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Electronically Filed
Jun 13 2019 03:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 *****

8 VANCE TAYLOR,

9 Petitioner,

10 vs.

Case No.: CV18-00673

Dept. No.: 6

11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS, and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.


NOTICE OF APPEAL

16 **NOTICE IS HEREBY GIVEN THAT:** VANCE TAYLOR, Petitioner above named, by and
17 through his attorney of record JASON D. GUINASSO, ESQ. hereby appeals to the SUPREME
18 COURT OF NEVADA the final judgment from the Order Denying Petition for Judicial Review, filed
19 in this action on May 10, 2019, attached hereto and incorporated herein as **Exhibit "1"**.

20 **AFFIRMATION**

21 The undersigned does hereby affirm that the foregoing document filed in this matter does not
22 contain the social security number of any person.

23 DATED this 7th day of June, 2019.

24 
25 Jason Guinasso, Esq.
Attorney for Petitioner, Vance Taylor

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On June 7th, 2019, I served the following:

NOTICE OF APPEAL

on the following in said cause as indicated below:

VANCE TAYLOR 1009 TIMBER RIDGE ROAD LAKE ALMANOR, CA 96137 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG 6590 S MCCARRAN BLVD., #B RENO, NV 89509 (VIA E-FLEX & U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
NEVADA DEPT. OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FL CARSON CITY, NV 89701 (VIA U.S. MAIL)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7th, 2019, at Reno, Nevada.



KATRINA A. TORRES

**LIST OF EXHIBITS
CASE NO. CV18-00673
NOTICE OF APPEAL**

EXHIBIT #	DOCUMENT TITLE	# OF PAGES
Exhibit 1	Order dated May 10, 2019	10

EXHIBIT 1

EXHIBIT 1

1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 VANCE TAYLOR,

Case No. CV18-00673

10 Petitioner,

Dept. No. 6

11 vs.
12

13 TRUCKEE MEADOWS FIRE PROTECTION
14 DISTRICT; ALTERNATIVE SERVICE
15 CONCEPTS, LLC, PUBLIC AGENCY
16 COMPENSATION TRUST and the NEVADA
17 DEPARTMENT OF ADMINISTRATION
18 APPEALS OFFICER SHEILA MOORE,

19 Respondents.
20 _____ /

21 ORDER RE PETITION FOR JUDICIAL REVIEW
22

23 Before this Court is a *Petition for Judicial Review* ("Petition") filed by Petitioner
24 VANCE TAYLOR ("Mr. Taylor") by and through his attorney of record, Jason D. Guinasso,
25 Esq. On May 3, 2018, Mr. Taylor filed the *Record on Appeal* ("ROA") in accordance with the
26 Nevada Administrative Procedure Act. On July 10, 2018, Mr. Taylor filed *Petitioner's*
27 *Opening Brief* ("Brief")

28 On February 7, 2019, Respondent TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT ("TMFPD") and PUBLIC AGENCY COMPENSATION TRUST ("PACT")
(collectively "Respondents") filed *Respondents' Answering Brief* ("Answer"), by and through

1 their attorney of record, Robert F. Balkenbush, Esq.

2 Mr. Taylor filed *Petitioner's Reply Brief* ("Reply"). No request for hearing was made
3 and the matter was submitted for decision.
4

5 **I. FACTS AND PROCEDURAL HISTORY**

6 The instant action arises out of a contested worker's compensation claim before the
7 State of Nevada Department of Administration Hearings Division ("AHD") and is the result of
8 a February 28, 2018 *Decision and Order* ("*Decision*"). The issue before the AHD was
9 whether Mr. Taylor rightfully refused his employer's offer of temporary "light-duty" work for a
10 one-month period after he was deemed temporarily totally disabled.
11

12 The following Findings of Fact and Conclusions of Law were made by the Appeals
13 Officer in the *Decision*.

14 **A. Appeals Officer's Findings of Fact**

15 In April 2016, Mr. Taylor¹ was 46 years old and employed as a Fire Captain for
16 TMFPD. *Decision*, p. 3. Taylor had been employed with TMFPD since January 1997.
17 *Decision*, p. 3. On April 19, 2016, during a training exercise, Taylor suffered an injury to his
18 left shoulder. *Decision*, p. 3.
19

20 On July 21, 2016, Mr. Taylor underwent shoulder surgery. *Decision*, p. 3. On
21 September 7, 2016, Mr. Taylor was examined by Dr. Malcarney and released to work with
22 light-duty restrictions, including not lifting over five pounds and not reaching above his
23 shoulder for one-month. *Decision*, p. 3.
24

25 On September 9, 2016, TMFPD offered Taylor temporary, light-duty employment.
26 *Decision*, p. 3. The assignment offered was in the administrative offices of TMFPD working
27 Monday through Friday, 8:00 a.m. to 5:00 p.m. with an hour lunch. *Decision*, p. 4. The
28

¹ Mr. Taylor was identified as "Taylor" in the Appeals Officer's *Decision*.

1 position was immediately available, compatible with the temporary physical limitations for
2 work imposed by Dr. Malcarney, and substantially similar to Mr. Taylor's pre-injury position
3 in relation to location, hours, and the same wage he earned prior to injury. *Decision*, p. 4.

4
5 On September 9, 2016, Mr. Taylor informed TMFPD he would not accept the offer
6 because the work assignment was not substantially similar to Mr. Taylor's position as Fire
7 Captain², including differences in work hours, benefits, supervisors, and job duties.
8 *Decision*, p. 4. Specifically, prior to his injury, Mr. Taylor worked 48 hour shifts, followed by
9 96 hours off. *Decision*, p. 4. Mr. Taylor claimed hardship based on childcare. However, Mr.
10 Taylor did not provide records demonstrating financial hardship or difference in benefits.
11 *Decision*, p. 4. Moreover, Mr. Taylor's temporary position was located six miles from his
12 prior work location and he previously accepted the same temporary, light-duty job offered to
13 him. *Decision*, p. 4. Mr. Taylor was paid he pre-injury gross average monthly wage.
14
15 *Decision*, p. 5.

16
17 **B. Appeals Officer's Conclusions of Law**

18 On February 28, 2018, the AHD entered its *Decision* finding Mr. Taylor was not
19 entitled to temporary total disability during that time because TMFPD's offer of light-duty
20 work was a valid light duty job, is not considered humiliating and degrading, and is an
21 essential function in the work force pursuant to NRS 616C.475(8), NAC 616C.586(2).
22
23 *Decision*, generally.

24 Mr. Taylor appealed a denial of his workers compensation claim against TMFPD.

25 **C. Petitioner's Argument on Appeal**

26 Mr. Taylor filed his *Petition* arguing TMFPD's offer of light-duty job was not
27 substantially similar to the job Mr. Taylor had pre-injury; and, therefore, TMFPD's offer failed
28

² Mr. Taylor is referenced as both a Captain and Battalion Chief.

1 to comply with NRS 616C.475(8) and NAC 616A.400. Mr. Taylor maintains he is entitled to
2 temporary disability benefits for the period of September 11, 2016 through November, 2016.
3 *Petition*, generally.

4 Specifically, Mr. Taylor argues in EG & G Special Projects, Inc. v. Corselli, the
5 Nevada Supreme Court held an offer of light duty work must not impose an unreasonable
6 burden on the injured worker. *Brief*, p. 10; citing EG & G Special Projects, Inc. v. Corselli,
7 102 Nev. 116, 715 P.2d 1326 (1986). Mr. Taylor asserts in Corselli, the Court found a light-
8 duty job offer which substantially changed the hours, days, and location of work was
9 unreasonable. *Brief*, pp. 10-11; citing *Id.* Mr. Taylor argues because the offered light duty
10 employment significantly changed his hours, FLSA pay, and precludes his ability to "bank
11 Holiday Comp Time" it was not reasonable. *Brief*, p. 11.

14 Moreover, Mr. Taylor argues the employment location was six-miles from his pre-
15 injury employment location. *Brief*, p. 12. Lastly, the light duty job offer changed Mr. Taylor's
16 duties from a Captain to an "office secretary" which is "humiliating and unlawful." *Brief*, p.
17 12; citing Dillard's Dept. Stores, Inc v. Beckwith, 115 Nev. 372, 989 P.2d 882 (1999). Mr.
18 Taylor argues it is humiliating and degrading for a person who "regularly works as a fire
19 fighter" to take a position as an "office secretary." *Brief*, p. 12. Mr. Taylor also argues
20 appointing a Battalion Chief to an office secretary position breaks the chain of command.
21 *Brief*, p. 13.

