

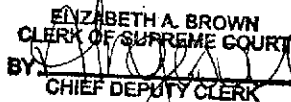
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES,
Appellant,
vs.
TERESA ADAMS,
Respondent.

No. 68057

FILED

JAN 30 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order denying a petition for judicial review. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Department of Motor Vehicles ("DMV") dismissed respondent Teresa Adams for violating, among other statutes and DMV policies, a policy against completing transactions for friends.¹ Under the DMV's Prohibitions and Penalties, a violation of this policy requires dismissal. Adams appealed her dismissal, and a hearing officer found by a preponderance of the evidence that Adams did not violate the policy because the policy did not apply to mere acquaintances. The hearing officer reversed Adams' dismissal, finding a lesser disciplinary action was appropriate for the violations Adams committed. The DMV filed a petition for judicial review and the district court denied the petition, finding the hearing officer's decision was supported by substantial evidence. The DMV appeals the district court's order.

¹We do not recount the facts except as necessary to our disposition.

On appeal, the DMV contends the hearing officer improperly substituted his judgment for that of the DMV by applying the incorrect standard of review and reaching a decision that is erroneous in view of the substantial evidence in the record.

A hearing officer's role is to "determine the reasonableness of a dismissal, demotion, or suspension." NRS 284.390(1); *Taylor v. Dep't of Health and Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 950-51. A dismissal is "reasonable" if it would "serve the good of the public service." NRS 284.385(1)(a); *Knapp v. State ex rel. Dep't of Prisons*, 111 Nev. 420, 424, 892 P.2d 575, 577 (1995). "When reviewing a district court's [order regarding] a petition for judicial review of an agency decision, this court engages in the same analysis as the district court." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010). Thus, we "review the evidence presented to the administrative body and ascertain whether that body acted arbitrarily or capriciously, thus abusing its discretion." *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980). See *Morgan v. State, Dep't of Bus. & Indus., Taxicab Auth.*, No. 67944, 2016 WL 2944701 (Ct. App. May 16, 2016). This court may set a hearing officer's decision aside if it rests on an error of law or constitutes an abuse of discretion. *State v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013). We review the hearing officer's conclusions of law, insofar as they concern purely legal questions, de novo. *Knapp*, 111 Nev. at 423, 892 P.2d at 577.

In making a decision "a hearing officer does not defer to the appointing authority's decision." *Id.* at 424, 892 P.2d at 577. While the hearing officer makes a determination as to the reasonableness of dismissal without deference to the agency, the hearing officer's ability to

reverse the dismissal is limited by law. "If the hearing officer determines that the dismissal, demotion or suspension was without just cause as provided in NRS 284.385, the action must be set aside." NRS 284.390(6). A discharge for just cause "is one which is not for any arbitrary, capricious, or illegal reason and which is one based on facts (1) supported by substantial evidence, and (2) reasonably believed by the employer to be true." *Southwest Gas Corp. v. Vargas*, 111 Nev. 1064, 1078, 901 P.2d 693, 701 (1995). Therefore, the hearing officer should only reverse dismissal if he or she concludes dismissal is (1) not based on substantial evidence or (2) for a purpose other than the good of the public service.

In this case, the hearing officer applied the incorrect standard of review in his factual determinations. Critically, the hearing officer found that the DMV failed to prove by a preponderance of the evidence that Adams and the customer she helped serve were not mere acquaintances. Instead, the hearing officer should have ruled on whether substantial evidence supported the DMV's contention that Adams and the customer were close friends. And since the preponderance-of-the-evidence standard is higher than the substantial-evidence standard, we must reverse and remand this matter for the hearing officer to utilize the correct standard of review.² See *Weaver v. State, Dep't of Motor Vehicles*,


²Substantial evidence is "evidence that a reasonable mind could accept as adequately supporting the agency's conclusions." *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. ___, ___, 327 P.3d 487, 489 (2014). We recognize that *Nassiri* may have caused confusion because it noted the standard of proof was by a preponderance of the evidence, but that was in relation to the agency's determination for its licensing proceedings; "substantial evidence" is the proper standard of review to be used during the hearing officer's review. See *Morgan*, 2016 WL 2944701, at *1.

121 Nev. 494, 501 n.12, 117 P.3d 193, 198 n.12 (2005). Had the hearing officer applied the correct standard of review, he may have concluded that there was substantial evidence that Adams and the customer were close friends, and thus found the DMV's actions were supported by just cause.³

Thus, we reverse the district court's order with instructions to remand this matter to the hearing officer to make factual findings based on the proper standard of review. Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³The DMV argues its policy against completing transactions for friends includes transactions for acquaintances. However, the hearing officer's interpretation of its administrative regulations is entitled to deference from this court. *See Taylor*, 129 Nev. at 930, 314 P.3d at 951 (holding a hearing officer's interpretation of a regulation is entitled to deference if it is "within the language" of the regulation).

cc: Hon. James Todd Russell, District Judge
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