

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HARDIE BUILDING
PRODUCTS, INC.; AND CANNON
COCHRAN MANAGEMENT SERVICES,
INC.,
Appellants,
vs.
EFRAIN ACEVEDO,
Respondent.

No. 50069

FILED

JUN 24 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district order denying a petition for judicial review and affirming the appeals officer's decision in a workers' compensation case.¹ First Judicial District Court, Carson City; William A. Maddox, Judge.

In the underlying proceeding, respondent requested that appellants pay him total temporary disability (TTD) benefits under his workers' compensation claim, which had been accepted for the claimed injury. The parties agreed that respondent violated appellant James Hardie Building Products' safety procedures when he was injured. Hardie fired respondent for violating the safety regulations soon after respondent's injury. After respondent's request for TTD was denied, an appeals officer reversed that denial. The district court denied appellants'

¹Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this appeal.

petition for judicial review and affirmed the appeals officer's decision. This appeal followed.

In the context of an appeal from a district court order resolving a petition for judicial review of an administrative decision, we, like the district court, examine the administrative decision for clear error or an arbitrary abuse of discretion.² 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.³ "Substantial evidence is that 'which a reasonable person might accept as adequate to support a conclusion.'"⁴ Courts may not substitute their judgment for that of the appeals officer as to "the weight of the evidence."⁵ Our review is limited to the record before the appeals officer.⁶

Appellants argue that respondent was not entitled to TTD benefits after respondent's employment was terminated for cause soon after his injury. Having reviewed the administrative record and considered the parties' arguments, we conclude that the appeals officer's

²Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003); Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

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

⁴Ayala, 119 Nev. at 235, 71 P.3d at 491-92 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1032, 862 P.2d 1197, 1199 (1993)).


⁵Chalue, 119 Nev. at 352, 74 P.3d at 597.

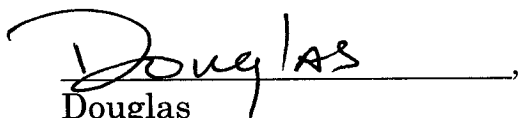
⁶Ayala, 119 Nev. at 235, 71 P.3d at 491.

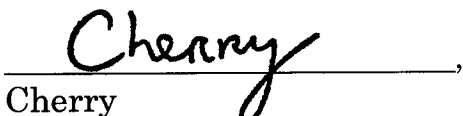
determination was not affected by clear error or an abuse of discretion.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. William A. Maddox, District Judge
Lansford W. Levitt, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP
Kathleen A. Sigurdson
Carson City Clerk