

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF RENO,  
Appellant,  
vs.  
DENNIS SCHILLING,  
Respondent.

No. 44080

**FILED**

DEC 27 2005

ORDER OF REVERSAL

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
*J. Bloom*  
CHIEF DEPUTY CLERK

This appeal challenges a district court order denying a petition for judicial review in an occupational disease case. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Respondent Dennis Schilling was employed as a firefighter for appellant City of Reno from July 1967, until he retired on August 11, 2001. In November 2001, Schilling reported chest pains, and the next month, he was diagnosed with heart disease. His subsequent claim for occupational disease benefits was accepted by the City's third party administrator, which agreed to pay Schilling's medical bills.

In early 2003, Schilling requested permanent total disability (PTD) benefits under NRS 617.457(7), which were denied. A hearing officer reversed the administrator's denial, however, determining that Schilling was entitled to PTD benefits. An appeals officer affirmed the hearing officer's decision, concluding that the "uniqueness of the presumption of coverage for heart disease requires payment of [disability] compensation even after retirement if the firefighter first becomes disabled after retirement." Thereafter, the district court denied judicial review, from which order the City appeals, arguing that because Schilling was retired at his date of disability, he had no "average monthly wage"

from employment from which to calculate disability benefits and was therefore not entitled to disability compensation.<sup>1</sup>

In an appeal from a district court order denying a petition for judicial review, this court, like the district court, examines the administrative decision for clear legal error or arbitrary abuse of discretion.<sup>2</sup> Although we will not substitute our judgment for that of the appeals officer as to the weight of the evidence or on issues of credibility, we may correct an appeals officer's decision that is based on "errors of law."<sup>3</sup> Our review is limited to the record before the agency.<sup>4</sup>

In a recent decision, Howard v. City of Las Vegas,<sup>5</sup> this court examined whether a retired firefighter was entitled to disability benefits in a matter factually similar to the one at hand. In that opinion, we reiterated that a claimant becomes eligible for disability benefits on the date that his occupational disease causes his inability to continue working.<sup>6</sup> This rule was derived, in part, from NRS 617.060, which

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<sup>1</sup>See NRS 616C.440(1)(a).

<sup>2</sup>Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003).

<sup>3</sup>NRS 233B.135(3)(d); Bally's Grand Hotel & Casino v. Reeves, 113 Nev. 926, 935, 948 P.2d 1200, 1206 (1997).

<sup>4</sup>Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

<sup>5</sup>121 Nev. \_\_\_, 120 P.3d 410 (2005).

<sup>6</sup>Id. at \_\_\_, 120 P.3d at 411 (citing Mirage v. State, Dep't of Administration, 110 Nev. 257, 260-61, 871 P.2d 317, 319 (1994)).

defines “disablement” as “the event of becoming physically incapacitated.”<sup>7</sup> We also noted that NRS 617.420 precludes a claimant from receiving disability benefits unless the claimant has in fact been incapacitated from earning wages for at least five cumulative days in a twenty-day period. As a result, we concluded that, “when a retired claimant becomes eligible for occupational disease benefits, the claimant is entitled to receive medical benefits but may not receive any disability compensation if the claimant is not earning any wages,” because the term “wages” does not include retirement benefits and because a retired claimant has generally not lost any salary due to his disability.<sup>8</sup>

In this case, the appeals officer, noting that Schilling’s retirement constituted a “regular” retirement and not a “disability” retirement, even though he had experienced some fatigue and shortness of breath before retirement and felt that he was unable to perform his job, determined that Schilling had retired before the date of his disability. This determination is based on substantial evidence in the record. In particular, no doctor found that Schilling was unable to continue working at the time of his retirement, and although Schilling claims to have retired because, in his opinion, his condition lessened his ability to adequately perform his duties, no substantial evidence in the record demonstrates that he was incapacitated from earning wages at the time of his retirement.


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<sup>7</sup>Mirage, 110 Nev. at 260, 871 P.2d at 319.


<sup>8</sup>Howard v. City of Las Vegas, 121 Nev. at \_\_\_, 120 P.3d at 411-12.

Since Schilling's disability occurred after he had retired, the appeals officer's determination that Schilling is entitled to PTD benefits was affected by legal error. Accordingly, we

ORDER the judgment of the district court REVERSED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Steven P. Elliott, District Judge  
McDonald Carano Wilson LLP/Reno  
Anderson & Gruenewald  
Washoe District Court Clerk