

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FOCUS FRAMING; AND SUN CITY  
ELECTRIC,  
Appellants,  
vs.  
MARTIN DURAN PEREZ,  
Respondent.

No. 79856-COA

FILED

OCT 21 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
CLERK  
CLERK

*ORDER OF AFFIRMANCE*

Focus Framing and Sun City Electric<sup>1</sup> appeal a district court order denying their petition for judicial review in a workers' compensation matter.<sup>2</sup> Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Martin Duran Perez was injured when he fell off the roof of a home under construction while he was at work.<sup>3</sup> Perez worked as a carpenter for Focus Framing on the day of the accident. Focus is a construction company that, among other things, frames houses. Focus organizes its employees into crews, each with a crew leader. Crew leaders are responsible for supervising the crew, filling out timecards for each employee, and submitting timecards to management for employee payroll.

The week prior to the accident, Perez had worked under crew leader Pedro Rosales. On the day of the accident, Perez was working at a residential housing development construction site under a different crew

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<sup>1</sup>This court hereinafter refers to Focus Framing and Sun City Electric collectively as "Focus."

<sup>2</sup>The Honorable Bonnie Bulla voluntarily recused herself from participation in the decision of this matter.

<sup>3</sup>We do not recount the facts except as necessary for our disposition.

leader, about three houses away from where Rosales was working. That day, Perez received his paycheck for the work performed the previous week under Rosales. Perez was upset because he believed the paycheck was short for the hours he had actually worked. Perez then walked over to where Rosales was working to ask about the paycheck. Perez climbed to the roof of the home where Rosales was located. Rosales's son, who also worked for Focus, became upset about the conversation. Rosales's son climbed to the roof of the home and pushed Perez, causing Perez to fall to the ground and sustain injuries.

Perez submitted a workers' compensation claim to Focus. Focus denied the claim, stating that the injury did not meet the statutory requirements because it did not arise out of and in the course and scope of employment. Perez appealed the decision to the Nevada Department of Administration Hearings Division, which reversed the claim denial and found that Perez's claim was compensable. Focus then appealed to the Appeals Division of the Nevada Department of Administration.

An appeals officer held a hearing on the matter. At the hearing, Focus presented testimony from two safety managers who were not on the job site at the time of the accident. They testified that earlier that day, while they were on the job site, Perez approached them about the paycheck discrepancy. One safety manager testified that he instructed Perez to speak with the management office at the end of the day to have the paycheck corrected. However, Perez testified that he had not spoken with the safety managers about the paycheck that day. Perez stated that he was supposed to speak to Rosales about the paycheck because he had worked with Rosales the previous week and because Rosales gave him the paycheck. The safety manager also testified that Rosales could not issue a new check, but that Rosales could have made a phone call to the office to get the check corrected.

The appeals officer affirmed the reversal of the claim denial, (the decision and order), finding that Perez was injured in the course and scope of his employment. The appeals officer specifically found Perez's testimony credible when he testified that he believed he should speak to Rosales about issues with his paycheck. The decision and order explained that the accident occurred while resolving a paycheck issue, which was within the course and scope of employment.

Focus then submitted a petition for judicial review to the district court. The district court held a hearing on the matter, and issued an order denying the petition for judicial review and affirming the decision and order. The district court's order did not contain findings of fact or conclusions of law. This appeal followed.

On appeal, Focus first contends that the appeals officer erred in finding that Perez was injured in the course and scope of employment. Focus argues that the injury was not in the course and scope of employment because neither Perez nor Rosales had authority over the paycheck dispute, Perez was not following employer instructions when he was injured, and the battery in question was of a purely personal nature. Focus also argues that the district court erred when it denied its petition for judicial review without including findings of fact or conclusions of law.<sup>4</sup> We conclude that Focus's arguments are unpersuasive.

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<sup>4</sup>Focus cites NRS 233B.125 of the Nevada Administrative Procedure Act, which requires administrative agencies to make findings of fact and conclusions of law based on a preponderance of the evidence. However, there is similar no requirement that district courts make specific findings of fact and conclusions of law when reviewing petitions for judicial review of administrative decisions. Furthermore, this court's review of an administrative agency's decision is identical to that of the district court.

“This court ‘review[s] an administrative body’s decision for clear error or an arbitrary abuse of discretion.’ We will not disturb an agency’s factual findings that are supported by substantial evidence.” *MGM Mirage v. Cotton*, 121 Nev. 396, 398, 116 P.3d 56, 57 (2005) (quoting *Constr. Indus. Workers’ Comp. Grp. v. Chalue*, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003)); see also NRS 233B.135. This court may not substitute its own judgment for that of the agency. NRS 233B.135(3). Substantial evidence is defined as “evidence which a reasonable mind might accept as adequate to support a conclusion.” NRS 233B.135(4). “A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and thus an abuse of discretion that warrants reversal.” *Cannon v. Cochran Mgmt. Servs., Inc. v. Figueroa*, 136 Nev., Adv. Op. 51, 468 P.3d 827, 829 (2020) (quoting *Tighe v. Las Vegas Metro Police Dep’t*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994)) (citing NRS 233B.135). Purely legal issues are reviewed de novo, but “the appeals officer’s fact-based conclusions of law are entitled to deference and will not be disturbed if they are supported by substantial evidence.” *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005).

