

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DZIDEFO MENSAH,  
Appellant,  
vs.  
CORVEL CORPORATION,  
Respondent.

No. 69384

**FILED**

MAR 06 2017

ELIZABETH A. BROWN  
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 workers' compensation matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Dzidefo Mensah slipped and fell while working as an independent contractor. He filed a workers' compensation claim and respondent Corvel Corporation accepted the claim for issues with Mensah's right shoulder. When Corvel later refused to expand the claim to include his left shoulder and left knee, Mensah filed an appeal. At the hearing before the appeals officer, Mensah moved to admit approximately 200 pages of documentary evidence that he had not previously given to Corvel. Despite the failure to provide Corvel the materials ahead of the hearing as is required, and despite the fact that the documents were not separated into exhibits or paginated, the appeals officer allowed the documents in over Corvel's objection. Ultimately, however, the appeals officer found in favor of Corvel, concluding that Mensah failed to present any objective evidence that he suffered injuries to his left shoulder or knee.

Mensah then filed a petition for judicial review with the district court. After the district court received the administrative record,

Mensah sought to supplement it, claiming that certain documents that he had presented as evidence during the administrative proceeding, which were crucial to his case, were not included in the record transmitted to the district court. The district court denied the motion, concluding that relief was not warranted under NRS 233B.131(2) (providing that, in judicial review proceedings, the district court may direct that additional evidence be taken before the agency if it is material and good cause exists for the failure to present it during the administrative proceedings). The district court later denied Mensah's petition for judicial review, and this appeal followed.

On appeal, Mensah asserts that the district court erred in denying his request to supplement the record. Specifically, he argues that the district court's application of NRS 233B.131(2) was erroneous because he was not seeking to present additional evidence as that statute contemplates, but rather was seeking to ensure that the entire agency record was transmitted to the district court. *See* NRS 233B.131(1)(b) (requiring the administrative agency to transmit the record to the district court upon the filing of a petition for judicial review). Corvel responds that the evidence Mensah alleges was not transferred as part of his petition for judicial review was never presented during the administrative proceeding and, therefore, the district court properly used its discretion under NRS 233B.131(2) to refuse to admit the additional evidence. *See Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 56, 200 P.3d 514, 519 (2009) (reviewing a decision under NRS 233B.131(2) for an abuse of discretion). Having reviewed the parties' briefs and the record on appeal, we are unable to discern whether the evidence Mensah complains of was presented at the administrative hearing and, thus, improperly omitted

from the record transmitted to the district court or whether Mensah failed to actually present these materials to the appeals officer.

During the administrative hearing, Mensah relied heavily on the documents he claims to have submitted into evidence—he provided the specific dates and doctors to which the evidence related and even read into the record, verbatim, one of the letters that was allegedly not transmitted to the district court.<sup>1</sup> That letter, from one of Mensah's treating physicians, opined that Mensah's left shoulder and knee should have been covered by workers' compensation. And from the transcript of the administrative hearing, it appears that the appeals officer took note of the date of this particular letter. Despite Mensah's testimony regarding these documents and his statements during the hearing indicating that he had submitted these materials to the appeals officer as part of his evidence packet, however, the final agency decision merely states that Mensah did not offer any objective medical evidence demonstrating that he injured his left knee and shoulder as a result of the industrial accident.

But the appeals officer's decision contains no reference to or discussion of the aforementioned letter, including whether this document was included in the materials he submitted at the hearing. As noted above, Mensah's testimony and the letter on which it was based went to his claimed injuries. The other documents Mensah testified about that were allegedly submitted to the appeals officer but not transmitted to the district court are likewise not addressed in the appeals officer's decision.

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<sup>1</sup>Mensah attached copies of these materials to his district court motion to supplement the record, and thus, they are included in the record before us on appeal.

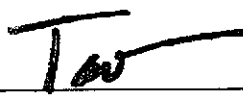
Given the appeals officer's determination that Mensah offered no objective evidence showing he suffered the injuries at issue here in the industrial accident and the absence of any findings addressing Mensah's testimony regarding these materials, including whether this testimony was supported by documentary evidence in the record and whether the testimony and any supporting materials did or did not support the expansion of his claim, we are unable to conduct a proper review of the agency's decision or Mensah's claim that the agency failed to transmit all of the documents he submitted to the district court as required by NRS 233B.131(1)(b). *See Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 785, 312 P.3d 479, 482 (2013) (providing that an agency's factual findings facilitate judicial review and "enable the courts to evaluate the administrative decision without intruding on the agency's fact-finding function"); *see also* NRS 233B.135(3)(d), (f) (providing that an agency decision may be overturned if it is affected by an error of law or is arbitrary or capricious); *State, Tax Comm'n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 385-86, 254 P.3d 601, 603 (2011) (determining whether the agency decision under review was arbitrary and capricious and thus an abuse of discretion or otherwise affected by prejudicial legal error).

Based on the foregoing, we must reverse the district court's order denying judicial review and remand this matter to the district court to remand to the appeals officer for findings regarding Mensah's testimony as to the documents that were not transmitted to the district court and whether that testimony was supported by documentary evidence, as discussed above. And, if the documents were provided at the administrative hearing, the appeals officer will need to make findings

addressing those documents and whether they provide any support for Mensah's request to expand the scope of his workers' compensation claim.

It is so ORDERED.<sup>2</sup>

, C.J.  
Silver

, J.  
Tao

, J.  
Gibbons

cc: Hon. Patrick Flanagan, District Judge  
Dzidefo Mensah  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Washoe District Court Clerk

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<sup>2</sup>Based on our decision herein, we need not address Mensah's remaining arguments on appeal. Additionally, this order should not be construed as a comment upon the merits of the underlying substantive claims.