

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOURAD MESSIHA,

Appellant,

vs.

NEVADA DEPARTMENT OF
TRANSPORTATION,

Respondent.

No. 36780

FILED

JAN 03 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

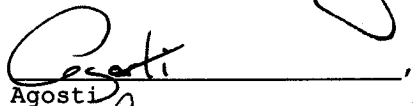
This is a proper person appeal from a district court order denying judicial review and affirming respondent's termination of appellant's employment. When an administrative decision is challenged, this court's function is identical to that of the district court; we review the evidence presented to the administrative hearing officer to determine whether he acted arbitrarily or capriciously, thus abusing his discretion. See *Knapp v. State, Dep't of Prisons*, 111 Nev. 420, 423, 892 P.2d 575, 577 (1995). The hearing officer was charged with determining the reasonableness of appellant's dismissal, guided in his decision by the weight of the evidence showing that dismissal would serve the good of the public service. See id. at 424, 892 P.2d at 577; NRS 284.385(1)(a); NRS 284.390(1); NAC 284.798. If substantial evidence and sound legal reasoning support the hearing officer's decision, reviewing courts must sustain it. See *SIIS v. Shirley*, 109 Nev. 351, 353-54, 849 P.2d 256, 258 (1993); NRS 233B.135(3). The hearing officer's credibility determinations are not open to judicial review. See *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579, 585, 854 P.2d 862, 867 (1993).

We have reviewed the record, and we conclude that substantial evidence and sound legal reasoning support the hearing officer's determination that appellant's dismissal was reasonable and would serve the good of the public service. Respondent properly used progressive disciplinary measures in response to appellant's tardiness, unauthorized absences and abuse of leave privileges. See NRS 284.383 (mandating the adoption of a progressive discipline system for state employees). Respondent dismissed appellant after he failed to show up for work, and did not contact his supervisor, for three weeks in August 1997. Appellant's dismissal was justified by his lengthy unauthorized absence from his job, see NAC 284.650 (listing causes for disciplinary action against classified state employees, including unauthorized absence from duty or abuse of leave privileges), and the district court did not err by denying appellant's petition for judicial review.

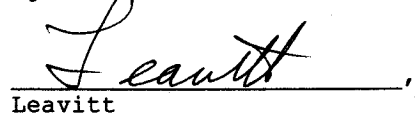
Accordingly, we affirm the order of the district court.


Shearing

J.


Agosti

J.


Leavitt

J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Joseph Vadala, Deputy Attorney General, Las Vegas
Mourad Messiha
Clark County Clerk