24 D. Respondent's Argument

25 In its *Answer*, Respondents argue the light-duty job offered to Mr. Taylor was
26 adequately similar in hours, pay, and location. First, Respondents argue hours for a light-
27 duty position need only be "similar." *Answer*, p. 11. Respondents argue that, although the
28

1 temporary light-duty position required him to work 8:00 a.m. to 5:00 p.m. instead of his
2 normal 48-hour shift followed by 96 hours off, the schedule provided the same wages at a
3 lower minimum hour requirement. *Answer*, p. 11. Moreover, Mr. Taylor offered no evidence
4 the changed scheduled resulted in financial hardship or that his benefits changed. *Answer*,
5 p. 11.
6

7 Additionally, Respondents assert Mr. Taylor was to be paid his pre-injury monthly
8 wage and a temporary employment location six-miles from his pre-injury position is not a
9 substantial change in location and was actually closer to Mr. Taylor's residence. *Answer*, p.
10 14.
11

12 Respondents further contend, although a post-injury position must be similar to the
13 job held pre-injury, the post-injury job does not need personal approval by the employee.
14 *Answer*, p. 12. Importantly, Respondents contend Section 616C.586 of the Nevada
15 Administrative Code provides light-duty temporary employment is not demeaning or
16 degrading where the job is part of the employer's regular business operation. *Answer*, p.
17 14.
18

19 **II. LAW AND ANALYSIS**

20 A court may set aside a final decision of an agency if the decision is arbitrary,
21 capricious, in violation of statute, characterized by abuse of discretion or affected by error of
22 law. NRS 233B.135(3); Ranieri v. Catholic Community Services, 111 Nev. 1057, 1061, 901
23 P.2d 158, 161 (1995). Generally, the reviewing court may not substitute its judgment for
24 that of an agency as to the weight of the evidence on a question of fact. See NRS
25 233B.135(3); Gandy v. State el rel. Div. of Investigation & Narcotics, 96 Nev. 281, 282, 607
26 P.2d 581, 583 (1980); City of North Las Vegas v. Public Service Commission, 83 Nev. 278,
27
28

1 281, 429 P.2d 66, 68 (1967) ("We should not pass upon the credibility of witnesses or weigh
2 the evidence, but limit the review to a determination that the board's decision is based upon
3 substantial evidence.") (emphasis supplied). However, factual determinations that are not
4 supported by "substantial evidence" are unsustainable and must be reversed. See State
5 Indus. Ins. Sys. v. Christensen, 106 Nev. 460, 469, 186 P.3d 878, 884 (2008) (citing NRS
6 233B.125). The factual findings must be supported by substantial evidence and, "if
7 rendered in statutory language, supported by a 'concise and explicit statement of the
8 underlying facts supporting the findings.'" Dickinson, 124 Nev. at 469, 186 P.3d at 884
9 (citing NRS 233B.125).
10
11

12 In addition, NRS 233B.125 requires a final decision include "findings of fact and
13 conclusions of law, separately stated. Findings of fact and decision must be based upon a
14 preponderance of the evidence." NRS 233B.125.
15

16 Thus, when reviewing factual issues, the reviewing court must determine whether
17 there is "substantial evidence" in the record to support the agency's conclusion. Garcia v.
18 Scolari's Food & Drug, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009). "Substantial evidence is
19 defined as "evidence that a reasonable mind might accept as adequate to support the
20 appeals officer's conclusion." Id. If there is no evidence in the record to support an
21 agency's conclusion, substantial evidence is obviously lacking. Ayala v. Caesars Palace,
22 119 Nev. 232, 240, 71 P.3d 490, 495 (2003) (abrogated on another point of law).
23

24 The Court reviews the Appeals Officer's legal conclusions *de novo*. Vredenburg v.
25 Sedgwick CMS, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008).
26

27 Section 616C.475(1) of the Nevada Revised Statutes, provides, in pertinent part,
28 every employee who is injured by accident arising out of and in the course of employment is

1 entitled to receive temporary total disability. NRS 616C.475(1). Additionally, Section
2 616C.475(8) of the Nevada Revised Statutes provides,

3 If the certification of disability specifies that the physical limitations or
4 restrictions are temporary, the employer . . . may offer temporary, light-duty
5 employment to the employee. If the employer makes such an offer, the
6 employer shall confirm the offer in writing within 10 days after making the offer.
7 Any offer of temporary, light-duty employment made by the employer
8 must specify a position that:

9 (a) Is substantially similar to the employee's position at the time of his or her
10 injury in relation to the location of the employment and the hours the employee
11 is required to work;

12 (b) Provides a gross wage that is:

13 (1) If the position is in the same classification of employment, equal to the
14 gross wage the employee was earning at the time of his or her injury; or

15 (2) If the position is not in the same classification of employment, substantially
16 similar to the gross wage the employee was earning at the time of his or her
17 injury; and

18 (c) Has the same employment benefits as the position of the employee at the
19 time of his or her injury.

20 NRS Section 616C.475(8). When NRS 616C.475 is read in its entirety, "an employer who
21 provides a temporarily totally disabled employee with a post-injury job that is similar in
22 hours, location and gross pay to the job the employee held pre-injury, and who gives
23 adequate consideration to the employee's post-injury limitations, can cease paying the
24 employee temporary total disability benefits in the amount of 66 2/3 percent of the
25 employee's pre-injury wage." Amazon.com v. Magee, 121 Nev. 632, 636, 119 P.3d 732,
26 735 (2005).

27 First, Mr. Taylor argues the location of his proposed administrative position "six-
28 miles" from his pre-injury job location and the change in his scheduled hours is
unreasonable and burdensome. An offer of temporary employment cannot be considered

1 legitimate if the location of the job imposes an unreasonable burden on the worker. EG & G
2 Special Projects, Inc. v. Corselli, 102 Nev. 116, 119 715 P.2d 1326, 1328 (1986). In Corselli
3 the Nevada Supreme Court found a light-duty job offer to work as a security guard in Las
4 Vegas five-days a week was unreasonable where the employee resided in Riverside,
5 California and had worked for the past twenty-five years at a Nevada test site with shifts of
6 three days on and four days off. Id.

8 Unlike in Corselli, Mr. Taylor is not required to cross state-lines five days a week.
9 Although his shifts have changed, the combination of the location of his new job and lesser
10 required hours required per week result in a reasonable request. This is buttressed by the
11 fact that Mr. Taylor's offered post-injury job location is actually closer to his home. The
12 Court additionally notes that Mr. Taylor previously accepted this position.

14 Moreover, Mr. Taylor was offered the same salary as his pre-injury position for less
15 minimum hours worked. Although Mr. Taylor argues the change in schedule required he
16 pay additional childcare, there is no evidence Mr. Taylor suffered financial hardship as a
17 result of obtaining additional childcare in the record.

19 Mr. Taylor further asserts the light-duty position providing administrative support to
20 TMFPD was not substantially similar to his position as a Battalion Chief. The Court notes
21 that Mr. Taylor was not demoted during the one-month period he was on light-duty. Instead,
22 his job tasks changed. Mr. Taylor argues it is humiliating to be a "secretary;" however, the
23 Court finds this unpersuasive.

25 First, many talented people are proud to hold administrative positions. The Court
26 does not find anything inherently humiliating or degrading about being a "secretary." More
27 importantly, Section 616C.586(2)(a) of the Nevada Administrative Code provides,
28

1 "temporary employment at light duty offered by the employer which is a part of the
2 employer's regular business operations shall not be deemed to be demeaning or degrading
3 or to subject the employee to ridicule or embarrassment." NAC 616C.586. Here, Mr. Taylor
4 was offered light-duty employment which was part of TMFPD's regular business operations.
5 Accordingly, the Court finds there is nothing demeaning or degrading about the offered
6 position.
7

8 III. CONCLUSION

9 Mr. Taylor was offered a light-duty administrative position, for a period of one-month,
10 which was located six-miles from his previous job site, and offered the same pre-injury
11 monthly salary. Although Mr. Taylor's hours changed, the change was not significant in light
12 of the location and salary pursuant to the Nevada Supreme Court's ruling in Corselli.
13 Moreover, the position was part of his employer's regular business operations. In
14 accordance with Section 616C.586(2(a) of the Nevada Administrative Code, Section
15 616C.475(8) of the Nevada Revised Statutes, and applicable law as cited, this Court
16 concludes Mr. Taylor's *Petition* shall be denied.
17

18 Accordingly, and good cause appearing,
19

20 IT IS HEREBY ORDERED Petitioner's *Petition for Judicial Review* is DENIED.
21

22 Dated this 16th day of May, 2019.
23

24 
25 DISTRICT JUDGE
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 1st day of May, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

JASON GUINASSO, ESQ.

LUCAS MOLLECK, ESQ.

ROBERT BALKENBUSH, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows

Huda Brc

CV18-00673

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Hutchison & Steffen, PLLC
500 Damonte Ranch Parkway, Suite 980
3 Reno, NV 89521
Attorney for Vance Taylor
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

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8 VANCE TAYLOR,

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11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS, and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.
15

Case No.: CV18-00673

Dept. No.: 6

CASE APPEAL STATEMENT

16 COMES NOW, Petitioner, VANCE TAYLOR, by and through his attorney of record, JASON
17 D. GUINASSO, ESQ. of HUTCHISON & STEFFEN, PLLC, pursuant to NRAP 3(f), hereby submits
18 to the Court Appellant's Case Appeal Statement:

19 **1. Name of appellants filing this case appeal statement:**

20 Vance Taylor

21 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

22 The Honorable District Court Judge, Lynne Simons- Department 6

23 **3. Identify each appellant and the name and address of counsel for each appellant:**

24 Vance Taylor is represented by Jason D. Guinasso, Esq.

25 ○ Appellate Counsel: Jason D. Guinasso, Esq.

