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Case No. 90422

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOUNTAIN VIEW HOSPITAL, Appellants,

v.

ANGELIQUE FISHER, Respondent.

Appeal from a District Court Order Denying Petition for Judicial Review
Eight Judicial Court of Nevada, Clark County, Nevada
Department No. 14
Case No. A-22-861111-J

RESPONDENT'S ANSWERING BRIEF

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MOUNTAIN VIEW HOSPITAL,
Appellants,

v.

ANGELIQUE FISHER,
Respondent.

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that judges of this court may evaluate possible disqualifications or recusal.

Respondent's parent corporations: Not Applicable.

Firms having appeared: Nevada Attorney for Injured Workers

Respondent's pseudonyms: None

Submitted this 5 day of November, 2025.

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II.

JURISDICTIONAL STATEMENT

The jurisdictional statement as set out in the Appellant's Opening Brief is accurate, and therefore, Respondent Fisher does not recite her own jurisdictional statement here. NRAP 28(b)(1).

III.

ROUTING STATEMENT

Under NRAP 17(b)(9), the issue of the appeals officer's decision regarding whether Fisher met her burden of proof to show by a preponderance of evidence that she suffered an injury by accident in the course and scope of her employment pursuant to NRS 616C.150 would be presumptively assigned to the Court of Appeals as it concerns a petition for judicial review of an administrative agency's final decision. [1]

Likewise, the appeals officer's decision regarding whether Fisher provided either timely notice of an injury to her employer pursuant to NRS 616C.015 or evidence to excuse timely notice requirements pursuant to NRS 616C.025(2)(b) would be presumptively assigned to the Court of Appeals for the same reason.

None of these issues raise a question of first impression.

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[1] There is an erroneous citation to NRAP 17(b)(10) in Appellant's Opening Brief, which addresses family law matters. Appellant's Br., 8. The correct subsection for this petition is NRAP 17(b)(9).

IV.

STATEMENT OF THE ISSUES

1. Whether the appropriate standard of review in this case is deference to the appeals officer's decision dated October 20, 2022.

2. Whether there is substantial evidence to support the appeals officer's findings and conclusions that Fisher's untimely notice of injury to the employer is excused, and whether she has met her burden of proof by a preponderance of the evidence that she suffered a compensable work injury.

3. Whether the district court erred as a matter of law when it denied Appellant's Petition for Judicial Review and affirmed the appeals officer's decision dated October 20, 2022.

V.

STATEMENT OF THE CASE AND FACTS

The statement of the case as set out in the Appellant's Opening Brief is accurate except where restated or revised below, and therefore, Fisher does not recite her own statement of the case here.

This case stems from a contested workers' compensation claim. The Respondent and Claimant, Angelique Fisher, was employed as a registered nurse by Mountain View Hospital ("employer") on the date of injury, October 19, 2015. Appellant's Chronological Index Volume V (hereinafter "AI ___"), 663, 667, 669.

On that date, Fisher was working during her normal shift on location at the hospital premises when she attempted to pull up a patient in a bed and felt a pull/pop in her lower back. AI II, 235; AI V, 659, 663, 669. Although pain symptoms did not manifest instantaneously, Fisher experienced achy symptoms in her back for the rest of the day. AI II, 239. Fisher testified that her job repeatedly required her to pull patients up in bed, resulting in minor back symptoms at times. AI II, 249. She believed that rest and self-care, including stretching and hot baths, would improve her symptoms. AI II, 240, 250; AI V, 664. Fisher had not previously filed a workers' compensation claim in Nevada and was not familiar with its procedures. AI II, 239, 245-247. The employer failed at hearing to provide any testimony or documentation to refute that Fisher was unfamiliar with workers' compensation procedures or deadlines, or that the employer provided such information in the form of signed acknowledgments or posted notices.

Fisher completed her work shift that day and went home. AI II, 235. For reasons unrelated to this incident, prior to the October 19, 2015, workplace accident, Fisher had already obtained preauthorization from her employer to take a one-week vacation, which began at the end of her work shift and would last until her return on October 27, 2015. AI II, 236.

Fisher reported and testified that although she felt the pop in her low back right away, symptoms of pain did not manifest until a few days later. AI II, 235; AI

V, 659, 663, 669. She had never experienced this type of injury or symptoms before, and she did not think it was serious at the time it occurred. AI II, 242, 244, 249; AI V, 660. Fisher stated that she believed the symptoms would improve with rest during her vacation time, but instead, the symptoms worsened. AI II, 236, 240, 250; AI V, 659, 663, 669.

