IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RUPAM SALUJA,
Appellant,
vs.
ADVANCE AMERICA; AND BROADSPIRE MOUNTAIN WEST SERVICE CENTER,
Respondents.

No. 82278-COA

FILED

DEC 23 2021

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

ORDER OF AFFIRMANCE

Rupam Saluja appeals from a district court order denying her petition for judicial review in a workers' compensation action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Over the course of three years, Saluja submitted three separate workers' compensation claims while working for respondent Advance America (Advance).[1] She now appeals nine decisions an appeals officer made with respect to those claims all of which were denied upon judicial review. First, Saluja claims that she suffered right wrist and arm injuries during a 2010 customer interaction. Second, she claims that she suffered physical injuries from repetitive motions she performed at work. Finally, she claims that she had an anxiety attack and suffered chest pains while at work. We discuss each separately.

2010 incident

Saluja worked for Advance, a company specializing in payday and other loans. In 2010, she alleged that a customer grabbed her hand and twisted it when exchanging money with her. Two days later, Saluja received

[1]Broadspire Mountain West Service Center is also a respondent in this appeal. Advance is insured by Broadspire and makes no separate arguments. We recount the facts only as necessary for our disposition.

treatment for these injuries at the hospital. There, she reported pain in her right arm, starting at the bicep and extending downwards. The doctor diagnosed her with a right arm strain. She then filed a workers' compensation claim for right bicep swelling and muscle tear, contusion of the arm, elbow sprain, arm sprain, shoulder sprain, and right wrist tenosynovitis. The insurer accepted the claim in part and later expanded it in part upon Saluja's request. Saluja again sought to expand the scope of the claim, but both the claim examiner and hearing officer denied the request. The insurer then closed the claim, and Saluja sought additional benefits—all of which were denied due to the claim closure.

Saluja appealed six determinations to the appeals officer: (1) denial of scope expansion to include the right shoulder, right side of the cervical region, and rib contusions; (2) claim closure without first receiving a permanent partial disability evaluation (PPDE); (3) denial of temporary partial disability (TPD) benefits; (4) denial of a right wrist MRI; (5) denial of her request to reopen the claim; and (6) denial of her request for payment of medical bills from January 16, 2011, to April 11, 2012, following claim closure. The appeals officer subsequently found that Saluja failed to meet her burden of proof entitling her to an expanded scope of her claim or to reopen the claim and consequently affirmed claim closure without receiving a PPDE. Because claims 2, 3, and 6 were predicated on a successful underlying claim, the appeals officer dismissed these claims as moot.

Repetitive motion claim

After the insurer closed Saluja's 2010 claim, Saluja filed another workers' compensation claim in early 2011, this time for right hand and wrist inflammation that she suffered from performing repetitive motions at work, such as handling cash, writing, and typing. In support, Saluja pointed

to a four-day time frame where Advance required her to work the service center by herself, aggravating these injuries.

When Saluja went to receive treatment and evaluation for her workers' compensation claim, however, the evaluating doctor seemingly could not causally connect her injuries to her job duties.[2] After submitting her repetitive motion workers' compensation claim, the claims officer denied her claim, a decision a hearing officer subsequently affirmed. The appeals officer then likewise found that Saluja failed to meet her burden of proof through medical evidence entitling her to a repetitive motion claim.

2011 incident

A few months after the denial of her repetitive motion claim, Saluja claimed she suffered an anxiety attack and incurred chest pain, purportedly from a verbal altercation with a customer at work. When Saluja was treated for these alleged injuries, the examining doctor diagnosed her with anxiety, palpitations, and chest pain. Although he found that her anxiety stemmed from a stressful work situation, he noted that the coronary diagnosis and chest pain were not industrially related. The insurer, however, denied Saluja's entire claim, as well as her requests for temporary total disability (TTD) benefits and medical expenses. The hearing officer affirmed the determinations denying the claim, TTD benefits, and payment of medical bills. The appeals officer then likewise found that Saluja failed to present a compensable claim and consequently denied the requested benefits. Saluja then filed a petition for judicial review of the denial of all

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[2]To complete the required workers' compensation form, the evaluating doctor had to answer the following question: "[C]an you directly connect the injury or occupational disease as being job related?" Saluja's doctor answered "?" in response.

claims—from the 2010 incident, the repetitive motion claim, and from the 2011 incident.

Substantial evidence supports the appeals officer's decisions regarding each claim[3]

With regard to all of her claims, Saluja primarily and generally argues that substantial evidence did not support the appeals officer's decisions because she received additional medical treatment that neither the appeals officer nor the district court considered. Saluja specifically points to three types of evidence that support her claim that the appeals officer did not consider: (1) medical reports allegedly in the record before the appeals officer that were presented prior to the appeals hearing, (2) medical reports allegedly in the record before the appeals officer issued her decision, and (3) medical evidence she admits that was never submitted as evidence to the appeals officer.

