IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN REEVES,
Appellant(s),
vs.

DIVISION OF INDUSTRIAL RELATIONS; NEVADA DEPARTMENT OF ADMINISTRATION,
Respondent(s),

Case No: A644791
SC Case No: 62468

RECORD ON APPEAL
VOLUME
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A644791 SUSAN REEVES vs. DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency

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vs.
Division Of Industrial Relations, Defendant(s)

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of Diabetes on her feet and chronic dizzines from a accident in 1988. (exhibit "A" at pp. 10)

The only other treating physician at the time of both Reeves' non-industrial and industrial accidents was Dr. Barton R. Becker M.D. F.A.C.S.. who opined on the dates listed below:

> June 21, 1989: Mrs. Reeves gives a clinical history of postural vertigo. Her postural vertigo was gradually improving with valium (proscribed for labyrinthine sedation) and her headaches were decreasing. However, the second accident on 9/25/88 caused further damage, resulting in more neck pain and vertigo. (exhibit "A" at pp.12)
>
> July 21, 1989: Mrs. Reeves has been followed by me since 4/13/87. She was involved in an auto accident with neck strains and vertigo 7/20/87. Medical therapy has helped, and she was improving, with less dizziness and headaches.
> On 9/25/89 [88], she was involved in a second accident, re-injuring her neck, resulted in increased vertigo and headache, which has persisted until the present. (exhibit "A" at pp. 13)
>
> February 1, 1990: I feel the 9/25/88 accident did more damage to Mrs. Reeves.
> My notes from 11/13/87 to 5/12/88 show progressive improvement in her symptoms, such as decreased vertigo and headaches.
> I examined Mrs. Reeves next 10/4/88, for an auto accident 9/25/88. She had increased neck pain, vertigo and complained of left ear tinnitus.
> Mrs. Reeves has not done well since her second accident. She may have permanent neck problem and vertigo. (exhibit "A" at pp. 15)
>
> Undated: her life is greatly affected by her balance problems. (exhibit "A" at pp. 16)

As noted in every physicians report from the time of Reeves' industrial accident until the present, she has presented with the very same symptoms that were found to be compensational by Bally's. (exhibit "A" at pp. 1 thru 217) Of note is the fact that in all of the medical documentation, there is no physician that opined that Reeves was capable of returning to gainful employment, as required pursuant to NRS 616C. 475, to cease payment of benefits. To the contrary all of the physicians opined that Reeves was not able to return to gainful

employment. (exhibit "A" at pp. 5 ,6, 24, 60, 81, 83, 87, 101, 122, 128, 130, 131, 133, 134, 203, 216) Bally's determined that Reeves was not entitled to past and ongoing TTD benefits, in her accepted and open industrial claim on the notion that there is no certification of disability, against of the medical evidence. (exhibit "B" at pp. 284)

Reeves has sought and is seeking medical treatment for her accepted industrial injuries. She has undergone various treatments over the years, including physical therapy, injections into her neck and back, pain and stress management counseling, biofeedback therapy and psychoeducational lectures, and various prescription medications, all to try to have a life without the constant headaches, extreme dizziness, and chronic neck and back pain. After twenty-two (22) years, she is now resolved to the conclusion that her industrially caused injuries may never be resolved enough to permit her to have a life without pain, (exhibit "A" at pp. 1 thru 217) She is now treating with her family physician, Dr. Doina R. Jianu, and Mountain Rehabilitation, Dr. Curtis W. Poindexter, to try to alleviate some of her pain and dizziness.

The fact that Bally's is and has not paid for most of Reeves medical treatment, for her industrial symptoms, is because they closed her claim, on the issue of causation, almost as soon as they accepted it.

As this is a long and complex case, Reeves will try to just deal with the claim closures after the Supreme Court Decision in 1997. Bally's Grand Hotel and Casino v Reeves, 113 Nev. 926, 948 P.2d 1200 (1997). (exhibit "C" at pp. 318-325)

It is undisputed that Bally's accepted Reeves' claim the first time, with the symptoms of dizziness, headaches and neck pain, in an acceptance letter dated September 26, 1997, (exhibit

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"B" at pp. 237) and a second letter dated May 12, 1998. (exhibit "B" at pp. 238)

After long delays, nine (9) months, in paying back TTD benefits or any other benefits, even though, NRS 616C.065 (1), (a), states that within 30 days after accepting the claim the insurer shall commence payment, Bally's eventuality, on or about June 2, 1998, issued a check for back TTD benefits. (exhibit "B" at pp. 239)

On the same day Bally's scheduled an appointment with Dr. Oliveri, for an IME, on August 12, 1998.

In letters to Dr. Oliveri, Ms. Ethel Pipp, Manager, Workers' Compensation, Hilton Hotels Corporation, informed Dr. Oliveri, on the dates listed below:

> June 2, 1998: Since Bally's was unsuccessful in their denial of this claim, it became my responsibility to manage the file.
> What I feel will be of interest to you is no tests were performed from the MVA.
> She said she normally just lies around all day since she is not capable of anything else.
> She had a motor vehicle accident prior to her current one of 09-25-88.
> I believe she had the same medical complaints of headaches, dizziness and neck pain from both accidents. (exhibit "B" at pp. 240-241)

> July 23, 1998: Please address what drugs are appropriate for her industrial condition and what drugs are for her non-industrial condition. (exhibit "B" at pp. 244)

In a letter from Ms. Pipp to David Zerfing, Sr. V.P., Finance & Administration, Bally's, dated June 2, 1998, in which she stated: (exhibit "B" at pp. 242)

> The physician must determine what is industrial versus her non-industrial complaints.

As, noted in the letters above, Bally's has been trying to revisit the issue of causation, from the time they first accepted Reeves claim as industrial, to the present day, with no legal grounds to do so.

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Per Nevada Supreme Court rulings, the reconsideration of causation is not allowed. Day v Washoe County School District and CDS Compfirst, 102 Nev. 387, 116 P.3d 68 (2005), "does not permit reconsideration of the accuracy of a prior decision that an injury is industrial in nature." and that "prior determination that an injury was industrially related may not be reconsidered in determining primary causation under NRS 616C.390."

X

DOCUMENTS THAT SUPPORT A DETERMINATION OF VIOLATIONS OF NRS 616D.120 AND 616C.475. THAT REEVES' CLAIM SHOULD BE REOPENED WITH ALL WORKER'S COMPENSATION BENEFITS;

Whereas, the DIR found that there was no violation of NRS 616D.120 is based upon the medical documents from Dr. Oliveri and Dr. Glyman, Reeves will deal with those first.

A. DR. OLIVERI'S REPORTS:

Reeves' appointment with Dr. Oliveri was re-scheduled and held on August 18, 1998. In Dr. Olliveri's report he stated; (exhibit "A" at pp. 48-61)

> The examinee states that in July of 1987, she was the belted passenger in a full-sized truck when she was rear-ended and pushed into a Bronco. She states she hit her head on the window and had problems primarily headaches. She denies any cervical or upper extremity complaints or any other complaints related to that accident other than headache.
> On 09/25/88, the examinee states that she was the belted driver in the same truck that she was in with the previous accident. She states that her head whipped forward and backward very hard.
> There is subjective limitation in bilateral shoulder abduction at 140 degrees.
> She has subjective limitations that are nonanatomic in cervical and lumbar spine motion.
> In the cover letter, it stated that Bally's was unsuccessful in denial of the claim. I have been asked to evaluate the examinee's capabilities in terms of entering the work force. The bottom line is that this examinee primarily has a psychiatric problem. Of note is that she has been granted social security disability since 1989. The criteria for disability under social security are very much different than the criteria under worker's compensation especially when issues of

causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge.
PREEXISTING CONDITIONS: There was a previous motor vehicle accident in 1987 resulting in headache complaints. I suspect that those complaints are also part of her current presentation.
CAUSATION: The motor vehicle accident on 09/25/88 may have caused some minor problems physically but those have undoubtedly resolved.
WORK CAPACITY/DISABILITY: As discussed above, this examinee's obtaining of social security disability dating back to 1989 should not be misconstrued as a justification for disability on an industrial basis It is my very strong opinion that based on the industrial accident and objective issues ,there is no evidence of disability.
PROGNOSIS: Exceedingly guarded because of the nonindustrial factors.

B. ARGUMENT OF DR. OLIVERI'S REPORTS:

On August 27, 1998, Bally's sent a letter to Reeves effectively closing her claim by stating that her condition was non-industrial, according to the report from Dr. Oliveri, and no other disability benefit would be provided since her industrial condition had plateaued. (exhibit "B" at pp. 244 A-244 B) That Bally's issued a check, for TTD benefits, that covered the period through 08-26-98. (exhibit "B" at pp. 244 A, 244 B)

It should be noted that Dr. Oliveri's report did not state that there were not any physical problems, just that it was his opinion that whatever the physical problems were, they were related to the first accident, not the second. Dr. Oliveri also stated that the second accident may have caused some minor physical problems but they have undoubtedly resolved. (exhibit "A" at pp. 60) He also, stated under " preexisting conditions," that he suspected that her complaints from her prior accident were part of her current presentation. (exhibit "A" at pp. 59) Which would appear, he is saying that Reeves current symptoms are part of her symptoms from her non-industrial accident, to wit, that her current symptoms are not solely related to

either accident, but a combination of injury from both.

These symptoms were found in Bally's vs. Reeves to be at the very least, partly, caused or aggravated, along with new injury, by the industrial accident, of 1988, and are the symptoms that Bally' accepted as industrial, in 1997. (exhibit "B" at pp. 237, 238)

Whereas, Dr. Oliveri only stated that Reeves current symptoms are part of her first accident and that solely from her industrial accident there was no evidence of disability. To accept that as a reason to close an industrial claim is to revisit the issue of causation, which is not allowed, as noted in Day v Washoe.

Whereas, Bally's has always required objective medical evidence to support an opinion, Reeves would like to see what objective medical evidence Dr. Oliveri utilized in forming his opinion, that all of Reeves' physical symptoms were solely related to the first (non-industrial) accident, other than the letters from Ms. Pipp. (exhibit "B" at pp. 240-241, 244)

Dr. Oliveri also stated the prognosis for returning to work was exceeding guarded. (exhibit "A" at pp. 60) As such, he did not release her to return to work, just that it was his opinion that whatever her symptoms are, they are related solely to the non-industrial accident.

Whereas, Dr. Oliveri did not find that Reeves was able to return to gainful employment, pursuant to NRS 616C.475, her claim should not have been closed, and yet was not, thereby, a violation of NRS 616C.475 and NRS 616D.120.

Whereas, Dr. Oliveri had not seen Reeves until ten (10) years after the accidents, and based upon the Decision in Bally's v Reeves, where it was found that there was ample medical evidence that the industrial accident of 1988, both aggravated her previous injuries and caused injuries independent of the previous injuries. Reeves is at a loss as to how Dr. Oliveri separated

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the cause of Reeves' physical symptoms, as to what is related to the first accident as opposed to the second accident. The issue of causation is what Bally's and Dr. Oliveri were trying to revisit, in effect overturn the Nevada Supreme Court Ruling.

Also, it would appear, by the letters that were sent to Dr. Oliveri, by Ms. Pipp, that Bally's was trying to influence the physicians report. (exhibit "B" at pp. 240-241, 244)

Reeves timely filed for an Hearing Before the Hearings Officer and a hearing was held on January 11,1999. The Hearings Officer, Ms. Nora Garcia held: (exhibit "C" at p. 326-327)

> Regarding the closure of this claim, the evidence shows that this claim was initially denied and via litigation was deemed a compensable claim. The basis of the August 27, 1998 closure was Dr. Oliveri's Independent Medical Evaluation dated August 18, 1998. However, the totality of the evidence raises a medical question regarding the claimant's continued symptomatology of headaches, dizziness, tinnitus and vertigo. Accordingly, this matter is hereby REMANDED for the insurer to provide the claimant with a one time consult with a mutually agreed upon specialist in order that a further medical opinion can be rendered regarding treatment of these conditions. Upon completion, a further determination is to be generated, providing appropriate appeal rights, relative to the status of this claim.

In a letter from F. Edward Mulholland to Ms. Reeves dated February 3, 1999, in which he stated: (exhibit "B" at pp 252-253)

> The Decision and Order denied Bally's previous determination to close your claim.
> Upon receipt of a report from the evaluating physician, Park Place will issue a determination letter with appeal rights relative to the status of your claim.

Mr. Mulholland in the letter above tells Reeves that Bally's closure was denied by the Hearings Officer and that at some point in time, later, Bally's would issue a determination as to the status of her claim. It stands to reason that if Reeves' claim was open prior to the Decision and Order, with benefits being paid, That as the closure was denied, the claim would revert

back to that status, but did not.

Whereas, Bally's did not reinstate benefits after the Hearings Officer denied their closure, amounts to an unreasonable delay, therefore a violation of NRS 616D.120.

In a letter from Ms. Ethel Pipp to Mr. F. Edward Mulholland, dated April 16, 1999, in which she stated: (exhibit "B" at pp. 254)

> Needless to say I am disappointed in having to pick up benefits from August forward.
> I will be issuing a check to her as you suggested for her disability from August and reimburse her for the past prescriptions.

In a letter from Mr. F. Edward Mulholland to Ms. Ethel Pipp, dated April 20, 1999, in which he stated: (exhibit "B" at pp. 256-258)

> 3. Regarding payments for TTD and prescriptions, I think Dr. Olliveri did address the status of her claim in his August 18, 1998, report. In addition to opining that Claimant had non-industrial somatform pain disorder, Dr. Oliveri stated: (a) Claiment's inability to work was not related to the industrial injury at Bally's; (b) Claimant's medications prescribed by Dr. Mattimoe were not related to her industrial injury at Bally's; (c) Claimant's complaints had resolved; Note that it was Claimant's counsel who requested that we pay benefits starting back in August, 1998, not me. It is my belief that we should <u>not</u> pay any TTD benefits to Claimant (that we have not already paid) or for any more prescriptions. These issues were addressed by Dr. Oliveri and he indicated that non-industrial reasons prevented Claimant from working and any medications were related to her non-industrial somatoform pain disorder. Most importantly, the Hearing Officer Decision and Order dated January 25, 1999, did not obligate us to pay benefits.

In a letter from Ms. Ethel Pipp to Mr. Douglas M. Rowan dated May 7, 1999, in which she stated: (exhibit "B" at pp. 259)

> I have been waiting for your office and our attorney to agree on a physician to examine Ms. Reeves.
> My reading of Dr. Oliveri's report, I though was clear. However, if another examination will clear up any confusion you feel there is on the diagnosis, I suggest the physician be selected and an

appointment scheduled.
I an not releasing disability benefits.

In letters from Mr. F. Edward Mulholland to Mr. John F. Vena, Claims Manager, Park Place Entertainment Corporation, on the dates listed below, in which he stated:

> July 9, 1999: Please remember that Ms. Reeves' claim has been accepted as compensable. We are currently litigating only the issue of entitlement to interest. Ms. Reeves continues to desire additional treatment in order to determine what is wrong with her and what can be done to remedy her pain.
> Fairly recently, an evaluating physician, George Petroff, M. D. , examined Ms. Reeves and prescribed additional medication and vestibular physical therapy.
> Given that this matter has been accepted, Ms. Reeves remains entitled to, or more accurately potentially entitled to, certain benefits, including, but not limited to: (1) additional treatment if she can find a physician who states she is in need of treatment and that the cause for the need for treatment is related to her industrial injury; (2) TTD compensation; (3) a PPD award if a ratable impairment is indicated. Because many of the stated issues involve monetary compensation and Ms. Reeves is still seeking active treatment, we may have a very difficult time resolving this case once and for all at this point in time. (exhibit "B" at pp. 245-246)

> August 10, 1999: Ethel has corresponded with George Petroff, M. D. to seek his opinion on a referral. Dr. Petroff examined Ms. Reeves on three or more occasions, and provided the enclosed reports. Unfortunately, Dr. Petroff never made any medical findings on the causation or status of the various conditions described by Ms. Reeves. (exhibit "B" at pp. 249-250)

In a letter from Mr. John F. Vena to Mr. Edward Mulholland, dated September 20, 1999, he states: (exhibit "B" at pp. 260)

> Currently I am in the process of consulting various other Workers Compensation experts to obtain a consensus on what type of facility we could offer to send Ms. Reeves to, (baring any out of state treatment) to obtain a complete final profile on her conditions, industrial vs non-industrial.

In a letter from Mr. F. Edward Mulholland to Robert A. Fusinatto, Senior Claims Analyst, Safety National Casualty Corporation, dated August 2, 2000, in which he stated:

(exhibit "B" at pp. 261-262)

> Difficulties arose over several years regarding prosecution of the case. Bally's then changed counsel to Schreck Morris and we moved forward to the conclusion set forth in the opinion from the Supreme Court.
> In hindsight, it appears that this claim should have been accepted on day one. Notwithstanding that hindsight, this matter has now been litigated to a final conclusion regarding compensability with the Nevada Supreme Court decision.
> With respect to current care, the parties have been having ongoing discussions regarding additional diagnostic testing to determine what is industrial and where treatment needs to go from here.

In a letter from Mr. Robert Fusinatto to Mr. John F. Vena dated August 14, 2000, in which he stated: (exhibit "B" at pp. 264)

> The issue of compensability regarding the litigation centered on whether or not the claimant timely filed a proper report to the insured. Also there was an argument as to whether or not the alleged work accident caused the injuries or if the injuries are related to a prior condition.
> Our records further show that the claimant did have a preexisting cervical injury. Was there any investigation as to the extent of this impairment resulting from that prior injury?

In a letter from Mr. Cliff Conner, Director of Workers' Compensation, Gallagher Bassett Services, to Mr. Mitch Neuhaus, Regional Claims Manager, Safety National Insurance Company, dated November 7, 2000, in which he stated: (exhibit "B" at p. 266)

> There is no question as to compensability of this claim, as the prior administrator accepted the loss. The claimant was diagnosed with somatoform pain disorder as a result of the industrial episode.

In a letter from Mr. Robert A. Fusinatto to Mr. Cliff Connor, dated November 20, 2000, in which he stated: (exhibit "B" at pp. 268)

> Based on the reported paid, there are no benefits being paid. I thought the recent decision allowed compensability. What about ongoing treatment?

In a letter from Mr. Cliff Connor to Mr. Bob Fusinatto, dated May 8, 2001, in which he stated: (exhibit "B" at pp. 271)

> The claimant just recently underwent an IME, which was performed by Dr. Glyman. Once the results of the IME are known, we should be in a position to clarify the claimant's present medical status and whether it is related to the industrial episode of 9/25/88, or to the intervening accident.

C. NO LEGAL REASON TO CLOSE CLAIM ON DR. OLIVERI' S REPORTS:

It should be noted that Bally's, after the Supreme Court ruling, paid back TTD benefits, but not back medical benefits, then paid TTD benefits only through August 26, 1998 when Bally's closed Reeves' claim based upon the report from Dr. Oliveri'. Due to the fact, that Dr. Oliveri's report did not address Reeves' symptomatology, headaches, dizziness, tinnitus, and vertigo, the accepted industrial symptoms, the Hearings Officer's Decision and Order remanded the matter, for the insurer to provide Reeves with a one-time consult, upon completion, a further determination was to be generated, relative to the status of Reeves' claim. (exhibit "C" at pp. 326-327)

Bally's counsel, in the letter of February 3, 1999, under claim closure noted that Bally's previous determination to close Reeves' claim was denied by the Hearings Officer. (exhibit "B" at pp. 252)

Therefore, it stands to reason that the claim should have been reinstated with all worker's compensation benefits, to include, but not limited to, TTD benefits back to where the claim was closed illegally.

Bally's did not file an appeal of the Hearings Officer's decision, did not ask for a stay of that decision but decided to withhold back and ongoing TTD benefits, along with all other benefits, for some unknown reason.

Even Bally's own insurer thought Reeves was entitled to benefits, as noted in his letters above. (exhibit "B" at pp. 266, 268)

Bally's counsel stated in 1999, "please remember that that Ms. Reeves' claim has been accepted as compensable. This is after Bally's closed Reeves' claim, and stopped all payments. (exhibit "B" at pp. 245)

Even after the Hearings Officer's Decision and Order, Bally's relied upon Dr. Oliveri's report to deny any and all workers compensation benefits, even after his report was found not to have addressed the issue of sympotomatology, and therefore, claim closure was denied based upon his report. (exhibit "B" at pp. 259)

Based upon the correspondence above, Bally's was well aware that Reeves' claim was an accepted claim and that she was actively seeking treatment for her accepted industrially caused medical symptoms. One would believe that the Order of Remand would put the claim back in it's previous status, that it was in, before the illegal closure.

Apparently, since the Hearings Officer's Decision and Order did not spell out that was the case, Bally's believed that Reeves was only potentially entitled to any workers compensation benefits. Although the Hearings Officer's Decision and Order held, regarding the closure of this claim, that upon completion of a consult, that a further determination was to be generated relative to the status of this claim. Reeves believes that a further determination relative to the status of this claim does mean that Reeves was entitled to all worker's compensation benefits, at least up until the new determination was made.

Also, it should be noted, by the documents above that Bally's, their insurer, and their attorney all are still wanting to have this claim closed for the reason of causation, as to which

accident caused Reeves' industrial medical symptoms, dizziness, neck, and head pain. (exhibit "B" at pp. 241, 242, 257, 260, 264, 268, 270, 271, 275)

It is undisputed that these symptoms were found to be at least partly caused or aggravated, along with new injury to Reeves in Bally's v Reeves in 1997. Reeves' claim was accepted, by Bally's, upon that Decision, as to causation and as to what Reeves' industrially caused medical symptoms were and are. (exhibit "B" at pp. 237, 238)

Per Nevada Supreme Court, the reconsideration of causation is not allowed. See Day v Washoe.

As noted in NRS 616C.475 (1), (5), (a), (b), (e), an industrially injured employee is entitled to 66 2/3 percent wages until that employee is, either determined to be physically capable of gainful employment, able to perform in a light-duty position with restrictions, or incarcerated.

Whereas, none of the above have occurred, Bally's had and has no legal reason to have ever closed Reeves' claim.

Whereas, Dr. Oliveri's report was not sufficient to close Reeves' claim and closure was denied based upon his report, and that in Bally's own documents it was noted that their insurer believed that Reeves was entitled to compensation, as noted in their disappointment at having to pickup benefits back to where the claim was closed, which they did not.

Whereas, Bally's did not reinstate benefits, after the closure was denied, although by their documents they believed that they should, is a clear violation of NRS 616D.120.

D. DR. GLYMAN'S REPORTS:

On March 26, 2001, Dr. Steven A. Glyman conducted a IME, he issued a report, in which he

stated: (exhibit "A" at pp. 96-97)

> CRANIAL NERVES: Range of motion of the cervical spine is diminished due to pain in all planes. Left shoulder voluntary range of motion is decreased as well in all planes subjectively.
> MOTOR: motor examination discloses giveaway weakness in the left deltoid, left biceps, left triceps, and wrist extensor.
> IMPRESSION AND PLAN: 1) This is a very unusual and extreme case. I do not have all of her records to review but from what I can gather at the worst this woman has suffered a mild post-concussion syndrome. The term mild is used because this individual did not report loss of consciousness, was not hospitalized, and indeed was able to work in some capacity for nine months after this accident. Certainly this is not consistent with a severe closed-head injury.
> 2) This patient has many subjective symptoms, i. e. headache, dizziness, and even sensory loss. As far as her other subjective complaints, i. e. dizziness and headache, these too cannot be verified very well since there is no objective medical test that can tell an individual how much pain one is feeling or how much dizziness an individual is subjectively feeling.
> 3) it would be very unusual for an individual with a mild head injury to have complaints that are so strong and so extreme 13 years later.

On March 20, 2001, Dr. Glyman issued An Addendum, in which he stated: (exhibit "A" at pp. 99-102)

> Additional medical records were submitted regarding Susan Reeves. After reviewing all of these records and evaluating this individual, specifically with regards to the questions submitted to this examiner by Melody Francis in the correspondence dated 6/5/01, I have the following comments.
> 1) What is the patient's current diagnosis? Obviously, this has been an issue since she was originally injured in 9/25/88. I am of the opinion that she probably does suffer from a somatoform disorder. I would say that her complaints and findings have been characteristic and continued from the time of her original assessment. As far as the follow-up question to this, whether the current complaints are consistent with the mechanism of the injury, it would appear that her complaints are stable. As noted by other examiners, she is felt to have a strong psychological basis for her symptoms and this is in concurrence with the diagnosis of a somatoform disorder.
> 3) In response to the question, are there other factors involved

which could contribute to the current complaints? As best as I can say, I am in agreement with other examiners that she has a somatoform disorder or a psychological basis of her symptoms.
4) With respect to her status, it does not appear that she can return to work duty. She has not worked in some time and there is nothing that changed from the time of her original disability impairment exams that have been done in the past. I certainly see no improvement from how she was when her case was closed and her PPD rating was performed.
5) As far as the question about what treatment plan is available for this individual, I have to say I am at a loss to offer one. There certainly has not been any great advance in either treating or evaluating individuals such as this patient from the time of her original injury to now and there does not appear to be a medical treatment that will reverse or correct her situation.

E. ARGUMENT OF DR.GLYMAN'S REPORTS:

Reeves noted that in Dr. Glyman's initial report, he found that there was limited range of motion in her cervical spine due to pain. And there also was giveaway weakness in her left arm. (exhibit "A" at pp. 96)

Dr. Glyman went on to say that without all of the patient's medical records, he gathered that the patient had suffered at worst a mild post-concussion syndrome, as she did not lose consciousness and was not hospitalized. Also, that this was not consistent with a severe-closed head injury. (exhibit "A" at pp. 96)

One reading that report, and knowing that in the first accident Reeves' sustained a head injury, by striking her head upon the rear window, not a "whiplash" injury, meaning a more severe neck injury, where her head and neck were whipped back and forward very hard, could believe that the injury Dr. Glyman was describing was related more to the first accident, rather than the second accident. He described it as a mild head injury. It, also should be noted that the vehicle involved was an older vehicle that had no headrests.

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In a letter from Melody Francis, claims examiner, Gallager Bassett Services, dated December 20, 2001, she stated that "All we need to know is if the headaches are due to her work injury or her pre-existing medical conditions." (exhibit "B" at pp. 272 A) Once again Bally's is trying to get the physician to return to the issue of causation, which has already been found to be industrial and accepted by Bally's.

Reeves finds it hard to understand how a physician, thirteen (13) years after the accidents could determine objectively what was the cause of her symptoms, one (1) accident from the other. As noted in Bally's v Reeves, there was ample medical evidence to show that the second (industrial) accident caused aggravating and new injuries.

In Dr. Glyman's addendum, he opined, that Reeves probably suffers from a somatoform disorder. When he states that Reeves' current complaints are consistent with the mechanism of the injury, it appears that he is saying that her symptoms were caused by one or both of the accidents, thereby, agreeing with the Nevada Supreme Court.(exhibit "A" at pp. 100)

As to Reeves' complaints of dizziness, neck and head pain, he stated that there was no objective medical test to measure said symptoms. (exhibit "A" at pp. 97) He did not say that that the pain that Reeves felt was not real, only that there was no way to measure it. He also stated that with respect to Reeves work status, she does not appear to be able to return to work duty, as nothing has changed since her original impairment exams, and that he sees no improvement from when her case was closed and her PPD rating was preformed. (exhibit "A" at pp. 101)

Dr. Glyman's opinion that Reeves physical condition has not improved since her PPD rating was preformed in 1990, (exhibit "A" at pp. 37-42, 43-44) eleven (11) years prior to his IME,

suggests that the industrial injuries that prevented her from working were still preventing her from returning into work.

It also, should be noted that at the time of Reeves' PPD rating, which was never awarded, in 1990, that Reeves' claim was not open, Bally's was not paying for anything since Bally's did not accept Reeves' claim until after the Supreme Court Decision in 1997.

Whereas, Dr. Glyman opined, that Reeves does not appear to be able to return to work, he also, did not release her to return to work.

Therefore, closure based upon Dr. Glyman's report is a violation of NRS 616C.475.

It should also be noted that Dr. Glyman did not have the x-rays or MRI that would become available at a later date to Dr. Petroff, which will be discussed when we reach that physicians reports.

F. NO LEGAL REASON TO CLOSE CLAIM ON DR. GLYMAN'S REPORTS;

Bally's closed Reeves' claim, with a Notice of Intention to Close Claim, dated December 27, 2001. Based upon Dr. Glyman's IME, that Reeves had been discharged from care and she was not seeking further medical treatment. Also, that all benefits had been paid. (exhibit "B" at pp. 273)

Whereas, Dr. Glyman was not treating Reeves, just performing an IME, he could not discharge her from care. She was then, as always, since the accidents, been under the care of her own physicians. As noted, in CCMSI's correspondence with Dr. Petroff, CCMSI knew that Reeves was still treating with him for her industrial symptoms. (exhibit "B" at pp. 245, 249-250, 279, 281, exhibit "A" at pp. 70, 81, 82-83, 86) The fact that Bally's was not paying for anything, other than the IME, does not mean that she was not seeking further

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medical treatment for her industrially caused symptoms.

As, to all benefits being paid , Reeves would like to know what benefits Bally's was paying . Bally's was not paying for Reeves' physician visits, TTD benefits, medications or anything else.

Whereas, Reeves' claim was not closed until the Notice of Intention to Close Claim, dated December 27, 2001, (exhibit "B" at pp. 273) would mean that it was open and all worker's compensation benefits should have been being paid at least up until that time.

Whereas, Bally's was not paying for anything, other than the IME, on an open and accepted claim, as Reeves' claim must have been, since the Notice of Intention to Close Claim was dated December 27, 2001, (exhibit "B" at pp. 273) dating back to the last time any payment was made in 1998, is once a violation of NRS 616D.120.

Dr. Glyman stated that he was at a loss as to offer a treatment plan. He also stated that there does not appear to be a medical treatment that will reverse or correct her situation. (exhibit "A" at pp. 101-102) He did not state that Reeves' symptoms, dizziness, head and neck pain were not related to her accidents, only that he could offer no treatment plan.

Dr. Glyman also went on to state that her current complaints are consistent with the mechanism of the injury, to mean that her complaints (symptoms) are consistent with the injuries she sustained in her industrial accident, of 1988. (exhibit "A" at pp. 100)

The fact that a patient has a situation (symptoms) that there appears to be no way of reversing or correcting, other than to try, with medications, to alleviate the pain and suffering, should not mean that an insurer could close an accepted claim, without the industrially injured employee being at a level of gainful employment.

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Also, Dr. Glyman stated that, with respect to work status, it does not appear that she can return to work duty. (exhibit "A" at pp. 101)

Reeves timely filed for a Hearing Before the Hearings Officer and a hearing was held on April 9, 2002. (exhibit "C" at pp. 328-329) At that hearing the Hearings Officer Affirmed the claim closure, upon the opinion of Dr. Glyman, that there is no further treatment to offer the claimant.

The Hearings Officer based her Decision upon NCA 616C.112 [NCA 616.555].

Apparently, with the logic of the Hearings Officer, if an industrially injured employee's symptoms can not be resolved and a physician can not offer a treatment plan, other than through medication, to try to alleviate the injured employee's pain and suffering, the injured employee's claim can be closed, even if they are unable to return to gainful employment.

The fact that no physician, including Dr. Glyman, opined that Reeves is capable of returning to gainful employment, due to her industrial symptoms, is apparently of no import.

Not having a treatment plan, according to one (1) physician, does not appear to be one (1) of the three (3) reasons that, pursuant to NRS 616C.475, are reasons allowed to close an injured employee's accepted claim, and cease benefits. NRS 616C.475 states:

> (5), (a), that a physician or chiropractor determines the employee is physically capable of gainful employment for which the employee is suited, (b), that the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician, (c), the employee is incarcerated.

Reeves timely filed for an Appeal Before the Appeals Officer. A hearing was held on February 11, 2003, where it was determined, that there was a question as to whether Reeves somatoform pain disorder was industrially caused or the result of the natural progression of a

pre-existing disorder. An Interim Order was issued for the employer to arrange for an independent medical examination by an appropriate psychologist or psychiatrist. One Louis F. Mortillaro, Ph. D. performed a psychological evaluation of Reeves on April 14, 2003 and April 22, 2003. Dr. Mortillaro authored reports dated April 25, 2003 and May 5, 2003. Upon the reports from Dr. Mortillaro, the Appeals Officer's Decision and Order, issued on December 1, 2003, held that: (exhibit "C" at pp. 330-333)

> 1. Claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.
> 2. Claimant's claim should not have been closed but should remain open for further benefits.
> It is hereby Ordered the Decision of the Hearing Officer dated February 25, 2002 and the Employer's closure of claim is reversed and the claim reopened.

According, on December 11, 2003, CCMSI issued a letter keeping Reeves' claim open for further treatment, which stated: (exhibit "B" at pp. 277)

> Pursuant to the Appeals Officer's Decision Order, filed December 1, 2003, the above-referenced claim ,will remain open to allow for further treatment. Treatment shall include short-term individual pain management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

Whereas, the letter from CCMSI, stated that Reeves' claim was to remain open, which would mean that it should not have been closed, and therefore, she was entitled to all worker's compensation benefits, which was to include specific treatments, not to be just those treatments. CCMSI, Bally's, did not provide any benefits except the specific benefits.

In a letter from Mr. Daniel L. Schwartz, attorney, to Ms. Beverly Mandery, Cannon Cochran Management Services, dated January 2, 2004, which stated: (exhibit "B" at pp. 278)

> This letter will confirm our discussion of the above entitled matter. It was our conclusion that an appeal of the Appeals Officer's "Decision and Order" filed on December 1, 2003 would not be warranted. Therefore, the claim shall remain open. It was our conclusion that an appeal of this matter was not warranted.

Whereas, Bally's, CCMSI, did not appeal and seek a stay of the Appeals Officer's Decision, all benefits should have been reinstated, as Reeves' claim was an accepted and open claim. But, in a letter to Reeves from Ms. Beverly Mandery, claims reprehensive, CCMSI, dated January 14, 2004, the word include became the word only, she stated that "we" have been "instructed" to provide only the specific treatments on the Order. It makes one wonder as to who "instructed" them to provide only those benefits. (exhibit "B" at pp. 279)

> Pursuant to a Decision and Order of the Appeals Officer, dated December 1, 2003, we have been instructed to provide only short-term individual pain management counseling, biofeedback therapy, psycho-educational lectures, and appropriate therapy. Therefore, we are denying Dr. Petroff's request for continued treatment, MRI of C-spine and C-spine x-ray.

It would also appear that Bally's new that Reeves' somatoform disorder was related to her industrial injury, as noted in the letter from Mr. Cliff Conner to Mr. Mitch Neuhaus, dated November 7, 2000, three (3) years before the Appeals Officer's Decision, where under extent of injuries, he stated "The claimant was diagnosed with somatoform pain disorder as a result of the industrial episode." (exhibit "B" at pp. 266) Also, based upon the report from Dr. Glyman, since in a letter, a full seven (7) months before the Appeals Officer's Interim Order, and a full eight (8) months before Appeals Officer's Decision and Order, from Gallagher Bassett Services to Mr. Robert F. Fusinatto, dated July 17, 2002, in which it was stated under current status: (exhibit "B" at pp. 275)

> In the last update you were advised that an independent medical

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> exam had been arranged, to review the claimant's current condition and causal relationship to the injury of this claim file. The IME report concluded the claimant's diagnosis is somatoform disorder related to the injury of this claim file.

Also, of interest, is a letter, dated April 1, 2003, from Ms. Leah Lyons, claims representative, Gallagher Bassett Services, addressed to Reeves, but with the incorrect DOI and claim number, addressing a Ms. Morgan, for an appointment for an IME with Dr. Mortillaro. In that letter is the statement that failure to participate may result in suspension of benefits pursuant to NRS 616C.140. (exhibit "B" at pp. 276) Whereas, benefits were not being paid, have not been paid since 1998, Reeves is at a loss as to what benefits Ms. Lyons was threatening to suspend, as Bally's was not providing any benefits on an accepted and open claim.

Whereas, the closure of Reeves claim, as held by The Appeals Officer was that the "Claimant's claim should not have been closed but should remain open for further benefits" that the "decision of the Hearings Officer and the Employer's closure of claim is reversed and the claim reopened." (exhibit "C" at pp. 333) the fact that Bally's did not reinstate all benefits amounts to a violation of both NRS 616C.475 and NRS 616D.120.

The following physician reports are from the physicians that treated Reeves after the Appeals Officer's Order of December 1, 2003.

G. <u>DR. MORTILLARO'S REPORTS:</u>

In reports from Louis F. Mortillaro Ph. D., in which he stated on the dates listed below:

> 11-13-89, 11-17-89: Objective and subjective psychological data, in combination, suggest the following DSM-III-R diagnostic categories. Axis I: Clinical Syndromes: # 307.80 Somatoform Pain Disorder.
> It is opinioned that at this time, Mrs. Reeves is experiencing a

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Somatoform Pain Disorder that has developed out of her inability to successful cope with the physical conequences of both motor vehicle accidents in question. Prognosis for successful resolution of her Somatoform Pain Disorder arising out of the motor vehicle accident is excellent if the following treatment recommendations can be successfully implemented.
1. She should be referred for pain management counseling.
2. She would benefit from instruction in biofeedback strategies:
(exhibit "A" at pp. 115)

04/25/03: PSYCHOLOGICAL EVALUATION SUMMARY; A summary of her MMPI-2 test results indicates that she demonstrates a balance between self-protective's and self-disclosure.
The Clinical Scales suggest that she is experiencing general symptoms of pain and coping deficits. She is an individual who converts her stress into physical symptoms.
PAIN AND SUFFERING INDEX; Based upon her Pain and Suffering Index score, she is placed in Category 2. Individuals placed in Category 2 are pain minimizes who experience a low level of suffering and have low perceptions of pain and disability. Psychological symptoms and reports of pain and disability are minimal.
DISCUSSION; The objective and subjective psychological data results indicate that Susan Reeves is manifesting symptoms related to Psychological Factors Affecting her Physical Condition (DSM-IV-TR316). She has a long history of history of disability since 09/25/88 when she was injured in a second motor vehicle accident that has affected her overall life dynamics.
She is unable to return to work in any capacity and receives SSDI benefits. She reports periodic dizziness, dropping and falling down episodes and she walks carefully. She has constant headaches 100% of her waking hours, muscle spasms and tension type SCM muscle spasms. She manifests mild symptoms of anxiety. She has limited pain and stress management coping skills. (exhibit "A" at pp. 118-120)

May 5, 2003: To Leah L. Lyons, Claim Representative, Gallagher Bassett Services, With respect to the question posed by Appeals Officer Richins, the common feature of a somatoform pain disorder is the communication of physical symptoms that suggest the presence of a medical condition with symptoms of physical pain and emotional suffering that are not fully explained by the identification of a pain generator. These physical and psychological symptoms including deficient coping skills must cause clinically significant distress or impairment in social, occupational or other areas of functioning.
The physical and psychological symptoms described in a somatoform

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pain disorder are not intentional or under voluntary control. There is no evidence of malingering or a factitious disorder.
Under current DSM-IV-TR topology, the somatoform disorder is best described as a pain disorder associated with both psychological factors and a general medical condition (DMS-IV-TR 307.89).
This subtype of a somatoform pain disorder describes when both psychological factors and a medical condition are judged to have important roles in the onset, severity, exacerbation or maintenance of the pain. Ms. Susan Reeves' pain disorder is chronic because the duration of her pain has been six months or longer.
Typically, individuals manifesting a pain disorder are unable to work or attend school, have frequent use of the healthcare system and pain is a major focus of their life requiring substantial use of medications.
In the past, Ms. Reeves has been diagnosed with a somatoform pain disorder and this diagnosis is industrial, not nonindustrial, due to the fact that this psychological condition would not have been diagnosed without the presence of a presenting medical condition, which in her case, was industrially related. (exhibit "A" at pp. 121-122)

January 10,2004: to Beverly Mandery, Claims Administrator, CCMSI,
1. She is to receive individual counseling, biofeedback therapy and the psychoeducational lectures three times per week for seven weeks.
2. She is to receive the necessary physical therapy three times per week for seven weeks.
3. She is currently being prescribed appropriate medication for her headaches and dizziness by Doctors Petroff and Madamo. She is to continue seeing Doctors Petroff and Madamo for being prescribed the appropriate medications.
4. A Theracane, which is a hand-held self-massager, is to be provided for her so she can apply pain relieving deep compression directly to her hard, knotted " trigger points ". The cost for the Theracane.... Is approximately $50.00. It can be purchased from Theracane Company, P. O. Box 9220, Denver, Colorado 80209. The toll-free order number is 1-800-947-1470. (exhibit "A" at pp. 123-124)

03/18/04: DISCHARGE SUMMARY, It was this psychologist's opinion that she was experiencing and manifesting Psychological Factors Affecting her Physical Condition (DSM-IV-316).
Her view of her stressors as being overwhelming was reconceptualized to be more manageable.
During the treatment process, she spoke a number of times about her dizziness (she was observed to have difficulty with balance when in this office). She continues experiencing residual dizziness which causes problems for her maintaining her balance, with reports

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of falls. As a result, she walks very carefully.
During the treatment sessions, the flourescent light in this clinician's office was turned off and the sessions were conducted in natural sunlight coming in from the windows. This was beneficial for the patient because of her significant high level of sensitivity to light. She was observed wearing dark glasses during the entire treatment program.
Her learning of coping skills during psychological treatment, in combination with medication management by Dr. Petroff, has been a significant factor in improving Ms. Reeves' overall condition. Even through she continues to complain of headache pain and dizziness. Ms. Reeves has been a pleasant individual who discussed her concerns during treatment in an open fashion.
The patient stated that she was very frustrated regarding her overall medical condition. The medical evidence suggests that her medical condition appears to be the root of her pain generator. She also has a long history of disability since 1988 and, during this period of time, she has received a number of prescription medications designed to help improve her overall medical condition.
DISCHARGE ISSUES: At the time of discharge, Susan Reeves indicated that the combination of her prescription medications and her participation in the psychological treatment.....have made it possible for her to have a better quality of life. Unfortunately, she continues to experience headaches, sensitivity to light, dizziness and unresolved pain in her neck and lower back.
At this time, Susan Reeves is discharged from further psychological treatment. She continues to receive physical therapy. She also remains under the care of Dr. Petroff. The prognosis for Ms. Reeves returning to work is guarded due to her long-term disability and belief she will never return to work in any capacity.
At this time, there are no psychological contraindications preventing Susan Reeves from undergoing further medical treatment, or returning to work if given a release by her physician Dr. Petroff. However, as previously indicated in this report, the prognosis for her returning to gainful employment is guarded because of her residual medical disability and belief she will never return to work in any capacity.
(exhibit "A" at 125-128)

April 26, 2004: to Beverly Mandery, As indicated in the Discharge Summary Report, she has shown some improvement but she continues to experience frustration about overall medical condition, headaches, sensitivity to light, dizziness, unresolved neck and lower back pain with experiences of significant difficulty coping with her physical symptoms.

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She continues taking her prescription medication on an ongoing basis. Also, she has been off work since 1988. Experience shows that individuals on long-term disability have a poor prognosis for returning to work in a full time capacity.
She says that some days are better than others. Her symptoms should be considered as chronic.
There is no question that Ms. Reeves's medical condition has been preventing her from returning to gainful employment as documented by the medical doctors who have continued to provide medical treatment for her.
With reference to her continuing headaches, sensitivity to light, dizziness, and unresolved neck and back pain, it is opined that these psychophysiological symptoms may prevent her from returning to any type of competitive employment at the present time unless they are resolved.
In summary, as a result of her work related accident on 09/25/88, Susan Reeves has a long-term disability as documented by the medical doctors who have been treating her from the time of her accident to the present time. She continues to take a significant amount of prescription medications and continues experiencing symptoms including headaches, dizziness neck back pain and sensitivity to light It is our opinion that she is not capable of returning to work in any capacity at the present time unless her symptoms arising out of the industrial related accident on 09/25/88 have been resolved in order to avoid placing her and her co-workers in a potentially dangerous situation in the workplace. (exhibit "A" at pp. 129-131)

05/22/04 or 06/01/04: to Susan Sayegh, Claims Supervisor, CCMSI; Ms. Reeves has subjectively reported to Dr. Gamazo and myself the following barriers to her attainment of physical maximum medical improvement: headaches, dizziness, problems with balance, neck and low back pain, sensitivity to light, use of prescription medication and inability to drive a vehicle. True, these symptoms are subjective reports of what she is feeling. However, to document these symptoms, her treating physician must base his opinion on objective medical data. From a psychological point of view, there are no industrially related symptoms that would contraindicate her successful return to work other than her mental perception that she is unable to work in any capacity.
In summary, Susan Reeves has stated to Dr. Gamazo and this psychologist that she desires to return to work in some capacity, but she believes that, at this time, she is physically, not psychologically is permanently and totally disabled. At this point, the evaluating physician would be able to render an opinion relative to whether

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or not Ms. Reeves physical condition will be resolved in the future with specific treatment allowing her to return to work. Following this process is the only fair way for a physician to objectively determine whether or not Ms. Reeves will be able to return to work in some capacity or in point of fact be rated permanently and totally disabled. She has not worked in many years and the psychological and medical disability literature is filled with studies that suggest that people that have been out of work for as long as Ms. Reeves usually do not return to work.

Ms. Reeves states that she is basically in the same physical condition as she was when the Bally's representatives walked her off the job on May 15, 1989, after she had attempted to return to work for nine months. She was informed that she was a hazard on the property due to her dizziness, not due to poor work performance, absenteeism or any other work-related factor. (exhibit "A" at pp. 132-134)

In the treatment session summaries, on the dates listed below, are the measurements as to how much pain Reeves was experiencing on that day: (exhibit "A" at pp. 135 thru 153)

01/05/04: session #1, 3/10.
01/12/04: session #2, 3/10.
01/14/04: session #3, 3-4/10.
01/16/04, session #4 3/10.
01/21/04: session #5, 3-4/10.
01/23/04: session #6, 3-4/10.
01/26/04: session #7, 3/10.
02/02/04: session #9, 3-5/10.
02/05/04: session #10, 3-5/10.
02/09/04: session #11, 3-4/10.
02/12/04: session #12, 5/10.
02/19/04: session #13, 5/10.
02/23/04: session # 14, 4-5/10.
09/25/04: session #15, 4-5/10.
03/04/04: session #17, 4/10.
03/08/04: session #18, 8/10.
03/11/04: session #19, 6-7/10.
03/15/04: session #20, 6/10.
03/18/04: session #21, 5-6/10.

As Dr. Mortillaro diagnosed Reeves in 1989, with a somatoform pain disorder and he stated at that time, that it was his opinion, "Reeves is experiencing a Somatoform Pain Disorder that developed out of her inability to successful cope with the physical consequences of both motor vehicle accidents." His prognosis, in 1989, was that a successful resolution was excellent if his treatment recommendations could be successfully implemented. (exhibit "A" at pp. 115) Those recommendations were not successfully implemented.

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It should be noted that Allstate Insurance, not Bally's, was the insurer paying for Reeves' treatment at that time. It also, should be noted it was fourteen (14) years later that Bally's accepted Reeves somatoform pain disorder as industrial. (exhibit "B" at pp. 277, 279) That is fourteen (14) years of being in chronic pain with no treatment of her somatoform pain disorder.

H. ARGUMENT OF DR. MORTILLARO'S REPORTS:

After the Appeals Officer's Decision, on December 1, 2003, a full fourteen (14) years later, Bally's was required to submit Reeves for a psychological evaluation where it was determined by the psychological data that she manifested symptoms related to DSM-IV-TR-316, (exhibit "A" at pp. 119) and that her disorder was industrially caused. (exhibit "A" at pp.122)

Dr Mortillaro stated in his first report that Reeves was placed in Category 2 on a pain and suffering index, which are individuals that are pain minimizers and have a low perception of suffering, pain and disability. If she has a low perception of suffering, pain and disability, it certainly sounds like he is saying that her pain is real and that it is most likely worse than she states, as she minimizes, or makes less of, her pain. It was also found that she had limited pain and coping skills. Apparently, her limited pain and coping skills are to minimize her perception of suffering, pain and disability. (exhibit "A" at 119-120)

Dr. Mortillaro stated in his second report that the common feature of a somatoform disorder was communication of physical symptoms that are not fully explained by the identification of a pain generator. Also, that the physical and psychological symptoms are not intentional or under voluntary control. That this subtype of somatoform pain disorder is

when both psychological and a medical condition have important roles in the onset, exacerbation or maintenance of the pain. Also, Reeves' pain disorder is chronic because it has lasted longer than six (6) months. Dr Mortillaro went on to state that individuals, typically, manifesting a pain disorder are unable to work or attend school, have frequent use of the healthcare system and require substantial use of medications. (exhibit "A" at pp. 121-122)

Dr. Mortillaro stated in the discharge summary that Reeves was observed to have difficulty with balance when walking in his office, due to dizziness and walks very carefully. That the lights were turned off during treatment, but she still had to wear dark glasses. That she was a pleasant individual who discussed her concerns in an open fashion. Also, that with the combination of her prescription medications and the coping skills she learned, have made it possible for her to have " better days". That she still has times that she experiences significant difficulty coping with her physical symptoms. (exhibit "A" at pp. 126-127)

Dr. Mortillaro also stated, that she does not think that she is capable of returning to gainful employment, due to her continued symptoms of dizziness, headaches, sensitivity to light, tinnitus and unresolved pain in her neck and lower back. (exhibit "A" at pp. 128)

Reeves was discharged from psychological treatment, with a prognosis that a return to work was guarded due to her long-term disability and her belief that she will never return to work in any capacity. That there were no psychological contraindications preventing her from undergoing further medical treatment, or returning to work if given a release from her physician. (exhibit "A" at pp. 128) Dr. Mortillaro appears to be saying that due her long-term physical disability, not her chronic psychological, somatoform pain disorder, she is unable to return to gainful employment.

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Reeves is at a loss as to how an individual with a chronic somatoform pain disorder, one that she has been experiencing for over fourteen (14) years, now twenty-two (22), could have, with twenty-one (21) treatments, been brought under control, even though, on the session summary reports, it appears, by the pain numbers, that she was experiencing more pain, not less pain, as the treatments were progressing. The pain levels were low at the beginning and progressively became worse. (exhibit "A" at pp. 135 thru 153)

Also, on those reports the progress was described as slow, but on the last report , as average. (exhibit "A" at pp. 136 thru 153) Reeves, by the fifth session, could not handle the physical pain and stress of going to the treatment sessions and physical therapy three (3) times per week each, so she started going to physical therapy one (1) time per week and treatment sessions two (2) times per week. (exhibit "A" at pp. 139) She never, during the treatment sessions, became able to cope with her pain well enough, or have a level of pain, that would permit her to return to three (3) times per week.

And yet, Dr. Mortillaro stated at the end of her treatment sessions, she was better able to cope with her pain and there were no psychological contraindications preventing her from returning to work, if released by her physician or undergoing further medical treatment.

Apparently she no longer had a chronic somatoform pain disorder after fourteen (14) years, now twenty-two (22) of unresolved chronic physical pain. From those reports it certainly appears that she was not learning to cope with her pain well enough to resume a normal life or return to gainful employment.

Dr. Mortillaro stated early on that the common feature of a somatoform pain disorder is the communication of physical symptoms that suggest the presence of a medical condition

with symptoms of physical pain and emotional suffering that are not fully explained by the identification of a pain generator, or in other words not objectively identified. (exhibit "A" at pp. 121)

In a later report, Dr. Mortillaro stated that medical evidence suggests that her medical condition appears to be the root of her pain generator. (exhibit "A" at pp. 126) One would suppose he was saying that Reeves' symptoms, head, neck and lower back pain, along with dizziness and headaches were the root cause of her pain generator, or in other words, her pain was in response to her accepted industrial injuries.

Dr. Mortillaro went on to state that "there is no question that Ms. Reeves' medical condition has been preventing her from returning to gainful employment as documented by the medical doctors who have continued to provide medical treatment for her." (exhibit "A" at pp. 130)

Dr. Mortillaro's opinion was that she could not return to work unless her industrially caused symptoms had been resolved. He went on to state, that unless Reeves' psychophysiological symptoms, continuing dizziness, headaches, sensitivity to lightand unresolved pain in her neck and lower back, have been resolved, she may be prevented from returning to any type of competitive employment. It was his opinion that she is not capable of returning to work at the present time. (exhibit "A" at pp. 130-131)

After that report, Reeves was informed by Dr, Mortillaro and Dr. Gamazo, that a meeting was held at his office, sometime between April 26, 2004 and May 22, 2004, after her discharge summary, with representatives from CCMSI and Bally's counsel.

After said meeting, Dr. Mortillaro went on to state, in a report, that an evaluating physician should determine whether or not Reeves subjective symptoms have an objective

basis or not. He stated that physical casualty must be objectively documented by medical tests and examination, as opposed to undocumented medical complaints. (exhibit "A" at pp. 133)

If Reeves is not mistaken, having symptoms of pain without the identification of a fully, objectively, explained pain generator, is what he stated that her somatoform pain disorder was. (exhibit "A" at pp. 121) Now he seems to opine that if a pain generator can not be identified objectively, that she either has, or had, no pain from the accidents, for all these years, or that she still has a somatoform pain disorder that is preventing her from returning to gainful employment. It appears that he has completely reversed his own opinion as to what a somatoform pain disorder is, and / or what an individual with it can do.

Dr. Mortillaro also stated that the psychological and medical disability literature is filled with studies that suggest that people that have been out of work as long as Ms. Reeves usually do not return to work. (exhibit "A" at pp. 133-134)

Dr. Mortillaro also stated that she was not able to return to gainful employment until her unresolved symptoms had been resolved. As Reeves is still presenting the same symptoms, as she has presented at every doctor appointment she has had since her industrial accident, one would assume that she has a, as yet, not fully explained pain generator, or that she still has a somatoform pain disorder, that is preventing her from retuning to gainful employment.

Whereas, Dr. Mortillaro opined that individuals with somatoform pain disorder typically can not work or attend school. (exhibit "A" at pp. 122) Also, that Reeves suffered from a somatofprm pain disorder, that was industrially caused, that she was unable to return to gainful employment until her unresolved symptoms had been resolved, Bally's should have reinstated

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all worker's compensation benefits but did not.

Whereas, Dr. Mortillaro opined that Reeves symptoms were industrially caused and that she was not able to return to gainful employment due to those symptoms, (exhibit "A" at pp. 122, 128, 130-131, 133-134) for CCMSI, Bally's, to not reinstate all benefits, amounts to a violation of NRS 616C.475 and NRS 616D.120.

I. DR. PETROFF'S REPORTS;

Dr. Petroff has stated in reports on the dates listed below:

> September 3, 1998: The patient volitionally stopped range of motion of the neck to the left at 30 degrees with a complaint of discomfort, but range of motion was full to the right.
> The patient has various complaints which have been present over a long period of time. Due to the amount of time that has passed and after reviewing the records, I cannot clearly attribute any of her present complaints to her motor vehicle accidents, nor can I discount them as sources.
> I am aware that the patient has been diagnosed with a somatization disorder and it is a difficult problem to sort out neurological issues from somatization. (exhibit "A" at pp. 62-63)
>
> September 28, 1998: MRI of the cervical spine shows only some minor disc bulging at C3-C6.
> This patient has probably mild degenerative change of the cervical and lumbosacral spine and possibly some cervical radicular irritation. Her dizziness is chronic in nature and may be due to a chronic vestibulopathy.
> We will offer the patient a trial of Pamelor for her headaches, chronic pain, and depression from chronic pain. (exhibit "A" at pp. 65)
>
> November 30, 1998: I think there is a reasonable possibility that this patient has an inner ear disturbance producing a peripheral vestibulopathy.
> She has been in pain chronically for a number of years, according to her. This may be somatoform or the patient may have a chronic pain syndrome, a psychological reaction to being in pain for a number of years.
> The patient had been diagnosed with an inner ear problem back in

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1988 and 1989 and I am recommending electronystagmography to follow up on this. (exhibit "A" at pp. 66)

May 20, 1999, a letter to Ms. Ethel Pipp, Mgr., Worker's Compensation, Park Place Enterainment: With receipt to Susan Reeves, my current diagnosis is: 1) chronic headache with mixed components of migraine, muscle contraction and carcinogenic source; 2) peripheral vestibulopathy due to inner ear degenerative change. (exhibit "A" at pp. 70)
July 25, 2001: IMPRESSION: 1. Mixed headaches, with cervical strain and occipital neuralgia. 2. Chronic tinnitus. (exhibit "A" at pp. 74)

December 5, 2001: The patient's MRI shows moderate cervical stenosis at C4-5 and C5-6, with slight indentation of the cord to the right at the lower level. (exhibit "A" at pp. 76)

January 10, 2002: Range of motion of the neck is limited to 80 degrees rotation left and right with discomfort. (exhibit "A" at pp. 77)

February 18, 2004: Repeat MRI and x-ray imaging of the C-spine shows some progression of disc entophyte encroachment, impingement upon the cord at the C4-5 level. This may be unchanged at the C5-6 level two years ago. There is neural foramina stenosis at C6-7 bilaterally suggested. (exhibit "A" at pp. 79)

April 13, 2004 in a letter to Ms. Susan (Sayegh); 2. Q. Work status from beginning of treatment in 1988 to the present. A. During this period of time, the patient had significant and constant headache problems, which slowly improved with therapy. She also had significant overlaying psychological/psychiatric issues, and basically had a chronic pain syndrome. It is doubtful she could have worked on any regular basis through the period of 1998 to the present. Superimposed neck problems became prominent in the last couple of years. This would further make it difficult for her to return to the work force.
(exhibit "A" at pp. 81)

May 18, 2004: 1) Symptoms currently keeping the patient from returning to work, to my understanding, principally consist of neck pain and dizziness, the basis of her neck pain is documented objectively on MRI and x-ray, with C4-5 disc bulge and protrusion, C5-6 central disc protrusion, mild flattening of the cervical spinal cord, C6-7 mild-to-moderate neural foramina stenosis, C4-5 right neural foramina encroachment. This anatomy could generate pain in the neck. These changes noted on imaging are degenerative in

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nature. To some extent, the degeneration can be accelerated by posture/head movements, which one might encounter in certain occupations. It is impossible to document objectively what component of this degenerative change is work-related, however.
The patient has complained of dizziness. Dizziness may be from a variety of reasons. In this case, I cannot objectively identify the source of the patient's dizziness, but possibilities would include migraine phenomenon, problems with the inner ear, or balance disturbance arising from the patient's neck muscles/degenerative neck disease. There is no way of objectifying this or its source with respect to the patient's employment.
The patient has headache. Again, this cannot be objectively qualified with respect to its source, although I think that her neck problems are significantly contributory to her headaches. She is complaining of lumbosacral strain, and this cannot be objectified either.
3) From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical spine disease.
With respect to the patient's physical therapy/frequency of treatment, this is based on neurological assessment. The basis for physical therapy to this point has been empiric based on the patient's improvement. As long as the patient continues to improve, and there is no other obvious modality causing her to improve, I would continue to have her in physical therapy until she reaches a plateau of improvement. (exhibit :A: at pp. 82-83)

June 29, 2004: I am dictating this letter based on discussion at a meeting taking place in our offices on 6/29/04 between myself, Dr. Mortillaro and three worker's compensation representatives with CCMSI.
Susan Reeves was present here in our offices with her husband, but shortly before the meeting and after a discussion with my office manager and the CCMSI representatives, it was determined that the patient was not allowed to be at this meeting per her worker's compensation representatives, the patient then left the office.
Issues discussed address the nature, extent and cause of Ms. Reeves current disability.
Basically, I have been seeing Ms. Reeves since September 3, 1998. I was not aware that there was a worker's compensation claim or issue. After 1/6/04, work compensation began covering the nurological follow-ups and treatment.
With respect to the patient's history, she was in two motor vehicle accidents; one on July 20, 1987, the second in September of 1988.

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Apparently, she is claiming work-related disability from the second accident, which occurred on the property/premises of her workplace. With regard to causality, at this point, many years later, I would have to defer to opinions rendered around the time of the second accident. Relating to this, Dr. Bowler, a neurologist, on December 12, 1988 rendered the opinion with respect to the September motor vehicle accident: "This patient may have experienced some discomfort from the incident that she describes. There is no suggestion, however, that she had any type of intracranial structural lesion or a significant problem".
Also, an Independent Medical Evaluation was preformed 8/18/98 by Dr. David Oliveri, Specialist in Rehabilitation and Electrodiagnostic Medicine. His opinion was that the patient had a somatoform pain disorder, which is a psychiatric diagnosis, and is not something that is caused by an industrial accident. He further states, "In this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury".
In discussion with Dr. Mortillaro today, he feels that the patient is not limited from working based on her psychological state of health. Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties. The patient does have Social Security Disability currently.
Based on the review of systems and my observations of the patient's examination over the years, solely with respect to intention of injury from the second motor vehicle accident of September of 1988, it would be reasonable to recommend the patient undergo a trial of back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds. If working at a computer, this should be at a proper height, with an adjustable chair and lumbar roll provided, and with frequent breaks provided for standing, stretching and repositioning. If the patent cannot tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome. (exhibit "A" at pp. 86-87)

September 22, 2004: X-ray of the LS-spine shows an old L1 wedge injury. MRI shows diffuse mild degeneration in the lumbosacral spine, moderately advanced cervical degenerative change with stenosis, but no cord signal change. (exhibit "A" at pp. 88)

March 22, 2006: I am in receipt of your letter dated March 21, 2006 requesting a meeting with Dr. Petroff, Jeff Dictrich (Family & Sports Physical Therapy) and yourself. Dr. Petroff is more than happy to

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meet with you, but will require the presence of a court reporter for the meeting. (exhibit "A" at pp. 91)

J. ARGUMENT OF DR. PETROFF'S REPORTS:

After Bally's representatives, from CCMSI had a meeting with Dr. Petroff, on June 29, 2004, Bally's once again closed Reeves' claim, with a Notice of Intention to Close Claim, pursuant to NRS 616C.235, dated September 8, 2006, based upon a report from Dr. Petroff. (exhibit "B" at pp. 311)

It should be noted that Reeves was not allowed to be at said meeting, according to Bally's representatives. Reeves who was at Dr. Petroff's office, upon being notified by Dr. Petroff's office that she had an appointment, at that date and time. Reeves was asked to leave or CCMSI would leave and reschedule. Reeves and her husband then left. Bally's counsel was also present at Dr. Petroff's office for that meeting, but after a phone conversation with Reeves' counsel, he also left. (exhibit "A" at pp. 86)

Reeves through counsel and by herself, tried to get the written record of said meeting, pursuant to NRS 616D.330, only to be informed that she has all of the records pertaining to her case-file. Reeves filed a complaint with the Division of Industrial Relations (DIR) only to be informed, in a letter signed by Ms. Susan Sayegh, that no violation was found, as CCMSI had timely responded to her request for her industrial claim file. That there were no additional correspondence relating to oral communication. (exhibit "B" at pp. 313 B-313 D)

Whereas, the result of that meeting was to have Reeves' claim closed, by Bally's, Reeves may be mistaken, but believes that a meeting is a form of oral communication pursuant to NRS 616D.330. That a written record must be kept and that record must be made available to the injured employee, upon request, in a timely manner.

The log of oral communication that CCMSI supplied was incorrect as to who was at that meeting and only stated that there was a meeting. The log stated that an adjuster, supervisor, Dr. Mortillaro, Dr. Petroff, Reeves, her husband and her counsel were present. (exhibit "B" at pp. 281) Although Dr. Petroff's letter stated that at the meeting were three (3) worker's compensation representatives along with Dr, Mortillaro and himself. Reeves and her husband were asked to leave before said meeting. (exhibit "A" at pp. 86) Her counsel was never there to begin with, it was Bally's counsel who was there.

Whereas, the log from CCMSI stated that there were two (2) representatives at that meeting and Dr. Petroff stated that there were three (3), one might wonder who the third person was. Did Bally's counsel return? (exhibit "B" at pp. 281, exhibit "A" at pp. 86.)

Also, the log of oral communication in question, appears to have had that information added at a later date, since the date at the top 9/8/06, is later than the date 6/29/04, further down the page. (exhibit "B" at pp. 281)

It also appears that the same Ms. Susan Sayegh who is now the Southern District Manager, Workers' Compensation Section, of the DIR, is the same Ms. Susan Sayegh that was the Claims Supervisor at CCMSI, on Reeves' claim, at the time of that meeting, and the same Ms. Susan Sayegh that found there was no violation.

Reeves requested a meeting with Dr. Pertoff to discuss what was said at his meeting with Bally's representatives. A meeting was held at Dr. Petroff's office on April 27, 2006, to address the report that Dr. Petroff issued after the meeting with CCMSI. In attendance were Dr. Petroff, Douglas Rowan, Esq. Jeff Dietrich P.T. Susan Reeves, Jeff Reeves, and Jennifer Marie Roland, CCR 293. (exhibit "A" at pp. 91)

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Reeves finds it peculiar that she, the patient, was required to have a court reporter present at a meeting, with her own physician, but no written record was required at the meeting with Bally's. (exhibit "A" at pp. 91) One might believe that Dr, Petroff felt he needed a word for word written record, of what was said, to be more comfortable, in light of what happened at the meeting with the representatives from CCMSI.

Whereas, Dr. Petroff had referenced only two (2) doctors reports, Dr. Bowler, who Reeves believes to be Dr. Boulware, and Dr. Oliveri, who had seen Reeves less than two (2) weeks prior to being seen by Dr. Petroff. (exhibit "A" at pp. 86-87) That out of all her medical records, Reeves' counsel tried to ascertain as to why only those two (2), reports had been used to make a finding as to what had caused Reeves symptoms as related to which accident, and as to who had provided him with those records. (exhibit "B" at pp. 287-309)

K. QUOTES FROM TRANSCRIPT:

In the transcripts from the meeting held on April 26, 2006, the following: (exhibit "B" at pp. 287-309)

> Mr. Rowan; it's my understanding that you had a meeting with Bally's representatives. As a result of that they had you draft that letter. June 29, 2004. You indicate in there that you didn't feel that you were in a position to address causation.... Then you reference both Dr. Boulware and Dr. Oliveri as doctors who would have more information about her condition at the time and you would defer. I'm just curious where you obtained that information or the records from Dr. Boulware and Dr. Oliveri. Is that something that Bally's provided you or were you given additional information to look at?
> Dr. Petroff: I think, I believe that was ....I was provided with records with respect to that prior to that meeting.
> Mr. Rowan: By Bally's?
> Dr. Petroff: I don't know who they came from. As they arranged the meeting, it could have been from them. I didn't document where they came from.

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Mr. Rowan: But you got some records to review in anticipation of that meeting?
Dr. Petroff: Yes.
Mr. Rowan: Well, basically you said in that letter that you would defer to the doctors who had seen her before, and then you specifically referenced Drs. Boulware and Oliveri. If you had an opportunity to review all the records before you made those statements or the statement was made because of the information that Bally's had provided you?
Dr. Petroff: Well, it was based on the information I had at the time. I don't recall, to be honest with you, exactly who handed me the material when.
Mr. Rowan: You didn't go through your entire chart for that meeting, you looked at the records that you were given?
Dr. Petroff: I reviewed my chart. As you can see, it's a very large stack of records. I'm not familiar with every element of this stack of charts.
Mr. Rowan: What were you asked to do by Bally's representatives?
Dr.Petroff: The issue was, would it be reasonable to afford you, Susan Reeves, an opportunity of a trial of back to work in a controlled and adapted situation.
Mr. Rowan: It appeared from your letter that Bally's had tried to distinguish between a non-industrial reason and an industrial reason why she couldn't work..... that you would defer to the doctors who had seen her before. But then you go on to say that you believe that a trial back to work would be reasonable with respect to the industrial condition.
.... if you're deferring to other doctors as to what was industrially caused, but then you indicate she's fine from an industrial standpoint.
Dr. Petroff: Well, it was because it was the industrial agents that were arranging the back to work trial.
Mr. Rowan: Did you feel you were in a position to distinguish with respect to what was industrial and what was not industrial?
Dr. Petroff: I can only make my best opinion on the material I had at the time.
Mr. Rowan: And the material you're talking about is the material that Bally's representatives gave you?
Dr. Petroff: Plus my own charts.
Mr. Rowan: During the period that you saw Susan were they all the same nature of complaints?
Dr. Petroff: I would say generally they were. The same issues, the same complaints tended to persist or keeping up through the time of treatment.
Mr. Rowan: The nature of the complaints that were fairly consistent

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over the period of time would have included headaches, dizziness, loss of balance?
Dr. Petroff: Yes.
Mr. Rowan: An issue was also raised by your letter of June 2004 which indicated that you were not aware that Susan was involved in an industrial insurance situation or workers compensation situation. We have correspondence in which you communicated with Bally's insurance representatives even in '99. If you just hadn't reviewed the whole file and didn't see those letters or --.I can show you, for example, here's a letter dated May 14th of 1999 from Ethel Pipp at Park Place Entertainment to you, and it talks about Susan.
Dr. Petroff: When I say I wasn't aware that the prime mover of this whole case was a claim of injury from a car accident that happened over a decade before, that is true.
Mr. Rowan: That wasn't something you were really concerned about, you were there to treat what she was there for?
Dr. Petroff: Exactly so.
Mr. Rowan: So your primary purpose of seeing Susan obviously was not to determine a causal connection between the '88 accident and the condition she was presenting to you, correct?
Dr. Petroff: Not initially so.
Mr. Rowan: The first time you were really asked to make that causal statement, would that have been when you met with Bally's representatives?
Dr. Petroff: I would say around that time would be the first time I was made aware of the importance of an event in another time as causing, as being a claim for the cause of all the complaints I had been seeing you for.
Mr. Rowan: Regardless of what had caused her symptoms originally, you still didn't feel she was capable of working, did you?
Dr. Petroff: Well, I did not clear her for work. Rather it was a relief of symptom strategy.
Mr. Dietrich: We were treating her for pain, dizziness, balance, headaches. I never thought that she was going to be returning to work just based on.... the fact that she able to make one trip a day on a CAT bus, and if she would do more than that she would be sick. Like when she was going to Dr. Mortillaro.... she was wiped out. She wasn't able to go to his place and come to therapy in the same day. I didn't feel she was going back to work. That was my personal opinion. Just based on her symptoms when she attempted to be out more frequently.
Dr. Petroff: Am I mistaken, at some point was there not a disability based on Medicare? Again, if someone comes in with a disability on Medicare that's going to take away my attention from any effort

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to restore the patient. If they're disabled, if they have a disability rating it's not my job to overcome a disability rating. And that may also have clouded the issue with respect to the work comp claim.
Mr. Reeves: But on her first visit down she brought her supreme court decisions, her district court decisions and gave them to you along with all of her medical records. So that sort of would show you that there was ongoing litigation with these people over this.
Mr. Rowan: She wasn't coming to you to try to build up her claim. I understand you were brought into the situation later on with respect to a request for your opinions from a causation standpoint.
Mr. Rowan: It's after you met with Bally's representatives and they elicited that June 29th, 2004 letter that addressed causation. I guess that's when we had questions and concerns as to what that was based upon, what information they brought to you. If you recall what information they brought you. Just because from your reference to those two particular doctors, there are a number of other doctors Susan has seen much closer in time to the accident as well as Dr, Boulware who had differing opinions.
Mr. Rowan: My understanding, Mr. Dietrich, is that you have spoken with Susan.... about her condition and it's connection with the 1988 auto accident and the length of time that she has been experiencing her condition. I don't know if Susan can bring out the issue a little better maybe than I am.
Mrs. Reeves: Well, about the whiplash syndrome. I went to Jeff..... and in his report that he made recently, he said this is a typical whiplash syndrome. he's had a lot of people who's had this chronic long-term muscle spasms up and down, the neck problems, the dizziness that I have all the time, but I have to spot constantly like a dancer or I'll fall over. But you had explained to me that you had dealt with people like me.
Mr. Dietrich: Yes, I've worked with people that have had whiplash before, and it can happen people can have problems for years down the road with pain, spasms, sometimes dizziness and imbalance. But the dizziness and the hearing loss or tinnitus symptoms are also part, they could come from an inner ear problem, they could also come from a cervical injury. So to isolate down exactly what mechanism is causing all the problems, that's hard to do. Plus the headaches.
Mrs. Reeves: I needed help. I came to you. I'm still taking three Somas at night to even go to sleep an hour before. Sometimes that's not enough and I have to take two or three Darvocets to go to sleep because of the headaches. I'm laying in my bed hanging over the side backwards because of my neck and back spasms still, and I'm still trying to get help. Jeff Dietrich has helped quite a lot, but it's still like this, it's been like this for 18 years. Bally's said I can not

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come back..... unless I'm 100 percent with no restrictions.
Mr. Reeves: Well, actually the biggest thing is were you to defer to the doctors-- they haven't actually closed the claim. I guess they haven't paid anything. I guess they're paying you , Jeff, I don't know, but they're not paying anything else. We don't mind if you want to defer, but we think you should defer to the doctors who saw her at the time instead of the doctor who saw her a couple of weeks before you and a doctor that looked at the records basically.
Dr. Petroff: Well, you can't put a bunch of paper on my table and expect me to review them and change my opinion. I gave the opinion based on the information I have. If there is additional information it may change my mind or to a different point of view or it may persuade me that I can't have a point of view or it may keep my present opinion.
Mr. Reeves: Then could we leave those with you and you can review them at your leisure and see if it goes anywhere?
Dr. Petroff: Yes. But how do I know there's not more records somewhere else that either side has?
Mr. Reeves: I don't know.
Dr. Petroff: It has to be done in some sort of orderly way, some sort of equitable way.
Mr. Reeves: We could bring you down every medical record we have of hers, which would be basically all of them.
Dr. Petroff: You know, there are certain things that stick out in the story that have to be --you can't help but think about. Your report that all your symptoms of the previous car accident completely disappeared three days before the new accident would make almost anybody skeptical.
Mrs. Reeves: It doesn't say that.
Dr. Petroff: Okay. If it doesn't say that I would have to know what was said.
Dr. Petorff: I have no trouble with people giving me information and having me look at it and consider it. But it's got to make some sense the way it's delivered to me.
Dr. Petroff: That's been the problem all along. Through my chart, through this Bally's meeting and even now. It's almost chaotic. Everybody has a position to advocate. I'm really not interested in advocating anyone's position at all. That's not what I want to do for a living.
Mr. Rowan: I'm certainly not asking you to do that.
Dr. Petroff: But if people have well-documented information that they want me to consider, and in this case I would like to have good information from both sides, then perhaps I can make a judgment that people will find harder to take issue with.
Mr. Rowan: That's fine. I don't think we were really ever expecting

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you to give an opinion as to causation. The only reason you've sort of been dragged into the causation issue is because of Bally's coming in and asking you to provide that. I'm happy to provide you with the records to the extent that we have them that relate to the first accident.
Mrs. Reeves: That's Dr. Becker and Dr. Mattimoe was treating me before, right after the first accident, and after the second accident. It's the same two doctors. So it's not like I went from doctor to doctor to doctor to doctor, but it's the same doctor.

L ARGUMENT OF DR PETROFF'S FINAL REPORT:

Whereas, Dr. Petroff, with respect to causality, chose to defer to the opinions rendered around the time of the second accident, specifically Drs. Boulware and Oliveri. (exhibit "A" at pp. 86) Although not the physicians who had seen Reeves before and after both accidents, Dr. Mattimoe, her family physician for many years, and Dr Becker, who treated her after the first and second accidents. (exhibit "A" at pp. 1 thru 16)

Dr. Boulware's report was discounted by the Nevada Supreme Court (exhibit "C" at pp. 323) and Dr. Oliveri's report, which did not address Reeves' Symptomaology was put aside by a Hearings Officer, to have a new report done by an agreed upon physician. (exhibit "C" at pp. 327) Also, Dr Oliveri's report was less than two (2) weeks before Dr. Petroff saw Reeves in 1998, he was not a physician around the time of either accident. (exhibit "A" at pp. 48, 62

In Dr. Petroff's September 3, 1998, report he stated he, at this late date, ten (10) years after the accidents, he could not rule as to whether Reeves' current symptoms are related to ether accident nor could he rule them out as causes. (exhibit "A" at pp. 63)

Dr. Petroff has stated in all of his previous reports, that Reeves was not capable of returning to any gainful employment. (exhibit "A" at pp. 81, 83, 87) In his report on May 18, 2004, with respect to her pre-accident job description, he suspected that she would not be able to return to gainful employment, (exhibit "A" at pp. 83) and yet, after a meeting with Bally's

representatives, and deferring to those two (2) doctors, he then felt that a trial of back to work with various restrictions was reasonable, solely with respect to the injury of the second accident. He then put in his disclaimer that stated "If the patient can not tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome." (exhibit "A" at pp. 87)

Dr. Petroff has stated in all of his reports previous to the meeting with Bally's representatives, that it was his opinion that she was not able to return to gainful employment. (exhibit "A" at pp. 81, 83, 87)

In the transcript, when asked if Bally's had tried to get Dr. Petroff to distinguish between a non-industrial or industrial reason why Reeves could not work, he chose to defer to the doctors who had seen her before, (exhibit "B" at pp. 289) even though earlier, he stated that he could do no such thing. (exhibit 'A" at pp. 63) When asked what he was basing that statement on, as he was deferring to other doctors as to what was industrially caused but then indicated that she's fine from an industrial standpoint. He stated "Well, it was because it was the industrial agents that were arranging the back to work trial." (exhibit "B at pp. 290) When asked if during the period that he saw Reeves, were the nature of complaints all the same, Dr. Petroff stated "I would say generally they were." (exhibit "B" at pp. 291-291) When asked if the symptoms were fairly consistent over the period of time would have included headaches, dizziness, loss of balance, he stated "Yes." (exhibit "B" at pp. 291) When asked if during the time he had seen her if he felt she could work, regardless, of what had caused her symptoms, he stated "Well, I did not clear her for work." (exhibit "B" at pp.293)

It would appear that Dr, Petroff does not believe that Reeves can return to gainful

employment, unless her symptoms can be separated, one (1) accident from the other and that solely with respect to injuries sustained in the second (industrial) accident, it would be reasonable to try a trial of back to work with various restrictions, and if that trial does not workout, to revisit her disability claim with Social Security, based on the very same symptoms she has had since 1988. (exhibit "A" at pp. 87)

The Nevada Supreme Court, has already, in Bally's v Reeves, found that Reeves' symptoms had been aggravated and new injury had been caused by the second (the industrial) accident. (exhibit "C" at pp. 323-325) Those symptoms dizziness, head and neck and lower back pain are the symptoms that Bally's accepted as industrially caused.

Bally's has been trying to separate Reeves' symptoms every since they have accepted her claim. (exhibit "B" at pp. 241, 242, 257,260,264, 268, 270, 271, 275, exhibit "A" at pp. 58, 86)

As, noted above in Day v Washoe, the Nevada Supreme Court has held that the issue of causation, once accepted as industrial, can not be revisited.

As it appears that in Dr. Petroff's report, after the meeting with Bally's representatives, that it would be reasonable from an industrial standpoint, to have Reeves undergo a trial of back to work was / is mostly reliant upon the reports from Dr. Boulware and Dr. Oliveri, as to what is industrial and what is non-industrial.

Reeves believes that it should be noted that the report from Dr. Boulware was said, by the Nevada Supreme Court, to have had nothing of import to say as regarding as to whether or not Reeves suffered a compensable injury in the second accident, it only referred to her dizziness and headache, and that these symptoms had persisted since her first accident. Dr.

Boulware did not state that Reeves suffered no new or aggravating injuries in the second accident or that the entire etiology of Reeves' complaints was the first accident. (exhibit "C" at pp. 323)

Whereas, the Nevada Supreme Court has said that Dr. Boulware's report said nothing of import, that Bally's would not be allowed to use that report as evidence, to try to support their position that the symptoms she had and has, are somehow related only to the first accident.

Also, Dr. Petroff referred to a statement in that report, about the symptoms, from the first accident completely disappearing three (3) days before the second accident. He then went on to state that would make almost anybody skeptical. (exhibit "B" at pp. 306) Skeptical, in this case, would mean as to which accident caused Reeves symptoms. When Reeves stated that was not what it says, Dr. Petroff replied "Ok. If it doesn't say that I would have to know what was said." (exhibit "B" at pp. 306) It appears by that statement, that Dr. Petroff did not really notice the statement that he referred to in his report, but that someone else referenced it.

One must remember that whether the symptoms arose out of the first or second accident, or a combination of both, as found in Bally's v Reeves, is an issue of causation that is undisputed and found to be compensational, and accepted by Bally's. (exhibit "B" at pp. 237, 238)

As to what that report actuality states is "apparently some three days after her complaints had resolved.... she was involved in a second automobile accident". (exhibit "A" at pp. 17)

In a report from Otologic Medical Group, dated March 30, 1990, Reeves stated that about three (3) days after the 1987, the first, accident is when the dizziness came on, and that by July of 1988, she was feeling quite good. But on September 27, [25] 1988, the second accident caused her headaches and dizziness to become even worse than before. (exhibit "A" at

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pp. 33) So, when Bally's presented only Dr. Boulware's report and, perhaps, pointing out that phrase, does not give a true picture of the three (3) day statement.

Also, of note is a report from Dr. Petroff to Dr. Mattimoe, dated September 22, 2004, where he notes that x-ray of the LS-spine shows an old L1 wedge injury. (exhibit "A" at pp. 88) It is noted on a report from Dr. Mare Pomerantz, Radiology Associates of Nevada. (exhibit "A" at pp. 88 A)

M. NO LEGAL REASON TO CLOSE CLAIM ON DR. PETROFF'S REPORTS;

Although, Bally's accepted Reeves' claim in 1997, (exhibit "B" at pp. 237, 238) and on the basis of the Nevada Supreme Court Decision, in Bally's v Reeves , as to what symptoms were related to the first or second accident. Bally's has been trying to separate those symptoms, headaches, dizziness and neck pain, every since. (exhibit "B" at pp. 241, 242, 257, 260, 264, 268, 270, 275, exhibit "A" at pp. 58, 86)

As documented in Reeves whole medical record, these symptoms have persisted, since the 1988 accident until the present day. Preventing her from returning to gainful employment. (exhibit "A" at 1 thru 217)

As to the use of Dr. Oliveri's report as a basis for the intention for a trail of back to work, from an industrial standpoint, this to would also be a causation issue. As Dr. Oliveri never stated that Reeves had no symptoms, only that they were related to the first accident and / or what was causing them undoubtedly had resolved, as to the second (industrial)accident or was a psychological issue. He also stated that Reeves was not able to return to work. (exhibit "A" at pp. 58-60)

It should also be noted that Dr. Oliveri's report was found to have not addressed the issue of

Reeves' symptomatoloagy, by Hearings Officer Nora Garcia on January 25, 1999, and so, closure of claim was denied. (exhibit "C" at pp. 326-227)

Bally's should not be allowed to use that report as a basis to form an opinion as to what caused Reeves' symptoms, as it was found to not have addressed those issues.

Also, in the transcript from the meeting with Reeves, Dr. Petroff stated that he was provided with records to review prior to the meeting with Bally's representatives and that those records might have come from Bally's representatives, as they were the ones that had arranged the meeting. He also stated that he reviewed his charts, but that it was a very large stack of records, and he was not familiar with every element of those charts. (exhibit "B" at pp. 287, 288, 289.)

Whereas, only these two (2) doctors were referenced by Dr. Pertoff, and by his statements in the transcript at his meeting with Reeves, that these two (2) doctors reports were most likely to have been provided by Bally's, as Reeves' stack of records was very large and he was not familiar with every element, and that he felt that there was a problem all along with people advocating positions, that it was almost chaotic. (exhibit "B" at pp. 306)

One could get the impression that Dr. Petroff was persuaded, or perhaps, pressured, to try to separate the two (2) accidents by Bally's representatives at the meeting they held with him, (exhibit "A" at pp.86-87) as he required a court reporter to be at the meeting with Reeves, so he would feel more comfortable. (exhibit "A" at pp. 91)

Dr. Petroff had stated in his September 3, 1998, report, that he could not clearly attribute any of Reeves' present complaints to either of her accidents, nor could he discount them as sources. (exhibit "A" at pp. 63)

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In a letter to Ms. Sayegh, dated April 13, 2004, Dr. Petroff stated that it was doubtful whether Reeves could have worked on any regular basis from 1998 to the present. (exhibit "A" at pp. 81)

In a letter to Ms Sayegh, dated May 18, 2004, Dr. Petroff objectively identified the basis of Reeves' neck pain as various disc bulges and protrusions. He noted that these changes are degenerative in nature, but that it is impossible to objectively document what component of that degenerative change is work related. Also, he stated with respect to Reeves' dizziness, that there was no way of objectifying this as to it's source or with respect to employment, but possibilities included migraine phenomenon, problems with the inner ear, balance disturbance arising from her neck injury. As to her headaches, he stated that with respect to it's source he thinks that her neck problems are significantly contributory. (exhibit "A" at pp. 83) It should be noted that Reeves' neck injury was found to be industrially compensational in the acceptance of her claim, by Bally's in 1997. (exhibit "B" at pp. 237, 238)

As for her return to gainful employment, from a medical standpoint, with respect to her pre-accident job description, he suspected that she would not be able to return to work based upon her objectively documented degenerative cervical spine disease. (exhibit "A" at pp. 83)

It should be noted that this last report was just before the meeting with Bally's representatives.

And yet, after the meeting with Bally's representatives, Dr. Petroff felt that a trial of back to work was reasonable, solely with respect to intention of injury from the second accident. (exhibit "A" at pp. 87)

Somehow at that meeting Dr. Petroff, with the help of Bally's representatives, found a way

to separate Reeves' symptoms, ones caused by the first accident from the ones caused by the second accident, even through he had stated earlier that he could not do such a thing. (exhibit "A" at pp. 63) He also stated in one (1) report that Reeves could not perform in the pre-accident job description that Bally's had provided. (exhibit "A" at pp. 83)

It also, should be noted that in Dr. Petroff's report of June 29, 2004, he stated "Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties." (exhibit "A" at pp. 87) Whereas, it is now six (6) years later, with no offer of a return to work, based on sedentary duties, one can only wonder how long it will take for CCMSI to find a position that Reeves is able to perform.

Bally's knows full well, as documented by Reeves' medical records, that Bally's has had all along, that she would not be able to perform in any capacity, that would be considered gainful employment. (exhibit "A" at pp. 1 thru 217)

The fact of the matter is that Bally's does not want Reeves to return to work without a full duty release. (exhibit "A" at pp. 154, exhibit "B" at pp. 223, 236) As such, they have / had no intension of arranging a trial of back to work with restrictions.

It should also be noted that it was Bally's that placed Reeves on a medical LOA against her wishes due to her dizziness, an accepted industrial symptom, (exhibit "B" at pp. 223, 234, 242, 270) because they felt that she was a hazard at the workplace. (exhibit "A" at pp. 154, exhibit "B" at pp. 223, 236)

Whereas, there has <u>never</u> been a physician who has felt Reeves could return to gainful employment, for a variety of reasons. Anything from that her symptoms are solely related to the first accident, to they must have resolved, as related to the second accident, or that she

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has a somatoform pain disorder, which also must have resolved somehow, or they just do not know what to recommend to resolve the symptoms, to finally, by objective medical evidence, as noted by MRI, that her symptoms are most likely to be from her degenerative neck problems, (exhibit "A" at pp. 32) which has been one (1) of her accepted symptoms since her industrial accident In 1988.

Based upon the last report, by Dr. Petroff, induced, by Bally's representatives, at their meeting with him, they found no evidence of a certification of disability, and pursuant to NRS 616C.475 (7), denied Reeves past and ongoing TTD benefits. (exhibit "B" at pp. 284)

Whereas, Bally's first closure after accepting Reeves claim in 1998 was denied by a Hearings Officer, (exhibit C" at pp. 226-227) and after Bally's second closure, it was found that her somatoform pain disorder was also caused by her industrial accident, and that closure was reversed and reopened by a Appeals Officer. (exhibit "C" at pp. 233) Bally's now wants to close this claim on the grounds that there is no certification of disability, when all of the medical records show that Reeves was / is not capable of gainful employment due to her industrial injuries. (exhibit "A" 1 thru 217)

Yet, Bally's, even after their closure was denied the first time, then reopened, the second time, they have never reinstated worker's compensation benefits or paid TTD benefits since they illegally closed Reeves claim in 1998. (exhibit "B" at pp. 259)

Whereas, Bally's has no legal reason to close this claim, as no physician has ever determined that Reeves is capable of gainful employment, as required pursuant to NRS 616C.475.

Whereas, the document that Bally's utilized to close this claim, was induced from Dr.

Petroff , at Bally's meeting with him, and goes against all of his previous opinions, it also, should not be allowed to be utilized in the issue of causation.

That report was only with reference to the injury of the second (the industrial) accident. (exhibit "A" at pp. 87) It also, was based upon only two (2) physicians reports, (exhibit "A" at pp. 86-87) which had already been found to have said nothing of import or did not address the issues of symptomatology of Reeves' complaints. (exhibit "C" at pp. 223, 227)

As such it was a report that tried to return to the issue of causation, which, the Nevada Supreme Court has held can not be revisited, once accepted as industrial.

Whereas, CCMSI's latest closure is based upon the report that was induced from Dr.Petroff, and tries to return to the issue of causation or that there no evidence of disability, as the symptoms Reeves presents with were somehow separated after their meeting with him, that closure does not abide by NRS 616C.475 as a reason allowed for closure. As such that closure will be reversed and her claim reopened.

N. NEW MEDICAL EVIDENCE:

Reeves has been treated by and had a new IME preformed by Dr. Curtis W. Poindexter on 04/10/2010 (exhibit "A" at pp. 204-215) and an addendum dated 06/15/2010, (exhibit "A" at pp. 216-217) in which he stated:

> 1. By history it appears that she has had a chronic multiple problems of dizziness, headaches, some decreased balance ect. As noted in she above records review which had been present since the rear-ended MVA she was involved in on 09/28/88. [09/25/88]
> 2. All of the historical information relates these problems to the MVA of 09/28/88 [09/25/88] and some to the prior MVA of 07/20/87. By history, it appears her problems from the 07/20/87 MVA had improved and apparently resolved shortly before the second MVA.
> 3. It is highly medically likely that the multiple problems she experiences today are related some to the prior MVA of 07/20/87; however in my

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medical opinion, the majority of the symptoms are related to the second MVA in 1988.
4. They [her symptoms dizziness, headaches, neck and lower back pain] Could be a natural progression of the particular injury; however, it appears these symptoms have been historically present since the time of the second MVA.
5. [is there a way to determine how long ago her injuries were from ?] No, not likely; however, in this case it seems apparent that her problems related to the prior MVA due to all of the medical records which include multiple evaluations, testing and notes of various treatments that she received consecutively since that time.
6. From my review of multiple records and seeing Ms. Reeves, I do feel she could work at least part time in various settings; however, the right modified setting would need to be available for participation in duties that would not tend to flare up or worsen her symptoms. Often, in these scenarios, the appropriate particular job and employer is not always available or is very hard to find.
7. [is she still suffering from the injuries from her 09/25/88 accident?] Yes.
8. These problems are a constellation of symptoms which appear to be related to 2 injuries, partially to the initial MVA of 07/20/87 and to a larger extent related to the injuries and flare up that she received from the 09/25/88 MVA.
9. [would her dizziness she has had since her accident in 88, cause her to fall or walk into things and injure herself ?] Yes. These symptoms very likely could lead to these problems.
10. From review of the x-rays / MRI findings, I do not find that the physical problems have progressively worsened; how, the findings noted on x-ray testing are likely slowly progressing due to aging.

In an addendum, in reference to number 6, to clarify whether Reeves was able to return to gainful employment, and in what capacity, Dr. Poindexter stated: (exhibit "A" at pp. 216-217)

As a general consensus, with Ms. Reeves's types of problems and injuries, there was a possibility she could return to a job in a modified position. She would be unable to participate in the majority of job positions that might be available to her. Therefore, the potential to find just such a job would be somewhat limited.
Due to her condition and problems, she would likely have a very difficult time maintaining even a part job due to her condition and various symptoms which have definitely interfered with her overall level of functioning for many years now. These symptoms would also tend interfere with an appropriate work schedule where she

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> would likely have a significant amount of tardiness and multiple absences at a particular job and very likely could not maintain a work schedule with most jobs due to this.
> It is high likely that she would not be able to maintain a regular position and work schedule. Therefore, realistically speaking, I do not feel she would be able to maintain an appropriate schedule for the jobs that may be available to her.

Dr. Poindexter's opinion was that the majority of Reeves' symptoms, she presents with today are mostly related to her industrial accident of 1988. (exhibit "A" at pp. 214, 215)

He also, stated that her dizziness would very likely cause her to fall or walk into things, and cause injury. (exhibit "A" at pp. 215)

Whereas, Dr. Poindexter initially stated that Reeves would need a position that would not flare up or make her symptoms worse, and also, that such a position is not always available or is very hard to find. (exhibit "A" at pp. 214)

He then stated in his addendum, that realistically, she would not be able to perform at a job that might be available. (exhibit "A" at pp. 216) He appears to be saying that somewhere, someplace, there might be a job that she might be able to do, but such jobs are very hard to find, and so realistically, she is not capable of gainful employment, not even light-duty or part-time. She certainly is not capable of returning to her pre-industrial injury position, as none of her symptoms that caused Bally's to place her on a medical leave have resolved.

As noted in Dr. Poindexter's IME and all of the other medical documentation, Reeves has never been determined able to return to gainful employment by any physician. (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 122, 128, 120, 131, 133, 134, 203, 216)

For CCMSI to not accept Dr. Poindexter's report as evidence of certification of disability, with a direct relation to Reeves ' industrial injury, and a reason to reopen (reinstate) all

worker's compensation benefits back to the time of their first illegal closure goes against all of the medical evidence, statutes and case law.

In, Spencer v Harrah's Incorporated, 98 Nev. 99, 661 P.2d 481 (1982), " We also recognize the humanitarian motive behind the enactment of the worker's compensation scheme, which compels a liberal construction in favor of claimants." Also in Southwest Gas Corporation v Woods, 108 Nev. 11,823 P.2d 288 (1992), it was noted:

> It has been a long-standing policy of this Court to liberally construe such laws to protect injured workers and their families. Unquestionably, compensation laws were enacted as a humanitarian measure. A reasonable, liberal and practical construction is preferable to a narrow one, since these acts are enacted for the purpose of giving compensation, not for the denial thereof.

In State Industrial Insurance System v Campbell, 108 Nev. 1100, 844 P.2d 795 (1992), under NRS 616.585 (4), that the only circumstance provided by Nevada law allowing for the permanent discontinuance of disability benefits is "when any physician or chiropractor determines that the employee is capable of gainful employment." That "the purpose of the [worker's compensation] system is to provide compensation for industrial injuries." Although the above cases could be discounted by NRS 616A.010, Reeves is not asking for this claim to be liberally construed, only that Bally's follow the statutes, specifically, NRS 616C.475, [NRS 616.585 (4)]when it comes to their attempts to close Reeves' claim. Reeves believes that when all of the documentation is taken into consideration, the merits of her claim become self evident. She believes that when it comes to the medical documentation, as no physician has ever determined that she is able to return to gainful employment due to her industrially caused symptoms, (exhibit "A" at pp. 5. 6. 24, 60, 81, 83, 87, 101, 122, 128, 130, 131, 133, 134, 203, 216) and that Bally's has closed her claim two (2) times that were denied,

(exhibit "C" at pp. 327, 33) without the reinstatement of benefits, is a violation of NRS 616D.120. CCMSI now hope that their closure on their notion that there is no certification of disability will be legal. The fact that they have had all of the medical documentation all along and have never supplied an approved form, either by mail or in person should not be an allowable excuse to close and or not pay compensation due an industrially injured employee, without the requirements pursuant to NRS 616C.475 being met.

O. ARGUMENT OF CERTIFICATION OF DISABILITY

Then, there is the matter of certification of disability, which Bally's requested for the first time, in fourteen (14) years. In a letter to Mr. Douglas Rowan, attorney, dated March 16, 2004, they requested Reeves to supply certification of disability from her physicians from August 26, 1998, the last time they had paid TTD benefits, to the present, even though they have had Reeves' medical records all along. (exhibit "B" at pp. 280)

In those medical records, there has never been any physician who has stated that Reeves was capable of returning to gainful employment, because of her industrial symptoms. (exhibit "A" at pp. 5, 6,24, 60, 81, 83, 87, 101, 12, 128, 130, 131, 133, 134,203, 216)

To the contrary, as noted in the letters from Dr. Petroff to Ms. Suasn Sayegh, claims supervisor, CCMSI, who now works for the DIR, dated April 13, 2004, when asked about Reeves work status from beginning treatment in 1998 to the present, he stated that "It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present." (exhibit "A" at pp. 81) CCMSI did not at that time send along a certificate of disability form for Dr. Petroff to fill out.

Whereas, CCMSI did not like the response to their previous letter, another letter was sent

and the response was dated May 18, 2004, in which Dr. Petroff stated that "Symptoms currently keeping the patient from returning to work, by my understanding, principally consist of neck pain, back pain and dizziness." He then went on to state that my neck pain was documented objectively on MRI and x-ray, that my neck condition was possibly the cause of my dizziness and balance problems, also that he felt that my neck problems are significantly contributory to my headaches. He also stated, "From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical disease." (exhibit "A" at pp. 82-83) Once again, CCMSI did not send along a certificate of disability form.

As noted, in the correspondence between CCMSI and Dr. Petroff, CCMSI knew that Reeves was not able to return to gainful employment, due to her industrially caused symptoms. The fact that CCMSI never gave her or her physicians any certificate of disability forms to fill out does not mean that they did not know that there was evidence of certification of disability, as documented in all of her medical records, that CCMSI has and had in their possession all along.

Whereas, Bally's has not paid any TTD benefits since August 26, 1998, and has never supplied Reeves with any forms, not in twenty-two (22) years, to present to her physicians, pursuant to NRS 616C.475 (6), that with each check they issue they may include a form approved by the Division for the injured employee to request continued compensation.

Reeves believes that it is CCMSI's responsibility to furnish certificate of disability forms, which they have never done. To now deny TTD benefits and all other worker's compensation benefits because they do not have them, she believes is their fault not hers. They could have furnished the forms in any of their letters to her physicians or took one with them to their

meeting, or even mailed one to her, but did not.

In a letter, from Ms. Beverly Mandery, claims reprehensive, CCMSI, to Robert A. Fusinatto, Safety National, dated March 23, 2004, she stated: (exhibit "B" at pp. 282)

> Claimant's claim should not have been closed but should remain open for further benefits.
> This office has been ordered to provide treatment with Dr. Mortillaro, needed diagnostics, physical therapy and medication management.
> Claimant is slow to progress.
> Once we receive and verify the medical disabilities, we can review the issue of TTD and interest from 1998 to the present and continuing.
> This office is complying with Nevada Statutes in requesting medical disability for the referenced period of time.

In a letter from Ms. Beverly Mandery, claims representative, CCMSI, to Mr. Rowan, counsel for Petitioner. dated July 21, 2004, it was stated: (exhibit "B" at pp. 284)

> Based on Dr. Petroff's report, there is no certification of disability.
> Pursuant to NRS 616C.475 (7), your request for TTD benefits from 1998 to present, are denied.

In the letters above, CCMSI admits that Reeves industrial claim should have not been closed but remain open for further benefits. Apparently, to CCMSI, not closed but remain open, does not include TTD benefits, or most other benefits.

Whereas, NRS 616C.475 (7), states what a certification of disability must include, (6) states that with each check issued the insurer may include a form for the employee to request continued compensation. Bally's has never supplied any forms for Reeves to take to her physicians to have filled out. They have also, not issued a check since August 26, 1998, when they illegally closed her claim. (exhibit "B" at pp. 239)

Whereas, Reeves' claim was accepted in 1997, TTD benefits were paid up until it was illegally closed in 1998, with no certificate of disability, just her medical records, and Bally's

has had all of Reeves' medical documents, which all clearly state that she is not capable of gainful employment, due to her industrial symptoms, (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 122, 128, 130, 131, 133, 134, 203, 216) to now claim that there is no certification of disability is unbelievable.

As to, CCMSI complying with Nevada Statures in requesting medical disability, they have, as noted above, more than enough medical documentation in Reeves' medical records to know that she is medically disabled due to her industrial injuries and not capable of gainful employment.

4. REEVES IS ENTITLED TO PAST AND ONGOING TTD, ALONG WITH ALL OTHER WORKER'S COMPENSATION BENEFITS.

As an accepted industrial claim, pursuant to NRS 616C.475 (1), an industrially injured employee is entitled to 66 2/3 percent of the average monthly wage, until the requirements pursuant to NRS 616C.475 (5), are met.

Whereas, those requirements have not been met, Reeves is entitled to past and ongoing TTD, and all other benefits, until those requirements are met.

5. REEVES' CLAIM SHOULD BE EXPANDED TO INCLUDE INJURIES THAT OCCUR DUE TO HER INDUSTRIAL SYMPTOMS.

NRS 616C.160 { NRS 616.5018 } provides:

> That where a condition is not mentioned in the initial report of injury or the medical history of the case, a physician must establish a firm causal relationship between the newly developed condition and the original accident in order for the condition to be compensable.
>
> 1). Newly developed injury or disease; Inclusion in original claim for compensation; Limitation.
>
> 2.) The injured employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is

> being sought, or there is no documentation indicting that there was possible exposure to an injury described in paragraph (b) or (c) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a casual relationship between the injury or disease for which treatment is being sought and the original accident.

Reeves will show through the following documents that dizziness was on the initial report of injury (exhibit "B" at pp. 221, 222) and that it is referenced on every physicians report. (exhibit "A" at pp 1 thru 217)

As such , her dizziness and balance problems are not a newly developed injury, but injuries that result from falls, due to her dizziness, most certainly happen as a result of her industrial injuries. Also, that Bally's, after the Nevada Supreme Court Decision in 1997, (exhibit "C" at pp. 318-325) accepted this claim with dizziness, headaches and neck pain as the symptoms that are industrially caused.

The Nevada Supreme Court has set the issues and injuries in the matter at hand in 1997, Bally's Grand Hotel and Casino v Reeves, 113 Nev. 926, 948, P.2d 1200 (1997). The Nevada Supreme Court held; (exhibit "C" at pp. 321, 322)

> At the time of Ms. Reeves' hearing before the hearing officer it had been conceded, and is still conceded, that Ms. Reeves' injuries arose out of and in the scope of her employment.
> Ms. Reeves' physician treated her with regard to both accidents. This physician, Dr, Barton Becker, verifies Ms. Reeves' statements, pointing out that after the first accident Ms. Reeves "showed progressive improvement in her symptoms, such as decreased vertigo and headaches." When Dr. Becker examined Ms. Reeves for injuries sustained in the second, September, 1988, accident, the doctor noted "increased neck pain and tenderness, headaches, and postural vertigo....left ear tinnitus (ringing in the ear)." Dr. Becker reported that after the second accident an "audiogram reveals a mild bilateral sensor neural loss, worse in the right ear." Dr, Becker's conclusion relative to injuries resulting from the industrial accident is:

> Ms. Reeves has not done well since her second accident. She may have permanent neck problems and vertigo.
> Dr. David Toeller prepared an "independent medical exam" dated June 1, 1989, in which he furnished the following diagnosis;
> 1. Cervical sprain/strain syndrome with no objective neurological or orthopedic findings.
> 2. The two motor vehicle accidents were not close enough together to justify a diagnosis of a second injury syndrome.
> 3. The patient has positional dizziness assumed to be a vestibular irritation or eustachian tube dysfunction related to her cervical soft tissue injuries.

The Nevada Supreme Court also held that in this case that the Appeals Officer made an error of law by requiring "objective medical evidence" to support a claim for the kind of soft tissue injury suffered by Ms. Reeves. (exhibit "C" at pp. 324)

> That such injuries rarely manifest themselves in objective terms, independent of "objective" evidence of the injury.
> confirmable by x-ray or other physical means of establishing "objective" harm. The kinds of injuries sustained by Ms. Reeves can be reliably established by any reasonable and probable medical testimony,

The Nevada Supreme Court also held that; (exhibit "C" at pp.324, 325)

> Ms. Reeves was not required to establish her injuries by "objective" medical evidence. Additionally, at the time that Ms. Reeves' industrial Claim arose, we had recognized that "preexisting illness normally will not bar a claim if the employment aggravates, accelerates or combines with the disease to trigger disability or death. ' State Industrial Insurance System v Kelly 99 Nev. 774, 775, 671 P.2d 29, 29-30 (1983 .) We further recognized in Kelly that the fact that industrial aggravation may have been but one of several causes producing the symptomatic condition is of no moment. "An industrially related accident does not have to be the cause of injury or death, but merely a cause. '

The Nevada Supreme Court also stated; (exhibit "C" at pp. 324)

> Ms. Reeves told everyone that would listen to her that she had received some new injuries and that her previous injury had been aggravated. No adjudicator could have denied this claim without concluding that Ms. Reeves not being truthful, despite the fact that this conclusion would be inconsistent with all of the available medical evidence. Nothing in the

record indicates that Ms. Reeves was anything other than a completely sincere and believable claimant.

The Nevada Supreme Court held in Alfred Day v Washoe County School District and CDS Compfirst 121 Nev. 387, 116 P.3d 68 (2005) that a prior determination that an injury was industrially related may not be reconsidered in determining primary causation. NRS 616C.390 does not permit reconsideration of the accuracy of a prior decision that an injury is industrial in nature,

Whereas, Reeves' industrial claim was accepted for vertigo (dizziness), neck problems, and cervical sprain/strain in 1997. (exhibit "B" at pp. 327, 328) Bally's can not now claim that falls and or stumbling into objects, from that industrial condition, causing injury, would not be a foreseeable outcome of those industrial injuries. Reeves has had many injuries, from falls and stumbling, over the years, since her industrial accident, as noted in her medical history.

Reeves had no idea that she could expand the scope of her claim to include such injuries, until she spoke with an attorney from the office of the Nevada Attorney for Injured Workers in 2007. Reeves then filed, with Bally's, to expand the scope of her claim, to include her most recent injuries that required her to seek medical attention.

Although, Reeves has fallen on numerous occasions, due to her dizziness, she did not know that injuries resulting from those falls, as a result of her dizziness, could be included in her claim. Therefore, she did not keep the records of the times that those injuries required medical attention. But, she found a couple that did not get thrown away, one (1) from November 4, 1998, where had an x-ray of her ankle (exhibit "A" at pp. 218) and one (1) from 05/09/05, where she had x-rays of her knee, ribs/chest and foot. (exhibit "A" at pp. 220) It should be noted that these records are not bills, but on Medicare Summary Notices.

As to Reeves' medical history (records), Reeves has sought medical help from the day of her industrial injuries, dizziness, headaches, and neck pain, to the present. Reeves' condition has not improved, but gotten worse, over the years. (exhibit "A" at pp. 1 thru 217)

At ever physicians appointment, Reeves has presented the same symptoms, headaches, dizziness, neck and low back pain. Starting with the physicians that were treating her before and after both accidents.

The first accident was on July 20, 1987 and the second was on September 25, 1988.

P. MEDICAL DOCUMENTS IN SUPPORT OF EXPANDSION OF CLAIM

In reports, from Dr. Peter Mattimoe, Reeves family physician, he stated, on the dates listed below:

> November 7, 1987: Patient continues to have dizziness or light headedness: she has the feeling, when looking at objects for a time, that move away from her and then oscillate up and down. Good cervical movements. (exhibit "A" at pp. 1)

> September 4, 1990: Patient returned having been attending other doctors in regard to the MVA of 9-5-88 [9-25-88]. She has been under the care of various ENT specialists in regard to possible vestibular problems, but these have been excluded by the Otologic Medical Group of Los Angeles, who felt that her problems are directly related to her neck injury and suggested PT. Her main problem is in the neck especially the lower half. She also has headaches, photophobia, occasional dizziness and sometimes parasitize in some of the L) fingers. Patient is wearing dark glasses. There appears to be loss of the cervical Lordosis and considerable posterior neck muscle spasm; all neck movements are greatly decreased with pain. (exhibit "A" at pp. 2-3)

> January 3, 1991: Patient still complains of severe headaches and Ataxia, meaning a staggering motion while walking and feeling of loss balance; she has not fallen but takes care when walking and does not drive any vehicle. (exhibit "A" at pp. 4)

> January 31, 1991: Her dizziness remains a major feature and she complains of staggering while waking. Her headaches remain and

the various medications prescribed have not helped her.
March 30, 1991: Patient states that her main complaints are severe headaches and Ataxia.The patient continues to have an unsteady gait and appears to stagger backwards without actually falling, and supports herself, at times, with her hands on the wall while walking. May need attendance when walking lest she fall. (exhibit "A" at pp. 5)

March 30, 1991: Patient states that her main complaints are severe headaches and Ataxia.
The patient continues to have an unsteady gait and appears to stagger backwards without actually falling, and supports herself, at times, with her hands on the wall while walking.
In view of her symptoms and the appearance of Ataxia, I feel that she is currently unfit to undertake any duty or to drive and, in fact, may need attendance when walking lest she fall. (exhibit "A" at pp. 6)

June 1, 1991: Mrs. Reeves continues to have severe headaches and a tendency to back into objects. (exhibit "A" at pp. 7)

January 11, 1992: Patient has a number of problems which are MVA related -- headaches, back and neck pain, Parasthesia L) lower limb. She has considerable photophobia and continuing dizziness.
(exhibit "A" at pp. 8)

May 8, 1993: Mrs. Reeves has suffered very severe incapacitating headaches since the MVA of 9-25-1998. (exhibit "A" at pp. 9)

May 20,2002, a letter to CAT Paratransit Services: Susan L. Reeves has difficult with walking due to the effects of Diabetes on her feét and chronic dizziness from a accident in 1988. (exhibit ""A" at pp. 10)

In reports, from Dr. Barton Becker, F. A. C. S., he stated, on the dates listed below:

5/22/89: (on a Rx. Note pad) Mrs. Reeves has chronic balance problems. She cannot do spins or knee bends. (exhibit "A" at pp. 11)

June 21, 1989: in a letter to Allstate Claim Office, Mrs. Reeves gives a clinical history of postural vertigo. Her postural vertigo was gradually improving with valium (prescribed for labyrinthine sedation) and her headaches were decreasing. However, the second accident on 9-25-1998 caused further damage, resulting more neck pain and vertigo.
(exhibit "A: at pp. 12)

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July 31, 1989: Mrs. Reeves has been followed by me since 4/13/87. She was involved in an auto accident with neck strains and vertigo, 7/20/87. Medical therapy has helped, and she was improving, with less dizziness and headaches.
On 9/25/89 [9/25/88], she was involved in a second accident, re-injuring her neck, has resulted in increased vertigo and headaches, which has persisted until the present. (exhibit "A" at pp. 13)

July 31, 1989: Mrs. Reeves has cervical muscular damage secondary to an accident. (exhibit "A" at pp. 14)

February 1, 1990: I feel the 9/25/88 accident did more damage to Mrs. Reeves.
I base my conculsion on my notes of Mrs. Reeves' medical visits. She was originally seen 11/13/87 for a 7/20/87 accident. Typical whiplash symptoms were present, such as neck pain and tenderness, headaches, and postural vertigo. My notes from 11/13/87 to 5/12/88 show progressive improvement in her symptoms, such as decreased vertigo and headaches.
I examined Mrs. Reeves next 10/4/88, for an auto accident 9/15/88.
She had increased neck pain, vertigo and complained of left ear tinnitus.
Mrs. Reeves has not done well since her second accident. She may have permanent neck problem and vertigo. (exhibit "A" at pp.15)

Undated note states, She complains of postural vertigo, and she was improving with conservative therapy. Her life is greatly affected by her balance problems. (exhibit "A" at pp. 16)

In a report from an IME, Dr. Frederick T. Boulware, dated December 12, 1988, he states:

This 37-year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an autombile accident which had occurred on July 20, 1987. The patient states that she progressive improved after that time. Apparently some three days after her complains had resolved, sometime in September of this year, she was involved in a second automoile accident in which she was the driver of a car that was rear-ended while stopped. She has since this time , experienced constant headache. She also has some complaints of lightheadedness, which may occur if she turns her head suddenly or moves quickly. (exhibit "A" at pp. 17)

As, noted above, dizziness was a complaint in every physicians report.

Now after the second (the industrial) accident on September 25, 1988, Reeves was seen

by the following physicians along with Dr. Mattimoe and Dr. Becker:

In a physical examination from Dr. Peter Wardle, dated 1/3/89 he states:

> Extension flexion injury 9-25-88. Tinnitus & dizziness. Hearing loss.
> (exhibit 'A" at pp. 20)

In a reports, from IMEs, Dr. David G. Toeller , he stated on the dates listed below:

> June 1, 1989: the patient still continues to have constant headaches of a dull nature across the forehead to both temples. She has soreness of the lower left neck She continues to have dizziness when she moves her head. The patient is fit for unrestrieted duty except as restricted, because of her dizziness pending a better diagnostic explanation of her dizziness.
> (exhibit "A" at pp. 22, 26)

> October 17, 1989: the patient states that her dizziness is worse since physical therapy. Her dizziness has progressively gotten worse. The patient states she is unable to drive. She does some of her housework, but has to be careful with it.
> The patient continues to have headaches, occasionally very severe.
> (exhibit "A" at pp. 28)

In a report from an IME, Dr. Leslie H Gaelen, dated January 4, 1990, he stated:

(exhibit "A" at pp. 30)

> Actually, Mrs. Reeves' neurological symptomatology began following a second vehicular accident on September 25, 1988.
> She had an exacerbation of her previous symptoms, including sevére headaches of a generalized nature, low back and neck discomfort.

In reports from an IME, Dr. Aram Glorig, Otologic Medical Group, he stated on the dates listed below:

> March 30, 1990: She was complaining chiefly of a dizziness described as "things moving about her", causing her to be dizzy. The dizziness came on about three days after the accident. By July of 1988, she was feeling quite good. But on September 27, 1988, she was rear ended again and headaches and dizziness became even worse than she had before the second accident. (exhibit "A" at pp. 33)

> August 16, 1990: Susan Reeves was seen by Dr. Brackman and I have

consulted with him regarding his opinions. We both feel that there is no damage to her vestibular system and that her problems are strictly related to her neck injury.
The only pathology we can find is related to a neck injury.
(exhibit "A" at pp. 36)

In reports from a disability evaluation, Dr. Richard W. Kudrewicz, on the dates listed below, he stated:

8/15/90 She does admit to a previous accident 7/87. This was a motor vehicle accident and she did sustain a head injury with resultant headaches, dizziness and whiplash. She states that the majority of these symptoms have cleared by early 1988, with only an occasional headache. She was involved in a second motor vehicle accident in September 1988 and aggravated her symptoms.
The patient also notes basically constant dizziness. She also has significant headache.
It would appear that this patient's diagnosis, referable to accident 9/88 is essentially chronic cervical strain. In addition, there is the issue of her vertigo.
We must now address the question of this patient's dizziness. This patient does have rather poor balance and tends to drift rather suddenly to the right when we try to do Romberg testing on her. (exhibit "A" at pp. 38, 39, 40,41)

Stamped February 25,1991: I an in receipt of a request to comment on the question as to whether the patient's current physical condition can be related to automobile accident of 9/15/88 as opposed to automobile accident of 7/20/87.
As I review the records, it would appear that this patient's primary complaints are those of constant headache, significant dizziness, neck soreness and some dysfunction in the left shoulder. It would appear her present diagnosis is chronic cervical strain and strain, left paracervical musculature with residual loss of range of motion, cervical spine, and left shoulder as well as a diagnosis of postural vertigo.
One can also state that it appears that the natural course of her symptoms following the accident of7/87 was one of gradual and progressive resolution. She was still symptomatic at the time of the accident of 9/88 and this apparently did result in significant aggravation of her preexisting symptoms.
In terms of assigning a particular percentage of responsibility to the first and to the second accident, it is obviously quite difficult to do

this accurately. I could honestly do no better then to state that approximately 50 percent of her present complaints are attributable to initial accident, 9/87 and that 50 percent of her present symptoms and complaints are referable to subsequent accident, 9/88.
(exhibit "A" at pp. 43-44)

In a report from Dr. Ronald A. Weisner, psychiatrist, dated July 26, 1991, he states: (exhibit "A" at pp. 45)

> The patient explains her predicament as follows: She says that she was injured in an automobile accident and told by Bally's eight months later that she could not work any more. An automobile accident occurred on September 25,1988 in the parking lot on the way to work in which she was rear ended. She had headaches and dizziness as a result. She was noticed to be unsteady at work and eventually placed on indefinite medical leave according to the patient.

Now, after the Nevada Supreme Court ruling in 1997, and acceptance by Bally's, Reeves was seen by the following physicians:

Reeves was referred to Dr. Oliveri, by Bally's, for an IME, dated 08/18/98 in which he stated: (exhibit "A" at pp. 49)

> CURRENT CHIEF COMPLAINT(S): Constant headache, " bad" dizziness, tingling in the left arm with pain down to the left leg. She has subjective limitations that are nonantomic in cervical and lumbar spine motion.

In reports from Dr. George A. Petroff, for consultation and treatment, he states on the dates listed below:

> September 3, 1998: This is a 46-year-old right-handed woman who was complaining of headaches, neck and back pain radiating to the arm and leg respectively, and dizziness. At times the patient has dizziness in two forms. The first is a since of poor balance where she may veer off to the left or right or stumble. The second type is a peculiar type of vertigo which she describes in terms of a spinning egg. It has caused her to fall to the ground by her account:
> (exhibit "A" at pp. 62)

September 28,1998: I saw Susan Reeves in follow-up for head, neck. back, and right arm and leg complaints and dizziness. This patient has probably mild degenerative change of the cervical and lumbosacral spine and possibly some cervical radicular irritation. Her dizziness is chronic in nature and may be due to a chronic vestibulopathy. (exhibit "A" at pp. 65)

November 30, 1998: I saw Susan Reeves in followup for head, neck, arm, and leg complaints. She still has constant dizziness, sometimes worse, sometimes better. (exhibit "A" at pp. 66)

January 14, 1999: I saw Susan Reeves in followup for chronic pain complaints. Her two principal complaints are headaches and poor balance and dizziness today. (exhibit "A" at pp. 69)

April 8, 1999: I saw Susan Reeves in followup for chronic headaches and dizziness. The patient's dizziness and headaches are still present most of the time. (exhibit "A" at pp. 69)

May 20, 1999, in a letter to Ms. Ethel Pipp, Mgr., worker's compensation, Park Place Entertaiment: I am in receipt of your communication from May 14, 1999. With respect to Susan Reeves, my current diagnosis is: 1) chronic headache with mixed components of migraine, muscle contraction and cercinogenic source; 2) peripheral vestibulopathy due to inner ear degenerative change. (exhibit "A" at pp. 70

October 14, 1999: I saw Susan Reeves in followup. She has not had a severe headache since she has been on her current regimen, which includes Inderal, Pamelor, and very seldom Darvocet, Midrin or Imitrex. With respect to the vestibulopathy, the patient is still dizzy when she stands and walks. (exhibit "A" at pp. 71)

February 24, 2000: She has headaches daily, but these have lessened considerably in intensity. She has fallen and fractured her ribs, and these are still tender. (exhibit "A" at pp. 72)

February 1, 2001: The headaches have become worse. They are more intense, more frequent, and she feels dizzy with these. (exhibit "A" at pp. 73)

November 14, 2001: She is still having dizziness in the form of lightheadedness. (exhibit "A" at pp. 75)

December 5, 2001: The patient's MRI shows moderate cervical stenosis at C-4 and C-5, with slight indentation of the cord to the right at the lower level. (exhibit "A" at pp. 76)

January 10, 2002: Since tapering her Pamelor (down to50 mg presently), she has had worse headache, dizziness and tinnitus, more pain in her neck with radiation into her left arm. (exhibit "A" at pp. 77)
January 6, 2004: She has headaches infrequently - about once a month or every six weeks. She is taking Inderal on a daily basis, and does have milder daily headaches. She still has dizziness. She continues to have tinnitus. She had a flare of her neck and back pain. (exhibit "A" at pp. 78)

February 18,2004: Repeat MRI and x-ray imaging of the C-spine shows some progression of disc entophyte encroachment, impingement upon the cord at the C4-5 level. This may be unchanged at the C5-6 level two years ago. There is neural foramina stenosis at C6-7 bilaterally suggested. She has limited range of motion of the neck with guarding. (exhibit "A" at pp. 79)

April 13, 2004: She continues to have headache, neck discomfort, dizziness and lumbosacral strain, unchanged. (exhibit "A" at pp. 80)

April 13, 2004, a letter to Susan (Sayegh): Q. Work status from beginning of treatment in 1998 to the present. A. During this period of time, the patient had significant and constant headache problems, which slowly improved with therapy. She also had significant overlying psychological/psychiatric issues, and basically had a chronic pain syndrome. It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present. Superimposed neck problems became prominent in the last couple of years. (exhibit "A" at pp. 81)

May 18, 2004, a letter to Ms. Sayegh: 1) Symptoms currently keeping the patient from returning to work, to my understanding, principally consist of neck, back pain and dizziness. The basis of her neck pain is documented objectively on MRI and x-ray, with C4-5 disc bulge and protrusion, C5-6 central disc protrusion, mild flattening of the cervical spinal cord, C6-7 mild-to moderate neural foramina stenosis, C4-5 right neural foramina encroachment. This anatomy could generate pain in the neck. These changes noted on imaging are degenerative in nature. To some extent, the degeneration can be accelerated by posture/ head movements, which one might encounter in certain occupations. It is impossible to document objectively what component of this degenerative change is work-related, however.

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The patient has complained of dizziness. Dizziness may be from a variety of reasons. In this case, I cannot objectively identify the source of the patient's dizziness, but possibilities would include migraine phenomenon, problems with the enter ear, or balance disturbance arising from the patient's neck muscles/degenerative neck disease. There is no way of objectifying this or its source with respect to the patient's employment.
The patient has headache. Again, this cannot be objectively qualified with respect to its source, although I think that her neck problems are significantly contributory to her headaches. She is complaining of lumbosacral strain, and this cannot be objectified either.
3) From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical spine disease. (exhibit "A" at pp. 82-83)

June 22, 2004: She has been feeling worse. She continues to have pain in the mid base of the neck. She has pain up and down her spine, not as severe. She has lightheadedness, at times, not particulary positional. She has headache radiating from the mid neck pain. (exhibit "A" pp. 84)

September 22, 2004: continues to have numerous problems. She has hearing loss, ringing in her ears and dizziness. She has low back pain about the same. (exhibit "A" at pp. 88)

December 14, 2004: She continues to have neck and low back pain, as well as dizziness. (exhibit "A" at pp. 90)

In a report from an IME, Dr. Steven A, Glyman, dated March 26, 2001 he states: (exhibit "A" at pp. 93, 96)

She had ringing in her ears and noted blackness in her left eye as well as dizziness. As far as her current subjective symptoms, she notes headaches every day constantly. She has dizziness, which gets worse when the headache is worse. She says the more the dizziness the more she has other symptoms. She notes that she has tingling in her left shoulder and arms. She has trouble with limited range of motion. She has ringing in her ears. She says that her symptoms occur 24 hours a day, seven days a week. She notes now that she may just fall backwards if she does not concentrate. She said the headaches were so severe that two times a week she would experience very severe symptoms. She says she can look

after herself but is slow and careful. She notes that pain does not prevent her from walking as far as she wants; dizziness does. She has headaches which interfere with her sleeping. She says that the pain has reduced her social life.
Range of motion of the cervical spine is diminished due to pain in all planes. Left shoulder voluntary range of motion is decreased as well in all planes subjectively.
Motor examination discloses giveaway weakness in the left deltoid, left biceps, left triceps, and wrist extensor.
She is slightly unsteady on turning.

In a report from Dr. Godwin O. Muduka, dated 6/29/04, he states: (exhibit "A" at pp. 103)

CHIEF COMPLAINT: Chronic headaches, neck and back pain, with the neck pain radiating down to the left arm as well as low back pain radiating down to the left lower extremity.
Last week, the pain was moderate interfering most of the time with her daily activities for which she fairly often takes pain medications for relief including Fexeril and Darvocet that have been prescribed by Dr. Mattimoe as well as Advil and Inderal that is being prescribed by Dr. Petroff for her dizziness.

In a report from Dr. Roger Woods, dated March 28, 2005, he states: (exhibit "A" at pp. 107-109)

The patient reports that she has a longstanding history of neurological complaints including headache, dizziness, neck and back spasms and tinnitus that date back to a whiplash injury without loss of consciousness seventeen years ago.
Review of symptoms:
OPHTHALMOLOGICAL symptoms were positive for blurred vision and double vision. Symptoms were positive for trouble hearing, ringing in the ear (s), dizziness (vertigo) and loss of balance.
MUSCULOSKELETAL symptoms were positive for neck pain, back pain and joint stiffness.
NEUROLOGICAL symptoms were positive for headache, clumsiness and trouble concentrating.
Station and gait: Gait is broad based and pain limited. She was unable to stand with feet together with eyes closed but could do so with eyes open.
Laboratories: Lumbosacral spine series 9/14/04: Mild anterior wedging at L1; some T12-L1 intervertebral narrowing.
MRI of the cervical spine 9/14/04: C3-4: posterior bulging abuting

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the spinal cord, neural foramina intact. C4-5: posterior bulging with cord compression and bilateral neural forminal stensis. C5-6: posterior bulging: mild right foramina stenosis. C6-7: mild bulging and foramina stenosis.

In reports from Dr. Louis F. Mortillaro, psychologist, on the dates listed below, he states:

11-13-89,'11-17-89: Her condition was diagnosed as cervical strain and head injury. She reports that some of her medical symptoms which had significantly improved from the first accident, returned. Also, she has positional dizziness assumed to arise out of cervical soft tissue injuries. (exhibit "A" pp. 111)

04/25/03: She reports periodic dizziness, episodes of dropping and falling down and she is careful when walking. She has constant headaches 100% of her waking hours, muscle spasms and tension type of SCM muscle spasms. (exhibit "A" at pp. 118)

03/18/04: During the treatment process, she spoke a number of times about her dizziness (she was observed to have difficulty with balance when walking in this office). She continues experiencing residual dizziness which causes problems for her maintaining her balance, with reports of her falling. As a result, she walks very carefully. she continues to complain of headache pain and dizziness. The medical evidence suggests that her medical condition appears to be the root of her pain generator. Unfortunately, she continues to experience headaches, sensitivity to light, dizziness and unresolved pain in her neck and lower back. (exhibit "A" at pp. 126, -127)

April 26, 2004: However, she continues to experience physical symptoms including dizziness, headaches, sensitivity to light, and difficulty maintaining her balance which may cause her to fall. Her symptoms should be considered chronic. She continues to take a significant amount of prescription medications and continues experiencing symptoms including headaches, dizziness, neck and back pain and sensitivity to light. (exhibit "A" at pp. 129-130)

Not dated but with dates of 05/22/04 and 06/02/04: Ms. Reeves has subjectively reported to Dr. Gamazo and myself the following barriers to her attainment of physical maximum medical improvement: headaches, dizziness, problems with balance, neck and low back pain, sensitivity to light. She was informed that she was a hazard on the property due to her

dizziness. (exhibit "A" at pp. 132-134)

In treatment session summaries signed by Dr. Manuel Gamazo, and others, on the dates listed below:

> 01-16-04: she would not be able to RTW due to physical limitations (especially headaches and dizziness) (exhibit "A" at pp. 138 0
>
> 01-21-04: She wants to come 2 times a week. She indicated dizziness and headache and she doesn't want to hit the wall or felt (fall?) due to her problems. (exhibit "A" at pp. 139)
>
> 01-26-04: Patient manifested headache & dizziness and ringing in the cars. She is coming 2 times a week for sessions. (exhibit "A" at pp. 141)
>
> 02-05-04: She continues to manifesting dizziness, she is pushing herself to much she say and is paying the price. (exhibit "A" at pp. 143)
>
> 02-23-04: any fast movement of the head will lose her balance and may fall. (exhibit "A" at pp. 147)
>
> 02-25-04: She continue with headache and dizziness. Coming to program exacerbate the headache. (exhibit "A" at pp. 148)
>
> 03-11-04: coming 2 times a week to the office is making her headache worse. Florescent light exacerbate her headache. (exhibit "A" at pp. 151)

Also of interest is a report from Jacqueline Joy Borkin, D. C., on January 3, 1990, which states: (exhibit "A" at pp. 154)

> She is being seen by a physical therapist and is suffering from dizzy spells and when she walks she cannot effect a straight line.

And then there are the reports from physical therapists, the first of which is from Community Hospital of North Las Vegas, Outpatient Physical Therapy Department, signed by Nadine G. Nirary R. P. T. dated August 29 1989, which states: (exhibit "A" at pp. 155)

> Pt. reports pain. Still c/o dizziness & loss of balance.

The next is from Amick Physical Therapy & Associates Inc., signed by Gary Amick,

Licensed Physical Therapist, on the dates listed below:

November 7, 1990: Her chief complaint is constant left ear tinnitus. Her complaints of dizziness and light sensitivity exacerbate two or three times weekly. (exhibit "A" at pp. 156)

January 2, 1991: Presently she reports symptoms are slowly improving with the exception of dizziness and light sensitivity. She also reported daily episodes of falls and bouncing off the walls". Her equilibrium is of major concern.
She still requires dark glasses and demonstrates poor balance during gait. (exhibit "A" at pp. 157)

January 13, 1992: She presently complains of constant low grade headaches with episodes of severe headaches in the occipital area, dizziness aggravated by light (she uses dark glasses most of the time and prefers dim light), left upper extremity numbness into the hand, and shoulder joint pain.
INSPECTION; Palpation reveals mild tenderness in the upper thoracic and posterior cervical area. Gait analysis reveals slight to moderate balance problem also present during standing.
FUNCTION: Approximately 1 Grade weakness present in left shoulder girdle. Active cervical movement is within normal limits with end-range pain in side bending right, side bending left and rotation right. Active left shoulder motion reveals approximately 25 percent restriction with shoulder flexion and abduction.
SPECIAL TEST: Joint mobility tests revealed restriction in cervical C2-3 with side bending right, also cardiothoracic junction.
IMPRESSION : Patient appears to have post concussion syndrome. (exhibit "A" at pp. 158)

April 1, 1992: Presently she complains of headaches in the same location with decreased intensity. Susan described falling from dizziness, " I blanked out". She apparently hit her nose with persistent soreness and difficulty breathing.
INSPECTION: Palpation reveals mild tenderness in the posterior cervical and cardiothoracic areas. Mild spasm noted in upper thoracic and cardiothoracic areas.
FUNCTION: Approximately 1 Grade weakness present in the left shoulder girdle. Active cervical movement reveals approximately 20 percent restriction in side bending right, side bending left, rotation right and roration left without end-range pain. Active left-shoulder motion reveals approximately 30 degrees deficit in flexion and abduction.
IMPRESSION: Patient has a chronic soft tissue involvement with

mechanical faults in cervical and thoracic segments and post concussion syndrome. (exhibit "A" at pp. 160)

The next are from Novacare, signed by Jeff Dietrich P. T., on the dates listed below:

2/5/99: Patient presents to Physical Therapy for evaluation and treatment of vestibulopathy. She reports onset of symptoms 10 years ago and relates them to motor vehicle accident where she sustained a flexion-extension injury to the cervical spine. She had treatment after the accident, but did not have any relief of dizziness or headache symptoms. Her current complaints include 1. Constant dizziness. 2. Imbalance in standing and walking, with multiple falls noted. 3. Constant headache that varies in intensity affects activity level, as she is intolerant to light. 4. Vertigo that is intermittent. 5. She also has complaints of tinnitus and some hearing loss
Inspection - Poor sitting posture, elevated shoulders, forward head. Sits back into chair to improve stability, when sitting towards edge of chair she holds onto arms or seat for stability. In standing she has a 10" wide base of support with externally rotated feet. She holds on to walls to improve her balance.
Eye-Head Coordination - increased dizziness with slow and fast horizontal tracking. Dizziness increases with vertical and horizontal head movements and gaze fixed on stationary target.
Palpation - Tight sub occipitals, levator scapulae, trapezius (left greater than right).
Gait - demonstrates decreased velocity, wide base of support, unable to tandem walk. Can walk on heels, unable on toes.
Objective Finding; Postural Control-Active Sway Posterior, Fall. Postural Control-Induced Anterior Displacement, Fall. Postural Control- Induced Posterior Displacement, Fall. Postural Control-Induced Lateral Displacement, Fall. Gait-Tandem, Unable. Right Leg Balance-Eyes Closed, Unable. Left Leg Balance-Eyes Closed, Unable. SOT-Foam Stand-Eyes Open (5 seconds), Fall Posterior. SOT-Foam Stand-Eyes Closed, Fall Posterior. Special Test-Right Sidelying, Dizziness. Special Test-Sitting, Dizziness.
ASSESSMENT: Patient's findings are consistent with Veritgo, dizziness (780.4). Currently the patient demonstrates: 1. Constant dizziness that is made worse with head movement, eye movement, or position changes. 2. Imbalance in standing, wide base of support, holds on for stability, exaggerated protective responses with loss of balance posterior which usually leads to fall back onto sitting surface. 3. Decreased cervical ROM into extension secondary to dizziness. 4. Decreased left extremity strength. 5. Constant headache. 6. Tight cervical and sub occipital musculature. (exhibit "A" at pp. 162-164)

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2/10/1999: Notes that she gets very dizziness when performing head-eye exercises. (exhibit "A" at pp. 165)

2/17/1999: Did have a loss of balance and jammed right hand and fingers. (exhibit "A" at pp. 166)

2/22/1999: Observation: Eye-Head Coordination - Dizziness with all motions. Dizziness with longer onset with smooth pursuit than on initial evaluation.
Palpation - tight suboccipitals and left levator scapulae and trapezius.
Gait - wide base of support. Progressed to 5 steps of tandem walking. Unable to walk on toes.
Dizziness is present with rapid head movements, and she losses balance posterior when manually displaced. (exhibit "A" at pp. 167-168)

3/3/1999: Had increased dizziness and lost her balance into the closet when she was working on a low shelf yesterday. (exhibit "A" at pp. 170)

3/5/1999: Had increased imbalance start two nights ago, and has felt more off balance since. No vertigo, just very off balance when walking and standing, hard for her to get a center point of focus to increase sense of stability.
She is more at risk for falls today secondary to her imbalance.
(exhibit "A" at pp. 171)

3/12/1999: Had another dizzy/off balance day yesterday, but today feels better. (exhibit "A" at pp. 172)

3/19/1999: Had a bad headache day yesterday, but today down to her normal low-grade headache. Dizziness continues to be constant.
(exhibit "A" at pp. 173)

3/22/1999: Patient reports that her baseline dizziness continues to be 3/10. With head movement in the horizontal plane and with exercises the symptoms increase to 6-7. Headache symptoms are constant 3/10 with increase with activities. She continues to have intermittent falls. Observation: Inspection - continues to have 6" between medial malleoli in standing. Eye - Head Coordination - Horizontal head movements provoke symptoms after 3 movements to each side. Vertical head movements provoke after 12 movements. Gait - Wide Base. She continues to have intermittent falls or loss of balance. Dizziness and headaches continue to be constant on a daily basis (3/10 to 10/10 depending on activity). Head movement in the horizontal plane is the most provocative activity for increasing

dizziness. (exhibit "A" at pp. 174-176)

4/9/1999: Dizziness and imbalance are still provoked with sudden movements, people or objects moving towards her head does make her off balance. (exhibit "A" at pp. 177)

4/25/1999: Since she is feeling better (decreased headaches and dizziness), she is moving faster, but fell yesterday and hit her right shin and left hip. Needs to slow down and be more careful when walking. (exhibit "A" at pp. 178)

5/7/1999: Patient notes improvement in static and dynamic balance activities, though she continues to have falls if she moves to quickly. Baseline dizziness is 3-5/10 and increases to 6-7 with head movements. Headaches are staying around 3/10, and increase with stress. Observation: Inspection - poor sitting posture, protracted and elevated shoulders. Joint Mobility - upper cervical mobility continues to be limited with A-A rotation and O-A flexion. Eye - Head - Horizontal movements continue to provoke dizziness with head/eye and with just eye movements. Treatment to the upper cervical spine alleviates dizziness and headaches. This area is hypomobile with joint and soft tissue tightness, possibly from guarding due to her flexion-extension injury 10 years ago. (exhibit "A" at pp. 179-180)

6/2/1999: Susan has been out of town for the past month. She reports that dizziness was worse when they were driving on winding roads or with switchbacks and lasted for 4-5 days afterwards. Patient rates her dizziness at 7/10 today. Inspection - poor sitting posture, protracted and elevated shoulders. Joint Mobility - upper cervical mobility continues to be limited with A-A, and O-A flexion. Subjective complaints of dizziness continue to be present with rapid head movements or quick position changes. (exhibit "A" at pp. 182-183)

6/7/1999: Bad headache today. Moved quickly and fell yesterday, the first fall in several weeks. (exhibit "A" at pp. 185)

6/11/1999: Had a fall two nights ago, but it was dark and very late at night. Feels that she is really having to concentrate to keep from losing her balance when she moves quickly. Good protective responses with balance loss. (exhibit "A" at pp. 186)

6/23/1999: Bad headache, neck pain, dizziness, and nausea today. Woke up very dizzy and the other symptoms followed. Better recognition of falls and is able to catch herself sooner. (exhibit "A" at pp. 187)

6/30/1999: Still very guarded with quick movements, and does lose balance if she tries to move quickly. (exhibit "A" at pp. 188)

7/7/1999: Has a bad headache today, feeling more dizziness. Notes no reason for increase in symptoms. (exhibit "A" at pp. 189)

9/2/1999: Dizziness continues to be 6/10, worse with siting and during stressful times. Headaches have been wurse over the past three weeks. Palpation - tight muscular in cervical and upper cervical region. Dizziness increased with rapid horizontal and head movements. We have decreased frequency to 1 time per week for the past two months. Single limb balance activities and more dynamic activities that require head movements and quick righting reactions does increase her dizziness. (exhibit "A" at pp. 190-191)

10/28/1999: Pt. reports being dizzy and falling twice this week. (exhibit "A" at pp. 193)

11/4/1999: has been dizzier this past week. Fallen or lost balance a couple of times. (exhibit "A" at pp. 194)

11/18/1999: has had a stressful past week and feels more off balance and dizzy today. Fell two times when trying to squat down to pick something off the floor. (exhibit "A" at pp. 195)

12/9/1999: She continues to have dizziness and headaches on a regular basis. She still has balance loss with intermittent falls mostly with quick movements. (exhibit "A" at pp. 196)

12/16/1999: Lost balance and fell into a wall bruising her right hip. (exhibit "A" at pp. 197)

2/24/2000: continues to have cervical muscular tightness and tenderness. She continues to have balance deficits, dizziness and headaches, though progress has plateaued over the last couple of months. (exhibit "A" at pp. 198-199)

In reports, from Family & Sports Physical Therapy, signed by Jeff Dietrich M. P. T. on the dates listed below:

2/13/04: Primary complaint is of some upper cervical pain and a mild headache. Back and shoulder musculature is still tight and tender, left worse than right. Tightness and tenderness in bilateral upper trapezius

(especially the left), levator scapulae, SCM, cervical paraspinals, upper pectoralis major, and sub occipitals (left greater than right). Tenderness in thoracic-lumbar parasitical and rhomboids. Susan is back to doing pretty well after approximately 3 week period of flare-up in nausea, dizziness, imbalance, and headaches. Muscular tightness and restrictions still present in cervical and thoracic musculature.
(exhibit "A" at pp. 200)

January 23,2006: I first evaluated Susan Reeves when I worked at NovaCare on February 5, 1999 for problems with dizziness, imbalance, neck/back pain, and chronic headaches which she had had since an auto accident in 1988. Her initial presentation was with constant dizziness that increased with any head movement or change in body position, imbalance in sitting and especially standing, multiple falls and running into objects while walking, very limited neck movement in any direction, tinnitus with multiple tones, constant neck pain and tightness/spasms, and headaches.
In January of 2002 Susan returned for evaluation of neck pain on the referral of Dr. Petroff. She reported at that time she was having continued problems with her dizziness, imbalance with walking, neck pain and left greater than right shoulder pain and tightness/spasm, limited neck ROM, continued tinnitus in both ears, and continued headaches that at times limited her from doing anything other than laying down. None of her symptoms were eliminated, the intensity of all were just decreased to a level that made her daily activity more manageable.
Susan returned for therapy again in January of 2003 for neck pain, back pain, and headaches. She also continued to have her dizziness and balance problems. She continued to have neck and neck tightness/ spasm that increased with prolonged sitting, constant dull headache, dizziness and imbalance with quick head movements and with certain visual stimulations, and a general pain in her neck and back.
Susan continued her treatment into 2004 with all her symptoms still present at some level. Early in the year her symptoms dizziness, imbalance, and headaches increased as she tried to increase her frequency with therapy and in conjunction with going to a pain management program. By April, pain was primarily in the upper cervical spine and because her pain level with the neck and bad headaches had decreased, her complaints of dizziness were increased. As of January 2006 she has already had a fall in her home, breaking some toes on her right foot.
I have worked with Susan for almost seven years. During this time I saw her progress from a woman who could barely leave her home secondary to dizziness, headaches, balance problems, and pain- to a woman who can now go out to multiple (2 - 3 max) appointments

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per week, not lock herself in a dark room every day. Her neck and back pain have varied over the years. Her dizziness is still present at some degree all the time. Tinnitus has been unchanged since I have known her. Her balance is still an issue with falling and running into walls, probably a little worse than in late 2003. Headaches are still present at some level all the time. Back and neck muscle tightness/ spasm are still present. Susan's symptoms chronic neck and back pain are not unlike other patients injured in auto accidents that I have treated during my 13 year career. Likewise, it is not uncommon for people with dizziness and balance disorders to have continued symptoms for many years, especially when their symptoms are untreated for many years. (exhibit "A" at pp. 201-203)

Q. OTHER DOCUMENTS IN SUPPORT OF EXPANSION OF CLAIM

6/7/89: A Memorandum of Settlement, whereas a grievance was filed by Reeves to be allowed to return to work, with some necessary medical restrictions, since she was placed upon a medical leave of absence, by her employer, against her wishes. Reeves did not sign the Memorandum of Settlement because she did not agree with it. Number two (2) and number four (4) on the Memorandum of Settlement state: (exhibit "B" at pp. 223)

> WHEREAS, a grievance was filed against the Employer on or about May 19, 1989 concerning placement of grievant on a medical leave of absence:
>
> 2. The Grievant will remain on a medical leave of absence until she has a full medical release to return to work without restrictions.
>
> 4. This Memorandum of Settlement shall constitute a final and binding settlement of any and all matters which have been or might be raised by the Union or by the Grievant in connection with her medical leave of absence.

2/29/91: comment from Vickie Prediger to Arnold Weinstock; Bally's does not want to return her [Reeves] to work without a full duty release. (exhibit "B" at pp. 236)

6/8/89: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness. (exhibit "B" at pp. 224)

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6/26/89: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness. (exhibit "B" at pp. 225)

7/31/89: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness. (exhibit "B" at pp. 226)

9/11/89: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness. (exhibit "B" at pp. 227)

10/13/89: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness. (exhibit "B" at pp. 228)

12/8/89: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness.(exhibit "B" at pp. 229)

6/1/90: Bally's Las Vegas Personnel Action Form - LOA Reason - Dizziness. (exhibit "B" at pp. 230)

12/2/91: Bally's Las Vegas Personnel Action Form - Termination - Employee's leave of absence exceeds Teamster's Collective Bargaining Agreement - Article 8.02) Note: pending appeal to District Court. (exhibit "B" at pp. 231)

1/3/91: Telephone Conversation Record - reference - Return from LOA - Susan came in with a note from a Dr. Borkin which stated Susan could return to work duties she was performing prior to her being put on LOA. (exhibit "A" at pp. 154) I told Susan I know there was more to this situation and that I would need to check with Cass since he was the one that involved with this. Susan was sitting in the chair by my desk, as she began to stand up, she appeared to become dizzy and unbalanced to the point where the man that was with her had to help her stand and help her walk out of the office to keep her balance. (exhibit "B" at pp. 222)

In a letter from Arnold Weinstock, counsel for Bally's, to Ms. Vickie Prediger, Rawlings, Burdick & Hunter, dated February 7, 1991: (exhibit "B" at pp. 234 A)

Claimant is requesting settlement of the above case, receiving the 5% Permanent Partial Disability Award which Dr. Kudrewicz apparently said she would be entitled to. In addition, Ms. Reeves wants to be allowed to return to work at Bally's as an employee.

On a Wage Verification Form, dated 2/25/91, signed by, Ms. Ana Ojeda, W.C. Specialist:

Date employee last worked after injury incurred: 5/17/89* * Placed on medical LOA due to dizziness. (exhibit "B" at pp. 234)

In a letter from Ms. Julie Vacca to Mr. Cliff Conner;

> 12/08/2000: Ms. Reeves continued to work, after the accident, until 9 months later when her employer forced her to take a medical leave of absence claiming she was a hazard to her job. (exhibit "B" at pp. 270)

In a letter from Ms. Ethel I. Pipp, Manager, Workers' Compensation, to Dr. David Oliveri: (exhibit "B" at pp. 240-241)

> June 2, 1998: She stated to me on the phone that she is to dizzy to drive. She said she normally just lies around all day since she is not capable of anything else.
> She had a motor vehicle accident prior to her current one of 09-25-88. I believe she had the same medical complaints of headaches, dizziness and neck pain from both accidents.

In a letter from Ms. Ethel I. Pipp, Manager, Workers' Compensation, to Mr. David Zerfing, Sr. V. P., Finance & Administration, Bally's: (exhibit "B" at pp. 242)

> June 2, 1998: She was released from employment as a room reservation clerk on 05-17-89. Reason given: extreme headaches, dizziness with neck pain.

In letters, from Mr. F. Edward Mulholland II, Attorney, for Bally's, to Mr. John F. Vena, Claims Manager, Park Place Entertainment Corporation, on the dates listed below:

> July 9, 1999: Ms. Reeves' complaints, last I heard, included dizziness, ringing in her ears, headaches and uncomfortableness with bright lights. (exhibit "B" at pp. 245)

> August 10, 1999: Those medical records generated within six months or so of her industrial injury indicate complaints of headaches, dizziness, neck and head pain. (exhibit "B" at pp. 250)

Even in the original Hearings Officer's Decision, dated Nov. 30, 1989, The Hearings Officer, Mr. Edwin Armstrong, stated: (exhibit "C" at pp. 316-317)

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Unfortunately, while the claimant does, indeed, unquestionably have major problems with dizziness, it does not appear that these problems owe their etiology to the industrial accident of September 25, 1988.

