

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA RISK MANAGEMENT AND  
RAYMOND O'DONNELL,  
Appellants,  
vs.  
EMPLOYERS INSURANCE COMPANY  
OF NEVADA,  
Respondent.

No. 38527

FILED

APR 08 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review and affirming a hearing officer's determination that workers' compensation benefits be paid according to a deemed wage associated with a labor classification that was erroneously submitted by an employer.

The decision of an administrative officer may be set aside if it is clearly erroneous in view of the reliable, probative, and substantial body of evidence contained in the record.<sup>1</sup> A reviewing court may set aside an

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<sup>1</sup>NRS 233B.135(3)(e); See also United Exposition Service v. SIIS, 109 Nev. 421, 424, 851 P.2d 423, 424 (1993); Desert Inn Casino v. Moran, 106 Nev. 334, 336, 792 P.2d 400, 401 (1990); SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987); SIIS v. Hicks, 100 Nev. 567, 569, 688 P.2d 324, 325 (1984).

appeals officer's decision if the decision is affected by error of law.<sup>2</sup> Any error of law is subject to de novo review.<sup>3</sup>

The court here must consider the ramifications of Nevada Risk Management's erroneous classification of O'Donnell as a clerical worker and the resultant underpayment of premiums normally associated with a management or sales employee. O'Donnell's wages were duly reported to Employers Insurance Company of Nevada (EICON). The error involved was an error of classification, not omission. Absent a showing of fraud, it is reasonable to conclude that a wrongly classified worker is entitled to benefits at the rate associated with his true classification.

The facts in this case, however, are noteworthy as they cast serious doubt as to whether such a determination should be applied to O'Donnell.

Nevada Risk Management (NRM) was formed to assist in the administration of workers' compensation benefits. Thus, it is reasonable to conclude that NRM was knowledgeable regarding the filing of reports with EICON and the associated classification scheme.

O'Donnell is no mere employee of NRM. He is the CEO and sole owner of the firm. Even though the record suggests that a staff accountant performed the errant classification, O'Donnell bears ultimate responsibility for the accuracy of reports filed on NRM's behalf.

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<sup>2</sup>NRS 233B.135(3)(d).

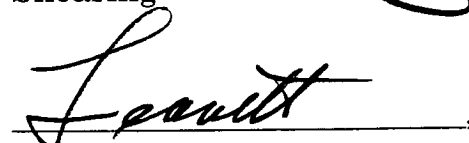
<sup>3</sup>SIIS v. Giles, 110 Nev. 216, 218, 871 P.2d 920, 921 (1994); See also American International Vacations v. MacBride, 99 Nev. 324, 326, 661 P.2d 1301 1301, 1302 (1983).


O'Donnell is the beneficiary of both the reduced premiums (in his role as sole owner of NRM) and the increased benefits (in his role as the injured employee).

O'Donnell and NRM bear substantial responsibility for any mistake committed by NRM. NRM is a company that assists self-insured employers with regard to workers' compensation programs and is expected to have knowledge and expertise in the area. Additionally, the errant classification unjustly benefits O'Donnell in his role as sole owner and CEO of NRM. O'Donnell is ultimately responsible for the accuracy of submissions to EICON. Any award of benefits for a classification higher than that reported to EICON would reward O'Donnell and NRM for their mistake. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing J.

  
Leavitt J.

  
Becker J.

cc: Hon. Jennifer Togliatti, District Judge  
J. Michael McGroarty, Chtd.  
Beckett & Yott, Ltd./Carson City  
Beckett & Yott, Ltd./Las Vegas  
Clark County Clerk