

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT STILZ,  
Appellant,  
vs.  
LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT; AND CANNON  
COCHRAN MANAGEMENT SERVICES,  
INC.,  
Respondents.

No. 84199-COA

FILED

FEB 07 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING*

Robert Stilz appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.<sup>1</sup>

Stilz suffered an industrial injury while employed by respondent Las Vegas Metropolitan Police Department (LVMPD) and was declared permanently and totally disabled. He later treated with a pulmonologist, Dr. Singh, who diagnosed Stilz with hypoxemia, restrictive lung disease, and sleep-related hypoxia and opined that these conditions were causally related to his industrial injury. However, after learning that Stilz had undergone an unapproved surgery, LVMPD's claims administrator, respondent Cannon Cochran Management Services, Inc., declined to cover any further treatment with Dr. Singh on the grounds that Stilz's pulmonological symptoms may have been caused by the surgery.

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<sup>1</sup>Although Judge Clark Newberry entered the order denying Stilz's petition for judicial review, Senior Judge Joseph T. Bonaventure entered the earlier order denying Stilz's motion to present additional evidence, which he challenges in this appeal.

After a hearing officer affirmed that determination, Stilz appealed that decision (Appeal No. 1712890-DM) along with two others (Appeal Nos. 1507701-DM and 1711265-DM), and the appeals were consolidated and heard by an appeals officer.

The appeals officer affirmed the decision of the hearing officer in Appeal No. 1712890-DM, finding in relevant part that Dr. Singh was not aware that Stilz had undergone the unapproved surgery and therefore based his opinion on incomplete information. Stilz thereafter filed a petition for judicial review, challenging the appeals officer's decision with respect to Appeal No. 1712890-DM as well as Appeal Nos. 1507701-DM and 1711265-DM, the latter of which concerned matters unrelated to Stilz's pulmonological issues and are not at issue in this appeal. As to Appeal No. 1712890-DM, Stilz filed a motion to present additional evidence under NRS 233B.131(2), arguing that he was unaware until the hearing before the appeals officer that respondents would argue a lack of knowledge on Dr. Singh's part. Stilz attached to the motion a newly obtained record from Dr. Singh clarifying that he was aware of Stilz's unapproved surgery and reiterating his belief that the pulmonological issues were related to the industrial injury. The district court denied the motion in a written order, concluding that NRS 233B.135(1)(b) prevented it from allowing Stilz to submit additional evidence. The district court proceeded to deny Stilz's petition for judicial review in its entirety, and this appeal followed.

As an initial matter, we note that Stilz does not challenge the district court's order insofar as it denied his petition for judicial review with respect to Appeal Nos. 1507701-DM and 1711265-DM, and we therefore affirm the order to that extent. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127

Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

However, with respect to Appeal No. 1712890-DM, Stilz contends that the district court erred in its application of Nevada statutes when denying his motion for leave to present additional evidence. Specifically, he argues that the district court failed to exercise its discretion to allow supplementation of the administrative record under NRS 233B.131(2) because it wrongly determined that NRS 233B.135(1)(b) foreclosed such supplementation. We agree.<sup>2</sup>

We review a district court's interpretation of statutes de novo. *Chandra v. Schulte*, 135 Nev. 499, 501, 454 P.3d 740, 743 (2019). NRS 233B.135(1)(b) provides that judicial review of an administrative decision generally must be confined to the administrative record. But NRS 233B.131(2) provides that,

[i]f, before submission to the court, an application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence and any rebuttal evidence be taken before the agency upon such conditions as the court determines.

A district court's failure to apply this standard when ruling on an application under the statute amounts to legal error. *See Consol. Municipality of Carson City v. Lepire*, 112 Nev. 363, 364-65, 914 P.2d 631, 632-33 (1996) (holding it was error for the district court to admit additional

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<sup>2</sup>Because reversal is warranted on this issue, we need not consider any of Stilz's other arguments on appeal.

evidence that was not part of the administrative record without following the procedures set forth in NRS 233B.131(2)). And although the statute gives district courts discretion concerning whether to allow additional evidence, *see* NRS 233B.131(2) (providing that the district court “*may* order that the additional evidence . . . be taken before the agency” (emphasis added)); *Sengbusch v. Fuller*, 103 Nev. 580, 582, 747 P.2d 240, 241 (1987) (“‘May’ is to be construed as permissive, unless the clear intent of the legislature is to the contrary.”), a failure to acknowledge and exercise that discretion amounts to an abuse of discretion, *see Lund v. Eighth Judicial Dist. Court*, 127 Nev. 358, 363, 255 P.3d 280, 284 (2011) (concluding the district court manifestly abused its discretion where legal error caused it to fail “to exercise discretion that it unquestionably ha[d]”).

Here, in its order denying Stiliz’s motion under NRS 233B.131(2), the district court did not make any findings as to whether the newly proffered evidence was material or whether there were good reasons for Stiliz’s failure to present it in the administrative proceedings. Instead, the court simply concluded that NRS 233B.131(2) “is preceded by NRS 233B.135(1)(b)” such that the evidence the district court considers on a petition for judicial review must have been part of the administrative record.<sup>3</sup> Such a reading of the statutes ignores the extent to which NRS 233B.131(2) plainly provides the court a mechanism to allow a party to

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<sup>3</sup>The court further noted that the underlying matter was litigated for years before the appeals officer entered her 2019 decision and order, that Stiliz had submitted the matter to the appeals officer for decision, and that Stiliz generated the newly proffered evidence after the appeals officer entered her decision. None of these findings address whether the newly proffered evidence is material or whether Stiliz had good reasons for not presenting it sooner.

present additional evidence before the administrative agency, thereby making that evidence part of the administrative record and allowing the district court to consider it on a petition for judicial review. *See In re Execution of Search Warrants*, 134 Nev. 799, 801, 435 P.3d 672, 675 (Ct. App. 2018) (“[T]he proper place to begin is with the plain text of the relevant statute[s], and if those words are unambiguous, that is where our analysis ends as well.”); *see also In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. 669, 677, 310 P.3d 574, 580 (2013) (“Whenever possible, [we] will interpret a rule or statute in harmony with other rules or statutes.” (internal quotation marks omitted)).

Thus, the district court erred by misapplying the relevant statutes and thereby abused its discretion under NRS 233B.131(2) by failing to exercise that discretion. *See Lund*, 127 Nev. at 363, 255 P.3d at 284; *Lepire*, 112 Nev. at 364-65, 914 P.2d at 632-33. And because the district court’s failure to properly rule on Stilz’s motion to present additional evidence may have impacted the ultimate result in the underlying case, we necessarily reverse and remand this matter to the district court for reevaluation of Stilz’s motion under the proper standard. *See In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (“[B]ecause it is not clear that the district court would have reached the same conclusion . . . had it applied the correct [legal] standard . . . , we must reverse the district court’s decision and remand for further proceedings.”).

In light of the foregoing, we affirm the district court’s order denying Stilz’s petition for judicial review with respect to Appeal Nos. 1507701-DM and 1711265-DM, but we reverse the district court’s order

with respect to Appeal No. 1712890-DM and remand this matter to the district court for proceedings consistent with our disposition.<sup>4</sup>

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge  
Robert Stilz  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk

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<sup>4</sup>Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.