

IN THE SUPREME COURT OF THE STATE OF NEVADA

BEVERLY HAUG,  
Appellant,  
vs.  
CLARK COUNTY SCHOOL DISTRICT,  
Respondent.

No. 41996

**FILED**

MAR 17 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *JMB*  
DEPUTY CLERK

This is an appeal from a district court order denying judicial review of an appeals officer's decision to close a workers' compensation claim. Eighth Judicial District Court, Clark County; David Wall, Judge.

FACTS

Beverly Haug was involved in a work-related accident when the wheelchair ramp on the school bus she drove lowered onto her head. After the accident, Clark County School District (School District) accepted her compensation claim for neck strain and mild concussion. Prior to the accident, Haug was diagnosed with stenosis, spondylosis, and possible myelopathy in her neck. Following the accident, Haug underwent a cervical reconstruction and C5-6 vertebrectomy on her neck, which the School District refused to compensate, alleging that the surgery was necessitated by preexisting conditions.

Approximately one month after the surgery, the School District closed Haug's compensation claim, and Haug appealed that decision, requesting a hearing before the Department of Administration's Hearings Division. The hearing officer affirmed the School District's decision to close the claim and deny compensation for Haug's surgery. Haug then appealed the hearing officer's decision to the administrative appeals officer. The administrative appeals officer reviewed all Haug's

medical records, including an independent medical evaluation, before concluding that Haug's conditions were preexisting and not due to the work-related injury and that compensation should be denied.

Following the appeals officer's determination to deny compensation, Haug filed a petition for judicial review in the district court, which the district court denied, stating, "substantial and credible medical reporting of [various doctors] supported the Appeals Officer's finding that claim closure was proper. Therefore, there is no ground upon which this Court can reverse the decision that affirmed claim closure." Haug appeals the district court's order denying her petition for judicial review.

### DISCUSSION

#### Substantial Evidence

Haug contends that the appeals officer ignored evidence that the wheelchair ramp accident aggravated Haug's preexisting condition and caused new injuries. We disagree and affirm the district court's order denying Haug's petition for judicial review.

During appellate review, an agency's decision will be affirmed when it is supported by substantial evidence.<sup>1</sup> Substantial evidence is evidence "a reasonable mind might accept as adequate to support a conclusion."<sup>2</sup>

Medical records from several doctors support the agency's decision. Dr. Luis Diaz treated Haug several months before the accident,

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<sup>1</sup>Bally's Grand Hotel & Casino v. Reeves, 113 Nev. 926, 935, 948 P.2d 1200, 1206 (1997).

<sup>2</sup>Edison Co. v. Labor Board, 305 U.S. 197, 229 (1938), quoted in Bally's, 113 Nev. at 935-36, 948 P.2d at 1206.

and concluded that Haug suffered mild cervical myelopathy secondary to severe central spinal canal stenosis and multilevel spondylosis. Dr. Diaz discussed surgery with Haug, but Haug declined surgical consultation at that time. Following the accident, a second MRI was performed, with results showing no significant changes from the pre-accident MRI evaluation. In addition, two doctors, Dr. Mashood and Dr. Schifini, attributed Haug's symptoms to her preexisting condition and not to the industrial accident. Finally, Dr. Thalgott performed an independent medical evaluation on Haug, concluding that she suffered significant preexisting degenerative disease and stenosis. Furthermore, he concluded that the accident rendered Haug progressively myelopathic; however, the first MRI, performed before the accident, contradicts that statement as that MRI showed evidence of myelopathy. Consequently, it appears from the record that there is substantial evidence to support the appeals officer's decision.

Furthermore, we find support for this decision in State Industrial Insurance System v. Thomas, wherein we determined that substantial evidence supported the appeals officer's decision to deny coverage for shoulder surgery that the officer determined was necessitated by a pre-existing shoulder injury.<sup>3</sup> Following the holding in Thomas, we conclude that the medical evidence in this case provides substantial evidence to support the agency's decision; therefore, we affirm the district court's order.

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<sup>3</sup>101 Nev. 293, 297, 701 P.2d 1012, 1015 (1985).

### Decision Contrary to Law

In addition, Haug argues that the decision of the appeals officer was contrary to the law of preexisting conditions. We disagree.

NRS 616C.175(1) states, in pertinent part, that if an employee has a preexisting condition and sustains a work-related injury “which aggravates, precipitates or accelerates his preexisting condition,” that injury shall be deemed compensable “unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition.”

Decisions of administrative agencies will be affirmed if they are supported by substantial evidence, and substantial evidence supported this agency decision. The appeals officer considered the School District’s evidence that Haug’s symptoms and surgery were caused by a preexisting injury, and not the accident. After reviewing the evidence, the appeals officer found that the accident was not a substantial cause of the injury. We conclude that the appeals officer’s decision complied with NRS 616C.175.

### Sanctions

The School District asserts that there are several allegations in Haug’s opening brief that are not referenced in the record, and those allegations should be disregarded for failure to comply with NRAP 28(e).

NRAP 28(e) provides that “[e]very assertion in briefs regarding matters in the record shall be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.” A party may be sanctioned for failure to comply with NRAP 28.<sup>4</sup>

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<sup>4</sup>Collins v. Murphy, 113 Nev. 1380, 1385, 951 P.2d 598, 601 (1997).


“This court need not consider the contentions of an appellant where the appellant’s opening brief fails to cite to the record on appeal.”<sup>5</sup>

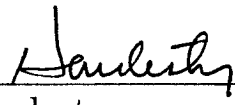
In Smith v. Emery, this court imposed sanctions because the appellant’s opening and reply briefs did not contain a single citation to the record.<sup>6</sup> However, in Collins v. Murphy, we held that sanctions were not justified when respondents failed to provide citations to two factual assertions.<sup>7</sup>

Although Haug’s opening brief contained factual assertions without record citations, sanctions are not warranted. Most assertions were referenced in Haug’s brief. However, Haug’s brief contains some unreferenced, contested factual assertions; therefore, the appropriate remedy is to disregard those assertions.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Hardesty

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<sup>5</sup>Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993).

<sup>6</sup>109 Nev. 737, 743, 856 P.2d 1386, 1390 (1993).

<sup>7</sup>113 Nev. at 1385, 951 P.2d at 601.

cc: Hon. David Wall, District Judge  
Charles J. Lybarger  
Carrie S. Bourdeau  
Clark County Clerk