R. ARGUMENT IN SUPPORT OF EXPANSION OF THE SCOPE OF CLAIM

CLAIM WAS ACCEPTED FOR THE VERY ISSUES THAT ARE NOW BEING REJECTED AS OUT OF THE SCOPE OF CLAIM.

Reeves' industrial claim was accepted in 1997 for her industrial injuries of dizziness, head and neck pain. (exhibit "B" at pp. 237, 238)

Reeves' request to have her claim expanded to include foreseeable injuries, such as broken toes or broken ribs, from falling or stumbling into objects, is supported by the facts, that in her medical records there is substantial mentioning, by her medical physicians, that she had and has dizziness and balance problems, resulting in falls and injuries, along with head and neck pain, relating to her industrial injuries.

The fact that injuries, resulting from dizziness and balance problems, one (1) of her accepted industrial symptoms, are not listed on the initial report of injury is simply because they had not happened at that time.

Reeves has had many falls and injuries over the years due to her dizziness and balance problems, supported by the medical record, but not until 2007, find out that injuries caused by her industrial injury could be included in her claim. Reeves then filed to have her most recent injuries, that required medical attention, to be included in her claim. (exhibit "B" at pp. 312)

In Imperial Palace v Dawson, 102 Nev. 88, 90-91, 715 P.2d 1318, 1320 (1986), it was recognized that a worker's compensation insurer is responsible for covering any injury caused by the treatment of an industrial injury. Therefore, it certainly would mean that an

injury that is a direct result of an industrial condition would be the insurer's responsibility.

In a letter from Jennifer DaRos, worker's compensation representative, dated February 16, 2007, stating that Reeves ' claim can not be expanded to include injury from falls due to the fact that she was not working at that time. (exhibit "B" at pp. 312)

For Bally's to claim that these injuries not be included in her industrial claim due to the fact that she was not working at the time of these injuries, goes against all of the medical evidence, which has been in their possession all along. These types of injury would not occur, but for her industrial injury.

Bally's has had Reeves' medical records throughout this entire case, dating back to 1988. Dizziness is the reason Bally's placed her on a medical leave, against her wishes. (exhibit "B" at pp. 223, 234, 242, 270)

Bally's believes that Reeves' dizziness made her a hazard, to herself and others, on the job, and so placed her on a medical LOA. One would assume that Bally's reason for believing this was that she might and would fall, from her dizziness, to cause injury to herself or others. Reeves' dizziness is an accepted industrial symptom. (exhibit "B" at pp. 221, 222, 237, 238) For Bally's to now claim that injuries arising from that industrial symptom should not be part of Reeves' claim is unbelievable.

As opposed to the ruling in State industrial Insurance System v Hicks, 100 Nev. 567, 688 P.2d 324 (1984), Reeves is not reiterating the same complaints, after being granted a permanent partial disability award for her industrial injuries. She has never received a PPD award. (exhibit "B" at pp. 239)

Reeves was offered a permanent partial disability award in 1991, which was rescinded,

not paid or accepted. (exhibit "B" at pp. 239) Reeves could not accept a payment of that permanent partial disability award, because, according to NRS 616.507, that would constitute a final settlement of all factual and legal issues regarding her claim, including the right to appeal from the closure of the case or the percentage of disability. (exhibit "B" at pp. 235)

In the disability evaluation by Dr. Kudrewicz, with regards to the issue of Reeves' dizziness, he would defer any disability assessment until further information had been obtained. (exhibit "A" at pp. 40-41) .

Although Bally's advised Reeves that as of the date of her evaluation (8/15/90), her claim would be closed, which is peculiar as Reeves' claim had not been accepted at that time. Reeves' claim for workers compensation would not be accepted until after the Supreme Court Decision in 1997. (exhibit "B" at pp. 237, 238)

Also Reeves' medical condition has not plateaued, but has gotten worse over the years. Reeves had and is having the same symptoms that she has had since her industrial injury in 1988. She has been, and continues to be, under medical care for those symptoms relating to her industrial injury of 1988. (exhibit "A" at pp. 1 thru 217)

Reeves has gone well beyond speculation and conjecture, by a preponderance of the medical evidence, to establish that her dizziness and balance problems, an accepted industrial injury, was and is the cause of her falling and or stumbling into objects, resulting in new injuries. (exhibit "A" at pp. 1 thru 217)

Reeves' physicians from right after the 1988 industrial accident, have stated that the cause of Reeves' chronic dizziness and balance problems was from the injuries sustained in the 1988 industrial accident. (exhibit "A" at pp. 1 thru 217)

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There has not been any physician who has stated that Reeves did not have dizziness and balance problems. The only issue is what is the cause of that dizziness and balance problem. Some physicians have stated that they believe the injury to Reeves' neck is the cause of her dizziness and balance problems, as noted on x-ray and MRI, others have stated that they have no idea of what is the cause, or that the cause is only related to the non-industrial accident of 1987.

In Bally's v Reeves The Nevada Supreme Court held that Reeves' medical record indicted that the industrial accident, of 1988, caused new injuries and aggravating injuries.

One must remember that Reeves' claim for workers compensation was accepted, by Bally's, for dizziness, head and neck pain in 1997, and now Bally's, once again, is trying to un-accept Reeves' claim for workers compensation without a resolution of those symptoms. Bally's is trying to revisit the issue of causation, (exhibit "A" at pp. 58, 86, exhibit "B" at pp. 241, 242, 257, 260, 264, 268, 270, 271, 275) which is not permitted, per case law. In fact it is of no import as to whether Reeves' current symptoms, dizziness, head, neck and back pain were caused partly by the accident of 1987 or the accident of 1988, or a combination of both, it is an undisputed fact that Bally's accepted those symptoms as industrially compensational symptoms in 1997. (exhibit "B" at pp. 237, 238)

As dizziness and balance problems would almost certainly cause one to fall or stumble on occasion, resulting in injury on occasion, Reeves' claim should be expanded to include injuries from those falls.

For Bally's to expect a physician, at an emergency room or quick-care, without Reeves medical records or history, to have an opinion as to what caused the dizziness that resulted in

a fall causing new injury is unbelievable:

7. AS, A PURE LEGAL QUESTION, BALLY'S HAS HAD NO JUSTIFICATION TO HAVE EVER CLOSED REEVES' CLAIM.

Pursuant to NRS 616C.475 (5), (a), (b), (c), which states:

> (5), (a), a physician or chiropator determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience. (b), The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor. (c), The employee is incarcerated.

Whereas, none of the above have occurred, Reeves is requesting that her claim be reopened (reinstated), and that Bally's be required to provide all worker's compensation benefits, not just the ones that they feel are required, since her claim should have never been closed since it was accepted as industrial, in 1997.

Whereas, no physician or chiropator has ever determined that Reeves was capable of any gainful employment, for which she is suited, or that she was capable of light-duty employment, with limitations or restrictions, and she has never been incarcerated, Bally's has had no legal justification to have ever closed her claim.(exhibit "A" at pp. 1 thru 217)

As a purely legal question, Reeves believes that Bally's, CCMSI, has closed her worker's compensation claim illegally three separate times since it was accepted as industrial in 1997.

The first time in 1998, the claim closure was denied. (exhibit "C" at pp. 326-327) The second time in 2001, the claim closure was reversed and reopened. (exhibit "C" at pp. 330-333) The third time in 2006, is being disputed, as none of the requirements pursuant to NRS 616C. 475 (5), (a), (b), (c), have been met.

Bally's, even after each of their closures were either denied or reversed and reopened, they

never reinstated any worker's compensation benefits. They also, did not appeal and seek a stay, which would make one believe that Reeves' claim would revert to it's accepted and open status, for all worker's compensation benefits, the status it was in prior to the closures. That an open and accepted claim means that all worker's compensation benefits are due to the injured worker, until the claim is closed legally, which has not happened in this case.

8. REEVES IS ENTITLED TO INTEREST ON THE PAYMENTS THAT WERE UNREASONABLY DELAYED.

Pursuant to NRS 616C.335, Reeves is entitled to interest on the past TTD benefits, co-pays, deductibles and other out of pocket expenses that should have been paid through worker's compensation benefits.

Whereas, Bally's new that Reeves' claim was an accepted and open claim, that after each of their closures were either denied or reversed and the claim reopened, (exhibit "C" at pp. 326-327, 333) they should have reinstated all worker's compensation benefits, but did not.

Therefore, Reeves is entitled to interest on amounts that should have been paid.

9. REEVES IS ENTITLED TO THREE (3) TIMES THE AMOUNT THAT WAS UNREASONABLY DELAYED.

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of their closures was either denied or reversed. (exhibit "C" at pp. 326-327, 333) Reeves is entitled to three (3) times the amount that was and is being unreasonably delayed, on an open and accepted claim.

10. REEVES IS ENTITLED TO AN AFFIDAVIT FROM BALLY'S

Whereas, Reeves industrial claim has been closed a number of times illegally, she has had to utilize other healthcare providers, who will most likely seek reimbursement. She is entitled to an affidavit from Bally's and or their insurer, CCMSI, that should Medicare, the Teamsters Health Care Plan, any other health care provider, or company that provides prescription medications or any other payments that should have been paid through worker's compensation benefits, seek reimbursement for those payments, that they have paid over the years, since 1988, that Bally's or their insurer, CCMSI, will be responsible for the reimbursement of those payments, not her.

11. REEVES IS ENTITLED TO REIMBURSEMENT OF THE COST OF THE NEW IME.

Reeves is entitled to reimbursement of the cost of the new IME, in as much as she would not have had to seek a new IME, if Bally's were not still seeking to revisit the issue of causation. (exhibit A" at pp. 204-217), exhibit "B" at pp. 241, 242, 257, 260, 264, 268, 270, 271, 275)

Bally's has never had a legal reason to close Reeves' claim, and yet, they have closed it a number of times, by utilizing the issue of causation contained in physicians reports that were either denied or reversed. (exhibit "C" at pp. 226-227, 233)

The fact is that Reeves has and is still seeking treatment for her industrial symptoms. The fact that no physician has ever determined that Reeves was capable of returning to gainful employment, (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 122, 130, 131, 133, 134, 203,

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216) has not stopped Bally's from illegally closing and denying benefits to an industrially injured employee.

12. REEVES HAS A RIGHT TO LEGAL DEFINITIONS OF VARIOUS WORDS AND TERMS, ALSO WHETHER SOME BEHAVIOR IS ETHICAL OR LEGAL.

I am also, requesting legal definitions of the words or terms, " include or including," " part of ," " open as opposed to closed," "reversed and reopened," " should have not been closed but remain open for further benefits," " refused," " unreasonable," " delay," " initiate proceedings," " accepted " since the definitions in the dictionary and Bally's interpretation of the meanings of those words or terms are at odds.

Also, if there is a legal way to have a claim, that is open and accepted as industrial, to be only "open for litigation," where the insurer can pick and choose which benefits they will or will not provide, if any at all?

Also, under the worker's compensation statures, what is an industrially injured employee is entitled to, in an open and accepted claim?

I would also, like to know if it is ethical, if not illegal, under the Nevada Rules of Professional Conduct, Rule 3.4 (a) and (b), to alter or falsity evidence (documents) that is material and has evidentiary value, for an attorney to submit, and an appeals officer to accept, and utilize those documents in the making of a ruling, documents that have been redacted, not just "personal identifying Information", but lines in documents that would give a false impression as to what the document actuality states, as evidence.

The following documents have had various lines or parts of lines blacked out. Dr. Mortillaro's Psychological Evaluation Summary, dated 04/25/03, (exhibit "D" at pp. 349) had the following line "She is unable to work in any capacity and receives SSDI benefits" (exhibit

"A" at pp. 121) blacked out.

In a letter from Dr. Mortillaro to Ms. Beverly Mandery, claims reprehensive, CCMSI, dated April 26, 2004, (exhibit "B" at pp. 351-352) had the following parts lines (exhibit "D" at pp. 351) "significant difficulty coping with her physical symptoms," (exhibit "A" at pp. 129), (exhibit "B" at pp. 352) "psychophysiological symptoms may prevent her from returning to any type of competitive employment at the present time unless they are resolved." (exhibit "A" at pp. 138) blacked out.

The next letter from Dr. Mortillaro is after CCMSI's alleged meeting with him.

In a letter from Dr. Mortillaro to Ms. Susan Sayegh, claims supervisor, CCMSI, dated 05/22/04, (exhibit "D" at pp. 354-356) had the following lines or parts of lines (exhibit "D" at pp. 355) "but she believes that, at this time, she is physically, not psychologically is permanently and totally disabled.", also the line "If she does not have physical symptoms that would prevent her from returning to work in some capacity, then a hypothesis could be made that it would be Ms. Reeves perception that she could not return to work that is preventing her from doing so." along with the line "She has not worked in many years and the psychological and medical disability literature is filled with studies that suggest that people that have been out of work for as long as Ms. Reeves usually do not return to work." (exhibit "A" at pp. 133-134) Blacked out or cropped off.

In treatment session summary number fifteen (15) dated 02/05/04, (exhibit "D" at pp. 150), had the following line "Usually the session is conducted under low light environment (fluorescent light off" (exhibit "A" at pp. 148) blacked out.

In a letter from Dr. Petroff to Ms. Susan Sayegh, claims supervisor, CCMSI, dated April 13,

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2004, (exhibit "D" at pp. 357), had the following line "It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present.' (exhibit "A" at pp. 81) blacked out.

In a letter from Dr. Petroff to Susan Sayegh, claims supervisor, CCMSI, dated May 18, 2004, (exhibit "D" at pp. 358), had the following lines or parts of lines "It is impossible to document objectively what component of this degenerative change is work-related, however."

In a letter from Dr. Petroff to Dr. Mottimore, dated September 27, 2004, had the following line (exhibit "D" at pp. 365), "X-ray of the LS-spine shows an old L1 wedge injury." (exhibit "A" at pp. 88) blacked out.

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In a report from Dr. Mare Pomerantz to Dr. Petroff, dated 09/14/04, (exhibit "D" at pp. 364) had the following part of a line "L1 probably old in nature" (exhibit "A" at 89A) blacked out.

Whereas, NRS 616C.310 (1) (c), provides for the redaction of "personal identifying information" such as an address, a birth date or a social security number.

In the Court Rules of Nevada, pursuant to Part VII, Rule 2, Definitions; number 5. "Redact" To redact means to protect from examination by the public and unauthorized court personal a portion portions of a specified court document. Number 6. "Restricted personal information" includes a person's social security number, driver's license number or identification card number, telephone numbers, financial account numbers, personal identification numbers (PINs), and credit card or debit card account numbers.

As noted above, the redaction in the documents submitted, by Dally's counsel and accepted by the Appeals Officer, has nothing to do with "personal identifying information", but has relevant evidentiary value.

Pursuant to NRS 48.015 "Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

Reeves believes that by submitting such documents and an Appeals Officer admitting them as evidence, and using them to make a ruling, is at the very least unethical, even if not illegal.

Reeves also requests the legal definition pursuant to NRS 616D. 330, (1), (a), (1), as to what is a written record, that is a log that includes the date, time and subject matter, legally is. Is it just the date, time and subject matter or a written record of what was actually said, by whom to whom?

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13. CAN BALLY'S MAKE STATEMENTS OF FACTS WITHOUT DOCUMENTATION TO PROVE THOSE FACTS?

Bally's counsel has in the past made statements of facts that are either typographical errors, mistaken beliefs, taken out of context or completely incorrect.

In the last Appeals Officer's Decision and Order, dated December 22, 2009, (exhibit "C" at pp. 340-343) submitted by Mr. Davis, Esq. are examples of such occurrences.

The Appeals Officer relied upon twenty-seven (27) Finding of Fact. These Facts are not all factual. Numbers one (1) two (2), six (6), thirteen (13), seventeen (17), thru twenty (20), twenty-two (22), and twenty-four (24) are factual. Numbers three (3), four (4), ten (10), and fourteen (14), are mostly likely typographical errors. Numbers five (5), seven (7), thru nine (9), eleven (11), twelve (12), sixteen (16), twenty-five (25), thru twenty-seven (27), do not present a true picture of the statements in the record. Number fifteen (15) has a statement that is not factual at all.

First, Reeves would like to discuss the facts that are most likely typographical errors, numbers three (3), and four (4), Reeves never filed a worker's compensation claim with Bally's in 1987. She assumes that Bally's counsel meant the 1988 claim. Number ten (10), as, she never filed a claim with a date of injury of July 20, 2007, with Bally's, since she has not worked since 1989. She assumes that date is for some other time, most likely the 1988 claim, as that is the only claim Reeves has filed and the only claim that Bally's has accepted.

Secondly, Reeves would like to discuss the facts that do not present a true picture of the statements in the records, but taken out of context to present a different meaning.

Number five (5). The fact states Reeves was receiving treatment for her symptoms, for her 1988 claim. That fact makes it sound like Bally's was providing that treatment, but that

treatment was being provided by her private physicians, as Bally's did not accept her claim until 1997. (exhibit "B" at pp. 237, 238) Even after accepting her claim Bally's provided very little treatment. As such it is taken out of context and made to sound like something that it is not, to present a different meaning.

Number eight (8), refers to report from Dr. Kudrewicz, dated August 15, 1990, where he found that the majority of Reeves' symptoms from her first accident had improved by 95% before her second accident. She was found to have an intitlement to a five (5) percent PPD award. That fact failed to note that Dr. Kudrewicz would like to defer any disability assessment until further information, regarding the issue of vertigo was obtained. (exhibit "A" at pp. 40-41 Also, of note is the fact that Bally's had not accepted Reeves' claim until 1997. (exhibit "B" at pp. 237, 238) As such, that fact was taken out of context to present a different meaning.

Number nine (9), states that on February 27, 1991 the 5% PPD would offered to the claimant. That fact fails to note that the 5% PPD was offered, rescinded, never accepted, as acceptance would constitute a final settlement of all factual and legal issues regarding Reeves' claim, including the right to appeal closure and percentage of disability. (exhibit "B" at pp. 239, 235) As noted above her claim was not accepted until 1997. (exhibit "B" at pp. 237, 238) As such ,that fact was taken out of context to present a different meaning, as if it was awarded and accepted.

Number eleven (11), the fact states "on December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder." Dr. Glyman actually stated "I am of the opinion that she probably does suffer from a somatoform disorder." He also stated that "it does not appear that she can return to work duty." It was also his opinion that "there certainly

has not been any great advance in either treating or evaluating individuals such as this patient from the time of her original injury to now and there does not appear to be a medical treatment that will reverse or correct her situation." (exhibit "A" at pp. 101-102) Whereas, he refered to an original injury, must mean the industrial injury. The paraphrasing in that fact is to present a different meaning, one taken out of context.

Number twelve (12), the fact states "on December 27, 2001 the claimant was sent a claim closure notice, that determination would be reversed by an appeals officer awarding the claimant further medical care." The Appeals Officer's Decision and Order actually stated that "Claimant's somatoform pain disorder is industrial and requires further treatment including" specific treatments not just specific treatments. It also, stated that "Claimant's claim should not have been closed but remain open for further benefits." That "It is hereby Ordered the Decision of the Hearing Officer dated February 25, 2002 and the Employer's closure of claim is reversed and the claim reopened." (exhibit "C" at pp. 333) Whereas, Bally's did not provide any benefits other than the specific treatments, those treatments were not included into Reeves' treatment plan, according to Bally's, they were her treatment plan. Bally's took a very narrow view of what "should not have been closed but remain open" "reversed and reopened" further medical benefits" to mean. As such, that fact is presented out of context to present a different meaning.

Number sixteen (16). The fact states On September 8, 2006, it was learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication, also that the claimant was spending a lot of time out of state and treating under Medicare. The fact fails to note that since Dr. Petroff was only monitoring Reeves' medication, she preferred

to have only one (1) physician monitor her medications, so as to not have adverse reactions, that it was her who released him. Reeves has no idea of why the fact that she visited family and friends out of state is relevant, unless Bally's is trying to make the point that she is capable of riding in a vehicle. She also does not know what a lot is or how that is relevant. As for treating under Medicare, she still is treating for her industrial symptoms, as Bally's is not paying for anything, what would they have her do, just suffer in pain with no treatment? Or does Bally's believe that if Medicare is paying for her treatment, they are resolved from paying for industrially caused injuries? As that fact makes it sound like she is more capable than she is, it is also taken out of context to present a different meaning.

Number nineteen (19), the fact states that the claimant requested that injuries from falls as a result of her dizziness and balance problems be included in her claim, as she believed that her industrial symptom of dizziness caused her to fall and injure herself. The fact that Reeves was placed upon a medical LOA, by Bally's because of her dizziness. (exhibit "B" at pp. 223, 234, 242, 270) as they believed that she was a hazard at the workplace and in her medical history which has numerous documentation that she has fallen and injured herself on many occasions (exhibit "A" at pp. 1 thru 217) makes that fact a fact that is out of context and made to present a different meaning.

Number twenty-five (25), the fact states the Employer served the claimant with interrogatory questions focused on providing specific dates when she injuried herself as a result of falls, also provide the medical facilities that she sought medical attention as a result of her falls. That fact makes it sound like those interrogatory questions were not answered, when in fact they were. As such, that fact was presented to make it appear that those questions were not

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answered, to present a different meaning.

Number twenty-six (26), the fact states that the claimant testified that she had many falls that she thought was caused by her industrial injuries, also that she believed that she was forced to require medical care. The fact is that Reeves has had many falls over the years since her industrial accident, some of which resulted in injury, as documented in her medical history. (exhibit "A" at pp. 1 thru 217) As to the forced to seek medical care, Reeves does not know what that means, as she testified that she only sought medical care when she believed that it was necessary, not every time she fell. As such that fact is out of context to present a different meaning.

Number twenty-seven (27), the fact states "These findings of fact are based upon substantial evidence within the record." In fact, as noted above, those facts are not substantial when based upon the whole record.

Number fifteen (15), the fact states that "On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time that the claimant treated at that facility." That fact is nowhere to be found in any therapist document from that date.(exhibit "A" at pp. 201-203) As such should not even be in a statement of facts.

In Bally's Opposition to Petition's Motion to Supplement the Record on Appeal and Respondent's Motion to Strike Petitioner's Supplementation to the Record, received July 26, 2010, the facts that Bally's counsel stated above are almost exactly the same, but he went a step further where he states that Petitioner's July 20, 1987 accident was denied and that denial was eventuality reversed by the District Court and the Nevada Supreme Court. (exhibit "C" at pp. 345 B)

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Whereas, Reeves has never had an industrial claim from her accident of July 20, 1987, as pointed out to Bally's counsel at the appeal hearing, he for some unknown reason is still under the impression that there are two (2) separate industrial claims.

Whereas, Bally' s has presented facts that, when taken out of context, would lead one to believe that there have been two (2) separate industrial claims, one (1) from 1987 and one (1) from 1988. In fact there has been only one (1) industrial claim, the one (1) from 1988, which has been ongoing since then. Bally's counsels presentation of facts tries to present the picture of an industrial accident from 1987 that was closed with the award of a PPD and then another industrial accident from 1988 that was treated by Bally's.

Therefore. Reeves requested documentation in support of those facts. in a letter to CCMSI dated 7/29/2010. (exhibit "B" at pp 315 A) She received a response from CCMSI. dared August 25. stating that there is nothing further in her claim file that has not been previously sent to her. (exhibit "B" at pp. 315 D) Whereas. there is no documentation of any claim from 1987. no documentation of an acceptance of any PPD award. Reeves believes that facts that have no documentation or are presented out of context should not be allowed to be presented as facts.

XI
CONCLUSION

Whereas. it is undisputed. that Reeves suffered industrial injury in her industrial accident of 1988. (exhibit "C" at pp. 318-325)

Bally's accepted Reeves claim as compensational in 1997. with the very same symptoms that she has presented with since her industrial accident and still presents with today. (exhibit "B" at pp. 237. 238. exhibit "A" at pp. 1 thru 217)

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No physician has ever determined that Reeves was able to return to gainful employment. (exhibit "A" at pp. 5, 6,24,60,81, 83,87, 101,119, 122, 128, 130, 131, 133, 134, 203, 216)

All of the medical evidence, from the time of Reeves industrial accident, to the present, including her newest IME, show that she was and is not able to return to gainful employment, as required by statute, due to her accepted industrial symptoms. (exhibit "A" at pp. 1 thru 217)

Whereas, no physician has ever opined that Reeves was capable of gainful employment, for Bally's to constantly close her claim on the belief that her symptoms were and are solely related to her non-industrial accident, is a matter that has already been decided by the findings in Bally's v Reeves. (exhibit :C" at pp. 318-325) Which is an issue of causation, that can not be revisited once accepted as industrial. (exhibit "A" at pp. 58, 86), exhibit "B" at pp. 241, 242, 257,260,264, 268, 270, 271, 275) See Day v Washoe.

Whereas, Reeves' claim is an accepted claim and none of the conditions, pursuant to NRS 616C.475 (1), (5), (a), (b), (c), by statute or case law, to close a claim, have been met, Bally's has never had any legal justification to have ever closed her claim.

Accordingly, Reeves' industrial claim should be reopened (reinstated), as there has never been a legal justification to have closed it.

Her claim should be reopened with all worker's compensation benefits, to include, but not limited to, past and ongoing TTD benefits, reimbursement of all costs that should have been paid through worker's compensation benefits, interest on the amount that was unreasonably delayed, pursuant to NRS 616C.335, three (3) times the amount that was unreasonably delayed, pursuant to NRS 616D.120, and the cost of her latest IME, as she would not have had to seek it, if Bally's was following the worker's compensation statutes, and case law.

Bally's first closure in 1998 was denied, with no reinstatement of benefits. (exhibit "C" at pp. 327) Bally's second closure in 2001 was reversed and Reeves' claim reopened, with no reinstatement of benefits. (exhibit "C" at pp. 333) Bally's latest closure, in 2006, is being disputed as none of the requirements pursuant to NRS 616C.475 to close a claim have been met.

Whereas, Bally's has not reinstated benefits after each denial or reopening, they have unreasonably delayed payment due an industrially injured employee, and made it necessary for her to initiate proceedings to try to obtain the benefits due an industrially injured employee. Therefore, a violation of NRS 616D.120, making Reeves entitled to the above.

If, for some unknown reason, against all of the evidence, you should find that Reeves' claim should not be reopened (reinstated), she is certainly entitled to all of the above up until the time her claim was closed in 2006.

The statute that Bally's utilized in not reopening Reeves' claim, is not the correct statute, in this case.

In their letter of non-reopening, they state that the IME from Dr. Bassewitz, who is not the physician who preformed Reeves IME, did not show a change in circumstance, provided no objective medical evidence, or provide a viable treatment plan.

Whereas, Reeves' claim is an accepted claim and all of the medical evidence shows that she has been under a physicians care every since her industrial accident for her industrial symptoms. (exhibit "A" at pp. 1 thru 217) That the symptoms that were accepted as industrial have not changed or have gotten worse over the years.

Bally's has had objective medical evidence, as to the cause of Reeves' industrial symptoms.

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since Dr. Petroff's report, in 2004, (exhibit "A" at pp. 82) that was issued to Bally's, immediately before their meeting with him.

After which, at their behest, he issued another report, as to the issue of causation, but only with respect to the injuries from the second accident, contrary to all of his previous statements that he could not make such a determination. (exhibit "A" at pp. 63, 86-87)

As to, a viable treatment plan, Reeves has, over the years, tried every possible medical treatment plan that might resolve her symptoms. (exhibit "A" at pp. 1 thru 217)

After twenty-two (22) years, Reeves has come to the conclusion, that her industrial symptoms will never be resolved enough, for her to have a life without constant dizziness, headache and pain. Even with medication, her life is one of constant dizziness, headache and pain.

Reeves believes that as an accepted claim, pursuant to NRS 616C.475 (5), (a), (b), (c), and case law, that the only way to close an accepted claim and cease benefits, is when one (1) of the conditions in that statute apply. Whereas, none of those conditions apply, her claim is actuality open, and therefore, Bally's has used the incorrect statute to deny reopening (reinstating) of her claim.

As to, no certification of disability, Bally's latest closure is based upon the notion that there is no certification of disability, as they have no formal certification of disability forms from any of Reeves physicians. (exhibit "B" at pp. 314)

Bally's fails to make clear that they have never supplied any forms to have filed out either by mail or at their meetings with her physicians and they have had all of Reeves medical documentation which clearly shows that she is not able to return to gainful employment due to

her industrial symptoms all along. (exhibit "A" at pp. 1 thru 217)

Whereas, on all physician's reports, Reeves has, as noted in her medical history, stated that dizziness and balance problems, an accepted industrial symptom, has been a problem, and that sometimes, she has fallen and injured herself, due to her dizziness. As such, her claim should be expanded to include injuries from those falls, a foreseeable outcome due to her industrial symptom of dizziness. (exhibit "A" at pp. 1 thru 217)

Whereas, Bally's has not paid most of Reeves' medical bills over the years, she is entitled to an affidavit, from Bally's or their insurer, that should any healthcare provider seek reimbursement of payments, that should have been paid through worker's compensation benefits, that Bally's or their insurer, will be responsible to repay those payments.

Whereas, the dictionary and Bally's appear to differ on the meaning of certain words or terms, Reeves is entitled to the legal definitions, if they are not the same as the dictionary definitions.

Also, whether it is ethical or legal to redact documents, not just "personal identifying information," but to try to give the documents a different meaning.

Also, whether statements of facts can be made without documentation to back up the statements.

Respectfully Submitted,

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by:
Jeff Reeves (husband)

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CERTTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 7 day of September, 2010, I deposited a true and correct copy of the above and foregoing Request for Appeal OF DIR DETERMINATION in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

John F. Wiles Esq.
Business & Industry
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Dalton L. Hooks Esq.
4570 South Eastern Ave. Suite 28
Las Vegas, Nevada 89119

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third-Party Administrator
CCMSI

RECEIVED AND FILED

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Matter of the Contested Insurance Claim of SUSAN REEVES 4724 E WASHINGTON AVE LAS VEGAS NV 89110	APPEAL NO.: 78016-SL CLAIM NO.: 88S01H243724 Employer: BALLY'S DENNIS LINDENBACH 3645 LAS VEGAS BLVD S LAS VEGAS NV 89109

NOTICE OF APPEARANCE

TO: SUSAN REEVES, Claimant in Proper Person;

TO: JOHN F. WILES, ESQ., General Counsel for Division of Industrial Relations;

TO: BALLY'S , the Claimant's employer of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE of the appearance of DALTON L. HOOKS, JR., ESQ., of the law firm of FLOYD, SKEREN & KELLY, LLP., as counsel for CCMSI ("TPA"), in the above-entitled matter.

Doc038

Dated this 30 day of August, 2010.

FLOYD, SKEREN & KELLY, LLP.
By:

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DALTON L. HOOKS, JR., ESQ.
Attorney for Third-Party Administrator
CCMSI

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF APPEARANCE** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves 4724 E Washington Ave Las Vegas,NV 89110
[x] Via Facsimile [ ] Mail [ ] Personal Delivery	John Wiles Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Ms. Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 26th day of August, 2010

An employee of
FLOYD, SKEREN & KELLY, LLP

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FILED

AUG 16 2010

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

BEFORE THE APPEALS OFFICER

In the Administrative Action of:	)	APPEAL NO. 78016-SL
	)	CITATION NO.
	)	
SUSAN REEVES	)	
	)	

NOTICE OF APPEAL AND ORDER TO APPEAR

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the above entitled matter as been scheduled to be heard before the Appeal Officer on:

DATE: TUESDAY, SEPTEMBER 21, 2010

TIME: 11:00 – 12:00 P.M.

PLACE: STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION / HEARINGS DIVISION
2200 S. RANCHO DRIVE, SUITE 220
LAS VEGAS, NV 89102
Phone (702) 486-2527 Fax (702) 486-2555

The hearing will be held pursuant to the authority and jurisdiction conferred upon the Department of Administration by Nevada Revised Statutes ("NRS") 616D, and 233B.

PRE-HEARING ORDER

1. All parties are ordered to exchange and file with the Appeals Officer, prior to the hearing:
   a. All documentary evidence they propose to introduce at the hearing;
   b. A statement of the issues to be raised;
   c. Any case law, statutes or regulations in support of their respective positions;
   d. A list of witnesses and a brief summary of their proposed testimony;
   e. An estimate of the length of time required to present his/her case, including rebuttal and arguments.

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2. All parties shall comply with the foregoing paragraph 1 of this Order as follows:
    a. By the appealing parties, at least fourteen (14) days prior to the first scheduled hearing date;
    b. All other parties, at least seven (7) days prior to the first scheduled hearing date.
3. Continuances may be granted only in accordance with the requirements of NAC 616C.318.
4. Failure to comply with this Order may result in the exclusion of testimony or documentary evidence.

IT IS SO ORDERED this 16TH day of August, 2010.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ
APPEALS OFFICER

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF APPEAL AND ORDER TO APPEAR** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 16th day of August, 2010.

Diane Gagliano

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE
10 AUG 10 AM 10:24
RECEIVED AND FILED

Department of Administration
Appeals Office
2200 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102

August 9, 2010

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's, Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

I, Susan Reeves, would like to appeal the Determination of the Division of Industrial Relations (DIR) of July 22, 2010, with regards to the above.

I am disputing the DIR's Findings of Fact, as they utilized only parts of documents which do not present a true picture of the actual Facts of this case.

Also, in my letter of complaint, I asked the DIR, that if they needed documents to make a Finding of Fact, as I did not know what documents they might need, or where they might get them from, that I would like to be involved. I only sent them the Appeals Officer's Decision and Order, dated December 1, 2003, which found that my claim should not have been closed but should remain open for further benefits, and Ordered that the Hearings Officer's Decision, dated February 25, 2002, is reversed and the claim reopened.

Whereas, I never heard from the DIR, with regards to any documents they intended to use to make a determination from, other than the above, I can only assume that they received the documents that they quoted from CCMSI.

Whereas, I am involved in litigation with Bally's, CCMSI, over the handing of my claim, I believe that if the DIR is going to conduct a quasi-hearing, that both sides involved should have the opportunity to present opposing documents. Also, to be able to point out when the parts of documents quoted do not present the actual statements in the documents.

Whereas, the DIR quoted from Dr.Oliveri's report from August 18, 1998, in which he stated that " I have been asked to evaluate the examinee's capabilities in terms of entering the work force." That much is true, but they failed to mention, that in a cover letter from Bally's, they stated that they were unsuccessful in denial of my claim. Also, that his prognosis for my return to work was exceedingly guarded.

The DIR also quoted from Dr. Oliveri's report, that I had " overwhelming symptom magnification". That is also true, but they did not take note of the fact, that on the McGill Pain Questionnaire, I scored 32, and Dr. Oliveri stated " The maximum score is 78 points. Scores above 30 tend to indicate exaggeration of symptoms,

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although there is no exact cutoff point accepted." , not exactly overwhelming. He went from tend to exaggerate to overwhelming, although, he stated that there is no exact cutoff point.

The DIR also quoted, that Dr. Oliveri stated that he diagnosed me with a somatoform pain disorder, which is primarily a psychiatric problem, and that was not something that was caused by an industrial accident. In fact that is actually the opposite of the findings in the Decision and Order that I sent them.

Also, I do not believe that Dr. Oliveri is a psychologist or psychiatrist, capable of making a psychiatric diagnosis. Although he did state " Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge."

The DIR also quoted, that Dr. Oliveri stated that, " the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder." In fact, he stated that " The motor vehicle accident on 09/25/88 may have caused some minor problems but those have undoubtedly resolved." Whereas, it was ten (10) years after the accident, when Dr. Oliveri preformed his IME, and based upon the Nevada Supreme Court Decision Bally's v Reeves, I am at a loss as to how he objectively identified what physical injuries, be they minor or major, happened in an accident from that long ago, much less, how he could know that whatever the injuries were, they had undoubtedly resolved.

The DIR also quoted, that Dr. Oliveri stated "The criteria for disability under social security are very much different than the criteria under worker's compensation especially when issues of causation need to be established." In fact the issue of causation has been established in Bally's v Reeves, and under Nevada Case Law, once a claim has been accepted as industrial, that issue of causation can not be revisited., which is what Bally's has been trying to do every since they accepted my claim.

The DIR also quoted, that Dr. Oliveri stated that " He found that you were at maximum medical improved for the industrial injury." I am at a loss as to how he separated my physical injuries, as to what was industrial and what was not, ten (10) years after the accident.

Dr. Oliveri also stated under preexisting conditions; "there was a previous motor vehicle accident in 1987 resulting in headache complaints. I suspect that those complaints are also part of her current presentation." That statement taken at face value suggests that he was saying that my physical injuries from the previous accident are part of my current complaints. Which is exactly what was found in Bally's v Reeves, that my previous symptoms had been aggravated and new injury caused by the industrial accident.

Then there is the issue that the DIR did not mention at all, the Fact that Bally's closure of my claim was denied by a Hearings Officer, dated 1/25/99. In that Decision the Hearings Officer found that " the totality of the evidence raises a medical question regarding the claimant's continued symptomatology of headaches, dizziness, tinnitus and vertigo." These are the very symptoms that Bally's accepted as industrial in 1997.

So, with regards to Dr. Oliveri's report, he one (1) stated that I had a somatoform pain disorder that was not industrially caused, which was found not to be the case, two (2) that whatever minor physical injuries were caused by the industrial accident, they had undoubtedly resolved, not that I did not have physical injuries, just that they were not industrially caused, contrary to the Decision of the Nevada Supreme Court and my

medical history, three (3) that his prognosis for my return to work was exceeding guarded, and four (4) that Bally's closure based upon his report was denied.

Whereas, Bally's did not appeal and seek a stay, my claim should have been reopened with all worker's compensation benefits, but was not.

The DIR quoted from the March 26, 2001, report by Dr. Glyman, that he "diagnosed that you with a mild post-concussion syndrome" and "that you had many subjective symptoms which did not match up with objective physical findings."

However, what Dr. Glyman actually stated was "her objective physical findings are hard to match up with her complaints." He also, stated that complaints of dizziness and headache, cannot be objectively verified, as there is no objective medical test that can tell how much pain one is in or how much dizziness one is feeling. He went on to state that "it would be very unusual for an individual with a mild head injury to have complaints that are so strong and so extreme 13 years later." He also noted that "range of motion of the cervical spine is diminished due to pain in all planes."

As Bally's, CCMSI, and everyone else involved in my claim, knows that I was involved in a prior MVA in 1987, which was not industrial. In that MVA my head struck the rear window of the truck I was riding in. In the MVA of 1988, the industrial accident, I was the driver and the seat was moved much further forward and in that accident my head and neck were whipped back and forth very hard, causing damage to my neck, along with extreme dizziness and headache. It should be noted that the truck was an older model with no headrests. As noted by my physicians at the time, they stated that it was a typical "whiplash" injury.

Knowing that I struck my head in the first accident and that in the second accident my head and neck were whipped back and forth very hard, it sounds more like Dr. Gylman was describing my injuries from the first accident rather than my injuries from second, industrial, accident.

The DIR quoted from the addendum from Dr Glyman, dated December 20, 2001, "He agreed with the other physician who examined you and concluded that you suffer from a somatoform pain disorder. He did not recommend any further medical treatment."

As far as the statements by the DIR go they are almost true, but what Dr. Glyman actually stated was ' I am of the opinion that she probably does suffer from a somatoform disorder." He did state that 'As best as I can say, I am in agreement with other examiners that she has a somatoform disorder or a psychological basis of her symptoms." As for him not recommending a treatment plan, what he said was "I have to say that am at a loss to offer one." Whereas, over the years, I have tried numerous treatments to try to have a life without pain, as noted by Dr. Glyman, but with little success. Therefore, my physicians have tried to manage my pain through medication.

What the DIR did not mention was that Dr. Glyman also stated that "There certainly has not been any great advance in either treating or evaluating individuals such as this patient from the time of her original injury to now and there does not appear to be a medical treatment that will reverse or correct her situation." The DIR also, did not mention the fact that he stated "With respect to her work status, it does not appear that she can return to work duty. She has not worked in some time and there is nothing that has changed from the time of

her original disability impairment exams that have been done in the past. I certainly see no improvement from how she was when her case was closed and her PPD rating was performed."

Whereas, Dr. Glyman stated that I had an original injury, would mean that I had physical injuries from my accident and that it has not gotten any better since my PPD rating, which was preformed in 1990, eleven (11) years prior to his IME. It also, should be noted that no PPD award was ever awarded. He also stated that I was not able to return to work, and yet Bally's used his report to once again close my claim. That fact that he was at a loss to offer a treatment plan does not mean that I was not receiving treatment for my industrial symptoms, only that he could not offer a treatment plan that he believed would resolve my symptoms. He stated as much when he said that there does not appear to be a treatment that will reverse or correct my situation (symptoms).

I appealed Bally's December 27, 2001, claim closure, and a hearing was held, where on April 19, 2002, a Decision was issued affirming claim closure.

I appealed the Hearings Officer's Decision, and a appeal hearing was held, where on December 1, 2003, a Decision was issued, which stated that my claim should have not been closed but should remain open for further treatment, to include specific treatments, also the actual order stated that the Hearings Officer's Decision was reversed and my claim reopened.

Whereas, Bally's did not appeal and seek a stay, my claim should have been reopened with all worker's compensation benefits, but was not.

Apparently, that my claim should have not been closed but remain open, that the Hearings Officer's Decision was reversed and my claim reopened, did or does not mean that I am entitled to TTD benefits, or most other benefits, according to Bally's.

On January 21, 2004, my counsel requested TTD benefits from the date of the first claim closure in 1998.

On March 16, 2004, CCMSI wrote a letter to my counsel requesting a certificate of disability from my physicians in support of the request for TTD benefits. CCMSI did not send along any forms for my physician to fill out.

On July 21, 2004, CCMSI wrote a letter to my counsel, denying TTD benefits, based upon a report from Dr. Petroff, dated June 29, 2004, because there was no evidence of certification of disability.

The DIR did not take notice that in every report from Dr. Petroff, previous to the one (1) that CCMSI utilized in denying TTD benefits, he had always stated that I was not capable of gainful employment due to my industrial symptoms, which CCMSI had in their possession all along. Whereas, they were the party that had requested, numerous times, that he opine what my capability was in returning to gainful employment.

That report from Dr. Petroff was after CCMSI had a meeting with him where he was induced to state that solely from the injury from the industrial accident, it would be reasonable to try a trial of back to work. Somehow at that meeting, between Dr. Petroff and CCMSI, they found a way to separate my symptoms one (1) accident from the other, contrary to the findings in Bally's v Reeves. He did not state that I was fit for gainful employment, with respect to all of my symptoms, only with respect to my industrial injuries.

It also, should be noted that in Dr. Petroff's report of June 29, 2004, he stated "Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties." Whereas, it is now six (6) years later, with no offer of a return to work, based on sedentary duties, one can only wonder how long it will take for CCMSI to find a position that I am able to perform. The fact of the matter is that Bally's does not want me back on their property, as noted in documents, that had I had an opportunity to present would have shown that one (1) Bally's placed me on a medical LOA against my wishes, and two (2) that they know that I am not capable of returning to gainful employment, as documented in my medical record.

Had the DIR looked at all of the previous correspondence between CCMSI and Dr. Petroff, they would have found that he had stated that it was his opinion that I was not capable of gainful employment.

In letters from Dr. Petroff to Ms. Suasn Sayegh, claims supervisor, CCMSI, who now works for the DIR, dated April 13, 2004, when asked about my work status from beginning treatment in 1998 to the present, he stated that "It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present." CCMSI did not at that time send along a certificate of disability form for Dr. Petroff to fill out. As they did not like the response to their previous letter, another letter was sent and the response was dated May 18, 2004, in which he stated that " Symptoms currently keeping the patient from returning to work, by my understanding, principally consist of neck pain, back pain and dizziness." He then went on to state that my neck pain was documented objectively on MRI and x-ray, that my neck condition was possibly the cause of my dizziness and balance problems, also that he felt that my neck problems are significantly contributory to my headaches. He also stated, "From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical disease." Once again, CCMSI did not send along a certificate of disability form.

It should be noted that Dr. Petroff's report of May 18, 2004, was only one (1) month before the meeting with CCMSI, where he was induced to issue the opinion stated in the report of June 29, 2004. Even at CCMSI's meeting with Dr. Petroff, they did not give him a certificate of disability form.

As noted, in the correspondence between CCMSI and Dr. Petroff, CCMSI knew that I was not able to return to gainful employment, due to my industrially caused symptoms. The fact that CCMSI never gave me or my physicians any certificate of disability forms to fill out does not mean that they did not know that there was evidence of certification of disability, as documented in all of my medical records, that CCMSI has and had in their possession all along.

The fact that the DIR apparently used only documents supplied by CCMSI, is why I asked them that if they intended to look over my entire case to make a Findings of Fact, that I would like to be involved I was not asked to submit any other documents.

The September 8, 2006, letter notifying CCMSI that I was no longer going to be seeing Dr. Petroff and only see my family physician, Dr. Mattimoe, is because Dr. Petroff was only monitoring some of my medications, and I prefer to have only one (1) physician prescribe my medications, if possible, to cut down on the chance of reactions.

As to, Dr. Mattimoe not treating me for my worker's compensation claim, as noted in my medical records,

Dr. Mattimoe had been treating me for my industrial symptoms since my industrial accident. For whatever personal reasons Dr. Mattimoe did not wish to become involved in any legal matters in my claim.

It should be noted that Bally's for the first nine (9) years, after my industrial accident did not accept it or pay for any treatment. After their acceptance in 1997, they still only paid for IME's to look into the causation issue.

Whereas, I had industrial injuries that needed treatment, I treated with my own physician, and many others over the years to try to resolve my symptoms, most of which was not paid by Bally's.

For CCMSI, Bally's, to claim that, on an accepted and open claim, to not pay TTD benefits along with all other worker's compensation benefits is unbelievable. It makes one wonder what accepted and open means.

Can CCMSI just pay for the worker's compensation benefits that they want to, if any at all?

Whereas, I believe that Bally's, CCMSI, are in violation of a number of statutes, specifically NRS 616C, 475 (1), which states:

> An employee injured by accident is entitled to 66 2/3 percent of the average monthly wage. until (5) (a), that a physician or chiropractor determines that the employee is physically capable of gainful employment for which they am suited, after giving consideration to their education, training and experience. (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

Whereas, the Appeals Officer's Decision and Order stated plainly that my claim should not have been closed but remain open further treatment, and had Bally's abided by the above statute, I would not have had to file a complaint with the DIR about the issue of back TTD benefits, on an open and accepted claim. It should be noted that Bally's paid TTD benefits, without certificates of disability, until they closed my claim in 1998. Bally's never asked for any certificates of disability until 2004, fourteen (14) years after my industrial accident. They have also had all of my medical records this whole time, and they have known that I was not capable of returning to gainful employment due to my industrial injuries, as noted in the fact that no physician has ever determined that I was capable of gainful employment.

Whereas, Bally's has unreasonably delayed payment of compensation due an injured employee, I believe pursuant to NRS 616C,065 (3), that I am entitled to three (3) times the amount that was / is being unreasonably delayed. I believe that my claim is the very reason that a statute such as this one was put into law. Also pursuant to NRS 616C.335, interest on the amount that was unreasonably delayed.

Whereas, NRS 616D.120 states:

> (c), refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found due him by a hearing officer, appeal officer
> (e), made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D
> (g), failed to provide or unreasonably delayed payment to an injured employee

(h), intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS

Whereas, an Appeals Officer found that my claim should not have been closed but remain open for further treatment of my industrial injuries, that my claim was reopened, and yet Bally's did not reinstate all worker's compensation benefits. The only benefits that they paid were the specific treatments on the Order, even through it stated including those specific benefits, not limited to just those benefits.

If the wording on a Decision, does not carry a plain meaning, I am requesting just exactly what wording should I look for, in a Decision, that on face value makes one believe that the Order is in their favor? If there are different meanings, legally, as opposed to the dictionary, of words, such as, include, open, part of , closed, refused, unreasonable, delay, initiate proceedings, accepted, I feel that I am entitled to the definition of the legal meaning of those words.

Whereas, I believe that CCMSI is in violation of all the statutes above, in particular, in this appeal, 616D.120, where an Appeals Officer plainly stated that my claim should have not been closed but remain open, and that the Hearings Officer's Decision was reversed and my claim reopened. That wording certainly sounds like my claim would revert back to the status that it was in before Bally's closed it. Before Bally's closed my claim they were paying TTD benefits without certification of disability forms.

As noted above CCMSI has been in contact with my physicians and plainly knew that I was industrially disabled and not able to return to gainful employment, due to my industrially caused symptoms.

If I am not mistaken, it is CCMSI's responsibility to furnish certificate of disability forms, which they have never done. To now deny TTD benefits and all other worker's compensation benefits because they do not have them, I believe is their fault not mine. They could have furnished the forms in any of their letters to my physicians or took one with them to their meeting, or even mailed one to me, but did not.

Whereas, CCMSI did not furnish the forms that they now claim to need to pay TTD benefits, is pursuant to NRS 616D.120, a refusal and an unreasonable delay of payment of compensation due an industrially injured employee, and therefore, made it necessary for me to initiate proceedings to try to obtain benefits that are due an industrially injured employee.

I therefore request that a Decision and Order be issued that I am entitled to back and ongoing TTD benefits, along with all other worker's compensation benefits, and pursuant to NRS 616C.335, interest on the amount that should have been paid. Also, pursuant to NRS 616C.065 (3), that I am entitled to three (3) times the amount that was unreasonably delayed, along with any benefit penalties due pursuant to NRS 616D.120.

Respectfully submitted,



Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (husband)

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CERTTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 10 day of August, 2010, I deposited a true and correct copy of the above and foregoing Request for Appeal OF DIR DETERMINATION in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

Charles J. Verfe
Division of Industrial Relations
Worker's Compensatrion Section
1301 N. Green Valley Parkway, Suite 200
Henderson , Nevada 89074

Rosemarie McMorris
CCMSI
P.O. Box 35350
Las Vegas, Nevada 89133-5350

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

1064

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

July 22, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

Dear Ms. Reeves:

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS), has completed its investigation into your complaint dated June 1, 2010.

FINDINGS OF FACT:

You alleged that Bally's and CCMSI failed to timely pay temporary total disability (TTD) benefits after a December 1, 2003 Appeals Officer decision ordered that closure of your workers' compensation claim was premature. You alleged that you were due TTD benefits from the date your claim was closed on August 27, 1998.

On August 18, 1998 Dr. Oliveri conducted an independent medical evaluation (IME) in which he was asked to evaluate your capabilities of entering to the work force. Dr. Oliveri stated that your subjective complaints far exceeded objective findings. He diagnosed you with a somatoform pain disorder which was primarily a psychiatric problem which was not something that was caused by an industrial accident. Dr. Oliveri stated, ". . . The criteria for disability under social security are very much different than

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the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury. . ." Dr. Oliveri found that you had overwhelming symptom magnification. He stated that the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder. He found that you were maximum medical improved for the industrial injury. Dr. Oliveri stated that there was no evidence for disability and the current perceived disability was based on your nonindustrial somatoform pain disorder.

On March 26, 2001 Dr. Glyman examined you and diagnosed you with a mild post-concussion syndrome. He stated that you had many subjective symptoms which did not match up with objective physical findings.

On December 20, 2001 Dr. Glyman provided an addendum after reviewing additional medical records. He agreed with the other physician who examined you and concluded that you suffer from a somatoform paid disorder. He did not recommend any further medical treatment.

On December 27, 2001 Gallagher Bassett Services wrote a letter notifying you of their intention to close your claim. They also notified you that if you disagreed with their determination you could file an appeal with the Department of Administration Hearing Division.

On April 19, 2002 Hearing Officer Nora Garcia issued a Decision and Order, hearing number LHS2002-C-4641-NG, regarding your appeal of the insurer's December 27, 2001 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 1, 2003 Appeals Officer Nancy Richins issued a Decision and Order regarding your appeal of the Hearing Officer's Decision affirming claim closure. The Appeals Officer concluded that the somatoform pain disorder was industrially related and required further medical treatment, and ordered the claim to be reopened.

On December 11, 2003 CCMSI wrote a letter notifying you the claim would remain open for further medical treatment, and notified you that they scheduled you for an appointment with Dr. Mortillaro on January 5, 2003 at 9:30 am.

On January 14, 2004 CCMSI wrote a letter that they were aware you were being treated by Dr. Petroff. They advised you that the Appeals Officer instructed them to provide short term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures and appropriate therapy. They notified you that Dr. Mortillaro was authorized to provide these treatments, and they were denying Dr. Petroff's recommended treatment plan.

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On January 21, 2004 Douglas Rowan wrote a letter to CCMSI that he was aware they authorized further medical treatment with Dr. Mortillaro. He also requested TTD benefits from the date of claim closure.

On January 30, 2004 CCMSI faxed a letter to Dr. Petroff authorizing an MRI of your cervical spine. It appears that they also authorized medications prescribed by Dr. Petroff and Dr. Mattimoe, as well as physical therapy.

On March 16, 2004 CCMSI wrote a letter to Mr. Rowan requesting a certificate of disability from your physicians from August 26, 1998 in support for his request of TTD benefits. Once they received the certificates of disability they would render a determination with appeal rights.

On March 30, 2004 Dr. Mortillaro discharged you from his care and noted that you remained under the care of Dr. Petroff.

On July 21, 2004 CCMSI wrote a letter to Mr. Rowan notifying him that they were denying his request for TTD benefits from 1998 based on a medical report by Dr. Petroff dated June 29, 2004, because there was no evidence of certification of disability. They also provided him with a copy of the report.

On January 20, 2006 Appeals Officer Gerald Schwartzer filed a Decision and Order, Appeal Number 14175-GS/14174-GS/13350-GS, regarding your appeal of a Hearing Officer's Decision and Order dated November 30, 2004, affirming denial of TTD benefits. The Appeals Officer dismissed your appeal for denial of TTD benefits due to untimely filing of the appeal.

On September 8, 2006 the insurer was notified that Dr. Petroff was only monitoring your medications and referred further care to Dr. Mattimore, who has been prescribing physical therapy. They were also notified that Dr. Mattimore was not treating you for the workers' compensation claim.

On July 25, 2007 Hearing Officer Steven Evans issued a Decision and Order, hearing number 41025-SE, regarding your appeal of the insurer's September 8, 2006 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 22, 2009 Appeals Officer Gregory Krohn filed a Decision and Order, Appeal Number 39934-GK/42367-GK, regarding your appeal of a Hearing Officer's Decision and Order dated July 25, 2007 which affirmed claim closure. The Appeals Officer affirmed claim closure.

On June 21, 2010 the WCS mailed a letter to CCMSI notifying them of your complaint. The WCS received a letter from CCMSI dated June 29, 2010 in which they informed the WCS that the matters of TTD benefits, medical treatment and claim closure have been affirmed by the Appeals Officer and are currently pending in District Court. You appealed the Hearing Officer's Decision affirming denial of TTD benefits and the

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Appeals Officer affirmed the denial. This case is pending at the District Court. Claim closure was affirmed by a Hearing Officer and Appeals Officer. The case is also pending at the District Court.

DETERMINATION:

Determinations regarding TTD benefits and claim closure were affirmed by a Hearing Officer and Appeals Officer. Certificates of disability were not received for the specific periods in questions. Medical treatment was provided timely as ordered.

ADMINISTRATIVE FINE:

Based on the findings of fact, it is determined that there are no violations that would warrant an administrative fine.

BENEFIT PENALTY:

It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

NOTICE OF RIGHT TO APPEAL:

If a person wishes to contest a written determination of the administrator to refuse to impose a benefit penalty pursuant to NRS 616D.120, he must file a notice of appeal with an appeals officer within 30 days after the date on which the administrator's determination was mailed. The notice of appeal must set forth the reasons the refusal to impose a benefit penalty should not be issued. **If a notice of appeal is not filed as required, the refusal to impose a benefit penalty shall be deemed a final order and is not subject to review by any court or agency.**

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The notice of appeal should be addressed to the Department of Administration, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102 or the Department of Administration, Appeals Office, 1050 East Williams Street, Suite 450 Carson City, Nevada 89701.

Sincerely,
Don Jayne, Administrator
Division of Industrial Relations

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

CJV:cgp

cc: Don Jayne, Administrator, DIR
CCMSI

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Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (3), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Ms. Susan Sayegh?

Thank You,

Susan Reeves

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Recsearcked and Typed by,
Jeff Reeves (husband)

cc: Don Jayne

1071

Susan Sayegh
Southern District Manager
Workers Compensation
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 29, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Sayegh,

I am in receipt of your letter, dated April 26, 2010, where my complaint of a violation, pursuant to NRS 616D.130, was found to have no merit. Apparently Bally's representatives, ether Bally's employees or CCMSI employees, do not have to make or keep a written record of oral communications, of what was said at meetings that are held between said representatives and patients doctors. One could assume that since you, Ms. Sayegh, were the Claims Supervisor for CCMSI at the time of the meeting with Dr. Petroff, you could have been one of those representatives. If not, you most certainly would have known who would have been at that meeting and whether or not a written record was kept.

Since your office, the D.I.R., has conducted an investigation and concluded that all Bally's or their representatives have to do, pursuant to NRS 616D.130, is timely respond to a request, not actually keep or have a written record, that there is no violation.

Since my complaint was about written records, pursuant to NRS 616D.130, I have no idea why your office would go to the great lengths of looking into the history of my claim. As for reviewing the information, as it pertains to my claim, your office did not request any information from me. One would then assume that all information supplied for the investigation was supplied by Bally's or CCMSI.

As to your offices findings of fact, since your office is a governmental regulatory agency, that your office would at least verify those facts before presenting those facts as facts. Upon reviewing said facts, they appear to be almost word for word the findings of fact that Bally's attorney presented, at the last appeal hearing I had. They are also the same as in the last Appeals Officers' Decision, written by Bally's attorney. There are a number of errors in those facts, some perhaps are just typed wrong, others are just wrong.

Since it was not my intension to have your office look into my entire claim, I will not go into all the details of which facts are incorrect.

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As I have not received the type of fair and unbiased handling of this matter that one would expect, and since your department, the D.I.R.s, responsibility is to investigate possible violations, by insurers, pursuant to the NRS. I am requesting that your office inform me as to which governmental agency, office or department, investigates possible mishandling of complaints by your office, as I would wish to make a complaint about the handling of this matter.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

1073

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 26, 2010

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re:	Injured Employee:	Susan Reeves (2)
	Claim No.:	88H92H243724
	Employer:	Bally's
	D.O.I.:	September 25, 1988
	TPA:	CCMSI
	Complaint #:	11522

Dear Ms. Reeves,

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS) has, pursuant to Nevada Revised Statutes (NRS) 616D.130, investigated the complaint you filed. The issue in your complaint that can be addressed by the WCS is a possible violation of NRS 616D.330.

After reviewing the information supplied to this agency and completing the investigation, a determination has been reached and has concluded the following:

FINDINGS OF FACT:

On July 20, 1987, you were involved in a motor vehicle accident wherein you were diagnosed with cervical strain and head injury.

In 1987, Bally's issued a Notice of Claim denial.

On September 25, 1988, you were involved in another motor vehicle accident while employed at Bally's and sustained an industrial injury while working within the course and scope of your employment.

On June 9, 1989, S.I.S. Administrators issued a Notice of Claim Denial. Appropriate appeal rights were given.

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On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that you be sent to pain management.

You appealed the 1987 claim to the hearing officer and your claim would be denied. You then appealed the matter to the appeals officer.

On August 15, 1990, you were seen by Dr. Kudrewicz and would eventually be found to have an entitlement to a five (5%) percent Permanent Partial Disability (PPD)

On February 27, 1991, you were offered the 5% PPD Award.

On March 26, 1991, the appeals officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later by the Nevada Supreme Court.

On September 26, 1997, a Notice of Claim Acceptance was issued for your claim with a date of injury July 20, 1987.

On May 12, 1998, a second Notice of Claim Acceptance was issued.

On December 20, 2001, Dr. Glyman wrote a report concluding that you had a somatoform disorder.

On December 27, 2001, a Notice of Claim Closure was issued but would later be reversed by an appeals officer awarding you further medical treatment.

You continued your care with Dr. Mortillaro in 2003 and 2004. In March 2004 Dr. Mortillaro discharged you from his care.

On May 28, 2004, you requested copies of all correspondence between CCMSI and Drs. Mortillaro and Petroff.

On June 2, 2004, CCMSI responded to your May 28, 2004 request.

On December 15, 2004, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from CCMSI.

You continued to receive physical therapy at the Family & Sports Physical Therapy Center. On January 23, 2006, a therapist indicated that your condition had greatly improved over the time period that you had treated at the center.

On September 8, 2006, CCMSI learned that Dr. Petroff had released you to your family physician since he was only monitoring your medication. It was also learned that you had been spending a lot of time out of state and were being treating under Medicare.

On September 8, 2006, CCMSI issued a Notice of Intent to Close Claim. You appealed this determination. The hearing officer would dismiss your appeal because you failed to attend the hearing. You appealed this determination.

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On January 17, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Bally's.

In January 2007, you submitted a written request to expand the scope of your claim to include bruised ribs and a broken toe.

On February 16, 2007, CCMSI issued a determination denying your January 2007 request. Appropriate appeal rights were given.

On May 10, 2007, the hearing officer issued a decision and order affirming the February 16, 2007 determination. You appealed this determination.

On May 31, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services. ("Sedgwick")

On August 16, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services.

January 29, 2010, you requested a copy of your complete industrial claim file from Sedgwick.

On February 24, 2010, CCMSI responded your January 29, 2010 request that was addressed to Sedgwick. They informed you that the copy work of your claim file had been previously supplied to you and that no other documentation exists.

CONCLUSION:

As it relates to a possible violation of NRS 616D.30, no violation was found.

CCMSI timely responded to your request pursuant to statute. You were advised in a previous response that you had been provided with a complete copy of your industrial injury claim file. The investigator reviewed the claim file and found no additional correspondence relating to the logs of oral communication.

As the issue outlined in your complaint has been addressed, the complaint filed with this agency is closed. If you have any further questions, feel free to contact Christopher Brown, Compliance/Audit Investigator II, at (702) 486-9098.

Sincerely,

Susan Sayegh
Southern District Manager
Workers' Compensation Section

cc: George Ward, WCS

1076

Christopher D. Brown
Compliance/Audit Investigator II
Industrial Insurance Regulation Section
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 18, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I. 9/25/1988
TPA/Insurer: CCMSI

Dear Mr. Brown,

This is a follow up to the conversations, that you had with my husband over the phone. He got the impression that a determination letter would be sent shortly thereafter. As I have not received any such letter, I would appreciate a letter to let me know what stage the investigation is in. Thank you for your attention to this matter.

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (Husband)

Doc045
1077

Nevada Division of Industrial Relations
1301 North Green Valley Parkway, Suite 200
Henderson , Nevada 89074
702-486-9080

February 28 2010

To whom it may concern,

I, Susan Reeves, would like the D.I.R. pursuant to NRS 616D.330 to help me get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them. There have been a number of requests for that information. Once by Douglas Rowan, Esq. on May 28 2004 and four times by the Nevada Attorney for Injured Workers, December 15 2004, January 17 2007, May 31 2007 and August 16 2007 and two times by me, January 29 2010 and February 12 2010. Their response was to say that all correspondence was duly copied, letter to Mr. Rowan June 2 2004, or that the copy work supplied was all there was, letter to me February 24 2010. They did send a log of oral communication for a meeting at Dr. Petroff's office that gives no idea of what was said, only that there was a meeting, and the people that they listed at that meeting is wrong. It was not my attorney but theirs, my husband and myself were asked to leave, see letter from Dr. Petroff June 29 2004 and letter from Mr. Rowan July 22 2004. There is also an activity log from May 10 2004 that has a S/W (spoke with?) Dr. Mortillaro that also gives no idea of what was said. I was told when I had my last appointment, by Dr.Mortillaro and Dr. Manuel F. Gamazo, that CCMSI (Bally's) and their attorney had been at their offices for a meeting. The meeting with Dr. Mortillaro and Dr. Gamazo was after my discharge, March 18 2004, but before my last appointment, June 1 2004. I requested a meeting with Dr. Petroff and was informed that I would have to have a court reporter present, letter from Dr. Petroff's office March 22 2004. Letter from my attorney, March 29 2004, about the requirement for a court reporter raises the issue of Dr. Petroff's concerns of what was said at the meeting with CCMSI, they did not have to have one. I feel that NRS 616D.330 would mean that if representatives of an employer have meetings with doctors that they have to have a written record of what was said. The letters written after, not the letters before, said meetings were the reason my claim was closed.

Thank You

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves(husband)

1078

ORIGINAL

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES, Claimant.	Claim No.: 88H92H243724 Appeal No.: 13350-GS 14174-GS 14175-GS

STATE OF NEVADA DEPARTMENT OF ADMINISTRATION
06 MAY -9 PM 1:35
RECEIVED AND FILED

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE GERALDINE SCHWARTZER

APPEALS OFFICER

Thursday, January 5, 2006

2:06 p.m.

2200 South Rancho Drive, Suite 200

Las Vegas, Nevada 89102

Ordered by: Department of Administration
2200 South Rancho Drive, Suite 200
Las Vegas, Nevada 89102

Doc 046
1079

A P P E A R A N C E S

On behalf of the Claimant:

Douglas Rowan, Esq.
Thorndal, Armstrong, Delk, Balkenbush &
Eisinger Law Offices
1100 East Bridger Avenue
Las Vegas, Nevada 89101

On behalf of the Employer:

Lee Davis, Esq.
Santoro, Driggs, Walch, Kearney,
Johnson & Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

I N D E X

EXAMINATION	DIRECT	CROSS	REDIRECT	RECROSS
SUSAN REEVES	7	12	15	17

EXHIBITS	IDENTIFIED	IN EVIDENCE
	(NONE OFFERED)	

* * *

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P R O C E E D I N G S

APPEALS OFFICER SCHWARTZER: This is in the matter of the contested industrial insurance claim of Susan Reeves. Present in the courtroom is the Claimant. She's represented by Mr. Rowan. Representing the self-insured Employer, Bally's, is Mr. Davis.

There are three appeals on for hearing. 13350 which is the Claimant's appeal from a Hearing Officer's order of dismissal that was dated November 30th, 2004. The Hearing Officer dismissed the appeal indicating that there was no determination filed with the appeal. I believe the Claimant was saying that her -- she was appealing claim closure.

14174 which is the Claimant's appeal from a November 30th, 2004 Hearing Officer decision. The issue was a July 15th, 2004 denial of a medical bill as not being preauthorized.

14175 which is the Claimant's appeal from a Hearing Officer's November 30th, 2004 decision regarding a July 21st, 2004 denial of temporary total disability.

I read Mr. Rowan's brief, and I believe that you were saying the matter in 13350 is -- you're withdrawing it because the Employer agreed the claim wasn't closed; is that correct.

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MR. ROWAN: That's correct. That the Employer is still maintaining that the claim is not closed, then there is nothing to appeal.

MR. DAVIS: That's what was represented in the Hearing Office level. I don't know of any determination since that time closing it.

APPEALS OFFICER SCHWARTZER: So the claim is open, as far as you know?

MR. DAVIS: As far as I know by reviewing the file.

APPEALS OFFICER SCHWARTZER: And 14174 is my understanding that you were saying, Mr. Rowan, that that matter was moot because it was discovered that they had paid the bill.

MR. ROWAN: I think that that was resolved.

APPEALS OFFICER SCHWARTZER: That was resolved. Okay. Which leaves 14175 regarding the temporary total disability.

Now, when I was going over the files I did notice -- and I don't know if either one of you knew this because it's involved with the appeal filing process, but I feel I have to bring it up. Appeal No. 13350, which was the one regarding the order of dismissal, was timely filed on December 8th. It's my understanding that the Claimant contacted the Appeals Office wanting to know

1083

what happened to her other appeals. Both those decisions were also signed by the Hearing Officer on November 30th, 2004, but we hadn't received the appeal. The appeal was filed on January 12th, 2005. May have been that she used the form that the Hearing Officer presented, and she indicated that she was appealing the decision of November 30th, and she thought she was appealing everything, but I do have to bring this up. If you want to come up and see my file I'll show what you I'm talking about.

MR. DAVIS: Okay.

APPEALS OFFICER SCHWARTZER: So off the record.

(Off the record)

APPEALS OFFICER SCHWARTZER: We're back on the record in the matter of Susan Reeves.

And, Mr. Rowan, you're going to present witnesses?

MR. ROWAN: Yes, initially I would like to call Susan Reeves just to address the issue --

APPEALS OFFICER SCHWARTZER: The jurisdiction?

MR. ROWAN: The jurisdictional issue.

APPEALS OFFICER SCHWARTZER: All right. Ms. Reeves, if you can come up here, please. Have a seat in that chair. Raise your right hand.

Do you solemnly swear or affirm that the

1084

testimony you are about to give in this matter will be the truth and nothing but the truth?

THE CLAIMANT: Yes.

APPEALS OFFICER SCHWARTZER: Thank you.

Could you state your name and spell your last name.

THE CLAIMANT: Susan Reeves, R-e-e-v, as Victor, e-s.

APPEALS OFFICER SCHWARTZER: I just want to check the mailing address that we have. 4724 East Washington Avenue, Las Vegas, Nevada 89110.

THE CLAIMANT: Correct.

APPEALS OFFICER SCHWARTZER: Mr. Rowan, you can proceed.

MR. ROWAN: Thank you.

DIRECT EXAMINATION

BY MR. ROWAN:

Q. Just, Susan, so you have an understanding of what I'm questioning about, there is an issue of whether the appeals were timely filed.

A. Yes.

Q. Did you receive a notice of the Hearing Officer's decision from November of 2004?

A. Yes, I did.

1085

Q. And were you provided with appeal forms with that notice?

A. Yes.

Q. At that time were you representing yourself?

A. Yes.

Q. And just because I was counsel previously, but was in the process of transitioning law firms; is that right?

A. Yes.

Q. And did you send in any of the notice -- strike that.

How many notices of appeal did you receive? I'm sorry. How many of the requests for appeal did you receive?

A. I could not honestly say now. It was a number of pages. I signed them all, dated them all. I photocopied to make sure I had a copy, and I sent them in.

Q. And where did you send them?

A. To the address that was on there. I mean, I don't have them here in front of me. I don't know -- I don't know if it was this address or the one on Washington. It was the address I had at the top of the page.

Q. Do you have an understanding that there were

1086

three claims or three claim numbers, file numbers, that came from the Hearing Officer?

A. I know there was a number of them. I couldn't tell you exactly how many.

Q. Did you have an intention -- strike that.

What was your intention as to the number which you wished to appeal?

A. I wanted to appeal all of them because I disagreed.

Q. Did there -- strike that.

Did you send in the request for appeal?

A. Yes, I did.

Q. And do you recall approximately when you did that?

A. It would be within a day or two after I received it.

Q. Did you receive any notification of the setting up the hearing before an Appeals Officer from the state?

A. One.

Q. Okay. And in December of 2004 were you home in Las Vegas during that entire month?

A. No.

Q. Where were you?

A. I think at that time we were down in California for -- usually we take always the Christmas week and the

1087

New Year week and sometimes the week before Christmas to see family.

Q. At some point did you receive notice from the state of the setting of a hearing before the Appeals Officer?

A. Yes, I received one.

Q. Okay. And what did you do when you received that one?

A. I called to find out what was -- what happened to the other ones.

Q. And do you recall who you spoke with?

A. No. It was a girl on the phone. She checked it out, and she said they had not received it. I asked if I could copy them and send them back in. She said, yes, which I did.

Q. And did you send the original appeal forms?

A. No. I had already sent those. I sent the copies that I had.

Q. Okay. When you sent the request for a hearing before the Appeals Officer in originally, did you send all of the ones that you had in?

A. The first time?

Q. Yes.

A. Yes.

Q. Okay. And how did you send them?

1088

A. Regular mail.
Q. And how many envelopes did you use?
A. One.
Q. Were all of the requests in the -- in one envelope?
A. Yes.
Q. How long after you received notice of the setting of the hearing before the Appeals Officer did you contact the Appeals Office regarding the status of the other two appeals?
A. When I received the notice that wanted the hearings set I called that day when I got the paper in the mail.
Q. Okay. During the time that you would have been out of town in December 2004/January of 2005, what would be done with your mail?
A. It's always held at the post office.
Q. And then what do you -- how do you get the mail?
A. My husband goes and picks it up on the way home from work on the first day back.
MR. ROWAN: I have nothing further on the jurisdictional issue at this time.
APPEALS OFFICER SCHWARTZER: Do you have any questions?
MR. DAVIS: Yes, I do. I wanted to show her the

1089

request for hearing forms.

APPEALS OFFICER SCHWARTZER: I'll give them to you.

MR. DAVIS: Okay.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Ma'am, I'm going to ask you just a few questions about your -- the Hearing Officer's decisions when you received them. Questions like that. Okay?

A. Okay. Can you speak up a little?

Q. Sure.

You had a hearing before the Hearing Officer, looks like, in November of 2004.

Do you recall that?

A. I recall a hearing. I don't know the exact date.

Q. Okay. But it was in November of 2004?

APPEALS OFFICER SCHWARTZER: I didn't -- you have to answer out loud.

Do you want to show her the --

MR. DAVIS: Sure.

APPEALS OFFICER SCHWARTZER: That says November of --

THE CLAIMANT: I just know I went for a hearing.

109.

I don't know the exact date.
BY MR. DAVIS:
Q. Okay.
A. I'll take your word for it.
Q. Right here it indicates it was filed -- your request for hearing was filed -- this was before the Hearing Officer -- in September. It was originally scheduled in October, and the hearing was rescheduled and took place November 8th.
A. Okay.
Q. Okay. As a result of that hearing the Hearing Officer issued you decisions, and it appears it was three decisions.
A. Uh-huh.
Q. Do you recall receiving all three of those decisions?
A. Yes, that's the one we're talking about, isn't it.
Q. Exactly.
A. Okay.
Q. Okay. And with each decision the Hearing Officer sent you a request for hearing form. Did you receive -- do you recall receiving that request for hearing form?
A. Yes.

1091

Q. Okay. And it's your testimony that you received all those at one time?
A. Yes. I don't know if they were all in one envelope, but I remember receiving all of them, yes.
Q. Okay. And it's your testimony within a few days after receiving them you filled out the paperwork and mailed it to the Appeals Office?
A. Right.
Q. You put all in one envelope?
A. Yes.
Q. And you sent it by regular mail?
A. Correct.
Q. When you sent in the request for hearing forms did you send in copies or did you send in the originals?
A. The first time I sent all originals.
Q. And then it's your testimony the second time you sent in copies?
A. That's all I had was copies that I --
Q. So you made copies of your copies?
A. Yes.
Q. And you're positive that you sent them all the first time in one envelope, all three of them?
A. That I know positively.
APPEALS OFFICER SCHWARTZER: Are you sure you filed three request for hearings --

1092

THE CLAIMANT: Yes, ma'am.

APPEALS OFFICER SCHWARTZER: -- the first time?

THE CLAIMANT: Yes, ma'am. I sat there at the esk and filled all of them out. I remember.

BY MR. DAVIS:

Q. And they were all sent to the same address?

A. Correct.

Q. In the same envelope?

A. In the same envelope.

Q. You sent that just regular mail?

A. Correct.

Q. You didn't send it registered or certified?

A. No.

MR. DAVIS: Nothing further.

APPEALS OFFICER SCHWARTZER: Mr. Rowan.

MR. ROWAN: If I could show her --

APPEALS OFFICER SCHWARTZER: Absolutely.

MR. ROWAN: -- the forms.

REDIRECT EXAMINATION

BY MR. ROWAN:

Q. Susan, I'm going to show you the form here on --

A. Do you want me to get up?

Q. I'll bring it to you so you can stay by the microphone.

1093

Are they based on a hearing number? Is that how it's --

APPEALS OFFICER SCHWARTZER: This is the hearing number.

MR. ROWAN: I just want to make sure -- so it's --

BY MR. ROWAN:

Q. Okay. What I'm going to show you, first of all, is the request for hearing before the Appeals Officer. Looks like it was received and filed December 8th, '04, Hearing No. 10908. Looking at that -- let me ask you this. Can you read it?

A. Just let me get my glasses, my reading glases.

Q. Okay.

A. Thank you.

Yes, that's the original signature it looks like.

Q. Okay. And let me show you one from -- with Hearing No. 10907.

Does that appear to be an original or a copy?

A. Yeah, that looks like an original. Yeah, that looks like original. I don't know. That might be all the original ones that were sent in.

Q. Show you the next one. Hearing No. 11038.

Does that appear to be a photocopy or an

1094

original, if you can tell?

A. Looks like an original.

Q. Can you tell?

A. I can't really tell. They look like those are the originals. I signed them all together.

MR. DAVIS: Judge, I have one more question I wanted to ask about those just so the record is clear. I mean, the document kind of speaks for itself, but I just wanted to --

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Ma'am, I'm going to show you the request for hearing form, and I'll just make reference to it's for Hearing No. 11038-SM.

The signature down at the bottom to the left side, is that your signature?

A. Looks like it, yes.

Q. Okay. And there is nowhere on this document where you date when you signed it; correct?

A. No, I don't think so. I thought there was a different paper that they had --

Q. And I'm just going to ask you about this one as well. This is the request for hearing form, and I'll make reference to it's Hearing No. 10907-SM, and the

1095

signature down at the bottom on the left side, that's your signature; correct?

A. Yes.

Q. And, once again, there is nowhere on the document where you dated when you signed it; correct?

A. No, there is not a place do that.

MR. DAVIS: Okay. Nothing further. Thank you.

APPEALS OFFICER SCHWARTZER: Thank you very much. You can return to your seat.

Off record. I want to see the attorneys meet me outside.

(Off the record)

APPEALS OFFICER SCHWARTZER: I had an off-the-record discussion with the attorneys because this was a new issue that neither one of them was aware of. However, jurisdiction can be raised at any point in the proceedings. So if I heard it on the merits today, ruled on the merits, and it went up to District Court by either party appealing it, once the record was produced, the attorneys certainly would become familiar with that part of the record that was in the Appeals Office. So it is an important issue that has to be resolved.

Because this was a new issue that neither attorney was familiar with at the time, I am going to give the parties ten days to do further research into the

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matter, and at the end of the ten days, unless I receive notification for further proceedings, I'm going to decide on the jurisdictional aspect of the case. So this matter will be continued for ten days. I'm just going to tickle my file for ten days unless I hear something further from the parties. Thank you.

Off the record.

(Proceedings concluded at 2:51 p.m.)

* * *

1097

CERTIFICATION

TITLE: SUSAN REEVES

DATE: January 5, 2006

LOCATION: Las Vegas, Nevada

The below signature certified that the proceedings and evidence are contained fully and accurately in the tapes and notes as reported at the proceedings in the above referenced matter before the Department of Administration, Appeals Office.

Kelly Paulson — 05/02/06

KELLY PAULSON — DATE

CERTIFIED COURT REPORTER #628

1098

Electronically Filed
10/14/2011 10:01:51 AM

CLERK OF THE COURT

IAFD

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for TPA/Respondent
CANNON COCHRAN MANAGEMENT SERVICES

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES,

Petitioner,

vs.

DIVISION OF INDUSTRIAL RELATIONS, And THE DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency,

Respondents.

CASE NO.: A-11-644791-J
DEPT. NO.: IV

Hearing Date: N/A
Hearing Time: N/A

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filling fees are submitted for parties appearing in the above referenced action as indicated below:

CANNON COCHRAN MANAGEMENT SERVICES, INC. [CCMSI]

$223.00

TOTAL REMITTED **$223.00**

Dated this 14th day of October, 2011.

FLOYD, SKEREN & KELLY, LLP.
By: #8038

DALTON L. HOOKS, JR., ESQ.
Attorney for TPA/Respondent
CCMSI

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of the law firm of FLOYD, SKEREN, & KELLY, LLP, and on this 14th day of October, 2011, I am serving the foregoing **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)** on the following parties:

Susan Reeves
Petitioner in Pro-Se
4724 E Washington Ave
Las Vegas NV 89110

Jennifer Leonescu, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway, #200
Henderson, NV 89074

Appeals Officer Shirley Lindsey, Esq.
Department Of Administration
2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos: 78016-SL; 80334-SL

Courtesy Copies:
Ms. Rosemarie McMorris
CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

BY:

xx Placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery by runner or messenger service.

____ Facsimile.

____ Federal Express or other overnight delivery.

Terry Rodriguez, An Employee of
Floyd, Skeren, & Kelly, LLP

Electronically Filed
10/14/2011 10:00:06 AM

CLERK OF THE COURT

RSPN
DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for TPA/Respondent
CANNON COCHRAN MANAGEMENT SERVICES

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES,

Petitioner,

vs.

DIVISION OF INDUSTRIAL RELATIONS, And THE DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency,

Respondents.

CASE NO.: A-11-644791-J
DEPT. NO.: IV

Hearing Date: N/A
Hearing Time: N/A

TPA/RESPONDENT'S RESPONSE TO PETITION FOR JUDICIAL REVIEW AND STATEMENT OF INTENT TO PARTICIPATE

COMES NOW Insurer/Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI ("TPA/RESPONDENT"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and submits its Response to Petition for Judicial Review and Statement of Intent to Participate. This statement is filed pursuant to NRS 233B.130.

...

...

...

Petitioner, Susan Reeves, improperly failed to name CCMSI, as an essential party to her Petition for Judicial Review. Despite this error, CCMSI, the TPA/Respondent, does intend to participate in this appeal.

TPA/Respondent CCMSI avers that there is substantial, credible, reliable and probative evidence in the record before the Appeals Officer and this Court to support the findings and decision of the Appeals Office and the findings and decision were not arbitrary or capricious or characterized by abuse of or unwarranted exercise of discretion by the Appeals Officer.

WHERFORE, the TPA/Respondent CCMSI prays that this Court affirm the decision of the Appeals Officer and enter an order in accordance therewith.

Dated this 14th day of October, 2011.

Respectfully submitted,

FLOYD SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for TPA/Respondent
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in or submitted for District Court Case No.: **A-11-644791-J** does not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for TPA/Respondent
CANNON COCHRAN MANAGEMENT
SERVICES, INC./CCMSI

10-14-11
DATE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of the law firm of FLOYD, SKEREN, & KELLY, LLP, and on this 14th day of October, 2011, I am serving the foregoing **TPA/ESPONDENT'S RESPONSE TO PETITION FOR JUDICIAL REVIEW AND STATEMENT OF INTENT TO PARTICIPAE: AFFIRMATION PURSUANT TO NRS 239B.030** on the following parties:

Susan Reeves
Petitioner in Pro-Se
4724 E Washington Ave
Las Vegas NV 89110

Jennifer Leonescu, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway, #200
Henderson, NV 89074

Appeals Officer Shirley Lindsey, Esq.
Department Of Administration
2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos: 78016-SL; 80334-SL

Courtesy Copies:
Ms. Rosemarie McMorris
CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

BY:

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Las Vegas, Nevada 89110
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Petitioner in Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARING DIVISION, a State Agency, Respondents	)	CASE NO. A644791 DEPT. NO. IV

A-11-644791-J
BREF
Brief
1734995

PETITIONER'S BRIEF IN SUPPORT OF JUDICAL REVIEW

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II.
STANDARD OF REVIEW

NRS 616.543 provides in pertinent part:

> No judicial proceedings may be instituted for compensation for injury or death under this chapter unless: (a) a claim for compensation is filed as provided in NRS 616.500; (b) a final decision of an appeals officer has been rendered on such claim.

Whereas, by summarily dismissing both appeals, that is a final decision of an Appeals Officer. Reeves is therefore entitled to judicial review of the Decision of the Appeals Officer.

Judicial review of the Appeals Officer's Decision is governed by NRS 233B, the Nevada Administrative Procedure Act. The Nevada Supreme Court has upheld the power of the District Court to entertain appeals from administrative agency hearings. Nevada Industrial Commission v Reese, 93 Nev. 115, 560 P.2d 1352 (1977) . Pursuant to NRS 233B.135, "judicial review of a final decision of an agency must be: (a) conducted by the court without a jury; and (b) confined to the record. In cases concerning alleged irregularities and

procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularity."

Further, the court shall not substitute it's judgment for that of the agency as to the weight of evidence on the question of fact. NRS 233B.135 (3). However, the court may remand or affirm the final decision or set it aside in whole or part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is: (a) in violation of constitutional or statutory provisions; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by an abusive discretion.

In conducting judicial review of the Appeals Officer's Decision, the court is to determine whether substantial evidence exists in the record to support the agency's ruling. State Industrial Insurance v Christiansen, 106 Nev. 85, 88, 787 P.2d 408 (1990). "An agency ruling without substantial evidentiary support is arbitrary or capricious and therefore unsustainable." See also, State Industrial Insurance System v Swinney, 103 Nev. 17, 20, 731 P.2d 359 (1987).

In, State Department of Motor Vehicles v Becksted, 107 Nev. 456,458,813 P.2d 995, 997 (1991), substantial evidence is evidence which a reasonable person might accept as adequate to support a conclusion.

In, Spencer v Harrah"s Incorporated, 98 Nev. 99, 661 P.2d 481 (1982), " We also recognize the humanitarian motive behind the enactment of the worker's compensation scheme, which compels a liberal construction in favor of claimants." Also in Southwest Gas Corporation v Woods, 108 Nev. 11,823 P.2d 288 (1992), it was noted:

> It has been a long-standing policy of this Court to liberally construe such laws to protect injured workers and their families. Unquestionably, compensation laws were enacted as a humanitarian measure. A reasonable, liberal and practical construction is preferable to a narrow one, since these acts are enacted for the purpose of giving compensation, not for the denial thereof.

As demonstrated below, the Appeals Officer's Decision is in violation of statutory provisions and the Nevada Supreme Court's interpretation thereof; the Appeals Officer's Decision was made upon unlawful procedure; the Appeals Officer's Decision is affected by a clear error of law; the Appeals Officer's Decision was made upon irregularities clearly in the record; and the Appeals Officer's Decision was clearly erroneous in view of the reliable , probative and substantial evidence on the whole record, and otherwise characterized by an abuse of discretion.

III.
STATEMENT OF THE ISSUES

1. Whether the Appeals Officer's summary dismissal of appeal # 78016-SL, what is a written record and what must it contain pursuant to NRS 616D.330, without even hearing any arguments is sustainable.

2. Whether the Appeals Officer's summary dismissal of appeal # 80334-SL, what constitutes an unreasonable delay in payment pursuant to NRS 616D.120, without even hearing any arguments is sustainable.

3. Whether the department of administration has jurisdiction to review the merits of a claim or only the DIR has the jurisdiction to make a finding of whether or not an employer or their insurer has violated any provision of the State Industrial Act, any provision of the Nevada Administrative Code or the Nevada Revised Statures.

4. Whether the consolidation of there two (2) appeals, over the objection of the Claimant was justified.

5. Whether there is any collaboration between the DIR and the insurer.

IV
STATEMENT OF FACTS

1. It is undisputed that this claim was accepted as industrially compensaitable, after much litigation, in 1997.

2. It is undisputed that the Nevada Supreme Court, see Bally's v Reeves, 1997, found that in Reeves' claim that she need not prove that her injuries were solely caused by her industrial accident, only that it contributed to her symptoms.

3. It is undisputed that TTD benefits were paid without any certificates of disability forms until Bally's first closure in 1998.

4. It is undisputed that that the first closure was remanded without the reinstatement of any benefits.

5. It is undisputed that Bally's second closure in 2001 was reversed with the finding that the claim should not have been closed, but remain open for further benefits in 2003, without the reinstatement of TTD benefits.

6. It is undisputed that this claim was accepted with the symptoms of headaches, dizziness and neck pain, later somatoform pain disorder was also accepted as industrially caused.

7. It is undisputed that CCMSI never requested any certificate of disability forms until 2004, and then never suppied any forms.

8. It is undisputed that no physician has even determined that Susan Reeves (hereinafter Reeves) was or is capable of returning to gainful employment due to her industrially caused

symptoms.

9. It is undisputed that CCMSI had a meeting with Dr. Petroff where no actual written record was keep.

10. It is undisputed that Reeves was and is seeking treatment for her industrially caused symptoms.

11. It is undisputed that the Appeal Decision of 2003 clearly found that Reeves' claim should not have been closed but remain open for further benefits, including specific treatments.

III.
STATEMENT OF THE CASE

Petitioner Reeves, suffered injuries resulting from a rear-end motor vehicle accident which occurred in the parking lot of her employer, Bally's, on September 25, 1988.

Reeves was released from employment on 5/15/89, placed on a medical leave on May 25, 1989, on the grounds that her dizziness made her a hazard on her job.

Reeves' claim for workers compensation benefits has been through various administrative, District Court, and the Nevada Supreme Court proceedings over the years involving various issues.

Reeves has been to various doctors over the years trying to get help for her symptoms, dizziness, headaches, neck, back pain, and somatoform pain disorder which have been persistent since her motor vehicle accident in 1988.

Bally's originally denied Reeves claim for workers compensation benefits on the basis that she had not timely filed a claim for compensation.

The Hearings Officer and Appeals Officer upheld Bally's denial of Reeves claim on the

basis that she had not filed her claim timely and that her injuries were from a preexisting condition, as Reeves had been involved in a prior motor vehicle accident in 1987.

Reeves timely filed a Petition for Judicial Review with the District Court. On March 15, 1994, the District Court entered an Order granting Reeves' Petition for Judicial Review, ruling that the Appeals Officer's Decision and Order was without substantial evidence.

Bally's appealed the District Court's Order to the Nevada Supreme Court.

Despite the initial dismissal of the appeal, the Nevada Supreme Court ultimately agreed to hear Bally's appeal. In August 1997, the Nevada Supreme Court issued an Opinion affirming the decision of the District Court in Reeves' favor and remanded her claim back to Bally's for reconsideration. The Opinion originally issued on August 28, 1997 was withdrawn due the inadvertent application of the incorrect standard with respect to the industrial aggravation of previous non-industrial injuries, and a substitute Opinion was filed on November 26, 1997 in its place. Bally's Grand Hotel and Casino v Reeves, 113 Nev. 926, 948 P.2d 1200 (1997). However, the substitute Opinion did not change the Nevada Supreme Court's ultimate decision in favor of Reeves.

Accordingly, on September 26, 1997, Bally's issued a letter accepting Reeves' claim as industrially compensable. A second letter was sent on May 12, 1998, confirming acceptance of Reeves' claim. After many requests, between the first letter of acceptance and the second, Bally's issued a check for back TTD benefits on June 2, 1998. Although, NRS 616C.065 (1) (a), sates, that once a claim for compensation has been accepted, payment shall commence within thirty (30) days, not nine and one half (9 ½) months later.

After accepting the claim as industrially compensable, Bally's submitted Reeves to an independent medical examination (IME), by Dr. Oliveri, held on August 18, 1998.

Bally's issued a letter of closure on Reeves' claim dated August 27, 1998, based upon that report by Dr. Oliveri.

Reeves timely filed a Request for a Hearing Before the Hearings Officer, after which an Order was issued on January 25, 1999, that the matter be remanded for Bally's to provide Reeves with a one-time consultation with a mutually agreed upon specialist in order that a further medical opinion could be rendered regarding treatment of Reeves' condition. After that one-time consultation, a further determination was to be issued.

On March 26, 2001, Dr. Glyman conducted an IME of Reeves. He was subsequently provided with copies of Reeves' medical records for review.

Bally's issued a letter of closure dated December 27, 2001, based upon that report by Dr. Glyman.

Reeves timely filed a Request for Hearing Before the Hearings Officer. That hearing was held on April 9, 2002. The Hearing Officer issued a Decision and Order affirming Bally's closure of Reeves' claim.

Reeves timely filed a Notice of Appeal on the basis that Bally's had closed Reeves' claim on the mistaken belief that she was suffering from a non-industrially caused somatoform pain disorder. Reeves demonstrated to the Appeals Officer that there was medical evidence that her 1988 industrial accident caused or aggravated her somatoform pain disorder.

Accordingly, the Appeals Officer ordered Bally's to arrange for an independent medical examination to be conducted by a psychologist or psychiatrist. The psychologist or

psychiatrist was to render an opinion as to whether Reeves' somatoform pain disorder was industrial and whether further treatment was needed.

Bally's and Reeves agreed to have Reeves evaluated by psychologist Louis Mortillaro Ph. D. Dr, Mortillaro performed an evaluation of Reeves on April 14, and April 22, 2003.

Bally's did not feel that Dr. Mortillaro's initial report addressed the questions submitted by the Appeals Officer. Bally's therefore requested that Dr. Mortillaro provide an opinion as to whether Reeves' somatoform pain disorder is industrial. Dr. Mortillaro opined that Reeves had been diagnosed with a somatoform pain disorder and the diagnosis was industrial due to the fact that the psychological condition would not have been diagnosed without the presence of a presenting medical condition which was industrially related.

Based upon Dr. Mortillaro's opinions, the Appeals Officer concluded that Reeves' somatoform pain disorder was industrial and that she required further treatment. That her claim should not have been closed but remain open for further benefits. That the Hearings Officer's Decision was reversed and the claim reopened.

In January of 2004, Reeves , through counsel, requested past and ongoing TTD benefits.

In a letter dated July 2004, Bally's denied TTD benefits on the basis that there was no certification of disability.

Reeves timely filed for a Request for Hearing Before the Hearings Officer.

A hearing was held on November 8, 2004, along with two (2) other Requests for Hearing Before the Hearings Officer, which were consolidated. The Hearings Officer's Decision and Order affirmed Bally's denial of past and ongoing TTD benefits based upon NRS 616C.475 (5) { NRS 616.585 (50 }. The other two (2) issues were also denied.

Reeves timely filed a Request for Hearing Before the Appeals Officer. A hearing was held on January 5, 2006,. A jurisdictional issue caused that appeal to be dismissed.

Reeves timely filed a Petition for Judicial Review.

Judicial review was denied.

Reeves timely filed an appeal to the Nevada Supreme Court, which is pending.

Reeves treated with Dr. Mortillaro until 3/18/2004, which was paid through workers compensation benefits, Jeff Dietrich P.T. until 2006, some of which was paid through workers compensation benefits, and Dr. Petroff until March of 2005, very little of which was paid through workers compensation benefits. She also, treated, and is treating, with her private physicians, none of which is or has been paid through worker's compensation.

Bally's issued a letter of closure dated September 8, 2006, based upon their determination that all benefits had been paid.

Reeves timely filed for a Request for Hearing Before the Hearings Officer. A hearing was scheduled for December 12, 2006, where an Order of Dismissal was issued for Reeves failure to appear.

Reeves timely filed a Request for Hearing Before the Appeals Officer.

A Hearing Before the Appeals Officer was held on June 12, 2007, an Order of Remand was issued.

In January of 2007, Reeves requested an expansion of the scope of her workers compensation claim to include injuries arising out of falls and stumbling into objects because of her industrially caused vertigo (dizziness).

On February 16, 2007, Bally's sent Reeves a letter denying the expansion of the claim,

because Reeves was not working at the time, as her claim was closed for further benefits on 9/8/06.

Reeves timely filed a Request for Hearing Before the Hearings Officer.

A hearing was held on May 2, 2007, the Hearings Officer held that the denial was proper pursuant to NRS 616C.160 [NRS 616.5018].

Reeves timely filed a Request for Hearing Before the Appeals Officer.

A Hearing Before the Hearings Officer was held on July 17, 2007, the Hearings Officer affirmed the claim closure, pursuant to NAC 616C.112 [NAC 616.555].

Reeves timely filed a Request for Hearing Before the Appeals Officer.

The two (2) Requests for Hearing Before the Appeals Officer were consolidated and a Hearing Before the Appeals Officer was held on August 11, 2009, where the Hearings Officer's Decisions were affirmed.

Reeves timely filed a Petition for Judicial Review.

Judicial review was denied.

Reeves timely filed an appeal to the Nevada Supreme Court, which is pending.

IV.

ARGUMENT

This action involves judicial review of the Appeals Officer's Decisions filed by the Appeals Officer on June 15, 2011 in which the Appeals Officer summarily dismissed both appeals.

In the present case, Reeves filed complaints with the DIR, as the DIR found that there were no violations of any kind. She therefore filed appeals, which were summarily

dismissed, apparently based upon, in the question of what a written is, no discussion whatever and in the question of whether or not TTD should have been reinstated after reopening, events that occurred well after the time in question.

The first, about what a written record is and what it must contain pursuant to NRS 616D.330, as Reeves felt that the document supplied by CCMSI of their meeting with Dr. Petroff did not comply with the requirements of that stature.

Whereas, the DIR found that all an insurer has to do is provide the claimant with whatever documents the insurer has, in a timely manner, regardless of whether or not the document or documents have any factual information on them, is all that they are required to do.

The document that CCMSI supplied as the written record of their June 29, 2004 meeting with Dr. Petroff was clearly put on that document well after the fact with an incorrect list of who was in attendance, and not one word about what was said, only that a meeting had occurred on that date.

The report from Dr. Petroff of June 29, 2004 is the reason for Reeves' complaint to the DIR, that CCMSI keep no written record of their meeting with Dr, Petroff. Whereas in all reports prior to that meeting and in Dr. Petroff's correspondence with CCMSI, he had stated that Reeves was not able to return to work. Also that he could not rule the industrial accident as the cause of Reeves' symptoms nor could he rule it out. The Nevada Supreme Court found that Reeves' injuries were a combination of both accidents, therefore industrial. However after that meeting he somehow was induced to opine that solely from the industrial accident, it would be reasonable to try a trial of back to work, which as noted in that report,

CCMSI offered to arrange, which has never been offered. Somehow after that meeting he was able to separate which injuries came from which accident. CCMSI has utilized that report to deny TTD, all other benefits and eventually close this claim, without any physician ever determining that Reeves was able to return to gainful employment. Reeves believes that the very reason that NRS 616D.330 was put into law, was to prevent insurers from having just such a meeting without keeping a written record of what was said. Reeves believes that the fruits of such a meeting, which amounts to an illegal meeting, should not be allowed to be used as evidence any matter pertaining to this claim.

Whereas, the Appeal Officer by summarily dismissing that appeal without any discussion of the merits of whether or not the document in question conforms with that stature, apparently agrees with the DIR, that is all the insurer is required to do. The fact that the document in question clearly contains no factual information, not one (1) word of what was said, and is clearly not a reproducible written record of an oral communication as required by stature is an action made upon unlawful procedure and is clearly erroneous in view of the reliable, probative and substantial evidence in the record, thereby an abuse of discretion.

The second, about whether the DIR's finding that there was no violation, pursuant to NRS 616D.120, by CCMSI in not reinstating TTD benefits after a decision by an Appeals Officer found that her claim should not have been closed but remain open for further benefits that would warrant a benefit penalty is sustainable.

The Appeals Oficer by making a summary judgment based upon events that occurred after the Decision of 2003, is not a Decision that can stand, as the complaint filed with the DIR is about what the status of Reeves' claim should have been reopened to as of that date. CCMSI

did not appeal that Decision and seek a stay, nor did they reinstate TTD. The events that occurred after that date are irrelevant as CCMSI reasonably should have reopened this claim to the status it was in prior to the first closure, which included TTD without the benefit of certificates of disability forms, using her medical records as prove of disability. Also the fact that no physician has ever determined that she was able to return to gainful employment, due to her industrial symptoms, sense acceptance of her claim as industrial, as required by NRS 616C.475. Which states that an injured employee is entitled to 66 2/3 % of the averge monthly wage until such time as the injured employee can return to gainful employment. NRS 616C.475 does not state that an injured employee is potentially entitled to TTD, but that they are. It also does not state that a certificate of disability is required for payment of TTD, only what a certificate of disability must contain. It also states that if an insurer wants a form to continue payment of TTD, it may send along that form, which has never happened. It therefore stands to reason that CCMSI, by not providing any forms, did not want them, but using the fact that they do not have them as a justification to not reinstate TTD payments amounts to an unreasonable delay in payment.

Counsel for the DIR states in the transcript that the matter of TTD has been decided in later decisions, when in fact the question is not what has occurred after the Decision in 2003, but as of that Decision, reversing claim closure. What was Reeves entitled to regarding TTD and all other benefits? Should CCMSI have reinstated her claim back to the status it was in prior to closure, or does CCMSI have the authority to place this claim back in the status of a new claim, requiring a new initial certification of disability and then decide what benefits they will or will not provide and what is required to receive them? In effect, placing one (1)

roadblock after another, requiring a new initial certification of disability form, ongoing certificates of disability forms and then not providing any forms, contrary to NCA 616A.480 (6), which states that the administrator is responsible for printing and distributing all forms listed other than the ones listed in (5). Also, that the issue of TTD is not decided, but it is on appeal at the Supreme Court, but once again, events that pertain to the appeal at the Supreme Court occurred after the time in question.

Counsel for CCMSI stated in the transcript that what is needed to receive TTD is a certification of disability from a physician, which the Claimant can not produce one as they do not exist, then goes on to state that taking the date of certification of disability from '89 to '97, that there were certificates of disability for that period of time. What counsel states about certificates of disability from '89 to '97 is completely false, as there has never been any certification of disability forms from any physician in this case, but TTD was paid without them until the first closure, based upon her medical records. If counsel for CCMSI has certificates of disability from that time period, Reeves would certainly like to see them as CCMSI has stated that they have provided all documents in her claim file and she does not have any such forms. He also stated that somatoform pain disorder was absolutely not within scope of claim, also completely false. The Decision sent to the DIR, by Reeves in her complaint, is the Decision that found that her somatoform pain disorder was industrially caused and that her claim should not have been closed, but remain open for further benefits, including specific treatment. To include specific treatment would mean that that treatment would have to be included into the other benefits that an injured worker is entitled to, one (1) of which is TTD until the injured worker is able to return to gainful employment.

If her claim should not have been closed, but remain open for further benefits, a reasonable person would assume that the claim would revert back to the status it was in prior to closure, with the reinstatement of TTD without the forms that were never required before. If CCMSI now required forms, they could and should have supplied them to Reeves' physicians, which they have never done. As a matter of fact, CCMSI did not request any certificates of disability forms until 2004.

The Appeals Officer, in the transcript, brought up the issue of jurisdiction, as she believed that she had no jurisdiction to hear matters that had been decided by a different Appeals Officer, which in her mind were claim closure and that it was found that claimant had attained maximum medical improvement.

Whereas the issues on appeal were not claim closure nor any unsubstantiated finding of MMI, as there is no such finding in the records, but appeals of what is a written record, pursuant to NRS 616D.330, and what status should have Reeves' claim have been reopened to as of the 2003 Decision.

Although, the issue of MMI was and is not before the Appeals Officer, since she brought it up, apparently she is of the opinion, that if a claimant reaches MMI without being able to return to gainful employment, the employer can close the claim, cease all benefits and declare that they have provided all benefits that they are required to do under the law. It is Reeves' belief that if that were true, that an employer could cease all benefits to the unemployable injured employee, just let the injured employee fend for themselves, is truly unbelievable. She is of the opinion that if an injured employee was at MMI and still not able to return to gainful employment, that employee should be declared permanently totally

disabled and provided with the benefits proscribed under the law.

Whereas, the physician's , Dr. Oliveri, report utilized in the first closure was based upon the physician's opinion that Reeves' physical injuries were solely related to her first accident, not her industrial accident, contrary to the Supreme Court's Decision. Also that what was preventing Reeves from returning to work was her injury from the first accident and her non-industrial somatoform pain disorder. That closure was remanded as it did not address her symptoms, without the reinstatement of benefits.

CCMSI's second closure was based upon the opinion of Dr. Glyman, which basically agreed with Dr. Oliveri, which was reversed and the claim reopened with the Decision of 2003 in question, without the reinstatement of TTD or most other benefits.

Whereas counsel for CCMSI has on numerous occasions brought up the issue that Reeves wants to argue issues not before the Appeals Officer in various appeals and are therefore not relevant. For the Appeals Officer, in this appeal to make a Decisions based upon Decisions that occurred after the events in question certainly appear to be issues not before the Appeals Officer in these appeals.

Reeves believes that either the Appeals Officer, who stated that she believed that she had no jurisdiction to hear matters that had been decided at a later time, has to only hear evidence which has bearing on the two (2) appeals before her, or everything that has transpired in this claim, which no Appeals Officer has ever wanted to do, including this one.

In appeal after appeal, Appeals Officers have stated that their jurisdiction is very narrow, limited to the subject matter on appeal, not Reeves' entire claim. For the Appeals Officer to make a decision based upon events that transpired after the issues in question, therefore not

related to the appeals before her, amounts to doing the very thing that they claim that they are not allowed to do. Which is therefore a decision made upon unlawful procedure, a clear error of law and is erroneous, in view of the reliable, probative and substantial evidence in the record, thereby an abuse of discretion.

Whereas, Reeves objected to the consolidation of these two (2) appeals, as other than the fact they were both filed with the DIR about the way CCMSI has conducted themselves during the handling of her claim, have absolutely nothing to do with each other. The first about what a written record must contain was not even discussed at all. Reeves' believed that very thing would happen, that one (1) of her appeals would be overlooked, is the reason for her objection to the consolidation of these appeals. In the instant matter it turned out her belief was true.

In the matter of collaboration between the DIR and the insurer, there is some question as to whether counsel for either actually set down to together to formulate a defense for the insurer. Whether they did or not is not necessary for collaboration.

It is Reeves' belief , based upon some interesting facts, that point to collusion between the DIR and CCMSI. Fact one (1), if the DIR is a state agency, whose purpose is to reglate insurers, is true, then there can be no reason for counsel for an insurer to be present to help the DIR in the defence of their decisions. As found in the transcript, counsel for CCMSI did the majority of the argument in the defense of the DIR's position.

Whereas, it is true that if these appeal decisions were to go against the DIR, the insurer would have a financial responsibility, and therefore be very interested in the outcome of these appeals. But for the counsel for the insurer to be involved, it certainly appears to be

some collusion between the DIR and the insurer in the defense of the findings of the DIR, which supposedly conducted an independent investigation to arrive at their findings. If the DIR conducted it's own independent investigation, they should be able to defend it without the help of the insurers counsel.

Fact two (2), that the findings of facts, by the DIR, were the same findings of facts written by counsel for CCMSI in a different appeal, with the very same wording, in the very same order, with the very same typographical errors and other inaccuracies. Once again, it certainly appears that the two (2) are in collusion.

Fact three (3), that the supervisor, worker compensation divison, at the DIR who found that there were no violations, is the very same person that was the claims supervisor at CCMSI, on Reeves' claim, at the time of the supposed violations. For that person to find that violations had occurred would mean that she had violated the law, which certainly appears to be some collusion between the DIR and CCMSI or at least be unethical.

Fact four (4), counsel for the DIR, Ms. Leonesu, states in the transcript, that this is not the first time that the matter of collusion or the question of ethics into the DIR's investigations has come up, but there is a continued argument whenever a PT is denied. In the instant matter, borne out by the above facts, it certainly appears that there is some collusion, or that the DIR, either does not have the manpower nor time to conduct a thorough independent investigation, but relies upon the opinions of the insurer as to what the facts are, which certainly does not amount to an indepentent investgation.

For the counsels for the regulator (DIR) and the regulated (insurer) to be, in effect, co-counsels in what appears to be the defense of the conclusions and statements of facts made

by the regulated is at best unseemly, at worst collusion or unethical.

VI.
CONCLUSION

This Court's review of the record and Worker's Compensation laws will find that the Appeals Officer was erroneous in the dismissal, without hearing, of these two (2) appeals.

Reeves believes that as a purely legal question, whereas NRS 616C.475 clearly states that an injured worker is entitled to 66 2/3 % wages, until such time that that they are able to return to work, that when this claim was reopened, it should have been reopened with all benefits that were being provided prior to closure. That whereas NRS 616D.120 clearly states that by making it necessary for Claimant to initiate proceedings to receive TTD, that stature was violated and a benefit penalty should have been imposed. Also, that by summarily dismissing the appeal about what a written is and must contain without any discussion or opinion about whether or not the log in question complies with NRS 616D.330, amounts to a complete disregard for that law.

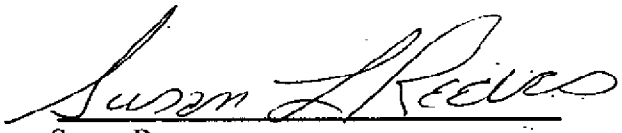
That this Court should find that the counsel for the insurer should not be allowed to participate in the hearings, therefore the defense of the DIR.

That this Court should find that as these appeals have nothing to do with each other, they should be deconsolidated, with each heard on it's own merits.

This Court should find that substantial rights of the Claimant have been prejudiced and that the summary dismissal of these two (2) appeals is erroneous in view of the reliable probative and substantial evidence in the record, thereby an abuse of discretion.

Petitioner, therefore respectfully requests entry of this Court's Order overturning the Appeals Officer's Decision and Order, filed June 15, 2011.

Respectfully Submitted,



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Researched and Typed by
Jeff Reeves (husband)

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 4 day of JANUARY, 2012, I deposited a true and correct copy of the above and foregoing BRIEF IN SUPPORT OF JUDICIAL REVIEW in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES,

Petitioner,

vs.

DIVISION OF INDUSTRIAL RELATIONS, and THE DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency,

Respondents.

CASE NO.: A-11-644791-J
DEPT. NO.: IV

Hearing Date: N/A
Hearing Time: N/A

TPA/RESPONDENT'S REPLY TO PETITIONER'S OPENING BRIEF

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COMES NOW the TPA/Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC. ("CCMSI" or "TPA/Respondent"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and hereby submits its Reply to Petitioner's Opening Brief concerning the above referenced matter. This pleading is filed pursuant to NRS 233B.135. This Reply is based on the papers and pleadings on file herein, the attached Points and Authorities and any oral argument at the time of the hearing on the Petition.

Dated this 27th day of January 2012.

Respectfully submitted,

FLOYD SKEREN & KELLY, LLP.

By: #9977

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I.

ISSUES PRESENTED

The issues argued herein deal with whether the Appeals Officer acted outside of her discretion by affirming the Division of Industrial Relations' ("DIR") determinations of 07/22/10 and 10/01/10. Specifically, the issue on appeal is whether the Appeals Officer committed clear error and an abuse of discretion, pursuant to NRS 233B.135, by ruling in favor of the DIR pursuant to a Motion for Summary Judgment regarding DIR's determination that there was no violation of NRS 616D.120.

The additional issues cited by the Petitioner/Claimant in her Opening Brief concerning the jurisdiction of the Appeals Officer regarding DIR determinations, the appropriateness of the consolidation of Appeals 78016-SL and 80334-SL, and the alleged collaboration between DIR and the TPA/Respondent will also be addressed briefly, although these issues were not on appeal. As will be discussed in more detail below, the Petitioner/Claimant fails, in any serious way, to develop a cogent argument pertaining to any of the issues in this case.

II.

STATEMENT OF RELEVANT FACTS

On or about 09/25/88, the Petitioner/Claimant, a restroom clerk for BALLY'S, suffered an occupational injury or disease during the course and scope of her employment. *See* Record on Appeal ("ROA") at pg. 333. According to the C-4, the Petitioner/Claimant was involved in a motor vehicle accident while in BALLY'S parking lot. *See id.* BALLY'S subsequently completed a C-3 which similarly described the incident. *See id* at pg. 334. A C-1 was also completed. *See id* at pg. 335. The Petitioner/Claimant apparently suffered head and neck pain as a result of this incident. *See id* at pp. 334-335. The claim was eventually accepted after lengthy litigation. *See id* at pp. 383-384. This case has progressed through many appeals, most of which are irrelevant to the current issue on

appeal. The current Petition for Judicial Review is regarding two of the Petitioner/Claimant's consolidated appeals, the facts of which will now be outlined separately. *See id* at pp. 159-160.

Appeal No. 78016-SL

On or about 06/01/10, the Petitioner/Claimant filed a complaint with DIR. It the complaint, the Petitioner/Claimant alleged that (1) she was not timely paid TTD benefits, (2) she was not given proper medical care, and (3) she requested that she be awarded a benefit penalty. *See id* at pp. 396-397. After carefully reviewing the Petitioner/Claimant's file and completing a thorough investigation into the matter, DIR determined that there was no violations of NRS 616D.120, and thus, the Petitioner/Claimant was not entitled to a benefit penalty. *See id* at pg. 401. The Petitioner/Claimant subsequently filed an appeal of that determination on 08/10/10. *See id* at pp. 403-410.

Appeal No. 80334-SL

On or about 09/11/10, the Petitioner/Claimant filed another complaint with DIR, in which she alleged that her claim was not properly closed. *See id* at pp. 191-192. On 09/20/10, in response to the Petitioner/Claimant's allegations of possible violations, the TPA wrote a correspondence to DIR and supplied a brief chronology regarding the closing of the Petitioner/Claimant's claim. *See id* at pp. 195 and 204. After carefully reviewing the Claimant's file, DIR responded to the Petitioner/Claimant in a correspondence dated 10/01/10. *See id* at pg. 205. In said correspondence, DIR noted that the issue regarding claim closure had previously been before the Hearing Officer and the Appeals Officer and was, at that time, pending before the Nevada District Court[1]. *See id.* As such, DIR informed the Petitioner/Claimant that it did not have the authority to modify or negate a

[1] Indeed, the claim closure had affirmed by Hearing Officer Steven Evans in a Decision and Order dated 07/25/07. *See id* at pp. 372-373. The Hearing Officer's Decision and Order was then affirmed by Appeals Officer Gregory Krohn in a Decision and Order dated 12/18/09. *See id* at pp. 374-379. The Petitioner/Claimant filed an appeal with the District Court regarding the 12/18/09 Decision and Order. Over thirteen (13) months later, and after DIR's investigation of the Petitioner/Claimant's complaint, the District Court denied the Petition for Judicial Review finding that the Appeals Officer's decision was supported by substantial evidence and was not arbitrary and capricious in an Order dated 02/08/11. *See id* at pg. 135.

determination by a Hearing Officer, Appeals Officer, or court of competent jurisdiction. *See id.* Although the 10/01/10 DIR letter contained no appeal rights as it was purely informational, the Petitioner/Claimant nevertheless filed an appeal of that determination on 10/19/10. *See id* at pg. 207.

The parties subsequently agreed to consolidate the matters. *See id* at pp. 159-160. The hearing concerning the consolidated matters was held before Appeals Officer Shirley Lindsey, on 04/13/11. *See id* at pg. 3. Testimonial evidence was not obtained at the hearing as the majority of the two hour hearing was spent discussing and identifying what were the specific issues of the appeal. Following the hearing, the Appeals Officer the parties were asked to file any appropriate motions prior to the next hearing. *See id.* at pg. 66. Accordingly, DIR filed, and the TPA/Respondent joined, a Motion to Dismiss, or in the Alternative for Summary Judgment. *See id* at pp. 147-158. The Claimant opposed said Motion. *See id.* at pp. 112-116. Then, in an Order dated 06/15/11, the Appeals Officer granted the Motion for Summary Judgment and affirmed DIR's determination letters dated 07/22/10 and 10/01/10. *See id.* at pp. 98-100. The Appeals Officer found when "[v]iewing the evidence in a light most favorable to [Petitioner/Claimant], there is no factual basis to support a finding that the administrator delayed in paying the [Petitioner/Claimant] TTD in this claim." *See id.* The Petitioner/Claimant subsequently filed a Petition for Judicial Review. The TPA now submits this Reply Brief.

III.

STANDARD OF REVIEW

The Nevada Administrative Procedure Act, as contained in NRS 233B, outlines the standard for review to be used when conducting a judicial review of a final decision of an agency. NRS 233B.135 states, in relevant part, the following:

1. Judicial review of a final decision of an agency must be:

(a) Conducted by the court without a jury; and

(b) Confined to the record.

In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.

2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

NRS 233B.135.

In reviewing of a petition for relief from an administrative decision, the District Court may not disturb the decision of an Appeals Officer unless the decision was clearly erroneous or constituted an abuse of discretion. *See Nevada Indus. Comm'n v. Reese*, 93 Nev. 115, 560 P.2d 1352 (1977). With specific regard to factual determinations, the decision of the Appeals Officer, as the initial trier of fact, are conclusive so long as they are supported by evidence which a reasonable mind would consider to be sufficient to support the Appeal Officer's conclusion. *See Nevada Indus. Comm'n v. Williams*, 91 Nev. 686, 541 P.2d 905 (1975). The court may not substitute its own judgment as to the weight of evidence, but rather is limited to determining whether the Appeals

...

Officer's determination was arbitrary or capricious. *See McCracken v. Fancy*, 98 Nev. 30, 639 P.2d 255 (1982).

Further, despite the Claimant's assertions to the contrary, NRS 616A.010 provides that the workers compensation statute must not be interpreted "broadly or liberally in favor of an injured or disabled employee." *See* NRS 616A.010(4) (2009). Indeed, NRS 616A.010(2) provides in relevant part that:

> A claim for compensation filed pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS must be decided on its merits and not according to the principles of common law that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature
>
> ...
>
> [f]or the accomplishment of these purposes, the provisions of chapters 616A to 617, inclusive, of NRS must **not** be interpreted or construed broadly or liberally in favor of an employee who is injured ...

See NRS 616A.010(2) (2009).

V.

LEGAL ARGUMENT

A. Introduction

The findings and decision of the Appeals Officer in this matter were not arbitrary or capricious and were not in abuse of the Appeals Officer's discretion. As explained more fully below, the Appeals Officer made a determination which was consistent with the controlling statutory law, as well as the overwhelming evidence presented. Further, despite the Petitioner/Claimant's assertion regarding the jurisdiction of the department of administration, the Appeals Officer was well within her jurisdiction under NRS 616 and 617 to review the merits of the Petitioner/Claimant's complaints to DIR because the Petitioner/Claimant had appealed DIR determination to the Appeals Officer. Moreover, the consolidation of the Petitioner/Claimant's appeals had no negative affect on the outcome of her appeal, and as such, her objection to the consolidation is rendered moot. Because

the Appeals Officer's determination is consistent with Nevada law, the Petitioner's Petition for Judicial Review must be denied.

B. The Appeals Officer's Granting of the Motion for Summary Judgment Was Not in Error or An Abuse of Discretion

The Appeals Officer did not act outside of her discretion by affirming DIR's determinations of 07/22/10 and 10/01/10. Summary judgment is appropriate where there is no genuine issue of material fact which could potentially resolve the matter in the non-moving party's favor. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In accordance with *Wood,* summary judgment is not precluded on the basis that there is the "slightest doubt as to the operative facts." *See id.* Rather, the non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *See id.* The non-moving party is not permitted to rely upon general allegations and conclusions, nor to rely "on the gossamer threads of whimsy, speculation and conjecture." *See id.,* citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). In this case, the Appeals Officer appropriately granted DIR's Motion for Summary Judgment because there was no genuine issue of material fact presented. In other words, there was "no factual basis to support a finding that the administrator delayed in paying the Petitioner/Claimant TTD." *See* ROA at pp. 98-99. As such, there was no violation of NRS 616D.120 and, therefore, no benefit penalty was warranted.

1. There Was No Violation of NRS 616D.120 Because The Administrator Had Not Delayed In Paying the Petitioner/Claimant TTD Benefits, and Therefore, No Benefit Penalty Was Warranted

Under the facts of this case, the Petitioner/Claimant's complaint regarding unpaid TTD benefits under Appeal No. 78016-SL did not justify a benefit penalty. Under NRS 616D.120, a benefit penalty is awarded to a claimant in cases where an insurer, third party administrator, etc. has engaged in conduct as described in NRS 616D.120(1)(a-e)(h-i). However, despite the Petitioner/Claimant's assertions to the contrary, this type of conduct did not occur in this case. Thus,

a benefit penalty was not warranted.

Here, in her complaint to DIR, the Petitioner/Claimant alleged that CCMSI, the third party administrator for Bally's at the time of the Petitioner/Claimant's injury, violated NRS 616D.120 by failing to pay her TTD benefits in accordance with the Appeals Officer's 12/01/03 Decision and Order. *See id.* at pp. 185-189. However, the Appeals Officer's 12/01/03 Decision and Order simply reversed claim closure. *See* ROA at pp. 363-366. Importantly, said Decision and Order did not order TTD benefits.

However, after the 12/01/03 Decision and Order, the Petitioner/Claimant's attorney requested TTD benefits in a correspondence dated 01/21/04. *See id.* at pp. 381-382. In response to her request, pursuant to NRS 616C.475, the Respondent/TPA requested the Petitioner/Claimant provide a certification of disability from her physician for the time period in which she had requested TTD benefits. *See id.* at pg. 394. Because the Petitioner/Claimant never provided said certificates, the TPA did not pay the requested TTD benefits. The TPA's determination not to pay TTD benefits was thereafter appealed by the Petitioner/Claimant, and affirmed by the Hearing Officer, the Appeals Officer, the District Court, and is now pending before the Nevada Supreme Court. *See id.* at pp. 367-371.

Despite this procedural status, upon receipt of the Petitioner/Claimant's complaint, DIR undertook the investigation of the Petitioner/Claimant's complaint. As part of its investigation, DIR sent a letter to CCMSI requesting its response to the alleged NRS 616D.120 violation. *See id.* at pp. 429-430. CCMSI provided the requested response on 06/29/10. *See id.* at pg. 432. After DIR completed its investigation, it issued a letter to the Petitioner/Claimant outlining its findings of fact, and concluding that there had been no violation of NRS 616D.120. *See id.* at pp. 433-436. Specifically, DIR indicated, as stated above, that the issue of TTD benefits had been affirmed by the

Hearing and Appeals Officer, and at that time, was before the District Court.[2] Thus, DIR informed the Petitioner/Claimant that no benefit penalty was warranted.

In regards to this issue, the Petitioner/Claimant's claims regarding collaboration or collusion between the Respondent/TPA and DIR are completely without merit. To assert that DIR's request for a response to the alleged violation from the Respondent/TPA illustrates collaboration is absurd. As part of its investigation into complaints, DIR obtains statements from the complainant and the accused party, as well as reviewing the evidence, in order to come to a determination. This is a proper investigation procedure. Based on the facts of this case and DIR's investigation, it is clear that there was no misconduct supporting the imposition of a benefit penalty. Hence, the Appeals Officer appropriately granted DIR's Motion for Summary Judgment because there was "no factual basis to support a finding that the administrator delayed in paying the Petitioner/Claimant TTD." *See id.* at pp. 98-99.

2. The Petitioner/Claimant's Appeal of DIR's 10/01/10 Letter Was Improper Because Said Letter Contained No Appeal Rights and Was Purely Informative

DIR's 10/01/10 letter to the Petitioner/Claimant was for information purposes only, and did not carry with it any appeal rights. Therefore, summary judgment regarding this appeal was appropriate.

On 02/28/10, the Petitioner/Claimant wrote a letter to DIR requesting assistance in gathering certain communications from her insurer. *See id.* at pg. 236. In correspondences dated 04/26/10 and 10/01/10, DIR explained that it had investigated the Petitioner/Claimant's 02/28/10 request and had determined that CCMSI had provided Petitioner/Claimant with all the requested information. *See id.* at pp. 234-235; 237-238. The 10/01/10, like the 04/26/10, correspondence merely restated the various complaints the Petitioner/Claimant had made regarding the handling of her claim and explained that these issues had previously been dealt with in Appeal 78016-SL. *See id.* Because this

[2] The District Court later dismissed the Petitioner/Claimant's appeal

letter was purely informative, there was no appeal rights afforded thereto. Thus, the Petitioner/Claimant's complaint and appeal regarding this 10/01/10 letter was improper and was appropriately dismissed pursuant to the Motion for Summary Judgment.

V.
CONCLUSION

The Petitioner has failed to demonstrate, in any substantive way, that the Appeals Officer's determination was clearly erroneous or an abuse of discretion. DIR's investigation into the Petitioner/Claimant's complaint was appropriately completed, and its conclusion that no violations had occurred was proper. Further, DIR's 10/01/10 letter to the Petitioner/Claimant was for information purposes only, and did not carry with it any appeal rights. Therefore, summary judgment regarding the Petitioner/Claimant's appeals was appropriate. Hence, the Appeals Officer's Order Granting the Motion for Summary Judgment is in no way either capricious or inequitable, and in fact, represented an appropriate exercise of her statutory duty.

Wherefore, CCMSI, respectfully requests that the District Court provide the following relief:

1. That the District Court DENY the Petitioner's Petition for Judicial Review and AFFIRM the Appeals Officer's Order Granting Summary Judgment dated 06/15/11.

Dated this 27th day of January, 2012.

Respectfully submitted,
FLOYD SKEREN & KELLY, LLP.
By: #9977

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the foregoing 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 N.R.A.P 28(d), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. 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.

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1/27/12
DATE

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in or submitted for District Court Case No. **A-11-644791-J** does not contain the social security number of any person.

#9977

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1/27/12
DATE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of the law firm of FLOYD, SKEREN, & KELLY, LLP, and on this 30th day of January, 2012, I am serving the foregoing **TPA/RESPONDENT'S REPLY TO PETITIONER'S OPENING BRIEF; TABLE OF CONTENTS; TABLE OF AUTHORITIES; AFFIRMATION PURSUANT TO NRS 239B.030** on the following parties:

Susan Reeves
Petitioner in Pro-Se
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Division of Industrial Relations
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BY:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, v. DIVISION OF INDUSTRIAL RELATIONS, and the DEPARTMENT OF ADMINISTRATION, APPEALS Division, a State Agency, Respondents	Case No.: A644791 Department: IV

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
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RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' NOTICE OF JOINDER IN TPA/RESPONDENT'S "REPLY" TO PETITIONER'S OPENING BRIEF

TO: Petitioner, SUSAN REEVES, in proper person;

TO: Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through its counsel of record, Dalton L. Hooks, Esq.,

FROM: Respondent, Division of Industrial Relations, by and through its Division Counsel, Jennifer J. Leonescu, Esq.

The Division of Industrial Relations (the "Division") does hereby give notice of its intent to join in the arguments set forth in Cannon Cochran Management Services, Inc.'s ("CCMSI") "Reply" to Petitioner's Opening Brief.

STATE OF NEVADA
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I. FACTS

In addition to the facts presented in CCMSI's brief, the Division will address some issues peculiar to this agency. The Division is Respondent State of Nevada, Department of Business and Industry, Division of Industrial Relations ("DIR"), is a state regulatory agency. DIR's Workers' Compensation Section ("WCS") is charged with ensuring the timely and accurate delivery of workers' compensation benefits and employer compliance with mandatory coverage provisions. NRS 616A.400.

DIR is responsible for investigating complaints by injured workers alleging he or she is entitled to a benefit penalty under NRS 616D.120. Once the Division issues a determination to award or not to award a benefit penalty, the aggrieved party may appeal to the Appeals Officer. NRS 616D.140. Appeals Officers have limited jurisdiction: they hear contested claim appeals pursuant to NRS 616C.345 and benefit penalty appeals pursuant to NRS 616D.140. The Division is not responsible for awarding workers' compensation benefits. The Division does not manage claims. Claims are managed and benefits are paid by individual insurers or the insurers' third-party administrators ("TPA") like CCMSI.

On February 28, 2010, Petitioner submitted a letter to the Division requesting the Division "to help me get the actual oral communications, the written record, of what was said, by whom and to whom at meetings with my Doctors..," ROA 181. The letter stated the request was made pursuant to NRS 616D.330. It did not request a benefit penalty. *Id.*

After completing its investigation, the Division responded in a letter dated April 26, 2010. It found no violation of NRS 616D.330. ROA 237-238. The Division did not include any language informing the Petitioner of her right to appeal because the correspondence was not a "determination" of the Division for which appeal rights are afforded but was a response to a request for assistance. *Id.*

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Thereafter, the Petitioner submitted a complaint to the Division dated June 1, 2010 in which she alleged either the employer, Bally's, and/or CCMSI failed to make temporary total disability ("TTD") payments since August 26, 1998 in violation of NRS 616D.120(1)(c), (g) and (h). ROA 241-242. Attached to the letter was an Appeals Officer's Decision and Order dated December 1, 2003 which reversed claims closure. ROA 253-257. During the course of its investigation into the complaint, the Division found subsequent procedural issues which were not disclosed by the Petitioner in her complaint; (1) that the Appeals Officer affirmed the Hearing Officer's dismissal of Petitioner's appeal of a determination denying TTD benefits which was affirmed by the District Court and has been submitted to the Supreme Court [ROA 169-172]; and (2) that claim closure was affirmed by the Appeals Officer, the District Court and is on appeal to the Supreme Court. ROA 174-180. Therefore, the Division determined there were no violations to warrant imposition of an administrative fine and/or benefit penalty. *Id.* Petitioner filed a Request for Hearing on the Division's Determination (Appeal No. 78016-SL). In her request she reiterated her demand for back TTD benefits. *Id.*

The Petitioner then sent another letter dated September 11, 2010 requesting the Division reconsider its letter dated February 28, 2010 regarding communications with the physicians. ROA 231-233. The Division responded in a letter dated October 1, 2010, restating that CCMSI provided the information regarding oral communications, that there was a July 22, 2010 Division determination addressing her other various complaints and that it was currently on appeal. ROA 234-235. The Division did not include appeal rights as it was informational and appeal rights were already provided in its previous July 22, 2010 determination. Nevertheless, the Petitioner submitted a Request for Hearing (Appeal No. 80334-SL).

After a hearing at which the Petitioner was represented and discussions were held for nearly two hours regarding what the Petitioner was actually appealing, the parties were asked by the

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Appeals Officer to submit any appropriate motions. the Division moved for Summary Judgment. ROA 151-157. Summary judgment was granted on June 15, 2011 in an Order in which specific findings of fact and conclusions of law are made. ROA 98-100. It is from this Order Petitioner petitioned for judicial review.

II. ARGUMENT

The Division joins in CCMSI's statement of the standard of review on appeal and makes the following brief argument.

A. The actions complained of in Appeal No. 78016-SL do not give rise to a benefit penalty.

The Decision and Order at issue in this appeal did not order the payment of any TTD benefits. Pursuant to NRS 616D.120, the Division is unable to "modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction..." In addition, the Nevada Supreme Court has held that "administrative agencies cannot enlarge their own jurisdiction." *See, Reno v. Civil Serv. Comm'n of Reno*, 117 Nev. 855 (2002), *citing, Southern Nev. Mem. Hosp. v. State*, 101 Nev. 387, 394, 394, 705 P.2d 139, 144 (1985). The scope of an agency's authority is limited to the matters the legislative body has expressly or implicitly delegated to the agency. *Clark Co. v. State, Equal Rights Comm'n.*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991).

The insurer's determinations to close the claim (since 2006) and not to pay TTD benefits has been affirmed by the Hearing Officer, Appeals Officer, the District Court, and has been submitted to the Supreme Court for decision; it is telling that information regarding these subsequent court proceedings was omitted by the Petitioner in her complaint to the Division but was found by investigators upon examination of the claims file. What the Petitioner is requesting is that the Division order CCMSI, in contravention of all of these subsequent decisions, order the

payment of TTD benefits. This is outside the scope of the Division's jurisdiction as has been explained previously to the Petitioner. Under these circumstances, there was substantial evidence to find there was no unreasonable delay in compliance with a Hearing or Appeals Officer's Decision upon which to impose an administrative fine and/or benefit penalty. The Appeals Officer's Decision and Order must be affirmed.

B. There was no actionable conduct raised in Appeal No. 80334.

Pursuant to NRS 616D.120(1) and (3), an administrative fine and benefit penalty may be imposed only in the event an insurer, TPA, etc., has been found to have engaged in prohibited conduct as described in NRS 616D.120(1), subsections (a) through (h) and (i). Petitioner requested assistance in obtaining communications from her insurer. The Division on both April 26th and October 1, 2010, advised the Petitioner that all communications were provided. The letter was purely informational and not a determination and did not include any appeal rights. The remainder of her complaints was already on appeal in Appeal No. 78016-SL.

The Appeals Officer did not commit error in granting summary judgment on these issues. The Division will not respond to the other arguments asserted by Petitioner, including a collaboration between counsel for the Division and CCMSI as the arguments are nonsensical and baseless in law or fact.[1]

III. CONCLUSION

Petitioner continues to operate under a fundamental misapprehension about the role of the Division in a benefit penalty appeal versus in the contested claims process. The Division's jurisdiction is limited under the Nevada Industrial Insurance Act. The Division cannot compel the payment of workers compensation benefits to any claimant. The Division cannot reverse, modify,

[1] The Court is, however, alerted to the fact that Petitioner even while representing herself in proper person must still comport with the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a

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Division of Industrial Relations - Division Counsel's Office
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Henderson, Nevada 89074
(702) 486-9070

add to or take away from a Hearing Officer's, Appeals Officer's or Court's Decision on any claims matter. Those matters are strictly within the jurisdiction of the Department of Administration, Hearings Division.

Given the procedural history of this lengthy claim, there was substantial evidence to support the Appeals Officer's Decision and Order affirming the Division's determination not to impose a benefit penalty and/or administrative fine against CCMSI. The Petition must be denied.

Dated this 2 day of February, 2012 and respectfully submitted by:

Jennifer J. Leonescu, Esq., Division Counsel
Nevada Bar No.: 006036
Division of Industrial Relations
1301 North Green Valley Parkway
Suite 200
Henderson, Nevada 89704
702.486.9070

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

reference to the page of the transcript or appendix where the matter relief on is to be found. Petitioner's brief fails to comport with this requirement.

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

TABLE OF AUTHORITIES

CASES

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Respondent Division of Industrial Relations Responding 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 N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relief on is to be found. 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 7 day of February, 2012.

DIVISION OF INDUSTRIAL RELATIONS

Jennifer J. Leonescu, Division Counsel
Nevada Bar Number 6036
1301 N. Green Valley Pkwy, Ste. 200
Henderson, NV 89074
Attorney for DIVISION OF INDUSTRIAL RELATIONS

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(702) 486-9070

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:	**Respondent Division of Industrial Relations' Joinder in Reply to Petitioner's Opening Brief**
Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: Dalton Hooks, Esq. Floyd, Skeren & Kelly, LLP 4570 South Eastern Ave., Ste. 28 Las Vegas, NV 89119	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: The Hon. Shirley Lindsey, Esq. Office of the Appeals Officer 2200 S. Rancho Dr., #220 Las Vegas, NV 89102	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____

Person(s) Served:	U.S. Mail
CCMSI Attn: Rosemarie McMorris P.O. Box 35350 Las Vegas, NV 89133-5350	X **via State Mail room** (regular or certified) circle one ___ **deposited directly with U.S. Mail Service** ___ **Overnight Mail** ___ **Interdepartmental Mail** ___ **Messenger Service** ___ **Facsimile** fax number: _____
Bally's Attn: Dennis Lindenbach 3645 Las Vegas Blvd S. Las Vegas, NV 89109	X **via State Mail room** (regular or certified) circle one ___ **deposited directly with U.S. Mail Service** ___ **Overnight Mail** ___ **Interdepartmental Mail** ___ **Messenger Service** ___ **Facsimile** fax number:

DATED this 7 day of February, 2012.

State of Nevada Employee

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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CLERK OF THE COURT

REQT

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Respondent
CCMSI

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES

Petitioner,

vs.

DIVISION OF INDUSZTRIAL RELATIONS, and the DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION

Respondents.

CASE NO.: A-11-644791-J
DEPT. NO.: IV

REQUEST FOR HEARING ON PETITION FOR JUDICIAL REVIEW

COMES NOW, Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC., [CCMSI] ("Respondent"), by and through their counsel of record, DALTON L. HOOKS, JR., ESQ. and hereby requests that this Court place this matter on calendar for hearing on the Petition for Judicial Review filed by the Petitioner in Proper Person, SUSAN REEVES.

Dated this 27th day of September, 2012.

Respectfully submitted,

FLOYD, SKEREN & KELLY, LLP
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Respondent
CCMSI

NOTICE OF HEARING

This matter will be heard on the 13 day of December, 2012 at 8:30 am M, in Department No. IV of this Court.

Submitted by:

FLOYD, SKEREN & KELLY, LLP.

DALTON L. HOOKS, JR., ESQ.
Attorney for Respondent
CCMSI

CERTIFICATE OF SERVICE

On the 25th date of September, 2012, I hereby certify that I served, via facsimile and US Mail, the above **REQUEST FOR HEARING ON PETITION FOR JUDICIAL REVIEW** on the following parties:

Susan Reeves
Petitioner in Proper Person
4724 E Washington Ave
Los Vegas, NV 89110

Jennifer Leonescu, Esq.
Department of Business & Industry
Division of Industrial Relations
1301 N Green Valley Parkway, Suite 200
Henderson, NV 89074-6497

Appeals Officer Shirley Lindsey, Esq.
Department Of Administration
2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos.: **78016-SL and 80334-SL**

Courtesy Copy
Ms. Rosemarie McMorris
CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

Terry Rodriguez, An Employee of
FLOYD, SKEREN & KELLY, LLP

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CLERK OF THE COURT

CERT
DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Respondent
CCMSI

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES

Petitioner,

vs.

DIVISION OF INDUSZTRIAL RELATIONS, and the DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION

Respondents.

CASE NO.: A-11-644791-J
DEPT. NO.: IV

DATE: 12/13/12
TIME: 8:30 AM

CERTIFICATE OF MAILING

TO: SUSAN REEVES, Petitioner in Proper Person

TO: JENNIFER LEONESCU, ESQ., DIVISION COUNSEL, DIR

TO: APPEALS OFFICER SHIRLEY LINDSEY, ESQ. Department of Administration

The undersigned, an employee of Floyd, Skeren & Kelly, LLP hereby certify that on the 1st day of October, 2012, a true and correct copy of the **NOTICE OF HEARING ON PETITION FOR JUDICIAL REVIEW** was duly mailed, postage prepaid to the following:

...

...

...

...

Susan Reeves
Petitioner in Proper Person
4724 E Washington Ave
Los Vegas, NV 89110
VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Jennifer Leonescu, Esq.
Department of Business & Industry
Division of Industrial Relations
1301 N Green Valley Parkway, Suite 200
Henderson, NV 89074-6497

Appeals Officer Shirley Lindsey, Esq.
Department Of Administration
2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos.: **78016-SL and 80334-SL**

Courtesy Copy
Ms. Rosemarie McMorris
CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

Terry Rodriguez, An Employee of
FLOYD, SKEREN & KELLY, LLP

Electronically Filed
09/28/2012 11:15:22 AM

CLERK OF THE COURT

REQT
DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Respondent
CCMSI

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES Petitioner, vs. DIVISION OF INDUSZTRIAL RELATIONS, and the DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION Respondents.	CASE NO.: A-11-644791-J DEPT. NO.: IV

REQUEST FOR HEARING ON PETITION FOR JUDICIAL REVIEW

COMES NOW, Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC., [CCMSI] ("Respondent"), by and through their counsel of record, DALTON L. HOOKS, JR., ESQ. and hereby requests that this Court place this matter on calendar for hearing on the Petition for Judicial Review filed by the Petitioner in Proper Person, SUSAN REEVES.

Dated this 28 day of September, 2012.

Respectfully submitted,

FLOYD, SKEREN & KELLY, LLP
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Respondent
CCMSI

NOTICE OF HEARING

This matter will be heard on the 13 day of December, 2012 at 8:30 am M, in Department No. IV of this Court.

Submitted by:

FLOYD, SKEREN & KELLY, LLP.

DALTON L. HOOKS, JR., ESQ.
Attorney for Respondent
CCMSI

CERTIFICATE OF SERVICE

On the 28th date of September, 2012, I hereby certify that I served, via facsimile and US Mail, the above **REQUEST FOR HEARING ON PETITION FOR JUDICIAL REVIEW** on the following parties:

Susan Reeves
Petitioner in Proper Person
4724 E Washington Ave
Los Vegas, NV 89110

Jennifer Leonescu, Esq.
Department of Business & Industry
Division of Industrial Relations
1301 N Green Valley Parkway, Suite 200
Henderson, NV 89074-6497

Appeals Officer Shirley Lindsey, Esq.
Department Of Administration
2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos.: **78016-SL and 80334-SL**

Courtesy Copy
Ms. Rosemarie McMorris
CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

Terry Rodriguez, An Employee of
FLOYD, SKEREN & KELLY, LLP

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CLERK OF THE COURT

ORDD

John F. Wiles, Esq.
Nevada Bar No.: 003844
State of Nevada
Department of Business and Industry
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074-6497
(702) 486-9070
jwiles@business.nv.gov

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS, And THE DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency, Respondents.	Case No.: A-11-644791-J Dept. No.: IV

ORDER DENYING PETITION FOR JUDICIAL REVIEW

THIS MATTER coming on for hearing on Petitioner's Petition for Judicial Review on the 13th day of December, 2014, Petitioner, Susan Reeves, appearing in proper person, Dalton Hooks, Esq., appearing on behalf of Respondent Cannon Cochran Management Services, Inc., ("CCMSI"), and Jennifer J. Leonescu, Esq., Division Counsel, on behalf of Respondent, the Division of Industrial Relations (the "Division"), the Court having considered the papers and pleadings on file, the oral arguments of counsel and for good cause therefore, the Court finds as follows:

12-19-12A10:58 RCVD

That this Court's review of the Petition for Judicial Review is governed by NRS 233B.135.

That the Appeals Officer's Order Granting Summary Judgment is not affected by error of law or arbitrary or capricious or characterized by abuse of discretion or in any other way reversible under NRS 233B.135; therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner's Petition for Judicial Review is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Appeals Officer's June 15, 2011 Order Granting Summary Judgment is **AFFIRMED.**

IT IS SO ORDERED this 19 day of December, 2012

Distrct Court Judge

RD

Submitted by:

DIVISION OF INDUSTRIAL RELATIONS

Jennifer J. Leonescu, Division Counsel
Nevada Bar No. 6036
1301 N. Green Valley Pkwy., Ste. 200
Henderson, NV 89074
(702) 486-9070

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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CLERK OF THE COURT

NEOJ

Donald C. Smith, Esq.
Nevada Bar No.: 000413
Jennifer J. Leonescu
Nevada Bar No.: 006036
State of Nevada
Department of Business and Industry
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074-6497
Phone: (702) 486-9070
Fax: (702) 990-0361
donaldcsmith@business.nv.gov
Attorney for Respondent

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

DISTRICT COURT
CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS, And THE DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION a State Agency, Respondents.	Case No.: A-11-644791-J Dept No.: IV

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES:

PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was electronically filed in the above-entitled matter on December 24, 2012, a copy of which is

///

///

///

attached hereto.

Dated this 28 day of December, 2012 and respectfully submitted by:

Jennifer J. Leonescu, Esq.
Division Counsel

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: Respondent Division of Industrial Relations' Notice Of Entry of Order Granting Motion to Dismiss – A644791

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** ✓ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: Dalton Hooks, Esq. Floyd, Skeren & Kelly, LLP 4570 South Eastern Ave., Ste. 28 Las Vegas, NV 89119	**U.S. Mail** ✓ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:

Person(s) Served: The Hon. Shirley Lindsey, Esq. Office of the Appeals Officer 2200 S. Rancho Dr., #220 Las Vegas, NV 89102	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Person(s) Served: CCMSI Attn: Rosemarie McMorris P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Bally's Attn: Dennis Lindenbach 3645 Las Vegas Blvd S. Las Vegas, NV 89109	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____

DATED this 28 day of December, 2012.

State of Nevada Employee

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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CLERK OF THE COURT

ORDD

John F. Wiles, Esq.
Nevada Bar No.: 003844
State of Nevada
Department of Business and Industry
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074-6497
(702) 486-9070
jwiles@business.nv.gov

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Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS, And THE DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency, Respondents.	Case No.: A-11-644791-J Dept. No.: IV

ORDER DENYING PETITION FOR JUDICIAL REVIEW

THIS MATTER coming on for hearing on Petitioner's Petition for Judicial Review on the 13th day of December, 2014, Petitioner, Susan Reeves, appearing in proper person, Dalton Hooks, Esq., appearing on behalf of Respondent Cannon Cochran Management Services, Inc., ("CCMSI"), and Jennifer J. Leonescu, Esq., Division Counsel, on behalf of Respondent, the Division of Industrial Relations (the "Division"), the Court having considered the papers and pleadings on file, the oral arguments of counsel and for good cause therefore, the Court finds as follows:

12-19-12A10:58 RCVD

That this Court's review of the Petition for Judicial Review is governed by NRS 233B.135.

That the Appeals Officer's Order Granting Summary Judgment is not affected by error of law or arbitrary or capricious or characterized by abuse of discretion or in any other way reversible under NRS 233B.135; therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner's Petition for Judicial Review is **DENIED.**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Appeals Officer's June 15, 2011 Order Granting Summary Judgment is **AFFIRMED.**

IT IS SO ORDERED this 19 day of December, 2012

District Court Judge

Submitted by:

DIVISION OF INDUSTRIAL RELATIONS

Jennifer J. Leonescu, Division Counsel
Nevada Bar No. 6036
1301 N. Green Valley Pkwy., Ste. 200
Henderson, NV 89074
(702) 486-9070

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

SUSAN REEVES, PLAINTIFF(S)	CASE NO.: A-11-644791-J
VS.	
DIVISION OF INDUSTRIAL	DEPARTMENT 4
RELATIONS, DEFENDANT(S)	

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Other Manner of Disposition (Notice of Bankruptcy only)
- ☐ Voluntary Dismissal
- ☐ Transferred (before/during trial)
- ☒ Involuntary (statutory) Dismissal
- ☐ Judgment on Arbitration Award
- ☐ Stipulated Dismissal
- ☐ Stipulated Judgment
- ☐ Default Judgment
- ☐ Motion to Dismiss (by Defendant)
- ☐ Summary Judgment
- ☐ Non-Jury (bench) Trial
- ☐ Jury Trial

DATED this 14th day of January, 2013.

KERRY EARLEY
DISTRICT COURT JUDGE

NO FEES COLLECTED

ORIGINAL

FILED

JAN 15 10 54 AM '13

No. A-11-644791-J

Dept No. IV

IN THE EIGHTH JUDICIAL DISTRICT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

SUSAN REEVES
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110

Plaintiff

v

Division of Industrial Relations, and the Department of Administration, Appeals Division, A State Agency

Defendants

A-11-644791-J
NOAS
Notice of Appeal
2147962

NOTICE OF APPEAL

Notice is hereby given that Susan Reeves, Plaintiff above, hereby appeals to the Supreme Court of Nevada from the final judgment of the Honorable Judge Kerry Earley from the Order Denying Petition for Judicial Review entered in this action on the nineteenth day of December 2012.

