

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH TWIDDY,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT
OF PUBLIC SAFETY; AND STATE OF
NEVADA DEPARTMENT OF
PERSONNEL, STATE PERSONNEL
COMMISSION,
Respondents.

No. 62868

FILED

MAR 26 2015

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a state employment matter. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellant Kenneth Twiddy was employed by the Nevada Highway Patrol until NHP terminated Twiddy's employment for cause. Twiddy appealed to the Nevada State Personnel Commission, and a hearing was held. The hearing officer concluded that just cause supported Twiddy's termination, and the district court denied Twiddy's petition for judicial review. Twiddy now appeals and argues that the hearing officer abused his discretion by failing to impose the burden of proof on the State. We agree.

When reviewing a decision of an administrative body, this court, like the district court, must determine whether the administrative body abused its discretion. *Knapp v. State ex rel. Dep't of Prisons*, 111 Nev. 420, 423, 892 P.2d 575, 577 (1995). We review purely legal questions

de novo. *Id.* Granting a petition for judicial review is appropriate where the agency's decision is affected by an error of law. NRS 233B.135(3)(d).

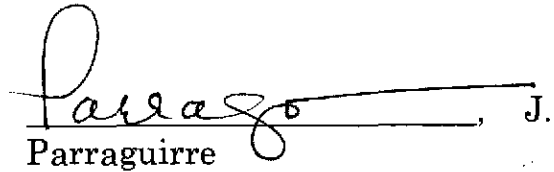
The State does not dispute and we agree that the State bore the burden of proving that just cause supported Twiddy's termination. *See, e.g., Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. ___, ___, 327 P.3d 487, 490 (2014) (“[T]he Board carried the initial *burden* to prove that appellants committed misconduct.”); *Knapp*, 111 Nev. at 424, 892 P.2d at 578 (considering whether a hearing officer abused his discretion by “concluding that [the appointing authority] *failed to establish*” the charges (emphasis added)); *see also Cal. Corr. Peace Officers Ass'n v. State Pers. Bd.*, 899 P.2d 79, 92 (Cal. 1995) (stating that the appointing authority bears the burden of proving that an employee engaged in misconduct and that the misconduct warrants the discipline given).

Here, it is entirely unclear where the hearing officer placed the burden of proof. Initially, the hearing officer stated that “the burden . . . is upon the appellant [Twiddy] to demonstrate that the decision [to terminate him] was wrong.” The hearing officer later “acknowledge[d] that the burden of proof . . . is on the State to support its decision for termination.” In his written decision, however, the hearing officer stated that “[b]urden of proof as it is normally understood in contested legal matters doesn't really exist here.” Thus, the hearing officer wavered and ultimately declined to determine which party bore the burden of proof. By failing to impose the burden of proof upon the State, the hearing officer abused his discretion, thus warranting judicial review. *See* NRS 233B.135(3)(d); *Knapp*, 111 Nev. at 423, 892 P.2d at 577. We therefore reverse and remand the district court's order denying Twiddy's

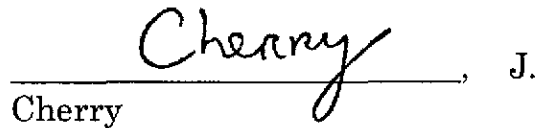
petition for judicial review. On remand, the district court shall remand this matter to the hearing officer to apply the correct burden of proof.¹

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 J.
Parraguirre

 J.
Douglas

 J.
Cherry

cc: Hon. Ronald J. Israel, District Judge
Salvatore C. Gugino, Settlement Judge
Law Office of Daniel Marks
Brandon R. Price
Attorney General/Reno
Eighth District Court Clerk

¹Given our disposition of this matter, we decline to address the parties' remaining arguments on appeal. See *Hernandez v. Bennett-Haron*, 128 Nev. ___, ___ n.8, 287 P.3d 305, 317 n.8 (2012).