

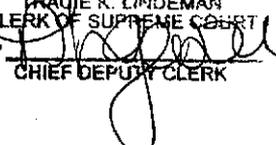
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY DANIELS MORAGA,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA; AND STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY, DIVISION OF
INDUSTRIAL RELATIONS,
Respondents.

No. 66090

FILED

JUN 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order denying a petition for judicial review in an industrial insurance matter. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

In accordance with a stipulation and order for settlement and dismissal, Employers Insurance Company of Nevada ("EICN") scheduled appointments for Roy Moraga to receive a standing x-ray of his knee and a permanent partial disability evaluation.¹ Moraga, however, was not transported to his appointments.² Approximately one month after the appointments were scheduled to take place, Moraga's attorney sent correspondence to EICN's counsel stating that, although his office "duly forwarded the information well ahead of time to the warden's office and requested that the claimant be transported[. . .] we have learned that the claimant was not transported on October 17 or the 24 and that the

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

²At all times relevant to this action, Moraga was incarcerated in the Nevada Department of Corrections.

Department of Prisons in Carson City must be contacted with such requests." Accordingly, Moraga's attorney requested that EICN reschedule Moraga's appointments and stated that his office would "endeavor to get notice and authorization for transportation through Mr. Crawford in Carson City."

Nearly six years after the missed appointments, Moraga filed a complaint with the Division of Industrial Insurance ("DIR") in which he asserted that EICN breached the stipulation by sending him a letter providing the date, time, and other information regarding one of his appointments, which information Moraga claims was to be sent to his attorney only due to prison security protocols. The DIR considered the complaint as alleging a violation of NRS 616D.120(1)(c)(1) and requested a response from EICN. The DIR subsequently rendered a determination in which it concluded that EICN complied with the stipulation and, therefore, declined to impose an administrative fine or benefit penalty. In its determination, the DIR also noted that pursuant to NRS 11.190(4)(b) it is unable to enforce an order more than two years after the date compliance was due.

Moraga appealed the DIR's determination and, after conducting a hearing on the matter, an appeals officer entered a decision and order affirming the DIR. In particular, the appeals officer concluded that Moraga failed to demonstrate by a preponderance of the evidence that EICN committed any violation of NRS 616D.120. Moraga then filed a petition for judicial review, which petition the district court denied on the ground that the appeals officer's decision is supported by substantial evidence. This appeal followed.

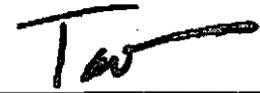
This court's role in reviewing an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. ___, ___, 312 P.3d 479, 482 (2013). Therefore, this court is limited to the record before the agency and cannot substitute its judgment for that of the agency on issues concerning the weight of the evidence on questions of fact. *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 282, 183 P.3d 126, 128 (2008). This court will only overturn an administrative agency's factual findings if they are not supported by substantial evidence. NRS 233B.135(3)(e), (f); *Elizondo v. Hood Mach., Inc.*, 129 Nev. at ___, 312 P.3d at 482. However, this court reviews conclusions of law, including the administrative construction of statutes, *denovo*. *Elizondo*, 129 Nev. at ___, 312 P.3d at 482.

On appeal, Moraga concedes that EICN scheduled the appointments and provided the information to his attorney as agreed and that EICN was not responsible for arranging transportation. Nevertheless, he maintains that the appeals officer erred in affirming the DIR's determination because EICN directly interfered with his transportation when, contrary to prison security protocol as acknowledged by EICN in its prior correspondence, EICN sent a letter to Moraga informing him of the time and place of his permanent partial disability evaluation appointment. EICN and DIR counter that Moraga failed to carry his burden to establish that EICN violated NRS 616D.120(1)(c)(1), as EICN complied with the stipulation, EICN was not responsible for Moraga's transportation, and the stipulation did not prohibit EICN from providing information to Moraga. DIR further argues that Moraga failed to produce evidence to support his claim that the prison did not transport him because of EICN's letter. To the contrary, DIR notes that although

the letter complained of included information regarding only one of the two scheduled appointments, the prison did not transport Moraga to either. Having considered the parties' arguments and reviewed the record on appeal, we conclude that the appeals officer's decision is supported by substantial evidence.³ We therefore,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Rob Bare, District Judge
Woodrum Law LLC
Dept of Business and Industry/Div of Industrial
Relations/Henderson
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

³Although we need not reach the issue because we conclude that the appeals officer did not err by affirming the DIR's determination on the merits, we also note that Moraga's DIR complaint was time-barred under NRS 11.190(4)(b).