When reviewing a district court's denial of a petition for judicial review, "we evaluate the agency's decision for clear error or an arbitrary and capricious abuse of discretion." *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383 (2008). On appeal, this court is confined to the record and cannot "reweigh the evidence or revisit an appeals

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[3]Saluja almost exclusively argues that the evidence she presented in her opening brief on her petition for judicial review contradicts the findings the appeals officer made with respect to the 2010 workers' compensation claim. To the extent that Saluja seeks to appeal the appeals officer's decision and order with respect to her repetitive motions claim or the 2011 incident described above, she has not presented an adequate record on appeal, nor cogently argued her points or presented any evidence demonstrating that the appeals officer lacked substantial evidence. We therefore decline to analyze those claims. *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 an appellant's argument that is not cogently argued or lacks the support of relevant authority).

officer's credibility determination." *See Associated Risk Mgmt., Inc. v. Ibanez*, 136 Nev., Adv. Op. 91, 478 P.3d 372, 374 (2020) (internal quotation marks omitted); *Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 56, 200 P.3d 514, 519-20 (2009). Therefore, when evaluating an appeals officer's findings, this court gives those findings and conclusions deference, and they "will not be disturbed if they are supported by substantial evidence." *Ibanez*, 136 Nev., Adv. Op. 91, 478 P.3d at 374 (internal quotation marks omitted). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support the appeals officer's conclusion." *Garcia*, 125 Nev. at 56, 200 P.3d at 520.

"Our review is limited to the record *before the appeals officer*." *Dickinson v. Am. Med. Response*, 124 Nev. 460, 466, 186 P.3d 878, 882 (2008) (emphasis added). Appellant bears the burden of providing this court with "any . . . portions of the record essential to determination of issues raised in appellant's appeal." NRAP 30(b)(3). Generally, this court "cannot consider matters not contained in the record on appeal." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). So when the "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." *Id.*

Here, Saluja argues that the appeals officer lacked substantial evidence because of medical evidence in the record that the appeals officer did not consider or medical evidence Saluja acknowledges that she never properly submitted to the appeals officer. Yet Saluja has not provided this court with the record she submitted to the appeals officer or the transcript from that hearing. Indeed, other than the appeals officer's decision and order, Saluja has provided none of the documents that would have been available to the appeals officer at the time of the decision and order. Because

we presume that the missing portions of the record support the determinations made, we must conclude that the appeals officer had substantial evidence to support her determinations, decision, and order.[4]

The district court did not err by not sua sponte considering Saluja's opening brief on her petition for judicial review as a request to supplement the record

After the appeals officer issued her decision and order, Saluja filed a pro se petition for judicial review with the district court, which the district court subsequently denied. Saluja now appeals that denial. She argues that the district court should have sua sponte considered her petition for judicial review as a request to supplement the record under NRS 233B.131(2). She claims her opening brief in her petition for judicial review contained additional evidence of medical treatment she received for work-related injuries that would have been material to the appeals officer's decision. Saluja argues that had the district court considered her petition

[4]Regardless, Saluja's claim also fails on other but related grounds. Indeed, the appeals court "is limited to the record *before the appeals officer*," *Dickinson*, 124 Nev. at 466, 186 P.3d at 882 (emphasis added), and "cannot consider matters not contained in the record on appeal," *Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Consequently, without a record to review at all, we cannot perform the required review. *Cf. Pfister v. Shelton*, 69 Nev. 309, 311, 250 P.2d 239, 240 (1952) (noting in the plain error context that when the court's duty is to review the record for prejudice, "it [is] impossible for us to state that the asserted error . . . was prejudicial" when no record had been provided). When appellant initially bears the burden as the party seeking the appeal, failure to submit *any* record deprives this court of any ability to review the claim, which means appellant's claim must fail. *See Camacho v. McDaniel*, No. 55401, 2011 WL 1344170, at *1 (Nev. Apr. 6, 2011) ("However, review is impossible when, as here, an appellant fails to provide an adequate record. Accordingly, we cannot conclude that the district court erred in rejecting this claim."). This court is thus not simply *rewarding* a respondent for appellant's failure to create an adequate record under *Cuzze*—which may not always dispose of the case in respondent's favor—it is *penalizing* appellant for making this court's job impossible.

for judicial review as a request to supplement (because the evidence was there in form) and then remanded the matter to the agency, the appeals officer would have lacked substantial evidence for her decision.

NRS 233B.131(2) permits a court to order that the parties present additional evidence to the agency. To do so, however, the parties must (1) seek the court's permission, and (2) do so *before* they submit the record to the district court on the petition for judicial review. *Id.* The district court must find that the additional evidence is material and that there were good reasons the agency did not initially hear the evidence. *Id.*

Here, Saluja's claim lacks merit. First, we need not consider this argument because Saluja has provided no authority showing that district courts have a sua sponte duty to construe a petition for judicial review as a request to supplement the record. *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 an appellant's argument that lacks the support of relevant authority). Second, even if we reviewed Saluja's claim, it fails. We review a district court's decision to deny a request to supplement the record for an abuse of discretion. *Garcia*, 125 Nev. at 56, 200 P.3d at 519. A district court abuses its discretion when it allows a party to supplement the record if the requesting party has not demonstrated or argued "that the 'additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency.'" *Consol. Municipality of Carson City v. Lepire*, 112 Nev. 363, 365, 914 P.2d 631, 633 (1996) (quoting NRS 233B.131(2)).

