

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT B. LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
DEPARTMENT OF PRISONS; AND  
THE STATE OF NEVADA,  
DEPARTMENT OF PERSONNEL,  
Respondents.

No. 39289

FILED

JUL 14 2003

MANUELA BLUMBERG  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order, entered on judicial review, affirming a hearing officer's determination that the Nevada Department of Prisons' (NDOP) dismissal of appellant Bennett B. Lewis was reasonable and would serve the public good.

Lewis, an NDOP corrections officer for thirteen years, was served with an NDP-41 specificity of charges which recommended termination, based on off-duty conduct at the Texas Station Hotel & Casino. Lewis attempted to use his status as a corrections officer to obtain a favor and a free meal at a Texas Station restaurant.

Lewis appealed NDOP's determination and, following a one-day hearing, the hearing officer determined the charges against Lewis had been proven by substantial evidence, and termination was reasonable and would serve the public good given the nature of Lewis' behavior. However, the hearing officer also included a statement in the order regarding his personal disagreement with NDOP's handling of the Lewis situation.

Lewis filed a petition for judicial review. The district court, concluding that the hearing officer's findings of fact were supported by substantial evidence, still remanded the decision for the limited purpose of

applying the correct standard of review because the district court found the hearing officer's statement appeared to indicate the officer was deferring to NDOP's decision. If so, this would be an inappropriate application of the law. The hearing officer issued a supplemental order, without requiring an additional hearing, briefing, or receiving additional evidence, providing an explanation for the personal statement and indicating he had applied the correct standard of review to Lewis' case.

Lewis filed a supplemental petition for judicial review and a second petition for judicial review, which were consolidated. Following a hearing on the matter, the district court denied Lewis' petition for judicial review, concluding that it had remanded the matter for a limited purpose and that the supplemental order clearly provided the ordered information. Lewis timely appeals.

Lewis argues the district court erred in denying his second petition for judicial review, as the hearing officer failed to adhere to the order of the district court as to the original decision. Lewis contends the hearing officer failed on remand to comply with a valid order of the district court when he issued a supplemental order characterizing the district court's order as misunderstanding the legal underpinnings of the decision. Lewis argues the hearing officer should have conducted a de novo review of the appointing authority's decision. Therefore, Lewis contends that, although the district court adopted the hearing officer's findings of fact in its first order, those facts are still subject to review.

The State argues the hearing officer fully complied with the order of the district court when he issued the supplemental decision. The State contends the supplemental decision sets forth the appropriate legal standard applicable to personnel matters. Despite the hearing officer's

opinion in the original order, the State argues the hearing officer unequivocally found, in the original order, that Lewis' termination was for the good of the public service and that just cause existed for the termination. The State contends the language of the supplemental decision clarified any misunderstanding regarding the proper standard of review and the personal opinion statement. We agree.

When an administrative decision is challenged, this court's function is identical to that of the district court; we review the evidence presented to the administrative hearing officer to determine whether he acted arbitrarily or capriciously, thus abusing his discretion.<sup>1</sup> The hearing officer was charged with determining the reasonableness of the dismissal, guided in his decision by the weight of the evidence showing that dismissal would serve the good of the public service.<sup>2</sup> If substantial evidence and sound legal reasoning support the hearing officer's decision, reviewing courts must sustain it.<sup>3</sup>

Further, Nevada Administrative Code (NAC) 284.798 provides that, "The hearing officer shall make no assumptions of innocence or guilt

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<sup>1</sup>See Knapp v. State, Dep't of Prisons, 111 Nev. 420, 423, 892 P.2d 575, 577 (1995).

<sup>2</sup>Id. at 424, 892 P.2d at 577; NRS 284.385(1)(a); NRS 284.390(1); NAC 284.798.

<sup>3</sup>SIIS v. Shirley, 109 Nev. 351, 353-54, 849 P.2d 256, 258 (1993); NRS 233B.135(3).

but shall be guided in his decision by the weight of evidence as it appears to him at the hearing.”<sup>4</sup>


In the present case, the district court’s November 29, 2001, order adopted the hearing officer’s findings of fact and reversed and remanded Lewis’ case for the limited purpose of ensuring that the proper standard of review was enunciated. The hearing officer’s supplemental order cites to its use of the correct standard of review in the original order. Moreover, the supplemental order reiterates the proper standard of review. It also clarifies that the disagreement with the decision to terminate was simply a personal comment about what the hearing officer might have done, rather than an expression of deference or a finding of insufficient evidence. Therefore, the supplemental order makes clear that no deference was given to NDOP’s determination to terminate Lewis. Accordingly, we conclude substantial evidence supports the district court’s denial of Lewis’ second petition for judicial review,<sup>5</sup> and we

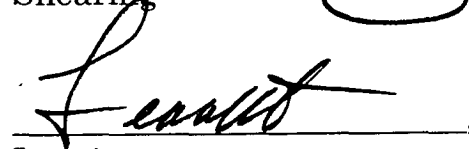
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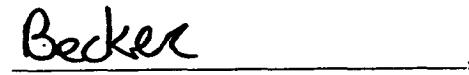
<sup>4</sup>See Knapp, 111 Nev. at 424, 892 P.2d at 578 (quoting Dredge v. State ex rel. Dep’t Prisons, 105 Nev. 39, 48, 769 P.2d 56, 62 (1989) (Springer, J. dissenting)).

<sup>5</sup>Lewis also argues the hearing officer’s supplemental decision was issued in violation of NRS 233B.125 and that this court should reverse the district court’s denial of the petition for judicial review and remand the matter back to NDOP for implementation of progressive discipline. We have reviewed Lewis’ claims and conclude they are without merit.

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Ronald D. Parraguirre, District Judge  
Law Office of Daniel Marks  
Attorney General Brian Sandoval/Las Vegas  
Clark County Clerk