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

RECEIVED
JAN 15 2013
CLERK OF THE COURT

CERTIFICATE OF SERVICE

I Susan Reeves, certify that on the date indicated below, I served a true and correct copy of Notice of Appeal to the Nevada Supreme Court, by postage prepaid US mail to the following persons at their last known address:

Dalton Hooks Esq.
Floyd, Skeren & Kelly
4570 S. Eastern, Suite 28
Las Vegas, Nevada 89119

Jennifer J. Leonescu, Esq.
Department of Business and Industry
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Shirley Lindsey, Esq.
Appeals Officer
Department of Administration
2200 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102

DATED this 15 day of January 2013.

Susan L Reeves

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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ASTA

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

SUSAN REEVES,

Plaintiff(s),

vs.

DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency,

Defendant(s).

Case No: A-11-644791-J
Dept No: IV

CASE APPEAL STATEMENT

1. Appellant(s): Susan Reeves

2. Judge: Kerry Earley

3. Appellant(s): Susan Reeves

Counsel:

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

4. Respondent (s): Division of Industrial Relations; Department of Administration, Appeals Division, a State Agency

Counsel:

John F. Wiles, Esq.
1301 N. Green Valley Pkwy., Suite 200
Henderson, NV 89074

5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
**Expires 1 year from date filed*

9. Date Commenced in District Court: July 12, 2011

10. Brief Description of the Nature of the Action: Civil Petition for Judicial Review

Type of Judgment or Order Being Appealed: Petition for Judicial Review

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 17 day of January 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

DISTRICT COURT
CLARK COUNTY, NEVADA

Civil Petition for Judicial Review	COURT MINUTES	December 13, 2012

A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

December 13, 2012 **8:30 AM** **Petition for Judicial Review**

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER: Loree Murray

PARTIES PRESENT:

Leonescu, Jennifer J	Attorney
Reeves, Susan	Plaintiff
Wiles, John F.	Attorney

JOURNAL ENTRIES

- COURT FINDS, based on the Points of Authority that have been filed, the Court AFFIRMS the decision and order by the Appeals Officer Shirley Lindsay in 2011. Ms. Leonescu will prepare the Order.

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated April 23, 2013, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises five volumes with pages numbered 1 through 1188.

SUSAN REEVES,

Plaintiff(s),

vs.

DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency,

Defendant(s),

Case No: A644791
Dept No: IV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 30 day of April 2013.

Steven D. Grierson, Clerk of the Court

Heather Ungermann

Heather Ungermann, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN REEVES,
Appellant(s),
vs.

DIVISION OF INDUSTRIAL RELATIONS; NEVADA DEPARTMENT OF ADMINISTRATION,
Respondent(s),

Case No: A644791
SC Case No: 62468

RECORD ON APPEAL
VOLUME
4

ATTORNEY FOR APPELLANT
SUSAN REEVES, PROPER PERSON
4724 E. WASHINGTON AVE.
LAS VEGAS, NV 89110

ATTORNEY FOR RESPONDENT
JOHN F. WILES, ESQ.
1301 N. GREEN VALLEY PKWY., SUITE 200
HENDERSON, NV 89074

A644791 SUSAN REEVES vs. DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency

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A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
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A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

I N D E X

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FAMILY & SPORTS PHYSICAL THERAPY

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January 23, 2006

To Whom It May Concern:

I first evaluated Susan Reeves when I worked at NovaCare on February 5, 1999 for problems with dizziness, imbalance, neck/back pain, and chronic headaches which she had had since an auto accident in 1988. She was referred by Dr. Petroff. Her initial presentation was with constant dizziness that increased with any head movement or change in body position, imbalance in sitting and especially standing, multiple falls and running into objects while walking, very limited neck movement in any direction, tinnitus with multiple tones, and constant neck pain and tightness/spasms, and headaches. Since she had had her symptoms for so long, she was very guarded and limited her movements to only what was necessary and what would increase her dizziness or headaches the most (this is typical in people that get dizzy with head movement, if their dizziness increases with head or eye movements they limit that motion and eventually many of them will have ROM changes due to muscular and joint tightness, and in Susan's case she also had neck injury at the time of the accident). Initially treatment was very limited secondary to increase in her dizziness and headache with any attempts to increase her neck motion and head-eye control. Over the course of the next two years Susan took the CAT bus to come in for weekly physical therapy/vestibular rehabilitation at NovaCare. During that time she gradually improved her neck ROM, improved her head-eye control, increased her tolerance to head and eye movements without increasing her level of dizziness, improved her balance and postural control, and generally increased her activity level. She continued to have constant dizziness and imbalance in standing (not as much imbalance in sitting), constant headaches (though the frequency of her "bad" or incapacitating headaches did decrease), and constant neck/shoulder pain and tightness/spasm. She was always compliant with her home exercise program. I saw Susan until April of 2001 when I left NovaCare, at that time she was going to continue with her home exercise program.

In January of 2002 Susan returned for evaluation of neck pain on the referral of Dr. Petroff. She reported at that time she was having continued problems with her dizziness, imbalance with walking, neck pain and left greater than right shoulder pain and tightness/spasm, limited neck ROM, continued tinnitus in both ears, and continued headaches that at times limited her from doing anything other than laying down. Her neck pain was limiting her ability to perform her home exercises for her dizziness and balance problems. She was treated until July of 2002 one to two times per week. Frequency of visits was limited because she had to take the CAT bus to each session and those trips could make her therapy visit take between 3-6 hours depending on what other stops the CAT bus had to make. Susan usually had increased pain and headache after spending that length of time out, so she did better with a lower frequency of visits and

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more reliance on her home exercises. During this episode in therapy she demonstrated decrease in neck pain, improvement in her cervical ROM in all directions, improved ability to move her head faster through cervical motions without increasing her dizziness, her headaches were maintained at a lower level with a decreased frequency of her "bad" headaches, balance and general endurance improved, and she was able to perform more activity around her home. None of her symptoms were eliminated, the intensity of all were just decreased to a level that made her daily activity more manageable. She continued with her home exercise program.

Susan returned for therapy again in January of 2003, on referral from Dr. Petroff, for neck pain, back pain, and headaches. She also continued to have her dizziness and balance problems which she continued to perform her home exercises for. She was seen approximately one time per week over the course of that year, demonstrating improvements in her neck ROM, decrease in the frequency of her "bad" headaches to 1-2 times per month, and she felt that the dizziness was less intense and her balance was a little better. She continued to have back and neck tightness/spasm that increased with prolonged sitting, constant dull headache, dizziness and imbalance with quick head movements and with certain visual stimulations (ie. Wind blowing leaves or being a passenger in a car), and a general pain in her neck and back. She was able to perform more activities around her home, though she still required pain pills and muscle relaxers to help sleep and control her pain.

Susan continued her treatment into 2004 with all her symptoms still present at some level. Early in the year her symptoms dizziness, imbalance, and headaches increased as she tried to increase her frequency with therapy and in conjunction with going to a pain management program. She had to decrease her frequency back to one time per week because going out into the community daily was making her symptoms worse. By April, pain was primarily in the upper cervical spine and because her pain level with the neck and bad headaches had decreased, her complaints of dizziness were increased. She also had continued tightness in neck/shoulder and back musculature. Cervical ROM was maintained and the same level for most of the year. The frequency of her "bad" headaches were 1-2 times per month and usually coincided with situations of increased stress and tension. Balance and dizziness were relatively unchanged until September of 2004 when she started having significant decrease in the strength and endurance in both her legs, affecting her ability to do stairs, raise from sitting, get up from the floor, limited her ability to do housework. The weakness was also associated with increase in leg pain and she had to increase her medication use. This weakness persisted through the end of the year and she was referred by Dr. Petroff to Dr. Duke.

In early 2005 her leg weakness increased which made her walking more unsteady and she had more falls and losses of balance. She was unable to stand from sitting without upper extremity assist, unable to get off the floor without her husbands help, and she also noted more upper extremity weakness. Neck pain and back pain continued to be present but did not affect her as much as the weakness. She saw Dr. Duke in March and was then referred to UCLA. By mid-year she had started having injections and felt that that helped to centralize the pain more to along the spine and felt that her leg strength and

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endurance was slowly starting to return. She continued with injections through the end of the year with some success at temporary relief in her neck and back pain, some relief in headache intensity, no real change in her dizziness and balance. She continued to have tightness/spasm in neck, shoulder, back musculature, but has maintained good cervical ROM. She has continued to perform her home exercises as she was able to.

As of January 2006 she has already had a fall in her home, breaking some toes on her right foot. This has also affected her gait and balance. Headaches and neck and back pain have been a little more due to stress, dizziness is at the same level.

In summary, I have worked with Susan for almost seven years. During this time I saw her progress from a woman who could barely leave her home secondary to dizziness, headaches, balance problems, and pain – to a woman who can now go out to multiple (2-3 max) appointments per week, perform housework and cooking activities, not have to lock herself in a dark room every day, move her head and neck around, and perform a limited exercise program. Her neck and back pain have varied in intensity over the course of the years, but on the whole her pain is at a decreased level. Her dizziness is still present at some degree all the time, however, she is now able to move her head and body a lot more without the dizziness getting a lot worse. Tinnitus has been unchanged since I have known her. Never in the seven years I have treated her have I seen her at a level where she could have performed a job of any type. Her balance is still an issue with falling and running into walls, probably a little worse than in late 2003, maybe due to the onset of her leg weakness (and recent toe fractures). Headaches are still present at some level all the time but the "bad" headache frequency is generally decreased (unless stress level is increased, at which time the bad headaches are more frequent and last longer). Back and neck muscle tightness/spasm are still present, though not as bad now as compared to past years. Even though she is able to get out of her house and move around more, she still has to rely on CAT for transportation since she is unable to drive (hasn't driven since accident in 1988) due to the dizziness. Susan's symptoms chronic neck and back pain are not unlike other patients injured in auto accidents that I have treated during my 13 year career. Likewise, it is not uncommon for people with dizziness and balance disorders to have continued symptoms for many years, especially when their symptoms are untreated for many years.

If you have any questions, please call at 968-0520.

Sincerely,

Jeff Dietrich, PT NV#0911

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MOUNTAIN REHABILITATION SERVICES

CURTIS W. POINDEXTER, M.D.
Physical Medicine & Rehabilitation
Electrodiagnostic Medicine

2073 E. SAHARA AVENUE, SUITE A LAS VEGAS, NEVADA 89104 (702) 732-8558 FAX (702) 732-8568

Date: 04/10/10

NAME: Susan L. Reeves **DOB:** 10/06/51
EMPLOYER: Bally's Hotel/Casino
OCCUPATION: None-previously
Room reservations **PRIMARY INSURANCE:**
DOI: 09/25/88
SSN: 572-78-2120

To Whom It May Concern:

I have been provided with copies of several medical records from 11/07/87 through 01/06/09 in regards to an industrial MVA that occurred on 09/25/1988.

11/07/87: Patient seen for a medical visit; however, there is no name of physician on the report. At that time, she had ongoing dizziness or lightheadedness and when looking at objects for a period of time they tended to move away from her and also up and down which caused some left sided neck pain and prevented her from driving since an MVA on 07/20/87. The note stated that she had no "LOT" since her last visit. It is not clear what the LOT refers to. She still had occipital pain with headaches. She was referred to Dr. Becker for ENT.

12/12/88: Patient was seen by Dr. Barton Becker with complaints of headaches and dizziness which had been present since an MVA of 07/20/87. She states that she had progressively improved since the injury and stated that about 3 days after her complaints resolved, some time in 09/88, she was involved in a second MVA when she was rear-ended while stopped. She was thrown forward and backwards. Since, she has experienced constant headaches described as a dull ache in the bifrontal-temporal regions yet also with a posterior head contribution. This was increased by turning her head to either side. She also had some nausea and complaints of lightheadedness when she turned her head suddenly or moved quickly. EEG revealed low voltage, fast activity throughout all head regions consistent with medication effect. Dr. Becker did not feel that she had any type of intracranial lesion or problem. He suggested continued symptomatic measures and encouraged her to maintain her usual activities.

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05/09/89: Patient was seen by Dr. David Toeller for IME. The note stated she was involved in 2 MVAs. The first one was on 07/20/87 and the second on 09/25/88. His impressions included the following:

1. Cervical sprain/strain syndrome with no objective neurological or orthopedic findings.
2. The 2 motor vehicle accidents were not close enough to justify a diagnosis of second injury syndrome.
3. The patient has dizziness secondary to vestibular irritation or eustacian tube dysfunction related to the soft tissue injuries.

I reviewed an Employers' Report of Injury or occupational disease. On this form, it states she worked until 05/11/89 when she was forced to go on medical leave of absence by Cass Palmer and Sally Shakelford. She had complaints of extreme headaches, dizziness, neck and head pain.

I reviewed a letter addressed from Dr. Barton Becker to Wendy Schultz from Allstate Insurance. This stated the patient had postural vertigo and mild sensorineural hearing loss yet ENG demonstrated no abnormalities. He stated in another letter that the ENG only tested about 60% of the balance mechanism and a normal test does not rule out vertigo. He felt she had postural vertigo which was gradually improving with Valium which was prescribed for labyrinthine sedation and her headaches were decreasing. She was involved in the second accident on 09/25/88 which caused further damage resulting in more neck pain and vertigo.

I reviewed another letter from Dr. Becker from 07/31/89 that stated due to a 07/20/87 MVA, she had a neck strain and vertigo. He felt the medical therapy had helped and she was improving with less dizziness and headaches. She then had a second MVA on 09/25/88 which in increased the vertigo and headache.

10/17/89: The patient was seen by Dr. Toeller who refers to her being seen at the Otologic medical group in Los Angeles by Dr. Lubritz. She also had complaints of left shoulder and arm pain and had symptom. Dr. Toeller that she would benefit from PT and also required a neurological workup including EMG study.

11/13/89 and 11/17/89: She was seen for a psychological evaluation by Dr. Louis Mortillaro and he felt the patient was experiencing somatoform pain disorder which was developed by her inability to essentially cope with the physical complications of both MVAs. He felt that treatment for this would be successful if she followed recommendations including pain management counseling, biofeedback and as soon as

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possible be issued a return to work release based on objective medical findings. She was desirous of returning to work at her pre-accident employer.

01/03/90: I reviewed a one page evaluation by Jacqueline Joy Borkin, D.C. The patient had been returned to work to the duties that she was performed the day that she was "walked off the job".

01/04/90: The patient was seen by Dr. Leslie Gaelen for a second opinion neurology evaluation. The physician agreed with the prior evaluation of Dr. Boulware, that there were no objective findings of any post traumatic or other neurological deficits. He also did not find any evidence of spinal cord, spinal root, peripheral nerve or muscle disease problem. He suggested a course of biofeedback and other behavioral modification methods to return her to her previous well being. He was suspicious of some type of secondary gain also.

01/15/90: The patient was again seen by Dr. Toeller. I reviewed this report and Dr. Toeller recommended that she was medically ready for closure in the left upper extremity with the diagnosis of chronic pain. He had not recently talked to Ms. Reeves and did not know the status of the dizziness and headaches. He states that these problems should be closed or further evaluated as previously suggested in a prior letter.

01/01/90: Letter from Dr. Barton Becker. He felt that the 09/25/88 accident did more damage to Ms. Reeves. He states he reviewed his previous notes and from 11/13/87 to 05/12/88 she had shown progressive improvement in her symptoms such as decreased headaches. After evaluating her on 10/04/88 after the 09/15/88 accident, this presumably should be 09/25/88, he stated that she had increased neck pain with vertigo and had left ear tinnitus. An audiogram revealed mild bilateral sensory neural loss, right in the right ear. He states she had not been well since the second accident may had a permanent neck problem and vertigo.

03/30/90: The patient was seen by Dr. Aram Glorig, an ENT specialist in Los Angeles, California. He stated that several previous physicians had all stated there was nothing wrong with her and it was all in her head. However, he did not feel that this was the case and thus suggested further testing including an ENG, Brainstem audiogram, impedance test and Equi- test. She sees Dr. Brackman who was a renowned expert on dizziness.

05/21/90: The patient was seen by Dr. Glorig again. She had undergone the testing that was requested and he felt that the audiogram of 03/13/90 was reasonably valid except in the low frequency

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which appeared that she had a little more loss than she actually has. The appointment with Dr. Brackman was made at a later date.

08/15/90: Evaluation by Dr. Richard Kudrewitz. At that time, she was given a 5% whole person impairment. He was unable to delineate any specific central or peripheral neurological deficit. He also felt he needed more data referring to the issue of the vertigo before he could classify her further.

08/15/90: Addendum to the evaluation by Dr. Kudrewitz. At that time, she was still symptomatic from the 09/88 accident which apparently did result in symptom aggravation of her complaints. Dr. Kudrewitz could only state that approximately 50% of her present complaints were attributed to the initial accident in 09/87. He felt that there was not enough in the records for him to refine this any further.

08/16/90: Letter from Dr. Glorig to Nina Sams of Allstate. The letter from Dr. Glorig stated he consulted with Dr. Brackman and her problems were strictly related to the neck injury. The ENG which was a test to decide whether the vestibular system end organ was at fault was normal. Also the Equi Test showed no signs of focal lesions and the brain stem audiogram was normal. He stated the only pathology that could be found was related to neck injury which should be taken care of with PT.

I reviewed a non-dated note without an author which stated the patient was referred to Gary Amick for PT and she was prescribed Norgesic Forte which is a muscle relaxant.

I reviewed a 1 page report from Gary Amick, PT. The note stated that she had improvement in active and passive cervical, thoracic and lumbar range of motion. Also, the left shoulder was improved.

01/02/91: Another 1 page report from Gary Amick from PT stated she had been seen for 13 PT treatments and she had improved spinal motion and segmented mobility. She still required dark glasses and demonstrated poor balance during gait.

03/13/91: Seen by Dr. Peter Mattimoe with the diagnosis of hematochezia x 2 likely due to Aspirin.

03/21/91: Normal gallbladder.

04/04/91: Normal barium MRI – this was performed due to the patient's vomiting blood.

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07/26/91: Seen by Dr. Ronald Weisner for psychiatry. His psychiatric diagnosis included:

Axis I :	Somatoform Pain Disorder.
Axis II :	No diagnosis.
Axis III:	Patient was involved in two motor vehicle accidents in 1987 and 1988. It was uncertain what, if any, neurological sequelae ensued from these accidents.
Axis IV:	Stressors are moderate. Loss of Income.

01/13/92: Patient referred again to Gary Amick, PT by Dr. Mattimoe. She previously had not continued with PT due to financial reasons. She had complaints of constant low grade headaches with episodes of severe headaches in the occipital area, dizziness aggravated by light (she uses dark glasses most of the time and prefers dim light). She also had left upper extremity numbness in her hand and left shoulder pain.

04/01/92: Again, she was referred to Gary Amick, PT by Dr. Mattimoe.

05/08/93: Letter To Whom It May Concern from Dr. Mattimoe in which he stated that she suffered very severe headaches since the MRI of 09/25/88. He stated that only Imitrex helped and had provided relief.

Letter to Susan Sayegh, Claims Supervisor at CCMSI from Louis Mortillaro, PhD. This stated the patient had desired to return to work but believed at the time that she was physically not psychologically, permanently and totally disabled. His note stated the Evaluating physician would have to determine whether or not the patient's symptoms described had an objective basis and prevented her from returning to work. He stated that the patient had not worked for many years and the psychological and medical disability literature suggested that people out of work for as long as Ms. Reeves, usually do not return to work.

06/29/04: The patient was seen by Dr. Godwin Maduka with complaints of chronic headaches, neck and back pain with radiation into the left arm and left leg. His impression included:

1. Headaches.
2. Cervical disc disorder.
3. Cervicalgia.
4. Back pain.
5. Cervical and lumbar radiculopathy.

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He recommended PT, updated MRI scans of the brain and spine. He also recommended cervical and lumbar epidural injections as well as injection of B12, magnesium, Lidocaine and Toradol.

08/18/98: IME by Dr. David Oliveri whose impressions included:

1. Somatoform pain disorder.
2. Heart murmur.
3. Endometriosis per examination with multiple surgical interventions.
4. Excessive Darvocet/ Midrin use.

He stated that Bally's was unsuccessful in the denial of a claim. He also stated that due to a prior MVA she had headaches and expected these complaints were part of her current presentation. He also stated the most overwhelming aspect to her presentation is preexisting tendency or actual preexisting diagnosis of somatoform pain disorder. He stated she had an overwhelming magnification of symptoms. He also stated her prognosis was extremely guarded because of the non-industrial factors. He discussed the fact that she had obtained social security disability benefits dating back to 1989 and felt that this should not be misconstrued as a justification of disability on an Industrial basis.

08/25/98: Normal left shoulder and cervical spine x-rays.

09/03/98: Neurological consultation by Dr. Petroff. His impressions were the following:

1. Headaches of mixed etiology possibly due to muscle contraction headaches or cervical strain with possible vascular component.
2. Neck strain and sensory cessation in left arm possibly representing radicular irritation; however no objective findings support this.
3. Dizziness and poor balance and vertigo. Evidence of vestibulopathy on neurological examination.

At that time, he recommended MRI scan of the brain and cervical spine as well as cervical spine x-rays, EEG and EMG.

09/22/98: Normal EEG by Dr. Petroff.

09/22/98: MRI scan of the brain with contrast is normal.

09/22/98: MRI scan of the cervical spine demonstrated mild disc bulges at C3-6 without significant central or foraminal stenosis.

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09/28/98: Dr. Petroff. Mild degenerative changes in the neck and lumbar spine region and possibly some cervical radicular irritation. There was no clear cervical lesion. He recommended Pamelor for headaches, chronic pain and depression.

12/14/98: ENG by Dr. Richard Wagner. Results were as followed: abnormalities in the test of the vestibular ocular reflex suggest that a CNS lesion cannot be ruled out: direction changes nystagmus also suggest a CNS lesion.

02/25/99: Dr. Petroff. Chronic headaches and vestibulopathy. There had been significant improvement with the vestibular therapy and she hardly experienced dizziness. She also had no severe dizziness. Her headaches were somewhat better and she decreased the use of Darvocet, Imitrex and Midrin.

05/29/99: Letter from Dr. Petroff to Ethel Pipp, work comp management for Park Place Entertainment. He provided his diagnosis. She continued with vestibular therapy and PT with respect to the cervicogenic headache to a logical end-point of self maintenance. He stated she was doing well and did not feel strongly that another doctor was required at that time.

08/20/99: Supplemental report by Dr. Oliveri. He felt that even with the treatment that she received, this did not change his opinion and he, again, felt she had no objective evidence for disability. He felt that she was capable of working from an objective standpoint.

I again reviewed records and additional letters to Dr. Mattimoe from Dr. Petroff. Again, he states that her vestibular therapy had helped significantly.

She continued to see Dr. Petroff intermittently and he did change her medications.

03/26/01: I reviewed an extensive medical examination report by Dr. Steven Glyman. He said that hers was a very unusual and extreme case. He did not have all of the records to review; however, he stated that what he gathered, at worst, was that she suffered a mild post concussive syndrome. She had not reported any LOC, was not hospitalized and was able to return to work in some type of capacity. He felt that she did not have any pattern consistent with a severe closed head injury.

She saw Dr. Petroff again, ongoing, for several months with medication changes. He also recommended a large rubber exercise type ball for stretching, palm-mag 1000 device and a thera-cane.

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11/06/01: Cervical spine x-rays, with oblique, demonstrated mild degenerative disc disease at C4-5 greater then C5-6. Also, the bones were demineralized suspecting osteopenia/osteoporosis.

11/06/01: Lumbar spine x-rays with diffuse demineralization. Also moderate atherosclerosis, calcification in the mid and distal abdominal aorta.

11/06/01: Cervical spine MRI scan demonstrated C4-5 mild DDD; mild disc bulge; mild central canal stenosis; mild right neural foraminal stenosis; minimal DDD with small focal central/right pericentral disc protrusion at C5-6; small focal central disc protrusion at C3-4. Also, a cord signal was somewhat accentuated on several transaxial images, most prominent at C4 however this was suspect to be technical and demyelization was less likely.

12/01/01: MRI scan of the cervical spine with contrast with similar problems as prior exam.

12/20/01: Dr. Glyman. His letter agreed that he had a somatoform disorder or a psychological basis for her symptoms. He also stated that he did not feel that she could return to work due to the fact that she had not worked for some time and these had changed from the prior disability impairment. He did not see any improvement from when her case was closed and the PPD rating from before.

I also reviewed a short letter from Dr. Mattimoe from 05-20-02 which stated that she had difficulty with walking due to the effects of Diabetes on her feet and the chronic dizziness from her accident in 1988.

I again reviewed additional letters from Dr. Petroff to Dr. Mattimoe and also pain medications that she was taking.

04/25/03: Psychological evaluation by Dr. Mortillaro. He again suggested she was a candidate for individual consultations, biofeedback therapy and pychoeducational lectures.

05/05/03: Another letter from Dr. Mortillaro in which he stated that she was diagnosed with a somatoform pain disorder and this diagnosis was industrial, non-industrial due to the fact that the psychological condition would not have been diagnosed without the presence of presenting medical condition which, in this case, was industrially related.

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02/07/04: MRI of the cervical spine demonstrated C4-5, C5-6 small disc osteophytes causing mild flattening of the cervical cord; C6-7 mild to moderate narrowing of both neural foramen.

02/11/04: Cervical spine x-rays with obliques demonstrated minimal base narrowing at C4-5; some uncinate process overgrowth resulting in minimal compression of the right foramen. The second part of this impression is not completed.

03/18/04: Discharge summary by Dr. Mortillaro after the patient had been seen for multiple treatment visits from 01/05/04 through 03/18/04. With treatment she received, she apparently obtained coping skills which allowed her to experience better days than before. In the report, he stated concern about her not receiving benefits from the workers compensation even though the court ordered a reinstatement of these benefits. He was distressed for her due to the fact that she was not receiving financial assistance. She had significant problems with authorization of her medications and had to use her insurance benefits through the Teamsters Union. She continued to experience headaches, sensitivity to light, dizziness and unresolved pain in the neck and low back. She has occasional difficulty coping with her physical symptoms. She did not think that she was capable of returning back to work due to the symptoms.

Letter to Dr. Petroff addressed to Susan Sayegh, claims manager. He stated that she had finished her PT. He felt that it was doubtful that she would return back to the work force due to her ongoing symptoms.

05/17/04: Letter to Dr. Petroff from Beverly Mendry, the claims representative from CCMSI. In the letter, she requested additional information concerning what benefits the Palm-Mag 1000 stimulating device would provide the patient.

I then reviewed additional records and letters from Dr. Petroff to the claims examination and also Dr. Mattimoe.

06/29/04: I reviewed a letter from Dr. Petroff in which he felt that it was reasonable for the patient to undergo a trial of back to work.

09/14/04: MRI scan of the cervical spine with some diminution of the normal lordotic curve as well as posterior osteophytes at multiple levels most prominent at C3-6 levels causing spinal stenosis at C4-5 with compression of the cord but no clear increase signal within the cord. Also, left neural foraminal stenosis at C4-5; right neural foraminal stenosis at C5-6 and C6-7.

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09/14/04: Lumbar spine x-rays demonstrated mild anterior wedging at L1, old in nature; scattered degenerative changes.

I again reviewed additional letters from Dr. Petroff to Dr. Mattimoe.

03/28/05: Ms. Reeves was seen at the UCLA Medical Center by Dr. Woods whose impression included complaints of bilateral lower extremity weakness with asymmetric examination with problems on the left which could not be attributed to a single nerve on nerve root. There was mention of significant peripheral neuropathy most likely due to diabetes. He felt that EMG studies would be helpful to rule out possible Mononeuritis Multiplex or focal neuropathic process.

01/23/06: 3-page letter from Jeff Dietrich, PT, which summarized her prior problems and progress. He stated that it was uncommon for people with dizziness and balance disorders to have continued symptoms for many years especially when the symptoms are untreated for many years.

01/06/09: MRI scan of the cervical spine with flexion and extension views with C3-4 disc protrusion producing mild narrowing. Impression included: C3-4 disc protrusion producing mild spinal canal narrowing; C4-5 demonstrating disc protrusion producing mild spinal canal stenosis.

01/07/09: MRI scan of thoracic spine and mild disc bulge at T2-3 and T7-8.

01/07/09: MRI scan of the lumbar spine with flexion and extension views. At L5-S1 there was a disc protrusion which abutted the thecal sac; mild foraminal narrowing measuring 2.1 mm in flexion and 3.0 mm in extension.

This completes my review of multiple medical records concerning her injuries and ongoing chronic problems since the MVA of 09/25/88.

As part of my review, I was asked to answer several questions concerning her medical condition and the etiology of her ongoing complaints.

1. ***If the problems with my neck and back are from an injury, is there any way to tell if the injury is old is recent?***

No. There is no relation to the chronic problems she is suffering; however, by history it appears that she has had chronic multiple problems of dizziness, headaches, some decreased balance etc as noted in the above records review which had been present since the rear-ended MVA she was involved in on 09/28/88.

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2. ***If my injury can be shown to be old, is there any way to show how old?***

No; however, all of the historical information relates these problems to the MVA of 09/28/88 and some to the prior MVA of 07/20/87. By history, it appears her problems from the 07/20/87 MVA had improved and apparently resolved shortly before the second MVA.

3. ***Based upon my medical records, MRIs and the opinions of the doctors at the time, 1988-1991, what is the medical probability that my symptoms including dizziness, headaches neck and lower back pain, that are still present today, are at least partly a result of the injuries I sustained in the motor vehicle accident of 1988?***

It is highly medically likely that the multiple problems she still experiences today are related some to the prior MVA of 07/20/87; however in my medical opinion, the majority of the symptoms are related to the second MVA in 1988.

4. ***In medical probability, are the symptoms, dizziness, headaches, neck and lower back pain I present with today a natural progression of an injury?***

They could be a natural progression of the particular injury; however, it appears these symptoms have been historically present since the time of the second MVA.

5. ***If it is from an injury from a significant number of years ago, is there a way to determine how long prior to the present that might have been?***

No, not likely; however, in this case it seems apparent that her problems related to the prior MVA due to all of the medical records which include multiple evaluations, testing and notes of various treatments that she received consecutively since that time.

6. ***In your opinion, am I capable of returning to any gainful employment at the present time?***

From my review of multiple records and seeing Ms. Reeves, I do feel that she could work at least part time in various modified settings; however, the right modified setting would need to be available for participation in duties that would not tend to flare up or worsen her symptoms. Often, in these scenarios, the appropriate particular job and employer is not always available or is very hard to find.

719

000214

7. ***In your opinion, is Susan Reeves suffering the same injuries she accrued from the 09/25/88 accident? Could the extreme headaches, dizziness, neck and head pain be the same pain she is still dealing with, that she brought to the attention of every doctor she has seen for 21 years?***

Yes.

8. ***Are these problems Susan has, headaches, dizziness, neck pain, back pain, ear ringing, left arm and leg numbness, a disease or an injury?***

These problems are a constellation of symptoms which do appear to be related to 2 injuries, partially to the initial MVA of 07/20/87 and to a larger extent related to the injuries and flare up that she received from the 09/25/88 MVA.

9. ***Due to the dizziness she has had since the accident, would this cause her to fall, walk into things and such causing her to break, bruise and injure herself?***

Yes. These symptoms very likely could lead to these problems.

10. ***Looking at her MRI and X-rays from different time periods, are these problems getting worse or better?***

From review of the x-rays/MRI findings, I do not find that the physical problems have progressively worsened; however, the findings noted on the x-ray testing are likely slowly progressing due to aging.

I do hope that the Impression provided in my Record Review is beneficial in helping assess Ms. Reeves' condition and problems. If I can be of further assistance, please feel free to contact my office.

Curtis Poindexter, MD

Curtis Poindexter, M.D.
Mountain Rehabilitation Services

CP:eb Dictated

720

000215

MOUNTAIN REHABILITATION SERVICES

CURTIS W. POINDEXTER, M.D.
Physical Medicine & Rehabilitation
Electrodiagnostic Medicine

2073 E. SAHARA AVENUE, SUITE A LAS VEGAS, NEVADA 89104 (702) 732-8568 FAX (702) 732-8588

Date: 06/15/10

NAME: Susan Reeves

INDEPENDENT MEDICAL RECORD REVIEW –
Addendum

To Whom It May Concern:

I recently provided a medical record review and answers to various questions concerning the medical problems Ms. Susan Reeves has had for several years in relation to a prior industrial injury. In the previous report I had stated the possibility of Ms. Reeves returning to a light duty position. At this time I would like to clarify my statement which was made in general terms and requires some clarification.

As a general consensus, with Ms. Reeves's types of problems and injuries, there was a possibility she could return to a job in a modified position. While in theory my suggestion is correct, I do realize that with a 20+ year history of dealing with various medical problems in relation to her prior industrial injury, it is more unlikely that she would be unable to participate in the majority of job positions that might be available to her. Therefore, the potential to find just such a job would be somewhat limited.

At any rate, due to her condition and problems, she would likely have a very difficult time maintaining even a part time job due to her condition and various symptoms which have definitely interfered with her overall level of functioning for many years now. These symptoms would also tend to interfere with an appropriate work schedule where she would likely have a significant amount of tardiness and multiple absences at a particular job and very likely could not maintain a work schedule with most jobs due to this.

It is high likely that she would not be able to maintain a regular position and a work schedule. Therefore, realistically speaking, I do not feel she would be able to maintain an appropriate schedule for the jobs that may be available to her.

721

000216

I hope that this does provide further clarification of my assessment of Ms. Reeves' overall condition and problems that she has experienced for many, many years now.

If there is need for additional information or further clarification, please feel free to contact my office.

Sincerely,

Curtis Poindexter, MD

Curtis Poindexter, M.D.
Mountain Rehabilitation Services

CP:eb Dictated

722

000217

MEDICARE OPERATIONS
[redacted]
FARGO ND

THIS IS NOT A BILL
Explanation of Your Medicare Part B Benefits

NV-H4-019674

SUSAN L REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110-2425

NV

Summary of this notice dated December 11, 1998		
Total charges:	$	32.00
Total Medicare approved:	$	9.12
We paid your provider:	$	7.30
Your total responsibility:	$	1.82

Your Medicare number is: [redacted]

Your provider accepted assignment

This is about this notice (See the back for more information.)

BILL SUBMITTED BY: DESERT RADIOLOGISTS
Mailing address: 2355 RED ROCK ST 103 LAS VEGAS NV 89102

Dates	Services and Service Codes	Charge	Medicare Approved	See Notes Below
	Control number 5083-2210-05300 HOWARD A TISCHLER M.D.			
Nov 04, 1998	1 X-ray exam of ankle [73610-26] professional charge	$ 32.00	$ 9.12	a

Notes:

a The approved amount is based on the fee schedule.

GENERAL INFORMATION ABOUT MEDICARE:

Get the flu prevention shot, NOT the flu. Medicare Part B covers a flu shot to protect you each flu season. You can also protect yourself from some pneumococcal infections by getting a pneumococcal vaccination. Medicare will also pay for your vaccination. One pneumococcal vaccination may be all you ever need. Ask your doctor.

IMPORTANT: If you have questions about this notice, call Medicare Operations toll free at 1-800-444-4606 or write to: Medicare, 5515 N. 7th St [redacted] Phoenix, AZ 85014. You will need this notice if you contact us.

To appeal our decision, you must WRITE to us before: June 2, 1999 at [redacted] Box 6700, Fargo ND [redacted] See #2 on the back.

Please see other side.

723

Received 08-28-2008 10:25am From- To-NAIW Page 010

000218

NV-P4-021963

SUSAN L REEVE

Control number 4283-0625-13701

Your Medicare number is: [redacted]

More details about this notice

Here's an explanation of this notice

Medicare secondary payment	$	893.73	You have already met the deductible for 1998.
Less previous payment for these services	–	893.73	We have already made partial payment.
Net payment now due	$	0.00	
We are paying the provider	$	0.00	

IMPORTANT: If you have questions about this notice, call Medicare Operations toll free at 1-800-444-4096 or write us at Medicare, 5333 N. 7th St Paragon Plaza, #300, Phoenix, AZ 85014. You will need this notice if you contact us.

To appeal our decision you must WRITE to us before April 13, 2000 at Medicare Operations, P.O. Box 6705, Fargo, ND 58108-6705. See #2 on the back.

Page 5 of 7

PLEASE SEE OTHER SIDE.

724

Received 08-28-2008 10:26am From- To-NAIW . Page 011

000219

325282514 100263731

CMS Medicare Summary Notice

CUSTOMER SERVICE INFORMATION

Your Medicare Number: [redacted]

If you have questions, write or call:
Medicare Operations (#00834) SW
901 40th Street South, Suite 1
Fargo, ND 58103

Call: 1-800-MEDICARE (1-800-633-4227)
Ask For Doctor Services
TTY Users Should Call 1-877-486-2048
www.noridianmedicare.com

SUSAN L REEVES 010393
4724 E WASHINGTON
LAS VEGAS NV 89110-2425

BE INFORMED: Read Your Medicare Summary Notice carefully for accuracy of dates, services, and amount billed to Medicare.

This is a summary of claims processed from 07/12/2005 through 07/22/2005.

PART B MEDICAL INSURANCE - ASSIGNED CLAIMS

Dates of Service	Services Provided	Amount Charged	Medicare Approved	Medicare Paid Provider	You May Be Billed	See Notes Section
Claim number 22-05189-055-620 NV						
Ellis Bandt Birkin Kollins, 3090 S Durango Dr Ste 200, **Las Vegas, NV 89117-9192**						a
Referred by: Dr. Simms, Patricia. DO						
Dr. Kang, Jay W. M.D.						
05/09/05	1 X-ray exam, knee, 4 or more (73564-26LT) professional charge	$43.00	$0.00	$0.00	$0.00	
05/09/05	1 X-ray exam of ribs/chest (71101-26RT) professional charge	50.00	0.00	0.00	0.00	
05/09/05	1 X-ray exam of foot (73630-26) professional charge	33.00	0.00	0.00	0.00	
	Claim Total	**$126.00**	**$0.00**	**$0.00**	**$0.00**	
Claim number 22-05181-053-740 NV						
Godwin O. Madaka, M.D., 3835 S Jones # 104, Las Vegas, NV 89103-2283						b,a
Referred by: Dr. Mattimoe, Peter F., M.D.						
04/25/05	1 Office/outpatient visit, est (99214)	$270.00	$0.00	$0.00	$0.00	

725

Received 08-28-2008 12:34pm From- To-NAIW Page 004

000220

Exhibit B 726

REFERRAL ADVICE

EMPLOYEE ACCIDENT REPORT

Name: Susan L. Peterson — Date: 12-27-37

Home Address: 1124 E Washington — Sex: ☐ M ☒ F — Marital Status: ☐ Sgl. ☒ Mar. ☐ Sp. ☐ Wd.

City: Las Vegas — State: NV — Zip: 89101 — Regularly Work: 9:30A - 3:30P — Scheduled Days Off: Sat/Sun

Home Telephone Number: 453-2588 — Employee's occupation (Job title) when injured: Room Svc Clerk — Department: Room Svc — Employee #: 93234

Employer's Name: BALLY'S (505-530) — Telephone: 739-4260

Office mail address (Number and Street): P.O. BOX 93666 — City: LAS VEGAS — State: NEVADA — Zip: 89109

Date of Injury: 2/25/88 — Hour of Injury: 6:30 P.M. — Date employer notified: 2/28/88 — Last day of work after injury: 2/27/88 — Supervisor to whom injury reported: Mary Anne Sipe

Address or location of accident (Be as specific as possible): Emp Parking lot

I was hit on my head into engine pick-up by a unknown white car driven by a white male employee. He ran off after the accident & I did not get his name. Witness name and address (Attach witness statement): See Incident Report

How did accident occur? (Be specific and in detail. Use additional sheet if necessary): See above

Was any unsafe condition or practice involved (Before, during or after)? If so, explain: See incident report - Reported to Supervisor

Nature of Injury: Head trauma - dizziness - achiness - headache — Part of body injured: — Degree of injury: Emp. left parking lot when I was hit

I CERTIFY THAT THE ABOVE IS TRUE AND TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASE ACTS (NRS 616 & 617). I HEREBY AUTHORIZE ANY PHYSICIAN, PRACTITIONER, HOSPITAL, OTHER PERSON, ANY SCHOOL, INSURANCE COMPANY, ADMINISTRATOR OR EMPLOYEE OF THE FOREGOING, ANY INDUSTRIAL INSURANCE REGULATORY AUTHORITY, EMPLOYER, LABOR ORGANIZATION, ANY MEDICAL SERVICE ORGANIZATION, INSURER, ANY ATTORNEY OR ANY OTHER PERSON OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING BUT NOT LIMITED TO, HIV TEST RESULTS, MENTAL HEALTH RECORDS, ALCOHOL AND DRUG ABUSE RECORDS OR ANY OTHER INFORMATION PERTAINING TO MY HISTORY, DIAGNOSIS OR TREATMENT OF ANY MENTAL OR PHYSICAL CONDITION OR DISABILITY, INCLUDING ANY PAST OR PRESENT CONDITION OR DISABILITY, FOR WHICH I AM OR MAY BE ELIGIBLE, OR OTHERWISE PAYABLE, UNDER THE INDUSTRIAL INSURANCE OR OCCUPATIONAL DISEASE ACTS. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE VALID AS THE ORIGINAL.

Date: 5/25/89 — Place — Worker's Signature: Susan L Peterson — Supervisor's Initial

INTENTIONAL FALSIFICATION OF THIS REPORT MAY SUBJECT YOU TO TERMINATION

INSTRUCTIONS: To be completed by employee. Detach original and forward to Worker's Compensation Department. Give pages 2, 3, and 4 to employee for delivery to Treating Facility/Physician.

PHYSICIAN'S REPORT OF INITIAL TREATMENT

First treatment: Place — Name of Hospital

Hour: A.M. P.M. — Date — Diagnosis and description of injury or occupational disease

Describe treatment used:

X-ray findings:

MAY 26 9 12 AM

From information give you by the employee, together with medical evidence, can you directly connect this accident or disease as job incurred?	☐ Yes	☐ No
Is additional medical care by a physician indicated?	☐ Yes	☐ No
If referred for additional care, please identify physician to whom referred.		
Have you advised patient to remain off work five days or more?	☐ Yes	☐ No
Do you know of any previous injury or disease contributing to this disability? Explain Yes	☐ Yes	☐ No

Remarks:

WC DIV. USE ONLY

727

MAY 8 1989

SIS ADMINISTRATORS, L...

Date	Print Doctor's Name	Doctor's Signature	Degree

Address — Telephone

PHYCIANS INITIAL REPORT

REV 8/87 LV 531

COMPLETE & MAIL WITHIN 6 WORK DAYS TO: SIS ADMINISTRATORS, INC. 1055 EAST TROPICANA, #275 LAS VEGAS, NEVADA 89119

PAGE 000821

BALLY'S
LAS VEGAS, NEVADA

EMPLOYER'S REPORT OF INJURY OR OCCUPATIONAL DISEASE

EMPLOYER

Name BALLY'S Telephone 739-4260

Address P.O. BOX 93898 City or Town LAS VEGAS State NEVADA Zip 89109

EMPLOYEE

1. Name of injured SUSAN (First Name) L. (Middle Initial) REEVES (Last Name) Social Security No. [redacted]
2. Address 4724 E. WASHINGTON City or Town LAS VEGAS State NV Zip 89110
3. Telephone No. 453-2588 Employee No. 33234 Speak English
4. ☒ Married ☐ Single ☐ Male ☒ Female
5. Age 37 Date of Birth 10/06/51 Job Code 1505-5310
6. (a) Occupation when injured CLERK (b) Was this his or her regular occupation? YES
   (In what department or branch of work regularly [redacted] Code 9001
7. (a) Date of hire 09/15/80 (b) Wages per hour $ 9.9100
8. (a) No. hours worked per day (b) Wages per day $
   (c) No. days worked per week (d) Average weekly earnings $
   (e) If board, lodging, meals furnished, provide value No. meals per day ONE
   Meal value

ACCIDENT

9. Date of injury 09/25/88 19 Day of week Hour of day 6:20 A.M. P.M.
10. Date disability began 19 A.M. P.M. Was injured paid in full for date of injury? YES
11. When did you or supervisor first know of injury? 09/25/88
12. Name of supervisor and title MIMI
13. Location or place where accident occurred EMPLOYEE PARKING LOT
    Department ROOM RESERVATIONS State if employer's premises YES
14. Describe fully how accident occurred and state what employee was doing when injured
    I WAS 3/4 WAY TURNED INTO EMPLOYEE PARKING LOT WHEN ANOTHER EMPLOYEE HIT THE REAR OF MY TRUCK ON THE LEFT BACK TO HER RIGHT FRONT.

    NOTE: EMPLOYEE STATES SHE WORKED UNTIL 5/17/89 WHEN SHE WAS FORCED TO GO ON A MEDICAL LEAVE OF ABSENCE BY CASS PALMER AND SALLY SHAKELFORD.
15. Describe injury or exposure fully and identify parts of body affected EXTREEM HEADACHES, DIZZYNESS, NECK AND HEAD PAIN.
16. Machine, tool, thing or substance causing injury ANOTHER EMPLOYEE & VEHICLE GOING TOO FAST IN EMPLOYEE PARKING LOT
17. Kind of power (hand, foot, electrical, steam, etc.)
18. Part of machine on which accident occurred
    (a) Was safety appliance or regulation provided? (b) Was it in use at time?
19. Was accident caused by injured's failure to use or observe safety appliance or regulation?
20. Names and addresses of witnesses

    728
21. Probable length of disability 22. Has injured returned to work?
23. If so, date and hour At what wage $
24. At what occupation
25. (a) Name and address of physician
26. (b) Name and address of hospital

MAY 31 1989
SIS ADMINISTRATORS

FATAL CASES

Has insured died? If so, give date of death

TITLE

00228

MEMORANDUM OF SETTLEMENT

THIS MEMORANDUM OF SETTLEMENT is entered into by and among BALLY'S CASINO RESORT (hereinafter, the Employer), PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, LOCAL NO. 995 (hereinafter, the Union) and SUSAN L. REEVES (hereinafter, the Grievant).

WITNESSETH:

WHEREAS, a grievance was filed against the Employer on or about May 19, 1989 concerning placement of grievant on a medical leave of absence; and

WHEREAS, the parties desire to settle this matter as set forth herein;

NOW THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed as follows:

1. The grievance concerning the leave of absence is herewith withdrawn.

2. The Grievant will remain on a medical leave of absence until she has a full medical release to return to work without restrictions.

3. The Grievant will receive twelve and one-half (12-1/2) days vacation pay for requested vacation during the period of June 8, 1989 to June 23, 1989 which period occurs during her medical leave of absence.

4. This Memorandum of Settlement shall constitute a final and binding settlement of any and all matters which have been or might be raised by the Union or by the Grievant in connection with her medical leave of absence.

5. This Settlement Agreement has no precedential value and will not be used by any party hereto in any action or proceeding except one for enforcement of the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this MEMORANDUM OF SETTLEMENT to be executed on the dates below their names.

HILTON CLAIMS ADM
LAS VEGAS, NEVADA
JUN 12 P

For the Employer:

BALLY'S CASINO RESORT

By: [signature]
Its:
Dated: 6-7-89

For the Union:

PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, LOCAL NO. 995

By: [signature]
Its: B. A.
Dated: 6-7-89

By: _____
Susan L. Reeves, Grievant
Dated: _____

729

000123

THIS SECTION MUST ALWAYS BE COMPLETED

CHECK APPROPRIATE ACTION (S)

_____ NEW HIRE
_____ REHIRE
Jun 8 2 43 PM '89 RETURN FROM LOA
_____ REINSTATE
_____ RECALL FROM LAY OFF
_____ TEMP TO REG.
_____ ADDRESS/TELEPHONE CHANGE
_____ PAYROLL RATE CHANGE
_____ JOB CLASS CHANGE
_____ TRANSFER
XX LEAVE OF ABSENCE
_____ TERMINATION

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	REPORT'S DATE
33234	Reeves	Susan	L.	6/8/89

DEPARTMENT	CLASSIFICATION
Room Reservations	Reservation Clerk

ACTIVATE

NEW HIRE OR REHIRE

NO. STREET CITY STATE ZIP CODE TELEPHONE NO.

START DATE | SHIFT | DAYS OFF | DATE OF BIRTH | SOCIAL SECURITY NO.

RATE/SALARY PER | TEMP. OR REG. | REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN | SHIFT | DAYS OFF

CHANGE

NEW ADDRESS/ PHONE

NO. STREET NEW TELEPHONE NO.

CITY STATE ZIP CODE

PAYROLL RATE/JOB CLASS-IFICATION CHANGE

DATE OF CHANGE | SHIFT | DAYS OFF | HIRE DATE | PROMOTION DATE

NEW JOB CLASSIFICATION | FROM RATE/SALARY PER

NEW DEPARTMENT | TO RATE/SALARY PER

TRANSFER

DATE OF TRANSFER | SHIFT | DAYS OFF | HIRE DATE

NEW DEPT/JOB CLASSIFICATION | NEW RATE PER

DEACTIVATE

LEAVE OF ABSENCE

LAST DAY SCHEDULED PRIOR TO LEAVE: 5/24/89 | DATE OF RETURN: 6/26/89 | TIME DUE: none - pd 6/8 paychk

CIRCLE ONE: PERSONAL (MEDICAL) INDUSTRIAL INJURY | LOA REASON: Dizziness

TERMINATION

EFFECTIVE DATE OF TERMINATION | TIME DUE | JOB PERFORMANCE

TERMINATION REASON

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

COMMENTS:

ACTUAL LAST DAY WORKED _____ RECEIVED

DATE TERMINATION COMMITTEE AUTHORIZATION _____ SEP 2 U 1989

STAFF BUDGET COMMITTEE APPROVAL _____ HS ADMINISTRATORS-LL

INPUT 6/9/89 Date
Andrea Lewis

730

not available

FORMER DEPARTMENT HEAD SIGNATURE (TRANSFERS ONLY)

EMPLOYEE SIGNATURE

DEPARTMENT HEAD SIGNATURE

1.Personnel 2.Payroll 3.Union 4.Department Head 5.Employee

REV 3/89 LV

AD

000224

PERSONNEL ACTION FORM

THIS SECTION MUST ALWAYS BE COMPLETED

CHECK APPROPRIATE ACTION (S)

- _____ NEW HIRE
- _____ REHIRE
- JUN 27 '89 RETURN FROM LOA 103
- _____ REINSTATE
- _____ RECALL FROM LAY OFF
- _____ TEMP TO REG.
- _____ ADDRESS/TELEPHONE CHANGE
- _____ PAYROLL RATE CHANGE
- _____ JOB CLASS CHANGE
- _____ TRANSFER
- XX LEAVE OF ABSENCE
- _____ TERMINATION

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAY'S DATE
33234	Reeves	Susan		6/26/89

DEPARTMENT	JOB CLASSIFICATION
Room Reservations	Reservation Clerk

NEW HIRE OR REHIRE

NO. | STREET | CITY | STATE | ZIP CODE | TELEPHONE NO.

START DATE | SHIFT | DAYS OFF | DATE OF BIRTH | SOCIAL SECURITY NO.

RATE/SALARY | PER | TEMP OR REG. | REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN | SHIFT | DAYS OFF

NEW ADDRESS/ PHONE

NO. | STREET | NEW TELEPHONE NO.

CITY | STATE | ZIP CODE

PAYROLL RATE/JOB CLASSIFICATION CHANGE

DATE OF CHANGE | SHIFT | DAYS OFF | HIRE DATE | PROMOTION DATE

NEW JOB CLASSIFICATION | FROM | RATE/SALARY | PER

NEW DEPARTMENT | TO | RATE/SALARY | PER

INPUT Date 6/28

TRANSFER

DATE OF TRANSFER | SHIFT | DAYS OFF | HIRE DATE

NEW DEPT/JOB CLASSIFICATION | NEW RATE | PER

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LOA: 5/24/89 | EXPECTED DATE OF RETURN: 7/31/89 | TIME DUE: None

CIRCLE ONE: PERSONAL (MEDICAL) MILITARY MATERNITY | LOA REASON: Dizziness

TERMINATION

EFFECTIVE DATE OF TERMINATION | TIME DUE | EX-PERFORMANCE

TERMINATION REASON

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

COMMENTS: Extend LOA until 7/31/89

ACTUAL LAST DAY WORKED _____ RECEIVED

DATE TERMINATION COMMITTEE AUTHORIZATION _____ SEP 2 ' 1989

STAFF BUDGET COMMITTEE APPROVAL _____

7/31

HRIS ADMINISTRATOR: Not Available

FORMER DEPARTMENT HEAD SIGNATURE (TRANSFERS ONLY)

EMPLOYEE SIGNATURE

DEPARTMENT HEAD SIGNATURE

1.Personnel 2.Payroll 3.Union 4.Department Head 5.Employee

REV 3/89 LU 370

225

THIS SECTION MUST ALWAYS BE COMPLETED

CHECK APPROPRIATE ACTION: _____ NEW HIRE; _____ REHIRE; Jul 31 RETURN FROM LOA / REINSTATE; _____ RECALL FROM LAY OFF; _____ TEMP TO REG.; _____ ADDRESS/TELEPHONE CHANGE; _____ PAYROLL RATE CHANGE; _____ TRANSFER; XXX LEAVE OF ABSENCE; _____ TERMINATION

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAY'S DATE
33234	Reeves	Susan		7/31/89

DEPARTMENT: Room Reservations

JOB CLASSIFICATION: Reservation Clerk

ACTIVATE

NEW HIRE OR REHIRE

NO. / STREET / CITY / STATE / ZIP CODE / TELEPHONE NO.

START DATE / SHIFT / DAYS OFF / DATE OF BIRTH / SOCIAL SECURITY NO.

RATE/SALARY PER / TEMP. OR REG. / REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN / SHIFT / DAYS OFF

CHANGE

NEW ADDRESS/ PHONE

NO. / STREET / NEW TELEPHONE NO.

CITY / STATE / ZIP CODE

PAYROLL RATE/JOB CLASS-IFICATION CHANGE

DATE OF CHANGE / SHIFT / DAYS OFF / HIRE DATE / PROMOTION DATE

NEW JOB CLASSIFICATION / FROM RATE/SALARY PER

NEW DEPARTMENT / TO RATE/SALARY PER

TRANSFER

DATE OF TRANSFER / SHIFT / DAYS OFF / HIRE DATE

NEW DEPT/JOB CLASSIFICATION / NEW RATE PER

DEACTIVATE

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LEAVE	DATE OF RETURN	TIME DUE
5/17/89	9/1/89	None

(CIRCLE ONE) PERSONAL (MEDICAL) INDUSTRIAL INJURY

LOA REASON: Dizziness

TERM-INATION

EFFECTIVE DATE OF TERMINATION / TIME DUE / JOB PERFORMANCE

TERMINATION REASON

INPUT Date Pat Hoover

NOTE: Department Heads are responsible for clipping the ID-badge & ensuring the return of any department keys.

COMMENTS: Extend LOA until 9/1/89 - Correct Last Day Worked to show 5/17/89.

ACTUAL LAST DAY WORKED _____

DATE TERMINATION COMMITTEE AUTHORIZATION _____

STAFF BUDGET COMMITTEE APPROVAL _____

RECEIVED SEP 20 1989

732

SIGNATURE NOT available

DEPARTMENT HEAD SIGNATURE

FORMER DEPARTMENT HEAD SIGNATURE (TRANSFERS ONLY)

1.Personnel 2.Payroll 3.Union 4.Department Head 5.Employee

REV 3/89 LV

48

000226

BALLY'S LAS VEGAS
PERSONNEL ACTION FORM

THIS SECTION MUST ALWAYS BE COMPLETED

CHECK APPROPRIATE ACTION (S)

____ NEW HIRE	____ RECALL FROM LAY OFF	____ JOB CLASS CHANGE
____ REHIRE	____ TEMP TO REG.	____ TRANSFER
____ RETURN FROM LOA	____ ADDRESS/TELEPHONE CHANGE	XX LEAVE OF ABSENCE
____ REINSTATE	____ PAYROLL RATE CHANGE	____ TERMINATION

SEP 11 1 PM '89

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAY'S DATE
33234	Reeves	Susan		9/11/89

DEPARTMENT	JOB CLASSIFICATION
Room Reservations	Reservation Clerk

ACTIVATE

NEW HIRE OR REHIRE

NO.	STREET	CITY	STATE	ZIP CODE	TELEPHONE NO.

START DATE	SHIFT	DAYS OFF	DATE OF BIRTH	SOCIAL SECURITY NO.

RATE/SALARY	TEMP. OR REG.	REPORTS TO
PER		

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN	SHIFT	DAYS OFF

CHANGE

NEW ADDRESS/PHONE

NO.	STREET	NEW TELEPHONE NO.

CITY	STATE	ZIP CODE

PAYROLL RATE/JOB CLASSIFICATION CHANGE

DATE OF CHANGE	SHIFT	DAYS OFF	HIRE DATE	PROMOTION DATE

NEW JOB CLASSIFICATION	FROM	RATE/SALARY
		PER

NEW DEPARTMENT	TO	RATE/SALARY
		PER

TRANSFER

DATE OF TRANSFER	SHIFT	DAYS OFF	HIRE DATE

NEW DEPT./JOB CLASSIFICATION	NEW RATE
	PER

DEACTIVATE

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LEAVE	DATE OF RETURN	TIME DUE
5/17/89	10/15/89	None

SCHOOL DATE	LOA REASON
PERSONAL / MEDICAL / INDUSTRIAL INJURY	Dizziness

TERMINATION

EFFECTIVE DATE OF TERMINATION	TIME DUE	JOB PERFORMANCE

TERMINATION REASON

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

COMMENTS: Extend LOA to 10/15/89

ACTUAL LAST DAY WORKED _____

DATE TERMINATION COMMITTEE AUTHORIZATION _____

STAFF BUDGET COMMITTEE APPROVAL _____

733

not available
EMPLOYEE SIGNATURE

L. Salem
DEPARTMENT HEAD SIGNATURE

FORMER DEPARTMENT HEAD SIGNATURE
(TRANSFERS ONLY)

000227

BALLYS LAS VEGAS

PERSONNEL ACTION FORM

THIS SECTION MUST ALWAYS BE COMPLETED

CHECK APPROPRIATE ACTION (S)

_____ NEW HIRE	_____ RECALL FROM LAY OFF	_____ JOB CLASS CHANGE	
_____ REHIRE	_____ TEMP TO REG.	_____ TRANSFER	
_____ RETURN FROM LOA	_____ ADDRESS/TELEPHONE CHANGE	XX LEAVE OF ABSENCE	
_____ REINSTATE	_____ PAYROLL RATE CHANGE	_____ TERMINATION	

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAYS DATE
33234	Reeves	Susan		10/13/89

DEPARTMENT | JOB CLASSIFICATION

ACTIVATE

NEW HIRE OR REHIRE

NO. | STREET | CITY | STATE | ZIP CODE | TELEPHONE NO.

START DATE | SHIFT | DAYS OFF | DATE OF BIRTH | SOCIAL SECURITY NO.

RATE/SALARY PER | TEMP. OR REG. | REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN | SHIFT | DAYS OFF

CHANGE

NEW ADDRESS/ PHONE

NO. | STREET | NEW TELEPHONE NO.

CITY | STATE | ZIP CODE

PAYROLL RATE/JOB CLASS-IFICATION CHANGE

DATE OF CHANGE | SHIFT | DAYS OFF | HIRE DATE | PROMOTION DATE

NEW JOB CLASSIFICATION | FROM RATE/SALARY PER

NEW DEPARTMENT | TO RATE/SALARY PER

TRANSFER

DATE OF TRANSFER | SHIFT | DAYS OFF | HIRE DATE

NEW DEPT/JOB CLASSIFICATION | NEW RATE PER

DEACTIVATE

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LEAVE	DATE OF RETURN	TIME DUE
5/17/89	12/4/89	None

(CIRCLE ONE) PERSONAL (MEDICAL) INDUSTRIAL INJURY | LOA REASON: Dizziness

TERM-INATION

EFFECTIVE DATE OF TERMINATION | TIME DUE | JOB PERFORMANCE

TERMINATION REASON

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

COMMENTS: Extend current LOA to 12/4/89

ACTUAL LAST DAY WORKED _____

DATE TERMINATION COMMITTEE AUTHORIZATION _____

STAFF BUDGET COMMITTEE APPROVAL _____

INPUT 10/16/89 Date
Andrea Lewis

734

not available
EMPLOYEE SIGNATURE

Lisa Salem

FORMER DEPARTMENT HEAD SIGNATURE (TRANSFERS ONLY)

000228

BALLY'S LAS VEGAS
PERSONNEL ACTION FORM

S SECTION
ST
VAYS BE
MPLETED

CHECK APPROPRIATE ACTION (S)

____ NEW HIRE	____ RECALL FROM LAY OFF	____ JOB CLASS CHANGE
____ REHIRE	____ TEMP TO REG.	____ TRANSFER
____ RETURN FROM LOA	____ ADDRESS/TELEPHONE CHANGE	____ LEAVE OF ABSENCE
____ REINSTATE	____ PAYROLL RATE CHANGE	____ TERMINATION

DEC 12 9 34 AM '89

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAY'S DATE
33234	Reeves	Susan		12/8/89

DEPARTMENT	JOB CLASSIFICATION
Room Reservations	Reservation Clerk

NEW HIRE OR REHIRE

NO.	STREET	CITY	STATE	ZIP CODE	TELEPHONE NO.

START DATE	SHIFT	DAYS OFF	DATE OF BIRTH	SOCIAL SECURITY NO.

RATE/SALARY PER	TEMP. OR REG.	REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN	SHIFT	DAYS OFF

NEW ADDRESS/ PHONE

NO.	STREET	NEW TELEPHONE NO.

CITY	STATE	ZIP CODE

PAYROLL RATE/JOB CLASS-IFICATION CHANGE

DATE OF CHANGE	SHIFT	DAYS OFF	HIRE DATE	PROMOTION DATE

NEW JOB CLASSIFICATION	FROM	RATE/SALARY PER

NEW DEPARTMENT	TO	RATE/SALARY PER

TRANSFER

DATE OF TRANSFER	SHIFT	DAYS OFF	HIRE DATE

NEW DEPT./JOB CLASSIFICATION	NEW RATE PER

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LEAVE	DATE OF RETURN	TIME DUE
5/17/89	2/1/90	None

CIRCLE ONE: PERSONAL / MEDICAL / INDUSTRIAL INJURY	LOA REASON
	Dizziness

TERMI-NATION

EFFECTIVE DATE OF TERMINATION	TIME DUE	JOB PERFORMANCE

TERMINATION REASON

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

NTS: Extend current LOA

LAST DAY WORKED _____

ERMINATION COMMITTEE AUTHORIZATION _____

UDGET COMMITTEE APPROVAL _____

735

not available
EMPLOYEE SIGNATURE

FORMER DEPARTMENT HEAD SIGNATURE
(TRANSFERS ONLY)

L. Salem
DEPARTMENT HEAD SIGNATURE

000229

BALLY'S LAS VEGAS
PERSONNEL ACTION FORM

THIS SECTION MUST ALWAYS BE COMPLETED

CHECK APPROPRIATE ACTION (S)

____ NEW HIRE	____ RECALL FROM LAY OFF	____ JOB CLASS CHANGE
____ REHIRE	____ TEMP TO REG.	XX TRANSFER
____ RETURN FROM LOA	____ ADDRESS/TELEPHONE CHANGE	____ LEAVE OF ABSENCE
____ REINSTATE	____ PAYROLL RATE CHANGE	____ TERMINATION

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAY'S DATE
33234	REEVES	SUSAN		6/1/90

DEPARTMENT: ROOM RESERVATIONS

JOB CLASSIFICATION: RESERVATION CLERK

ACTIVATE

NEW HIRE OR REHIRE

NO. STREET CITY STATE ZIP CODE TELEPHONE NO.

START DATE | SHIFT | DAYS OFF | DATE OF BIRTH | SOCIAL SECURITY NO.

RATE/SALARY PER | TEMP. OR REG. | REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN | SHIFT | DAYS OFF

CHANGE

NEW ADDRESS/ PHONE

NO. STREET NEW TELEPHONE NO.

CITY STATE ZIP CODE

PAYROLL RATE/JOB CLASS-IFICATION CHANGE

DATE OF CHANGE | SHIFT | DAYS OFF | HIRE DATE | PROMOTION DATE

NEW JOB CLASSIFICATION | FROM | RATE/SALARY PER

NEW DEPARTMENT | TO | RATE/SALARY PER

TRANSFER

DATE OF TRANSFER | SHIFT | DAYS OFF | HIRE DATE

NEW DEPT/JOB CLASSIFICATION | NEW RATE PER

DEACTIVATE

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LEAVE: 5/17/89 | DATE OF RETURN: 12/1/90 | TIME DUE

(CIRCLE ONE) PERSONAL MEDICAL INDUSTRIAL INJURY

LOA REASON: EXTENSION PER MEMORANDUM AGREEMENT

TERM-INATION

EFFECTIVE DATE OF TERMINATION | TIME DUE | JOB PERFORMANCE

TERMINATION REASON

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

COMMENTS:

ACTUAL LAST DAY WORKED _____

DATE TERMINATION COMMITTEE AUTHORIZATION _____

STAFF BUDGET COMMITTEE APPROVAL _____

INPUT 6-4-90 Date
Andrea Lewis
NOT AVAILABLE

736

FORMER DEPARTMENT HEAD SIGNATURE

EMPLOYEE SIGNATURE

000230

HIS SECTION UST WAYS BE OMPLETED	CHECK APPROPRIATE ACTION (S) 1505-5310	___ NEW HIRE ___ REHIRE ___ RETURN FROM LOA ___ REINSTATE	___ RECALL FROM LAY OFF ___ TEMP TO REG. DEC 3 [illegible] CHANGE ___ PAYROLL RATE CHANGE
		___ JOB CLASS CHANGE ___ TRANSFER ___ LEAVE OF ABSENCE X TERMINATION	

EMPLOYEE NO.	LAST NAME	FIRST NAME	MI	TODAY'S DATE
33234	REEVES	SUSAN		12-2-91

DEPARTMENT	JOB CLASSIFICATION
ROOM RESERVATIONS	RESERVATION CLERK

NEW HIRE OR REHIRE

NO.	STREET	CITY	STATE	ZIP CODE	TELEPHONE NO.

START DATE	SHIFT	DAYS OFF	DATE OF BIRTH	SOCIAL SECURITY NO.

RATE/SALARY PER	TEMP. OR REG.	REPORTS TO

RETURN FROM LOA, REINSTATE, RECALL FROM LAY OFF

DATE OF RETURN	SHIFT	DAYS OFF

NEW ADDRESS/ PHONE

NO.	STREET	NEW TELEPHONE NO.

CITY	STATE	ZIP CODE

PAYROLL RATE/JOB CLASS-IFICATION CHANGE

DATE OF CHANGE	SHIFT	DAYS OFF	HIRE DATE	PROMOTION DATE

NEW JOB CLASSIFICATION	FROM	RATE/SALARY PER

NEW DEPARTMENT	TO	RATE/SALARY PER

TRANSFER

DATE OF TRANSFER	SHIFT	DAYS OFF	HIRE DATE

NEW DEPT./JOB CLASSIFICATION	NEW RATE PER

LEAVE OF ABSENCE

LAST DAY WORKED PRIOR TO LEAVE	DATE OF RETURN	TIME DUE

(CIRCLE ONE) PERSONAL MEDICAL INDUSTRIAL INJURY	LOA REASON	INPUT ME Date 12/3/91

TERM-INATION

EFFECTIVE DATE OF TERMINATION	TIME DUE	JOB PERFORMANCE
12-2-91		

TERMINATION REASON

Employee's leave of absence exceeds Teamster's Collective Bargaining Agreement - Article 8.02 (Note: pending appeal to District Court regarding claim being non-industrial or industrial related.

NOTE: Department Heads are responsible for clipping the ID badge & ensuring the return of any department keys.

MENTS:

UAL LAST DAY WORKED 5-17-89

E TERMINATION COMMITTEE AUTHORIZATION [signature] 12-2-91

F BUDGET COMMITTEE APPROVAL _____

737

EMPLOYEE SIGNATURE

FORMER DEPARTMENT HEAD SIGNATURE (TRANSFERS ONLY)

Lisa Salem

DEPARTMENT HEAD SIGNATURE

1.Personnel 2.Payroll 3.Union 4.Department Head 5.Employee

REV 3/89 LV 376

000231

TELEPHONE CONVERSATION RECORD

CONVERSATION WITH: Susan Reeves

DATE: 1/3/91 TIME: 12:50 pm

IN OFFICE ~~CALL INITIATED~~ BY: Susan Reeves

REFERENCE: Return from LOA

HILTON CLAIMS ADM.
LAS VEGAS, NEVADA
1998 MAR 12 P 3:44

Susan came in with a note from Dr. Berkin which stated Susan could return to work duties she was performing prior to her being put on LOA. I told Susan I knew there was more to this situation and that I would need to check with Cass since he was the one that was involved with this. Cass was out of the building and had meetings scheduled the rest of this afternoon, per Mary Erkenzer. I told Susan I would call her at home as soon as I could get more info. Susan was sitting in the chair by my desk, as she began to stand up, she appeared to become dizzy and unbalanced to the point where the man that was here with her had to help her stand and help her walk out of the office to keep her balance.

SIGNED: Ina

17

738

Received 08-28-2008 04:32pm From- To-NAIW Page 004

000232

MORAN & WEINSTOCK
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
630 SOUTH 4TH STREET
SUITE 400
LAS VEGAS, NEVADA 89101
Telephone (702) 384-8424
Telecopier (702) 384-6568

JOHN T. MORAN, JR.
ARNOLD WEINSTOCK
DENNIS M. LEAVITT
ANDREW M. LEAVITT

January 10, 1991

Ms. Vickie Prediger
SIS Administrator Services
1055 E. Tropicana
Suite 275
Las Vegas, Nevada 89119

Re: Claimant: Susan Reeves
Claim No.: 7715-1035-88
D.O.I.: 9-25-85
Employer: Bally's Grand Hotel & Casino

Dear Vickie:

Please be advised that on January 3, 1991, I attended a status check hearing on the above-entitled matter. At that time, Claimant's attorney, James Stuart, myself, and Appeals Officer Rhonda Gross, discussed the evaluation which was performed by Dr. Richard Kudrewicz. As you know in that evaluation, Dr. Kudrewicz did not really address the issue for which he was requested, but instead granted to the Claimant a Permanent Partial Disability Rating of 5%. As such, in speaking with Mr. Stuart, he indicated to me that his client would probably accept said 5% Permanent Partial Disability Award in lieu of litigating this matter further. However, Mr. Stuart would like to have the exact dollar figure breakdown of such an award.

At this time, I believe that absent persuasive documentation from Dr. Kudrewicz, or some other license physician, regarding Claimant's current medical condition in relation to her first and second automobile accident, that Bally's Grand Hotel & Casino will be held responsible under the Nevada Workers Compensation Laws for the injuries which Ms. Reeves received in the September 15, 1988 automobile accident. Thus, the settlement request from Mr. Stuart should be seriously considered.

Based upon all of the above, please forward to me a breakdown of the 5% Permanent Partial Disability Award which Ms. Reeves would be entitled to if this matter is resolved. I will forward the same to the Claimant's attorney, and see if this matter can be resolved. If the same is not resolved, this matter is being set for a hearing before, Appeals Officer Rhonda Gross in approximately 45 days. I will obviously advise you as to the date of the same, and continue to represent the interest of Bally's Grand Hotel & Casino.

739

000732A

Should you have any further questions in regard to the above, please feel free to contact me at your convenience. Your time and anticipated cooperation in this regard is greatly appreciated. I shall await your anticipated prompt response to this letter. I remain,

Very truly yours,

Arnold Weinstock P.S.

Arnold Weinstock

AW:rs

[Dictated but not read]

740

000232 B

WAGE VERIFICATION FORM

Please provide the following information for the employee named below by completing this form. The information is needed so that the amount of disability compensation to which your employee is entitled may be calculated. Prompt completion and return of this form will assure the timely payment of any compensation due this injured worker. Please answer all questions and sign the form where indicated.

If you have any questions call: (702) - Thank you for your cooperation.

EMPLOYER: PLEASE PROVIDE THE FOLLOWING

PLEASE ALL QUESTIONS.

Claim No.: D.P.T. No.

Date of Injury: 9/25/88

Date: 9/15/89

Work 40 hours per week: [X] Yes [ ] No If no, how many hours per week:

Employee's wage was: $ per [ ] Hour [ ] Day [ ] Week [ ] Month

Effective: date

If wage was in effect less than 12 weeks prior to date of injury: $

[ ] Week [ ] Month

Did employee change to a job with different-(1) duties, (2) hours of employment,

[X] No If no, date: Explain:

Satisfied? [ ] Yes [X] No

If commissions, indicate the amount received over the last 6 months, or since date of hire

$: Is this amount included in GROSS EARNINGS below? [ ] Yes [ ] No

For purpose of worker's compensation? [ ] Yes [X] No See payroll declaration below.

Meals or Lodging (excluding reimbursement for travel per diem)? [X] Yes [ ] No

How many meals per day? one Monetary value of meals $ 1.25 ea per [X] Day [ ] Week [ ] Month

DO NOT INCLUDE IN GROSS EARNINGS Lodging $ per [ ] Day [ ] Week [ ] Month

TWELVE WEEK VERIFICATION FROM PAYROLL RECORDS. Report GROSS EARNINGS, include overtime payment and any other remuneration (except reimbursement for expenses). (See NAC 616.072)

Give payroll information from through gross earnings from date of hire to date of injury.

IF ABSENT FROM WORK FOR THE FOLLOWING REASONS, PLEASE SPECIFY ABSENCE.

1. Certified illness or disability; 2. Institutionalized as full-time student, not employed on days of attendance; 4 conducted on weekends; 5. Absent because of officially an

Payroll Period Beginning	Gross Earnings	Declared Tips
9/2 - 9/8/89	984.18	-0-
8/26 - 9/1/89	768.40	
8/19 - 8/25/89	153.44	
8/12 - 8/18/89	153.44	
8/5 - 8/11/89	671.30	None
7/29 - 8/4/89	324.86	
7/22 - 7/28/89	383.60	
7/15 - 7/21/89	383.60	None
7/8 - 7/14/89	376.95	None
	3,439.27	

984.18*
768.40 +
153.44 +
153.44 +
671.30 +
324.86 +
383.60 +
007
3,439.27 *

July Last 25, 89 *
20.00+ per
21.00+
25.00+
84.00

000
0.00 *

1 FR 26 FEB

POST CARD

WC 89 9.59

141

000233

Pay period ends on (check one) [✓] Sunday [ ] Monday [ ] Tuesday [ ] Wednesday [ ] Thursday [ ] Friday [ ] Saturday

Employee is paid: [ ] Weekly [✓] Bi-weekly [ ] Semi-Monthly [ ] Monthly [ ] Other

Employee scheduled day(s) off: [✓] Sun. [ ] Mon. [ ] Tues. [ ] Wed. [ ] Thurs. [ ] Fri. [✓] Sat. [ ] Other

Explain "other":

Date the employee last worked AFTER injury incurred: 5/12/89 Date returned to work:

[illegible]

This information is true and correct as taken from the employee's payroll records.

By: [signature] Title: W.C. Specialist

Date: 03/25/91

01RU196

742

000234

MORAN & WEINSTOCK
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
630 SOUTH 4TH STREET
SUITE 400
LAS VEGAS, NEVADA 89101
Telephone (702) 384-8424
Telecopier (702) 384-6568

JOHN T. MORAN, JR.
ARNOLD WEINSTOCK
DENNIS M. LEAVITT
ANDREW M. LEAVITT

February 7, 1991

Ms. Vickie Prediger
Rawlings Burdick & Hunter
1055 E. Tropicana
Suite 275
Las Vegas, Nevada 89109

Re: Claimant: Susan Reeves
Claim No.: 7715-1035-88
Appeal No.: LV90-493-R
Employer: Bally's Las Vegas

Dear Vickie:

Enclosed please find a letter which I recently received from Claimant's attorney, James Stuart, Esq. In that regard, Claimant is requesting settlement of the above case, receiving the 5% Permanent Partial Disability Award which Dr. Kudrewicz apparently said she would be entitled to. In addition, Ms. Reeves wants to be allowed to return to work at Bally's as an employee. Therefore, please review the enclosed letter, and discuss this with the Bally's representatives regarding their thought on the same.

Obviously, if we are able to resolve this matter prior to the March 7, 1991 hearing date, this matter can be concluded once and for all. However, if no settlement can be reached, then it is imperative that I get an additional statement from Dr. Kudrewicz in advance of the March 7, 1991 court date. As such, I shall await hearing from you in this regard forthwith.

Should you have any further questions in regard to the above, please feel free to contact me at your convenience. Your time and anticipated cooperation in this regard is greatly appreciated. I shall await your anticipated prompt response to this letter. I remain,

743

Very truly yours,

Arnold Weinstock

RECEIVED
FEB 11 1991
RAWLINGS BURDICK HUNTER

Claimant: Susan Reeves
Claim #: 7215-1035-88
Employer: Bally's Las Vegas

Date: 2-27-91
Date Of Injury: 9-25-88

ELECTION OF METHOD OF PAYMENT OF COMPENSATION

Susan Reeves, 572-70-2120

I, Claimant, Soc. Sec. #, have been advised that I may elect to receive my permanent partial disability compensation ~~of~~ on an installment basis or, if eligible, and I so elect, on a lump sum basis.

Should I elect to receive my compensation on an installment basis, payments will begin on 4-1-91 and terminate on 10-5-2021 and will be paid at the Annual rate of $460.32. This will vary depending on the date I elect to receive payment. According to NRS 616.507, if I elect to receive my payment for permanent partial disability in a lump sum payment constitutes a final settlement of all factual and legal issues regarding this claim. By so accepting, I waive all of my rights regarding the claim, including the right to appeal from the closure of the case or the percentage of my disability, except:

(a) My right to request reopening in accordance with the provisions of NRS 616.545; and

(b) Any services for counseling, training or rehabilitation provided by the insurer.

Further, I realize that I have twenty (20) days after the mailing or personal delivery of this notice within to retract or reaffirm my request for a lump sum.

Circle one to indicate method of payment desired and sign below.

1. On an installment basis as provided by NRS 616.605.

2. A lump sum of $7,833.11 as calculated in NRS 616.607.

Claimant Date

744

Witness Date

000235

Brookfield West
Insurance Administrators
1900 East Flamingo, Suite 170, Las Vegas, Nevada 89119
Telephone (702) 792-4225 Fax (702) 792-4227

TELECOPIER COVER PAGE

DATE: 2/29/91

PLEASE TRANSMIT THE FOLLOWING PAGES TO:

NAME: Arnold Weinstock

FIRM: Moran & Weinstock

FAX#: 384-6568

FROM: Vickie L. Prediger

RE: Susan Reeves/Settlement

THERE ARE 5 PAGES BEING TRANSMITTED (TOTAL NUMBER INCLUDING COVER PAGE.)

COMMENTS: Arnold, please fax me a copy of the agreement that you work out with Susan Reeve's attorney. Bally's does not want to return her to work without a full duty release. I understand that all they are asking is for the settlement or lump sum award, no medical.

I was surprised that the lump sum was so low. I will send you the work sheet and copies of her wages. I have not signed this until I can show the agreement to Ana.

Thanks, Vickie

You have a copy of the rating. I will have the balance of the papers should the agreement go through.

745

IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES INDICATED ABOVE, OR HAVE ANY QUESTIONS REGARDING THIS INFORMATION, PLEASE CALL THE FOLLOWING NUMBER:

(702) 792-4225

000236

DETERMINATION OF COMPENSABILITY

Employer Ballys Lv.
Claimant Reeves, Susan
Address 4724 E. Washington
Las Vegas NV 89110
(702) 453-2588

Date 7/2/91
Date of Injury 9/25/88
Claim # 91102505

INITIAL

HAVE WE RECEIVED: Date Received

1. Employer Accident Report May 31, 1989 ✓ Yes ___ No
2. Employee Accident Report ___ Yes ___ No
3. Witness Report ___ Yes ___ No

RECOMMENDATIONS

✓ Accept ___ Deny ___ Extension Requested From DIRR

Explain Recommendation: NRS-616.020

(Attach Accident Report)
(Where Necessary)

IF ACCEPTED

INDICATE RESERVE LEVEL ESTABLISHED:

8000 Legal 650 Medical ___ Indemnity (PPD)

___ TTD ___ Rehabilitation ___ Flag for possible future Indemnity

DIRR Wage Verification Form Received From Employer: ___ Yes ___ No

Wage Calculation Completed: ___ Yes ___ No

Additional Information Requested From:

CLOSE

All Payments Made: ___ Yes ___ No

Closure Letter To Claimant (With 30 Day Notice of Intent): ___ Yes ___ No

Closure Date:

Closed on Computer: ___ Yes ___ No

Comments: Dizzyness to head, neck / 199

SS 572-78-2120
BD 10/06/51
BP 199
CC 641
LOC AGW

746

Hilton
Hotels Corporation

CLAIMS ADMINISTRATION

September 26, 1997

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re: Claim No. : 7715-1035-88
D.O.I. : 07-20-87
Employer : Bally's Las Vegas

Dear Ms. Reeves:

We have now received your Bally's file. It would appear acceptance of your claim was in order.

Our office is currently auditing the file for any benefits paid or to be paid.

If you have any questions, please put them in writing and address them to our office.

Thank you.

Sincerely yours,

Ethel Pipp

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

EP:bl
cc: F. Edward Mulholland II, Esq.
Douglas M. Rowan, Esq.
Paula Kitchell
I.I.R.S.
file

747

Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6828
Reservations 1-800-HILTONS

000237

Hilton
Hotels Corporation

CLAIMS ADMINISTRATION

RECEIVED
MAY 13 1998

May 12, 1998

CONFIDENTIAL

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Dear Ms. Reeves:

We sent you a letter on September 26, 1997, that your claim was being accepted by this office. Perhaps the acceptance was not clear.

An appointment for you to be examined by a physician or group of physicians, if they are required, will be forthcoming. Please be available for the examination. You will be provided an appointment letter. In the meantime, I suggest you be prepared to gather the films for that examination.

Since you were receiving Social Security benefits, any temporary total disability will be offset against those benefits.

This letter will be copied to your attorney to keep him updated on the activity of your claim.

We are attempting to determine your daily benefit under this claim. I would anticipate a check for those benefits will be issued within the next week.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

EP:lb
cc: Douglas M. Rowan
F. Edward Mulholland II, Esq.
file

748

Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6828
Reservations 1-800-HILTONS

000238

Hilton
Hotels Corporation

CLAIMS ADMINISTRATION

June 2, 1998

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re: Claim No. : 072-88-00377
D.O.I. : 09-25-88
Employer : Bally's Las Vegas

Dear Ms. Reeves:

We have calculated the period of compensation disability due you. Taking the date of certification from 1989 through 1997, there were 3,150 days at $28.01 daily benefit = $88,231.50 less the social security you received through 1997 = $56,955.60, which leaves a balance of $31,275.90.

A check for this amount will be forwarded to your attorney's office.

On 02-27-91, you were advised of the percentage of disability impairment you had. That offer evidently was not accepted by you.

Previously we informed you that you will be examined to determine your current medical condition. Therefore, any impairment previously rated will not be considered until we are assured no further treatment is anticipated.

A Request for Compensation form is enclosed for your attention. We cannot issue disability benefits for 1998 until we can determine what social security benefits you will be receiving. Perhaps you can assist us with this.

We will approve your prescriptions until you are examined by Dr. Oliveri on August 12, 1998.

Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6828
Reservations 1-800-HILTONS

749

FILE COPY

Hilton
Hotels Corporation

CLAIMS ADMINISTRATION

June 2, 1998

David Oliveri, M.D.
1250 S. Valley View Blvd.
Las Vegas, NV 89102

Re: Claimant : Susan Reeves
Claim No. : 072-88-00377
D.O.I. : 09-25-88
Employer : Bally's Las Vegas

Dear Dr. Oliveri:

Doctor, we ask you to provide medical treatment for Ms. Reeves.

Since Bally's was unsuccessful in their denial of this claim, it became my responsibility to manage the file.

What I feel will be of interest to you is no tests were performed from the MVA. The physician, according to Ms. Reeves, merely gave her a diagnosis and began giving her prescription medications.

I am approving any test you feel is needed in order to determine what her capabilities are in entering the work force. She is currently receiving social security benefits in addition to her disability compensation.

She required an emergency room examination sometime in February, 1998 from lifting her 115 lb. great dane.

She stated to me on the phone that she is too dizzy to drive.

Thank you for agreeing to treat Ms. Reeves. Any consultations you may require from other physicians are also approved.

Since I have had only one telephone conversation with her, I do not know what type of personality she has. She said she normally just lies around all day since she is not capable of anything else.

750

Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6628
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She had a motor vehicle accident prior to her current one of 09-25-88. I believe she had the same medical complaints of headaches, dizziness and neck pain from both accidents.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

Encs.
EP:bl
cc: F. Edward Mulholland II, Esq.
Paula Kitchell
file

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000141

FILE COPY

Hilton

Memorandum

To: David Zerfing, Sr. V.P., Finance & Administration, Bally's

From: Ethel I. Pipp, Manager, Workers' Compensation

Location: Hilton Hotels Corporation, Claims Administration

Date: June 2, 1998

Subject: **Susan Reeves**
072-88-00377
09-25-88
Bally's Las Vegas

The file was assigned to our office to address the benefits due Ms. Reeves.

A brief outline on what has transpired since the date of injury 09-25-88, when she was turning into the employee parking lot and was struck by another vehicle. She had a previous MVA the prior year.

She was released from employment as a room reservation clerk on 05-17-89. Reason given: extreme headaches, dizziness with neck pain.

The claim was denied. It then progressed to the appeals level, then to District Court. Judge McGroarty set aside the appeals officer decision favoring the claim denial.

Bally's appealed to the State Supreme Court where the Court remanded reconsideration of acceptability.

What I am currently attempting to do is determine the disability due Ms. Reeves, as well as establish what her actual current medical condition is.

We will schedule her for medical examination then look to possible vocational rehabilitation. The physician must determine what is industrial versus her non-industrial complaints.

It has been necessary that the reserves be adjusted to anticipate further disability, vocational rehabilitation, as well as physician's charges and tests.

Since acceptance of the claim, legal fees will be limited.

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Reserves			Paid to Date		
Disability	: $	70,000.00	Disability	: $	.00
Medical	: $	22,000.00	Medical	: $	.00
Expense	: $	5,000.00	Expense	: $	3,519.82

EP:bl
cc: John Vena
Paula Kitchell
file

753

000243

FILE COPY

Hilton Hotels Corporation

CLAIMS ADMINISTRATION

July 23, 1998

David Oliveri, M.D.
1250 S. Valley View Blvd.
Las Vegas, NV 89102

Re: Claimant : Susan Reeves
Claim No. : 072-88-00377
D.O.I. : 09-25-88
Employer : Bally's Las Vegas

Dear Dr. Oliveri:

Doctor, I have enclosed the prescriptions that were prescribed by Dr. Mattimoe for Ms. Reeves.

On August 12, 1998 at 1:00 p.m., you will be examining this claimant.

Please address what drugs are appropriate for her industrial condition and what drugs are for her non-industrial condition.

I cannot get a dictated report from Dr. Mattimoe. In fact, he challenged my medical knowledge. He was very defensive. Maybe you will have better luck with him.

Thank you.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

Encs.
EP:bl
cc: F. Edward Mulholland II, Esq.
Paula Kitchell
file

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000244

Hilton
Hotels Corporation

CLAIMS ADMINISTRATION

August 27, 1998

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re: Claim No. : 072-88-00377
D.O.I. : 09-25-88
Employer : Bally's Las Vegas

Dear Ms. Reeves:

The report from industrial specialist, David J. Oliveri, has been received. It details all of your medical complaints and treatment you have received, as well as the history you provided.

His recommendations for your non-industrial conditions are to wean you from addictive medications. A psychologist can assist you. This, of course, would be non-industrial.

There are no medications necessary objectively as it would relate to your 1988 injury.

The physician continues that there is no evidence for disability for your industrial injury. Merely receiving social security benefits does not justify disability on an industrial basis. The 1988 injury may have caused some minor physical problems, but those should have resolved.

We are; therefore, advising you that any treatment or medications you may seek are for a non-industrial condition and we will not authorize them.

The 1988 claim will remain open to address reimbursement to the Social Security Administrator for the period as previously noted. To date, we have not heard from them on this issue.

A disability check was issued to you on 08-18-98 that covered the period through 08-26-98. No other disability benefit will be provided since your industrial condition has plateaued. We will be copying the Social Security Division to alert them in order for your future social security checks to be adjusted accordingly.

755

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000244A

Dr. Mattimoe will receive a copy of Dr. Oliveri's report. If you have questions, you can discuss the report with Dr. Mattimoe or your attorney.

Please keep in mind we will not approve any additional prescriptions.

We can schedule an appointment with a rating physician. Please advise on this.

If you do not agree with the above, you have the right to an appeal and a hearing. The appeal must be submitted within seventy (70) days from the date of this letter to the address indicated on the enclosed appeal form.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

Enc: Appeal form
EP:bl
cc: F. Edward Mulholland II, Esq.
Douglas Rowan, Esq.
Peter Mattimoe, M.D.
Social Security Division
Paula Kitchell
file

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000244B

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July 9, 1999

John F. Vena
Claims Manager
PARK PLACE ENTERTAINMENT CORPORATION
1850 E. Flamingo Road, Suite 145
Las Vegas, Nevada 89119

RECEIVED
JUL 9 1999
CLAIMS ADMINISTRATION

Re:	Claimant:	Susan Reeves
	Employer:	Bally's Las Vegas
	D.O.I.:	09-25-88
	Claim No.:	072-88-00377

Dear John:

I think your proposal to try and resolve this claim is a great idea. However, we may have trouble with an overall settlement given the unfortunate status of the claim and the claimant. Here are my thoughts on the issue of an overall settlement.

Please remember that Ms. Reeves' claim has been accepted as compensable. We are currently litigating only the issue of entitlement to interest. Ms. Reeves continues to desire additional treatment in order to determine what is wrong with her and what can be done to remedy her pain. Ms. Reeves' complaints, last I heard, included dizziness, ringing in her ears, headaches and uncomfortableness with bright light. Her "treating physician" (not authorized by Park Place) has managed to prescribe medication for Ms. Reeves so that she is basically an addict to certain prescriptions.

Fairly recently, an evaluating physician, George Petroff, M.D., examined Ms. Reeves and prescribed additional medication and vestibular physical therapy. Ms. Reeves is hopeful of finding a different physician who can properly diagnose her alleged disability. Bally's and Park Place are obligated, pursuant to the most recent Hearing Officer Decision and Order, to find such a physician. As you probably gathered from a review of the file, Ethel Pipp requested a referral from Dr. Petroff on this issue. I do not know if he has yet responded to the inquiry.

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Given that this matter has been accepted, Ms. Reeves remains entitled to, or more accurately potentially entitled to, certain benefits, including, but not limited to: (1) additional treatment if she can find a physician who states she is in need of treatment and that the cause for the need for treatment is related to her industrial injury; (2) TTD compensation; (3) a PPD award if a ratable impairment is indicated; (4) vocational rehabilitation services; and (5) lifetime reopening rights. Because many of the stated issues involve monetary compensation and Ms. Reeves is still seeking active treatment, we may have a very difficult time resolving this case once and for all at this point in time.

If Park Place is interested in attempting to settle this matter once and for all (excluding reopening rights) it will take a substantial lump sum payment to Ms. Reeves. At this time, Ms. Reeves has requested the sum of $27,000.00 to resolve the interest issue only. In order to resolve all treatment and other compensation issues, and the interest issue, I believe any settlement figure will have to be higher to say the least. My guess is that something in the $20,000.00 range will resolve the interest issue. Park Place will then have to place a figure on any potential PPD award and perhaps a vocational rehabilitation services buyout. Please understand that I am not opining that Ms. Reeves would be entitled to either a PPD evaluation/award or vocational rehabilitation services. But, to resolve the issues now, compensation will have to be forthcoming.

I think it would be helpful for your staff to work up a few PPD award calculations for Ms. Reeves, based upon her age, AMW, etc. You and Ethel can discuss what percentage of disability to use in the calculations, but I suggest calculating awards based upon 1, 3, 5, 7 and 10 percent, whole person, just so we can have an idea of a specific amount of compensation for settlement discussions. The use of a specific PPD percentage and amount will also be helpful in the future in the event that Ms. Reeves reopens her claim. At that point, we will be able to argue that a specific percentage of disability was awarded to Ms. Reeves which can be used to off-set future PPD awards, if any.

Let me reiterate again that I have no idea whether Ms. Reeves would qualify under the guidelines for a PPD award. If you are concerned about that issue, perhaps Ethel could contact Dr. Kudrewicz for a general opinion on the issue of

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SCHRECK MORRIS
ATTORNEYS AT LAW

John F. Vena
July 9, 1999
Page 3

whether an impairment would exist and what it might be, based upon Ms. Reeves' medical records. With respect to a vocational rehabilitation services lump sum buyout, Ethel can probably provide you with information on other injured workers in this area. My guess is that the range of figures for Park Place's consideration should be between $1,000.00 to $10,000.00.

In summary, let me make the following points:

1. Park Place definitely needs to consider attempting to settle the interest issue currently pending before the Appeals Officer. At some point, the Appeals Officer will tell us that he is going to issue his opinion. My previous correspondence to you has outlined the fact that neither side has any idea what his opinion will be. I would hope that $20,000.00 would settle the interest issue. Please remember that interest is still accruing. My game plan would be to start settlement negotiations at $17,000.00, which splits the amount of interest being argued by the respective parties; Park Place $0 and Reeves $34,000.00.

2. It would be helpful to have more information on Ms. Reeves' potential entitlement to a PPD award. Dr. Kudrewicz or some other authorized rating physician could provide insight on this issue. Settlement of the interest issue and settlement of all other issues do not have to be done at the same time. Obtaining information from a rating physician may take more time than we can afford to spend given the pending status of the interest issue.

3. The interest issue can be documented with a stipulation and order approved by the Appeals Officer. Ms. Reeves would in effect waive any right to appeal the issue further. If we settle all other issues, I would suggest using a settlement agreement much like those used in personal injury actions. Since no issues other than the interest issue are pending before an Appeals Officer, it does not make sense to bring the other issues into a public document. In fact, the Appeals Officer may not agree to sign such a stipulation since those issues would not be pending before him.

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The foregoing summarizes my thoughts and suggestions at this time. If you have any questions, please feel free to write back or call me.

Cordially,

SCHRECK MORRIS

F. Edward Mulholland II

FEM/cjp

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LAS VEGAS, NEVADA 89101
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August 10, 1999

John F. Vena
PARK PLACE ENTERTAINMENT CORPORATION
1850 E. Flamingo Road, Suite 145
Las Vegas, Nevada 89119

Re:	Claimant:	Susan Reeves
	Employer:	Bally's Las Vegas
	D.O.I.:	09-25-88
	Claim No.:	072-88-00377

RECEIVED
AUG 11 1999
CLAIMS ADMINISTRATION

Dear John:

I share your desire to try and resolve this matter as quickly as possible. I am aware that Ms. Reeves is prescribed many drugs by Dr. Mattimoe and that those drugs are a costly expense. I am not sure, however, if Ethel has been paying for those drugs. Regardless, there are certain decisions that can be made at this time on this claim.

As you know, declaring Ms. Reeves to be permanently totally disabled ("PT") under NRS 616C.440 will entitle her to her monthly TTD rate of compensation for life. Once Ms. Reeves becomes PT, it will be very difficult, if not impossible, to remove her from the PT payroll. This long-term financial obligation must be weighed against the opportunity to administer the case as it would normally proceed. The following are issues for consideration if Park Place chooses to not declare Ms. Reeves as PT.

First, Park Place is currently required to schedule Ms. Reeves for an evaluation with an appropriate physician to try and determine the status of her disability and what treatment, if any, is indicated. Because Ms. Reeves' alleged disability is not something ordinary (knee, neck, back), Ethel is having a difficult time determining where to send Ms. Reeves. Ethel has corresponded with George Petroff, M.D. to seek his opinion on a referral. Dr. Petroff has been slow to respond. Dr. Petroff examined Ms. Reeves on three or more occasions, and provided the

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enclosed reports. Unfortunately, Dr. Petroff never made any medical findings on the causation or status of the various conditions described by Ms. Reeves.

Previously, Ethel had David J. Oliveri, M.D. evaluate Ms. Reeves. Dr. Oliveri's August 18, 1998, report is enclosed for your review. Note that Dr. Oliveri generally concludes that Ms. Reeves suffers from somatoform pain disorder and that she is stable from an industrial injury standpoint. All recommendations for treatment are on a non-industrial basis. Unfortunately, Dr. Oliveri's report is nearly one year old.

Dr. Oliveri's report was submitted at the Hearing Officer hearing which resulted in the requirement that Bally's schedule Ms. Reeves for another medical evaluation, as described above. Therefore, Dr. Oliveri's report can still be used in comparison to any other report on the status of Ms. Reeves' disability.

It is difficult to determine at this time what course of action will be most cost effective. I have reviewed the AMA Guides to Permanent Impairment. Given that all PPD awards in Nevada have to be based on evaluations of loss of motion, sensation and strength, Ms. Reeves may not be entitled to a PPD award because of the etiology of her complaints. Unfortunately, the medical records at the time of her industrial injury are relatively sparse. Those medical records generated within six months or so of her industrial injury indicate complaints of headaches, dizziness, neck and head pain. Neurological testing performed on or about December 12, 1988, by Frederick T. Boulware, Jr., M.D. was completely normal.

It will, however, take additional medical testing to determine just where we are in this claim. I believe it would be cost effective to invest the time, effort and money to try and determine Ms. Reeves' current physical status, especially since Dr. Oliveri has indicated that she is stable from her industrial injury. The other option is to simply pay Ms. Reeves for the rest of her life. Those payments will likely total $200,000 to $300,000, depending on how long she lives. Please remember that once she is declared to be PT, it will be very difficult to remove her from that payroll. If medical evidence supports the finding that she is no longer PT, we will be right back at this point, trying to determine her physical status through litigation.

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At earlier points in this litigation, Ms. Reeves requested an examination at the Mayo Clinic. Perhaps that is something to consider. I have no idea how much a comprehensive evaluation would cost, but such an evaluation could be a one-time shot at attempting to get a handle on this claim. I think they have a Mayo Clinic location in Arizona. The Scripps Clinic in California is an alternative. Of course, if something can be arranged in Nevada it would probably be better. Nevada physicians would have a better idea as to the workers' compensation issues that arise from day to day.

Those are my thoughts on the status of the claim. Ms. Reeves can always be declared to be PT at any time. But for restrictions on medication, she would probably prefer PT status. Please call me with any questions or concerns. Thank you for your continued cooperation in this matter.

Cordially,

SCHRECK MORRIS

F. Edward Mulholland II

FEM/cjp

Enclosures

cc: Ethel I. Pipp
Paula Kitchell

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DAVID B. BORNHAK
MATTHEW L. HONNOLD
PAUL D. COLTON

February 3, 1999

RECEIVED
FEB 04 1999

Susan Reeves
4724 E. Washington Avenue
Las Vegas, Nevada 89110

Re: Claimant: Susan Reeves
Employer: Bally's Las Vegas
Claim No.: 072-88-0377

Dear Ms. Reeves:

Bally's claims administrator, Park Place Entertainment Corporation ("Park Place"), has requested that I issue a determination letter to you relating to the January 25, 1999, Hearing Officer Decision and Order from Nora Garcia ("Decision and Order"). A copy of this determination letter will be forwarded to your attorney, Douglas M. Rowan, along with the disability checks that will be more fully discussed and described herein.

CLAIM CLOSURE

The Decision and Order denied Bally's previous determination to close your claim. Therefore, Park Place will schedule the one time consultation ordered by Hearing Officer Garcia. Mr. Rowan and I will work with one another to agree upon a specialist to evaluate your current condition and complaints. Upon receipt of a report from the evaluating physician, Park Place will issue a determination letter with appeal rights relative to the status of your claim.

AVERAGE MONTHLY WAGE AND TTD BENEFITS

Park Place has recalculated your average monthly wage ("AMW") in accordance with the Decision and Order. Bally's original AMW calculation dated February 25, 1991, included a nine (9) day period while you were apparently off of work from August 17, 1988, through August 25, 1988, because of foot surgery. Although the records available at this time do not show your absence for foot surgery was "certified" as required by NAC 616C.438(1), Park Place has recalculated your AMW by removing nine (9) days from the calculation period. Your new AMW daily rate is $31.28 or an increase of $3.27 from the previous daily rate of $28.01. A copy of the calculation is enclosed.

Enclosed with this determination letter are three checks. Check number 00057183 totals $10,331.78 and compensates you for two things: (1) the $3.27 increase in your daily rate for the entire 3151 day period of May 17, 1989 through December 31, 1997; and (2) an additional $28.01 to make up for the missed day of TTD benefits associated with the previous check issued to you on

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000252

RENO OFFICE: 100 WEST LIBERTY STREET, SUITE 940, RENO, NEVADA 89501
(775) 322-7777 · FAX (775) 322-7759

or about June 2, 1998. Check number 00057190 totals $28.01 and is issued to you to make up for the one missing day of TTD benefits associated with the time period of January 1, 1998 through July 1, 1998 (182 days). Check number 00057267 totals $595.14 and covers the increase of $3.27 to your daily rate for the above-referenced 182 day period.

INTEREST

Park Place disagrees with the Decision and Order regarding payment of interest on your claim. Therefore, Park Place has already appealed the interest issue from the Decision and Order, and will likewise seek a stay of the Decision and Order on that issue. Those documents and pleadings will be forwarded to Mr. Rowan.

Again, this is a determination letter from Bally's claims administrator Park Place Entertainment Corporation. Pursuant to NRS 616C.315(2), you have 70 days in which to request a hearing before a hearing officer if you disagree with the contents of this determination letter. An appeal form is enclosed for any request for hearing.

Cordially,

SCHRECK MORRIS

F. Edward Mulholland II

Enclosures: Request for Hearing
AMW Calculation
Copies of Checks (3)

cc: Douglas M. Rowan
With Enclosures (Original Checks)

765

FILE COPY

PARK PLACE
ENTERTAINMENT

April 16, 1999

F. Edward Mulholland II, Esq.
Attorney at Law
1200 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

Re: Claimant Susan Reeves
Claim No. 072-88-00377
D.O.I. 09-25-88
Employer Bally's Las Vegas

Dear Mr. Mulholland:

I have your letter of April 6, 1999. Did her attorney ever provide you with a copy of the medical findings she submitted to the Social Security adjudicators when she sought disability benefits? It would be interesting to compare them.

Needless to say, I am disappointed in having to pick up benefits from August forward.

What I suggest is we enter her into a pain management program. We can have the various disciplines examine her over a 20-day period and report their findings. NovaCare should be able to provide this service. Otherwise, we would need to set her up with another neurologist, perhaps Dr. Moody.

As far as approving a prescription at Von's, what date is she referring to?

To date I have reimbursed Allstate $23,743.34, and Safeway $7,202.33 for prescriptions from June 2, 1998 through July 30, 1998.

Personally, I understand Dr. Oliveri's report as saying she had a somotoform pain disorder. Perhaps she did not understand this diagnosis.

I will be issuing a check to her as you suggested for her disability from August and reimburse her for the past prescriptions. However, doesn't this open the door for her submitting more prescriptions or can I have Dr. Oliveri monitor and issue the prescriptions? Please advise before any benefits are issued.

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When would she agree to my suggestion for pain management? Could this be a condition she would have to meet before any TTD is paid? Otherwise, it is in limbo.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Park Place Entertainment

EP:bl
cc: Paula Kitchell
file

767

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*RENO MANAGING PARTNER

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MARY J. GRANT
AMELIA DE LOS SANTOS
AKASH D. SETHI
JENNIFER L. TELTON
WENDY MEDURA
JOHN P. DESMOND
ROBERT J. GRASSO

April 20, 1999

Ethel I. Pipp
Manager, Workers' Compensation
PARK PLACE ENTERTAINMENT CORPORATION
1850 E. Flamingo Road, Suite 145
Las Vegas, Nevada 89119

PARK PLACE CLAIMS
LAS VEGAS, NEVADA
'99 APR 23 PM 12 41

Re:	**Claimant:**	**Susan Reeves**
	Claim No.:	**072-88-0377**
	Employer:	**Bally's Las Vegas**
	D.O.I.:	**09-25-88**

Dear Ethel:

I have received your April 16, 1999, letter about Ms. Reeves. I think it would be best to address your concerns and questions in the following paragraph form.

1. I do not have any documents from the Social Security Administration regarding disability findings of fact. I will request any such documents from Claimant's counsel.

2. I am not sure if Claimant will agree to the 20 day pain management program through NovaCare. I will check with her counsel to see if that is agreeable. Regardless, we can always schedule Claimant for the program outside of the Hearing Officer's remand for a one-time consult.

3. Regarding payments for TTD and prescriptions, I think Dr. Oliveri did address the status of her claim in his August 18, 1998, report. In addition to opining that Claimant had non-industrial somatoform pain disorder, Dr. Oliver stated: (a) Claimant's inability to work was not related to the industrial injury at Bally's; (b) Claimant's medications prescribed by Dr. Mattimoe were not related to her industrial injury at Bally's; (c) Claimant's industrial complaints had resolved; and (d) Claimant presented significant symptom magnification. Note that it was Claimant's counsel who requested that we pay benefits starting back in August, 1998, not me. It is my belief that we should not pay any TTD benefits to Claimant (that we have not already paid) or for any more prescriptions. These issues were addressed by Dr. Oliveri and he indicated that non-industrial reasons prevented Claimant from working and any medications were related to her non-industrial somatoform pain

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disorder. Most importantly, the Hearing Officer Decision and Order dated January 25, 1999, did not obligate us to pay benefits. With respect to the documents Claimant provided us on April 6, 1999, I think we should be consistent by reimbursing Claimant or paying any pharmacy for prescriptions that were filled and paid for within the time frame for which we have already paid. By this I mean if we paid for prescriptions through July 30, 1998, we should be consistent and reimburse Claimant for out-of-pocket expenditures for authorized prescriptions incurred before July 30, 1998. Anything after July 30, 1998, should be withheld for further consideration after the one-time consult is undertaken.

4. I am not sure if Dr. Mattimoe is an authorized provider for Bally's MCO. If he is not, we can certainly deny payment of any prescriptions on that basis and assign Claimant a new treating physician, if necessary, who is authorized. Again, Dr. Oliveri addressed the prescription issue in his August 18, 1998, report. The medications she is currently being prescribed are for non-industrial causes.

5. The Hearing Officer has ordered us to provide Claimant with a one-time consult. Hopefully, that will help lead us down a path to claim closure. Dr. Oliveri's report was not quite enough to get us to claim closure. Therefore, I think we need to be very careful in choosing an appropriate physician to evaluate Claimant. A positive report will go a long way toward claim closure. I am not sure if a pain management program will provide us with the type of evaluation we need. To me, a pain management program indicates that we believe further treatment is warranted. Based upon Dr. Oliveri's report, Claimant's pain and other physical problems are not work-related. I think we need to choose one physician to evaluate Claimant's alleged physical problems to determine whether or not they can possibly be related to the accident in 1988, or whether they are now resolved. Either way, a positive report will go a long way to prevent us from paying additional benefits from August, 1998, on. If more than one consultation or expert evaluation is required, I think we should undertake whatever is necessary to address the status of her claims now. If you believe Dr. Moody is the person to start the process, I think we should go with him and authorize whatever tests or referral he believes are appropriate. Please remember that the parties must mutually agree on the evaluating physician.

6. Regarding the Von's prescription, I do not know the answer to your question, but I will follow up with Claimant's counsel.

[redacted]

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I hope the following helps you consider your options in trying to close down this claim. I believe that it would be appropriate for you to issue a determination letter, with appeal rights, regarding Bally's non-payment of TTD benefits, Bally's non-payment of any further prescriptions, and any reimbursements made to Claimant for co-pays prior to July 30, 1998. This may trigger additional litigation, but I believe we are obligated to address Ms. Reeves' request as set forth in her attorney's April 6, 1999, correspondence.

If you have any questions or concerns about the foregoing, please feel free to call me as always. Thank you for your continued help and attention to this matter.

Cordially,

SCHREEK MORRIS

F. Edward Mulholland II

cc: Paula Kitchell

770

000258

PARK PLACE
ENTERTAINMENT

FILE COPY

May 7, 1999

Douglas M. Rowan, Esq.
Attorney at Law
6900 Westcliff Drive, #800
Las Vegas, NV 89128

Re:	Claimant	Susan Reeves
	Claim No.	072-88-00377
	D.O.I.	09-25-88
	Employer	Bally's

Dear Mr. Rowan:

I have been waiting for your office and our attorney to agree on a physician to examine Ms. Reeves.

My reading of Dr. Oliveri's report, I thought, was clear. However, if another examination will clear up any confusion you feel there is on the diagnosis, I suggest the physician be selected and an appointment scheduled.

I am not releasing disability benefits.

By the way, I have paid all the prescriptions: Vons $134.77; Safeway $7,202.33 and Ms. Reeves $2,958.19.

Please contact Mr. Mulholland to reach the agreement on selecting a physician.

If you do not agree with the above, you have the right to an appeal and a hearing. The appeal must be submitted within seventy (70) days from the date of this letter to the address indicated on the enclosed appeal form.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Park Place Entertainment

Enc: appeal form
EP:bl
cc: F. Edward Mulholland II, Esq.; Paula Kitchell; file

CLAIMS ADMINISTRATION OFFICE

771

000259

PARK PLACE
ENTERTAINMENT

September 20, 1999

Schreck Morris
Edward Mulholland II, Esq.
Attorney at Law
1200 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV. 89101

Re: Susan Reeves
09-25-88
Bally's Las Vegas

Dear Ed:

I am in receipt of your most recent correspondence of September 16, 1999.
I am very pleased with your representation on this claim to date and feel confident that we shall be in a position to settle all issues on this claim within the next few months.

Currently I am in the process of consulting various other Workers Compensation experts to obtain a consensus on what type of facility we could offer to send Ms. Reeves to, (baring any out of state treatment) to obtain a complete final profile on her conditions, industrial Vs non-industrial.

I hope to receive those reports shortly. Upon my receipt of such I shall be in touch to further discuss this claim.

Thank you as always for your attention to this matter.

Sincerely,

John F. Vena
Claims Manager
Park Place Entertainment

772

CLAIMS ADMINISTRATION OFFICE
GREYSTONE BUILDING, 1850 E. FLAMINGO ROAD, SUITE 145, LAS VEGAS, NEVADA 89119
TELEPHONE 1-800-696-6699 LOCAL 702-796-9694 FAX 702-796-6828

000268

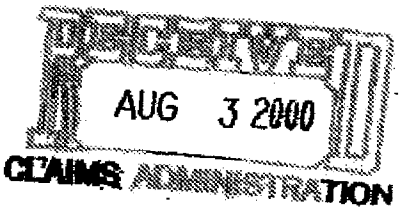
SCHRECK MORRIS
ATTORNEYS AT LAW
1200 BANK OF AMERICA PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2101 · FAX (702) 382-8135
WWW.SCHRECKMORRIS.COM

August 2, 2000

Robert A. Fusinatto
Senior Claims Analyst
SAFETY NATIONAL CASUALTY CORPORATION
2043 Woodland Parkway, Suite 200
St. Louis, MO 63146

Re:	**SNCC Claim file No.:**	**WC-V-0870**
	PPE Claim No.:	**072-88-00377**
	Insured:	**Bally's Grand, Inc.**
	Claimant:	**Susan Reeves**
	Date of Loss:	**09/25/88**

RECEIVED
AUG 3 2000
CLAIMS ADMINISTRATION



Dear Mr. Fusinatto:

Schreck Morris represents the interests of Park Place Entertainment Corporation and its various hotels/casinos in Nevada. Mr. John Vena has forwarded to me your June 1, 2000, correspondence regarding an update of the above-referenced contested industrial insurance claim. I have been handling the Susan Reeves matter for several years now. Therefore, I am probably in a good position to provide you with the information requested in your correspondence.

I am enclosing for your review a copy of a written opinion from the Supreme Court of the State of Nevada involving Ms. Reeves' claim. As you can see, Bally's has litigated this issue for quite some time. Bally's was successful (with other counsel) in the first two administrative hearing levels in Las Vegas. Bally's prior counsel then appealed the issue to District Court where the District Court Judge reversed the Appeals Officer's Decision and Order and remanded the matter for claim acceptance. Bally's former counsel then appealed that decision from the District Court to the Nevada Supreme Court. Difficulties arose over several years regarding prosecution of the case. Bally's then changed counsel to Schreck Morris and we moved forward to the conclusion set forth in the opinion from the Supreme Court.

773

RENO OFFICE: 100 WEST LIBERTY STREET, SUITE 940, RENO, NEVADA 89501

000261

In hindsight, it appears that this claim should have been accepted on day one. Notwithstanding that hindsight, this matter has now been litigated to a final conclusion regarding compensability with the Nevada Supreme Court decision.

With respect to subrogation issues, I have performed a computer search regarding litigation filed by Ms. Reeves in Clark County. Other than the petition for judicial review involved in this contested industrial insurance claim, no other litigation is referenced regarding Ms. Reeves. Please note that Schreck Morris first became involved in this matter in May, 1995. Therefore, it is unknown to me what transpired regarding subrogation issues between 1988 and May, 1995. I have never seen any documentation relating to a personal injury claim made by Ms. Reeves. Additionally, counsel has never referenced to me the fact that there is any ongoing litigation against the third-party tortfeasor.

It is my understanding from Mr. Vena's correspondence dated May 22, 2000, that he has provided to you copies of all medical and other records on this claim. Therefore, I will not duplicate those efforts. Those documents most likely are very accurate as to the history of her injuries and treatment since the date of the occurrence.

With respect to current care, the parties have been having ongoing discussions regarding additional diagnostic testing to determine what is industrial and where treatment needs to go from here. The parties have agreed on a neurologist named Dr. Steven Glyman for an evaluation to determine Ms. Reeves' current condition. The parties are working on a cover letter to Dr. Glyman prior to any evaluation.

It is true that Ms. Reeves claims to be extremely disabled. I have not been involved in authorizing any surveillance on Ms. Reeves. Prior to an evaluation with Dr. Glyman, surveillance may not be a bad idea. Perhaps we will get lucky.

The parties have previously discussed efforts to resolve the entire claim. Given the complexity of the claim and the fact that it is unclear at this time what diagnoses and treatment are accurate, it has simply proven not feasible to come to any conclusion on settlement terms. I do not expect that that type of settlement will occur at any time in the near future. We acknowledge your prior authorization of any type of settlement exceeding our self-insured retention of $325,000.

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000262

If you have any questions or concerns regarding this matter, please feel free to correspond with me at the above-referenced address. Please note that Friday, August 4, 2000, is my last day at Schreck Morris. Therefore, I would appreciate it if any correspondence is generated and addressed to me that conforming copies be sent to Mr. Vena as well. Thank you for your continued cooperation in this matter.

Cordially,

SCHRECK MORRIS

F. Edward Mulholland II

FEM/cjp

Enclosure

cc: John F. Vena (w/Enclosure)

775

000161

SAFETY NATIONAL
Casualty Corporation

3045 Woodland Parkway, Suite 200
St. Louis, MO 63146-4255
Telephone (314) 995-5300
Fax (314) 995-3843

August 14, 2000

Mr. John F. Vena
Claims Manager
Park Place Entertainment
Claims Administrative Office
Greystone Building
1850 E. Flamingo Rd., Suite 145
Las Vegas, NV 89119

RECEIVED
AUG 17 2000
CLAIMS ADMINISTRATION

RE: SNCC Claim No.: WC-V-0870
PPE Claim No.: 072-88-00377
Insured: Bally's Grand
Claimant: Susan Reeves
D/O: 09/25/88

Dear John:

I received and reviewed the August 2 correspondence from Mr. Mulholland. The issue of compensability regarding the litigation centered on whether or not the claimant timely filed a proper report to the insured. Also there was an argument as to whether or not the alleged work accident caused the injuries or if the injuries are related to a prior condition.

I still have additional inquiries concerning this incident. Was there any argument as to whether or not this accident occurred in the course and scope of employment? The initial reports indicated the claimant was just entering the employer's parking lot when another employee coming to work struck her in the rear. Is there any investigation as to whether this was even a compensable accident? Are the employees mandated to park in this particular lot? I would appreciate any case law that may parallel the facts of this accident.

If in fact courts have found similar situations be compensable, were there any attempts to subrogate the negligent driver? Mr. Mulholland did indicate that he found no petitions filed in Clark County relating to this accident. Did you ever put the adverse driver on notice of the potential workers' compensation lean?

Our records further show that the claimant did have a preexisting cervical injury. Was there any investigation as to the extent of this impairment resulting from that prior injury? If so, was there any claim filed with Subsequent Injury Fund?

I would also be interested to determine if there were any police reports filed as a result of the accident. Was there any investigation as to the extent of the collision?

776

If you should have any questions regarding my additional inquiries, please contact me.

Sincerely,

Robert Fusinatto
Senior Claims Analyst
bob.fusinatto@sncc.com
(314) 995-3897-Fax

RF/kk

cc: F. Edward Mulholland
Schreck Morris
Attorneys at Law
1200 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

777

000265

Gallagher Bassett Services, Inc.

November 7, 2000

Mr. Mitch Neuhaus
Regional Claims Manager
Safety National Insurance Company
2043 Woodland Parkway, Suite 200
St. Louis, MO 63146

RE: Susan Reeves vs. Park Place Entertainment (Bally's Casino)
Our File #: 001504-001083-WC-01
Date of Loss: September 25, 1988

Dear Mitch:

As per our conversation, I am reporting this claim, as the reserves exceed 50 percent of the self-insured retention. Kindly indicate whether this claim was previously reported by Park Place and the corresponding Safety National file number.

Claimant Information

Susan Reeves, DOB, 10/6/51, current age 49. Her address is 4724 East Washington, Las Vegas, NV 89110. On the date of loss, she was employed as a room reservations clerk.

Compensability—Coverages

The SIR according to our conversation is $325,000, and Safety National has statutory limits.

Mitch, I would kindly request that you confirm this coverage information.

There is no question as to the compensability of this claim, as the prior administrator accepted the loss.

Facts of the Accident

According to our records, the claimant was in the employee parking lot, stopped in her vehicle. At that time, another vehicle entered the parking lot and rear-ended her vehicle.

Extent of Injuries

The claimant was diagnosed with somatoform pain disorder as a result of the industrial episode.

THE GALLAGHER CENTRE
TWO PIERCE PLACE
ITASCA, IL 60143-3141
630.773.3800
630.285.4000 FAX
www.gallagherbassett.com

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000266

In revealing the attached correspondence, it would appear that Bob Fusinatto of your office is intimately familiar with this claim. Therefore, I will not be recapping all that is transpired since the claim's inception.

Total Experience—Payments

The total experience is at $241,000, and to date we have paid $124,825 in indemnity, $59,097 in medical, $0 in rehab, and $48,748 in expense. The total payments are therefore $232,670.

Future Handling

We will continue to monitor the legal activities until such time as all issues can be formally resolved.

Diary Date

Kindly diary your file for 120 days, at which time I will update you with any new developments.

Sincerely,

Cliff Connor
Director of Workers' Compensation

mbk
Attachment
c Kristina Westbay, GB-Las Vegas

779

000267

SAFETY NATIONAL
Casualty Corporation

2043 Woodland Parkway, Suite 200
St. Louis, MO 63146-4257
Telephone (314) 995-5300
Fax (314) 995-5843

November 20, 2000

Cliff Connor
Director of Workers' Compensation
Gallagher Bassett Services, Inc.
The Gallagher Centre
Two Pierce Place
Itasca, IL 60143-3141

Re:	SNCC Claim No.:	WC-V-0870
	Your File No.:	001504-001083-WC-01
	Insured:	Bally's Grand (Park Place Entertainment)
	Claimant:	Susan Reeves
	D/O:	9/25/88

Dear Cliff:

This will acknowledge receipt of your correspondence of November 7, 2000 regarding the status of the captioned claim.

As you are aware, our policy was issued to Bally's Grand. Bally's was self-administered. Sometime around January 1997, Park Place Entertainment purchased Bally's. Park Place is also self-administered. It appears the paid reported is only that paid by Park Place. We need to confirm what was paid by Bally's. I will need a printout of payments for each of these entities, as well as your printout of payments since acquiring the claim.

I also refer you to my correspondence of August 14, 2000. As you are aware, the extent of litigation centered on whether or not this claim was timely reported within the statutes. My questions focused on whether or not the claimant was even in the course and scope of her employment when this accident occurred. The claimant alleged that she was three-fourth of her way into the employer parking lot when she was rear-ended. I do not understand how this could be deemed compensable based on that fact. Is there any case law in Nevada that would parallel this situation?

In addition, I asked if there was any police report filed. If so, I would like a copy. Do we have any ideas as to the extent of damage to the vehicles? Did the claimant pursue any third party claim? If so, was there a recovery and what about our subrogation?

I also pointed to the fact that the claimant had a pre-existing cervical injury. Was there any investigation as to the potential for SIF?

Based on the reported paid, there are no benefits being paid. I thought the recent decision allowed compensability. What about ongoing treatment? Obviously, I do need copies of any pertinent medical reports as to the ongoing treatment and the cost of that care.

780

If you should have any questions regarding this correspondence, please contact me.

Sincerely,

Robert A. Fusinatto
Senior Claims Analyst
bob.fusinatto@sncc.com
(314) 995-3897 Fax

RAF/mb

781

Julie Vacca
12/08/2000 09:00 AM

To: Cliff Connor/CM/GBSI@GBSI
cc: Margie Dixon/WEST/CM/GBSI@GBSI, Melody Francis/WEST/CM/GBSI@GBSI, Emil Bravo/CM/GBSI@GBSI

Subject: Re: Susan Reeves vs.Park Place

Thank you for your fax to me from Safety National regarding this claim. It appears that the requested information was not addressed in the adjusters last CLR to you dated 9-14-00. Based upon this information I will try to address those issues for you to the best of my ability based on the inadequate file we have on this person.

Firstly, It appears wehn PPE was administrating this claim they referred this case directly over to their defense counsel, Ed Mulholland with the Schreck Morris Law Firm to help[administratoe the claim even when there was no pending litigation at that time.

Ms. Reeves did not file her claim, for MVA accident dated 9/25/88, with her employer, until 5/25/89 at 2:00pm and made her take a medical leave of absence from her position. One week prior to her alleged MVA accident of 9/25/88, medical records showed Ms. Reeves was being treated for neck, headaches and dizziness which states occurred from a prior MVA accident in 1997. She treated with a Dr. Becker who prescribed her valium and darvocet and referred her for a neuro exam with Dr. Bourwarld on 12/12/88 (3 months after her alleged MVA accident) Dr. Bourwarld found no neurological problems at that visit.

It appears that AOE/COE was not a questionable factor at that time as the accident did occur on property. Had Ms. Reeves filed her claim timely then compensability would not have been an issue but since she did not report her claim timely the issue of compensability was not argued or addressed at that time.

With regards to the parking issue: Employees are required, but not forced, to park in the employee parking lot, where the accident occurred. Unfomunately I found no case law to support this requirement but will check with Ballys to see if there was a company policy which may support this finding.

I will fax you a copy of the traffic accident report filed by the Las Vegas Metro Police Dept. The negligent 3rd party driver, Ophelia Chavez was cited for due care and no proof of insurance. Due to the fact that the claim was not reported for 8 months later, claim denial & that the 3rd party had no proof of insurance, I could find no letter placing the third party on notice of this claim. Police report filed showed no injuries to either party and minor vehicle damage to our vehicle and claim was submitted by Ms. Reeves to her Insurance Company, All State Ins. The bills were submitted by Ms. Reeves, at the time of injury, to her Ins Co and they were paid. Ms. Reeves continued to work, after the accident, until 9 months later whenher employer forced her to take a medical leave of absence claiming she was a hazard to her job.

It was evident based on the prior medical records that there was significant pre-existing but appeared that since Ms. Reeves treated up until 1 weeks prior to her 9/25/88 accident that an Impairment rating was not, nor could be obtained for her 1997 MVA accident. No SIF was ever filed as this claim was initially denied by the prior TPA- SIS, adjuster-Debbie Castillo. This case was not accepted until the opinion of the Supreme Court decision, made by Justice Springer dated 8/28/97, that this case be remanded back to the administrator to determine whether or not they would allow the excuse of late reporting/filing presented by Ms. Reeves. On 9/28/97, Ethel Pipp with PPE accepted Ms. Reeves claim.

Lastly, No SIF was ever filed as claim was initially denied and by the time the Supreme Court made its ruling, almost 10 years later, ordering PPE to accept this case, the time limits were not met. Nevada

782

000270

Gallagher Bass Services, Inc.

MF

May 8, 2001

Mr. Bob Fusinatto
Senior Claims Analyst
Safety National Insurance Company
2043 Woodland Parkway, Suite 200
St. Louis, MO 63146

RE: Susan Reeves vs. Park Place Entertainment (Bally's Grand)
SNCC File #: WC-V-0870
Our File #: 001504-001083-WC-01
D/Loss: September 25, 1988

Dear Bob:

Please accept this as an updated status report since our last report of November 7, 2000.

I apologize for the late fashion in which this subsequent report has been issued.

Claim Information

Bob, hopefully the information contained in our branch's latest update will help to supplement the e-mail of 12/8/00, which was sent directly from our branch manager in Las Vegas.

The claimant just recently underwent an IME, which was performed by Dr. Glyman. Once the results of the IME are known, we should be in a position to clarify the claimant's present medical status and whether it is related to the industrial episode of 9/25/88, or to the intervening accident. The IME will also assist us in determining whether a PPD evaluation is necessary.

By copy of this letter, I would once again request that our branch manager provide me with the payment information requested in your letter of November 20, 2000. This would include a printout of payments for what was actually paid by Bally's. According to your letter, the payments recorded in our system only reflect that which has been paid by Park Place.

Bob, for your convenience, I have attached a copy of our complete payment record to date.

THE GALLAGHER CENTRE
TWO PIERCE PLACE
ITASCA, IL 60143-3141
630.773.3800
630.285.4000 FAX
www.gallagherbassett.com

793

000271

Total Experience/Payments

The total experience is at $244,230 and to date we have paid $124,825 in indemnity, $80,261 in medical, $0 in rehab, and $52,863 in expense. The total payments are therefore $237,949.

Future Handling

As previously indicated, we are awaiting the IME report to determine our next course of action.

Diary Date

Kindly diary your file for 90 days at which time we will update you with any new developments.

Sincerely,

Cliff Connor
Director of Workers' Compensation

te
Attachment
c Julie Vacca, GB-Las Vegas

bps Julie, please comply with Safety National's request as outlined in their November 2000 letter and again in my e-mail request. We will need to clarify the payment picture before Safety National can consider this claim for excess reimbursement. Thanks, Cliff.

784

000272

Gallagher Basset Services, Inc.

MEMO DATE: December 20, 2001

TO: Sharon, Dr. Glyman's
Fax: 731-0328

FROM: Melody Francis
Fax: 892-9193

SUBJECT: Employee: Susan Reeves
Employer: Bally's Las Vegas
Claim #: 001504-001083-WC-01
D/Injury: 09/25/88

PAGES: 1

We have spoken about this file on numerous occasions--Is Dr. Glyman ever going to finish his report on Ms. Reeves?

The last we spoke he was going to do it last month (and the month before that, and the month before that. As far as I know he finally had all the medical records last July. All we need to know is if the headaches are due to her work injury or her pre-existing medical conditions.

Help me, please! I don't want to have to call the DIR to get this done!

Please call me at 892-0083, ext. 216, if you have any questions or need further information (like if there's still some other record he needs to finish the report,...)

Thanks you so much for your help! If there's anything I can do to get this done please, please, please let me know. We really need to do something with this claim.

PO Box 70687
Las Vegas NV 89170
Phone: 702/892-0083
Fax: 702/892-9193

785

000272 A

Gallagher Bassett Services, Inc.

December 27, 2001

Susan Reeves
4724 E Washington
Las Vegas NV 89110

RE: Employer: Bally's Las Vegas
Claim #: 001504-001083-WC-01
D/Injury: 09/25/88
Body Part(s): Head/Neck/Shoulders

NOTICE OF INTENTION TO CLOSE CLAIM
Pursuant to NRS 616C.235/NAC 616C.112(1)

Dear Ms. Reeves:

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Based on Dr. Glyman's court remanded IME, you have been discharged from care. We do not show that you have sought further medical treatment. Therefore, we are closing your claim for further medical treatment at this time.

Nevada Revised Statutes (NRS) 616C.390 subsection 1 and 4 define your rights to reopen your claim. It states as follows: 1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if: (a) A change of circumstances warrants an increased or rearrangement of compensation during the life of the claimant; (b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and (c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstance which would warrant an increased or rearrangement of compensation. 4. Except as otherwise provided in subsection 5, if an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim only if; (a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and (b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made.

NRS 616C.235 state as follows: 1. Except as otherwise provided in subsection 2,3,and 4; (a) When the insurer determines that a claim should be closed before all benefits to which the claimant maybe entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant. The notice must include a statement that if the claimant does not agree with the determination, he has the right to request a resolution of the dispute pursuant to NRS616C.305 and 616C.315 to 616C.385, inclusive. A suitable form for requesting a

PO Box 70667
Las Vegas NV 89170
Phone: 702-892-0063
Fax: 702-892-9193

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resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection. (b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim. (c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing office may be served by first class mail. 2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less that $300, the insurer may close the claim at any time after he sends, by first class mail addressed to the last known address of the claimant, written notice that: (a) The claim is being closed pursuant to this subsection; (b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS616C.305 and 616C.315 to 616C.385, inclusive; and (c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened. 3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than $300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be: (a) Sent by first-class mail addressed to the last known address of the claimant; and (b) a document that is separate from any other document or form that is used by the insurer. 4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsection 2 and 3.

If you or your employer disagrees with this determination, you may request a Hearing before the Hearing Officer. If you wish to appeal, complete the enclosed Request for Hearing form and attach it to a copy of this letter. The completed request for hearing MUST BE RECEIVED by the Hearing Division within seventy (70) days of the date of this letter. If you do not appeal within seventy (70) days, you lose your right to appeal.

If you have any questions or if I can be of any further assistance to you regarding your industrial injury claim, please do not hesitate to contact me at 702/ 892-0083 or toll free at 877/263-8748.

Sincerely,

Melody Francis

Claims Examiner

Cc: Douglas Rowan, Esq.
Bally's Las Vegas
Claim File

787

000274

Gallagher Bassett Services, Inc.

July 17, 2002

Robert A. Fusinatto
Safety National Insurance Company
2043 Woodland Parkway, Suite 200
St. Louis, MO 63146

RE: Susan Reeves vs. Park Place Entertainment (Bally's Grand)
Our Claim #: 001504-001083-WC-01
D/Loss: September 25, 1988
SNCC File #: WC-V-0870

Dear Mr. Fusinatto:

Please accept this as an updating status report of this ongoing claim.

Current Status

Litigation on this claim continues. In the last update you were advised that an independent medical exam had been arranged, to review the claimant's current condition and causal relationship to the injury of this claim file. The IME report concluded the claimant's diagnosis is somatoform disorder related to the injury of this claim file. The consultant stated the claimant is at maximum medical improvement. He discharged her from care in an addendum of December 20, 2001.

A Workers' Compensation Board decision was rendered in April of this year, and the claimant has appealed it. The appeal is pending and litigation continues. The next hearing is set for October 10, 2002.

Total Experience / Payments

The total experience is at $241,442. The total paid-to-date is $240,431.46. Attached is a Reserve Analysis which shows the total paid-to-date for each reserve category and the remaining balance. We believe that the reserves are adequate to bring the claim to conclusion, as it is our contention that she is due no further PPD award. After the October 10 hearing, we will review the claim for reserve adequacy in both medical and expense, especially if litigation is going to continue.

I have asked the branch to review the claim file and answeryour previously asked question regarding the total paid as shown in RISX-FACS®. I have asked the adjuster to send you a direct reply, as to the total paid by Bally's and if this total is included in the total paid in RISX-FACS®.

788

Gallagher Bassett Services, Inc
PO Box 70687
Las Vegas, NV 89170
702-892-0083 702-892-9193 fax

April 1, 2003

Susan Reeves
4724 E Washington Ave
Las Vegas, NV 89110

Re: Employer: Bally's, Las Vegas
DOI: October 11, 2002
Claim No: 001504-043098-WC-01

Dear Ms. Morgan,

I have scheduled you for an IME appointment with Dr. Louis Mortillaro, PHD. Dr Mortillaro's office is located at 501 S Rancho Drive, Suite# F-37, Las Vegas, NV 89106. The office number is (702) 388-9403. Your appointment's (2) are scheduled for Monday, April 14, 2003 at 8:30 am, for testing and Wednesday, April 16, 2003 at 2:30 pm for an evaluation with Dr Mortillaro.

Please arrive at least 30 minutes in advance to complete all necessary paperwork.

Your attendance is mandatory. Failure to participate may result in the suspension of benefits pursuant to NRS 616C.140.

We are submitting a copy of your medical file to Dr. Mortillaro for his review. Please take any x-rays or MRI's taken as a result of your injury to the appointment with you. Please call the doctors office and confirm you appointment. You will also need to bring with you a valid picture I.D.

Please call me if you have any questions at (702) 892-0083 ext. 207

Sincerely,
Leah Lyons
Leah Lyons
Claims Representative

cc: file
Employer
Dr. Mortillaro, MD
Attorney

789

002276



C C M S I™

December 11, 2003

Louis F. Mortillaro, PH.D.
And Associates
501 South Rancho Drive
Suite F-37
Las Vegas NV 89106

RE:	Susan Reeves
CLAIM #:	88H92H243724
EMPLOYER:	Bally's Las Vegas
DATE OF INJURY:	09/25/88

Dear Dr. Mortillaro:

Pursuant to the Appeals Officer's Decision and Order, filed December 1, 2003, the above-referenced claim for Ms. Susan Reeves will remain open to allow for further treatment. Treatment shall include short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

We have scheduled an appointment for Ms. Reeves for January 5, 2003, at 9:30 A.M. Please provide this office with your treatment plan and duration. Thank you very much for your attention to this matter. Should you need anything further, please do not hesitate to call at any time.

Sincerely,

Beverly Mandery
Claims Administrator, CCMSI

Encl.
Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
Douglas M. Rowan, Esq.
Susan Reeves

790

JOHN E. LEACH
GREGORY J. WALCH
NICHOLAS J. SANTORO
MICHAEL E. KEARNEY
J. DOUGLAS DRIGGS, JR.
RICHARD F. HOLLEY
DAVID G. JOHNSON
RONALD J. THOMPSON
JAMES E. WHITHIRE, III
STEVEN A. GIBSON
DANIEL L. SCHWARTZ

MICHAEL E. ROHE
JAVIER A. ARGUELLO
LEE E. DAVIS
VICTORIA L. NELSON
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OF COUNSEL:
ANTHONY A. ZHAILA

PRIVILEGED AND CONFIDENTIAL
COMMUNICATION FROM COUNSEL

January 2, 2004

VIA FACSIMILE & U.S. MAIL

Beverly Mandery
Cannon Cochran Management Services, Inc.
P. O. Box 35350
Las Vegas, NV 89133-5350

Re:	Claimant	:	Susan Reeves
	Claim No.	:	001504-001083
	Appeal No.	:	LAS2002-C-2501-NR
	Employer	:	Bally's
	Our File No.	:	3637.124

Dear Ms. Mandery:

This letter will confirm our discussion of the above entitled matter. It was our conclusion that an appeal of the Appeals Officer's "Decision and Order" filed on December 1, 2003 would not be warranted. The Appeals Officer reversed the Hearing Officer's Decision and Order dated February 25, 2002 which affirmed the determination to close the industrial insurance claim. Therefore, the claim shall remain open. It was our conclusion that an appeal of this matter was not warranted. By your actions, you have already complied with the Decision and Order.

Thank you for your professional cooperation in this matter.

Sincerely,

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

Daniel L. Schwartz, Esq.
DLS:cgb

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JAN 05 2004
CCMSI

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C C M S I

January 14, 2004

Susan Reeves
4724 E. Washington
Las Vegas NV 89110

DATE OF INJURY: 09/25/88
EMPLOYER: Bally's Las Vegas
CLAIM #: 88H92H243724

Dear Ms. Reeves:

I am in receipt of Dr. George Petroff's recent medical dictation of January 6, 2004, and subsequent request for an MRI of C-spine and C-spine x-ray. Pursuant to a Decision and Order of the Appeals Officer, dated 12/01/03, we have been instructed to provide only short-term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures, and appropriate therapy. Dr. Louis Mortillaro has been authorized to provide these treatments. Therefore, we are denying Dr. Petroff's request for continued treatment, MRI of C-spine and C-spine x-ray.

If you have any questions regarding this matter, please do not hesitate to contact this office. If you do not agree with this determination, you have a right to request a hearing regarding this matter. If this is your intention, please complete the attached Request for Hearing form and return it, **along with a copy of this letter**, to the Hearings Division at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

Beverly Mandery,
Claims Representative, CCMSI

Encl. D-12a

Cc: Bally's Las Vegas
Daniel L. Schwartz, Esq.
Douglas M. Rowan, Esq.
File

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CCMSI

March 16, 2004

Douglas M. Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

RECEIVED
MAR 18 2004

Re:	Susan Reeves
Claim #:	88H92H243724
Employer:	Bally's Las Vegas
Date of Injury:	09/25/88

Dear Mr. Rowan:

Thank you for submitting the completed D-6 Form for Ms. Susan Reeves. Pursuant to NRS 616C.475, this office is requesting that Ms. Reeves supply certification of disability from her physicians, to support the request for TTD benefits, from August 26, 1998 to the present.

Upon receipt of these records and upon confirmation from the ESD, that Ms. Reeves was not working or collecting unemployment benefits, we will be more than happy to render a determination with appeal rights.

Please do not hesitate to call at any time.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
File

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Tel: (702) 933-4800 Fax: (702) 933-4861 www.ccmsi.com

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WORKERS' COMPENSATION

CLAIM FILE
LOG OF
ORAL COMMUNICATION

Claimant's Name: Susan Reeves

Claim Number: 88S01H243724

Claimant's Attorney:

Treating Physician:

9/8/06		Adjuster phone call to Jeff Dietrich, PT
6/29/04		Medical staffing with adjuster, supervisor, Dr. Louis Mortillaro, Dr. Petroff, defense attorney, claimant, and claimant's husband

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March 23, 2004

C C M S I

Robert A. Fusinatto
Safety National
2043 Woodland Parkway
Suite 200
St. Louis,MO 63146-4235

RE:	CLIENT:	Caesar's Entertainment, Inc. - Bally's Las Vegas.
	CLAMANT:	Susan Reeves
	LOSS DATE:	09/25/88
	CLAIM #:	88H92H243724
	SNCC Claim #:	WC-V-0870
	SNCC Filing #:	2020573

SUBSEQUENT REPORT

Dear Mr. Fuscinato:

The Appeal Officer's Decision and Order filed on 12/1/03 reversed the Hearing Officer's Decision and Order dated 2/25/02, regarding closure of this claim. Nancy Richins, AO, determined that claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures, and appropriate physical therapy. Claimant's claim should not have been closed but should remain open for further benefits. Pursuant to Order, an appointment was scheduled with Louis Mortillaro, PhD, for 1/5/04.

This office has been ordered to provide treatment with Dr. Mortillaro, needed diagnostics, physical therapy and medication management. Claimant is slow to progress with Dr. Mortillaro, pursuant to his reports. I am attaching copies of latest medical repots from all providers.

Back TTD benefits have been requested, from date of closure of this claim, 8/26/98, to present, and ongoing, since the date the claim was closed. This office has requested from Ms. Reeves and her attorney, the physician's medical disability reports for these dates. This is approximately a 5 ½ year period, plus interest, with interest and TTD continuing to run. Once we receive and verify the medical disabilities, we can review the issue of

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March 23, 2004

TTD and interest from 1998 to present and continuing. This office is complying with Nevada Statutes in requiring medical disability for the referenced period of time.

RESERVES:
See Attached. We believe this claim will exceed the SIR.

Should you need anything further, please do not hesitate to call at any time. We are requesting from your office, a copy of the terms and condition of the contract for this year.

Very truly yours,

Beverly Mandery
Claims Representative, CCMSI

Encl.
Cc: Bally's Las Vegas
File

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CCMSI

RECEIVED

July 21, 2004

Douglas Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

Re:	Susan Reeves
Claim #:	88H92H243724
Employer:	Bally's Las Vegas
Date of Injury:	09/25/88

Dear Mr. Rowan:

Attached is a copy of Dr. George Petroff's report of June 29, 2004. Based on Dr. Petroff's report, there is no evidence of a certification of disability.

Pursuant to NRS 616C.475 (7), your request for TTD benefits from 1998 to present, are denied.

If you have any questions regarding this matter, please do not hesitate to contact this office. If you do not agree with this determination, you have a right to request a hearing regarding this matter. If this is your intention, please complete the attached Request for Hearing form and return it, **along with a copy of this letter**, to the Hearings Division at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Encl.
Cc: Bally's Las Vegas
Susan Reeves
Daniel Schwartz, Esq.
File

SEP 21 2004
CCMSI - LAS VEGAS

797

CANNON COCHRAN MANAGEMENT SERVICES INC • PO Box 35350 • Las Vegas NV 89133-5350

MEETING

RE: SUSAN REEVES

Date: Thursday, April 27, 2006

Time: 4:05 p.m.

ORIGINAL

Location: 2628 West Charleston Boulevard
Las Vegas, Nevada

Present: Dr. Petroff
Douglas Rowan, Esq.
Susan Reeves
Jeff Reeves
Jeff Dietrich

REPORTED BY: JENNIFER MARIE ROLAND, CCR 293

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Whereupon, --

* * * * *

MR. ROWAN: First I wanted to let you know what happened the last time we were in front of the appeals officer when you were scheduled to testify by telephone.

DR. PETROFF: I'd better take some notes. Go ahead.

MR. ROWAN: Jurisdictional issue came up, was brcught up by the appeals officer, and we basically spent an hour, hour and a half trying to address that issue, and the substance of the hearing actually never proceeded. Unfortunately, I was caught in there with the appeals officer and Bally's attorney and could not contact your office to let you know what was happening. Didn't want you to think we had ignored you when we had you cancel patients to appear at the hearing telephonically.

Today I think what we're here for is Susan has a couple of specific questions that we want to address, and then I know that Jeff Dietrich has spoken with Susan about his opinion about her condition, and we just wanted to talk to you and get your opinion about that.

First of all, let me show you the

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documentation. It would probably be easier.

It's my understanding you had a meeting with Bally's representatives. It's probably been a couple years ago now. As a result of that they had you draft that letter. June 29th, 2004. There were a couple of things in there that we just need clarification on, and that was the primary purpose of having you testify at that appeals officer hearing had it gone forward.

You indicate in there that you didn't feel you were in a position to address causation given the fact that Ms. Reeves' accident had been in 1988 and you hadn't seen her until 1997. Then you reference both Dr. Boulware and Dr. Oliveri as doctors who would have more information about her condition at that time and you would defer.

I'm just curious where you obtained that information or the records from Dr. Boulware and Dr. Oliveri. Is that something that Bally's provided you or were you given additional information to look at?

DR. PETROFF: I think, I believe that was provided -- I was provided with records with respect to that prior to that meeting.

MR. ROWAN: By Bally's?

DR. PETROFF: I don't know who they came

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from. As they arranged the meeting, it could have been from them. I didn't document where I got them from.

MR. ROWAN: But you got some records to review in anticipation of that meeting?

DR. PETROFF: Yes.

MR. ROWAN: Were you ever provided records from Dr. Barton Becker or Dr. Kudrewicz? Do you remember ever seeing any of those?

DR. PETROFF: I don't recall. I don't recall. Probably not if they're not in my chart collection.

MR. ROWAN: Well, basically you said in that letter that you would defer to the doctors who had seen her before, and then you specifically referenced Drs. Boulware and Oliveri. Basically I was just trying to find out if you had an opportunity to review all the records before you made those statements or the statement was made because of the information that Bally's had provided you?

DR. PETROFF: Well, it was based on the information I had at the time. And as I say, I don't recall, to be honest with you, exactly who handed me the material when. It's just, like you say, it was a couple years ago.

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MR. ROWAN: You didn't go through your entire

chart for that meeting, you looked at the records that you were given?

DR. PETROFF: I reviewed my chart.

MR. ROWAN: Does your chart have all the prior records or just -- if you know.

DR. PETROFF: I don't know.

MR. ROWAN: Okay.

DR. PETROFF: As you can see, it's a very large stack of records. I'm not familiar with every element of this stack of charts.

MR. ROWAN: I understand. What were you asked to do by Bally's representatives?

DR. PETROFF: Let's see. The issue was, as I recall to the best of my knowledge, would it be reasonable to afford you, Susan Reeves, an opportunity of a trial of back to work in a controlled and adapted situation.

MR. ROWAN: It appeared from your letter that Bally's had tried to distinguish between a non-industrial reason and an industrial reason why she couldn't work, and you indicated in that letter that you would defer to the doctors who had seen her before. But then you go on to say that you believe that a trial back to work would be reasonable with respect to the industrial condition. I just didn't know what you were

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basing that statement on, if you're deferring to other doctors as to what was industrially caused, but then you indicate she's fine from an industrial standpoint.

DR. PETROFF: Well, it was because it was the industrial agents that were arranging the back to work trial.

MR. ROWAN: Did you feel you were in a position to distinguish with respect to what was industrial and what was not industrial?

DR. PETROFF: I can only make my best opinion on the material I had at the time.

MR. ROWAN: And the material you're talking about is the material that Bally's representatives gave you?

DR. PETROFF: Plus my own chart.

MR. ROWAN: You had first seen Susan in I think 1997, and you saw her from 1997 through approximately 2004.

DR. PETROFF: Let me see if that date's right.

It looks like September of 1998.

MR. ROWAN: '98, okay. I apologize if I'm off a year.

During the period that you saw Susan were they all the same nature of complaints?

