

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUG DONOVAN,
Appellant,
vs.
CITY OF HENDERSON; AND CCMSI,
Respondents.

No. 88537-COA

FILED

AUG 27 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa J. Allen*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Doug Donovan appeals from a district court order denying his petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Donovan, who was previously employed as a firefighter for respondent City of Henderson, submitted a workers' compensation claim for a lumbar strain. Respondent CCMSI accepted the claim. After undergoing treatment, Donovan reached maximum medical improvement and was stable and ratable. Following a permanent partial disability (PPD) evaluation, Donovan received a ten percent impairment rating from the evaluating doctor. CCMSI accepted the impairment rating and provided Donovan an Election of Methods (EOM) form that allowed him to select either monthly payments or a lump sum payment for his PPD benefits.

Prior to completing the EOM form, Donovan filed a request for a review of CCMSI's claim decision before a hearing officer. A hearing was set in November 2021. After initiating a review of the claim decision, Donovan completed the EOM form and selected a lump sum payment. The parties agree that prior to the November 2021 hearing, Donovan received and cashed the workers' compensation benefits check. The parties then

attended the November hearing, and the hearing officer ultimately affirmed CCMSI's claim decision. Donovan then filed an appeal and requested the claim decision be reviewed by an appeals officer.

While this appeal was pending, Donovan underwent a second PPD evaluation with a different doctor and this doctor assigned Donovan a 32 percent impairment rating. Donovan then submitted this second evaluation to CCMSI and requested that his impairment rating be increased to 32 percent. CCMSI denied this request and stated that pursuant to NRS 616C.495(2), Donovan waived his right to appeal or challenge the percentage of disability by accepting the lump sum payment. Donovan then requested a hearing officer review of this denial. The parties subsequently stipulated to waive the hearing officer review and proceed directly to an appeals officer review.

The appeals officer subsequently consolidated the two appeals to determine: (1) whether the medical evidence demonstrated Donovan was entitled to the 32 percent impairment rating or (2) whether NRS 616C.495(2) mandated the dismissal of Donovan's appeals.

The appeals officer subsequently entered an order both dismissing the appeals pursuant to NRS 616C.495(2) or alternatively affirming CCMSI's decision to provide only the ten percent PPD benefits. Relevant here, while the order found that NRS 616C.495(2) mandated dismissal, the appeals officer alternatively held that Donovan "has not [met] his burden [to establish] that he is entitled to . . . a greater PPD award." The appeals officer cited the May 2021 medical evaluation, which determined Donovan did not require any additional medical care. The order then cited the initial PPD evaluation, which found a ten percent impairment rating, and determined "[Donovan] simply does not have sufficient medical

evidence to meet his burden of proof that . . . he is entitled to a greater PPD award.” Accordingly, the order states it was alternatively affirming the determination that Donovan was entitled to a ten percent PPD impairment rating.

Donovan subsequently petitioned for rehearing. Notably, the motion did not discuss the appeals officer’s findings regarding the medical evidence or that Donovan had failed to carry his burden of establishing a greater entitlement. Further, the petition for rehearing did not argue the appeals officer abused her discretion by failing to hold an evidentiary hearing. The sole issue presented in the petition was whether the 2021 amendments to NRS 616C.495(2) entitled Donovan to continue disputing the percentage of disability despite accepting a lump sum payment. The appeals officer denied the petition for rehearing.

Donovan then petitioned for judicial review. Donovan’s opening brief asserted the sole issue was whether the appeals officer erred as a matter of law by finding NRS 616C.495(2) mandated dismissal of his appeals. Respondents opposed, arguing the 2021 amendments do not permit Donovan to continue challenging the percentage of disability and additionally argued his medical evidence failed to demonstrate an entitlement to a greater PPD rating. Donovan filed a reply which did not address the appeals officer’s findings regarding the medical evidence noted above. The district court ultimately entered an order denying the petition for judicial review, and Donovan now appeals.

“The standard for reviewing petitions for judicial review of administrative decisions is the same for this court as it is for the district court.” *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). “Like the district court, we decide pure

legal questions without deference to an agency determination.” *Id.* (internal quotation marks omitted). Nor do we give the district court deference when reviewing appellate challenges to district court decisions on petitions for judicial review. *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). However, we review “fact-based conclusions of law” for substantial evidence. *L. Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008). On appeal, Donovan argues the appeals officer erred in finding that NRS 616C.495(2) mandated dismissal of his appeals challenging the percentage of disability. However, we conclude that we need not address whether the appeals officer committed legal error because Donovan failed to challenge the appeals officer’s alternative ruling that an affirmance was appropriate even if NRS 616C.495(2) did not bar the appeal because Donovan failed to establish an entitlement to a greater percentage of disability.

Because the appeals officer provided two alternative bases for its order, the dismissal pursuant to NRS 616C.495(2) and the affirmance based on the evidence submitted, Donovan is required to successfully challenge the validity of both bases in this appeal. *Hung v. Berhad*, 138 Nev. 547, 547-48, 513 P.3d 1285, 1286 (Ct. App. 2022). “And when appellants fail to challenge the alternative grounds in their opening brief, even if they later do so in the reply brief, the failure to raise those issues in the opening brief results in waiver.” *Id.* at 550, 513 P.3d at 1287.

Here, the appeals officer dismissed the appeals pursuant to NRS 616C.495(2) but also alternatively affirmed the determination awarding Donovan a ten percent PPD award. In multiple locations within the order, the appeals officer stated she had reviewed the exhibits and evidence submitted and determined that Donovan “simply does not have

sufficient medical evidence to meet his burden of proof . . . that he is entitled to a greater PPD award.” Based on the record before us, Donovan did not challenge this merit-based finding in either his petition for rehearing or petition for judicial review. Similarly, Donovan’s opening brief on appeal does not address whether substantial evidence supports the appeals officer’s determination that the evidence presented does not support his request for a greater percentage of disability. *See L. Offs. of Barry Levinson*, 124 Nev. at 362, 184 P.3d at 383-84 (applying the substantial evidence standard of review when evaluating agency’s fact-based conclusions).

Thus, in light of Donovan’s failure to challenge the appeals officer’s alternative basis for resolving his administrative appeals, we conclude that Donovan has waived the ability to do so and thus affirm the district court’s order denying the petition for judicial review.¹

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹In light of our conclusion, we do not address Donovan’s argument that the appeals officer and district court committed legal error by finding NRS 616C.495(2) mandated dismissal of his appeals.

cc: Hon. Jerry A. Wiese, Chief Judge
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