Here, Saluja never formally requested permission to present additional evidence to the agency for review—a statutory prerequisite. *See* NRS 233B.131(2). Even if she had made a formal request to present additional evidence, she did not make that request *before* she submitted the

record—another statutory prerequisite—because, as she claims, it was her opening brief on her petition for judicial review that contained the alleged request and additional evidence. Saluja also never argued good cause—not in her petition for judicial review, not at the hearing where she was represented by counsel, nor in her appellate brief. The district court thus did not abuse its discretion in not sua sponte construing Saluja's petition for judicial review as a request to supplement the record when she failed to comply with *any* of the statutory requirements.

Whether the appeals officer committed error in considering Saluja's nolo contendere plea in a criminal case to evaluate her credibility as a witness cannot be determined, and even if it was error, it was not plain error, or it was harmless error

Saluja finally argues that the appeals officer improperly relied upon her nolo contendere plea for improperly receiving industrial insurance benefits and it was not harmless error.[5] She then summarily argues that such reliance "is inherently prejudicial" "and cannot be sanctioned as harmless error in any respect."

Nevada law prohibits admitting into evidence at a "proceeding" a nolo contendere plea against the person who entered such a plea. NRS 48.125(2). But on appeal, we must disregard any evidentiary error that does not affect the substantial rights of the parties. *See* NRS 47.040(1); *cf.* NRCP 61 ("Unless justice requires otherwise, no error in admitting or excluding evidence . . . is ground for . . . disturbing a judgment or order. At every stage

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[5]In her findings of fact, the appeals officer noted that "[t]he claimant admitted that she had pled no contest to a charge of theft of a value less than $650.00 in association with her accepted workers' compensation claim. That misdemeanor conviction, in association with the inconsistencies in the claimant's testimony and memory make the claimant a noncredible witness."

of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."); *see also State Indus. Ins. Sys. v. Romero*, 110 Nev. 739, 741-42, 877 P.2d 541, 542 (1994) (conducting harmless-error review in the context of a workers' compensation appeal).

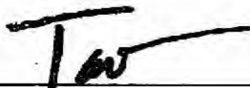
Here, Saluja failed to provide this court with the hearing transcript before the appeals officer. Saluja was under an obligation to object during the hearing to improperly presented evidence. *See* NRS 47.040(1)(a); *Hagblom v. Pers. Advisory Comm'n of Nev.*, 97 Nev. 35, 37, 623 P.2 977, 978 (1981) (stating that appellant waived right to appeal a procedural agency issue by not objecting at the time of the hearing). Although not part of the record before the appeals officer, we do have in our record on appeal the admission that the only time Saluja raised this argument was in her petition for judicial review. Consequently, she waived her right to appellate review of this issue. *See Tahoe Highlander v. Westside Fed. Sav. & Loan Ass'n*, 95 Nev. 8, 11, 588 P.2d 1022, 1024 (1979).

We can then only review Saluja's claim, if at all, through the deferential lens of plain error. *See Torres v. Farmers Ins. Exch.*, 106 Nev. 340, 345 n.2, 793 P.2d 839, 842 n.2 (1990). Under plain-error review, not only must we find prejudice, we must "search the record as a whole, and exercise a judicial discretion in deciding whether the error is harmless or reversible in nature." *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963). Because we will not presume prejudice, *id.*, if appellant fails to deliver the record so that we can review for prejudice, we will deem the error harmless. *Id.* at 359 n.3, 385 P.2d at 343 n.3; *Pfister v. Shelton*, 69 Nev. 309, 311, 250 P.2d 239, 240 (1952). Having no record before us now from when the allegedly improper evidence was admitted, "it [is] impossible for us to state that the asserted error (if, indeed, it were error) . . . was prejudicial." *Pfister*, 69 Nev. at 311, 250 P.2d at 240.

Even if we were to review for harmless error, the record we do have on appeal shows substantial evidence supported the appeals officer's decision. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 477, 635 P.2d 276, 278 (1981) (noting that an inadequate record had been provided but finding that "[s]ince the record properly before us establishes no error which has been preserved for appellate review, the judgment must be affirmed"). The appeals officer used the workers' compensation theft conviction obtained through a nolo contendere plea solely to help assess Saluja's credibility as a witness, but that plea was not the sole reason the appeals officer found Saluja lacked credibility. And in disposing of each of Saluja's claims, it is unclear the extent to which Saluja's credibility as a witness even mattered. Indeed, based solely on the appeals officer's findings of fact and conclusions of law due to Saluja's failure to provide a record, the appeals officer had substantial evidence for each of her decisions even without considering Saluja's credibility. This evidence included multiple medical reports and witness statements. That Saluja failed to produce the hearing transcript, but the appeals officer made detailed evidentiary findings, strengthens this analysis. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Accordingly, we

ORDER the judgment of the district court be AFFIRMED.

_______________, C.J.
Gibbons



_______________, J.
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Bulla

cc: Hon. James Todd Russell, District Judge
Laurie Yott, Settlement Judge
Kirk T. Kennedy
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Carson City Clerk