

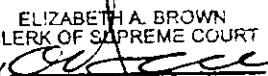
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS FIERRO-SOSA,  
Appellant,  
vs.  
HP ENTERPRISES SERVICES AND  
BERKLEY ASSIGNED RISK,  
Respondents.

No. 87324-COA

**FILED**

FEB 21 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Jesus Fierro-Sosa appeals from a district court order denying a petition for judicial review in a workers' compensation matter.<sup>1</sup> Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Fierro-Sosa, a carpenter, was injured while working at a residential jobsite located on Rita Drive in Las Vegas and transported to the hospital. There, he initiated a workers' compensation claim by filling out a C-4 form, with help from his English-speaking daughter, listing JAS Framing, LLC (JAS) as his employer. At some point, Fierro-Sosa received correspondence from JAS's third-party administrator advising that Fierro Sosa had not been working for JAS, but instead had been working for respondent HP Enterprises Services (HP) when the injury occurred. Thereafter, Fierro-Sosa attempted to assert his claim with HP. HP's third-party administrator, respondent Berkely Assigned Risk, also denied liability for Fierro-Sosa's claim, reasoning that he was not employed by HP on the day he was injured and therefore could not prove that his injuries arose out of and in the course and scope of his employment.

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<sup>1</sup>We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

Fierro-Sosa appealed Berkley's claim denial to a hearing officer, who reversed the denial and ordered Berkley to accept the claim as compensable. HP and Berkley appealed the decision.

An appeals officer subsequently conducted a hearing where Fierro-Sosa testified through a translator and both parties submitted documentary evidence, including medical records, text messages in Spanish between an individual named Robert Serrano and Fierro-Sosa directing Fierro-Sosa to Rita Drive for a job, written statements from Serrano and HP President Patrick Roberts, and an approved permit showing that HP was allowed to perform a residential building repair at Rita Drive.

Following the hearing, the appeals officer entered a written order reversing the hearing officer's determination and affirming Berkley's claim denial. In so doing, the appeals officer considered the definition of "employee" set forth in NRS 616A.105 and concluded Fierro-Sosa failed to prove that he was an employee of HP on the date of his injury. In reaching that conclusion, the appeals officer relied, among other things, on the discrepancy with regard to the named employer on the C-4 form, a "lack of information on the approved permit," the purportedly "insufficient evidence submitted by [ ] Serrano," and Fierro-Sosa's "testimony that he did not know what company or companies employed him for work." Fierro-Sosa thereafter timely filed a petition for judicial review.

The district court denied Fierro-Sosa's petition for judicial review, concluding that the appeals officer's order was thorough and supported by substantial evidence, and that Fierro-Sosa failed to establish with credible evidence that he was an HP employee. This appeal followed.

On appeal, Fierro-Sosa contends that the record does not support the appeals officer's conclusion that there was no employee-employer relationship between HP and Fierro-Sosa. Further, based on the

expansive statutory definition of “employee,” Fierro-Sosa argues that he was an employee entitled to workers’ compensation benefits.

When reviewing a decision of an administrative agency, this court’s role “is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency’s decision was arbitrary or capricious and was thus an abuse of the agency’s discretion.” *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993). This court reviews purely legal questions, including matters of statutory interpretation, de novo. *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). This court will uphold fact-based conclusions when supported by substantial evidence. *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005); *see also* NRS 233B.135(3)(e)-(f).

The Nevada Industrial Insurance Act (NIIA) requires that certain employers must provide compensation for death or injury that arises out of and in the course of employment. NRS 616A.020(2), NRS 616B.612(1). NRS 616A.105 defines an employee as every person in the service of an employer under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed. NRS 616A.210 provides that, except as provided in NRS 616B.603,<sup>2</sup> subcontractors, independent contractors, and employees of either are deemed employees of the principal contractor for the purposes of the NIIA.

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<sup>2</sup>NRS 616B.603 provides that a person is not an employer for the purposes of the NIIA if (a) the person enters into a contract with another person or business which is an independent enterprise; and (b) the person is not in the same trade, business, profession or occupation as the independent enterprise. However, this exception does not apply to a principal contractor who is licensed pursuant to chapter 624 of NRS. NRS 616B.603(3).

On appeal, the parties do not appear to dispute that HP qualifies as an employer under the NIIA. Rather, the parties dispute whether the evidence showed that Fierro-Sosa was an HP employee entitled to workers' compensation coverage. Fierro-Sosa argues that the record does not support the appeals officer's determination that he was not employed by HP because he qualifies as an HP employee under NIIA's broad definition of employee. Further, HP, as a licensed principal contractor, was responsible for providing workers' compensation coverage for its subcontractors and independent contractors.

In response, respondents contend that the appeals officer's determination was supported by substantial evidence because Fierro-Sosa failed to establish that he was an employee of HP. Specifically, respondents assert there was no evidence to show that HP hired Fierro-Sosa or that he could have reasonably expected workers' compensation coverage from HP. Respondents further assert that Fierro-Sosa identified Serrano as his coworker—not a foreman, owner, or supervisor for HP—who informed him of available work and that Fierro-Sosa could not even identify which company employed Serrano.

