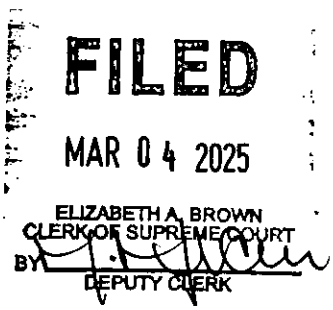
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIENE HUGHES DAVIS,
Appellant,
vs.
FEDEX GROUND PACKAGE SYSTEM; SEDGWICK CMS; AND STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INDUSTRIAL RELATIONS,
Respondents.

No. 88808-COA



ORDER OF AFFIRMANCE

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

While at work, Davis suffered an injury while loading a conveyor belt and subsequently submitted a workers' compensation claim to respondent Sedgwick. Sedgwick denied the claim, and Davis appealed. On May 8, 2019, the Division of Industrial Relations (Division) reversed the denial and issued an order instructing Sedgwick to accept the claim.

On May 14, 2019, Davis submitted a reimbursement request for travel expenses relating to her medical treatment. Davis did not receive confirmation that Sedgwick received the request. Between May and October 2019, Davis spoke to her claims adjuster on multiple occasions, but asserted that she never inquired into the status of her May 2019 reimbursement request even though Sedgwick had not issued payment. During this time period, Davis submitted other requests for reimbursement, which Sedgwick promptly paid.

On September 2, 2019, Davis filed a complaint with the Division that alleged Sedgwick failed to respond to her May reimbursement request and sought a benefit penalty payment pursuant to NRS 616D.120(1). On October 3, 2019, Sedgwick issued payment for the May reimbursement request. A notation in the claim file indicates the adjuster spoke to Davis on October 2, 2019, and during this conversation Davis informed him of the delayed reimbursement. The note further indicates the adjuster then found the request "buried" with other paperwork and immediately authorized payment.

The Division issued its investigation findings and concluded that Sedgwick violated NAC 616C.094, which requires that an insurer respond to a reimbursement request within 30 days. However, the Division found a benefit penalty was not warranted pursuant to NRS 616D.120(1)(i) because the violation was unintentional, based on the notation indicating the request was "buried" with other paperwork and the fact that Sedgwick promptly issued payment once it learned of the delay.

Davis appealed the Division's determination and argued that, because the Division determined Sedgwick violated NAC 616C.094, it was required to issue a benefit penalty. Davis further argued Sedgwick violated NRS 616D.120(1)(c), which imposes a penalty if an insurer unreasonably delays paying a benefit found due by a hearing officer or court of competent jurisdiction. Davis additionally argued that the length of the delay should create a presumption that the violation was intentional.

An appeals officer held a hearing at which only Davis testified, and the parties stipulated to the introduction of the claim file. Davis testified she watched her supervisor fax the May reimbursement request to Sedgwick but acknowledged they did not receive any confirmation it was

received. Davis further testified that, between May and October, she submitted other reimbursement requests, which were paid. Davis denied speaking to the adjuster on October 2, 2019, and further denied asking about the missing reimbursement. Davis testified that the claims note, which indicated that she informed the adjuster of the missing reimbursement request, was inaccurate. During closing arguments, Davis argued it was "convenient" for Sedgwick that the adjuster located the reimbursement request after the complaint was filed and again argued the length of the delay should create a presumption that the violation was intentional. In contrast, the Division argued the claim note demonstrated any violation was unintentional and there was no evidence suggesting otherwise. The appeals officer ultimately entered an order affirming the Division's finding that the violation of NAC 616C.094 was unintentional and, thus, Davis was not entitled to a benefit penalty pursuant to NRS 616D.120(1)(i).

Davis subsequently filed a petition for judicial review arguing that, because the Division found a violation of NAC 616C.094, it was required to impose a benefit penalty regardless of whether the violation was intentional. Further, Davis argued that substantial evidence does not support the appeals officer's decision. The district court denied the petition, concluding that substantial evidence supports the appeals officer's determination that Sedgwick did not intentionally violate NAC 616C.094. Davis now appeals.

When reviewing an agency's decision, this court affords no deference to the district court's decision and determines, "based on the administrative record, whether substantial evidence supports the administrative decision." *Bombardier Transp. (Holdings) USA, Inc. v. Nev.*

Labor Comm'r, 135 Nev. 15, 18, 433 P.3d 248, 252 (2019) (quotation marks omitted). "We defer to the agency's findings of fact, but review its legal conclusions de novo." *Id.*; *see* NRS 233B.135(3). Moreover, we "review de novo statutory interpretation questions in the administrative context." *Bombardier Transp. (Holdings) USA, Inc.*, 135 Nev. at 18, 433 P.3d at 252.

