

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANPOWER OF SOUTHERN  
NEVADA, INC.,  
Appellant,  
vs.  
ROBIN DREW AND THE STATE OF  
NEVADA -DEPARTMENT OF  
BUSINESS AND INDUSTRY, DIVISION  
OF INDUSTRIAL RELATIONS, AN  
AGENCY OF THE STATE OF NEVADA,  
Respondents.

No. 56033

FILED

DEC 27 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *A. Inge*  
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Manpower of Southern Nevada, Inc. contends that the district court committed reversible error in denying its petition for judicial review because the underlying decision by an administrative appeals officer incorrectly assessed administrative fines and benefit penalties.<sup>1</sup> We conclude that the appeals officer erred in calculating the amount of the benefit penalty stemming from a 2007 violation, and we reverse in part the district court's order. However, because the appeals officer's remaining determinations were proper, we affirm the rest of the district court's order.

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<sup>1</sup>As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

### Standard of review

When reviewing a district court's decision to deny judicial review of an administrative agency determination, this court applies the same standard of review as the district court, and must "evaluate the agency's decision for clear error or an arbitrary and capricious abuse of discretion." Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383 (2008); see also NRS 233B.135 (providing the standards for judicial review of an agency decision).

### The appeals officer committed an abuse of discretion in calculating the 2007 benefit penalty

Manpower argues that the appeals officer improperly calculated the benefit penalty that was assessed for a violation occurring in December 2007. Specifically, the appeals officer found that Manpower committed two prior violations, subjecting Manpower to a three-point enhancement and commensurate additional penalty. Manpower contends that it only committed one prior violation. Accordingly, Manpower asserts that the amount of the benefit penalty for the 2007 violation should have been \$3,250 less than the \$9,875 imposed by the appeals officer.

After reviewing the record, the evidence supporting the appeals officer's finding of two prior violations remains unclear. Because the appeals officer failed to reference the facts giving rise to either of these prior alleged violations, we conclude that there has been an abuse of discretion. Cf. Jitnan v. Oliver, 127 Nev. \_\_\_, \_\_\_, 254 P.3d 623, 629 (2011) (explaining that "[w]ithout an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation"). Moreover, because respondent Robin Drew failed to respond to this

argument on appeal, she has conceded the error. See Ozawa v. Vision Airlines, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009).

We conclude that the appeals officer erred in failing to articulate support for the alleged two prior violations before imposing a three point penalty. Thus, we reverse in part the district court's decision to deny Manpower's petition for judicial review with regard to the calculation of a benefit penalty assessed for Manpower's 2007 violation.<sup>2</sup>

The appeals officer properly determined that Manpower's delay in paying fines assessed from a 2006 violation was unreasonable

Manpower argues that the appeals officer erred by affirming an administrative fine and benefit penalty imposed on Manpower for its delayed payment of fees assessed from its 2006 violation. Manpower contends that the delay was not unreasonable. We disagree.

Manpower has not provided sufficient justification to show that its nine-day delay was reasonable. To the contrary, the Division of Industrial Relations correctly weighed the requisite factors under NAC 616D.315 and made detailed findings as to why Manpower's delay was unreasonable. The appeals officer affirmed this finding, and we find no error in this logic.<sup>3</sup> Therefore, we affirm the district court's decision with

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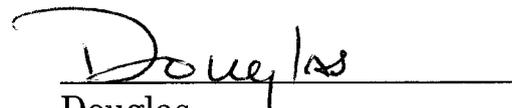
<sup>2</sup>To be clear, we conclude that the appeals officer properly imposed the administrative fine of \$15,000 and the minimum benefit penalty of \$5,000 in regard to Manpower's 2007 violation. Because Manpower concedes one prior violation, we reverse only \$3,250 of the enhanced portion of the benefit penalty related to the three-point enhancement.

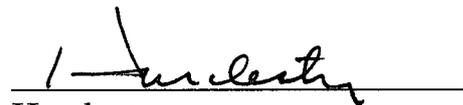
<sup>3</sup>Manpower also contends that the appeals officer failed to cite to sufficient legal authority to support a number of her determinations. We find this argument to be unpersuasive. Other than the appeals officer's failure to reference evidence of two prior violations in assessing the benefit

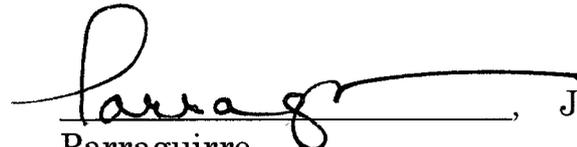
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regard to the administrative fine and benefit penalty imposed for the late payment. For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

 J.  
Douglas

 J.  
Hardesty

 J.  
Parraguirre

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penalty for the 2007 violation (as discussed above), the record clearly supports her calculations of the remaining fines and penalties as provided in NRS 616D.120(1)(e), (1)(c)(2), (3)(b), and NAC 616D.411.

Finally, Manpower asserts that the appeals officer erred by: (1) refusing to recuse herself, (2) refusing Drew's attorney's request to withdraw as counsel, and (3) misidentifying its third party administrator. Because Manpower does not cite to any law in support of these arguments, we decline to consider them. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider allegations of error not cogently argued or supported by any pertinent legal authority).

cc: Hon. Timothy C. Williams, District Judge  
Howard Roitman, Settlement Judge  
Lynne & Associates  
Nevada Attorney for Injured Workers/Las Vegas  
Dept of Business and Industry/Div of Industrial  
Relations/Henderson  
Eighth District Court Clerk