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### Summary of Taylor v. Nev. Dept. of Health and Human Servs., 129 Nev. Adv. Op. 99

Whitney E. Short  
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## EMPLOYMENT LAW: EMPLOYEE DISCIPLINE HEARINGS

### **Summary**

The Court determined one issue: whether it is within a hearing officer's duty to determine the appropriate level of discipline and impose that determination.

### **Disposition**

NRS Chapter 284 allows hearing officers to “determine the reasonableness of disciplinary actions and recommend appropriate levels of discipline.” Only appointing authorities, however, “have the power to prescribe the actual discipline imposed on permanent classified state employees.”

### **Factual and Procedural History**

Appellant Michael Taylor (“Taylor”) was employed by the Nevada Department of Health and Human Services as a group supervisor in the Division of Child and Family Services (“DCFS”). As a result of an incident between Taylor and a youth, Taylor was issued a specificity of charges document that recommended his termination from employment.

Taylor administratively appealed his dismissal. After an evidentiary hearing, the State Personnel Commission hearing officer issued a decision setting aside the termination and remanding the case to DCFS to determine the appropriate level of discipline for Taylor's conduct. The hearing officer recommended that DCFS impose a suspension and require remedial training. Taylor sought reconsideration of that decision, arguing that the hearing officer, not the employer, should determine the appropriate amount of discipline.

The hearing officer denied reconsideration and Taylor filed a petition for judicial review to have a district court decide the issue. The district court denied Taylor's petition, stating that hearing officers are not required to determine the appropriate level of discipline after finding that dismissal was unreasonable.

### **Discussion**

*NRS 284.390 does not clearly address the situation at hand, so the hearing officer should be the decision maker in regards to the level of discipline because the hearing officer is the “fact finding tribunal.”*

The Court disagrees with this argument given the clear and unambiguous language of NRS Chapter 284. “While hearing officers may determine the reasonableness of disciplinary actions and recommend appropriate levels of discipline, only appointing authorities have the power to prescribe the actual discipline imposed on permanent classified state employees.”

*The court defers to the agency's interpretation of the relevant statute's language.*

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<sup>1</sup> By Whitney E. Short

<sup>2</sup> *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008).

If the hearing officer's interpretation of the statute and associated regulations is "within the language of the statute," the court will defer to that interpretation.<sup>2</sup> NAC 284.022 provides that an appointing authority is an official having the legal authority to make appointments. DCFS is an appointing authority. However, hearing officers are not present in that definition because their authority is reserved for hearings where they determine the reasonableness of a dismissal.<sup>3</sup> The only influence a hearing officer has on the prescription of discipline comes from the ability to determine the reasonableness of the disciplinary action<sup>4</sup> and to recommend what could constitute as an appropriate amount of discipline.<sup>5</sup>

### **Conclusion**

The court affirmed the district court's order denying judicial review because based on the language of the statutes and regulations, "while hearing officers may determine the reasonableness of disciplinary actions and recommend appropriate levels of discipline, only appointing authorities have the power to prescribe the actual discipline imposed on permanent classified state employees."

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<sup>2</sup> *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008).

<sup>3</sup> NEV. REV. STAT. § 284.390(1) (2013); *Knapp v. State ex rel. Dep't of Prisons*, 111 Nev. 420, 424, 892 P.2d 575, 577 (1995).

<sup>4</sup> NEV. REV. STAT. § 284.390(1) (2013).

<sup>5</sup> NEV. REV. STAT. § 284.818 (2013).