

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,
Appellant,
vs.
TRACEY COOPER,
Respondent.

No. 37661

FILED

NOV 21 2002

ORDER OF REVERSAL

CLARK COUNTY SCHOOL DISTRICT
vs. TRACEY COOPER
J. Richard
JUDGE

This is an appeal from a district court order reversing an appeals officer's decision that a one-year averaging period should be used to calculate Tracy Cooper's average monthly wage. On November 19, 1998, Cooper suffered a compensable industrial injury. The Clark County School District accepted Cooper's workers' compensation claim and determined, based on a one-year averaging period, that his average monthly wage was \$1,627.31. Cooper appealed and ultimately an appeals officer ruled that the School District had properly averaged his monthly wage over a one-year period. Cooper petitioned for judicial review. The district court reversed the appeals officer's determination and remanded for recalculation using a twelve-week averaging period. The School District argues that substantial evidence supports the appeals officer's decision that a one-year averaging period should be used to calculate Cooper's average monthly wage. We agree.

"This court, like the district court, reviews an administrative decision to determine, based on the evidence that was before the agency, whether the agency's decision was arbitrary or capricious and thus an abuse of discretion."¹ "Administrative agencies may receive and weigh

¹SIIS v. Montoya, 109 Nev. 1029, 1031, 862 P.2d 1197, 1199 (1993).

evidence and a reviewing court may not substitute its judgment on questions of fact."² "Although this court independently reviews an agency's legal determinations 'the agency's conclusions of law, which will necessarily be closely related to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are supported by substantial evidence.'"³ Therefore, "[t]he central inquiry is whether substantial evidence in the record supports the agency decision."⁴ Substantial evidence "is that which a reasonable person might accept as adequate to support a conclusion."⁵

NAC 616C.435 sets forth the following methods to calculate a claimant's monthly wage:

1. Except as otherwise provided in this section, a history of earnings for a period of 12 weeks must be used to calculate an average monthly wage.

2. If a 12-week period of earnings is not representative of the average monthly wage of the injured employee, earnings over a period of 1 year or the full period of employment, if it is less than 1 year, may be used. Earnings over 1 year or the full period of employment, if it is less than 1 year, must

²Southwest Gas v. Woods, 108 Nev. 11, 15, 823 P.2d 288, 290 (1992); see also NRS 233B.135(3).

³Montoya, 109 Nev. at 1031-32, 862 P.2d at 1199 (quoting Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)).

⁴Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 583, 854 P.2d 862, 865 (1993).

⁵Montoya, 109 Nev. at 1032, 862 P.2d at 1199.

be used if the average monthly wage would be increased.

Thus, under NAC 616C.435, a claimant's monthly earnings should be calculated based on a twelve-week period unless such a period is not representative of the claimant's average monthly wage. If a twelve-week period is not representative, a one-year averaging period may be used. We have held that when "a disproportionately large or small earnings period skews the calculation of respondent's average monthly wage under the twelve-week period,"⁶ the one-year period is the proper period by which to calculate a claimant's average monthly wage.⁷

We conclude that the record supports the appeals officer's finding that a twelve-week period is not representative of Cooper's monthly wage, and that a one-year averaging period is appropriate. From November 1997 to November 1998, excluding summer recess, the School District determined that Cooper earned \$19,459.32. The School District paid Cooper \$11.16 per hour on a bi-weekly basis and the appeals officer found that his earnings varied from zero to over \$1,600.00 per two-week period.⁸ The appeals officer further found that Cooper rarely earned the same amount from pay period to pay period.

⁶Id. at 1033, 862 P.2d at 1201


⁷Id. at 1034, 862 P.2d at 1201.


⁸It appears that the appeals officer considered Cooper's summer recess from working for the School District as constituting zero dollars per paycheck. Furthermore, per our March 22, 2002 order granting the School District's motion to strike parts of Cooper's answering brief, we are disregarding Cooper's argument that his summer employment with the Boy Scouts entitles him to a concurrent wage calculation.

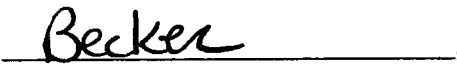
In the year prior to Cooper's injury, Cooper earned \$1,000.00 or more on only seven out of twenty-one paychecks. It appears that five of these paychecks were due to overtime Cooper worked during the twelve-week period prior to his injury. Based on the twelve-week averaging period, Cooper's average monthly wage with the School District would be approximately \$2,375. However, this figure overcompensates Cooper because it appears that it is based on a period during which Cooper worked disproportionately more overtime than he generally worked. Thus, evidence supports the appeals officer's finding that a twelve-week averaging period is not representative of Cooper's monthly wage, and a one-year averaging period is more representative of Cooper's monthly wage.

Accordingly, we

ORDER the district court's judgment reversed and the appeals officer's order reinstated.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Mark R. Denton, District Judge
L. Steven Demaree
Jon M. Okazaki
Michael Paul Wood
Clark County Clerk