- Trial Counsel: Jason D. Guinasso, Esq.
- Address: Hutchison & Steffen, PLLC: 500 Damonte Ranch Parkway, Suite 980,
Reno, Nevada 89521

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of the respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

■ Truckee Meadows Fire Protection District

- Appellate Counsel: Robert F. Balkenbush, Esq.
- Trial Counsel: Robert F. Balkenbush, Esq.
- Address: Thorndal, Armstrong, Delk, Balkenbush & Eisinger: 6590 S McCarran
Blvd., Suite B, Reno, Nevada 89509

■ Alternative Service Concepts

- Appellate Counsel: Robert F. Balkenbush, Esq.
- Trial Counsel: Robert F. Balkenbush, Esq.
- Address: Thorndal, Armstrong, Delk, Balkenbush & Eisinger: 6590 S McCarran
Blvd., Suite B, Reno, Nevada 89509

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Not applicable.

6. Indicate whether appellant was represented by, appointed or retained counsel in the District Court:

The Appellant was represented by retained counsel in the District Court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

1 The Appellant is represented by retained counsel on appeal.

2 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date**
3 **of entry of the district court order granting such leave:**

4 Not applicable.

5 **9. Indicate the date the proceedings commenced in district court:**

6 March 30, 2018

7 **10. Provide a brief description of the nature of the action and result in the district court,**
8 **including the type of judgment or order being appealed and the relief granted by the district**
9 **court:**

10 Petitioner, Vance Taylor ("Mr. Taylor"), filed his Petition for Judicial Review action on March
11 30, 2018, seeking review of the Decision and Order of the Department of Administration Appeals
12 Officer filed on February 28, 2018, under Appeal No. 1701567-SYM. The matter was heard by
13 Appeals Officer Sheila Y. Moore, Esq. on March 2, 2017.

14 On September 9, 2016, Mr. Taylor's employer, Truckee Meadows Fire Protection District
15 ("TMFPD"), sent a letter to Mr. Taylor with an offer of temporary light duty employment since he had
16 been off work due to an industrial injury in which worker's compensation benefits were being provided
17 by Alternative Service Concepts ("ASC"). The letter offering the light duty job provided as follows:

18 "You will be assigned to the administrative office and your scheduled hours will be Monday
19 through Friday 8am to 5pm with an hour lunch. To align the schedule change with the
20 beginning of the FLSA cycle, you will report to the administrative offices on Monday
September 12, 2016 at 8am."

21 This light duty job offer fails to comply with NRS 616C.475(8) and is otherwise unreasonable
22 for the following reasons.

23 First, the light duty job offer dramatically changed Mr. Taylor's work schedule from a 48/96
24 schedule and pay scale, which includes FLSA pay, to a forty hour scale administrative schedule from
25 8:00 am to 5:00 pm Monday through Friday with no FLSA pay and no ability to bank Holiday Comp

1 Time. This imposed a hardship on Mr. Taylor and his family by causing incurred increased day care
2 expenditures for childcare, increased fuel and maintenance costs for daily commutes, and increase
3 stress on the family due to an unfamiliar, unforgiving, and inconvenient work schedule.

4 Second, the change of schedule also eliminated FLSA pay and the ability to bank 12 hours of
5 Holiday Comp Time. This resulted in a decrease in pay over an extended or lengthy injury recovery
6 period. In this case, Mr. Taylor's recovery from the medical treatment for his work-related shoulder
7 injury took several months.

8 Third, this light duty job offer changed the location of Mr. Taylor's employment from Station
9 15 at 110 Quartz Lane, Reno, Nevada 89433 to a location six miles away at 1001 East Ninth Street,
10 Building D, Reno, Nevada 89512.

11 Fourth, this light duty job offer changed Mr. Taylor's job duties dramatically and effectively
12 demoted Mr. Taylor from a Captain to an office secretary, which is unlawful. See Dillard Dept. Stores,
13 Inc. v. Beckwith, 115 Nev. 372, 989 P.2d 882 (1999)(Court awarded claimant \$2,496,112 in damages
14 and \$518,455 in attorney fees and costs for constructive discharge claims because employer placed
15 employee in entry level position, which included document filing, rather than being returned to her
16 management position with the company).

17 Finally, TMFPD's light duty job offer replaced Mr. Taylor's normal supervising Battalion Chief
18 with an appointed office secretary, which in turn, breaks the normal chain of command established by
19 the fire department. Changing Mr. Taylor's supervisor from his duty Battalion Chief to an appointed
20 office secretary not only breaks the established chain of command, but was extremely confusing and
21 restrictive for Mr. Taylor and his Battalion Chief.

22 In accordance with the foregoing, TMFPD's light duty job offer did not provide for a light duty
23 job that was substantially similar to the job Mr. Taylor had pre-injury with regard to both the shift he
24 was required to work and the location of his employment. Moreover, the light duty job offer was
25 unreasonable and otherwise degrading to Mr. Taylor, who is a 27-year veteran of the Fire Service, and

1 a Captain for the TMFPD.

2 The Appeals Officer found that the light duty job offer was appropriate and did comply with
3 Nevada law in placing Mr. Taylor in a secretary position while recovering from his injury and surgery.

4 In Mr. Taylor's Petition for Judicial Review, filed on March 30, 2018, he requested that the
5 Decision and Order be reviewed because: 1) the Appeals Officer erred as a matter of law by holding
6 that Mr. Taylor is not entitled to temporary total disability ("TTD") benefits for the period of
7 September 11, 2016 through his return to his pre-injury job in November 2016, as stated in ASC's
8 September 26, 2016, determination letter, 2) the Appeals Officer erred as a matter of law when she
9 concluded that the light duty job offered to Mr. Talyor by the employer was a valid light duty job offer
10 under Nevada law, and 3) the Appeals Officer erred as a matter of law by finding that the light duty job
11 offered to Mr. Taylor by the employer satisfied the requirements of NRS 616C.478(8) and NAC
12 616C.583

13 On May 10, 2019, the District Court issued an Order Denying Petition for Judicial Review, The
14 Court's Order and consequential holding is now the subject of this appeal.

15 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**
16 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of**
17 **the prior proceeding:**

18 No, the case is not currently the subject of an appeal.

19 **12. Indicate whether this appeal involves child custody or visitation:**

20 No, the appeal does not involve child custody or visitation.

21 **13. If this case is a civil case, indicate whether this appeal involves the possibility of**
22 **settlement:**

23 Yes, the issues on appeal involve the possibility of settlement.

24 ///

25 ///

AFFIRMATION

The undersigned does hereby affirm that the foregoing document filed in this matter does not contain the social security number of any person.

DATED this 7th day of June, 2019.



Jason Guinasso, Esq.
Attorney for Petitioner, Vance Taylor

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On June 7th, 2019, I served the following:

CASE APPEAL STATEMENT

on the following in said cause as indicated below:

VANCE TAYLOR 1009 TIMBER RIDGE ROAD LAKE ALMANOR, CA 96137 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG 6590 S MCCARRAN BLVD., #B RENO, NV 89509 (VIA E-FLEX & U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
NEVADA DEPT. OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FL CARSON CITY, NV 89701 (VIA U.S. MAIL)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7th, 2019, at Reno, Nevada.



KATRINA A. TORRES

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV18-00673****Case Description: VANCE TAYLOR VS. TM FIRE PROTECT; ET AL (D6)****Case Number: CV18-00673 Case Type: WORKER'S COMPENSATION - Initially Filed On: 3/30/2018****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - LYNNE K. SIMONS - D6	Active
ATTY - Jason D. Guinasso, Esq. - 8478	Active
ATTY - Lucas W. Molleck, Esq. - 14405	Active
ATTY - Robert Francis Balkenbush, Esq. - 1246	Active
PETR - VANCE TAYLOR - @1322081	Active
RESP - TRUCKEE MEADOWS FIRE PROTECTION DISTRICT - @9579	Active
RESP - ALTERNATIVE SERVICE CONCEPTS, LLC - @164280	Active
RESP - APPEALS OFFICE OF THE DEPT. OF ADMINISTRATION - @147869	Active

Disposed Hearings

- 1 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 7/2/2018 at 13:54:00
Extra Event Text: MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW, REGARDING THE DECISION AND ORDER RENDERED BY APPEALS OFFICER SH
Event Disposition: S200 - 9/5/2018
- 2 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 10/10/2018 at 15:33:00
Extra Event Text: TRUCKEE MEADOWS FIRE PROTECTION DISTRICT AND ALTERNATIVE SERVICE CONCEPTS LLC SUPPLEMENT IN SUPPORT OF MOTIO
Event Disposition: S200 - 12/10/2018
- 3 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 3/7/2019 at 11:06:00
Extra Event Text: PETITIONERS OPENING BRIEF FILED 7/10/18
Event Disposition: S200 - 5/10/2019

