

IN THE SUPREME COURT OF THE STATE OF NEVADA

TEAM AMERICA,  
Appellant,  
vs.  
RONALD CHAVEZ,  
Respondent.

No. 45205

TEAM AMERICA,  
Appellant,  
vs.  
RONALD CHAVEZ; M & K  
ENTERPRISES; AND PAYROLL  
SOLUTIONS,  
Respondents.

No. 45642

**FILED**

NOV 14 2007

JAMETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a consolidated appeal from district court orders denying petitions for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Team America argues that the district court abused its discretion by denying its petitions for judicial review of the appeals officer's determination that Team America was respondent Ronald Chavez's employer at the time he was injured and that Chavez's untimely notice of injury was excused. Since the parties are familiar with the facts, we do not recount them in this order except as is necessary for our disposition.

Jurisdiction

Initially, we consider whether the appeals officer's order dismissing respondent Payroll Solutions as a party and remanding Chavez's claim to Team America and respondent M & K Enterprises for re-determination was final such that the district court had jurisdiction to

review it. We conclude that the order is final under NRS 233B.130(1)(b) because it is an appeals officer's decision, which is the highest level of review available within the administrative appeals system. It was also final and reviewable as it removed Payroll Solutions as a party to the case.

### Summary judgment

This court, like the district court, reviews administrative agency decisions for abuse of discretion.<sup>1</sup> Although this court reviews de novo an appeals officer's purely legal determinations, the appeals officer's fact-based conclusions of law are "entitled to deference."<sup>2</sup> This court will not disturb fact-based determinations when there is substantial evidence in the record to support them.<sup>3</sup> Additionally, this court will "not substitute its judgment for that of the [appeals officer] as to the weight of [the] evidence on a question of fact."<sup>4</sup> This court's review is further limited to the record before the appeals officer.<sup>5</sup>

The question raised before the district court was whether the appeals officer abused her discretion by concluding that summary

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<sup>1</sup>Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 603, 939 P.2d 1043, 1045 (1997); see also NRS 233B.135(3)(f).

<sup>2</sup>Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993)).

<sup>3</sup>Id.

<sup>4</sup>Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839, 842 (1997) (quoting NRS 233B.135(3)).

<sup>5</sup>Id. at 536, 936 P.2d at 842.

judgment was appropriate in this case.<sup>6</sup> “Summary judgment is appropriate” where “no ‘genuine issue as to any material fact [remains] and . . . the moving party is entitled to a judgment as a matter of law.’”<sup>7</sup> The substantive law on which a claim is based determines which facts are material.<sup>8</sup>

NRS 616B.691 controls the parties’ status under an employee leasing arrangement. When the appeals officer considered this case, NRS 616B.691(1) stated that, for workers’ compensation purposes, an employee leasing company . . . shall be deemed to be the employer of the employees it leases to a client company.”<sup>9</sup>

In this case, the relevant question is whether there are unresolved facts that prevent NRS 616B.691 from applying to Team America. We have reviewed de novo the parties’ contract, and we have considered the evidence supporting the appeals officer’s findings. We conclude that substantial evidence supports the appeals officer’s findings on this matter and that the appeals officer properly interpreted and applied the parties’ contract. Therefore, the district court did not abuse its discretion by denying Team America’s petitions for judicial review.

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<sup>6</sup>Ayala, 119 Nev. at 235, 71 P.3d at 491.

<sup>7</sup>Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (alteration in original) (quoting NRCP 56(c)).

<sup>8</sup>Id. at 731, 121 P.3d at 1031.

<sup>9</sup>The Legislature amended NRS 616B.691 in 2007. 2007 Nev. Stat., ch. 536, § 30.8, at 3340.

Untimely notice of injury

Team America argues that the appeals officer abused her discretion by excusing Chavez's untimely notice of injury form. We disagree.

"Worker's compensation statutes are to be liberally construed as to matters of procedure."<sup>10</sup> If written notice is untimely, NRS 616C.025(2) gives an insurer discretion to excuse the deficiency in certain instances. However, "the insurer's decision to deny an excuse is reviewable de novo."<sup>11</sup> This court applied those principals in Desert Inn Casino & Hotel v. Moran.<sup>12</sup> We conclude that the district court did not abuse its discretion by excusing Chavez's untimely notice of injury, because Chavez substantially complied with the reporting requirements of the workers' compensation system by reporting his injury to M & K on the day it occurred, and by filing a notice of injury with Payroll Solutions based on the misinformation he had received from M & K. Therefore, we conclude that the district court did not abuse its discretion when it denied Team America's petitions for judicial review of this issue because the appeals officer acted within her discretion.

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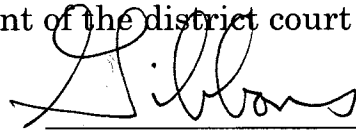
<sup>10</sup>Desert Inn Casino & Hotel v. Moran, 106 Nev. 334, 337, 792 P.2d 400, 402 (1990).


<sup>11</sup>Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 548, 2 P.3d 850, 854 (2000).


<sup>12</sup>106 Nev. At 337-38, 792 P.2d at 402-03 (affirming an appeals officer's decision to reverse the insurer's claim denial and excuse the claimant's untimely claim, because the employee had substantially complied with her statutory obligations; the claim was untimely only because the employer provided the employee with inaccurate information).

We have considered the parties' other contentions and conclude that they lack merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Douglas W. Herndon, District Judge  
Hon. Mark R. Denton, District Judge  
Persi J. Mishel, Settlement Judge  
Santoro, Driggs, Walch, Kearney, Holley & Thompson  
Craig P. Kenny & Associates  
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.  
Marquis & Aurbach  
Eighth District Court Clerk