Reviewing the appeals officer's determination, we conclude that she utilized an incomplete definition for employee in reaching her decision. *See* NRS 233B.135(3)(d). Although the appeals officer's order defined "employee" under NRS 616A.105, it did not mention or apply the definition of an employee as set forth in NRS 616A.210, which includes subcontractors, independent contractors, and employees of either as covered employees under the NIIA. Instead, the appeals officer's determination only stated that Fierro-Sosa failed to establish that he was a direct employee of HP without addressing whether he qualified as a covered employee by being an indirect employee of HP by being a subcontractor or independent contractor or an employee of one.

Here, the evidence potentially demonstrated that Fierro-Sosa had an employment relationship with Serrano,<sup>3</sup> who was undisputably authorized to be on the Rita Drive jobsite. *See* NRS 616A.105 (providing that a person in the service of an employer under any appointment or contract of hire, express or implied is an employee for purposes of the NIIA); *see also* NRS 616A.210 (including subcontractors, independent contractors, and employees of either as covered employees).

The evidence Fierro-Sosa presented in support of his position included his testimony that he received a text message from Serrano directing him to Rita Drive for a job, that he was working as a carpenter at Rita Drive on the day of his injury, that he had worked with Serrano for approximately three years, that Serrano would text him informing him of work locations, that he would go to those locations and perform work, and that Serrano would receive payment from the principal contractor and split the money equally with him. Fierro-Sosa corroborated his testimony with an approved permit showing that HP was allowed to perform a residential building repair at the Rita Drive address and a letter from Serrano stating that Fierro-Sosa was working for HP on the day he was injured. Moreover, the letter from HP president Roberts showed that Serrano was authorized to be on the Rita Drive jobsite and contained a contractor license number matching the license number on the approved permit. Notably, Roberts' letter did not deny that HP or Serrano were performing the work at the Rita Drive jobsite on the day Fierro-Sosa was injured.

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<sup>3</sup>While respondents point to Fierro-Sosa's testimony that Serrano was a "coworker" as evidence that Fierro-Sosa did not view him as someone with the authority to hire workers on behalf of HP, we are unpersuaded by this argument in light of the totality of the evidence demonstrating the nature of their employment relationship, as discussed. Further, we note that Fierro-Sosa testified through a translator and was merely referencing the fact that the two worked together.

Despite this evidence, in reaching its conclusion, the appeals officer concluded that Fierro-Sosa failed to prove that he was an employee based on the discrepancy on the C-4 form, the lack of information on the approved permit, "the insufficient evidence submitted by [ ] Serrano,"<sup>4</sup> and Fierro-Sosa's testimony that he did not know which company employed him. However, none of these concerns precluded the determination that Fierro-Sosa was an indirect employee of HP under the NIIA, given the expansive definition of employee under both NRS 616A.105 and NRS 616A.210, potentially entitling him to compensation. Further, Fierro-Sosa also explained that his daughter filled out the C-4 form and did not know which company he had been employed by on that day. Moreover, the permit, although lacking some information, still provided corroborating evidence for Fierro-Sosa's position that he was working for HP at the Rita Drive jobsite. Serrano's letter demonstrated that he had an employment relationship with Fierro-Sosa and confirmed that Fierro-Sosa was working for HP on the relevant day. Finally, given the evidence demonstrating the employment relationship between Fierro-Sosa and Serrano, whether or not Fierro-Sosa knew the name of the principal contractor, he merely needed to show that he was employed by a sub- or independent contractor of the principal to be an employee entitled to workers' compensation benefits. *See* NRS 616A.210.

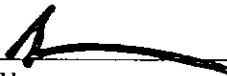
In light of the foregoing, it is unclear whether the appeals officer would have come to the same conclusion, denying Fierro-Sosa workers' compensation benefits based on his lack of a direct employment relationship with HP, had it considered whether an indirect employment relationship existed between Fierro-Sosa and HP. We therefore reverse the district court's decision and remand this matter so that the appeals officer may

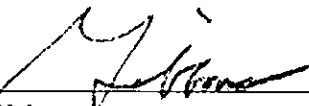
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<sup>4</sup>To the extent this language suggests that Serrano had an evidentiary burden, we note that he was not a party and therefore had no such burden.

consider whether Fierro-Sosa was an indirect "employee" of HP pursuant to both NRS 616A.210 and NRS 616A.105, to qualify for workers' compensation benefits. See NRS 233B.135(3)(d); *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.").<sup>5</sup>

It is so ORDERED.

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

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

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

cc: Hon. Nadia Krall, District Judge  
Wood Law Group  
Hooks Meng & Clement  
Eighth District Court Clerk

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<sup>5</sup>Insofar as Fierro-Sosa raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.