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 3/30/2018 | - | \$3550 - \$Pet for Judicial Review
Additional Text: Transaction 6605163 - Approved By: PMSEWELL : 03-30-2018:14:33:54 |
| 2 | 3/30/2018 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC605073. |
| 3 | 4/11/2018 | - | 2610 - Notice ...
Additional Text: Notice of Intent to Participate - Transaction 6624267 - Approved By: CSULEZIC : 04-12-2018:08:31:16 |
| 4 | 4/11/2018 | - | \$1560 - \$Def 1st Appearance - CV
Additional Text: ALTERNATIVE SERVICE CONCEPTS, LLC - Transaction 6624267 - Approved By: CSULEZIC : 04-12-2018:08:31:16 |
| 5 | 4/12/2018 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$213.00 was made on receipt DCDC606114. |
| 6 | 4/12/2018 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 6625006 - Approved By: NOREVIEW : 04-12-2018:08:32:29 |

Report Does Not Contain Sealed Cases or Confidential Information

- 7 5/3/2018 - 3746 - Record on Appeal
Additional Text: ORIGINAL RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT (CHAPTER 233B OF NRS)
- 8 5/3/2018 - 4195 - Transmittal of Rec. on Appeal
No additional text exists for this entry.
- 9 5/3/2018 - 1365 - Certificate of Transmittal
No additional text exists for this entry.
- 10 5/4/2018 - 2880 - Ord for Briefing Schedule
Additional Text: Transaction 6663469 - Approved By: NOREVIEW : 05-04-2018:10:43:44
- 11 5/4/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6663471 - Approved By: NOREVIEW : 05-04-2018:10:44:45
- 12 6/4/2018 - 2300 - Mtn to Dismiss Pet
Additional Text: RESPONDENTS MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 6709973 - Approved By: CSULEZIC : 06-04-2018:09:53:07
- 13 6/4/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6709991 - Approved By: NOREVIEW : 06-04-2018:09:53:56
- 14 6/11/2018 - 4047 - Stip Extension of Time ...
Additional Text: STIPULATION FOR EXTENSION OF TIME FOR PETITION TO FILE OPENING BRIEF - Transaction 6722227 - Approved By: YVILORIA : 06-11-2018:11:55:41
- 15 6/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6722239 - Approved By: NOREVIEW : 06-11-2018:11:56:39
- 16 6/14/2018 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 6728891 - Approved By: CSULEZIC : 06-14-2018:11:13:02
- 17 6/14/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6728945 - Approved By: NOREVIEW : 06-14-2018:11:13:59
- 18 6/27/2018 - 4050 - Stipulation ...
Additional Text: Transaction 6749613 - Approved By: YVILORIA : 06-27-2018:12:39:19
- 19 6/27/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6749767 - Approved By: NOREVIEW : 06-27-2018:12:40:14
- 20 6/29/2018 - 3790 - Reply to/in Opposition
Additional Text: RESPONDENTS' REPLY TO TAYLOR'S OPPOSITION TO MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 6755019 - Approved By: PMSEWELL : 06-29-2018:14:34:02
- 21 6/29/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6755215 - Approved By: NOREVIEW : 06-29-2018:14:35:20
- 22 7/2/2018 - 3860 - Request for Submission
Additional Text: Transaction 6757007 - Approved By: YVILORIA : 07-02-2018:13:51:27
DOCUMENT TITLE: MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW, REGARDING THE DECISION AND ORDER RENDERED BY APPEALS OFFICER SHEILA MOORE ON 2-28-18
PARTY SUBMITTING: ROBERT F. BALKENBUSH ESQ
DATE SUBMITTED: JUL 2, 2018
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:

- 23 7/2/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6757162 - Approved By: NOREVIEW : 07-02-2018:13:52:24
- 24 7/10/2018 - 2640 - Opening Brief
Additional Text: DFX: DOCUMENT CONTAINS INCORRECT CASE NUMBER - Transaction 6768625 - Approved By: CSULEZIC : 07-10-2018:15:08:07
- 25 7/10/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6768878 - Approved By: NOREVIEW : 07-10-2018:15:09:26
- 26 7/19/2018 - 3746 - Record on Appeal
Additional Text: ORIGINAL RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT (CHAPTER 233B OF NRS)
- 27 7/19/2018 - 4195 - Transmittal of Rec. on Appeal
No additional text exists for this entry.
- 28 7/19/2018 - 1365 - Certificate of Transmittal
No additional text exists for this entry.
- 29 8/6/2018 - 4047 - Stip Extension of Time ...
Additional Text: Transaction 6813998 - Approved By: CSULEZIC : 08-06-2018:14:10:19
- 30 8/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6814334 - Approved By: NOREVIEW : 08-06-2018:14:11:30
- 31 9/5/2018 - 3370 - Order ...
Additional Text: RE MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 6865230 - Approved By: NOREVIEW : 09-05-2018:16:59:21
- 32 9/5/2018 - S200 - Request for Submission Complet
Additional Text: order
- 33 9/5/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6865238 - Approved By: NOREVIEW : 09-05-2018:17:00:33
- 34 9/7/2018 - 4050 - Stipulation ...
Additional Text: Transaction 6867993 - Approved By: CSULEZIC : 09-07-2018:09:59:58
- 35 9/7/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6868067 - Approved By: NOREVIEW : 09-07-2018:10:01:02
- 36 9/25/2018 - 3870 - Request
Additional Text: REQUEST FOR EXTENSION OF TIME TO FILE AFFIDAVITS IN SUPPORT OF MOTION/REPLY TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 6896285 - Approved By: CVERA : 09-25-2018:11:38:16
- 37 9/25/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6896721 - Approved By: NOREVIEW : 09-25-2018:11:39:06
- 38 9/25/2018 - 2501 - Non-Opposition ...
Additional Text: Transaction 6896920 - Approved By: BBLOUGH : 09-25-2018:14:43:25
- 39 9/25/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6897360 - Approved By: NOREVIEW : 09-25-2018:14:44:34
- 40 9/28/2018 - 1075 - Affidavit ...
Additional Text: SUPPLEMENTAL AFFIDAVIT - Transaction 6902766 - Approved By: CSULEZIC : 09-28-2018:11:55:32

- 41 9/28/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6903189 - Approved By: NOREVIEW : 09-28-2018:11:56:22
- 42 10/5/2018 - 4105 - Supplemental ...
Additional Text: RESPONDENTS' SUPPLEMENT IN SUPPORT OF MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW AND REPLY IN SUPPORT OF MOTION TO DISMISS - Transaction 6914894 - Approved By: YVILORIA : 10-08-2018:08:14:55
- 43 10/8/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6915099 - Approved By: NOREVIEW : 10-08-2018:08:15:49
- 44 10/10/2018 - 3860 - Request for Submission
Additional Text: - Transaction 6921342 - Approved By: YVILORIA : 10-10-2018:15:32:41
DOCUMENT TITLE: TRUCKEE MEADOWS FIRE PROTECTION DISTRICT AND ALTERNATIVE SERVICE CONCEPTS LLC SUPPLEMENT IN SUPPORT OF MOTION/REPLY TO DISMISS PETITION FOR JUDICIAL REVIEW; AND REQUEST FOR FINAL DECISION ON MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW
PARTY SUBMITTING: ROBERT BALKENBUSH ESQ
DATE SUBMITTED: OCT 10, 2018
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 45 10/10/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6921540 - Approved By: NOREVIEW : 10-10-2018:15:33:55
- 46 10/11/2018 - 4050 - Stipulation ...
Additional Text: Transaction 6923974 - Approved By: YVILORIA : 10-11-2018:15:25:03
- 47 10/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6924123 - Approved By: NOREVIEW : 10-11-2018:15:28:24
- 48 12/10/2018 - 2842 - Ord Denying Motion
Additional Text: TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 7015487 - Approved By: NOREVIEW : 12-10-2018:11:27:36
- 49 12/10/2018 - S200 - Request for Submission Complet
Additional Text: ORDER
- 50 12/10/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7015491 - Approved By: NOREVIEW : 12-10-2018:11:28:37
- 51 1/9/2019 - 4050 - Stipulation ...
Additional Text: STIPUALTION OF TIME TO RESPOND - Transaction 7058630 - Approved By: CSULEZIC : 01-09-2019:11:44:52
- 52 1/9/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7058791 - Approved By: NOREVIEW : 01-09-2019:11:46:45
- 53 2/7/2019 - 1170 - Answering Brief
Additional Text: RESPONDENTS ANSWERING BRIEF - Transaction 7108003 - Approved By: CSULEZIC : 02-07-2019:15:59:55
- 54 2/7/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7108579 - Approved By: NOREVIEW : 02-07-2019:16:01:22
- 55 3/6/2019 - 3785 - Reply Brief
Additional Text: PETITIONER'S REPLY BRIEF - Transaction 7150693 - Approved By: YVILORIA : 03-06-2019:10:40:06
- 56 3/6/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7150852 - Approved By: NOREVIEW : 03-06-2019:10:41:03

