

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD MUNN,  
Appellant,  
vs.  
CLARK COUNTY,  
Respondent.

No. 69079

**FILED**

DEC 28 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*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; Jessie Elizabeth Walsh, Judge.

After being diagnosed with a heart condition, appellant Donald Munn, who was an administrative firefighter,<sup>1</sup> sought total permanent disability benefits. Respondent Clark County denied the request, and both the hearing officer and the appeals officer affirmed that denial. Specifically, the appeals officer found that two physicians opined that Munn could perform the duties of an administrative firefighter and that the only physician to opine that Munn could not perform such duties lacked credibility. Munn filed a petition for judicial review with the district court, which was denied, and this appeal followed.

Having considered the parties' briefs and the 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

<sup>1</sup>An administrative firefighter is one that does not suppress fires as part of his job duties. Appellant previously worked in fire suppression, but was reassigned as an administrative firefighter due to other medical conditions not at issue here.

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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, two physicians opined that Munn’s heart condition did not prevent him from fulfilling the duties of an administrative firefighter, 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 one physician opined that Munn could not fulfill the duties of an administrative firefighter, the appeals officer found that physician to not be credible and this court will not revisit that credibility determination. *See id.*


Rather than asserting that substantial evidence does not support the appeals officer’s decision, on appeal Munn argues that he is entitled to findings from the district court as to why the one physician was found to not be credible. He further asserts that because those findings were not included in the district court’s order, the district court abused its discretion in denying the petition for judicial review. We disagree. Here, it was the appeals officer that found the physician to not be credible, not the district court. And because the district court cannot revisit credibility decisions and must follow the appeals officer’s conclusion in that regard, *see id.* (providing that appellate courts will not reweigh evidence or credibility determinations in petitions for judicial review of agency decisions), there is no basis for the district court to make any findings as

to the reasons for the lack of credibility.<sup>2</sup> Compare NRS 233B.125 (requiring agencies to provide written findings of fact and conclusions of law when deciding contested cases), with NRS 233B.135 (including no such requirement for district court decisions on petitions for judicial review from agency decisions).

Accordingly, for the reasons set forth above, we conclude that the district court properly denied Munn's petition for judicial review and therefore affirm that decision.

It is so ORDERED.

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

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

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

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<sup>2</sup>While Munn briefly suggests the appeals officer should have explained the basis for finding that the third physician lacked credibility, he cites no authority to support our revisiting this credibility determination. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider claims that are not supported by relevant authority); *Elizondo*, 129 Nev. at 784, 312 P.3d at 482 (stating that appellate courts will not reweigh credibility determinations in reviewing appeals arising from agency decisions). Furthermore, had the appeals officer reached the result at issue here without making any determination regarding the third physician's credibility, we would nonetheless affirm that decision, as the other two physicians' reports constitute substantial evidence supporting the appeals officer's ultimate decision to deny total permanent disability benefits. See *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 562, 188 P.3d 1084, 1091 (2008) (providing that the evidence supporting an appeals officer's decision "need not be conclusive" to be considered substantial; indeed, it "may even be conflicting").

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Lansford W. Levitt, Settlement Judge  
Law Offices of Steven J. Parsons  
Lynne & Associates  
Eighth District Court Clerk