

IN THE UTAH COURT OF APPEALS

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Von Marie Strieker,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20050209-CA
v.)	
)	
Labor Commission; Employers')	F I L E D
Reinsurance Fund; and/or Delta)	(April 13, 2006)
Airlines, Inc.,)	
)	2006 UT App 143
Respondents.)	

Original Proceeding in this Court

Attorneys: Von Marie Strieker, Longview, Texas, Petitioner
Pro Se
Alan L. Hennebold, Mark D. Dean, Kristy L. Bertelsen,
and Elliot R. Lawrence, Salt Lake City, for
Respondents

Before Judges Billings, Orme, and Thorne.

BILLINGS, Judge:

Petitioner Von Marie Strieker (Strieker) appeals the Utah Labor Commission Appeals Board's (the Board) denial of Strieker's motion for review of her claim for benefits under the Utah Workers' Compensation Act. See Utah Code Ann. §§ 34A-2-101 to -905 (2005). We affirm.

First, we conclude the Board properly upheld the Administrative Law Judge's (the ALJ) decision to permit Delta Airlines, Inc. (Delta) additional time to submit the joint medical record. Utah Administrative Code rule 602-2-1 explains that "[l]ate-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown." Utah Admin. Code R602-2-1(H)(5). Here, the Board upheld the ALJ's admission of Delta's late-filed medical records based on the Board's determination that "[i]n most cases it would be impossible for the ALJ to resolve the case without the joint medical record." The Board's determination supports the conclusion that the ALJ had good cause to extend Delta's time to file the joint medical record. See id. Thus, we

hold that it was not unreasonable or irrational for the Board to conclude the ALJ acted within the confines of rule 602-2-1. See Kent v. Department of Employment Sec., 860 P.2d 984, 986 (Utah Ct. App. 1993) (explaining that "appellate courts should employ an intermediate standard, one of some, but not total, deference, in reviewing an agency's application of its own rules" and that such a standard is one of "reasonableness and rationality").

Second, we rule the Board did not act improperly in deciding that Delta's failure to provide Strieker with a copy of the medical record was "not a sufficient reason to disturb [the ALJ's] decision." In making its determination that Delta's failure to abide by Utah Labor Commission rules did not require a reversal, the Board explained that while "[it] agree[d] that Delta should have provided [Strieker] with a copy of the medical record, . . . Strieker could have requested her copy from Delta or reviewed the medical record on file with [the ALJ]." Furthermore, the Board stated, "[a]t this point in the proceeding, [Strieker] must demonstrate a material omission from the medical record. Her suggestion that the record 'may' be incomplete is not a sufficient reason to disturb [the ALJ's] decision." We agree that Strieker could have requested a copy of the medical record or reviewed the copy on file with the ALJ. We further concur that Strieker's purported injury resulting from Delta's error--i.e., "How can I be assured that the necessary records were supplied?"--was, without more, a merely speculative statement of possible, but not probable, harm.

Finally, we sustain the Board's decision that the medical panel (the Panel) was impartial and that the additional medical care Strieker requested in this case was not medically necessary to treat her 1987 work-related injuries. In challenging the ALJ's ruling, Strieker essentially disputes the ALJ's "adopt[ion] of] the findings and conclusions of the . . . [P]anel as [its] own." But "when reviewing an agency's decision, [this court] does not conduct a de novo credibility determination or reweigh the evidence." Questar Pipeline Co. v. Utah State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993). It is the responsibility of the party challenging the agency's findings to demonstrate the findings "are not supported by substantial evidence." Hales Sand & Gravel, Inc. v. Audit Div. of State Tax Comm'n, 842 P.2d 887, 888 (Utah 1992). Thus, in the present case, Strieker "b[ore] the burden of marshaling all of the evidence supporting the findings and then . . . showing that the findings [were] not supported by substantial evidence." Kennecott Corp. v. State Tax Comm'n, 858 P.2d 1381, 1385 (Utah 1993). Strieker failed to meet her marshaling burden and further neglected to show that the agency's findings were not supported by substantial evidence. We therefore accept the ALJ's findings as conclusive, see Johnson v. Board of Review, 842 P.2d 910, 912 (Utah Ct. App. 1992), and

refuse to overrule the Board's decision that "[t]he [P]anel's report [was] impartial, thorough, and well-reasoned."

In summary, we reject Strieker's contentions on appeal and affirm the decision of the Board.

Judith M. Billings, Judge

WE CONCUR:

Gregory K. Orme, Judge

William A. Thorne Jr., Judge