Fisher testified that on Thursday, October 22, 2015, she woke up and felt numbness in the left buttock and posterior aspect of her left thigh, suggesting to her that something was wrong. AI II, 236-237, 250, 260, 294; AI V, 664. She called her primary care physician, Jennifer Relph M.D., and scheduled an appointment for October 26, 2015, which later resulted in a referral for an MRI diagnostic. AI II, 236; AI IV, 605. Between October 19, 2015 and the day numbness symptoms manifested, Fisher believed that her back symptoms would resolve with rest and self-care, but the numbness indicated to her that she needed to consult a doctor. AI II, 240, 250; AI V, 664.

On October 27, 2015, eight (8) days after the date of injury and after her doctor's appointment, Fisher was due to return to work. AI II, 237-238, 241. She called her employer that day to inform the charge nurses on duty, Dolores and Jaymie, that she was injured while working on Monday, October 19, 2015, when she felt a pull/pop in her back, and that she would not be able to come in. AI II, 237-238, 241, 273. Fisher was told to report to her manager the following day. Id. Records

from AT&T submitted into evidence corroborated that she contacted the employer on October 27th. AI II, 253; AI V, 661-662. Fisher left a telephone message for manager Becky Womack, who returned her call and told her to report to Employee Health, which she did. AI II, 238. The employer confirmed knowledge of the injury on October 28, 2015, although actual notice was given verbally on October 27th. AI II, 273; AI V, 667. On October 29, 2015, Fisher was then provided a C-1 form, which she filled out and submitted by fax. AI II, 238-239; AI V, 659.[2]

On October 30, 2015, Fisher underwent a lumbar spine MRI without contrast, which revealed an acute-appearing Schmorl's node with surrounding edema at L4, L2-3 disc protrusion displacing the nerve root, L3-4 disc bulge, L4-5 disc extrusion with annular tear and bilateral neural foraminal narrowing, and an L5-S1 disc protrusion. AI II, 297-298.

On November 4, 2015, Fisher consulted with Dr. Victor Klausner, D.O., and completed a claim for compensation C-4 form, which diagnosed her with lumbar strain and left L4-5 radiculopathy. AI V, 663. Dr. Klausner did not issue an opinion regarding whether the low back injury was industrially related, instead putting a "?" on the form. AI, 663. Dr. Klausner was not able to review Fisher's remarkable October 30, 2015, MRI images when he diagnosed her with a lumbar strain and

[2] The timeline for when Fisher saw Dr. Relph and reported her injury to the employer is misrepresented and lacks citation to the record. Appellant's Br., 4.

bilateral L5 radiculopathy. AI V, 663-666. Fisher was then taken off work for four (4) more days, and a follow up appointment was scheduled with Dr. Klausner to review her MRI results. Id.

The next day on November 5, 2015, Broadspire issued a claim denial determination, but it was not received by Ms. Fisher until February 10, 2016. AI III, 454-455; AI V, 673. This claim denial determination is the matter underlying the appeals officer's decision that is the subject of this petition for judicial review. Due to the claim denial determination, Fisher was never able to follow up with Dr. Klausner or have her MRI reviewed by him. It is important to note, contrary to arguments made by the employer that Dr. Klausner denied an industrial relationship, that he never issued a causation opinion before treatment was cut off.

On November 9, 2015, Dr. Frank Silver, M.D., examined Fisher and also completed a C-4 form diagnosing her with a lumbosacral strain with possible radiculopathy and certifying that it was a work-related injury. AI V, 612, 669. Dr. Silver provided modified work restrictions of no lifting over 20 pounds. AI V, 669-670.

That same day, Fisher followed up with her primary physician to review the MRI results. AI II, 299. Fisher was assessed with lumbar nerve root impingement, lumbar intervertebral disc displacement, lumbar intervertebral disc stenosis of neural canal, lumbar spinal stenosis, low back pain, sciatica, and numbness and tingling of

left leg. AI II, 300. Fisher was referred to pain management and to Dr. Mark Kabins for an orthopedic surgical consultation due to an acute traumatic low back pain. AI II, 330-301; AI III, 305.

On November 11, 2015, Dr. Kabins issued a letter stating that Fisher's lumbar injury was causing a progressing deficit requiring surgery. AI V, 613-614. On November 18, 2015, Dr. Kabins reported that Fisher's injuries were directly related to her workplace accident on October 19, 2015, resulting in injury to the low back and a herniated disc at L4-5. AI V, 671.

On November 19, 2015, Dr. Kabins performed the first of several surgeries on Fisher, a laminectomy with decompression and microdiscectomy at L4-5. AI III, 329-331.

On January 30, 2017, Fisher returned to Dr. Kabins, reporting a recurrence of low back pain and severe left lower leg radiculopathy. AI III, 349. Dr. Kabins recommended an immediate lumbar MRI and electrodiagnostic studies of the bilateral lower extremities secondary to motor and sensory dysfunction. AI III, 351. On February 20, 2017, Dr. Kabins reported that Fisher suffered from left drop foot and recurrent herniated disc with retrolisthesis at L4-5, and he recommended that she should be taken off work completely as she was not capable of gainful employment. AI III, 353. Fisher was unable to bear weight on her left leg. AI III, 355.

On March 25, 2017, a lumbar MRI showed an L4-5 large residual recurrent disk extrusion causing mass effect on the left L5 and S1 nerve roots and lateral recess narrowing. AI III, 357, 359-360.

On March 26, 2017, Dr. Kabins performed a second surgery on Fisher, a revision left microdecompression with associated microdiscectomy at L4-5. AI III, 354. Fisher had developed progressive left leg radiculopathy with motor and sensory dysfunction with intense sciatica, which prevented her from walking. AI III, 364. Dr. Kabins opined that Fisher was unable to perform her job functions and should be off work from March 26, 2017, until July 1, 2017. AI III, 367-368. He also opined that the large extruded disc herniation at L4-5 required surgery on March 26, 2017, and both the surgery and work restrictions were medically necessary. Id.

On April 24, 2017, Fisher underwent an MRI of the lumbar spine without contrast, which indicated a recurrent or residual disc herniation at L4-5 with surgical changes and severe left foraminal stenosis and left lateral recess narrowing with likely impingement on the left L5 and L4-5 dorsal root ganglia. AI III, 382. The imaging also showed small disc herniations at L5-S1, L2-3, a small disc bulge at L1-2, and at least moderate right foraminal stenosis at L5-S1. Id.

On May 1, 2017, Fisher confirmed to Dr. Kabins that she had not suffered any new intervening incident, injury, or trauma since the October 19, 2015 work injury. AI III, 383. At that time, Fisher was unable to engage in prolonged sitting, standing,

or walking. Id. Dr. Kabins recommended revision decompression, cage instrumentation, and fusion with bone marrow aspiration. AI III, 385.

On May 6, 2017, Dr. Kabins performed a third lumbar surgery on Fisher due to the recurrent disk herniation at L4-5 with instability at L5-S1, including microdecompression and interbody fusion at L4-5 and decompression at L5-S1. AI III, 392. On May 9, 2017, Dr. Kabins reported Fisher was unable to perform work duties and remained on off work status. AI III, 399-401. On October 2, 2017, Dr. Kabins returned Fisher to work with restrictions of no heavy lifting with bending, and only part-time hours. AI III, 411.

On October 5, 2017, Fisher consulted with Russell Shah, M.D., a neurologist, regarding headaches and neck pain. AI III, 412-413. Dr. Shah assessed Fisher with cervical strain, thoracic strain, and cervicogenic headaches due to derivative lumbar derangement. AI III, 419.

On November 28, 2017, Dr. Kabins reported that as a result of the October 19, 2015 injury, Fisher was unable to work from March 26, 2017, to October 1, 2017. AI III, 436-437. Work restrictions after October 1, 2017, included no prolonged sitting, standing, or walking, and no repetitive neck range of motion. Id.

On February 19, 2020, Dr. Kabins completed a form reporting that Fisher's impairments were permanently impacting her ability to work. AI III, 449-451. Fisher would need accommodations for frequent breaks, shifting from sitting to

standing to walking to a total of 4 hours a day wand limiting lifting to up to 10 pounds. Id.

On February 3, 2021, Appeals Officer Karl Armstrong issued a Decision and Order finding jurisdiction for the issue of claim denial to be heard before Appeals Officer Pulliam. AI IV, 456-457.

On October 20, 2022, the appeals officer issued a Decision and Order reversing claim denial and remanding to the insurer to accept the claim for the lumbar spine and issue appropriate benefits. AI II, 271-281. This appeals officer's Decision and Order is the subject of the Petition for Judicial Review. In particular, the appeals officer's decision and order made the following critical factual and legal determinations:

- Fisher was injured in an accident within the course and scope of her work on October 19, 2015, while pulling a patient up in bed. AI II, 272, 280-281.
- Fisher did not feel immediate pain; rather, it came on gradually over the next few days along with numbness in the left leg. AI II, 272.
- Fisher had a pre-authorized week-long vacation that complicated the timeline to provide notice to the employer. AI II, 272, 278.
- Fisher first sought treatment on October 26, 2015, with her primary care physician, Dr. Relph, and no C-4 form was completed at that time because she does not practice in workers' compensation. AI II, 272-273.

- Fisher contacted the employer on October 27, 2015, and reported the industrial injury to the charge nurses, Dolores and Jaymie, who did not provide her instructions on the procedures for formalizing a workers' compensation claim. AI II, 273.
- Fisher made several calls to the employer on October 28, 2015, in an attempt to facilitate filing a workers' compensation claim. AI II, 273.
- Fisher was not provided a C-1 form or any instructions on how to file a workers' compensation claim until making contact with Ms. Lisa Patterson on October 29, 2015, after which she immediately submitted the C-1 form. AI II, 273.
- Dr. Klausner evaluated Fisher on November 4, 2015, but he did not have the aid of Fisher's MRI results to complete his evaluation, placing a "?" on the C-4 form with regard to causation. AI II, 274.
- The Insurer verbally denied the claim on November 5, 2015, on the basis of only untimely notice. AI II, 274.
- Dr. Klausner canceled the follow up appointment scheduled for November 7, 2015, due to the claim denial. AI II, 274.
- On November 9, 2015, Dr. Silver authored another C-4 form indicating that Fisher's low back injury was industrially related. AI II, 274.

- Dr. Kabins also opined that the low back injury and need for surgery were industrially related. AI II, 275.
- Under these facts, Fisher's one (1) day tardiness in reporting was excused under NRS 616C.025(2). AI II, 278.
- Further, Fisher clearly described and presented evidence of an accident under NRS 616A.030, an injury under NRS 616A.265, and that she satisfied her burden to show she suffered an injury in the course and scope of her employment pursuant to NRS 616C.150. AI II, 280-281.

Following this decision, Appellant filed a Petition for Judicial Review on November 11, 2022 with the district court. AI I, 3-18. On March 24, 2025, District Court Judge Tina Talim issued an Order Denying Petition for Judicial Review, finding that substantial evidence in the record supported the appeals officer's decision, which was not arbitrary, capricious, or an abuse of discretion per NRS 233B.135. AI VI, 769-774. The district court gave deference to the appeals officer's factual determinations regarding weight and credibility, and found in particular that the evidence justified waiving the one (1) day untimely notice due to both mistakes of fact and ignorance of law. AI VI, 770-771.

Regarding ignorance of law, Fisher testified that she did not know there was a statutory mandate to report a work-related injury within seven (7) days. AI VI, 771. This ignorance was further compounded by the fact Fisher had a pre-authorized

week-long vacation scheduled before the date of injury. Id. There also existed a mistake of fact that caused an initial delay in reporting because Fisher assumed that her injury was minor and would improve on its own with rest and self-care during her pre-authorized vacation. Id. Further, the employer delayed formal notice by not providing a C-1 form to Fisher upon receiving actual notice of the injury. Id.

The district court also recognized that the application of these factual findings to the question of whether to waive untimely notice was a question of fact that must be given deference under NRS 233B.135. AI VI, 771-772. Moreover, the district court agreed that the description of the accident and injury, along with the medical reports of Dr. Kabins and Silver satisfied the finding that Fisher suffered a compensable injury under NRS 616C.150. AI VI, 772-773.

A Civil Docketing Statement was filed on April 30, 2025. Appellant then filed its Opening Brief on October 7, 2025.

VI.

SUMMARY OF THE ARGUMENT

The employer seeks to overturn the district court's Denial of Petition for Judicial Review, arguing that the appeals officer's decision to waive Fisher's one (1) day late notice of injury due to a mistake of fact and law pursuant to NRS 616C.025(2) was an abuse of discretion and/or clear error. Further, the employer also argues that it was an abuse of discretion and/or clear error for the appeals officer to

find that Fisher had met her burden by a preponderance of evidence to establish an injury by accident under NRS 616C.150. The employer's arguments must fail as the appeals officer's decision was based upon substantial evidence in the record.

