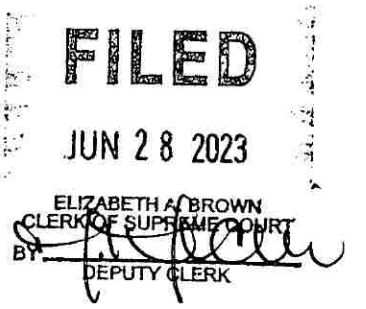
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KELLI HICKLE,
Appellant,
vs.
LVMPD-HEALTH DETAIL; AND CCMSI,
Respondents.

No. 84634-COA



ORDER OF AFFIRMANCE

Kelli Hickle appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

On September 14, 2004, Hickle sustained an injury to her lower back during the course and scope of her employment as a Las Vegas Metropolitan Police Department (LVMPD) officer.[1] Cannon Cochran Management Services (CCMSI), LVMPD's third-party administrator, accepted Hickle's claim for her injury.

In May 2011, a rating physician performed a permanent partial disability (PPD) evaluation on Hickle and determined that she had a 1% whole person impairment related to the lower back injury. The third-party administrator[2] informed Hickle of her PPD status and associated award, but Hickle disagreed with the rating and filed an administrative appeal.

While that appeal was pending, in August 2014, the third-party administrator inquired with a rating physician if Hickle was eligible to qualify for permanent total disability (PTD) status, and the physician

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

[2]Tristar Risk Management was serving as LVMPD's third-party administrator at this time.

indicated that Hickle was eligible. On September 17, 2014, CCMSI issued a determination letter that approved Hickle's PTD status. The letter also stated, "please be advised that your claim is now closed for all medical benefits and will remain open for the sole purpose of PTD benefits only." Hickle filed another administrative appeal because she "disagree[d] with the September 17, 2014 determination letter solely for the closure of [her] medical benefits."

In April 2016, CCMSI sent Hickle a letter that stated that she "may be directed to submit to [an] annual medical examination pursuant to NRS 616C.140 and . . . provide a report of wages on an annual basis per NRS 616C.445" due to her PTD status. This letter did not address the issue of medical benefits or reference CCMSI's prior determination to close Hickle's medical benefits.

In June 2016, Hickle and LVMPD entered into a settlement agreement resolving Hickle's outstanding administrative appeals, including an unrelated ankle injury claim that had been denied. As part of the settlement, LVMPD agreed to pay Hickle $13,000 for "out of work benefits." Additionally, the parties agreed that "all issues [ ] before the Appeals Officer [were] waived and the determination to deny the ankle claim [ ] shall remain in effect." Hickle and LVMPD also agreed that Hickle's other "remaining appeals have been rendered moot by subsequent determinations made by the Administrator and may be dismissed." Finally, the parties stipulated that all of Hickle's pending appeals were dismissed with prejudice under the terms of the settlement, including her appeal from the September 2014 closure of her medical benefits.

In April 2018, Hickle asked CCMSI to provide a copy of its provider panel so Hickle could get treatment for her lower back injury. In

response, CCMSI informed Hickle that her request for medical treatment was denied and referred Hickle to the September 2014 letter "effectively closing [her] claim medically." Hickle appealed CCMSI's denial of further medical treatment.[3]

In July 2019, an appeals officer for the Nevada Department of Administration held a hearing on Hickle's appeal. Hickle argued that the April 2016 letter discussing her PTD status was a new determination letter, and because *that* letter did not address the denial of her medical benefits, her medical benefits remained "open," and she did not need to seek to reopen her claim. Hickle further argued that she stipulated to dismiss her prior appeal from the September 2014 medical closure because the new April 2016 determination letter, which did not close her medical claim, rendered that appeal "moot." Finally, Hickle briefly argued, as a matter of public policy, that a person with PTD status should not have to file for reopening. Hickle did not present any additional arguments to the appeals officer.

In September 2019, the appeals officer entered his decision and order, which included Hickle's detailed medical history and exhaustive findings of fact. The appeals officer found that the "current status" of Hickle's case was "medically closed" because there was no determination letter that authorized medical treatment after the September 2014 letter that medically closed her case. The appeals officer further found that if Hickle needed further treatment, she must reopen her claim pursuant to NRS 616C.390. With that, the appeals officer affirmed CCMSI's April 2018 determination denying Hickle's request for further medical treatment.

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[3]The parties stipulated to waive a hearing before a hearing officer to present their claims directly to an appeals officer.

In March 2021, Hickle filed a petition for judicial review in the district court, which the court denied in March 2022. This appeal followed.

