

IN THE SUPREME COURT OF THE STATE OF NEVADA

LIBERTY MUTUAL,
Appellant,
vs.
NICK MARCHESE,
Respondent.

No. 45147

FILED

APR 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of a workers' compensation claim. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant challenges an appeals officer's decision, requiring appellant to accept claimant's surgery request, as legally erroneous or not based on substantial evidence.

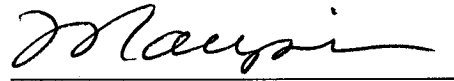
In the context of an appeal from a district court order denying a petition for judicial review of an administrative decision, we examine the administrative decision for clear error or an arbitrary abuse of discretion.¹ While purely legal determinations are reviewed independently, the appeals officer's fact-based conclusions of law are entitled to deference and will not be disturbed if they are supported by substantial evidence. "Substantial evidence is that 'which a reasonable person might accept as

¹Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003) (citations omitted).

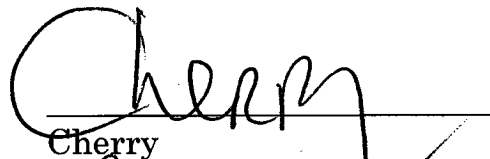
adequate to support a conclusion.”² Nor will this court substitute its judgment for that of the appeals officer as to “the weight of the evidence.”³ Our review is limited to the record before the appeals officer.⁴

Having reviewed the administrative record and considered the parties’ arguments, we conclude that the appeals officer’s determination that appellant improperly refused to accept claimant’s surgery request was not affected by clear error or an abuse of discretion. Accordingly, we

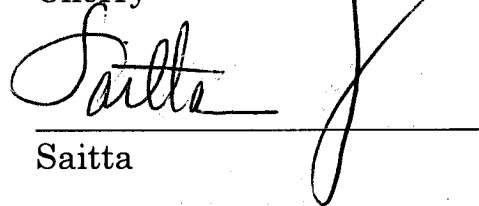
ORDER the judgment of the district court AFFIRMED.⁵

 J.

Maupin

 J.

Cherry

 J.

Saitta

²Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1032, 862 P.2d 1197, 1199 (1993)).

³Chalue, 119 Nev. at 352, 74 P.3d at 597.

⁴Ayala, 119 Nev. at 235, 71 P.3d at 491.

⁵In light of this order we need not address other arguments asserted by appellant.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Lester H. Berkson, Settlement Judge
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Brian D. Nettles
Eighth District Court Clerk