

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JABARI R. EVERETT; AND JABARI
EVERETT INSURANCE AGENCY, A
DOMESTIC CORPORATION, D/B/A
EVERETT INSURANCE GROUP,
Appellants,
vs.
NEVADA DIVISION OF INSURANCE;
BARBARA RICHARDSON, AS
COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA; AND
LAURIE SQUARTSOFF, AS DEPUTY
COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA,
Respondents.

No. 77354-COA

FILED

NOV 21 2019

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

ORDER OF AFFIRMANCE

Jabari Reginald Everett and Jabari Everett Insurance Agency appeal from a district court order denying a petition for judicial review of an insurance sales licensing decision that revoked his license. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Everett was a licensed insurance producer (agent) and owned Jabari Everett Insurance Agency (JEIA). He sold insurance policies for Farmers Insurance Group (Farmers), which had an internal policy mandating that agents would only sell car insurance to customers who could prove that they were previously insured for at least six continuous months. If customers were unable to prove prior coverage, agents were to offer policies from Bristol West Insurance Company (Bristol), a subsidiary of Farmers, which offered car insurance at significantly higher premiums. Farmers fired Everett after an internal investigation revealed that 39 of the policies he sold—out of a sample of 75 policies—used falsified documents.

Specifically, Farmers concluded that Everett created documents showing that customers were previously insured for six continuous months when, in fact, some of the customers were never insured. Farmers determined that Everett falsified these documents so that unqualified customers would be able to afford the cheaper premiums from Farmers. In turn, Everett would receive a commission from the sale of the policy. This scheme led to lost profits of at least \$44,990 for Farmers and Bristol. Farmers reported Everett to the Nevada Department of Business and Industry, Division of Insurance (the Division), which filed an administrative complaint averring that Everett's insurance license should be revoked under NRS 683A.451(5) for intentional misrepresentation, and NRS 683A.451(8) for fraud and incompetence.

At the administrative hearing, Marletta Wilmarth, a senior investigator for the Internal Audit Department at Farmers, testified that Farmers discovered the falsified policies because the letterheads on the documents Everett submitted did not match authentic documents, and the language used in the documents contained numerous identical typographical errors. To further her investigation, Wilmarth took a sample consisting of 75 policies that Everett issued. She testified to the alterations and discrepancies contained in 39 of those policies, including that (1) unrelated customers had the same policy numbers, (2) two policies did not have a Vehicle Identification Number (VIN), (3) unrelated customers had the same address, and (4) multiple documents listed the same VIN for different customers with different vehicles. On cross-examination of Wilmarth, Everett attempted to elicit testimony to establish his contention that less than 2 percent of his policies had falsified documents, i.e., only 39 of the roughly 2,160 policies that Everett issued in 3 years relied on fraudulent documents.

Everett's defense consisted solely of his own testimony. He did not contest that the policy documents were falsified, but he argued that used car dealers had falsified them. He also testified used car dealers gave him the fraudulent documents and that he merely scanned them into Farmers computer system without examining them. On cross-examination, however, Everett testified that he was unable to name more than one car dealership that he had received the documents from, and he was only able to name two car sales persons. He was unable to provide any other information regarding the source of the fraudulent documents.¹

The hearing officer issued a recommendation that Everett's and JEIA's insurance licenses be revoked under NRS 683A.451(5) for intentional misrepresentation, and NRS 683A.451(8) for fraud and incompetence. The Commissioner of Insurance agreed. Everett and JEIA filed a petition for judicial review, which the district court denied. On appeal, Everett and JEIA argue that substantial evidence does not support the hearing officer's finding that Everett's license should be revoked pursuant to NRS 683A.451(5) and (8). We disagree.

When a hearing officer's decision is appealed, we review the evidence presented to determine whether the hearing officer acted arbitrarily or capriciously, thus abusing his or her discretion. *O'Keefe v. State, Dep't of Motor Vehicles*, 134 Nev., Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). Although we review pure legal questions de novo, under the arbitrary-and-capricious standard, we defer to the hearing officer's conclusions of law that are closely related the hearing officer's view of the facts. *Id.* at *6, 431 P.3d at 353. This court further defers to the hearing officer's findings of fact that are supported by substantial evidence. *Taylor v. State, Dep't of Health &*

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

Human Servs., 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” *Nguyen v. Boynes*, 133 Nev. 229, 233-34, 396 P.3d 774, 779 (2017) (quotation omitted). In addition, facts can be inferred from circumstantial evidence. See *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335 P.3d 190, 199 (2014). The Nevada Administrative Procedure Act requires findings of fact to be based on a preponderance of the evidence. NRS 233B.121(9). The Commissioner of Insurance may revoke an insurance license for “[i]ntentionally misrepresenting the terms of an actual or proposed contract of or application for insurance,” NRS 683A.451(5), or “[u]sing fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business . . . in this State or elsewhere,” NRS 683A.451(8).

Here, the hearing officer found by a preponderance of the evidence that Everett intentionally misrepresented the policies because he knowingly submitted false documents to Farmers so that unqualified customers would be able to obtain insurance, which resulted in lost profits of \$44,990 for Farmers. The exhibits and testimony in the record show that (1) out of 75 policies sampled from Everett’s business, 39 used fraudulent documents or falsified information, (2) there were typographical errors common to multiple falsified documents, indicating that someone other than Farmers created the false documents, (3) Everett admitted that the documents were falsified, and that he was the one that sent them to Farmers, and (4) Everett gave no explanation as to another source of the falsified documents, or why he did not notice the inconsistencies.² Thus, substantial

²Although the hearing officer did not explicitly state that Everett’s testimony was not credible, he found that Everett did not provide any relevant testimony as to the source of the falsified documents or to why he


evidence supports the hearing officer's finding that Everett intentionally misrepresented applications for insurance and his insurance license should be revoked pursuant to NRS 683A.451(5).

The hearing officer also concluded that Everett submitted falsified documents to Farmers for the purposes of obtaining an insurance policy that would otherwise be unobtainable, which constituted a fraudulent and dishonest practice. This conclusion was based upon the same facts as set forth above, and substantial evidence supports this conclusion. The hearing officer also concluded that Everett demonstrated incompetence in the conduct of his business by submitting fraudulent documents and failing to perform any self-audits until Farmers began investigating his policies. We conclude there is substantial evidence in the record to support the hearing officer's findings and his decision to recommend revocation of Everett's license for either fraud or incompetence under NRS 683A.451(8).

The district court, thus, properly denied Everett's petition for judicial review.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

failed to notice the inconsistencies in the documents. He also found that Farmers had ample reason to suspect that the documents submitted by Everett were evidence of intentional wrongdoing.

³Insofar as Everett raises arguments that are not specifically addressed in this order, we have considered the same and conclude they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. William D. Kephart, District Judge
Law Offices of Eric K. Chen
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk