

IN THE SUPREME COURT OF THE STATE OF NEVADA


GERALD PONDER,  
Appellant,  
vs.

THE STATE OF NEVADA HEALTH  
AND HUMAN SERVICES, DIVISION  
OF CHILD AND FAMILY SERVICES,  
Respondent.

No. 88350

FILED

JUN 18 2025

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 concerning an agency substantiation of child abuse. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Gerald Ponder was a juvenile probation officer overseeing the incarceration of 17-year-old A.I.R. A physical altercation occurred between A.I.R., Ponder, and another juvenile probation officer because A.I.R. disobeyed Ponder's order to return to his room. The altercation was recorded on video without audio.

After an investigation, the Division of Child and Family Services (DCFS) substantiated a finding of child abuse against Ponder under NRS 432B.020(1). Ponder administratively appealed that determination. The hearing officer heard testimony from two juvenile probation officers and a social worker and considered the altercation video, A.I.R.'s post-incident interview, and injury photos. The hearing officer affirmed DCFS's finding of child abuse under NRS 432B.020.

Ponder petitioned for judicial review ("First PJR"), arguing DCFS's determination was arbitrary and capricious because no physical

injury of a nonaccidental nature occurred and DCFS conflated statutory abuse with excessive force. The district court granted the petition, concluding that DCFS incorrectly focused on whether Ponder's use of force was justified and remanding to the hearing officer with instructions to apply NRS 432B.090 to determine whether the abuse charge should be substantiated.

On remand, the hearing officer issued an amended decision upholding the substantiation of child abuse under NRS 432B.020, NRS 432B.090, and NAC 432B.024. The hearing officer concluded DCFS proved that Ponder's intentional punches to A.I.R.'s head and neck inflicted physical injuries of a nonaccidental nature on a child in his protective custody. The district court denied Ponder's petition for judicial review ("Second PJR") of the amended decision, concluding that the hearing officer applied the correct standards in evaluating DCFS' decision and that there was substantial evidence to uphold DCFS' substantiation of child abuse. Ponder appeals.

This court reviews an administrative agency's factual findings for clear error or an arbitrary abuse of discretion, and it will not overturn those findings if they are supported by substantial evidence. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion." *Id.* (internal quotation marks omitted).

Ponder argues that the district court abused its discretion in connection with the First PJR by remanding the matter to the hearing officer after concluding that the hearing officer had applied an incorrect legal standard. We disagree.

The district court determined that the hearing officer incorrectly focused on whether Ponder's use of force was excessive to substantiate a finding under NRS 432B.020. As a result, the district court remanded to the hearing officer with instructions to apply the statutory criteria under NRS 432B.090 to determine whether a charge of child abuse should be substantiated under the facts. The district court further instructed that if the hearing officer again substantiated the charge, the hearing officer must identify the facts in the record which led to that conclusion under the correct statutory criteria. Such a remand is permitted under NRS 233B.135(3). And this court has recognized the validity of a remand for a hearing officer to apply the correct legal standard. *See, e.g., Dep't of Corrs. v. Ludwick*, 135 Nev. 99, 104-05, 440 P.3d 43, 47-48 (2019) (remanding to the district court for it to remand to the hearing officer with instructions to apply correct administrative regulations in evaluating an agency decision after the hearing officer had relied on invalid provisions). Thus, the district court's decision to remand to the hearing officer was not an abuse of discretion.

Ponder next argues that DCFS failed to establish a physical injury under NRS 432B.090 because A.I.R. suffered only minor bruising which cannot rise to the level of disfigurement. We disagree.

Abuse of a child is defined to include a "[p]hysical or mental injury of a nonaccidental nature . . . caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm." NRS 432B.020(1)(a). "Physical injury" includes a "[p]ermanent or temporary disfigurement." NRS 432B.090(7). And "disfigurement" includes a mark, welt, or bruise. NAC 432B.024(1).


The hearing officer's amended decision was based on photos of A.I.R.'s injury, the altercation video, and witness testimony. The photos reveal dark bruises around A.I.R.'s neck and the video shows Ponder forcefully striking A.I.R.'s head and neck multiple times. And a social worker who documented the event testified that A.I.R.'s injuries were a direct result of Ponder's punches. This evidence and testimony support DCFS's abuse finding under the relevant definitions of physical injury and disfigurement. And DCFS's interpretation of those definitions and its evaluation of the facts are consistent with this court's decisions in similar cases. *See, e.g., Rydell v. Clark Cnty. Dep't of Fam. Servs.*, No. 69929, 2017 WL 1957099, at \*1-2 (Nev. May 10, 2017) (Order of Affirmance) (concluding that substantial evidence supported a finding of abuse where it was undisputed that three days after a parent slapped their child, the child had a faded bruise that did not exist before the slap, such that the child sustained a physical injury for purposes of NRS 432B.020(1)(a)). As substantial evidence supports the hearing officer's determination sustaining the finding of physical abuse, and this court will not substitute its judgment for that of the agency on fact questions, NRS 233B.135(3), or reassess witness credibility, *Nellis Motors v. State, Dep't of Motor Vehicles*, 124 Nev. 1263, 1270, 197 P.3d 1061, 1066 (2008), the hearing officer's decision was not an abuse of discretion.


Ponder finally argues that DCFS failed to establish that the physical injury was nonaccidental. In particular, Ponder asserts that he acted in self-defense and was attempting to compel A.I.R.'s compliance. NAC 432B.020, however, defines "nonaccidental" as "arising from an event or effect that a person responsible for a child's welfare could reasonably be expected to foresee, regardless of whether that person did not intend to

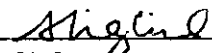
abuse or neglect a child or was ignorant of the possible consequences of his actions or failure to act.” Thus, the term “nonaccidental” as used in NRS 432B.020(1)(a) focuses on the foreseeability of an event or effect. And we have applied it that way in other cases. *See, e.g., Jethva v. Clark Cnty. Dep’t of Fam. Servs.*, No. 72124, 2017 WL 4619051, at \*1 (Nev. Oct. 13, 2017) (Order of Affirmance) (emphasizing the foreseeability of an event that could lead to a child’s physical injury in concluding that the agency properly found the child’s injury was nonaccidental). Ponder testified that he struck A.I.R. during the altercation because he believed there were no other reasonable alternatives, and a supervisory probation officer testified that Ponder’s punches landed in “red zone[d]” areas of the body. This constitutes substantial evidence supporting the agency’s determination that the effects of Ponder’s intentional strikes to A.I.R.’s head and neck were foreseeable and thus A.I.R.’s physical injuries were nonaccidental under NAC 432B.020 regardless of Ponder’s intent in striking A.I.R.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

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

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Kathleen E. Delaney, District Judge  
Law Office of Daniel Marks  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk