

IN THE SUPREME COURT OF THE STATE OF NEVADA

REYNOLD WORTHINGTON,

No. 36023

Appellant,

vs.

MGM DESERT INN, MGM GRAND
HOTEL,

Respondent.

FILED

NOV 09 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribak*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order, entered on judicial review, which affirms an administrative determination that appellant is not entitled to certain worker's compensation benefits.

Appellant Reynold Worthington injured his left shoulder on the job in 1988, while employed by respondent MGM Desert Inn, MGM Grand Hotel ("MGM"). Following several surgeries, he was released for light-duty work and underwent vocational retraining in food and beverage management. Worthington suffered lower back pain shortly thereafter, and his physician determined that he was incapable of working.

MGM subsequently rejected Worthington's request for temporary total disability payments. Two hearings officers and an appeals officer found that Worthington was ineligible for temporary total disability compensation. The district court upheld these decisions on judicial review.

On appeal, Worthington contends that (1) the appeals officer's decision was unsupported by substantial evidence; (2) the decision was affected by error of law because the appeals officer considered facts not in evidence; and (3) the district court abused its discretion in refusing to find that MGM confessed error by failing to file a timely answering brief. We conclude that each of these assignments of error lacks merit.

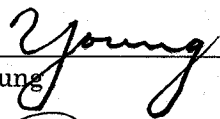
The district court may set aside an agency's final decision if no substantial evidence in the record exists to support the appeals officer's decision, and that decision was clearly erroneous.¹ "Substantial evidence

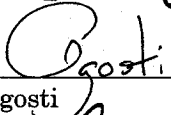
¹See NRS 233B.135(3).

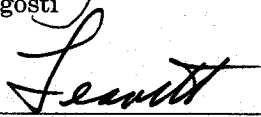
is that 'quantity and quality of evidence [that] a reasonable [person would] accept as adequate to support a conclusion.'"² Here, we find that the evidence in the record below supports the decision and findings of the appeals officer. Thus, the decision was not clearly erroneous.

We have also considered Worthington's remaining arguments and conclude that neither argument supports a finding of error by the appeals officer or the district court.

Accordingly, having considered Worthington's arguments, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Stephen L. Huffaker, District Judge
Nevada Attorney for Injured Workers
J. Michael McGroarty, Chtd.
Clark County Clerk

²Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270 (1993)
(quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608 n.1, 729
P.2d 497, 498 n.1 (1986)).