

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDA CREELMAN,  
Appellant,  
vs.  
THE VONS COMPANY,  
Respondent.

No. 35553

**FILED**

**JUL 10 2001**

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

ORDER OF REVERSAL

This is an appeal from a district court order granting judicial review and reversing the appeals officer's determination in a workers' compensation case.

On appeal, Linda Creelman contends that the district court erroneously considered additional medical evidence not presented to the appeals officer. Creelman asserts that because the district court could not consider such evidence, the district court committed reversible error. We agree.

NRS 233B.135 is the statute governing the district court's scope of judicial review of administrative agency decisions. Judicial review of administrative decisions is deferential and not de novo, because the reviewing court must accept the agency's findings of fact as presumptively correct.<sup>1</sup> Thus, the district court's determination is "[c]onfined to the record" of the final agency decision.<sup>2</sup> The record to be reviewed by the district court shall only "consist[] of all evidence taken at the hearing before the appeals officer and any findings of fact and conclusions of law based thereon."<sup>3</sup>

<sup>1</sup>See SIIS v. Khweiss, 108 Nev. 123, 126, 825 P.2d 218, 219 (1992).

<sup>2</sup>NRS 233B.135(1)(b).

<sup>3</sup>NRS 616C.345.

Here, the district court permitted respondent Vons to attach various documents, including medical records, to its opening brief in support of its petition for judicial review. Many of these documents were not admitted into evidence at the administrative hearing.

We note that most of the fugitive documents were unrelated to Creelman's heart condition - and thus, their admissibility amounted to harmless error. However, at least one document was probative and may have influenced the district court's decision. Specifically, a letter written by Creelman's treating physician, Dr. Charles R. Ruggeroli, stated that Creelman "has a documented history of coronary artery disease." Dr. Ruggeroli's statement was used by the district court in support of its determination that no causal relationship existed between Creelman's heart attack and the industrial injury claim.

NRS 233B.135 provides that the district court may not receive extraneous evidence - not provided in the appeals officer's record - unless that evidence would explain procedural irregularity. In no manner, however, is the district court permitted to otherwise supplement the record. To the contrary, if the district court determines that the fugitive evidence is of a material nature, the district court must either exclude the evidence or remand the matter and allow the appeals officer to consider the additional evidence.<sup>4</sup>


The district court did not follow statutory procedures when it supplemented the record with additional documents not before the appeals officer. Therefore, we conclude that the district court's consideration of this

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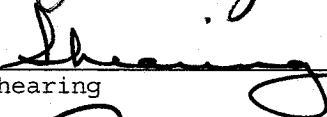
<sup>4</sup>NRS 233B.131(2).

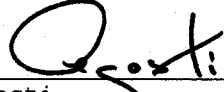
evidence was in error.<sup>5</sup> Here, we conclude that substantial evidence deduced through testimony of Creelman's treating physicians established the probability of a causal connection.

Accordingly, we ORDER the judgment of the district court reversed, and we reinstate the decision of the appeals officer.


  
Maupin C.J.

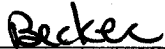
  
Young J.

  
Shearing J.

  
Agosti J.

  
Rose J.

  
Leavitt J.

  
Becker J.

cc: Hon. Lee A. Gates, District Judge  
Nevada Attorney for Injured Workers  
Moran & Associates  
Clark County Clerk

<sup>5</sup>See Carson City v. Lepire, 112 Nev. 363, 365, 914 P.2d 631, 633 (1996).