In order for an injury to be compensable under workers’ compensation law, the injured employee must establish by a preponderance of the evidence that the injury arose out of and in the course of his or her employment. NRS 616C.150. The Nevada Supreme Court has emphasized that this is a two-prong inquiry. *MGM Mirage*, 121 Nev. at 400, 116 P.3d at 58. Generally, whether an injury occurred in the course of employment “refers merely to the time and place of employment, *i.e.*, whether the injury occurs at work, during work hours, and while the employee is reasonably

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*Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). Therefore, this argument is without merit.



performing his or her duties.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005) (citing *Murphy v. Indus. Comm’n of Ariz.*, 774 P.2d 221, 224 (Ariz. 1989)). “An accident or injury is said to arise out of employment when there is a causal connection between the injury and the employee’s work.” *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997) (citing *Murphy*, 774 P.2d at 224). The injured employee “must establish a link between the workplace conditions and how those conditions caused the injury” and “demonstrate that the origin of the injury is related to some risk involved within the scope of employment.” *Id.* “[I]f an accident is not fairly traceable to the nature of employment or the workplace environment, then the injury cannot be said to arise out of the claimant’s employment.” *Id.*

Focus first claims that neither Perez nor Rosales had authority over the paycheck dispute and that Perez knew Rosales did not have power to resolve the issue. Focus argues that because neither party had authority over the workplace dispute, the injury could not have occurred in the course or scope of employment.<sup>5</sup>

The decision and order specifically noted that Perez credibly testified that he should speak to Rosales about an issue with his paycheck. The appeals officer heard testimony that supported this finding. Perez testified that he thought he should talk to Rosales because Rosales gave him the paycheck that day. Moreover, Rosales was Perez’s crew leader for the

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<sup>5</sup>Focus also argues that the appeals officer excluded all evidence of the paycheck dispute resolution process because it was not discussed in the decision and order. However, at the hearing, the appeals officer heard testimony from three witnesses who discussed how paycheck disputes were typically resolved and the decision and order finds that Perez’s testimony that he should speak to his former crew leader, Rosales, was credible.

work covered in the disputed paycheck. Focus's witnesses explained that crew leaders were responsible for keeping track of employee time and submitting that time to the office for payment. One of Focus's witnesses specifically testified that while Rosales could not issue a new check, Rosales could call the office and instruct it to correct the paycheck. While Focus's witnesses also testified that Perez was instructed to go to the office to resolve any discrepancy and that Rosales did not have authority over the paycheck, other substantial evidence supports the appeals officer's finding that Perez reasonably believed he should speak to Rosales about the paycheck. Based on these facts, Perez's injury arose out of his employment because it occurred in the course of a paycheck dispute which is "fairly traceable to the nature of employment . . . ." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046.

Focus next argues that Perez left his job duties and was not following his employer's instructions when he was injured, which means that he was not injured in the course of employment. However, "there is no requirement that the employee actually be capable of performing job duties or be actively engaged in those job duties at the time of the injury for it to occur in the course of employment." *Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. 597, 599, 426 P.3d 586, 590 (2018). Even if Perez was advised that Rosales could not resolve the paycheck issue, and was instead instructed to speak to the office about it, Focus makes no argument and cites to no authority that Perez must have been engaged in other job duties at the time he was injured to justify compensation. *See Wood*, 121 Nev. at 733, 101 P.3d at 1032 (stating whether an injury occurs in the course of employment depends on whether the injury occurred at work, during work hours, and while the employee was performing his or her duties). Substantial evidence supports the appeals officer's finding that Perez was injured in the course of employment.

Focus further argues that the battery was the result of personal animosity and not connected to employment. The Nevada Supreme Court has noted that “it is well settled that injuries resulting from assaults by fellow workmen when the attack results from personal animosity unconnected with the employment, are not compensable . . . . But this rule is inapplicable if the employment increases or contributes to the risk of assault.” *Cummings v. United Resort Hotels, Inc.*, 85 Nev. 23, 27, 449 P.2d 245, 248 (1969) (quoting *Pacific Emp’rs Ins. Co. v. Indus. Acc. Comm’n*, 293 P.2d 502, 504 (Cal. Ct. App. 1956)).

Focus fails to identify any facts to support its contention that the battery was caused by personal animosity not connected to employment. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority). In fact, Focus states in its brief that the battery occurred due to an argument about the allegedly short paycheck. Substantial evidence supports the finding that the underlying dispute was work related and, therefore, the appeals officer’s decision was not erroneous.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

cc: Hon. Tierra Danielle Jones, District Judge  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Bighorn Law/Las Vegas  
Eighth District Court Clerk