Despite arguing that this appeal presents a question of law, the employer actually presents a question of fact as to whether substantial evidence existed to support the appeals officer's findings. With regards to questions of fact, the reviewing court must review the appeals officer's view of the facts deferentially. NRS 233B.135(3). An administrative determination regarding a question of fact will not be set aside unless it is against the manifest weight of the evidence. Nevada Indus. Comm'n v. Hildebrand, 100 Nev. 47, 675 P.2d 401 (1984).

First, the appeals officer's decision to waive Fisher's one (1) day untimely notice was based upon a number of factual findings, including: (1) a mistake of fact caused by a delayed onset of symptoms, which explained why she did not report the injury immediately; and (2) a mistake of law due to Fisher's unfamiliarity with workers' compensation procedures and deadlines. This was further compounded by the fact that Fisher had a pre-authorized vacation scheduled to begin the day following the accident, which delayed notice. The appeals officer found Fisher testified credibly regarding her unfamiliarity with workers' compensation procedures and deadlines, and due to the vacation and delayed onset of symptoms, she acted reasonably under the circumstances when she reported the injury one (1)

day late upon her return from vacation. This qualified as a mistake of fact and law justifying a waiver of timely notice pursuant to NRS 616C.025(2).

Second, the appeals officer found that substantial evidence supported that Fisher had met her burden to prove by a preponderance of evidence that she had sustained an injury by accident on October 19, 2015, pursuant to NRS 616C.150. Fisher described that she had injured her lower back when pulling up a patient in bed, resulting in a "pop" that later manifested symptoms within a reasonable amount of time. This description met the definition of an accident pursuant to NRS 616A.030 and a traumatic injury pursuant to NRS 616A.265. Her description of the accident was further corroborated by medical evidence, including a lumbar MRI from October 30, 2015, and the records of three doctors (Drs. Silver, Kabins, and Shah), who all reported positively that Fisher's injuries and later developing conditions were the result of the October 19, 2015, lifting incident. Moreover, their opinions weighed greater than that of Dr. Klausner, who did not issue a positive or negative causation opinion because he never had the opportunity to review Fisher's lumbar MRI before the claim was denied. As such, the appeals officer found that Fisher sustained her burden of proof.

Upon the filing of the Petition for Judicial Review, the district court affirmed the appeals officer's decision, finding that it was based upon substantial evidence

and rejecting any attempt to re-weigh the evidence. This Court should affirm the district court's decision as well and deny the petition for judicial review.

VII.

ARGUMENT

A. Standard of Review

The Supreme Court's review of an agency decision is limited by NRS 233B.135 to issues of law, or on issues of fact as to whether there is substantial evidence to support findings of fact. "Questions of law include questions of statutory interpretation." Buma v. Providence Corp. Dev., 135 Nev. 448, 450, 453 P.3d 904 (2019). They also include interpretation of caselaw. Martin v. Martin, 138 Nev. Adv. Rep. 78, 520 P.3d 813, 817 (2022). "[W]hen the statute's language is plain and its meaning clear, [we generally] apply that plain language." Id. A de novo standard of review is applied when the court addresses a question of law, including the administrative construction of statutes. Elizondo v. Hood Mach., Inc., 129 Nev. 780, 784, 312 P.3d 479, 485 (2013).

Here, the employer's Opening Brief raises no genuine issues of law as there is no allegation that NRS 616C.020, NRS 616C.150, or a particular case requires interpretation. Instead, the employer raises an issue of whether the appeals officer committed clear error or an abuse of discretion pursuant to NRS 233B.135(3). This is important to distinguish from a pure question of law. With regards to questions of

fact, the reviewing court must review the appeals officer's view of the facts deferentially. NRS 233B.135(3); *see* Buma, 135 Nev. at 450.

The reviewing court's standard of review should be limited to whether the administrative decisions are based on substantial evidence. North Las Vegas v. Public Serv. Comm'n, 83 Nev. 278, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial evidence is that quantity and quality of evidence which a reasonable person would accept as adequate to support a conclusion. NRS 233B.135(4); *see* Horne v. State Indus. Ins. Sys., 113 Nev. 532, 936 P.2d 839 (1997).