- 57 3/7/2019 - 3860 - Request for Submission
Additional Text: PETITIONERS OPENING BRIEF FILED 7/10/18 - Transaction 7153324 - Approved By: CSULEZIC : 03-07-2019:09:36:42
PARTY SUBMITTING: JASON GUINASSO ESQ
DATE SUBMITTED: 3/07/19
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 58 3/7/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7153415 - Approved By: NOREVIEW : 03-07-2019:09:37:41
- 59 5/10/2019 - 2840 - Ord Denying ...
Additional Text: PETITION FOR JUDICIAL REVIEW - Transaction 7263834 - Approved By: NOREVIEW : 05-10-2019:10:14:20
- 60 5/10/2019 - S200 - Request for Submission Complet
Additional Text: ORDER
- 61 5/10/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7263838 - Approved By: NOREVIEW : 05-10-2019:10:15:17
- 62 5/10/2019 - F230 - Other Manner of Disposition
No additional text exists for this entry.
- 63 5/15/2019 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 7271044 - Approved By: NOREVIEW : 05-15-2019:12:15:49
- 64 5/15/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7271048 - Approved By: NOREVIEW : 05-15-2019:12:19:17
- 65 6/7/2019 - 2515 - Notice of Appeal Supreme Court
Additional Text: NOTICE OF APPEAL - Transaction 7309663 - Approved By: YVILORIA : 06-07-2019:13:36:12
- 66 6/7/2019 - 1310 - Case Appeal Statement
Additional Text: CASE APPEAL STATEMENT - Transaction 7309663 - Approved By: YVILORIA : 06-07-2019:13:36:12
- 67 6/7/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7310139 - Approved By: NOREVIEW : 06-07-2019:13:37:07
- 68 6/7/2019 - SAB - **Supreme Court Appeal Bond
Additional Text: Bond ID: SAB-19-00041; Total Bond Amount: \$500.00.

Bond Code, SAB, Receipted for: Guinasso, Esq., Jason D., on 07-JUN-2019 in the amount of \$500.00 on case ID CV18-00673.
- 69 6/7/2019 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7310384 - Approved By: NOREVIEW : 06-07-2019:14:18:35

1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 VANCE TAYLOR,

Case No. CV18-00673

10 Petitioner,
11

Dept. No. 6

12 vs.

13 TRUCKEE MEADOWS FIRE PROTECTION
14 DISTRICT; ALTERNATIVE SERVICE
15 CONCEPTS, LLC, PUBLIC AGENCY
16 COMPENSATION TRUST and the NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER SHEILA MOORE,

17 Respondents.
18 _____ /

19 **ORDER RE PETITION FOR JUDICIAL REVIEW**

20 Before this Court is a *Petition for Judicial Review* ("Petition") filed by Petitioner
21 VANCE TAYLOR ("Mr. Taylor") by and through his attorney of record, Jason D. Guinasso,
22 Esq. On May 3, 2018, Mr. Taylor filed the *Record on Appeal* ("ROA") in accordance with the
23 Nevada Administrative Procedure Act. On July 10, 2018, Mr. Taylor filed *Petitioner's*
24 *Opening Brief* ("Brief")

25
26 On February 7, 2019, Respondent TRUCKEE MEADOWS FIRE PROTECTION
27 DISTRICT ("TMFPD") and PUBLIC AGENCY COMPENSATION TRUST ("PACT")
28 (collectively "Respondents") filed *Respondents' Answering Brief* ("Answer"), by and through

1 their attorney of record, Robert F. Balkenbush, Esq.

2 Mr. Taylor filed *Petitioner's Reply Brief* ("Reply"). No request for hearing was made
3 and the matter was submitted for decision.
4

5 **I. FACTS AND PROCEDURAL HISTORY**

6 The instant action arises out of a contested worker's compensation claim before the
7 State of Nevada Department of Administration Hearings Division ("AHD") and is the result of
8 a February 28, 2018 *Decision and Order* ("*Decision*"). The issue before the AHD was
9 whether Mr. Taylor rightfully refused his employer's offer of temporary "light-duty" work for a
10 one-month period after he was deemed temporarily totally disabled.
11

12 The following Findings of Fact and Conclusions of Law were made by the Appeals
13 Officer in the *Decision*.

14 **A. Appeals Officer's Findings of Fact**

15 In April 2016, Mr. Taylor¹ was 46 years old and employed as a Fire Captain for
16 TMFPD. *Decision*, p. 3. Taylor had been employed with TMFPD since January 1997.
17 *Decision*, p. 3. On April 19, 2016, during a training exercise, Taylor suffered an injury to his
18 left shoulder. *Decision*, p. 3.
19

20 On July 21, 2016, Mr. Taylor underwent shoulder surgery. *Decision*, p. 3. On
21 September 7, 2016, Mr. Taylor was examined by Dr. Malcarney and released to work with
22 light-duty restrictions, including not lifting over five pounds and not reaching above his
23 shoulder for one-month. *Decision*, p. 3.
24

25 On September 9, 2016, TMFPD offered Taylor temporary, light-duty employment.
26 *Decision*, p. 3. The assignment offered was in the administrative offices of TMFPD working
27 Monday through Friday, 8:00 a.m. to 5:00 p.m. with an hour lunch. *Decision*, p. 4. The
28

¹ Mr. Taylor was identified as "Taylor" in the Appeals Officer's *Decision*.

1 position was immediately available, compatible with the temporary physical limitations for
2 work imposed by Dr. Malcarney, and substantially similar to Mr. Taylor's pre-injury position
3 in relation to location, hours, and the same wage he earned prior to injury. *Decision*, p. 4.
4

5 On September 9, 2016, Mr. Taylor informed TMFPD he would not accept the offer
6 because the work assignment was not substantially similar to Mr. Taylor's position as Fire
7 Captain², including differences in work hours, benefits, supervisors, and job duties.
8 *Decision*, p. 4. Specifically, prior to his injury, Mr. Taylor worked 48 hour shifts, followed by
9 96 hours off. *Decision*, p. 4. Mr. Taylor claimed hardship based on childcare. However, Mr.
10 Taylor did not provide records demonstrating financial hardship or difference in benefits.
11 *Decision*, p. 4. Moreover, Mr. Taylor's temporary position was located six miles from his
12 prior work location and he previously accepted the same temporary, light-duty job offered to
13 him. *Decision*, p. 4. Mr. Taylor was paid he pre-injury gross average monthly wage.
14 *Decision*, p. 5.
15

16 **B. Appeals Officer's Conclusions of Law**

17 On February 28, 2018, the AHD entered its *Decision* finding Mr. Taylor was not
18 entitled to temporary total disability during that time because TMFPD's offer of light-duty
19 work was a valid light duty job, is not considered humiliating and degrading, and is an
20 essential function in the work force pursuant to NRS 616C.475(8), NAC 616C.586(2).
21 *Decision*, generally.
22

23 Mr. Taylor appealed a denial of his workers compensation claim against TMFPD.
24

25 **C. Petitioner's Argument on Appeal**

26 Mr. Taylor filed his *Petition* arguing TMFPD's offer of light-duty job was not
27 substantially similar to the job Mr. Taylor had pre-injury; and, therefore, TMFPD's offer failed
28

² Mr. Taylor is referenced as both a Captain and Battalion Chief.

1 to comply with NRS 616C.475(8) and NAC 616A.400. Mr. Taylor maintains he is entitled to
2 temporary disability benefits for the period of September 11, 2016 through November, 2016.
3 *Petition*, generally.

4 Specifically, Mr. Taylor argues in EG & G Special Projects, Inc. v. Corselli, the
5 Nevada Supreme Court held an offer of light duty work must not impose an unreasonable
6 burden on the injured worker. *Brief*, p. 10; citing EG & G Special Projects, Inc. v. Corselli,
7 102 Nev. 116, 715 P.2d 1326 (1986). Mr. Taylor asserts in Corselli, the Court found a light-
8 duty job offer which substantially changed the hours, days, and location of work was
9 unreasonable. *Brief*, pp. 10-11; citing Id. Mr. Taylor argues because the offered light duty
10 employment significantly changed his hours, FLSA pay, and precludes his ability to “bank
11 Holiday Comp Time” it was not reasonable. *Brief*, p. 11.

14 Moreover, Mr. Taylor argues the employment location was six-miles from his pre-
15 injury employment location. *Brief*, p. 12. Lastly, the light duty job offer changed Mr. Taylor’s
16 duties from a Captain to an “office secretary” which is “humiliating and unlawful.” *Brief*, p.
17 12; citing Dillard’s Dept. Stores, Inc v. Beckwith, 115 Nev. 372, 989 P.2d 882 (1999). Mr.
18 Taylor argues it is humiliating and degrading for a person who “regularly works as a fire
19 fighter” to take a position as an “office secretary.” *Brief*, p. 12. Mr. Taylor also argues
20 appointing a Battalion Chief to an office secretary position breaks the chain of command.
21 *Brief*, p. 13.

24 **D. Respondent’s Argument**

25 In its *Answer*, Respondents argue the light-duty job offered to Mr. Taylor was
26 adequately similar in hours, pay, and location. First, Respondents argue hours for a light-
27 duty position need only be “similar.” *Answer*, p. 11. Respondents argue that, although the
28

1 temporary light-duty position required him to work 8:00 a.m. to 5:00 p.m. instead of his
2 normal 48-hour shift followed by 96 hours off, the schedule provided the same wages at a
3 lower minimum hour requirement. *Answer*, p. 11. Moreover, Mr. Taylor offered no evidence
4 the changed scheduled resulted in financial hardship or that his benefits changed. *Answer*,
5 p. 11.

7 Additionally, Respondents assert Mr. Taylor was to be paid his pre-injury monthly
8 wage and a temporary employment location six-miles from his pre-injury position is not a
9 substantial change in location and was actually closer to Mr. Taylor's residence. *Answer*, p.
10 14.

12 Respondents further contend, although a post-injury position must be similar to the
13 job held pre-injury, the post-injury job does not need personal approval by the employee.
14 *Answer*, p. 12. Importantly, Respondents contend Section 616C.586 of the Nevada
15 Administrative Code provides light-duty temporary employment is not demeaning or
16 degrading where the job is part of the employer's regular business operation. *Answer*, p.
17 14.

19 **II. LAW AND ANALYSIS**

20 A court may set aside a final decision of an agency if the decision is arbitrary,
21 capricious, in violation of statute, characterized by abuse of discretion or affected by error of
22 law. NRS 233B.135(3); Ranieri v. Catholic Community Services, 111 Nev. 1057, 1061, 901
23 P.2d 158, 161 (1995). Generally, the reviewing court may not substitute its judgment for
24 that of an agency as to the weight of the evidence on a question of fact. See NRS
25 233B.135(3); Gandy v. State el rel. Div. of Investigation & Narcotics, 96 Nev. 281, 282, 607
26 P.2d 581, 583 (1980); City of North Las Vegas v. Public Service Commission, 83 Nev. 278,
27
28

1 281, 429 P.2d 66, 68 (1967) (“We should not pass upon the credibility of witnesses or weigh
2 the evidence, but limit the review to a determination that the board’s decision is based upon
3 substantial evidence.”) (emphasis supplied). However, factual determinations that are not
4 supported by “substantial evidence” are unsustainable and must be reversed. See State
5 Indus. Ins. Sys. v. Christensen, 106 Nev. 460, 469, 186 P.3d 878, 884 (2008) (citing NRS
6 233B.125). The factual findings must be supported by substantial evidence and, “if
7 rendered in statutory language, supported by a ‘concise and explicit statement of the
8 underlying facts supporting the findings.’” Dickinson, 124 Nev. at 469, 186 P.3d at 884
9 (citing NRS 233B.125).
10
11

12 In addition, NRS 233B.125 requires a final decision include “findings of fact and
13 conclusions of law, separately stated. Findings of fact and decision must be based upon a
14 preponderance of the evidence.” NRS 233B.125.
15

16 Thus, when reviewing factual issues, the reviewing court must determine whether
17 there is “substantial evidence” in the record to support the agency’s conclusion. Garcia v.
18 Scolari’s Food & Drug, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009). “Substantial evidence is
19 defined as “evidence that a reasonable mind might accept as adequate to support the
20 appeals officer’s conclusion.” Id. If there is no evidence in the record to support an
21 agency’s conclusion, substantial evidence is obviously lacking. Ayala v. Caesars Palace,
22 119 Nev. 232, 240, 71 P.3d 490, 495 (2003) (abrogated on another point of law).
23

24 The Court reviews the Appeals Officer’s legal conclusions *de novo*. Vredenburg v.
25 Sedgwick CMS, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008).
26

27 Section 616C.475(1) of the Nevada Revised Statutes, provides, in pertinent part,
28 every employee who is injured by accident arising out of and in the course of employment is

1 entitled to receive temporary total disability. NRS 616C.475(1). Additionally, Section
2 616C.475(8) of the Nevada Revised Statutes provides,

3 If the certification of disability specifies that the physical limitations or
4 restrictions are temporary, the employer . . . may offer temporary, light-duty
5 employment to the employee. If the employer makes such an offer, the
6 employer shall confirm the offer in writing within 10 days after making the offer.
7 Any offer of temporary, light-duty employment made by the employer
8 must specify a position that:

9 (a) Is substantially similar to the employee's position at the time of his or her
10 injury in relation to the location of the employment and the hours the employee
11 is required to work;

12 (b) Provides a gross wage that is:

13 (1) If the position is in the same classification of employment, equal to the
14 gross wage the employee was earning at the time of his or her injury; or

15 (2) If the position is not in the same classification of employment, substantially
16 similar to the gross wage the employee was earning at the time of his or her
17 injury; and

18 (c) Has the same employment benefits as the position of the employee at the
19 time of his or her injury.

20 NRS Section 616C.475(8). When NRS 616C.475 is read in its entirety, "an employer who
21 provides a temporarily totally disabled employee with a post-injury job that is similar in
22 hours, location and gross pay to the job the employee held pre-injury, and who gives
23 adequate consideration to the employee's post-injury limitations, can cease paying the
24 employee temporary total disability benefits in the amount of $66\frac{2}{3}$ percent of the
25 employee's pre-injury wage." Amazon.com v. Magee, 121 Nev. 632, 636, 119 P.3d 732,
26 735 (2005).

27 First, Mr. Taylor argues the location of his proposed administrative position "six-
28 miles" from his pre-injury job location and the change in his scheduled hours is
unreasonable and burdensome. An offer of temporary employment cannot be considered

1 legitimate if the location of the job imposes an unreasonable burden on the worker. EG & G
2 Special Projects, Inc. v. Corselli, 102 Nev. 116, 119 715 P.2d 1326, 1328 (1986). In Corselli
3 the Nevada Supreme Court found a light-duty job offer to work as a security guard in Las
4 Vegas five-days a week was unreasonable where the employee resided in Riverside,
5 California and had worked for the past twenty-five years at a Nevada test site with shifts of
6 three days on and four days off. Id.

8 Unlike in Corselli, Mr. Taylor is not required to cross state-lines five days a week.
9 Although his shifts have changed, the combination of the location of his new job and lesser
10 required hours required per week result in a reasonable request. This is buttressed by the
11 fact that Mr. Taylor's offered post-injury job location is actually closer to his home. The
12 Court additionally notes that Mr. Taylor previously accepted this position.

14 Moreover, Mr. Taylor was offered the same salary as his pre-injury position for less
15 minimum hours worked. Although Mr. Taylor argues the change in schedule required he
16 pay additional childcare, there is no evidence Mr. Taylor suffered financial hardship as a
17 result of obtaining additional childcare in the record.

19 Mr. Taylor further asserts the light-duty position providing administrative support to
20 TMFPD was not substantially similar to his position as a Battalion Chief. The Court notes
21 that Mr. Taylor was not demoted during the one-month period he was on light-duty. Instead,
22 his job tasks changed. Mr. Taylor argues it is humiliating to be a "secretary;" however, the
23 Court finds this unpersuasive.

25 First, many talented people are proud to hold administrative positions. The Court
26 does not find anything inherently humiliating or degrading about being a "secretary." More
27 importantly, Section 616C.586(2)(a) of the Nevada Administrative Code provides,
28

1 "temporary employment at light duty offered by the employer which is a part of the
2 employer's regular business operations shall not be deemed to be demeaning or degrading
3 or to subject the employee to ridicule or embarrassment." NAC 616C.586. Here, Mr. Taylor
4 was offered light-duty employment which was part of TMFPD's regular business operations.
5 Accordingly, the Court finds there is nothing demeaning or degrading about the offered
6 position.
7

8 **III. CONCLUSION**

9
10 Mr. Taylor was offered a light-duty administrative position, for a period of one-month,
11 which was located six-miles from his previous job site, and offered the same pre-injury
12 monthly salary. Although Mr. Taylor's hours changed, the change was not significant in light
13 of the location and salary pursuant to the Nevada Supreme Court's ruling in Corselli.
14 Moreover, the position was part of his employer's regular business operations. In
15 accordance with Section 616C.586(2(a) of the Nevada Administrative Code, Section
16 616C.475(8) of the Nevada Revised Statutes, and applicable law as cited, this Court
17 concludes Mr. Taylor's *Petition* shall be denied.
18

19 Accordingly, and good cause appearing,

20 IT IS HEREBY ORDERED Petitioner's *Petition for Judicial Review* is DENIED.

21 Dated this 16th day of May, 2019.
22

23
24 
25 DISTRICT JUDGE
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 01 day of May, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

JASON GUINASSO, ESQ.

LUCAS MOLLECK, ESQ.

ROBERT BALKENBUSH, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows

Huda Brc

CV18-00673

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Hutchison & Steffen, PLLC
500 Damonte Ranch Parkway, Suite 980
3 Reno, NV 89521
Attorney for Vance Taylor
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 *****

8 VANCE TAYLOR,

9 Petitioner,

10 vs.

