

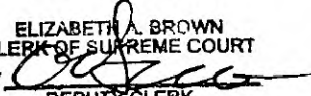
IN THE SUPREME COURT OF THE STATE OF NEVADA

AIRLIFT HELICOPTERS, INC., A  
NEVADA CORPORATION; AND ALP,  
INC., A NEVADA CORPORATION,  
Appellants,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF TAXATION,  
Respondent.

No. 85680

**FILED**

NOV 17 2023

ELIZABETH A. 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 an administrative matter. First Judicial District Court, Carson City; James Todd Russell, Judge.<sup>1</sup>

Respondent State of Nevada Department of Taxation (the Department) audited appellants Airlift Helicopters, Inc. and ALP, Inc. (collectively, Airlift). The audit found that Airlift failed to satisfy sales and use tax obligations on purchases and leases of three helicopters and at least one vehicle. The Department issued deficiency notices to Airlift, which then requested redetermination.

An Administrative Law Judge (ALJ) held a hearing and found that Airlift failed to meet its burden to prove that redetermination was warranted. See NAC 360.130(1) (providing that the party seeking redetermination bears the burden of proof). After the Nevada Tax

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

Commission upheld the ALJ's decision, Airlift petitioned for judicial review. Because Airlift did not produce the flight logs and the district court found that the logs would provide the best evidence of where the helicopters were used during the audit period, it remanded the matter for an evidentiary hearing. The district court specifically ordered that if Airlift "does not provide the flight logs for [the] helicopters . . . within 90 days from the date of this Order or 30 days [before] the evidentiary hearing, whichever is earliest, the rebuttable presumption against [Airlift] pursuant to NRS 47.250(3) will become conclusive."

On remand, the ALJ applied the presumption conclusively because Airlift did not provide the flight logs for the helicopters and instead produced aviation fuel records. The ALJ found the fuel records were "incomplete and unreliable records of the aircraft's operations." The Nevada Tax Commission affirmed the ALJ's decision. Airlift again petitioned for judicial review. Finding that substantial evidence supported the factual findings, and considering the totality of the record, including that the adverse presumption under NRS 47.250(3) as to the unproduced flight logs, the district court denied the petition. Airlift appeals.

Airlift contends that substantial evidence does not support the ALJ's decision, that the district court clearly erred by stating that the adverse presumption under NRS 47.250 could be applied conclusively, and that the negligence penalty assessed against it was unjustified. "When reviewing a district court's denial of a petition for judicial review of an agency decision, [we] engage[] in the same analysis as the district court . . ." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010). Particularly, we review whether the agency's decision was

arbitrary or capricious, constituting an abuse of discretion, or whether there was clear error. *See Simmons v. Briones*, 133 Nev. 59, 60-61, 390 P.3d 641, 643 (2017); *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383 (2008). In doing so, “[w]e defer to an agency’s findings of fact as long as they are supported by substantial evidence.” *Phillips*, 126 Nev. at 349, 240 P.3d at 4. “Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency’s conclusion . . . .” *Milko*, 124 Nev. at 362, 184 P.3d at 384. “Questions of law are reviewed de novo.” *Phillips*, 126 Nev. at 349, 240 P.3d at 4.

Having reviewed the record, we conclude that substantial evidence supports the ALJ’s findings that owner and president of Airlift, Justin Seyferth, offered testimony that was inconsistent and/or contradictory, and therefore not credible. This includes his testimony as to why Airlift could not acquire the flight logs from the leasing company. Airlift offered no evidence as to the efforts it undertook on its own to obtain the flight logs and failed to issue a subpoena for the records. Additionally, Airlift knew the flight logs were important for audit purposes, as it had been involved in a previous audit where it did produce flight logs. Given the totality of the record, and the fact that we do not reweigh credibility on appeal, *see Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (“[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal.”), the circumstances were sufficient to create a suspicion that Airlift willfully attempted “to withhold competent evidence,” *cf. Langford v. State*, 95 Nev. 631, 637, 600 P.2d 231, 235 (1979) (applying NRS 47.250(3)’s presumption under such circumstances).

Although the district court erred in stating that NRS 47.250 applied conclusively under the circumstances, we are not convinced that error affected the ALJ's decision. In particular, substantial evidence supports the ALJ's finding that the evidence that Airlift introduced was unreliable, contradictory, and/or lacked key information, such that Airlift failed to meet its burden of rebutting the presumption that the evidence contained in the flight logs would have been adverse to its position. See NRS 47.180(1) ("A presumption . . . imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence."). Thus, we perceive no error in the ALJ's finding that Airlift failed to meet its burden to demonstrate that a redetermination or adjustment was warranted. See *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason."); NAC 360.130 (addressing the burden of proof for persons seeking redeterminations and presentation of evidence); see also NRS 233B.040(1)(a) (providing that the Nevada Administrative Code has "the force of law"); *Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 227, 19 P.3d 245, 248 (2001) (recognizing that "the Legislature may authorize administrative agencies to make rules and regulations supplementing legislation").

Substantial evidence also supports the ALJ's findings regarding the negligence penalty assessed on Airlift by the Department because Airlift failed to implement changes recommended at the previous audit in 2007 and the same reporting problems were evident in the current audit. NRS

360.330 (providing for penalties for deficiency resulting from negligence or intentional disregard of a law or regulation). We therefore

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.  
Stiglich

Lee, J.  
Lee

Parraguirre, J.  
Parraguirre

cc: Hon. James Todd Russell, District Judge  
David Wasick, Settlement Judge  
John Bartlett, Attorney at Law  
Attorney General/Carson City  
Carson City Clerk