When reviewing administrative court decisions, the Nevada Supreme Court has held that the findings and ultimate decision of an appeals officer are not to be disturbed unless they are clearly erroneous or otherwise amount to an abuse of discretion. Nevada Indus. Comm'n v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977). A reviewing court may not substitute its judgment for that of the appeals officer on matters of weight or credibility on issues of fact. Apeceche v. White Pine County, 96 Nev. 723, 615 P.2d 975 (1980); Grover C. Dils Med. Ctr v. Menditto, 121 Nev. 278, 112 P.3d 1093 (2005). An administrative determination regarding a question of fact will not be set aside unless it is against the manifest weight of the evidence. Hildebrand, 100 Nev. 47, 675 P.2d 401. A decision by an appeals officer that is

based upon the credibility of Fisher and other witnesses is not open to appellate review. Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 854 P.2d 862 (1993).

The Nevada Supreme Court, in Elizondo, 129 Nev. at 784, reaffirmed the limited review of an administrative agency's findings of fact and the definition of substantial evidence. The court reviews an administrative agency's factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence. Id. Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion. Id. The court will not re-weigh the evidence or revisit an appeals officer's credibility determination. Id.

B. The appeals officer's findings regarding Fisher's notice of injury to the employer were proper and should be given deference.

The appeals officer did not commit error or abuse her discretion in this matter. The employer contends that the appeals officer committed clear error upon finding that Fisher's notice of injury to the employer on the 8th day rather than the 7th should be excused pursuant to NRS 616C.025(2). The issue of whether Fisher met her burden of establishing a valid excuse for untimely notice of injury is a question of fact, and this Court should give deference to the appeals officer on findings of fact. Apeceche, supra.

Although NRS 616C.015(1) requires an employee to provide notice of an injury within seven (7) days, NRS 616C.025(2)(b) provides that failure to file a

notice of injury may be excused if the failure was caused by the employee's mistake or ignorance of fact or law. Further, actual notice or knowledge of the worker's injury brought to the employer will also excuse formal written notice. Nevada Indus. Comm'n v. Adair, 67 Nev. 259, 269, 217 P.2d 348 (1950). Both of these legal principles were used by the appeals officer to justify a waiver of timely written notice based upon Fisher's ignorance of both fact and law.

In Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 548, 2 P.3d 850 (2000), the Nevada Supreme Court held that a mistake of fact could exist where a claimant did not immediately understand that they suffered an injury or its causal relationship to employment, and a delay in notice or filing of a claim could be excused on that basis alone. Further, while the language of NRS 616C.025(2)(b) suggests that it is the province of the insurer to decide whether to waive timely notice, an appeals officer still has jurisdiction to allow a waiver and prevent an insurer from barring an otherwise valid claim. Bally's Grand Hotel & Casino v. Reeves, 113 Nev. 926, 928 n. 1, 929 n. 3, 948 P.2d 1200 (1997).

Substantial evidence supports the appeals officer's finding that Fisher established a valid excuse for untimely notice of injury to the employer based upon both a mistake of fact and ignorance of law under NRS 616C.025(2)(b). Fisher reported and testified that on October 19, 2015, when she felt the pull/pop in her back, she felt only minor aches at first that were not atypical for her job duties and

assumed that they would heal on their own with a week of rest and self-care. AI II, 235, 239-240; AI V, 659, 663, 669. Fisher's belief that she had not suffered an injury was a mistake of fact which contributed to her waiting until October 27, 2015 to notify her employer about her work accident instead of reporting it on the day that it happened. AI II, 272, 278.

Further, the appeals officer found that Fisher's preauthorized one-week vacation beginning the day following the injury was also a reasonable explanation as to why she waited to call the employer until she was scheduled to return on October 27, 2015, the 8th day after the date of injury. AI II, 278. First, Fisher did not begin to feel any low back pain or numbness into her lower extremity until several days after the accident and while she was already on her vacation. AI II, 250, 272; AI V, 664. After which, she made an appointment to see her primary care physician on the earliest available date, October 26, 2015. AI II, 236; AI IV, 605. It was not until October 26th that any physician had evaluated Fisher or told her that she would need to be off work due to the injury. AI II, 237-238, 241.

Fisher then provided actual notice to the employer by calling in on October 27, 2015, to report that she had injured her low back at work by accident and was unable to return as a result of that injury. AI II, 273. If Fisher had been due to return to work sooner or had been aware of NRS 616C.015's notice requirements, she

would have called the employer sooner to notify them of the injury and her inability to return. AI II, 241.

But Fisher had not previously filed a workers' compensation claim in Nevada, and she testified that she did not know the rules, procedures, or deadlines. AI II, 239, 247. Sworn testimony of a witness appearing before an administrative agency can constitute substantial evidence. Washoe Cty. v. John A. Dermody, Inc., 99 Nev. 608, 611, 668 P.2d 280, 281 (1983). Further, the employer failed to present any evidence that Fisher had a past history of filing workers' compensation claims, had signed any acknowledgments of receiving policies and procedures for filing claims, or had any access to readily visible posters or notices in the workplace informing her of such rights and responsibilities. See AI II, 245-247.

