

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK BELGER,  
Appellant,  
vs.  
CITY OF HENDERSON AND CCMSI,  
Respondents.

No. 90011-COA

**FILED**

**MAY 27 2026**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Frank Belger appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Belger was a firefighter for respondent, the City of Henderson, for 27 years and retired in 2001. In November 2022, Belger was diagnosed with interstitial lung disease. He initiated a workers' compensation claim that was eventually accepted by respondent CCMSI pursuant to NRS 617.455. CCMSI calculated Belger's average monthly wage. Because it exceeded the maximum allowable wage for the applicable fiscal year (2000), CCMSI set Belger's average monthly wage at the maximum allowable average monthly wage for that fiscal year—\$3,667.27. Belger appealed this determination and the parties stipulated to have the matter transferred to an appeals officer.

Before the appeals officer, Belger argued that CCMSI erred by determining his average monthly wage based on the maximum allowable wage for the fiscal year corresponding to the time of his retirement. Belger

contended he was entitled to the maximum average monthly wage for the fiscal year in which his occupational disease was causally connected to the disability—the November 2022 diagnosis date.

The appeals officer determined that CCMSI properly determined Belger’s average monthly wage based on his wages at the time of his retirement in compliance with NRS 616A.065(1) and NAC 616C.435(7), and the holdings in *DeMaranville v. Employers Insurance Co. of Nevada*, 135 Nev. 259, 448 P.3d 526 (2019), and *Clark County v. Bean*, 136 Nev. 579, 482 P.3d 1207 (2020). Belger filed a petition for judicial review, which the district court denied. This appeal followed.

On appeal, Belger challenges the district court’s denial of his petition for judicial review and argues the appeals officer erroneously concluded that CCMSI properly determined his maximum average monthly wage based on his wages at the time of his retirement. Citing *DeMaranville*, *Bean*, and NRS 616C.425(1), Belger contends that his maximum average monthly wage should be determined using the fiscal year in which his disability was diagnosed and was thus causally connected to his employment, rather than determined using the fiscal year corresponding with his retirement.

When reviewing an administrative decision, 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). However, “[q]uestions of law, including the agency’s

interpretation of statutes, are reviewed de novo without deference to the agency's decision." *Bean*, 136 Nev. at 581, 482 P.3d at 1209. Appellate review of a final agency decision is "confined to the record before the agency." *Law Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008).

NRS 617.455 governs lung diseases as occupational diseases for firefighters. An employee who is injured or dies because of an occupational disease that arises out of and in the course of employment may recover compensation. NRS 617.430(1). An occupational disease may be compensable even if first discovered after the employee has terminated employment. *See DeMaranville*, 135 Nev. at 262, 448 P.3d at 530. "The compensation paid to an employee . . . is based on the value received by the employee for his or her services in the employment in which the injury or disease occurs." *Id.* at 267, 448 P.3d at 533 (citations omitted). "The Legislature intended the linkage between an employee's compensable claim and employment to be so great that, in certain cases like this one, the connection is conclusively presumed." *Id.*; *see* NRS 617.455(1), (5) (providing that a person who has been employed as firefighter for the applicable period of years and is disabled by a lung disease is presumed to have compensable claim for occupational disease benefits).

The Legislature has defined average monthly wage for purposes of this appeal as: "The monthly wage actually received or deemed to have been received by the employee on the date of the accident or injury to the employee . . ." NRS 616A.065(1)(a); *see also* NRS 616C.425(1) (providing "[e]xcept as otherwise provided by a specific statute . . . [t]he amount of

compensation and benefits and the person or persons entitled thereto must be determined as of the date of the accident or injury to the employee, and their rights thereto become fixed as of that date”). An injured employee’s average monthly wage is based on the calculation periods prescribed in NAC 616C.435. NAC 616C.435 (1998)<sup>1</sup> provides in relevant part:

1. Except as otherwise provided in this section, a history of earnings for a period of 12 weeks must be used to calculate an average monthly wage.

....

7. If these methods of determining a period of earnings cannot be applied reasonably and fairly, an average monthly wage must be calculated by the insurer at 100 percent of:

(a) The sum which reasonably represents the average monthly wage of the injured employee as defined in NAC 616C.420 to 616C.447, inclusive, at the time the injury or illness occurs; or

(b) The hourly wage on the day the injury or illness occurs, calculated by using the projected working schedule.

8. The period used to calculate the average monthly wage must consist of consecutive days, ending on the date on which the accident or disease occurred, or the last day of the payroll period preceding the accident or disease if this period is representative of the average monthly wage.

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<sup>1</sup>NAC 616C.435 was amended effective August 22, 2023. We refer to the prior version in effect at the time Belger initiated his claim.

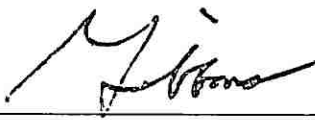
Both the Nevada Supreme Court and this court have interpreted the date of occurrence language contained in NAC 616C.435 as it relates to the calculation of the average monthly wage to compensate a retired employee's occupational disease benefit claims as the last day of disease-risk exposure causally connected to the disease—the date of retirement from the disease-risk exposing employment. *See DeMaranville*, 135 Nev. at 268, 448 P.3d at 534 (concluding that a retired police officer's occupational heart disease for purposes of an original death benefits claim occurs "on the last day of the disease-risk exposure that is causally connected to the disease"); *Bean*, 136 Nev. at 583, 482 P.3d at 1211 (concluding that a retired firefighter's compensation for permanent partial disability benefits due to cancer "must be based on the wages he was earning at the time he retired" because that was the last day the disease-risk exposure was causally connected to the disease); *City of Las Vegas v. Munson*, 141 Nev., Adv. Op. 28, 574 P.3d 426, 431 (Ct. App. 2025) (concluding "the appeals officer properly relied on the supreme court's reasoning in *Bean* and *DeMaranville* and considered the wages Munson was earning in 2013 when she retired as a firefighter to calculate her permanent total disability benefits [due to occupational heart disease]").

In light of the foregoing, the appeals officer properly relied on the reasoning in *DeMaranville* and *Bean* to determine that CCMSI correctly determined Belger's maximum average monthly wage based on his wages at the time he retired as a firefighter as opposed to when his lung disease was diagnosed. Because the appeals officer's conclusion properly applied the relevant law, we conclude that the appeals officer's decision was not an

abuse of discretion. Therefore, we affirm the district court's decision to deny the petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 24  
Janet Trost, Settlement Judge  
GGRM Law Firm  
Hooks Meng & Clement  
Eighth District Court Clerk