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ELIZABETH A. BROWN
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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND CCMSI, Appellants, vs. DEREK BURNETT, Respondent.	No. 90807-COA

ORDER OF AFFIRMANCE

Las Vegas Metropolitan Police Department (LVMPD) and CCMSI appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Respondent Derek Burnett is a police officer for LVMPD. Burnett was getting ready for his shift at his home and inspecting the flashlight he carries while on duty. During that inspection, the flashlight exploded and Burnett sustained injuries from the explosion. Burnett sought medical treatment and thereafter initiated a workers' compensation claim. CCMSI denied the claim, determining that Burnett failed to establish his injury arose in the course and scope of his employment because Burnett purchased the flashlight himself and was at home handling it at the time he was injured. Burnett appealed and a hearing officer reversed, determining that although Burnett was home at the time he was injured, because Burnett's injury stemmed from equipment he was required to have, he met his burden of establishing a compensable injury.

The hearing officer's determination was appealed and, before the appeals officer, LVMPD argued that considering the totality of the

circumstances, Burnett could not establish that his injury arose out of and in the course and scope of his employment. LVMPD contended that Burnett clearly alleged that his injury occurred before his shift when he was at his private residence and thus failed to demonstrate a causal connection to his employment. Following a hearing wherein Burnett testified, the appeals officer affirmed the decision of the hearing officer, finding that the totality of the circumstances demonstrated that Burnett's injury arose out of an d in the course of his employment because he was performing work-related activities when he was injured. LVMPD and CCMSI filed a petition for judicial review, which the district court denied. This appeal followed.

On appeal, LVMPD and CCMSI challenge the district court 's denial of their petition for judicial review and argue the appeals officer erroneously concluded that Burnett 's injury arose out of and in the course of his employment. When reviewing an administrative decision, this court 's role "is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency' s decision was arbitrary or capricious and was thus an abuse of the agency 's discretion." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 423, 851 P.2d 423, 423 (1993). "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) (citation omitted); *see also* NRS 233B.135. Substantial evidence is defined as "evidence which a reasonable mind might accept as adequate to support a conclusion." NRS 233B.135(4). This court may not substitute its own judgment for that of the agency. NRS 233B.135(3). "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 Cochran Mgmt. Servs., Inc. v.*

Figueroa, 136 Nev. 443, 443, 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)). 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).

NRS 616C.150(1) provides that an injured employee may receive compensation if he or she establishes "by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment." "An injury occurs within the course of employment when there is a causal connection between the injury and the nature of the work or the workplace." *Cannon Cochran Mgmt. Servs., Inc.*, 136 Nev. at 444, 468 P.3d at 829 (citation omitted). "[W]hen determining whether an injury that is sustained outside of the actual period of employment or off of the employer's premises nonetheless arose in the course of employment, we consider whether the employee [was] in the employer's control." *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 286, 183 P.3d 126, 131 (2008) (internal quotation marks omitted). In determining whether an injury arose out of and in the course of employment, a court must look to the totality of the circumstances. *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997); *see also Cannon Cochran Mgmt. Servs., Inc.*, 136 Nev. at 445, 468 P.3d at 830 (providing that "a court must take into account all of the circumstances surrounding a law-enforcement officer's injury to properly assess whether a connection can be established to his or her employment").

Here, the appeals officer made the following findings of fact. Burnett works for LVMPD's traffic division as a motorcycle officer and is

assigned a department-issued motorcycle that he takes home and is required by LVMPD to park in a locked garage. LVMPD required Burnett to carry equipment, including a flashlight, taser, knife, firearm, duty belt, and body armor. While LVMPD provided some of the equipment, it required officers to provide their own flashlight, firearm, and footwear. The district court found that Burnett testified credibly that anytime he is on the department-issued motorcycle, he must respond to emergencies and crimes and thus must be fully dressed in uniform and equipped when leaving his home to start his shift. He is also required to maintain and check his equipment daily to ensure it is in good working condition and, because he is not assigned a locker, he must gear up at home before his shift. In April 2024, when Burnett was at home getting ready for work and checking his equipment, his flashlight exploded in his right hand after he changed its battery and turned it on to verify it was working, injuring him.

The appeals officer relied on these findings in making his ultimate determination to affirm the hearing officer's decision. And while LVMPD and CCMSI challenge the sufficiency of the evidence, they fail to specifically challenge these findings on appeal or provide this court with a transcript of the hearing the appeals officer relied on in making its determination. As a result, we must presume that the missing transcript supports the appeals officer's factual findings. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (providing that when an appellant fails to provide necessary documentation from the record, the appellate court "necessarily presume[s] that the missing portion [of the record] supports the district court's decision").

Accepting the appeals officer's findings as correct, we agree with the appeals officer that Burnett's injury arose out of and in the course

of his employment. While Burnett was injured at his home, prior to his shift, and by a piece of equipment he personally purchased, LVMPD exercised control over the circumstances in which Burnett was injured by requiring him to purchase the flashlight, check it, and equip himself with it prior to leaving his home on his department-issued motorcycle. *See Bob Allyn Masonry*, 124 Nev. at 286, 183 P.3d at 131. Given the unique facts of this case, we conclude the appeals officer properly concluded that Burnett demonstrated his injury arose out of and in the course of his employment. *See* NRS 616C.150(1); *Cannon Cochran Mgmt. Servs., Inc.* , 136 Nev. at 445, 468 P.3d at 830 (recognizing that law enforcement is a specialized industry, "policeman are on call in a special sense," and "that law enforcement differs from traditional employment" (internal quotation marks omitted)). Therefore, we conclude that the appeals officer 's decision was not an abuse of discretion and affirm the district court 's decision to deny the petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED. [1]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Joanna Kishner, District Judge
Janet Trost, Settlement Judge

[1]Insofar as appellants have raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

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