Because of the delay in onset of symptoms and Fisher's credible lack of knowledge or prior experience with the workers' compensation system, the appeals officer properly found that she had established a valid basis to excuse the one-day untimely notice of injury to the employer for both an ignorance of fact and law under NRS 616C.025(2). AI II, 278. Fisher's decision to wait until October 27th due to a lack of knowledge of the notice requirements was reasonable under the circumstances. Id.

Now in its Petition for Judicial Review, the employer makes a number of arguments in an attempt to overturn this decision and re-weigh the evidence for a

different outcome. First, the employer that the appeals officer provided "no rationale or basis for how there was a mistake or ignorance of fact or law." Appellant's Br., 12. This is untrue. The rationale and facts supporting such are laid out in the Decision and Order, particularly in paragraphs 2, 3, 4, 5, 6, and 7 from the "Findings of Fact"; and paragraphs 7 and 8 of the "Conclusions of Law." AI II, 272-273, 278. Further, that rationale is corroborated by the district court's Decision and Order. AI VI, 770:27-772:4.

The employer also manipulates the facts here to suggest that Fisher did not provide notice until nine (9) days after the date of injury. Appellant's Br., 12. The suggestion seems to be that notice was not effective until the C-1 form was completed, but the appeals officer found Fisher's testimony credible that she had reported her injury by phone on October 27, 2015, and was delayed by the employer's actions from filing formal notice until she was actually provided the C-1 form on October 29th. AI II, 273, 278.

The employer also misstates the facts and throws a red herring in at the same time by arguing that there is some relevance to Fisher delaying treatment until "two weeks after the alleged industrial date." Appellant's Br., 14. It is clear from the factual conclusions adopted in the appeals officer's Decision and Order that Fisher first sought treatment on October 26, 2015, not when she first saw a workers'

compensation doctor on November 4, 2015. AI II, 272-274. Moreover, the argument has no rationale basis in an analysis of notice.

The employer also makes numerous to Fisher providing "inconsistent stories" as to when she felt pain and suggesting that as a nurse working in a hospital, she should have known better than to not report her injury immediately on October 19, 2015. Appellant's Br., 13-14. These are not legal arguments; they are factual. In fact, they are the same factual arguments that the employer made during closing arguments before the appeals officer. AI II, 255-265. These factual arguments are the crux of why this Petition for Judicial Review must fail as this Petition is not meant to be a second bite at the apple to re-weigh the evidence in a light more favorable to the employer.

The employer concludes its argument by stating that the "[a]ppeals [o]fficer failed to consider the totality of the evidence presented to her." Appellant's Br., 14. The appeals officer made no such failure and simply found that the employer's arguments were unpersuasive. See AI II, 276-278. This last sentence illustrates perfectly what this appeal is really based upon — not a question of law or even clear error. Rather, it is a complaint that the appeals officer should have viewed the facts differently and made different determinations. That is not the province of a reviewing court on appeal and deference must be given the appeals officer's factual findings.

C. The appeals officer's findings and conclusions regarding Fisher's injuries by accident arising out of and in the course of her employment are proper and supported by substantial evidence.

The appeals officer properly found that Fisher met her burden of establishing a compensable workers' compensation claim for the October 19, 2015, accident and resulting injuries. NRS 616C.150 requires an injured worker to show by a preponderance of the evidence that their injuries by accident arose out of and in the course of employment in order to be compensable. An injury arises out of the employment "when there is a causal connection between the employee's injury and the nature of the work or workplace." Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005). Both Dr. Silver and Dr. Kabins concluded that Fisher's lumbar injuries were caused by her work accident on October 19, 2015. AI V, 669, 671. The risk of harm of a registered nurse injuring their back while lifting or pulling up a patient is a work-related risk, as it is a known hazard in performance of that job. See Rio All Suite Hotel and Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d 2, 7 (2010)(Injuries resulting from employment-related risks are "all the obvious kinds of injur[ies] that one thinks of at once as industrial injur[ies]" and are generally compensable).