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DR. PETROFF: I would say generally they were. There was a fairly long list of complaints, some of them relevant to something I thought I could do about and some of them maybe not. The same issues, the same complaints tended to persist or keep coming up through the time of the treatment. Although generally, I read through my notes today, and the majority of the notes suggest a report of improvement by the patient over time.

MR. ROWAN: The nature of the complaints that were fairly consistent over the period of time would have included headaches, dizziness, loss of balance?

DR. PETROFF: Yes.

MR. ROWAN: Were those among the symptoms?

DR. PETROFF: Yes.

MR. ROWAN: An issue was also raised by your letter of June 2004 which indicated that you were not aware that Susan was involved in an industrial insurance situation or workers compensation situation. We have correspondence in which you communicated with Bally's insurance representatives even in '99. I'm just curious why you indicated that in the letter. If you just hadn't reviewed the whole file and didn't see those letters or -- I mean, I can show you, for example, here's a letter dated May 14th of 1999 from

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Ethel Pipp at Park Place Entertainment to you, and it talks about Susan. I think the subsequent documents, it probably includes some of your responses to her.

DR. PETROFF: Well, I would say this is pretty kind of nonspecific and a vague reference. When I say I wasn't aware that the prime mover of this whole case was a claim of injury from a car accident that happened over a decade before, that is true. When I first saw you in consultation basically a number of symptoms were talked about. It was not specifically or in any way strongly stated that this all arose from a certain motor vehicle accident on a certain day in the past.

MR. ROWAN: That wasn't something you were really concerned about, you were there to treat what she was there for?

DR. PETROFF: Exactly so.

MR. ROWAN: Okay.

DR. PETROFF: I'm not -- I don't practice my medicine in such a way as to be a patient advocate in a lawsuit. I'm a neurologist. People come in, give me complaints, and I try to make them better.

MR. ROWAN: So your primary purpose of seeing Susan obviously was not to determine a causal connection between the '88 accident and the condition

she was presenting to you, correct?

DR. PETROFF: Not initially so. And that was not really specifically pointed out to me until a great time later.

MR. ROWAN: The first time you were really asked to make that causal statement, would that have been when you met with Bally's representatives?

DR. PETROFF: I would say around that time would be the first time that I was made aware of the importance of an event in another time as causing, as being a claim for the cause of all the complaints I had been seeing you for.

MR. ROWAN: During the time you had seen Susan you didn't feel she could work, though, did you? Regardless of what had caused her symptoms originally, you still didn't feel she was capable of working, did you?

DR. PETROFF: Well, I did not clear her for work. I don't believe that we went to a great deal of ability to assess her to get back to work, I was mostly just treating her symptoms. There was no -- I did not feel under any compulsion to formulate a back to work strategy. Rather it was a relief of symptom strategy.

(A discussion was held off the record.)

MR. ROWAN: You're aware that Mr. Dietrich

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has been providing physical therapy for Ms. Reeves? I think you originally gave her a prescription, sent her over there.

DR. PETROFF: If that's what the chart reflects. I didn't have a great deal of time to review the chart today due to my busy schedule, so I would assume so.

MR. ROWAN: Mr. Dietrich has spoken with Ms. Reeves about her current condition and his opinions, and part of the reason for this meeting was for Mr. Dietrich to speak with you about his opinions and see how they relate to your opinions with respect to Ms. Reeves.

DR. PETROFF: Okay.

MR. DIETRICH: Well, one, I agree that return to work was never one of the primary issues. We were treating her for pain, dizziness, balance, headaches. I never thought that she was going to be returning to work just based on, you know, the fact that she was able to make one trip a day on a CAT bus, and if she would do more than that she would be sick. If she did it more than two or three times, like when she was going to Dr. Mortillaro, you know, she was wiped out. She wasn't able to go to his place and come to therapy in the same day. You know, it's hard to

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find a job where you can go to work on a CAT bus and be able to sit at a computer or whatever and then make it back home.

I didn't feel she was going back to work. That was my personal opinion. Just based on her symptoms when she attempted to be out more frequently in public.

DR. PETROFF: Am I mistaken, at some point was there not a disability based on Medicare?

MR. REEVES: Um-hmm.

DR. PETROFF: Again, if someone comes in with a disability on Medicare that's going to take away my attention from any effort to restore the patient. If they're disabled, if they have a disability rating it's not my job to overcome a disability rating. And that may also have clouded the issue with respect to the work comp claim.

MR. REEVES: But on her first visit down she brought her supreme court decisions, her district court decisions and gave them to you along with all of her medical records. So that sort of would show you that there was ongoing litigation with these people over this.

DR. PETROFF: Well, I don't recall that, but it may be true. Whether it is or not, if someone comes

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to see me for a work comp claim routinely the staff understands it's a work comp claim and it's written clearly at the top of the page it's a work comp claim. And this is not the case in this case.

MR. ROWAN: I don't think anybody is indicating it was. She wasn't coming to you to try to build up her claim. I understand you were brought into the situation later on with respect to a request for your opinions from a causation standpoint from that perspective.

DR. PETROFF: And that creates a lot of confusion in my mind, what it was I was supposed to be doing or what I was expected to be doing.

MR. ROWAN: And I don't know that any of us were expecting you to do that. It's after you met with Bally's representatives and they elicited that June 29th, 2004 letter that addressed causation. I guess that's when we had questions and concerns as to what that was based upon, what information they brought to you. That really was our concern.

To be honest, without your understanding the history of the litigation and what's happened there, I don't expect you to fully understand our concerns on that. That's why I'm just trying to find out, you know, again, I understand it's been almost two years,

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if you recall what information they brought you. Just because from your reference to those two particular doctors, there are a number of other doctors Susan has seen much closer in time to the accident as well the same as Dr. Boulware who had differing opinions. That was really my question as to what information you had been provided when you authored that letter.

DR. PETROFF: Okay.

MR. ROWAN: I don't want you to think that we're sitting here saying as of 1998 you should have been expressing a causation or a causal relationship or any opinions on that issue, because that's not what we're here for. It's not what was expected. The only reason we brought up the causation issue is because Bally's brought it up with you and had you author that letter.

DR. PETROFF: Okay.

MR. ROWAN: My understanding, Mr. Dietrich, is that you have spoken with Susan recently, and recently is a relative term, about her condition and its connection with the 1988 auto accident and the length of time that she has been experiencing her condition. I guess I thought that you would be in the best position to explain to Dr. Petroff what it is that you've experienced with respect to Ms. Reeves'

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condition and to see if he is in agreement.

I don't know if -- I haven't spoken with you, so I don't know. I'm going on based on my understanding from Susan what your conversations have been. I don't know if Susan can bring out the issue a little better maybe than I am.

MRS. REEVES: Well, about the whiplash syndrome. Because in the accident there at the hotel I was hit pretty hard. I was at a standstill. It was an older truck that did not have a headrest. I had pulled the seat up because I have short legs, so when I was hit I went forward, back, forward, back. And right from the very beginning I was dizzy. And I kept complaining of this to Dr. Mattimoe, Dr. Becker at the time.

If you would like to see, these doctors here were the doctors that were treating me at the time of the accident, Dr. Becker and Dr. Mattimoe, who is also still treating me, which I have many records of them.

No one really knew really how to help me it seemed like. I was going around and around in circles. I couldn't even hardly sit in a chair. When I came to you I tried to explain that to you, and you gave me the feeling that if anybody could help me it would be Jeff.

I went to Jeff, and after quite a while

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working with him, and in his report that he made just recently, he said this is a typical whiplash syndrome. Dr. Mattimoe also said the same thing, but I don't have him right here. It's happened to him and it makes the muscles up and down your back spasm up. And it's been like that so long it seems like it's normal to be doing that.

So Jeff Detrich can explain about he's had a lot of people who's had this chronic long-time muscle spasms up and down, the neck problems, the dizziness that I have all the time, which we're now getting a little under control, but I have to spot constantly like a dancer or I'll fall over. Or if something moves in front of me I fall.

The ringing in the ears, if people hit those certain tones I can't hear. And Dr. Becker on here, who was my doctor at the time, said I had hearing loss and a percentage of hearing loss. But I don't think it's really hearing loss, it's that they hit that tone and then I can't hear the person because it blends in.

But you had explained to me that you had dealt with people like me. And you have worked with me quite a while.

MR. DIETRICH: Yes, I've worked with people that have had whiplash before, and it can happen people

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can have problems for years down the road with pain, spasms, sometimes dizziness and imbalance. Even though that's rarer in the whiplash. It's mostly pain and limited motion and sometimes spasm.

But in Susan, you know, we've noticed significant improvements in her balance and postural control, her range of motion and her neck and shoulders, even though she still has the tightness and spasms. Her falling frequency has decreased a lot, even though it still occurs, unfortunately.

But the dizziness and the hearing loss or the tinnitus symptoms are also part, they could come from an inner ear problem, they could also come from a cervical injury. So to isolate down exactly what mechanism is causing all the problems, that's hard to do. Plus the headaches. You know, the headaches.

MRS. REEVES: Headaches are constant.

MR. DIETRICH: The headaches have been constant from the first day I've seen her. They've decreased in intensity significantly from where she used to have to close herself in a dark room multiple times per month, and now that's down to 1 don't even ask anymore if you've had a bad one because now they are so rare you tell me.

MRS. REEVES: But I still have them all the

time.

But my thing is on the paper that you wrote for Bally's that you said you didn't know, we don't expect you to know because you are a good doctor, and there is no way a doctor is going to know what happened 18 years ago and what really caused it. But you said you were going to defer to the doctors at the time. And my thing is Dr. Boulware didn't really see me that much. He just looked at my records. Dr. Oliveri I came to see just a couple weeks before I came to see you. So they weren't the doctors that were treating me at the time. They were Dr. Becker and Dr. Mattimoe.

If you could even glance at their records, what they said, and Dr. Becker does state that it can be permanent --

MR. REEVES: Permanent neck problems.

MRS. REEVES: -- neck problems.

MR. REEVES: And dizziness.

MRS. REEVES: And dizziness. These are the same symptoms from day one that I've had to every doctor I've gone to trying to plead to get help. Because you've got these problems, you want help. I don't want to be stuck in a room.

Yes, I'm on social security disability. Bally's has contacted social security disability, said

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that I'm on workers comp, so, of course, I'm only getting a third of my social security disability even though I'm not getting workers comp because this has all been such a mess.

When I came to see you, honestly what I told you and I told them, that I wasn't on workers comp, that I have social security disability and Teamsters. But we were in litigation with Bally's over this, and that's why I brought the supreme court ruling in, the district court ruling, and every one of my doctors that I could find, their records in, because I want help, but I wanted to explain that to you.

But I didn't quite understand why you were sending letters back and forth to Bally's when they weren't paying my insurance -- or my insurance was paying. I was kind of confused on that one.

Mrs. Pipp. You know, Ethel Pipp. Because they weren't paying, but you were in correspondence.

I'm always trying to be up front and honest, and I just felt like in that letter that you wrote that I looked like I was being sneaky and sliding this in. I wasn't. I really wasn't.

I needed help. I came to you. Dr. Mattimoe said you could help me probably. He sent me to you. And he is still my doctor. He's been my doctor since

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1980, my family doctor, and he's still.

That's why we had the last discussion was, you know, to have one doctor do all my prescriptions instead of having you do some and then him, because I was having some reactions from the stuff that you were giving me. That's why you released me and said, okay, we'll just let him do it.

I'm still taking three Somas at night to even go to sleep an hour before. Sometimes that's not enough and I have to take two or three Darvocets to go to sleep because of the headaches. I'm laying in my bed hanging over the side backwards because of my neck and back spasms still, and I'm still trying to get help. Jeff Dietrich has helped quite a lot, but it's still like this. It's been like this for 18 years.

Bally's said I cannot come back, and I have records, a paper, unless I'm 100 percent with no restrictions. I cannot have any restrictions. So that's why, you know, this has been kind of like a bouncing ball. I didn't quite understand this.

MR. REEVES: Well, actually the biggest thing is were you to defer to the doctors -- they haven't actually closed the claim. I guess they haven't paid anything. I guess they're paying you, Jeff, I don't know, but they're not paying anything else. We don't

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mind if you want to defer, but we think you should defer to the doctors who saw her at the time instead of the doctor who saw her a couple of weeks before you and a doctor that looked at the records basically. That's what we're thinking.

MRS. REEVES: You've been a good doctor.

MR. REEVES: They're using that deferment to basically --

MRS. REEVES: Close my claim.

MR. REEVES: Yes.

MR. ROWAN: Let me ask you, at this point are either of you in a position to give an opinion that Ms. Reeves' current condition is related to the 1988 accident?

DR. PETROFF: That's the second accident.

MR. REEVES: Yes.

MR. ROWAN: The 1987 one and then the 1988 one.

MRS. REEVES: Dr. Becker explains all about it.

DR. PETROFF: Well, you can't put a bunch of paper on my table and expect me to review them and change my opinion. I'm not going to do that. I gave the opinion I gave based on the information I have. That's how I always give my opinions.

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If there is additional information it may change my mind or to a different point of view or it may persuade me that I can't have a point of view or it may keep my present opinion. I don't know. This is all speculation.

MR. REEVES: Then could we leave those with you and you can review them at your leisure and see if it goes anywhere?

DR. PETROFF: Yes. But how do I know there's not more records somewhere else that either side has?

MR. REEVES: I don't know.

DR. PETROFF: It has to be done in some sort of orderly way, some sort of equitable way.

MR. REEVES: We could bring you down every medical record we have of hers, which would be basically all of them, if you want.

DR. PETROFF: Are there descriptions of the accident at the time of the accident which document the nature, the velocities involved, car damage, any of that kind of stuff? Is it available anywhere?

MR. ROWAN: I can give you what we have.

DR. PETROFF: That would help.

MRS. REEVES: Dr. Becker saw me the next day. But not the car damage.

MR. ROWAN: There may be some documentation

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on that.

DR. PETROFF: You know, there are certain things that stick out in the story that have to be -- you can't help but think about. Your report that all your symptoms of the previous car accident completely disappeared three days before the new accident would make almost anybody skeptical.

MRS. REEVES: It doesn't say that.

DR. PETROFF: Okay. If it doesn't say that I would have to know what was said.

MR. REEVES: Don't push papers at him.

MRS. REEVES: I know. I'm pulling it back.

MR. ROWAN: That's fine. We're happy to provide you with everything, all the records.

DR. PETROFF: I have no trouble with people giving me information and having me look at it and consider it. But it's got to make some sense the way it's delivered to me.

MR. ROWAN: That's fine.

DR. PETROFF: That's been the problem all along. Through my chart, through this Bally's meeting and even now. It's almost chaotic. Everybody has a position to advocate. I'm really not interested in advocating anybody's position at all. That's not what I want to do for a living.

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MR. ROWAN: I'm certainly not asking you to do that.

DR. PETROFF: But if people have well-documented information that they want me to consider, and in this case I would like to have good information from both sides, then perhaps I can make a judgment that people will find harder to take issue with.

MR. ROWAN: That's fine. I don't think we were really ever expecting you to give an opinion as to causation. The only reason you've sort of been dragged into the causation issue is because of Bally's coming in and asking you to provide that. And basically that's why I started this all off by asking you what information Bally's provided you, simply because they were records that we believe were incomplete, and we have other issues with the use of those records as well, which is not of your concern. But certainly if you're willing to do that I'm happy to provide you with complete copies of the records so that you can see.

I can tell you that there are limited records between approximately 1992 and 1998 mainly because we were in litigation. But there are a lot more records that go back from '87 forward. I mean, certainly I'm happy to provide you with the records to the extent

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that we have them that relate to that first accident.

MRS. REEVES: That's Dr. Becker and Dr. Mattimoe was treating me before, right after the first accident, and after the second accident. They've treated me all through both. So I have records from them both treating me from the first accident and the second accident. It's the same two doctors. So it's not like I went from doctor to doctor to doctor to doctor, but it's the same doctor. And Dr. Mattimoe had been treating me ever since.

But we don't bring Dr. Mattimoe in, just like we weren't going to bring Jeff in, because they asked not to be involved in a workers comp. But he did provide some of his medical records from way back.

MR. ROWAN: Well, I will put that together.

DR. PETROFF: Well, and you will have to negotiate with our staff on an appropriate fee.

MR. ROWAN: That's fine. I understand that.

DR. PETROFF: And I never would have had -- I don't have any trouble with that request. I never would have had any trouble with that request.

MR. ROWAN: Again, I sent you over a copy of our evidence packet that we presented to the appeals officer. I was going to have you look at those records. Mainly I wasn't even looking for your

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causation opinion at that point, it was my intent simply to find out if you had been shown those particular records at the time of the hearing. That was the purpose of having you testify at the hearing. Right now obviously we're going a little bit farther beyond that. But that's fine. We'll contact your office.

DR. PETROFF: You can do that. And in my role and within my scope and knowledge as a neurologist I could try to assess that further. Not as an advocate for either side.

MR. ROWAN: That's fine.

DR. PETROFF: And not as any kind of expert on medical/legal issues and work comp cases either. This would be an opinion of a clinical neurologist reviewing information, searching for objective information especially, which is highly important to me.

MR. ROWAN: That's fine. Do you have anything else?

MRS. REEVES: That was all.

MR. REEVES: Thank you very much.

MR. ROWAN: Thank you for your time.

(Whereupon, the proceedings concluded at 4:40 p.m.)

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CERTIFICATE OF REPORTER

I, Jennifer Marie Roland, a duly commissioned Court Reporter in the State of Nevada, do hereby certify: That I reported the meeting regarding Susan Reeves, commencing on Thursday, April 27, 2006, at 4:05 o'clock p.m.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested.

Jennifer Marie Roland

JENNIFER MARIE ROLAND, CCR #293

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Sedgwick CMS

4955 S. Durango Dr., Ste. 209
Las Vegas, NV 89113
Phone: (702) 568-3800
Fax: (702) 568-3779

September 8, 2006

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE: Employer: Bally's Las Vegas
Claim No: H243724
D.O.I.: 9/25/88

Dear Mrs. Reeves:

NOTICE OF INTENTION TO CLOSE CLAIM
(Pursuant to NRS 616C.235)

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Your file reflects that you are not presently undergoing any medical treatment; however, if you are scheduled for future medical appointments, please advise us immediately.

Nevada Revised Statute (NRS) 616C.390 defines your right to reopen your claim. You must make a written request for reopening and your doctor must submit a report relating your problem to the original industrial injury. The report must state that your condition has worsened since the time of claim closure and that the condition requires additional medical care. Reopening is not effective prior to the date of your request for reopening unless good cause is shown. Upon such showing by your doctor, the cost of emergency treatment shall be allowed.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter.

If you have any questions, please contact me at (866)464-0159 ext. 83742.

Sincerely,

Jennifer DaRos
WC Claims Examiner

Encl.: Hearing Request

cc: Employer

824

Sedgwick CMS

PO Box 34660
Las Vegas, NV 89133-4660
Phone: (866) 464-0159
Fax: (702) 568-3779

February 16, 2007

Susan L. Reeves
4724 E WASHINGTON
Las Vegas, NV 89110

RE: Claimant: Susan Reeves
Employer: Bally's Las Vegas
Claim No.: H243724
D.O.I.: 09/25/1988

Dear Ms. Reeves:

Sedgwick CMS administers Workers' Compensation claims for Harrah's Entertainment, Inc. We are in receipt of your letter, in which you request the scope of the above captioned claim to be expanded to include broken toe and bruised ribs.

Per review of this claim, you were not working in 2006, therefore any falls subsequent to your injury could not have occurred within the course and scope of employment (see NRS 616C.150 Compensation prohibited unless preponderance of evidence establishes that injury arose out of and in course of employment; rebuttable presumption if notice of injury is filed after termination of employment.)

Furthermore, we note that pursuant to NRS 616C.160, if, after a claim for compensation is filed the injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease; and the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

Based on the above, the fact that your claim was closed for further benefits on 9/8/06, and any other applicable defense, your request to expand the scope of the above captioned claim is denied.

If you disagree with the above determination, you may request a hearing before a Hearing Officer by completing the enclosed Request for Hearing form within seventy (70) days after the date on which the notice was mailed, and sending it to the State of Nevada, Department of Administration, Hearing Division.

If you have any questions or comments, please do not hesitate to contact me at 1(888)464-0159 ext 83742.

Sincerely,

Jennifer DaRos
Workers' Compensation Representative

Encl.: Hearing Request

cc: Employer, Claimant Attorney, Defense Attorney

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JIM GIBBONS
Governor

STATE OF NEVADA

NANCYANN LEEDER
Nevada Attorney for Injured Workers

NEVADA ATTORNEY FOR INJURED WORKERS
2200 South Rancho Drive, Suite 230
Las Vegas, Nevada 89102-4413
(702) 486-2830 • Fax (702) 486-2844

November 21, 2007

FILED
2007 NOV 21 PM 2:25

APPEALS OFFICER GREGORY A. KROHN, ESQ.
DEPARTMENT OF ADMINISTRATION
2200 S RANCHO DRIVE STE 220
LAS VEGAS NV 89102

Re: Susan Reeves
Appeal Nos.: 39934-GK
42367-GK

Dear Appeals Officer Krohn:

Please be advised that Atty. Davis and I have agreed to submit a Stipulation to Continue the hearing set for December 4, 2007 at 3:00 p.m. The reason for the requested continuance is this a complex case with multiple issues and parties are working on a global settlement. We respectfully request that you grant our Stipulation.

Therefore, we ask that you please vacate the December 4th hearing date. The formal Stipulation is forthcoming. Thank you for your patience and consideration of this matter.

Sincerely,

NEVADA ATTORNEY FOR INJURED WORKERS

Cory A. Santos, Esq.
Deputy

CAS:at

cc: Lee E. Davis, Esq.
Susan Reeves

C:\S_REEVES, SUSAN_Stip Letter - Other.wpd

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Website: http://www.naiw.nv.gov
E-mail: naiw@naiw.nv.gov

000818

Nevada Division of Industrial Relations
1301 North Green Valley Parkway, Suite 200
Henderson , Nevada 89074
702-486-9080

February 28 2010

To whom it may concern,

I, Susan Reeves, would like the D.I.R. pursuant to NRS 616D.330 to help me get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them. There have been a number of requests for that information. Once by Douglas Rowan, Esq. on May 28 2004 and four times by the Nevada Attorney for Injured Workers, December 15 2004, January 17 2007, May 31 2007 and August 16 2007 and two times by me, January 29 2010 and February 12 2010. Their response was to say that all correspondence was duly copied, letter to Mr. Rowan June 2 2004, or that the copy work supplied was all there was, letter to me February 24 2010. They did send a log of oral communication for a meeting at Dr. Petroff's office that gives no idea of what was said, only that there was a meeting, and the people that they listed at that meeting is wrong. It was not my attorney but theirs, my husband and myself were asked to leave, see letter from Dr. Petroff June 29 2004 and letter from Mr. Rowan July 22 2004. There is also an activity log from May 10 2004 that has a S/W (spoke with?) Dr. Mortillaro that also gives no idea of what was said. I was told when I had my last appointment, by Dr.Mortillaro and Dr. Manuel F. Gamazo, that CCMSI (Bally's) and their attorney had been at their offices for a meeting. The meeting with Dr. Mortillaro and Dr. Gamazo was after my discharge, March 18 2004, but before my last appointment, June 1 2004. I requested a meeting with Dr. Petroff and was informed that I would have to have a court reporter present, letter from Dr. Petroff's office March 22 2004. Letter from my attorney, March 29 2004, about the requirement for a court reporter raises the issue of Dr. Petroff's concerns of what was said at the meeting with CCMSI, they did not have to have one. I feel that NRS 616D.330 would mean that if representatives of an employer have meetings with doctors that they have to have a written record of what was said. The letters written after, not the letters before, said meetings were the reason my claim was closed.

Thank You

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves(husband)

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000134

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 26, 2010

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re:	Injured Employee:	Susan Reeves (2)
	Claim No.:	88H92H243724
	Employer:	Bally's
	D.O.I.:	September 25, 1988
	TPA:	CCMSI
	Complaint #:	11522

Dear Ms. Reeves,

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS) has, pursuant to Nevada Revised Statutes (NRS) 616D.130, investigated the complaint you filed. The issue in your complaint that can be addressed by the WCS is a possible violation of NRS 616D.330.

After reviewing the information supplied to this agency and completing the investigation, a determination has been reached and has concluded the following:

FINDINGS OF FACT:

On July 20, 1987, you were involved in a motor vehicle accident wherein you were diagnosed with cervical strain and head injury.

In 1987, Bally's issued a Notice of Claim denial.

On September 25, 1988, you were involved in another motor vehicle accident while employed at Bally's and sustained an industrial injury while working within the course and scope of your employment.

On June 9, 1989, S.I.S. Administrators issued a Notice of Claim Denial. Appropriate appeal rights were given.

On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that you be sent to pain management.

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You appealed the 1987 claim to the hearing officer and your claim would be denied. You then appealed the matter to the appeals officer.

On August 15, 1990, you were seen by Dr. Kudrewicz and would eventually be found to have an entitlement to a five (5%) percent Permanent Partial Disability (PPD)

On February 27, 1991, you were offered the 5% PPD Award.

On March 26, 1991, the appeals officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later by the Nevada Supreme Court.

On September 26, 1997, a Notice of Claim Acceptance was issued for your claim with a date of injury July 20, 1987.

On May 12, 1998, a second Notice of Claim Acceptance was issued.

On December 20, 2001, Dr. Glyman wrote a report concluding that you had a somatoform disorder.

On December 27, 2001, a Notice of Claim Closure was issued but would later be reversed by an appeals officer awarding you further medical treatment.

You continued your care with Dr. Mortillaro in 2003 and 2004. In March 2004 Dr. Mortillaro discharged you from his care.

On May 28, 2004, you requested copies of all correspondence between CCMSI and Drs. Mortillaro and Petroff.

On June 2, 2004, CCMSI responded to your May 28, 2004 request.

On December 15, 2004, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from CCMSI.

You continued to receive physical therapy at the Family & Sports Physical Therapy Center. On January 23, 2006, a therapist indicated that your condition had greatly improved over the time period that you had treated at the center.

On September 8, 2006, CCMSI learned that Dr. Petroff had released you to your family physician since he was only monitoring your medication. It was also learned that you had been spending a lot of time out of state and were being treating under Medicare.

On September 8, 2006, CCMSI issued a Notice of Intent to Close Claim. You appealed this determination. The hearing officer would dismiss your appeal because you failed to attend the hearing. You appealed this determination.

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On January 17, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Bally's.

In January 2007, you submitted a written request to expand the scope of your claim to include bruised ribs and a broken toe.

On February 16, 2007, CCMSI issued a determination denying your January 2007 request. Appropriate appeal rights were given.

On May 10, 2007, the hearing officer issued a decision and order affirming the February 16, 2007 determination. You appealed this determination.

On May 31, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services. ("Sedgwick")

On August 16, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services.

January 29, 2010, you requested a copy of your complete industrial claim file from Sedgwick.

On February 24, 2010, CCMSI responded your January 29, 2010 request that was addressed to Sedgwick. They informed you that the copy work of your claim file had been previously supplied to you and that no other documentation exists.

CONCLUSION:

As it relates to a possible violation of NRS 616D.30, no violation was found.

CCMSI timely responded to your request pursuant to statute. You were advised in a previous response that you had been provided with a complete copy of your industrial injury claim file. The investigator reviewed the claim file and found no additional correspondence relating to the logs of oral communication.

As the issue outlined in your complaint has been addressed, the complaint filed with this agency is closed. If you have any further questions, feel free to contact Christopher Brown, Compliance/Audit Investigator II, at (702) 486-9098.

Sincerely,

Susan Sayegh
Southern District Manager
Workers' Compensation Section

cc: George Ward, WCS

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000319

Susan Sayegh
Southern District Manager
Workers Compensation
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 29, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Sayegh,

I am in receipt of your letter, dated April 26, 2010, where my complaint of a violation, pursuant to NRS 616D.130, was found to have no merit. Apparently Bally's representatives, ether Bally's employees or CCMSI employees, do not have to make or keep a written record of oral communications, of what was said at meetings that are held between said representatives and patients doctors. One could assume that since you, Ms. Sayegh, were the Claims Supervisor for CCMSI at the time of the meeting with Dr. Petroff, you could have been one of those representatives. If not, you most certainly would have known who would have been at that meeting and whether or not a written record was kept.

Since your office, the D.I.R., has conducted an investigation and concluded that all Bally's or their representatives have to do, pursuant to NRS 616D.130, is timely respond to a request, not actually keep or have a written record, that there is no violation.

Since my complaint was about written records, pursuant to NRS 616D.130, I have no idea why your office would go to the great lengths of looking into the history of my claim. As for reviewing the information, as it pertains to my claim, your office did not request any information from me. One would then assume that all information supplied for the investigation was supplied by Bally's or CCMSI.

As to your offices findings of fact, since your office is a governmental regulatory agency, that your office would at least verify those facts before presenting those facts as facts. Upon reviewing said facts, they appear to be almost word for word the findings of fact that Bally's attorney presented, at the last appeal hearing I had. They are also the same as in the last Appeals Officers' Decision, written by Bally's attorney. There are a number of errors in those facts, some perhaps are just typed wrong, others are just wrong.

Since it was not my intension to have your office look into my entire claim, I will not go into all the details of which facts are incorrect.

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As I have not received the type of fair and unbiased handling of this matter that one would expect, and since your department, the D.I.R.s, responsibility is to investigate possible violations, by insurers, pursuant to the NRS. I am requesting that your office inform me as to which governmental agency, office or department, investigates possible mishandling of complaints by your office, as I would wish to make a complaint about the handling of this matter.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

832

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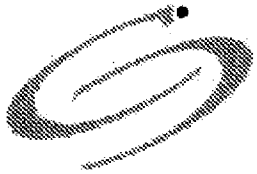

C C M S I

July 6, 2010

Susan Reeves
4724 W. Washington
Las Vegas, NV 89110

RE: Claimant: Susan Reeves
Claim No: 88S01H243724
DOI: 09/25/1988
Employer: Bally's

Dear Ms. Reeves:

Our office received your attorney's request to reopen the above-mentioned claim.

In order for the claim to be reopened you must provide a change of circumstances that warrants an increase or rearrangement of compensation. The primary cause of the change of circumstances is the injury for which the claim was originally made and the application (request for reopening) is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation as specified in NRS616C.390(1).

The reporting received from Dr. Bassewitz dated April 10, 2010 and June 15, 2010 does not show a change of circumstances which would warrant an increase or rearrangement of compensation nor does he recommend reopening, provide any objective medical evidence to base a reopening recommendation on or provide a viable treatment plan should the claim be reopened for treatment.

Therefore, your request for reopening; TTD benefits with interest; payments of co-pays, deductibles and other out of pocket expense; an affidavit or re-payment to your personal insurance; costs of the IME with Dr. Bassewitz; and scope of claim expansion is denied.

Be advised any and all written record of communication that is in your claim file has previously been submitted to you.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of

PO Box 35350, Las Vegas, NV 89133-5350

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Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter.

Should you have any questions, please contact me at (866) 446-1424 ext. 4833.

Sincerely,

Rosemarie McMorris
Senior Claims Consultant

Cc: File, Bally's, Lee Davis

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To Whom That May Help: 7/29/2010

I, Susan L. Reeves, am requesting the following copy of the Original Document Copies, with Susan L. Reeves signatures. If none of these exist, a letter stating findings on each.

1. Employee Accident Report for the July 20, 1987 car accident/Worker Comp.
2. The request for Worker Comp from anyone about the Accident on July 20, 1987.
3. Written correspondence in the year 1987 until the 2nd accident in September 25, 1988.
4. The Denial from Bally or anyone for the July 20, 1987.
5. Copy of Susan L. Reeves receiving 5% PPD Award with a copy of the canceled check with her signature on it and all paperwork of acceptation.
6. The copy of Dr. Petroff refusing Susan L. Reeves treatment, other than, Susan L. Reeves, at her request, going back to her family doctor since Dr. Petroff could at that time, only offer the same medications he had her on for a long period with no new medical treatments, she had been taking at his request. Susan L. Reeves found her family doctor could prescribe and keep track of all her medications.

If any cost for these documents accrue, Please contact Susan L. Reeves as soon as possible at (702) 453-2588 for payment.

Thank You

Susan L. Reeves Claimant Employer Bally's Claim No: 88S01H243724 DOI 9/25/1988

cc: Lee Davis Esq.
Lewis Brisbois Bisgaard & Smith
400 South Fourth Street Suite 500
Las Vegas, NV 89101

cc: CCMSI
Rosemarie Mc Morris
Senior Claim Consultant
P. O. Box 35360
Las Vegas, NV 89133-5350

cc: Bally's
DIR/WCS Henderson
3645 Las Vegas Blvd South
Las Vegas, NV 89109-4307

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C C M S I

July 6, 2010

Susan Reeves
4724 W. Washington
Las Vegas, NV 89110

RE: Claimant: Susan Reeves
Claim No: 88S01H243724
DOI: 09/25/1988
Employer: Bally's

Dear Ms. Reeves:

Our office received your attorney's request to reopen the above-mentioned claim.

In order for the claim to be reopened you must provide a change of circumstances that warrants an increase or rearrangement of compensation. The primary cause of the change of circumstances is the injury for which the claim was originally made and the application (request for reopening) is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation as specified in NRS616C.390(1).

The reporting received from Dr. Bassewitz dated April 10, 2010 and June 15, 2010 does [redacted] show a change of circumstances which would warrant an increase or rearrangement of compensation [redacted] he recommend reopening, provide [redacted] objective medical evidence to base a reopening recommendation [redacted] vide a viable treatment plan [redacted] the claim be reopened for treatment.

Therefore, your request for reopening; TTD benefits with interest; payments of co-pays, deductibles and other out of pocket expense; an affidavit or re-payment to your personal insurance; costs of the IME with Dr. Bassewitz; and scope of claim expansion is [redacted]

Be advised any and all written record of communication that is in your claim file has previously been submitted to you.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of

PO Box 35350, Las Vegas, NV 89133-5350

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Rosemarie McMorris
Senior Claim Consultant
PO Box 35350
Las Vegas, Nevada 89133-5350

August 12, 2010

Re: Employee Susan Reeves
Employer Bally's- Las Vegas
Date of Injury 9/25/1988
Claim Number 88SO1H243724

Dear Ms McMorris,

I am requesting that you send me a certification of disability form, as I don't believe I have ever seen one in the twenty-two years that my claim has been ongoing. I will need it as I have a physician's appointment next week.

Appentantlly pursuant to NRS 616C.475 (6), I will need a form that is approved by the Decision and my reading of that statute is that you are the ones to supply it.

I am also wondering how your search for the documents I requested in my letter of 7/29/10, is going? Looking forward to seeing them soon.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

837



C C M S I

August 25, 2010

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE:	Claimant:	Susan Reeves
	Claim No.:	88S01H243724
	Employer:	Bally's
	DOI:	09/25/1988

Dear Ms. Reeves:

We are in receipt of the July 29, 2010, August 10, 2010 and August 12, 2010 correspondence from you.

Please be advised that the copy work that was supplied to you is all that there is, there is nothing further in the claim file that has not previously been sent to you.

There is no specific/required form for disability certification, disability certification may be submitted by an authorized treating physician on a open/accepted claim.

Please be reminded that your claim is not open for medical treatment at this time.

If you have any questions, please contact me at (702) 933-4833.

Sincerely,

Rosemarie McMorris
Senior Claim Consultant

CC: File, Bally's, Lee Davis

PO Box 35350, Las Vegas, NV 89133-5350

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000315

Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (3), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Ms. Susan Sayegh?

Thank You,

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Recsearcked and Typed by,
Jeff Reeves (husband)

cc: Don Jayne

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

July 22, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

Dear Ms. Reeves:

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS), has completed its investigation into your complaint dated June 1, 2010.

FINDINGS OF FACT:

You alleged that Bally's and CCMSI failed to timely pay temporary total disability (TTD) benefits after a December 1, 2003 Appeals Officer decision ordered that closure of your workers' compensation claim was premature. You alleged that you were due TTD benefits from the date your claim was closed on August 27, 1998.

On August 18, 1998 Dr. Oliveri conducted an independent medical evaluation (IME) in which he was asked to evaluate your capabilities of entering to the work force. Dr. Oliveri stated that your subjective complaints far exceeded objective findings. He diagnosed you with a somatoform pain disorder which was primarily a psychiatric problem which was not something that was caused by an industrial accident. Dr. Oliveri stated, ". . . The criteria for disability under social security are very much different than

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the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury. . ." Dr. Oliveri found that you had overwhelming symptom magnification. He stated that the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder. He found that you were maximum medical improved for the industrial injury. Dr. Oliveri stated that there was no evidence for disability and the current perceived disability was based on your nonindustrial somatoform pain disorder.

On March 26, 2001 Dr. Glyman examined you and diagnosed you with a mild post-concussion syndrome. He stated that you had many subjective symptoms which did not match up with objective physical findings.

On December 20, 2001 Dr. Glyman provided an addendum after reviewing additional medical records. He agreed with the other physician who examined you and concluded that you suffer from a somatoform paid disorder. He did not recommend any further medical treatment.

On December 27, 2001 Gallagher Bassett Services wrote a letter notifying you of their intention to close your claim. They also notified you that if you disagreed with their determination you could file an appeal with the Department of Administration Hearing Division.

On April 19, 2002 Hearing Officer Nora Garcia issued a Decision and Order, hearing number LHS2002-C-4641-NG, regarding your appeal of the insurer's December 27, 2001 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 1, 2003 Appeals Officer Nancy Richins issued a Decision and Order regarding your appeal of the Hearing Officer's Decision affirming claim closure. The Appeals Officer concluded that the somatoform pain disorder was industrially related and required further medical treatment, and ordered the claim to be reopened.

On December 11, 2003 CCMSI wrote a letter notifying you the claim would remain open for further medical treatment, and notified you that they scheduled you for an appointment with Dr. Mortillaro on January 5, 2003 at 9:30 am.

On January 14, 2004 CCMSI wrote a letter that they were aware you were being treated by Dr. Petroff. They advised you that the Appeals Officer instructed them to provide short term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures and appropriate therapy. They notified you that Dr. Mortillaro was authorized to provide these treatments, and they were denying Dr. Petroff's recommended treatment plan.

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On January 21, 2004 Douglas Rowan wrote a letter to CCMSI that he was aware they authorized further medical treatment with Dr. Mortillaro. He also requested TTD benefits from the date of claim closure.

On January 30, 2004 CCMSI faxed a letter to Dr. Petroff authorizing an MRI of your cervical spine. It appears that they also authorized medications prescribed by Dr. Petroff and Dr. Mattimoe, as well as physical therapy.

On March 16, 2004 CCMSI wrote a letter to Mr. Rowan requesting a certificate of disability from your physicians from August 26, 1998 in support for his request of TTD benefits. Once they received the certificates of disability they would render a determination with appeal rights.

On March 30, 2004 Dr. Mortillaro discharged you from his care and noted that you remained under the care of Dr. Petroff.

On July 21, 2004 CCMSI wrote a letter to Mr. Rowan notifying him that they were denying his request for TTD benefits from 1998 based on a medical report by Dr. Petroff dated June 29, 2004, because there was no evidence of certification of disability. They also provided him with a copy of the report.

On January 20, 2006 Appeals Officer Gerald Schwartzer filed a Decision and Order, Appeal Number 14175-GS/14174-GS/13350-GS, regarding your appeal of a Hearing Officer's Decision and Order dated November 30, 2004, affirming denial of TTD benefits. The Appeals Officer dismissed your appeal for denial of TTD benefits due to untimely filing of the appeal.

On September 8, 2006 the insurer was notified that Dr. Petroff was only monitoring your medications and referred further care to Dr. Mattimore, who has been prescribing physical therapy. They were also notified that Dr. Mattimore was not treating you for the workers' compensation claim.

On July 25, 2007 Hearing Officer Steven Evans issued a Decision and Order, hearing number 41025-SE, regarding your appeal of the insurer's September 8, 2006 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 22, 2009 Appeals Officer Gregory Krohn filed a Decision and Order, Appeal Number 39934-GK/42367-GK, regarding your appeal of a Hearing Officer's Decision and Order dated July 25, 2007 which affirmed claim closure. The Appeals Officer affirmed claim closure.

On June 21, 2010 the WCS mailed a letter to CCMSI notifying them of your complaint. The WCS received a letter from CCMSI dated June 29, 2010 in which they informed the WCS that the matters of TTD benefits, medical treatment and claim closure have been affirmed by the Appeals Officer and are currently pending in District Court. You appealed the Hearing Officer's Decision affirming denial of TTD benefits and the

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Appeals Officer affirmed the denial. This case is pending at the District Court. Claim closure was affirmed by a Hearing Officer and Appeals Officer. The case is also pending at the District Court.

DETERMINATION:

Determinations regarding TTD benefits and claim closure were affirmed by a Hearing Officer and Appeals Officer. Certificates of disability were not received for the specific periods in questions. Medical treatment was provided timely as ordered.

ADMINISTRATIVE FINE:

Based on the findings of fact, it is determined that there are no violations that would warrant an administrative fine.

BENEFIT PENALTY:

It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

NOTICE OF RIGHT TO APPEAL:

If a person wishes to contest a written determination of the administrator to refuse to impose a benefit penalty pursuant to NRS 616D.120, he must file a notice of appeal with an appeals officer within 30 days after the date on which the administrator's determination was mailed. The notice of appeal must set forth the reasons the refusal to impose a benefit penalty should not be issued. **If a notice of appeal is not filed as required, the refusal to impose a benefit penalty shall be deemed a final order and is not subject to review by any court or agency.**

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The notice of appeal should be addressed to the Department of Administration, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102 or the Department of Administration, Appeals Office, 1050 East Williams Street, Suite 450 Carson City, Nevada 89701.

Sincerely,
Don Jayne, Administrator
Division of Industrial Relations

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

CJV:cgp

cc: Don Jayne, Administrator, DIR
CCMSI

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EXHIBIT C

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STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

HEARINGS DIVISION

In the Matter of the Industrial Insurance Claim of:	)	Hearing Number: LV 89-4307
	)	Claim Number: 7715-1035-88
	)	Employer: BALLY'S GRAND
SUSAN REEVES 4724 E. Washington Las Vegas, NV 89110	)	

BEFORE THE HEARING OFFICER

On September 18, 1989, a hearing relative to the captioned matter was convened, said hearing being held in accordance with Chapter 616 of the Nevada Revised Statutes. Pursuant to said hearing, an order of remand was executed on September 19, 1989 ordering the self insured employer's administrator to open the claimant's claim under medical investigation. The objective of the investigation would be to determine the probability that the claimant's now presenting symptoms owe their etiology to the most recent automobile accident of September 25, 1988. Additionally, the Hearing Officer executed an order of correction on 27th October 1989 advising all parties that the Hearing Officer was retaining jurisdiction, rescinding appeal rights and enjoining the administrator to make the results of the medical investigation available to the Hearing Officer within 5 working days from the date of the order. Now, the Hearing Officer is in receipt of information dated September 25, 1989 from Dr. Vincent Cederblade, the administrators medical advisor indicating "it appears the (claimant) was treated for dizziness and headaches and postural problems stemming from a previous accident in 1987 and has continued to do so after her accident in the parking lot @ Bally's. Therefore I (Dr. Cederblade) don't think you have to accept liability for a pre-existing problem."

Now, the insurer's medical advisor, indeed, paid close attention to those medical records available and determined that the claimant had a pre-existing condition which was not, exacerbated by the most recent incident.

This, coupled with the Hearing Officer's reading of a report by Dr. Frederick T. Boulware dated December 12, 1988 and the Hearing Officer recognizes the fact that the claimant's now presenting symptoms most probably owe their etiology to the non industrial automobile accident which occurred on July 20, 1987. This as typified by the following excerpt from Dr. Boulware's report "This 37-year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an automobile accident which occurred on July 20, 1987."

Unfortunately, while the claimant does, indeed, unquestionably have major problems with dizziness, it does not appear that these problems owe their etiology to the industrial accident of September 25, 1988. Instead, it would

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seem that these problems owe their etiology to a non industrial accident of July 20, 1987.

DECISION

Based upon the foregoing, it is the decision of the Hearing Officer to affirm the self insured employer administrator's determination of June 9, 1989.

The claimant, employer and/or the self-insured administrator are advised that they have the right to appeal this decision to the Appeals Officer as specified in Chapter 616 of the Nevada Revised Statutes. If the claimant, employer and/or the self-insured administrator wish to appeal this Hearing Officer's decision, the attached Basis for Appeal form should be returned to and filed with the Appeals Officer within sixty (60) days from the date of this decision.

Should the claimant desire to have a State Industrial Claimants Attorney appointed in their industrial insurance claim before the Appeals Officer at no cost, please indicate on the attached Request for Hearing form by checking the appropriate box near the bottom of the page.

Dated this 30th day of Nov, 1989.

Edwin Armstrong, Hearing Officer

EA/tb

cc: Susan L. Reeves
Bally's Grand
S.I.S. Administrators

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BALLY'S GRAND HOTEL & CASINO, Appellant,
v.
Susan REEVES, Respondent.

No. 25600.

Supreme Court of Nevada.

Nov. 26, 1997. [FN*]

FN* Editor's Note: This opinion was originally issued August 28, 1997. In light of the inadvertent application of the incorrect standard with respect to the industrial aggravation of previous non-industrial injuries, the opinion filed August 28, 1997, was withdrawn. This substitute opinion was filed November 26, 1997, in its place.

Workers' compensation claimant appealed administrative appeals officer's decision denying benefits. The Eighth Judicial District Court, Clark County, John S. McGroarty, J., set aside decision and remanded for reconsideration by self-insured employer's claims administrator. Employer sought review. After establishing jurisdiction, 929 P.2d 936, the Supreme Court, Springer, J., held that: (1) remand was warranted by irregularities in manner that claim was handled by administrator and hearing officer; (2) appeals officer's decision was not supported by substantial evidence; (3) claimant was not required to present objective medical evidence to support claim for soft tissue injury; and (4) administrator, hearing officer, and appeals officer were required to determine whether industrial accident was a cause of aggravation.

Affirmed.

[1] WORKERS' COMPENSATION ⚖1950
413k1950
Remand of workers' compensation claim to self-insured employer's claims administrator was warranted by irregularities in handling of claim by administrator and hearing officer; record was not clear as to whether administrator considered claimant's proffered excuse for failure to timely give notice or file written claim, hearing officer made decision on grounds that claimant did not assert in request for hearing, and hearing officer did not consider all medical data available. N.R.S. 616.500, subd. 6 (1988).

[2] ADMINISTRATIVE LAW AND PROCEDURE ⚖754.1
15Ak754.1
Under statute governing judicial review of final decision of administrative agency, Supreme Court is authorized to correct errors of law and to review evidence presented to agency to determine whether agency's decision was arbitrary or capricious and was thus abuse of agency's discretion. N.R.S. 233B.135.

[2] ADMINISTRATIVE LAW AND PROCEDURE ⚖763
15Ak763
Under statute governing judicial review of final decision of administrative agency, Supreme Court is authorized to correct errors of law and to review evidence presented to agency to determine whether agency's decision was arbitrary or capricious and was thus abuse of agency's discretion. N.R.S. 233B.135.

[2] ADMINISTRATIVE LAW AND PROCEDURE ⚖796
15Ak796
Under statute governing judicial review of final decision of administrative agency, Supreme Court is authorized to correct errors of law and to review evidence presented to agency to determine whether agency's decision was arbitrary or capricious and was thus abuse of agency's discretion. N.R.S. 233B.135.

[3] ADMINISTRATIVE LAW AND PROCEDURE ⚖791
15Ak791
Decision of administrative agency will be affirmed only if there is substantial evidence to support decision.

[4] ADMINISTRATIVE LAW AND PROCEDURE ⚖791
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"Substantial evidence" supporting agency decision is that which reasonable mind might accept as adequate to support a conclusion.
See publication Words and Phrases for other judicial constructions and definitions.

[5] WORKERS' COMPENSATION ⚖1488

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413k1488
Appeals officer's decision, that nonindustrial rear-end automobile accident was sole cause of workers' compensation claimant's present injuries, was not supported by substantial evidence.

[6] WORKERS' COMPENSATION ⇐1417
413k1417
Workers' compensation claimant was not required to present objective medical evidence to support claim for soft tissue injury suffered by reason of typical cervical sprain/strain.

[7] WORKERS' COMPENSATION ⇐1366
413k1366
Under standard in effect prior to enactment of statute governing preexisting conditions, in case of industrial aggravation of preexisting nonindustrial disease or condition, workers' compensation claimant had burden of showing that claimed disability or condition was caused or triggered or contributed to by industrial injury and not merely the result of natural progression of preexisting disease or condition. N.R.S. 616C.175.

[8] WORKERS' COMPENSATION ⇐598
413k598
Under standard in effect prior to enactment of statute governing preexisting conditions, for industrially related accident to be compensable through workers' compensation, it did not have to be the cause of injury or death, but merely a cause; if claimant's job precipitated or accelerated the condition, a causal connection with the work could be found. N.R.S. 616C.175.

[9] WORKERS' COMPENSATION ⇐554
413k554
Under standard in effect prior to enactment of statute governing preexisting conditions, where workers' compensation claimant claimed to suffer from both new industrial injury and aggravation of preexisting nonindustrial injury, claims administrator, hearing officer, and appeals officer were required to determine whether claimant's industrial accident was a cause of aggravation, with respect to those injuries thought by competent medical authority to have been aggravation of preexisting condition. N.R.S. 616C.175.

*1201 Schreck, Jones, Bernhard, Woloson & Godfrey and F. Edward Mulholland II, Las Vegas, for Appellant.

Pearson & Patton and Douglas M. Rowan, Las Vegas, for Respondent.

OPINION

SPRINGER, Justice:

The subject matter of this case is the denial of respondent Susan Reeves' claim for industrial insurance benefits. At every administrative level, Ms. Reeves was denied benefits on the ground that she did not comply *1202 with the formal claim-filing requirements of NRS 616.500 and on the ground that all of her claimed injuries were sustained as a result of a previous non-industrial accident.

The district court "set aside" the administrative appeals officer's decision which denied industrial insurance benefits to Ms. Reeves and ordered that "this matter be remanded for reconsideration of Susan Reeves' claim by Bally's self- insured administrator." [FN1] Because of the irregularities in the handling of the claim by Bally's administrator and the hearing officer, and because of error on the part of the appeals officer, we affirm the district court's judgment.

> FN1. This court confirmed that jurisdiction may rest in this court despite the remand language in the district court's order. See Bally's Grand Hotel v. Reeves, 112 Nev. 1487, 929 P.2d 936 (1996).

Two issues recur in this case. One issue is whether claimant Reeves should be "excused" for her noncompliance with the formal claim-filing requirements of NRS 616.500; the other issue is whether Ms. Reeves should be deprived of benefits for injuries suffered in her industrial accident because she was involved in a previous, non-industrial accident. We conclude that the district court was correct in remanding the matter to the self-insured administrator because the record does not reveal adequate consideration by the administrator of the first issue, namely, whether Ms. Reeves was entitled to be excused for her failure to comply with the formal requirements of NRS 616.500. The district court was also correct in remanding the matter to Bally's administrator because of the manner in which Ms. Reeves' claim was denied on its merits; in effect, the hearing

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officer ruled that the sole cause of her present complaint was a previous non-industrial accident.

WHETHER CLAIMANT SHOULD BE "EXCUSED" FOR HER FAILURE TO COMPLY WITH THE FORMALITIES OF NRS 616.500

Ms. Reeves' claim was denied by the administrator, by the hearing officer and, ultimately, by the appeals officer, on the ground that Ms. Reeves failed to file a timely written claim in the manner required by NRS 616.500. Ms. Reeves admits that she failed to conform to the formal requirements of the statute; and, consequently, the only issue that remains is whether there is "sufficient reason" to excuse this failure.

Under NRS 616.500(6), [FN2] an industrial accident insurer may excuse a claimant's failure to comply with the formalities of NRS 616.500(1), the claims statute, where there is "sufficient reason" for doing so, principally in cases in which a claimant has an excuse based upon "mistake or ignorance of fact or of law." We have held that an employer's knowledge of an industrial injury or an injured employee's giving actual notice of the injury to the employer may excuse a failure to abide by the formal written notice requirements of NRS 616.500. [FN3] Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 854 P.2d 862 (1993); Industrial Commission v. Adair, 67 Nev. 259, 217 P.2d 348 (1950). This, of course, is a matter to be dealt with on remand.

FN2. At the time of the claimant's industrial accident, NRS 616.500(6) read as follows:

6. Failure to give notice or to file a claim for compensation within the time limit specified in this section is a bar to any claim for compensation under this chapter, but such failure may be excused by the insurer on one or more of the following grounds:

(a) That notice for some sufficient reason could not have been made.

(b) That failure to give notice will not result in an unwarrantable charge against the state insurance fund.

(c) That failure to give notice was due to the employee's or beneficiary's mistake or ignorance of fact or of law, or of his physical or mental inability, or to fraud, misrepresentation or deceit.

See 1989 Nev.Stat., ch. 161, § 2, at 332.

FN3. Ms. Reeves claims that she gave notice orally to her supervisors that she had suffered an on-the-job injury and that her employer was on notice of her claim thereafter. Ms. Reeves also explains that at the time in question there was in progress a transfer of interest from MGM to Bally's and that she was advised that it would not be necessary to take any action on her claim until the transfer was completed. This would appear to be a prima facie case of mistake or ignorance of both fact and law; but we leave these matters for administrative reconsideration on remand.

On May 25, 1989, the administrator denied, in writing, Ms. Reeves' late- filed claim

> based on NRS 616.500 paragraph 1. "Notice of the injury for which compensation is *1203 payable under this chapter must be given to the insurer as soon as practicable, but within 30 days after the happening of the accident."

When the insurer denied the claim, it arguably concluded at the same time that no "sufficient reason" existed under NRS 616.500(6) to "excuse" Ms. Reeves' failure to conform to formal filing requirements. It is not clear from this record, however, whether the insurer actually considered Ms. Reeves' excuse and rejected it for lack of "sufficient cause." We see no reason to disturb the trial court's order remanding the matter to the administrator for reconsideration of all issues. On remand, the administrator will be required to consider the excuse presented by Ms. Reeves and to notify her as to whether her excuse will be allowed under NRS 616.500(6). [FN4]

FN4. NRS 616.500(6) gives broad discretionary powers to employers as to whether they should accept or reject employees' excuses for failing to comply. According to the statute "such failure may be excused by the insurer." (Emphasis added.) The insurer, then, may or may not find that there is "sufficient reason" to permit the excuse and thus allow a formally noncomplying claim to proceed. The wording of the statute would appear to make the granting or rejecting of an employee's excuse a matter of grace that lies completely within the discretion of the employer. This cannot, and does not, mean, however, that the insurer's decision is inviolate. This is especially true in cases of self-insured employers, who are interested parties when they make decisions as to whether an employee should "be excused by the insurer" under NRS 616.500(6). It is clear, for example, that an insurer's arbitrary decision not to

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excuse an employee's failure, in a case where a clear and justifiable "mistake or ignorance of fact or law" exists, may not properly be allowed to bar claimant's pursuit of an otherwise legitimate industrial claim. A self- insured's decision to deny an excuse under NRS 616.500(6) is reviewable de novo by a hearing officer, who must decide whether the proffered excuse is covered by one of the grounds enumerated in the statute. The statute requires that the first decision in these matters must be made by the insurer.

WHETHER THE CLAIM SHOULD HAVE BEEN DENIED ON THE GROUND THAT ITS SOLE "ETIOLOGY" IS A PRIOR, NON-INDUSTRIAL ACCIDENT

Ms. Reeves' claim arises from a rear-end collision that occurred in Bally's parking lot on September 25, 1988. On July 20, 1987, some fourteen months before the subject work-related injury, Ms. Reeves was involved in a similar, nonindustrial accident. Ms. Reeves claims that the first accident caused physical injuries which to some degree overlap her present injuries. She claims that by the time she was involved in the accident in the Bally's parking lot, she had almost entirely recovered from the headaches and vertigo suffered in the first accident. Ms. Reeves contends that the industrial accident both aggravated her previous injuries and caused injuries independent of the previous injuries. As will be discussed, ample medical evidence is present to support Ms. Reeves' contentions. [FN5]

FN5. Ms. Reeves' physician treated her with regard to both accidents. This physician, Dr. Barton Becker, verifies Ms. Reeves' statements, pointing out that after the first accident Ms. Reeves "show[ed] progressive improvement in her symptoms, such as decreased vertigo and headaches." When Dr. Becker examined Ms. Reeves for injuries sustained in the second, September, 1988, accident, the doctor noted "increased neck pain and tenderness, headaches, and postural vertigo ... left ear tinnitus [ringing in the ear]." Dr. Becker reported that after the second accident an "audiogram reveals a mild bilateral sensorineural loss, worse in the right ear." Dr. Becker's conclusion relative to injuries resulting from the industrial accident is:

Mrs. Reeves has not done well since her second accident. She may have permanent neck problems and vertigo.

Dr. David Toeller prepared an "independent medical exam" dated June 1, 1989, in which he furnished the following diagnosis:

1. Cervical sprain/strain syndrome with no objective neurological or orthopedic findings.
2. The two motor vehicle accidents were not close enough together to justify a diagnosis of a second injury syndrome.
3. The patient has positional dizziness assumed to be a vestibular irritation or eustachian tube dysfunction related to her cervical soft tissue injuries.

As stated above, Bally's denied Ms. Reeves' claim on the ground that it was not properly and timely filed. On June 30, 1989, Ms. Reeves filed a "Request for Hearing," with the Hearing Division. Her request for hearing, understandably, addressed only the issue on which her claim was denied, her failure to comply with the formal filing requirements of NRS 616.500(1). Ms. Reeves *1204 explained in her Request for Hearing that she had given oral notice to her supervisor at the time of her accident and noted in this document that "[b]oth managers and asst. managers knew of the accident." Ms. Reeves has maintained throughout that, at the time of the accident, she did not understand that the notice had to be in writing. She also maintains that when she made inquiries to Bally's management about what was required to complete her claim, she was told that appropriate forms and documents were in the process of being resupplied, that "everything was being changed over" from MGM to Bally's and that the claims procedure "would be taken over later."

On September 18, 1989, a hearing was set to review the denial of Ms. Reeves' claim based on noncompliance with formal claim-filing requirements; however, for some reason not evident in this record, the hearing officer, sua sponte, "determined that the claimant had sustained two separate automobile accidents" and that the claimant was "experiencing similar symptoms" to those that she sustained in a previous nonindustrial accident. On September 19, 1989, the hearing officer determined, based on an independent review of the record, that Ms. Reeves' claim must be "remanded to the administrator to have the claimant's claim opened under medical investigation," with the "objective" of determining the "probability" that the "claimant's now presenting symptoms owe their etiology to the most recent automobile accident of September 25, 1988."

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The next step in these proceedings was the hearing officer's issuance of an ex parte "Order of Correction," issued sua sponte by the hearing officer on October 27, 1989. In this order, the hearing officer made it clear that jurisdiction was retained and that Ms. Reeves' rights to appeal were suspended, pending receipt of a "medical investigation" that the hearing officer ordered Bally's to complete.

In response to the hearing officer's October 27, 1989 order, Bally's claims administrator submitted its "medical investigation" in the form of a note subscribed by Bally's "medical adviser," Dr. Vincent Cedarblade. In transmitting Dr. Cedarblade's handwritten note, Bally's claims administrator did not deny Ms. Reeves' claim, but did advise the hearing officer that the insurer's medical advisor "did not think that [Bally's] should accept responsibility for a pre-existing condition." Dr. Cedarblade's note read as follows:

> 9-25-89. It appears she was treated for dizziness and headaches and postural problems stemming from a previous accident in 1987 and has continued to do so after her accident in the parking lot at Bally's. Therefore I don't think you have to accept liability for a pre existing problem—V. Cedarblade

Other than the previously mentioned September 18, 1989, hearing, the record does not reveal any further hearings by the hearing officer. Between the time of the September 18, 1989, hearing and the hearing officer's sua sponte order, no testimony was presented before the hearing officer. Apparently, however, after the September 18, 1989, hearing and before the hearing officer's decision in the matter, the hearing officer received additional evidence in the form of the aforementioned note written by Dr. Cedarblade and an "excerpt" from a report prepared by Dr. Predrick Boulware, dated December 12, 1989, which read as follows:

> This 37 year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an automobile accident which occurred on July 20, 1997.

On November 30, 1989, based on the foregoing "medical investigation," which Bally's was ordered to complete, the hearing officer ruled that all of Ms. Reeves' "problems owe their etiology to a non industrial accident of July 20, 1987." Ms. Reeves filed an appeal from the hearing officer's decision, contending that she had asked for a hearing to review Bally's denial of her claim for failure to abide by formal filing requirements. Ms. Reeves complained that her claim was denied by the hearing officer on other, substantive grounds, namely, that the injuries upon which her claim was based owed their "etiology" to her non-industrial accident and were not, therefore, covered by Bally's insurance. On March 26, 1991, an appeals officer affirmed the hearing officer's decision. Thereafter, the district court granted Ms. Reeves' petition for judicial review.

*1205 [1] We conclude that the district court properly granted Ms. Reeves' petition. Not only was Ms. Reeves "blind sided" by having the hearing officer base the decision on grounds that Ms. Reeves did not assert, it does not appear that the hearing officer considered Ms. Reeves' arguments or all of the pertinent medical data that was available at the time. The record before us, and especially the wording of Ms. Reeves' hand-written appeal referred to below, reveals that Ms. Reeves was not given an opportunity before the hearing officer to respond to whatever it might have been that inexplicably led the hearing officer to conclude that Ms. Reeves' physical "problems owe their etiology to a non-industrial accident of July 20, 1987." In other words, the hearing officer concluded that Ms. Reeves' September 25, 1988, industrial accident was not related to her present complaints. This is an extreme and untenable position, a position that is not supported by this record.

At the time of Ms. Reeves' hearing before the hearing officer it had been conceded, and is still conceded, that Ms. Reeves' injuries arose out of and in the scope of her employment. She had no reason to suspect when she filed her Request for Hearing that the hearing officer was going to launch an inquiry into causation or the so-called "etiology" issue, an issue that was conjured by the hearing officer herself. In her appeal, Ms. Reeves makes it clear that she was very much aware of and troubled by the unfairness and confusion inherent in the hearing officer's changing the hearing from a review of the question of whether she was entitled to pursue her claim despite her failure to make a timely written claim into a "medical investigation" that would ultimately result in a denial of her claim on

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its merits.

In her handwritten appeal document, Ms. Reeves writes that the "reason" for her appeal was that the hearing officer had "withdrawn" Ms. Reeves' stated ground for review (which was, of course, that she had an excuse for noncompliance with formal notice requirements) and had substituted a totally new issue, the "etiology" issue. Ms. Reeves complained in her appeal document that if she was going to be

> denied on other grounds [that is, the "etiology" grounds] I should have had due time for all of my evidence. The SIS [sic] did not send me to any medical doctors for determination and only pick and chose [sic] lines on certain papers of my doctors, which I supplied. Long before the hearing date I have evidence of my greatly improved condition that I was unable to bring up due to it was not on my hearing denial of 9/18/89.[[FN6]]

> FN6. Ms. Reeves is referring to the hearing upon which the September 19, 1989, Order of Remand was based, the hearing in which the hearing officer decided to make the "etiology" of Ms. Reeves' physical problems the issue rather than the untimely written notice grounds for denial stated by the insurer.

The grounds for Ms. Reeves' appeal, then, are: (1) that her failure to file timely written notice was improperly and sua sponte "withdrawn" by the hearing officer, presenting her with an entirely new, uncharged basis for denial of her claim on its merits; (2) that she was not given an adequate opportunity to present evidence in opposition to the newly framed medical issues before the hearing officer; and (3) that the hearing officer engaged in a biased and unfair selection of medical data, relying on the insurer's "medical advisor" and an isolated, virtually meaningless "excerpt" from a report of another physician.

Although we approve of the district court's remand of this matter to Bally's administrator, we perceive that all of Ms. Reeves' grounds for appeal have substance. Giving credence to Ms. Reeves' contentions (aside from the bias inherent in the hearing officer's having put such great stock in the report of Bally's medical advisor) is the fact that neither Dr. Cedarblade nor Dr. Boulware provided the hearing officer with an acceptable basis for denying Ms. Reeves' industrial accident claim. Dr. Cedarblade correctly reported that Ms. Reeves had been treated for "dizziness, and headaches and postural problems stemming from a previous accident." Dr. Cedarblade noted that Ms. Reeves continued to suffer from the mentioned types of problems; but Dr. Cedarblade did not contend that Ms. Reeves did not suffer any additional or aggravating injuries as a result *1206 of the later, industrial accident. Dr. Boulware wrote nothing of import regarding whether Ms. Reeves suffered a compensable injury in her second accident. Dr. Boulware referred only to Ms. Reeves' "headache" and "dizziness," and merely stated that these symptoms "had persisted" since the former accident. Again, Dr. Boulware did not state that Ms. Reeves suffered no additional or aggravating injuries in the second accident or that the entire "etiology" of Ms. Reeves' complaints was the non- industrial accident.

The November 30, 1989, decision of the hearing officer does not mention another significant medical record that was available at that time, namely, Dr. Toeller's "independent medical exam." In this independent examination, Dr. Toeller diagnoses Ms. Reeves' injuries relative to the stated "date of loss: 9/25/88" (the industrial accident), as being "cervical sprain/strain syndrome" and rules out "second injury syndrome." [FN7] In the presence of an independent medical examination describing the nature of injuries sustained by Ms. Reeves in the subject industrial accident, and in the absence of any medical opinion that Ms. Reeves suffered no injury or aggravation arising out of the industrial accident, it is not easy to understand how the hearing officer could have denied this claim. [FN8] The hearing officer was clearly acting in an arbitrary and capricious manner in deciding to deny this claim on the ground that Ms. Reeves' injuries "owe their etiology" to a previous, non- industrial accident.

> FN7. It is not entirely clear what the doctor meant when he wrote of a "second injury syndrome." When Dr. Toeller denied that Ms. Reeves was suffering from a second injury syndrome, he appears to be saying, in support of Ms. Reeves' claim, that the two injuries were separate and had an independent existence. We make no conclusions on the subject, however, and leave this matter for proper inquiry on remand.

> FN8. The only hearing held by the hearing officer was on September 18, 1989, and the only business conducted at that hearing was the hearing officer's

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deciding to open up the "etiology" question and to rule "that the matter should be remanded to the administrator to have the claimant's claim opened under medical investigation." If Ms. Reeves was going to be denied on medical grounds rather than on the ground of noncompliance with NRS 616.500(1), she should have been given, as she requested, "due time for all of [her] medical evidence" to be marshalled. Ms. Reeves told everyone that would listen to her that she had received some new injuries and that her previous injury had been aggravated. No adjudicator could have denied this claim without concluding that Ms. Reeves was not being truthful, despite the fact that this conclusion would be inconsistent with all of the available medical evidence. Nothing in the record indicates that Ms. Reeves was anything other than a completely sincere and believable claimant.

ERROR ON THE PART OF THE APPEALS OFFICER

We have reviewed several "irregularities" in the manner that this claim was handled by Bally's administrator and by the hearing officer, and have come to the conclusion that these irregularities are sufficient in themselves to warrant the remand to the administrator ordered by the district court. This appeal, however, is from the district court's order setting aside the decision of the appeals officer.

[2][3][4] NRS 233B.135 governs judicial review of the final decision of an administrative agency, in this case represented by the decision of the appeals officer. Under this statute, the supreme court is authorized to correct "errors of law" and

> to review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion.

Clements v. Airport Authority, 111 Nev. 717, 721, 896 P.2d 458, 460 (1995). Further, the decision of an administrative agency will be affirmed only if there is substantial evidence to support the decision. SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987). Substantial evidence is that which " 'a reasonable mind might accept as adequate to support a conclusion.' " State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971)).

[5] We conclude that the district court was quite correct in its decision to "set aside" the appeal officer's ruling on the ground that the record was "without substantial evidence to support the decision of the appeals officer." From our discussion relating to the hearing officer's decision in this case, no *1207 substantial evidence exists that is adequate for a reasonable mind to accept the conclusion that the non-industrial accident was the sole cause of Ms. Reeves' present injuries and complaints. We therefore affirm the district court's judgment in this regard.

[6] Additionally, the appeals officer made an erroneous "conclusion of law" when she concluded that the "objective medical evidence does not establish a change in Claimant's condition between the first serious automobile accident and the second minor accident" and that objective medical evidence did not support a finding of "a medical condition causally related to the September 25, accident." The appeals officer made an error of law by requiring "objective medical evidence" to support a claim for the kind of soft tissue injury suffered by Ms. Reeves by reason of a typical "cervical sprain/strain." Such injuries rarely manifest themselves in objective terms, confirmable by x-ray or other physical means of establishing "objective" physical harm. If we were to accept the appeals officer's conclusion of law and declare that soft tissue injuries must, in industrial accident claims cases, be established by "objective evidence," we would work a great mischief indeed to workers' compensation law. The kinds of injuries sustained by Ms. Reeves can be reliably established by any reasonable and probable medical testimony, independent of "objective" evidence of the injury.

The hearing officer, by ruling that Ms. Reeves' "problems owe their etiology" to a previous accident, appears to have accepted a determination made by "the insurer's medical advisor" that "the claimant had a pre-existing condition which was not exacerbated by the most recent incident." The appeals officer affirmed this ruling of the hearing officer. As discussed above, Ms. Reeves was not required to establish her injuries by "objective" medical evidence. Additionally, at the time that Ms. Reeves' industrial claim arose, we had recognized that " 'preexisting illness normally will not bar a claim if the employment aggravates, accelerates or combines with the disease to trigger disability or death.' " State Industrial Insurance System v.

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Kelly, 99 Nev. 774, 775, 671 P.2d 29, 29-30 (1983) (quoting Spencer v. Harrah's, Inc., 98 Nev. 99, 101, 641 P.2d 481, 482 (1982)).

[7][8] In Kelly, we adopted the rule that the "claimant has the burden of showing that the claimed disability or condition was in fact caused or triggered or contributed to by the industrial injury and not merely the result of the natural progression of the preexisting disease or condition." Id. at 775-76, 671 P.2d at 30 (citing Arellano v. Industrial Commission, 25 Ariz.App. 598, 545 P.2d 446, 452 (1976)). We further recognized in Kelly that "[t]he fact that industrial aggravation may have been but one of several causes producing the symptomatic condition is of no moment. 'An industrially related accident does not have to be the cause of injury or death, but merely a cause. If the job is said to precipitate or accelerate the condition, a causal connection with the work can be found.' " Id. at 776, 671 P.2d at 30 (quoting Harbor Insurance Company v. Industrial Commission, 25 Ariz.App. 610, 545 P.2d 458, 461 (1976)). This was the standard in effect at the time that Ms. Reeves' industrial claim arose. [FN9]

FN9. In 1993, the legislature adopted NRS 616.50185, now codified as NRS 616C.175, and changed the applicable standard. With respect to the claims that arise after the enactment of this statute, the claimant is not entitled to compensation for job-related accidents that "aggravate [ ], precipitate[ ], or accelerate[ ]" a "preexisting condition," unless the industrial accident is the primary cause of the resulting injury or disability. See Ross v. Reno Hilton, 113 Nev. 228, 931 P.2d 1366 (1997); NRS 616C.175. Here, however, as Ms. Reeves' claim arose in 1988, the provisions of NRS 616C.175 (formerly NRS 616.50185) do not apply. See Ranieri v. Catholic Community Servs., 111 Nev. 1057, 1063 n. 1, 901 P.2d 158, 162 n. 1 (1995) (concluding, with respect to an industrial injury that arose in 1989, that the Kelly standard applied and that NRS 616.50185 was inapplicable).

[9] The medical records in this case indicate that Ms. Reeves claims to suffer from both new injuries and aggravating injuries. With respect to those injuries thought by competent medical authority to have been an aggravation of a preexisting condition, the claims administrator, the hearing officer and *1208 the appeals officer should have determined whether Ms. Reeves' industrial accident was a cause of the aggravation.

For all of the reasons discussed herein, the judgment of the district court is affirmed; and the matter will, in accordance with the order of the district court, be remanded for reconsideration by Bally's self-insured administrator.

SHEARING, C.J., and ROSE, YOUNG and MAUPIN, JJ., concur.

END OF DOCUMENT

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NEVADA DEPARTMENT OF ADMINISTRATION
HEARING OFFICER DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Numbers: LHS 1999-C-1443-NG, LHS 1999-C-1444-NG, LHS 1999-C-1578, LHS 1999-C-1672-NG, LHS 1999-C-1958-EB and LHS 1999-C-1781-SE
	Claim Number: 072-88-0377
	Employer:
SUSAN REEVES	ATTN ETHEL PIPP/CLAIMS ADMINISTRATION BALLYS
4724 EAST WASHINGTON AVENUE	1850 EAST FLAMINGO RD 145
LAS VEGAS NV 89110	LAS VEGAS NV 89119

MARK PLACE CLAIMS
LAS VEGAS, NEVADA
99 JAN 27 PM 2 10

HEARING OFFICER DECISION AND ORDER
BEFORE THE HEARING OFFICER

The claimant's requests for hearing were filed on September 7, 4, 11, 16, 28 and 21, 1998. Hearings were scheduled for October 14, 19 and 22, 1998. The hearings were consolidated and held on January 11, 1999, in accordance with Chapter 616 of the Nevada Revised Statutes.

The claimant was present. The claimant was represented by Douglas Rowan, Esquire. The employer was not present. The employer was represented by Edward Mulholland, Esq.

ISSUE

The claimant appealed the insurer's decisions dated June 2, 1998, July 14, 1998, September 15, 1998. Joined herein is the insurer's decision dated August 27, 1998.

The issues before the Hearing Officer are claim closure, average monthly wage, temporary total disability and interest payments.

DECISION and ORDER

Hearing numbers LHS 1999-C-1444-NG, LHS 1999-C-1958-EB and LHS 1999-C-1443-NG were filed pursuant to the claimant's requests for hearings, however, there were no determinations attached thereto.

Hearing number LHS 1999-C-1781-SE is the result of the insurer's determinations dated June 2, 1998 and September 14, 1998, that address the calculation of the claimant's benefits and their offset due to social security benefits received.

Hearing numbers LHS 1999-C-1578-NG and LHS 1999-C-1672-NG are duplicate appeals that result from the insurer's determination dated July 14, 1998 that deny the claimant's request for interest payment.

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The insurer's determination dated August 27, 1998 addresses the medical closure of this claim.

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Regarding the closure of this claim, the evidence shows that this claim was initially denied and via litigation was deemed a compensable claim. The basis of the August 27, 1998 closure was Dr. Oliveri's Independent Medical Evaluation dated August 18, 1998. However, the totality of the evidence raises a medical question regarding the claimant's continued symptomatology of headaches, dizziness, tinitus and vertigo. Accordingly, this matter is hereby REMANDED for the insurer to provide the claimant with a one time consult with a mutually agreed upon specialist in order that a further medical opinion can be rendered regarding treatment of these conditions. Upon completion, a further determination is to be generated, providing appropriate appeal rights, relative to the status of this claim.

Regarding the recalculation of the claimant's average monthly wage, NAC 616C.438 provides each day within the period of earnings, including vacation and other periods of unemployment, must be counted. Exception is made where Employee was absent because of a certified illness or disability, whether related to this industrial accident or not. Apparently, the period used to calculate the claimant's average monthly wage includes a period wherein the claimant was off work due a certified disability, i.e. foot surgery. Accordingly, this matter is hereby REMANDED for the insurer to recalculate the claimant's average monthly wage excluding that period when the claimant was off due to the aforementioned foot surgery. Upon completion, a further determination is to be generated, providing appropriate appeal rights, relative to this issue.

Regarding the claimant's temporary total disability benefits. The wage stubs indicate that the period used consists of 3,151 days, however, the calculation conducted used a period of 3,150 days. Therefore, this matter is hereby REMANDED for the insurer to provide the claimant with benefits based on 3,151 days.

Regarding the claimant's contention, through counsel, that she is entitled to interest payment on her retroactive benefits. The determination of the insurer is hereby REVERSED and REMANDED for the insurer to provide the claimant with interest payments pursuant to NRS 616C.335 that provides if a contested claim for compensation is decided in favor of the claimant, the claimant's entitled to an award of interest at the rate of 9 percent on the amount of compensation due the claimant, from the date the payment on the claim would be due until the date that payment is made.

APPEAL RIGHTS

Any aggrieved party may appeal this decision to the Appeals Officer, by completing the attached form and filing it with the Appeals Office within thirty (30) days of the date of the decision.

By: Nora Garcia Date: 1-25-99
Nora Garcia, Hearing Officer

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NG:ng

cc: D. Rowan, Esq. E. Mulholland, Esq. IIRS

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NEVADA DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: LHS2002-C-4641-NG Claim Number: 001504-001083 Employer:
SUSAN L REEVES 4724 E WASHINGTON AVE LAS VEGAS NV 89110	PAULA KITCHELL BALLY'S 3655 LAS VEGAS BLVD S LAS VEGAS NV 89109

_____/

The Claimant's request for hearing was filed on FEBRUARY 15, 2002 and a hearing was scheduled for THURSDAY, MARCH 14, 2002. The hearing was continued, reset, and heard on TUESDAY, APRIL 9, 2002, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present. The Claimant was represented by Douglas M. Rowan, Esquire. The Employer was not present. The Employer was represented by Lee Davis, Esquire for Santoro, Driggs, et al.

ISSUE

The Claimant appealed the determination of GALLAGHER BASSETT SERVICES, INC. dated December 27, 2001.

The issue before the Hearing Officer is CLAIM CLOSURE.

DECISION AND ORDER

After careful review and consideration of the totality of the evidence, Dr. Glyman's opinion that there is no further treatment to offer the claimant, is deemed proper and supported by the claim file. Accordingly, the insurer's determination is hereby **AFFIRMED.**

> **NAC 616C.112** {NAC 616.555} provides when the Insurer determines the Claimant has received all benefits known to be due, the Insurer shall close its file concerning the Employee and provide a

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claim closure notice, including appeal rights and claim reopening rights.

IT IS SO ORDERED this 19th day of April, 2002.

NORA GARCIA
HEARING OFFICER

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 555 E. Washington Ave., #3300, Las Vegas, Nevada, to the following:

SUSAN L REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS M ROWAN ESQ
6900 WESTCLIFF DR 800
LAS VEGAS NV 89128

PAULA KITCHELL
BALLY'S
3655 LAS VEGAS BLVD S
LAS VEGAS NV 89109

LEE DAVIS ESQ
SANTORO DRIGGS ET AL
400 S FOURTH ST 3RD FLR
LAS VEGAS NV 89101

ATTN JULIE VACCA
GALLAGHER BASSETT SERVICES INC
P O BOX 70687
LAS VEGAS NV 89170-0687

DATED this 19th day of April, 2002.

MARY E. HOLM
EMPLOYEE OF THE STATE OF NEVADA

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BEFORE THE APPEALS OFFICER

FILED
DEC 0 1 2003
APPEALS OFFICE

IN THE MATTER OF THE CONTESTED INDUSTRIAL INSURANCE CLAIM

of

SUSAN REEVES,

Claimant.

Claim No.: 001504-001083
Appeal No.: LAS2002-C-2501-NR

DECISION AND ORDER

This matter initially came on for hearing February 11, 2003 before Appeals Officer Nancy K. Richins, Esq. The Claimant was represented by Douglas M. Rowan, Esq. The Employer was represented by Daniel L. Schwartz, Esq.

The Appeals Officer entered an Interim Order requiring that the Claimant be seen for an independent medical examination by an appropriate psychologist or psychiatrist to address whether the Claimant's somatoform pain disorder pre-existed the industrial injury and, if so, if the industrial injury precipitated, aggravated, or accelerated the pre-existing disorder or if the Claimant's condition WAS a result of the natural progression of the pre-existing condition. Additionally, the independent medical examination was to determine, if the somatoform pain disorder was industrial, whether there was treatment needed for the condition.

In compliance with that Interim Order, Louis F. Mortillaro, Ph.D. performed a psychological evaluation of Claimant on April 14, 2003 and April 22, 2003. Dr. Mortillaro authored a report dated April 25, 2003 and a subsequent report dated May 5, 2003.

The above-entitled matter came on for hearing again on September 10, 2003, before Appeals Officer Nancy K. Richins, Esq. The Claimant was present and was represented by Douglas M. Rowan, Esq. The Employer was represented by Daniel L. Schwartz, Esq.

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PEARSON, PATTON, SHEA, FOLEY & KURTZ, P.C.
6900 Westcliff Drive, Suite 800
Las Vegas, Nevada 89145

After review of the evidence, Dr. Mortillaro's reports, and argument of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. Claimant was employed as a room reservation clerk at the MGM/Bally's Grand Hotel commencing on September 15, 1980.

2. On September 25, 1988, Claimant was rear-ended in her truck by a co-employee when she was turning into Bally's parking lot.

3. The Employer denied Claimant's claim for worker's compensation benefits on the basis that she did not timely file a claim for compensation. The Hearings Officer and Appeals Officer upheld the Employer's denial of Claimant's claim on the basis that Claimant had not timely filed her claim and that her injuries were the result of a pre-existing condition.

4. Claimant filed a Petition for Judicial Review with the District Court. On March 15, 1994, the District Court entered an order granting Claimant's Petition for Judicial Review, ruling that the Appeals Officer's Decision and Order was without substantial evidence.

5. The Employer appealed the District Court's Order to the Nevada Supreme Court. In August 1997, the Nevada Supreme Court issued an opinion affirming the decision of the District Court in Claimant's favor and remanded her claim to the Employer for reconsideration. The Supreme Court held "from our discussion relating to the Hearing Officer's decision in this case, no substantial evidence exists that is adequate for a reasonable mind to accept the conclusion that the non-industrial accident was the sole cause of Ms. Reeves' present injuries and complaints." On September 26, 1997, the Employer issued a letter accepting Claimant's claim as industrially compensable. Bally's Grand Hotel and Casino v. Reeves, 113 Nev. 926, 948 P.2d 1200 (1997).

On March 26, 2001, Dr. Steven Glyman conducted an independent evaluation of Claimant. Dr. Glyman found that Claimant was suffering from a non-industrial somatoform pain disorder. In

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Bally's Grand Hotel and Casino v. Reeves, 113 Nev. 926, 948 P.2d 1200 (1997), the Nevada Supreme Court indicated that the rule of law with respect to Claimant's claim with respect to the aggravation of non-industrial conditions was that "'the Claimant has the burden of showing that the claimed disability or condition was in fact caused or triggered or contributed to by the industrial injury and not merely the result of the natural progression of the pre-existing disease or condition.' State Industrial Insurance System v. Kelly, 99 Nev. 774, 775-76, 671 P.2d 29 (1983)."

The Appeals Officer requested that the physician performing the independent medical evaluation render an opinion as to whether the Claimant's somatoform pain disorder was industrial and, if so, whether further treatment would be recommended for this condition.

Dr. Mortillaro's report dated April 25, 2003 states:

> The objective and subjective psychological data results indicate that [Claimant] is manifesting symptoms related to psychological factors affecting her physical condition (DSM-IV-TR316). She has a long history of disability since 09/25/88 when she was injured in a second motor vehicle accident that has affected her overall life dynamics.

Dr. Mortillaro recommended the following:

> To assist [Claimant] in decreasing her pain intensity and duration, she is an appropriate candidate for participation in individual counseling sessions, biofeedback therapy and psychoeducational lectures in order to learn and implement appropriate pain and stress management coping skills.

The employer sent Dr. Mortillaro a letter dated May 2, 2003 indicating that his report did not address the questions submitted by the Interim Order. That letter requested that Dr. Mortillaro provide an opinion as to whether the Claimant's somatoform pain disorder is industrial.

Dr. Mortillaro authored a second report dated May 5, 2003. In that report, Dr. Mortillaro stated:

> In the past, [Claimant] has been diagnosed with a somatoform pain disorder and this diagnosis is industrial, not non-industrial, due to the fact that the psychological condition would not have been diagnosed

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without the presence of a presenting medical condition, which in her case, was industrially related.

Dr. Mortillaro recommended the following treatment for this industrial diagnosis:

> The treatment recommended to decrease her pain intensity and duration is short term individual pain and stress management counseling, biofeedback therapy and psychoeducational lectures in order for her to learn and implement appropriate pain and stress management coping skills. Her reports of periodic dizziness, dropping and falling down episodes, constant headaches, muscle spasms and tension in the SCM muscles are reliably remediated with a combination of the pain management psychological treatment recommended and appropriate physical therapy. This psychologist will consult with the physical therapist relative to specific modalities that may be helpful in combination with the psychological treatment to help Ms. Reeves resolve her pain and disability.

CONCLUSIONS OF LAW

1. Claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

2. Claimant's claim should not have been closed but should remain open for further benefits.

ORDER

IT IS HEREBY ORDERED the Decision of the Hearing Officer dated February 25, 2002 and the Employer's closure of claim is reversed and the claim reopened.

DATED this 9th day of December 2003.

NANCY K. RICHINS, ESQ.
Appeals Officer

...
...

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: 41025-SE Claim Number: H243724
SUSAN REEVES 4724 E WASHINGTON AVE LAS VEGAS, NV 89110	BALLY'S CINDY MCNULTY 3645 LAS VEGAS BLVD S LAS VEGAS, NV 89109

The Claimant's request for hearing was filed on June 18, 2007 and a hearing was scheduled for July 17, 2007. The hearing was held on July 17, 2007, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present and was accompanied by her husband. The Claimant was not represented by legal counsel. The Employer was not present. The Insurer was represented by Lee Davis, Esq.

ISSUE

The Claimant appealed the determination of SEDGWICK CMS dated SEPTEMBER 8, 2006.

The issue before the Hearing Officer is CLAIM CLOSURE.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED**. This matter is heard as a result of an Appeal Officer Order of Remand.

The most recent medical report is one and one half years old. There is no current or compelling medical evidence to support continued treatment under the workers compensation claim.

A preponderance of the evidence supports closure of the claim.

> The standard required for admissibility of an expert opinion regarding causation is "a reasonable degree of medical probability", **Brown and Johnson v. Capanna, 105 Nev. 11, (1989); Orcutt v. Miller, 95 Nev. 408, (1979).**

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NAC 616C.112 (NAC 616.555) provides when the Insurer determines the Claimant has received all benefits known to be due, the Insurer shall close its file concerning the Employee and provide a claim closure notice, including appeal rights and claim reopening rights.

IT IS SO ORDERED this 25 day of July, 2007.

Steven Evans
Hearing Officer

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing DECISION AND ORDER was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

CINDY MCNULTY
BALLYS
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

JANET MACHADO
SEDGWICK CMS
PO BOX 34660
LAS VEGAS NV 89133-4660

LEE DAVIS ESQ
SANTORO DRIGGS ET AL
400 S FOURTH ST THIRD FL
LAS VEGAS NV 89101

Dated this 25 day of July, 2007.

Louanne Helms
Employee of the State of Nevada

866

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: 38073-DH Claim Number: H243724 - JC
SUSAN REEVES 4724 E WASHINGTON AVE LAS VEGAS, NV 89110	BALLY'S CINDY MCNULTY 3645 LAS VEGAS BLVD S LAS VEGAS, NV 89109

The Claimant's request for hearing was filed on MAY 26, 2007 and a hearing was scheduled for MAY 2, 2007. The hearing was held on MAY 2, 2007, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present with her husband, Jeff Reeves. The Claimant was not represented. The Employer was not present. The Administrator was represented by of Lee Davis, Esq. of Santoro Driggs ET AL.

ISSUE

The Claimant appealed the determination of SEDGWICK CMS dated FEBRUARY 16, 2007.

The issue before the Hearing Officer is SCOPE OF CLAIM.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED.** The Claimant states the loss of balance due to dizziness is the cause of her broken toes and bruised ribs. The Claimant was injured on September 25, 1988. Sufficient evidence has not been provided to substantiate there is a causal connection with the broken toes and broken ribs with the industrial injury. Therefore, the denial is proper.

> **NRS 616C.160** (NRS 616.5018) requires where a condition is not mentioned in the initial report of injury or the medical history of the case, a physician must establish a firm causal relationship between the newly developed condition and the original accident in order for the condition to be compensable.

RECEIVED MAY 14 2007

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IT IS SO ORDERED this 10 day of May, 2007.

Daphne L Hodge
Hearing Officer

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

RECEIVED MAY 14 2007

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

CORY SANTOS ESQ
NV ATTORNEY FOR INJURED WORKERS
2200 S RANCHO DR #230
LAS VEGAS NV 89102

CINDY MCNULTY
BALLY'S
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

JANET MACHADO
SEDGWICK CMS
PO BOX 34660
LAS VEGAS NV 89133-4660

LEE DAVIS ESQ,
SANTORO DRIGGS ET AL
400 S FOURTH ST THIRD FLOOR
LAS VEGAS NV 89101

Dated this 10 day of May, 2007.

Ethel Fox
Employee of the State of Nevada

RECEIVED MAY 14 2007

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FILED
DEC 22 2009
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES 4724 East Washington Avenue Las Vegas, NV 89110 Claimant.	Claim No.: 88H92H243724 Appeal No.: 39934-GK 42367-GK Employer: BALLY'S Attn: Kathy Mone 3645 Las Vegas Boulevard South Las Vegas, NV 89109

DECISION AND ORDER

The above-captioned appeal came on for hearing multiple days before Appeals Officer GREGORY KROHN, ESQ. The claimant, SUSAN REEVES, was represented by, TERESA HORVATH, ESQ., of the NEVADA ATTORNEY FOR INJURED WORKERS. The Employer, BALLY'S, was represented by LEE DAVIS, ESQ., of SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON.

In a letter dated February 16, 2007, the Employer notified the claimant that her claim was accepted for specific injuries only. The claimant appealed that determination to a Hearing Officer.

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

In a letter dated September 8, 2006, the Employer notified the claimant that it was closing her claim. The claimant appealed that determination to a Hearing Officer.

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

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03637-462/537449

000339

SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

After reviewing the documentary evidence, hearing the testimony of witnesses, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

I.

FINDINGS OF FACT

1. On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury.

2. The claimant was also involved in a motor vehicle accident again on September 25, 1988.

3. The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim.

4. The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the matter to the Appeals Officer. On March 26, 1991 the Appeals Officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court.

5. The Claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness.

6. The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts.

7. On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that she be sent to pain management.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

8. On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain.

9. On February 27, 1991, the 5% PPD would be offered to the claimant.

10. On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. A second letter of acceptance would be sent to the claimant on May 12, 1998.

11. On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder.

12. On December 27, 2001 the claimant was sent a claim closure notice, that determination would later be reversed by an appeals officer awarding the claimant further medical care. The claimant would be sent to Dr. Mortillaro. In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer.

13. The claimant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004.

14. The claimant also continued to treat with Dr. Dunn in 2004.

15. The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility.

16. On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

17. On September 8, 2006 the claimant was sent a claim closure determination. The claimant appealed that determination.

18. A Hearing Officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

19. The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim.

20. On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination.

21. On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim.

22. The claimant appealed the hearing officer order of dismissal. The claimant brought the issue of her failure to appear to Appeals Officer Richens who issued an order of remand finding that the claimant established that she had not received the notice of hearing. The matter would be referred back to the hearing office for a hearing on the merits.

23. On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination.

24. The claimant appealed that decision. Both of these appeals have been consolidated.

25. The Employer served the claimant with interrogatory questions focused on the claimant providing specific dates when he injured herself as a result of falls. The questions also asked the claimant to provide the medical facilities that she sought medical attention as a result of her fall(s).

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SANTORO DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON
SDW

26. At the time of appeal hearing the claimant testified that she had many falls that she thought was caused by her industrial injuries. The claimant further testified that she believed that she was forced to require medical care for these falls.

27. These findings of fact are based upon substantial evidence within the record.

II.

CONCLUSIONS OF LAW

1. Under NRS 616C.160, the claimant must demonstrate that a late manifesting condition is caused by the accepted condition.

> 1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;
>
> 2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. The Claimant is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is the Claimant's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

III.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the claimant has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally the claimant has failed to establish an entitlement to further medical care and that claim closure was improper;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Officer Decisions dated May 10, 2007 and July 25, 2007 are AFFIRMED.

IT IS SO ORDERED.

DATED this 18th day of December, 2009

GREGORY KROHN, ESQ.
Appeals Officer

Submitted by,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

By: _____
LEE DAVIS, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for the Employer

NOTICE: Pursuant to NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service of this Order.

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03637-462/537449

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON
SDW

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the ___ _____ day of December, 2009, service of the foregoing **DECISION AND ORDER** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following::

Susan Reeves
4724 East Washington Avenue
Las Vegas, NV 89110

Teresa Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, NV 89102

Bally's
3645 Las Vegas Blvd. South
Las Vegas, NV 89109

Sedgwick Claims
P.O. Box 14438
Lexington, KY 40512-4483

Lee Davis, Esq.
Santoro, Driggs, Walch,
Kearney, Holley & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

DATED this 22nd day of December, 2009

An employee of the Department of Administration,
Appeals Office

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

SDW

OPP
LEE DAVIS, ESQ.
Nevada Bar No. 003932
LEWIS BRISBOIS BISGAARD & SMITH, LLP
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101
Tel: 893-3383
Fax: 893-3789

Attorneys for Employer, Bally's

DISTRICT COURT

CLARK COUNTY NEVADA

SUSAN REEVES, Petitioner, vs. BALLY'S GRAND HOTEL & CASINO, and THE DEPARTMENT OF ADMINISTRATION HEARING DIVISION, a State Agency, Respondents.	Case No.: A-10-607874-J Dept. No.: IX

OPPOSITION TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL AND RESPONDENT'S MOTION TO STRIKE PETITIONER'S SUPPLEMENTATION TO THE RECORD

COMES NOW the Respondent, BALLY'S GRAND HOTEL & CASINO, (hereinafter referred to as "Respondent"), by and through their attorney, LEE E. DAVIS, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and submits its Opposition to Petitioner's Motion to Supplement the Record on Appeal and Motion to Strike Petitioner's Supplementation to the Record.

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LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

4832-2366-5670.1

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DATED this 21st day of July, 2010

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

DEE F. DAVIS, ESQ.
Nevada Bar No. 003932
400 South Fourth Street, Suite 500
Las Vegas, NV 89101
(702) 583-6002
Attorneys for Respondent

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury. (ROA at pp. 000124-000127)

The claimant was also involved in a motor vehicle accident again on September 25, 1988. (ROA at pp. 000130-000135)

The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim. (ROA at pp. 000124-000127)

The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the mater to the Appeals Officer. On March 1991 the Appeals Officer issued a decision affirming claim denial. (ROA at pp. 000124-000127) The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court. (ROA at pp. 000128-000129)

The claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She has also been diagnosed with positional dizziness. (ROA at pp. 000130-000135)

The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts. (ROA at pp. 000130-000135)

On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform pain Disorder and recommended that she be sent to pain management. (ROA at pp. 000130-00135)

On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. (ROA at pp. 000136-000142)The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain. (ROA at pp. 000136-000142 and 000143-000144)

On February 27, 1991, the 5% PPD would be offered to the claimant. (ROA at pp. 000145-000150)

On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. (ROA at pp. 000151) A second letter of acceptance would be sent to the claimant on May 12, 1998. (ROA at p. 000152)

On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder. (ROA at p.p. 000153-000156)

On December 27, 2001 the claimant was sent a claim closure notice (ROA at pp. 000157-000158), that determination would later be reversed by an appeals officer awarding the claimant further medical care. (ROA at p. 000159) The claimant would be sent to Dr. Mortillaro. (ROA at pp. 000160-000161) In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer. (ROA at pp. 000162)

The clamant continued her care with Dr. Mortillero in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004. (ROA at pp. 000163-000185)

The claimant also continued to treat with Dr. Dunn in 2004. (ROA at pp.000186-000196)

The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility. (ROA at pp. 000197-000199)

On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare. (ROA at p. 000200)

On September 8, 2006 the claimant was sent to the claimant a claim closure determination. The claimant appealed that determination. A hearing officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim. (ROA at p. 000201)

On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination. (ROA at pp. 000202-000203)

On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim. (ROA at pp. 000263-000265)

The claimant brought the issue of her failure to appear. Appeals Officer Richens issued an order of remand finding that the claimant established that she had not received the notice of hearing. (ROA at pp. 000266-000267)

On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination. The claimant appealed that decision. Both of those appeals were consolidated. (ROA at pp. 000268-000269)

The Nevada Attorney for Injured Workers were appointed to represent the claimant.

This appeal follows.

On December 22, 2009, Appeals Officer Krohn issued a decision and order. (ROA at pp. 000013-000019)

Appeals Officer Krohn held that Ms. Reeves had not established that these new injuries were related to her claim. The Appeals Officer also held that the Claimant was not entitled to further medical care.

The Appeals Officer held that Reeves was given every opportunity to provide evidence:

> "It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did."

On or about January 15, 2010, Ms. Reeves filed a Petition for Judicial Review, appealing the Appeals Officer's December 22, 2010 Decision and Order.

ARGUMENT

I.

REEVES' EVIDENCE IS NOT ADMISSIBLE BEFORE THE DISTRICT COURT

NRS 233.135 states:

> **NRS 233B.135 Judicial Review: Manner of conducting; burden of proof; standard for review.**
>
> 1. Judicial review of a final decision of an agency must be:
> (a) Conducted by the court without a jury; and
> (b) Confined to the record. In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.

> 2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.
>
> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
> (a) In violation of constitutional or statutory provisions;
> (b) In excess of the statutory authority of the agency;
> (c) Made upon unlawful procedure;
> (d) Affected by other error of law;
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) Arbitrary or capricious or characterized by abuse of discretion.

NRS 233B.135 limits the evidence that a district court can consider on matters appealed on judicial review. Unless in rare instances, a district court may only consider evidence that was part of the lower court's record.

NRS 233B.131 provides that the lower court transmit to the reviewing court the original or a certified copy of the entire record under the proceeding under review, including a transcript of the evidence resulting in the final decision of the agency. The parties may stipulate to shorten the records.

NRS 233B.131(2) provides that a party may present additional evidence if it requests the court for leave to present the additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it to the proceeding before the lower court.

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LEWIS BRISBOIS BISGAARD & SMITH LLP

NRS 233B.131 states in part:

> **NRS 233B.131 Transmittal of record of proceedings to reviewing court by agency; additional evidence; modification of findings by agency.**
>
> 1. Within 30 days after the service of the petition for judicial review or such time as is allowed by the court, the agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, including a transcript of the evidence resulting in the final decision of the agency. The record may be shortened by stipulation of the parties to the proceedings. A party unreasonably refusing to stipulate to limit the record, as determined by the court, may be assessed by the court any additional costs. The court may require or permit subsequent corrections or additions to the record.
>
> 2. If, before submission to the court, an application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence and any rebuttal evidence be taken before the agency upon such conditions as the court determines.

In this case, the issues before the Appeals Officer pertained to the (a) scope of Ms. Reeves' industrial injury claim; (b) whether claim closure was proper.

The documentation that Ms. Reeves has attempted to supplement into the record at District Court by filing her Motion to Supplement the Record included evidence pertaining to the following issues: (a) medical care; (b) scope of claim; (c) new injuries; (d) the alleged need for further medical care under her work claim. All of these issues had been litigated before the Appeals Officer. Ms. Reeves had every opportunity to provide any evidence that she felt was necessary at the time of her worker compensation hearing.

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LEWIS BRISBOIS BISGAARD & SMITH LLP

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Additionally Ms. Reeves had been provided an attorney at the Nevada Attorney For Injured Workers (NAIW). Ms. Reeves' attorney participated in each and every court appearance and hearing held before the Appeals Officer.

Additionally, Interrogatory questions and a medical records release were served on Ms. Reeves by the Employer's attorney. These questions included a request for her to provide information regarding any falls and medical care she sought as a result.

The documents that Ms. Reeves is attempting to supplement the record on appeal with consist of three hundred and some pages. Each and every one of these medical documents predates the date of the last appeal hearing, except for pages three hundred and seventy one through three hundred and eighty four which is a recent Independent Medical Report (IME) report that Ms. Reeve's is attempting to use to request that her work claim be reopened pursuant to NRS616C.390. Reeves has written a letter to the workers compensation administrator requesting that her claim be reopened.

These documents were available to Ms. Reeves at the time of the appeal hearing.

Ms. Reeves cannot show good cause for her failure to provide these documents to the appeals officer at the time of the appeal hearing. Moreover, she had an attorney who must have made a decision not to provide these documents.

Finally, these documents are not material to this appeal. Ms. Reeves argued that she had numerous falls which caused her new injuries.

NRS616C.160 requires that a physician state to a degree of medical probability that Ms. Reeves has a (a) new injury, (b) that it was caused by an accident, and (c) that both the accident and the injury was related to her work claim. Ms. Reeves failed to provide any documents to satisfy these requirements. Moreover, none of these documents that Ms. Reeves is attempting to supplement the record with satisfies these elements either.

As such, the District Court should order that the additional evidence could not be considered by the Court.

CONCLUSION

Therefore, the Respondent, BALLY'S GRAND HOTEL & CASINO, respectfully request that this Court issue an Order denying Petitioner's Motion to Add Evidence and grant the Respondents' Motion to Strike Appellant's Supplementation to the Record, which attempts to add to the Record documents that were not before the Appeals Officer.

DATED this 21st day of July, 2010

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

LEE E. DAVIS, ESQ.
Nevada Bar No. 003932
400 South Fourth Street, Suite 500
Las Vegas, NV 89101
(702) 583-6002
Attorneys for Respondent

LEWIS BRISBOIS BISGAARD & SMITH LLP

4832-2366-5670.1

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000345

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I HEREBY CERTIFY that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and that, on the 26th day of July 2010, I deposited a true and correct copy of the above and foregoing **Opposition to Petitioner's Motion to Supplement the Record on Appeal and Respondent's Motion to Strike Petitioner's Supplementation to the Record** in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first-class postage was fully prepaid, addressed to the following:

Susan Reeves
4724 E Washington Ave
Las Vegas, Nevada 89110

Geraldine Schwartzer, Esq.
Appeals Officer
Department of Administration
Hearings Division, Appeals Office
2200 South Rancho Drive, Suite 220
Las Vegas, NV 89102

CCMSI
P.O. Box 35350
Las Vegas, NV 89133-5350

An employee of LEWIS BRISBOIS BISGAARD & SMITH, LLP

LEWIS BRISBOIS BISGAARD & SMITH LLP

4832-2366-5670.1

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Exhibit D

LOUIS F. MORTILLARO
AND
ASSOCIATES

Louis F. Mortillaro, Ph.D.
Licensed Psychologist
Licensed Marriage & Family Therapist

Manuel F. Gamazo, Ph.D.
Psychological Assistant

Donald J. Johnson, Ph.D.
Licensed Marriage & Family Therapist

Volmar Franz, Ph.D.
Licensed Marriage & Family Therapist

Linda Buckner, M.A. CRC, M.F.T.
Rehabilitation Specialist
Licensed Marriage & Family Therapist

PSYCHOLOGICAL EVALUATION SUMMARY

PATIENT NAME:	REEVES, SUSAN
DATE OF BIRTH:	10/06/51
SOCIAL SECURITY #:	[redacted]
DATE OF ACCIDENT:	09/25/88
CLAIM #:	001504-001083WC01
DATE(S) OF EVALUATION:	04/14/03 (TESTING) 04/22/03 (INTERVIEW)
DATE OF REPORT:	04/25/03
REFERRED BY:	LEAH LYONS, GALLAGHER-BASSETT INSURANCE

- CONFIDENTIAL -

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Reason for Referral

Susan Reeves was referred for a psychological evaluation/IME to assess the nature and extent of psychological barriers preventing her from achieving maximum medical improvement.

Background Information

In summary, the records indicate that Susan Reeves was involved in a motor vehicle accident on 07/20/87. She was involved in a second motor vehicle on 09/25/88. In the first accident, she was a passenger and in the second accident, a half-ton truck when she was rear-ended by a smaller vehicle.

At the time of the second accident on 09/25/88, she reports that some of her medical symptoms which had significantly improved from the first accident were exacerbated again.

- *Psychological, Presurgical & Neuropsychological Evaluations*
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- *Drug & Alcohol Rehabilitation Therapy*
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- *Pain/Stress Management*
- *Vocational Rehabilitation Services*
- *Bilingual Services*

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Las Vegas, Nevada 89106
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702-388-9643 (FAX)
mortpsych501@aol.com (e-mail)

888

000246

Since the time of her accident, she has undergone several [illegible] success in improving her overall medical condition.

She complains of pain in her neck, shoulder, hand, arm and left foot. She agrees with her doctor's diagnosis and the treatment she received. She reports that her medical condition has impacted a number of areas of her life. She rates her present disability at ten, indicating that she is totally disabled.

The details of the patient's medical condition are deferred to the medical record.

Observations

Susan Reeves is a 51-year-old, right-handed Caucasian female who is 5'5" tall and currently weighs 170 pounds. She has blonde hair and brown eye color.

Mental Status Examination

An assessment of her mental status examination indicates that she is not experiencing symptoms of depression and manifests mild symptoms of anxiety.

She was oriented to person, place, time and situation. It was estimated that she was functioning in the high average range of intellectual ability. Her memory functions appear to be within normal limits. No recent disturbance in consciousness was reported. Insight, judgment and impulse control are fair.

Presenting Problems

Major presenting problems described during the clinical interview include not working since the 09/25/88 motor vehicle accident. She had a medical leave for two years and then she was fired. She stated that she has not worked since 1989. The Superior Court ruled that the employer rehire her and provide her medical treatment. However, she is unable to return to work in any capacity and receives SSDI benefits. She reports periodic dizziness, episodes of dropping and falling down and she is careful when walking. She has constant headaches 100% of her waking hours, muscle spasms and tension type of SCM muscle spasms. She indicates that she is undergoing treatment which has helped her. She manifests mild symptoms of anxiety and she has limited pain and stress coping skills.

Psychological Data Summary

Minnesota Multiphasic Personality Inventory-2:

A summary of her MMPI-2 test results indicates that she demonstrates a balance between self-protectiveness and self-disclosure. She responded to the MMPI-2 items in a cooperative fashion with valid test profile results.

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The Clinical Scales suggest that she is experiencing general symptoms of pain and coping deficits. She is an individual who converts her stress into physical symptoms. When the stress is alleviated, her physical symptoms are also alleviated. She reports a high level of health concerns, reporting a number of physical symptoms across several body systems.

Beck Depression Inventory-II:

Her Beck Depression Inventory-II raw score suggests that she is not experiencing symptoms of depression.

Beck Anxiety Inventory:

Her Beck Anxiety Inventory raw score of 8 indicates that she manifests mild symptoms of anxiety.

Pain and Suffering Index:

Based upon her Pain and Suffering Index score, she is placed in Category 2. Individuals placed in Category 2 are pain minimizers who experience a low level of suffering and have low perceptions of pain and disability. Psychological symptoms and reports of pain and disability are minimal and psychological or medical intervention is usually not necessary to achieve maximum medical improvement.

Brief Psychosocial History Data

Susan Reeves states that she was born on 10/06/51 in Oceanside, California. She has been married once for almost 32 years. She has 31 and 26-year-old sons. She rates her relationship with her spouse and children between happy and pleasant. She currently lives with her 52-year-old husband.

Educationally, she completed the 12th grade of schooling in Paramount, California.

Occupationally, she has been declared permanently and totally disabled for more than 14 years. Her employment history was reported as working for the MGM-Bally Hotel as a room reservations clerk from September 1980 to May 15, 1989. Prior to that, she worked for the Action Employment Agency, for Avon as a sales representative and assistant manager, and for the Gambler's Hall of Fame as a 21 dealer. Her length of employment with these businesses was not reported.

She indicates her recreational and leisure-time activities have been affected by her overall medical condition.

Discussion

The objective and subjective psychological data results indicate that Susan Reeves is manifesting symptoms related to Psychological Factors Affecting her Physical Condition (DSM-IV-TR 316). She has a long history of disability since 09/25/88 when she was injured in a second motor vehicle

accident that has affected her overall life dynamics.

During the clinical interview, she stated that she has not worked since 1989. She was on medical leave for two years and then was fired from her job. The Superior Court ruled that the employer rehire her and provide medical treatment for her. [redacted]. She reports periodic dizziness, dropping and falling down episodes and she walks carefully. She has constant headaches 100% of her waking hours, muscle spasms and tension type SCM muscle spasms. She indicates that she is undergoing physical therapy treatment which has helped her. She manifests mild symptoms of anxiety. She has limited pain and stress management coping skills.

Recommendations

1. To assist Susan Reeves in decreasing her pain intensity and duration, she is an appropriate candidate for participation in individual counseling sessions, biofeedback therapy and psychoeducational lectures in order to learn and implement appropriate pain and stress management coping skills.

2. If you have any questions or need further clarification, please contact this psychologist at your earliest convenience.

Louis F. Mortillaro, Ph.D.

Louis F. Mortillaro, Ph.D.
Psychologist
Diplomate, American Academy of Pain Management
Senior Disability Analyst & Fellow, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
Fellow and Diplomate, American Board of Medical Psychotherapists

MFG:LFM:gs

DICTATED, NOT EDITED.

cc: Leah Lyons, Gallagher-Bassett Insurance Company

F: 4/30/03

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 02-25-04
CLAIM #ID: 001504-001083W601 DATE OF INJURY: 09-25-88 SESSION #: 15
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: WNL
  - Assistive Aids: None
  - Motor Activity: WNL
  - Demeanor: Cooperative
  - Communication: Approp
  - Mood: frustration
  - Affect: Serious

- Session Measurements:
  - Pain = 4-5/10 headache
  - Anxiety = 3-4/10
  - Depression = 3/10

- Session Summary:
  Pt spoke about her frustration with her case because some day she is better and the next day she continue with headache dizzines. Occasional Fenstrex and Midrin was reported but she is afraid of medications side effect. Coming to the program exacerbate the headache. [redacted]
  We discussed FIT model of coping.

Progress:
Slow progress. Perceive that she is not capable to RTW in any capacity due to her pain.

Recommendations:
Continue counseling/biofeedback
Home practice

ician Signature: [signature], Ph.D. Date: 02-25-04

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Therapist

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icensed Alcohol & Drug
Counselor
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Donald J. Johnson, Ph.D.
icensed Marriage & Family
Therapist
lationally Certified Psychologist

Volmar Franz, Ph.D.
icensed Marriage & Family
Therapist
lationally Certified Psychologist

Linda Buckner, M.A. CRC, M.F.T.
Rehabilitation Specialist
icensed Marriage & Family
Therapist
lationally Certified Psychologist

sychological, Presurgical
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April 26, 2004

Beverly Mandery
Claims Representative
CCMSI
P.O. Box 35350
Las Vegas, Nevada 89133-5350

Re: Susan Reeves
Claim #: 88H92H243724
Date of Injury: 09/25/88
Employer: Bally's Las Vegas

Dear Ms. Mandery:

This office is in receipt of your letter dated April 2, 2004 where you ask whether Ms. Reeves has completed her physical therapy program and her medical treatment with Dr. George Petroff and Dr. Mattimoe. You also indicate that you have received the Discharge Summary Report for Ms. Reeves on 03/18/04 where it was memorialized that she had completed the Pain Counseling Program per Dr Mortillaro's recommendation.

In the Discharge Summary Report dated 03/18/04, it was described that Ms. Reeves successfully completed the Pain Counseling Program where she learned and was able to implement the pain and stress management coping skills taught during the program in response to pain and stress stimuli. She also reported, at the time of discharge from the Pain Counseling Program, that she noticed an improvement in her overall ability to cope her medical condition. However, she continues to experience physical symptoms including dizziness, headaches, sensitivity to light, and difficulty maintaining her balance which may cause her to fall. Because of Ms. Reeves's sensitivity to light, this clinician was required to turn off the flourescent lights and open the blinds in the office during the individual pain and stress management counseling sessions.

As indicated in the Discharge Summary Report, she has shown some improvement but she continues to experience frustration about overall medical condition, headaches, sensitivity to light, dizziness, unresolved neck and lower back pain with experiences of [redacted]

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She continues taking her prescription medication on an ongoing basis. Also, she has been off work since 1998. Experience shows that individuals on long-term disability have a poor prognosis for returning to work in a full time capacity.

She says that some days are better than others. Her symptoms should be considered as chronic.

There is no question that Ms. Reeves's medical condition has been preventing her from returning to gainful employment as documented by the medical doctors who have continued to provide medical treatment for her.

At the present time, we have not received any information as to whether or not she has completed her physical therapy program, if she continues to be under the care of Dr. Petroff and Dr. Mattimoe, or the status of her current medical condition.

As you know, psychologists cannot make disability limitations based upon a patient's medical diagnosis. Such a decision must be rendered by the medical doctor who is primarily responsible for treating her.

With reference to her continuing headaches, sensitivity to light, dizziness, and unresolved neck and back pain, it is opined that these [redacted]

Ms. Reeves has discussed her frustration with this clinician regarding the worker's compensation system's handling of her case and the fact that she has been denied receiving total and temporary disability compensation benefits even though her doctors have indicated that she is unable to work.

As previously documented, Ms. Reeves's had a court hearing regarding her case. According to court documentation reviewed by this clinician, it clearly indicates that she has a right to receive financial compensation during her total and temporary disability status.

As indicated in the Discharge Summary Report, Susan Reeves would like to try acupuncture as this type of treatment has been successful in treating patients suffering from dizziness, headaches and other symptoms. She is a potential candidate to receive this type of treatment.

In summary, as a result of her work related accident on 09/25/88, Susan Reeves has a long-term disability as documented by the medical doctors who have been treating her from the time of her accident to the present time. She continues to take a significant amount of prescription medications and continues experiencing symptoms including headaches, dizziness, neck and back pain and sensitivity to light. She has continuing financial problems arising out of the accident. She has not been able to drive her motor vehicle which makes it difficult for her to travel from one place to another.

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It is our opinion that she is not capable of returning to work in any capacity at the present time unless her symptoms arising out of the industrial related accident on 09/25/88 have been resolved in order to avoid placing her and her co-workers in a potentially dangerous situation in the workplace.

Once again, any questions regarding Ms. Reeves's medical limitations should be referred to her treating physicians.

If you have any questions or need further clarification, please contact this psychologist for assistance.

Manuel F. Gamazo, Ph.D.
Clinical Director, Bilingual Services
Certified Clinical Psychopathologist #A16941
Doctoral Addiction Counselor #B17782
Senior Disability Analyst & Diplomate, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
National Certified Psychologist #01357

Louis F. Mortillaro, Ph.D.
Psychologist
Diplomate, American Academy of Pain Management
Senior Disability Analyst & Fellow, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
Fellow and Diplomate, American Board of Medical Psychotherapists

DICTATED, NOT EDITED

MFG:LFM:gs

cc: Beverly Manderly, Claims Representative
CCMSI

F: 4/28/04

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censed Marriage & Family
herapist

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ationally Certified Psychologist

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olmar Franz, Ph.D.
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ationally Certified Psychologist

nda Buckner, M.A. CRC.M.F.T
habilitation Specialist
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herapist
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axation Training

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abilitation Therapy

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/Stress Management

tional Rehabilitation
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LOUIS F. MORTILLARO, PH.D.
AND
ASSOCIATES

To: Susan Sayegh, Claims Supervisor, CCNSI
P.O. Box 35350
Las Vegas, NV 89133-5350

RE:	Susan Reeves, Claimant
CLAIM NUMBER:	88H92H243724
EMPLOYER:	Ballys Las Vegas
DATE OF INJURY:	09/25/1988

-CONFIDENTIAL-

The information contained in this report is strictly confidential and is only for the use of the professional(s) to whom it is addressed. Any unauthorized disclosure is strictly forbidden and illegal.

Dear Ms. Sayegh,

This psychologist is in receipt of your 05/13/2004 letter asking specific information about the psychological evaluation, treatment and medical condition of Ms. Reeves. I will respond to your questions in the order they were written in the 05/13/2004 letter.

1. In the 04/26/2004 letter to Beverly Mandery, Claims Representative, the results of Ms. Reeves' evaluation and treatment were memorialized. It was opined at that time that Ms. Reeves was not capable of returning to work unless her symptoms arising out of the industrial accident of 09/25/1988 have been resolved. Ms. Reeves has subjectively reported to Dr. Gamazo and myself the following barriers to her attainment of physical maximum medical improvement: headaches, dizziness, problems with balance, neck and low back pain, sensitivity to light, use of prescription medication and inability to drive a vehicle. I am these complaints subjective reports of what she is feeling. However, to document these symptoms, her treating physician must base his opinion on objective medical data relative to her achievement of maximum medical improvement and ability to return to work. From a psychological point of view, there are no industrially related symptoms that would contraindicate her successful return to work other than her mental perception that she is unable to work in any capacity.

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2. Dr. Gamazo was referring to the order offered by Nancy K. Richins, Esq., Appeals Officer, dated 12/01/2003. In this order it states " Claimants Somatoform Pain Disorder is industrial and requires further treatment including short term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures and appropriate physical therapy. Claimants claims should not have been closed but should remain open for further benefits." Dr. Gamazo was only making reference to that document relative to the claim remaining open for " further benefits."

3. This psychologist reviewed copies of recent physical therapy notes that your office provided indicating long computer use. It appears that when Ms. Reeves sits for an extended length of time at a computer, she experiences increased pain. However, the physical therapist does not mention the amount of time spent by Ms. Reeves sitting at a computer. When asked, Ms. Reeves states she used for computer for a maximum of an hour at a time to do research and contact family and friends. Increased time on the computer produces, she says, an increase in her headache, neck and back pain.

4. This psychologist reviewed Ms. Reeves pre-accident job description as a call center representative. Psychologically, it would be very therapeutic for Ms. Reeves to return to work. In her opinion, she is unable to physically perform this job description. As previously stated, there are no psychological contraindications to Susan Reeves returning to work. In fact, she wants to return to work if she is physically able.

5. With respect to the recommendation for acupuncture treatment, Susan Reeves told Dr. Gamazo specifically that she would like to try acupuncture as a treatment as it has been successful in the past in treating patients suffering from dizziness and headaches. She is a potential candidate to receive this type of treatment because she has investigated it and appears to be willing to do it. However, all medical treatment recommended must be done so by a licensed physician. Therefore, Dr. Gamazo did not recommend that she receive acupuncture, only that she would like to attempt it.

In summary, Susan Reeves has stated to Dr. Gamazo and this psychologist that she desires to return to work in some capacity, [redacted]. Thus, it is the responsibility for an evaluating physician to determine whether or not the subjective symptoms described by Ms. Reeves have an objective basis and prevent her from returning to work. [redacted] A physical casualty for being unable to return to work must be objectively documented by medical tests and examination. At this point, the evaluating physician would be able to render an opinion relative to whether or not Ms. Reeves physical condition will be resolved in the future with specific treatment allowing her to return to work. If it is determined that her subjective pain complaints do not have a physical basis based upon the objective medical data, then the physician would issue a return to work release based only upon objective standards and not undocumented medical complaints. Following this process is the only fair way for a physician to objectively determine whether or not Ms. Reeves will be able to return to work in some capacity or in point of fact be rated permanently and totally disabled. [redacted]

Ms. Reeves states that she is basically in the same physical condition as she was when the Bally's representatives walked [off the job on May 15, 1989, after she [attempted to return to work for nine months. She was informed that she was a hazard on the property due to her dizziness, not due to poor work performance, absenteeism or any other work-related factor.

If you have any further questions or need clarification of this information, please contact this psychologist at your earliest convenience. Ms. Reeves', medical condition is certainly complicated and she has been the subject of intense case management over the years. The only way her medical condition can be concluded is for an evaluating physician to compare the mechanism of injury and past treatments with current functioning and objectify the subjective pain complaints.

Louis F. Mortillaro, Ph.D.

Louis F. Mortillaro, Ph.D.
Psychologist
Diplomate, American Academy of Pain Management
Senior Disability Analyst & Fellow, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
Fellow and Diplomate, American Board of Medical Psychotherapists

LFM:aac

DICTATED BUT NOT EDITED

F: 06/01/04

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April 13, 2004

Re: REEVES, Susan [redacted]

Dear Susan:

I have reviewed questions which you have phoned in as they are transcribed in the chart with respect to Susan Reeves. I will endeavor to answer them for you.

1. Q. How much more therapy will the patient require when she can be discontinued?

   A. The patient may be discontinued from formal physical therapy when she has learned an acceptable and effective routine for neck pain. This may include being set up for home traction if this has not yet been done and also with use of a TENS unit. This could be arranged and achieved, I believe, within two months.

2. Q. Work status from beginning of treatment in 1998 to the present.

   A. During this period of time, the patient had significant and constant headache problems, which slowly improved with therapy. She also had significant overlying psychological/psychiatric issues, and basically had a chronic pain syndrome. [redacted] superimposed neck problems became prominent in the last couple of years. This would further make it difficult for her to return to the work force.

Sincerely,

G. Petroff, M.D.
GP/rs

2628 W Charleston Blvd. LV NV 89102 (702) 878-0111 FAX (702) 870-6199

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

May 18, 2004

Susan Sayegh, Claims Supervisor
CCMSI
Fax: 702-933-4861

Re: Susan Reeves
Claim No. 88H92H243724
Emp: Ballys Las Vegas

Dear Ms. Sayegh:

I am in receipt of your letter dated May 13, 2004. You have asked a number of questions, and I will attempt to answer them for you.

1) Symptoms currently keeping the patient from returning to work, by my understanding, principally consist of neck pain, back pain and dizziness. The basis of her neck pain is documented objectively on MRI and x-ray, with C4-5 disc bulge and protrusion, C5-6 central disc protrusion, mild flattening of the cervical spinal cord, C6-7 mild-to-moderate neural foraminal stenosis, C4-5 right neural foraminal encroachment. This anatomy could generate pain in the neck. These changes noted on imaging are degenerative in nature. To some extent, the degeneration can be accelerated by posture/head movements, which one might encounter in certain occupations. [redacted].

The patient has complained of dizziness. Dizziness may be from a variety of reasons. In this case, I cannot objectively identify the source of the patient's dizziness, but possibilities would include migraine phenomenon, problems with the inner ear, or balance disturbance arising from the patient's neck muscles/degenerative neck disease. [redacted]

The patient has headache. Again, this cannot be objectively qualified with respect to its source, [redacted] She is complaining of lumbosacral strain, and this cannot be objectified either.

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2) With reference to an accident tripping over furniture on 2/27/04, I do not have reference to this in my follow-up notes, so I am unable to comment. However, I have discussed with the patient the nature of her computer use.

From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical spine disease.

4) With respect to acupuncture treatment, this can be a significant pain-relieving modality in patients with chronic pain which has been intractable to medicines and physical therapy. It would reasonable to undergo a trial of acupuncture.

The next question is "7". I do not have Questions 5 or 6, so I cannot answer them.

With respect to the patient's physical therapy/frequency of treatment, this is based on neurological assessment. Dr. Mortillaro is a psychologist, albeit a very good one. He is not following the patient for medical addressed being addressed in physical therapy and should not bear the responsibility for determining physical therapy. The basis for physical therapy to this point has been empiric based on the patient's improvement. As long as the patient continues to improve, and there is no other obvious modality causing her to improve, I would continue to have her in physical therapy until she reaches a plateau of improvement.

Sincerely,

G. Petroff, M.D.
GP/rs

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

June 22, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
572-78-2120

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She has [redacted]. [redacted]wo, she has [redacted]r. She has not seen a physician for this. This has stopped this week. She says this is secondary to stress with her medical legal problems. She continues to have pain in the mid base of the neck. This has been the most intractable pain with respect to her physical therapy efforts. She has pain up and down her spine, not as severe. She has lightheadedness, at times, not particularly positional. She has headache radiating from the mid neck pain.

In physical therapy, she is making good gains with "ball" therapy. Palm Mag is especially giving her significant pain relief. Cyclobenzaprine helps her. Headaches are generally coming and going. Dizziness is significantly better with vestibular therapy, but still can be triggered with moving her head or seeing moving objects in her field of vision. She is on diet and medication (Actose) for her diabetes.

On review of systems, she has poor visual acuity and photophobia bilaterally, bilateral tinnitus and poor hearing. She has been having hyperventilation, which gives her chest discomfort secondarily, left shoulder joint pain.

On range of motion, the patient has no apparent distress. Speech is normal. Lungs are clear. Head is normocephalic, atraumatic. Range of motion of the neck is 85 degrees rotation left and right. She has full strength in all four extremities. Speech, cranial, motor, sensory, coordination and gait testing is normal. Tone is somewhat increased in the posterolateral nuchal muscles.

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IMPRESSION:

1. Cervical degenerative disease, cervical strain, cervicogenic headache.
2. The patient gives a history of hemoptysis with history of ulcer; address possible reactivation of ulcer.
3. Dizziness, responding to therapy, unclear etiology.

PLAN:

1) I will have the patient see you in follow-up this week for GI complaints, but will guaiac her stool.
2) I have refilled her Flexeril.
3) We will continue physical and vestibular therapy.

Sincerely,

G. Petroff, M.D.
GP/rs

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June 29, 2004

Re: REEVES, Susan
572-78-2120

To Whom It May Concern:

I am dictating this letter based on discussion at a meeting taking place in our offices on 6/29/04 between myself, Dr. Mortillaro and three worker's compensation representatives with CCMSI.

Susan Reeves was present here in our offices with her husband, but shortly before the meeting and after a discussion with my office manager and the CCMSI representatives, it was determined that the patient was not allowed to be present at this meeting per her worker's compensation representatives. The patient then left the office.

Issues discussed address the nature, extent and cause of Ms. Reeves current disability.

Basically, I have been seeing Ms. Reeves since September 3, 1998, funded through Medicare, based on a disability from that organization. During that time of treatment and management, [redacted]. After 1/6/04, work compensation began covering the neurological follow-ups and treatment. I was never given an explanation of this change by the patient or by Worker's Comp until yesterday.

With respect to the patient's history, she was in two motor vehicle accidents; one on July 20, 1987, the second in September of 1988. Apparently, she is claiming work-related disability from the second accident, which occurred on the property/premises of her workplace.

[redacted]

a[redacted]nt: "This patient may have experienced some discomfort from the incident that she describes. There is no suggestion, however, that she had any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activities."

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Also, an Independent Medical Evaluation was performed 8/18/98 by Dr. David Oliveri, Specialist in Rehabilitation and Electrodiagnostic Medicine. His opinion was that the patient had a somatoform pain disorder, which is a psychiatric diagnosis, and is not something that is caused by an industrial accident. He further states, "In this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury."

In discussion with Dr. Mortillaro today, he feels that the patient is not limited from working based on her psychological state of health. Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties. The patient does have Social Security Disability currently.

Based on the review of systems and my observations of the patient's examination over the years, solely with respect to intention of injury from the second motor vehicle accident of September of 1988, it would be reasonable to recommend the patient undergo a trial of back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds. If working at a computer, this should be at a proper height, with an adjustable chair and lumbar roll provided, and with frequent breaks provided for standing, stretching and repositioning. If the patient cannot tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome.

Sincerely,

G. Petroff, M.D.
GP/rs

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RADIOLOGY ASSOCIATES
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(702) 878-0111 • Fax: (702) 87[illegible]199



RECEIVED
SEP 15 2004
DUNN NEUROLOGIC

PATIENT: **REEVES, SUSAN**

DATE: 09-14-04 PT#: 6109

DOCTOR: Goodwin DOB: 10-06-51

EXAM: **AP, Lateral, Coned Down Lateral and Both Oblique Views of the Lumbosacral Spine Series**

FINDINGS: The examination demonstrates the alignment to be intact. Mild anterior wedging is seen at L1. I believe that this is old in nature, though clinical correlation with respective point tenderness is advised. Remaining lumbar vertebral bodies demonstrate normal height. Intervertebral disc spaces are fairly well maintained, except for the T12-L1 intervertebral disc space, which appears somewhat narrowed. Small, scattered osteophytes are seen. Facet joints are intact.

IMPRESSION:

1. **Mild anterior wedging a[redacted] though clinical correlation with respective point tenderness here is advised.**
2. **Scattered degenerative changes as described above.**

L691 TCH

Marc Pomerantz, M.D.
Radiology Associates of Nevada
D: 09-14-04
T: 09-15-04/inf

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000364

September 22, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
572-78-2120

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She says she is doing well, but continues to have numerous problems. She has not had any recent vomiting of blood, but she says that has been an intermittent occurrence for years, which she basically puts up with. However, she said she did discuss with you any needed intervention. She has hearing loss, ringing in her ears and dizziness. This has been improved by vestibular therapy.

Her neck is moving much better after a corticosteroid injection and also with physical therapy. She has low back pain - about the same. Headaches are better with intervention to the neck. She has a sense of upper thigh weakness. She has no bowel or bladder disturbance. She again recounts the trauma of sitting by her brother's bedside, through his coma and death last month.

She is benefitting from the same modalities as noted previously.

She is alert and oriented, in no apparent distress. Range of motion of the neck is fairly full. Mental status, speech, cranial, motor, sensory, coordination and gait testing are normal.

[redacted] MRI shows diffuse mild degeneration in the lumbosacral spine, moderately advanced cervical degenerative change with stenosis, but no cord signal change.

IMPRESSION:
1. Headache, cervical degenerative change.
2. Hemoptysis.

his message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes. They are intended only for the use of the addressee. If you e not the intended recipient, any disclosure, copying, or distribution of this information is strictly prohibited. If you receive this transmission in error, please accept our apologies and notify the sender

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000385

PET
Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

APPEALS DIVISION

DEPARTMENT OF ADMINISTRATION

SUSAN REEVES Petitioner vs. DIVISION of INDUSTRIAL RELATIONS WORKER'S COMPENSATION SECTION CCMSI Respondents	APPEAL NO. 78016-SL

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AUG -7 PM 4:48
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BEFORE THE APPEALS OFFICER

I

STATEMENT OF THE ISSUES

1. Whether, the Division of Industrial Relations' (hereinafter DIR) finding that there was no violation of NRS 616D,120, by CCMSI, by only utilizing documents provided by CCMSI, in their determination, has issued a bias determination, therefore, not justified?

2. Whether, Bally's has unreasonably delayed payment of compensation and all other benefits due an industrially injured employee? NRS 616D,120

3. Whether, the DIR, if it is going to base a findings of facts on Reeves' medical history, not include the whole history, all of the medical evidence, along with all other documentation

including the newest IME?

4. Whether, Reeves is entitled to past and ongoing TTD benefits, along with all other worker's compensation benefits?

5. Whether, Reeves claim should be expanded to include injury from falls that are a result of her dizziness, an accepted industrial condition?

6. Whether, as a pure legal question, has Bally's ever had a legal justification to have closed Reeves' claim at all?

7. Whether, Reeves is entitled to interest on the payments that were unreasonably delayed?

8. Whether, Reeves entitled to three (3) times the amount that was unreasonably delayed?

9. Whether, Reeves is entitled to an affidavit, from Bally's or their insurer, that should Medicare or other healthcare providers, that have paid for medical care that should have been paid through worker's compensation benefits, seek reimbursement, that Bally's or their insurer will be responsible for those payments?

10. Whether Reeves is entitled to reimbursement of the cost of the new IME?

11. Whether, Reeves is entitled to a legal definition of various words and terms, also, whether some behavior is ethical and or legal.

12. Whether, a statement of facts can be can be made without documentation to prove those facts?

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VIII
STATEMENT OF THE CASE

Whereas, this claim has been ongoing since September 25, 1988, Susan Reeves (hereinafter Reeves) will give the short history of events up until the acceptance of the claim, by Bally's, after the Nevada Supreme Court decision in favor of Reeves, in It's Opinion filed November 26, 1997. Bally's Grand Hotel v Reeves, 113 Nev. 926, 948 P,2d 1200 (1997). (exhibit "C" at pp. 318-325)

Reeves was involved in an automobile accident in 1987, which was non-industrial. She was then involved in another automobile accident on September 25, 1988, which was found to be industrial in Bally's v Reeves.

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Reeves was released from employment on 5/15/89 and placed on a medical leave of absence, against her wishes, on May 25, 1989 by her employer, Bally's, as they believed her to be a hazard at the workplace, due to her dizziness.(exhibit "B" at pp. 221 thru 231, 242, 270)

Reeves filed for worker's compensation, which was denied. Her claim then went through various administrative hearings, District Court and finally the Nevada Supreme Court.

Reeves' claim was found by the Nevada Supreme Court, in August 1997, to be industrial. There was found to be some issues with the original Decision, and a second Decision was issued on November 26, 1997, which did not change the original Decision that Reeves' claim was industrial. and as such, accepted by Bally's, in 1997, as industrial, with the symptoms of dizziness, head and neck pain, which have not resolved to this day. (exhibit "C" at pp. 318-325, exhibit "A: at pp. 204-217)

Accordingly, Bally's issued an acceptance letter to Reeves dated September 26, 1997. (exhibit "B" at pp. 237)

However, as no benefits were forthcoming, and after numerous letters from both Reeves and her counsel, Bally's issued a second letter of acceptance (exhibit "B" at pp. 238) dated May 12, 1998, but did not provide any benefits until they issued a check for back TTD benefits on June 2, 1998. (nine (9) months after accepting her claim.) (exhibit "B" at pp. 239)

After accepting Reeves' claim as industrial, Bally's then closed her claim on August 27, 1998 based upon a report from Dr. Oliveri. (exhibit "B" at pp. 244 A-244 B)

Reeves timely filed for a hearing Before the Hearings Officer.

Bally's closure was denied, by the Hearings Officer, in an Order issued on January 25, 1999, as Dr. Oliveri's report did not address Reeves' symptoms. Bally's did not appeal and seek a

stay, nor did they reinstate benefits. (exhibit "C" at pp. 326-327)

Bally's then closed Reeves' claim on December 27, 2001, based upon a report from Dr. Glyman. (exhibit "B" at pp. 273-274)

Reeves timely filed for a hearing Before the Hearings Officer. A hearing was held on April 9, 2002, where the Hearings Officer affirmed Bally's claim closure. (exhibit "C" at pp. 328-329)

Reeves timely filed for an appeal Before the Appeals Officer, An Order was issued on December 1, 2003, where it was found that her somatoform pain disorder was also industrial in nature. The Appeals Officer held that Reeves' claim should not have been closed but should remain open for further benefits. Bally's closure was reversed and the claim was reopened. Bally's did not appeal and seek a stay, nor did they reinstate benefits. (exhibit "C" at pp. 330-333)

Reeves treated with Dr. Mortillaro, a psychologist, in 2003-2004, Dr Petroff, a neurologist, from 1998 to 2006, along with physical therapy and still with her personal physician.

Bally's then closed Reeves' claim, on September 8, 2006, based upon a report from Dr. Petroff. (exhibit "B" at pp. 311)

It should be noted that the report Bally's utilized in closing Reeves' claim had been in their possession since right after their meeting with Dr. Petroff on June 29, 2004.(exhibit "A" at pp. 86-87)

Reeves timely filed for a hearing Before the Hearings Officer. A hearing was held and a Decision and Order was issued on July 25, 2007, affirming claim closure. (exhibit "C" at pp. 334-335)

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Reeves timely filed for an appeal Before the Appeals Officer.

Reeves filed to have her claim expanded to include injury from falls due to her dizziness, which was denied by her employer. (exhibit "B" at pp. 312)

Reeves timely filed for a hearing Before the Hearings Officer. A hearing was held and a Decision and Order was issued on May 10, 2007, denying expansion of her claim, to include injury from her dizziness. (exhibit "C" at pp. 336-337)

In November of 2007, Cory Santos, NAIW, and attorney Davis agreed to submit a Stipulation to Continue, as the parties were working on a global settlement, which never materialized. (exhibit "B" at pp. 313)

Reeves timely filed for an appeal Before the Appeals Officer. The two (2) appeals were consolidated and a hearing was held. A decision and Order issued December 22, 2009, affirming claim closure and denying expansion of her claim. (exhibit "C" at pp. 339-345)

Reeves timely filed for Judicial Review to the District Court.

Reeves, who is and has been under constant medical care since her industrial accident, in 1988, with various treatments to try to resolve her symptoms, to no avail, obtained an IME, preformed by Dr Poindexter on April 10, 2010, (exhibit "A" at pp. 204-215) with an addendum dated June 15, 2010. (exhibit "A" at pp. 216-217)

Dr. Poindexter opined that the majority of her symptoms are, by her medical history, related to her second, industrial, accident. (exhibit "A" at pp. 214) Also, that she was not capable of returning to gainful employment. (exhibit "A" at pp. 216)

Reeves therefore, submitted to Bally's, CCMSI, to have her claim reopened, as no physician has ever opined, since her industrial accident, that she was capable of returning to gainful

employment due to her industrial symptoms. (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 122, 128, 130, 131, 133, 134, 203, 216)

Bally's, CCMSI, in a letter dated July 6, 2010 denied reopening of Reeves' claim, along with denying all other claims made by Reeves. (exhibit "B" at pp. 314-315)

Reeves timely filed for a hearing Before the Hearings Officer, which brings the case to where it is now.

Whereas, Reeves believes that Bally's (CCMSI) have violated various statutes, she filed a complaint with the DIR on February 28, 2010, pursuant to NRS 616D.330. (exhibit "B" at pp. 313 A)

The DIR issued a determination that there was no violation, dated April 26, 2010. That determination letter was signed by Ms. Susan Sayegh, formally the claims supervisor at CCMSI, and the claims supervisor on Reeves' claim at the time of the alleged violation. (exhibit "B" at pp. 313 B-313 D)

Reeves therefore, responded to the letter of determination, that she felt that it was bias by the fact of having someone look into a complaint, that could be the person that the complaint was about. (exhibit "B" at pp.313 E-313 F)

Reeves was informed by Mr. Verfe, by telephone, that her complaint would be looked into again by someone other than Ms. Sayegh. No determination has been forthcoming as of yet. (complaint No. 11522)

Reeves, then filed a letter of complaint with the DIR, dated June 1, 2010, as to possible violations pursuant to NRS 616C.475, NRS 616D.120, NRS 616C.335 and NRS 616C.065. (exhibit "B" at pp. 315 E-315 F) The only determination was that there was no violation of NRS 616D.120, in a letter dated July 22, 2010. (exhibit "B" at pp. 315 G-315 K) The other

complaints have not been determined as-of this filing.

VIII
STATEMENT OF FACTS

It is undisputed that Reeves has and had only one (1) industrial accident, which is her claim of September 25, 1988. (exhibit "B" at pp. 221, 222)

It is undisputed that Reeves was placed upon a medical LOA for her industrially caused dizziness. (exhibit "B" at pp. 223, 234, 242, 270)

It is undisputed that Reeves' claim was accepted by Bally's in 1997 as industrially compensational, with the symptoms of dizziness, head and neck pain. (exhibit "B" at 221, 222, 237, 238, 245, 266)

It is undisputed that after Bally's first acceptance of Reeves' claim on September 26, 1997, (exhibit "B" at pp. 237) they did not pay anything until June 2, 1998. (exhibit "B" at p. 239)

It is undisputed that Bally's has not paid for any of Reeves' treatment, for her industrially accepted symptoms, until 2003, and then only very few.

It is undisputed that the claim closure based upon Dr. Oliveri's report in 1998 was denied by the Hearings Officer, without an appeal and stay, but benefits were not reinstated. (exhibit "C" at pp. 326-327)

It is undisputed that Dr. Oliveri's prognosis for Reeves to return to work was exceeding guarded (exhibit "A" at pp. 61) Also, that her current presentation is part of her prior complaints. (exhibit "A" at pp. 59)

It is undisputed that the claim closure based upon Dr. Glyman's report was reversed and the claim reopened, without an appeal and stay, but benefits were not reinstated. (exhibit "C" at pp. 333)

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It is undisputed that Dr. Glyman's prognosis for Reeves return to work was that she was not able. (exhibit "A" at pp. 101) Also, that she probably, as best as he could say, suffers from a somatoform pain disorder.(exhibit "A" at pp. 100)

It is undisputed that Reeves' somatoform pain disorder was found to be also industrial in nature. (exhibit "C" at pp. 333)

It is undisputed that Bally's has not paid any TTD benefits since 1998, when they illegally closed Reeves' claim. (exhibit "B" at pp. 256, 259)

It is undisputed that Bally's has not paid most of the worker's compensation benefits due an injured employee.

It is undisputed that Bally's has been trying to revisit the issue of causation, from the time that they first accepted Reeves' claim, to the present, despite the Nevada Supreme Court Decision and case law. (exhibit "B" at pp. 241, 242, 257, 260, 264, 268, 271, exhibit "A" at pp. 58, 86,)

It is undisputed that there has never been any physician who has determined that Reeves is capable of returning to gainful employment, due to her industrial symptoms. (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 119, 122, 128, 130, 131, 133, 134, 203, 216)

It is undisputed that Reeves has never been awarded a PPD award. (exhibit "B" at pp. 239)

It is undisputed that there is no such phase " condition greatly improved " in any physical therapist document dated January 23, 2006. (exhibit "A" at pp. 201-203)

It is undisputed that counsel for Bally's and counsel for Reeves agreed to submit a Stipulation to Continue, in November of 2007, as they were working on a global settlement. (exhibit "B" at pp. 313)

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It is undisputed that Reeves discontinued treatment, for her industrial symptoms, with Dr. Petroff in 2006, since he was only monitoring her medication, not providing any new treatment plan. She preferred to have a single physician provide all of her medications so as not to have any bad reactions from the combination of various medications, for her industrial symptoms.

It is undisputed that the symptoms Reeves presents with today are the very same symptoms that caused Bally' to place her on a medical LOA and Bally's accepted as industrial in 1997. (exhibit "B" at pp.221, 222, 223, 234, exhibit "A" at pp. 214, 215)

It is undisputed, that Reeves has been and is seeking treatment for her industrial symptoms since her industrial accident. (exhibit "A" at pp. 1 thru 217)

1. THE DIR'S FINDING THAT THERE WAS NO VIOLATION OF NRS 616D.120 IS NOT JUSTIFIED.

Whereas, the DIR found that there was no violation of NRS 616D.120 is based solely upon parts of documents supplied by CCMSI, they apparently did not read the one (1) document that Reeves supplied. That document was a finding by Appeals Officer Nancy K. Richins, dated December 1, 2003, which held: (exhibit "C" at pp. 330-333)

> 1. Claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psycho educational lectures, and appropriate therapy.
> 2. Claimant's claim should not have been closed but should remain open for further benefits.
>
> ORDER
>
> IT IS HEREBY ORDERED the Decision of the Hearing Officer dated February 25, 2002 and the Employer's closure of claim is reversed and the claim reopened.

Whereas, Reeves believes that the Order is very plain in the Decision, that her claim should not have been closed but remain open for further treatment, including specific treatment, not

just the specific treatment. That Order held that the closure was reversed and the claim reopened. For Reeves' claim to be reopened would mean she was entitled to all worker's compensation benefits, including past and ongoing TTD benefits. To have the specific treatment included, would mean to have those treatments be part of the treatment she was receiving with her private physicians. Bally's did not appeal and seek a stay, nor did they reinstate benefits.

Whereas, CCMSI (Bally's) did not appeal and seek a stay, nor did they reinstate benefits, they have and are unreasonably delaying payment of compensation due an industrially injured employee.

Pursuant to NRS 616C.475, every employee injured by accident in the course of employment is entitled to 66 2/3 percent of the average monthly wage until a physician or chiropractor determines that the employee is physically capable of gainful employment, or light-duty employment that is modified according to the restrictions imposed by a physician or chiropractor is offered.

Whereas, Reeves claim was an accepted and open claim before CCMSI's closure and none of the provisions pursuant to NRS 616C.475 have occurred, that amounts to an unreasonable delay of compensation due an industrially injured employee, in an open and accepted claim.

Whereas, Reeves believed that the Order was plain in it's meaning, it was the only document she sent to the DIR. In her letter of complaint she requested, along with other things, that if the DIR was going to instigate a fact finding mission, that she be involved, as the documentation in her case is very large and she had no idea what documents they might need if they believed that the wording in the Order was not plain. (exhibit "B" at pp. 315 F)

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The DIR did not request any other documents from Reeves, but relied solely upon documents or parts of documents supplied by CCMSI.

The documents that the DIR relied upon, specifically Dr. Oliveri's and Dr. Glyman,'s reports, were reports that Bally's used to close Reeves' claim. Dr. Oliveri's report was remanded and therefore, not sufficient to close her claim. Dr. Oliveri in that report stated that Reeves was not able to return to work. (exhibit "A" at pp. 60) And yet, Bally's did not reinstate benefits, which in itself was an unreasonable delay. Dr. Glyman's report was the reason that Bally's closed her claim next. That closure resulted in the above Order. Dr. Glyman, also stated that Reeves was not able to return to work. (exhibit "A" at pp. 101) Once again Bally's did not reinstate benefits. That too is an unreasonable delay.

Whereas, no physician has ever determined that Reeves was able to return to gainful employment, including Dr.s Oliveri and Glyman. (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 122, 128, 130, 131, 133, 134, 203, 316) The DIR, by using parts of just those documents came to a determination that, along with the above Order, do not fit this case.

Had the DIR informed Reeves that they believed that the Order did not have a plain meaning and they were going to have to look into all of the documentation that led up to that Order, she to should have had an opportunity to present documentation. As documented in Reeves whole medical history, no physician has ever determined that Reeves is able to return to gainful employment due to her industrial symptoms. (exhibit "A" at pp. 5, 6, 24, 60, 81, 83, 87, 101, 122, 128, 130, 131, 133, 134, 203, 216)

The DIR knowing that this claim has been a long disputed claim, reasonably, if they were going to make a decision based upon documents, other than the Order above, which Reeves

believes to have very plain language, should have notified her, so as she could have supplied more documents or at least an argument in support of her beliefs.

Whereas, Bally's paid TTD benefits without certification of disability forms until they closed Reeves claim based upon the report from Dr. Oliveri in 1998, (exhibit "B" at pp. 244 A) a closure that was denied as that report did not address Reeves' symptomaology. (exhibit "C" at pp. 327) That denial of closure should have placed the claim back in it's previous status. One where Reeves was at least receiving TTD benefits and prescription medications. For some unknown reason Bally's did not reinstate any benefits, nor did they appeal and seek a stay.

Bally's next closure was based upon a report from Dr. Glyman. (exhibit "B" at pp. 273) That closure was eventually reversed and Reeves's claim reopened in the above Order. That reopening should have placed the claim back in the status it was in before it was closed, with at least TTD benefits and medications. Once again, for some unknown reason, Bally's did not reinstate benefits nor did they appeal and seek a stay.