As an initial matter, we note the district court's written order states the preponderance of the evidence demonstrates Sedgwick was unaware of the May reimbursement request until October 2, 2019, and found "Claimant has not established entitlement to a benefit penalty under NRS 616D.120(1)(c)." However, this appears to be a typographical mistake as both the Division and appeals officer evaluated whether there was a violation of NRS 616D.120(1)(i). Because we apply the same standard of review as the district court, this mistake has no bearing on our analysis and we will evaluate whether a benefit penalty was warranted under either subsection. *See id.* (providing "we review an agency's decision under the same standard as the district court").

"If the Administrator determines that a violation of any of the provisions of [NRS 616D.120(1)(a)-(e), (h), (i)] has occurred, the Administrator shall order the insurer . . . to pay the claimant a benefit penalty." NRS 616D.120(3). An insurer violates NRS 616D.120(1)(i) when it "[i]ntentionally fail[s] to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS." NAC 616C.094, which was adopted pursuant to NRS 616A.400, states that, within 30 days of receipt of a written request relating to a claim, the insurer must "notify the person making the request of its determination." An insurer violates NRS 616D.120(1)(c) by "refus[ing] to pay or unreasonably delay[ing] payment to a claimant of compensation or

other relief found to be due to the claimant by a hearing officer, appeals officer, [or] court of competent jurisdiction."

The parties do not dispute that Sedgwick failed to comply with NAC 616C.094 because it did not respond to the May reimbursement request within 30 days. The appeals officer, however, declined to award Davis a benefit penalty based on the conclusion that this violation was not intentional. On appeal, Davis argues that once a violation was established, Sedgwick's intent was irrelevant. Additionally, Davis argues substantial evidence does not support the appeals officer's conclusion that any delay was not intentional. Alternatively, Davis argues the Division could have found a violation of NRS 616D.120(1)(c), which does not require any delay to be intentional, and thus argues she was entitled to a benefit penalty. We address each of these arguments below in turn.

We first reject Davis's argument that she was automatically entitled to a benefit penalty once the Division determined Sedgwick violated NAC 616C.094 because it ignores the plain language of NRS 616D.120(1)(i) and she has not otherwise argued a different provision provides for an automatic benefit penalty. As relevant here, NRS 616D.120(1)(i) would apply only if Sedgwick "intentionally failed to comply with" NAC 616C.094. Thus, to the extent Davis argues that Sedgwick's intent was irrelevant to whether she should receive a benefit penalty, that argument is without merit. Accordingly, we conclude the appeals officer did not commit legal error by concluding NRS 616D.120(1)(i) required a finding that Sedgwick intentionally violated NAC 616C.094.

We further conclude substantial evidence supports the appeals officer's conclusion that Sedgwick's violation of NAC 616C.094 was unintentional. While Davis denied informing the adjustor of the missing

reimbursement request, the appeals officer implicitly discredited this testimony by relying on the contradictory claim note, and this court cannot reweigh credibility determinations. *See Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000). Although Davis argues Sedgwick's discovery of the reimbursement request was "convenient," she presented no evidence demonstrating the delay was the result of anything other than a mistake. Finally, Davis testified she submitted other reimbursement requests, which Sedgwick promptly paid. Davis provided no argument regarding why Sedgwick would pay the later reimbursement requests while intentionally refusing to respond to the May request. Accordingly, we conclude substantial evidence supports the appeals officer's determination that any violation was unintentional.[1]

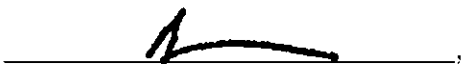
We likewise reject Davis's claim that she was entitled to a benefit penalty pursuant to NRS 616D.120(1)(c). A claimant is entitled to a benefit penalty when an insurer unreasonably delays payment "found to be due . . . by a hearing officer, appeals officer, [or] court of competent jurisdiction." NRS 616D.120(1)(c); NRS 616D.120(3). Here, Davis argues the May 8, 2019, hearing officer decision, which ordered Sedgwick to accept Davis's workers' compensation claim, should be read as requiring Sedgwick to pay all subsequent reimbursement requests. We disagree, as that order only directs Sedgwick to accept the claim and does not order Sedgwick to pay any specific benefit. Further, the May 8 order was issued nearly a week before Davis submitted the reimbursement request at issue in this case, and

[1]To the extent Davis argues the claims note was hearsay, we conclude she waived that argument by failing to raise such an objection during the appeals hearing and instead stipulating to its introduction. *Cf. Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding an argument not presented before the district court is waived on appeal).

thus it could not have ordered Sedgwick to pay a benefit that had not yet been requested. Therefore, this argument does not provide a basis for relief.

Accordingly, for the reasons set forth above, we conclude that the appeals officer properly determined Davis was not entitled to a benefit penalty. And as a result, we affirm the denial of Davis's petition for judicial review.

It is so ORDERED.



_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: First Judicial District Court, Dept. One
Williene Hughes Davis
State of Nevada Department of Business and Industry/
Div of Industrial Relations/Carson City
Hooks Meng & Clement
Carson City Clerk