IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE GONZALEZ,
Appellant,
vs.
ORACLE MANSION,
Respondent.

No. 70034

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant worked for respondent nightclub as a security officer. During or shortly after one of his shifts, appellant was assaulted by a club patron. Thereafter, appellant sought workers' compensation benefits for his resulting injuries. Respondent denied the claim and appellant appealed. After a hearing, the appeals officer concluded that any resulting injuries did not arise out of appellant's employment, *see* NRS 616C.150(1) (providing that for an injury to be compensable under the workers' compensation statutes, the claimant must establish that the injury "arose out of and in the course of his or her employment"), but instead, that the assault was personal in nature, such that the resulting injuries were not compensable. *See McColl v. Scherer*, 73 Nev. 226, 230-31, 315 P.2d 807, 809-10 (1957) (concluding that if a claimant is attacked and injured while at work for a personal reason, rather than a work-related reason, then the injury is not compensable because it did not "arise

out of the course of [the claimant's] employment"). Appellant filed a petition for judicial review, which the district court denied. This appeal followed.

Having reviewed the briefs and record on appeal, we conclude that the appeals officer's decision is supported by substantial evidence. *See* NRS 233B.135(3)(e) (providing that a petition for judicial review may be granted if the agency's decision is "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record"); *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (providing that this court reviews agency decisions in the same manner as the district court and will only overturn factual findings which are not supported by substantial evidence, which is evidence a reasonable mind would accept as adequate to support a conclusion). In particular, multiple witnesses provided testimony that the fight was personal in nature, which we conclude constitutes substantial evidence supporting the appeals officer's decision. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. And, although other witnesses provided different accounts of the incident in question, the appeals officer found those witnesses to not be credible and this court will not revisit those credibility determinations on appeal. *See id.* ("This court will not reweigh the evidence or revisit an appeals officer's credibility determination." (internal quotation marks omitted)).

Rather than asserting that substantial evidence does not support the appeals officer's decision, appellant argues that the appeals officer should not have relied on hearsay statements or written statements from witnesses who did not testify at the hearing. These arguments fail, however, to provide a basis upon which to overturn the appeals officer's

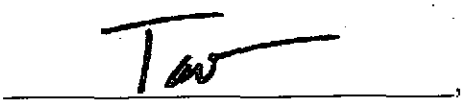
decision. First, the rules of evidence are relaxed at administrative hearings, such that hearsay statements are admissible when they are "of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs." NRS 233B.123(1) (providing the rules of evidence for administrative hearings); *see State, Dep't of Motor Vehicles v. Kiffe*, 101 Nev. 729, 732-33, 709 P.2d 1017, 1019-20 (1985) (concluding that the hearsay statements at issue there were within the purview of NRS 233B.123(1)). Here, the alleged hearsay statements were from respondent's management discussing the results of its investigation into the assault on appellant, and we see no clear error or abuse of discretion in the appeals officer's decision that these statements fit within NRS 233B.123(1). *See* NRS 233B.135(3)(e), (f) (providing the grounds upon which this court may overturn an agency decision).

Second, appellant never requested to cross-examine respondent's witnesses, making it proper for the appeals officer to rely on those witnesses' written statements as evidence. *See* NRS 616C.355 (providing that if a party does not request to cross-examine the opposing party's witness who has submitted a written declaration, then the written statement "if introduced into evidence, will have the same effect as if the affiant or declarant had given sworn testimony before the appeals officer"). Conversely, because respondent timely requested to cross-examine appellant's witnesses, the appeals officer properly declined to consider the written statements of any of appellant's witnesses who did not appear for the hearing. *See id.* Accordingly, because the appeals officer's decision is supported by substantial evidence and because appellant has provided no

other basis upon which to overturn the appeals officer's decision, we necessarily affirm the district court's order denying judicial review.

It is so ORDERED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Jose Gonzalez
Law Offices of David Benavidez
Eighth District Court Clerk