Whereas, nether closure was found to have merit, by either a Hearings Officer (exhibit "C" at pp. 327) or an Appeals Officer, (exhibit "C" at pp. 333) Pursuant to NRS 616C.475, Reeves was entitled to all worker's compensation benefits in an open and accepted industrial claim, including TTD benefits, back to the time that Bally's closed her claim in 1998.

Whereas, the DIR mentions Dr. Mortillaro as the authorized provider of treatment from the above Order, it should be noted that he also, opined that Reeves was not able to work due to her industrial symptoms. (exhibit "A" at pp. 122, 127, 130-131, 133-134) As such, Reeves as an industrially injured employee, unable to be gainfully employed was entitled to all worker's compensation benefits, including TTD benefits.

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Whereas, Dr. Mortillaro was an authorized physician, his opinion that Reeves was unable to return to gainful employment due to her accepted industrial symptoms, is certification of disability.

The DIR should have taken into consideration the fact that as the Order above held that Reeves' claim was an open and accepted claim, a claim that should not have been closed, Reeves was therefore, entitled to all worker's compensation benefits, back to the time the claim was closed.

Whereas, Bally's did and has not paid compensation due an industrially injured employee, they have engaged in an unreasonable delay of payment due an injured employee, making it necessary for Reeves to initiate proceedings to try obtain benefits due an industrially injured employee, thereby violating NRS 616D.120.

2. BALLY'S HAS UNREASONABLLY DELAYED PAYMENT OF COMPENSATION DUE AN INDUSTRIALLY INJURED EMPLOYEE.

Pursuant to NRS 616D.120 (1), (c), (c), (2), (e), (g), (h), (i), which states:

> (1), (c), refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer, (c), (2), that over thirty (30) days is considered to be unreasonable, (e), made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, (g), failed to provide or unreasonably delayed payment to an injured employee, (h), engaged in a pattern of untimely payment to an injured employee, (i), intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 616D of NRS.

Whereas, this claim was accepted and TTD benefits were paid until Bally's closed it in 1998, (exhibit "B" at pp. 237, 238) a closure that was denied by a Hearings Officer. Exhibit "C" at pp. 326-327)

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The claim was then closed again in 2001, (exhibit "B" at pp. 273) a closure that was reversed and the claim reopened by an Appeals Officer. (exhibit "C" at pp. 333)

Whereas, Bally's issued a notice of intention to close claim Reeves' claim on December 27, 2001, (exhibit "B" at pp. 273) and they would not have had to close an already closed claim, must have meant that her claim was open as the August 27, 1998 closure was denied, but no benefits were being paid. That itself amounts to an unreasonable delay in compensation of over two (2) years. Thereby, a violation of NRS 616D.120.

Bally's 2001 closure of Reeves' claim was reversed and her claim reopened, with no reinstatement of benefits, which amounts to another violation of NRS 616D.120, at least up until the latest closure in 2006, another five (5) years. That makes an unreasonable delay of compensation of over seven (7) years and as Reeves believes that Bally's closure in 2006 will be overturned, as none of the requirements pursuant to NRS 616C. 475 have been met, which now makes it over twelve (12) years.

The claim was closed again in 2006, that closure is being disputed. (exhibit "B" at pp. 311)

The fact is, that this claim was accepted and TTD benefits paid until the illegal closure, in 1998. After each closure was found to be without merit, Bally's reasonably should have reinstated the claim to it's previous status, with all worker's compensation benefits.

Whereas, Bally's did not, they have engaged in a pattern of untimely, unreasonable delays in payment of compensation. Which amounts to a refusal and an intentional delay of payment due an industrially injured employee.

Whereas, it is now twelve (12) years later, with no payment, it is well past the thirty (30) days that is considered to be unreasonable.

To show that this is a pattern that Bally's has used in this case from the very beginning are the following documents and the fact that it took nine (9) months after accepting Reeves' claim for Bally's to commence payment the first time.

Reeves thinks it is interesting that as far back as January 10, 1991, in a letter from Arnold Weinstock, counsel for Bally's, to Vickie Prediger, SIS administrator services, he stated: (exhibit "B" at pp. 232 A)

> At this time, I believe that absent persuasive documentation from Dr. Kudrewicz, or some other license physician, regarding Claimant's current medical condition in relation to her first and second automobile accident, Bally's Grand Hotel & Casino will be held responsible under the Nevada Workers Compensation Laws for the injuries which Ms. Reeves received in the September 15, [25] 1988 automobile accident.

Also, on a Determination of Compensability form, dated 7/2/91, under Recommendations, was to accept Reeves' claim as compensable. (exhibit "B" at pp. 236 A)

Bally' new as far back as January of 1991, that their counsel believed that under Nevada Worker's Compensation Laws, Bally's would be held responsible for the injuries Reeves sustained in her industrial accident, and their insurer recommended acceptance of her claim.

Bally's did not accept Reeves' claim, until almost eight (8) years later, after continuous litigation, all the way to the Nevada Supreme Court, and then returned to the issue of causation to close her claim almost as soon as they accepted it. The very issue of etiology is what the Nevada Supreme Court found to be unsubstantiated in the medical records, (exhibit "C" at pp. 324) and yet Bally's keeps returning to that issue of causation.

Bally's accepted Reeves' claim the first time, on September 26, 1997. (exhibit "B" at pp. 237)

After numerous requests and long delays, nine (9) months, in paying back TTD benefits or any

other benefits, even though, NRS 616C.065 (1) (a) states that within 30 days after accepting the claim the insurer shall commence payment, Bally's eventuality, on or about June 2, 1998, issued a check for back TTD benefits. (exhibit "B" at pp. 239)

Whereas, Bally's own insurer believed that compensation was due, as documented in the letter from Ms. Ethel Pipp to Mr. F. Edward Mulholland, dated April 16, 1999, in which she stated; "Needless to say I am disappointed in having to pick up benefits from August forward. I will be issuing a check to her as you suggested for her disability from August and reimburse her for the past prescriptions." , (exhibit "B" at pp. 254) and the letter from Mr. Robert A. Fusinatto to Mr. Cliff Connor, dated November 20, 2000, in which he stated; "Based on the reported paid, there are no benefits being paid. I thought the recent decision allowed compensability. What about ongoing treatment?" (exhibit "B" at pp. 268)

It was their attorney, Mr. Mulholland, that felt that Reeves was only potentially entitled to any worker's compensation benefits, as noted in his response letter to Ms. Pipp dated April 20, 1999, in which he stated; "It is my belief that we should not pay any TTD benefits to Claimant (that we have not already paid) or for any more prescriptions. Most importantly, the Hearing Officer Decision and Order dated January 25, 1999, did not obligate us to pay benefits.", (exhibit "B" at pp. 256-257) and his letter to Mr. John F. Vena, dated July 9, 1999, in which he stated; " Please remember that Ms. Reeves' claim has been accepted as compensable. We are currently litigating only the issue of entitlement to interest. Ms. Reeves continues to desire additional treatment in order to determine what is wrong with her and what can be done to remedy her pain. Given that this matter has been accepted, Ms. Reeves remains entitled to, or more accurately potentially entitled to, certain benefits, including, but not limited to: (1)

additional treatment if she can find a physician who states she is in need of treatment and that the cause for the need for treatment is related to her industrial injury; (2) TTD compensation; (3) a PPD award if a ratable impairment is indicated. Because many of the stated issues involve monetary compensation and Ms. Reeves is still seeking active treatment, we may have a very difficult time resolving this case once and for all at this point in time." (exhibit "B" at pp. 245-246) Based upon his advice, Bally's refused to pay anything.

It should be noted that in the letter from Bally's counsel dated July 9, 1999, he first stated to please remember that Reeves' claim has been found to be compensable, then he states that she is only potentially entitled to any benefits. Of note, is the date of that letter, it is after Bally's closed Reeves' claim.

As, noted in the documents above, Bally's new that Reeves claim was an accepted and open claim, that their closure had been denied, and therefore she should have been receiving benefits.

Also, the Appeals Officer's Decision and Order plainly stated that Reeves' claim should not have been closed but should remain open for further treatment, which to a reasonable mind would mean that all worker's compensation benefits that were being paid until the illegal closure would be reinstated, but were not.

Therefore, Bally's actions amounts to an unreasonable delay and refusal to pay compensation due to an injured worker, which forced her to initiate proceedings to try to have her benefits reinstated, therefore, a violation of NRS 616D.120.

3. <u>IF THE DIR IS GOING TO BASE A DETERMINATION ON REEVES' MEDICAL HISTORY, IT SHOULD BE ON THE WHOLE HISTORY.</u>

Whereas, the DIR has based a finding on only selected by Bally's medical documents, and even then only on selected lines in those documents, even through Reeves requested to be

involved in any process that required more documentation, she believes that her whole medical history should be taken into condsideration.

When one takes Reeves' whole medical history into condsideration, along with other documents, it will show that, one (1), no physician has ever determined that Reeves was able to return to gainful employment due to her industrial injuries, two (2), that Bally's placed Reeves on a medical LOA against her wishes and do not want her to return to work with any restrictions, three (3), that Bally's has never had a legal justification to have ever closed this claim, four (4), that Bally's has engaged in numerous attempts to return to the issue of causation, to close this claim, so as to not pay compensation due an industrially injured employee and five (5), that Reeves contunes to suffer from the same symptoms that caused Bally's to place her on a medical LOA and were accepted as industrially compensational, as documented in her most recent IME.

Reeves will show through the following documents that the industrial accident of September 25, 1988 caused the symptoms that have prevented her from returning to gainful employment and that Bally's has known all along that to be the case, but still has engaged in a pratice designed to delay or prolong the payment of compensation, thereby, violating NRS 616C.475 and NRS 616D.120, and case law.

Reeves' industrial accident occurred on September 25, 1988. (exhibit "B" at pp. 221, 222) She continued to work until May 17, 1989, when she was placed upon a medical LOA, against her wishes by her employer, Bally's, as they believed her to be a hazard at the workplace due to her dizziness, a symptom from her industrial accident. (exhibit "B" at pp. 234, 270)

Reeves filed a grievance on May 19, 1989, to be allowed to return to her position as a room

reservation clerk, with some necessary medical restrictions. A grievance meeting was held and on 6/7/89 a Memorandum of Settlement was issued which held: (exhibit "B" at pp. 223)

> WHEREAS, a grievance was filed against the Employer on or about May 19, 1989 concerning placement of grievant on a medical leave of absence:
>
> 2. The Grievant will remain on a medical leave of absence until she has a full medical release to return to work without restrictions.
>
> 4. This Memorandum of Settlement shall constitute a final and binding settlement of any and all matters which have been or might be raised by the Union or by the Grievant in connection with her medical leave of absence.

Reeves did not sign the Memorandum of Settlement because she did not agree with it, specifically numbers two (2) and four (4).

Also, of interest are Bally's own documents, that show that Bally's placed Reeves on a medical LOA due to her dizziness, and did not want her on their property until she had a full medical release with no restrictions, dated and listed below:

> 2/29/91: comment from Vickie Prediger to Arnold Weinstock; Bally's does not want to return her [Reeves] to work without a full duty release. (exhibit "B" at pp. 236)
>
> 1/3/91: Telephone Conversation Record - reference - Return from LOA - Susan came in with a note from a Dr. Borkin which stated Susan could return to work duties she was performing prior to her being put on LOA. (exhibit "A" at pp. 154) I told Susan I know there was more to this situation and that I would need to check with Cass since he was the one that involved with this. Susan was sitting in the chair by my desk, as she began to stand up, she appeared to become dizzy and unbalanced to the point where the man that was with her had to help her stand and help her walk out of the office to keep her balance. (exhibit "B" at pp. 232)

It should be noted that on the note from Dr. Borkin mentioned in the above telephone conversation, some Bally's employee wrote at the bottom "not acceptable per Mark Soloman"

On a Wage Verification Form, dated 2/25/91, signed by, Ms. Ana Ojeda, W.C. Specialist:

> Date employee last worked after injury incurred: 5/17/89* * Placed on medical LOA due to dizziness. (exhibit "B" at pp. 234)

In a letter from Ms. Julie Vacca to Mr. Cliff Conner;

> 12/08/2000: Ms. Reeves continued to work, after the accident, until 9 months later when her employer forced her to take a medical leave of absence claiming she was a hazard to her job. (exhibit "B" at pp. 270)

In a letter from Arnold Weinstock, counsel for Bally's, to Ms. Vickie Prediger, Rawlings, Burdick & Hunter, dated February 7, 1991: (exhibit "B" at pp. 234 A)

> Claimant is requesting settlement of the above case, receiving the 5% Permanent Partial Disability Award which Dr. Kudrewicz apparently said she would be entitled to. In addition, Ms. Reeves wants to be allowed to return to work at Bally's as an employee.

In a letter from Ms. Ethel I. Pipp, Manager, Workers' Compensation, to Mr. David Zerfing, Sr. V. P., Finance & Administration, Bally's: (exhibit "B" at pp. 242)

> June 2, 1998: She was released from employment as a room reservation clerk on 05-17-89. Reason given: extreme headaches, dizziness with neck pain.

Although Bally's did not want Reeves to return to work, unless her industrially caused symptoms had completely resolved, (exhibit "A" at pp. 154, exhibit "B" at pp. 232, 236) she desired to return to work, as noted by her filing of a grievance and providing the letter from Dr. Borkin. (exhibit "A" at pp. 154) However her own treating physician, Dr. Mattimoe, in a report dated January 31, 1991, stated "I would not recommend her to resume work although she states she is most anxious to do so." (exhibit "A" at pp. 5) Also in a report dated March 30, 1991, he stated "I feel that she is currently unfit to undertake any duty." (exhibit "A" at pp. 6)

It should be noted that Bally's did not want Reeves to return to work but they also did not

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accept her industrial claim of 1988 until 1997, (exhibit "B" at pp. 237, 238) after years of litigation, and then only long enough to try to find a different reason to close it. That reason has been the same reason, causation. (exhibit "A" at pp. exhibit "B" at pp. 241, 242, 257, 260, 264, 268, 270, 275) Bally's has been trying to revisit the issue of causation every since they accepted this claim, even though in Day v Washoe it was found that causation can not be revisited once it has been accepted as industrially caused. As such, until Reeves industrially caused symptoms are resolved, there is no legal justification for Bally's to close her claim.

As to the symptoms, arising out of Reeves' industrial accident of September 25, 1988, Dr. Mattimoe opined that on the dtaes listed below:

> September 4, 1990: Patient returned as I had seen her soon after the injury.
> Her main problem is pain in the neck especially the lower half, and of the L) shoulder which is quite intense, sometimes radiating into the L upper arm.
> She also has headaches, photophobia, occasional dizziness.
> There appears to be loss of the cervical Lordosis and considerable Posterior neck muscle spasm, all neck movements are greatly decreased with pain. (exhibit "A" atb pp. 2, 3)
>
> January 3, 1991: Patient still complains of severe headaches and Ataxia, meaning a staggering motion while walking and feeling of loss of balance. (exhibit "A" at pp. 4)
>
> January 31, 1991: Her dizziness remains a major feature and she complains of staggering while walking. (exhibit "A" at pp. 5)
>
> January 11, 1992: Patient has a number of problems which are MVA related - headaches, back and neck pain, Parastheaiae L) lower limb. She has considerable photophobia and continuing dizziness. (exhibit "A" at pp. 8)
>
> May 8, 1993: Mrs. Reeves has suffered very severe in-capacitating headaches since the MVA of 9-25-88. (exhibit "A" at pp. 9)
>
> May 20, 2002: Susan Reves ha difficult with walking dur to th effects

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PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN REEVES,
Appellant(s),
vs.

DIVISION OF INDUSTRIAL RELATIONS; NEVADA DEPARTMENT OF ADMINISTRATION,
Respondent(s),

Case No: A644791
SC Case No: 62468

RECORD ON APPEAL
VOLUME
3

ATTORNEY FOR APPELLANT
SUSAN REEVES, PROPER PERSON
4724 E. WASHINGTON AVE.
LAS VEGAS, NV 89110

ATTORNEY FOR RESPONDENT
JOHN F. WILES, ESQ.
1301 N. GREEN VALLEY PKWY., SUITE 200
HENDERSON, NV 89074

A644791 SUSAN REEVES vs. DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency

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vs.
Division Of Industrial Relations, Defendant(s)

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A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
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PEARSON
PATTON
SHEA
FOLEY &
KURTZ P.C.
Attorneys at Law

FILE

January 21, 2004

Beverly Mandery
OHMS/CCMSI
P.O. Box 35350
Las Vegas, NV 89133

Re: Susan Reeves

Dear Ms. Mandery:

I represent Susan Reeves regarding her industrial accident of September 1988. As you are aware, the Appeals Officer in this matter recently agreed with Dr. Mortillaro's opinion, finding that Ms. Reeves' condition is industrially caused. It is my understanding that you have authorized Ms. Reeves to commence treatment with Dr. Mortillaro as recommended. It is my further understanding that Dr. Mortillaro has recently advised you as to the additional treatment which he believes Ms. Reeves needs. Dr. Mortillaro has referred Ms. Reeves to Dr. Petroff for further evaluation and to physical therapy consistent with his prior recommendations. Dr. Petroff has recommended diagnostic evaluation of Ms. Reeves before she begins the physical therapy. Dr. Petroff has also provided Ms. Reeves with several prescriptions for which the pharmacy needs your approval before they will fill them.

Additionally, Ms. Reeves has not received any temporary total disability benefits in a number of years due to the wrongful closing of this claim. This matter has been tied up in the administrative appeals process since then, with Dr. Mortillaro finally resolving all questions as to whether Ms. Reeves' condition was industrially related. Bally's did not petition for judicial review the decision by the Appeals Officer. Since Ms. Reeves' claim was wrongfully closed, she is entitled to total temporary disability benefits for nearly 5-1/2 years. Additionally, she is entitled to interest on those benefits. I have previously litigated both issues with Bally's in this matter. Please provide me with your calculations of Ms. Reeves' TTD benefits and the associated interest.

Please advise as to Bally's position concerning Ms. Reeves' current medical benefits, prior temporary total disability benefits and interest, and Ms. Reeves' current total temporary disability benefits.

It is my understanding that I am to communicate with you directly now that the administrative appeals process is concluded. If this is not correct, please advise and I will continue to communicate through Bally's counsel.

Niels L. Pearson
W. Randolph Patton
Randa Reiff Shea
George W. Foley, Jr.
Theodore J. Kurtz
Douglas M. Rowan
Michele A. Kiraly
Robert S. Cardenas
Nathaniel G. Hannaford

Bank of America West
6900 Westcliff Dr., Suite 800
Las Vegas, NV 89145
(702) 228-7717 *phone*
(702) 228-8824 fax
www.ppsfk.com

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LAS VEGAS

Thank you for your attention to this matter. If you wish to discuss this matter, please feel free to contact me.

Very truly yours,

PEARSON, PATTON, SHEA,
FOLEY & KURTZ, P.C.

Douglas M. Rowan

DMR:jh

cc: Susan Reeves
Don Schwartz, Esq.

COMST - LVS VEGAS
JAN 23 2004

Bank of America West
6900 Westcliff Dr., Suite 800
Las Vegas, NV 89145
(702) 228-7717 *phone*
(702) 228-8824 fax
www.ppsfk.com

[redacted]

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Note Type	Created	Last Modified

Ltr from Douglas Rowan, 1/21/04, stating that Dr. Mortillaro has referred clmt to Dr. Petroff for further evaluation and to physical therapy. (This office does not have this referral, and according to my telephone conversation w/Dr. Mortillaro's office, they have not made any referrals, other than requesting PT by report). Mr. Rowan states that Dr. Petroff has recommended diagnostic eval prior to her beginning PT, and several prescriptions. Mr. Rown is requesting TTD for nearly 5-1/2 years, due to the appeals process and the "wrongful closure" of clmt's claim. He also states that it is his understanding that he is to communicate w/us directly now that the appeals process is concluded. I have an e-mail to Dan Schwartz to address these issues:
Hi Dan:

Douglas Rowan has copied you in on his letter to me of 01/21/04. Please address his requests and statements regarding Dr. Petroff, TTD, and communications, and please advise. Thank you for your attention to this matter.

Beverly Mandery
Claims Representative, CCMSI
702-933-4817
702-933-4861

MEDICAL 01/27/2004 by Internal Load 01/27/2004 by Internal Load

Med rpt of Dr. Mortillaro rec'd, dated 1/10/04, re presenting a proposed tx plan. As approved, clmt will be provided individual counseling, biofeedback therapy and psychoeducational lectures along with appropriate physical therapy and medication management. Short-term program as follows: clmt to rec individual counseling, biofeedback therapy and psychoeducational lectures 3xweek for 7 weeks; clmt to receive PT 3xweek; clmt is currently seeing Dr. Petroff and Madamo for being prescribed the approp medications, she is to cont w/these physicians for the medications; a Theracane is to be provided, w/video, cost of approx $50.00. It is anticipated that after completion of the 7 weeks, the presenting physical and psychological issues related to the 9/25/88 injury should be in remission. At that point, it is anticipated that clmt should require no further medical or psychological tx related to this injury. E-mailed this information to Dan Schwartz. Will fax him a hard copy.

GENERAL 01/27/2004 by MYRA JOVELLANOS 01/27/2004 by MYRA JOVELLANOS

Bill Return:Dietrich MPT, Jeff
Date Of Service:1-8-2004
Amount:$131.00
Reason: Need medical Reports

LEGAL 01/29/2004 by Internal Load 01/29/2004 by Internal Load

Another ltr from Douglas Rowan, 1/26/04, in response to my ltr of 1/14/04 to clmt, responding to Dr. Petroff's report of 1/6/04. We denied treatment by Dr. Petroff, MRI of cervical spine, and x-ray of cerv spine. (The HO on 4/19/02 affirmed our determination of claim closure, appealed. On 02/25/02, the AO reversed the HO Decision & Order. Conclusions of law, state that "Claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback thereapy, psychoeducational lectures and appropriate physical therapy". Dr. Mortillaro was authorized to provide the treatment pursuant to Order. Dr. Petroff continued to treat clmt, and requested MRI of cerv spine before clmt returns to PT to determine the current status of the structures of her cerv spine. Dr. Mortillaro does recommend the PT and that has been authorized through his office. Dr. Petroff wants to continue clmt on medications, which Dr. Mortillaro authorizes, in his letter of 1/10/04, received after we denied further tx by Dr. Petroff. Dr. Mortillaro only states in his letter of 1/10/04, "she is currently being prescribed appropriate medication for her headaches and dizziness by Doctors Petroff and Madamo. She is to continue seeing Doctors Petroff and Madamo for being prescribed the appropriate medications." In addition, Dr. Mortillaro is recommending a Theracane for clmt. Additionally, attny is stating that the claim was "wrongfully closed" in 1998 and he is requesting TTD from 1998 to present, and continuing.

LEGAL 01/29/2004 by Internal Load 01/29/2004 by Internal Load

Fax to Daniel Schwartz, Esq.:
Hi Dan:

Hope you received my fax to you of 1/27/04, regarding the letter I received from Douglas Rowan. I am attaching a second letter from him, dated 1/26/04. I am requesting that you call me to discuss Mr. Rowan's requests and a plan of action. I need your involvement here, so please contact me as soon as you can. Thanks.

cc: Suhair Sayegh

PRE-CERT 01/30/2004 by Internal Load 01/30/2004 by Internal Load

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Claim Note for Reeves, Susan (88[illegible]01H243724, DOL: 09/25/1988)

Note Type	Created	Last Modified

Fax to Dr. Petroff, authorizing the MRI of C-spine, per discussion w/Dan Schwartz:

Fax Cover Sheet

Date: January 30, 2004

To: Name: George Petroff, M.D.
Company: Dunn Neurologic Assoc
Phone: ?????
Fax: 702-878-1566

From: CCMSI
Name: Beverly Mandery (bmandery@ccmsi.com)
Phone: 702-933-4817
Fax: 702-933-2053

Pages: 2 (including cover)

Subject: Susan Reeves, claim #: 88H92H243724, DOI: 9/25/88

Dear Dr. Petroff:

This fax is to authorize your request for MRI of the C-Spine for Ms. Susan Reeves. The authorized diagnostic center is Steinberg Diagnostics for this employer. Please have your office schedule the appointment with Steinberg. Thank you for your attention to this matter.

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
Douglas Rowan, Esq.
Suhair Sayegh

GENERAL 01/30/2004 by Internal Load 01/30/2004 by Internal Load

Faxing copy of auth for MRI w/Dr. Petroff to Dan Schwartz and Douglas Rowan.

LEGAL 01/30/2004 by Internal Load 01/30/2004 by Internal Load

Discussed the letters of clmt's counsel, Douglas Rowan. After discussion w/Dan and review of the Order, we have decided that Dr. Mortillaro's letter of 1/10/04, does state that Dr. Petroff will handle the PT for clmt, and that it may be that the MRI is needed prior to starting the PT. In Dr. Petroff's letter of 1/6/04, need for MRI, C-spine x-ray to address her current flare and to track degenerative change of superimposed trauma in the neck region. I asked Dan to address the letters of Mr. Rowan regarding med treatment and benefit issues, possibly in my absence from the office. Dan wants printout of indemnity benefits that were paid to clmt over the years.

GENERAL 02/04/2004 by MYRA JOVELLANOS 02/04/2004 by MYRA JOVELLANOS

Bill Return: Dietrich MPT
Date Of Service: 1-13-2004
Amount:$151.00
Reason: No Medical Reports

MEDICAL 02/06/2004 by Internal Load 02/06/2004 by Internal Load

Verbal auth MRI of the cervical spine as ordered by Dr. Petroff to Denise @ Steinberg Diagnostic.

LEGAL 02/10/2004 by Internal Load 02/10/2004 by Internal Load

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CCMSI

March 16, 2004

Douglas M. Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

Re:	Susan Reeves
Claim #:	88H92H243724
Employer:	Bally's Las Vegas
Date of Injury:	09/25/88

Dear Mr. Rowan:

Thank you for submitting the completed D-6 Form for Ms. Susan Reeves. Pursuant to NRS 616C.475, this office is requesting that Ms. Reeves supply certification of disability from her physicians, to support the request for TTD benefits, from August 26, 1998 to the present.

Upon receipt of these records and upon confirmation from the ESD, that Ms. Reeves was not working or collecting unemployment benefits, we will be more than happy to render a determination with appeal rights.

Please do not hesitate to call at any time.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
File

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C C M S I

July 21, 2004

Douglas Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

Re:	Susan Reeves
Claim #:	88H92H243724
Employer:	Bally's Las Vegas
Date of Injury:	09/25/88

Dear Mr. Rowan:

Attached is a copy of Dr. George Petroff's report of June 29, 2004. Based on Dr. Petroff's report, there is no evidence of a certification of disability.

Pursuant to NRS 616C.475 (7), your request for TTD benefits from 1998 to present, are denied.

If you have any questions regarding this matter, please do not hesitate to contact this office. If you do not agree with this determination, you have a right to request a hearing regarding this matter. If this is your intention, please complete the attached Request for Hearing form and return it, **along with a copy of this letter**, to the Hearings Division at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Encl.
Cc: Bally's Las Vegas
Susan Reeves
Daniel Schwartz, Esq.
File

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CCMSI

FILED
JAN 2 0 2006
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	Claim No:	88H92H243724
SUSAN REEVES, Claimant.	Appeal No:	14175-GS 14174-GS 13350-GS

DECISION AND ORDER

The above captioned appeals came on for hearing before Appeals Officer, Geraldine H. Schwartzer, Esq., on January 5, 2006. The Claimant was present and was represented by Douglas Rowan, Esq. The Self-insured employer, Bally's, was represented by Lee Davis, Esq. of Santoro Driggs, Walch, Kearney, Johnson & Thompson.

There were three (3) appeals consolidated for hearing. At the time of the hearing, Claimant's counsel advised that appeal numbers 13350 and 14174 were being withdrawn and could be dismissed. Appeal number 13350 was the Claimant's appeal from a November 30, 2004 Hearing Officer's Order of Dismissal. The Hearing Officer dismissed the Claimant's appeal regarding claim closure. The Hearing Officer noted there was no determination and a review of the file failed to indicate the claim was closed. Although the Claimant appealed the November 30, 2004 Hearing Officer's decision, the Claimant withdrew the appeal on January 5, 2006, as the claim is open and claim closure is not an issue.

In regards to appeal number 14174, this was Claimant's appeal from the July 15, 2004 denial of certain medical bills. The Claimant, through counsel, withdrew the appeal as that issue was resolved and no longer at issue.

In regards to appeal number 14175, this was the Claimant's appeal from a November 30, 2004 Hearing Officer's decision. The Hearing Officer affirmed the July 21, 2004 denial of temporary total disability, "TTD" herein, benefits. Upon review of the appeal file, the Claimant's

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appeal was untimely filed on January 12, 2005. The parties were informed as to the date the appeal was filed and Claimant presented testimony regarding the filing of the appeal. After considering the documents and Claimant's testimony, the Appeals Officer renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant testified she received the three Hearing Officers' November 30, 2004 decisions and forms to file the appeals from the Hearing Officer's decision. She further testified she completed all three appeal forms and sent the forms to the appeals office in the same envelope.

2. There is no evidence the appeals office received all three appeal forms on the same day. Each Hearing Officer decision has a different number for that appeal before the Hearing Officer. Although all three decisions were rendered on November 30, 2004, each decision has a different number for that particular issue decided by the Hearing Officer. The appeal forms used to request an appeals officer hearing each contained the hearing officer number that was being appealed. According to the appeal forms, appeal number 13350 was the appeal from Hearing Officer number 10908-SM, the hearing involving the claim closure. This appeal request was received on December 8, 2004. The appeal request for appeal number 14174 was the appeal request for Hearing Officer number 11038-SM, the appeal involving the denial of medical bills. This appeal was received on January 12, 2005. The appeal form used to request an appeal from the denial of TTD, Hearing Officer number 10907-SM, was also received by the appeals office on January 12, 2005.

3. The Claimant's appeal from the Hearing Officer's decision denying TTD was untimely filed on January 12, 2005.

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. . .

CONCLUSIONS OF LAW

1. NRS 616C.345(1) provides for a thirty (30) day period for filing an appeal from the hearing officer's decision.

2. Failure to file a request for hearing may be excused where the aggrieved party can demonstrate by a preponderance of the evidence that she did not receive the determination and the forms necessary to file the appeal. NRS 616C.345(8).

3. The time limits for the filing of appeals in Workers' Compensation actions are mandatory and jurisdictional. State Indus.Ins.Sys. v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985). Reno Sparks Visitors Auth. v. Jackson, 112 Nev.62, 910P.2d 267 (1996). The Appeals Officer thus has no discretion to excuse the untimely filing of an appeal, other than as provided by statute.

4. Mailing does not constitute filing. The appeal request must be timely filed. Filing is not timely unless the papers are received by the clerk. SIIS v. Partlow-Hursh, 101 Nev. 122, 696 P. 2d 462 (1985). Although the Claimant testified she mailed the appeal request at the same time as the appeal request in appeal number 13350 which was timely received and filed, the documentary evidence indicates appeal number 14175 was received on January 12, 2005 and was untimely.

ORDER

Pursuant to the Claimant's withdrawal of appeal number 13350 (the Hearing Officer's Order of Dismissal regarding the claim closure issue), and appeal number 14174 (the Hearing Officer's decision regarding payment of medical bills), the appeals are dismissed with prejudice. In regards to appeal number 14175 (the Hearing Officer's decision regarding TTD), the appeal was untimely filed and the Appeals Officer has no discretion to excuse the Claimant's untimely filing of the appeal. Due to the untimely filing of the appeal, there is a lack of jurisdiction to

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decide the appeal involving the TTD issue and the appeal is dismissed.

IT IS SO ORDERED this 20th day of January, 2006

GERALDINE H. SCHWARTZER, ESQ.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

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JUL 3 ...
WCS HND

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS ROWAN ESQ
THORNDAL ARMSTRONG DELK ET AL
1100 E BRIDGER AVE
LAS VEGAS NV 89101

BALLY'S
KATHY MONE
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

DANIEL SCHWARTZ ESQ
SANTORO DRIGGS ET AL
400 S 4TH ST 3RD FL
LAS VEGAS NV 89101

CCMSI
DEBORAH JONES
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 20th day of January, 2006.

Luciana Della Neve

Luciana Della Neve, Legal Secretary II
Employee of the State of Nevada

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Claim Notes for Reeves, Susan (8[illegible]01H243724, DOL: 09/25/1988)

Note Type	Created	Last Modified
RESERVES	08/28/2006 by CONVERTED CONVERTED	08/28/2006 by CONVERTED CONVERTED

Reserve change #8: Decreased $ 49,595.46 COMMENTS: Balancing buckets on converted claim. Denial of TTD affirmed and PPD paid previously, therefore no further indeminity benefits anticipated. Future medical treatment is likely. Reserving $1000 for MD office visits, $2000 for Rx and $5000 for physical therapy. $750 for IME to obtain current status and $1000 for bill review. $2500 for investigation due to possible future surveillance if claim cannot be closed. $2500 for legal as EE is represented and continues to oppose denial of medical bill pay.

CONVERTED-UNKNOWN	08/28/2006 by CONVERTED CONVERTED	08/28/2006 by CONVERTED CONVERTED

From: Daviet, Glenn Sent: Sunday, August 27, 2006 6:29 PM To: DaRos, Jennifer Subject: RE: Excess again - Susan Reeves, H243724 Sharon Gibson gave me a spreadsheet that had information she was keeping on some of the older policies. According to the spreadsheet, the Safety National policy (4151566) for 1/1/88 - 12/31/88 had a $250,000 deductible.

MEDICAL	08/29/2006 by CONVERTED CONVERTED	08/29/2006 by CONVERTED CONVERTED

Received call from Jeff Dietrich PT office and answered questions regarding o/s bills. Explained that further PT is not authorized and any requests will likely be denied. They could not say when the last time EE saw a physician was.

MEDICAL	08/29/2006 by CONVERTED CONVERTED	08/29/2006 by CONVERTED CONVERTED

Placed call to Dr. Mortillaro's office. EE was last seen over 2.5 years ago. Bonnie will fax the most recent report.

MEDICAL	08/29/2006 by CONVERTED CONVERTED	08/29/2006 by CONVERTED CONVERTED

Placed call to Dr. Mattimoe's office and spoke with Estelle. EE treats with Dr. Mattimoe but he is her personal physician. He does not handle WC. The last time EE treated with him was for a personal skin condition.

MEDICAL	08/31/2006 by CONVERTED CONVERTED	08/31/2006 by CONVERTED CONVERTED

Received call from Bonnie at Dr. Mortillaro's office. Confirmed that we had requested most recent report from Dr. Mortillaro. She will be pulling the file and sending.

MEDICAL	09/07/2006 by CONVERTED CONVERTED	09/07/2006 by CONVERTED CONVERTED

3/30/04 letter from Dr. Mortillaro PhD: At this time, Susan Reeves is discharged from further psychological treatment. She continues to received physical therapy. She also remains under the care of Dr. Petroff. The prognosis for Ms. Reeves returned to work is guarded to her long-term disability and belief she will never return to work in any capacity. At this time, there are no psychological contraindications preventing Susan Reeves from undergoing further medical treatment, or returning to work if given a release by her physician Dr. Petroff. however, as previously indicated in this report, the prognosis for her returning to gainful employment is guarded because of her residual medical disability and belief she will never return to work in any capacity.

MEDICAL	09/07/2006 by CONVERTED CONVERTED	09/07/2006 by CONVERTED CONVERTED

Placed call to Jeff Dietrich PT (702-968-0520). Was instructed to call back in the morning to speak with Maureen regarding who has been referring EE for PT for the work related injury, as the bills indicate Dr. Mattimoe, however his office states they are not treating her for WC.

MEDICAL	09/07/2006 by CONVERTED CONVERTED	09/07/2006 by CONVERTED CONVERTED

Placed call to Dr. Petroff's office. The doctor has relocated to Austin Texas.

ACTION PLAN/DIARY REVIEW	09/08/2006 by CONVERTED CONVERTED	09/08/2006 by CONVERTED CONVERTED

Goal is excess recovery and closure. Plan is to f/u with Safety National regarding excess recovery. Review for EE to appeal closure. Target is closure in 73 days if no appeal from EE and excess monies recovered.

CONVERTED-UNKNOWN	09/08/2006 by CONVERTED CONVERTED	09/08/2006 by CONVERTED CONVERTED

Faxed request for reimbursement to Safety National (314-995-3897). Filing No: 2020573, Claim No: 958403 SIR: $250,000.00 Paid: $268,141.04 Requested: $18,141.04 Attached payment ledger and reserve screen print.

MEDICAL	09/08/2006 by CONVERTED CONVERTED	09/08/2006 by CONVERTED CONVERTED

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Claim Notes for Reeves, Susan (88[illegible]01H243724, DOL: 09/25/1988)

Note Type	Created	Last Modified

Placed call to PT office and spoke with Jeff Dietrich. He states EE's WC physician was Dr. Petroff, who was simply managing her medications and decided to refer EE back to her primary physician, Dr. Mattimoe. Dr. Mattimoe has been writing the PT prescriptions. I noted that Dr. Mattimoe states they were not treating EE for WC. Jeff says that whether they were billing under WC or not, that Dr. Mattimoe was writing scripts for neck/back/shoulder PT, which Jeff states is related to the WC injury. He states that regardless of her subsequent injuries, he never treated her for anything other than this WC injury. He states EE has now out of state. Her husband has retired, so Jeff has not seen her for a while. EE indicated to him that she will be back in the area periodically wanting to treat, but will bill under Medicare.

CLAIMANT	09/08/2006 by CONVERTED CONVERTED	09/08/2006 by CONVERTED CONVERTED

September 8, 2006 Susan Reeves 4724 E Washington Las Vegas, NV 89110 RE: Employer: Bally's Las Vegas Claim No: H243724 D.O.I.: 9/25/88 Dear Mrs. Reeves: NOTICE OF INTENTION TO CLOSE CLAIM (Pursuant to NRS 616C.235) After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice. Your file reflects that you are not presently undergoing any medical treatment; however, if you are scheduled for future medical appointments, please advise us immediately. Nevada Revised Statute (NRS) 616C.390 defines your right to reopen your claim. You must make a written request for reopening and your doctor must submit a report relating your problem to the original industrial injury. The report must state that your condition has worsened since the time of claim closure and that the condition requires additional medical care. Reopening is not effective prior to the date of your request for reopening unless good cause is shown. Upon such showing by your doctor, the cost of emergency treatment shall be allowed. If you

CLAIMANT	09/08/2006 by CONVERTED CONVERTED	09/08/2006 by CONVERTED CONVERTED

disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter. If you have any questions, please contact me at (866)464-0159 ext. 83742. Sincerely, Jennifer DaRos WC Claims Examiner Encl.: Hearing Request cc: Employer

CONVERTED-UNKNOWN	09/13/2006 by CONVERTED CONVERTED	09/13/2006 by CONVERTED CONVERTED

9/8/06 letter from Brad Goodman of Safety National: Than you for your reimbursement request dated 9/8/06. I regret to inform you that we will be unable to honor this request. The SIR is $325,000 not $250,000 and the expenses are paid at the conclusion of the file on a Pro-Rated basis. Based upon this information the file has not exceeded the SIR. With these corrections the total paid is $207,164.49. I have reviewed your attached reserve report and based upon this report it does not appear this file will exceed the SIR. You have no reserves for indemnity and minimal for medical and expenses. I will keep on a 6 month diary and request a report at that time. if there has been no substantial change, then I will close my file at that time.

CONVERTED-UNKNOWN	09/13/2006 by CONVERTED CONVERTED	09/13/2006 by CONVERTED CONVERTED

From: DaRos, Jennifer Sent: Wednesday, September 13, 2006 2:05 PM To: Daviet, Glenn Subject: RE: Excess again - Susan Reeves, H243724 I submitted a request to Safety National for reimbursement on this claim. It came back denied because they state the SIR is $325,000. Do you have proof that the SIR was $250,000, or is it possible that Safety National is correct?

CONVERTED-UNKNOWN	09/15/2006 by CONVERTED CONVERTED	09/15/2006 by CONVERTED CONVERTED

From: Daviet, Glenn Sent: Friday, September 15, 2006 12:01 PM To: DaRos, Jennifer; Sharon Gibson (gibsons@harrahs.com) Cc: Banks, Carol Subject: RE: Excess again - Susan Reeves, H243724 Jennifer. It is possible that Safety National is correct about the deductible. At this point all I have is the spreadsheet that Sharon provided. Sharon, is there any way to confirm the deductible on the policy for Bally's Las Vegas for the period covering 9/25/88? The spreadsheet you shared with me has $250,000 but Safety National is indicating that it is $325,000.

CONVERTED-UNKNOWN	09/18/2006 by CONVERTED CONVERTED	09/18/2006 by CONVERTED CONVERTED

From: Daviet, Glenn Sent: Monday, September 18, 2006 8:31 AM To: Sharon Gibson; DaRos, Jennifer Cc: Banks, Carol Subject: RE: Excess again - Susan Reeves, H243724 Thanks Sharon. I apologize, I looked at the wrong area of the spreadsheet. Jennifer, the deductible is $325,000. Sorry for the confusion. Glenn D. Daviet, CSP, CPCU, ARM Director, Workforce Management (901) 415-7926 (direct) ---------- From: Sharon Gibson [mailto:GibsonS@harrahs.com] Sent: Monday, September 18, 2006 9:52 AM To: Daviet, Glenn; DaRos, Jennifer Cc: Banks, Carol Subject: RE: Excess again - Susan Reeves, H243724 The spreadsheet I have shows the following: Safety National SP1389NV Deductible: $325,000

MEDICAL	10/05/2006 by CONVERTED CONVERTED	10/05/2006 by CONVERTED CONVERTED

Received call from Linda from Fam&Sports PT requesting status of check that was mailed on 8/29/06. Explained it has cleared and that I will obtain a copy and fax to her at 702-361-3374 (phone 702-361-3283).

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: 41025-SE Claim Number: H243724
SUSAN REEVES 4724 E WASHINGTON AVE LAS VEGAS, NV 89110	BALLY'S CINDY MCNULTY 3645 LAS VEGAS BLVD S LAS VEGAS, NV 89109

The Claimant's request for hearing was filed on June 18, 2007 and a hearing was scheduled for July 17, 2007. The hearing was held on July 17, 2007, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present and was accompanied by her husband. The Claimant was not represented by legal counsel. The Employer was not present. The Insurer was represented by Lee Davis, Esq.

ISSUE

The Claimant appealed the determination of SEDGWICK CMS dated SEPTEMBER 8, 2006.

The issue before the Hearing Officer is CLAIM CLOSURE.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED**. This matter is heard as a result of an Appeal Officer Order of Remand.

The most recent medical report is one and one half years old. There is no current or compelling medical evidence to support continued treatment under the workers compensation claim.

A preponderance of the evidence supports closure of the claim.

> The standard required for admissibility of an expert opinion regarding causation is "a reasonable degree of medical probability", **Brown and Johnson v. Capanna, 105 Nev. 11, (1989); Orcutt v. Miller, 95 Nev. 408, (1979).**

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NAC 616C.112 {NAC 616.555} provides when the Insurer determines the Claimant has received all benefits known to be due, the Insurer shall close its file concerning the Employee and provide a claim closure notice, including appeal rights and claim reopening rights.

IT IS SO ORDERED this 25 day of July, 2007.

Steven Evans
Hearing Officer

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

CINDY MCNULTY
BALLY'S
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

JANET MACHADO
SEDGWICK CMS
PO BOX 34660
LAS VEGAS NV 89133-4660

LEE DAVIS ESQ
SANTORO DRIGGS ET AL
400 S FOURTH ST THIRD FL
LAS VEGAS NV 89101

Dated this 25 day of July, 2007.

Louanne Helms
Employee of the State of Nevada

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APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES 4724 East Washington Avenue Las Vegas, NV 89110 Claimant.	Claim No.: 88H92H243724 Appeal No.: 39934-GK 42367-GK Employer: BALLY'S Attn: Kathy Mone 3645 Las Vegas Boulevard South Las Vegas, NV 89109

DECISION AND ORDER

The above-captioned appeal came on for hearing multiple days before Appeals Officer GREGORY KROHN, ESQ. The claimant, SUSAN REEVES, was represented by, TERESA HORVATH, ESQ., of the NEVADA ATTORNEY FOR INJURED WORKERS. The Employer, BALLY'S, was represented by LEE DAVIS, ESQ., of SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON.

In a letter dated February 16, 2007, the Employer notified the claimant that her claim was accepted for specific injuries only. The claimant appealed that determination to a Hearing Officer.

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

In a letter dated September 8, 2006, the Employer notified the claimant that it was closing her claim. The claimant appealed that determination to a Hearing Officer.

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

After reviewing the documentary evidence, hearing the testimony of witnesses, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

I.

FINDINGS OF FACT

1. On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury.

2. The claimant was also involved in a motor vehicle accident again on September 25, 1988.

3. The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim.

4. The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the matter to the Appeals Officer. On March 26th 1991 the Appeals Officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court.

5. The Claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness.

6. The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts.

7. On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that she be sent to pain management.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

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8. On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain.

9. On February 27, 1991, the 5% PPD would be offered to the claimant.

10. On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. A second letter of acceptance would be sent to the claimant on May 12, 1998.

11. On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder.

12. On December 27, 2001 the claimant was sent a claim closure notice, that determination would later be reversed by an appeals officer awarding the claimant further medical care. The claimant would be sent to Dr. Mortillaro. In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer.

13. The clamant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004.

14. The claimant also continued to treat with Dr. Dunn in 2004.

15. The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility.

16. On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare.

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17. On September 8, 2006 the claimant was sent a claim closure determination. The claimant appealed that determination.

18. A Hearing Officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

19. The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim.

20. On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination.

21. On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim.

22. The claimant appealed the hearing officer order of dismissal. The claimant brought the issue of her failure to appear to Appeals Officer Richens who issued an order of remand finding that the claimant established that she had not received the notice of hearing. The matter would be referred back to the hearing office for a hearing on the merits.

23. On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination.

24. The claimant appealed that decision. Both of these appeals have been consolidated,

25. The Employer served the claimant with interrogatory questions focused on the claimant providing specific dates when he injured herself as a result of falls. The questions also asked the claimant to provide the medical facilities that she sought medical attention as a result of her fall(s).

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26. At the time of appeal hearing the claimant testified that she had many falls that she thought was caused by her industrial injuries. The claimant further testified that she believed that she was forced to require medical care for these falls.

27. These findings of fact are based upon substantial evidence within the record.

II.

CONCLUSIONS OF LAW

1. Under NRS 616C.160, the claimant must demonstrate that a late manifesting condition is caused by the accepted condition.

> 1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;
>
> 2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. The Claimant is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is the Claimant's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

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It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

III.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the claimant has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally the claimant has failed to establish an entitlement to further medical care and that claim closure was improper;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Officer Decisions dated May 10, 2007 and July 25, 2007 are AFFIRMED.

IT IS SO ORDERED.

DATED this 18th day of December, 2009

GREGORY KROHN, ESQ.
Appeals Officer

Submitted by,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

By: _____
LEE DAVIS, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for the Employer

NOTICE: Pursuant to NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service of this Order.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the ___ _____ day of December, 2009, service of the foregoing **DECISION AND ORDER** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following::

Susan Reeves
4724 East Washington Avenue
Las Vegas, NV 89110

Teresa Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, NV 89102

Bally's
3645 Las Vegas Blvd. South
Las Vegas, NV 89109

Sedgwick Claims
P.O. Box 14438
Lexington, KY 40512-4483

Lee Davis, Esq.
Santoro, Driggs, Walch,
Kearney, Holley & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

DATED this 22nd day of December, 2009

An employee of the Department of Administration,
Appeals Office

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ORIGINAL

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:

SUSAN REEVES

Appeal No: 2016-SL

DOH: September 21, 2010
11:00 AM.

DIVISION OF INDUSTRIAL RELATIONS
PRE-HEARING STATEMENT

I.

DOCUMENTARY EVIDENCE

The Workers' Compensation Section of the Division of Industrial Relations (the "Division") now submits one Evidence Packet consisting of seventy-one (71) pages (excluding the index) herewith. References to pages within the Evidence Packet shall be designated as "EP" and followed by the specific page number(s) of the document referred to.

The Division reserves the right to submit additional evidence and documentary rebuttal evidence if necessary.

II.

STATEMENT OF THE CASE

1. Issues in Question:

Whether the Division was correct in its July 22, 2010 determination not to assess administrative fines or benefit penalties against her employer, Bally's, and/or the third-party administrator of her claim, CCMSI, pursuant to NRS 616D.120 based upon their alleged misconduct in association with the injured worker's claim.

2. Statement of the Facts:

The Division adopts the facts as stated in its Determination Letter dated July 22, 2010.

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STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

3. The Division's Brief Position Statement:

NRS 616C.235 Closure of claim by insurer: Procedure; notice; special procedure if medical benefits less than $300.

1. Except as otherwise provided in subsections 2, 3 and 4:

(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant and, if the insurer has been notified that the claimant is represented by an attorney, to the attorney for the claimant by first-class mail addressed to the last known address of the attorney. The notice must include, on a separate page, a statement describing the effects of closing a claim pursuant to this section and a statement that if the claimant does not agree with the determination, the claimant has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, including, without limitation, a statement which prominently displays the limit on the time that the claimant has to request a resolution of the dispute as set forth in NRS 616C.315. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than $300, the insurer may close the claim at any time after the insurer sends, by first-class mail addressed to the last known address of the claimant, written notice that includes a statement which prominently displays that:

(a) The claim is being closed pursuant to this subsection;

(b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive; and

(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.

3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than $300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:

(a) Sent by first-class mail addressed to the last known address of the claimant; and

(b) A document that is separate from any other document or form that is used by the insurer.

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Henderson, Nevada 89074
(702) 486-9070

4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.

NRS 616C.235(1)–(4).

NRS 616C.390 Reopening claim: General requirements and procedure; limitations; applicability.

1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

(a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

(c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation.

2. After a claim has been closed, the insurer, upon receiving an application and for good cause shown, may authorize the reopening of the claim for medical investigation only. The application must be accompanied by a written request for treatment from the physician or chiropractor treating the claimant, certifying that the treatment is indicated by a change in circumstances and is related to the industrial injury sustained by the claimant.

3. If a claimant applies for a claim to be reopened pursuant to subsection 1 or 2 and a final determination denying the reopening is issued, the claimant shall not reapply to reopen the claim until at least 1 year after the date on which the final determination is issued.

4. Except as otherwise provided in subsection 5, if an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim only if:

(a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and

(b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made.

5. An application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if:

(a) The claimant was not off work as a result of the injury; and

(b) The claimant did not receive benefits for a permanent partial disability.

➥ If an application to reopen a claim to increase or rearrange compensation is made pursuant to this subsection, the insurer shall reopen the claim if the requirements set forth in paragraphs (a), (b) and (c) of subsection 1 are met.

6. If an employee's claim is reopened pursuant to this section, the employee is not entitled to vocational rehabilitation services or benefits for a temporary total disability if, before the claim was reopened, the employee:

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(a) Retired; or

(b) Otherwise voluntarily removed himself or herself from the workforce,

➥ for reasons unrelated to the injury for which the claim was originally made.

7. One year after the date on which the claim was closed, an insurer may dispose

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(702) 486-9070

of the file of a claim authorized to be reopened pursuant to subsection 5, unless an application to reopen the claim has been filed pursuant to that subsection.

8. An increase or rearrangement of compensation is not effective before an application for reopening a claim is made unless good cause is shown. The insurer shall, upon good cause shown, allow the cost of emergency treatment the necessity for which has been certified by a physician or a chiropractor.

9. A claim that closes pursuant to subsection 2 of NRS 616C.235 and is not appealed or is unsuccessfully appealed pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive, may not be reopened pursuant to this section.

10. The provisions of this section apply to any claim for which an application to reopen the claim or to increase or rearrange compensation is made pursuant to this section, regardless of the date of the injury or accident to the claimant. If a claim is reopened pursuant to this section, the amount of any compensation or benefits provided must be determined in accordance with the provisions of NRS 616C.425

NRS 616C.390.

NRS 616C.475 Amount and duration of compensation; limitations; requirements for certification of disability; offer of light-duty employment.

1. Except as otherwise provided in this section, NRS 616C.175 and 616C.390, every employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out of and in the course of employment, or his dependents, is entitled to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.

* * *

5. Payments for a temporary total disability must cease when:

(a) A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience;

(b) The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7; or

(c) Except as otherwise provided in NRS 616B.028 and 616B.029, the employee is incarcerated.

* * *

7. A certification of disability issued by a physician or chiropractor must:

(a) Include the period of disability and a description of any physical limitations or restrictions imposed upon the work of the employee;

(b) Specify whether the limitations or restrictions are permanent or temporary; and

(c) Be signed by the treating physician or chiropractor authorized pursuant to NRS 616B.527 or appropriately chosen pursuant to subsection 3 of NRS 616C.090.

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NRS 616C.475(1), (5) and (7).

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Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
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Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

NRS 616D.120 Administrative fines and benefit penalties for certain violations; powers of Administrator; revocation or withdrawal of certificate of self-insurance or registration as third-party administrator; claim against bond for payment of administrative fines or benefit penalties.

1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:

(a) Induced a claimant to fail to report an accidental injury or occupational disease;

(b) Without justification, persuaded a claimant to:

(1) Settle for an amount which is less than reasonable;

(2) Settle for an amount which is less than reasonable while a hearing or an appeal is pending; or

(3) Accept less than the compensation found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;

(c) Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

(1) Later than 10 days after the date of the settlement agreement or stipulation;

(2) Later than 30 days after the date of the decision of a court, hearing officer, appeals officer or the Division, unless a stay has been granted; or

(3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer or the Division has been lifted;

(d) Refused to process a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(e) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(f) Failed to comply with the Division's regulations covering the payment of an assessment relating to the funding of costs of administration of chapters 616A to 617, inclusive, of NRS;

(g) Failed to provide or unreasonably delayed payment to an injured employee or reimbursement to an insurer pursuant to NRS 616C.165;

(h) Engaged in a pattern of untimely payments to injured employees; or

(i) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,

☐ the Administrator shall impose an administrative fine of $1,500 for each initial violation, or a fine of $15,000 for a second or subsequent violation.

* * *

495

3. If the Administrator determines that a violation of any of the provisions of paragraphs (a) to (e), inclusive, (h) or (i) of subsection 1 has occurred, the Administrator shall order the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company to pay to the claimant a benefit penalty:

NRS 616D.120(1) & (3).

Pursuant to the express terms of NRS 616D.120, an administrative fine and benefit penalty is mandated only in the event that an insurer, organization for managed care, health care provider, third-party administrator or employer has been found to have engaged in the prohibited conduct described in NRS 616D.120(1), subsections (a), (b), (c), (d), (e) or (h). Here, under the circumstances as described by the Division in its determination letter, there has been no demonstrable misconduct by either her employer or CCMSI which would support imposition of an administrative fine and benefit penalty in this matter. Accordingly, the Division's determination to deny both an administrative fine and benefit penalty is appropriate.

III.

WITNESSES

The Division may call a Compliance/Audit Investigator or other knowledgeable employee of the Division to testify. The Division also reserves the right to examine the other party's witnesses and to examine rebuttal witnesses.

IV.

ESTIMATED TIME

The Division's presentation will take approximately thirty (30) minutes.

Dated this 8th day of September, 2010.

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By: _____

John F. Wiles, Esq., Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

496

R:\Legal\A WCS\Reeves, Susan\PHS.doc

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

AFFIRMATION

NAC 616C.303

The undersigned affirms that except as otherwise provided in NRS 616C.310, the papers and documents described in the Division's preceding Prehearing Statement and submitted in its accompanying supporting Evidence Packet filed in **Appeal No. 78016-SL**:

☑ Do not contain the personal identifying information of any person

OR

☐ Do not contain the personal identifying information of any person except for the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

OR

B. For the administration of a public program or for an application for a federal or state grant.

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

John F. Wiles, Esq. — Date: 9-6-10

John F. Wiles, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Pkwy, Suite 200
Henderson, NV 89074
(702) 486-9070

497

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: **Division of Industrial Relations' Prehearing Statement and Evidence Packet in Appeal No. 78016-SL**

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number:
Person(s) Served: Bally's Attn: Dennis Lindenbach 3645 Las Vegas Blvd S. Las Vegas, NV 89109	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number:
Person(s) Served: CCMSI Attn: Bridget Wyszomirski P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____

DATED this 10th day of September, 2010.

Judith Hade

An employee of the Division of Business & Industry

498

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STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

PET
Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588
Petitioner in Proper Person

APPEALS DIVISION

DEPARTMENT OF ADMINISTRATION

SUSAN REEVES Petitioner vs. DIVISION of INDUSTRIAL RELATIONS WORKER'S COMPENSATION SECTION CCMSI Respondents	APPEAL NO: 78016-SL DATE OF HEARING: 09/21/10 TIME OF HEARING: 11:00-12:00 P.M.

PETITION FOR AN INTERPRETER

Petitioner is requesting, pursuant to NRS 50.050 1 (b),and NRS 50.052 2 (a) and 3, that her husband (Jeff Reeves) be allowed to act, (help her understand), the proceedings in court, as even with the headphones, due to her headaches, from her industrial accident, she has a hard time hearing and processing exactly what is been said.

The longer the petitioner is in bright lights, the worse her headache becomes, the harder it is for her to understand the proceedings.

The petitioner also, needs to be allowed to keep her dark glasses on, and a brimmed hat,

Doc035
499

166180

as they are beneficial to help block out some of the glare from the lights.

Enclosed, is a letter from petitioner's doctor, Dr. Doina Jianu.

Respectfully submitted,

Susan L Reeves

Susan Reeves
4724 E. Washington Ave.
Las, Vegas Nevada 8910
702-453-2588
Petitioner in Proper Person

Researched and Typed by,
Jeff Reeves (husband)

500

166180

Doina R. Jianu, MD
Internal Medicine

February 23, 2010

To Whom It May Concern:

Susan Reeves has chronic headaches and dizziness from a workmans comp accident in 1988. Bright lights make her headaches and dizziness worse; it would be beneficial for Mrs. Reeves to allow her to wear sunglasses and a hat with a brim to help block out the lighting.

If there are any further questions, please contact my office at (702) 341-9400.

Sincerely,

Doina Jianu, MD
DJ/mw

501

(702) 341-9400 FAX (702) 341-9400
9300 Sun City Blvd., Ste. 101 Las Vegas, NV 89134

AFFIDAVIT & CERTIFICATION

Case No: A644791
Dept. No: IV
Susan Reeves vs Division of Industrial Relations et al
Appeal No: 88265-SL (78016-SL; 80334-SL)

This is to certify that the documents for the aforementioned Record On Appeal have been reviewed by the undersigned of the Department of Administration, Hearings Division, and to the best of my knowledge, all social security numbers have been redacted, and that the enclosed Record On Appeal is a certified copy of the original on file with this agency.

Signed: Shirley D Lindsey

Shirley D Lindsey, Appeals Officer

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CLERK OF THE COURT

TRNS
APPEALS OFFICE
2200 S. Rancho Drive Suite 220
Las Vegas NV 89102
(702) 486-2527

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, a State Agency, Respondents.	Case No.: A644791 Dept. No.: IV Appeal No.: 88265-SL (78016-SL; 80334-SL)

TRANSMITTAL OF RECORD ON APPEAL

TO: STEVEN GRIERSON, Clerk of the above-captioned Court:

Pursuant to NRS 233B.140, the transmittal of the entire Record on Appeal, in accordance with the Nevada Administrative Procedure Act (Chapter 233B of the Nevada Revised Statutes), is hereby made as follows:

1. The entire Record herein, including each and every pleading, document, affidavit, order, decision and exhibit now on file with the Appeal Office, at 2200 S. Rancho Drive Suite 220, Las Vegas, Nevada 89102, under the Nevada Industrial Insurance Act, in the above-captioned action, including the court reporter's transcripts if available, of the testimony of the Appeal Officer hearing.

2. This Transmittal.

DATED this 30th day of August, 2011.

SHIRLEY D. LINDSEY, ESQ.
APPEALS OFFICER

C001
001

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08/31/2011 09:44:37 AM

CLERK OF THE COURT

ROA
APPEALS OFFICE
2200 S. Rancho Drive Suite 220
Las Vegas NV 89102
(702) 486-2527

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, a State Agency, Respondents.	Case No.: A644791 Dept. No.: IV Appeal No.: 88265-SL (78016-SL; 80334-SL)

RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT

(Chapter 233B of NRS)

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI - STATE DIR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dec002
002

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

CLAIMANT'S EXHIBIT # 1

RECEIVED
AND
FILED

SEP -7 PM 4:49

DoC036
502

Saturday, November 7, 1987:

Patient states that she continues to have dizziness or light headedness; she has the feeling, when looking at objects for a time, that they move away from her and then oscillate up and down. She is also dizzy when turning her head to the left which can also cause some pain on the left side of the neck and has prevented her from driving since the MVA. She has no LOT since last visit. There is also pain in the occipital area with headaches.

O/e 135/72 72. Good cervical movements. Chest and CVS normal. Cranial nerves intact. No Nystagmus. Unsteadiness giving ambivalent Rhomberg. Heel-toe gait and one foot stance okay.

Patient referred to Dr. B. Becker, ENT. I will see her in 1/12.

[illegible]

[illegible]

503

Patient: Susan Reeves

September 4, 1990: Patient returned having been attending other doctors in regard to the MVA of 9-5-'88. She has been under the care of various ENT specialists in regard to possible vestibular problems, but these have been excluded by the Otologic Medical Group of Los Angeles, who felt that her problems are directly related to her neck injury and suggested PT.(see copy of their letter of August 16, 1990). Patient returned as I had seen her soon after the injury and she needs medical supervision of her PT.

Her main problem is pain in the neck especially the lower half, and of the L) shoulder which is quite intense, sometimes radiating into the L) upper limb. It is aggravated by movement but not by coughing. She feels she has to hold the L) shoulder in almost immobile position with her elbow flexed by 90° across her Torso. She also has headaches, photophobia, occasional dizziness and sometimes parasthesiæ in some of the L) fingers.

She states that she has been on, at different times, Gen. DALMANE DIAZEPAM, DEMORAL and Gen. DARVOCETTE N100, all without relief. She has seen doctors from various specialties and a pschychologist. She states that she is most anxious to regain her post with BALLY'S where she is employed in Reservations.

O/e: Vital Signs normal. Patient is wearing dark glasses. There appears to be loss of the cervical Lordosis and considerable

504

000...

Patient: Susan Reeves

posterior neck muscle spasm; all neck movements are greatly decreased with pain, similarly with the L) shoulder movements.

She was referred to Gary Amick for intensive PT and she was prescribed NORGESIC FORTE and a muscle relaxant.

12 + more

I will see her in one month.

505

000063

Patient: Susan Reeves

January 3, 1991: Patient still complains of severe headaches and Ataxia, meaning a staggering motion while walking and feeling of loss of balance; she has not fallen but takes care when walking and does not drive any vehicle.

The examination is essentially unchanged. I feel this lady requires an independent specialist's work-up.

January 10, 1991: Patient telephoned - Haemathemisis and possible Melena. She was advised to discontinue ASA and NSAID's, and she will be prescribed a Histamine 2 Blocker. She is to have an upper G.I. at Dr. Steinberg's in the morning.

January 11, 1991: Dr. Green telephoned - patient shows Duodenal Ulcer. I advised the patient of this. She has had no further overt problem in this regard since yesterday. She was asked to make an appointment with Dr. J. Fayad, Gastro-enterologist.

506

Patient: Susan Reeves

January 31, 1991: Patient's spouse present. Her dizziness remains a major feature and she complains of staggering while walking. Since her last visit an Upper G.I. following a bout of Haematemesis showed Acute Gastritis and duodenitis. She responded well to Zantac. Her headaches remain and the various medications prescribed have not helped her. She states that she gets quite frustrated with her current position and that she is not obtaining help from anybody. She mentioned that she has had temper tantrums as a result. Dr. Becker, ENT has told her that he could not do anything further for her and she is anxious to have another opinion.

O/e: 136/86 72 PERLA. Good Cervical movements, NAD Chest, CVS, ENT neck. She arose from the examination table easily and walked out without any sign of Ataxia.

She was prescribed NORFLEX. I again advised her that in view of her symptomalogy, I would not recommend her to resume work although she states she is most anxious to do so.

I will write a note to her Insurance Co. recommending another opinion. She also states that I never said she was unable to work.

507

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Patient: Susan Reeves

March 30, 1991: Patient states that her main complaints are severe headaches and Ataxia + considerable stress due to mounting unpaid bills. She states that she is most anxious to resume work as soon as possible at her pre-accident position.

She is still being investigated by Dr. Fayad, Gastroenterologist, in regard to her recent G.I. bleeding. He feels that this arose from her use of Aspirin to relieve those headaches. Since she has discontinued the Aspirin she has not noticed any further G.I. bleeding and does not now have any abdomen complaints.

O/e: Vital Signs normal. No Nystagmus. PERLA, NAD, ENT, CVS, Chest, CNS. The patient continues to have an unsteady gait and appears to stagger backwards without actually falling, and supports herself, at times, with her hands on the wall while walking.

In view of her symptoms and the appearance of Ataxia, I feel that she is currently unfit to undertake any duty or to drive and, in fact, may need attendance when walking lest she fall.

I consider that the patient would benefit from fresh Neurological and Ent. evaluations.

508

000006

Patient: Susan Reeves

June 1, 1991: Mrs. Reeves continues to have severe headaches and a tendency to back into objects. She takes 2 Darvocets N100 at night to relieve the headaches so that she may sleep. Her abdominal problems have responded well to Gen. Donnatal once the initial side effects abated. She was prescribed Gen. DONNATAL and DARVOCET in the 100. I have urged her to have the case settled.

509

000007

Patient: Susan L. Reeves

January 11, 1992: Patient has a number of problems which are MVA related - - headaches, back and neck pain, Parasthesiae L) lower limb. She has considerable photophobia and continuing dizziness. Examination is really unchanged and I have referred her to Gary Amick for continuing PT.

I will see her in 3-months or prn.

$55

March 24, 1992: Patient reports that she had been doing well since her last visit but has been seriously affected by the recent sudden death of her grandson. She reports severe headaches, dizziness, insomnia, and overwhelming grief. Examination remains unchanged and she was offered supportive care.

I will see her in 1-month or prn.

$55

510

000008

PETER F MATTIMOE M D LTD
4190 SO JONES BLVD
LAS VEGAS NEVADA 89103
TELEPHONE: (702) 871-3730

I.D. #88-0232076
S S #071-34-7083

May 8, 1993

TO WHOM IT MAY CONCERN

Re: Susan Reeves
Allstate Claim No. 1979706518 104

Mrs. Reeves has suffered very severe incapacitating headaches since the MVA of 9-25-1988. Only Imitrex has provided satisfactory relief. I have therefore prescribed Imitrex for her on a continuing basis.

Peter F. Mattimoe, M.D

Rx ONLY
TUSSI-ORGANIDIN-S LIQUID

511

000009

CAT Paratransit Services
600 S. Grand Central Parkway #350
Las Vegas NV 89106-4512

May 20, 2002

Susan L. Reeves has difficult with walking due to the effects of Diabetes on her feet and chronic dizziness from a accident in 1988.

Dr. Mattimoe
3611 Lindell Road # 102
Las Vegas NV 89103
702-871-3730

512

000010

Ear, Nose, Throat
Head and Neck Surgery
OFFICE 737-1607

2121 E. Flamingo Rd. - Su... 106 , Vegas, NV 89119

Name S. Reeves Date 6/22/16

Address

℞ Mrs Reeves has a
Chronic balance problem
She cannot do sprin or
~~Knee~~ Knee Bends.

Refill PRN ..... NR .....
Refill ..... Times
Dr. LIC No. 4174

Dr. [signature]
Dispense Only As Written ☐
DEA No. AB9719153

513

BARTON R. BECKER, M.D., F.A.C.S.
SUITE 106, 2121 EAST FLAMINGO ROAD
LAS VEGAS, NEVADA 89119

TELEPHONE (702) 737-1607

June 21, 1989

Wendy Schultz
Allstate
Market Claim Office
4801 S. Sandhill Rd.
Las Vegas, Nv. 89121

Re: Susan Reeves
Claim No. NWS-1979706518

Dear Ms. Schultz:

Thank you for your recent letter.

Mrs. Reeves gives a clinical history of postural vertigo. The ear studies show a mild sensorineural hearing loss, and the ENG shows no abnormality. As stated in my letter January 15, 1988 that the ENG only tests about 60% of the balance mechanism. Therefore a normal test does not rule out a vertigo problem.

Her postural vertigo was gradually improving with valium (prescribed for labyrinthine sedation) and her headaches were decreasing. However, the second accident on 9/25/88 caused further damage, resulting in more neck pain and vertigo.

I agree with Dr. Toeller that consultation is required. I have advised Mrs. Reece to consult the Otologic Medical Group in Los Angeles, where sophisticated tests are available.

Dr. Boulware was the consultant neurologist. He could find no pathology on 2 examinations. Cervical xrays were not ordered by me.

514

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BARTON R. BECKER, M.D. F.A.C.S
SUITE 108, 2121 EAST FLAMINGO ROAD
LAS VEGAS, NEVADA 89119
TELEPHONE (702) 737-1607

July 31, 1989

TO WHOM IT MAY CONCERN:

Re: Susan L. Reeves

Mrs. Reeves has been followed by me since 4/13/87. She was involved in an auto accident with neck strains and vertigo 7/20/87. Medical therapy has helped, and she was improving, with less dizziness and headaches.

On 9/25/89, she was involved in a second accident, re-injuring her neck, has resulted in increased vertigo and headache, which has persisted until the present.

Sincerely yours,

BARTON R. BECKER, M.D.

BRB:aw

515

000013

BARTON R. BECKER, M.D., F.A.C.S.
SUITE 106, 2121 EAST FLAMINGO ROAD
LAS VEGAS, NEVADA 89119

TELEPHONE (702) 737-1607

July 31, 1989

TO WHOM IT MAY CONCERN:

Re: Susan L. Reeves

Mrs. Reeves has cervical muscular damage secondary to an accident. Physical therapy 3 times weekly for 4 weeks is advised at the Southwest Therapy Services.

EVAL & TREAT

BARTON R. BECKER, M.D.

BRB:aw

1905 McDaniels #207
642-0441

516
000014

BARTON R. BECKER, M.D., F.A.C.S.
SUITE 106, 2121 EAST FLAMINGO ROAD
LAS VEGAS, NEVADA 89119
TELEPHONE (702) 737-1607

February 1, 1990

James M. Stuart, Esq.
State Industrial Claimants' Attorney
2770 S. Maryland Parkway, ste. 218
Las Vegas, Nv. 89158

Re: Susan Reeves
Claim No. 7715-1035-88

Dear Mr. Stuart:

In reply to your letter of 1/17/90, I feel the 9/25/88 accident did more damage to Mrs. Reeves.

I base my conculsion on my notes of Mrs. Reeves' medical visits. She was originially seen 11/13/87 for a 7/20/87 accident. Typical whiplash symptoms were present, such as neck pain and tenderness, headaches, and postural vertigo. My notes from 11/13/87 to 5/12/88 show progressive improvement in her symptons, such as decreased vertigo and headaches.

I examined Mrs. Reeves next 10/4/88, for an auto accident 9/15/88. She had increased neck pain, vertigo and complained of left ear tinnitus. An audiogram reveals a mild bilateral sensorineural loss, worse in the right ear. Mrs. Reeves has not done well since her second accident. She may have permanent neck problem and vertigo.

Sincerely yours,

BARTON R. BECKER, M.D.

RECEIVED
FEB 05 1990
STATE INDUSTRIAL ATTORNEY

BRB:aw

517
CLAIMANT'S EXH
000015

BARTON R. BECKER, M.D., F.A.C.S.
SUITE 108, 2121 EAST FLAMINGO ROAD
LAS VEGAS, NEVADA 89119

TELEPHONE (702) 737-1607

Re: Susan Reeves

As her physician, I must treat Mrs. Reeves. She complains of postural vertigo, and was improving with conservative therapy. Her life is greatly affected by her balance problems. I strongly advise a consultation by the Otologic Medical Group.

Sincerely yours,

BARTON R. BECKER, M.D.

BRB:aw

518

000016

BOULWARE NEUROLOGICAL INSTITUTE

1900 East Desert Inn Road
Las Vegas, Nevada 89109
735-1676

December 12, 1988

Barton Becker, M.D.
2121 East Flamingo Road - Suite 106
Las Vegas, Nevada 89109

Re: Susan L. Reeves

Dear Doctor Becker:

Thank you for your referral of Ms. Susan Reeves to this office for neurologic evaluation. This 37-year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an automobile accident which occurred on July 20, 1987. The patient states that she progressive improved after that time. Apparently some three days after her complaints had resolved, sometime in September of this year, she was involved in a second automobile accident in which she was the driver of a car that was rear-ended while stopped. She was thrown forward and backwards but did not strike her head. She has, since this time, experienced constant headache. She describes a dull ache which is primarily bifronto-temporal in location, although it has a posterior head contribution. It is increased by turning of the head to either side. She initially had some nausea, but no vomiting. She also has some complaints of lightheadedness, which may occur if she turns her head suddenly or moves quickly.

On neurological examination, the cranial nerves are normal. The patient walks well straight away without evidence of ataxia. Associated movements are normal and there are no abnormalities of coordination, station or alternate motion rate. The deep tendon reflexes are normal and symmetrical in the upper and lower extremities. There are no abnormal reflexes. There is no muscle weakness or sensory deficit.

An electroencephalogram reveals low-voltage, fast activity throughout the record in all head regions consistent with medication affect.

This patient may have experienced some discomfort with the incident that she describes. There is no suggestion, however, that she has any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activity.

519

000017

I trust that this information will be of some assistance to you in the continued care of this patient.

Sincerely,

Frederick T. Boulware, Jr., M.D.

FTB:vf

cc: ✓Peter Mattimoe, M.D.

BOULWARE NEUROLOGICAL INSTITUTE

PHYSICAL EXAMINATION

Susan Rowe
Name
5'5" WEIGHT: 180

BUILD: slender / medium / obese ✓

PULSE: _____ BLOOD PRESSURE: _____

(✓) IF NORMAL. MARK (O) IF DEVIATION FROM NORMAL AND GIVE DETAILS BELOW

...n	O	Glands		Lungs		Extremities		SPINE:		SPECIAL EXAMS:	
...ck	O	Thyroid		Heart		Neurological		Motion		Fundi	Pelvic
...uses		Eyes		Vessels		G.U.		Palpations		Intraocular tension	Breasts
...ums		Ears		Abdomen		Hernia		Deformities		Rectal	Other
Throat		Chest		Joints		Varicosities					

...LS OF ALL ABNORMAL ...NGS NOTED ABOVE: Extension flexion injury 9.25.89. Previous 7.87 [illegible] Tinnitus & dizziness. Hearing loss. Spasm of trapezius & erector spinae

SIGNATURE OF EXAMINING PHYSICIAN [signature] M.D

DATE 1.3.89

PROGRESS RECORD

DATE	NOTE: Progress of case, complications, change in diagnosis, condition on discharge, instructions to patient.
1.3.89	Cervical & lumbar areas [signature]
1-4-89	Doing Great, PW 100 JB
1-5-89	Excellent, cervical concentration JB
1-6	Progressing wonderfully pw 105 JB
1-9	Doing super pw-150 (JB)
1-10	Concentrate on cervical, PW 160
1-11	Doing very well, Pulse Width 150. JB
1-12-89	Feels fine, Pulse Width 160 JB
1-13-89	Feels great, PW 170. 521 JB
1-16	Progressing very well pw 165 JB
1.17.89	Feels much better. Headaches less. Medication used less
	[illegible]

000019

Occupational Health Strategies, Inc.

David G. Tandler, D.O. FACOEM
Chief Executive Officer/Board Certified
Occupational/Preventive Medicine

Patient: SUSAN REEVES
Date of loss: 9/25/88
Claim # NWS-1979706518

To Whom It May Concern:

Ms. Reeves was seen in my office for an Independent Medical Evaluation on 5/9/89. Ms. Reeves was involved in 2 motor vehicle accidents, the first on July 20, 1987 and the second September 25, 1988.

HISTORY OF PRESENT COMPLAINTS

7/20/87 MVA. Ms. Reeves was a passenger in a 1988 Chevy half ton 8 foot bedfleet side pickup truck. The truck was stopped when it was rear ended by a smaller vehicle. The pickup truck sustained a second impact when it hit the car in front of it. The patient states she hit her head on the back window of the pickup truck.

The patient states that the patient received extensive damage, including frame damage. A letter from All State Insurance states that the damage totaled $1573.32.

7/20/87 First medical care from Dr. Peter Mattimoe, M.D. Diagnosis: head injury, cervical strain. Physical therapy was prescribed through
Gary Amick, R.P.T.

11/7/87 The patient continues to have dizziness and left sided neck pain. A referral is made to Dr. Becker, otolaryngologist. A referral is made to Dr. Wagner, D.D.S. who installed a bridge in the patient's teeth.

The patient was also seen by the Audiology Group for an apparent hearing problem and their diagnosis was reduced vestibular response in the right ear. I do not have the medical records from any of those visits.

There are a series of visits to Dr. Becker. I have hand written notes which are, for the most part, illegible. It appears as though by 12/87 Dr. Becker feels that the postural vertigo is better, and that the patient sustained a mild nerve loss due to

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this accident. Dr. Becker was prescribing Darvocet N 100 and Valium on a regular basis up to 9/19/88.

12/24 through 2/8/88 the patient was off work as a room reservation clerk.

9/25/88 Second MVA. The patient was driving the same pickup truck and was rear ended by a smaller vehicle.

The patient states that the dizziness, which had gotten 95% better from the first accident, returned.

10/4/88 Dr. Becker, hand written note. Diagnosis: whiplash syndrome. The patient is complaining of nausea, vertigo, tinnitus in the left ear. He continues to prescribe Valium and Darvocet.

12/12/88 Frederick Boulware, M.D., neurologist, consultation. Dr. Boulware notes that he had seen the patient in consultation in January of 1987 for the first motor vehicle accident, and was seeing her at this time for the second time for a revisit consultation due to the second motor vehicle accident. The patient was complaining of a constant headache, of a dull nature, which was bifrontal temporal in location. The headache was worse with turning of the head. The patient had nausea, but no vomiting. She had light headedness which would occur if she turned her head or move quickly.

The neurological examination was completely normal.

Electroencephalogram revealed medication effect, but no other abnormalities.

Dr. Boulware states that there is no intracranial structural lesion or a significant neurological problem. He urges continued symptomatic relief only and encouragement for the patient to continue with her normal activity.

Hand written notes from Dr. Becker show that the patient continues to complain of headache. He continues to treat with Valium and Darvocet on a regular basis. No additional examination or diagnosis is recorded in these notes. The last visit was 2/26/89 in the records provided for our review.

1/3/89 Ms. Reeves came under the care of Dr. Peter Wardle, M.D. She has received physical therapy treatments, initially three times a week and then on a daily basis, in his office. These have consisted of EMS to the cervical spine. Dr. Wardle diagnoses extension flexion injury of the cervical spine. He listed prognosis as good in a report filed in March of 1989.

1/3/89 There is a note that Peter Wardle, M.D. submitted a bill for comprehensive medical consultation. We do not have a

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copy of that comprehensive consultation.We do have a hand-written medical record which states "Physical Examination" at the top and which is signed by Dr. Wardle. There is essentially no physical examination here.

1/3/89 to 5/5/89 There are hand-written office notes apparently from physical therapy signed with the initials of J.B. Interestingly these notes state that the patient seems to be doing very well.

1/4/89 "Doing great..."
1/5/89 "Excellent, cervical concentration"
1/6/89 "Progressing wonderfully..."
1/9/89 "Doing super"

In fact there are no physical therapy evaluations, no physical therapy notes that the patient is doing anything but good, great or wonderful.

2/1/89 Dr. Wardle hand-written note states that patient is getting better and dizziness is less severe and less frequent. The physical therapy notes up through 5/5/89 basically shows that the patient continues to be doing "excellent" or "very well" or "feels better".

3/18/89 Dr. Becker files a medical report. Diagnosis: cervical strain. Medications prescribed are Valium, Darvocet N 100, and Soma Compound. The prognosis is listed guarded. The patient's activity level is regular occupation.

5/4/89 Therapist states that the patient's neck is not doing well from "stress".

5/5/89 The patient's entire back bothers and she really feels lousy.

PRESENT SYMPTOMS FROM THE PATIENT ON 5/9/89

The patient still continues to have constant headaches of a dull nature across the forehead to both temples. She has soreness of the lower left neck. She continues to have dizziness when she moves her head. This can be prevented by shutting the eyes.

She states that she missed 5 days from the automobile accident is was back to work full duty now.

The patient states that there has been no loss of smell or taste. She states she has nausea from headaches. She does not mention nausea from the dizziness.

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The patient states that her physical therapy gives her relaxation and temporary amelioration of her symptoms, but in the last several weeks has not caused any overall improvement.

The patient states that her tinnitus has stopped.

The patient has no low back pain or extremity pain.

The patient does not radiate into the upper extremities. The pain does not go near the TMJ. The vision has not been effected.

PHYSICAL EXAMINATION

On 5/9/89 we found the patient to be 167 1/2 pounds. She had a normal blood pressure of 114/64.

The patient states that at the time of this examination she is taking Soma with aspirin, Valium, Darvocet, Inderal, aspirin.

The patient's neurological examination is entirely normal. Her cerebral function is appropriate. Cerebellar shows no nystagmus or loss of balance. We did not do caloric testing, nor did we ask her to reproduce her dizziness by moving her head much.

We did check the extra ocular movements and found no nystagmus. We also pulled her eyes back and forth rapidly, without creating any complaints of dizziness.

The pulse rate is 72 beats per minute at rest.

Deep tendon reflexes in the four extremities, including triceps, biceps, brachial radialis, patellar, Achilles, and plantar areas were normal.

Cranial nerves were normal. Taste and smell were not tested.

There were no motor or sensory deficits in the four extremities.

The standing vertebral architecture of the cervical spine was entirely normal, with a normal cervical curvature. There were no palpable or observable muscle spasms. There is tenderness in the left superspinatus and lateral neck musculature, without spasms.

The cervical flexion reaches 45 degrees, extension 45 degrees, left lateral flexion 50 degrees, right lateral flexion 50 degrees. Rotation reaches 85 degrees bilaterally. These are measured with a goniometer. These are within normal AMA Guidelines.

There is no atrophy in the upper extremities one side compared to the other, either in the forearms or the hands.

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DISCUSSION

Fitness for Duty:

It is unclear to me why the patient required time away from work over the Christmas holidays and January of 1988 a full five months after her first MVA. She was working before and after that time. Her therapist even during those weeks off states that she was doing "great".

The Fitness for Duty issue at the present time is unrestricted except by her dizziness. She states that she is unable to drive and unable to get up from a seated position frequently without becoming dizzy. Consequently she has restrictions in the workplace which have caused her to be placed on medical leave (according to the phone call dated 5/18/89 to my office).

Dr. Becker's work restrictions would have to stand until some more definitive diagnosis is made of her dizziness. Since it is improving slowly Dr. Becker may simply be waiting this out expecting the improvement to continue.

Issue of Dizziness:

Dr. Becker's diagnosis of cervical sprain strain or cervical flexion extension sprain does not explain the patient's positional dizziness. Is there eustachian tube dysfunction? Have there been any tests to document the causes of her dizziness? Dr. is treating her with Valium and Darvocet which would tend to make a person more positionally unstable in terms of an orthostatic problem. There are no medications being used to treat the vestibular or the eustachian tube.

I suggest that you request Dr. Becker provide you with a narrative report outlining the exact causes of the dizziness and a treatment plan with prognosis.

Issues of soft tissue pain and treatment:

Dr. Wardle's notes indicate that he is billed for comprehensive medical examination on 1/3/89. We see only a brief hand-written note listing the patient's complaints for that date. I would request a copy of this comprehensive examination.

The patient is receiving EMS physical therapy according to Dr. Wardle's notes on a very regular basis. There are no indications that this is being provided by a registered therapist. The progress notes from the person administering therapy indicate that the patient is doing very well indeed. The patient herself states that the therapy provides only temporary amelioration of her symptoms. The latest note indicating that the patient is

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worse is said to be due to "stress". This would be not related to the injury of record.

Virtually every medical insurance carrier with a utilization program would require additional justification for the use of this single modality therapy.

Ordinarily EMS would be used for a few weeks following an acute injury and the physical therapy would progress into non modality stretching and various strengthening and conditioning exercises.

X-RAYS:

The medical records I have do not show the results of any cervical spine X-rays. If they have been done we should see them. If they have not been done we would like the patient sent to a qualified radiological clinic for a five view cervical spine film to assess any underlying conditions and to see if there are any degenerative changes which might explain the patient's prolonged treatment requirements.

DIAGNOSES:

1. Cervical sprain/strain syndrome with no objective neurological or orthopedic findings.

2. The two motor vehicle accidents were not close enough together to justify a diagnosis of a second injury syndrome complication.

3. The patient has positional dizziness assumed to be a vestibular irritation or eustachian tube dysfunction related to her cervical soft tissue injuries.

PLAN:

1. Cervical spine X-rays at Desert Radiology, five views if these have not already been done.

2. Physical therapy should be moved to a physical therapy institution and administered by a registered physical therapist. Therapy should consist of non modality progressing to stretching and strengthening and teaching of a home program.

3. Request the narrative information from Dr. Becker as mentioned above. Based upon his clarifications, I may or may not request a second ENT opinion.

4. If you wish another medical advisory on this case, please return records to me when these three items are

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completed. If you wish, my O.H.S. company will arrange them for you.

The patient is fit for unrestricted duty except as restricted, because of her dizziness pending a better diagnostic explanation of the dizziness.

Sincerely,

David G. Toeller, D.O., F.A.O.C.P.M.
DGT/mm

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Occupational Health Strategies, Inc.

David G. Toeller, D.O. FAOCPM
Chief Executive Officer, Board Certified
Occupational/Preventive Medicine

October 17, 1989

Wendy Schultz, Senior Casualty Claim Representative
Allstate
Market Claim Office
4801 Sandhill Road
Las Vegas, Nevada 89121

RE: SUSAN REEVES O.H.S. # RE120
D.O. :LOSS 9/25/88
CLAIM #: IO4-1979706518

Dear Ms. Schultz:

Ms. Reeves appeared in our office for a follow-up consultation, at your request, on October 17, 1989.

Ms. Reeves has presently the following complaints.

1. The patient's left upper extremity has become painful primarily in the left shoulder over the deltoid, but radiating towards the neck on the left, and down the entire left upper extremity. She gets pain and numbness into the entire left upper extremity, with the numbness extending into the left hand in a glove-like distribution, encompassing all 5 fingers. This has been present since August. She feels that it was directly caused by physical therapy, apparently traction, given at the Southwest Physical Therapy in North Las Vegas.

   The patient described for me the physical therapy treatments and I reviewed the medical records from that therapist. The treatments and records appear to be appropriate. I don't find any reasons why the standard therapies should have bothered Ms. Reeves in this way. She feels that the shoulder was not related to the MVA of 9/25/88, but rather to the physical therapy. The patient goes on to state that one therapist

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seemed to give her some relief with certain suboccipital or neck techniques, while another therapist seemed to make it worse.

2. The patient states that her dizziness is worse since physical therapy. Her dizziness has progressively gotten worse. The patient states she is unable to drive. She does some of her housework, but has to be careful with it.

3. The patient continues to have headaches, occasionally very severe. She has now been given some Demerol pills to use for this. She continues to have Valium that she takes about 5 mg at bedtime to help with the imbalance problem. She has Soma Compound that she uses 4 times a day. She takes aspirin, up to 8 tablets daily, to help with her headaches. She also uses Benadryl to help with her headaches.

PHYSICAL EXAMINATION

On 10/17/89 we found the upper extremities to have normal neurological examination. The patient has normal right hand dominant measurements in the forearms. There is no sign of atrophy on careful examination of the hands or forearms. Reflexes at the triceps, biceps, brachial radialis, and rotators are present and symmetrical. The patient has no signs of atrophy or disuse on examination of the small muscles of the hands. She holds her left upper extremity into the body with some flexion at the wrist and cupping of the hand. There are no RSDS symptoms whatsoever. There are no RSDS complaints by the patient, or physical findings on exam.

Neurological exam continues to be normal, including the cerebral, cerebellar deep tendon reflexes, cranial nerves (smell and taste were not tested) motor, and sensory system. We found no nystagmus.

ADDITIONAL MEDICAL RECORDS

Since my letter of June 1, 1989, the patient has seen Dr. Joel Lubritz, an ear, nose, and throat surgeon. He found no abnormalities on his physical examination, except for a nasal septum, which is deviated to the left. He did not find any nystagmus. Dr. Lubritz writes one consultation on 9/13/89 and a follow-up letter on 10/16/89, suggesting that Ms. Reeves be worked up at the Otologic Medical Group in Los Angeles. He simply does not want to do the work up himself on this particular patient due to the complexities and multiple issues involved in the case.

ADDITIONAL OBJECTIVE INFORMATION

Cervical spine films show no degenerative disease. The patient does have bilateral cervical ribs. The cervical ribs seemed to be an incidental finding, but may be related to the patient's upper left extremity, neck, shoulder, arm, hand, symptoms that have occurred since physical therapy.

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ISSUE OF MEDICATIONS

Dr. Lubritz informs us that the patient's Valium as prescribed by ear, nose, and throat specialist, Dr. Becker, is commonly used for disequilibrium, after a proper work up.

I am concerned that the patient is now having to use Demerol in addition to Valium, Soma, aspirin and Benadryl, to control her symptoms...and in fact, they are not controlling her symptoms. I still feel that these medications all contribute to dizziness and unsteadiness individually and collectively.

PLAN FOR CONTINUED INVESTIGATION

I called several ear, nose, and throat specialists in town and explained this case to them. Each of them felt that the patient would better be worked up by someone else. It becomes perhaps imperative that she now be seen at one of the regional medical centers. I suggest that we take Dr. Becker's solution at the Otologic Medical Group in Los Angeles, as Dr. Lubritz agrees this is a nationally recognized ear research institute.

I still feel that the patient's neck...and now her left shoulder, arm, hand symptoms...would benefit from physical therapy. We will ask her to see a different physical therapist and we will prepare that therapist with a good explanation of the case to date.

A neurological consultation with electrodiagnostics (EMG , conduction velocities, etc.), will be requested to workup the upper left extremity pain and numbness. After the neurologist's studies, one might determine whether or not we are dealing with a thoracic outlet syndrome, neck problem, or shoulder problem.

Left shoulder x-rays should be done. We will make arrangements.

Prior to implementing any of this plan we will discuss the case with you. I am not sure what prior authorizations are necessary in this case. I do suggest, however, that each and every issue be concurrently addressed to arrive at the earliest possible solution to these problems.

Sincerely,

David G. Toeller, D.O., F.A.O.C.P.M.
DGT/mm

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LESLIE H. GAELEN, M.D.

NEUROLOGY

3121 SOUTH MARYLAND PARKWAY, SUITE 412
LAS VEGAS, NEVADA 89109
(702) 731-9600

January 4, 1990

David Toeller, D.O.
2625 S. Rainbow Blvd.
Suite C-102
Las Vegas, Nevada 89102

Re: Susan REEVES
Age 38

Dear Dr. Toeller:

Thank you for thinking of this office for a second opinion regarding Susan Reeves.

As you know, her current complaint is of paresthesiae, tingling and some discomfort in the left upper extremity since August 1989.

Actually, Mrs. Reeves' neurological symptomatology began following a second vehicular accident on September 25, 1988. There is a previous history of a vehicular accident on July 20, 1987. During the first accident she was a passenger in a half ton truck, when it was rear-ended by a smaller vehicle. The impact forced the pick-up truck to strike a car in front of her, with Mrs. Reeves hitting her head on the back window of the cab of the truck. Her condition then was diagnosed as cervical strain and head injury.

Her second motor vehicle accident, occurring on September 25, 1988, occurred while she was then driving the same pick-up truck and again was rear-ended by a smaller vehicle. She had an exacerbation of her previous symptoms, including severe headaches of a generalized nature, low back and neck discomfort, with neither radiating into any limb.

Mrs. Reeves has seen many physicians, including yourself, Drs. Boulware, Hecker and Lubritz, as well as having x-rays. Treatment to date has been essentially diagnostic and conservative physiotherapy. She also has had a course of cervical manipulation.

X-rays of the cervical spine and left foot were reviewed, and while there is bilateral cervical ribs present there is no evidence of any neural compromise from this anomaly to postulate a neurologic "thoracic outlet" syndrome.

Mrs. Reeves has also had a course of biofeedback. All medical as well as physiotherapeutic efforts have apparently been palliative, in that they have transiently relieved her symptomatology.

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It is of some interest that the patient reports that since August 1989 she has had painful tingling sensations in the entire left upper extremity, which have not been considered neurologic, apparently orthopedic or related to any previous consultative efforts. She also complains of continued subjective ataxia, lightheadedness, severe headaches, intermittent blurring of vision, particularly when her generalized headaches are severe, difficulty in concentration while symptomatic, and bilateral ear noises which she ascribes to aspirin intoxication.

The patient also admits, in further history, that she was suddenly and precipitously terminated from her job on May 17, 1989 ascribing the sudden termination due to a personality clash.

Mrs. Reeves' neurological examination was entirely normal. I found her to be a well developed, somewhat overweight, righthanded white woman, in no distress. Blood pressure was 130/80 in the left arm, standing position, 120/80 in the sitting position, and 130/80 in the supine position, with a pulse rate varying from 88 to 92. There were no craniocervical bruits. There was no brachioplexus tenderness. There were no Spurling or Adson signs. Station and gait were entirely normal. There was no Romberg sign. Examination of the twelve pairs of cranial nerves appeared intact bilaterally. There were no disturbances in finger to nose or heel to shin testing. Speech was normal for cadence and articulation. Rapid rhythmical alternating movements were intact. The power, mass and tone of all muscle groups in the upper and lower extremities appeared physiologic. There were no adventitious muscle movements. All deep tendon reflexes were symmetrically equal at Grade II in the upper and lower extremities. There were no pathological reflexes.

There was an unanatomic midline "splitting" to the 128 cycle per second tuning fork of the forehead, mentum and sternum, with the patient favoring the right side. Other sensory testing, including light pain, light touch, two point discrimination in the fingers and position sense in the toes, as well as vibration in the legs, appeared entirely normal.

I would agree with the previous neurological examination, as conducted by Dr. Boulware, that there is no objective evidence of any post-traumatic or other neurologic deficits on clinical examination. While neuro-electrical studies were recommended, I honestly do not feel that they are indicated in light of the fact that there is no evidence of spinal cord, spinal root, peripheral nerve or muscle disease at present to warrant them.

If I might, may I suggest a course in biofeedback and other behavioral modification methods as a therapeutic regimen, so as to return Mrs. Reeves to her previous well-being. I would also be suspicious of some type of secondary gain in view of Mrs. Reeves' history with regard to her occupational distress.

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Please call if you have any questions. Thank you for the opportunity to examine Mrs. Reeves.

Sincerely yours,

Leslie H. Gaelen, M.D.

LHG:pm

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OTOLOGIC MEDICAL GROUP, INC.
EAR, FACIAL NERVE AND RELATED STRUCTURES
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JOHN W. HOUSE, M.D.
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CLOUGH SHELTON, M.D.

MEDICAL OTOLOGY AND
OTOLARYNGIC ALLERGY
M. JENNIFER DEREBERY, M.D.

INDUSTRIAL AND FORENSIC OTOLOGY
ARAM GLORIG, M.D.

AUDIOLOGY
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ALLEN SENNE, M.A.
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SUSAN M. BYRD, M.A.
DONNA GILMARTIN, M.S.
LORA SCHWALLIE, M.A.
KATRINA BRAND, M.A.
DANA KWOCK, M.S.

HEARING DISPENSARY
JOHN COLEMAN, M.A.

March 30, 1990

Ms. Nina Sams
Allstate Insurance Company
District Claim Office
4801 S. Sandhill Road
Las Vegas, Nevada 89121

Dear Ms. Sams:

Re: Susan L. Reeves
OMG #: 14-91-81
Claim #: MPS-1979706518

Susan Reeves was seen in my office on March 13, 1990. I found her to be a 38-year-old woman who did not appear to be in serious distress.

CHIEF COMPLAINTS:

She was complaining chiefly of a dizziness described as "things moving about her", causing her to be dizzy. She said when she moves quickly, she notices that this increases. She says she can prevent this by fixing her eyes on some point and then turning her head. Standing up quickly with quick movements of any kind increases the dizziness. She says when people move across her vision, she notices the dizziness. She says the whole thing is somewhat better now than right after an accident. At that time she had nausea, but no vomiting, and the nausea continued for about four months. She has no real problem with hearing; however, she does have a constant ringing described as a buzzing with high-pitched mixed in. However, it does not bother her sleep and it is worse in quiet.

She says these things came on following an accident which occurred in July of 1987. At that time, she hit the back of her head on the window of a pickup truck in which she was riding. She was not knocked unconscious. Following this she went to a Dr. Mattimoe who is her family doctor. He said she had a whiplash. The dizziness came on about three days after the accident while in the shower. Following this she saw a Dr. Becker, who is an ear, nose and throat doctor and a neurologist. By July of 1988, she was feeling quite good. But on September 27, 1988, she was rear ended again and headaches and dizziness became even worse than she had before the second accident. This time, she had a whiplash which started the

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CHIEF COMPLAINTS (CONT'D):

symptoms all over again, but worse than previously. She has had physical therapy for about nine months. But she did not appear to be too satisfied with what was done. From what she says, she appears to have had a brainstem response test.

It seems from talking to Ms. Reeves that her biggest complaint is hear headaches. She says she has severe headaches and has had since the first accident, but they appear to have gotten worse since the second accident. They are in the forehead area and according to Ms. Reeves, no medication helps very much. The headache appears to be worse when she is exposed to bright lights. She has seen a psychologist for testing, but she has never had any psychotherapy.

PAST MEDICAL HISTORY:

She has had all the childhood diseases. She has never been seriously ill, except she does have a heart murmur and is on Endaural. She has never had any other head injuries than those described above. There are no hearing impairments in her family. She had her tonsils removed at the age of 12. She had a hysterectomy at the age of 24. She had her appendix removed sometime between 1976 and 1979, she was not sure of the date. She had endometriosis and has been operated upon for that also. She has had previous hearing tests by Dr. Becker, but none before the first accident and none between accidents.

PAST OCCUPATIONAL HISTORY:

She has not worked since May 15, 1989. When working she worked for Bally's Hotel as a reservations clerk for 10 years, in Las Vegas. She has never had any job which included noise exposure. She has had no military service. She did shoot a .38 once, about five or ten rounds, but at that time she wore muffs.

PHYSICAL EXAMINATION:

Both ears are normal to inspection. The nose airway is adequate. The septum is reasonably straight. The throat shows the absence of tonsils and the face and neck are within normal limits. An audiogram done on March 13, 1990 shows a more or less flat loss, with more loss in the very low frewquencies than the mid and high frequencies. This loss varies between 40 dB at 500 Hz and 25 dB at 8000 Hz in the right ear. Speech reception threshold in the right ear is 20 dB with a 92 percent discrimination score. Her left ear

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PHYSICAL EXAMINATION (CONT'D):

is somewhat the same as the right ear, with a 20 dB speech reception threshold and a 96 percent discrimination score. I received a note from the audiologist after the test was done stating that Ms. Reeves probably has better hearing than this audiogram shows. This would appear to be the case on the basis of her speech reception thresholds, which is about 10 dB better than her puretone thresholds, which is always indicative of invalid responses to pure tones.

DISCUSSION:

Before I can come to any conclusions about Ms. Reeves' dizziness and her hearing, I would like her to return for an electronystagmogram, a brainstem audiogram, an impedance test and an Equi-test, which is a balance test which has recently been developed. It appears to me that Ms. Reeves has something wrong and that she may need treatment. I would like also for an appointment to be made with Dr. Derald Brackmann of this Group following the completion of the four tests that I have asked for. These tests will take approximately 2-1/2 hours, and then she can be seen by Dr. Brackmann. I have spoken to Dr. Brackmann about this and he is willing to see her. Please call the appointment desk at (213) 483-9930, ext. 212, and arrange for the four tests that I have asked for and the appointment to see Dr. Brackmann afterwards.

Ms. Reeves has told me that she has been seen by several physicians and all of them say that there is nothing wrong with her and that it is all in her head. But I doubt this and that is why I am asking for these extra tests and for her to see Dr. Brackmann, who is a world-renowned expert on dizziness. As soon as I receive the results of these tests and after the visit with Dr. Brackmann, I will complete this report.

Thank you for referring Ms. Reeves and if I can be of further assistance, please let me know.

Sincerely yours,

Aram Glorig

Aram Glorig, M.D.
Industrial and Forensic Otology

AG:plh
Enclosure

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OTOLOGY
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OTOLARYNGIC ALLERGY
M. JENNIFER DEREBERY, M.D.

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DAWNA M. MILLS, M.A.
TERESA M. LAKE, M.A.
SUSAN M. BYRD, M.A.
DONNA GILMARTIN, M.S.
LORA SCHWALLIE, M.A.

HEARING DISPENSARY
JOHN COLEMAN, M.A.
SUSAN CONRAD ILES, M.A.

August 16, 1990

Ms. Nina Sams
Allstate Insurance Company
District Claim Office
4810 S. Sandhill Road
Las Vegas, Nevada 89121

Dear Ms. Sams:

Re: Susan L. Reeves
OMG #: 14-91-81
Claim #: 19794 57063

Susan Reeves was seen by Dr. Brackmann and I have consulted with him regarding his opinions. We both feel that there is no damage to her vestibular system and that her problems are strictly related to her neck injury. The electronystagmogram, which is a test to decide whether the vestibular system end-organ is at fault, was perfectly normal in all respects. The Equi-test, which is another test to try and localize any problem as far as the vestibular system is concerned, showed no signs of any localizations. The brainstem audiogram was normal, indicating no problem as far as retrocochlear lesions are concerned.

It remains then that the accident has not caused any vestibular problems and that Ms. Reeves' hearing is within normal limits. The only pathology we can find is related to a neck injury which should be taken care of by physical therapy.

Thank you again for referring Ms. Reeves. If I can be of further assistance, please let me know.

Sincerely yours,

Aram Glorig, M.D.
Industrial and Forensic Otology

AG:plh

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RICHARD WALTER KUDREWICZ, M.D., LTD.

DIPLOMATE AMERICAN BOARD OF FAMILY PRACTICE

2820 W. Charleston Boulevard
Quail Park IV, Building C, Suite 27

Las Vegas, Nevada 89102
(702) 877-9676

DISABILITY EVALUATION

PATIENT: REEVES, Susan
DATE OF INJURY: 9/25/88
DATE OF EXAMINATION: 8/15/90

This is a thirty-eight year old female, who was injured when involved in a motor vehicle accident. This patient has had her medical history summarized from the dates of 7/87 up until 5/89 by Dr. Toeller. I will highlight her history and then pick it up from there.

This patient was involved in a motor vehicle accident 7/20/87. She apparently was hit from behind and also sustained additional impact when the truck she was in hit the car in front of her. She apparently struck her head in the back window.

The patient was seen by Dr. Mattimoe with diagnosis of cervical strain and head injury. Conservative therapy was prescribed.

As of 11/87, the patient was complaining of dizziness and left-sided neck pain and the patient was seen by Dr. Becker and was seen by the audiology group for hearing problems. The apparently diagnosis was reduced vestibular response in the right ear and Dr. Becker felt the patient did have postural vertigo.

In addition, the patient was seen by Dr. Wagner, a dentist, who installed a bridge in the patient's teeth.

The patient sustained a second motor vehicle accident 9/25/88 when she was rear-ended. Apparently, her dizziness which had gotten 85 percent better from the first accident now returned.

As of 10/4/88, she was complaining to Dr. Becker of nausea, vertigo, tinnitus in the left ear. He continued to prescribe Valium and Darvocet for her symptoms.

The patient was seen by Dr. Boulware 12/12/88. She was complaining of constant headache of a dull nature and was bifrontal temporal in location. Neurologic examination was totally normal. EEG showed some medication effect, but no other abnormalities. Dr. Boulware stated there was no intracranial structural lesion or significant neurologic problems and conservative therapy, only was recommended.

The patient apparently continued with some form of physiotherapy over the next few months.

As of 2/1/89, there is a note from Dr. Wardle, who notes that the patient is getting better with less severe dizziness and less frequent dizziness. He is

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noted that physical therapy notes, through May 1989 showed the patient to be progressing and doing very well.

As of 3/18/89, Dr. Becker felt the patient had sustained cervical strain and continued with Valium and Darvocet and Soma Compound.

The patient was seen by Dr. Toeller for Independent Medical Evaluation 5/9/89. The patient was complaining of constant headaches, across her forehead to both temples. There was soreness, left lower neck and she continued to have dizziness when she moved her head. The patient stated that her tinnitus has stopped and that she had no low back or extremity pain. There was no temporal mandibular joint dysfunction and no complaint of visual disturbance. On examination, neurologic was totally normal. There was no nystagmus or loss of balance. Range of motion, cervical spine was normal. Apparently, upper extremity neurologic was normal. It was felt that patient was fit for duty, except for whatever restriction was indicated by her dizziness. She stated she was unable to drive and is unable to get up from a seated position frequently without becoming dizzy.

Dr. Toeller's overall assessment was cervical sprain/strain syndrome with no objective neurologic or orthopedic findings. Also, it is noted that the two motor vehicle accidents were not close enough together to justify a diagnosis of a second injury syndrome complication. In addition, the patient has positional dizziness, assumed to be vestibular irritation or eustachian tube dysfunction, related to cervical soft tissue injuries. Physical therapy was well as cervical spine films and possible further ENT assessment was recommended.

There is contained in the chart, further x-rays 7/12/89. These revealed normal skull x-rays and normal left foot.

The patient was seen for psychological evaluation by Dr. Mortillaro 11/13/89 and 11/17/89. The overall impression was somatoform pain disorder. It was felt she had developed this disorder out of her inability to successfully cope with the physical consequences of her motor vehicle accidents. Referral for pain management counseling as well as biofeedback were recommended. It was felt that the patient should be issued a return to work release, based upon objective medical findings.

The patient presents for Disability Rating Evaluation at my office on 8/15/90.

This is a thirty-eight year old, right-handed female, who presently does not take any medication or receive any therapy. She presently is not working. She was a room reservation person. She states that she has not had not been released. She does admit to a previous accident 7/87. This was a motor vehicle accident and she did sustain a head injury with resultant headaches, dizziness and whiplash. She states that the majority of these symptoms have cleared by early 1988, with only an occasional residual headache. She was involved in a second motor vehicle accident in September 1988 and aggravated her symptoms.

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The patient states that right now, at rest, she has fairly constant pain, left paracervical musculature, extending to her left shoulder. She notes numbness extending down her entire left arm, to involve all of her fingers. She denies any right upper extremity radicular pain or numbness. With activity, she notes increased pain, cervical spine, basically same distribution. She notes continued left arm numbness, basically in a stocking distribution. She notes diffuse stiffness in the left arm. She also notes significant loss of strength in left arm and grip. She denies any right upper extremity radicular pain, numbness or weakness symptoms.

The patient also notes basically constant dizziness. She describes this as vertigo with a spinning sensation. She also has significant headache and states it extends from temple to temple.

On physical examination, measurement, upper extremity musculature reveals right arm and forearm to be approximately 1 cm. greater then left. This is appropriate for a right-handed individual. Deep tendon reflexes are full and appropriate in both upper extremities. There is no evidence of Tinel's sign or intrinsic muscle atrophy of the hand. There is noted some puffiness in the left hand. Vascular supply is intact. Temperature is equal in both upper extremities. Sensory examination to pinprick is basically intact in both upper extremities. Examination of strength reveals it to be normal in right arm and grip function. The left arm does have rather good strength. She, essentially has 0 strength in her left grip.

On examination of the spine, itself, there is some tenderness at the base of the cervical spine, in the midline and some mild tenderness, left paracervical musculature. There is no evidence of periscapular muscle tenderness. There is no particular tenderness in the shoulders. There is no evidence of surgical scar or muscle spasm.

On examination of range of motion, we will measure range of motion in the cervical spine. I have also included measurements in left and right shoulders and will comment on these.

On examination of cervical spine, patient has forward flexion full to 45 degrees. Patient has extension limited to 30 degrees. This is a 15 degree loss of range of motion and is equivalent to a 1 percent impairment, whole man. Patient has left and right lateral flexion full to 45 degrees in each direction. Patient has left and right rotation full to 80 degrees in each direction.

Therefore, based upon loss of range of motion, cervical spine, patient has a total of 1 percent impairment, whole man.

Regarding range of motion in the shoulders, suffice it to say that range of motion in the right shoulder is full and appropriate in all directions.

Regarding range of motion in the left shoulder, patient has forward flexion limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has extension full to 40 degrees. Patient has abduction limited to 120 degrees. This is a

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30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has internal rotation and external rotation full to 90 degrees. full to 40° RwK

Therefore, based upon loss of range of motion, left shoulder, patient has a total of 6 percent impairment, upper extremity.

There are several points for further discussion.

1. It would appear that this patient's diagnosis, referable to accident 9/88 is essentially chronic cervical strain. She has residuals of minor loss of range of motion. In addition, she apparently has sustained injury to the left paracervical musculature and has residual difficulties with left shoulder function. In addition, there is the issue of her vertigo. At present time, we shall consider her stable and rateable.

2. This patient, at present time has loss of range of motion, cervical spine equivalent to a 1 percent impairment, whole man. We shall have to consider this as reasonable and recommend it be granted.

3. This patient does have some ongoing loss of range of motion in left shoulder as compared to right. There is no documented intra-articular left shoulder pathology. It would appear that he problems are due primarily to soft tissue injury. She does complain of pain in the left paracervical musculature, extending down into the left shoulder area, diffusely. There is no significant muscle spasm noted, but she does have persistence of complaints which appears consistent with the documentation in her medical record. I therefore think we are going to have to concede the loss of range of motion impairment in this patient's left shoulder, despite the fact that there is no intrinsic left shoulder pathology. This disability is assigned on the basis for soft tissue injury to the surrounding musculature. She presently has a total of left upper extremity, based upon loss of range of motion in the shoulder. This is her non-dominant extremity, but since she falls into the range of 0 to 10 percent, there is no indication for subtraction. This is equivalent to a 4 percent impairment, whole man.

4. This patient has somewhat severe complaints of a more or less stocking numbness in her left upper extremity associated with significant loss of strength. On physical examination, there is no evidence of dermatomal sensory loss. Her arm strength actually is fairly good. She has, essentially, no grip on the left side. It is impossible for me to really understand how this has taken place. I do not see any evidence of radicular impairment in this patient's left or right upper extremities. I could understand some arm strength due to her shoulder difficulties, but this is not present. I am unable to explain her significant loss of grip strength. I do not note reflex loss or any evidence of Tinel's sign or intrinsic muscle atrophy of the hand. Basically, despite her complaints, I am unable to assign any particular impairment to loss of strength, left upper extremity or loss of sensory response, left upper extremity.

5. We must now address the question of this patient's dizziness. On my examination, I did not note any nystagmus. This patient does have rather

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poor balance and tends to drift rather suddenly to the right when we try to do romberg testing on her. Unfortunately, I do not have sufficient data in this chart on which to base an informed opinion as to what is going on in terms of her balance difficulties. Her neurologic assessment apparently revealed no evidence of intracranial pathology. She did have, apparently ear, nose and throat examination and there is noted an audiogram in the chart, which apparently revealed a mild sensory neural hearing loss. She did have an ENG, which showed no abnormality. In fact, Dr. Becker did recommend referral to an otologic group in Los Angeles for more sophisticated testing.

When we look at the possible impairments for vertigo, a Class 1 impairment carries with it a 0 percent impairment, whole man, and is classified by signs of vestibular disequilibrium being present without supporting objective findings and the usual activities of daily living can be performed without assistance. A Class 2 impairment carries with it anywhere from 5 to 10 percent impairment, whole man, and is characterized by signs of vestibular dysequilibrium present with supporting objective findings and the usual activities of daily living are performed without assistance, except for complex activities, such as bike riding or certain activities related to patient's work such as walking on girders or scaffolds.

It would appear, based upon the data at hand, that this patient belongs into a Class 1 impairment. I do not mean to underestimate the intensity of her symptoms, but objective testing does not reveal significant findings. It would appear that activities of daily living are performed without assistance.

In summation, regarding this issue, I would like to see a Comprehensive Otologic evaluation in this patient, before we commit to a particular level of impairment. I would need to know that she has been fully evaluated and that the extent of her symptomatology and impairment has been delineated. I would therefore defer any disability assessment on this patient, regarding the issue of the vertigo, until further information has been obtained. If for some reason, the patient refuses any further evaluation, then I think I'm going to have to be forced to place her into a Class 1 impairment, which is characterized by the issues stated above, but carries with it a 0 percent impairment.

In summation, in terms of her musculoskeletal situation, this patient appears to have a 4 percent impairment, whole man, based upon loss of range of motion, left shoulder, combined with a 1 percent impairment, whole man, based upon injury to cervical spine.

Using Combined Values Charts, this sums to a 5 percent impairment, whole man. I am unable to delineate specific central or peripheral neurologic deficits in this patient. In addition, I need more data referable to the issue of her vertigo before I can classify her any further.

This examination was performed in accordance with the AMA Guidelines for the Evaluation of Permanent Impairment, Copyright 1984, March Edition, Third Printing, 1985.

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All measurements were obtained with the use of the goniometer with the exception of rotation of the cervical spine which was accomplished by inspection.

Thank you.

Sincerely,

Richard W. Kudrewicz, M.D.

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RICHARD WALTER KUDREWICZ, M.D., LTD.

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OF FAMILY PRACTICE

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Las Vegas, Nevada 89102
(702) 877-9676



ADDENDUM - DISABILITY EVALUATION

PATIENT: Su
DATE OF INJURY: 9/25/
DATE OF EXAMINATION: 8/15/9

May concern:

I am in receipt of a request to comment on the question as to whether the patient's current physical condition can be related to automobile accident of 9/15/88 as opposed to automobile accident of 7/20/87.

As I review the records, it would appear that this patient's primary complaints are those of constant headache, significant dizziness, neck soreness and some dysfunction in the left shoulder. It would appear her present diagnosis is chronic cervical strain and strain, left paracervical musculature with residual loss of range of motion, cervical spine and left shoulder, as well as a diagnosis of postural vertigo.

It would appear that this patient did have essentially these same symptoms following her accident of 7/20/87 as documented in the medical history. It is noted by the patient that the majority of these symptoms had cleared by early 1988 with only occasional residual headache when she was involved in a second motor vehicle accident, 9/88 and aggravated her symptoms. Apparently, the second accident resulted in similar symptoms as the first. According to the patient, she had apparently gotten 95 percent better from the first accident and then symptoms returned.

According to Dr. Becker's note of 7/31/89, it is noted that patient was responding to medical therapy and was improving with less dizziness and headaches following her accident of 7/87. Following her accident of 9/88, she sustained reinjury to her neck which had resulted in increased vertigo and headache which has persisted to the present time.

It would appear that the basic pathology, i.e., cervical strain, as well as paracervical muscle strain, as well as postural vertigo were caused, initially by the accident of 9/87. If we are looking for the initiating event, I would have to state that this is indeed referable to the accident of 7/20/87.

One can also state that it appears that the natural course of her

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symptoms following the accident of 7/87 was one of gradual and progressive resolution. She was still symptomatic at the time of the accident of 9/88 and this apparently did result in significant aggravation of her preexisting symptoms.

In summation, I would have to state that the constellation of symptoms that this patient had at the time of my examination were referable directly to the accident of 7/20/87 and had not totally resolved by the time of her second accident. The second accident certainly did lead to aggravation of these preexisting symptoms.

In terms of assigning a particular percentage of responsibility to the first and to the second accident, it is obviously quite difficult to do this accurately. I could honestly do no better then to state that approximately 50 percent of her present complaints are attributable to initial accident, 9/87 and that 50 percent of her present symptoms and complaints are referable to subsequent accident, 9/88. There simply is not enough documentation in the medical records for me to refine this percentage any further.

Thank you.

Sincerely,

Richard W. Kadrmas, M.D.

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RONALD A. WEISNER, M.D.
PSYCHIATRY
Valley Depression Clinic • 2975 So. Rainbow Blvd. • Suite C-3 • Las Vegas, Nevada 89102 • (702) 367-1977

July 26, 1991

Linda Palmer
Case Manager
Bureau of Disability Adjudication
1050 E. Williams Street
Carson City, NV 89710

RE: SUSAN REEVES

Dear Ms. Palmer:

I interviewed Susan Reeves in my office today. She arrived on time. Her date of birth is 10/6/51. Preceding her arrival, I reviewed very extensive evaluations by a number of physicians; to name a few, there is an evaluation by Dale W. Forsythe, Ed.D., Dr. Kudrewicz, Dr. Mattimoe, Dr. Gaelen as well as other evaluations by Dr. Becker, Dr. Boulware and several more physicians as well.

The patient explains her predicament as follows: She says that she was injured in an automobile accident and told by Bally's eight months later that she could not work any more. She explains her last day on the job was May 15, 1989. She was a reservations clerk and had worked in that capacity for 10 years. An automobile accident occurred on September 25, 1988 in the parking lot on the way to work in which she was rear ended. She had headaches and dizziness as a result. She was noticed to be unsteady at work and eventually placed on indefinite medical leave according to the patient.

The patient said one year earlier on Tropicana Avenue she was rear ended and also sustained headaches. However, the dizziness and the headaches were exacerbated greatly following the second accident.

She at present is taking Darvocet three times a day. She says currently the headaches are being helped by a TENS unit, but the dizziness at this point she would describe as her main problem.

The patient denies feeling depressed, but says she is angry because of losing her job. She says at present her husband of 21 years supports her. He is a driver for the Tropicana Hotel. The patient explains she has put in applications at several places, but she cannot get a job because she is shown as being actively employed at Bally's and being on medical leave. The patient then apologizes and says that she cracked two of her ribs this weekend when she tripped on the couch and she has some difficulty breathing.

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The patient denies any prior psychiatric treatment. She was born in Oceanside, California and she says raised all over California. Her biological parents split up right after she was born. The patient's mother raised her. Her mother remarried, and both her father and stepfather were in the military. She has one half-brother and two half-sisters.

The patient attended school through high school. She denies any mental illness that she is aware of in her family. She denies alcoholism in the family. She said she married her high school sweetheart and they have been married for the last 21 years. They have two boys ages 20 and 15. They moved to Las Vegas 18 years ago.

Regarding the patient's daily routine, she wakes up at 6:30 and makes tea and toast. She says she does not make breakfast for the family as they make their own breakfast. She will spend mornings showering and cleaning up her room and doing some dusting in the house. She does not do all of the housework. She says the children do the vacuuming and everybody helps out with the laundry. She tends to skip lunch, spends the afternoon bringing the dogs in the house. She will work her TENS unit mostly in the afternoons and spend a lot of time talking with the children. She says everybody works together as a team making dinner at night. The patient does not drive, but she does make up the grocery lists and her son does the grocery shopping. After dinner the patient plays some videos or watches a movie. They do a lot of talking at home. Bedtime is usually around 9:30. She will take a second shower before bed.

Regarding the patient's functional assessment, this was given to me to fill out under a separate form which will accompany this report, so I will skip this area in this report and not duplicate it. Also, information is in the report as to whether in my opinion the patient is capable of managing her own benefits.

On mental status exam, the patient presents as an obese Caucasian female. She insists on keeping her sunglasses on, saying the lights will tend to give her headaches. Her affect was pleasant throughout the interview. She was cooperative with the examiner. She was fully oriented. There was no overt evidence of thought disorder, hallucinations, delusions or thought blocking, and the patient vigorously denied experiencing any phenomenon of this nature. The patient denied feeling depressed, but did admit to irritability frequently, and she said in attempting to concentrate she would frequently get headaches. She was able to subtract serial sevens from 100 only down to 93, giving up on [illegible] seven. She did correctly locate Brazil in South America.

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Her memory recent and remote appeared to be grossly intact, and recall for three objects after five minutes was also noted to be intact. She says she still has episodes where she gets angry during the day, primarily at the doctor, specifically Dr. Mattimoe, who will not release her to go to work, but then she says on the other hand, perhaps he has good reason. The patient says she sleeps okay at night and overall she feels that she is functioning okay in the psychological sphere. She denies having any psychiatric problems.

PSYCHIATRIC DIAGNOSIS:

AXIS I	SOMATOFORM PAIN DISORDER.
AXIS II	NO DIAGNOSIS.
AXIS III	PATIENT WAS INVOLVED IN TWO MOTOR VEHICLE ACCIDENTS, IN 1988 AND 1987. IT IS UNCERTAIN WHAT IF ANY, NEUROLOGICAL SEQUELAE ENSUED FROM THESE AUTOMOBILE ACCIDENTS.
AXIS IV	STRESSORS ARE MODERATE. LOSS OF INCOME.
AXIS V	CURRENT GAF 65. HIGHEST GAF THIS PAST YEAR APPROXIMATELY 65.

Thank you very much.

Sincerely,

Ronald A. Weisner, M.D.

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DAVID J. OLIVERI, M.D.
DIPLOMATE, AMERICAN BOARD OF PHYSICAL MEDICINE AND REHABILITATION
DIPLOMATE, AMERICAN BOARD OF ELECTRODIAGNOSTIC MEDICINE

PM&R

INDEPENDENT MEDICAL EVALUATION

EXAMINEE	:	Susan Reeves
DATE	:	08/18/98
CLAIM #	:	0728800377
D.O.I.	:	09/25/88
EMPLOYER	:	Bally's
REFERRAL SOURCE:		Hilton

The independent medical evaluation process was explained to the examinee, and it is understood that there is no patient/treating physician relationship present. It was explained that the evaluation was requested by the referral source and that a report will be sent to the referral source upon completion. The examinee understands that no conclusions or recommendations will be discussed during today's evaluation. The examinee understands that full, reasonable, and consistent effort is requested during the evaluation. The above is consistent with the standards set forth by the American Board of Independent Medical Examiners.

IDENTIFICATION

46-year-old right-handed female positively identified by a Nevada driver's license.

HISTORY

GENERAL:

The history is obtained from the examinee as well as the extensive medical records outlined below.

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PREINJURY STATUS:

The examinee states that in July of 1987, she was the belted passenger in a full-sized truck when she was rear-ended and pushed into a Bronco. She states that the front end of the vehicle she was in was crushed and the back end was damaged. She states she hit her head on the window and had problems with primarily headaches. She denies any cervical or upper extremity complaints or any other complaints related to that accident other than headache. In addition to the above, she had an injury to her knee in the 1960's with resolved complaints.

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1250 S. VALLEY VIEW BLVD., LAS VEGAS, NV 89102
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LAUGHLIN

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MECHANISM OF INJURY:

On 09/25/88, the examinee states that she was the belted driver in the same truck that she was in with the previous accident. She had stopped in the employee parking lot when another vehicle entered and rear-ended her truck. She states that her head whipped forward and backward very hard and she states her "brain shifted forward and backward bruising the front per Dr. Mattimoe, Dr. Becker and others."

CURRENT CHIEF COMPLAINT(S):

Constant headache, "bad" dizziness, tingling in the left arm with pain down to the left leg, upset stomach, hemorrhoids due to all of the vomiting associated with the upset stomach, inability to handle lights and sounds, difficulty focusing, and difficulty turning her head to the left.

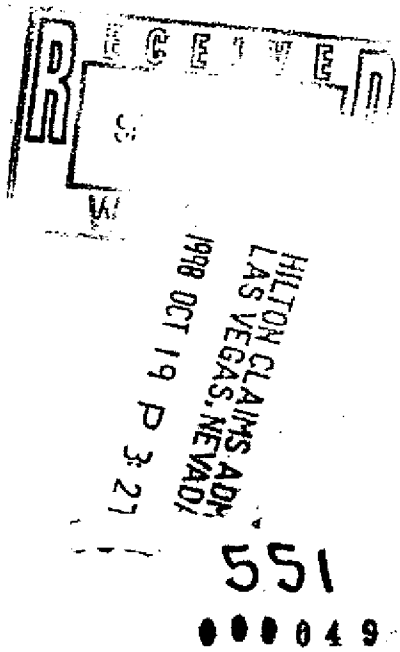
CLINICAL STATUS:

This examinee, since 1988, has been evaluated and treated by multiple physicians. She is currently under the care of her primary care physician, Dr. Mattimoe. Her main complaint is a headache that she describes in the bitemporal area similar to the pain that a person gets when they eat ice cream too fast. In addition, she has the other complaints that are listed above. She has had treatments including physical therapy. She has been granted social security disability dating back to 1989. She states that at this point, she is wanting to plead with social security to be sent to the Mayo Clinic. She states that she wants to be "fixed."

Aggravating Factors:	Light, tension, noise level, thinking, and concentrating.
Relieving Factors:	Dark and quiet room.
Sleep Cycle:	Usually about four hours per night.
Treatment:	The examinee has had physical therapy.
Home Exercise:	None.

PAST MEDICAL HISTORY:

Allergies:	Iodine, codeine and chemicals in cologne.
Medical Illnesses:	Heart murmur and endometriosis.
Last Menstrual Period:	1976.



Current Physicians: Dr. Mattimoe.

Past Surgeries: Tonsillectomy and six major operations between 1976 and 1979 after a complete hysterectomy and discovery of the endometriosis.

Current Medications: Darvocet approximately 90 per month, Midrin more than 90 per month, Imitrex Tablets and injections, use of either Belladonna, Phenerbel, Zantac, or Prilosec for her upset stomach. Propranolol for her heart murmur. Vistaril on "real smoggy days or windy days when her skin feels like it is crawling and burning."

SOCIAL HISTORY:

The examinee has been married since 1970. She has two children. She has a high school education and some night school. She rarely drinks alcohol. She smokes cigarettes. She feels as though she is depressed because of the long court fights of her case. She denies any history of abuse or abandonment. She considers herself psychologically stable.

OCCUPATIONAL HISTORY:

The examinee was working in room reservations as well as a shop steward trainee with Bally's. She last worked her regular job on 05/15/89 when she states that they "threw me off my job." She had been with them since 1980.

REVIEW OF SYSTEMS:

Remarkable for visual problems, headaches, vomiting, spitting up blood.

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RECORD REVIEW

09/25/88 **Date of Loss.** Traffic accident report not available.

12/12/88 **Frederick T. Boulware, Jr., M.D.** This 37-year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an automobile accident which occurred on July 20, 1987. Patient states she progressive improved after that time. Apparently some three days after her complaints had resolved, sometime in September of this year, she was involved in a second automobile accident in which she was the driver of a car that was rear-ended while stopped. She was thrown forward and backwards but did not strike her head. She has since this time experienced constant headache. She describes a dull ache which is primarily bifrontotemporal in location, although it has a posterior head contribution. It is increased by turning of the head to either side. She

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initially had some nausea, but no vomiting. She also has some complaints of lightheadedness, which may occur if she turns her head suddenly or moves quickly. An electroencephalogram reveals low-voltage, fast activity throughout the record in all head regions consistent with medication affect. Patient may have experienced some discomfort with the incident that she describes. There is no suggestion, however, that she has any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activity.

10/09/89 **Joel Lubritz, M.D.** Letter to Allstate Insurance Company. I would suggest that Mrs. Reeves have an audiogram, an electronystagmogram and brain stem evoked response audiometry. The cost of these tests is approximately $600.00. However, as stated in my previous letter to you, I would suggest that these tests be done by a well recognized authority such as the Otologic Medical Group in Los Angeles.

11/29/89 **Louis F. Mortillaro, Ph.D.** Impressions: Axis I: Clinical syndromes: 307.80 Somatoform pain disorder. Axis II: V-71.09 No diagnosis or condition noted on Axis II. It is opinioned that at this time, Mrs. Reeves is experiencing a Somatoform Pain Disorder that has developed out of her inability to successful cope with the physical consequences of both motor vehicle accidents in question. Prognosis for successful resolution of her Somatoform Pain Disorder arising out of the motor vehicle accident is excellent if the following treatment recommendations can be successfully implemented. She should be referred for pain management counseling where she can learn and implement an effective pain management ritual in response to pain stimuli. She would benefit from instruction in biofeedback strategies for pain management to help her resolve problems of somatic pain headaches and moderate interpersonal distress. As soon as possible, Mrs. Reeves should be issued a return to work release based upon objective medical findings. She is desirous of returning to work with the pre-accident employer as soon as possible. [Page 1 of this report unavailable.]

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03/30/90 **Aram Glorig, M.D.** Letter to Allstate Insurance Company. She was complaining chiefly of a dizziness described as "things moving about her", causing her to be dizzy. She said when she moves quickly, she notices that this increases. She says she can prevent this by fixing her eyes on some point and then turning her head. Standing up quickly with quick movements of any kind increases the dizziness. She says when people move across her vision, she notices the dizziness. She says the whole thing is somewhat better now than right after an accident. At that time, she had nausea, but no vomiting and the nausea continued for about four months. She has no real problem with hearing; however, she does have a constant ringing described as a buzzing with high-pitched mixed in. However, it does not bother her and it is worse in quiet. She says these things came on following an accident which occurred in July of 1987. At that time, she hit the back of her head on the window of a pickup truck in which she was riding. She was not knocked unconscious. Following this she went to Dr. Mattingoe who is her family doctor. He said she had whiplash. The dizziness came on about three days

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after the accident while in the shower. Following this, she saw Dr. Becker who is an ear, nose, and throat doctor and a neurologist. By July of 1988, she was feeling quite good. But on September 27, 1988, she was rear ended again and headaches and dizziness became even worse than she had before the second accident. This time, she had a whiplash which started the symptoms all over again, but worse than previously. She has had physical therapy for about nine months. But she did not appear to be too satisfied with what was done. Discussion: Before I can come to any conclusions about Ms. Reeves' dizziness and her hearing, I would like her to return for an electronystagmogram, a brain stem audiogram, an impedance test and an Equi-test, which is a balance test which has recently been developed. It appears to me that Ms. Reeves has something wrong and that she may need treatment. I would like also for an appointment to be made with Dr. Derald Brackmann of this group following the completion of the four tests that I have asked for. Ms. Reeves has told me she has been seen by several physicians and all of them say there is nothing wrong with her and that it is all in her head. But I doubt this and that is why I am asking for these extra tests and for her to see Dr. Brackmann, who is a world-renowned expert on dizziness. As soon as I receive the results of these tests and after the visit with Dr. Brackmann, I will complete this report.

05/21/90 **Dr. Glorig.** Letter to Allstate Insurance Company. The brain stem audiogram indicated that the audiogram we made on 03/13/90 was reasonably valid, except in the low frequencies which I feel showed her to have a little more loss than she actually has. Consequently, her hearing is within normal limits throughout the spectrum. The electronystagmogram showed normal results, as far as the peripheral vestibular system is concerned, and did not show any indication of any central problem. The impedance test indicated that her hearing was within normal limits and that there was no difficulty with her middle ear function. I note that the appointment with Dr. Brackmann was not made and a statement is in her chart indicating that this appointment was to be made at a later date. I would definitely like her to be seen by Dr. Brackmann before coming to any final conclusions.

08/15/90 **Richard W. Kudrewicz, M.D.** On examination of cervical spine, patient has forward flexion full to 45 degrees. Patient has extension limited to 30 degrees. This is a 15 degree loss of range of motion and is equivalent to a 1 percent impairment, whole man. Patient has left and right lateral flexion full to 45 degrees in each direction. Patient has left and right rotation full to 80 degrees in each direction. Therefore, based upon loss of range of motion, cervical spine, patient has a total of 1 percent impairment, whole man. Regarding range of motion in the shoulders, suffice it to say that range of motion in the right shoulder is full and appropriate in all directions. Regarding range of motion in the left shoulder, patient has forward flexion limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has extension full to 40 degrees. Patient has abduction limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has internal rotation/and external rotation full to 40 degrees and external rotation full to 90 degrees. Therefore, based upon loss of range of

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motion, left shoulder, patient has a total of 6 percent impairment, upper extremity. In summation, in terms of her musculoskeletal situation, this patient appears to have a 4 percent impairment, whole man, based upon loss of range of motion, left shoulder, combined with a 1 percent impairment, whole man, based upon injury to cervical spine. Using Combined Values Charts, this sums to a 5 percent impairment, whole man. I am unable to delineate specific central or peripheral neurologic deficits in this patient. In addition, I need more data referable to the issue of her vertigo before I can classify her any further.

08/16/90 **Dr. Glorig.** Letter to Allstate Insurance Company. Susan Reeves was seen by Dr. Brackmann and I have consulted with him regarding his opinions. We both feel that there is no damage to her vestibular system and that her problems are strictly related to her neck injury. The electronystagmogram which is a test to decide whether the vestibular system end-organ is at fault, was perfectly normal in all respects. The Equi-test which is another test to try and localize any problem as far as the vestibular system is concerned, showed no signs of any localizations. The brain stem audiogram was normal, indicating no problem as far as retrocochlear lesions are concerned. It remains then that the accident has not caused any vestibular problems and that Ms. Reeves' hearing is within normal limits. The only pathology we can find is related to a neck injury which should be taken care of by physical therapy.

09/04/90 **Peter Mattimoe, M.D.** Her main problem is pain in the neck especially the lower half, and of the left shoulder which is quite intense, sometimes radiating into the left upper limb. It is aggravated by movement but not by coughing. She feels she has to hold the left shoulder in almost immobile position with her elbow flexed by 90 degrees across her torso. She also has headaches, photophobia, occasional dizziness and sometimes parasthesiae in some of the left fingers. Exam: There appears to be loss of the cervical lordosis and considerable posterior neck muscle spasm; all neck movements are greatly decreased with pain, similarly with the left shoulder movements. She was referred to Gary Amick for intensive PT and she was prescribed Norgesic Forte and a muscle relaxant. I will see her in one month.

11/07/90 **Gary Amick, P.T.** Susan has received regular and consistent treatment to her back and neck area, consisting of moist heat, electrical stimulation, ultrasound, massage, mobilization and progressive resistive exercises. Presently she reports symptoms are generally improved with episodes of increased symptoms. Her functional activities have increased. Her chief complaint is constant left ear tinnitus which began approximately ten days ago. Her complaints of dizziness and light sensitivity exacerbate two or three times weekly but has improved since therapy. Objective findings reveal moderate improvement in active and passive cervical, thoracic and lumbar range of motion, strength and function. Her left shoulder has significantly improved with range of motion and strength. Recommend Susan continue with treatment as above with emphasis in progressive resistive exercises.

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11/08/90 **Dr. Mattimoe.** Ms. Reeves reports considerable improvement to all areas other than to her ear problem. There is less pain in her neck and especially in her left shoulder, for which PT has been very helpful in assisting her to gain increased mobility - similarly with the low back area. There are still periods which are becoming fewer and more short-lived of intense severity of pain. She appears to have tinnitus and episodes of dizziness not associated with nausea and not precipitated by position. Her whole outlook is optimistic. She is to continue physical therapy and obtain an E & T [sic] consultation.

01/02/91 **Gary Amick, P.T.** Presently she reports symptoms are slowly improving with the exception of dizziness and light sensitivity. She also reported daily episodes of falls and "bouncing off the walls." Her equilibrium is of major concern as is her desire to return to work. Susan has taken steps to seek a release to full duty from another source. Objective findings include improved spinal motion and segmented mobility. She still requires dark glasses and demonstrates poor balance during gait.

01/03/91 **Dr. Mattimoe.** Patient still complains of severe headaches and ataxia meaning a staggering of motion while walking and feeling of loss of balance; she has not fallen but takes care when walking and does not drive any vehicle. Exam is essentially unchanged. I feel this lady requires an independent specialist's work-up.

01/10/91 **Dr. Mattimoe.** Patient telephoned - Haemathemisis [sic] and possible melena. Advised to discontinue ASA and NSAID's and will be prescribed a histamine 2 blocker. She is going to have upper GI at Steinberg's in the morning.

01/11/91 **Dr. Mattimoe.** Dr. Green telephoned - patient shows duodenal ulcer. Advised to make an appointment with Dr. J. Fayad, Gastroenterologist.

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01/11/91 **Upper GI Series. R. B. Greene, M.D.** The preliminary film of the abdomen reveals no abnormalities. There are prominent gastric rugae or folds involving the entire stomach. This is consistent with diffuse hypertrophic gastritis. Mild to moderate antral spasm, pylorospasm and duodenal irritability. There are moderately prominent duodenal bulb mucosal folds present. On multiple Hampton views of the duodenal bulb, there is demonstrated one, possibly two 2 mm-3 mm in diameter superficial benign duodenal bulb erosions and/or ulcerations. No gastric outlet obstruction. Normal esophagus. The upper GI series is otherwise not remarkable.

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01/31/91 **Dr. Mattimoe.** Her dizziness remains a major feature and she complains of staggering while walking. Her headaches remain and the various medications prescribed have not helped her. She states she gets quite frustrated with her current position and she is not obtaining help from anybody. She mentioned she has had temper tantrums as a result. Dr. Becker, ENT has told her he could not do anything further for her and she is anxious to have

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another opinion. She was prescribed Norflex. I again advised her that in view of her symptomatology, I would not recommend her to resume work although she states she is most anxious to do so. I will write her insurance company recommending another opinion. She also states I never said she was unable to work.

03/13/91 **Joseph Fayad, M.D.** Impression: Hematochezia times two. Likely due to aspirin. The possibility of other pathology has to be ruled out. Plan: Proceed with an EGD. Start patient on Zantac and recommend to avoid any aspirin as well as alcohol for now.

03/30/91 **Dr. Mattimoe.** Patient states her main complaints are severe headaches and ataxia plus considerable stress due to mounting unpaid bills. She states she is most anxious to resume work as soon as possible at her pre-accident position. She is still being investigated by Dr. Fayad, Gastroenterologist, in regard to her recent GI bleeding. He feels this arose from her use of aspirin to relieve those headaches. Since she has discontinued the aspirin she has not noticed any further GI bleeding and does not now have any abdomen complaints. Exam: Patient continues to have an unsteady gait and appears to stagger backwards without actually falling and supports herself, at times, with her hands on the wall while walking. In view of her symptoms and the appearance of ataxia, I feel she is currently unfit to undertake any duty or to drive and, in fact, may need attendance when walking lest she fall. I consider patient would benefit from fresh neurological and ENT evaluations.

06/01/91 **Unsigned typewritten note.** Continues to have severe headaches and a tendency to back into objects. She takes 2 Darvocet N 100 at night to relieve the headache so she may sleep. Her abdominal problems have responded well to Gen. Donnatal once the initial side effects abated. She was prescribed Gen. Donnatal and Darvocet in the 100. I have urged her to have the case settled.

07/26/91 **Ronald A. Weisner, M.D.** Psychiatric diagnosis: Axis I: Somatoform pain disorder. Axis II: No diagnosis. Axis III: Patient was involved in two motor vehicle accidents, in 1988 and 1987. It is uncertain what if any, neurological sequelae ensued from automobile accidents. Axis IV: Stressors are moderate. Loss of income. Axis V: Current 65. Highest GAF this past year approximately 65.

09/23/91 **Administrative Law Judge Decision Regarding Social Security.** The judge states that "medical evidence establishes that the claimant has severe medically determinable impairments of somatoform pain disorder, postural vertigo, status post cervical strain and obesity but that she does not have an impairment or combination of impairments listed in or medically equal to one listed in appendix A, subpart P, regulation #4." He states "the claimant's subjective complaints preclude the performance of substantial gainful activity on a routine and sustained basis." He states that she does have disability as defined in the Social Security Act.

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01/11/92 **Unsigned typewritten note.** Patient has a number of problems which are MVA related - headaches, back and neck pain, paresthesiae left lower limb. She has considerable photophobia and continuing dizziness. Exam is unchanged and I have referred her to Gary Amick for continuing PT.

03/24/92 **Unsigned typewritten note.** Patient reports she had been doing well since her last visit but has been seriously affected by the recent death of her grandson. She reports severe headaches, dizziness, insomnia and overwhelming grief. Exam remains unchanged and she was offered supportive care.

05/08/93 **Dr. Mattimoe.** Mrs. Reeves has suffered very severe incapacitating headaches since the MVA of 09/25/88. Only Imitrex has provided satisfactory relief. I have therefore prescribed Imitrex for her on a continuing basis.

05/16/98 **Physician unknown. Handwritten note.**

PHYSICAL EXAMINATION

GENERAL:

The examinee stands 5'5" tall and weighs 180 pounds.

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EXTREMITIES:

There is no visible atrophy in the upper or lower extremities. Measurements are taken at the upper arms bilaterally and are 34 cm bilaterally. The forearms measure 27 cm bilaterally. The calf measurements are 38 cm bilaterally. There is subjective limitation in bilateral shoulder abduction at 140 degrees.

TRUNK/SPINE:

The examinee has normal upright posture without scoliosis. She has subjective limitations that are nonanatomic in cervical and lumbar spine motion. Straight leg raises seated are to 90 degrees bilaterally with no pain.

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SENSORY:

There is nonanatomic circumferential tingling in the left upper extremity. Sensation is otherwise intact in the right upper extremity and bilateral lower extremities.

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MOTOR:

GRIP	JAMAR DYNAMOMETER		
RIGHT	52,	54,	50
LEFT	20,	15,	24

Rapid exchange grip strength testing was attempted although the examinee was unable/unwilling to coordinate the effort. There is breakaway weakness in the upper and lower extremity myotomes.

REFLEXES:

2+ at the bilateral biceps, triceps, brachioradialis, quadriceps and Achilles.

GAIT:

Slow.

CREDIBILITY/SYMPTOMS REPORTING

PAIN DIAGRAM: Nonanatomic.

MCGILL PAIN QUESTIONNAIRE: 32.

The McGill Pain Questionnaire is a simple, but reliable, measure of a patient's perception of pain. The questionnaire that is used in this case is the Pain Rating Index (Rank Value). The patient is asked to choose words from a list of 20 different categories. A score is obtained based on the range of that word in the category. The maximum score is 78 points. Scores above 30 tend to indicate exaggeration of symptoms, although there is no exact cutoff point accepted.

BECK DEPRESSION INVENTORY: 12.

The Beck Depression Inventory is a 21-item self-report questionnaire that is used as a screening measure for clinical depression. The score can be interpreted as follows: 1 to 10 normal, 11 to 16 mild mood disturbance, 17 to 20 borderline clinical depression, 21 to 30 moderate depression, 31 to 40 severe depression, over 40 extreme depression.

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DIAGNOSES

DIAGNOSIS (PRIMARY INDUSTRIAL CAUSATION):

1. STATUS POST INDUSTRIAL MOTOR VEHICLE ACCIDENT, 09/25/88, WITH DIFFUSE SYMPTOMATOLOGY COMPLICATED BY FUNCTIONAL OVERLAY.

DIAGNOSES (OTHER):

1. SOMATOFORM PAIN DISORDER.
2. HEART MURMUR PER EXAMINEE.
3. ENDOMETRIOSIS PER EXAMINEE WITH REPORTED MULTIPLE SURGICAL INTERVENTIONS.
4. EXCESSIVE DARVOCET/MIDRIN USE.

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DISCUSSION

I was asked to evaluate this examinee. In the cover letter, it is stated that Bally's was unsuccessful in denial of the claim. I have been asked to evaluate the examinee's capabilities in terms of entering the work force. I have reviewed the medical records including the records from the examinee's primary care physician, Dr. Mattimoe. The examinee wants to be "fixed." She stated that she wants to be sent to the Mayo Clinic for treatment, but then told me that if I could help her here in Las Vegas, she would certainly go through that treatment. The difficulty that I believe all involved in this case are experiencing is the fact that this examinee's subjective complaints are far in excess of any objective findings that may be hidden. This type of presentation is completely consistent with the diagnosis of somatoform pain disorder which was noted by Dr. Mortillaro back in November of 1989. The bottom line is that this examinee primarily has a psychiatric problem. Somatoform pain disorder is a psychiatric diagnosis and is not something that is caused by an industrial accident. This examinee has diffuse bodily complaints and has a perceived level of disability that is far in excess of anything that could be causally related to her accident in 1988. Of note is that she has been granted social security disability since 1989. The criteria for disability under social security are very much different than the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury.

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There is also a question in my mind as to the 1987 accident where the examinee hit her head and this resulted in headache complaints. Per Dr. Boulware's report of 12/12/88, he states that her headache complaints from the 1987 accident continued until three days before the September 1988 accident. This is quite unlikely from an objective medical standpoint.

As far as managing an individual with somatoform pain disorder with multiple diffuse bodily complaints such as this examinee, it is important to keep in mind that it is primarily a psychiatric diagnosis. It is clear that the examinee has a great deal of trust in Dr. Mattimoe and undoubtedly, Dr. Mattimoe is doing everything he can to help her although the ongoing use of addictive medications such as Darvocet and Midrin are really contraindicated in a somatoform pain disorder. The bottom line is that there is really no conceivable objective diagnosis resulting from the automobile accident that could justify the use of these medications especially at the numbers per month she is consuming. The examinee's behavior of wanting to seek out additional treatment at a nationally recognized center is also consistent with somatoform pain disorder. She has fixated on her pain and disability to the point that it is an all consuming project. The litigation aspects fall into this pattern also.

The bottom line is that despite the fact that her claim has been accepted, I have no industrial treatment recommendations. From a nonindustrial standpoint, she should be taken off of addictive medications and she should be under the care of a psychiatrist or psychologist. There is nothing of significant concern from a medical standpoint that would warrant urgent treatment and there is nothing that would require multidisciplinary or regional medical center treatment.

CONCLUSIONS/RECOMMENDATIONS

PREEXISTING CONDITIONS:

There was a previous motor vehicle accident in 1987 resulting in headache complaints. I suspect that those complaints are also part of her current presentation. The most overwhelming aspect of this examinee's presentation is what I would consider a preexisting tendency or an actual preexisting diagnosis of somatoform pain disorder in this examinee.

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SYMPTOM MAGNIFICATION/NONORGANIC FINDINGS:

The examinee has overwhelming magnification of symptomatology. In addition to already being diagnosed officially with somatoform pain disorder, she has an elevated McGill Pain Questionnaire score which is in the realm of symptom magnification, she has a nonanatomic pain diagram, she has nonanatomic complaints, and she has nonanatomic findings on examination. For purposes of clarification, it is important to note that this examinee may not have conscious

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control over the issues of symptom magnification or functional overlay. In other words, the examinee may truly feel that she has symptomatology severe enough to preclude functional activities. However, this is not justifiable on an objective industrial basis.

CAUSATION:

The motor vehicle accident on 09/25/88 may have caused some minor problems physically but those have undoubtedly resolved. The causation of the examinee's current presentation overwhelmingly is her nonindustrial somatoform pain disorder.

MAXIMUM MEDICAL IMPROVEMENT:

Yes from an industrial standpoint.

RECOMMENDATIONS:

The following recommendations are nonindustrial. I would advise the examinee to wean herself completely from addictive medications. I would recommend that she be under the nonindustrial care of a psychologist or psychiatrist skilled in dealing with somatoform pain disorder.

I was also asked to clarify which medications are necessary for this examinee on an industrial basis. There are no medications necessary objectively on an industrial basis as it relates to the 1988 accident.

WORK CAPACITY/DISABILITY:

As discussed above, this examinee's obtaining of social security disability dating back to 1989 should not be misconstrued as a justification for disability on an industrial basis. It is my very strong opinion that based on the industrial accident and the industrial objective issues, there is no evidence for disability. The examinee's current perceived level of disability is based on her nonindustrial somatoform pain disorder.

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PROGNOSIS:

Exceedingly guarded because of the nonindustrial factors.

DISCLAIMER

The opinions, conclusions, and recommendations expressed above are based upon reasonable medical probability and are independent of the referral source. Multiple factors have been taken into account including the examinee's subjective complaints, provided history, medical records

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Patient: Susan Reeves MVA: 7-20-'87

Saturday, November 7, 1987:

Patient states that she continues to have dizziness or light headedness; she has the feeling, when looking at objects for a time, that they move away from her and then oscillate up and down. She is also dizzy when turning her head to the left which can also cause some pain on the left side of the neck and has prevented her from driving since the MVA. She has no LOT since last visit. There is also pain in the occipital area with headaches.

O/e 135/72 72. Good cervical movements. Chest and CVS normal. Cranial nerves intact. No Nystagmus. Unsteadiness giving ambivalent Rhomberg. Heel-toe gait and one foot stance okay.

Patient referred to Dr. B. Becker, ENT. I will see her in 1/12.

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reviewed, direct review of diagnostic or radiographic testing, results of credibility and symptoms reporting, and the physical examination findings. Comments on appropriateness of care are professional opinions based upon the specifics of the case and are not to be generalized to the specific involved providers or disciplines. The opinions expressed above to not constitute a recommendation that specific claims or administrative decisions be made or enforced. At the conclusion of the examination today, the examinee left the office without complaints of additional injury.

Respectfully submitted,

David J. Oliveri, M.D.
Board Certified, American Board of Independent Medical Examiners

DJO/cak

HILTON CLAIMS DEPT.
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Gerald W. Dunn, M.D. George A. Petroff, M.D.

September 3, 1998

Peter Mattimoe, M.D.
3611 S. Lindell Rd. #102
Las Vegas, NV 89103

RE: Reeves, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in neurologic consultation. This is a 46-year-old right-handed woman who was complaining of headaches, neck and back pain radiating to the arm and leg respectively, and dizziness. The patient has frontal headaches. There is a pressure about the head as if she is wearing a tight cap. Her headaches are constant and daily but wax and wane in intensity. At times they have an intense feeling as a "ice cream" headache. At times the patient has dizziness in two forms. The first is a sense of poor balance where she may veer off to the left or right or stumble. The second type is a peculiar type of vertigo which she describes in terms of a spinning egg. There is a clear sense of subjective movement with this. It is not positional. It has caused her to fall to the ground by her account. The patient's headaches are worse if she is exposed to bright lights or if she has to concentrate to any degree mentally. The patient has tingling paresthesia over the lateral forearm and arm and pain in the upper arm and shoulder. There is numbness in the upper inner arm at times. There is also numbness and tingling in all the toes of the left foot and a ribbon of numbness all the way from the inside of the leg to the foot. The patient denies significant low back pain at this point. The patient has pain in her upper neck at the base of the skull and she describes a physical therapy session where pressure was applied to this area and all of the symptoms resolved. Subsequent similar manipulation made all of her symptoms worse.

PAST MEDICAL HISTORY: Otherwise remarkable for heart murmur, ½ to one pack per day of tobacco. The patient has an extremely complicated history of complaints including dizziness, and head and neck pain dating from two motor vehicle accidents, one in 1987 and the other in 1988.

CURRENT MEDICATIONS: Include Propoxyphene, Belladonna, Imitrex, Propranolol, Midrin, Prilosec, Phenerbel-S, Tigan, Hydrochlorothiazide.

ALLERGIES: The patient is intolerant of iodine, codeine.

GENERAL REVIEW OF SYSTEMS: Positive for occasional tinnitus.

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On examination the patient was well-developed and well-nourished and in no apparent distress. She was oriented and appropriate. The speech was normal. The blood pressure was 120/84. The pulse was 84. The neck was supple without bruits. The patient volitionally stopped range of motion of the neck to the left at 30 degrees with a complaint of discomfort, but range of motion was full to the right. The patient's speech was normal. The mental status was normal. The patient had a normal cranial nerve and motor examination. On sensory examination there was decreased pin prick and temperature over the lateral forearm and decreased pin prick over the lateral arm on the left. In the lower extremity there was spotty non-neuronal, non-dermatomal and not reproducible sensory loss to pin prick. The gait was guarded but otherwise stable. This included a tandem gait. Coordination was normal. The Romberg was negative. The reflexes were 1 with symmetry. The toes were downgoing.

IMPRESSION:

This patient is presenting with:

1. Headaches which appear to be of mixed etiology, possibly due to muscle contraction headache or cervical strain or perhaps with a vascular component.
2. Neck strain and a sensory sensation of change in the left arm which could possibly represent radicular irritation. There was no objective finding to support his, however.
3. The patient has dizziness in the form of poor balance, but also of vertigo by her description. There is no evidence of vestibulopathy on neurologic examination today.

The differential would include peripheral or central vestibulopathy. This has been fairly worked up with physiologic studies by ENT physicians in the past. The patient denies ever having an MRI of her head to address a structural source of her headache and dizziness complaints. A partial seizure would be unlikely but would be in the differential diagnosis.

The patient has various complaints which have been present over a long period of time. Due to the amount of time that has passed and after reviewing the records, I cannot clearly attribute any of her present complaints to her motor vehicle accidents, nor can I discount them as sources.

I am recommending MRI image of the head, cervical spine x-ray, cervical spine MRI, and an EEG to address her subjective complaints, and EMG/nerve conduction of the left arm and leg. I am aware that the patient has been diagnosed with a somatization disorder and it is a difficult problem to sort out neurological issues from somatization. Perhaps the best strategy at this point is to undergo a round of objective testing, as I have recommended above.

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Peter Mattimoe, M.D.
September 3, 1998
RE: Reeves, Susan
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If I may be of further assistance in the care of this patient, please let me know.

Sincerely,

G. Petroff, M.D.

GP:bh

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

September 28, 1998

Peter Mattimoe, M.D.
3611 S. Lindell Rd. #102
Las Vegas, NV 89103

RE: Reeves, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in followup for head, neck, back, and right arm and leg complaints and dizziness. The patient had nerve conduction studies performed today. These are normal, including median, ulnar, peroneal, and tibial motor response, median, ulnar, and radial sensory responses. The sural sensory response was mildly delayed in latency.

Electromyography was fairly unremarkable with only some mild polyphasia in the right abductor pollicis brevis muscle.

The patient has had a normal EEG and MRI of the brain since last seen. MRI of the cervical spine shows only some minor disc bulging at C3-C6.

IMPRESSION:

This patient has probably mild degenerative change of the cervical and lumbosacral spine and possibly some cervical radicular irritation. There is no clear surgical lesion identified at this point. Her dizziness is chronic in nature and may be due to a chronic vestibulopathy.

We will offer the patient a trial of Pamelor for her headaches, chronic pain, and depression from chronic pain. She might best improve in a rehabilitation situation and I would recommend this.

If I may be of further assistance in the care of this patient, please let me know.

Sincerely,

G. Petroff, M.D.

GP:bh

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2628 W. Charleston Blvd Las Vegas NV 89102 (702) 878-0111 FAX (702) 870-6199

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

November 30, 1998

Peter Mattimoe, M.D.
3611 S. Lindell Rd. #102
Las Vegas, NV 89103

RE: Reeves, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in followup for head, neck, arm, and leg complaints. The patient is doing quite well. She can now move her arm above her head. Her headaches have been reduced by well over 50% and the ones that she has are much less severe. She still has constant dizziness, sometimes worse, sometimes better. Her vision is now clear. Her thoughts are clear. She attributes all of these improvements to Pamelor. In fact, she tried to discontinue the Pamelor and this made all of her symptoms worse.

On examination she is oriented and appropriate. The speech is normal. She has a normal cranial nerve examination. The neck has full range of motion with some mild nuchal tightness. The gait is stable. There is no Romberg.

This patient has brought me a list of questions she wishes me to answer and enter into the record:
1. I think there is a reasonable possibility that this patient has an inner ear disturbance producing a peripheral vestibulopathy.
2. I do not recall whether the patient handles pain well or not. Apparently she did tolerate the EMG/nerve conduction studies with a minimum of discomfort.
3. It is not within my expertise to determine whether the patient clearly has a somatoform pain disorder. She has been in pain chronically for a number of years, according to her. This may be somatoform or the patient may have a chronic pain syndrome, a psychological reaction to being in pain for a number of years.
4. I do believe being in pain for 10 years could cause a psychological problem.
5. It would be reasonable for this patient to see a pain psychologist to address chronic pain issues and somatoform disorder.
6. The patient had been diagnosed with an inner ear problem back in 1988 and 1989 and I am recommending electronystagmography to follow up on this.

IMPRESSION:

My impression is that this patient has chronic headaches, chronic pain syndrome, and possible vestibulopathy.

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Peter Mattimoe, M.D.
November 30, 1998
RE: Reeves, Susan
Page Two

I am increasing the patient's Pamelor to 20 mg. q.h.s. and ordering ENG.

If I may be of further assistance in the care of this patient, please let me know.

Sincerely,

G. Petroff, M.D.

GP:bh

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DUNN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

January 14, 1999

Peter Mattimoe, M.D.
3611 S. Lindell Rd. #102
Las Vegas NV 89103

RE: Reeves, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in followup for chronic pain complaints. Her two principal complaints are headache and poor balance and dizziness today. The ENG was non-localizing with respect to the patient's vestibular complaints. Pamelor is helping her headaches somewhat.

On examination the extraocular movements are intact without nystagmus. The gait is stable to tandem gait. The Romberg is negative.

IMPRESSION:

1. Chronic pain syndrome.
2. Headache.
3. Vestibular disturbance.

PLAN:

1. Advance Pamelor.
2. Trial of vestibular physical therapy.
3. Followup in 3 months.

If I may be of further assistance in the care of this patient, please let me know.

Sincerely,

George Petroff MD

G. Petroff, M.D.

GP:bh

571
00068

2628 W. Charleston Blvd Las Vegas NV 89102 (702) 878-0111 FAX (702) 870-6199

DUN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

April 8, 1999

Peter F. Mattimoe, M.D.
3611 Lindell Road
Las Vegas, NV 89103

Re: REEVES, Susan

Dear Dr. Mattimoe:

I saw Susan Reeves in followup for chronic headaches and dizziness. The patient's dizziness and headaches are still present most of the time. They are slowly improving with vestibular therapy. The patient's ringing in her ear has diminished with Pamelor. Besides this, she is taking Imitrex and Darvocet prn, and hydroxyzine q.h.s.

The patient has normal vestibular examination today. Gait is stable.

IMPRESSION:
1. Chronic headache, with mixed component.
2. Peripheral vestibulopathy.

PLAN:
1. I will see the patient in followup in four months.
2. She will continue her vestibular therapy and current medicines.

Sincerely,

G. Petroff, M.D.
GP/rs

572

000069

2628 W. Charleston Blvd Las Vegas NV 89102 (702) 878-0111 FAX (702) 870-6100

Gerald W. Dunn, M.D. George A. Petroff, M.D.

May 20, 1999

Ethel Pipp, Mgr.
Worker's Compensation
Park Place Entertainment

Re: REEVES, Susan

Dear Ms. Pipp:

I am in receipt of your communication from May 14, 1999. With respect to Susan Reeves, my current diagnosis is: 1) chronic headache with mixed components of migraine, muscle contraction and cervicogenic source; 2) peripheral vestibulopathy due to inner ear degenerative change.

When last seen on April 8, 1999, the patient was doing significantly better with the vestibular therapy and medicines, including prn Imitrex and Darvocet. She was doing well to the point where I felt I didn't have to see her for a four-month period.

My recommendation is that the patient continue her vestibular physical therapy and any physical therapy with respect to cervicogenic headache to a logical end-point of self-maintenance. As the patient is doing well, I do not feel strongly that another physician is required, at this point.

Sincerely,

G. Petroff, M.D.
GP/rs

573

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000071

DC N NEUROLOGIC ASS CIATES

Gerald W. Dunn, M.D George A. Petroff, M.D. Gobinder "Gary" Chopra, M.D.

October 14, 1999

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in followup. She has not had a severe headache since she has been on her current headache regimen, which includes Inderal, Pamelor, and very seldom Darvocet, Midrin or Imitrex.

She is oriented and appropriate today. Pupils are equal. Extraoscular movements are intact. Range of motion of the neck is fairly full. Gait is stable.

With respect to the vestibulopathy, the patient is still dizzy when she stands and walks. She is making progress, slow but steady, in physical therapy and vestibular therapy.

PLAN: We will advance the patient's Pamelor to a total of 120 mg q.h.s. She will continue her Inderal 120 mg long-acting per day. We will continue vestibular therapy.

Sincerely,

G. Petroff, M.D.
GP/rs

574

2628 W. Charleston Blvd Las Vegas NV 89102 (702)878-0111 FAX (702)870-6199

000071

Gerald W. Dunn, M.D George A. Petroff, M.D. Gobinder "Gary" Chopra, M.D.

February 24, 2000

Peter F. Mattimoe, M.D.
3611 S. Lindell Rd. #102
LV, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in followup. She is doing well. She has headaches daily, but these have lessened considerably in intensity. She is taking Inderal, Pamelor, Imitrex and prn Darvocet. She has fallen and fractured her ribs, and these are still tender. Her dizziness is better with vestibular physical therapy.

On examination, she is oriented and appropriate. Speech is normal. Pupils are equal. Gait and coordination are stable.

IMPRESSION:
1. Headaches.
2. Vestibulopathy.

PLAN:
1. We will continue current medicines, but we will advance Pamelor from 150-175 q.h.s.
2. I will see the patient in followup in three months.

Sincerely,

G. Petroff, M.D.
GP/rs

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575

000072

DUNN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

February 1, 2001

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in followup for headaches. The headaches have become worse. They are more intense, more frequent, and she feels dizzy with these. Her tinnitus is also worse. She has a vaginal discharge, which is being followed by OB/GYN. She has been having dental work, which may have stirred up her headaches. She is taking Topamax (no help), Pamelor, Darvocet, Donnatal and Maxalt. She is taking Maxalt two per day.

On examination, she is in no apparent distress, oriented and appropriate, well developed. She has a normal cranial, motor, coordination and gait testing.

IMPRESSION:
1. Mixed headaches.
2. Chronic pain syndrome.
3. Element of occipital neuralgia.

PLAN:
1. TENS to the occipital region.
2. Stop Topamax and Darvocet to simplify medical regimen.
3. The patient will take Maxalt appropriately, as prescribed.

Sincerely,

G. Petroff, M.D.
GP/rs

576

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000073

DUNN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

July 25, 2001

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
572-78-2120

Dear Dr. Mattimoe:

I saw Susan Reeves in followup. She has a complaint of persistent vaginal infections over the last one year, despite various interventions. Her headache continues. It was worse when she lowered her Pamelor to 125 mg. Otherwise, medicines give her fair headache control. She has some change in distribution of her numbness to her right toes in her ulnar hand and face.

On examination, the patient is oriented and appropriate. Speech is normal. She is in no apparent distress. Cranial, motor and coordination tests are normal.

IMPRESSION:
1. Mixed headaches, with cervical strain and occipital neuralgia.
2. Chronic tinnitus.

PLAN:
A. Current medicines, but increase Pamelor back up to 150 mg.
B. She may advance her baclofen to 20 mg q.i.d., as tolerated.

Sincerely,

G. Petroff, M.D.
GP/rs

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577
000074

DUNN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

November 14, 2001

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She is still having dizziness in the form of lightheadedness. She has intermittent blurring of vision, polydipsia, polyuria, numbness in her feet. Imitrex does help her headaches, as does Pamelor.

The patient has had some serum studies, including a glucose of 376, and she insists she was fasting. Sedimentation rate is somewhat elevated at 48.

I have discussed with her the possibility that she may have diabetes. We will repeat the fasting glucose tomorrow with a UA. If this is positive for diabetes, she will see you in follow-up to address this. Otherwise, she will continue current medicines for her headaches, which are fairly effective, at this point.

Sincerely,

G. Petroff, M.D.
GP/rs

578

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000075

DUNN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

December 5, 2001

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. Her dizziness and lightheadedness, polydipsia and polyuria, she thinks, is somewhat better after tapering and temporarily stopping her Pamelor. Nevertheless, she continues to have a fasting glucose of 263, with urine showing greater than 1,000 glucose and moderate ketones. We will arrange to have her seen at your offices tomorrow to address diabetes.

The patient's MRI shows moderate cervical stenosis at C4-5 and C5-6, with slight indentation of the cord to the right at the lower level. She is having no disturbance of bowel or bladder control. She has no pain into her arms, but she does have tightness in her neck and shoulders. Her headaches are worse since she has been tapering her Pamelor.

We reviewed her medicines. I am going to add Verapamil 240 mg q.h.s. She will taper her Pamelor as tolerated. I will have her referred to your offices tomorrow respecting diabetes. She will have two weeks of physical therapy to establish a neck program. I will see the patient in follow-up in three weeks.

Sincerely,

G. Petroff, M.D.
GP/rs

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000076

2628 W. Charleston Blvd. LV, NV 89102
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Gerald W. Dunn, M.D. George A. Petroff, M.D.

January 6, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She has headaches infrequently - about once a month or every six weeks. She takes prn Elavil for this and it seems to help. She is taking Inderal on a daily basis, and does have milder daily headaches. She still has dizziness, but this is much better over time and with intervention by vestibular therapy. She continues to have tinnitus. This is not terribly bothersome at this point. She had flare of her neck and back pain, but this again has responded to current physical therapy. She identifies both doctors involved in her care - Dr. Mortillaro, Psychologist, and her pain manager, respectively. Physical therapy will be up to twice a week.

She is alert and oriented. She has fairly full range of motion of the neck, 80 degrees rotation left and right. She is in no distress, in pleasant spirits. Gait and coordination are normal.

IMPRESSION:
1. Headache.
2. Vestibulopathy.
3. Cervical strain.
4. Cervical degenerative change.
5. Lumbosacral strain.

PLAN:
1) MRI of the C-spine and C-spine x-ray to address her current flare and to track degenerative change of superimposed trauma in the neck region.
2) Refill Inderal and Elavil.
3) Follow-up in six months.

Sincerely,

G. Petroff, M.D.
GP/rs

cc: Dr. Mortillaro

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DUNN NEUROLOGIC ASSOCIATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

January 10, 2002

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. Since tapering her Pamelor (down to 50 mg presently), she has had worse headache, dizziness and tinnitus, more pain in her neck with radiation into her left arm. She has no disturbance of bowel or bladder. However, with tapering her Pamelor, her vaginal discharge has finally improved. She does not feel dehydrated anymore.

On examination, the patient is alert and oriented. Range of motion of the neck is limited to 80 degrees rotation left and right with discomfort. Strength is full in the arms. Reflexes are symmetrical. Sensation is intact.

IMPRESSION:
1. Mixed headaches.
2. Cervical radiculopathy.

PLAN:
A. Switch over to Elavil and advance as tolerated to 100 mg q.h.s. to see if she tolerates this better than the Pamelor.
B. She will attend physical therapy for cervical radiculopathy.
C. I will see her in follow-up for two months.

She wishes me to state for the record and insurance that I have placed her on verapamil (Calan) not for blood pressure but for headache and migraine prophylaxis.

Sincerely,

G. Petroff, M.D.
GP/rs

581

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000077

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

February 18, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. Repeat MRI and x-ray imaging of the C-spine shows some progression of disc osteophyte encroachment, impingement upon the cord at the C4-5 level. This may be unchanged at the C5-6 level two years ago. There is neural foraminal stenosis at C6-7 bilaterally suggested.

The patient has actually done well for the last couple of days since she has been seeing the vestibular and physical therapist, and has obtained her medicine Inderal and Elavil.

She has limited range of motion of the neck with guarding. Gait is stable. She is in no apparent distress.

IMPRESSION:
1. Headaches.
2. Cervical degenerative disease.
3. Vestibulopathy.
4. Lumbosacral strain.

PLAN:
A. Current medicines and management.
B. Follow-up in two months.

Sincerely,

G. Petroff, M.D.
GP/rs

FAX 11 2004
COMSI - LAS VEGAS

582

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

April 13, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

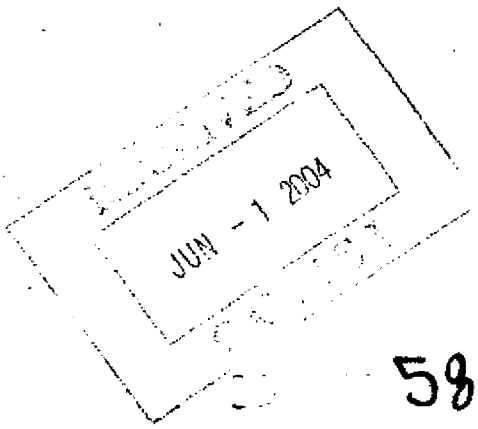
I saw Susan Reeves in follow-up. She continues to have headache, neck discomfort, dizziness and lumbosacral strain, unchanged.

I have refilled her Elavil and Flexeril prescriptions. She has shown me two appliances to help her pain. I have asked her to have her therapist review these to see if they would be useful to her, and I would then prescribe them.

I will see the patient in follow-up in two months.

Sincerely,

G. Petroff, M.D.
GP/rs



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Gerald W. Dunn, M.D.

George A. Petroff, M.D.

April 13, 2004

RECEIVED
APR 30 2004

Re: REEVES, Susan
[redacted]

Dear Susan:

I have reviewed questions which you have phoned in as they are transcribed in the chart with respect to Susan Reeves. I will endeavor to answer them for you.

1. Q. How much more therapy will the patient require when she can be discontinued?

   A. The patient may be discontinued from formal physical therapy when she has learned an acceptable and effective routine for neck pain. This may include being set up for home traction if this has not yet been done and also with use of a TENS unit. This could be arranged and achieved, I believe, within two months.

2. Q. Work status from beginning of treatment in 1998 to the present.

   A. During this period of time, the patient had significant and constant headache problems, which slowly improved with therapy. She also had significant overlying psychological/psychiatric issues, and basically had a chronic pain syndrome. It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present. Superimposed neck problems became prominent in the last couple of years. This would further make it difficult for her to return to the work force.

JUN - 1 2004
CCMSI

Sincerely,

G. Petroff, M.D.
GP/rs

584

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(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

May 18, 2004

Susan Sayegh, Claims Supervisor
CCMSI
Fax: 702-933-4861

Re: Susan Reeves
Claim No. 88H92H243724
Emp: Ballys Las Vegas

Dear Ms. Sayegh:

I am in receipt of your letter dated May 13, 2004. You have asked a number of questions, and I will attempt to answer them for you.

1) Symptoms currently keeping the patient from returning to work, by my understanding, principally consist of neck pain, back pain and dizziness. The basis of her neck pain is documented objectively on MRI and x-ray, with C4-5 disc bulge and protrusion, C5-6 central disc protrusion, mild flattening of the cervical spinal cord, C6-7 mild-to-moderate neural foraminal stenosis, C4-5 right neural foraminal encroachment. This anatomy could generate pain in the neck. These changes noted on imaging are degenerative in nature. To some extent, the degeneration can be accelerated by posture/head movements, which one might encounter in certain occupations. It is impossible to document objectively what component of this degenerative change is work-related, however.

   The patient has complained of dizziness. Dizziness may be from a variety of reasons. In this case, I cannot objectively identify the source of the patient's dizziness, but possibilities would include migraine phenomenon, problems with the inner ear, or balance disturbance arising from the patient's neck muscles/degenerative neck disease. There is no way of objectifying this or its source with respect to the patient's employment.

   The patient has headache. Again, this cannot be objectively qualified with respect to its source, although I think that her neck problems are significantly contributory to her headaches. She is complaining of lumbosacral strain, and this cannot be objectified either.

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

2) With reference to an accident tripping over furniture on 2/27/04, I do not have reference to this in my follow-up notes, so I am unable to comment. However, I have discussed with the patient the nature of her computer use.

3) From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical spine disease.

4) With respect to acupuncture treatment, this can be a significant pain-relieving modality in patients with chronic pain which has been intractable to medicines and physical therapy. It would reasonable to undergo a trial of acupuncture.

The next question is "7". I do not have Questions 5 or 6, so I cannot answer them.

With respect to the patient's physical therapy/frequency of treatment, this is based on neurological assessment. Dr. Mortillaro is a psychologist, albeit a very good one. He is not following the patient for medical addressed being addressed in physical therapy and should not bear the responsibility for determining physical therapy. The basis for physical therapy to this point has been empiric based on the patient's improvement. As long as the patient continues to improve, and there is no other obvious modality causing her to improve, I would continue to have her in physical therapy until she reaches a plateau of improvement.

Sincerely,

G. Petroff, M.D.
GP/rs

586

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

June 22, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She has been feeling worse. Over the last week or two, she has been vomiting blood, according to her. She has not seen a physician for this. This has stopped this week. She says this is secondary to stress with her medical legal problems. She continues to have pain in the mid base of the neck. This has been the most intractable pain with respect to her physical therapy efforts. She has pain up and down her spine, not as severe. She has lightheadedness, at times, not particularly positional. She has headache radiating from the mid neck pain.

In physical therapy, she is making good gains with "ball" therapy. Palm Mag is especially giving her significant pain relief. Cyclobenzaprine helps her. Headaches are generally coming and going. Dizziness is significantly better with vestibular therapy, but still can be triggered with moving her head or seeing moving objects in her field of vision. She is on diet and medication (Actose) for her diabetes.

On review of systems, she has poor visual acuity and photophobia bilaterally, bilateral tinnitus and poor hearing. She has been having hyperventilation, which gives her chest discomfort secondarily, left shoulder joint pain.

On range of motion, the patient has no apparent distress. Speech is normal. Lungs are clear. Head is normocephalic, atraumatic. Range of motion of the neck is 85 degrees rotation left and right. She has full strength in all four extremities. Speech, cranial, motor, sensory, coordination and gait testing is normal. Tone is somewhat increased in the posterolateral nuchal muscles.

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

IMPRESSION:
1. Cervical degenerative disease, cervical strain, cervicogenic headache.
2. The patient gives a history of hemoptysis with history of ulcer; address possible reactivation of ulcer.
3. Dizziness, responding to therapy, unclear etiology.

PLAN:
1) I will have the patient see you in follow-up this week for GI complaints, but will guaiac her stool.
2) I have refilled her Flexeril.
3) We will continue physical and vestibular therapy.

Sincerely,

G. Petroff, M.D.
GP/rs

588

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(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

June 29, 2004

Re: REEVES, Susan
572-78-2120

To Whom It May Concern:

I am dictating this letter based on discussion at a meeting taking place in our offices on 6/29/04 between myself, Dr. Mortillaro and three worker's compensation representatives with CCMSI.

Susan Reeves was present here in our offices with her husband, but shortly before the meeting and after a discussion with my office manager and the CCMSI representatives, it was determined that the patient was not allowed to be present at this meeting per her worker's compensation representatives. The patient then left the office.

Issues discussed address the nature, extent and cause of Ms. Reeves current disability.

Basically, I have been seeing Ms. Reeves since September 3, 1998, funded through Medicare, based on a disability from that organization. During that time of treatment and management, I was not aware that there was a worker's compensation claim or issue. After 1/6/04, work compensation began covering the neurological follow-ups and treatment. I was never given an explanation of this change by the patient or by Worker's Comp until yesterday.

With respect to the patient's history, she was in two motor vehicle accidents; one on July 20, 1987, the second in September of 1988. Apparently, she is claiming work-related disability from the second accident, which occurred on the property/premises of her workplace.

With regard to causality, at this point, many years later, I would have to defer to opinions rendered around the time of the second accident. Relating to this, Dr. Bowler, a neurologist, on December 12, 1988 rendered the opinion with respect to the September motor vehicle accident: "This patient may have experienced some discomfort from the incident that she describes. There is no suggestion, however, that she had any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activities."

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Gerald W. Dunn, M.D. George A. Petroff, M.D.

Also, an Independent Medical Evaluation was performed 8/18/98 by Dr. David Oliveri, Specialist in Rehabilitation and Electrodiagnostic Medicine. His opinion was that the patient had a somatoform pain disorder, which is a psychiatric diagnosis, and is not something that is caused by an industrial accident. He further states, "In this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury."

In discussion with Dr. Mortillaro today, he feels that the patient is not limited from working based on her psychological state of health. Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties. The patient does have Social Security Disability currently.

Based on the review of systems and my observations of the patient's examination over the years, solely with respect to intention of injury from the second motor vehicle accident of September of 1988, it would be reasonable to recommend the patient undergo a trial of back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds. If working at a computer, this should be at a proper height, with an adjustable chair and lumbar roll provided, and with frequent breaks provided for standing, stretching and repositioning. If the patient cannot tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome.

Sincerely,

G. Petroff, M.D.
GP/rs

590

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Gerald W. Dunn, M.D. George A. Petroff, M.D. Christopher M. Milford, M.D.

September 22, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She says she is doing well, but continues to have numerous problems. She has not had any recent vomiting of blood, but she says that has been an intermittent occurrence for years, which she basically puts up with. However, she said she did discuss with you any needed intervention. She has hearing loss, ringing in her ears and dizziness. This has been improved by vestibular therapy.

Her neck is moving much better after a corticosteroid injection and also with physical therapy. She has low back pain - about the same. Headaches are better with intervention to the neck. She has a sense of upper thigh weakness. She has no bowel or bladder disturbance. She again recounts the trauma of sitting by her brother's bedside, through his coma and death last month.

She is benefitting from the same modalities as noted previously.

She is alert and oriented, in no apparent distress. Range of motion of the neck is fairly full. Mental status, speech, cranial, motor, sensory, coordination and gait testing are normal.

X-ray of the LS-spine shows an old L1 wedge injury. MRI shows diffuse mild degeneration in the lumbosacral spine, moderately advanced cervical degenerative change with stenosis, but no cord signal change.

IMPRESSION:
1. Headache, cervical degenerative change.
2. Hemoptysis.

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528 W. Charleston Blvd. LV, NV 89102
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D. Christopher M. Milford, M.D.

PLAN:

1) Follow-up in pain clinic.
2) Continue physical therapy/vestibular therapy. Alternatively to this, the patient can be assigned by the primary physician to a rehabilitation specialist. This might streamline her care.
3) She declines any surgery for her neck, as she has a fear of post surgical scarring, as she has experienced thyroid surgery in the past.
4) I will see the patient in follow-up in three months.

Sincerely,

G. Petroff, M.D.
GP/rs

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RADIOLOGY ASSOCIATES OF NEVADA

DUNN NEUROLOGIC ASSOCIATES
2628 W. Charleston Blvd. • Las Vegas, NV 89102
(702) 878-0111 • Fax: (702) 870-6199

RECEIVED
SEP 15 2004
DUNN NEUROLOGIC

PATIENT: **REEVES, SUSAN**

DATE: 09-14-04 PT#: 6109

DOCTOR: Goodwin DOB: 10-06-51

EXAM: **AP, Lateral, Coned Down Lateral and Both Oblique Views of the Lumbosacral Spine Series**

FINDINGS: The examination demonstrates the alignment to be intact. Mild anterior wedging is seen at L1. I believe that this is old in nature, though clinical correlation with respective point tenderness is advised. Remaining lumbar vertebral bodies demonstrate normal height. Intervertebral disc spaces are fairly well maintained, except for the T12-L1 intervertebral disc space, which appears somewhat narrowed. Small, scattered osteophytes are seen. Facet joints are intact.

IMPRESSION:
1. **Mild anterior wedging at L1 probably old in nature, though clinical correlation with respective point tenderness here is advised.**
2. **Scattered degenerative changes as described above.**

Marc Pomerantz

Marc Pomerantz, M.D.
Radiology Associates of Nevada
D: 09-14-04
T: 09-15-04/icf

C691 TC4

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L NN NEUROLOGIC ASSOCIAT
2628 W. Charleston Blvd. LV, NV 89102
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D. Christopher M. Milford, M.D.

December 14, 2004

Peter F. Mattimoe, M.D.
3611 S. Lindell Road #102
Las Vegas, NV 89103

Re: REEVES, Susan
[redacted]

Dear Dr. Mattimoe:

I saw Susan Reeves in follow-up. She is actually doing very well. She continues to have neck and low back pain, as well as dizziness. She did have improvement on Skelaxin with respect to her neck and back pain and leg discomfort, but this caused itching over various parts of her body and she discontinued this. Physical therapy and vestibular therapy have helped significantly with respect to the neck and back pain and dizziness.

I have reviewed records, including a lengthy letter the patient composed with respect to her history of surgical adhesions in the abdomen. I reviewed physical therapy reports and a GI work-up from 1991 for hematochezia with diagnosis of gastritis.

She has normal mental status and speech. On motor examination, she gives incomplete effort to hip flexor testing, but otherwise has 5/5 strength, with normal bulk and tone. Gait is guarded with element of apparent antalgia, but is not unstable. There is no nystagmus.

IMPRESSION: Mixed headaches, cervical and lumbosacral degenerative change.

PLAN:
1. Continue vestibular and physical therapy.
2. The patient declines surgical intervention for the degenerative change in the neck and back.
3. Trial of Parafon muscle relaxant.
4. Follow-up in three months.

Sincerely,

G. Petroff, M.D.
GP/rs

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Dunn Neurologic Associates
2628 W. Charleston Blvd.
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

March 22, 2006

Douglas Rowan, Esquire
Fax No. 366-0327

Re: Susan Reeves

Dear Mr. Rowan:

I am in receipt of your letter dated March 21, 2006 requesting a meeting with Dr. Petroff, Jeff Dietrich (Family & Sports Physical Therapy) and yourself. Dr. Petroff is more than happy to meet with you, but will require the presence of a court reporter for the meeting.

Also, be advised that Dr. Petroff's fee per hour is $750.00, which must be paid ten days prior to the meeting date. Dr. Petroff's schedule will not be able to accommodate this meeting until either April 25, 2006 or April 27, 2006, starting at 4:00 p.m. until 5:00 p.m.

Please contact me to confirm the above.

Sincerely,

Erikk Savage, Office Manager
ES/rs

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APR 0 4 2001

NEVADA NEUROLOGICAL CONSULTANTS, LTD.
3131 La Canada Street, Suite #232
Las Vegas, NV 89109
(702) 731-9110

MEDICAL EXAMINATION

March 26, 2001

RE: PATIENT: REEVES, SUSAN LOUISE

To Whom It May Concern:

Susan Louise Reeves is a pleasant 49-year-old woman whom I saw today for a medical examination. The patient supplied the history and provided a questionnaire regarding her current symptoms and complaints. I reviewed the questionnaire with her and took an independent history. I also examined her today. I did not have the benefit of medical records to review at this time to assist in the preparation of this report.

HISTORY OF PRESENT ILLNESS: The patient is seen for a neurological assessment in regards to an accident that occurred on 9/25/88. She says that she was at a stop in the employees' parking lot and she was struck from behind by another vehicle. She said that her truck did not have a headrest and her head whipped forward and backwards. She notes that she eventually did go back to work in the hotel reservations department and worked for another nine months after the accident, at which point she was eventually escorted off her job and placed on a medical leave nine months after the accident, as she was told she was a "hazard." She apparently was employed doing room reservations. She was a shop steward. She was hired in September of 1980. She worked until 5/15/90 when she noted she was escorted off the property. In her daily work activities she trained new hires, helped the supervisors. While sitting she would train a new person, put the order files in, and would be helping with conventions and with phones. She would sit about 80% of the time, walk 20% of the time. She states the accident happened on a Sunday. She notes that she initially saw Dr. Peter Mattimoe on Monday and was referred to Dr. Becker. She saw Dr. Becker, an ENT specialist, and she was advised by Dr. Mattimoe to take Aspirin for her headache. She said that she was taking 100 Aspirins per day around the

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time she was walked off the job. She notes that she was having trouble with bright light bothering the headaches and she wore sunglasses. She notes that she was not allowed to use the sunglasses and almost every day or so she would go to therapy. She had ringing in her ears and noted blackness in her left eye as well as dizziness. She says that Dr. Mattimoe treated the symptoms. She was sent to therapy for about a week after the accident. She was treated also by Dr. Ameriks, Dr. Becker, and Dr. Petroff. She went to physical therapy at NovaCare. As far as her current subjective symptoms, she notes headaches every day constantly. She says that it varies in degree. She notes a tight cap-like feeling at the top of her head. She has dizziness, which gets worse when the headache is worse or when her stomach problems are worse. She says the more the dizziness the more she has other symptoms. She notes that she has tingling in her left shoulder and arms. She has trouble with limited range of motion. She has ringing in her ears. She notes that she has numbness and tingling in her left arm, numbness and tingling in her left leg. She says that she has numbness from her left leg to her big toe. She notes that the big toe movement feels like it is being stretched. She says that her symptoms occur 24 hours a day, seven days a week. She notes that bright light and noises can worsen the symptoms and trigger them. She says that she does not have many spinning sensations or dizziness. She notes now that she feels like she may just fall backwards if she does not concentrate. She says taking medication or going to the bedroom for a few hours may help her symptoms. The bedroom is completely dark without windows or noise. She says that her symptoms are getting worse due to the new medications and therapy. She notes that the dizziness symptoms rarely appear. The medications, particularly Pamelor helps with the ringing in the ears. She says that before this she could barely hear what people said. She said the headaches were so severe that two times a week she would experience very severe symptoms. She notes that she has never been hospitalized. She did have a GI evaluation due to taking too much Aspirin. She was seen by a Dr. Faris. She does not use any assistive devices. She has a prior injury in 1969 at Sears. She hurt her knee but states she had no legal settlement. She had it fixed and then went back to work. She notes that a car accident occurred in July of 1987. Apparently a car rear-ended her on Tropicana Boulevard. She says that her insurance took care of it under the no-fault insurance policy. With respect to her pain, she

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says her pain is reduced by medication, lying down in a dark, quiet room. She says she can look after herself but is slow and careful. She says she can lift everything without pain but is dizzy to watch. She notes that pain does not prevent her from walking as far as she wants; dizziness does. She says that with respect to her activities she can stand a few hours without having to sit but with dizziness it is reduced. She notes that she can stand a few hours without pain before having to sit but also notes dizziness. She says that she does not have any limitations sitting. She has headaches which interfere with her sleeping. She notes that she is restricted to short journeys due to headaches. She says that the pain has reduced her social life. She does not go out as often. She notes that headaches have reduced her sex life. She says that since the accident she does not go dancing as much or go out as much, nor does she go climbing or hiking. She is unable to play any sports now because of pain. As far as her daily routine, she gets up between 7:00 and 8:00 a.m. depending on when the dogs get her up. She relaxes with tea and breakfast, listens to her radio show, thumbs through the newspaper. By 9:00 a.m. she takes her pills and straightens up the bed and brings the dog pillows up to the family room. She opens up the living room blinds and windows. At night she feeds the fish and feather dusts things. She starts the laundry and dishware and lays down for an hour or two. She gets up, finishes walking, she puts away the dishes, and makes sure that she has everything ready for dinner. She goes for the mail and sorts out the trash to be placed in the garbage. In the early morning she sits down to try to watch the birds at the feeder but the sun is too much for her headaches. She goes inside and lays down. She is able to vacuum and mop the floors off and on during the week but does this slowly and carefully. On the weekend the patient and her husband try to do the real cleaning, the bathrooms and such. Around 3:30 p.m. her husband comes home and then she tries to sit out under the back porch, which is shaded for an hour or so. Then they may watch TV, talk, or she tries to do her dizziness exercises, then goes to bed. With respect to her pain diagram, she notes tight muscles in her left shoulder. She has numbness in her entire left arm and a ribbon of numbness along her left leg and calf. She describes the headache as a band-like pain across the front of her head and numbness even noted at the top of her head.

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PAST MEDICAL HISTORY: Her past medical history is remarkable for hospitalizations in Valley Hospital and was at Loma Linda as well for a tubo-ovarian abscess. She also was hospitalized at Women's Hospital as well.

ALLERGIES: Iodine, Sulfa medications, Codeine, and Novocaine as well as occasional perfumes.

SOCIAL HISORY: She is married. She rarely has an alcoholic beverage. She smokes a pack of tobacco per day. She has had high school and some college degree. She has lost 11 years of work because of her health-related problems.

FAMILY HISTORY: Remarkable for cancer, diabetes, heart disease, hypertension, stroke, and gout.

REVIEW OF SYSTEMS: The following systems have been reviewed and were normal unless otherwise stated below: General, HEENT, cardiovascular, respiratory, gastrointestinal, genitourinary, musculoskeletal, integumentary (skin and/or breasts), neurological, psychiatric, or endocrine.

The patient reports stiffness. She has had spitting up blood, difficulty walking two blocks, heart disease, vomiting, heartburn, indigestion, varicose veins, pain in the calf as noted, allergies.

PHYSICAL EXAMINATION

VITALS SIGNS: Vitals signs are unremarkable.

NEUROLOGICAL EXAMINATION

MENTAL STATUS: Mental status exam is remarkable for pressured speech. She has difficulty stopping talking. She has coherent thoughts however. She wears sunglasses but will take them off during the exam.

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CRANIAL NERVES: Cranial nerves II through XII were examined serially and found to be normal. Range of motion of the cervical spine is diminished due to pain in all planes. Left shoulder voluntary range of motion is decreased as well in all planes subjectively.

MOTOR: Motor examination discloses giveaway weakness in the left deltoid, left biceps, left triceps, and wrist extensor. Strength is normal everywhere else.

REFLEXES: Muscle stretch reflexes are 1+ throughout. Toes are downgoing to plantar stimulation.

SENSORY EXAM: Sensory exam is intact to all modalities except for the left side in the left upper extremity. There is diminished sensation to pinprick in the entire left arm as compared to the right, in the left lower extremity along the medial aspect, and in left foot along the dorsal surface.

COORDINATION: Coordination testing is normal.

GAIT: Gait is normal. She can walk with a narrow base and is able to turn. She is slightly unsteady on turning.

IMPRESSION AND PLAN: After interviewing this woman and examining her, I have the following comments:

1) This is a very unusual and extreme case. I do not have all of her records to review but from what I can gather at the worst this woman has suffered a mild post-concussion syndrome. The term mild is used because this individual did not report loss of consciousness, was not hospitalized, and indeed was able to work in some capacity for nine months after this accident. Certainly this pattern is not consistent with a severe closed-head injury.

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2) This patient has many subjective symptoms, i.e. headache, dizziness, and even sensory loss. Her objective physical findings are hard to match up with her complaints. That is to say, she has giveaway weakness on exam and sensory loss particularly in her left upper extremity, which do not correlate well. I cannot really explain her clinical pattern of findings. In addition on her pain diagram she noted that she had numbness over the top of her head. These findings taken together really do not make sense based on how the nervous system is organized. I cannot think of a lesion that would cause one to have numbness on her scalp in the midline and the pattern of numbness in her arm and her leg. In addition, one would not expect to see giveaway weakness without other reflex changes. As far as her other subjective complaints, i.e. dizziness and headache, these too cannot be verified very well since there is no objective medical test that can tell an individual how much pain one is in or how much dizziness an individual is subjectively feeling.
3) So, her subjective complaints and her physical findings are difficult to reconcile. In addition to this, it would be very unusual for an individual with a mild head injury to have complaints that are so strong and so extreme 13 years later, at least based on what I have read and what I have seen in my medical practice.
4) I do not have her medical records at the present time to review. It will be interesting when they become available to look and see whether her present complaints are the same as she has had in the past. That is to say, if I discovered weakness today that was never noted in the past or a particular sensory pattern that was not noted in the past, this too would also be non-physiologic. I will wait until I have a chance to review her records to comment further on this.
5) As far as diagnostic testing, I do not know what has been done. I will certainly wait to review the studies when they become available and comment further. It would be interesting if she has had posturography done. This type of testing can be done in individuals who are dizzy, and certainly I would expect would be able to determine a true pattern of dizziness from one that was more subjective.

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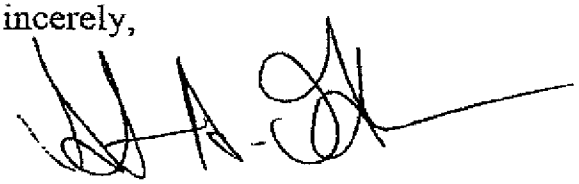
6) I do not know whether this individual has had a psychiatric or psychological assessment in the past. It is interesting in speaking with her that many of her complaints have gotten better since Dr. Petroff started her on Pamelor. Pamelor is an antidepressant and while this is used for many purposes by physicians, it is possible that her symptoms may have been due to a co-morbid depression that was occurring in this individual, which Pamelor is treating. Interestingly Pamelor would not be typically expected to improve tinnitus in most patients and the fact that she is getting better might too suggest that the subjective complaint of tinnitus may have a psychological basis.
7) The conclusions that I have reached at the present time are based solely on the patient's current physical examination, her subjective complaints to me, and the history that was related. I will be happy to review any records as they become available and comment further, and should the medical records provide further history or information that is relevant or important, I will certainly prepare a corrected report. On the other hand the basic issues that I observed today, i.e. her history, her subjective complaints, and what she wrote in her patient questionnaire, make me concerned about her subjective symptoms and their basis in true physiologic mechanisms. I will hold my final conclusions in abeyance until all the records are reviewed.

Sincerely,



Steven A. Glyman, M.D.
SAG/lad

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ORIGINAL FAX
DOCUMENT RECEIVED

NEVADA NEUROLOGICAL CONSULTANTS, LTD.

3131 La Canada Street, Suite #232
Las Vegas, NV 89109
(702) 731-9110

December 20, 2001

ADDENDUM

RE: PATIENT: REEVES, SUSAN LOUISE

To Whom It May Concern:

Additional medical records were submitted regarding Susan Reeves, which I have now reviewed. These submitted medical records include the following.

1) Medical records of Dr. George Petroff, which describe medical care from January through February of 1999.
2) Physical therapy records from February of 1999 from Jeff Deitrich, physical therapist.
3) Medical records from Dr. David Oliveri from 8/18/98.
4) Medical records of Dr. Peter Mattimoe from 1987 to 1998.
5) Medical records from Gary Amick, registered physical therapist, from April of 1992 and January of 1992.
6) Psychiatry records from Ronald Weisner from July of 1991.
7) Radiologic reports from Desert Radiology including a CT scan of the abdomen and a barium enema and ultrasound of the gallbladder.
8) Medical records of Joseph Fayad from March of 1991.
9) Laboratory studies from Associated Pathologists Lab from March of 1991 as well as other studies including biopsy report of gastric fundus as interpreted by Dr. Voss (from Associated Pathologists) in 1991.
10) A neuro-otology assessment by Dr. Glorig from August of 1990 which also includes an electronystagmogram.
11) A disability evaluation dated 8/15/90 from Richard Kudrewicz . Medical records from Dr. David Toeller from January of 1990.
12) Neurological consultation from Dr. Leslie Gaelen from 1/5/90.
13) Disability assessment from Jacqueline Joy Borkin, doctor of chiropractic, from 1/3/90.

Post-it® Fax Note 7671	Date 1/30	# of pages ▶ 1 of 4
To Doug R., Esq.	From Jennie [illegible]	
Co./Dept.	Co.	
Phone # not rec'd 1/2/02	Phone #	
Fax # 258-8824	Fax #	

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14) Psychological assessment from Dr. Louis J. Mortillaro, Ph.D., dated 11/28/89.
15) Comprehensive assessment from Dr. David Toeller dated 10/17/89.
16) ENT assessment from Dr. Joel Lubritz 10/9/89.
17) Independent medical examination, Dr. David Toeller, dated 6/1/89.
18) ENT assessment from Dr. Barton Becker, 6/21/89.
19) Neurological assessment from Dr. Frederick Boulware, 12/12/88.
20) Physical therapy notes from NovaCare Outpatient Rehab describing vestibular therapy and physical therapy from February of 1999 to December of 1999.

After reviewing all of these records and evaluating this individual, specifically with regards to the questions submitted to this examiner by Melody Francis in the correspondence dated 6/5/01, I have the following comments.

1) What is the patient's current diagnosis? In answer to this question, I have the following comments. Obviously, this has been an issue since she was originally injured in 9/25/88. Several examiners including Dr. Mortillaro, Dr. Toeller, and Dr. Oliveri, in their independent assessments, have raised the issue of a somatoform disorder. Dr. Gaelen described non-neuroanatomic findings. In my assessment, which was done initially independently without the benefit of any of these records, I was concerned that this individual had a variety of subjective complaints and physical findings that were difficult to reconcile. It was my opinion in my original assessment that she might have a psychological basis for her symptoms and indeed in reviewing the totality of her records, I am of the opinion that she probably does suffer from a somatoform disorder. I would say that her complaints and findings have been characteristic and continued from the time of her original assessment. As far as the follow-up question to this, whether the current complaints are consistent with the mechanism of the injury, it would appear that her complaints are stable. As noted by other examiners, she is felt to have a strong psychological basis for her symptoms and this is in concurrence with the diagnosis of a somatoform disorder. There is nothing new that I am seeing on my assessment that gives me a different idea of what is occurring in her case, and at this time, it would appear from the looking at the totality of her records there is no new information supplied that would shed insight into the mechanism of injury or some alternative diagnosis.

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2) Does the patient need further diagnostic work-up? In response to this question, I would say no. I am now the fourth neurologist that she has seen. She has already seen Dr. Frederick Boulware, Dr. Leslie Gaelen, Dr. George Petroff, and myself. In addition to this, she has seen two rehab medicine specialists, Dr. David Toeller and Dr. Oliveri. She has seen three ENT specialists, including Dr. Joel Lubritz, Dr. Barton Becker, and Dr. Glorig, who is a specialist at the House Ear Insititute. In addition, Dr. Glorig in his notes relates that the patient also saw Dr. Derald Brackman. Dr. Brackman is a world-renowned ENT specialist. It would appear that the diagnostic assessment based on their reviews has been adequate. In addition to these specific specialists, she has seen a psychiatraist, Dr. Weisner, a psychologist, Dr. Mortillaro, several physical therapists including a therapist at Gary Amick, a specialist at NovaCare. She has undergone vestibular rehab and had what appears to be adequate testing.
3) In response to the question, are there other factors involved which could contribute to the current complaints? As best I can say, I am in agreement with other examiners that she has a somatoform disorder or a psychological basis of her symptoms. There is nothing really new that I can see at this time in this individual's case.
4) With respect to her work status, it does not appear that she can return to work duty. She has not worked in some time and there is nothing that has changed from the time of her original disability impairment exams that have been done in the past. I certainly see no improvement from how she was when her case was closed and her PPD rating was performed.
5) As far as the question about what treatment plan is available for this individual, I have to say I am at a loss to offer one. I cannot see that there has been a marked worsening or change in this individual's complaints as she has grown older. She has rather static subjective complaints which have not measurably worsened from their initial onset. I do not see the rationale for any further treatment. It is not clear to me that she responded to anything that was done in the past and there is really no rationale to justify further therapy, nor do I have the expectation that she will improve, given the fact that she did not improve the first time despite rather extensive care. At this time, I would say there is little that I can suggest to help this woman and there is little that I can hope to find by doing further tests as prior work-ups have been unyielding and prior treatments have not been particularly successful. There

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certainly has not been any great advance in either treating or evaluating individuals such as this patient from the time of her original injury to now and there does not appear to be a medical treatment that will reverse or correct her situation.

Should you have further questions, please call me.

The opinions rendered in this case are the opinions of this evaluator. This evaluation has been conducted on the basis of the medical examination and documentation as provided, with the assumption that the material is true and correct. If more information becomes available at a later date, an additional service/report/reconsideration may be requested. Such information may or may not change the opinions rendered in this evaluation. This opinion is based on a clinical assessment, examination, and documentation. This opinion does not constitute per se a recommendation for specific claims or administrative functions to be made or enforced.

Sincerely,

Steven A. Glyman, M.D.
SAG/cfb

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LAS VEGAS PAIN INSTITUTE AND MEDICAL CENTER - WEST

PAIN MANAGEMENT CONSULTATION

REEVES, SUSAN **06/29/04**

PRIMARY CARE PHYSICIAN: Peter Mattimoe, M.D., George Petroff, M.D. and Gerald Dunn, M.D.

CHIEF COMPLAINT: Chronic headaches, neck and back pain, with the neck pain radiating down to the left arm as well as low back pain radiating down to the left lower extremity.

HISTORY OF PRESENT ILLNESS: The patient is a 52-year-old Caucasian female who is in the clinic today due to the above pain complaints. The patient verbalizes spasmic, numbing, tingling, dull, achy and constant pains at the above locations. The patient rates her pain as a 4-8/10 on a scale of 0 to 10. The pain first occurred in September, 1988, where she was rear-ended at the employee's parking lot while she was waiting in line. Her headaches are aggravated by light, reading, noise and her back and neck pains are aggravated by activity. Last week, the pain was moderate interfering most of the time with her daily activities for which she fairly often takes pain medications for relief including Flexeril and Darvocet that have been prescribed by Dr. Mattimoe as well as Advil and Inderal that is being prescribed by Dr. Petroff for her dizziness. These medications sometimes decrease her pain levels. The patient denies having had any surgical treatment for the pain. The patient states that her pain sometimes wakes her up at night resulting in a good sleeping pattern. She sleeps about six to eight hours a night. Appetite is good. Bowel movements are good. She does not use laxatives. She exercises or walks on daily basis. She is currently attending physical therapy. She does not consider herself tense, nervous, depressed or suicidal. She denies any emotional disturbances in the past. No history of physical abuse and is not under the care of a psychologist. Social activities are much less than before. Ability for recreational activities is much less than before.

PAST MEDICAL HISTORY: Positive for diabetes. Past surgical history positive for complete hysterectomy in 1979, appendectomy.

ACCIDENTS/INJURIES: MVA in 1987 and 1988.

ALLERGIES: Difficulty breathing and swelling with Iodine.

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SOCIAL HISTORY: She has been married for the past thirty-three years with two children. She has a high school degree. She worked as a room reservation agent for 10 years, however, due to the pain, she has been disabled since 1989. She smokes about one pack of cigarettes a day since the age of 16. She denies alcohol or any drug abuse.

CURRENT MEDICATIONS: She is taking Inderal, Darvocet, Elavil, Flexeril, Imitrex as needed, Actos, Metformin, Neurontin and Donnatel as needed.

FAMILY HISTORY: Positive for cancer, diabetes, stroke, asthma and emphysema.

REVIEW OF SYSTEMS: Positive for history of irregular heart beat, arthritis, diabetes, acid reflux, joint tenderness and swelling.

PREVIOUS THERAPIES: Positive for biofeed relaxation, TENS unit, physical therapy, ice and heat applications, massage, anti-depressant medications, muscle relaxants and exercise with varying relief.

PHYSICAL EXAMINATION:
VITAL SIGNS: Blood pressure 140/85, pulse 80, height 5'5", weight 204 pounds.
GENERAL: Well-developed, well-nourished, well-groomed female who appears stated age, alert and oriented times three. Affect is appropriate.
HEENT: Pupils equal and reactive to light bilaterally. Extraocular movements are intact. Negative nystagmus. Head is atraumatic, normocephalic and symmetrical. The neck is supple without adenopathy, masses or tenderness.
RESPIRATORY: The lungs are clear to percussion and auscultation bilaterally. There are no audible rhonchi or rales. Respirations are easy and free from use of accessory muscles with symmetric expansion.
CARDIOVASCULAR: Sinus rhythm without gallops, rubs or murmurs. Peripheral pulses are present and equal at 2+ bilaterally.
EXTREMITIES: Free from edema or clubbing bilaterally.
ABDOMEN: Soft and supple without tenderness or organomegaly.
RECTAL: Deferred.

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LAS VEGAS PAIN INSTITUTE AND MEDICAL CENTER - WEST

PAIN MANAGEMENT CONSULTATION

REEVES, SUSAN **06/29/04**

Page 3

GENITOURINARY: Pelvic examination deferred. The patient denies complications.
MUSCULOSKELETAL/NEUROLOGIC: The motor examination reveals tone is normal. Strength in upper extremities is normal, rhomboids, deltoids, supraspinatus, infraspinatus, biceps, triceps, wrist extensors, wrist flexors, intrinsic muscles, and grip are all 5/5 bilaterally right and left. Lower extremities, iliopsoas, quadriceps, hamstrings, dorsiflexors, plantar flexors, extensor hallucis longus are all 5/5 bilaterally right and left.
PALPATION:

1. There is positive pericranial muscle tenderness on palpation.
2. There is positive tenderness in the cervical spine area left greater than right.
3. Thoracic facets and bilateral paraspinous muscles without tenderness or spasm.
4. There is positive tenderness in the lumbar spine area.
5. Normal sagittal and coronal alignment without evidence of scoliosis. Normal lumbar lordosis noted.

MECHANICAL: Cervical range of motion is diminished. Lumbar range of motion is diminished. Negative Fabere's test bilaterally. Seated straight leg raises are negative bilaterally. Muscle strength is symmetric and equal on both sides.
JOINTS: Full range of motion without tenderness, heat, erythema or swelling. The joints are free from crepitus.
COORDINATION/NEURO: Gait is steady and unassisted. The patient demonstrates toe stand, heel walk and has good coordination with heel and toe gait.

X-RAYS: She had an MRI of her cervical spine that was done in February 2004, showing a small disc osteophytes at the C4-5 and C6-7 levels with mild flattening of the cervical cord. The patient also has mild to moderate narrowing of both neural foreman at C6-7. She had a lumbar spine x-ray done in November, 2001, showing demineralization of her bones, apparently she also had an MRI of her brain done about six years ago which revealed normal results.

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000105

IMPRESSION:
1. HEADACHES.
2. CERVICAL DISC DISORDER.
3. CERVICALGIA.
4. BACK PAIN.
5. CERVICAL AND LUMBAR RADICULOPATHY.

PLAN:
1. The patient was advised to continue following up with her primary care physician as well as with her neurologist.
2. The patient was also advised to continue with her physical therapy.
3. The patient will benefit from an updated MRI of her brain as well as her lumbar spine area in order to evaluate further pathology.
4. The patient will need a cervical and lumbar epidural injections as well as IV injection with B12, magnesium and Lidocaine and Toradol for pain relief.
5. The patient verbalizes understanding of all of the above and wishes to proceed.
6. The patient was seen with nurse practitioner, Jennifer Kawi.

Godwin O. Maduka, M.D., PHARM. D.
Dictated but not edited.
Seen with Nurse Practitioner Jennifer Kawi.

JK/jor
REF# 496965

610

000106

Documents for: REEVES, SUSAN L

353-65-90 WW
REEVES, SUSAN L
Outpatient Consultation
NEUROLOGICAL SERVICES

Date of Service: Monday, March 28, 2005

Identification:
Susan Reeves is a 53 year old woman seen in consultation at the request of Dr. Derek Duke.

Chief Complaint:
Leg pain and weakness

History Of Present Illness:
The patient reports that she has a longstanding history of neurological complaints including headaches, dizziness , neck and back spasms and tinnitus that date back to a whiplash injury without loss of consciouness seventeen years ago. However, last August she noted the onset of diffuse aching in both of her thighs and calves and noted that her legs were weaker, particularly on the left, such that she had problems walking over curbs or getting out of a bathtub. On the advice of her physical therapist who she sees weekly for chronic back spasms, she had an evaluation including cervical and lumbar MRI's and she was referred to Dr. Duke for possible neck surgery. However, he advised against this, recommending that she come to UCLA for evaluation. The patient also complains of burning pain in both feet at times and indicates that she has noted progressive numbness in her feet that she attributes to her diabetes. She indicates that the more recent pain in the thighs and calves feels as if she had overexerted herself. She things that her arms have also been weak, but not as much as the legs.

The patient indicates that she is often non-compliant with her diabetes medication, typically using the severity of her foot pain as a gauge for whether her diabetes is controlled or whether she should take her medicine on any given day.

Past Medical History:
tonsillectomy 1960's
multiple operations for endometriosis
ankle fracture
MVA's in 1987 and 1988.

Medications:
carisopradol 350 mg tid prn
propo-N/apap 100/650 prn
verapamil SR 240 mg qd
metformin 850 mg bid
neurontin 400 mg ii tid
propranolol 40 mg six times daily
amitryptiline 40 mg six per day
lescol XL 80 mg qd
pioglitazone i qd

Allergies:
iodine
codeine-->itching

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Family History:
She does not know her parent's medical history. A sibling died at age 41 of cancer. Sons, ages 33 and 29 are in good health. A maternal grandmother had a stroke.

Social History:
She has smoked for 36 years. She does not drink or use drugs. She has no history of exposure to toxins. She no longer works due to disability since the motor vehicle accident. She has a high school education, is married and was born in Oceanside, CT.

Review Of Systems:
CONSTITUTIONAL symptoms were positive for fatigue and were negative for fever and weight loss.
OPHTHALMOLOGICAL symptoms were positive for blurred vision and double vision and were negative for loss of vision, eye pain, eye redness and eye dryness.
EAR, NOSE AND THROAT symptoms were positive for trouble hearing, ringing in the ear(s), dizziness (vertigo) and loss of balance and were negative for ear pain, ear discharge, hoarseness, trouble swallowing and slurred speech.
CARDIOVASCULAR symptoms were positive for irregular heart beat and were negative for chest pain, fast heart beat, limb swelling, limb pain on walking and fainting.
RESPIRATORY symptoms were negative for trouble breathing, chronic cough and coughing blood.
GASTROINTESTINAL symptoms were negative for indigestion, heart burn, abdominal pain, nausea, vomiting, regurgitation, diarrhea, constipation and bloody stools.
GENITOURINARY symptoms were negative for incontinence, pain on urination and blood in the urine.
MUSCULOSKELETAL symptoms were positive for neck pain, back pain and joint stiffness and were negative for muscle pain, muscle cramps, muscle twitches, loss of muscle bulk, joint pain and joint swelling.
SKIN AND BREAST symptoms were positive for numbness and tingling and were negative for discoloration, hair loss, nail changes and sweating changes.
NEUROLOGICAL symptoms were positive for headache, clumsiness and trouble concentrating and were negative for facial pain, facial numbness, weakness, tremors, blackouts and trouble with memory.
PSYCHIATRIC symptoms were negative for hallucinations, feeling depressed, trouble sleeping, suicidal thoughts, inappropriate crying and inappropriate laughing.
HEMATOLOGICAL/LYMPHATIC symptoms were negative for abnormal bleeding, nose bleeds and lumps or swellings.
ALLERGIC/IMMUNOLOGICAL symptoms were positive for joint pain and were negative for skin rash and dry eyes and/or mouth.
ENDOCRINOLOGICAL symptoms were negative for excessive thirst, heat or cold intolerance and excessive urination.

Physical Examination:

Constitutional:
The patient is an overweight woman in no acute distress. BP 146/79, P 78, regular, Weight 200 lbs, T 97.8

Ophthalmological:
The disc margins are sharp with normal eye grounds.

Cardiovascular:
No carotid bruits; normal S1, S2 without S3 or S4. There is trace peripheral edema.

Mental Status:

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Alert and oriented with intact concentration, memory and language. Fund of knowledge fair. Affect appropriate.

Cranial Nerves:
II: visual fields full
III,IV,VI: PERRL, ocular movements full
V: masseter power normal; normal facial sensation
VII: face symmetric
VIII: hearing intact to finger rub bilaterally
IX,X: palate elevation symmetric
XI: sternocleidomastoid and trapezius power normal
XII: tongue midline

Motor:
Normal bulk and tone in upper and lower extremities bilaterally. No pronator drift. Power 5/5 in upper extremities bilaterally. Lower extremity testing showed 4/5 power of the left quadriceps and 3/5 power of the left tibialis anterior with 5-/5 power diffusely elsewhere.

Sensory:
Pinprick decreased to the knees bilaterally in stocking distribution; intact on hands. Position and vibration sensation also impaired in the lower extremities bilaterally.

Reflexes:
The biceps, triceps, brachioradials and knee jerk reflexes were 2+ and symmetric. Ankle jerks were absent bilaterally. There was no Hoffman reflex. The toes were downgoing bilaterally.

Coordination:
Normal finger-nose and heel-shin.

Station And Gait:
Gait was broad based and pain limited. She was unable to stand with feet together with eyes closed but could do so with eyes open.

Laboratories:
Lumbosacral spine series 9/14/04: Mild anterior wedging at L1; some T12-L1 intervertebral narrrowing

MRI of the cervical spine 9/14/04:
C3-4: posterior bulging abuting the spinal cord, neural foramina intact
C4-5: posterior bulding with cord compression and bilateral neural forminal stensis
C5-6: posteroir bulging; mild right foraminal stenosis
C6-7: mild bulging and foraminal stenosis

MRI of the lumbosacral spine 9/14/04: mild posterior disc bulging at L4-5 and L5-S1

Assessment:

This patient has complaints of bilateral lower extremity weakness, but on examination has an asymmetric examination with problems on the left that cannot be attributed to a single nerve or nerve root. She clearly has a significant peripheral neuropathy which is most likely secondary to diabetes. Although her cervical MRI shows extensive disc bulging, there is no clear cut evidence of myelopathy (e.g., no increased tone and no upper motor neuron findings on examination) though it is possible that such findings could be masked by the peripheral neuropathy. Given the focal motor weakness, EMG/NCV studies would be

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very helpful to look for evidence of a mononeuritis multiplex or other focal neuropathic process that might account for her lower extremity complaints.

I have advised the patient that presence or absence of lower extremity pain is a poor basis for deciding whether to take her diabetes medication had that good glycemic control is the mainstay of best management of diabetic peripheral neuropathy.

The complaint of aching pain in the legs can be seen with diabetic radiculopathy, so EMG studies would again be helpful. CPK and aldolase should also be checked to exclude primary muscle disease.

Her gait instability is due to the peripheral neuropathy as evidenced by the Romberg sign.

Recommendations:
EMG/NCV studies of left lower extremity to characterize peripheral neuropathy and to look for mononeuritis or radiculopathy to account for selective weakness and to exclude diabetic radiculopathy.

Check for other treatable causes of peripheral neuropathy: B12, ANA, ESR, VDRL, HIV, SPEP, IEP, TFT's

Check CPK and aldolase to exclude primary muscle disease.

ROGER WOODS, M.D. (P11424)
Electronically signed (3/28/2005 12:52:30)
MD5 checksum: 2d25ae9cb89450d5d9d32aec8d234be9

cc:
Dr. Derek Duke
3006 S. Maryland Parkway 285
Las Vegas, NV 89109

Dr. Peter Mattimoe
3611 S. Lindell, Suite #102
Las Vegas, NV 89103

Dictated: 3/28/2005 12:48:52
  By: ROGER WOODS, M.D. (P11424)
  Reference number: FreeForm
Transcribed: 3/28/2005 12:48:53
  By: 11424
  Reference number:
Received: 3/28/2005 12:48:53
Document ID Number: 3053507
Patient UI Number: 103227247
Filing number: 003

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PSYCHOLOGICAL EVALUATION

NAME: SUSAN REEVES
DOB: 10-6-51
SSN: [redacted]
DOI: 9-25-88
CLAIM NO. 104-1979706518 Allstate Insurance
REFERRED BY: Dr. David Toeller
DATES OF EVALUATION: 11-13-89, 11-17-89

PRESENTING PROBLEMS

Susan Reeves is a 38-year-old right handed female who is 5 feet, 5 inches tall and weighs 160 pounds. She gained approximately 20 pounds last year because of a lack of activity. Mrs. Reeves was involved in two motor vehicle accidents. The first occurred on 7-20-87 and the second on 9-25-88. In the first accident, she was a passenger in a 1988 Chevrolet 1/2-ton truck, when it was rear-ended by a smaller vehicle. The pickup truck also hit the car in front of it with Mrs. Reeves hitting her head on the back window of the pickup truck. Her condition was diagnosed as a cervical strain and head injury. The second motor vehicle accident occurred on 9-25-88 when she was driving the same 1988 1/2-ton pickup truck and again was rear-ended by a smaller vehicle. She reports that some of her medical symptoms which had significantly improved from the first accident, returned.

She has received a variety of medical diagnostics and at this time she is opinioned to have a cervical sprain/strain syndrome with no objective orthopedic or neurological findings. Also, she has positional dizziness assumed to arise out of cervical soft tissue injuries. She was referred for a psychological evaluation to assess the presence of psychological factors that may contraindicate a successful healing effort.

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PSYCHOLOGICAL DATA

PSYCHOMETRIC TEST DATA

Results of a valid Minnesota Multiphasic Personality Inventory-II test suggest the presence of a sub-clinical "conversion V" profile indicative of a tendency to exacerbate pain symptomology in response to distressing stimuli. That is, Mrs. Reeves endorsed test content would indicate the presence of an operant pain behavior under social control. Also, she tends to be most traditionally oriented toward a feminine role and has interest in masculine activities as well. She is interpersonally sensitive, but thinks rationally and clearly. That is, there is no evidence of a thought disorder or impaired decision making and problem solving capabilities. She is secure and comfortable with herself and is emotionally stable. She is success oriented, persistent and capable. She has a normal energy and activity level and reports a balance between socially introverted and extroverted behaviors and attitudes.

SUBJECTIVE PSYCHOLOGICAL DATA

On a mental status examination, Mrs. Reeves described her major presenting problem as that of unresolved pain complaints, as well as mild depression and anxiety over being unable to work and earn money. Her manner of dress was appropriate and her hygiene good. No prosthetic devices were noted. Her gait and posture were normal. She was alert and responsive. Her facial expressions during the interview were normal and her eye contact was appropriately focused. Speech quantity and quality were normal. Her mood was pessimistic and her affect appropriate. She was oriented with respect to person, place, time and situation. There was no evidence of illusions, hallucinations or delusions. Her thought processes were logical and coherent. Her thought content suggested preoccupation with somatic symptoms. That is, she is most concerned about her health due to her automobile accident. She desires to return to work in order to earn a regular income.

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PAIN HISTORY

She has had a variety of medical diagnostics and treatments, including use of medication, physical therapy, TENS unit and relaxation training. She states that the only treatment that proved effective was the use of the TENS unit. Medication used includes Aspirin, Valium, Soma compound, Naporsin, Benedryl and Demerol. She states that as a result of the pain, she was walked off her job at the Bally's Grand on 5-17-89. She reports that her pain is present all the time and is mostly located in her head, eyes, ears and left shoulder, arm, elbow, wrist and hands.

On the McGill Pain Questionnaire, she rates her pain at its worst as excruciating and at its least mild or discomforting. Her responses have an affective sensory quality about them.

Functional limitations include alleged problems with prolonged standing, squatting, reaching, balancing and kneeling. She also reports difficulty with bending, lifting with her left arm, climbing, driving, twisting quickly, carrying with her left arm and walking. She states that as a result of her health status, her hobbies and recreational activities are adversely affected. She also reports that because of her pain problem, the frequency of her sexual encounters with her husband have dropped from three times per week to once a week. She does not report any problems falling asleep. However, she awakens one or two times per night because of her teenage son coming home late or if the dog has to be let out of the house. She averages eight hours of sleep per night. She states that she gets enough sleep and usually wakes up feeling refreshed, depending upon her pain level. When she arises in the morning, her muscles are no stiffer than usual.

She reports headaches occurring continuously located in the front of her head from one temple to the other. She treats her headaches with pain medication and Aspirin.

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PSYCHOSOCIAL HISTORY

She was born 10-6-51, in Oceanside, California. She has one brother age 26. She reports a normal childhood with no major difficulties. She has been married once for approximately 19 years. She and her 38-year-old husband live in their own home with their 18 and 13-year old sons. Presenting homelife problems include financial difficulties and her poor health.

Educationally, she completed the 12th grade from Paramount High School in Paramount, California.

Her work history includes employment for the past 10 years at Bally's MGM Grand Hotel as a room reservation clerk and shop steward. She also for 4-1/2 years was an assistant manager for Avon Cosmetics. She states that she has not worked since 5-17-89, when she was walked off the job because of her bosses belief that her physical health interfered with her safely completing the work requirements. She states that she is very desirous of obtaining a return to work release so she can once again be gainfully employed.

Financially she reports a significant loss of income, the use of savings to meet basic expenses, problems budgeting money and financial security worries. When employed, she was netting $1,200 per month. She was receiving $93 per week in worker's compensation benefits, but reports that is ending. Her husband nets approximately $2,300 per month.

She has a variety of leisure time activity interests including camping, hiking and traveling. However, she has been physically unable to engage in these favored leisure time activities.

She reports that she consumes less than one drink of alcohol per month but will smoke a pack of cigarettes per day. She does not report a substance abuse history.

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IMPRESSIONS

Objective and subjective psychological data, in combination, suggest the following DSM-III-R diagnostic categories.

Axis I: Clinical Syndromes:
#307.80 Somatoform Pain Disorder.

Axis II: #V-71.09 No diagnosis or condition noted on Axis II.

It is opinioned that at this time, Mrs. Reeves is experiencing a Somatoform Pain Disorder that has developed out of her inability to successful cope with the physical consequences of both motor vehicle accidents in question. Prognosis for successful resolution of her Somatoform Pain Disorder arising out of the motor vehicle accident is excellent if the following treatment recommendations can be successfully implemented.

RECOMMENDATIONS

1. She should be referred for pain management counseling where she can learn and implement an effective pain management ritual in response to pain stimuli.

2. She would benefit from instruction in biofeedback strategies for pain management to help her resolve problems of somatic pain, headaches and moderate interpersonal distress.

3. As soon as possible, Mrs. Reeves should be issued a return to work release based upon objective medical findings. She is desirous of returning to work with the pre-accident employer as soon as possible.

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4. If further consultation is needed the content of the psycholoIgical evaluation, implementation of the above mentioned recommendations or development of new recommendations, please contact this psycholoIgist for assistance.

L. Mortillaro, Ph.D.

Louis F. Mortillaro, Ph.D.
Nevada Licensed Psychologist
Diplomate, American Academy of Pain Management
DICTATED, NOT EDITED
11-28-89
LFM/jm

cc: Dr. David Toeller
2625 South Rainbow Blvd.
Suite #C-102
Las Vegas, Nevada 89102

Wendy Schultz, Senior Casualty Claim Representative
Allstate Insurance Company
Market Claim Office
4801 Sandhill Road
Las Vegas, Nevada 89121

C 620

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LOUIS F. MORTILLARO, PH.D.
AND
ASSOCIATES

PSYCHOLOGICAL EVALUATION SUMMARY

PATIENT NAME:	REEVES, SUSAN
DATE OF BIRTH:	10/06/51
SOCIAL SECURITY #:	[redacted]
DATE OF ACCIDENT:	09/25/88
CLAIM #:	001504-001083WC01
DATE(S) OF EVALUATION:	04/14/03 (TESTING) 04/22/03 (INTERVIEW)
DATE OF REPORT:	04/25/03
REFERRED BY:	LEAH LYONS, GALLAGHER-BASSETT INSURANCE

- CONFIDENTIAL -

The information contained in this report is strictly confidential and is only for the use of the professional(s) to whom it is addressed. Any unauthorized disclosure is strictly forbidden and illegal.

Reason for Referral

Susan Reeves was referred for a psychological evaluation/IME to assess the nature and extent of psychological barriers preventing her from achieving maximum medical improvement.

Background Information

In summary, the records indicate that Susan Reeves was involved in a motor vehicle accident on 07/20/87. She was involved in a second motor vehicle on 09/25/88. In the first accident, she was a passenger and in the second accident, a half-ton truck when she was rear-ended by a smaller vehicle.

At the time of the second accident on 09/25/88, she reports that some of her medical symptoms which had significantly improved from the first accident were exacerbated again.

- *Psychological, Presurgical & Neuropsychological Evaluations*
- *Individual, Group, Marriage, Family & Child Counseling/ Psychotherapy*
- *Biofeedback Therapy & Relaxation Training*
- *Forensic Evaluations*
- *Drug & Alcohol Rehabilitation Therapy*
- *Hypnotherapy*
- *Pain/Stress Management*
- *Vocational Rehabilitation Services*
- *Bilingual Services*

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Since the time of her accident, she has undergone several medical tests and consultations with limited success in improving her overall medical condition.

She complains of pain in her neck, shoulder, hand, arm and left foot. She agrees with her doctor's diagnosis and the treatment she received. She reports that her medical condition has impacted a number of areas of her life. She rates her present disability at ten, indicating that she is totally disabled.

The details of the patient's medical condition are deferred to the medical record.

Observations

Susan Reeves is a 51-year-old, right-handed Caucasian female who is 5'5" tall and currently weighs 170 pounds. She has blonde hair and brown eye color.

Mental Status Examination

An assessment of her mental status examination indicates that she is not experiencing symptoms of depression and manifests mild symptoms of anxiety.

She was oriented to person, place, time and situation. It was estimated that she was functioning in the high average range of intellectual ability. Her memory functions appear to be within normal limits. No recent disturbance in consciousness was reported. Insight, judgment and impulse control are fair.

Presenting Problems

Major presenting problems described during the clinical interview include not working since the 09/25/88 motor vehicle accident. She had a medical leave for two years and then she was fired She stated that she has not worked since 1989. The Superior Court ruled that the employer rehire her and provide her medical treatment. However, she is unable to return to work in any capacity and receives SSDI benefits. She reports periodic dizziness, episodes of dropping and falling down and she is careful when walking. She has constant headaches 100% of her waking hours, muscle spasms and tension type of SCM muscle spasms. She indicates that she is undergoing treatment which has helped her. She manifests mild symptoms of anxiety and she has limited pain and stress coping skills.

Psychological Data Summary

Minnesota Multiphasic Personality Inventory-2:

A summary of her MMPI-2 test results indicates that she demonstrates a balance between self-protectiveness and self-disclosure. She responded to the MMPI-2 items in a cooperative fashion with valid test profile results.

The Clinical Scales suggest that she is experiencing general symptoms of pain and coping deficits. She is an individual who converts her stress into physical symptoms. When the stress is alleviated, her physical symptoms are also alleviated. She reports a high level of health concerns, reporting a number of physical symptoms across several body systems.

Beck Depression Inventory-II:

Her Beck Depression Inventory-II raw score suggests that she is not experiencing symptoms of depression.

Beck Anxiety Inventory:

Her Beck Anxiety Inventory raw score of 8 indicates that she manifests mild symptoms of anxiety.

Pain and Suffering Index:

Based upon her Pain and Suffering Index score, she is placed in Category 2. Individuals placed in Category 2 are pain minimizers who experience a low level of suffering and have low perceptions of pain and disability. Psychological symptoms and reports of pain and disability are minimal and psychological or medical intervention is usually not necessary to achieve maximum medical improvement.

Brief Psychosocial History Data

Susan Reeves states that she was born on 10/06/51 in Oceanside, California. She has been married once for almost 32 years. She has 31 and 26-year-old sons. She rates her relationship with her spouse and children between happy and pleasant. She currently lives with her 52-year-old husband.

Educationally, she completed the 12th grade of schooling in Paramount, California.

Occupationally, she has been declared permanently and totally disabled for more than 14 years. Her employment history was reported as working for the MGM-Bally Hotel as a room reservations clerk from September 1980 to May 15, 1989. Prior to that, she worked for the Action Employment Agency, for Avon as a sales representative and assistant manager, and for the Gambler's Hall of Fame as a 21 dealer. Her length of employment with these businesses was not reported.

She indicates her recreational and leisure-time activities have been affected by her overall medical condition.

Discussion

The objective and subjective psychological data results indicate that Susan Reeves is manifesting symptoms related to Psychological Factors Affecting her Physical Condition (DSM-IV-TR 316). She has a long history of disability since 09/25/88 when she was injured in a second motor vehicle

accident that has affected her overall life dynamics.

During the clinical interview, she stated that she has not worked since 1989. She was on medical leave for two years and then was fired from her job. The Superior Court ruled that the employer rehire her and provide medical treatment for her. She is unable to return to work in any capacity and receives SSDI benefits. She reports periodic dizziness, dropping and falling down episodes and she walks carefully. She has constant headaches 100% of her waking hours, muscle spasms and tension type SCM muscle spasms. She indicates that she is undergoing physical therapy treatment which has helped her. She manifests mild symptoms of anxiety. She has limited pain and stress management coping skills.

Recommendations

1. To assist Susan Reeves in decreasing her pain intensity and duration, she is an appropriate candidate for participation in individual counseling sessions, biofeedback therapy and psychoeducational lectures in order to learn and implement appropriate pain and stress management coping skills.

2. If you have any questions or need further clarification, please contact this psychologist at your earliest convenience.

Louis F. Mortillaro, Ph.D.

Louis F. Mortillaro, Ph.D.
Psychologist
Diplomate, American Academy of Pain Management
Senior Disability Analyst & Fellow, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
Fellow and Diplomate, American Board of Medical Psychotherapists

MFG:LFM:gs

DICTATED, NOT EDITED.

cc: Leah Lyons, Gallagher-Bassett Insurance Company

F: 4/30/03

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May 5, 2003

To: Leah L. Lyons, Claim Representative
Gallagher Bassett Services, Inc.

Re: Susan Reeves
Claim #: 001504-001083-WC-01
Date of Injury: 09/25/88

Dear Ms. Lyons:

I am in receipt of your May 2, 2003-letter regarding the question posed by Appeals Officer, The Honorable Nancy K. Richins, Esq. Thank you for forwarding this psychologist a copy of the March 10, 2003 order. In this order, it states "The consulting physician will be asked to render his opinion as to whether the claimant's somatoform pain disorder is industrial and, if so, whether further treatment would be recommended for this condition."

In my psychological evaluation dated 04/25/03, this psychologist recommended a need for psychologically oriented pain management treatment that could be offered concurrent with her receipt of physical therapy. Unfortunately, I did not render an opinion as requested by the Appeals Officer.

With respect to the question posed by Appeals Officer Richins, the common feature of a somatoform pain disorder is the communication of physical symptoms that suggest the presence of a medical condition with symptoms of physical pain and emotional suffering that are not fully explained by the identification of a pain generator. These physical and psychological symptoms including deficient coping skills must cause clinically significant distress or impairment in social, occupational or other areas of functioning. The physical and psychological symptoms described in a somatoform pain disorder are not intentional or under voluntary control. There is no evidence of malingering or a factitious disorder.

- *Psychological, Presurgical & Neuropsychological Evaluations*
- *Individual, Group, Marriage, Family & Child Counseling/ Psychotherapy*
- *Biofeedback Therapy & Relaxation Training*
- *Forensic Evaluations*
- *Drug & Alcohol Rehabilitation Therapy*
- *Hypnotherapy*
- *Pain/Stress Management*
- *Vocational Rehabilitation Services*
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Under the current DSM-IV-TR topology, the somatoform disorder is best described as a pain disorder associated with both psychological factors and a general medical condition (DSM-IV-TR 307.89). This subtype of a somatoform pain disorder describes when both psychological factors and a medical condition are judged to have important roles in the onset, severity, exacerbation or maintenance of the pain. Ms. Susan Reeves' pain disorder is chronic because the duration of her pain has been six months or longer.

Typically, individuals manifesting a pain disorder are unable to work or attend school, have frequent use of the healthcare system and pain is a major focus of their life requiring substantial use of medications. Often times, relational problems such as marital discord and the disruption of the family's normal lifestyle are reported.

In the past, Ms. Reeves has been diagnosed with a somatoform pain disorder and this diagnosis is industrial, not nonindustrial, due to the fact that this psychological condition would not have been diagnosed without the presence of a presenting medical condition, which in her case, was industrially related.

The treatment recommended to decrease her pain intensity and duration is short-term individual pain and stress management counseling, biofeedback therapy and psychoeducational lectures in order for her to learn and implement appropriate pain and stress management coping skills. Her reports of periodic dizziness, dropping and falling down episodes, constant headaches, muscle spasms and tension in the SCM muscles are reliably remediated with a combination of the pain management psychological treatment recommended and appropriate physical therapy. This psychologist will consult with the physical therapist relative to specific modalities that may be helpful in combination with the psychological treatment to help Ms. Reeves resolve her pain and disability.

Hopefully, the explanations contained above address the question submitted by the interim order dated 03/10/03.

If you have any questions or need clarification, please contact this psychologist at your earliest convenience.

Louis F. Mortillaro, Ph.D.

Louis F. Mortillaro, Ph.D.
Psychologist
LFM:gs

cc: Leah Lyons, Claim Representative
Gallagher Bassett Services, Inc.

F: 5/6/03

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000122

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January 10, 2004

Beverly Mandery, Claims Administrator
CCMSI
P.O. Box 35350
Las Vegas, Nevada 89133-5350

Re: Susan Reeves
Claim #: 88-H92H243724
Employer: Bally's Las Vegas

Dear Ms. Mandery:

As requested in your December 11, 2003-letter to this psychologist, this letter will serve as the proposed treatment plan for Susan Reeves. As approved, she she will be provided individual counseling, biofeedback therapy and psychoeducational lectures along with appropriate physical therapy and medication management. The short-term program is to be structured as follows:

1. She is to receive individual counseling, biofeedback therapy and the psychoeducational lectures three times per week for seven weeks.

2. She is to receive the necessary physical therapy three times per week for seven weeks.

3. She is currently being prescribed appropriate medication for her headaches and dizziness by Doctors Petroff and Madamo. She is to continue seeing Doctors Petroff and Madamo for being prescribed the appropriate medications.

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4. A Theracane, which is a hand-held self-massager, is to be provided for her so she can apply pain relieving deep compression directly to her hard, knotted "trigger points" wherever they occur, especially breaking up tension even in hard to reach muscles between her shoulder blades. The Theracane does not use electricity and is a hook-shaped therapeutic instrument made of fiberglass that allows patients to apply appropriate pressure to treat muscle dysfunction. The cost for the Theracane, a 30-minute video guide, plus a 16-page owner's manual, is approximately $50.00. It can be purchased from Theracane Company, P.O. Box 9220, Denver, Colorado 80209. The toll-free order number is 1-800-947-1470.

It is anticipated that after the completion of the seven weeks of short-term counseling, biofeedback therapy, psychoeducational lectures and physical therapy, the presenting physical and psychological issues related to the 09/25/88 injury should be in remission. At that point it is anticipated that she should require no further medical or psychological treatment related to her industrial injury.

If you have any questions or need clarification of this information, please contact this psychologist at your earliest convenience. Thank you for the opportunity to evaluate and treat Ms. Reeves.

Louis F. Mortillaro, Ph.D.
Psychologist

LFM:gs

F: 1/12/04

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LOUIS F. MORTILLARO, PH.D.
AND
ASSOCIATES

DISCHARGE SUMMARY

PATIENT NAME:	SUSAN REEVES
DATE OF BIRTH:	10/06/51
SOCIAL SECURITY #:	[redacted]
DATE OF INJURY:	09/25/88
CLAIM #:	001504-001083WC01
DATE OF REPORT:	03/18/04
REFERRED BY:	LEAH LYONS, GALLAGHER BASSETT INS. CO.

-CONFIDENTIAL -

The information contained in this report is strictly confidential and is only for the use of the professional(s) to whom it is addressed. Any unauthorized disclosure is strictly forbidden and illegal.

INITIAL PSYCHOLOGICAL EVALUATION RESULTS:

Susan Reeves was referred for a psychological evaluation-IME to assess the nature and extent of psychological barriers arising preventing her from achieving maximum medical improvement. A psychological evaluation was conducted and the results were memorialized in a report dated 04/25/03. It was this psychologist's opinion that she was experiencing and manifesting Psychological Factors Affecting her Physical Condition (DSM-IV-TR 316). To help her resolve these psychological factors, she was recommended for participation in individual pain and stress management counseling, biofeedback therapy and psychoeducational lectures.

TREATMENT OUTCOMES:

Her treatment commenced on 01/05/04 and was completed on 03/18/04. During treatment, she was instructed in a number of pain and stress management coping skills to be applied in response to pain and stress stimuli. Her view of her stressors as being overwhelming was reconceptualized to be more manageable. She demonstrated a high level of motivation during her treatment and was cooperative in her treatment as indicated.

· *Psychological, Presurgical & Neuropsychological Evaluations*
· *Individual, Group, Marriage, Family & Child Counseling/ Psychotherapy*
· *Biofeedback Therapy & Relaxation Training*
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During the treatment process, she spoke a number of times about her dizziness (she was observed to have difficulty with balance when walking in this office). During psychological treatment, she also participated in a physical therapy program that she says helped control her dizziness. She continues experiencing residual dizziness which causes problems for her maintaining her balance, with reports of her falling. As a result, she walks very carefully.

During the treatment sessions, the flourescent light in this clinician's office was turned off and the sessions were conducted in natural sunlight coming in from the windows. This was beneficial for the patient because of her significant high level of sensitivity to light. She was observed wearing dark glasses during the entire treatment program which she states helps to control the negative effects of light.

On numerous occasions, Ms. Reeves discussed her concerns about not receiving financial benefits from the worker's compensation system even though the court ordered a reinstatement of these benefits. This issue created significant distress for her due to the fact that she is not receiving financial assistance. Also, she has reported significant problems obtaining authorization by the insurance company for her prescription medication and has had to use her insurance benefits from the Teamster's Union.

Her learning of coping skills during psychological treatment, in combination with medication management by Dr. Petroff, has been a significant factor in improving Ms. Reeves' overall condition. Even though she continues to complain of headache pain and dizziness, she indicates that she is feeling better physically and psychologically.

Ms. Reeves has been a pleasant individual who discussed her concerns during treatment in an open fashion and assimilated the treatment skills discussed during the sessions. She implemented the techniques taught during the treatment program with positive results in her overall condition.

In reviewing Dr. Petroff's report dated 02/18/04, he indicates that the patient has shown improvement but he recommended that she have another MRI. The X-ray image shows some progression of the disc osteophyte encroachment impinging at the C4-5 level. Also, Dr. Petroff indicated that this may be unchanged at the C5-6 level two years ago. There is also bilateral neuroforaminal stenosis. His diagnostic impressions were described as headaches, cervical degenerative disease, vestibulopathy and lumbar sacral strain.

The patient stated that she was very frustrated regarding her overall medical condition. The medical evidence suggests that her medical condition appears to be the root of her pain generator. She also has had a long history of disability since 1988 and, during this period of time, she has received a number of prescription medications designed to help improve her overall medical condition.

At this time, as previously indicated, the combination of her medications and the pain and stress management coping skills have allowed her to experience "better days" than she has had in the past.

Biofeedback therapy was included in her treatment plan with the use of digital thermal, skin conductance, and surface EMG modalities to control physical and psychological reactivity arising out of her overall medical and psychological condition. She learned a number of coping skills to enhance the mind-body connection. Her biofeedback therapy results indicate that she has met discharge treatment criteria, and when she implements the skills she learned during treatment, she is able to decrease her symptoms to a manageable level.

During treatment, she participated in 20 psychoeducational lectures where the following topics were covered:

Psychophysiology of pain, stress and response system.
Relaxation skills and training.
Mind-body interaction principles.
Hardiness and peak performance attributes.
Pain and stress coping models.
Attitudinal healing principles.
Pain and stress management coping skills.
Interpersonal communication patterns.
Internal and external locus of control, personal improvement and self-esteem development.
Realistic expectations and attitude, and anger management conflict resolution skills.
Medication and chronic pain behavior coping techniques.
Guided imagery and visualization skills development.
Mental coping techniques.
Inner dialogue process.
Spirituality and healing.
Sleep patterns and chronic pain.

DISCHARGE ISSUES:

At the time of discharge, Susan Reeves indicated that the combination of her prescription medications and her participation in the psychological treatment, including biofeedback therapy, psychological counseling and psychoeducational lectures, have made it possible for her to have a better quality of life. Unfortunately, she continues to experience headaches, sensitivity to light, dizziness and unresolved pain in her neck and lower back. She admits that she is able to better cope better with her condition, but she says that she occasionally experiences significant difficulty coping with her physical symptoms. She does not think, at the present time, that she is capable of returning to any gainful employment due to her residual symptoms of dizziness, headaches, sensitivity to light, tinnitus and unresolved pain in her neck and lower back.

Ms. Reeves states that she has attended some lectures regarding acupuncture techniques and she perceives that this type of treatment may be helpful for her. She would like to try acupuncture and then determine whether this type of treatment helps improve her overall condition.

At this time, Susan Reeves is discharged from further psychological treatment. She continues to receive physical therapy. She also remains under the care of Dr. Petroff. The prognosis for Ms. Reeves returning to work is guarded due to her long-term disability and belief she will never return to work in any capacity.

At this time, there are no psychological contraindications preventing Susan Reeves from undergoing further medical treatment, or returning to work if given a release by her physician Dr. Petroff. However, as previously indicated in this report, the prognosis for her returning to gainful employment is guarded because of her residual medical disability and belief she will never return to work in any capacity.

If you have any questions or need clarification, please contact this psychologist at your earliest convenience.

M. Gamazo, Ph.D.

Manuel F. Gamazo, Ph.D.
Clinical Director, Bilingual Services
Certified Clinical Psychopathologist #A16941
Doctoral Addiction Counselor #B17782
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L Mortillaro, Ph.D

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MFG:LFM:gs

DICTATED, NOT EDITED

cc: George Petroff, M.D.

F 3/30/04

LOUIS F. MORTILLARO, PH.D.
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April 26, 2004

Beverly Mandery
Claims Representative
CCMSI
P.O. Box 35350
Las Vegas, Nevada 89133-5350

Re: Susan Reeves
Claim #: 88H92H243724
Date of Injury: 09/25/88
Employer: Bally's Las Vegas

Dear Ms. Mandery:

This office is in receipt of your letter dated April 2, 2004 where you ask whether Ms. Reeves has completed her physical therapy program and her medical treatment with Dr. George Petroff and Dr. Mattimoe. You also indicate that you have received the Discharge Summary Report for Ms. Reeves on 03/18/04 where it was memorialized that she had completed the Pain Counseling Program per Dr. Mortillaro's recommendation.

In the Discharge Summary Report dated 03/18/04, it was described that Ms. Reeves successfully completed the Pain Counseling Program where she learned and was able to implement the pain and stress management coping skills taught during the program in response to pain and stress stimuli. She also reported, at the time of discharge from the Pain Counseling Program, that she noticed an improvement in her overall ability to cope her medical condition. However, she continues to experience physical symptoms including dizziness, headaches, sensitivity to light, and difficulty maintaining her balance which may cause her to fall. Because of Ms. Reeves's sensitivity to light, this clinician was required to turn off the flourescent lights and open the blinds in the office during the individual pain and stress management counseling sessions.

As indicated in the Discharge Summary Report, she has shown some improvement but she continues to experience frustration about overall medical condition, headaches, sensitivity to light, dizziness, unresolved neck and lower back pain with experiences of significant difficulty coping with her physical symptoms.

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She continues taking her prescription medication on an ongoing basis. Also, she has been off work since 1998. Experience shows that individuals on long-term disability have a poor prognosis for returning to work in a full time capacity.

She says that some days are better than others. Her symptoms should be considered as chronic.

There is no question that Ms. Reeves's medical condition has been preventing her from returning to gainful employment as documented by the medical doctors who have continued to provide medical treatment for her.

At the present time, we have not received any information as to whether or not she has completed her physical therapy program, if she continues to be under the care of Dr. Petroff and Dr. Mattimoe, or the status of her current medical condition.

As you know, psychologists cannot make disability limitations based upon a patient's medical diagnosis. Such a decision must be rendered by the medical doctor who is primarily responsible for treating her.

With reference to her continuing headaches, sensitivity to light, dizziness, and unresolved neck and back pain, it is opined that these psychophysiological symptoms may prevent her from returning to any type of competitive employment at the present time unless they are resolved.

Ms. Reeves has discussed her frustration with this clinician regarding the worker's compensation system's handling of her case and the fact that she has been denied receiving total and temporary disability compensation benefits even though her doctors have indicated that she is unable to work.

As previously documented, Ms. Reeves's had a court hearing regarding her case. According to court documentation reviewed by this clinician, it clearly indicates that she has a right to receive financial compensation during her total and temporary disability status.

As indicated in the Discharge Summary Report, Susan Reeves would like to try acupuncture as this type of treatment has been successful in treating patients suffering from dizziness, headaches and other symptoms. She is a potential candidate to receive this type of treatment.

In summary, as a result of her work related accident on 09/25/88, Susan Reeves has a long-term disability as documented by the medical doctors who have been treating her from the time of her accident to the present time. She continues to take a significant amount of prescription medications and continues experiencing symptoms including headaches, dizziness, neck and back pain and sensitivity to light. She has continuing financial problems arising out of the accident. She has not been able to drive her motor vehicle which makes it difficult for her to travel from one place to another.

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It is our opinion that she is not capable of returning to work in any capacity at the present time unless her symptoms arising out of the industrial related accident on 09/25/88 have been resolved in order to avoid placing her and her co-workers in a potentially dangerous situation in the workplace.

Once again, any questions regarding Ms. Reeves's medical limitations should be referred to her treating physicians.

If you have any questions or need further clarification, please contact this psychologist for assistance.

Manuel F. Gamazo, Ph.D.
Clinical Director, Bilingual Services
Certified Clinical Psychopathologist #A16941
Doctoral Addiction Counselor #B17782
Senior Disability Analyst & Diplomate, American Board of Disability Analysts
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MFG:LFM:gs

cc: Beverly Manderly, Claims Representative
CCMSI

F: 4/28/04

Re: Susan Reeves
Page 3

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LOUIS F. MORTILLARO, PH.D.
AND
ASSOCIATES

To: Susan Sayegh, Claims Supervisor, CCNSI
P.O. Box 35350
Las Vegas, NV 89133-5350

RE:	Susan Reeves, Claimant
CLAIM NUMBER:	88H92H243724
EMPLOYER:	Ballys Las Vegas
DATE OF INJURY:	09/25/1988

CONFIDENTIAL

The information contained in this report is strictly confidential and is only for the use of the professional(s) to whom it is addressed. Any unauthorized disclosure is strictly forbidden and illegal.

Dear Ms. Sayegh,

This psychologist is in receipt of your 05/13/2004 letter asking specific information about the psychological evaluation, treatment and medical condition of Ms. Reeves. I will respond to your questions in the order they were written in the 05/13/2004 letter.

1. In the 04/26/2004 letter to Beverly Mandery, Claims Representative, the results of Ms. Reeves' evaluation and treatment were memorialized. It was opined at that time that Ms. Reeves was not capable of returning to work unless her symptoms arising out of the industrial accident of 09/25/1988 have been resolved. Ms. Reeves has subjectively reported to Dr. Gamazo and myself the following barriers to her attainment of physical maximum medical improvement: headaches, dizziness, problems with balance, neck and low back pain, sensitivity to light, use of prescription medication and inability to drive a vehicle. True, these symptoms are subjective reports of what she is feeling. However, to document these symptoms, her treating physician must base his opinion on objective medical data relative to her achievement of maximum medical improvement and ability to return to work. From a psychological point of view, there are no industrially related symptoms that would contraindicate her successful return to work other than her mental perception that she is unable to work in any capacity.

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2. Dr. Gamazo was referring to the order offered by Nancy K. Richards, Esq., Appeals Officer, dated 12/01/2003. In this order it states " Claimants Somatoform Pain Disorder is industrial and requires further treatment including short term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures and appropriate physical therapy. Claimants claims should not have been closed but should remain open for further benefits." Dr. Gamazo was only making reference to that document relative to the claim remaining open for " further benefits."

3. This psychologist reviewed copies of recent physical therapy notes that your office provided indicating long computer use. It appears that when Ms. Reeves sits for an extended length of time at a computer, she experiences increased pain. However, the physical therapist does not mention the amount of time spent by Ms. Reeves sitting at a computer. When asked, Ms. Reeves states she used for computer for a maximum of an hour at a time to do research and contact family and friends. Increased time on the computer produces, she says, an increase in her headache, neck and back pain.

4. This psychologist reviewed Ms. Reeves pre-accident job description as a call center representative. Psychologically, it would be very therapeutic for Ms. Reeves to return to work. In her opinion, she is unable to physically perform this job description. As previously stated, there are no psychological contraindications to Susan Reeves returning to work. In fact, she wants to return to work if she is physically able.

5. With respect to the recommendation for acupuncture treatment, Susan Reeves told Dr. Gamazo specifically that she would like to try acupuncture as a treatment as it has been successful in the past in treating patients suffering from dizziness and headaches. She is a potential candidate to receive this type of treatment because she has investigated it and appears to be willing to do it. However, all medical treatment recommended must be done so by a licensed physician. Therefore, Dr. Gamazo did not recommend that she receive acupuncture, only that she would like to attempt it.

In summary, Susan Reeves has stated to Dr. Gamazo and this psychologist that she desires to return to work in some capacity, but she believes that, at this time, she physically, not psychologically is permanently and totally disabled. Thus, it is the responsibility for an evaluating physician to determine whether or not the subjective symptoms described by Ms. Reeves have an objective basis and prevent her from returning to work. If she does not have physical symptoms that would prevent her from returning to work in some capacity, then a hypothesis could be made that it would be Ms. Reeves perception that she could not return to work that is preventing her from doing so. A physical casualty for being unable to return to work must be objectively documented by medical tests and examination. At this point, the evaluating physician would be able to render an opinion relative to whether or not Ms. Reeves physical condition will be resolved in the future with specific treatment allowing her to return to work. If it is determined that her subjective pain complaints do not have a physical basis based upon the objective medical data, then the physician would issue a return to work release based only upon objective standards and not undocumented medical complaints. Following this process is the only fair way for a physician to objectively determine whether or not Ms. Reeves will be able to return to work in some capacity or in point of fact be rated permanently and totally disabled. She has not worked in many years and the psychological and medical disability literature is filled with studies that

suggest that people that have been out of work for as long as Ms. Reeves usually do not return to work.

Ms. Reeves states that she is basically in the same physical condition as she was when the Bally's representatives walked her off the job on May 15, 1989, after she had attempted to return to work for nine months. She was informed that she was a hazard on the property due to her dizziness, not due to poor work performance, absenteeism or any other work-related factor.

If you have any further questions or need clarification of this information, please contact this psychologist at your earliest convenience. Ms. Reeves' medical condition is certainly complicated and she has been the subject of intense case management over the years. The only way her medical condition can be concluded is for an evaluating physician to compare the mechanism of injury and past treatments with current functioning and objectify the subjective pain complaints.

L.F. Mortillaro, Ph.D. /LFM

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F: 06/02/04

JUN 3 2004
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Louis F. Mortillaro, Ph.D.
Psychologist

Rehabilitation & Health Psychology
*Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: SUSAN REEVES SESSION DATE: 01/05/04
CLAIM #ID: 88H92H243724 DATE OF INJURY: 9/25/88 SESSION #:
PROCEDURE CODE: CPT 90806 SERVICE DESCRIPTION:

- Observations:
  - Posture: Upright
  - Assistive Aids: None
  - Demeanor: Cooperative
  - Mood: Serious
  - Gait: Slow moving
  - Motor Activity: Limited Cervical ROM
  - Communication: Communication
  - Affect: Frustrated

- Session Measurements:
  - Pain = 3/10
  - Anxiety / Worry = 6/10
  - Depression = 1-2/10
  - Frustration = 8/10

- Session Summary:
  Established a tx plan –
  1. Bio / Clin / Lectures 3x/week for 7 weeks
  2. PT – 3x/week for 7 weeks
  3. medication mgt – Drs. Petroff / Mattimoe
  4. Use of theracane

- Progress: PT does help w/ her dizziness somewhat
  Has to travel to a CAT BUS

- Recommendations:
  Start treatment

Clinician Signature: L. F. Mortillaro, PhD Date: 01/05/04

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Louis F. Mortillaro, Ph.D.
Psychologist

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*Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: SUSAN REEVES SESSION DATE: 1/12/04
CLAIM #ID: 88H92H243724 DATE OF INJURY: 9/25/88 SESSION #: 2
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: BNM

- Observations:
  - Posture: upright
  - Gait: slow
  - Demeanor: Cooperative
  - Communication: appropriate
  - Mood: serious
  - Affect: tense
  - Prosthetic Devices: ⊖

Pain: 3/10
Anxiety: 7/10
Depression: 3/10

Frustration/anxiety cont ↑ - Pt discussed protracted legal battle c̄ worker's comp for benefits despite favorable rulings repeatedly from several courts - Pt/re: recent physical TX's have helped pain and mobility remarkably. Feels pain/headaches are manageable at this time. Mood quite determined. Cont to work on neck/back pain c̄ physical therapist.

New to pgm - mood/anticipation of cont success/recovery quite (+).

Cont supportive cnsg/biofeedback

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Clinician Signature: [signature] Date: 1/12/04

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Las Vegas, NV 89106

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Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 01-14-04
CLAIM #ID: 021504-001083 DATE OF INJURY: 09-25-~~00~~ SESSION #: 3
PROCEDURE CODE: 90809 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: Slow
  - Assistive Aids: none
  - Motor Activity: Slow
  - Demeanor: Cooperative
  - Communication: Receptive-quite
  - Mood: Serious
  - Affect: Serious

- Session Measurements:
  - Pain = 3-4/10
  - Anxiety = 5-6/10
  - Depression = 1-2/10
  - Frustration = 7/10

- Session Summary:
  Pt concern about future medical care if her case is closed. She feel that she will need medication to control her residual symptoms. Unsure what to do with her life. She does not perceive herself to RTW She is no working since 1988.
  We discussed Mind - Body relationship

- Progress:
  Slow progress. She is making effort to adjust to chronic pain and disability. Learning coping skill that make her more functional (like shy)

- Recommendations:
  Continue counseling / biofeedback
  Home practice.

Clinician Signature: L.F. Mortillaro, Ph.D. Date: 01-14-04

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Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 01-16-04
CLAIM #ID: 001504-001083 DATE OF INJURY: 9-25-88 SESSION #: 4
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: Slow
  - Assistive Aids: None observed
  - Motor Activity: WNL
  - Demeanor: Cooperative
  - Communication: Approp / communication
  - Mood: Serious
  - Affect: Appropriate

- Session Measurements:
  - Pain: 3/10
  - Anxiety: 4/10
  - Depression: 2/10

- Session Summary:
  - Client says she is only able to sit at computer for an hour at a time, has continuing dizziness. She does report feeling slightly improved (reduced pain) due to P.T.
  - She expresses a belief that she would not be able to RTW due to physical limitations (especially headaches and dizziness).
  - She does express interest in computer — though not directly for employment.

- Progress:

- Recommendations:
  Continue per program plan

Clinician Signature: [signature] CRC, MFT Date: 1-16-04

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Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 01-21-04
CLAIM #ID: 001504-001083 DATE OF INJURY: 09-25-88 SESSION #: 5
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: Slow
  - Assistive Aids: none
  - Motor Activity: WNL
  - Demeanor: cooperative
  - Communication: approp
  - Mood: frustrated
  - Affect: Serious

- Session Measurements:
  Pain = 3-4/10
  Anxiety = 3-4/10
  Depression = 2/10

- Session Summary:
  PT indicate that she is not able to sleep at night. She indicate that she is feeling tired in the morning. Make comments that coming to the program 3 time a week is to much for her. She want to come 2 time a week. She indicate dizziness and headache and she doesn't want to hit the wall or felt due to her problem. We discussed the need to focus in comply with the program and make effort to follow the recommendation

- Progress:
  Slow progress. She is concern of dizziness, headache and possible felt or vomiting in the premises

- Recommendations:
  Continue counseling / biofeedback
  Home practice. Cognitive Distraction

Clinician Signature: [signature], Ph.D. Date: 01-21-04

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000139

Louis F. Mortillaro, Ph.D.
Psychologist

Rehabilitation & Health Psychology
*Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Rivas SESSION DATE: 1-23-04
CLAIM #ID: 0015-04-001083 DATE OF INJURY: 9-25-88 SESSION #: 6
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: IND

- Observations:
  - Posture: Relaxed, leaning on table
  - Assistive Aids: None observed
  - Demeanor: Coop.
  - Mood: Calm
  - Gait: Slow
  - Motor Activity: WNL
  - Communication: Appropriate/Talkative
  - Affect: Calm

- Session Measurements:
  - Pain: 3-4/10
  - Depression: 2/10
  - Anxiety: 3/10

- Session Summary:

- Pt reports gradual physical improvement — but she had a "sick headache" last week. Prior to that she did have a headache for 1 year
- She did not express willingness or interest in keeping a journal. She did say she suspects that coming here [increased activity] has made her ill [headache] Frustration with insurance company exacerbated situation.

- Progress:
  Slow — She expresses very strong desire to get off medication.

- Recommendations:
  Continue per program plan

Clinician Signature: [signature], CRC, MFT Date: 1-23-04

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000140

Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reyes SESSION DATE: 01-26-04
CLAIM #ID: 001504-001083 WCO DATE OF INJURY: 09-25-88 SESSION #: 7
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: Slow
  - Assistive Aids: none
  - Motor Activity: Slow
  - Demeanor: Cooperative
  - Communication: Appropriate
  - Mood: frustrated
  - Affect: Sad
- Session Measurements:
  - Pain = 3/10
  - Anxiety = 3/10
  - Depression = 3-4
- Session Summary:
  Patient manifested her frustration with the Insurance Company, stated that she happens to get worker comp payment retroactive and she is not receiving this at this time.
  Patient manifested headache + dizziness and ringing in the ear. She is coming 2 time a week for session.
  Will discuss Stress / pain coping skill.
- Progress:
  Slow progress - She is not perceiving RTW in any capacity at this time due to her medical conditions She has been off work for more of 10 years
- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: M. Gomez, Ph.D. Date: 01-26-04

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00161

uis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 02-02-04
CLAIM #ID: 00150400108SWC0 DATE OF INJURY: 09-25-88 SESSION #: 9
PROCEDURE CODE: CPT 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: upright
  - Assistive Aids: none
  - Demeanor: cooperative
  - Mood: frustrated
  - Gait: WNL
  - Motor Activity: WNL
  - Communication: appr
  - Affect: Serious
- Session Measurements: headache
  Pain = 3-5/10
  Depression = 5/10
  Anxiety = 4/10
- Session Summary:
  PT frustrated with his medical condition and his negative experience with the insurance company. She indicated that finally the insurance will paid by Doctors. We discussed negative thought stop & replacement by positive affirmations
- Progress:
  Slow progress
- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: M. Jauregui, Ph.D. Date: 02-02-04

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000142

Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reaves SESSION DATE: 02-05-04
CLAIM #ID: 021504-001083WC01 DATE OF INJURY: 09-25-88 SESSION #: 10
PROCEDURE CODE: _____ SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: WNL
  - Assistive Aids: None
  - Motor Activity: WNL
  - Demeanor: Cooperative
  - Communication: appropriate
  - Mood: Frustrated
  - Affect: Serious
- Session Measurements:
  - Pain = 3-5/10 headache
  - Anxiety = 4/10
  - Depression = 3/10
- Session Summary:
  Pt report that she is going to be paid retroactive payment due to Supreme Court decision. This is going to be 5 1/2 years. She continue complaining. Reports she is pushing herself too much the day and is paying the price. Patient is participating in sessions making appropriate questions and discussing her concern.
- Progress:
  Slow progress
- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: L. Mortillaro, Ph.D. Date: 02-05-04

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000142

Louis F. Mortillaro, Ph.D.
Psychologist

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*Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 02-09-04
CLAIM #ID: 001504-001083WC01 DATE OF INJURY: 09-25-88 SESSION #: 17
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Assistive Aids: None
  - Demeanor: Cooperative
  - Mood: Frustration
  - Gait: WNL
  - Motor Activity: WNL
  - Communication: approp
  - Affect: Serious/apprehensive

- Session Measurements:
  Pain = 3-7/10 headache
  Depression = 3/10
  Anxiety = 4/10

- Session Summary:
  Pt report attention concentration problem. During session she want to put the flourcent light off due to hypersensitive in the eye
  We discussed refocussing skill focussing on pleasure activities, thinking and avoid negative experience.

- Progress:
  Slow progress. She is participating in the treatment and report some benefit.

- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: M. Gamazo, Ph.D. Date: 02-09-04

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000144

Louis F. Mortillaro, Ph.D.
Psychologist

Rehabilitation & Health Psychology
*Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 02-12-04
CLAIM #ID: 001504-001083WC01 DATE OF INJURY: 09-25-88 SESSION #: 12
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: upright
  - Gait: WNL
  - Assistive Aids: None
  - Motor Activity: WNL
  - Demeanor: Cooperative
  - Communication: approp
  - Mood: frustrations
  - Affect: Serious

- Session Measurements:
  - Pain = 5/10 headache
  - Anxiety = 4/10
  - Depression = 3/10

- Session Summary:
  Pt concern that she was no getting her medication as prescribed because pharmacy has no authorization. I called Beverly Mendoza (933-4800) ext (48719) to ask for help and she will call the pharmacy for authorization. Patient was happy with this news and she will call the pharmacy later. We discussed posting mental attitude and maintain self behavior control.

- Progress:
  Slow progress. She is cooperating in her treatment

- Recommendations:
  Continue counseling/biofeedback

Clinician Signature: [signature] Date: 02-12-04

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000145

Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 02-19-04
CLAIM #ID: 001504-001083WG01 DATE OF INJURY: 09-25-88 SESSION #: 13
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: upright
  - Gait: WNL
  - Assistive Aids: none
  - Motor Activity: WNL
  - Demeanor: Cooperative
  - Communication: appropr
  - Mood: frustration
  - Affect: Serious

- Session Measurements:
  - Pain = 5/10 headache
  - Anxiety = 3-4/10
  - Depression = 3/10

- Session Summary:
  Pt report that physical therapy and the pain management in combination with her medication is helping. She had headache but in managing it implementing coping skill. We discussed positive mental attitude

- Progress:
  Slow progress

- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: [signature], Ph.D. Date: 02-19-04

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000148

Louis F. Mortillaro, Ph.D.
Psychologist

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TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 02-23-04
CLAIM #ID: 001504-001083WC01 DATE OF INJURY: 09-25-88 SESSION #: 14
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Assistive Aids: None
  - Demeanor: Cooperative
  - Mood: frustration
  - Gait: WNL
  - Motor Activity: WNL
  - Communication: approp
  - Affect: Serious

- Session Measurements:
  Pain = 4-5/10 headache
  Depression = 3/10
  Anxiety = 3-4/10

- Session Summary:
  Pt report some improving with the headache dizziness. More neck mobility. She manifested concern about chronic fatigue (as Tired) any fast movement in the head will lose her balance and may fell. She is some what better but continues with number of issues no resolved at this time.

- Progress:
  Slow progress.

- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: M. Gamaza, Ph.D. Date: 02-23-04

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000147

Louis F. Mortillaro, Ph.D.
Psychologist

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TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reves SESSION DATE: 02-25-04
CLAIM #ID: 001504-001083WC01 DATE OF INJURY: 09-25-08 SESSION #: 15
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Gait: WNL
  - Assistive Aids: None
  - Motor Activity: WNL
  - Demeanor: Cooperative
  - Communication: Approp
  - Mood: Frustration
  - Affect: Serious

- Session Measurements:
  Rain - 4-5/10 headache
  Depression = 8/10
  Anxiety - 3-4/10

- Session Summary:
  Pt Spoke about her frustration with her case because some day she is better and the next day she continue with headache dizzines. Occasional Amitrax and Midrin was reported but she is afraid of medication side effect. Coming to the program escerbate the headache. Usually the session is conducted under low light environment. (Flourescent light off).
  We discussed FIT model of coping.

- Progress:
  Slow progress. Perceive that she is not capable to RTW in any capacity due to her pain.

- Recommendations:
  Continue counseling / biofeedback
  Home practice

Clinician Signature: [signature] Ph.D. Date: 02-25-04

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Louis F. Mortillaro, Ph.D.
Psychologist

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TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 03-04-04
CLAIM #ID: 001504-001083WC01 DATE OF INJURY: 04-25-88 SESSION #: 17
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind.

- Observations:
  - Posture: Upright
  - Gait: WNL
  - Assistive Aids: None
  - Motor Activity: WNL
  - Demeanor: cooperative
  - Communication: appropr
  - Mood:
  - Affect: Serious

- Session Measurements: headache
  Pain = 4/10
  Depression = 3/10
  Anxiety = 3-4/10

- Session Summary:
  Pt indicate that she is reviewing and learning some coping skill in the program. She is practice at home on daily basis. We discussed other coping skill and the need to distract from the current condition accepting that she is making progress.

- Progress:
  Slow progress

- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: [signature] Date: 03-04-04

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000149

Louis F. Mortillaro, Ph.D.
Psychologist

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TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 03-08-04
CLAIM #ID: 001504-001083W001 DATE OF INJURY: 09-25-88 SESSION #: 18
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Assistive Aids: None
  - Demeanor: cooperative
  - Mood: Calm
  - Gait: WNL
  - Motor Activity: WNL
  - Communication: approp
  - Affect: Serious

- Session Measurements:
  Pain = 8/10 headache
  Depression 3/10
  Anxiety = 3/10

- Session Summary:
  Pt is taking Elavil - Norflex - Inderal some time Darvocet - occasional Donatal. She is managing her headache some what better but is seen very uncomfortable at some day like today.
  We discussed the Anxiety focus of control and use refocussing skill.

- Progress:
  Slow progress She is coping better with her symptoms. Physical Therapy also is helping with the digrimes.

- Recommendations:
  Continue counseling / biofeedback

Clinician Signature: M. Gamez, Ph.D. Date: 03-08-04

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000150

Louis F. Mortillaro, Ph.D.
Psychologist

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TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Pence SESSION DATE: 03-11-04
CLAIM #ID: 001504-001083W001 DATE OF INJURY: 09-25-88 SESSION #: 19
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: WNL
  - Gait: WNL
  - Assistive Aids: none
  - Motor Activity: WNL
  - Demeanor: cooperative
  - Communication: approp
  - Mood: Calm
  - Affect: Serious

- Session Measurements:
  Pain = 6-7/10
  Depression = 3/10
  Anxiety = 3/10

- Session Summary:
  Pt report that she like what she does in treatment but coming 2 times a week to the office makes her headache worse due to be exposure to transportation around noise and around people. Flourescent light exacerbate her headace.
  We discussed stress headache coping skill.

- Progress:
  Slow progress

- Recommendations:
  Continue counseling / biofeedback
  Cognitive distraction

Clinician Signature: [signature] Date: 03-11-04

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000151

Louis F. Mortillaro, Ph.D.
Psychologist

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TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 03-15-04
CLAIM #ID: 001504-0010834001 DATE OF INJURY: 09-25-88 SESSION #: 20
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

- Observations:
  - Posture: Upright
  - Assistive Aids: None
  - Demeanor: Cooperative
  - Mood: Calm
  - Gait: WNL
  - Motor Activity: WNL
  - Communication: approp
  - Affect: Serious

- Session Measurements:
  Pain = 6/10
  Depression = 3/10
  Anxiety = 3/10

- Session Summary:
  Pt is accepting that she is doing better. She is learning that she can do something but unable to do others. She has a better understanding of her medical condition and Mind Body relationship. We discussed Imagery & Visualization. Light is off during session.

- Progress:
  Slow progress. She is demonstrating motivation for improvement.

- Recommendations:
  Continue counseling / biofeedback. Home practice.

Clinician Signature: M. Gamazo, Ph.D. Date: 03-15-04

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000152

Louis F. Mortillaro, Ph.D. — *Rehabilitation & Health Psychology*
Psychologist — *Neuropsychology * Family Psychology*

TREATMENT SESSION SUMMARY

CLIENT NAME: Susan Reeves SESSION DATE: 03-18-04
CLAIM #ID: 001504-001083W001 DATE OF INJURY: 09-25-88 SESSION #: 21
PROCEDURE CODE: 90806 SERVICE DESCRIPTION: Ind

Discharge

- Observations:
  - Posture: Upright
  - Gait: WNL
  - Assistive Aids: None
  - Motor Activity: WNL
  - Demeanor: cooperative
  - Communication: approp
  - Mood: Calm
  - Affect: Serious

- Session Measurements:
  Pain = 5-6/10
  Anxiety = 3/10
  Depression = 3/10

- Session Summary:
  Pt report some benefit from counseling & biofeedback. Continue with tiggrines less tan before but continue.
  She is overly tired - ear singing. Headache light sensitive; (session with light off).
  She is coping better but she perceive no capable to RTW in any capacity.
  I reinforce her progress and congratulate her for her effor.

- Progress: Relapse prevention was discussed.
  Average progress. She continue taking her medications as prescribed.

- Recommendations:
  Patient complete program treatment satisfaction
  Prognosis to RTW is guarded.

Clinician Signature: M. Gamazo, Ph.D. Date: 03-18-04

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000153

Home # 45 - 3

ORKIN'S
LISTIC
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ARE
ENTER

Jacqueline Joy Borkin, D.C.

JAN 3 12 48 PM '91

January 3, 1990

DIABILITY EVALUATION

PATIENT: REEVES, SUSAN
DATE OF INJURY: 9-25-88
DATE OF EXAM: 12-26-90

The above named patient presented herself to this office for examination and for an opinion as to when she could return to work. She stated that she had been in a motor vehicle accident on 9-25-88. She is being seen by a physical therapist and is suffering from dizzy spells and when she walks she cannot effect a straight line. She was able to work successfully and uneventfully for nine months without mishap. Suddenly she was told she was hazardous and was "walked off the job".

Patient is a 39 year old female. Blood pressure 130/80 right and left arms. Weight is 193 pounds and height is 5'5". Patient states she occasionally has headaches.

Ortho-neuro exams performed basically reinforced Dr. Kudrewicz' findings. Based on the diability evaluation by Dr. Richard Kudrewicz and my own examination of this patient, I feel that she can return to work to the duties she was performing until the day she was "walked off the job".

Respectfully submitted,

Dr. Jacqueline Joy Borkin

Jacqueline Joy Borkin, D.C.

JJB/rb

cc: James Stuart, Attorney

not acceptable per Mark Solomon

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000154

PHYSICAL THERAPY PROGRESS REPORT

COMMUNITY HOSPITAL OF NORTH LAS VEGAS

Outpatient Physical Therapy Department

649-7711 Ext. 207 • 642-0441

PATIENT REEVES, Susan NO. _____ DIAGNOSIS _____

DATE August 29, 1989 NO. OF Rx TO DATE _____

Management: Ultrasound
Myofascial Release Technique
Massage / Stretching
Moist heat

S ~ Pt. reports ↓ pain
O ~ NO SIGNIFICANT muscle spasm noted
~ mild tenderness on (R) upper trapezius area
~ still c/o dizziness + loss of balance
~ all major joints are within normal limits. (passively + actively moved)

P ~ May continue PT. For re-evaluation

REFERRING PHYSICIAN _____ THERAPIST Nadine I. Viray R.P.T

FORM PE004

659

000155

AMICK PHYSICAL THERAPY
& ASSOCIATES INC.

November 7, 1990

Peter Mattimoe, M.D.
4190 S. Jones
Las Vegas, NV. 89103

RE: SUSAN REEVES

Dr. Mattimoe:

Susan has received regular and consistant treatment to the back and neck area, consisting of moist heat, electrical stimulation, ultrasound, massage, mobilization, and progressive-resistive exercises. Presently she reports symptoms are generally improved with episodes of increased symptoms. Her functional activities have increased. Her chief complaint is constant left ear tinnitus which began approximately ten days ago. Her complaints of dizziness and light sensitivity exacerbate two or three times weekly, but has improved since therapy.

Objective findings reveal moderate improvement in active and passive cervical, thoracic and lumbar range of motion, strength, and function. Her left shoulder has significantly improved with range of motion and strength. Susan's blood pressure today was recorded at 140/90.

Recommend Susan continue with treatment as above with emphasis in progressive resistive exercises.

Please advise if you wish treatment to continue.

Sincerely:

Gary Amick

SIGNED BUT NOT EDITED

Gary Amick, P.T.
Licensed Physical Therapist

GCA/sc

Greystone Bldg. II 2030 East Flamingo Suite 285 Las Vegas, Nevada 89119 1-(702) 733-1842

660

00150

AMICK PHYSICAL THERAPY
& ASSOCIATES INC.

January 2, 1991

Peter Mattimoe, M.D.
4190 S. Jones
Las Vegas, NV. 89103

RE: SUSAN REEVES

Dr. Mattimoe:

Susan has received thirteen (13) treatments since the progress letter on November 7, 1990 consisting of moist heat, electrical stimulation, massage, mobilization, and progressive resistive exercises. Presently she reports symptoms are slowly improving with the exception of dizziness and light sensitivity. She also reported daily episodes of falls and "bouncing off the walls." Her equilibrium is of major concern as is her desire to return to work. Susan has taken steps to seek a release to full duty from another source. She has received counsel on our concern due to the above complaints.

Objective findings include improved spinal motion and segmented mobility. She still requires dark glasses and demonstrates poor balance during gait. Exercise program includes balance and cervical exercise. General strength in the left upper extremity is still impaired.

Please advise if you wish treatment to continue.

Sincerely:

Gary Amick

SIGNED BUT NOT EDITED

Gary Amick, P.T.
Licensed Physical Therapist

GCA/sc

Greystone Bldg. II 2030 East Flamingo Suite 285 Las Vegas, Nevada 89119 1-(702) 733-1842

6161

00157

AMICK PHYSICAL THERAPY
& ASSOCIATES INC.

Greystone Bldg. II 2030 East Flamingo Suite 285 Las Vegas, Nevada 89119 1-(702) 739-1842 FAX 1-(702) 733-7443

January 13, 1992

Peter Mattimoe, M.D.
4190 S. Jones
Las Vegas, NV. 89103

RE: SUSAN REEVES

Dear Dr. Mattimoe:

Thank you for your referral of this forty (40) year old female for physical therapy. She is well known to this clinic as she has received physical therapy treatment on and off for several years. She was last seen on January 2, 1991 and has not continued because of "financial reasons". She presently complains of constant low grade headaches with episodes of severe headaches in the occipital area, dizziness aggravated by light (she uses dark glasses most of the time and prefers dim light), left upper extremity numbness into the hand, and shoulder joint pain. She also indicated an MRI to the lumbar area is pending. Home treatment includes muscle stimulation, TENS, massage and cryotherapy pack. Apparently she was vomiting due to aspirin. Current medications include Donnatal and Darvocet. She denies previous or related surgery or other health problems and feels the symptoms are unchanged.

INSPECTION: Patient is an alert, cooperative female who appears in minimal discomfort. Standing and sitting posture are fair. Palpation reveals mild tenderness in the upper thoracic and posterior cervical area. Gait analysis reveals slight to moderate balance problem also present during standing.

FUNCTION: Approximately 1 Grade weakness present in left shoulder girdle. Active cervical movement is within normal limits with end-range pain in sidebending right, sidebending left and rotation right. Active left shoulder motion reveals approximately 25 percent restriction with shoulder flexion and abduction.

SPECIAL TEST: Joint mobility tests revealed restriction in cervical C2-3 with sidebending right, also cervicothoracic junction.

NEUROLOGICAL: Sensation and DTR tests were equal, brisk and symmetrical. Positive nastigmus.

IMPRESSION: Patient appears to have post concussion syndrome.

PLAN: Moist heat, electrical stimulation, massage, mobilization and progressive resistive exercise.

FREQUENCY: Three times per week as needed.

DURATION: Three to four weeks.

6162

000158

SHORT TERM GOALS: Decrease pain and headaches.

LONG TERM GOAL: Achieve optimal functional level.

Thank you for the opportunity to assist with Susan's rehabilitation.

Sincerely:

Gary Amick

SIGNED BUT NOT EDITED

Gary Amick, P.T.
Licensed Physical Therapist

GCA/ks

663-

000159

AMICK PHYSICAL THERAPY
& ASSOCIATES INC.

April 1, 1992

Peter Mattimoe, M.D.
4190 S. Jones
Las Vegas, NV. 89103

RE: SUSAN REEVES

Dear Dr. Mattimoe:

Thank you for your referral of this forty (40) year old female for physical therapy. She reports since the last treatment on February 24, 1992, she has increased use of the left upper extremity with greater strength and function with decreased pain, decreased headaches and decreased dizziness. Light sensitivity is also improved. Presently she complains of headaches in the same location with decreased intensity. She stopped her previous treatment due to transportation. Susan described falling from dizziness, "I blanked out." She apparently hit her nose with persistent soreness and difficulty breathing. She denies radiating symptoms or other health problems and feels the symptoms are improved.

INSPECTION: Patient is an alert, cooperative female who appears in minimal discomfort. Palpation reveals mild tenderness in the posterior cervical and cervicothoracic areas. Mild spasm noted in upper thoracic and cervicothoracic areas. Fair balance.

FUNCTION: Approximately 1 Grade weakness present in the left shoulder girdle. Active cervical movement reveals approximately 20 percent restriction in sidebending right, sidebending left, rotation right and rotation left without end-range pain. Active left shoulder motion reveals approximately 30 degrees deficit in flexion and abduction.

SPECIAL TEST: Joint mobility tests were deferred.

NEUROLOGICAL: Sensation and DTR tests were equal and symmetrical.

IMPRESSION: Patient has a chronic soft tissue involvement with mechanical faults in cervical and thoracic segments and post concussion syndrome.

PLAN: Moist heat, electrical stimulation, mobilization and progressive resistive exercise as tolerated.

FREQUENCY: Two to three times per week.

DURATION: Three to four weeks.

664

000160

Greystone Bldg. II 2030 East Flamingo Suite 285 Las Vegas, Nevada 89119 1-(702) 733-1842 FAX 1-(702) 733-7443

SHORT TERM GOALS: Increase range of motion and decrease pain.

LONG TERM GOAL: Achieve optimal functional level.

Thank you for the opportunity to assist with Susan's rehabilitation.

Sincerely:

Gary Amick

SIGNED BUT NOT EDITED

Gary Amick, P.T.
Licensed Physical Therapist

GCA/ks

665

000161

NovaCare
Outpatient Rehabilitation

PHYSICAL THERAPY
INITIAL EVALUATION/PLAN OF CARE

Doctor: Petroff, George
Date: 2/5/1999

Patient: Reeves,Susan
DOB: 10/6/1951
SS # [redacted]

Diagnosis: Vertigo, dizziness(780.4)
Occupation: Disabled
DOI/Onset: 9/1/1987
Date(s) of Surgery:

SUBJECTIVE EVALUATION:

Primary complaints: Patient presents to Physical Therapy for evaluation and treatment of vestibulopathy. She reports onset of symptoms 10 years ago and relates them to motor vehicle accident where she sustained a flexion-extension injury to the cervical spine. She had treatment after the accident, but did not have any relief of dizziness or headache symptoms. Her current complaints include 1. Constant dizziness that ranges from 3-8/10, worse with head and eye movements, 2. Imbalance in standing and with walking, with multiple falls noted, 3. Constant headache that varies in intensity affects activity level, as she is intolerant to light, 4. Vertigo that is intermittent, occurring 2 times per month, and 5. Generally decreased functional ability with driving, working, and performance of daily activities outside her home. She also has complaints of tinnitus and some hearing loss.

Level of Function at Start of Care:
ADL restrictions: Limited daily activity, family members assist with home care, limited walking, unable to drive.

Work restrictions: currently on disability

Sport restrictions: none

Social status: Married

Patient's medical history/comorbidities: Allergies, Headaches, Hypoglycemia, Heart Disease, Smoking

Medications: Propanolol, Imitrex, Propoxyphene, Midrin, Belladonna, Ranidine, Phenerbel, Hydroxyz, Pamelor

Diagnostics: Multiple tests, patient has copies of reports.

OBJECTIVE EVALUATION:
Age: 48
Height: 5'5"
Weight: 180

Reports current dizziness at 5/10. Least 3/10, Worst 8/10 (0=no dizziness)

Inspection - Poor sitting posture, elevated shoulders, forward head. Sits back into chair to improve stability, when sitting towards edge of chair she holds onto arms or seat for stability. In standing she has a 10" wide base of support with externally rotated feet. She holds on to walls to improve her balance.

Eye-Head Coordination - increased dizziness with slow and fast horizontal tracking. Dizziness increases with vertical and horizontal head movements and gaze fixed on stationary target (30 sec. horiz, 15 sec. vert.), with 5 second return to baseline. (test performed sitting).

Palpation - Tight suboccipitals, levator scapulae, trapezius (left greater than right).

Gait - demonstrates decreased velocity, wide base of support. Unable to tandem walk. Can walk on heels, unable on toes.

Special Tests - manual traction feels good, no change in headache. Vertebral artery not tested. Limited upper cervical mobility with O-A flexion and C1-2 rotation.

Postural Control-Active Sway Anterior	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Hip Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Hip Strategy
Postural Control-Induced Lateral Displacement	Fall	Hip Strategy
Gait-Normal	No antalgia	
Gait-Tandem	Unable	
Gait-March in Place	No Antalgia	
Gait-Horizontal Head Movement	Not Tested	
Gait-Vertical Head Movement	Not Tested	
Right Leg Balance-Eyes Open	5	15
Right Leg Balance-Eyes Closed	Unable	5
Left Leg Balance-Eyes Open	3	15
Left Leg Balance-Eyes Closed	Unable	5
SOT-Firm Stand-Eyes Closed (10 seconds)	Step Strategy	
SOT-Firm Stand-Eyes Open (2 seconds)	Step Strategy	
SOT-Firm Stand-Visual Dome	Not Tested	
SOT-Foam Stand-Eyes Open (5 seconds)	Fall Posterior	
SOT-Foam Stand-Eyes Closed	Fall Posterior	
SOT-Foam Stand-Visual Dome	Not Tested	
Special Test-Hallpike Dix, Head Left	Negative	
Special Test-Hallpike Dix, Head Right	Negative	
Special Test-Left Sidelying	Dizziness	Negative
Special Test-Right Sidelying	Negative	
Special Test-Sitting	Dizziness	
Special Test-Supine Lying	(-) Dizziness	
Neuro - Cutaneous Sensation	Intact	
Neuro - Position Sense	Intact	
Cervical AROM Flexion	45	
Cervical AROM Extension	45	60
Cervical AROM Lateral Flexion Right	25	30
Cervical AROM Lateral Flexion Left	25	30
Cervical AROM Rotation Right	65	65
Cervical AROM Rotation Left	40	60
DTRs are equal and active in the upper extremities	Yes	
MMT Hand Grip Dynamometry Position 2	L=25 R=65	
MMT Tricep	4/5	
MMT Wrist flexion	4/5	
MMT Wrist extension	4/5	
MMT Finger adduction	4/5	

Functional Goals:

1. Decrease dizziness to allow functional activities
2. Improve Ambulatory Status with decrease in loss of balance.
3. Demonstrate good posture
4. Improve balance in standing, and with movements.
5. Improve AROM of cervical spine without dizziness.
6. Independence in home exercise program

ASSESSMENT: Patient's findings are consistent with Vertigo, dizziness (780.4). A 48-year-old patient presents to physical therapy with chronic vestibulopathy. Currently the patient demonstrates: 1. Constant dizziness that is made worse with head movement, eye movement, or position changes, 2. Imbalance in standing, wide base of support, holds on for stability, exaggerated protective responses with loss of balance posterior which usually leads to fall back onto sitting surface, 3. Decreased cervical ROM into extension secondary to dizziness, 4. Decreased left upper extremity strength, 5. Constant headache, 6. Tight cervical and suboccipital musculature, 7. Decreased overall activity level, and 8. Not performing any type of home exercise program.

PLAN OF CARE: Treatment plan will consist of vestibular habituation exercises, visual tracking exercises, sitting and standing balance exercises, modalities to improve cervical soft tissue mobility and decrease muscular tightness, cervical manual traction and stretching, and I will develop a home program for this patient.

Frequency/Duration: 3x per week for 4 weeks

Thank you for this referral. If you have any questions or suggestions please feel free to call 360-9164.

Sincerely,

Jeff L. Dietrich PT #0911

Novacare Outpatient Rehabilitation
Daily Note

DATE:	2/10/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Notes that she gets very dizzy when performing head-eye exercises. Was fatigued after last visit. Notes that the traction helped with her headaches temporarily. She has had increased dizziness since yesterday.

Objective
See Flow Chart for treatment administered to this patient today.

Added standing balance exercise of diagonal rocking.

With cervical traction and Gr. II P-A at C2 she had decrease in headache intensity, instructed in use of towel traction.

Assessment
improved static balance in standing, better postural control. Dizziness increased with exercises, though balance is more stable.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L. Dietrich, PT #0911

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	2/17/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
notices improved balance in standing and with walking. Did have a loss of balance and jammed right hand and fingers. Felt less dizziness over the weekend. Has not had to take migraine pills in the past week.

Objective
See Flow Chart for treatment administered to this patient today.

With manual cervical traction and Gr. II P-A at C2 she had decrease in headache intensity. Manual cervical stretching.

Added rocker board for A-P and lateral balancing.

Assessment
Patient is progressing toward goals appropriately, will continue with current treatment plan per patient tolerance.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L Dietrich, PT #0911

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Visit Date:	2/22/1999
Name:	Susan L. Reeves
Number:	SP
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	7
Initial Visit Date:	2/5/1999

FEB 23 1999

Problems:
Dizziness

Referral:
Petroff, George

Diagnosis:
Vertigo, dizziness (780.4)

Insurance:
Zenith Administrators Teamsters Medicare

Date of Onset: 9/1/1987

Subjective Report
Patient notes continued improvement in dizziness and balance in standing. Headache intensity has decreased, but she continues to have a constant headache. She has increased her activity level and endurance with daily activities.

Observation
Inspection - less guarded when in the sitting position near edge of table or chair. In standing her base of support is now 6" (initially 10").

Eye-Head Coordination - Dizziness with all motions. Dizziness with longer onset with smooth pursuit than on initial evaluation.

Palpation - tight suboccipitals and left levator scapulae and trapezius.

Gait - wide base of support. Progressed to 5 steps of tandem walking. Unable to walk on her toes.

Please refer to the following objective findings which were recorded secondary to the patient's complaints.

Objective Findings

Objective Finding	Initial	Last Measurement	Goal
Postural Control-Active Sway Anterior	Ankle Strategy	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Step Strategy	Hip Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Fall	Hip Strategy
Postural Control-Induced Lateral Displacement	Fall	Hip Strategy	Hip Strategy

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Patient: [redacted] Page 1 of 3

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Gait-Normal	No antalgia	No Antalgia	
Gait-Tandem	Unable		
Gait-March in Place	No Antalgia	No Antalgia	
Gait-Horizontal Head Movement	Not Tested	Not Tested	
Gait-Vertical Head Movement	Not Tested	Not Tested	
Right Leg Balance-Eyes Open	5	15	15
Right Leg Balance-Eyes Closed	Unable	4	5
Left Leg Balance-Eyes Open	3	12	15
Left Leg Balance-Eyes Closed	Unable	3	5
SOT-Firm Stand-Eyes Open (30 seconds)	Step Strategy	A-P Sway,	
SOT-Firm Stand-Eyes Closed (30 seconds)	Step Strategy	A-P Sway	
SOT-Firm Stand-Visual Dome	Not Tested		
SOT-Foam Stand-Eyes Open (30 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Eyes Closed (30 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Visual Dome	Not Tested		
Special Test-Hallpike Dix, Head Left	Negative		
Special Test-Hallpike Dix, Head Right	Negative		
Special Test-Left Sidelying	Dizziness		Negative
Special Test-Right Sidelying	Negative		
Special Test-Sitting	Dizziness		
Special Test-Supine Lying	(-) Dizziness	(-) Dizziness	
Neuro - Cutaneous Sensation	Intact	Intact	
Neuro - Position Sense	Intact	Intact	
Cervical AROM Flexion	45	45	
Cervical AROM Extension	45	50	60
Cervical AROM Lateral Flexion Right	25	25	30
Cervical AROM Lateral Flexion Left	25	35	30
Cervical AROM Rotation Right	65	68	65
Cervical AROM Rotation Left	40	55	60
DTRs are equal and active in the upper extremities	Yes	Yes	
MMT Hand Grip Dynamometry Position 2	L=25 R=65		
MMT Tricep	4/5	4/5	
MMT Wrist flexion	4/5	4/5	
MMT Wrist extension	4/5	4/5	
MMT Finger adduction	4/5	4/5	

DATE RECEIVED
FEB 23 1999
DUNN NEUROLOGIC

Assessment

This is a 48-year-old female that has been seen for 7 physical therapy treatments over the past 3 weeks. Her treatment program has been working on balance retraining, vestibular habituation exercises, aerobic conditioning, and cervical stretching. She demonstrates a decrease in dizziness, improved single and double limb balance with eyes open and closed, decreased intensity of headaches, and is progressing with cardiovascular exercise program. She is progressing with a daily home exercise program. Dizziness is present with rapid head or eye movements, and she loses balance posteriorly when manually displaced.

Short Term Goals

Decrease dizziness to allow functional activities

Improve Ambulatory Status
Demonstrate good posture

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Long Term Goals

Improve balance

Improve AROM

Independence in home exercise program

Plan

Continue with prescribed treatment and progress as tolerated. Progress balance and vestibular program as tolerated.

Thank you for your referral. We will keep you abreast of this patient's status.

Regards,

Jeff L Dietrich PT #0911

DATE RECEIVED

FEB 23 1999

DUNN NEUROLOGIC

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	3/3/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Had increased dizziness and lost her balance into the closet when she was working on a low shelf yesterday. Dizziness is not too band right now, headache is minimal.

Objective
See Flow Chart for treatment administered to this patient today.

Manual traction for c/s with decreased dizziness and headach after. c/s joint mobilization - C2 P-A, cervical sideglides, downglides.

dynamic balance activity of manual preturbations with emphasis on using a step strategy posterior in an effort to avoid falling backwards.

Assessment
improved hip and ankle strategies for balance, except posterior where she can fall if she does not catch herself or have a chair behind her.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L. Dietrich, PT #0914

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Patient: Reeves, Susan L. for 3/3/1999 Visit

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	3/5/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Had increased imbalance start two nights ago, and has felt more off balance since. No vertigo, just very off balance when walking and standing, hard for her to get a center point or focus to increase sense of stability.

Objective
See Flow Chart for treatment administered to this patient today.

Manual traction for c/s with decreased dizziness and headach after. c/s joint mobilization - C2 P-A, cervical sideglides, downglides.

Treatment time limited today secondary to her transportation dropping her off late and picking her up early.

Assessment
decreased balance today, but able to perform most of her exercises before having to leave. Headeche symptoms are unchanged today. She is more at risk for falls today secondary to her imbalance.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L Dietrich, PT #0911

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	3/12/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Had another dizzy/off balance day yesterday, but today feels better. Today she feels better, with decreased tinnitus and headache.

Objective
See Flow Chart for treatment administered to this patient today.

Manual traction for c/s with decreased dizziness and headach after. c/s joint mobilization - C2 P-A, cervical sideglides, downglides. Manual cervical stretching for all motions.

Standing balance - manual preturbations on foam, on firm ground.

Assessment
Patient is progressing toward goals appropriately, will continue with current treatment plan per patient tolerance. Patient demonstrates improvement in the following: balance, endurance with exercises, decrease in frequency and intensity of headaches.

Plan
Continue with prescribed treatment and progress as tolerated.

PT
Jeff L. Dietrich, PT #0971

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	3/19/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Had a bad headache day yesterday, but today down to her normal low-grade headache. Dizziness continues to be constant, but doing better maintaining her balance throughout the day. Frequency of loss of balance with bending forward is decreased, but still occurs if she moves too quickly or is trying to do multiple things at once.

Objective
See Flow Chart for treatment administered to this patient today.

Manual traction for c/s with decreased dizziness and headach after. c/s joint mobilization - C2 P-A, cervical sideglides, downglides. Manual cervical stretching for all motions.

Standing balance - manual preturbations on foam, on firm ground. visual dome.

Assessment
Able to perform more activities with better control of balance and dizziness. Frequency of bad headaches continues to be decreased, intensity of her daily headaches is decreased, but they are still present.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeffrey Dietrich, PT #091[illegible]

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NovaCare Rehabilitation

Progress Evaluation

Visit Date:	3/22/1999
Name:	Susan L. Reeves
Number:	SP
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	19
Initial Visit Date:	2/5/1999

Problems:
Dizziness

Referral:
Petroff, George

Diagnosis:
Vertigo, dizziness(780.4)

Insurance:
Zenith Administrators Teamsters Medicare

Date of Onset: 9/1/1987

Subjective Report

Patient reports that her baseline dizziness continues to be 3/10. With head movement in the horizontal plane and with exercises the symptoms increase to 6-7. Headache symptoms are constant 3/10, with increase with activities. She has had one 10/10 headache since starting therapy, and has decreased her use of Midrin and Imitrex. She has been increasing her dose of Palomar since last seeing her neurologist. She feels that her balance is improving, though she continues to have intermittent falls. Tinnitus is decreased in bilateral ears.

Observation

Inspection - continues to have 6" between medial malleoli in standing. She is guarded with standing on unstable surfaces, but able to sit without being guarded.

Eye - Head Coordination - Horizontal head movements provoke symptoms after 3 movements to each side. Vertical head movements provoke symptoms after 12 movements.

Palpation- Improving soft tissue mobility of the cervical and scapular musculature.

Gait - Wide base. No deviation to right or left. She is able to slowly tandem walk 10 steps.

Please refer to the following objective findings which were recorded secondary to the patient's complaints.

