

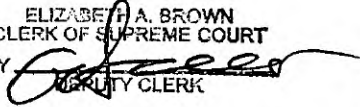
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON MARCANO,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
PERSONNEL COMMISSION,  
Respondents.

No. 85257

FILED

DEC 12 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a petition for judicial review of an administrative agency decision. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Brandon Marcano, a correctional officer with the Nevada Department of Corrections (NDOC), appeals from a district court order denying his petition for judicial review of the decision to suspend him for five days for insubordination. When reviewing a district court's denial of a petition for judicial review, we apply the same deference as the district court to the agency decision. *Taylor v. Dep't of Health and Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). We review an agency's findings of fact for clear error or abuse of discretion. NRS 233B.135(e)-(f). An agency's factual findings or legal conclusions that are closely related to the facts will not be overturned if they are supported by substantial evidence. *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 248, 327 P.3d 487, 489 (2014); *Kolnik v. Nev. Emp't Sec. Dep't.*, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996).

*See also* NRS 233B.135(e)-(f) (providing for review for clear error or abuse of discretion).

*The 60-day extension request*

Marcano argues NDOC failed to comply with NRS 284.387's time limit to complete the investigation because NDOC requested and received an extension of that time limit without showing good cause therefor. Under NRS 284.387(2), when a state employer conducts an internal administrative investigation that could result in employee discipline, the employer must notify the employee of any disciplinary action within 90 days of first notifying the employee about the investigation. The employer may request an extension of up to 60 days "upon showing good cause for the delay." *Id.*

Marcano argues that only complicated issues warrant a 60-day extension under the statute, that NDOC's extension request was without good cause because there were no complicated issues in his case, and that the district court erroneously concluded the decision to grant an extension is not reviewable. But assuming that an extension request is reviewable for good cause, there was no reversible lack of good cause here. Marcano's assertion that NDOC misrepresented the need for an extension—because all that it had left to do was decide on the length of the suspension—is contradicted by the record. Although NDOC completed its investigation within 90 days, Marcano's proposed discipline still had to be reviewed by the Attorney General's office. *See* NRS 284.385(2) (requiring NDOC to consult with the attorney general regarding proposed employee discipline). Thus, the district court did not abuse its discretion regarding the good-cause determination.

*The hearing officer's reliance on AR 339*

Marcano argues that under *Department of Corrections v. Ludwick*, 135 Nev. 99, 440 P.3d 43 (2019), the hearing officer's reliance on AR 339, an invalid administrative regulation, is clear error requiring reversal. NDOC argues that the hearing officer's reliance on AR 339 was harmless error, because the hearing officer's decision was also supported by valid regulations and statutes.

The *Ludwick* court invalidated AR 339 and declared that the hearing officer should not have relied on AR 339 "for any purpose related to the disciplinary charges in this case." But *Ludwick* focused on the facts of that case and did not hold that harmless-error review could never apply to a hearing officer's reliance on AR 339. *Ludwick*, 135 Nev. at 104, 440 P.3d at 47. Additionally, *Ludwick* instructed the hearing officer on remand to determine whether any valid NAC provisions would have supported discipline, indicating that discipline that is allowed by valid regulations may be upheld. *See id.* at 104, 440 P.3d at 48. Accordingly, we conclude that despite *Ludwick's* broad language, it does not foreclose harmless-error review of a hearing officer's reliance on AR 339.

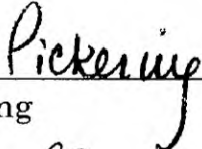
Here, the hearing officer relied on valid statutes and regulations—including NAC 284.650, NAC 284.642, and NRS 284.385—in addition to AR 339. The hearing officer also relied on testimony that Marcano repeatedly disobeyed a superior's order and that insubordination could jeopardize prison safety and security and embolden other employees to disobey orders from superiors. This is substantial evidence that Marcano was insubordinate under NAC 284.650 and supports the hearing officer's decision to uphold the discipline imposed. Moreover, these valid statutes

and regulations allowed for the five-day suspension. The hearing officer's reliance on AR 339 was harmless error in this case.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Bell

cc: Chief Judge, The Eighth Judicial District Court  
Hon. James Crockett, Senior Judge  
Madelyn Shipman, Settlement Judge  
Law Office of Daniel Marks  
Attorney General/Carson City  
Eighth District Court Clerk