IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEVADA YELLOW CAB; AND CORVEL CORPORATION,
Appellants,
vs.
CHARLES PRUITT,
Respondent.

No. 77341-COA

ORDER OF AFFIRMANCE

Nevada Yellow Cab and its insurer, Corvel Corporation, appeal from a district court order denying their petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Charles Pruitt was employed as a taxicab driver for Nevada Yellow Cab (Yellow Cab).[1] On August 11, 2014, Pruitt was involved in a collision shortly after midnight while driving a taxicab as part of his employment. Pruitt started his shift at 6:00 p.m. and was scheduled to end it at 6:00 a.m. on the day of the accident. Pruitt immediately reported the accident to a supervisor who then came to the scene. Pruitt told the supervisor that he did not think he was injured, despite being struck from the rear and having a damaged vehicle. Pruitt obtained another taxicab and finished his shift.

Pruitt arrived home around 6:00 a.m. and went to sleep. When Pruitt awoke, he was experiencing significant pain in his back and neck. He called Yellow Cab to inform his supervisor that he would be unable to work his shift that night due to the pain from the accident. Later that day,

[1]We do not recount facts except as necessary for our disposition.

Yellow Cab summoned Pruitt into its office, and informed him that he was being immediately terminated.

On August 13, 2014, Pruitt received a medical examination and was diagnosed with spinal injuries to the cervical, thoracic, and lumbar areas. Pruitt was also diagnosed with a distal coccyx fracture following X-rays the next day. The treating physician completed a C-4 form documenting Pruitt's injuries and connecting all of them to the August 11 collision.

Yellow Cab provided Pruitt a C-1 form on August 18, 2014. He immediately completed it by describing the car accident and his injuries, and returned the form. Pruitt then filed a workers' compensation claim, but the insurer denied it, as did a hearing officer. Pruitt then appealed to an appeals officer, who reversed the denial and awarded compensation. The appeals officer concluded that Pruitt gave notice to Yellow Cab of his work-related injuries before he was terminated; specifically, on August 11, when Pruitt called and informed his supervisor that he was unable to work that night due to his back pain caused by the car collision during the prior shift.

As an alternative basis for his decision, the appeals officer found that even if Pruitt did not give sufficient notice of his injuries prior to his termination, the evidence presented overcame the rebuttable presumption in NRS 616C.150(2) that the injures were not work related. Yellow Cab then filed a petition for judicial review in the district court, which was denied because the court concluded that there was substantial evidence in the record to support the appeals officer's decision. Yellow Cab then brought this appeal.

On appeal, Yellow Cab argues that the appeals officer erred when he determined that Pruitt gave notice to Yellow Cab prior to his

termination because Pruitt did not give written notice. Further, Yellow Cab asserts that Pruitt's injuries do not stem from the August 11, 2014, accident because no injuries were reported at the scene, thus Pruitt is unable to collect workers' compensation benefits. We disagree.

Yellow Cab is correct that the verbal notice provided by Pruitt that he was injured is insufficient under the statute. *See* NRS 616C.015(1) ("An employee . . . shall provide written notice of an injury that arose out of and in the course of employment to the employer of the employee as soon as practicable, but within 7 days after the accident."). Yellow Cab's opening brief, however, does not directly address the appeals officer's alternative basis for the decision in favor of Pruitt; specifically, the finding that Pruitt overcame the statutory presumption in NRS 616C.150(2). Thus, we could hold that Yellow Cab has waived it on appeal, and the appeal could be affirmed solely on that ground. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived"). Regardless, even if Yellow Cab had directly addressed the alternative basis, there is substantial evidence within the record to affirm the appeals officer's conclusion that Pruitt successfully rebutted the presumption in NRS 616C.150(2).

An appellate court should not substitute its judgment for the appeals officer's judgment on issues of credibility and weight. *Roberts v. State Indus. Ins. Sys.*, 114 Nev. 364, 367, 956 P.2d 790, 792 (1998). Appellate courts apply a de novo standard of review when they address questions of law, including how an administrative agency construes a statute. *Elizondo v. Hood Machine, Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). Also, "[a]n appeals officer's fact-based conclusions of law are

entitled to deference and will not be disturbed if supported by substantial evidence." *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion . . . ." *Law Offices of Barry Levinson v. Milko,* 124 Nev. 355, 362, 184 P.3d 378, 384 (2008).

NRS 616C.150(2) provides that if an employee "files a notice of an injury pursuant to NRS 616C.015 after his or her employment has been terminated . . . , there is a rebuttable presumption that the injury did not arise out of and in the course of . . . employment." NRS 616C.015(1) states, "[a]n employee . . . shall provide *written* notice of an injury . . . to the employer . . . as soon as practicable, but within 7 days after the accident." (Emphasis added.); *see also Barrick Goldstrike Mine v. Peterson,* 116 Nev. 541, 545, 2 P.3d 850, 852 (2000) ("[A]n injured employee must provide written notice of a work-related injury to the employer within seven days of the injury.").

Here, Pruitt provided written notice of the injury when he returned a completed C-1 form to Yellow Cab on August 18, 2014, exactly seven days after the accident, thus fulfilling the requirement of NRS 616C.015(1). Pruitt, however, submitted this form to Yellow Cab after he was terminated, and thus, the presumption in NRS 616C.150(2) applies against Pruitt. Pruitt testified that he informed Yellow Cab of his injury stemming from the accident as soon as he woke up that day, which was prior to his termination. He then met with a Yellow Cab safety supervisor who immediately terminated him. It was not until seven days later that Yellow Cab provided a C-1 form to Pruitt so he could describe in writing the work-related accident and injuries, which he did. Additionally, Pruitt testified that there were no intervening accidents or injuries in the two-day period

between the work-related collision and his medical examination. The appeals officer found all of this testimony credible.

Moreover, the medical records provided by the treating doctors directly attributed all of his injuries to the accident. Yellow Cab did not provide any medical reports or other evidence showing that Pruitt's diagnosed injuries were not connected to the accident. Thus, there is substantial evidence to support the appeals officer's alternative basis for his decision to award benefits by finding that the statutory presumption was rebutted, and that the car accident and resulting injuries were work related.[2] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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[2]We note that Pruitt did not file an answering brief and thus this court could reverse the appeals officer's decision on that ground. NRAP 31(d)(2); *Rhode Island v. Prins*, 96 Nev. 565, 566, 613 P.2d 408, 409 (1980) ("[The appellate] court may, in its discretion, treat the failure of a respondent to file his brief as a confession of error, and reverse the judgment without consideration of the merits of the appeal."). We decline, however, to conclude that error was confessed because Yellow Cab did not directly challenge the alternative basis for the decision and the appeals officer's decision is supported by the record.

[3]We note that respondent's counsel was temporarily suspended from the practice of law after the time for briefing in this matter ended. In light of our resolution, we take no further action in regard to this at this time.

cc: Hon. Kenneth C. Cory, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Allan P. Capps
Charles Pruitt
Eighth District Court Clerk