Objective Findings

Objective findings	Initial	Assessment/Goal	Goal
Postural Control-Active Sway Anterior	Ankle Strategy	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Hip Strategy	Hip

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Patient:

DC

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			Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Step Strategy	Hip Strategy
Postural Control-Induced Lateral Displacement	Fall	Hip Strategy	Hip Strategy
Gait-Normal	No Antalgia	No Antalgia	
Gait-Tandem	Unable	10 feet	
Gait-March in Place	No Antalgia	No Antalgia	
Gait-Horizontal Head Movement	Not Tested	Not Tested	
Gait-Vertical Head Movement	Not Tested	Not Tested	
Right Leg Balance-Eyes Open	5	30	15
Right Leg Balance-Eyes Closed	Unable	5	5
Left Leg Balance-Eyes Open	3	20	15
Left Leg Balance-Eyes Closed	Unable	3	5
SOT-Firm Stand-Eyes Open (60 seconds)	Step Strategy	A-P Sway,	
SOT-Firm Stand-Eyes Closed (60 seconds)	Step Strategy	A-P Swing,	
SOT-Firm Stand-Visual Dome (60 Seconds)	Not Tested	A-P Sway,	
SOT-Foam Stand-Eyes Open (60 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Eyes Closed (60 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Visual Dome (60 Seconds)	Not Tested	A-P Sway,	
Special Test-Hallpike Dix, Head Left	Negative		
Special Test-Hallpike Dix, Head Right	Negative		
Special Test-Left Sidelying	Dizziness		Negative
Special Test-Right Sidelying	Negative		
Special Test-Sitting	Dizziness		
Special Test-Supine Lying	(-) Dizziness	(-) Dizziness	
Neuro - Cutaneous Sensation	Intact	Intact	
Neuro - Position Sense	Intact	Intact	
Cervical AROM Flexion	45	45	
Cervical AROM Extension	45	50	60
Cervical AROM Lateral Flexion Right	25	26	30
Cervical AROM Lateral Flexion Left	25	35	30
Cervical AROM Rotation Right	65	68	65
Cervical AROM Rotation Left	40	55	60
DTRs are equal and active in the upper extremities	Yes	Yes	
MMT Hand Grip Dynamometry Position 2	L=25 R=65	L=32	
MMT Tricep	4/5	4/5	
MMT Wrist flexion	4/5	4/5	
MMT Wrist extension	4/5	4/5	
MMT Finger adduction	4/5	4/5	

Assessment

This is a 48 year old female that has been seen for 19 physical therapy visits over the past seven weeks. She has progressed with her balance and postural stability with standing and walking activities, single leg balance, and general cardiovascular status with her exercise program. She continues to have intermittent falls or loss of balance that she has an improved ability to control.

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Dizziness and headaches continue to be constant on a daily basis (3/10 to 10/10 depending on activity). Head movement in the horizontal plane is the most provacative activity for increasing dizziness. Headaches have been controlled with medication, mobilization, and stretching. Patient is progressing toward goals appropriately, will continue with current treatment plan per patient tolerance. She is performing home exercises for improving her balance, as well as vestibular habituation exercises.

Short Term Goals

Decrease dizziness to allow functional activities
Improve Ambulatory Status
Demonstrate good posture

Long Term Goals

Improve balance
Improve AROM
Independence in home exercise program

Plan

Continue with prescribed treatment and progress as tolerated.

Thank you for your referral. We will keep you abreast of this patient's status.

Regards,

Jeff L Dietrich PT #0911

L80

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	4/9/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Has seen MD and he wants her to continue therapy. He didn't adjust her Pamelor, but told her that this medication would help with the ringing in her ears. No changes in her symptoms since last visit.

Objective
See Flow Chart for treatment administered to this patient today.

Standing - stool exercise with 5-point toe tap on 9" step, alternating legs.

Manual techniques - cervical manual traction, left trapezius soft tissue mobilization, joint mob.

Exercise Modality Description	4/9/1999	4/7/1999	4/5/1999	4/2/1999	3/31/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5	5	5	5	5
Traction manual cervical	10	10	10	10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Activities - manual preturbations	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- .Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Foam stand - visual conflict dome	2	2	2	2	2
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Visual Conflict Dome	3	3	3	3	3
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	1/5/0	1/5/0	1/5/0	1/5/0	
Aerobic - minitramp - plyoback	5	5	5	5	
Functional Activities - braiding and turning to right and left	10	10	10		

Assessment
Patient demonstrates improvement in the following: balance, coordination with kariokas, stability on foam and rockerboard. Dizziness and imbalance are still provoked with sudden movements, people or objects moving towards her head does make her off balance.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L. Dietrich, PT #0911

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	4/23/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Since she is feeling better (decreased headaches and dizziness), she is moving faster, but she fell yesterday and hit her right shin and left hip.

Objective
See Flow Chart for treatment administered to this patient today.

Standing - stool exercise with 5-point toe tap on 9" step, alternating legs.

Manual techniques - cervical manual traction, left trapezius and suboccipital soft tissue mobilization.

Prone C2 P-A gr IV with significant headache decrease and relief of headaches and elimination of nausea.

Exercise Modality Description	4/23/1999	4/21/1999	4/19/1999	4/16/1999	4/14/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5	5	5	5	5
Traction manual cervical	10	10	10	10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Activities - manual preturbations	3/10/0		3/10/0	3/10/0	3/10/0
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Foam stand - visual conflict dome	2	2	2	2	2
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Visual Conflict Dome	3	3	3	3	3
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	1/5/0	1/5/0	1/5/0	1/5/0	1/5/0
Aerobic - minitramp - plyoback	5	5	5	5	5
Functional Activities - braiding and turning to right and left	10	10	10	10	10

Assessment
Needs to slow down and be more careful when walking.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L. Dietrich, PT #0911

682

Visit Date:	5/7/1999
Name:	Susan L. Reeves
Number:	SP
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	37
Initial Visit Date:	2/5/1999

Problems:
Dizziness

Referral:
Petroff, George

Diagnosis:
Vertigo, dizziness(780.4)

Insurance:
Zenith Administrators Teamsters Medicare

Date of Onset: 9/1/1987

Subjective Report
Patient notes improvement in static and dynamic balance activities, though she continues to have falls if she tries to move too quickly. Baseline dizziness is 3-5/10 and increases to 6-7 with head movements. Headaches are staying around 3/10, and increase with stress.

Observation

Inspection - poor sitting posture, protracted and elevated shoulders. In standing she has good static balance with 5" between malleoli.

Joint Mobility - upper cervical mobility continues to be limited with A-A rotation, and O-A flexion. NOTE - when P-A mobilization performed on C2 spinous process her symptoms of dizziness are greatly relieved, headaches also diminish.

Eye - Head - Horizontal movements continue to provoke dizziness with head/eye and with just eye movements. When performed with P-A mobilization on C2 she has improved ability to move head and eyes without dizziness or imbalance.

Objective Findings

Objective Findings	Initial Assessment	4-5 Re-assessment	Goal
Postural Control-Active Sway Anterior	Ankle Strategy	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Step Strategy	Hip Strategy
Postural Control-Induced Lateral Displacement	Fall	Hip Strategy	Hip Strategy
Gait-Normal	No antalgia	No Antalgia	

Patient:

683

WC

000179

Gait-Tandem	Unable	10 feet	
Gait-March in Place	No Antalgia	No Antalgia	
Gait-Horizontal Head Movement	Not Tested	Not Tested	
Gait-Vertical Head Movement	Not Tested	Not Tested	
Right Leg Balance-Eyes Open	5	25	15
Right Leg Balance-Eyes Closed	Unable	5	5
Left Leg Balance-Eyes Open	3	20	15
Left Leg Balance-Eyes Closed	Unable	5	5
SOT-Firm Stand-Eyes Open (60 seconds)	Step Strategy	A-P Sway,	
SOT-Firm Stand-Eyes Closed (60 seconds)	Step Strategy	A-P Swing,	
SOT-Firm Stand-Visual Dome (60 Seconds)	Not Tested	A-P Sway,	
SOT-Foam Stand-Eyes Open (60 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Eyes Closed (60 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Visual Dome (60 Seconds)	Not Tested	A-P Sway,	
Special Test-Hallpike Dix, Head Left	Negative		
Special Test-Hallpike Dix, Head Right	Negative		
Special Test-Left Sidelying	Dizziness	Negative	Negative
Special Test-Right Sidelying	Negative		
Special Test-Sitting	Dizziness		
Special Test-Supine Lying	(-) Dizziness	(-) Dizziness	
Neuro - Cutaneous Sensation	Intact	Intact	
Neuro - Position Sense	Intact	Intact	
Cervical AROM Flexion	45	45	
Cervical AROM Extension	45	55	60
Cervical AROM Lateral Flexion Right	25	33	30
Cervical AROM Lateral Flexion Left	25	35	30
Cervical AROM Rotation Right	65	68	65
Cervical AROM Rotation Left	40	65	60
DTRs are equal and active in the upper extremities	Yes	Yes	
MMT Hand Grip Dynamometry Position 2	L=25 R=65	L=40	
MMT Tricep	4/5	4/5	
MMT Wrist flexion	4/5	4/5	
MMT Wrist extension	4/5	4/5	
MMT Finger adduction	4/5	4/5	

Assessment

Susan is a 48 year old female that has been seen for 37 physical therapy visits over the past 3 months. She demonstrates improved balance and postural control, decreased dizziness, better control of her headaches, and improved cervical rotation. Treatment to the upper cervical spine alleviates dizziness and headaches. This area is hypomobile with joint and soft tissue tightness, possibly from gurarding due to her flexion-extension injury 10 years ago. She is working hard with her home program for balance and dizziness, general endurance.

Short Term Goals

Decrease dizziness to allow functional activities
Improve Ambulatory Status
Demonstrate good posture

Long Term Goals

Improve balance
Improve AROM
Independence in home exercise program

684

00018

Plan

Patient will be out of town for the next month. She will continue with a home program until she returns, at which point we will re-evaluate and treat accordingly.

Thank you for your referral. We will keep you abreast of this patient's status.

Regards,

Jeff L Dietrich PT #0911

685

000181

Progress Evaluation

Visit Date:	6/2/1999
Name:	Susan L. Reeves
Number:	SP
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	38
Initial Visit Date:	2/5/1999

Problems:
Dizziness

Referral:
Petroff, George

Diagnosis:
Vertigo, dizziness(780.4)

Insurance:
Zenith Administrators Teamsters Medicare

Date of Onset: 9/1/1987

Subjective Report
Susan has been out of town for the past month. She reports that dizziness was worse when they were driving on winding roads or with switchbacks and lasted for 4-5 days afterwards. Headaches have been better, but still present. She attributes this to the decrease stress since she was on vacation. She does report that she did her balance exercises on a regular basis. She also notes that her balance was and still is better since she left a month ago.

Observation

Patient rates her dizziness at 7/10 today.

Inspection - poor sitting posture, protracted and elevated shoulders. In standing she has good static balance with 5" between malleoli.

Joint Mobility - upper cervical mobility continues to be limited with A-A rotation, and O-A flexion.

Palpation - decreased muscular tightness in suboccipitals and cervical paraspinals.

Eye - Head - able to perform horizontal tracking for 30 seconds with minimal increase in her dizziness. Able to perform horizontal and vertical head movements for 30 seconds with minimal increase. Out of phase movements no dizziness, but difficult to coordinate.

Objective Findings

Objective Finding	Initial	Last Assessment	Goal
Postural Control-Active Sway Anterior	Ankle Strategy	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Lateral	Fall	Hip Strategy	Hip Strategy

Patient:

 686

000182

Displacement			
Gait-Normal	No antalgia	No Antalgia	
Gait-Tandem	Unable	15 feet	
Gait-March in Place	No Antalgia	No Antalgia	
Gait-Horizontal Head Movement	Not Tested	Not Tested	
Gait-Vertical Head Movement	Not Tested	Not Tested	
Right Leg Balance-Eyes Open	5	30	15
Right Leg Balance-Eyes Closed	Unable	7	5
Left Leg Balance-Eyes Open	3	30	15
Left Leg Balance-Eyes Closed	Unable	10	5
SOT-Firm Stand-Eyes Open (60 seconds)	Step Strategy	No Sway	
SOT-Firm Stand-Eyes Closed (60 seconds)	Step Strategy	A-P Sway	
SOT-Firm Stand-Visual Dome (60 Seconds)	Not Tested	A-P Sway	
SOT-Foam Stand-Eyes Open (60 seconds)	Fall Posterior	No Sway	
SOT-Foam Stand-Eyes Closed (60 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Visual Dome (60 Seconds)	Not Tested	A-P Sway,	
Special Test-Hallpike Dix, Head Left	Negative		
Special Test-Hallpike Dix, Head Right	Negative		
Special Test-Left Sidelying	Dizziness	Negative	Negative
Special Test-Right Sidelying	Negative		
Special Test-Sitting	Dizziness		
Special Test-Supine Lying	(-) Dizziness	(-) dizziness	
Neuro - Cutaneous Sensation	Intact	Intact	
Neuro - Position Sense	Intact	Intact	
Cervical AROM Flexion	45	45	
Cervical AROM Extension	45	55	60
Cervical AROM Lateral Flexion Right	25	32	30
Cervical AROM Lateral Flexion Left	25	35	30
Cervical AROM Rotation Right	65	68	65
Cervical AROM Rotation Left	40	65	60
DTRs are equal and active in the upper extremities	Yes	Yes	
MMT Hand Grip Dynamometry Position 2	L=25 R=65	L=45	
MMT Tricep	4/5	4/5	
MMT Wrist flexion	4/5	4/5	
MMT Wrist extension	4/5	4/5	
MMT Finger adduction	4/5	4/5	

Assessment

Susan is a 48 year old female that returns to physical therapy after being on vacation for the past month. Balance in standing and with dynamic activities continues to improve. Dizziness with head-eye exercises takes longer to provoke with exercises. Subjective complaints of dizziness continue to be present with rapid head movements or quick position changes. Neck muscle and joint tightness has decreased since she was in at her last visit. She continues to perform her home exercise program on a regular basis.

Short Term Goals

Decrease dizziness to allow functional activities
Improve Ambulatory Status
Demonstrate good posture

Long Term Goals

Improve balance
Improve AROM
Independence in home exercise program

687

000183

Plan

Continue with prescribed treatment and progress as tolerated.

Thank you for your referral. We will keep you abreast of this patient's status.

Regards,

Jeff L Dietrich PT #0911

L88

000184

Novacare Outpatient Rehabilitation
Daily Note

DATE:	6/7/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Bad headache today. Moved quickly and fell yesterday, the first fall in several weeks.

Objective
See Flow Chart for treatment administered to this patient today.

C/S stretching and upper cervical soft tissue mobilization with slight decrease in symptoms afterwards.

Exercise Modality Description	6/7/1999	6/4/1999	6/2/1999	5/7/1999	5/5/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5	5	5	5	5
Traction manual cervical	10	10	10	10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- .Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
Aerobic - minitramp - piyoback	5	5	5	5	5
Balance Activities - manual preturbations		3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand - visual conflict dome		2	1	2	2
Balance- Visual Conflict Dome		3	3	3	3
vestibular Brandt-Daroff exercises		1/5/0	1/5/0	1/5/0	1/5/0
Functional Activities - braiding and turning to right and left		10	10	10	10

Assessment
Decreased tolerance to treatment today due to headache and allergy to a scent in the clinic that aggravated her.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L. Dietrich, PT #0911

689

Novacare Outpatient Rehabilitation
Daily Note

DATE:	6/11/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Had a fall two nights ago, but notes it was dark and very late at night. Feels that she is really having to concentrate to keep from losing her balance when she moves quickly.

Objective
See Flow Chart for treatment administered to this patient today.

C2 PA mobilization

Exercise Modality Description	6/11/1999	6/7/1999	6/4/1999	6/2/1999	5/7/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sidegildes.	5	5	5	5	5
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Foam stand - visual conflict dome	2		2	1	2
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Visual Conflict Dome	3		3	3	3
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	1/5/0		1/5/0	1/5/0	1/5/0
Aerobic - minitramp - plyoback	5	5	5	5	5
Functional Activities - braiding and turning to right and left	10		10	10	10
Traction manual cervical		10	10	10	10
Balance Activities - manual preturbations			3/10/0	3/10/0	3/10/0

Assessment
Good performance of all exercises, no falls noted. Good protective responses with balance loss.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff Dietrich PT
Jeff L Dietrich, PT #0911

690

Novacare Outpatient Rehabilitation
Daily Note

DATE:	6/23/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Bad headache, neck pain, dizziness, and nausea today. Woke up very dizzy and the other symptoms followed. She notes that she recognizes when she is falling much faster now and is able to catch herself.

Objective
See Flow Chart for treatment administered to this patient today.

Manual Therapy - prone C2,3 P-A mobilization eliminated nausea until she resumed exercise, decreased HA, had no effect on dizziness. supine manual traction and cervical stretching the headaches were less, no change in dizziness.

Exercise Modality Description	6/23/1999	6/21/1999	6/11/1999	6/7/1999	6/4/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5		5	5	5
Traction manual cervical	10			10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Activities - manual preturbations	3/10/0				3/10/0
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	1/5/0	1/5/0	1/5/0		1/5/0
Aerobic - minitramp - plyoback	5	5	5	5	5
Functional Activities - braiding and turning to right and left	10	10	10		10
Balance- Foam stand - visual conflict dome			2		2
Balance- Visual Conflict Dome			3		3

Assessment
Good work with her exercises even on a day where all symptoms were increased. Better recognition of falls and is able to catch herself sooner.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L Dietrich PT
Jeff L Dietrich, PT #0911

691

000187

Novacare Outpatient Rehabilitation
Daily Note

DATE:	6/30/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Reports not as dizzy and headache not as bad as last visit.

Objective
See Flow Chart for treatment administered to this patient today.

Manual Therapy - PA mobilization to C2-7 with patient prone

Progressed to wearing visual conflict dome while on rockerboard, performed in the parallel bars for safety.

Exercise Modality Description	6/30/1999	6/28/1999	6/25/1999	6/23/1999	6/21/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5		5	5	
Traction manual cervical	10	10	10	10	
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Activities	On_Hold		3/10/0	3/10/0	
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Foam stand - visual conflict dome	2				
Balance- Rockerboard Anterior-Posterior - also with visual conflict dome.	3/10/0		3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0		3/10/0	3/10/0	3/10/0
Balance- Visual Conflict Dome	3				
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	1/5/0	1/5/0		1/5/0	1/5/0
Aerobic - minitramp - plyoback	5	5		5	5
Functional Activities	On_Hold		10	10	10

Assessment
Continues to demonstrate improved balance and stability when performing exercises. Still very guarded with quick movements, and does lose balance if she tries to move quickly. She is compliant with her home program as evident by the good improvement in her balance with all static balance activities.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff Dietrich PT

Jeff Dietrich, PT #0911

692

000188

Novacare Outpatient Rehabilitation
Daily Note

DATE:	7/7/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Has a bad headache today, feeling more dizzy. Notes no reason for increase in symptoms.

Objective
See Flow Chart for treatment administered to this patient today.

Treatment modified with no visual conflict dome because she was too dizzy to perform in standing, increased balance loss.

manual techniques for upper cervical spine provided no relief in dizziness, very minimal decrease in headache.

Exercise Modality Description	7/7/1999	7/2/1999	6/30/1999	6/28/1999	6/25/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5	5	5		5
Traction manual cervical	10		10	10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10	10	10	10
Balance Activities	On_Hold	On_Hold	On_Hold		3/10/0
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0		3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0		3/10/0
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
Aerobic - minitramp - plyoback	5	5	5	5	
Functional Activities	On_Hold	On_Hold	On_Hold		10
Balance- Foam stand - visual conflict dome		2	2		
Balance- Visual Conflict Dome		3	3		
vestibular Brandt-Daroff exercises			1/5/0	1/5/0	

Assessment
decreased tolerance to exercise today secondary to dizziness and headache.

Plan
Continue with prescribed treatment and progress as tolerated.

Jeff L Dietrich, PT #0911

693

Visit Date:	9/2/1999
Name:	Susan L. Reeves
Number:	SP
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	56
Initial Visit Date:	2/5/1999

DATE RECEIVED
SEP - 7 1999
DUNN NEUROLOGIC

Problems:
Dizziness

Referral:
Petroff, George

Diagnosis:
Vertigo, dizziness(780.4)

Insurance:
Zenith Administrators Teamsters Medicare

Date of Onset: 9/1/1987

Subjective Report

Susan reports that her balance and postural control are better since starting physical therapy. Dizziness continues to be 6/10, worse with sitting and during stressful times. Headaches have been worse over the past three weeks requiring use of Imitrix and Midrin - she notes this has been a stressful time period.

Observation

Dizziness rated at 6/10 today.

Inspection - improved static standing posture and balance. Good dynamic balance with reaching out of center of gravity.

Palpation - tight muscular in cervical and upper cervical region.

Dizziness increased with rapid horizontal and vertical head movements.

Objective Findings

Objective Finding	Initial	Last Assessment	Goal
Postural Control-Active Sway Anterior	Ankle Strategy	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Ankle Strategy	Hip Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Lateral Displacement	Fall	Hip Strategy	Hip Strategy

Patient:

694

Gait-Normal	No antalgia	No Antalgia	
Gait-Tandem	Unable	15 feet	
Gait-March in Place	No Antalgia	No Antalgia	
Gait-Horizontal Head Movement	Not Tested	Not Tested	
Gait-Vertical Head Movement	Not Tested	Not Tested	
Right Leg Balance-Eyes Open	5	30	15
Right Leg Balance-Eyes Closed	Unable	5	5
Left Leg Balance-Eyes Open	3	30	15
Left Leg Balance-Eyes Closed	Unable	5	5
SOT-Firm Stand-Eyes Open (60 seconds)	Step Strategy	No Sway	
SOT-Firm Stand-Eyes Closed (60 seconds)	Step Strategy	No Sway	
SOT-Firm Stand-Visual Dome (60 Seconds)	Not Tested	No Sway	
SOT-Foam Stand-Eyes Open (60 seconds)	Fall Posterior	No Sway	
SOT-Foam Stand-Eyes Closed (60 seconds)	Fall Posterior	A-P Sway,	
SOT-Foam Stand-Visual Dome (60 Seconds)	Not Tested	No Sway	
Special Test-Hallpike Dix, Head Left	Negative		
Special Test-Hallpike Dix, Head Right	Negative		
Special Test-Left Sidelying	Dizziness	Negative	Negative
Special Test-Right Sidelying	Negative		
Special Test-Sitting	Dizziness		
Special Test-Supine Lying	(-) Dizziness	(-) dizziness	
Neuro - Cutaneous Sensation	Intact	Intact	
Neuro - Position Sense	Intact	Intact	
Cervical AROM Flexion	45	45	
Cervical AROM Extension	45	60	60
Cervical AROM Lateral Flexion Right	25	32	30
Cervical AROM Lateral Flexion Left	25	35	30
Cervical AROM Rotation Right	65	68	65
Cervical AROM Rotation Left	40	65	60
DTRs are equal and active in the upper extremities	Yes	Yes	
MMT Hand Grip Dynamometry Position 2	L=25 R=65	L=45	
MMT Tricep	4/5	4/5	
MMT Wrist flexion	4/5	4/5	
MMT Wrist extension	4/5	4/5	
MMT Finger adduction	4/5	4/5	

DATE RECEIVED
SEP 07 1999
DUNN NEUROLOGIC

Assessment

Susan is a 48 year old female that has been seen for 56 physical therapy visits over the past 6 months. We have decreased frequency to 1 time per week for the past two months. She continues to progress with her postural control and static balance, stability with gait, stability on unstable surfaces. Single limb balance activities and more dynamic balance activities that require head movements and quick righting reactions does increase her dizziness. Stress also increases her headaches and she notices increased dizziness and instability when the headaches are worse. Susan performs home balance exercises on regular basis, in addition to her 1 time per week therapy.

Functional Goals

Decrease dizziness to allow functional activities
Improve Ambulatory Status with decrease in loss of balance.

695

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Demonstrate good posture
Improve balance in standing, and with movements.
Improve AROM of cervical spine without dizziness.
Independence in home exercise program

Plan

Susan will be seeing MD later this morning. We will await further orders regarding her care.

Thank you for your referral. We will keep you abreast of this patient's status.

Regards,

Jeff L Dietrich PT #0911

DATE RECEIVED
SEP 07 1999
DUKE NEUROLOGIC

Ward

696

Novacare Outpatient Rehabilitation
Daily Note

DATE:	10/28/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	[redacted]
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Pt. reports being dizzy and falling twice this week. Pt.reports she does get relief from headache and dizziness with Cervical mobs on roll or ball but when she releases the pressure the dizziness/headache returns. Pt. did have c/o increased dizziness/nausea after completing ex. with the C2 anterior mob, however no dizziness or nausea while doing the ex.

Objective
See Flow Chart for treatment administered to this patient today.

manual therapy for cervical stretching, joint mobilization of PA glides at multiple levels in C/S, and manual cervical traction.

Exercise Modality Description	10/28/1999	10/21/1999	10/14/1999	10/7/1999	9/23/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations - cervical PA, sideglides.	5	5	5	5	5
Traction manual cervical	10	10	10	10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10				10
Balance Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand - with C2 ant mob	3	3	3	3	3
Balance- Foam stand - visual conflict dome	2	2	2	2	2
Balance- Rockerboard Anterior-Posterior - with C2 mob	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Visual Conflict Dome	3		3	3	3
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	1/5/0		1/5/0	1/5/0	1/5/0
Aerobic - minitramp - plyoback	5	5	5	5	5
Functional Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
Total gym - leg press - L8	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0

Assessment
Patient is progressing toward goals appropriately, will continue with current treatment plan per patient tolerance.

Plan
Continue with prescribed treatment and progress as tolerated.

Billing Code	Billing Description	Units
97010	Hot Packs	1
97140	Manual therapy techniques	1
97110	Ther. Exercise 15 min.	2
97530	Dynamic Activities	1

Jeff Oeth PT

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	11/4/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	[redacted]
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
has been dizzier this past week. Fallen or lost balance a couple of times. Felt better after last visit for a couple of hours, but then returned to normal level of dizziness.

Objective
See Flow Chart for treatment administered to this patient today.

manual therapy for cervical stretching, joint mobilization of PA glides at multiple levels in C/S, and manual cervical traction. Note - with PA in cervical C2-6 there is significant relief of headache and dizziness as long as the mobilization is maintained, then all symptoms return when pressure removed.

Exercise Modality Description	11/4/1999	10/28/1999	10/21/1999	10/14/1999	10/7/1999
Moist Heat - Cervical	15	15	15	15	15
Joint mobilizations	5	5	5	5	5
Traction manual cervical	10	10	10	10	10
Aerobic - UBE - L-1	10	10	10	10	10
Stationary Cycle - -supine	10	10			
Balance Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Foam stand	3	3	3	3	3
Balance- Foam stand - visual conflict dome	On_Hold	2	2	2	2
Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Visual Conflict Dome	3	3		3	3
Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
Balance- Walking crossover with trunk rotation	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
Balance- - standing march	4	4	4	4	4
vestibular Brandt-Daroff exercises	On_Hold	1/5/0		1/5/0	1/5/0
Aerobic - minitramp - piyoback	5	5	5	5	5
Functional Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
Total gym - leg press - L8	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0

Assessment

Plan
Continue with prescribed treatment and progress as tolerated.

Billing Code	Billing Description	Units
97010	Hot Packs	1
97140	Manual therapy techniques	1
97110	Ther. Exercise 15 min.	2
97530	Dynamic Activities	1

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Novacare Outpatient Rehabilitation
Daily Note

DATE:	11/18/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	[redacted]
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
has had a stressful past week and feels more off balance and dizzy today. Fell two times when trying to squat down to pick something off the floor.

Objective
See Flow Chart for treatment administered to this patient today.

patient education to kneel with outstretched arm instead of squatting to prevent her from falling backwards.

prone P-A Cervical mobs.

Exercise Modality Description	11/18/1999	11/11/1999	11/4/1999	10/28/1999	10/21/1999
535.0 Vestibular Eye tracking - side to side, diagonals, vertical -standing	1/0/0	1/0/0			
450.0 Stationary Cycle - -supine	10	10	10	10	
007.0 Aerobic - UBE - L-1- on ball	10	10	10	10	10
Joint mobilizations - cervical p-a	5	5	5	5	5
Traction manual cervical	10	10	10	10	10
048.0 Balance Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
049.0 Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
050.0 Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
054.0 Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
060.0 Balance- Foam stand	3	3	3	3	3
063.0 Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
064.0 Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
069.0 Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
214.0 K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
053.0 Balance- - standing march	4	4	4	4	4
004.0 Aerobic - minitramp - plyoback	5	5	5	5	5
Functional Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
518.0 Total gym - leg press - L8	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0

Assessment
continues with balance and dizziness complaints, worse when under more stress.

Plan
Continue progressing balance exercises, cervical joint mobilization as needed.

Billing Code	Billing Description	Units
97140	Manual therapy techniques	1
97110	Ther. Exercise 15 min.	1
97530	Dynamic Activities	1
97112	Neuromuscular Re-education	1

Jeff L Dietrich, PT #0911

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NovaCare Outpatient Rehabilitation
Progress Evaluation

Visit Date:	12/9/1999
Name:	Susan L. Reeves
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	69
Initial Visit Date:	2/5/1999

Referral: Petroff, George

Diagnosis: Vertigo, dizziness(780.4)

Insurance: Zenith Administrators Teamsters

Subjective Report

Susan reports continued improvement with her balance and dizziness problem. She continues to have dizziness and headaches on a regular basis, however, she has better management over the dizziness and the severe headaches are much less frequent. She reports improved interaction with her family because she is able to function at a higher level. She still has balance loss with intermittent falls mostly with quick movements, though she is getting better at preventing the falls by concentrating on what she is doing. She would like to start preparing to drive.

Observation

GAIT - straight walking is with minimal deviation. When walking and talking she has increased width in base of support. When walking and changing directions she has intermittent balance loss with decreased velocity and wider base of support.

PALPATION - Cervical tightness and tenderness. Hard p-a pressure in the cervical spine does alleviate dizziness and headache until the pressure is released.

Functional - up and down stairs with minimal use of handrail. She has improved ability to perform household tasks. She is still unable to drive, but would like to start.

Objective Findings

Objective Finding	Initial	Last Measurement	Goal
Postural Control-Active Sway Anterior	Ankle Strategy	Ankle Strategy	
Postural Control-Active Sway Lateral	Hip Strategy	Hip Strategy	
Postural Control-Active Sway Posterior	Fall	Ankle Strategy	Hip Strategy
Postural Control-Induced Anterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Posterior Displacement	Fall	Hip Strategy	Hip Strategy
Postural Control-Induced Lateral Displacement	Fall	Hip Strategy	Hip Strategy
Gait-Normal	No antalgia	No Antalgia	

Novacare Outpatient Rehabilitation
Daily Note

DATE:	12/16/1999	INSURANCE:	Zenith Administrators Teamsters
PATIENT:	Reeves, Susan L.	SSN:	[redacted]
PATIENT #:	SP	Date of Birth:	10/6/1951
DIAGNOSIS:	Vertigo, dizziness		
PROBLEM SITE:	Dizziness		
REFERRAL:	George Petroff, MD		

Subjective
Lost balance and fell into a wall bruising her right hip, so she does want to do the bike today. Her neurologist wants her to consider nerve block to suboccipital region. Imitrex now only 2/week, no more midrin, heart meds increased per patient report.

Objective
See Flow Chart for treatment administered to this patient today.

manual therapy prone P-A, supine manual traction.

Exercise Modality Description	12/16/1999	12/9/1999	12/2/1999	11/26/1999	11/18/1999
535.0 Vestibular Eye tracking - side to side, diagonals, vertical -standing	1/0/0	1/0/0	1/0/0	1/0/0	1/0/0
007.0 Aerobic - UBE	10	10	10	10	10
Joint mobilizations - cervical p-a	5		5	5	5
Traction manual cervical	10		10	10	10
048.0 Balance Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
049.0 Balance Double leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
050.0 Balance Single leg stand	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
054.0 Balance- Ant-Post weight shifting	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
060.0 Balance- Foam stand	3	3	3	3	3
063.0 Balance- Rockerboard Anterior-Posterior	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
064.0 Balance- Rockerboard right-left	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
069.0 Balance- Wobble board - 20" small ball	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
214.0 K Toe Raisers DLS	2/10/0	2/10/0	2/10/0	2/10/0	2/10/0
053.0 Balance- - standing march	4	4	4	4	4
004.0 Aerobic - minitramp - plyoback	5	5	5	5	5
Functional Activities	On_Hold	On_Hold	On_Hold	On_Hold	On_Hold
518.0 Total gym - leg press - U8	3/10/0	3/10/0	3/10/0	3/10/0	3/10/0
450.0 Stationary Cycle - -supine		10	10	10	10

Assessment
Patient is progressing toward goals appropriately, will continue with current treatment plan per patient tolerance.

Plan
Continue with prescribed treatment and progress as tolerated.

Billing Code	Billing Description	Units
97110	Ther. Exercise 15 min.	1
97530	Dynamic Activities	1
97112	Neuromuscular Re-education	1
97140	Manual therapy techniques	1

Jeff L. Dietrich, PT #0911

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Visit Date:	2/24/2000
Name:	Susan L. Reeves
Social Security:	[redacted]
DOB:	10/6/1951
Total Visits:	76
Initial Visit Date:	2/5/1999

Referral: Petroff, George
Diagnosis: Vertigo, dizziness(780.4)
Insurance: Zenith Administrators Teamsters 995

Subjective Report

Susan reports that since beginning therapy she notes improved balance, less frequent and intense dizziness, improved ability to perform functional activities around her home and to a certain degree within the community. Progress has hit a plateau over the past couple of months. She notes that since discontinuing the midrin her headache frequency has increased, which in turn, decreases her standing balance. She is compliant with her home program and incorporates exercises into most of her daily activities.

ADL Restrictions: walking tasks, squatting
Level of Restriction: Minimal

Work Restrictions: N/A
Level of Restriction: N/A

Sport Restriction: N/A
Level of Restriction: N/A

Observation

GAIT - minimal deviation with normal gait, usually when she changes direction of walking quickly. She is able to catch herself with loss of balance during gait with protective widening of her base of support. She is able to tandem walk a 15 foot line with minimal loss of balance.

PALPATION - continues to have cervical muscular tightness and tenderness. P-A pressure on C2 provides temporary relief of headache and dizziness when the pressure is on.

FUNCTIONAL - independent with home exercise program. She performs more household tasks independently, is able to squat and use stairs with minimal upper extremity assist. She has still not attempted driving.

EYE-HEAD COORDINATION - able to perform eye tracking and head movement exercises in standing, longer time until increase in dizziness, faster recovery, and better postural control when performing.

Assessment

Susan has been seen for 76 physical therapy visits over the past 13 months. She demonstrates improved static and dynamic postural control, improved gait distance and stability, better single leg standing balance, and improved protective responses with manual preturbation. Functionally she has improved her general activity level around the home and within the community. She continues to have balance deficits, dizziness and headaches, though progress has plateaued over the past couple of months. She is independent with a home program.

Functional Goals

Decrease dizziness to allow functional activities
Improve Gait with decrease in loss of balance.
Demonstrate good posture
Improve balance in standing, and with movements.
Improve AROM of cervical spine without dizziness.
Independence in home exercise program

Plan

Recommend discharge to home program at this time. She was educated to call Dr. Petroff if she had future problems, or to call me if she had any questions regarding progression of her program.

Thank you for your referral. We will keep you abreast of this patient's status.

Regards,

Jeff L. Dietrich PT, Lic. #0911

FAMILY & SPORTS PHYSICAL THERAPY

Jeff Bowers ◦ MS/MPT/ATC
Jeff Dietrich ◦ MPT
John Cervantes II ◦ PT
7151 Cascade Valley Ct. Ste 101
Las Vegas NV 89128
702.968.0520 fax 702.968.0521

PHYSICAL THERAPY PROGRESS REPORT

Doctor:	George Petroff, M.D.	**Date:**	2/13/04
Patient:	REEVES, Susan	**Occupation:**	Not working
Diagnosis #1:	Cervical pain	**Diagnosis#2:**	Back pain
DOI/Onset:	Chronic	**Date of Surgery:**	N/A

Initial Visit Date:	1/16/03	Cancellations:	0
Total Visits:	51	No Shows:	0

SUBJECTIVE REPORTS

Susan reports she is doing pretty good today, primary complaint is of some upper cervical pain and a mild headache. She notes that her balance is back to where it was primary to her exacerbation of symptoms on 1/16/04. Back and shoulder musculature is still tight and tender, left worse than right. Not having nausea, dizziness back to being controlled. Has not been taking medication inconsistently due to being low, but as of yesterday all her prescriptions have been authorized. She notes that she is still getting used to being out of her house 4 days a week, but is not as tired as she was a couple of weeks ago.

OBJECTIVE FINDINGS

INSPECTION –Continues to have forward head posture, protracted and elevated shoulders, decrease in her lumbar lordosis.

RANGE OF MOTION – Cervical Rotation 70° bilaterally, sidebend 40° bilaterally, flexion 45°, and extension 60°. Shoulder flexion and abduction 160° on left 165° on right.

STRENGTH / MMT – Grip strength on the right 48 pounds, left 45. Manual muscle test is grossly 5/5 for bilateral upper extremities, 4/5 for trunk flexors and extensors.

PALPATION –Tightness and tenderness in bilateral upper trapezius (especially the left), levator scapulae, SCM, cervical paraspinals, upper pectoralis major, and suboccipitals (left greater than right). Tenderness in thoracic-lumbar paraspinals and rhomboids.

JOINT MOBILITY – Cervical joint mobility is good.

FLEXIBILITY – Upper trapezius are tight bilaterally.

NEUROLOGICAL STATUS – deep tendon reflexes and cutaneous sensation are intact.

SPECIAL TESTS – Cervical distraction feels good. Static balance on compliant foam surface is getting better, dynamic balance on rockerboard is improving.

ASSESSMENT

Susan is back to doing pretty well after approximately 3 week period of flare-up in nausea, dizziness, imbalance, and headaches. She is maintaining her cervical ROM well, with pain still present at a lower level. Muscular tightness and restrictions still present in cervical and thoracic musculature. Her balance and endurance with balance exercises is improving (back doesn't get tired as fast). She is compliant with her exercise program in the clinic, as well as with working on her balance and stretching at home.

PLAN

Continue with current program.

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FAMILY & SPORTS PHYSICAL THERAPY
Jeff Bowers ◦ MS/MPT/ATC
Jeff Dietrich ◦ MPT
John Cervantes II ◦ PT
7151 Cascade Valley Ct. Ste 101
Las Vegas NV 89128
702.968.0520 fax 702.968.0521

PHYSICAL THERAPY PROGRESS REPORT

Doctor:	George Petroff, M.D.	**Date:**	2/13/04
Patient:	REEVES, Susan	**Occupation:**	Not working
Diagnosis #1:	Cervical pain	**Diagnosis#2:**	Back pain
DOI/Onset:	Chronic	**Date of Surgery:**	N/A

Initial Visit Date:	1/16/03	Cancellations:	0
Total Visits:	51	No Shows:	0

SUBJECTIVE REPORTS

Susan reports she is doing pretty good today, primary complaint is of some upper cervical pain and a mild headache. She notes that her balance is back to where it was primary to her exacerbation of symptoms on 1/16/04. Back and shoulder musculature is still tight and tender, left worse than right. Not having nausea, dizziness back to being controlled. Has not been taking medication inconsistently due to being low, but as of yesterday all her prescriptions have been authorized. She notes that she is still getting used to being out of her house 4 days a week, but is not as tired as she was a couple of weeks ago.

OBJECTIVE FINDINGS

INSPECTION –Continues to have forward head posture, protracted and elevated shoulders, decrease in her lumbar lordosis.

RANGE OF MOTION – Cervical Rotation 70° bilaterally, sidebend 40° bilaterally, flexion 45°, and extension 60°. Shoulder flexion and abduction 160° on left 165° on right.

STRENGTH / MMT – Grip strength on the right 48 pounds, left 45. Manual muscle test is grossly 5/5 for bilateral upper extremities, 4/5 for trunk flexors and extensors.

PALPATION –Tightness and tenderness in bilateral upper trapezius (especially the left), levator scapulae, SCM, cervical paraspinals, upper pectoralis major, and suboccipitals (left greater than right). Tenderness in thoracic-lumbar paraspinals and rhomboids.

JOINT MOBILITY – Cervical joint mobility is good.

FLEXIBILITY – Upper trapezius are tight bilaterally.

NEUROLOGICAL STATUS – deep tendon reflexes and cutaneous sensation are intact.

SPECIAL TESTS – Cervical distraction feels good. Static balance on compliant foam surface is getting better, dynamic balance on rockerboard is improving.

ASSESSMENT

Susan is back to doing pretty well after approximately 3 week period of flare-up in nausea, dizziness, imbalance, and headaches. She is maintaining her cervical ROM well, with pain still present at a lower level. Muscular tightness and restrictions still present in cervical and thoracic musculature. Her balance and endurance with balance exercises is improving (back doesn't get tired as fast). She is compliant with her exercise program in the clinic, as well as with working on her balance and stretching at home.

PLAN

Continue with current program.

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN REEVES,
Appellant(s),
vs.

DIVISION OF INDUSTRIAL RELATIONS; NEVADA DEPARTMENT OF ADMINISTRATION,
Respondent(s),

Case No: A644791
SC Case No: 62468

RECORD ON APPEAL
VOLUME
2

ATTORNEY FOR APPELLANT
SUSAN REEVES, PROPER PERSON
4724 E. WASHINGTON AVE.
LAS VEGAS, NV 89110

ATTORNEY FOR RESPONDENT
JOHN F. WILES, ESQ.
1301 N. GREEN VALLEY PKWY., SUITE 200
HENDERSON, NV 89074

A644791 SUSAN REEVES vs. DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency

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vs.
Division Of Industrial Relations, Defendant(s)

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A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
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5	02/07/2012	RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' NOTICE OF JOINDER IN TPA/RESPONDENT'S "REPLY" TO PETITIONER'S OPENING BRIEF	1159 - 1168
5	01/30/2012	TPA/RESPONDENT'S REPLY TO PETITIONER'S OPENING BRIEF	1143 - 1158
5	10/14/2011	TPA/RESPONDENT'S RESPONSE TO PETITION FOR JUDICIAL REVIEW AND STATEMENT OF INTENT TO PARTICIPATE	1116 - 1119
3	08/30/2011	TRANSMITTAL OF RECORD ON APPEAL	515 - 515

Person(s) Served:	U.S. Mail
Dalton L. Hooks, Jr., Esq. 4570 South Eastern Ave, Suite 28 Las Vegas, NV 89119	X via State Mail room (regular or certified) circle one ____deposited directly with U.S. Mail Service ____Overnight Mail ____Interdepartmental Mail ____Messenger Service ____Facsimile fax number: _____

DATED this 30th day of November, 2010.

An employee of the Division of Business & Industry

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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ORIGINAL

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:	Appeal No: 80334-SL
SUSAN REEVES	DOH: December 8, 2010 9:00 AM.

INDEX AND EVIDENCE PACKET
OF THE
DIVISION OF INDUSTRIAL RELATIONS

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DATED this 8th day of November, 2010.

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By: _____
John F. Wiles, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

Doc21
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RECEIVED
SEP 14 2010
WCS HND

Chuck Verfe
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

September 11, 2010

Re: Injured Employee: Susan Reeves (5)
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verfe,

Whereas, my first complaint was on February 28, 2010, and found to not be a violation by Ms. Susan Sayegh, on April 26, 2010, and my letter of complaint on the handling of that complaint, on April 29, 2010, and speaking on the phone with you, I believe, the matter was going to be looked into by someone other than Ms. Sayegh.

Whereas, it is now the end of September and I have not heard from your office concerning that complaint, No. 11522, I was wondering how the investigation was coming along?

Also, in my letter of June 1, 2010, I filed complaints of NRS 616C.065, NRS 616C.335, NRS 616C.475 and NRS 616D.120. The only letter I received from your office was the finding that there was no violation of NRS 616D.120. What about the other complaints?

I now have another complaint about the way my claim was closed this last time. Bally's (CCMSI) have now closed my claim on the notion that there is no certification of disability, as no disability forms have been filled out by my physicians.

Bally's accepted my claim in 1997 without any certificates of disability forms, and I have never seen one in the twenty-two years that my claim has been ongoing. Bally's has had all of my medical records the entire time. They have also been in correspondence and had meetings with my physicians, and yet they have never supplied any forms.

Whereas, there has never been a physician that opined that I was able to return to gainful employment, to the contrary, as documented in my medical records, all of the physicians opined that I was not capable of returning to work.

Whereas, my medical documentation is very large, and knowing that your office gets the majority of it's documents from CCMSI, I have not included another copy of my records, but if you will, you can look at the documents that I have provided your counsel, Mr. John F. Wiles Esq. for my appeal of your office's finding that there was no violation of NRS 616D.120.

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If Mr. Wiles is not your counsel or you would like your own copy, please let me know and I will make and sent one to you.

Whereas, pursuant to NRS 616C.475, forms are to be approved by the Division, I requested approved forms from CCMSI, only to be informed by CCMSI there are no specific or required forms, in a letter dated August 25, 2010. Copy included.

Pursuant to NRS 616A.400, it is the duty of the Administrator to regulate forms. Therefore, I am requesting that your office supply me with whatever forms that are approved by your office, so I may take them to my physicians to have them filled out, to provide CCMSI with certification of disability.

Thank you for your attention to this matter,

Susan L Reeves.

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed by Jeff Reeves (husband)

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SEP 14 2010
WCS HND

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C C M S I

August 25, 2010

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE:	Claimant:	Susan Reeves
	Claim No.:	88S01H243724
	Employer:	Bally's
	DOI:	09/25/1988

Dear Ms. Reeves:

We are in receipt of the July 29, 2010, August 10, 2010 and August 12, 2010 correspondence from you.

Please be advised that the copy work that was supplied to you is all that there is, there is nothing further in the claim file that has not previously been sent to you.

There is no specific/required form for disability certification, disability certification may be submitted by an authorized treating physician on a open/accepted claim.

Please be reminded that your claim is not open for medical treatment at this time.

If you have any questions, please contact me at (702) 933-4833.

Sincerely,

Rosemarie McMorris

Rosemarie McMorris
Senior Claim Consultant

CC: File, Bally's, Lee Davis

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCM
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

October 1, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:		
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Employer:	Bally's Las Vegas
	Date of Injury:	09/25/88
	TPA:	CCMSI
	WCS Case Number:	17940

Dear Ms. Reeves:

The Division of Industrial Relations, Workers' Compensation Section (WCS), has completed its investigation into your complaint dated September 11, 2010. You requested that the WCS review the investigation that resulted in the April 26, 2010 WCS letter, which was an investigation of your February 28, 2010 complaint. The investigator found that CCMSI provided you and your attorney with the oral communications requested. There was no indication that any further communications occurred between CCMSI and your treating physicians.

You disagreed with the determination by the WCS dated July 22, 2010. You alleged CCMSI violated multiple statutes and the WCS determined that there were no violations of NRS 616D.120. The WCS determined in its July 22, 2010 letter that CCMSI did not violate any Nevada Workers' Compensation Law. You appealed this determination and the matter is currently in litigation.

You did not agree with the way CCMSI closed your workers' compensation claim. You appealed their determinations and the Hearing Officer and Appeals Officer affirmed claim closure. The matter is now in litigation with the Nevada District Court. The WCS does not have the authority to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction.

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NOV 03 2010

If you have any questions regarding this matter, please Christopher Pangallo at (702) 486-9100.

Sincerely,

Charles J. Vente
Chief Administrative Officer
Workers' Compensation Section

cc: CCMSI

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Nevada Division of Industrial Relations
1301 North Green Valley Parkway, Suite 200
Henderson , Nevada 89074
702-486-9080

February 28 2010

To whom it may concern,

I, Susan Reeves, would like the D.I.R. pursuant to NRS 616D.330 to help me get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them. There have been a number of requests for that information. Once by Douglas Rowan, Esq. on May 28 2004 and four times by the Nevada Attorney for Injured Workers, December 15 2004, January 17 2007, May 31 2007 and August 16 2007 and two times by me, January 29 2010 and February 12 2010. Their response was to say that all correspondence was duly copied, letter to Mr. Rowan June 2 2004, or that the copy work supplied was all there was, letter to me February 24 2010. They did send a log of oral communication for a meeting at Dr. Petroff's office that gives no idea of what was said, only that there was a meeting, and the people that they listed at that meeting is wrong. It was not my attorney but theirs, my husband and myself were asked to leave, see letter from Dr. Petroff June 29 2004 and letter from Mr. Rowan July 22 2004. There is also an activity log from May 10 2004 that has a S/W (spoke with?) Dr. Mortillaro that also gives no idea of what was said. I was told when I had my last appointment, by Dr.Mortillaro and Dr. Manuel F. Gamazo, that CCMSI (Bally's) and their attorney had been at their offices for a meeting. The meeting with Dr. Mortillaro and Dr. Gamazo was after my discharge, March 18 2004, but before my last appointment, June 1 2004. I requested a meeting with Dr. Petroff and was informed that I would have to have a court reporter present, letter from Dr. Petroff's office March 22 2004. Letter from my attorney, March 29 2004, about the requirement for a court reporter raises the issue of Dr. Petroff's concerns of what was said at the meeting with CCMSI, they did not have to have one. I feel that NRS 616D.330 would mean that if representatives of an employer have meetings with doctors that they have to have a written record of what was said. The letters written after, not the letters before, said meetings were the reason my claim was closed.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves(husband)

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03 2010

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Office

(702) 486-9080
Fax: (702) 990-0364
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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 26, 2010

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re:	Injured Employee:	Susan Reeves (2)
	Claim No.:	88H92H243724
	Employer:	Bally's
	D.O.I.:	September 25, 1988
	TPA:	CCMSI
	Complaint #:	11522

Dear Ms. Reeves,

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS) has, pursuant to Nevada Revised Statutes (NRS) 616D.130, investigated the complaint you filed. The issue in your complaint that can be addressed by the WCS is a possible violation of NRS 616D.330.

After reviewing the information supplied to this agency and completing the investigation, a determination has been reached and has concluded the following:

FINDINGS OF FACT:

On July 20, 1987, you were involved in a motor vehicle accident wherein you were diagnosed with cervical strain and head injury.

In 1987, Bally's issued a Notice of Claim denial.

On September 25, 1988, you were involved in another motor vehicle accident while employed at Bally's and sustained an industrial injury while working within the course and scope of your employment.

On June 9, 1989, S.I.S. Administrators issued a Notice of Claim Denial. Appropriate appeal rights were given.

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On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that you be sent to pain management.

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On January 17, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Bally's.

In January 2007, you submitted a written request to expand the scope of your claim to include bruised ribs and a broken toe.

On February 16, 2007, CCMSI issued a determination denying your January 2007 request. Appropriate appeal rights were given.

On May 10, 2007, the hearing officer issued a decision and order affirming the February 16, 2007 determination. You appealed this determination.

On May 31, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services. ("Sedgwick")

On August 16, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services.

January 29, 2010, you requested a copy of your complete industrial claim file from Sedgwick.

On February 24, 2010, CCMSI responded your January 29, 2010 request that was addressed to Sedgwick. They informed you that the copy work of your claim file had been previously supplied to you and that no other documentation exists.

CONCLUSION:

As it relates to a possible violation of NRS 616D.30, no violation was found.

CCMSI timely responded to your request pursuant to statute. You were advised in a previous response that you had been provided with a complete copy of your industrial injury claim file. The investigator reviewed the claim file and found no additional correspondence relating to the logs of oral communication.

As the issue outlined in your complaint has been addressed, the complaint filed with this agency is closed. If you have any further questions, feel free to contact Christopher Brown, Compliance/Audit Investigator II, at (702) 486-9098.

Sincerely,

Susan Sayegh
Southern District Manager
Workers' Compensation Section

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NOV 03 2010

cc: George Ward, WCS

Susan Sayegh
Southern District Manager
Workers Compensation
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 29, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Sayegh,

I am in receipt of your letter, dated April 26, 2010, where my complaint of a violation, pursuant to NRS 616D.130, was found to have no merit. Apparently Bally's representatives, ether Bally's employees or CCMSI employees, do not have to make or keep a written record of oral communications, of what was said at meetings that are held between said representatives and patients doctors. One could assume that since you, Ms. Sayegh, were the Claims Supervisor for CCMSI at the time of the meeting with Dr. Petroff, you could have been one of those representatives. If not, you most certainly would have known who would have been at that meeting and whether or not a written record was kept.

Since your office, the D.I.R., has conducted an investigation and concluded that all Bally's or their representatives have to do, pursuant to NRS 616D.130, is timely respond to a request, not actually keep or have a written record, that there is no violation.

Since my complaint was about written records, pursuant to NRS 616D.130, I have no idea why your office would go to the great lengths of looking into the history of my claim. As for reviewing the information, as it pertains to my claim, your office did not request any information from me. One would then assume that all information supplied for the investigation was supplied by Bally's or CCMSI.

As to your offices findings of fact, since your office is a governmental regulatory agency, that your office would at least verify those facts before presenting those facts as facts. Upon reviewing said facts, they appear to be almost word for word the findings of fact that Bally's attorney presented, at the last appeal hearing I had. They are also the same as in the last Appeals Officers' Decision, written by Bally's attorney. There are a number of errors in those facts, some perhaps are just typed wrong, others are just wrong.

Since it was not my intension to have your office look into my entire claim, I will not go into all the details of which facts are incorrect.

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MAY 03 2010

As I have not received the type of fair and unbiased handling of this matter that one would expect, and since your department, the D.I.R.s, responsibility is to investigate possible violations, by insurers, pursuant to the NRS. I am requesting that your office inform me as to which governmental agency, office or department, investigates possible mishandling of complaints by your office, as I would wish to make a complaint about the handling of this matter.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

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Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (4), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Ms. Susan Sayegh?

Thank You,

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Recsearcked and Typed by,
Jeff Reeves (husband)

cc: Don Jayne

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12

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYCOX
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

July 22, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

Dear Ms. Reeves:

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS), has completed its investigation into your complaint dated June 1, 2010.

FINDINGS OF FACT:

You alleged that Bally's and CCMSI failed to timely pay temporary total disability (TTD) benefits after a December 1, 2003 Appeals Officer decision ordered that closure of your workers' compensation claim was premature. You alleged that you were due TTD benefits from the date your claim was closed on August 27, 1998.

On August 18, 1998 Dr. Oliveri conducted an independent medical evaluation (IME) in which he was asked to evaluate your capabilities of entering to the work force. Dr. Oliveri stated that your subjective complaints far exceeded objective findings. He diagnosed you with a somatoform pain disorder which was primarily a psychiatric problem which was not something that was caused by an industrial accident. Dr. Oliveri stated, ". . . The criteria for disability under social security are very much different than

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the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury. . ." Dr. Oliveri found that you had overwhelming symptom magnification. He stated that the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder. He found that you were maximum medical improved for the industrial injury. Dr. Oliveri stated that there was no evidence for disability and the current perceived disability was based on your nonindustrial somatoform pain disorder.

On March 26, 2001 Dr. Glyman examined you and diagnosed you with a mild post-concussion syndrome. He stated that you had many subjective symptoms which did not match up with objective physical findings.

On December 20, 2001 Dr. Glyman provided an addendum after reviewing additional medical records. He agreed with the other physician who examined you and concluded that you suffer from a somatoform paid disorder. He did not recommend any further medical treatment.

On December 27, 2001 Gallagher Bassett Services wrote a letter notifying you of their intention to close your claim. They also notified you that if you disagreed with their determination you could file an appeal with the Department of Administration Hearing Division.

On April 19, 2002 Hearing Officer Nora Garcia issued a Decision and Order, hearing number LHS2002-C-4641-NG, regarding your appeal of the insurer's December 27, 2001 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 1, 2003 Appeals Officer Nancy Richins issued a Decision and Order regarding your appeal of the Hearing Officer's Decision affirming claim closure. The Appeals Officer concluded that the somatoform pain disorder was industrially related and required further medical treatment, and ordered the claim to be reopened.

On December 11, 2003 CCMSI wrote a letter notifying you the claim would remain open for further medical treatment, and notified you that they scheduled you for an appointment with Dr. Mortillaro on January 5, 2003 at 9:30 am.

On January 14, 2004 CCMSI wrote a letter that they were aware you were being treated by Dr. Petroff. They advised you that the Appeals Officer instructed them to provide short term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures and appropriate therapy. They notified you that Dr. Mortillaro was authorized to provide these treatments, and they were denying Dr. Petroff's recommended treatment plan.

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On January 21, 2004 Douglas Rowan wrote a letter to CCMSI that he was aware they authorized further medical treatment with Dr. Mortillaro. He also requested TTD benefits from the date of claim closure.

On January 30, 2004 CCMSI faxed a letter to Dr. Petroff authorizing an MRI of your cervical spine. It appears that they also authorized medications prescribed by Dr. Petroff and Dr. Mattimoe, as well as physical therapy.

On March 16, 2004 CCMSI wrote a letter to Mr. Rowan requesting a certificate of disability from your physicians from August 26, 1998 in support for his request of TTD benefits. Once they received the certificates of disability they would render a determination with appeal rights.

On March 30, 2004 Dr. Mortillaro discharged you from his care and noted that you remained under the care of Dr. Petroff.

On July 21, 2004 CCMSI wrote a letter to Mr. Rowan notifying him that they were denying his request for TTD benefits from 1998 based on a medical report by Dr. Petroff dated June 29, 2004, because there was no evidence of certification of disability. They also provided him with a copy of the report.

On January 20, 2006 Appeals Officer Gerald Schwartzer filed a Decision and Order, Appeal Number 14175-GS/14174-GS/13350-GS, regarding your appeal of a Hearing Officer's Decision and Order dated November 30, 2004, affirming denial of TTD benefits. The Appeals Officer dismissed your appeal for denial of TTD benefits due to untimely filing of the appeal.

On September 8, 2006 the insurer was notified that Dr. Petroff was only monitoring your medications and referred further care to Dr. Mattimore, who has been prescribing physical therapy. They were also notified that Dr. Mattimore was not treating you for the workers' compensation claim.

On July 25, 2007 Hearing Officer Steven Evans issued a Decision and Order, hearing number 41025-SE, regarding your appeal of the insurer's September 8, 2006 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 22, 2009 Appeals Officer Gregory Krohn filed a Decision and Order, Appeal Number 39934-GK/42367-GK, regarding your appeal of a Hearing Officer's Decision and Order dated July 25, 2007 which affirmed claim closure. The Appeals Officer affirmed claim closure.

On June 21, 2010 the WCS mailed a letter to CCMSI notifying them of your complaint. The WCS received a letter from CCMSI dated June 29, 2010 in which they informed the WCS that the matters of TTD benefits, medical treatment and claim closure have been affirmed by the Appeals Officer and are currently pending in District Court. You appealed the Hearing Officer's Decision affirming denial of TTD benefits and the

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Appeals Officer affirmed the denial. This case is pending at the District Court. Claim closure was affirmed by a Hearing Officer and Appeals Officer. The case is also pending at the District Court.

DETERMINATION:

Determinations regarding TTD benefits and claim closure were affirmed by a Hearing Officer and Appeals Officer. Certificates of disability were not received for the specific periods in questions. Medical treatment was provided timely as ordered.

ADMINISTRATIVE FINE:

Based on the findings of fact, it is determined that there are no violations that would warrant an administrative fine.

BENEFIT PENALTY:

It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

NOTICE OF RIGHT TO APPEAL:

If a person wishes to contest a written determination of the administrator to refuse to impose a benefit penalty pursuant to NRS 616D.120, he must file a notice of appeal with an appeals officer within 30 days after the date on which the administrator's determination was mailed. The notice of appeal must set forth the reasons the refusal to impose a benefit penalty should not be issued. **If a notice of appeal is not filed as required, the refusal to impose a benefit penalty shall be deemed a final order and is not subject to review by any court or agency.**

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The notice of appeal should be addressed to the Department of Administration, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102 or the Department of Administration, Appeals Office, 1050 East Williams Street, Suite 450 Carson City, Nevada 89701.

Sincerely,
Don Jayne, Administrator
Division of Industrial Relations

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

CJV:cgp

cc: Don Jayne, Administrator, DIR
CCMSI

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CCMSI

March 16, 2004

Douglas M. Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

Re:	Susan Reeves
Claim #:	88H92H243724
Employer:	Bally's Las Vegas
Date of Injury:	09/25/88

Dear Mr. Rowan:

Thank you for submitting the completed D-6 Form for Ms. Susan Reeves. Pursuant to NRS 616C.475, this office is requesting that Ms. Reeves supply certification of disability from her physicians, to support the request for TTD benefits, from August 26, 1998 to the present.

Upon receipt of these records and upon confirmation from the ESD, that Ms. Reeves was not working or collecting unemployment benefits, we will be more than happy to render a determination with appeal rights.

Please do not hesitate to call at any time.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
File

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(702) 870-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

June 29, 2004

Re: REEVES, Susan
572-78-2120

To Whom It May Concern:

I am dictating this letter based on discussion at a meeting taking place in our offices on 6/29/04 between myself, Dr. Mortillaro and three worker's compensation representatives with CCMSI.

Susan Reeves was present here in our offices with her husband, but shortly before the meeting and after a discussion with my office manager and the CCMSI representatives, it was determined that the patient was not allowed to be present at this meeting per her worker's compensation representatives. The patient then left the office.

Issues discussed address the nature, extent and cause of Ms. Reeves current disability.

Basically, I have been seeing Ms. Reeves since September 3, 1998, funded through Medicare, based on a disability from that organization. During that time of treatment and management, I was not aware that there was a worker's compensation claim or issue. After 1/6/04, work compensation began covering the neurological follow-ups and treatment. I was never given an explanation of this change by the patient or by Worker's Comp until yesterday.

With respect to the patient's history, she was in two motor vehicle accidents; one on July 20, 1987, the second in September of 1988. Apparently, she is claiming work-related disability from the second accident, which occurred on the property/premises of her workplace.

With regard to causality, at this point, many years later, I would have to defer to opinions rendered around the time of the second accident. Relating to this, Dr. Bowler, a neurologist, on December 12, 1988 rendered the opinion with respect to the September motor vehicle accident: "This patient may have experienced some discomfort from the incident that she describes. There is no suggestion, however, that she had any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activities."

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This message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes. They are intended only for the use of the addressee. If you are not the intended recipient, any disclosure, copying or distribution of the information is prohibited. If

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(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

Also, an Independent Medical Evaluation was performed 8/18/98 by Dr. David Oliveri, Specialist in Rehabilitation and Electrodiagnostic Medicine. His opinion was that the patient had a somatoform pain disorder, which is a psychiatric diagnosis, and is not something that is caused by an industrial accident. He further states, "In this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury."

In discussion with Dr. Mortillaro today, he feels that the patient is not limited from working based on her psychological state of health. Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties. The patient does have Social Security Disability currently.

Based on the review of systems and my observations of the patient's examination over the years, solely with respect to intention of injury from the second motor vehicle accident of September of 1988, it would be reasonable to recommend the patient undergo a trial of back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds. If working at a computer, this should be at a proper height, with an adjustable chair and lumbar roll provided, and with frequent breaks provided for standing, stretching and repositioning. If the patient cannot tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome.

Sincerely,

G. Petroff, M.D.
GP/rs

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This message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes. They are intended only for the use of the addressee. If

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CCMSI

July 21, 2004

Douglas Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

Re:	Susan Reeves
Claim #:	88H92H243724
Employer:	Bally's Las Vegas
Date of Injury:	09/25/88

Dear Mr. Rowan:

Attached is a copy of Dr. George Petroff's report of June 29, 2004. Based on Dr. Petroff's report, there is no evidence of a certification of disability.

Pursuant to NRS 616C.475 (7), your request for TTD benefits from 1998 to present, are denied.

If you have any questions regarding this matter, please do not hesitate to contact this office. If you do not agree with this determination, you have a right to request a hearing regarding this matter. If this is your intention, please complete the attached Request for Hearing form and return it, **along with a copy of this letter**, to the Hearings Division at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Encl.
Cc: Bally's Las Vegas
Susan Reeves
Daniel Schwartz, Esq.
File

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Sedgwick CMS

4955 S. Durango Dr., Ste. 209
Las Vegas, NV 89113
Phone: (702) 568-3800
Fax: (702) 568-3779

September 8, 2006

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE: Employer: Bally's Las Vegas
Claim No: H243724
D.O.I.: 9/25/88

Dear Mrs. Reeves:

NOTICE OF INTENTION TO CLOSE CLAIM
(Pursuant to NRS 616C.235)

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Your file reflects that you are not presently undergoing any medical treatment; however, if you are scheduled for future medical appointments, please advise us immediately.

Nevada Revised Statute (NRS) 616C.390 defines your right to reopen your claim. You must make a written request for reopening and your doctor must submit a report relating your problem to the original industrial injury. The report must state that your condition has worsened since the time of claim closure and that the condition requires additional medical care. Reopening is not effective prior to the date of your request for reopening unless good cause is shown. Upon such showing by your doctor, the cost of emergency treatment shall be allowed.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter.

If you have any questions, please contact me at (866)464-0159 ext. 83742.

Sincerely,

Jennifer DaRos
WC Claims Examiner

Encl.: Hearing Request

cc: Employer

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FILED
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APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	Claim No:	88H92H243724
SUSAN REEVES,	Appeal No:	14175-GS 14174-GS 13350-GS
Claimant.		

DECISION AND ORDER

The above captioned appeals came on for hearing before Appeals Officer, Geraldine H. Schwartzer, Esq., on January 5, 2006. The Claimant was present and was represented by Douglas Rowan, Esq. The Self-insured employer, Bally's, was represented by Lee Davis, Esq. of Santoro Driggs, Walch, Kearney, Johnson & Thompson.

There were three (3) appeals consolidated for hearing. At the time of the hearing, Claimant's counsel advised that appeal numbers 13350 and 14174 were being withdrawn and could be dismissed. Appeal number 13350 was the Claimant's appeal from a November 30, 2004 Hearing Officer's Order of Dismissal. The Hearing Officer dismissed the Claimant's appeal regarding claim closure. The Hearing Officer noted there was no determination and a review of the file failed to indicate the claim was closed. Although the Claimant appealed the November 30, 2004 Hearing Officer's decision, the Claimant withdrew the appeal on January 5, 2006, as the claim is open and claim closure is not an issue.

In regards to appeal number 14174, this was Claimant's appeal from the July 15, 2004 denial of certain medical bills. The Claimant, through counsel, withdrew the appeal as that issue was resolved and no longer at issue.

In regards to appeal number 14175, this was the Claimant's appeal from a November 30, 2004 Hearing Officer's decision. The Hearing Officer affirmed the July 21, 2004 denial of temporary total disability, "TTD" herein, benefits. Upon review of the appeal file, the Claimant's

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appeal was untimely filed on January 12, 2005. The parties were informed as to the date the appeal was filed and Claimant presented testimony regarding the filing of the appeal. After considering the documents and Claimant's testimony, the Appeals Officer renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant testified she received the three Hearing Officers' November 30, 2004 decisions and forms to file the appeals from the Hearing Officer's decision. She further testified she completed all three appeal forms and sent the forms to the appeals office in the same envelope.

2. There is no evidence the appeals office received all three appeal forms on the same day. Each Hearing Officer decision has a different number for that appeal before the Hearing Officer. Although all three decisions were rendered on November 30, 2004, each decision has a different number for that particular issue decided by the Hearing Officer. The appeal forms used to request an appeals officer hearing each contained the hearing officer number that was being appealed. According to the appeal forms, appeal number 13350 was the appeal from Hearing Officer number 10908-SM, the hearing involving the claim closure. This appeal request was received on December 8, 2004. The appeal request for appeal number 14174 was the appeal request for Hearing Officer number 11038-SM, the appeal involving the denial of medical bills. This appeal was received on January 12, 2005. The appeal form used to request an appeal from the denial of TTD, Hearing Officer number 10907-SM, was also received by the appeals office on January 12, 2005.

3. The Claimant's appeal from the Hearing Officer's decision denying TTD was untimely filed on January 12, 2005.

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CONCLUSIONS OF LAW

1. NRS 616C.345(1) provides for a thirty (30) day period for filing an appeal from the hearing officer's decision.

2. Failure to file a request for hearing may be excused where the aggrieved party can demonstrate by a preponderance of the evidence that she did not receive the determination and the forms necessary to file the appeal. NRS 616C.345(8).

3. The time limits for the filing of appeals in Workers' Compensation actions are mandatory and jurisdictional. State Indus.Ins.Sys. v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985). Reno Sparks Visitors Auth. v. Jackson, 112 Nev.62, 910P.2d 267 (1996). The Appeals Officer thus has no discretion to excuse the untimely filing of an appeal, other than as provided by statute.

4. Mailing does not constitute filing. The appeal request must be timely filed. Filing is not timely unless the papers are received by the clerk. SIIS v. Partlow-Hursh, 101 Nev. 122, 696 P. 2d 462 (1985). Although the Claimant testified she mailed the appeal request at the same time as the appeal request in appeal number 13350 which was timely received and filed, the documentary evidence indicates appeal number 14175 was received on January 12, 2005 and was untimely.

ORDER

Pursuant to the Claimant's withdrawal of appeal number 13350 (the Hearing Officer's Order of Dismissal regarding the claim closure issue), and appeal number 14174 (the Hearing Officer's decision regarding payment of medical bills), the appeals are dismissed with prejudice. In regards to appeal number 14175 (the Hearing Officer's decision regarding TTD), the appeal was untimely filed and the Appeals Officer has no discretion to excuse the Claimant's untimely filing of the appeal. Due to the untimely filing of the appeal, there is a lack of jurisdiction to

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decide the appeal involving the TTD issue and the appeal is dismissed.

IT IS SO ORDERED this 20th day of January, 2006

GERALDINE H. SCHWARTZER, ESQ.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS ROWAN ESQ
THORNDAL ARMSTRONG DELK ET AL
1100 E BRIDGER AVE
LAS VEGAS NV 89101

BALLY'S
KATHY MONE
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

DANIEL SCHWARTZ ESQ
SANTORO DRIGGS ET AL
400 S 4TH ST 3RD FL
LAS VEGAS NV 89101

CCMSI
DEBORAH JONES
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 20th day of January, 2006.

Luciana Della Neve

Luciana Della Neve, Legal Secretary II
Employee of the State of Nevada

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SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON
SDW

NEVADA DEPARTMENT OF ADMINISTRATION

FILED
DEC 22 2009
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES 4724 East Washington Avenue Las Vegas, NV 89110 Claimant.	Claim No.: 88H92H243724 Appeal No.: 39934-GK 42367-GK Employer: BALLY'S Attn: Kathy Mone 3645 Las Vegas Boulevard South Las Vegas, NV 89109

DECISION AND ORDER

The above-captioned appeal came on for hearing multiple days before Appeals Officer GREGORY KROHN, ESQ. The claimant, SUSAN REEVES, was represented by, TERESA HORVATH, ESQ., of the NEVADA ATTORNEY FOR INJURED WORKERS. The Employer, BALLY'S, was represented by LEE DAVIS, ESQ., of SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON.

In a letter dated February 16, 2007, the Employer notified the claimant that her claim was accepted for specific injuries only. The claimant appealed that determination to a Hearing Officer.

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

In a letter dated September 8, 2006, the Employer notified the claimant that it was closing her claim. The claimant appealed that determination to a Hearing Officer.

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

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After reviewing the documentary evidence, hearing the testimony of witnesses, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

I.

FINDINGS OF FACT

1. On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury.

2. The claimant was also involved in a motor vehicle accident again on September 25, 1988.

3. The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim.

4. The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the matter to the Appeals Officer. On March 26 1991 the Appeals Officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court.

5. The Claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness.

6. The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts.

7. On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that she be sent to pain management.

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8. On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain.

9. On February 27, 1991, the 5% PPD would be offered to the claimant.

10. On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. A second letter of acceptance would be sent to the claimant on May 12, 1998.

11. On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder.

12. On December 27, 2001 the claimant was sent a claim closure notice, that determination would later be reversed by an appeals officer awarding the claimant further medical care. The claimant would be sent to Dr. Mortillaro. In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer.

13. The clamant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004.

14. The claimant also continued to treat with Dr. Dunn in 2004.

15. The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility.

16. On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare.

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17. On September 8, 2006 the claimant was sent a claim closure determination. The claimant appealed that determination.

18. A Hearing Officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

19. The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim.

20. On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination.

21. On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim.

22. The claimant appealed the hearing officer order of dismissal. The claimant brought the issue of her failure to appear to Appeals Officer Richens who issued an order of remand finding that the claimant established that she had not received the notice of hearing. The matter would be referred back to the hearing office for a hearing on the merits.

23. On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination.

24. The claimant appealed that decision. Both of these appeals have been consolidated,

25. The Employer served the claimant with interrogatory questions focused on the claimant providing specific dates when he injured herself as a result of falls. The questions also asked the claimant to provide the medical facilities that she sought medical attention as a result of her fall(s).

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26. At the time of appeal hearing the claimant testified that she had many falls that she thought was caused by her industrial injuries. The claimant further testified that she believed that she was forced to require medical care for these falls.

27. These findings of fact are based upon substantial evidence within the record.

II.

CONCLUSIONS OF LAW

1. Under NRS 616C.160, the claimant must demonstrate that a late manifesting condition is caused by the accepted condition.

> 1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;
>
> 2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. The Claimant is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is the Claimant's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

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It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

III.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the claimant has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally the claimant has failed to establish an entitlement to further medical care and that claim closure was improper;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Officer Decisions dated May 10, 2007 and July 25, 2007 are AFFIRMED.

IT IS SO ORDERED.

DATED this 18th day of December, 2009

GREGORY KROHN, ESQ.
Appeals Officer

Submitted by,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

By: _____
LEE DAVIS, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for the Employer

NOTICE: Pursuant to NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service of this Order.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the ___ _____ day of December, 2009, service of the foregoing **DECISION AND ORDER** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following::

Susan Reeves
4724 East Washington Avenue
Las Vegas, NV 89110

Teresa Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, NV 89102

Bally's
3645 Las Vegas Blvd. South
Las Vegas, NV 89109

Sedgwick Claims
P.O. Box 14438
Lexington, KY 40512-4483

Lee Davis, Esq.
Santoro, Driggs, Walch,
Kearney, Holley & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

DATED this 22nd day of December, 2009

An employee of the Department of Administration,
Appeals Office

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

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PROGRESS REPORT
CERTIFICATION OF DISABILITY

Social Security Number:

Patient's Name: | Date of Injury:

Employer: | Name of MCO (if applicable)

Patient's Job Description/Occupation:

Previous Injuries/Diseases/Surgeries Contributing to the Condition:

Diagnosis:

Related to the Industrial Injury? Explain:

Objective Medical Findings:

❑ None - Discharged Stable ❑ Yes ❑ No Ratable ❑ Yes ❑ No

❑ Generally Improved ❑ Condition Worsened ❑ Condition Same

May Have Suffered a Permanent Disability ❑ Yes ❑ No

Treatment Plan:

❑ No Change in Therapy ❑ PT/OT Prescribed ❑ Medication May be Used While Working

❑ Case Management ❑ PT/OT Discontinued

❑ Consultation

❑ Further Diagnostic Studies:

❑ Prescription(s)

❑ Released to **FULL DUTY**/No Restrictions on (Date): _____

❑ Certified **TOTALLY TEMPORARILY DISABLED** (Indicate Dates) **From:** _____ **To:** _____

❑ Released to **RESTRICTED**/Modified Duty on (Date): **From:** _____ **To:** _____

Restrictions Are: ❑ Permanent ❑ Temporary

❑ No Sitting	❑ No Standing	❑ No Pulling	❑ Other: _____
❑ No Bending at Waist	❑ No Stooping	❑ No Lifting	_____
❑ No Carrying	❑ No Walking	❑ Lifting Restricted to (lbs.): _____	
❑ No Pushing	❑ No Climbing	❑ No Reaching Above Shoulders	

Date of Next Visit:	Date of this Exam:	Physician/Chiropractor Name:	Physician/Chiropractor Signature: 265

D-39 (Rev. 7/99)

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Citation: 332 or. 404

*332 Ore. 404, *; 29 P.3d 1129, **;*
*2001 Ore. LEXIS 661, ****

View Available Briefs and Other Documents Related to this Case

In the Matter of the Compensation of Garrett W. Crawford, Claimant. MENASHA CORPORATION and LUMBERMANS MUTUAL CASUALTY COMPANY, Respondents on Review, v. GARRETT W. CRAWFORD, Petitioner on Review.

SC S47076

SUPREME COURT OF OREGON

332 Ore. 404; 29 P.3d 1129; 2001 Ore. LEXIS 661

November 8, 2000, Argued and Submitted
August 16, 2001, Filed

PRIOR HISTORY: [*1]** On review from the Court of Appeals. * WCB 98-03327; CA A105040.

* Judicial review from the Workers' Compensation Board. 164 Ore. App. 174, 988 P.2d 451 (1999).

DISPOSITION: The decision of the Court of Appeals is affirmed. The order of the Workers' Compensation Board is reversed, and the case is remanded to the Workers' Compensation Board for further proceedings.

CASE SUMMARY

PROCEDURAL POSTURE: Claimant employee suffered a back injury, and was awarded workers' compensation benefits from the date of his surgery to the day he was released back to work. The employer was not awarded benefits for a two-year period from the date of injury to the date of surgery. An administrative law judge and the workers' compensation board awarded the employee benefits. The Court of Appeals (Oregon) reversed the determination. The employee appealed.

OVERVIEW: The workers' compensation board held that the employee was entitled to temporary total disability benefits for periods the employee could prove he was unable to work as a result of his compensable injury and the benefits were not contingent on contemporaneous authorization by a physician. The court of appeals reversed, finding that Or. Rev. Stat. 656.262(4)(q) prevented retroactive benefits more that 14 days in the past. On appeal, the employee claimed that the statute only applied to open claims, and not circumstances such as the employee's where a claim was being closed and an award was being finalized. The court affirmed the court of appeals decision. The court held that the statute limitation of retroactive benefits to 14 days was not unambiguous. The statute clearly

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showed that the legislature did not intend to permit physicians to certify retroactive temporary compensation for a period greater than 14 days. No related statutory provision stated that the statute applied only to certain kinds of claims but not to others. The court of appeals properly remanded for recalculation of the employee's award of temporary total disability benefits.

OUTCOME: The court affirmed the decision of the court of appeals, which reversed the award of the workers' compensation board.

CORE TERMS: temporary, claimant's, attending physician, disability benefits, disability, disability compensation, sentence, entitlement, authorize, closure, authorization, total disability, regular, insurer, workers' compensation, period of time, retroactive, retroactively, stationary, medically, suspended, compensable injury, injured worker, contemporaneous, verification, terminated, disabled, cease, statute provides, present case

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN1 See Or. Rev. Stat. § 656.262(4)(g).

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

Workers' Compensation & SSDI > Social Security Disability Insurance > Disability Determinations > General Overview

HN2 A claimant's substantive entitlement to temporary disability benefits, which is set forth in Or. Rev. Stat. §§ 656.210 and 656.212, is determined on claim closure and is proven by a preponderance of the evidence in the entire record showing that the claimant was disabled due to the compensable injury before being declared medically stationary. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN3 Or. Rev. Stat. § 656.262(4)(g) does not permit a physician to make an award of temporary compensation retroactive for more than 14 days. More Like This Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN4 See Or. Rev. Stat. § 656.262(4)(g).

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN5 See Or. Rev. Stat. § 656.262(4)(a).

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN6 See Or. Rev. Stat. § 656.262(4)(d).

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

Workers' Compensation & SSDI > Social Security Disability Insurance > Cessations > Notice, Hearings & Appeals

HN7 Temporary total disability benefits are not due and payable if the claim does not meet the qualifying statutory criteria. More Like This Headnote

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Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN8 See Or. Rev. Stat. § 656.268.

Workers' Compensation & SSDI > Benefit Determinations > Temporary Partial Disabilities

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

Workers' Compensation & SSDI > Social Security Disability Insurance > Cessations > Continuing Disability Standards

HN9 The workers' compensation statutes provide for temporary total disability in Or. Rev. Stat. § 656.210 and for temporary partial disability in Or. Rev. Stat. § 656.212. To be payable, such compensation must have both a physician's initial and continuing authorization. The first installment of temporary disability compensation shall be paid if the attending physician authorizes the payment of temporary disability compensation. Or. Rev. Stat. § 656.262(4)(a). An attending physician may authorize payment of disability benefits and payment may continue only for the period of time authorized by those sections. Or. Rev. Stat. § 656.262(4)(h). More Like This Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Partial Disabilities

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN10 An employer may suspend payment of temporary total disability or temporary partial disability benefits at the end of the period until the attending physician reauthorizes the temporary disability. Or. Rev. Stat. § 656.262(4)(h). Such compensation is not due and payable for any period for which the attending physician cannot verify the worker's inability to work, if the insurer or self-insured employer has requested verification of that inability. Or. Rev. Stat. § 656.262(4)(d). Further, if the insurer or self-insured employer has requested, but has not received, some form of verification from the attending physician, that physician's services are not compensable until the physician submits such verification. Or. Rev. Stat. § 656.262(4)(f). More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN11 See Or. Rev. Stat. § 656.210(1).

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN12 See Or. Rev. Stat. § 656.212.

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > General Overview
Public Health & Welfare Law > Social Services > Disabled & Elderly Persons > Agency Actions & Procedures > Negative Actions

Workers' Compensation & SSDI > Social Security Disability Insurance > Cessations > Continuing Disability Standards

HN13 Or. Rev. Stat. § 656.268(4)(b) provides that temporary total disability continues until the attending physician advises the claimant and documents in writing that the claimant is released to return to regular employment. In addition, that same subsection provides that temporary total disability shall continue until any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under Or. Rev. Stat. § 656.262(4). More Like This Headnote

Available Briefs and Other Documents Related to this Case:

OR Supreme Court Brief(s)

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COUNSEL: Mike Stebbins, of Stebbins & Coffey, North Bend, argued the cause and filed the brief for petitioner on review.

Jerald P. Keene, of Reinisch, Mackenzie, Healey, Wilson & Clark, P.C., Portland, argued the cause and filed the brief for respondents on review.

David L. Runner, Lead Appellate Counsel, Salem, filed the brief for amici curiae SAIF Corporation, Pape Group, Inc., and Timber Products Company.

G. Duff Bloom, of Cole, Cary, Wing & Bloom, P.C., Eugene, filed the brief for amicus curiae Oregon Trial Lawyers Association.

JUDGES: Before Carson, Chief Justice, and Gillette, Durham, Leeson, and Riggs, Justices. **

** Van Hoomissen, J., retired on December 30, 2000, and did not participate in the decision of this case; Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case; De Muniz, J., did not participate in the consideration or decision of this case. **[***2]**

OPINION BY: GILLETTE

OPINION

[1130]** **[*407]** GILLETTE, J.

The issue in this workers' compensation case is whether claimant is entitled to receive nearly two years' worth of temporary total disability (TTD) benefits, based on a physician's after-the-fact certification that claimant had been disabled for that period. An administrative law judge (ALJ) and the Workers' Compensation Board (Board) held that claimant was entitled to temporary compensation for the period in question. The Court of Appeals reversed. **Menasha Corp. v. Crawford**, 164 Ore. App. 174, 988 P.2d 451 (1999). We allowed claimant's petition for review and now affirm the decision of the Court of Appeals.

The facts are undisputed. On October 11, 1995, claimant reported to his employer that he had suffered an injury to his lower back. The next day, claimant saw Dr. Davis, who confirmed the back injury and released claimant to light work. Eight days later, Davis released claimant to regular work. In the meantime, employer fired claimant. On October 27, 1995, employer's insurer denied claimant's claim for compensation.

Claimant appealed the denial of his claim. On January 16, 1997, an ALJ reversed the denial. On July 15, 1997, the **[***3]** Board affirmed the ALJ's decision. Neither employer nor employer's insurer (collectively "employer") sought further review, and the merits of that adjudication are not before us. As the case comes to us, claimant is a worker who has had a valid claim for an on-the-job injury to his back, which claim was in accepted status after July 15, 1997.

Claimant was referred to and began treating with another physician, Dr. Bert, on December 13, 1995. On September 30, 1997, Bert performed surgery on claimant's back. On December 1, 1997, after an inquiry by claimant's lawyer, Bert certified retroactively that claimant had been unable to work for the period from October 20, 1995 (the date that Davis released claimant for regular work), until September 30, 1997 (the date of surgery).

[*408] On January 27, 1998, Bert released claimant for light work. On February 4, 1998, two physicians retained by employer concluded that claimant's back condition was "medically stationary." [1] Bert concurred.

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FOOTNOTES

1 "Medically stationary," as defined in ORS 656.005(17), means that "no further material improvement would reasonably be expected from medical treatment, or the passage of time."

[*4]** On March 9, 1998, employer's insurer closed the claim and awarded TTD benefits from September 30, 1997 (the date of surgery), until February 4, 1998 (the date on which claimant was determined to be medically stationary). A later modification added the period from October 12, 1995 (the date of injury), until October 20, 1995 (the date that Davis released claimant for regular work). Claimant was not awarded benefits for the nearly two-year gap between October 20, 1995, and September 30, 1997.

Claimant challenged the award, seeking compensation for the period from October 20, 1995, until September 30, 1997. An ALJ concluded that, although ORS 656.262(4)(g) [2] restricts retroactive awards of TTD during the period of time in which the claim is open, a TTD award for the period from October 20, **[**1131]** 1995, until September 30, 1997, nonetheless was appropriate. The ALJ explained:

FOOTNOTES

2 The statute that was in effect at the commencement of this case, ORS 656.262(4)(f) (1995), was renumbered in 1997 as ORS 656.262(4)(g), but was not otherwise changed. HN1 ORS 656.262(4)(g) provides:

> "Temporary disability compensation is not due and payable pursuant to ORS 656.268 after the worker's attending physician ceases to authorize temporary disability or for any period of time not authorized by the attending physician. No authorization of temporary disability compensation by the attending physician under ORS 656.268 shall be effective to retroactively authorize the payment of temporary disability more than 14 days prior to its issuance."

Unless otherwise noted, all statutory citations refer to the current version of the Oregon Revised Statutes.

[*5]**

> "The payment of temporary disability 'pursuant to ORS 656.268,'" as provided in [**former**] ORS 656.262(4)(f) [1995], concerns the payment of temporary disability during the carrier's processing of open claims to closure. Thus, ORS 262.268 refers to procedural temporary disability benefits which may accrue prior to claim closure. ORS 656.268 does not set forth the requirements for substantive entitlement to temporary disability; those requirements are set forth in **[*409]** ORS 656.210 and 656.212. **Kenneth P. Bundy**, 48 Van Natta 2501, 2503 (1996).
>
> "Here, inasmuch as claimant's claim has been closed, the issue is claimant's **substantive** right to temporary disability benefits. HN2 A claimant's substantive entitlement to temporary disability benefits, which is set forth in ORS 656.210 and 656.212, is determined on claim closure and is proven by a preponderance of the evidence in the entire record showing that the claimant was disabled due to the

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compensable injury before being declared medically stationary. * * *
Neither **[***6]** ORS 656.210 nor ORS 656.212 contains any language which limits a worker's substantive entitlement to temporary disability to only those periods for which there is contemporaneous authorization by the attending physician. **Bundy, supra.** Therefore, claimant need not show contemporaneous authorization of time loss to be entitled to those substantive benefits." [3]

FOOTNOTES

3 "Time loss," as used herein by the ALJ, the Board, and the Court of Appeals, is a shorthand for temporary disability compensation under ORS 656.210 and ORS 656.212.

(Citations omitted; emphasis in original.)

As noted, the ALJ relied on the Board's earlier decision in **Bundy**. In that decision, the Board had held that ORS 656.262(4)(g) applies only to "procedural" obligations. That was true, the Board stated, for two reasons: First, the verbs in ORS 656.262(4)(g) are **[***7]** in the present tense, implying that the statute applies only when the claim is open. Second, when the legislature added what is now ORS 656.262(4)(g), it did not revise ORS 656.210 and ORS 656.212, the statutes that authorize TTD and temporary partial disability compensation (TPD), respectively. Neither of those statutes specifically limits TPD and TTD only to those periods for which a physician has issued a contemporaneous authorization. As a result, the Board held in **Bundy** that ORS 656.262(4)(g) does not apply to a claim at closure. 48 Van Natta 2501, 2503 (1996).

On review in the present case, the Board affirmed, again asserting (as it had in **Bundy**) that a claimant's "substantive" entitlement to temporary disability benefits is **[*410]** determined when the claim is closed. Citing its earlier decision in **Bundy**, the Board concluded that a worker substantively is entitled to temporary disability benefits for those periods during which the worker is able to prove that he or she was unable to work as a result of a compensable injury and that substantive entitlement to such **[***8]** benefits is not contingent on contemporaneous authorization of time loss by the attending physician. **Garret W. Crawford**, 51 Van Natta 1 (1999). One member of the Board concurred specially, opining that the substantive/procedural distinction on which **Bundy** depended was eliminated when the legislature enacted **former** ORS 656.262(4)(f) (1995) and **former** ORS 656.268(3)(d) (1995), [4] and that the statute required a physician to authorize any award of temporary disability. The member declined to dissent, however, because the Board's decision in **Bundy** still was the law. **Id.** at 2.

FOOTNOTES

4 In 1999, **former** ORS 656.268(3)(d) (1995), was renumbered as ORS 656.268(4)(d), but was otherwise unchanged.

Shortly after the Board issued its **Crawford** decision, the Court of Appeals, in an en banc decision, reversed **Bundy**. **Fred Meyer, Inc. v. Bundy**, 159 Ore. App. 44, 978 P.2d 385 (1999). **[***9]** [5] In **Bundy**, the Court of Appeals described the issue as "whether **[**1132]** ORS 656.262(4)(g) applies to only procedural obligations to pay temporary disability while a claim is open, or whether it also applies to the substantive entitlement to benefits at claim closure." 159 Ore. App. at 49.

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FOOTNOTES

5 This court accepted review in **Bundy**, 329 Ore. 318, 994 P.2d 122 (1999), but later dismissed review as improvidently allowed, 329 Ore. 503, 991 P.2d 1058 (1999). The order of dismissal did not disclose the reasons for the court's decision to dismiss.

We examine the Court of Appeals' decision in **Bundy** at length, because it squarely presents the legal issue that we address in the present case. A majority of the full Court of Appeals concluded that HN3 ORS 656.262(4)(g) does not permit a physician to make an award of temporary compensation retroactive for more than 14 days. The majority rejected the Board's conclusion that ORS 656.262 **[***10]** (4)(g) applies only to pending "procedural" claims: "On its face, ORS 656.262(4)(g) is not limited to benefits that are due and payable during the time that the claim is open." **Bundy**, 159 Ore. App. at 50. In the majority's view, the fact that "the verbs in the statute are in **[*411]** the present tense does not negate the possibility that the statute also applies to awards of time loss **i.e.**, temporary disability] made at claim closure." **Id.** (footnote omitted). In addition, "the reference to ORS 656.268 in both sentences [of ORS 656.262(4)(g)] is a reference to a statute that addresses the process of claim closure." **Id.** The Court of Appeals majority ultimately concluded that ORS 656.262(4)(g) is ambiguous and proceeded to examine the legislative history of the statute. **See PGE v. Bureau of Labor and Industries**, 317 Ore. 606, 610-12, 859 P.2d 1143 (1993) (establishing that paradigm of statutory interpretation). From that review, the majority concluded that ORS 656.262(4)(g) prevents a physician from authorizing **[***11]** retroactive benefits more than 14 days into the past. 159 Ore. App. at 50-54.

Judge Wollheim, joined by Judges De Muniz and Armstrong, dissented. The dissent noted that the substantive/procedural distinction on which the Board relied was not found in the workers' compensation statute but, rather, existed in the Court of Appeals' case law. Specifically, the dissent argued that

> "substantive time loss is the temporary total disability award, which the injured worker is entitled to receive at the time of closure by virtue of proof that the injured worker experienced a period of temporary total disability before claim closure."

159 Ore. App. at 55 (Wollheim, J., dissenting). Conversely,

> "an injured worker's procedural entitlement to time loss is the temporary total disability benefits that the employer or insurer is obligated to pay on an open claim by virtue of the procedures of claim processing before the injured worker becomes medically stationary."

Id.

The dissent in **Bundy** maintained that ORS 656.262(4)(g) concerns only open claims and procedural benefits, **i.e.**, "when payment must be **[***12]** made, when payment is not due and payable, and when payment may be unilaterally suspended." **Bundy**, 159 Ore. App. at 57 (Wollheim, J., dissenting). The dissent then asserted that ORS 656.268, which is cross-referenced in ORS 656.262(4)(g), is a procedural statute **[*412]** that describes the process for awarding temporary benefits on a claim at the time of **closure**. 159 Ore. App. at 57-58. According to the dissent:

> "The first sentence of [ORS 656.262](4)(g) is expressly limited to temporary disability benefits not due and payable 'pursuant to ORS 656.268.' That statute is

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only a procedural statute. Because temporary disability benefits suspended under the first sentence of subsection (4)(g) are, by definition, being paid **pursuant to** ORS 656.268, this sentence is limited to the procedural entitlement to temporary disability benefits. The second sentence of subsection (4)(g) expressly refers to an attending physicians's authorization of temporary disability benefits 'under ORS 656.268.' The explicit **[***13]** reference to ORS 656.268 limits the application of this sentence of (4)(g) to the procedural entitlement of temporary benefits while the claim is open. * * * Thus, like the first sentence, the second sentence of subsection (4)(g) is also limited to the procedural entitlement to temporary disability benefits."

[1133]** 159 Ore. App. at 60-61 (citation omitted; emphasis in original). The dissent concluded, without reaching the legislative history, that ORS 656.262(4)(g) does not establish any temporal limit on the temporary compensation that might be paid when a claim is closed. 159 Ore. App. at 56-63.

On employer's petition for judicial review in the present case, the Court of Appeals reversed the Board's decision and remanded for reconsideration in light of **Bundy**. **Menasha Corp. v. Crawford**, 164 Ore. App. 174, 988 P.2d 451 (1999). We allowed claimant's petition for review.

The issue before us turns on the meaning of ORS 656.262(4)(g) and is a question of the legislature's intent. As did the Court of Appeals, we examine the text and context of the statute to determine **[***14]** that intent. **PGE**, 317 Ore. at 610. If the legislature's intent is clear from the text and context, further inquiry is unnecessary. 317 Ore. at 611. For convenience, we again set out HN4 ORS 656.262(4)(g):

"Temporary disability compensation is not due and payable pursuant to ORS 656.268 after the worker's attending physician ceases to authorize temporary disability or for **[*413]** any period of time not authorized by the attending physician. No authorization of temporary disability compensation by the attending physician under ORS 656.268 shall be effective to retroactively authorize the payment of temporary disability more than 14 days prior to its issuance."

The authorization of the attending physician triggers the duty to pay temporary disability benefits. HN5 Subsection (4)(a) of ORS 656.262, provides:

"The first installment of temporary disability compensation shall be paid no later than the 14th day after the subject employer has notice or knowledge of the claim, **if the attending physician authorizes the payment of temporary disability [***15] compensation**."

(Emphasis added.) HN6 Subsection (4)(d) of the same statute provides:

"Temporary disability compensation is not due and payable for any period of time for which the insurer or self-insured employer has requested from the worker's attending physician verification of the worker's inability to work resulting from the claimed injury or disease and the physician cannot verify the worker's inability to work, unless the worker has been unable to receive treatment for reasons beyond the worker's control."

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Viewed in light of subsections (4)(a) and (4)(d), the first sentence of subsection (4)(g) is clear. It describes two additional sets of circumstances in which temporary disability compensation is **not** due and payable: (1) after the claimant's attending physician ceases to authorize such compensation; and (2) for any other period of time "not authorized by the attending physician."

The first sentence leaves open this question: Should a worker receive TTD when an attending physician belatedly concludes that the worker is temporarily totally disabled? The second sentence of subsection (4)(g) answers that question: The attending physician's authorization **[***16]** of temporary total disability payments can be retroactive for up to 14 days -- but no more.

[*414] The foregoing statutes state the positive law basis for awarding TTD. HN7 TTD benefits are not due and payable if the claim does not meet the qualifying statutory criteria.

ORS 656.268, the statute twice cross-referenced in ORS 656.262(4)(g), sets out the procedures for terminating TTD benefits. That statute provides, in part:

> HN8 "(4) Temporary total disability benefits shall continue until whichever of the following events first occurs:
>
> "(a) The worker returns to regular or modified employment;
>
> "(b) The attending physician advises the worker and documents in writing that the worker is released to return to regular employment;
>
> "(c) The attending physician advises the worker and documents in writing that the worker is released to return to modified employment, such employment is offered in writing to the worker and the worker fails to begin such employment; or
>
> **[**1134]** "(d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under ORS 656.262(4) or other provisions **[***17]** of this chapter."

As did the dissent in **Bundy**, claimant here argues that the text of ORS 656.262(4)(g) applies only to open claims, not to circumstances in which a claim is being closed and an award is being finalized. As our examination of that statute in context demonstrates, however, the text and context of ORS 656.262(4)(g) do not permit such an interpretation: Neither ORS 656.262(4)(g) nor any other statute that provides context for ORS 656.262(4)(g) makes a distinction between a pending claim and a claim at the time of closing respecting retroactive compensation. [6]

FOOTNOTES

[6] The **Bundy** dissent purported to find such a distinction, based on the difference in wording between ORS 656.262(4)(g) ("not due and payable") and ORS 656.268(4)(d) ("suspended, withheld, or terminated"). The two statutes are harmonizable, however, when one recognizes that benefits are "terminated" when they no longer are due and payable.

[*18]** HN9

[*415] The workers' compensation statutes provide for TTD in ORS 656.210 [7] and for TPD in ORS 656.212. [8] To be payable, such compensation must have both a physician's initial and continuing authorization. "The first installment of temporary disability compensation shall be

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paid * * * if the attending physician [9] authorizes the payment of temporary disability compensation." ORS 656.262(4)(a). An attending physician may authorize payment of disability benefits and payment may continue only for the period of time authorized by those sections. ORS 656.262(4)(h). HN10 An employer may suspend payment of TTD or TPD at the end of the period until the attending physician reauthorizes the temporary disability. ORS 656.262(4)(h). Such compensation is not due and payable for any period for which the attending physician cannot verify the worker's inability to work, if the insurer or self-insured **[*416]** employer has requested verification of that inability. ORS 656.262(4)(d). Further, if the insurer or self-insured employer has requested, but has not received, **[***19]** some form of verification from the attending physician, that physician's services are not compensable until the physician submits such verification. ORS 656.262(4)(f).

FOOTNOTES

7 HN11 ORS 656.210(1) states:

> "When the total disability is only temporary, the worker shall receive during the period of that total disability compensation equal to 66-2/3 percent of wages, but not more than 100 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the amount of $ 50 a week, whichever amount is lesser. Notwithstanding the limitation imposed by this subsection, an injured worker who is not otherwise eligible to receive an increase in benefits for the fiscal year in which compensation is paid shall have the benefits increased each fiscal year by the percentage which the applicable average weekly wage has increased since the previous fiscal year."

ORS 656.210(2)-(4) further defines the methods of calculating temporary total disability benefits.

[*20]**

FOOTNOTES

8 HN12 ORS 656.212 states:

> "When the disability is or becomes partial only and is temporary in character:
>
> "(1) No disability payment is recoverable for temporary disability suffered during the first three calendar days after the worker leaves work or loses wages as a result of the compensable injury. If the worker leaves work or loses wages on the day of the injury due to the injury, that day shall be considered the first day of the three-day period.
>
> "(2) The payment of temporary total disability pursuant to ORS 656.210 shall cease and the worker shall receive for an aggregate period not exceeding two years that portion of the payments provided for temporary total disability which the loss of wages bears to the wage used to calculate temporary total disability pursuant to ORS 656.210."

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9 An attending physician generally is a licensed physician who primarily is responsible for

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treating a worker's compensable injury for the earlier of 30 days from the date of first visit on the initial claim or 12 visits. ORS 656.005(12)(b)(B); **see also** ORS 656.245(5) (authorizing certain nurse practitioners and physician assistants who practice in rural areas to authorize payment of temporary disability compensation for 30 days from date of first visit on claim).

[*21]** ORS 656.262(4)(g) applies in conjunction with ORS 656.268, the statute that determines a claimant's entitlement to claim closure as well as the claimant's entitlement to TTD. Consistent with the first sentence of ORS 656.262(4)(g), HN13 ORS 656.268 provides that TTD continues until the attending physician advises the claimant and documents in writing that the claimant is released to return **[**1135]** to regular employment. ORS 656.268(4)(b). In addition, that same subsection provides that TTD shall continue until "any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under **ORS 656.262(4)** * * *." ORS 656.268(4)(d) (emphasis added).

In sum, the statement in ORS 656.262(4)(g) that "no authorization * * * shall be effective * * * retroactively * * * more than 14 days" establishes that the legislature did not intend to permit physicians to certify retroactive temporary compensation for a period greater than 14 days. Context does not alter **[***22]** that fact: No related statutory provision states that ORS 656.262(4)(g) applies only to certain kinds of claims but not to others, or that the statute applies to claims while they are pending but not to claims at the time of their closure. The statutory text viewed in context is unambiguous. We need not examine legislative history to determine the legislature's intent. **PGE**, 317 Ore. at 611.

Application of the statute to this case is straightforward. On October 20, 1995, Davis released claimant for regular work. Under ORS 656.262(4)(g), temporary disability benefits no longer were due and payable to him, because the "attending physician ceased to authorize temporary disability." Later, Bert retroactively certified claimant as fully disabled from October 20, 1995, but Bert's later certification is, as we have shown, subject to the clearly worded limitation in the second sentence in ORS 656.262(4)(g). The Court of Appeals thus properly remanded the case to the Board to recalculate claimant's award of TTD benefits.

The decision of the Court of Appeals is affirmed. The order of the Workers' **[***23]** Compensation Board is reversed, and the case is remanded to the Workers' Compensation Board for further proceedings.

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NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Industrial Insurance Claim of SUSAN REEVES.	Claim No.: 88S01H243724 Appeal No.: 80334-SL

CLAIMANT'S EXHIBIT #1

CLAIMANT'S FIRST EXHIBIT

PAGE(S)	DOCUMENTS
1 - 34	Claimant's written petition and argument.
35	Letter from Erica Savago to Douglas Rowan, dated 03/22/06.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that no Social Security numbers appear in this Exhibit.

DATED this 2nd day of December, 2010.

NEVADA ATTORNEY FOR INJURED WORKERS

Teresa A. Horvath

Teresa A. Horvath, Esq., Deputy Attorney for Claimant

TAH_REEVES, SUSAN_Exhibit 1-0001.WPD

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APPEALS DIVISION

DEPARTMENT OF ADMINISTRATION

SUSAN REEVES	)
	)
Petitioner	)
	)
vs.	)
	)
DIVISION OF INDUSTRIAL RELATIONS & CCMSI	)
	)
Respondents	)
	)

BEFORE THE APPEALS OFFICER

I
STATEMENT OF THE ISSUES

1. Was the Division of Industrial Relations (hereafter the DIR) finding that there was no violation of NRS 616D.330 correct?

2. What constitutes a written record of an oral communication?

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V

STATEMENT OF THE CASE

On June 29, 2004, a meeting was held at Dr. Petroff's office between Dr. Petroff, Dr. Mortillaro and three (3) worker's compensation representatives from CCMSI. (at pp. 9-11)

CCMSI's counsel was also present but left after Reeves called her counsel and the two (2) counsels talked on the phone. Reeves and her husband were also present but she and her husband were informed by CCMSI's representatives that they were not allowed to be at the meeting and also left. Reeves counsel was never present. According to CCMSI's document, their log of oral communication, there were only two (2) representatives from CCMSI present, an adjuster and a supervisor, (at pp. 9) but according to Dr. Petroff's letter there were three (3) representatives from CCMSI. (at pp. 10-11) One can only wonder who the third person from CCMSI was.

The issues discussed were the nature, extent and cause of Reeves' current disability.

With documents supplied by CCMSI, Dr. Petroff, with respect to causality, deferred to two (2) opinions of other physicians, supposedly rendered around the time of the industrial accident. One (1), the opinion by Dr. Dr. Bowler, who was probably Dr. Boulware, was completely discounted by the Nevada Supreme Court. The other opinion by Dr. Oliveri, was not

a treating physician around the time of the accident, but only preformed an IME just less than two (2) weeks before Dr.Petroff began treatment of Reeves in 1998. Dr. Oliveri's opinion was found by a Hearings Officer to have not addressed Reeves' symptoms and therefore not an opinion sufficient for closure of Reeves' claim.

After the meeting. Dr. Petroff opined that solely with respect to the intention of injury from the second, the industrial accident, it would be reasonable to try a trial of back to work with restrictions but then added his disclaimer, that if Reeves could not tolerate this job that he would review and consider her disability based upon her advanced cervical degenerative change and migraine syndrome. (at pp. 11)

The worker's compensation representatives offered to arrange a trial of back to work, based upon sedentary duties. (at pp. (11)

The outcome of that meeting was a document that was utilized, on September 8, 2006, to close Reeves' claim, based on the notion that there was no certification of disability, a full fifteen (15) months after the document was authored, with no offer of any trial of back to work. (at pp. 12)

On Januaey 29, 2010, Reeves sent a letter to CCMSI requesting copies of her file with particular emphasis on the written record of the meeting between Dr. Petroff and CCMSI's representatives. (at pp. 13) Upon receipt of copies sent by CCMSI, Reeves, on February 12, 2010, sent another letter requesting copies of the written record of that meeting. (at pp. 14) On February 24, 2010, CCMSI responced by informing Reeves she had copies of all of her records. (at pp. 15)

On February 28, 2010, Reeves sent a letter of complaint to the DIR, as she feels that the oral

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log that CCMSI supplied does not comply with NRS 616D.330. (at pp. 16) On April 18, 2010, Reeves sent a follow-up letter to the DIR as no decision was forthcoming. (at pp. 17)

On April 26, 2010, the DIR issued a decision in which it found that there was no violation of NRS 616D.330, signed by Ms. Susan Sayegh, Southern District Manager, Worker's Compensation Section. (at pp.18-20)

On April 29, 2010, Reeves sent a letter to the DIR about the handling of her complaint. (at pp. 21-22) She was informed in a phone conversation with Ms. Sayrgh's supervisor that the matter would be looked into by some other person at the DIR. In a letter to the DIR dated June 1, 2010 Reeves inquired as to what other documents they might need as this issue is about what the word include means. (at pp. 23-24) Whereas, four months had passed with no new decision, Reeves sent another letter, dated September 11, 2010, to the DIR requesting the status of her complaint along with other issues. (at pp. 25-26)

On October 1, 2010, the DIR sent a letter to Reeves stating that after reviewing the investigation of her complaint of February 28, 2010 that resulted in the April 26, 2010 WCS letter, the investigator found that CCMSI had provided her and her attorney with the oral communications requested. (at pp. 27-28) Which brings the matter to the Appeal.

VI
STATEMENT OF FACTS

1. CCMSI (Bally's) has been trying to revisit the issue of casusation since they first accepted Reeves' claim in 1997.

2. The document that CCMSI supplied was incorrect as to who was at that meeting and appears to have been added to that log at a later date. (at pp. 9) 287

3. The log in question containts nothing about what was said by whom or any other thing

except the date that there was a meeting and incorrectly who was there. (at pp. 9)

4. The same Ms. Susan Sayegh, at the DIR, that found that there was no violation of NRS 616D.330 in the first place is the same person that was the claims supervisor at CCMSI on Reeves claim at the time of the meeting with Dr. Petroff. (at pp. 20, 21, 32, 33)

VII
AUGUMENT

NRS 616D.330 states that an insurer who initiates any oral communication with a treating physician that relates to the medical disposition of an injured employee must maintain a written record that is reproducible, that includes the date, time and subject matter, not just the date, time and subject matter.

Pursuant to NRS 616D.330 a written record is to include the date, time and subject matter of any oral communication initiated by an insurer. To include the above would mean to include that information along with the actual record of what was said at the meeting, not be just that a medical staffing was held on a date.

The document that CCMSI supplied does not contain a written record of what was discussed at that meeting other than the date and incorrectly who was at the meeting. It also appears to have been added to the log at a later date, as the date above on the log is a dated 9/8/06, the date that CCMSI closed Reeves' claim. (at pp. 9)

Whereas, in all of Dr. Petroff's previous reports and communications with CCMSI he had opined that Reeves was not able to work and that after so many years has passed since the accidents, he could not rule them in or out as causes. (at pp. 30, 32, 33-34) In a letter just prior to that meeting he had stated exactly what was preventing her from returning to gainful employment as documented objectively by MRI and x-ray. (at pp. 33-34) Whereas, the letter

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that he authored after that meeting was in such sharp contrast to all previous opinions and utilized to close Reeves' claim, that meeting certainly relates to the medical dispostion of her claim and therefore a written record pursuant to NRS 616D.330 should have been provided to Reeves upon request, but was not. Therefore, CCMSI did not abide by that statute.

VIII
CONCLUSION

The issue at hand is what is a written record and pursuant to NRS 616D.330 what that written must contain? According to CCMSI and the DIR all that CCMSI has to do is provide whatever they have in their file in a timely manner. According to the DIR it does not matter if that record does not contain any information whatsoever or that the limited amount of information is incorrect and it appears to have been added a later date, only that it was provided in a timely manner. (at pp. 9, 18-20, 27)

To have the very same person, Ms. Susan Sayegh, who was the claims supervisor on Reeves' claim, for CCMSI, at the time of said meeting to be involved at all in the finding that there was no violation is asking her to find that she did not follow the statute. Because the only reliable information on the log is the fact that a medical staffing was held on 06/29/10 and that an adjuster and supervisor were present. (at pp. 9)

The DIR supposedly conducted a new investigation, without requesting any new documents or information from Reeves or anyone else that Reeves knows of. In the DIR's letter of October 1, 2010, they only stated that an investigator found that CCMSI had provided the oral communications requested and that there was no indication of any further communication between CCMSI and Reeves' physician. (at pp. 27)

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Even if the information provided by CCMSI was correct, which it is not, the fact that a staff

meeting was held on a specific date is information that pursuant to NRS 616D.330 is to be included in the log, not to be the log.

Whereas, the effect of that meeting was to give CCMSI a disputable reason to close Reeves' claim, it was and is very important and relevant to Reeves' claim that the issues discussed at that meeting should have been written down.

Reeves therefore requests that you find that CCMSI did not follow the statute and the DIR is incorrect in it's believe that what was supplied by CCMSI is all that is required.

Reeves further requests that you find that CCMSI institute a policy that provides that this type of behavior does happen in the future, as it leaves the injured employee in an untenable position.

Reeves further requests that you find that CCMSI be held for whatever penalties might be involved.

Respectfully Submitted,

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (husband)

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WORKERS' COMPENSATION

CLAIM FILE LOG OF ORAL COMMUNICATION

Claimant's Name:	Claim Number:
Susan Reeves	88SO1H243784
Claimant's Attorney:	**Treating Physician:**

DATE	TIME	ACTIVITY
9/8/06		Adjuster phone call to Jeff Dietrich, PT
6/29/04		Medical staffing with adjuster, supervisor, Dr. Louis Mortillaro, Dr. Petroff, defense attorney, claimant, and claimant's husband

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DUNN NEUROLOGIC ASSOCIATES
2628 W. Charleston Blvd. LV, NV 89102
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

June 29, 2004

Re: REEVES, Susan
572-78-2120

To Whom It May Concern:

I am dictating this letter based on discussion at a meeting taking place in our offices on 6/29/04 between myself, Dr. Mortillaro and three worker's compensation representatives with CCMSI.

Susan Reeves was present here in our offices with her husband, but shortly before the meeting and after a discussion with my office manager and the CCMSI representatives, it was determined that the patient was not allowed to be present at this meeting per her worker's compensation representatives. The patient then left the office.

Issues discussed address the nature, extent and cause of Ms. Reeves current disability.

Basically, I have been seeing Ms. Reeves since September 3, 1998, funded through Medicare, based on a disability from that organization. During that time of treatment and management, I was not aware that there was a worker's compensation claim or issue. After 1/6/04, work compensation began covering the neurological follow-ups and treatment. I was never given an explanation of this change by the patient or by Worker's Comp until yesterday.

With respect to the patient's history, she was in two motor vehicle accidents; one on July 20, 1987, the second in September of 1988. Apparently, she is claiming work-related disability from the second accident, which occurred on the property/premises of her workplace.

With regard to causality, at this point, many years later, I would have to defer to opinions rendered around the time of the second accident. Relating to this, Dr. Bowler, a neurologist, on December 12, 1988 rendered the opinion with respect to the September motor vehicle accident: "This patient may have experienced some discomfort from the incident that she describes. There is no suggestion, however, that she had any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activities."

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DUNN NEUROLOGIC ASSOCIATES
2628 W. Charleston Blvd. LV, NV 89102
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

Also, an Independent Medical Evaluation was performed 8/18/98 by Dr. David Oliveri, Specialist in Rehabilitation and Electrodiagnostic Medicine. His opinion was that the patient had a somatoform pain disorder, which is a psychiatric diagnosis, and is not something that is caused by an industrial accident. He further states, "In this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury."

In discussion with Dr. Mortillaro today, he feels that the patient is not limited from working based on her psychological state of health. Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties. The patient does have Social Security Disability currently.

Based on the review of systems and my observations of the patient's examination over the years, solely with respect to intention of injury from the second motor vehicle accident of September of 1988, it would be reasonable to recommend the patient undergo a trial of back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds. If working at a computer, this should be at a proper height, with an adjustable chair and lumbar roll provided, and with frequent breaks provided for standing, stretching and repositioning. If the patient cannot tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome.

Sincerely,

G. Petroff, M.D.
GP/rs

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This message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes. They are intended only for the use of the addressee. If you are not the intended recipient, any disclosure, copying, or distribution of this information is strictly prohibited. If you receive this transmission in error, please accept our apologies and notify the sender

Sedgwick CMS
4955 S. Durango Dr., Ste. 209
Las Vegas, NV 89113
Phone: (702) 568-3800
Fax: (702) 568-3779

September 8, 2006

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE: Employer: Bally's Las Vegas
Claim No: H243724
D.O.I.: 9/25/88

Dear Mrs. Reeves:

NOTICE OF INTENTION TO CLOSE CLAIM
(Pursuant to NRS 616C.235)

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Your file reflects that you are not presently undergoing any medical treatment; however, if you are scheduled for future medical appointments, please advise us immediately.

Nevada Revised Statute (NRS) 616C.390 defines your right to reopen your claim. You must make a written request for reopening and your doctor must submit a report relating your problem to the original industrial injury. The report must state that your condition has worsened since the time of claim closure and that the condition requires additional medical care. Reopening is not effective prior to the date of your request for reopening unless good cause is shown. Upon such showing by your doctor, the cost of emergency treatment shall be allowed.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter.

If you have any questions, please contact me at (866)464-0159 ext. 83742.

Sincerely,

Jennifer DaRos
WC Claims Examiner

Encl.: Hearing Request

cc: Employer

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CCMSI
PO BOX 35350
Las Vegas Nevada 89113

January 29 2010

Re: Susan Reeves
Claim No. 88H92H243724
Appeal No. A-10-607874-J
Employed by Bally's

Dear Sir / Madam:

I Susan Reeves am now representing myself in the above-captioned claim before the District Court. Pursuant to NRS 616B.021 (3) , I request copies of my complete claims file including all medical reporting, investigators' reports, log of oral communications and written communications pursuant to NRS 616D. 330 since December 15, 2004. With particular emphasis on the notes and or minutes of the meetings with Dr. Mortillaro and Dr. Petroff between Bally's representatives and with Bally's attorney.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas Nevada 89110

Typed by
Jeff Reeves (Husband)

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RECEIVED
FEB 19 2010
CCMSI - LAS VEGAS

13

Sedgwick CMS
PO Box 34660
Las Vegas, Nevada 89133-4660

February 12-2010

Re: Susan Reeves
Claim No. 88H92H243724
D.O.I. 9/25/88
Appeal No. A-10-607874-J
Employer Bally's

Dear Jennifer DaRos,

I, Susan Reeves, am now representing myself in the above-captioned case before the District Court. Pursuant to NRS 616B.021 (3), I request copies of all investigators' reports, logs of oral communications and written communications pursuant to NRS 616D.330 since December 15, 2004. With particular emphasis on the notes and or the minutes of the meeting with Dr. Mortillaro that was held sometime between the discharge summary on 3/18/04 and a letter written to Ms. Sayegh on 5/21/04, also the notes and or the minutes of the meeting with Dr. Petroff held on 6/29/04 between worker compensation representatives from CCMSI, Dr. Mortillaro and Dr. Petroff, where Ballys' attorney, my husband and myself were asked to leave. I sent a letter to CCMSI dated 1/29/10 and do not need more copies of the materials they sent me (medical reports and Court documents).

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves (husband)

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RECEIVED
FEB 19 2010
CCMSI - LAS VEGAS

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C C M S I

February 24, 2010

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE:	Claimant:	Susan Reeves
	Claim No.:	88S01H243724
	Employer:	Bally's
	DOI:	09/25/1988

Dear Ms. Reeves:

We are in receipt of the February 12, 2010 correspondence addressed to Sedgwick CMS requesting a copy of your claim file and noting that you do not need more copies of the material sent to you from CCMSI.

Please be advised that Bally's is a self-insured employer who changed Third Party Administrators from Sedgwick CMS to CCMSI, effective March 01, 2008. When this transition took place, your claim file was forwarded to CCMSI; therefore, the copy work that was supplied to you is all that there is.

If you have any questions, please contact me at (702) 933-4833.

Sincerely,

Rosemarie McMorris
Senior Claim Consultant

CC: File, Bally's, Lee Davis

PO Box 35350, Las Vegas, NV 89133-5350

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000015

Nevada Division of Industrial Relations
1301 North Green Valley Parkway, Suite 200
Henderson , Nevada 89074
702-486-9080

February 28 2010

To whom it may concern,

I, Susan Reeves, would like the D.I.R. pursuant to NRS 616D.330 to help me get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them. There have been a number of requests for that information. Once by Douglas Rowan, Esq. on May 28 2004 and four times by the Nevada Attorney for Injured Workers, December 15 2004, January 17 2007, May 31 2007 and August 16 2007 and two times by me, January 29 2010 and February 12 2010. Their response was to say that all correspondence was duly copied, letter to Mr. Rowan June 2 2004, or that the copy work supplied was all there was, letter to me February 24 2010. They did send a log of oral communication for a meeting at Dr. Petroff's office that gives no idea of what was said, only that there was a meeting, and the people that they listed at that meeting is wrong. It was not my attorney but theirs, my husband and myself were asked to leave, see letter from Dr. Petroff June 29 2004 and letter from Mr. Rowan July 22 2004. There is also an activity log from May 10 2004 that has a S/W (spoke with?) Dr. Mortillaro that also gives no idea of what was said. I was told when I had my last appointment, by Dr.Mortillaro and Dr. Manuel F. Gamazo, that CCMSI (Bally's) and their attorney had been at their offices for a meeting. The meeting with Dr. Mortillaro and Dr. Gamazo was after my discharge, March 18 2004, but before my last appointment, June 1 2004. I requested a meeting with Dr. Petroff and was informed that I would have to have a court reporter present, letter from Dr. Petroff's office March 22 2004. Letter from my attorney, March 29 2004, about the requirement for a court reporter raises the issue of Dr. Petroff's concerns of what was said at the meeting with CCMSI, they did not have to have one. I feel that NRS 616D.330 would mean that if representatives of an employer have meetings with doctors that they have to have a written record of what was said. The letters written after, not the letters before, said meetings were the reason my claim was closed.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves(husband)

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000016

Christopher D. Brown
Compliance/Audit Investigator II
Industrial Insurance Regulation Section
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 18, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I. 9/25/1988
TPA/Insurer: CCMSI

Dear Mr. Brown,

This is a follow up to the conversations, that you had with my husband over the phone. He got the impression that a determination letter would be sent shortly thereafter. As I have not received any such letter, I would appreciate a letter to let me know what stage the investigation is in. Thank you for your attention to this matter.

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (Husband)

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 26, 2010

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re:	Injured Employee:	Susan Reeves (2)
	Claim No.:	88H92H243724
	Employer:	Bally's
	D.O.I.:	September 25, 1988
	TPA:	CCMSI
	Complaint #:	11522

Dear Ms. Reeves,

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS) has, pursuant to Nevada Revised Statutes (NRS) 616D.130, investigated the complaint you filed. The issue in your complaint that can be addressed by the WCS is a possible violation of NRS 616D.330.

After reviewing the information supplied to this agency and completing the investigation, a determination has been reached and has concluded the following:

FINDINGS OF FACT:

On July 20, 1987, you were involved in a motor vehicle accident wherein you were diagnosed with cervical strain and head injury.

In 1987, Bally's issued a Notice of Claim denial.

On September 25, 1988, you were involved in another motor vehicle accident while employed at Bally's and sustained an industrial injury while working within the course and scope of your employment.

On June 9, 1989, S.I.S. Administrators issued a Notice of Claim Denial. Appropriate appeal rights were given.

On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that you be sent to pain management.

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You appealed the 1987 claim to the hearing officer and your claim would be denied. You then appealed the matter to the appeals officer.

On August 15, 1990, you were seen by Dr. Kudrewicz and would eventually be found to have an entitlement to a five (5%) percent Permanent Partial Disability (PPD)

On February 27, 1991, you were offered the 5% PPD Award.

On March 26, 1991, the appeals officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later by the Nevada Supreme Court.

On September 26, 1997, a Notice of Claim Acceptance was issued for your claim with a date of injury July 20, 1987.

On May 12, 1998, a second Notice of Claim Acceptance was issued.

On December 20, 2001, Dr. Glyman wrote a report concluding that you had a somatoform disorder.

On December 27, 2001, a Notice of Claim Closure was issued but would later be reversed by an appeals officer awarding you further medical treatment.

You continued your care with Dr. Mortillaro in 2003 and 2004. In March 2004 Dr. Mortillaro discharged you from his care.

On May 28, 2004, you requested copies of all correspondence between CCMSI and Drs. Mortillaro and Petroff.

On June 2, 2004, CCMSI responded to your May 28, 2004 request.

On December 15, 2004, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from CCMSI.

You continued to receive physical therapy at the Family & Sports Physical Therapy Center. On January 23, 2006, a therapist indicated that your condition had greatly improved over the time period that you had treated at the center.

On September 8, 2006, CCMSI learned that Dr. Petroff had released you to your family physician since he was only monitoring your medication. It was also learned that you had been spending a lot of time out of state and were being treating under Medicare.

On September 8, 2006, CCMSI issued a Notice of Intent to Close Claim. You appealed this determination. The hearing officer would dismiss your appeal because you failed to attend the hearing. You appealed this determination.

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On January 17, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Bally's.

In January 2007, you submitted a written request to expand the scope of your claim to include bruised ribs and a broken toe.

On February 16, 2007, CCMSI issued a determination denying your January 2007 request. Appropriate appeal rights were given.

On May 10, 2007, the hearing officer issued a decision and order affirming the February 16, 2007 determination. You appealed this determination.

On May 31, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services. ("Sedgwick")

On August 16, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services.

January 29, 2010, you requested a copy of your complete industrial claim file from Sedgwick.

On February 24, 2010, CCMSI responded your January 29, 2010 request that was addressed to Sedgwick. They informed you that the copy work of your claim file had been previously supplied to you and that no other documentation exists.

CONCLUSION:

As it relates to a possible violation of NRS 616D.30, no violation was found.

CCMSI timely responded to your request pursuant to statute. You were advised in a previous response that you had been provided with a complete copy of your industrial injury claim file. The investigator reviewed the claim file and found no additional correspondence relating to the logs of oral communication.

As the issue outlined in your complaint has been addressed, the complaint filed with this agency is closed. If you have any further questions, feel free to contact Christopher Brown, Compliance/Audit Investigator II, at (702) 486-9098.

Sincerely,

Susan Sayegh
Southern District Manager
Workers' Compensation Section

cc: George Ward, WCS

297
2D
000020

Susan Sayegh
Southern District Manager
Workers Compensation
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 29, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Sayegh,

I am in receipt of your letter, dated April 26, 2010, where my complaint of a violation, pursuant to NRS 616D.130, was found to have no merit. Apparently Bally's representatives, ether Bally's employees or CCMSI employees, do not have to make or keep a written record of oral communications, of what was said at meetings that are held between said representatives and patients doctors. One could assume that since you, Ms. Sayegh, were the Claims Supervisor for CCMSI at the time of the meeting with Dr. Petroff, you could have been one of those representatives. If not, you most certainly would have known who would have been at that meeting and whether or not a written record was kept.

Since your office, the D.I.R., has conducted an investigation and concluded that all Bally's or their representatives have to do, pursuant to NRS 616D.130, is timely respond to a request, not actually keep or have a written record, that there is no violation.

Since my complaint was about written records, pursuant to NRS 616D.130, I have no idea why your office would go to the great lengths of looking into the history of my claim. As for reviewing the information, as it pertains to my claim, your office did not request any information from me. One would then assume that all information supplied for the investigation was supplied by Bally's or CCMSI.

As to your offices findings of fact, since your office is a governmental regulatory agency, that your office would at least verify those facts before presenting those facts as facts. Upon reviewing said facts, they appear to be almost word for word the findings of fact that Bally's attorney presented, at the last appeal hearing I had. They are also the same as in the last Appeals Officers' Decision, written by Bally's attorney. There are a number of errors in those facts, some perhaps are just typed wrong, others are just wrong.

Since it was not my intension to have your office look into my entire claim, I will not go into all the details of which facts are incorrect.

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As I have not received the type of fair and unbiased handling of this matter that one would expect, and since your department, the D.I.R.s. responsibility is to investigate possible violations, by insurers, pursuant to the NRS. I am requesting that your office inform me as to which governmental agency, office or department, investigates possible mishandling of complaints by your office, as I would wish to make a complaint about the handling of this matter.

Thank You

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

199
22
000022

Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (3), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Ms. Susan Sayegh?

Thank You,

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Recsearcked and Typed by,
Jeff Reeves (husband)

cc: Don Jayne

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Chuck Verfe
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

September 11, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verfe,

Whereas, my first complaint was on February 28, 2010, and found to not be a violation by Ms. Susan Sayegh, on April 26, 2010, and my letter of complaint on the handling of that complaint, on April 29, 2010, and speaking on the phone with you, I believe, the matter was going to be looked into by someone other than Ms. Sayegh.

Whereas, it is now the end of September and I have not heard from your office concerning that complaint, No. 11522, I was wondering how the investigation was coming along?

Also, in my letter of June 1, 2010, I filed complaints of NRS 616C.065, NRS 616C.335, NRS 616C.475 and NRS 616D.120. The only letter I received from your office was the finding that there was no violation of NRS 616D.120. What about the other complaints?

I now have another complaint about the way my claim was closed this last time. Bally's (CCMSI) have now closed my claim on the notion that there is no certification of disability, as no disability forms have been filled out by my physicians.

Bally's accepted my claim in 1997 without any certificates of disability forms, and I have never seen one in the twenty-two years that my claim has been ongoing. Bally's has had all of my medical records the entire time. They have also been in correspondence and had meetings with my physicians, and yet they have never supplied any forms.

Whereas, there has never been a physician that opined that I was able to return to gainful employment, to the contrary, as documented in my medical records, all of the physicians opined that I was not capable of returning to work.

Whereas, my medical documentation is very large, and knowing that your office gets the majority of it's documents from CCMSI, I have not included another copy of my records, but if you will, you can look at the documents that I have provided your counsel, Mr. John F. Wiles Esq. for my appeal of your office's finding that there was no violation of NRS 616D.120.

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If Mr. Wiles is not your counsel or you would like your own copy, please let me know and I will make and sent one to you.

Whereas, pursuant to NRS 616C.475, forms are to be approved by the Division, I requested approved forms from CCMSI, only to be informed by CCMSI there are no specific or required forms, in a letter dated August 25, 2010. Copy included.

Pursuant to NRS 616A.400, it is the duty of the Administrator to regulate forms. Therefore, I am requesting that your office supply me with whatever forms that are approved by your office, so I may take them to my physicians to have them filled out, to provide CCMSI with certification of disability.

Thank you for your attention to this matter,

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed by Jeff Reeves (husband)

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

October 1, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:		
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Employer:	Bally's Las Vegas
	Date of Injury:	09/25/88
	TPA:	CCMSI
	WCS Case Number:	17940

Dear Ms. Reeves:

The Division of Industrial Relations, Workers' Compensation Section (WCS), has completed its investigation into your complaint dated September 11, 2010. You requested that the WCS review the investigation that resulted in the April 26, 2010 WCS letter, which was an investigation of your February 28, 2010 complaint. The investigator found that CCMSI provided you and your attorney with the oral communications requested. There was no indication that any further communications occurred between CCMSI and your treating physicians.

You disagreed with the determination by the WCS dated July 22, 2010. You alleged CCMSI violated multiple statutes and the WCS determined that there were no violations of NRS 616D.120. The WCS determined in its July 22, 2010 letter that CCMSI did not violate any Nevada Workers' Compensation Law. You appealed this determination and the matter is currently in litigation.

You did not agree with the way CCMSI closed your workers' compensation claim. You appealed their determinations and the Hearing Officer and Appeals Officer affirmed claim closure. The matter is now in litigation with the Nevada District Court. The WCS does not have the authority to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction.

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If you have any questions regarding this matter, please Christopher Pangallo at (702) 486-9100.

Sincerely,

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

cc: CCMSI

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DUNI NEUROLOGIC ASSOC ATES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

September 3, 1998

Peter Mattimoe, M.D.
3611 S. Lindell Rd. #102
Las Vegas, NV 89103

RE: Reeves, Susan
#572-78-2120

Dear Dr. Mattimoe:

I saw Susan Reeves in neurologic consultation. This is a 46-year-old right-handed woman who was complaining of headaches, neck and back pain radiating to the arm and leg respectively, and dizziness. The patient has frontal headaches. There is a pressure about the head as if she is wearing a tight cap. Her headaches are constant and daily but wax and wane in intensity. At times they have an intense feeling as a "ice cream" headache. At times the patient has dizziness in two forms. The first is a sense of poor balance where she may veer off to the left or right or stumble. The second type is a peculiar type of vertigo which she describes in terms of a spinning egg. There is a clear sense of subjective movement with this. It is not positional. It has caused her to fall to the ground by her account. The patient's headaches are worse if she is exposed to bright lights or if she has to concentrate to any degree mentally. The patient has tingling paresthesia over the lateral forearm and arm and pain in the upper arm and shoulder. There is numbness in the upper inner arm at times. There is also numbness and tingling in all the toes of the left foot and a ribbon of numbness all the way from the inside of the leg to the foot. The patient denies significant low back pain at this point. The patient has pain in her upper neck at the base of the skull and she describes a physical therapy session where pressure was applied to this area and all of the symptoms resolved. Subsequent similar manipulation made all of her symptoms worse.

PAST MEDICAL HISTORY: Otherwise remarkable for heart murmur, ½ to one pack per day of tobacco. The patient has an extremely complicated history of complaints including dizziness, and head and neck pain dating from two motor vehicle accidents, one in 1987 and the other in 1988.

CURRENT MEDICATIONS: Include Propoxyphene, Belladonna, Imitrex, Propranolol, Midrin, Prilosec, Phenerbel-S, Tigan, Hydrochlorothiazide.

ALLERGIES: The patient is intolerant of iodine, codeine.

GENERAL REVIEW OF SYSTEMS: Positive for occasional tinnitus.

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2628 W. Charleston Blvd Las Vegas NV 89102 (702) 878-0111 FAX (702) 870-6199

Peter Mattimoe, M.D.
September 3, 1998
RE: Reeves, Susan
Page Two

On examination the patient was well-developed and well-nourished and in no apparent distress. She was oriented and appropriate. The speech was normal. The blood pressure was 120/84. The pulse was 84. The neck was supple without bruits. The patient volitionally stopped range of motion of the neck to the left at 30 degrees with a complaint of discomfort, but range of motion was full to the right. The patient's speech was normal. The mental status was normal. The patient had a normal cranial nerve and motor examination. On sensory examination there was decreased pin prick and temperature over the lateral forearm and decreased pin prick over the lateral arm on the left. In the lower extremity there was spotty non-neuronal, non-dermatomal and not reproducible sensory loss to pin prick. The gait was guarded but otherwise stable. This included a tandem gait. Coordination was normal. The Romberg was negative. The reflexes were 1 with symmetry. The toes were downgoing.

IMPRESSION:

This patient is presenting with:
1. Headaches which appear to be of mixed etiology, possibly due to muscle contraction headache or cervical strain or perhaps with a vascular component.
2. Neck strain and a sensory sensation of change in the left arm which could possibly represent radicular irritation. There was no objective finding to support his, however.
3. The patient has dizziness in the form of poor balance, but also of vertigo by her description. There is no evidence of vestibulopathy on neurologic examination today.

The differential would include peripheral or central vestibulopathy. This has been fairly worked up with physiologic studies by ENT physicians in the past. The patient denies ever having an MRI of her head to address a structural source of her headache and dizziness complaints. A partial seizure would be unlikely but would be in the differential diagnosis.

The patient has various complaints which have been present over a long period of time. Due to the amount of time that has passed and after reviewing the records, I cannot clearly attribute any of her present complaints to her motor vehicle accidents, nor can I discount them as sources.

I am recommending MRI image of the head, cervical spine x-ray, cervical spine MRI, and an EEG to address her subjective complaints, and EMG/nerve conduction of the left arm and leg. I am aware that the patient has been diagnosed with a somatization disorder and it is a difficult problem to sort out neurological issues from somatization. Perhaps the best strategy at this point is to undergo a round of objective testing, as I have recommended above.

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2628 W. Charleston Blvd Las Vegas NV 89102 (702) 878-0111 FAX (702) 870-6199

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Peter Mattimoe, M.D.
September 3, 1998
RE: Reeves, Susan
Page Three

If I may be of further assistance in the care of this patient, please let me know.

Sincerely,

G. Petroff, M.D.

GP:bh

2628 W. Charleston Blvd Las Vegas NV 89102 (702) 878-0111 FAX (702) 870-6199

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DUNN NEUROLOGIC ASSOCI ES

Gerald W. Dunn, M.D. George A. Petroff, M.D.

April 13, 2004

Re: REEVES, Susan
572-78-2120

Dear Susan:

I have reviewed questions which you have phoned in as they are transcribed in the chart with respect to Susan Reeves. I will endeavor to answer them for you.

1. Q. How much more therapy will the patient require when she can be discontinued?

   A. The patient may be discontinued from formal physical therapy when she has learned an acceptable and effective routine for neck pain. This may include being set up for home traction if this has not yet been done and also with use of a TENS unit. This could be arranged and achieved, I believe, within two months.

2. Q. Work status from beginning of treatment in 1998 to the present.

   A. During this period of time, the patient had significant and constant headache problems, which slowly improved with therapy. She also had significant overlying psychological/psychiatric issues, and basically had a chronic pain syndrome. It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present. Superimposed neck problems became prominent in the last couple of years. This would further make it difficult for her to return to the work force.

Sincerely,

G. Petroff, M.D.
GP/rs

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DUNN NEUROLOGIC ASSOCIATES
2628 W. Charleston Blvd. LV, NV 89102
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

May 18, 2004

Susan Sayegh, Claims Supervisor
CCMSI
Fax: 702-933-4861

Re: Susan Reeves
Claim No. 88H92H243724
Emp: Ballys Las Vegas

Dear Ms. Sayegh:

I am in receipt of your letter dated May 13, 2004. You have asked a number of questions, and I will attempt to answer them for you.

1) Symptoms currently keeping the patient from returning to work, by my understanding, principally consist of neck pain, back pain and dizziness. The basis of her neck pain is documented objectively on MRI and x-ray, with C4-5 disc bulge and protrusion, C5-6 central disc protrusion, mild flattening of the cervical spinal cord, C6-7 mild-to-moderate neural foraminal stenosis, C4-5 right neural foraminal encroachment. This anatomy could generate pain in the neck. These changes noted on imaging are degenerative in nature. To some extent, the degeneration can be accelerated by posture/head movements, which one might encounter in certain occupations. It is impossible to document objectively what component of this degenerative change is work-related, however.

   The patient has complained of dizziness. Dizziness may be from a variety of reasons. In this case, I cannot objectively identify the source of the patient's dizziness, but possibilities would include migraine phenomenon, problems with the inner ear, or balance disturbance arising from the patient's neck muscles/degenerative neck disease. There is no way of objectifying this or its source with respect to the patient's employment.

   The patient has headache. Again, this cannot be objectively qualified with respect to its source, although I think that her neck problems are significantly contributory to her headaches. She is complaining of lumbosacral strain, and this cannot be objectified either.

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DUNN NEUROLOGIC ASSOCIATES
2628 W. Charleston Blvd. LV, NV 89102
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

2) With reference to an accident tripping over furniture on 2/27/04, I do not have reference to this in my follow-up notes, so I am unable to comment. However, I have discussed with the patient the nature of her computer use.

3) From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical spine disease.

4) With respect to acupuncture treatment, this can be a significant pain-relieving modality in patients with chronic pain which has been intractable to medicines and physical therapy. It would reasonable to undergo a trial of acupuncture.

The next question is "7". I do not have Questions 5 or 6, so I cannot answer them.

With respect to the patient's physical therapy/frequency of treatment, this is based on neurological assessment. Dr. Mortillaro is a psychologist, albeit a very good one. He is not following the patient for medical addressed being addressed in physical therapy and should not bear the responsibility for determining physical therapy. The basis for physical therapy to this point has been empiric based on the patient's improvement. As long as the patient continues to improve, and there is no other obvious modality causing her to improve, I would continue to have her in physical therapy until she reaches a plateau of improvement.

Sincerely,

G. Petroff, M.D.
GP/rs

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This message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes. They are intended only for the use of the addressee. If you

Dunn Neurologic Associates
2628 W. Charleston Blvd.
(702) 878-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

March 22, 2006

Douglas Rowan, Esquire
Fax No. 366-0327

Re: Susan Reeves

Dear Mr. Rowan:

I am in receipt of your letter dated March 21, 2006 requesting a meeting with Dr. Petroff, Jeff Dietrich (Family & Sports Physical Therapy) and yourself. Dr. Petroff is more than happy to meet with you, but will require the presence of a court reporter for the meeting.

Also, be advised that Dr. Petroff's fee per hour is $750.00, which must be paid ten days prior to the meeting date. Dr. Petroff's schedule will not be able to accommodate this meeting until either April 25, 2006 or April 27, 2006, starting at 4:00 p.m. until 5:00 p.m.

Please contact me to confirm the above.

Sincerely,

Erinn Savage, Office Manager
/ESrs

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, does hereby certify that on the date shown below, a true and correct copy of the foregoing CLAIMANT'S FIRST EXHIBIT was duly mailed, postage pre-paid, at Las Vegas, Nevada, to the following:

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY LLP
4570 S EASTERN AVE STE C-28
LAS VEGAS NV 89119

JOHN F. WILES, ESQ.
DIVISION OF INDUSTRIAL RELATIONS
1301 N GREEN VALLEY PKWY STE 200
HENDERSON NV 89014

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DATED: 12/2/10

SIGNED: _____

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NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third-Party Administrator
CCMSI

RECEIVED AND FILED

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Administrative Action of: SUSAN REEVES	APPEAL NO.: 80334-SL CLAIM NO.: 88S01H243724 Employer: BALLY'S DENNIS LINDENBACH 3645 LAS VEGAS BLVD S LAS VEGAS NV 89109

NOTICE OF APPEARANCE

TO: SUSAN REEVES, Claimant;

TO: TERESA HORVATH, ESQ., NAIW, her attorney of record;

TO: JOHN F. WILES, ESQ., General Counsel for Division of Industrial Relations;

TO: BALLY'S , the Claimant's employer of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE of the appearance of DALTON L. HOOKS, JR., ESQ., of the law firm of FLOYD, SKEREN & KELLY, LLP., as counsel for CCMSI ("TPA"), in the above-entitled matter.

Dated this 14 day of November, 2010.

FLOYD, SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Third-Party Administrator
CCMSI

Doc023
314

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF APPEARANCE** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves 4724 E Washington Ave Las Vegas,NV 89110
[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	John Wiles, Esq. Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 9th day of November, 2010

An employee of
FLOYD, SKEREN & KELLY, LLP

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BEFORE THE APPEALS OFFICER

FILED
OCT 27 2010
APPEALS OFFICE

In the Administrative Action of:	Citation No:
SUSAN REEVES,	Appeal No: 80334-SL
Claimant.	

ORDER FOR APPOINTMENT OF

NEVADA ATTORNEY FOR INJURED WORKERS

The Appeals Officer, having received and considered the Claimant's written request for the appointment of the Nevada Attorney for Injured Workers; finds the Claimant would be better served by legal representation and accordingly;

IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this matter.

IT IS SO ORDERED this 27th day of October, 2010.

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

Doc024
316

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER FOR APPOINTMENT OF NEVADA ATTORNEY FOR INJURED WORKERS** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

NAIW
GENERAL COUNSEL
2200 S RANCHO DR #230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 27th day of October, 2010.

Diane Gagliano

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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FILED
OCT 27 2010
APPEALS OFFICE

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

BEFORE THE APPEALS OFFICER

In the Administrative Action of:	)	APPEAL NO. 80334-SL
	)	CITATION NO.
	)	
SUSAN REEVES	)	
	)	

NOTICE OF APPEAL AND ORDER TO APPEAR

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the above entitled matter as been scheduled to be heard before the Appeals Officer on:

DATE: WEDNESDAY, DECEMBER 8, 2010

TIME: 9:00 – 10:00 A M

PLACE: STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION / HEARINGS DIVISION
2200 S. RANCHO DRIVE, SUITE 220
LAS VEGAS, NV 89102
Phone (702) 486-2527 Fax (702) 486-2555

The hearing will be held pursuant to the authority and jurisdiction conferred upon the Department of Administration by Nevada Revised Statutes ("NRS") 616D, and 233B.

PRE-HEARING ORDER

1. All parties are ordered to exchange and file with the Appeals Officer, prior to the hearing:
   a. All documentary evidence they propose to introduce at the hearing;
   b. A statement of the issues to be raised;
   c. Any case law, statutes or regulations in support of their respective positions;
   d. A list of witnesses and a brief summary of their proposed testimony;
   e. An estimate of the length of time required to present his/her case, including rebuttal and arguments.

Doc025
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2. All parties shall comply with the foregoing paragraph 1 of this Order as follows:
    a. By the appealing parties, at least fourteen (14) days prior to the first scheduled hearing date;
    b. All other parties, at least seven (7) days prior to the first scheduled hearing date.
3. Continuances may be granted only in accordance with the requirements of NAC 616C.318.
4. Failure to comply with this Order may result in the exclusion of testimony or documentary evidence.

IT IS SO ORDERED this 27th day of October, 2010.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ
APPEALS OFFICER

319

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF HEARING AND ORDER TO APPEAR** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

NAIW
GENERAL COUNSEL
2200 S RANCHO DR #230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 27th day of October, 2010.

Diane Gagliano

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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Nevada Department of Administration Hearings Division
2200 S. Rancho Drive, Ste 220
Las Vegas, NV 89102
(702) 486-2525

Nevada Department of Administration Hearings Division
1050 E. Williams Street
Carson City, NV 89701
(775) 687-5966

RECEIVED AND FILED
OCT 18 AM 11:11

REQUEST FOR HEARING BEFORE APPEALS OFFICER

CLAIMANT INFORMATION

Claimant:	SUSAN REEVES
Address:	4724 E. Washington Ave.
	Las Vegas, NV. 89110
SSN:	572-78-2120
Telephone:	(702) 453-2588

EMPLOYER INFORMATION

Claim number:	88SOIH243724
Employer:	BALLY'S HOTEL
Address:	
Telephone:	( )

PERSON REQUESTING APPEAL: (circle one) CLAIMANT / EMPLOYER / INSURER

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: A finding by the DIR of October 1, 2010

YOU MUST ATTACH A COPY OF THE ~~HEARING OFFICER~~ DECISION

DIR

BRIEFLY EXPLAIN REASON FOR APPEAL: On February 28, 2010 I filed a complaint pursuant to NRS 616D.330 and it was found that there was no violation by the same person that was the claims supervisor on my claim for CCMSI. The DIR supposedly reviewed my complaint and made the same finding of no violation. I disagree.

If you are represented by an attorney or other agent, please print the name and address below.

ATTORNEY/REPRESENTATIVE:

Name:	John F. Wiles Esq.
Address:	1301 N. Green Valley Parkway, Suite 200
	Henderson NV. 89074
Telephone:	( )

INSURANCE COMPANY:

Name:	CCMSI
Address:	P.O. Box 35350
	Las Vegas, NV. 89133-5350
Telephone:	( )

Susan F Reeves
Signature

October 18, 2010
Date

NOTICE

If the Hearing Officer decision is appealed, Claimants are entitled to free legal representation by the Nevada Attorney for Injured Workers (NAIW). If you want NAIW to represent you, please sign below:

Susan F Reeves
Signature

702-453-2588
Telephone Number

****If you are appealing the Hearing Officer's Decision, file this form and a copy of the Decision no later than thirty (30) days after the date of the Hearing Officer's Decision.****

Dec 26

REVISED 02/14/07

321

DIV# 803341—SI

FILED

OCT 12 2010

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	Claim No:
SUSAN REEVES,	Appeal No: 78016-SL
Claimant.	

NOTICE OF RESETTING

TO ALL PARTIES-IN-INTEREST:

PLEASE TAKE NOTICE that the above-captioned matter will now be heard in front of the Appeals Officer for a **TIME CERTAIN HEARING** on:

DATE: **MONDAY, MARCH 7, 2011**

TIME: **1:00 – 2:00 P M**

PLACE: **DEPARTMENT OF ADMINISTRATION**
2200 SOUTH RANCHO DRIVE #220
LAS VEGAS, NV 89102

PLEASE TAKE FURTHER NOTICE that previously scheduled hearing dates in this matter, if any, are hereby vacated and reset to the above referenced date and time.

###

CONTINUANCE OF THIS SCHEDULED HEARING DATE SHALL ONLY BE CONSIDERED ON WRITTEN APPLICATION SUPPORTED BY AFFIDAVITS.

###

IT IS SO ORDERED this 12TH day of October, 2010.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

Doc 27
322

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF RESETTING** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

TERESA A HORVATH ESQ
NV ATTY FOR INJURED WORKERS
2200 S RANCHO STE 230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 12th day of October, 2010.

