

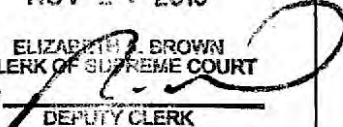
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NYE COUNTY; AND PUBLIC AGENCY  
COMPENSATION TRUST,  
Appellants,  
vs.  
WENDY AMLAND,  
Respondent.

No. 75647-COA

**FILED**

NOV 21 2019

ELIZABETH J. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.

Wendy Amland, the respondent, worked for Nye County as an evidence technician.<sup>1</sup> While working in the evidence warehouse, she had an adverse respiratory reaction on two occasions after being exposed to six bags of confiscated marijuana brought to the warehouse for processing. Over the course of several months, she saw multiple doctors and other medical personnel. Each doctor diagnosed her with a lung problem and linked the problem to her exposure at the evidence warehouse. She filed a claim for workers' compensation, but appellant Public Agency Compensation Trust, Nye County's insurer (hereinafter, collectively, Nye County), denied her claim. After the hearing officer affirmed the insurer's claim denial, Amland had another adverse respiratory reaction after exposure to marijuana while touring an evidence warehouse in Las Vegas as part of her work duties. She filed a second claim, which was also denied by the insurer. The parties

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

stipulated to having both claims consolidated for a hearing before the appeals officer.

At the appeals officer hearing, Amland testified as to the events that led to her reaction. Specifically, she described seeing moldy marijuana on both occasions and sensing strong odors and breathing fumes. She began coughing and had difficulty breathing normally. She had no preexisting conditions, and the medical records generally support her version of the events. The appeals officer ruled in her favor, finding that Amland was a credible witness and the medical evidence was persuasive. The district court denied Nye County's petition for judicial review.

On appeal, Nye County argues there is not sufficient evidence to support the appeals officer's ruling that Amland's contact with the tainted marijuana caused her injury.<sup>2</sup> We disagree.

Our role of judicial review on appeal of an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). Under NRS 233B.135(3), this court may set aside the final decision of an appeals officer

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<sup>2</sup>Additionally, Nye County argues that the appeals officer erred as a matter of law by (1) concluding that chemical exposure satisfies NRS 616A.265, NRS 616A.030, and NRS 617.440, (2) relying on medical evidence that is primarily subjective rather than objective, (3) failing to provide adequate findings of fact when comparing this case to another reported Nevada Supreme Court case, and (4) failing to address both of Amland's appeals even though they were consolidated. Nye County has not provided cogent argument or relevant authority to support these arguments. Therefore, we decline to consider the contentions that the appeals officer erred as a matter of law. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that arguments not cogently argued or supported with relevant authority need not be considered).

if a petitioner's substantial rights have been prejudiced because the agency's final decision is "[a]ffected by [an] error of law," is "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record," or is "[a]rbitrary or capricious." An appellate court should not substitute its judgment for the appeals officer's judgment on issues of credibility and weight. *Roberts v. State Indus. Ins. Sys.*, 114 Nev. 364, 367, 956 P.2d 790, 792 (1998). Also, "[a]n appeals officer's fact-based conclusions of law are entitled to deference and will not be disturbed if supported by substantial evidence." *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion . . . ." *Law Offices of Barry Levinson v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008).

Claimants must show by a preponderance of the evidence that the injury "arose out of and in the course of his or her employment." NRS 616C.150. Additionally, "[a]n award of compensation cannot be based solely upon possibilities and speculative testimony." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424, 851 P.2d 423, 425 (1993). Claimants have two ways of meeting their burden: (1) "[a] testifying physician must state to a degree of reasonable medical probability that the condition in question was caused by the industrial injury, or [(2)] sufficient facts must be shown so that the trier of fact can make the reasonable conclusion that the condition was caused by the industrial injury." *Id.* at 424-25, 851 P.2d at 425.

Here, multiple doctors diagnosed Amland with a lung injury, and none indicated the contrary. Further, one of the objective Pulmonary Function Tests indicated a possible degree of hyperinflation in Amland's

lungs. Another objective Pulmonary Function Test indicated that there was possible air trapping that could be associated with an obstruction in Amland's lungs.

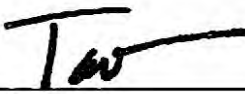
Additionally, each doctor linked Amland's injury to her exposure to the tainted marijuana, with some of the doctors mandating that she refrain from work until the issue was resolved. Moreover, two of her doctors responded to a letter indicating that their diagnoses were directly related to the industrial injury to a reasonable degree of medical probability. In addition, a third doctor stated that Amland's lung problems were more likely than not related to her exposure to the marijuana. Finally, the insurer provided no contrary medical evidence or opinions to rebut any of Amland's medical evidence. Thus, based on the testing combined with the medical opinions, we conclude that "a reasonable person could find the evidence adequate to support" the decision. *Milko*, 124 Nev. at 362, 184 P.3d at 384. Therefore, the first method of meeting one's burden under *United Exposition* is satisfied.

Furthermore, the appeals officer's decision is supported under the second method of *United Exposition* as well. Nye County argues that Amland's testimony was inconsistent and therefore not credible and, thus, that the appeals officer abused his discretion when he found her credible. An appellate court should not substitute its judgment for the appeals officer's judgment on issues of credibility and weight. *Roberts*, 114 Nev. at 367, 956 P.2d at 792. Upon our review of Amland's testimony, we conclude that the appeals officer's finding is not clearly erroneous because it is supported by substantial evidence. Her testimony along with the medical evidence provided sufficient facts so that the appeals officer could "make the reasonable conclusion that the condition was caused by the industrial

injury." *United Exposition*, 109 Nev. at 424-25, 851 P.2d at 425.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Linda Marie Bell, Chief Judge  
Hon. Kathy A. Hardcastle, Senior Judge  
Lynne & Associates  
Moss Berg Injury Lawyers  
Eighth District Court Clerk