11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS, and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.
15

Case No.: CV18-00673

Dept. No.: 6


NOTICE OF ENTRY OF ORDER

16 PLEASE TAKE NOTICE that, *Petitioner's Opening Brief* (filed on July 10, 2018),
17 *Respondent's Answering Brief* (filed on February 7, 2019), and *Petitioner's Reply Brief* (filed on March
18 6, 2019) have been submitted to the Court for decision. On May 10, 2019, the *Order Re Petition for*
19 *Judicial Review* was entered, a copy of the Order is attached hereto.

20 **AFFIRMATION**

21 The undersigned does hereby affirm that the foregoing document filed in this matter does not
22 contain the social security number of any person.

23 DATED this 15th day of May, 2019.

24 
25 Jason Guinasso, Esq.
Attorney for Petitioner, Vance Taylor

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On May 15, 2019, I served the following:

NOTICE OF ENTRY OF ORDER

on the following in said cause as indicated below:

VANCE TAYLOR 2919 ASPEN MEADOWS CT RENO, NV 89519 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG 6590 S MCCARRAN BLVD., #B RENO, NV 89509 (VIA E-FLEX & U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
NEVADA DEPT. OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FL CARSON CITY, NV 89701 (VIA U.S. MAIL)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 15, 2019, at Reno, Nevada.


KATRINA A. TORRES

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LIST OF EXHIBITS
CASE NO. CV18-00673
NOTICE OF ENTRY OF ORDER

EXHIBIT #	DOCUMENT TITLE	# OF PAGES
Exhibit 1	Order dated May 10, 2019	10

EXHIBIT 1

EXHIBIT 1

1 CODE NO. 3370
2
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 VANCE TAYLOR, Case No. CV18-00673
10 Petitioner, Dept. No. 6
11 vs.
12

13 TRUCKEE MEADOWS FIRE PROTECTION
14 DISTRICT; ALTERNATIVE SERVICE
15 CONCEPTS, LLC, PUBLIC AGENCY
16 COMPENSATION TRUST and the NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER SHEILA MOORE,

17 Respondents.
18 _____ /

19 **ORDER RE PETITION FOR JUDICIAL REVIEW**

20 Before this Court is a *Petition for Judicial Review* ("*Petition*") filed by Petitioner
21 VANCE TAYLOR ("Mr. Taylor") by and through his attorney of record, Jason D. Guinasso,
22 Esq. On May 3, 2018, Mr. Taylor filed the *Record on Appeal* ("ROA") in accordance with the
23 Nevada Administrative Procedure Act. On July 10, 2018, Mr. Taylor filed *Petitioner's*
24 *Opening Brief* ("*Brief*")
25

26 On February 7, 2019, Respondent TRUCKEE MEADOWS FIRE PROTECTION
27 DISTRICT ("TMFPD") and PUBLIC AGENCY COMPENSATION TRUST ("PACT")
28 (collectively "Respondents") filed *Respondents' Answering Brief* ("*Answer*"), by and through

1 their attorney of record, Robert F. Balkenbush, Esq.

2 Mr. Taylor filed *Petitioner's Reply Brief* ("Reply"). No request for hearing was made
3 and the matter was submitted for decision.

4 **I. FACTS AND PROCEDURAL HISTORY**

5 The instant action arises out of a contested worker's compensation claim before the
6 State of Nevada Department of Administration Hearings Division ("AHD") and is the result of
7 a February 28, 2018 *Decision and Order* ("*Decision*"). The issue before the AHD was
8 whether Mr. Taylor rightfully refused his employer's offer of temporary "light-duty" work for a
9 one-month period after he was deemed temporarily totally disabled.
10

11 The following Findings of Fact and Conclusions of Law were made by the Appeals
12 Officer in the *Decision*.

13 **A. Appeals Officer's Findings of Fact**

14 In April 2016, Mr. Taylor¹ was 46 years old and employed as a Fire Captain for
15 TMFPD. *Decision*, p. 3. Taylor had been employed with TMFPD since January 1997.
16 *Decision*, p. 3. On April 19, 2016, during a training exercise, Taylor suffered an injury to his
17 left shoulder. *Decision*, p. 3.

18 On July 21, 2016, Mr. Taylor underwent shoulder surgery. *Decision*, p. 3. On
19 September 7, 2016, Mr. Taylor was examined by Dr. Malcarney and released to work with
20 light-duty restrictions, including not lifting over five pounds and not reaching above his
21 shoulder for one-month. *Decision*, p. 3.

22 On September 9, 2016, TMFPD offered Taylor temporary, light-duty employment.
23 *Decision*, p. 3. The assignment offered was in the administrative offices of TMFPD working
24 Monday through Friday, 8:00 a.m. to 5:00 p.m. with an hour lunch. *Decision*, p. 4. The

25 ¹ Mr. Taylor was identified as "Taylor" in the Appeals Officer's *Decision*.

1 position was immediately available, compatible with the temporary physical limitations for
2 work imposed by Dr. Malcarney, and substantially similar to Mr. Taylor's pre-injury position
3 in relation to location, hours, and the same wage he earned prior to injury. *Decision*, p. 4.

4
5 On September 9, 2016, Mr. Taylor informed TMFPD he would not accept the offer
6 because the work assignment was not substantially similar to Mr. Taylor's position as Fire
7 Captain², including differences in work hours, benefits, supervisors, and job duties.
8 *Decision*, p. 4. Specifically, prior to his injury, Mr. Taylor worked 48 hour shifts, followed by
9 96 hours off. *Decision*, p. 4. Mr. Taylor claimed hardship based on childcare. However, Mr.
10 Taylor did not provide records demonstrating financial hardship or difference in benefits.
11 *Decision*, p. 4. Moreover, Mr. Taylor's temporary position was located six miles from his
12 prior work location and he previously accepted the same temporary, light-duty job offered to
13 him. *Decision*, p. 4. Mr. Taylor was paid he pre-injury gross average monthly wage.
14
15 *Decision*, p. 5.

16 17 **B. Appeals Officer's Conclusions of Law**

18 On February 28, 2018, the AHD entered its *Decision* finding Mr. Taylor was not
19 entitled to temporary total disability during that time because TMFPD's offer of light-duty
20 work was a valid light duty job, is not considered humiliating and degrading, and is an
21 essential function in the work force pursuant to NRS 616C.475(8), NAC 616C.586(2).
22
23 *Decision*, generally.

24 Mr. Taylor appealed a denial of his workers compensation claim against TMFPD.

25 **C. Petitioner's Argument on Appeal**

26 Mr. Taylor filed his *Petition* arguing TMFPD's offer of light-duty job was not
27 substantially similar to the job Mr. Taylor had pre-injury; and, therefore, TMFPD's offer failed
28

² Mr. Taylor is referenced as both a Captain and Battalion Chief.

1 to comply with NRS 616C.475(8) and NAC 616A.400. Mr. Taylor maintains he is entitled to
2 temporary disability benefits for the period of September 11, 2016 through November, 2016.
3 *Petition*, generally.

4 Specifically, Mr. Taylor argues in EG & G Special Projects, Inc. v. Corselli, the
5 Nevada Supreme Court held an offer of light duty work must not impose an unreasonable
6 burden on the injured worker. *Brief*, p. 10; citing EG & G Special Projects, Inc. v. Corselli,
7 102 Nev. 116, 715 P.2d 1326 (1986). Mr. Taylor asserts in Corselli, the Court found a light-
8 duty job offer which substantially changed the hours, days, and location of work was
9 unreasonable. *Brief*, pp. 10-11; citing *Id.* Mr. Taylor argues because the offered light duty
10 employment significantly changed his hours, FLSA pay, and precludes his ability to "bank
11 Holiday Comp Time" it was not reasonable. *Brief*, p. 11.

14 Moreover, Mr. Taylor argues the employment location was six-miles from his pre-
15 injury employment location. *Brief*, p. 12. Lastly, the light duty job offer changed Mr. Taylor's
16 duties from a Captain to an "office secretary" which is "humiliating and unlawful." *Brief*, p.
17 12; citing Dillard's Dept. Stores, Inc v. Beckwith, 115 Nev. 372, 989 P.2d 882 (1999). Mr.
18 Taylor argues it is humiliating and degrading for a person who "regularly works as a fire
19 fighter" to take a position as an "office secretary." *Brief*, p. 12. Mr. Taylor also argues
20 appointing a Battalion Chief to an office secretary position breaks the chain of command.
21 *Brief*, p. 13.

24 D. Respondent's Argument

25 In its *Answer*, Respondents argue the light-duty job offered to Mr. Taylor was
26 adequately similar in hours, pay, and location. First, Respondents argue hours for a light-
27 duty position need only be "similar." *Answer*, p. 11. Respondents argue that, although the
28

1 temporary light-duty position required him to work 8:00 a.m. to 5:00 p.m. instead of his
2 normal 48-hour shift followed by 96 hours off, the schedule provided the same wages at a
3 lower minimum hour requirement. *Answer*, p. 11. Moreover, Mr. Taylor offered no evidence
4 the changed scheduled resulted in financial hardship or that his benefits changed. *Answer*,
5 p. 11.
6

7 Additionally, Respondents assert Mr. Taylor was to be paid his pre-injury monthly
8 wage and a temporary employment location six-miles from his pre-injury position is not a
9 substantial change in location and was actually closer to Mr. Taylor's residence. *Answer*, p.
10 14.
11

12 Respondents further contend, although a post-injury position must be similar to the
13 job held pre-injury, the post-injury job does not need personal approval by the employee.
14 *Answer*, p. 12. Importantly, Respondents contend Section 616C.586 of the Nevada
15 Administrative Code provides light-duty temporary employment is not demeaning or
16 degrading where the job is part of the employer's regular business operation. *Answer*, p.
17 14.
18

19 II. LAW AND ANALYSIS

20 A court may set aside a final decision of an agency if the decision is arbitrary,
21 capricious, in violation of statute, characterized by abuse of discretion or affected by error of
22 law. NRS 233B.135(3); Ranieri v. Catholic Community Services, 111 Nev. 1057, 1061, 901
23 P.2d 158, 161 (1995). Generally, the reviewing court may not substitute its judgment for
24 that of an agency as to the weight of the evidence on a question of fact. See NRS
25 233B.135(3); Gandy v. State el rel. Div. of Investigation & Narcotics, 96 Nev. 281, 282, 607
26 P.2d 581, 583 (1980); City of North Las Vegas v. Public Service Commission, 83 Nev. 278,
27
28

1 281, 429 P.2d 66, 68 (1967) ("We should not pass upon the credibility of witnesses or weigh
2 the evidence, but limit the review to a determination that the board's decision is based upon
3 substantial evidence.") (emphasis supplied). However, factual determinations that are not
4 supported by "substantial evidence" are unsustainable and must be reversed. See State
5 Indus. Ins. Sys. v. Christensen, 106 Nev. 460, 469, 186 P.3d 878, 884 (2008) (citing NRS
6 233B.125). The factual findings must be supported by substantial evidence and, "if
7 rendered in statutory language, supported by a 'concise and explicit statement of the
8 underlying facts supporting the findings.'" Dickinson, 124 Nev. at 469, 186 P.3d at 884
9 (citing NRS 233B.125).
10
11

12 In addition, NRS 233B.125 requires a final decision include "findings of fact and
13 conclusions of law, separately stated. Findings of fact and decision must be based upon a
14 preponderance of the evidence." NRS 233B.125.
15

16 Thus, when reviewing factual issues, the reviewing court must determine whether
17 there is "substantial evidence" in the record to support the agency's conclusion. Garcia v.
18 Scolari's Food & Drug, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009). "Substantial evidence is
19 defined as "evidence that a reasonable mind might accept as adequate to support the
20 appeals officer's conclusion." Id. If there is no evidence in the record to support an
21 agency's conclusion, substantial evidence is obviously lacking. Ayala v. Caesars Palace,
22 119 Nev. 232, 240, 71 P.3d 490, 495 (2003) (abrogated on another point of law).
23

24 The Court reviews the Appeals Officer's legal conclusions *de novo*. Vredenburg v.
25 Sedgwick CMS, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008).
26

27 Section 616C.475(1) of the Nevada Revised Statutes, provides, in pertinent part,
28 every employee who is injured by accident arising out of and in the course of employment is

1 entitled to receive temporary total disability. NRS 616C.475(1). Additionally, Section
2 616C.475(8) of the Nevada Revised Statutes provides,

3 If the certification of disability specifies that the physical limitations or
4 restrictions are temporary, the employer . . . may offer temporary, light-duty
5 employment to the employee. If the employer makes such an offer, the
6 employer shall confirm the offer in writing within 10 days after making the offer.
7 Any offer of temporary, light-duty employment made by the employer
8 must specify a position that:

9 (a) Is substantially similar to the employee's position at the time of his or her
10 injury in relation to the location of the employment and the hours the employee
11 is required to work;

12 (b) Provides a gross wage that is:

13 (1) If the position is in the same classification of employment, equal to the
14 gross wage the employee was earning at the time of his or her injury; or

15 (2) If the position is not in the same classification of employment, substantially
16 similar to the gross wage the employee was earning at the time of his or her
17 injury; and

18 (c) Has the same employment benefits as the position of the employee at the
19 time of his or her injury.

20 NRS Section 616C.475(8). When NRS 616C.475 is read in its entirety, "an employer who
21 provides a temporarily totally disabled employee with a post-injury job that is similar in
22 hours, location and gross pay to the job the employee held pre-injury, and who gives
23 adequate consideration to the employee's post-injury limitations, can cease paying the
24 employee temporary total disability benefits in the amount of 66 2/3 percent of the
25 employee's pre-injury wage." Amazon.com v. Magee, 121 Nev. 632, 636, 119 P.3d 732,
26 735 (2005).

27 First, Mr. Taylor argues the location of his proposed administrative position "six-
28 miles" from his pre-injury job location and the change in his scheduled hours is
unreasonable and burdensome. An offer of temporary employment cannot be considered

1 legitimate if the location of the job imposes an unreasonable burden on the worker. EG & G
2 Special Projects, Inc. v. Corselli, 102 Nev. 116, 119 715 P.2d 1326, 1328 (1986). In Corselli
3 the Nevada Supreme Court found a light-duty job offer to work as a security guard in Las
4 Vegas five-days a week was unreasonable where the employee resided in Riverside,
5 California and had worked for the past twenty-five years at a Nevada test site with shifts of
6 three days on and four days off. Id.

8 Unlike in Corselli, Mr. Taylor is not required to cross state-lines five days a week.
9 Although his shifts have changed, the combination of the location of his new job and lesser
10 required hours required per week result in a reasonable request. This is buttressed by the
11 fact that Mr. Taylor's offered post-injury job location is actually closer to his home. The
12 Court additionally notes that Mr. Taylor previously accepted this position.

14 Moreover, Mr. Taylor was offered the same salary as his pre-injury position for less
15 minimum hours worked. Although Mr. Taylor argues the change in schedule required he
16 pay additional childcare, there is no evidence Mr. Taylor suffered financial hardship as a
17 result of obtaining additional childcare in the record.

19 Mr. Taylor further asserts the light-duty position providing administrative support to
20 TMFPD was not substantially similar to his position as a Battalion Chief. The Court notes
21 that Mr. Taylor was not demoted during the one-month period he was on light-duty. Instead,
22 his job tasks changed. Mr. Taylor argues it is humiliating to be a "secretary;" however, the
23 Court finds this unpersuasive.

25 First, many talented people are proud to hold administrative positions. The Court
26 does not find anything inherently humiliating or degrading about being a "secretary." More
27 importantly, Section 616C.586(2)(a) of the Nevada Administrative Code provides,
28

1 "temporary employment at light duty offered by the employer which is a part of the
2 employer's regular business operations shall not be deemed to be demeaning or degrading
3 or to subject the employee to ridicule or embarrassment." NAC 616C.586. Here, Mr. Taylor
4 was offered light-duty employment which was part of TMFPD's regular business operations.
5 Accordingly, the Court finds there is nothing demeaning or degrading about the offered
6 position.
7

8 III. CONCLUSION

9 Mr. Taylor was offered a light-duty administrative position, for a period of one-month,
10 which was located six-miles from his previous job site, and offered the same pre-injury
11 monthly salary. Although Mr. Taylor's hours changed, the change was not significant in light
12 of the location and salary pursuant to the Nevada Supreme Court's ruling in Corselli.
13 Moreover, the position was part of his employer's regular business operations. In
14 accordance with Section 616C.586(2(a) of the Nevada Administrative Code, Section
15 616C.475(8) of the Nevada Revised Statutes, and applicable law as cited, this Court
16 concludes Mr. Taylor's *Petition* shall be denied.
17

18 Accordingly, and good cause appearing,
19

20 IT IS HEREBY ORDERED Petitioner's *Petition for Judicial Review* is DENIED.
21

22 Dated this 16th day of May, 2019.
23

24 
25 DISTRICT JUDGE
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 01 day of May, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

JASON GUINASSO, ESQ.

LUCAS MOLLECK, ESQ.

ROBERT BALKENBUSH, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
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Huda Brc

CV18-00673

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

VANCE TAYLOR,

Case No. CV18-00673

Petitioner,

Dept. No. 6

vs.

TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT; ALTERNATIVE SERVICE
CONCEPTS, LLC, PUBLIC AGENCY
COMPENSATION TRUST AND THE
NEVADA DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER SHEILA MOORE,

Respondents.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 7th day of June, 2019, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 7th day of June, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

**HUTCHISON & STEFFEN PLLC
RENO OFFICE EXPENSE ACCOUNT**

500 DAMONTE SUITE 980
RENO, NV 89521

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94-177/1224
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DATE June 7, 2019



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