There is no evidence indicating that Fisher's injuries did not arise out of her employment. Dr. Klausner marked a "?" on the C-4 form, but he never indicated that the injury was not accident related. AI V, 663. Conversely, Drs. Kabins, Silver, and

Shah have all opined positively that Fisher's injuries were causally related to the October 19, 2015, workplace accident. AI III, 412-413, 419; AI V, 612, 671, 699. For this reason, substantial evidence supported the appeals officer's finding that Fisher met her burden under NRS 616C.150 of establishing that she had suffered a compensable injury arising out of her employment by a preponderance of the evidence.

Substantial evidence supports the appeals officer's finding that Fisher's injuries occurred in the course of her employment because:

> [W]hether an injury occurs within the course of employment refers merely to the time and place of employment, i.e., whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties.
>
> Wood, 121 Nev. at 733, 121 P.3d at 1032 .

The mechanism of injury on October 19, 2015, wherein Fisher attempted to pull up a patient in bed causing a pull/pop in her back meets the definition of accident pursuant to NRS 616A.030 because the pull/pop happened unexpectedly, suddenly, and violently, with the sound of the pop manifesting objective symptoms of injury. Substantial evidence also supports the finding that Fisher suffered an injury pursuant to NRS 616A.265 when she suffered a sudden tangible happening of a traumatic nature producing an immediate pop and pull sensation in the low back, and the injury was established by the October 30, 2015, MRI lumbar diagnostic revealing the acute

Schmorl's node and surrounding edema at L4 with L4-5 disc extrusion and annular tear resulting in severe impingement of nerve roots. AI II, 298.

> Where a worker was subjected to a sudden strain which proximately caused his injury, the injury occurred "suddenly and violently" and "traumatically."

See American Int'l Vacations v. MacBride, 99 Nev. 324, 661 P.2d 1301 (1983).

Fisher's initial injury symptoms manifested immediately in the form of a pull/pop on October 19, 2015, satisfying that she suffered an injury by accident because she described she felt a ball of achiness for the rest of the day. AI II, 239. However, on October 22, 2015, Fisher reported a worsening of condition when her left leg went numb. AI II, 240. These symptoms manifested within a reasonable time pursuant to NRS 616A.265 as an accidental injury does not require an instantaneous manifestation of symptoms; rather, the symptoms must manifest themselves within a reasonable time. See MacBride, 99 Nev. at 327, 661 P.2d at 1303.

Regarding Fisher's worsening condition requiring revision surgeries and expansion of the scope to include cervical strain, thoracic strain, and cervicogenic headaches due to derivative lumbar derangement, these are also compensable under this claim. AI III, 412-413, 419. Under NRS 616C.160, an insurer must accept a newly developed industrial condition even after the workers compensation claim has been filed if a physician establishes by medical evidence that a causal connection

between the injury and the industrial accident exists. See Dickinson v. Am. Med. Response, 124 Nev. 460, 468, 186 P.3d 878, 883-884 (2008). Workers compensation benefits are the exclusive remedy available for injured workers. See NRS 616A.020; Baiguen v. Harrah's Las Vegas, LLC, 134 Nev. 597, 598-599, 426 P.3d 586, 589 (2018).

Finally, Fisher timely filed the claim for compensation pursuant to NRS 616C.020, which requires filing a claim within ninety (90) days after the date of accident. Fisher suffered the work accident on October 19, 2015, and completed a claim for compensation with Dr. Klausner on November 4, 2015, 16 days after the date of injury; as well as a claim for compensation with Dr. Silver on November 9, 2015, 21 days after the date of injury. AI V, 663, 669. This satisfied timely filing requirements.

VIII.

CONCLUSION

Based upon the foregoing, Respondent contends that the district court did not commit an error of law in affirming the appeals officer's October 20, 2022, Decision and Order. The appeals officer's decision to waive Fisher's one (1) day untimely notice due to a mistake of fact and law pursuant to NRS 616C.025(2) and find that her burden to establish an injury by accident under NRS 616C.150 had been met was

based upon substantial evidence in the record. Further, the appeals officer committed no errors of law.

WHEREFORE, RESPONDENT respectfully asks this Court to affirm the district court's Order Denying the Petition for Review filed on November 11, 2022.

DATED this 5 day of November, 2025.

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CERTIFICATE OF COMPLIANCE
(NRAP 28.2)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains **6,538** words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or Appendix where the matter relied on is to be found.

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4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 5 day of November, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of NEVADA ATTORNEY FOR INJURED WORKERS, and that on this 5th day of November, 2025, I electronically filed and served a true and correct copy of the above and foregoing **RESPONDENT'S ANSWERING BRIEF** property addressed to the following:

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