On appeal, Hickle argues that the appeals officer erred as a matter of law when he concluded that Hickle needed to request claim reopening under NRS 616C.390 to receive medical benefits and that she was not entitled to medical benefits under NRS 616C.440. In response, LVMPD and CCMSI point out that Hickle settled her dispute about the 2014 medical claim closure and argue that the appeals officer's factual determination that she needed to reopen that claim to obtain further medical benefits was supported by the record. LVMPD and CCMSI further argue that Hickle's statutory interpretation arguments regarding claim reopening fail as a matter of law.

This court reviews an administrative agency's decision for clear error or an abuse of discretion. NRS 233B.135(3)(e)-(f); *Constr. Indus. Workers' Comp. Grp. v. Chalue*, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003). An "agency's fact-based conclusions of law are entitled to deference, and will not be disturbed if they are supported by substantial evidence." *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (internal quotation marks omitted). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion." *Id.* at 362, 184 P.3d at 384.

Questions of law, including "the administrative construction of statutes[,]" are reviewed de novo. *Holiday Ret. Corp. v. State, Div. of Indus. Relations*, 128 Nev. 150, 153, 274 P.3d 759, 761 (2012). This court "decide[s] 'pure legal questions without deference to an agency determination.'" *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251

P.3d 718, 721 (2011) (quoting *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)).

Hickle does not challenge the factual basis for the appeals officer's finding that her claim was medically closed in 2014 and needed to be reopened pursuant to NRS 616C.390. Instead, Hickle raises three legal arguments that she failed to present to the appeals officer when she had the opportunity to do so. First, she contends that the reopening requirements of NRS 616C.390 do not apply to workers deemed permanently totally disabled because, as a matter of law, their claims can never close.[4] Second, Hickle argues that the September 2014 medical claim closure letter was ineffective because it did not include the statutorily-required information as to the effects of claim closure. Third, Hickle argues that her 2018 letter requesting a list of doctors should be "recognized as a request for reopening." However, because Hickle failed to raise any of these arguments before the appeals officer, they are necessarily waived and need not be considered on

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[4]To support this argument, Hickle cites NRS 616C.435 (which identifies the injuries deemed total and permanent) and NRS 616C.440 (which defines the amount and duration of compensation for injuries deemed total and permanent), and points out that neither statute includes a mechanism for reopening. She contrasts these statutes with NRS 616C.495(2)(a)(1) (which provides for reopening of permanent partial disability awards) and suggests that the Legislature's failure to include reopening language in NRS 616C.435 and 616C.440 means reopening is not possible for permanent total disability claims. Hickle then relies on NRS 616C.440(3), which states that "[a]n employee is entitled to receive compensation for a permanent total disability only so long as the permanent total disability continues to exist" and places a burden on the insurer to prove that the disability no longer exists. And because the supreme court defined "compensation" to include medical benefits in *Employer's Insurance Co. of Nevada v. Chandler*, 117 Nev. 421, 426, 23 P.3d 255, 258 (2001), Hickle contends that her medical claim can never be closed so long as she maintains her PTD status.

appeal. *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) ("Because judicial review of administrative decisions is limited to the record before the administrative body, we conclude that a party waives an argument made for the first time to the district court on judicial review."); *Old Aztec Mine, Inc. v. Brown*, 97 Nev 49, 52, 623 P.2d 981, 983 (1981) (stating that issues not argued below are "deemed to have been waived and will not be considered on appeal").

Finally, we agree with LVMPD and CCMSI that the appeals officer's factual determinations were supported by substantial evidence in the record. The appeals officer found that Hickle's claim was closed for medical benefits in 2014, that she settled her appeal of that closure in 2016, and that there was no subsequent determination that authorized her medical treatment. In making his factual findings, the appeals officer looked to the September 17, 2014, determination letter that not only notified Hickle that her PTD benefits were initiated as of that date, but also stated that Hickle's claim was closed for medical benefits. The appeals officer also found that Hickle's claim was closed for medical benefits and Hickle's "remaining appeals were rendered moot and dismissed with prejudice" based on the parties' June 2016 settlement agreement. Finally, the appeals officer found that neither the April 12, 2016, determination letter nor any of the subsequent determination letters sent to Hickle after the June 2016 settlement agreement changed the closure of medical benefits. Based on these factual and legal findings, the appeals officer determined that Hickle must request claim reopening under NRS 616C.390 to receive additional medical treatment. Because substantial evidence exists in the record to support the appeals officer's factual finding that Hickle's claim was, in fact,

closed, Hickle must request claim reopening under NRS 616C.390 to receive additional medical treatment.[5]

Accordingly we,

ORDER the judgment of the district court AFFIRMED.[6]

_____, C.J.
Gibbons

_____, J.
Westbrook

_____, Sr.J.
Silver

cc: Hon. Jessica K. Peterson, District Judge
Janet Trost, Settlement Judge
Nevada Attorney for Injured Workers/Las Vegas
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas - Sahara Ave.
The State of Nevada Department of Administration, Hearings Division
Eighth District Court Clerk

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[5]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

[6]The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.