

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SERENA HICKS,  
Appellant,  
vs.  
GREEN VALLEY RANCH/STATION  
CASINOS, INC.; AND YORK RISK  
SERVICES GROUP, INC.,  
Respondents.

No. 73931

**FILED**

JUL 27 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Serena Hicks appeals from an order denying her petition for judicial review following an administrative appeals officer's decision and order. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Hicks worked as a hostess/cocktail server at a restaurant within the Green Valley Ranch Resort (Green Valley).<sup>1</sup> On August 11, 2015, during a shift while carrying a tray of drinks, Hicks tripped over a patron's scooter-style walker and fell to the floor. Hicks briefly lost consciousness and suffered a puncture wound to her neck caused by the broken drink glasses.

Hicks was transported to a hospital where she was diagnosed with a head injury, neck laceration, and left elbow sprain. A physician at the hospital provided Hicks with a medical excuse form that instructed her to refrain from working until August 15, 2015. On August 19, 2015, after evaluating Hicks, a different physician released her to light duty work.

Subsequently, Green Valley offered a number of light duty assignments to Hicks. Hicks rejected the first two light duty assignments she

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

received on the ground that she needed to rest. Hicks did not return to work until September 29, 2015.

Through legal counsel, Hicks requested “temporary disability benefits”—without specifying whether she wanted temporary *total* disability benefits or temporary *partial* disability benefits—from Green Valley for the entire time she missed work. Green Valley’s third-party administrator, York Services Group, Inc., (York) denied Hicks’ request. Hicks appealed this denial to an administrative hearing officer.

The hearing officer ordered Green Valley and York to provide Hicks with temporary total disability (TTD) benefits from August 11, 2015, through September 28, 2015. Green Valley and York appealed.

In a written decision and order, the appeals officer found that Hicks was released to light duty work on August 19, 2015. The appeals officer further found that Hicks was offered light duty work on that same date, which she declined, stating she needed to rest. The appeals officer concluded that Hicks was only entitled to TTD benefits from August 11, 2015, through August 18, 2015, and the evidence did not support an award of TTD benefits from August 19, 2015, onward.

Hicks petitioned the district court for judicial review of the appeals officer’s order. The district court denied her petition. This appeal follows.

We review petitions for judicial review of administrative decisions without “any deference to the district court decision.” *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). “Like the district court, we decide ‘pure legal questions without deference to an agency determination.’” *Id.* (quoting *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)). However, the appeals officer’s “conclusions of law, which will necessarily be closely related to the [officer’s]

view of the facts, are entitled to deference, and will not be disturbed if they are supported by substantial evidence.” *Jones*, 102 Nev. at 217, 719 P.2d at 806. Further, we review the officer’s “factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence.” *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) (internal quotation marks omitted); *see also* NRS 233B.135(3) (addressing the grounds to reverse an agency’s final decision “in whole or in part”). Substantial evidence is that “which a reasonable mind might accept as adequate to support a conclusion.” NRS 233B.135(4); *Nev. Pub. Emps.’ Ret. Bd. v. Smith*, 129 Nev. 618, 624, 310 P.3d 560, 564 (2013).

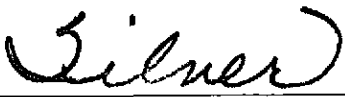
Hicks argues that the appeals officer erred by concluding she was not eligible for TTD benefits after August 18, 2015, because the light duty job offers Green Valley made to her were either not legally sufficient under NRS 616C.475(8) or were constructively revoked. Hicks does not argue that she was temporarily totally disabled from August 19, 2015, until she returned to work. Nevertheless, Hicks never expressly sought temporary partial disability benefits below and only argues that this court should “require payment of temporary total disability benefits” on appeal.

NRS 616C.475(5) provides, in part, that “[p]ayments for a temporary total disability *must cease* when: (a) [a] physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee’s education, training and experience . . . .” (emphasis added). “When [a] physician release[s] [an employee] to light-duty employment,” the employee is “not entitled to temporary total disability benefits, because [the employee’s] physical disabilities and work limitations, for the most part, d[o] not prevent [the employee] from earning wages.” *Amazon.com v. Magee*, 121


Nev. 632, 637, 119 P.3d 732, 735 (2005). After a physician releases an employee to light duty work, the employee is no longer eligible for TTD benefits. See *Mensah v. CorVel Corp.*, 131 Nev. 594, 596 n.1, 356 P.3d 497, 498 n.1 (2015) (“[A]ppellant was released to light-duty work with restrictions, and therefore the appeals officer did not err in concluding that appellant was not entitled to TTD benefits.” (citing NRS 616C.475(5))).

Here, the record provides ample support that a physician at Concentra Medical Center concluded that Hicks could return to work with certain restrictions on August 19, 2015. Accordingly, because a physician had released Hicks to return to work, albeit with certain restrictions, on August 19, 2015, Hicks was no longer temporarily *totally* disabled as of that date. See *Amazon.com*, 121 Nev. at 636-38, 119 P.3d at 735-36. Consequently, the legal sufficiency or constructive revocation of the light duty job offers made to Hicks by Green Valley are immaterial because Hicks was no longer temporarily totally disabled as of August 19, 2015, only partially disabled, and could not recover TTD benefits beyond that date.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, C.J.

Silver

 \_\_\_\_\_, J.

Tao

 \_\_\_\_\_, J.

Gibbons

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<sup>2</sup>We conclude that the light duty assignments Green Valley provided to Hicks were legally sufficient under NRS 616C.475(8) and Hicks' characterizations of these offers to the contrary are inaccurate. Hicks ultimately accepted an assignment identical to the August assignments she assails on appeal.

cc: Hon. Timothy C. Williams, District Judge  
Carolyn Worrell, Settlement Judge  
Michael Paul Wood  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk