

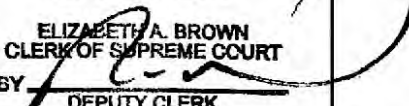
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SILVIA GARCIA,
Appellant,
vs.
BELLAGIO HOTEL CASINO; AND
MGM RESORTS INTERNATIONAL,
Respondents.

No. 75787-COA

FILED

OCT 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Silvia Garcia appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Garcia was injured during her employment with respondent Bellagio Hotel & Casino—which is owned and operated by respondent MGM Resorts International (collectively referred to as MGM)—as a guest room attendant. As a result of this incident, MGM accepted Garcia's workers' compensation claim for her left shoulder and Garcia received treatment, including surgery to repair her rotator cuff. Upon her treating physician concluding Garcia reached maximum medical improvement (MMI) and had a ratable condition, Garcia obtained a permanent partial disability (PPD) evaluation. Following the evaluation, MGM awarded Garcia a ten percent whole person impairment rating. Garcia appealed the award and MGM's denial of her request to expand the scope of her injury, asserting that the claim should be expanded as the surgery caused additional injuries and she needed additional treatment. Garcia also appealed the denial of her request for a second opinion and the determination to schedule a PPD evaluation, all of which were consolidated into one appeal. After an evidentiary

hearing, the appeals officer made findings of fact based on the evidence presented and concluded that Garcia failed to meet her burden in establishing a need for further treatment and expanding the scope of the claim. Additionally, the appeals officer affirmed MGM's denial of her request for a second opinion and the scheduling of her PPD evaluation. Garcia filed a petition for judicial review, which the district court denied. This appeal followed.

On appeal, Garcia challenges the denial of her petition for judicial review, asserting that the district court erred in failing to investigate what she believes are violations of the law that were committed, including the denial of her request to transfer to a different doctor and alleged fraud. Like the district court, we review an administrative agency's decision to determine whether it was affected by an error of law, or was arbitrary or capricious, and thus, an abuse of discretion. NRS 233B.135(3)(d), (f); *State Tax Comm'n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 385-86, 254 P.3d 601, 603 (2011). We review the agency's factual findings for clear error or an abuse of discretion, and will only overturn those findings if they are not supported by substantial evidence. NRS 233B.135(3)(e), (f); *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). 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).

As to Garcia's assertion that the district court erred in failing to investigate her claims, she has provided no authority supporting her assertion that the court was required to conduct an investigation, and NRS 233B.135(1) requires judicial review of an agency decision to be confined to

the record. While the court may receive evidence in some instances, the district court's taking evidence is not the same as the court conducting its own investigation and, regardless, Garcia failed to allege such circumstances applied here. *See id.* Thus, we conclude Garcia is not entitled to relief on this issue.

To the extent Garcia challenges the denial of her request for a second opinion, she only summarily states that she had the right to change doctors and was denied. Because Garcia fails to provide any cogent argument as to this issue, we need not address it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued). Nonetheless, we note that, based on our review of the record, we discern no abuse of discretion in the appeals officer's affirmance of the denial of Garcia's request when, as the appeals officer noted, Garcia ultimately received a second opinion and an independent medical exam. *See NRS 233B.135(3)(d), (f); Am. Home Shield of Nev., Inc.*, 127 Nev. at 385-86, 254 P.3d at 603.

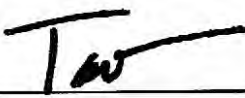
As to Garcia's assertion that fraud was allegedly committed and the district court erred in affirming the exclusion of false documents, it appears Garcia is referring to medical records that were produced, but belonged to another person with the same name as Garcia. Garcia has similarly failed to provide any cogent argument as to this issue, *see Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38, but we note that the appeals officer excluded those records at the hearing upon MGM's objection to their admission, and did not consider the same in making his determination. Based on these facts, we cannot conclude the appeals officer

abused his discretion in excluding the evidence. See NRS 233B.123(1) (requiring the appeals officer to exclude irrelevant or immaterial evidence).

Accordingly, because the appeals officer's decision was supported by substantial evidence, was not affected by an error of law, and was not arbitrary or capricious, we necessarily affirm the district court's order denying judicial review.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Silvia Garcia
Hooks Meng Schann & Clement
Eighth District Court Clerk

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.