

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDDIE BRIONES,

No. 35096

Appellant,

vs.

EMPLOYERS INSURANCE COMPANY OF  
NEVADA,

Respondent.

**FILED**

AUG 9 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review and affirming an appeals officer's determination that appellant Freddie Briones was not entitled to workers' compensation benefits.

Briones contends that the appeals officer abused his discretion in admitting the toxicology report into evidence because a supporting affidavit or declaration did not accompany it. Further, because Employers Insurance Company of Nevada's case was based solely on this purportedly inadmissible toxicology report, Briones contends that the appeals officer's decision to deny him workers' compensation benefits was not supported by substantial evidence. We disagree.

The standard of review of an administrative decision is codified in NRS 233B.135. This court reviews administrative decisions in similar fashion as the district court; we must ascertain whether the agency had sufficient evidence before it in making its determination, so as to ensure that the agency did not act in an arbitrary and capricious manner that would constitute an abuse of discretion.<sup>1</sup> Further, it is firmly established that neither

<sup>1</sup>See United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993).

court will substitute its own judgment for the judgment of the agency in matters regarding evidentiary findings in administrative proceedings.<sup>2</sup>

"Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion."<sup>3</sup> Any findings by the agency based on substantial evidence are therefore deemed to be conclusive.<sup>4</sup>

In this instance, Briones' claim for workers' compensation was denied because he tested positive for a controlled substance. Pursuant to NRS 616C.230(1)(d), compensation is not payable for an injury that is:

[p]roximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

Here, we conclude that the appeals officer did not abuse his discretion by admitting the toxicology report into evidence. NRS 50.315(5) states that "the affidavit or declaration of a person who receives from another a sample of blood or urine or other tangible evidence that is alleged to contain alcohol or a controlled substance . . . may be admitted in any" administrative proceeding. EICON submitted the toxicology report from APL, which included signed statements from APL employees attesting to the chain of custody of the sample. The bottom of the document contained in the record is partially illegible, and our attempts to

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<sup>2</sup>See id.

<sup>3</sup>Id. (citing State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

<sup>4</sup>See Whitney v. State, Employment Security Dep't, 105 Nev. 810, 812, 783 P.2d 459, 460 (1989).

procure a more legible copy of the report were disregarded by the attorneys in this case.

Because the appeals officer determined that the toxicology report was admissible, and because the record provided by the appellant does not demonstrate that the toxicology report was not accompanied by the appropriate declaration, we conclude that the appeals officer did not err in admitting and subsequently relying on the toxicology report.

Further, NRS 616C.230(1)(d) states that once a controlled substance is presumed to be the proximate cause of injuries, that assumption must be rebutted by contrary evidence. Here, Briones failed to provide any evidence that would explain why the controlled substance was found in his system.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. James C. Mahan, District Judge  
Peter L. Busher  
Karen T. Grant-Head  
Clark County Clerk