

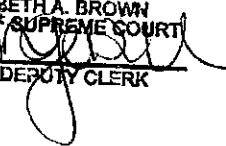
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WHITE PINE COUNTY SCHOOL
DISTRICT; ALTERNATIVE SERVICE
CONCEPTS, LLC; AND PUBLIC
AGENCY COMPENSATION TRUST,
Appellants,
vs.
SUSAN BENAVIDEZ,
Respondent.

No. 70908

FILED

SEP 15 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

White Pine County School District, Alternative Service Concepts, LLC, and Public Agency Compensation Trust appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Respondent Susan Benavidez injured her neck and back during a slip and fall accident while working for the White Pine County School District.¹ Benavidez claimed and received workers' compensation benefits, and the claim subsequently closed. A few years later, Benavidez's pain returned and she sought to reopen her claim based upon her treating physician's report. Alternative Service Concepts, LLC, denied the claim after an independent medical examination concluded that Benavidez's new pain was caused by preexisting degenerative disc disease, not the work-related injury. A hearings officer reversed the denial and appellants (collectively, White Pine) appealed.

¹We do not recount the facts except as necessary to our disposition.

An appeals officer presided over a hearing and medical expert testimony and medical reports from both Benavidez's and White Pine's physicians were presented. The respective physicians provided conflicting opinions regarding Benavidez's medical condition and its primary cause. Based on this conflicting testimony, the appeals officer found that a medical question existed and issued interim orders for an independent medical examination by Dr. William Muir. Dr. Muir examined Benavidez and reviewed all medical reports and evidence and concluded that Benavidez's work-related injury was the primary cause of her condition. White Pine requested to depose Dr. Muir, but the appeals officer denied the request. The appeals officer concluded that Benavidez's work-related injury was the primary cause of her change in circumstances and ordered the claim reopened. White Pine filed a petition for judicial review, which the district court denied. This appeal followed.

On appeal, White Pine asserts that (1) Benavidez's doctors' opinions were inadmissible under *Hallmark*,² (2) substantial evidence does not support the appeals officer's decision to reopen the claim, (3) the appeals officer abused her discretion by finding a medical question existed, and (4) the appeals officer abused her discretion by denying White Pine's request to depose Dr. Muir. Having reviewed the briefs and record on appeal, we conclude that the appeals officer did not abuse her discretion and we affirm the district court's order denying White Pine's petition for judicial review.

A petition for judicial review may be granted if the agency's decision is "[c]learly erroneous in view of the reliable, probative and

²*Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008).

substantial evidence on the whole record.” NRS 233B.135(3)(e). Like the district court, we review an agency’s decision for an abuse of discretion or prejudicial legal error. *State Tax Comm’n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 385, 254 P.3d 601, 603 (2011). We will only overturn factual findings which are not supported by substantial evidence; substantial evidence is evidence which a reasonable mind would accept as adequate to support a conclusion. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013).

We decline to address White Pine’s arguments regarding *Hallmark* as White Pine failed to advance those arguments below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that an argument not raised before the district court is deemed waived on appeal); *see also State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (stating that because judicial review is limited to the administrative record, arguments made for the first time on judicial review are generally considered waived).

Further, we conclude that the appeals officer’s decision to reopen the claim was supported by substantial evidence. We note that three physicians opined that Benavidez’s condition was primarily caused by the work-related injury, which we conclude constitutes substantial evidence supporting the appeals officer’s decision. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. And, although two other physicians disagreed with this conclusion, the appeals officer weighed the credibility of each witness and we will not revisit those credibility determinations on appeal. *See id.* (“This court will not reweigh the evidence or revisit an appeals officer’s credibility determination.” (internal quotation marks omitted)).

Next, the appeals officer did not abuse her discretion by finding the existence of a medical question. Under NRS 616C.360(3)(a), an appeals officer may order an independent medical examination “[i]f there is a medical question or dispute concerning an injured employee's condition.” Here, White Pine’s and Benavidez’s respective physicians provided conflicting opinions on Benavidez’s medical condition and its primary cause. Thus, the appeals officer’s finding that a medical question existed and the decision to order an independent medical evaluation was not an abuse of discretion.


We last consider whether the appeals officer abused her discretion by denying White Pine’s request to depose Dr. Muir.³ In general, we review discovery orders for an abuse of discretion. *Club Vista Fin. Servs., L.L.C. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012) (“[W]e will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion.”). Our review of the record demonstrates that White Pine failed to follow the proper procedures for requesting a deposition under NAC 616C.305 and 616C.336. Therefore, we conclude that the appeals officer was well within her discretion to deny White Pine’s deposition request.

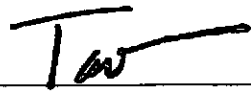
Accordingly, because the appeals officer’s decisions were supported by substantial evidence and White Pine has not shown that the


³White Pine also cursorily argues that this denial amounted to prejudicial deprivation of due process, but does not cite to a single point of authority, nor argue why the process provided was deficient. Thus, we decline to address this issue. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting we need not consider arguments that are unsupported or not cogently argued).

appeals officer abused her discretion, we affirm the district court's order denying White Pine's petition for judicial review.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Craig A. Hoppe, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Jenny Legal
Eighth District Court Clerk