Diane Gagliano

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAVNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

October 1, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Employer:	Bally's Las Vegas
	Date of Injury:	09/25/88
	TPA:	CCMSI
	WCS Case Number:	17940

Dear Ms. Reeves:

The Division of Industrial Relations, Workers' Compensation Section (WCS), has completed its investigation into your complaint dated September 11, 2010. You requested that the WCS review the investigation that resulted in the April 26, 2010 WCS letter, which was an investigation of your February 28, 2010 complaint. The investigator found that CCMSI provided you and your attorney with the oral communications requested. There was no indication that any further communications occurred between CCMSI and your treating physicians.

You disagreed with the determination by the WCS dated July 22, 2010. You alleged CCMSI violated multiple statutes and the WCS determined that there were no violations of NRS 616D.120. The WCS determined in its July 22, 2010 letter that CCMSI did not violate any Nevada Workers' Compensation Law. You appealed this determination and the matter is currently in litigation.

You did not agree with the way CCMSI closed your workers' compensation claim. You appealed their determinations and the Hearing Officer and Appeals Officer affirmed claim closure. The matter is now in litigation with the Nevada District Court. The WCS does not have the authority to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction.

Doc 28
324

If you have any questions regarding this matter, please Christopher Pangallo at (702) 486-9100.

Sincerely,

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

cc: CCMSI

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FILED

SEP 22 2010

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	Claim No:
SUSAN REEVES,	Appeal No: 78016-SL
Claimant.	

ORDER FOR APPOINTMENT OF

NEVADA ATTORNEY FOR INJURED WORKERS

The Appeals Officer, having received and considered the Claimant's written request for the appointment of the Nevada Attorney for Injured Workers; finds the Claimant would be better served by legal representation and accordingly;

IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this matter.

IT IS SO ORDERED this 22nd day of September, 2010.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

Doc029
326

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER FOR APPOINTMENT OF NEVADA ATTORNEY FOR INJURED WORKERS** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

NAIW
GENERAL COUNSEL
2200 S RANCHO DR #230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 22nd day of September, 2010.

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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JIM GIBBONS
Governor

STATE OF NEVADA

EVAN B. BEAVERS
Nevada Attorney for Injured Workers



NEVADA ATTORNEY FOR INJURED WORKERS
2200 South Rancho Drive, Suite 230
Las Vegas, Nevada 89102-4413
(702) 486-2830 • Fax (702) 486-2844

REPRESENTATION AGREEMENT

The Nevada Attorney for Injured Workers (NAIW) is a State agency established by the Nevada State Legislature to represent injured workers to ensure a fair hearing procedure.
NAIW handles only workers' compensation industrial insurance matters. It does not handle union matters, Social Security matters, employer-employee disputes, or collection actions. These matters are not within our jurisdiction.
NAIW will attempt to aid you in your appeal. However, you must recognize that you would not be here unless your case involved some problem. This office will make every effort to have the problems with your case resolved in your favor. Please note the following:

1. NAIW will represent you only on the issues ruled upon by the Hearings Officer, and stated in the Hearings Officer decision. Your claim may involve other issues. ***For example, the Hearings Officer may have decided that your claim should be closed, and you have appealed. At the same time, the insurance company may have sent you a letter stating you are not entitled to rehabilitation. This denial of rehabilitation is a separate issue, and you must appeal this issue on your own if you do not agree.***) If at any time while being represented by NAIW you receive a determination letter on a new or related issue, you must appeal it to preserve your rights. ***Be sure to provide a copy to your NAIW attorney as soon as possible.***

2. ***In handling your case, every effort will be made to proceed as quickly as possible. But, if additional evidence needs to be obtained, some delay will occur. Every attempt will be made to minimize the delay; however, this office cannot present a case without having the necessary evidence.***

3. NAIW does not pay money nor does it authorize care. Should you win your case, or if it is settled by stipulation, do not expect immediate payment. Various signatures are required, and it takes time to obtain them. It also takes time to calculate the benefits which may be due. NAIW can only attempt to move the papers along. Your patience is required.

4. If you lose your case, the law provides for a further appeal to the district court. NAIW has discretionary authority to handle district court appeals and considers representation on appeal on a case by case basis. This office does not appeal most cases. You will receive written notice of our decision to appeal. Should this office choose not to represent you on appeal, you may obtain private counsel or proceed on your own behalf. NAIW will advise you of your appeal rights and time requirements.

5. You are responsible for keeping this office informed of your whereabouts and/or any change of your address. If you do not, you may not receive important notices. If our office is unable to contact you, the attorney appointed to represent you will make a motion to the court to withdraw from representing you.

I HAVE READ THE ABOVE AND AGREE TO THE TERMS SET FORTH ABOVE.

Doc 3-328

APPEAL# 78016

DATED 9-21-10 PRINT NAME Susan Reeves

SIGNED Susan L Reeves TELEPHONE NO 453-2588

Website: http://www.naiw.nv.gov
E-mail: naiw@naiw.nv.gov

ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third Party Administrator
CCMSI

INSURER'S EXHIBIT # 4

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

FILED

In the Administrative Action of:	APPEAL NO.: 78016-SL CLAIM NO.: 88S01H243724
SUSAN REEVES	

TPA'S PRODUCTION OF RELATED DOCUMENTS

COMES NOW the Third Party Administrator, CCMSI ("TPA"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and submits its production of related documents concerning the instant matter to be heard on **Tuesday, September 21, 2010 at 11:00 AM**. This production of related documents is filed pursuant to NAC 616D.040.

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. . .

D-c031
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I.
LIST OF EXHIBITS TO BE RELIED UPON

C-4 1

C-3 2

C-1 3

Claimant's Medical Records 3-28

Hearings Division Decision and Order dated 04/19/02 29-30

Appeals Officer Decision and Order dated 12/01/03 31-34

Appeals Officer Decision and Order dated 01/20/06 35-39

Hearings Division Decision and Order dated 07/25/07 40-41

Appeals Officer Decision and Order dated 12/22/09 42-48

Correspondence from Claimant to TPA dated 01/21/04 49-50

Correspondence from TPA 51-63

Claimant's Claimant filed with DIR 64-65

DIR's determination dated 07/22/10 66-70

Claimant's Request for Hearing Before the Appeals Officer 71-78

Dated this 14th day of September, 2010.

Respectfully submitted,

FLOYD, SKEREN & KELLY, LLP
By:

DALTON L. HOOKS, JR., ESQ.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorneys for Third Party Administrator
CCMSI

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case No.: **78016-SL** does not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

09/11/10
DATE

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **TPA'S PRODUCTION OF RELATED DOCUMENTS; AFFIRMATION PURSUANT TO NRS 239B.030** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves 4724 E Washington Ave Las Vegas,NV 89110
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	John Wiles Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 14th day of September, 2010

An employee of
FLOYD, SKEREN & KELLY, LLP

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REFERRAL ADVICE

EMPLOYEE ACCIDENT REPORT

First Name: Susan	M.I.: L	Last Name: Reeves	Social Security Number:	Birthdate: 7/21/51	Age: 37
Home Address: 4724 E Washington			Sex: ☐ M ☑ F	Marital Status: ☐ Sgl. ☐ Mar. ☐ Div. ☐ Wid.
City: Las Vegas	State: NV	Zip: 89104	Scheduled Shift: 9:30A - 5:30P	Scheduled Days Off: Sat / Sun
Home Telephone Number: 453-2588	Employee's occupation (job title) when injured: Room Res. Clerk		Department: Room Res	Employee #: 3234
Employer's Name: BALLY'S 1505-5310		9/15/88 9:9AM		Telephone: 739-4260
Office mail address (Number and Street): P.O. BOX 93698	City: LAS VEGAS		State: NEVADA	Zip: 89109
Date of injury: 9/25/88	Hour of injury: 6:20 (A.M.) P.M.	Date employer notified: 9/25/88	Last day of work after injury: 9/27/88	Supervisor to whom injury reported: Mimi - Morning Sup

Address or location of accident (Be as specific as possible): Emp Parking lot

I was in my way turned into employee parking lot when another employee hit

Witness name and address (Attach witness statement): the rear of my truck on the left back by my Right Front

How did accident occur? (Be specific and in detail. Use additional sheet if necessary)

See above #

Was any unsafe condition or practice involved? (Broken equipment, working too fast, etc.)

She was sited for under care. I think Bally's going to fight and wasn't taking

Nature of injury	Part of body injured	Degree of disability
Head + neck - dizziness - extreme headaches		25% Temp + Partial

I CERTIFY THAT THE ABOVE IS TRUE AND TO CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACT. I HEREBY AUTHORIZE ANY PHYSICIAN, SURGEON OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR MILITARY SERVICE, ANY EMPLOYER, INSURANCE COMPANY OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING REPORTS FILED OR PAID, OR OTHER INFORMATION OR DOCUMENTS CONCERNING THIS OR OTHER DISABILITIES. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.

Date: 5/25/89 Place: Worker's Signature: Susan L Reeves Supervisor's Initial:

INTENTIONAL FALSIFICATION OF THIS REPORT MAY SUBJECT YOU TO TERMINATION

INSTRUCTIONS: To be completed by employee. Detach original and forward to Worker's Compensation Department. Give pages 2, 3, and 4 to employee for delivery to Treating Facility/Physician.

PHYSICIAN'S REPORT OF INITIAL TREATMENT

First treatment: Place — Name of Hospital

Hour A.M. P.M.	Date	Diagnosis and description of injury or occupational disease

Describe treatment used:

X-ray findings:

MAY 26 9 12 AM

From information give you by the employee, together with medical evidence, can you directly connect this accident or disease as job incurred?	☐ Yes	☐ No
Is additional medical care by a physician indicated?	☐ Yes	☐ No
If referred for additional care, please identify physician to whom referred.		
Have you advised patient to remain off work five days or more?	☐ Yes	☐ No
Do you know of any previous injury or disease contributing to this disability? Explain Yes	☐ Yes	☐ No

Remarks:

WC DIV. USE ONLY

MAY 31 1989

SIS ADMINISTRATORS

Date	Print Doctor's Name	Doctor's Signature	Degree

Address: Telephone:

PHYSICIANS INITIAL REPORT

REV 8/87 LV 531

COMPLETE & MAIL WITHIN 6 WORK DAYS TO: SIS ADMINISTRATORS, INC. 1055 EAST TROPICANA, #275 LAS VEGAS, NEVADA 89119

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PAGE 1

000001

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 5 WORKING DAYS OF RECEIPT OF THE C-4 FORM

Please Type or Print

EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

EMPLOYER

Name: RALLYS HOTEL AND CASINO
Nature of Business: HOTEL AND CASINO
FEIN: N/A
Claim Log #: N/A
Office Mail Address: 3645 LAS VEGAS BLVD
Location: 3645 LAS VEGAS BLVD LAS VEGAS,NV 89109
Telephone: (000)000-0000
City: LAS VEGAS,NV 89109
INSURER: WAUSAU UNDERWRITERS INSURANCE CO
THIRD-PARTY ADMINISTRATOR: N/A

EMPLOYEE

First Name: SUSAN Middle Initial: L Last Name: REEVES
Social Security: 572-78-2120
Birthdate: 10/06/1951
Age: 36
Primary Language Spoken: N/A
Home Address (Number and Street): 4724 S WASHINGTON AVE
Sex: ☐ Male ☒ Female
Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed UNKNOWN
City: LAS VEGAS State: NV Zip: 89119
Was the employee paid for the day of injury? (if applicable) ☒ Yes ☐ No
How long has this person been employed by you in months? N/A
In which state was employee hired? N/A
Employee's occupation (job title) at the time injured or disabled: UNKNOWN
Department in which regularly employed: N/A
Telephone: (702)453-2588
Is the injured employee a corporate officer? ...sole proprietor? ...partner? ☐ Yes ☐ No N/A ☐ Yes ☐ No ☐ Yes ☐ No
Was employee in your employ when injured or disabled by occupational disease (OD)? ☐ Yes ☐ No N/A

ACCIDENT OR DISEASE

Date of injury (if applicable): 09/25/1989
Time of injury (provide Military Time) (if applicable): 12:01 AM
Date employer notified of injury or OD: 09/25/1989
Supervisor to whom injury or OD reported: UNKNOWN,MGMT
Address or location of accident (Also provide city, county, state) (if applicable): 3645 LAS VEGAS BLVD
LAS VEGAS, CLARK, NV 89109
Accident on employer's premises? (if applicable) ☒ Yes ☐ No
What was the employee doing when the accident occurred? (if applicable) UNKNOWN
How did the injury or occupational disease occur? Include any employee began work, be specific and answer in detail. Use additional sheet if necessary
EMPLOYEE WAS WAITING FOR CAR IN FRONT OF HER TO MOVE AND WAS REAR ENDED BY A VEHICLE.

RECEIVED
JUL 22 2010

INJURY OR DISEASE

Specify machine, tool, substance, or object most closely connected with the accident (if applicable): N/A
Witness: N/A
Was there more than one person injured in this accident? ☐ Yes ☒ No
Part of body injured or affected: MULTIPLE NECK INJURY
If fatal, give date of death: N/A
Witness: N/A
Nature of injury or Occupational Disease (contusion, cut, burnes, strain, etc.): CONTUSION TO HEAD, NECK AND BACK
Witness: N/A
Did employee return to next scheduled shift after accident? (if applicable) ☒ Yes ☐ No No Lost Time
Will you have light duty work available if necessary? ☐ Yes ☐ No N/A
If fatality or injury is disabling, state reason: N/A
Location of Initial Treatment: N/A
Treating physician/chiropractor name: RSH,ID OC
Emergency Room: ☐ Yes ☒ No
Hospitalized: ☐ Yes ☒ No
IMPORTANT: How many days per week does employee work? 5
Time: N/A ☐ am ☐ pm To: N/A ☐ am ☐ pm
Last day wages were earned: N/A
Scheduled days off: S ☐ M ☐ T ☐ W ☐ T ☐ F ☐ S ☐ Rotating ☐ N/A
Are you paying injured or disabled employee's wages during disability? ☐ Yes ☒ No

IMPORTANT LOST TIME INFO

Date employee was hired: 05/25/1988
Last day of work after injury or disability: N/A
Date of return to work: No Lost Time
Number of work days lost: N/A
Was the employee hired to work 40 hours per week? ☒ Yes ☐ No
If not, for how many hours a week was the employee hired? 40
Did the employee receive unemployment compensation any time during the last 12 months? ☐ Yes ☐ No ☐ Do Not Know N/A

For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (C-9). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provided gross earnings from the date of hire to the date of injury or disability.

Pay period: ☐ Biwk ☐ Mth ☐ Wkly ☐ Semi-mth ☐ Bi-wkly: ☐ MON ☐ WED ☐ FRI N/A
Employee is paid: ☐ WEEKLY ☐ MONTHLY ☐ OTHER ☐ BI-WEEKLY ☐ SEMI-MONTHLY N/A
On the date of injury or disability the employee's wage was $ (40 Hrs/Wk) per ☐ Hr ☐ Day ☐ Wk ☐ Mo

For assistance with Workers' Compensation issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1587 Web site: http://govcha.state.nv.us E-mail cha@govcha.state.nv.us

Employer's Signature and Title: (000)000-0000 UNKNOWN, UNKNOWN UNKNOWN
Date: 07/20/2010 RECEIVED

Insurer Use Only
Claim is: ☐ Accepted ☐ Denied ☐ Deferred ☐ 3rd Party
Claim Examiner's Signature
Date
Deemed Wage
Account No.
Status Clerk
Date: AUG 12 2010

Form C-3 (rev.11/05) ORIGINAL - EMPLOYER PAGE 2 - INSURER/TPA PAGE 3 - EMPLOYEE

CCMSI - LAS VEGAS

334 000002

BALLY'S
LAS VEGAS, NEVADA

EMPLOYER'S REPORT OF INJURY OR OCCUPATIONAL DISEASE

EMPLOYER

Name BALLY'S Telephone 739-4260

Address P.O. BOX 93898 City or Town LAS VEGAS State NEVADA Zip 89109

EMPLOYEE

1. Name of injured SUSAN (First Name) L. (Middle Initial) REEVES (Last Name) Social Security No. ___
2. Address 4724 E. WASHINGTON City or Town LAS VEGAS State NV Zip 89110
3. Telephone No. 453-2588 Employee No. 33234 Speak English ___
4. ☒ Married ☐ Single ☐ Male ☒ Female
5. Age 37 Date of Birth 10/06/51 Job Code 1505-5310
6. (a) Occupation when injured CLERK (b) Was this his or her regular occupation? YES
   (In what department or branch of work regularly employed) ROOM RESERVATIONS (c) Department Code 9001
7. (a) Date of hire 09/15/80 (b) Wages per hour $ 9.9100
8. (a) No. hours worked per day ___ (b) Wages per day $ ___
   (c) No. days worked per week ___ (d) Average weekly earnings $ ___
   (e) If board, lodging, meals furnished, provide value ___ No. meals per day ONE
   Meal value ___

ACCIDENT

9. Date of injury 09/25/88 19 ___ Day of week ___ Hour of day 6:20 A.M. ___ P.M.
10. Date disability began ___ 19 ___ A.M. ___ P.M. Was injured paid in full for date of injury? YES
11. When did you or supervisor first know of injury? 09/25/88
12. Name of supervisor and title MIMI
13. Location or place where accident occurred EMPLOYEE PARKING LOT
    Department ROOM ~~RESERVATIONS~~ RESERVATIONS State if employer's premises YES
14. Describe fully how accident occurred and state what employee was doing when injured
    I WAS 3/4 WAY TURNED INTO EMPLOYEE PARKING LOT WHEN ANOTHER EMPLOYER HIT THE REAR OF MY TRUCK ON THE LEFT BACK TO HER RIGHT FRONT.

    NOTE: EMPLOYEE STATES SHE WORKED UNTIL 5/17/89 WHEN SHE WAS FORCED TO GO ON A MEDICAL LEAVE OF ABSENCE BY CASS PALMER AND SALLY SHAKELFORD.
15. Describe injury or exposure fully and identify parts of body affected EXTREEM HEADACHES, DIZZYNESS, NECK AND HEAD PAIN.
16. Machine, tool, thing or substance causing injury ANOTHER EMPLOYEE & VEHICLE GOING TOO FAST IN EMPLOYEE PARKING LOT
17. Kind of power (hand, foot, electrical, steam, etc.) ___
18. Part of machine on which accident occurred ___
    (a) Was safety appliance or regulation provided? ___ (b) Was it in use at time? ___
19. Was accident caused by injured's failure to use or observe safety appliance or regulation? ___
20. Names and addresses of witnesses ___
21. Probable length of disability ___ 22. Has injured returned to work? ___
23. If so, date and hour ___ At what wage $ ___
24. At what occupation ___
25. (a) Name and address of physician ___
26. (b) Name and address of hospital ___

FATAL CASES

Has insured died? ___ If so, give date of death ___

SIGNATURE ___ TITLE ___

335 000003

DAVID J. OLIVERI, M.D.
DIPLOMATE, AMERICAN BOARD OF PHYSICAL MEDICINE AND REHABILITATION
DIPLOMATE, AMERICAN BOARD OF ELECTRODIAGNOSTIC MEDICINE

EMG/NCV
PM&R

INDEPENDENT MEDICAL EVALUATION

EXAMINEE	:	Susan Reeves
DATE	:	08/18/98
CLAIM #	:	0728800377
D.O.I.	:	09/25/88
EMPLOYER	:	Bally's
REFERRAL SOURCE:		Hilton

The independent medical evaluation process was explained to the examinee, and it is understood that there is no patient/treating physician relationship present. It was explained that the evaluation was requested by the referral source and that a report will be sent to the referral source upon completion. The examinee understands that no conclusions or recommendations will be discussed during today's evaluation. The examinee understands that full, reasonable, and consistent effort is requested during the evaluation. The above is consistent with the standards set forth by the American Board of Independent Medical Examiners.

IDENTIFICATION

46-year-old right-handed female positively identified by a Nevada driver's license.

HISTORY

GENERAL:

The history is obtained from the examinee as well as the extensive medical records outlined below.

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PREINJURY STATUS:

The examinee states that in July of 1987, she was the belted passenger in a full-sized truck when she was rear-ended and pushed into a Bronco. She states that the front end of the vehicle she was in was crushed and the back end was damaged. She states she hit her head on the window and had problems with primarily headaches. She denies any cervical or upper extremity complaints or any other complaints related to that accident other than headache. In addition to the above, she had an injury to her knee in the 1960's with resolved complaints.

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MECHANISM OF INJURY:

On 09/25/88, the examinee states that she was the belted driver in the same truck that she was in with the previous accident. She had stopped in the employee parking lot when another vehicle entered and rear-ended her truck. She states that her head whipped forward and backward very hard and she states her "brain shifted forward and backward bruising the front per Dr. Mattimoe, Dr. Becker and others."

CURRENT CHIEF COMPLAINT(S):

Constant headache, "bad" dizziness, tingling in the left arm with pain down to the left leg, upset stomach, hemorrhoids due to all of the vomiting associated with the upset stomach, inability to handle lights and sounds, difficulty focusing, and difficulty turning her head to the left.

CLINICAL STATUS:

This examinee, since 1988, has been evaluated and treated by multiple physicians. She is currently under the care of her primary care physician, Dr. Mattimoe. Her main complaint is a headache that she describes in the bitemporal area similar to the pain that a person gets when they eat ice cream too fast. In addition, she has the other complaints that are listed above. She has had treatments including physical therapy. She has been granted social security disability dating back to 1989. She states that at this point, she is wanting to plead with social security to be sent to the Mayo Clinic. She states that she wants to be "fixed."

Aggravating Factors:	Light, tension, noise level, thinking, and concentrating.
Relieving Factors:	Dark and quiet room.
Sleep Cycle:	Usually about four hours per night.
Treatment:	The examinee has had physical therapy.
Home Exercise:	None.

PAST MEDICAL HISTORY:

Allergies:	Iodine, codeine and chemicals in cologne.
Medical Illnesses:	Heart murmur and endometriosis.
Last Menstrual Period:	1976.

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Current Physicians: Dr. Mattimoe.

Past Surgeries: Tonsillectomy and six major operations between 1976 and 1979 after a complete hysterectomy and discovery of the endometriosis.

Current Medications: Darvocet approximately 90 per month, Midrin more than 90 per month, Imitrex Tablets and injections, use of either Belladonna, Phenerbel, Zantac, or Prilosec for her upset stomach. Propranolol for her heart murmur. Vistaril on "real smoggy days or windy days when her skin feels like it is crawling and burning."

SOCIAL HISTORY:

The examinee has been married since 1970. She has two children. She has a high school education and some night school. She rarely drinks alcohol. She smokes cigarettes. She feels as though she is depressed because of the long court fights of her case. She denies any history of abuse or abandonment. She considers herself psychologically stable.

OCCUPATIONAL HISTORY:

The examinee was working in room reservations as well as a shop steward trainee with Bally's. She last worked her regular job on 05/15/89 when she states that they "threw me off my job." She had been with them since 1980.

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REVIEW OF SYSTEMS:

Remarkable for visual problems, headaches, vomiting, spitting up blood.

RECORD REVIEW

09/25/88 **Date of Loss.** Traffic accident report not available.

12/12/88 **Frederick T. Boulware, Jr., M.D.** This 37-year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an automobile accident which occurred on July 20, 1987. Patient states she progressive improved after that time. Apparently some three days after her complaints had resolved, sometime in September of this year, she was involved in a second automobile accident in which she was the driver of a car that was rear-ended while stopped. She was thrown forward and backwards but did not strike her head. She has since this time experienced constant headache. She describes a dull ache which is primarily bifrontotemporal in location, although it has a posterior head contribution. It is increased by turning of the head to either side. She

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initially had some nausea, but no vomiting. She also has some complaints of lightheadedness, which may occur if she turns her head suddenly or moves quickly. An electroencephalogram reveals low-voltage, fast activity throughout the record in all head regions consistent with medication affect. Patient may have experienced some discomfort with the incident that she describes. There is no suggestion, however, that she has any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activity.

10/09/89 **Joel Lubritz, M.D.** Letter to Allstate Insurance Company. I would suggest that Mrs. Reeves have an audiogram, an electronystagmogram and brain stem evoked response audiometry. The cost of these tests is approximately $600.00. However, as stated in my previous letter to you, I would suggest that these tests be done by a well recognized authority such as the Otologic Medical Group in Los Angeles.

11/29/89 **Louis F. Mortillaro, Ph.D.** Impressions: Axis I: Clinical syndromes: 307.80 Somatoform pain disorder. Axis II: V-71.09 No diagnosis or condition noted on Axis II. It is opinioned that at this time, Mrs. Reeves is experiencing a Somatoform Pain Disorder that has developed out of her inability to successful cope with the physical consequences of both motor vehicle accidents in question. Prognosis for successful resolution of her Somatoform Pain Disorder arising out of the motor vehicle accident is excellent if the following treatment recommendations can be successfully implemented. She should be referred for pain management counseling where she can learn and implement an effective pain management ritual in response to pain stimuli. She would benefit from instruction in biofeedback strategies for pain management to help her resolve problems of somatic pain headaches and moderate interpersonal distress. As soon as possible, Mrs. Reeves should be issued a return to work release based upon objective medical findings. She is desirous of returning to work with the pre-accident employer as soon as possible. [Page 1 of this report unavailable.]

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03/30/90 **Aram Glorig, M.D.** Letter to Allstate Insurance Company. She was complaining chiefly of a dizziness described as "things moving about her", causing her to be dizzy. She said when she moves quickly, she notices that this increases. She says she can prevent this by fixing her eyes on some point and then turning her head. Standing up quickly with quick movements of any kind increases the dizziness. She says when people move across her vision, she notices the dizziness. She says the whole thing is somewhat better now than right after an accident. At that time, she had nausea, but no vomiting and the nausea continued for about four months. She has no real problem with hearing; however, she does have a constant ringing described as a buzzing with high-pitched mixed in. However, it does not bother her sleep and it is worse in quiet. She says these things came on following an accident which occurred in July of 1987. At that time, she hit the back of her head on the window of a pickup truck in which she was riding. She was not knocked unconscious. Following this she went to Dr. Mattimoe who is her family doctor. He said she had whiplash. The dizziness came on about three days

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after the accident while in the shower. Following this, she saw Dr. Becker who is an ear, nose, and throat doctor and a neurologist. By July of 1988, she was feeling quite good. But on September 27, 1988, she was rear ended again and headaches and dizziness became even worse than she had before the second accident. This time, she had a whiplash which started the symptoms all over again, but worse than previously. She has had physical therapy for about nine months. But she did not appear to be too satisfied with what was done. Discussion: Before I can come to any conclusions about Ms. Reeves' dizziness and her hearing, I would like her to return for an electronystagmogram, a brain stem audiogram, an impedance test and an Equi-test, which is a balance test which has recently been developed. It appears to me that Ms. Reeves has something wrong and that she may need treatment. I would like also for an appointment to be made with Dr. Derald Brackmann of this group following the completion of the four tests that I have asked for. Ms. Reeves has told me she has been seen by several physicians and all of them say there is nothing wrong with her and that it is all in her head. But I doubt this and that is why I am asking for these extra tests and for her to see Dr. Brackmann, who is a world-renowned expert on dizziness. As soon as I receive the results of these tests and after the visit with Dr. Brackmann, I will complete this report.

05/21/90 **Dr. Glorig.** Letter to Allstate Insurance Company. The brain stem audiogram indicated that the audiogram we made on 03/13/90 was reasonably valid, except in the low frequencies which I feel showed her to have a little more loss than she actually has. Consequently, her hearing is within normal limits throughout the spectrum. The electronystagmogram showed normal results, as far as the peripheral vestibular system is concerned, and did not show any indication of any central problem. The impedance test indicated that her hearing was within normal limits and that there was no difficulty with her middle ear function. I note that the appointment with Dr. Brackmann was not made and a statement is in her chart indicating that this appointment was to be made at a later date. I would definitely like her to be seen by Dr. Brackmann before coming to any final conclusions.

08/15/90 **Richard W. Kudrewicz, M.D.** On examination of cervical spine, patient has forward flexion full to 45 degrees. Patient has extension limited to 30 degrees. This is a 15 degree loss of range of motion and is equivalent to a 1 percent impairment, whole man. Patient has left and right lateral flexion full to 45 degrees in each direction. Patient has left and right rotation full to 80 degrees in each direction. Therefore, based upon loss of range of motion, cervical spine, patient has a total of 1 percent impairment, whole man. Regarding range of motion in the shoulders, suffice it to say that range of motion in the right shoulder is full and appropriate in all directions. Regarding range of motion in the left shoulder, patient has forward flexion limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has extension full to 40 degrees. Patient has abduction limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has internal rotation/and external rotation full to 40 degrees and external rotation full to 90 degrees. Therefore, based upon loss of range of

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motion, left shoulder, patient has a total of 6 percent impairment, upper extremity. In summation, in terms of her musculoskeletal situation, this patient appears to have a 4 percent impairment, whole man, based upon loss of range of motion, left shoulder, combined with a 1 percent impairment, whole man, based upon injury to cervical spine. Using Combined Values Charts, this sums to a 5 percent impairment, whole man. I am unable to delineate specific central or peripheral neurologic deficits in this patient. In addition, I need more data referable to the issue of her vertigo before I can classify her any further.

08/16/90 **Dr. Glorig.** Letter to Allstate Insurance Company. Susan Reeves was seen by Dr. Brackmann and I have consulted with him regarding his opinions. We both feel that there is no damage to her vestibular system and that her problems are strictly related to her neck injury. The electronystagmogram which is a test to decide whether the vestibular system end-organ is at fault, was perfectly normal in all respects. The Equi-test which is another test to try and localize any problem as far as the vestibular system is concerned, showed no signs of any localizations. The brain stem audiogram was normal, indicating no problem as far as retrocochlear lesions are concerned. It remains then that the accident has not caused any vestibular problems and that Ms. Reeves' hearing is within normal limits. The only pathology we can find is related to a neck injury which should be taken care of by physical therapy.

09/04/90 **Peter Mattimoe, M.D.** Her main problem is pain in the neck especially the lower half, and of the left shoulder which is quite intense, sometimes radiating into the left upper limb. It is aggravated by movement but not by coughing. She feels she has to hold the left shoulder in almost immobile position with her elbow flexed by 90 degrees across her torso. She also has headaches, photophobia, occasional dizziness and sometimes parasthesiae in some of the left fingers. Exam: There appears to be loss of the cervical lordosis and considerable posterior neck muscle spasm; all neck movements are greatly decreased with pain, similarly with the left shoulder movements. She was referred to Gary Amick for intensive PT and she was prescribed Norgesic Forte and a muscle relaxant. I will see her in one month.

11/07/90 **Gary Amick, P.T.** Susan has received regular and consistent treatment to her back and neck area, consisting of moist heat, electrical stimulation, ultrasound, massage, mobilization and progressive resistive exercises. Presently she reports symptoms are generally improved with episodes of increased symptoms. Her functional activities have increased. Her chief complaint is constant left ear tinnitus which began approximately ten days ago. Her complaints of dizziness and light sensitivity exacerbate two or three times weekly but has improved since therapy. Objective findings reveal moderate improvement in active and passive cervical, thoracic and lumbar range of motion, strength and function. Her left shoulder has significantly improved with range of motion and strength. Recommend Susan continue with treatment as above with emphasis in progressive resistive exercises.

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11/08/90 **Dr. Mattimoe.** Ms. Reeves reports considerable improvement to all areas other than to her ear problem. There is less pain in her neck and especially in her left shoulder, for which PT has been very helpful in assisting her to gain increased mobility - similarly with the low back area. There are still periods which are becoming fewer and more short-lived of intense severity of pain. She appears to have tinnitus and episodes of dizziness not associated with nausea and not precipitated by position. Her whole outlook is optimistic. She is to continue physical therapy and obtain an E & T [sic] consultation.

01/02/91 **Gary Amick, P.T.** Presently she reports symptoms are slowly improving with the exception of dizziness and light sensitivity. She also reported daily episodes of falls and "bouncing off the walls." Her equilibrium is of major concern as is her desire to return to work. Susan has taken steps to seek a release to full duty from another source. Objective findings include improved spinal motion and segmented mobility. She still requires dark glasses and demonstrates poor balance during gait.

01/03/91 **Dr. Mattimoe.** Patient still complains of severe headaches and ataxia meaning a staggering of motion while walking and feeling of loss of balance; she has not fallen but takes care when walking and does not drive any vehicle. Exam is essentially unchanged. I feel this lady requires an independent specialist's work-up.

01/10/91 **Dr. Mattimoe.** Patient telephoned - Haemathemisis [sic] and possible melena. Advised to discontinue ASA and NSAID's and will be prescribed a histamine 2 blocker. She is going to have upper GI at Steinberg's in the morning.

01/11/91 **Dr. Mattimoe.** Dr. Green telephoned - patient shows duodenal ulcer. Advised to make an appointment with Dr. J. Fayad, Gastroenterologist.

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01/11/91 **Upper GI Series. R. B. Greene, M.D.** The preliminary film of the abdomen reveals no abnormalities. There are prominent gastric rugae or folds involving the entire stomach. This is consistent with diffuse hypertrophic gastritis. Mild to moderate antral spasm, pylorospasm and duodenal irritability. There are moderately prominent duodenal bulb mucosal folds present. On multiple Hampton views of the duodenal bulb, there is demonstrated one, possibly two 2 mm-3 mm in diameter superficial benign duodenal bulb erosions and/or ulcerations. No gastric outlet obstruction. Normal esophagus. The upper GI series is otherwise not remarkable.

01/31/91 **Dr. Mattimoe.** Her dizziness remains a major feature and she complains of staggering while walking. Her headaches remain and the various medications prescribed have not helped her. She states she gets quite frustrated with her current position and she is not obtaining help from anybody. She mentioned she has had temper tantrums as a result. Dr. Becker, ENT has told her he could not do anything further for her and she is anxious to have

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another opinion. She was prescribed Norflex. I again advised her that in view of her symptomatology, I would not recommend her to resume work although she states she is most anxious to do so. I will write her insurance company recommending another opinion. She also states I never said she was unable to work.

03/13/91 **Joseph Fayad, M.D.** Impression: Hematochezia times two. Likely due to aspirin. The possibility of other pathology has to be ruled out. Plan: Proceed with an EGD. Start patient on Zantac and recommend to avoid any aspirin as well as alcohol for now.

03/30/91 **Dr. Mattimoe.** Patient states her main complaints are severe headaches and ataxia plus considerable stress due to mounting unpaid bills. She states she is most anxious to resume work as soon as possible at her pre-accident position. She is still being investigated by Dr. Fayad, Gastroenterologist, in regard to her recent GI bleeding. He feels this arose from her use of aspirin to relieve those headaches. Since she has discontinued the aspirin she has not noticed any further GI bleeding and does not now have any abdomen complaints. Exam: Patient continues to have an unsteady gait and appears to stagger backwards without actually falling and supports herself, at times, with her hands on the wall while walking. In view of her symptoms and the appearance of ataxia, I feel she is currently unfit to undertake any duty or to drive and, in fact, may need attendance when walking lest she fall. I consider patient would benefit from fresh neurological and ENT evaluations.

06/01/91 **Unsigned typewritten note.** Continues to have severe headaches and a tendency to back into objects. She takes 2 Darvocet N 100 at night to relieve the headache so she may sleep. Her abdominal problems have responded well to Gen. Donnatal once the initial side effects abated. She was prescribed Gen. Donnatal and Darvocet in the 100. I have urged her to have the case settled.

07/26/91 **Ronald A. Weisner, M.D.** Psychiatric diagnosis: Axis I: Somatoform pain disorder. Axis II: No diagnosis. Axis III: Patient was involved in two motor vehicle accidents, in 1988 and 1987. It is uncertain what if any, neurological sequelae ensued from these automobile accidents. Axis IV: Stressors are moderate. Loss of income. Axis V: Current GAF 65. Highest GAF this past year approximately 65.

09/23/91 **Administrative Law Judge Decision Regarding Social Security.** The judge states that "medical evidence establishes that the claimant has severe medically determinable impairments of somatoform pain disorder, postural vertigo, status post cervical strain and obesity but that she does not have an impairment or combination of impairments listed in or medically equal to one listed in appendix A, subpart P, regulation #4." He states "the claimant's subjective complaints preclude the performance of substantial gainful activity on a routine and sustained basis." He states that she does have disability as defined in the Social Security Act.

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01/11/92 **Unsigned typewritten note.** Patient has a number of problems which are MVA related - headaches, back and neck pain, paresthesiae left lower limb. She has considerable photophobia and continuing dizziness. Exam is unchanged and I have referred her to Gary Amick for continuing PT.

03/24/92 **Unsigned typewritten note.** Patient reports she had been doing well since her last visit but has been seriously affected by the recent death of her grandson. She reports severe headaches, dizziness, insomnia and overwhelming grief. Exam remains unchanged and she was offered supportive care.

05/08/93 **Dr. Mattimoe.** Mrs. Reeves has suffered very severe incapacitating headaches since the MVA of 09/25/88. Only Imitrex has provided satisfactory relief. I have therefore prescribed Imitrex for her on a continuing basis.

05/16/98 **Physician unknown. Handwritten note.**

PHYSICAL EXAMINATION

GENERAL:

The examinee stands 5'5" tall and weighs 180 pounds.

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EXTREMITIES:

There is no visible atrophy in the upper or lower extremities. Measurements are taken at the upper arms bilaterally and are 34 cm bilaterally. The forearms measure 27 cm bilaterally. The calf measurements are 38 cm bilaterally. There is subjective limitation in bilateral shoulder abduction at 140 degrees.

TRUNK/SPINE:

The examinee has normal upright posture without scoliosis. She has subjective limitations that are nonanatomic in cervical and lumbar spine motion. Straight leg raises seated are to 90 degrees bilaterally with no pain.

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SENSORY:

There is nonanatomic circumferential tingling in the left upper extremity. Sensation is otherwise intact in the right upper extremity and bilateral lower extremities.

MOTOR:

GRIP	JAMAR DYNAMOMETER		
RIGHT	52,	54,	50
LEFT	20,	15,	24

Rapid exchange grip strength testing was attempted although the examinee was unable/unwilling to coordinate the effort. There is breakaway weakness in the upper and lower extremity myotomes.

REFLEXES:

2+ at the bilateral biceps, triceps, brachioradialis, quadriceps and Achilles.

GAIT:

Slow.

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CREDIBILITY/SYMPTOMS REPORTING

PAIN DIAGRAM: Nonanatomic.

MCGILL PAIN QUESTIONNAIRE: 32.

The McGill Pain Questionnaire is a simple, but reliable, measure of a patient's perception of pain. The questionnaire that is used in this case is the Pain Rating Index (Rank Value). The patient is asked to choose words from a list of 20 different categories. A score is obtained based on the range of that word in the category. The maximum score is 78 points. Scores above 30 tend to indicate exaggeration of symptoms, although there is no exact cutoff point accepted.

BECK DEPRESSION INVENTORY: 12.

The Beck Depression Inventory is a 21-item self-report questionnaire that is used as a screening measure for clinical depression. The score can be interpreted as follows: 1 to 10 normal, 11 to 16 mild mood disturbance, 17 to 20 borderline clinical depression, 21 to 30 moderate depression, 31 to 40 severe depression, over 40 extreme depression.

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DIAGNOSES

DIAGNOSIS (PRIMARY INDUSTRIAL CAUSATION):

1. STATUS POST INDUSTRIAL MOTOR VEHICLE ACCIDENT, 09/25/88, WITH DIFFUSE SYMPTOMATOLOGY COMPLICATED BY FUNCTIONAL OVERLAY.

DIAGNOSES (OTHER):

1. SOMATOFORM PAIN DISORDER.
2. HEART MURMUR PER EXAMINEE.
3. ENDOMETRIOSIS PER EXAMINEE WITH REPORTED MULTIPLE SURGICAL INTERVENTIONS.
4. EXCESSIVE DARVOCET/MIDRIN USE.

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DISCUSSION

I was asked to evaluate this examinee. In the cover letter, it is stated that Bally's was unsuccessful in denial of the claim. I have been asked to evaluate the examinee's capabilities in terms of entering the work force. I have reviewed the medical records including the records from the examinee's primary care physician, Dr. Mattimoe. The examinee wants to be "fixed." She stated that she wants to be sent to the Mayo Clinic for treatment, but then told me that if I could help her here in Las Vegas, she would certainly go through that treatment. The difficulty that I believe all involved in this case are experiencing is the fact that this examinee's subjective complaints are far in excess of any objective findings that may be hidden. This type of presentation is completely consistent with the diagnosis of somatoform pain disorder which was noted by Dr. Mortillaro back in November of 1989. The bottom line is that this examinee primarily has a psychiatric problem. Somatoform pain disorder is a psychiatric diagnosis and is not something that is caused by an industrial accident. This examinee has diffuse bodily complaints and has a perceived level of disability that is far in excess of anything that could be causally related to her accident in 1988. Of note is that she has been granted social security disability since 1989. The criteria for disability under social security are very much different than the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury.

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There is also a question in my mind as to the 1987 accident where the examinee hit her head and this resulted in headache complaints. Per Dr. Boulware's report of 12/12/88, he states that her headache complaints from the 1987 accident continued until three days before the September 1988 accident. This is quite unlikely from an objective medical standpoint.

As far as managing an individual with somatoform pain disorder with multiple diffuse bodily complaints such as this examinee, it is important to keep in mind that it is primarily a psychiatric diagnosis. It is clear that the examinee has a great deal of trust in Dr. Mattimoe and undoubtedly, Dr. Mattimoe is doing everything he can to help her although the ongoing use of addictive medications such as Darvocet and Midrin are really contraindicated in a somatoform pain disorder. The bottom line is that there is really no conceivable objective diagnosis resulting from the automobile accident that could justify the use of these medications especially at the numbers per month she is consuming. The examinee's behavior of wanting to seek out additional treatment at a nationally recognized center is also consistent with somatoform pain disorder. She has fixated on her pain and disability to the point that it is an all consuming project. The litigation aspects fall into this pattern also.

The bottom line is that despite the fact that her claim has been accepted, I have no industrial treatment recommendations. From a nonindustrial standpoint, she should be taken off of addictive medications and she should be under the care of a psychiatrist or psychologist. There is nothing of significant concern from a medical standpoint that would warrant urgent treatment and there is nothing that would require multidisciplinary or regional medical center treatment.

CONCLUSIONS/RECOMMENDATIONS

PREEXISTING CONDITIONS:

There was a previous motor vehicle accident in 1987 resulting in headache complaints. I suspect that those complaints are also part of her current presentation. The most overwhelming aspect of this examinee's presentation is what I would consider a preexisting tendency or an actual preexisting diagnosis of somatoform pain disorder in this examinee.

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SYMPTOM MAGNIFICATION/NONORGANIC FINDINGS:

The examinee has overwhelming magnification of symptomatology. In addition to already being diagnosed officially with somatoform pain disorder, she has an elevated McGill Pain Questionnaire score which is in the realm of symptom magnification, she has a nonanatomic pain diagram, she has nonanatomic complaints, and she has nonanatomic findings on examination. For purposes of clarification, it is important to note that this examinee may not have conscious

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control over the issues of symptom magnification or functional overlay. In other words, the examinee may truly feel that she has symptomatology severe enough to preclude functional activities. However, this is not justifiable on an objective industrial basis.

CAUSATION:

The motor vehicle accident on 09/25/88 may have caused some minor problems physically but those have undoubtedly resolved. The causation of the examinee's current presentation overwhelmingly is her nonindustrial somatoform pain disorder.

MAXIMUM MEDICAL IMPROVEMENT:

Yes from an industrial standpoint.

RECOMMENDATIONS:

The following recommendations are nonindustrial. I would advise the examinee to wean herself completely from addictive medications. I would recommend that she be under the nonindustrial care of a psychologist or psychiatrist skilled in dealing with somatoform pain disorder.

I was also asked to clarify which medications are necessary for this examinee on an industrial basis. There are no medications necessary objectively on an industrial basis as it relates to the 1988 accident.

WORK CAPACITY/DISABILITY:

As discussed above, this examinee's obtaining of social security disability dating back to 1989 should not be misconstrued as a justification for disability on an industrial basis. It is my very strong opinion that based on the industrial accident and the industrial objective issues, there is no evidence for disability. The examinee's current perceived level of disability is based on her nonindustrial somatoform pain disorder.

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PROGNOSIS:

Exceedingly guarded because of the nonindustrial factors.

DISCLAIMER

The opinions, conclusions, and recommendations expressed above are based upon reasonable medical probability and are independent of the referral source. Multiple factors have been taken into account including the examinee's subjective complaints, provided history, medical records

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reviewed, direct review of diagnostic or radiographic testing, results of credibility and symptoms reporting, and the physical examination findings. Comments on appropriateness of care are professional opinions based upon the specifics of the case and are not to be generalized to the specific involved providers or disciplines. The opinions expressed above to not constitute a recommendation that specific claims or administrative decisions be made or enforced. At the conclusion of the examination today, the examinee left the office without complaints of additional injury.

Respectfully submitted,

David J. Oliveri, M.D.
Board Certified, American Board of Independent Medical Examiners

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NEVADA NEUROLOGICAL CONSULTANTS, LTD.
3131 La Canada Street, Suite #232
Las Vegas, NV 89109
(702) 731-9110

MEDICAL EXAMINATION

March 26, 2001

RE: PATIENT: REEVES, SUSAN LOUISE

To Whom It May Concern:

Susan Louise Reeves is a pleasant 49-year-old woman whom I saw today for a medical examination. The patient supplied the history and provided a questionnaire regarding her current symptoms and complaints. I reviewed the questionnaire with her and took an independent history. I also examined her today. I did not have the benefit of medical records to review at this time to assist in the preparation of this report.

HISTORY OF PRESENT ILLNESS: The patient is seen for a neurological assessment in regards to an accident that occurred on 9/25/88. She says that she was at a stop in the employees' parking lot and she was struck from behind by another vehicle. She said that her truck did not have a headrest and her head whipped forward and backwards. She notes that she eventually did go back to work in the hotel reservations department and worked for another nine months after the accident, at which point she was eventually escorted off her job and placed on a medical leave nine months after the accident, as she was told she was a "hazard." She apparently was employed doing room reservations. She was a shop steward. She was hired in September of 1980. She worked until 5/15/90 when she noted she was escorted off the property. In her daily work activities she trained new hires, helped the supervisors. While sitting she would train a new person, put the order files in, and would be helping with conventions and with phones. She would sit about 80% of the time, walk 20% of the time. She states the accident happened on a Sunday. She notes that she initially saw Dr. Peter Mattimoe on Monday and was referred to Dr. Becker. She saw Dr. Becker, an ENT specialist, and she was advised by Dr. Mattimoe to take Aspirin for her headache. She said that she was taking 100 Aspirins per day around the

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PATIENT: REEVES, SUSAN LOUISE
DATE: MARCH 26, 2001
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time she was walked off the job. She notes that she was having trouble with bright light bothering the headaches and she wore sunglasses. She notes that she was not allowed to use the sunglasses and almost every day or so she would go to therapy. She had ringing in her ears and noted blackness in her left eye as well as dizziness. She says that Dr. Mattimoe treated the symptoms. She was sent to therapy for about a week after the accident. She was treated also by Dr. Ameriks, Dr. Becker, and Dr. Petroff. She went to physical therapy at NovaCare. As far as her current subjective symptoms, she notes headaches every day constantly. She says that it varies in degree. She notes a tight cap-like feeling at the top of her head. She has dizziness, which gets worse when the headache is worse or when her stomach problems are worse. She says the more the dizziness the more she has other symptoms. She notes that she has tingling in her left shoulder and arms. She has trouble with limited range of motion. She has ringing in her ears. She notes that she has numbness and tingling in her left arm, numbness and tingling in her left leg. She says that she has numbness from her left leg to her big toe. She notes that the big toe movement feels like it is being stretched. She says that her symptoms occur 24 hours a day, seven days a week. She notes that bright light and noises can worsen the symptoms and trigger them. She says that she does not have many spinning sensations or dizziness. She notes now that she feels like she may just fall backwards if she does not concentrate. She says taking medication or going to the bedroom for a few hours may help her symptoms. The bedroom is completely dark without windows or noise. She says that her symptoms are getting worse due to the new medications and therapy. She notes that the dizziness symptoms rarely appear. The medications, particularly Pamelor helps with the ringing in the ears. She says that before this she could barely bear what people said. She said the headaches were so severe that two times a week she would experience very severe symptoms. She notes that she has never been hospitalized. She did have a GI evaluation due to taking too much Aspirin. She was seen by a Dr. Faris. She does not use any assistive devices. She has a prior injury in 1969 at Sears. She hurt her knee but states she had no legal settlement. She had it fixed and then went back to work. She notes that a car accident occurred in July of 1987. Apparently a car rear-ended her on Tropicana Boulevard. She says that her insurance took care of it under the no-fault insurance policy. With respect to her pain, she

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says her pain is reduced by medication, lying down in a dark, quiet room. She says she can look after herself but is slow and careful. She says she can lift everything without pain but is dizzy to watch. She notes that pain does not prevent her from walking as far as she wants; dizziness does. She says that with respect to her activities she can stand a few hours without having to sit but with dizziness it is reduced. She notes that she can stand a few hours without pain before having to sit but also notes dizziness. She says that she does not have any limitations sitting. She has headaches which interfere with her sleeping. She notes that she is restricted to short journeys due to headaches. She says that the pain has reduced her social life. She does not go out as often. She notes that headaches have reduced her sex life. She says that since the accident she does not go dancing as much or go out as much, nor does she go climbing or hiking. She is unable to play any sports now because of pain. As far as her daily routine, she gets up between 7:00 and 8:00 a.m. depending on when the dogs get her up. She relaxes with tea and breakfast, listens to her radio show, thumbs through the newspaper. By 9:00 a.m. she takes her pills and straightens up the bed and brings the dog pillows up to the family room. She opens up the living room blinds and windows. At night she feeds the fish and feather dusts things. She starts the laundry and dishware and lays down for an hour or two. She gets up, finishes walking, she puts away the dishes, and makes sure that she has everything ready for dinner. She goes for the mail and sorts out the trash to be placed in the garbage. In the early morning she sits down to try to watch the birds at the feeder but the sun is too much for her headaches. She goes inside and lays down. She is able to vacuum and mop the floors off and on during the week but does this slowly and carefully. On the weekend the patient and her husband try to do the real cleaning, the bathrooms and such. Around 3:30 p.m. her husband comes home and then she tries to sit out under the back porch, which is shaded for an hour or so. Then they may watch TV, talk, or she tries to do her dizziness exercises, then goes to bed. With respect to her pain diagram, she notes tight muscles in her left shoulder. She has numbness in her entire left arm and a ribbon of numbness along her left leg and calf. She describes the headache as a band-like pain across the front of her head and numbness even noted at the top of her head.

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PAST MEDICAL HISTORY: Her past medical history is remarkable for hospitalizations in Valley Hospital and was at Loma Linda as well for a tubo-ovarian abscess. She also was hospitalized at Women's Hospital as well.

ALLERGIES: Iodine, Sulfa medications, Codeine, and Novocaine as well as occasional perfumes.

SOCIAL HISORY: She is married. She rarely has an alcoholic beverage. She smokes a pack of tobacco per day. She has had high school and some college degree. She has lost 11 years of work because of her health-related problems.

FAMILY HISTORY: Remarkable for cancer, diabetes, heart disease, hypertension, stroke, and gout.

REVIEW OF SYSTEMS: The following systems have been reviewed and were normal unless otherwise stated below: General, HEENT, cardiovascular, respiratory, gastrointestinal, genitourinary, musculoskeletal, integumentary (skin and/or breasts), neurological, psychiatric, or endocrine.

The patient reports stiffness. She has had spitting up blood, difficulty walking two blocks, heart disease, vomiting, heartburn, indigestion, varicose veins, pain in the calf as noted, allergies.

PHYSICAL EXAMINATION

VITALS SIGNS: Vitals signs are unremarkable.

NEUROLOGICAL EXAMINATION

MENTAL STATUS: Mental status exam is remarkable for pressured speech. She has difficulty stopping talking. She has coherent thoughts however. She wears sunglasses but will take them off during the exam.

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CRANIAL NERVES: Cranial nerves II through XII were examined serially and found to be normal. Range of motion of the cervical spine is diminished due to pain in all planes. Left shoulder voluntary range of motion is decreased as well in all planes subjectively.

MOTOR: Motor examination discloses giveaway weakness in the left deltoid, left biceps, left triceps, and wrist extensor. Strength is normal everywhere else.

REFLEXES: Muscle stretch reflexes are 1+ throughout. Toes are downgoing to plantar stimulation.

SENSORY EXAM: Sensory exam is intact to all modalities except for the left side in the left upper extremity. There is diminished sensation to pinprick in the entire left arm as compared to the right, in the left lower extremity along the medial aspect, and in left foot along the dorsal surface.

COORDINATION: Coordination testing is normal.

GAIT: Gait is normal. She can walk with a narrow base and is able to turn. She is slightly unsteady on turning.

IMPRESSION AND PLAN: After interviewing this woman and examining her, I have the following comments:

1) This is a very unusual and extreme case. I do not have all of her records to review but from what I can gather at the worst this woman has suffered a mild post-concussion syndrome. The term mild is used because this individual did not report loss of consciousness, was not hospitalized, and indeed was able to work in some capacity for nine months after this accident. Certainly this pattern is not consistent with a severe closed-head injury.

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2) This patient has many subjective symptoms, i.e. headache, dizziness, and even sensory loss. Her objective physical findings are hard to match up with her complaints. That is to say, she has giveaway weakness on exam and sensory loss particularly in her left upper extremity, which do not correlate well. I cannot really explain her clinical pattern of findings. In addition on her pain diagram she noted that she had numbness over the top of her head. These findings taken together really do not make sense based on how the nervous system is organized. I cannot think of a lesion that would cause one to have numbness on her scalp in the midline and the pattern of numbness in her arm and her leg. In addition, one would not expect to see giveaway weakness without other reflex changes. As far as her other subjective complaints, i.e. dizziness and headache, these too cannot be verified very well since there is no objective medical test that can tell an individual how much pain one is in or how much dizziness an individual is subjectively feeling.
3) So, her subjective complaints and her physical findings are difficult to reconcile. In addition to this, it would be very unusual for an individual with a mild head injury to have complaints that are so strong and so extreme 13 years later, at least based on what I have read and what I have seen in my medical practice.
4) I do not have her medical records at the present time to review. It will be interesting when they become available to look and see whether her present complaints are the same as she has had in the past. That is to say, if I discovered weakness today that was never noted in the past or a particular sensory pattern that was not noted in the past, this too would also be non-physiologic. I will wait until I have a chance to review her records to comment further on this.
5) As far as diagnostic testing, I do not know what has been done. I will certainly wait to review the studies when they become available and comment further. It would be interesting if she has had posturography done. This type of testing can be done in individuals who are dizzy, and certainly I would expect would be able to determine a true pattern of dizziness from one that was more subjective.

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6) I do not know whether this individual has had a psychiatric or psychological assessment in the past. It is interesting in speaking with her that many of her complaints have gotten better since Dr. Petroff started her on Pamelor. Pamelor is an antidepressant and while this is used for many purposes by physicians, it is possible that her symptoms may have been due to a co-morbid depression that was occurring in this individual, which Pamelor is treating. Interestingly Pamelor would not be typically expected to improve tinnitus in most patients and the fact that she is getting better might too suggest that the subjective complaint of tinnitus may have a psychological basis.
7) The conclusions that I have reached at the present time are based solely on the patient's current physical examination, her subjective complaints to me, and the history that was related. I will be happy to review any records as they become available and comment further, and should the medical records provide further history or information that is relevant or important, I will certainly prepare a corrected report. On the other hand the basic issues that I observed today, i.e. her history, her subjective complaints, and what she wrote in her patient questionnaire, make me concerned about her subjective symptoms and their basis in true physiologic mechanisms. I will hold my final conclusions in abeyance until all the records are reviewed.

Sincerely,

Steven A. Glyman, M.D.
SAG/lad

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Licensed Psychologist
Licensed Marriage & Family Therapist

Manuel F. Gamaza, Ph.D.
Licensed Alcohol & Drug Counselor
Nationally Certified Psychologist

Donald J. Johnson, Ph.D.
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LOUIS F. MORTILLARO, PH.D.
AND
ASSOCIATES

- *Psychological, Presurgical & Neuropsychological Evaluations*
- *Individual, Group, Marriage, Family & Child Counseling/ Psychotherapy*
- *Biofeedback Therapy & Relaxation Training*
- *Forensic Evaluations*
- *Drug & Alcohol Rehabilitation Therapy*
- *Hypnotherapy*
- *Pain/Stress Management*
- *Vocational Rehabilitation Services*
- *Bilingual Services*

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mortpsych501@aol.com (e-mail)

DISCHARGE SUMMARY

PATIENT NAME:	SUSAN REEVES
DATE OF BIRTH:	10/06/51
SOCIAL SECURITY #:	
DATE OF INJURY:	09/25/88
CLAIM #:	001504-001083WC01
DATE OF REPORT:	03/18/04
REFERRED BY:	LEAH LYONS, GALLAGHER BASSETT INS. CO.

-CONFIDENTIAL -

The information contained in this report is strictly confidential and is only for the use of the professional(s) to whom it is addressed. Any unauthorized disclosure is strictly forbidden and illegal.

INITIAL PSYCHOLOGICAL EVALUATION RESULTS:

Susan Reeves was referred for a psychological evaluation-IME to assess the nature and extent of psychological barriers arising preventing her from achieving maximum medical improvement. A psychological evaluation was conducted and the results were memorialized in a report dated 04/25/03. It was this psychologist's opinion that she was experiencing and manifesting Psychological Factors Affecting her Physical Condition (DSM-IV-TR 316). To help her resolve these psychological factors, she was recommended for participation in individual pain and stress management counseling, biofeedback therapy and psychoeducational lectures.

TREATMENT OUTCOMES:

Her treatment commenced on 01/05/04 and was completed on 03/18/04. During treatment, she was instructed in a number of pain and stress management coping skills to be applied in response to pain and stress stimuli. Her view of her stressors as being overwhelming was reconceptualized to be more manageable. She demonstrated a high level of motivation during her treatment and was cooperative in her treatment as indicated.

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During the treatment process, she spoke a number of times about her dizziness (she was observed to have difficulty with balance when walking in this office). During psychological treatment, she also participated in a physical therapy program that she says helped control her dizziness. She continues experiencing residual dizziness which causes problems for her maintaining her balance, with reports of her falling. As a result, she walks very carefully.

During the treatment sessions, the flourescent light in this clinician's office was turned off and the sessions were conducted in natural sunlight coming in from the windows. This was beneficial for the patient because of her significant high level of sensitivity to light. She was observed wearing dark glasses during the entire treatment program which she states helps to control the negative effects of light.

On numerous occasions, Ms. Reeves discussed her concerns about not receiving financial benefits from the worker's compensation system even though the court ordered a reinstatement of these benefits. This issue created significant distress for her due to the fact that she is not receiving financial assistance. Also, she has reported significant problems obtaining authorization by the insurance company for her prescription medication and has had to use her insurance benefits from the Teamster's Union.

Her learning of coping skills during psychological treatment, in combination with medication management by Dr. Petroff, has been a significant factor in improving Ms. Reeves' overall condition. Even though she continues to complain of headache pain and dizziness, she indicates that she is feeling better physically and psychologically.

Ms. Reeves has been a pleasant individual who discussed her concerns during treatment in an open fashion and assimilated the treatment skills discussed during the sessions. She implemented the techniques taught during the treatment program with positive results in her overall condition.

In reviewing Dr. Petroff's report dated 02/18/04, he indicates that the patient has shown improvement but he recommended that she have another MRI. The X-ray image shows some progression of the disc osteophyte encroachment impinging at the C4-5 level. Also, Dr. Petroff indicated that this may be unchanged at the C5-6 level two years ago. There is also bilateral neuroforaminal stenosis. His diagnostic impressions were described as headaches, cervical degenerative disease, vestibulopathy and lumbar sacral strain.

The patient stated that she was very frustrated regarding her overall medical condition. The medical evidence suggests that her medical condition appears to be the root of her pain generator. She also has had a long history of disability since 1988 and, during this period of time, she has received a number of prescription medications designed to help improve her overall medical condition.

At this time, as previously indicated, the combination of her medications and the pain and stress management coping skills have allowed her to experience "better days" than she has had in the past.

Biofeedback therapy was included in her treatment plan with the use of digital thermal, skin conductance, and surface EMG modalities to control physical and psychological reactivity arising out of her overall medical and psychological condition. She learned a number of coping skills to enhance the mind-body connection. Her biofeedback therapy results indicate that she has met discharge treatment criteria, and when she implements the skills she learned during treatment, she is able to decrease her symptoms to a manageable level.

During treatment, she participated in 20 psychoeducational lectures where the following topics were covered:

Psychophysiology of pain, stress and response system.
Relaxation skills and training.
Mind-body interaction principles.
Hardiness and peak performance attributes.
Pain and stress coping models.
Attitudinal healing principles.
Pain and stress management coping skills.
Interpersonal communication patterns.
Internal and external locus of control, personal improvement and self-esteem development.
Realistic expectations and attitude, and anger management conflict resolution skills.
Medication and chronic pain behavior coping techniques.
Guided imagery and visualization skills development.
Mental coping techniques.
Inner dialogue process.
Spirituality and healing.
Sleep patterns and chronic pain.

DISCHARGE ISSUES:

At the time of discharge, Susan Reeves indicated that the combination of her prescription medications and her participation in the psychological treatment, including biofeedback therapy, psychological counseling and psychoeducational lectures, have made it possible for her to have a better quality of life. Unfortunately, she continues to experience headaches, sensitivity to light, dizziness and unresolved pain in her neck and lower back. She admits that she is able to better cope better with her condition, but she says that she occasionally experiences significant difficulty coping with her physical symptoms. She does not think, at the present time, that she is capable of returning to any gainful employment due to her residual symptoms of dizziness, headaches, sensitivity to light, tinnitus and unresolved pain in her neck and lower back.

Ms. Reeves states that she has attended some lectures regarding acupuncture techniques and she perceives that this type of treatment may be helpful for her. She would like to try acupuncture and then determine whether this type of treatment helps improve her overall condition.

At this time, Susan Reeves is discharged from further psychological treatment. She continues to receive physical therapy. She also remains under the care of Dr. Petroff. The prognosis for Ms. Reeves returning to work is guarded due to her long-term disability and belief she will never return to work in any capacity.

At this time, there are no psychological contraindications preventing Susan Reeves from undergoing further medical treatment, or returning to work if given a release by her physician Dr. Petroff. However, as previously indicated in this report, the prognosis for her returning to gainful employment is guarded because of her residual medical disability and belief she will never return to work in any capacity.

If you have any questions or need clarification, please contact this psychologist at your earliest convenience.

M. Gamazo, Ph.D.

Manuel F. Gamazo, Ph.D.
Clinical Director, Bilingual Services
Certified Clinical Psychopathologist #A16941
Doctoral Addiction Counselor #B17782
Senior Disability Analyst & Diplomate, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
Nationally Certified Psychologist #01357

L. Mortillaro, Ph.D

Louis F. Mortillaro, Ph.D.
Psychologist
Diplomate, American Academy of Pain Management
Senior Disability Analyst & Fellow, American Board of Disability Analysts
Diplomate, American Board of Psychological Specialties
Fellow and Diplomate, American Board of Medical Psychotherapists

MFG:LFM:gs

DICTATED, NOT EDITED

cc: George Petroff, M.D.

F: 3/30/04

NEVADA DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: LHS2002-C-4641-NG Claim Number: 001504-001083 Employer:
SUSAN L REEVES 4724 E WASHINGTON AVE LAS VEGAS NV 89110	PAULA KITCHELL BALLY'S 3655 LAS VEGAS BLVD S LAS VEGAS NV 89109

The Claimant's request for hearing was filed on FEBRUARY 15, 2002 and a hearing was scheduled for THURSDAY, MARCH 14, 2002. The hearing was continued, reset, and heard on TUESDAY, APRIL 9, 2002, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present. The Claimant was represented by Douglas M. Rowan, Esquire. The Employer was not present. The Employer was represented by Lee Davis, Esquire for Santoro, Driggs, et al.

ISSUE

The Claimant appealed the determination of GALLAGHER BASSETT SERVICES, INC. dated December 27, 2001.

The issue before the Hearing Officer is CLAIM CLOSURE.

DECISION AND ORDER

After careful review and consideration of the totality of the evidence, Dr. Glyman's opinion that there is no further treatment to offer the claimant, is deemed proper and supported by the claim file. Accordingly, the insurer's determination is hereby **AFFIRMED.**

> **NAC 616C.112** (NAC 616.555) provides when the Insurer determines the Claimant has received all benefits known to be due, the Insurer shall close its file concerning the Employee and provide a

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claim closure notice, including appeal rights and claim reopening rights.

IT IS SO ORDERED this 19th day of April, 2002.

NORA GARCIA
HEARING OFFICER

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 555 E. Washington Ave., #3300, Las Vegas, Nevada, to the following:

SUSAN L REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS M ROWAN ESQ
6900 WESTCLIFF DR 800
LAS VEGAS NV 89128

PAULA KITCHELL
BALLY'S
3655 LAS VEGAS BLVD S
LAS VEGAS NV 89109

LEE DAVIS ESQ
SANTORO DRIGGS ET AL
400 S FOURTH ST 3RD FLR
LAS VEGAS NV 89101

ATTN JULIE VACCA
GALLAGHER BASSETT SERVICES INC
P O BOX 70687
LAS VEGAS NV 89170-0687

DATED this 19th day of April, 2002.

MARY E. HOLM
EMPLOYEE OF THE STATE OF NEVADA

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BEFORE THE APPEALS OFFICE

FILED
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APPEALS OFFICE

IN THE MATTER OF THE CONTESTED INDUSTRIAL INSURANCE CLAIM

of

SUSAN REEVES,

Claimant.

Claim No.: 001504-001083
Appeal No.: LAS2002-C-2501-NR

DECISION AND ORDER

This matter initially came on for hearing February 11, 2003 before Appeals Officer Nancy K. Richins, Esq. The Claimant was represented by Douglas M. Rowan, Esq. The Employer was represented by Daniel L. Schwartz, Esq.

The Appeals Officer entered an Interim Order requiring that the Claimant be seen for an independent medical examination by an appropriate psychologist or psychiatrist to address whether the Claimant's somatoform pain disorder pre-existed the industrial injury and, if so, if the industrial injury precipitated, aggravated, or accelerated the pre-existing disorder or if the Claimant's condition WAS a result of the natural progression of the pre-existing condition. Additionally, the independent medical examination was to determine, if the somatoform pain disorder was industrial, whether there was treatment needed for the condition.

In compliance with that Interim Order, Louis F. Mortillaro, Ph.D. performed a psychological evaluation of Claimant on April 14, 2003 and April 22, 2003. Dr. Mortillaro authored a report dated April 25, 2003 and a subsequent report dated May 5, 2003.

The above-entitled matter came on for hearing again on September 10, 2003, before Appeals Officer Nancy K. Richins, Esq. The Claimant was present and was represented by Douglas M. Rowan, Esq. The Employer was represented by Daniel L. Schwartz, Esq.

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PEARSON, PATTON, SHEA, FOLEY & KURTZ, P.C.
6900 Westcliff Drive, Suite 800
Las Vegas, Nevada 89145

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After review of the evidence, Dr. Mortillaro's reports, and argument of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. Claimant was employed as a room reservation clerk at the MGM/Bally's Grand Hotel commencing on September 15, 1980.

2. On September 25, 1988, Claimant was rear-ended in her truck by a co-employee when she was turning into Bally's parking lot.

3. The Employer denied Claimant's claim for worker's compensation benefits on the basis that she did not timely file a claim for compensation. The Hearings Officer and Appeals Officer upheld the Employer's denial of Claimant's claim on the basis that Claimant had not timely filed her claim and that her injuries were the result of a pre-existing condition.

4. Claimant filed a Petition for Judicial Review with the District Court. On March 15, 1994, the District Court entered an order granting Claimant's Petition for Judicial Review, ruling that the Appeals Officer's Decision and Order was without substantial evidence.

5. The Employer appealed the District Court's Order to the Nevada Supreme Court. In August 1997, the Nevada Supreme Court issued an opinion affirming the decision of the District Court in Claimant's favor and remanded her claim to the Employer for reconsideration. The Supreme Court held "from our discussion relating to the Hearing Officer's decision in this case, no substantial evidence exists that is adequate for a reasonable mind to accept the conclusion that the non-industrial accident was the sole cause of Ms. Reeves' present injuries and complaints." On September 26, 1997, the Employer issued a letter accepting Claimant's claim as industrially compensable. Bally's Grand Hotel and Casino v. Reeves, 113 Nev. 926, 948 P.2d 1200 (1997).

On March 26, 2001, Dr. Steven Glyman conducted an independent evaluation of Claimant. Dr. Glyman found that Claimant was suffering from a non-industrial somatoform pain disorder. In

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Bally's Grand Hotel and Casino v. Reeves, 113 Nev. 926, 940 P.2d 1200 (1997), the Nevada Supreme Court indicated that the rule of law with respect to Claimant's claim with respect to the aggravation of non-industrial conditions was that "'the Claimant has the burden of showing that the claimed disability or condition was in fact caused or triggered or contributed to by the industrial injury and not merely the result of the natural progression of the pre-existing disease or condition.' State Industrial Insurance System v. Kelly, 99 Nev. 774, 775-76, 671 P.2d 29 (1983)."

The Appeals Officer requested that the physician performing the independent medical evaluation render an opinion as to whether the Claimant's somatoform pain disorder was industrial and, if so, whether further treatment would be recommended for this condition.

Dr. Mortillaro's report dated April 25, 2003 states:

> The objective and subjective psychological data results indicate that [Claimant] is manifesting symptoms related to psychological factors affecting her physical condition (DSM-IV-TR316). She has a long history of disability since 09/25/88 when she was injured in a second motor vehicle accident that has affected her overall life dynamics.

Dr. Mortillaro recommended the following:

> To assist [Claimant] in decreasing her pain intensity and duration, she is an appropriate candidate for participation in individual counseling sessions, biofeedback therapy and psychoeducational lectures in order to learn and implement appropriate pain and stress management coping skills.

The employer sent Dr. Mortillaro a letter dated May 2, 2003 indicating that his report did not address the questions submitted by the Interim Order. That letter requested that Dr. Mortillaro provide an opinion as to whether the Claimant's somatoform pain disorder is industrial.

Dr. Mortillaro authored a second report dated May 5, 2003. In that report, Dr. Mortillaro stated:

> In the past, [Claimant] has been diagnosed with a somatoform pain disorder and this diagnosis is industrial, not non-industrial, due to the fact that the psychological condition would not have been diagnosed

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without the presence of a presenting medical condition, which in her case, was industrially related.

Dr. Mortillaro recommended the following treatment for this industrial diagnosis:

> The treatment recommended to decrease her pain intensity and duration is short term individual pain and stress management counseling, biofeedback therapy and psychoeducational lectures in order for her to learn and implement appropriate pain and stress management coping skills. Her reports of periodic dizziness, dropping and falling down episodes, constant headaches, muscle spasms and tension in the SCM muscles are reliably remediated with a combination of the pain management psychological treatment recommended and appropriate physical therapy. This psychologist will consult with the physical therapist relative to specific modalities that may be helpful in combination with the psychological treatment to help Ms. Reeves resolve her pain and disability.

CONCLUSIONS OF LAW

1. Claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

2. Claimant's claim should not have been closed but should remain open for further benefits.

ORDER

IT IS HEREBY ORDERED the Decision of the Hearing Officer dated February 25, 2002 and the Employer's closure of claim is reversed and the claim reopened.

DATED this 1st day of December, 2003.

NANCY K. RICHINS, ESQ.
Appeals Officer

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PEARSON, PATTON,
SHEA, FOLEY & KURTZ, P.C.
6900 Westcliff Drive, Suite 800
Las Vegas, Nevada 89145

FILED
JAN 2 0 2006
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	Claim No:	88H92H243724
SUSAN REEVES, Claimant.	Appeal No:	14175-GS 14174-GS 13350-GS

DECISION AND ORDER

The above captioned appeals came on for hearing before Appeals Officer, Geraldine H. Schwartzer, Esq., on January 5, 2006. The Claimant was present and was represented by Douglas Rowan, Esq. The Self-insured employer, Bully's, was represented by Lee Davis, Esq. of Santoro Driggs, Walch, Kearney, Johnson & Thompson.

There were three (3) appeals consolidated for hearing. At the time of the hearing, Claimant's counsel advised that appeal numbers 13350 and 14174 were being withdrawn and could be dismissed. Appeal number 13350 was the Claimant's appeal from a November 30, 2004 Hearing Officer's Order of Dismissal. The Hearing Officer dismissed the Claimant's appeal regarding claim closure. The Hearing Officer noted there was no determination and a review of the file failed to indicate the claim was closed. Although the Claimant appealed the November 30, 2004 Hearing Officer's decision, the Claimant withdrew the appeal on January 5, 2006, as the claim is open and claim closure is not an issue.

In regards to appeal number 14174, this was Claimant's appeal from the July 15, 2004 denial of certain medical bills. The Claimant, through counsel, withdrew the appeal as that issue was resolved and no longer at issue.

In regards to appeal number 14175, this was the Claimant's appeal from a November 30, 2004 Hearing Officer's decision. The Hearing Officer affirmed the July 21, 2004 denial of temporary total disability, "TTD" herein, benefits. Upon review of the appeal file, the Claimant's

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appeal was untimely filed on January 12, 2005. The parties were informed as to the date the appeal was filed and Claimant presented testimony regarding the filing of the appeal. After considering the documents and Claimant's testimony, the Appeals Officer renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant testified she received the three Hearing Officers' November 30, 2004 decisions and forms to file the appeals from the Hearing Officer's decision. She further testified she completed all three appeal forms and sent the forms to the appeals office in the same envelope.

2. There is no evidence the appeals office received all three appeal forms on the same day. Each Hearing Officer decision has a different number for that appeal before the Hearing Officer. Although all three decisions were rendered on November 30, 2004, each decision has a different number for that particular issue decided by the Hearing Officer. The appeal forms used to request an appeals officer hearing each contained the hearing officer number that was being appealed. According to the appeal forms, appeal number 13350 was the appeal from Hearing Officer number 10908-SM, the hearing involving the claim closure. This appeal request was received on December 8, 2004. The appeal request for appeal number 14174 was the appeal request for Hearing Officer number 11038-SM, the appeal involving the denial of medical bills. This appeal was received on January 12, 2005. The appeal form used to request an appeal from the denial of TTD, Hearing Officer number 10907-SM, was also received by the appeals office on January 12, 2005.

3. The Claimant's appeal from the Hearing Officer's decision denying TTD was untimely filed on January 12, 2005.

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CONCLUSIONS OF LAW

1. NRS 616C.345(1) provides for a thirty (30) day period for filing an appeal from the hearing officer's decision.

2. Failure to file a request for hearing may be excused where the aggrieved party can demonstrate by a preponderance of the evidence that she did not receive the determination and the forms necessary to file the appeal. NRS 616C.345(8).

3. The time limits for the filing of appeals in Workers' Compensation actions are mandatory and jurisdictional. State Indus.Ins.Sys. v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985). Reno Sparks Visitors Auth. v. Jackson, 112 Nev.62, 910P.2d 267 (1996). The Appeals Officer thus has no discretion to excuse the untimely filing of an appeal, other than as provided by statute.

4. Mailing does not constitute filing. The appeal request must be timely filed. Filing is not timely unless the papers are received by the clerk. SIIS v. Partlow-Hursh, 101 Nev. 122, 696 P. 2d 462 (1985). Although the Claimant testified she mailed the appeal request at the same time as the appeal request in appeal number 13350 which was timely received and filed, the documentary evidence indicates appeal number 14175 was received on January 12, 2005 and was untimely.

ORDER

Pursuant to the Claimant's withdrawal of appeal number 13350 (the Hearing Officer's Order of Dismissal regarding the claim closure issue), and appeal number 14174 (the Hearing Officer's decision regarding payment of medical bills), the appeals are dismissed with prejudice. In regards to appeal number 14175 (the Hearing Officer's decision regarding TTD), the appeal was untimely filed and the Appeals Officer has no discretion to excuse the Claimant's untimely filing of the appeal. Due to the untimely filing of the appeal, there is a lack of jurisdiction to

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decide the appeal involving the TTD issue and the appeal is dismissed.

IT IS SO ORDERED this 20th day of January, 2006

GERALDINE H. SCHWARTZER, ESQ.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS ROWAN ESQ
THORNDAL ARMSTRONG DELK ET AL
1100 E BRIDGER AVE
LAS VEGAS NV 89101

BALLY'S
KATHY MONE
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

DANIEL SCHWARTZ ESQ
SANTORO DRIGGS ET AL
400 S 4TH ST 3RD FL
LAS VEGAS NV 89101

CCMSI
DEBORAH JONES
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 20th day of January, 2006.

Luciana Della Neve, Legal Secretary II
Employee of the State of Nevada

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: 41025-SE Claim Number: H243724
SUSAN REEVES 4724 E WASHINGTON AVE LAS VEGAS, NV 89110	BALLY'S CINDY MCNULTY 3645 LAS VEGAS BLVD S LAS VEGAS, NV 89109

The Claimant's request for hearing was filed on June 18, 2007 and a hearing was scheduled for July 17, 2007. The hearing was held on July 17, 2007, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present and was accompanied by her husband. The Claimant was not represented by legal counsel. The Employer was not present. The Insurer was represented by Lee Davis, Esq.

ISSUE

The Claimant appealed the determination of SEDGWICK CMS dated SEPTEMBER 8, 2006.

The issue before the Hearing Officer is CLAIM CLOSURE.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED**. This matter is heard as a result of an Appeal Officer Order of Remand.

The most recent medical report is one and one half years old. There is no current or compelling medical evidence to support continued treatment under the workers compensation claim.

A preponderance of the evidence supports closure of the claim.

> The standard required for admissibility of an expert opinion regarding causation is "a reasonable degree of medical probability", **Brown and Johnson v. Capanna, 105 Nev. 11, (1989); Orcutt v. Miller, 95 Nev. 408, (1979).**

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NAC 616C.112 (NAC 616.555) provides when the Insurer determines the Claimant has received all benefits known to be due, the Insurer shall close its file concerning the Employee and provide a claim closure notice, including appeal rights and claim reopening rights.

IT IS SO ORDERED this 25 day of July, 2007.

Steven Evans
Hearing Officer

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing DECISION AND ORDER was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

CINDY MCNULTY
BALLY'S
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

JANET MACHADO
SEDGWICK CMS
PO BOX 34660
LAS VEGAS NV 89133-4660

LEE DAVIS ESQ
SANTORO DRIGGS ET AL
400 S FOURTH ST THIRD FL
LAS VEGAS NV 89101

Dated this 25 day of July, 2007.

Louanne Helms
Employee of the State of Nevada

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APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES 4724 East Washington Avenue Las Vegas, NV 89110 Claimant.	Claim No.: 88H92H243724 Appeal No.: 39934-GK 42367-GK Employer: BALLY'S Attn: Kathy Mone 3645 Las Vegas Boulevard South Las Vegas, NV 89109

DECISION AND ORDER

The above-captioned appeal came on for hearing multiple days before Appeals Officer GREGORY KROHN, ESQ. The claimant, SUSAN REEVES, was represented by, TERESA HORVATH, ESQ., of the NEVADA ATTORNEY FOR INJURED WORKERS. The Employer, BALLY'S, was represented by LEE DAVIS, ESQ., of SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON.

In a letter dated February 16, 2007, the Employer notified the claimant that her claim was accepted for specific injuries only. The claimant appealed that determination to a Hearing Officer.

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

In a letter dated September 8, 2006, the Employer notified the claimant that it was closing her claim. The claimant appealed that determination to a Hearing Officer.

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

After reviewing the documentary evidence, hearing the testimony of witnesses, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

I.

FINDINGS OF FACT

1. On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury.

2. The claimant was also involved in a motor vehicle accident again on September 25, 1988.

3. The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim.

4. The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the matter to the Appeals Officer. On March 26th 1991 the Appeals Officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court.

5. The Claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness.

6. The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts.

7. On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that she be sent to pain management.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

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8. On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain.

9. On February 27, 1991, the 5% PPD would be offered to the claimant.

10. On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. A second letter of acceptance would be sent to the claimant on May 12, 1998.

11. On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder.

12. On December 27, 2001 the claimant was sent a claim closure notice, that determination would later be reversed by an appeals officer awarding the claimant further medical care. The claimant would be sent to Dr. Mortillaro. In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer.

13. The clamant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004.

14. The claimant also continued to treat with Dr. Dunn in 2004.

15. The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility.

16. On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

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17. On September 8, 2006 the claimant was sent a claim closure determination. The claimant appealed that determination.

18. A Hearing Officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

19. The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim.

20. On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination.

21. On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim.

22. The claimant appealed the hearing officer order of dismissal. The claimant brought the issue of her failure to appear to Appeals Officer Richens who issued an order of remand finding that the claimant established that she had not received the notice of hearing. The matter would be referred back to the hearing office for a hearing on the merits.

23. On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination.

24. The claimant appealed that decision. Both of these appeals have been consolidated,

25. The Employer served the claimant with interrogatory questions focused on the claimant providing specific dates when he injured herself as a result of falls. The questions also asked the claimant to provide the medical facilities that she sought medical attention as a result of her fall(s).

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26. At the time of appeal hearing the claimant testified that she had many falls that she thought was caused by her industrial injuries. The claimant further testified that she believed that she was forced to require medical care for these falls.

27. These findings of fact are based upon substantial evidence within the record.

II.

CONCLUSIONS OF LAW

1. Under NRS 616C.160, the claimant must demonstrate that a late manifesting condition is caused by the accepted condition.

> 1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;
>
> 2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. The Claimant is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is the Claimant's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

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It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

III.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the claimant has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally the claimant has failed to establish an entitlement to further medical care and that claim closure was improper;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Officer Decisions dated May 10, 2007 and July 25, 2007 are AFFIRMED.

IT IS SO ORDERED.

DATED this 18th day of December, 2009

GREGORY KROHN, ESQ.
Appeals Officer

Submitted by,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

By: _____
LEE DAVIS, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for the Employer

NOTICE: Pursuant to NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service of this Order.

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SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the ___ _____ day of December, 2009, service of the foregoing **DECISION AND ORDER** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following::

Susan Reeves
4724 East Washington Avenue
Las Vegas, NV 89110

Teresa Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, NV 89102

Bally's
3645 Las Vegas Blvd. South
Las Vegas, NV 89109

Sedgwick Claims
P.O. Box 14438
Lexington, KY 40512-4483

Lee Davis, Esq.
Santoro, Driggs, Walch,
Kearney, Holley & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

DATED this 22nd day of December, 2009

An employee of the Department of Administration,
Appeals Office

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

SDW

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PEARSON
PATTON
SHEA
FOLEY &
KURTZ P.C.
Attorneys at Law

Niels L. Pearson
W. Randolph Patton
Randa Reiff Shea
George W. Foley, Jr.
Theodore J. Kurtz
Douglas M. Rowan
Michele A. Kiraly
Robert S. Cardenas
Nathaniel G. Hannaford

FILE

January 21, 2004

Beverly Mandery
OHMS/CCMSI
P.O. Box 35350
Las Vegas, NV 89133

Re: Susan Reeves

Dear Ms. Mandery:

I represent Susan Reeves regarding her industrial accident of September 1988. As you are aware, the Appeals Officer in this matter recently agreed with Dr. Mortillaro's opinion, finding that Ms. Reeves' condition is industrially caused. It is my understanding that you have authorized Ms. Reeves to commence treatment with Dr. Mortillaro as recommended. It is my further understanding that Dr. Mortillaro has recently advised you as to the additional treatment which he believes Ms. Reeves needs. Dr. Mortillaro has referred Ms. Reeves to Dr. Petroff for further evaluation and to physical therapy consistent with his prior recommendations. Dr. Petroff has recommended diagnostic evaluation of Ms. Reeves before she begins the physical therapy. Dr. Petroff has also provided Ms. Reeves with several prescriptions for which the pharmacy needs your approval before they will fill them.

Additionally, Ms. Reeves has not received any temporary total disability benefits in a number of years due to the wrongful closing of this claim. This matter has been tied up in the administrative appeals process since then, with Dr. Mortillaro finally resolving all questions as to whether Ms. Reeves' condition was industrially related. Bally's did not petition for judicial review the decision by the Appeals Officer. Since Ms. Reeves' claim was wrongfully closed, she is entitled to total temporary disability benefits for nearly 5-1/2 years. Additionally, she is entitled to interest on those benefits. I have previously litigated both issues with Bally's in this matter. Please provide me with your calculations of Ms. Reeves' TTD benefits and the associated interest.

Please advise as to Bally's position concerning Ms. Reeves' current medical benefits, prior temporary total disability benefits and interest, and Ms. Reeves' current total temporary disability benefits.

It is my understanding that I am to communicate with you directly now that the administrative appeals process is concluded. If this is not correct, please advise and I will continue to communicate through Bally's counsel.

Bank of America West
6900 Westcliff Dr., Suite 800
Las Vegas, NV 89145
(702) 228-7717 *phone*
(702) 228-8824 fax
www.ppsfk.com

[redacted]

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Thank you for your attention to this matter. If you wish to discuss this matter, please feel free to contact me.

Very truly yours,

PEARSON, PATTON, SHEA,
FOLEY & KURTZ, P.C.

Douglas M. Rowan

DMR:jh

cc: Susan Reeves
Don Schwartz, Esq.

CCMSI - LAS VEGAS
JAN 23 2004

Bank of America West
6900 Westcliff Dr., Suite 800
Las Vegas, NV 89145
(702) 228-7717 *phone*
(702) 228-8824 fax
www.ppsfk.com

[redacted]

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Hilton Hotels Corporation

FILE COPY

CLAIMS ADMINISTRATION

September 26, 1997

072-8700373

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re: Claim No. : 7715-1035-88
D.O.I. : 07-20-87
Employer : Bally's Las Vegas

Dear Ms. Reeves:

We have now received your Bally's file. It would appear acceptance of your claim was in order.

~~Our office is currently auditing the file for any benefits paid or~~ to be paid.

If you have any questions, please put them in writing and address them to our office.

Thank you.

Sincerely yours,

Ethel Pipp

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

EP:bl
cc: F. Edward Mulholland II, Esq.
Douglas M. Rowan, Esq.
Paula Kitchell
I.I.R.S.
file

Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6828
Reservations 1-800-HILTONS

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CLAIMS ADMINISTRATION

Hilton Hotels Corporation

FILE COPY

May 12, 1998

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Dear Ms. Reeves:

We sent you a letter on September 26, 1997, that your claim was being accepted by this office. Perhaps the acceptance was not clear.

An appointment for you to be examined by a physician or group of physicians, if they are required, will be forthcoming. Please be available for the examination. You will be provided an appointment letter. In the meantime, I suggest you be prepared to gather the films for that examination.

Since you were receiving Social Security benefits, any temporary total disability will be offset against those benefits.

This letter will be copied to your attorney to keep him updated on the activity of your claim.

We are attempting to determine your daily benefit under this claim. I would anticipate a check for those benefits will be issued within the next week.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

EP:lb
cc: Douglas M. Rowan
F. Edward Mulholland II, Esq.
file

Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6828
Reservations 1-800-HILTONS

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FILE COPY

Hilton Hotels Corporation

CLAIMS ADMINISTRATION

August 27, 1998

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re: Claim No. : 072-88-00377
D.O.I. : 09-25-88
Employer : Bally's Las Vegas

Dear Ms. Reeves:

The report from industrial specialist, David J. Oliveri, has been received. It details all of your medical complaints and treatment you have received, as well as the history you provided.

His recommendations for your non-industrial conditions are to wean you from addictive medications. A psychologist can assist you. This, of course, would be non-industrial.

There are no medications necessary objectively as it would relate to your 1988 injury.

The physician continues that there is no evidence for disability for your industrial injury. Merely receiving social security benefits does not justify disability on an industrial basis. The 1988 injury may have caused some minor physical problems, but those should have resolved.

We are; therefore, advising you that any treatment or medications you may seek are for a non-industrial condition and we will not authorize them.

The 1988 claim will remain open to address reimbursement to the Social Security Administrator for the period as previously noted. To date, we have not heard from them on this issue.

A disability check was issued to you on 08-18-98 that covered the period through 08-26-98. No other disability benefit will be provided since your industrial condition has plateaued. We will be copying the Social Security Division to alert them in order for your future social security checks to be adjusted accordingly.

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Greystone Building, 1850 East Flamingo Road, Suite 145, Las Vegas, Nevada 89119
Telephone 1-800-696-6699 Local 702-796-9694 Fax 702-796-6828
Reservations 1-800-HILTONS

Dr. Mattimoe will receive a copy of Dr. Oliveri's report. If you have questions, you can discuss the report with Dr. Mattimoe or your attorney.

Please keep in mind we will not approve any additional prescriptions.

We can schedule an appointment with a rating physician. Please advise on this.

If you do not agree with the above, you have the right to an appeal and a hearing. The appeal must be submitted within seventy (70) days from the date of this letter to the address indicated on the enclosed appeal form.

Sincerely yours,

Ethel I. Pipp
Manager, Workers' Compensation
Hilton Hotels Corporation/Nevada

Enc: Appeal form
EP:bl
cc: F. Edward Mulholland II, Esq.
Douglas Rowan, Esq.
Peter Mattimoe, M.D.
Social Security Division
Paula Kitchell
file

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Gallagher Basset Services, Inc.

December 27, 2001

Susan Reeves
4724 E Washington
Las Vegas NV 89110

RE: Employer: Bally's Las Vegas
Claim #: 001504-001083-WC-01
D/Injury: 09/25/88
Body Part(s): Head/Neck/Shoulders

NOTICE OF INTENTION TO CLOSE CLAIM
Pursuant to NRS 616C.235/NAC 616C.112(1)

Dear Ms. Reeves:

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Based on Dr. Glyman's court remanded IME, you have been discharged from care. We do not show that you have sought further medical treatment. Therefore, we are closing your claim for further medical treatment at this time.

Nevada Revised Statutes (NRS) 616C.390 subsection 1 and 4 define your rights to reopen your claim. It states as follows: 1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if: (a) A change of circumstances warrants an increased or rearrangement of compensation during the life of the claimant; (b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and (c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstance which would warrant an increased or rearrangement of compensation. 4. Except as otherwise provided in subsection 5, if an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim only if; (a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and (b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made.

NRS 616C.235 state as follows: 1. Except as otherwise provided in subsection 2,3,and 4; (a) When the insurer determines that a claim should be closed before all benefits to which the claimant maybe entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant. The notice must include a statement that if the claimant does not agree with the determination, he has the right to request a resolution of the dispute pursuant to NRS616C.305 and 616C.315 to 616C.385, inclusive. A suitable form for requesting a

PO Box 70687
Las Vegas NV 89170
Phone: 702-892-0083
Fax: 702-892-9193

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resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection. (b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim. (c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing office may be served by first class mail. 2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less that $300, the insurer may close the claim at any time after he sends, by first class mail addressed to the last known address of the claimant, written notice that: (a) The claim is being closed pursuant to this subsection; (b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS616C.305 and 616C.315 to 616C.385, inclusive; and (c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened. 3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than $300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be: (a) Sent by first-class mail addressed to the last known address of the claimant; and (b) a document that is separate from any other document or form that is used by the insurer. 4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsection 2 and 3.

If you or your employer disagrees with this determination, you may request a Hearing before the Hearing Officer. If you wish to appeal, complete the enclosed Request for Hearing form and attach it to a copy of this letter. The completed request for hearing MUST BE RECEIVED by the Hearing Division within seventy (70) days of the date of this letter. If you do not appeal within seventy (70) days, you lose your right to appeal.

If you have any questions or if I can be of any further assistance to you regarding your industrial injury claim, please do not hesitate to contact me at 702/ 892-0083 or toll free at 877/263-8748.

Sincerely,

Melody Francis

Claims Examiner

Cc: Douglas Rowan, Esq.
Bally's Las Vegas
Claim File

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000056



C C M S I

December 11, 2003

Susan Reeves
4724 E. Washington
Las Vegas NV 89110

RE:	Claim Closure Rescinded - Appointment Scheduled
CLAIM #:	88H92H243724
EMPLOYER:	Bally's Las Vegas
DATE OF INJURY:	09/25/88

Dear Ms. Reeves:

Pursuant to the Appeals Officer's Decision and Order, filed December 1, 2003, the above-referenced claim, will remain open to allow for further treatment. Treatment shall include short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

We have scheduled an appointment for you with Dr. Louis Mortillaro for January 5, 2003, at 9:30 A.M. Dr. Mortillaro is located at 501 South Rancho Drive, Suite F-37, Las Vegas NV 89106 (702-388-9403. Please plan on attending this appointment.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
Douglas M. Rowan, Esq.
File

C C M S I™

January 14, 2004

Susan Reeves
4724 E. Washington
Las Vegas NV 89110

DATE OF INJURY: 09/25/88
EMPLOYER: Bally's Las Vegas
CLAIM #: 88H92H243724

Dear Ms. Reeves:

I am in receipt of Dr. George Petroff's recent medical dictation of January 6, 2004, and subsequent request for an MRI of C-spine and C-spine x-ray. Pursuant to a Decision and Order of the Appeals Officer, dated 12/01/03, we have been instructed to provide only short-term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures, and appropriate therapy. Dr. Louis Mortillaro has been authorized to provide these treatments. Therefore, we are denying Dr. Petroff's request for continued treatment, MRI of C-spine and C-spine x-ray.

If you have any questions regarding this matter, please do not hesitate to contact this office. If you do not agree with this determination, you have a right to request a hearing regarding this matter. If this is your intention, please complete the attached Request for Hearing form and return it, **along with a copy of this letter**, to the Hearings Division at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

Beverly Mandery,
Claims Representative, CCMSI

Encl. D-12a

Cc: Bally's Las Vegas
Daniel L. Schwartz, Esq.
Douglas M. Rowan, Esq.
File

P.O. BOX 35350
Las Vegas, NV 89133-5350
(702) 933-4800 - Fax (702) 933-2053

CCMSI

Fax Cover Sheet

Date:	January 30, 2004	
To:	**Name:**	George Petroff, M.D.
	Company:	Dunn Neurologic Assoc
	Phone:	
	Fax:	702-878-1566
From:	**CCMSI**	
	Name:	Beverly Mandery (bmandery@ccmsi.com)
	Phone:	702-933-4817
	Fax:	702-933-2053
Pages:	2 (including cover)	
Subject:	Susan Reeves, claim #: 88H92H243724, DOI: 9/25/88	

Dear Dr. Petroff:

This fax is to authorize your request for MRI of the C-Spine for Ms. Susan Reeves. The authorized diagnostic center is Steinberg Diagnostics for this employer. Please have your office schedule the appointment with Steinberg. Thank you for your attention to this matter.

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
Douglas Rowan, Esq.
Suhair Sayegh

CONFIDENTIALITY NOTICE: Important: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication in error is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service.

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JOHN E. LEACH
GREGORY J. WALCH
NICHOLAS J. SANTORO
MICHAEL E. KEARNEY
J. DOUGLAS DRIGGS, JR.
RICHARD F. HOLLEY
DAVID G. JOHNSON
RONALD J. THOMPSON
JAMES E. WHITMIRE, III
STEVEN A. GIBSON
DANIEL L. SCHWARTZ

MICHAEL E. ROWE
JAVIER A. ARGUELLO
LEE E. DAVIS
VICTORIA L. NELSON
ANDREW J. DRIGGS
L. KIRK WILLIAMS

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON
ATTORNEYS
400 SOUTH FOURTH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101
TEL (702) 791-0308
FAX (702) 791-1912
WRITER'S EMAIL: DSCHWARTZ@NEVADAFIRM.COM

MARISA C. GUARINO
YVETTE J. ROBERSON
DEAN S. BENNETT
SEAN L. ANDERSON
JAMES D. BOYLE
KIRBY C. GRUCHOW, JR.
ANGELA K. ROCK
ANDREW J. GLENDON
OLIVER J. PANCHERI
BRIAN W. BOSCHEE
MICHELLE D. BRIGGS
BRYCE K. EARL
DOONNA M. ATAMOH
JENNIFER K. CRAFT
MICHAEL F. LYNCH
RYAN T. SCHULTZ

OF COUNSEL:
ANTHONY A. ZMAILA

January 30, 2004

VIA HAND DELIVERY

Douglas M. Rowan, Esq.
PEARSON, PATTON, SHEA, FOLEY & KURTZ
6900 Westcliff Drive, suite 800
Las Vegas, Nevada 89145

CCMSI - LAS VEGAS
FEB 4 2004

Re: Claimant : Susan Reeves
Claim No. : 88H92H243724
Employer : Bally's

Dear Mr. Rowan:

My client has asked me to respond to your January 26, 2004 letter. After discussing this matter, we will be authorizing the MRI / x-rays as recommended by Dr. Petroff. We came to this conclusion after finally receiving a copy of Dr. Mortillaro's reporting, as well as your letter indicating that the MRI / x-rays are needed to assure that Ms. Reeves' cervical spine is in good condition prior to commencement of the therapy recommended by Dr. Mortillaro.

With regard to your request for temporary total disability benefits, we are somewhat confused. You have requested benefits from 1998 to the present. However, there is a Hearing Officer's Decision and Order that appears to encompass at least part of this period. Further, the issue on appeal before the Appeals Officer was the 2001 claim closure letter. Therefore, we are going to research what payments have been made and what periods still are unpaid. Once this is accomplished, a determination letter will be issued regarding each specific period and whether payment will be made for each specific period. My client will be sending you a form for Ms. Reeves to complete concerning her work history, if any, during the period you are requesting. If she has not worked at all, she can simply sign the forms indicating so and return them to CCMSI.

I hope this answers your concerns for the present time.

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If anything further is needed, please feel free to contact me. Thank you very much for your professional cooperation and courtesy in this matter.

Sincerely,

Daniel L. Schwartz, Esq.
DLS:lg
cc: Beverly Mandery, CCMSI

CCMSI - LAS VEGAS
FEB 4 2004

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CCMSI

March 16, 2004

Douglas M. Rowan, Esq.
Pearson, Patton, Shea
Foley & Kurtz, P.C.
6900 Westcliff Drive
Suite 800
Las Vegas NV 89145

RECEIVED
MAR 18 2004

Re: Susan Reeves
Claim #: 88H92H243724
Employer: Bally's Las Vegas
Date of Injury: 09/25/88

Dear Mr. Rowan:

Thank you for submitting the completed D-6 Form for Ms. Susan Reeves. Pursuant to NRS 616C.475, this office is requesting that Ms. Reeves supply certification of disability from her physicians, to support the request for TTD benefits, from August 26, 1998 to the present.

Upon receipt of these records and upon confirmation from the ESD, that Ms. Reeves was not working or collecting unemployment benefits, we will be more than happy to render a determination with appeal rights.

Please do not hesitate to call at any time.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
File

JUN 1 2004

CCMSI - LAS VEGAS

CANNON COCHRAN MANAGEMENT SERVICES INC • PO Box 35350 • Las Vegas NV 89133-5350
Tel: (702) 933-4800 Fax: (702) 933-4861 www.ccmsi.com

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Sending 5/27/04 - If Anything Else is Needed Please let us Know

000062

Sedgwick CMS

4955 S. Durango Dr., Ste. 209
Las Vegas, NV 89113
Phone: (702) 568-3800
Fax: (702) 568-3779

September 8, 2006

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE: Employer: Bally's Las Vegas
Claim No: H243724
D.O.I.: 9/25/88

Dear Mrs. Reeves:

NOTICE OF INTENTION TO CLOSE CLAIM
(Pursuant to NRS 616C.235)

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Your file reflects that you are not presently undergoing any medical treatment; however, if you are scheduled for future medical appointments, please advise us immediately.

Nevada Revised Statute (NRS) 616C.390 defines your right to reopen your claim. You must make a written request for reopening and your doctor must submit a report relating your problem to the original industrial injury. The report must state that your condition has worsened since the time of claim closure and that the condition requires additional medical care. Reopening is not effective prior to the date of your request for reopening unless good cause is shown. Upon such showing by your doctor, the cost of emergency treatment shall be allowed.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter.

If you have any questions, please contact me at (866)464-0159 ext. 83742.

Sincerely,

Jennifer DaRos
WC Claims Examiner

Encl.: Hearing Request

cc: Employer

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RECEIVED JAN 11 2007

000063

Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (3), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Ms. Susan Sayegh?

Thank You,

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Recsearcked and Typed by,
Jeff Reeves (husband)

cc: Don Jayne

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RECEIVED
AUG 1 6 2010
CCMSI - LAS VEGA

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0368

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

July 22, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

Dear Ms. Reeves:

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS), has completed its investigation into your complaint dated June 1, 2010.

FINDINGS OF FACT:

You alleged that Bally's and CCMSI failed to timely pay temporary total disability (TTD) benefits after a December 1, 2003 Appeals Officer decision ordered that closure of your workers' compensation claim was premature. You alleged that you were due TTD benefits from the date your claim was closed on August 27, 1998.

On August 18, 1998 Dr. Oliveri conducted an independent medical evaluation (IME) in which he was asked to evaluate your capabilities of entering to the work force. Dr. Oliveri stated that your subjective complaints far exceeded objective findings. He diagnosed you with a somatoform pain disorder which was primarily a psychiatric problem which was not something that was caused by an industrial accident. Dr. Oliveri stated, ". . . The criteria for disability under social security are very much different than

the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury. . ." Dr. Oliveri found that you had overwhelming symptom magnification. He stated that the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder. He found that you were maximum medical improved for the industrial injury. Dr. Oliveri stated that there was no evidence for disability and the current perceived disability was based on your nonindustrial somatoform pain disorder.

On March 26, 2001 Dr. Glyman examined you and diagnosed you with a mild post-concussion syndrome. He stated that you had many subjective symptoms which did not match up with objective physical findings.

On December 20, 2001 Dr. Glyman provided an addendum after reviewing additional medical records. He agreed with the other physician who examined you and concluded that you suffer from a somatoform paid disorder. He did not recommend any further medical treatment.

On December 27, 2001 Gallagher Bassett Services wrote a letter notifying you of their intention to close your claim. They also notified you that if you disagreed with their determination you could file an appeal with the Department of Administration Hearing Division.

On April 19, 2002 Hearing Officer Nora Garcia issued a Decision and Order, hearing number LHS2002-C-4641-NG, regarding your appeal of the insurer's December 27, 2001 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 1, 2003 Appeals Officer Nancy Richins issued a Decision and Order regarding your appeal of the Hearing Officer's Decision affirming claim closure. The Appeals Officer concluded that the somatoform pain disorder was industrially related and required further medical treatment, and ordered the claim to be reopened.

On December 11, 2003 CCMSI wrote a letter notifying you the claim would remain open for further medical treatment, and notified you that they scheduled you for an appointment with Dr. Mortillaro on January 5, 2003 at 9:30 am.

On January 14, 2004 CCMSI wrote a letter that they were aware you were being treated by Dr. Petroff. They advised you that the Appeals Officer instructed them to provide short term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures and appropriate therapy. They notified you that Dr. Mortillaro was authorized to provide these treatments, and they were denying Dr. Petroff's recommended treatment plan.

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CCMSI - LAS VEGAS

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On January 21, 2004 Douglas Rowan wrote a letter to CCMSI that he was aware they authorized further medical treatment with Dr. Mortillaro. He also requested TTD benefits from the date of claim closure.

On January 30, 2004 CCMSI faxed a letter to Dr. Petroff authorizing an MRI of your cervical spine. It appears that they also authorized medications prescribed by Dr. Petroff and Dr. Mattimoe, as well as physical therapy.

On March 16, 2004 CCMSI wrote a letter to Mr. Rowan requesting a certificate of disability from your physicians from August 26, 1998 in support for his request of TTD benefits. Once they received the certificates of disability they would render a determination with appeal rights.

On March 30, 2004 Dr. Mortillaro discharged you from his care and noted that you remained under the care of Dr. Petroff.

On July 21, 2004 CCMSI wrote a letter to Mr. Rowan notifying him that they were denying his request for TTD benefits from 1998 based on a medical report by Dr. Petroff dated June 29, 2004, because there was no evidence of certification of disability. They also provided him with a copy of the report.

On January 20, 2006 Appeals Officer Gerald Schwartzer filed a Decision and Order, Appeal Number 14175-GS/14174-GS/13350-GS, regarding your appeal of a Hearing Officer's Decision and Order dated November 30, 2004, affirming denial of TTD benefits. The Appeals Officer dismissed your appeal for denial of TTD benefits due to untimely filing of the appeal.

On September 8, 2006 the insurer was notified that Dr. Petroff was only monitoring your medications and referred further care to Dr. Mattimore, who has been prescribing physical therapy. They were also notified that Dr. Mattimore was not treating you for the workers' compensation claim.

On July 25, 2007 Hearing Officer Steven Evans issued a Decision and Order, hearing number 41025-SE, regarding your appeal of the insurer's September 8, 2006 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 22, 2009 Appeals Officer Gregory Krohn filed a Decision and Order, Appeal Number 39934-GK/42367-GK, regarding your appeal of a Hearing Officer's Decision and Order dated July 25, 2007 which affirmed claim closure. The Appeals Officer affirmed claim closure.

On June 21, 2010 the WCS mailed a letter to CCMSI notifying them of your complaint. The WCS received a letter from CCMSI dated June 29, 2010 in which they informed the WCS that the matters of TTD benefits, medical treatment and claim closure have been affirmed by the Appeals Officer and are currently pending in District Court. You appealed the Hearing Officer's Decision affirming denial of TTD benefits and the

Appeals Officer affirmed the denial. This case is pending at the District Court. Claim closure was affirmed by a Hearing Officer and Appeals Officer. The case is also pending at the District Court.

DETERMINATION:

Determinations regarding TTD benefits and claim closure were affirmed by a Hearing Officer and Appeals Officer. Certificates of disability were not received for the specific periods in questions. Medical treatment was provided timely as ordered.

ADMINISTRATIVE FINE:

Based on the findings of fact, it is determined that there are no violations that would warrant an administrative fine.

BENEFIT PENALTY:

It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

NOTICE OF RIGHT TO APPEAL:

If a person wishes to contest a written determination of the administrator to refuse to impose a benefit penalty pursuant to NRS 616D.120, he must file a notice of appeal with an appeals officer within 30 days after the date on which the administrator's determination was mailed. The notice of appeal must set forth the reasons the refusal to impose a benefit penalty should not be issued. **If a notice of appeal is not filed as required, the refusal to impose a benefit penalty shall be deemed a final order and is not subject to review by any court or agency.**

4 of 1

RECEIVED
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CCMSI - LAS VEGAS

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The notice of appeal should be addressed to the Department of Administration, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102 or the Department of Administration, Appeals Office, 1050 East Williams Street, Suite 450 Carson City, Nevada 89701.

Sincerely,
Don Jayne, Administrator
Division of Industrial Relations

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

CJV:cgp

cc: Don Jayne, Administrator, DIR
CCMSI

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STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
10 AUG 10 AM 10:24
RECEIVED
AND
FILED

Department of Administration
Appeals Office
2200 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102

August 9, 2010

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's, Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

I, Susan Reeves, would like to appeal the Determination of the Division of Industrial Relations (DIR) of July 22, 2010, with regards to the above.

I am disputing the DIR's Findings of Fact, as they utilized only parts of documents which do not present a true picture of the actual Facts of this case.

Also, in my letter of complaint, I asked the DIR, that if they needed documents to make a Finding of Fact, as I did not know what documents they might need, or where they might get them from, that I would like to be involved. I only sent them the Appeals Officer's Decision and Order, dated December 1, 2003, which found that my claim should not have been closed but should remain open for further benefits, and Ordered that the Hearings Officer's Decision, dated February 25, 2002, is reversed and the claim reopened.

Whereas, I never heard from the DIR, with regards to any documents they intended to use to make a determination from, other than the above, I can only assume that they received the documents that they quoted from CCMSI.

Whereas, I am involved in litigation with Bally's, CCMSI, over the handing of my claim, I believe that if the DIR is going to conduct a quasi-hearing, that both sides involved should have the opportunity to present opposing documents. Also, to be able to point out when the parts of documents quoted do not present the actual statements in the documents.

Whereas, the DIR quoted from Dr.Oliveri's report from August 18, 1998, in which he stated that " I have been asked to evaluate the examinee's capabilities in terms of entering the work force." That much is true, but they failed to mention, that in a cover letter from Bally's, they stated that they were unsuccessful in denial of my claim. Also, that his prognosis for my return to work was exceedingly guarded.

The DIR also quoted from Dr. Oliveri's report, that I had " overwhelming symptom magnification". That is also true, but they did not take note of the fact, that on the McGill Pain Questionnaire, I scored 32, and Dr. Oliveri stated " The maximum score is 78 points. Scores above 30 tend to indicate exaggeration of symptoms,

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DIR #78110 - SL

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although there is no exact cutoff point accepted." , not exactly overwhelming. He went from tend to exaggerate to overwhelming, although, he stated that there is no exact cutoff point.

The DIR also quoted, that Dr. Oliveri stated that he diagnosed me with a somatoform pain disorder, which is primarily a psychiatric problem, and that was not something that was caused by an industrial accident. In fact that is actually the opposite of the findings in the Decision and Order that I sent them.

Also, I do not believe that Dr. Oliveri is a psychologist or psychiatrist, capable of making a psychiatric diagnosis. Although he did state " Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge."

The DIR also quoted, that Dr. Oliveri stated that, " the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder." In fact, he stated that " The motor vehicle accident on 09/25/88 may have caused some minor problems but those have undoubtedly resolved." Whereas, it was ten (10) years after the accident, when Dr. Oliveri preformed his IME, and based upon the Nevada Supreme Court Decision Bally's v Reeves, I am at a loss as to how he objectively identified what physical injuries, be they minor or major, happened in an accident from that long ago, much less, how he could know that whatever the injuries were, they had undoubtedly resolved.

The DIR also quoted, that Dr. Oliveri stated "The criteria for disability under social security are very much different than the criteria under worker's compensation especially when issues of causation need to be established." In fact the issue of causation has been established in Bally's v Reeves, and under Nevada Case Law, once a claim has been accepted as industrial, that issue of causation can not be revisited., which is what Bally's has been trying to do every since they accepted my claim.

The DIR also quoted, that Dr. Oliveri stated that " He found that you were at maximum medical improved for the industrial injury." I am at a loss as to how he separated my physical injuries, as to what was industrial and what was not, ten (10) years after the accident.

Dr. Oliveri also stated under preexisting conditions; "there was a previous motor vehicle accident in 1987 resulting in headache complaints. I suspect that those complaints are also part of her current presentation." That statement taken at face value suggests that he was saying that my physical injuries from the previous accident are part of my current complaints. Which is exactly what was found in Bally's v Reeves, that my previous symptoms had been aggravated and new injury caused by the industrial accident.

Then there is the issue that the DIR did not mention at all, the Fact that Bally's closure of my claim was denied by a Hearings Officer, dated 1/25/99. In that Decision the Hearings Officer found that " the totality of the evidence raises a medical question regarding the claimant's continued symptomatology of headaches, dizziness, tinnitus and vertigo." These are the very symptoms that Bally's accepted as industrial in 1997.

So, with regards to Dr. Oliveri's report, he one (1) stated that I had a somatoform pain disorder that was not industrially caused, which was found not to be the case, two (2) that whatever minor physical injuries were caused by the industrial accident, they had undoubtedly resolved, not that I did not have physical injuries, just that they were not industrially caused, contrary to the Decision of the Nevada Supreme Court and my

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medical history, three (3) that his prognosis for my return to work was exceeding guarded, and four (4) that Bally's closure based upon his report was denied.

Whereas, Bally's did not appeal and seek a stay, my claim should have been reopened with all worker's compensation benefits, but was not.

The DIR quoted from the March 26, 2001, report by Dr. Glyman, that he "diagnosed that you with a mild post-concussion syndrome" and "that you had many subjective symptoms which did not match up with objective physical findings."

However, what Dr. Glyman actually stated was "her objective physical findings are hard to match up with her complaints." He also, stated that complaints of dizziness and headache, cannot be objectively verified, as there is no objective medical test that can tell how much pain one is in or how much dizziness one is feeling. He went on to state that "it would be very unusual for an individual with a mild head injury to have complaints that are so strong and so extreme 13 years later." He also noted that "range of motion of the cervical spine is diminished due to pain in all planes."

As Bally's, CCMSI, and everyone else involved in my claim, knows that I was involved in a prior MVA in 1987, which was not industrial. In that MVA my head struck the rear window of the truck I was riding in. In the MVA of 1988, the industrial accident, I was the driver and the seat was moved much further forward and in that accident my head and neck were whipped back and forth very hard, causing damage to my neck, along with extreme dizziness and headache. It should be noted that the truck was an older model with no headrests. As noted by my physicians at the time, they stated that it was a typical "whiplash" injury.

Knowing that I struck my head in the first accident and that in the second accident my head and neck were whipped back and forth very hard, it sounds more like Dr. Gylman was describing my injuries from the first accident rather than my injuries from second, industrial, accident.

The DIR quoted from the addendum from Dr Glyman, dated December 20, 2001, "He agreed with the other physician who examined you and concluded that you suffer from a somatoform pain disorder. He did not recommend any further medical treatment."

As far as the statements by the DIR go they are almost true, but what Dr. Glyman actually stated was ' I am of the opinion that she probably does suffer from a somatoform disorder." He did state that 'As best as I can say, I am in agreement with other examiners that she has a somatoform disorder or a psychological basis of her symptoms." As for him not recommending a treatment plan, what he said was "I have to say that am at a loss to offer one." Whereas, over the years, I have tried numerous treatments to try to have a life without pain, as noted by Dr. Glyman, but with little success. Therefore, my physicians have tried to manage my pain through medication.

What the DIR did not mention was that Dr. Glyman also stated that "There certainly has not been any great advance in either treating or evaluating individuals such as this patient from the time of her original injury to now and there does not appear to be a medical treatment that will reverse or correct her situation." The DIR also, did not mention the fact that he stated "With respect to her work status, it does not appear that she can return to work duty. She has not worked in some time and there is nothing that has changed from the time of

her original disability impairment exams that have been done in the past. I certainly see no improvement from how she was when her case was closed and her PPD rating was performed."

Whereas, Dr. Glyman stated that I had an original injury, would mean that I had physical injuries from my accident and that it has not gotten any better since my PPD rating, which was preformed in 1990, eleven (11) years prior to his IME. It also, should be noted that no PPD award was ever awarded. He also stated that I was not able to return to work, and yet Bally's used his report to once again close my claim. That fact that he was at a loss to offer a treatment plan does not mean that I was not receiving treatment for my industrial symptoms, only that he could not offer a treatment plan that he believed would resolve my symptoms. He stated as much when he said that there does not appear to be a treatment that will reverse or correct my situation (symptoms).

I appealed Bally's December 27, 2001, claim closure, and a hearing was held, where on April 19, 2002, a Decision was issued affirming claim closure.

I appealed the Hearings Officer's Decision, and a appeal hearing was held, where on December 1, 2003, a Decision was issued, which stated that my claim should have not been closed but should remain open for further treatment, to include specific treatments, also the actual order stated that the Hearings Officer's Decision was reversed and my claim reopened.

Whereas, Bally's did not appeal and seek a stay, my claim should have been reopened with all worker's compensation benefits, but was not.

Apparently, that my claim should have not been closed but remain open, that the Hearings Officer's Decision was reversed and my claim reopened, did or does not mean that I am entitled to TTD benefits, or most other benefits, according to Bally's.

On January 21, 2004, my counsel requested TTD benefits from the date of the first claim closure in 1998.

On March 16, 2004, CCMSI wrote a letter to my counsel requesting a certificate of disability from my physicians in support of the request for TTD benefits. CCMSI did not send along any forms for my physician to fill out.

On July 21, 2004, CCMSI wrote a letter to my counsel, denying TTD benefits, based upon a report from Dr. Petroff, dated June 29, 2004, because there was no evidence of certification of disability.

The DIR did not take notice that in every report from Dr. Petroff, previous to the one (1) that CCMSI utilized in denying TTD benefits, he had always stated that I was not capable of gainful employment due to my industrial symptoms, which CCMSI had in their possession all along. Whereas, they were the party that had requested, numerous times, that he opine what my capability was in returning to gainful employment.

That report from Dr. Petroff was after CCMSI had a meeting with him where he was induced to state that solely from the injury from the industrial accident, it would be reasonable to try a trial of back to work. Somehow at that meeting, between Dr. Petroff and CCMSI, they found a way to separate my symptoms one (1) accident from the other, contrary to the findings in Bally's v Reeves. He did not state that I was fit for gainful employment, with respect to all of my symptoms, only with respect to my industrial injuries.

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It also, should be noted that in Dr. Petroff's report of June 29, 2004, he stated "Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties." Whereas, it is now six (6) years later, with no offer of a return to work, based on sedentary duties, one can only wonder how long it will take for CCMSI to find a position that I am able to perform. The fact of the matter is that Bally's does not want me back on their property, as noted in documents, that had I had an opportunity to present would have shown that one (1) Bally's placed me on a medical LOA against my wishes, and two (2) that they know that I am not capable of returning to gainful employment, as documented in my medical record.

Had the DIR looked at all of the previous correspondence between CCMSI and Dr. Petroff, they would have found that he had stated that it was his opinion that I was not capable of gainful employment.

In letters from Dr. Petroff to Ms. Suasn Sayegh, claims supervisor, CCMSI, who now works for the DIR, dated April 13, 2004, when asked about my work status from beginning treatment in 1998 to the present, he stated that "It is doubtful whether she could have worked on any regular basis through the period of 1998 to the present." CCMSI did not at that time send along a certificate of disability form for Dr. Petroff to fill out. As they did not like the response to their previous letter, another letter was sent and the response was dated May 18, 2004, in which he stated that " Symptoms currently keeping the patient from returning to work, by my understanding, principally consist of neck pain, back pain and dizziness." He then went on to state that my neck pain was documented objectively on MRI and x-ray, that my neck condition was possibly the cause of my dizziness and balance problems, also that he felt that my neck problems are significantly contributory to my headaches. He also stated, "From a medical standpoint, with respect to the pre-accident job description, I suspect the patient will not be able to return to gainful employment based on the objective evidence of her degenerative cervical disease." Once again, CCMSI did not send along a certificate of disability form.

It should be noted that Dr. Petroff's report of May 18, 2004, was only one (1) month before the meeting with CCMSI, where he was induced to issue the opinion stated in the report of June 29, 2004. Even at CCMSI's meeting with Dr. Petroff, they did not give him a certificate of disability form.

As noted, in the correspondence between CCMSI and Dr. Petroff, CCMSI knew that I was not able to return to gainful employment, due to my industrially caused symptoms. The fact that CCMSI never gave me or my physicians any certificate of disability forms to fill out does not mean that they did not know that there was evidence of certification of disability, as documented in all of my medical records, that CCMSI has and had in their possession all along.

The fact that the DIR apparently used only documents supplied by CCMSI, is why I asked them that if they intended to look over my entire case to make a Findings of Fact, that I would like to be involved I was not asked to submit any other documents.

The September 8, 2006, letter notifying CCMSI that I was no longer going to be seeing Dr. Petroff and only see my family physician, Dr. Mattimoe, is because Dr. Petroff was only monitoring some of my medications, and I prefer to have only one (1) physician prescribe my medications, if possible, to cut down on the chance of reactions.

As to, Dr. Mattimoe not treating me for my worker's compensation claim, as noted in my medical records,

Dr. Mattimoe had been treating me for my industrial symptoms since my industrial accident. For whatever personal reasons Dr. Mattimoe did not wish to become involved in any legal matters in my claim.

It should be noted that Bally's for the first nine (9) years, after my industrial accident did not accept it or pay for any treatment. After their acceptance in 1997, they still only paid for IME's to look into the causation issue.

Whereas, I had industrial injuries that needed treatment, I treated with my own physician, and many others over the years to try to resolve my symptoms, most of which was not paid by Bally's.

For CCMSI, Bally's, to claim that, on an accepted and open claim, to not pay TTD benefits along with all other worker's compensation benefits is unbelievable. It makes one wonder what accepted and open means.

Can CCMSI just pay for the worker's compensation benefits that they want to, if any at all?

Whereas, I believe that Bally's, CCMSI, are in violation of a number of statutes, specifically NRS 616C, 475 (1), which states:

> An employee injured by accident is entitled to 66 2/3 percent of the average monthly wage. until (5) (a), that a physician or chiropractor determines that the employee is physically capable of gainful employment for which they am suited, after giving consideration to their education, training and experience. (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

Whereas, the Appeals Officer's Decision and Order stated plainly that my claim should not have been closed but remain open further treatment, and had Bally's abided by the above statute, I would not have had to file a complaint with the DIR about the issue of back TTD benefits, on an open and accepted claim. It should be noted that Bally's paid TTD benefits, without certificates of disability, until they closed my claim in 1998. Bally's never asked for any certificates of disability until 2004, fourteen (14) years after my industrial accident. They have also had all of my medical records this whole time, and they have known that I was not capable of returning to gainful employment due to my industrial injuries, as noted in the fact that no physician has ever determined that I was capable of gainful employment.

Whereas, Bally's has unreasonably delayed payment of compensation due an injured employee, I believe pursuant to NRS 616C,065 (3), that I am entitled to three (3) times the amount that was / is being unreasonably delayed. I believe that my claim is the very reason that a statute such as this one was put into law. Also pursuant to NRS 616C.335, interest on the amount that was unreasonably delayed.

Whereas, NRS 616D.120 states:

> (c), refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found due him by a hearing officer, appeal officer
> (e), made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D
> (g), failed to provide or unreasonably delayed payment to an injured employee

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(h), intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS

Whereas, an Appeals Officer found that my claim should not have been closed but remain open for further treatment of my industrial injuries, that my claim was reopened, and yet Bally's did not reinstate all worker's compensation benefits. The only benefits that they paid were the specific treatments on the Order, even through it stated including those specific benefits, not limited to just those benefits.

If the wording on a Decision, does not carry a plain meaning, I am requesting just exactly what wording should I look for, in a Decision, that on face value makes one believe that the Order is in their favor? If there are different meanings, legally, as opposed to the dictionary, of words, such as, include, open, part of , closed, refused, unreasonable, delay, initiate proceedings, accepted, I feel that I am entitled to the definition of the legal meaning of those words.

Whereas, I believe that CCMSI is in violation of all the statutes above, in particular, in this appeal, 616D.120, where an Appeals Officer plainly stated that my claim should have not been closed but remain open, and that the Hearings Officer's Decision was reversed and my claim reopened. That wording certainly sounds like my claim would revert back to the status that it was in before Bally's closed it. Before Bally's closed my claim they were paying TTD benefits without certification of disability forms.

As noted above CCMSI has been in contact with my physicians and plainly knew that I was industrially disabled and not able to return to gainful employment, due to my industrially caused symptoms.

If I am not mistaken, it is CCMSI's responsibility to furnish certificate of disability forms, which they have never done. To now deny TTD benefits and all other worker's compensation benefits because they do not have them, I believe is their fault not mine. They could have furnished the forms in any of their letters to my physicians or took one with them to their meeting, or even mailed one to me, but did not.

Whereas, CCMSI did not furnish the forms that they now claim to need to pay TTD benefits, is pursuant to NRS 616D.120, a refusal and an unreasonable delay of payment of compensation due an industrially injured employee, and therefore, made it necessary for me to initiate proceedings to try to obtain benefits that are due an industrially injured employee.

I therefore request that a Decision and Order be issued that I am entitled to back and ongoing TTD benefits, along with all other worker's compensation benefits, and pursuant to NRS 616C.335, interest on the amount that should have been paid. Also, pursuant to NRS 616C.065 (3), that I am entitled to three (3) times the amount that was unreasonably delayed, along with any benefit penalties due pursuant to NRS 616D.120.

Respectfully submitted,

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (husband)

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CERTTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 10 day of August, 2010, I deposited a true and correct copy of the above and foregoing Request for Appeal OF DIR DETERMINATION in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

Charles J. Verfe
Division of Industrial Relations
Worker's Compensatrion Section
1301 N. Green Valley Parkway, Suite 200
Henderson , Nevada 89074

Rosemarie McMorris
CCMSI
P.O. Box 35350
Las Vegas, Nevada 89133-5350

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third Party Administrator
CCMSI

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

RECEIVED AND FILED

In the Administrative Action of: SUSAN REEVES	APPEAL NO.: 78016-SL CLAIM NO.: 88S01H243724

TPA'S PREHEARING STATEMENT

COMES NOW the Third Party Administrator, CCMSI ("TPA"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and submits its prehearing statement concerning the instant matter to be heard on **Tuesday, September 21, 2010 at 11:00 AM**. This prehearing statement is filed pursuant to NAC 616D.040.

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I.
ISSUES PRESENTED

Whether the Claimant Has Established an Entitlement to a Benefit Penalty Pursuant to NRS616D.120?

II.
STATEMENT OF FACTS

On or about 09/25/88, the claimant, SUSAN REEVES ("Claimant"), a restroom clerk for BALLY'S, suffered an occupational injury or disease during the course and scope of her employment. *See* exhibits attached to TPA's Production of Documents at pg. 1. According to the C-4, the Claimant was involved in a motor vehicle accident while in BALLY'S parking lot. *See id.* BALLY'S subsequently completed a C-3 which similarly described the incident. *See id* at pg. 2. A C-1 was also completed. *See id* at pg. 3. The Claimant apparently suffered head and neck pain as a result of this incident. *See id* at pp. 2-3.

The matter on appeal herein concerns the Claimant's request for a benefit penalty. On or about 06/01/10, the Claimant filed a complaint with the Division of Industrial Relations ("DIR") and alleged that she was not timely paid temporary total disability ("TTD") benefits nor was she given proper medical care and requested that she be awarded a benefit penalty. *See id* at pp. 64 and 65. After carefully reviewing the Claimant's file, DIR determined that the Claimant was not entitled to a benefit penalty. *See id* at pg. 69. The Claimant subsequently filed an appeal of that determination on 08/10/10. *See id* at pp. 71-78. The TPA now submits this Prehearing Statement.

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III.
ARGUMENT

The Claimant Has Not Established an Entitlement to a Benefit Penalty Pursuant to NRS 616D120.

The Claimant has filed entirely to establish an entitlement to a benefit penalty. In this matter, the applicable statute is NRS 616D.120. That statute provides in relevant part that:

> 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has:
>
> (a) Induced a claimant to fail to report an accidental injury or occupational disease;
>
> (b) Without justification, persuaded a claimant to:
>
> (1) Settle for an amount which is less than reasonable;
>
> (2) Settle for an amount which is less than reasonable while a hearing or an appeal is pending; or
>
> (3) Accept less than the compensation found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;
>
> (c) **Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer**, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:
>
> (1) Later than 10 days after the date of the settlement agreement or stipulation;
>
> (2) Later than 30 days after the date of the decision of a court, hearing officer, appeals officer or the Division, unless a stay has been granted; or
>
> (3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer or the Division has been lifted;

> (d) Refused to process a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;
>
> (e) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation or other relief found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;
>
> (f) Failed to comply with the Division's regulations covering the payment of an assessment relating to the funding of costs of administration of chapters 616A to 617, inclusive, of NRS;
>
> (g) Failed to provide or unreasonably delayed payment to an injured employee or reimbursement to an insurer pursuant to NRS 616C.165; or
>
> (h) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS, the Administrator shall impose an administrative fine of $1,500 for each initial violation, or a fine of $15,000 for a second or subsequent violation.

See NRS 616D.120(1) (2007). The Claimant's request for a benefit penalty is baseless. Upon completion of their investigation, DIR found that:

> Determinations regarding TTD benefits and claim closure were affirmed by a Hearings Officer and Appeals Officer. Certificates of disability were not received for the specific periods in question. Medical treatment was provided timely as ordered.

See id at pg. 69. The Claimant has simply failed to support her allegations that the TPA denied her timely medical treatment or that she was entitled to TTD benefits which were not paid. As DIR reported:

> It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

See id. Under these facts, the Claimant's request for a benefit penalty is clearly unfounded and the determination of DIR should be affirmed.

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IV.
CONCLUSION

The Claimant's request for a benefit penalty is without adequate support. The Claimant was provided with proper and timely medical treatment. Furthermore, the Claimant failed to submit certificates of disability to show that she was in fact entitled to TTD benefits. Under these facts, denial of a benefit penalty was appropriate pursuant to NRS 616D.120. In view of the foregoing, the determination letter of DIR, dated 07/22/10, must be affirmed and the Claimant be given no additional benefits under her application.

Wherefore, the Third Party Administrator, CCMSI, respectfully requests that the Appeals Officer provide the following relief:

1. That the Appeals Officer AFFIRM DIR's determination letter dated 07/22/10, which informed the Claimant that she was not eligible for a benefit penalty.

V.
LIST OF WITNESSES

1. **MS. SUSAN REEVES**
   4724 E. Washington Ave.
   Las Vegas, NV 89110

2. Any and all witnesses called by other parties to this litigation.

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VI.
LIST OF EXHIBITS TO BE RELIED UPON[1]

C-4 1

C-3 2

C-1 3

Claimant's Medical Records 3-28

Hearings Division Decision and Order dated 04/19/02 29-30

Appeals Officer Decision and Order dated 12/01/03 31-34

Appeals Officer Decision and Order dated 01/20/06 35-39

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Correspondence from Claimant to TPA dated 01/21/04 49-50

Correspondence from TPA 51-63

Claimant's Claimant filed with DIR 64-65

DIR's determination dated 07/22/10 66-70

Claimant's Request for Hearing Before the Appeals Officer 71-78

VII.
ESTIMATED TIME

The TPA estimates that one (1) hour will be required to present this case.

Dated this 14th day of September, 2010.

Respectfully submitted,

FLOYD, SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Third Party Administrator
CCMSI

[1] Unless otherwise indicated, the exhibits referenced to herein are those attached to the TPA's Production of Documents.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case No.: **78016-SL** does not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

09/14/12
DATE

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **TPA'S PREHEARING STATEMENT; AFFIRMATION PURSUANT TO NRS 239B.030** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves 4724 E Washington Ave Las Vegas,NV 89110
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	John Wiles Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 14th day of September, 2010

An employee of
FLOYD, SKEREN & KELLY, LLP

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:

SUSAN REEVES

Appeal No: 78016-SL

DOH: September 21, 2010
11:00 AM.

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INDEX AND EVIDENCE PACKET OF THE DIVISION OF INDUSTRIAL RELATIONS

DATE	DESCRIPTION OF DOCUMENTS	PAGE(S)
06/01/10	Complaint with attachments including 12/01/03 Decision and Order requiring reopening of claim	01-09
06/21/10	DIR letter to CCMSI requesting response re Complaint	10-12
06/29/10	CCMSI's response re Complaint	13
07/22/10	Determination letter	14-18
Various	Supporting documents	19-71

DATED this 9th day of September, 2010.

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By: _____
John F. Wiles, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

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WCS HND

Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (3), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Mr. Susan Keeve.

[illegible]

Susan Keeve

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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BEFORE THE APPEALS OFFICE

FILED
DEC 0 1 2003
APPEALS OFFICE

IN THE MATTER OF THE CONTESTED INDUSTRIAL INSURANCE CLAIM

of

SUSAN REEVES,

Claimant.

Claim No.: 001504-001083
Appeal No.: LAS2002-C-2501-NR

DECISION AND ORDER

This matter initially came on for hearing February 11, 2003 before Appeals Officer Nancy K. Richins, Esq. The Claimant was represented by Douglas M. Rowan, Esq. The Employer was represented by Daniel L. Schwartz, Esq.

The Appeals Officer entered an Interim Order requiring that the Claimant be seen for an independent medical examination by an appropriate psychologist or psychiatrist to address whether the Claimant's somatoform pain disorder pre-existed the industrial injury and, if so, if the industrial injury precipitated, aggravated, or accelerated the pre-existing disorder or if the Claimant's condition WAS a result of the natural progression of the pre-existing condition. Additionally, the independent medical examination was to determine, if the somatoform pain disorder was industrial, whether there was treatment needed for the condition.

In compliance with that Interim Order, Louis F. Mortillaro, Ph.D. performed a psychological evaluation of Claimant on April 14, 2003 and April 22, 2003. Dr. Mortillaro authored a report dated April 25, 2003 and a subsequent report dated May 5, 2003.

The above-entitled matter came on for hearing again on September 10, 2003, before Appeals Officer Nancy K. Richins, Esq. The Claimant was present and was represented by Douglas M. Rowan, Esq. The Employer was represented by Daniel L. Schwartz, Esq.

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JUN 04 2010
WCSHND

PEARSON, PATTON, SHEA, FOLEY & KURTZ, P.C.
6900 Westcliff Drive, Suite 800
Las Vegas, Nevada 89145

After review of the evidence, Dr. Mortillaro's reports, and argument of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. Claimant was employed as a room reservation clerk at the MGM/Bally's Grand Hotel commencing on September 15, 1980.

2. On September 25, 1988, Claimant was rear-ended in her truck by a co-employee when she was turning into Bally's parking lot.

3. The Employer denied Claimant's claim for worker's compensation benefits on the basis that she did not timely file a claim for compensation. The Hearings Officer and Appeals Officer upheld the Employer's denial of Claimant's claim on the basis that Claimant had not timely filed her claim and that her injuries were the result of a pre-existing condition.

4. Claimant filed a Petition for Judicial Review with the District Court. On March 15, 1994, the District Court entered an order granting Claimant's Petition for Judicial Review, ruling that the Appeals Officer's Decision and Order was without substantial evidence.

5. The Employer appealed the District Court's Order to the Nevada Supreme Court. In August 1997, the Nevada Supreme Court issued an opinion affirming the decision of the District Court in Claimant's favor and remanded her claim to the Employer for reconsideration. The Supreme Court held "from our discussion relating to the Hearing Officer's decision in this case, no substantial evidence exists that is adequate for a reasonable mind to accept the conclusion that the non-industrial accident was the sole cause of Ms. Reeves' present injuries and complaints." On September 26, 1997, the Employer issued a letter accepting Claimant's claim as industrially compensable. Bally's Grand Hotel and Casino v. Reeves, 113 Nev. 926, 948 P.2d 1200 (1997).

On March 26, 2001, Dr. Steven Glyman conducted an independent evaluation of Claimant. Dr. Glyman found that Claimant was suffering from a non-industrial somatoform pain disorder. In

Bally's Grand Hotel and Casino v. Reeves, 113 Nev. 926, 948 P.2d 1200 (1997), the Nevada Supreme Court indicated that the rule of law with respect to Claimant's claim with respect to the aggravation of non-industrial conditions was that "'the Claimant has the burden of showing that the claimed disability or condition was in fact caused or triggered or contributed to by the industrial injury and not merely the result of the natural progression of the pre-existing disease or condition.' State Industrial Insurance System v. Kelly, 99 Nev. 774, 775-76, 671 P.2d 29 (1983)."

The Appeals Officer requested that the physician performing the independent medical evaluation render an opinion as to whether the Claimant's somatoform pain disorder was industrial and, if so, whether further treatment would be recommended for this condition.

Dr. Mortillaro's report dated April 25, 2003 states:

> The objective and subjective psychological data results indicate that [Claimant] is manifesting symptoms related to psychological factors affecting her physical condition (DSM-IV-TR316). She has a long history of disability since 09/25/88 when she was injured in a second motor vehicle accident that has affected her overall life dynamics.

Dr. Mortillaro recommended the following:

> To assist [Claimant] in decreasing her pain intensity and duration, she is an appropriate candidate for participation in individual counseling sessions, biofeedback therapy and psychoeducational lectures in order to learn and implement appropriate pain and stress management coping skills.

The employer sent Dr. Mortillaro a letter dated May 2, 2003 indicating that his report did not address the questions submitted by the Interim Order. That letter requested that Dr. Mortillaro provide an opinion as to whether the Claimant's somatoform pain disorder is industrial.

Dr. Mortillaro authored a second report dated May 5, 2003. In that report, Dr. Mortillaro stated:

> In the past, [Claimant] has been diagnosed with a somatoform pain disorder and this diagnosis is industrial, not non-industrial, due to the fact that the psychological condition would not have been diagnosed

without the presence of a presenting medical condition, which in her case, was industrially related.

Dr. Mortillaro recommended the following treatment for this industrial diagnosis:

> The treatment recommended to decrease her pain intensity and duration is short term individual pain and stress management counseling, biofeedback therapy and psychoeducational lectures in order for her to learn and implement appropriate pain and stress management coping skills. Her reports of periodic dizziness, dropping and falling down episodes, constant headaches, muscle spasms and tension in the SCM muscles are reliably remediated with a combination of the pain management psychological treatment recommended and appropriate physical therapy. This psychologist will consult with the physical therapist relative to specific modalities that may be helpful in combination with the psychological treatment to help Ms. Reeves resolve her pain and disability.

CONCLUSIONS OF LAW

1. Claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

2. Claimant's claim should not have been closed but should remain open for further benefits.

ORDER

IT IS HEREBY ORDERED the Decision of the Hearing Officer dated February 25, 2002 and the Employer's closure of claim is reversed and the claim reopened.

DATED this 1st day of January 2003.

NANCY K. RICHINS, ESQ.
Appeals Officer

...
...

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PEARSON, PATTON, SHEA, FOLEY & KURTZ, P.C.
6900 Westcliff Drive, Suite 800
Las Vegas, Nevada 89145

RECEIVED
JUN 04 2003

Nevada Division of Industrial Relations
1301 North Green Valley Parkway, Suite 200
Henderson , Nevada 89074
702-486-9080

COPY

February 28 2010

To whom it may concern,

I, Susan Reeves, would like the D.I.R. pursuant to NRS 616D.330 to help me get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them. There have been a number of requests for that information. Once by Douglas Rowan, Esq. on May 28 2004 and four times by the Nevada Attorney for Injured Workers, December 15 2004, January 17 2007, May 31 2007 and August 16 2007 and two times by me, January 29 2010 and February 12 2010. Their response was to say that all correspondence was duly copied, letter to Mr. Rowan June 2 2004, or that the copy work supplied was all there was, letter to me February 24 2010. They did send a log of oral communication for a meeting at Dr. Petroff's office that gives no idea of what was said, only that there was a meeting, and the people that they listed at that meeting is wrong. It was not my attorney but theirs, my husband and myself were asked to leave, see letter from Dr. Petroff June 29 2004 and letter from Mr. Rowan July 22 2004. There is also an activity log from May 10 2004 that has a S/W (spoke with?) Dr. Mortillaro that also gives no idea of what was said. I was told when I had my last appointment, by Dr.Mortillaro and Dr. Manuel F. Gamazo, that CCMSI (Bally's) and their attorney had been at their offices for a meeting. The meeting with Dr. Mortillaro and Dr. Gamazo was after my discharge, March 18 2004, but before my last appointment, June 1 2004. I requested a meeting with Dr. Petroff and was informed that I would have to have a court reporter present, letter from Dr. Petroff's office March 22 2004. Letter from my attorney, March 29 2004, about the requirement for a court reporter raises the issue of Dr. Petroff's concerns of what was said at the meeting with CCMSI, they did not have to have one. I feel that NRS 616D.330 would mean that if representatives of an employer have meetings with doctors that they have to have a written record of what was said. The letters written after, not the letters before, said meetings were the reason my claim was closed.

Thank You

COPY ORIGINAL
ALREADY SENT

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves(husband)

RECEIVED

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Susan Sayegh
Southern District Manager
Workers Compensation
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

COPY

April 29, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Sayegh,

I am in receipt of your letter, dated April 26, 2010, where my complaint of a violation, pursuant to NRS 616D.130, was found to have no merit. Apparently Bally's representatives, ether Bally's employees or CCMSI employees, do not have to make or keep a written record of oral communications, of what was said at meetings that are held between said representatives and patients doctors. One could assume that since you, Ms. Sayegh, were the Claims Supervisor for CCMSI at the time of the meeting with Dr. Petroff, you could have been one of those representatives. If not, you most certainly would have known who would have been at that meeting and whether or not a written record was kept.

Since your office, the D.I.R., has conducted an investigation and concluded that all Bally's or their representatives have to do, pursuant to NRS 616D.130, is timely respond to a request, not actually keep or have a written record, that there is no violation.

Since my complaint was about written records, pursuant to NRS 616D.130, I have no idea why your office would go to the great lengths of looking into the history of my claim. As for reviewing the information, as it pertains to my claim, your office did not request any information from me. One would then assume that all information supplied for the investigation was supplied by Bally's or CCMSI.

As to your offices findings of fact, since your office is a governmental regulatory agency, that your office would at least verify those facts before presenting those facts as facts. Upon reviewing said facts, they appear to be almost word for word the findings of fact that Bally's attorney presented, at the last appeal hearing I had. They are also the same as in the last Appeals Officers' Decision, written by Bally's attorney. There are a number of errors in those facts, some perhaps are just typed wrong, others are just wrong.

Since it was not my intension to have your office look into my entire claim, I will not go into all the details of which facts are incorrect.

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JUN 04 2010

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As I have not received the type of fair and unbiased handling of this matter that one would expect, and since your department, the D.I.R.s, responsibility is to investigate possible violations, by insurers, pursuant to the NRS. I am requesting that your office inform me as to which governmental agency, office or department, investigates possible mishandling of complaints by your office, as I would wish to make a complaint about the handling of this matter.

Thank You

COPY ORIGINAL
ALREADY SENT

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

428

RECEIVED

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

June 21, 2010

CCMSI
Attn: Jennifer DaRos
P. O. Box 35350
Las Vegas, NV 89133-5350

Re:	Subject:	Possible Violation of NRS 616D.120	
	Injured Employee:	Susan Reeves	**CERTIFIED MAIL**
	Claim Number:	88H92H243724	**RETURN RECEIPT**
	Date of Injury:	09/25/88	**REQUESTED**
	Employer:	Bally's	

Dear Ms. DaRos:

The Division of Industrial Relations, Workers' Compensation Section (WCS), received the attached complaint, dated June 1, 2010, from the injured employee which alleges a violation of NRS 616D.120. An investigation will be conducted pursuant to NRS 616D.130.

Please provide your response to the alleged violation of NRS 616D.120 within ten working days after the date of this letter. In addition, if you are represented by an attorney regarding this matter, please include that information with your response so we can update our file. This expedited time frame is necessary to meet the statutory requirement to obtain information available at the time.

Please be advised that pursuant to NRS 616.D.130, the determination will include one or more of the following:

(1) The amount of any fine required to be paid, pursuant to NRS 616.D.120.

(2) The amount of any benefit penalty required to be paid to the injured employee pursuant to NRS 616.D.120.

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(3) A requirement that the notice of the violation be given to the appropriate agency that regulates the activities of the violator.

Again, if you should fail to respond, the Administrator will make a determination based upon any information available at the time.

Sincerely,

Christopher Pangallo
Compliance Audit Investigator
Workers' Compensation Section

cc: Susan Reeves

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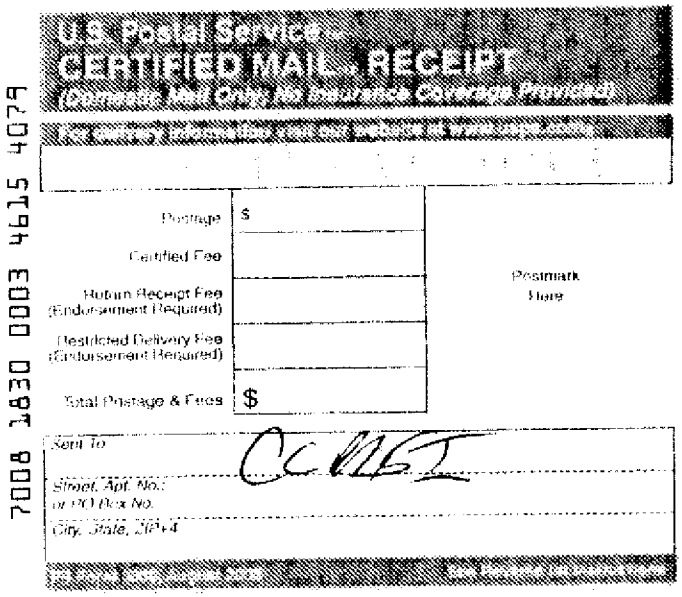

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7008 1830 0003 4615 4079

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

Postmark Here

Sent To CCMSI
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CCMSI
Attn: Brigid Wyszomirski
P. O. Box 35350
Las Vegas, NV 89133-5350

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 6/24/10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED
JUN 25 2010
WCS INT

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7008 1830 0003 4615 4079

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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C C M S I

June 29, 2010

RECEIVED
JUL 06 2010
WCS HND

Christopher Pangallo
Department of Industrial Relations
Workers' Compensation Section
1301 N. Green Valley Pkwy, Suite 200
Henderson, NV 89074

Re: RESPONSE TO POSSIBLE VIOLATIONS OF NRS 616C
Employee: Susan Reeves
Employer: Bally's Las Vegas
Date of Injury: 9/25/88
Claim Number: 88S01H243724

Dear Mr. Pangallo:

CCMSI is the current Third Party Administrator for Bally's Las Vegas. We have received and reviewed the complaint of Susan Reeves filed with the DIR WCS on 6/4/10. Mrs. Reeves' complaint involves her requests for TTD benefits, medical treatment, and claim closure. Our file records show that all of these issues have been properly addressed, appealed, adjudicated and affirmed by the Appeals Officer. Appeals have been filed to the District Court level and the matters are pending.

Mrs. Reeves reports that she has not received TTD benefits since 8/26/98 and alleges that she is entitled to such benefits and that payment has been unreasonably delayed or refused. Enclosed is a copy of Hearing Officer Order 10907-SM which affirms denial of TTD benefits. Appeals Officer Order 14175-GS dismisses further appeal of this issue. Mrs. Reeves has filed an appeal to District Court and case number 06A517655 is scheduled to be heard on 6/30/10.

Mrs. Reeves reports that she has attached an Appeals Officer Order indicating that her claim is to remain open for further benefits and alleges that not all appropriate benefits were provided. Our office has not been provided with a copy of Mrs. Reeves' attachment, however in response to this allegation we submit Appeals Officer Order 39934-GK/42367-GK. Findings of Fact confirm that a closure notice was issued on 12/27/01 and later reversed by an Appeals Officer. The Findings of Fact further confirm that additional treatment with Dr. Mortillaro, Dr. Dunn, and the Family & Sports Physical Therapy Center was provided in compliance.

A new claim closure determination was issued on 9/8/06 and affirmed by both the Hearing Officer and Appeals Officer (see Appeals Officer Order 39934-GK/42367-GK attached). Mrs. Reeves has exercised her right to appeal this Order to District Court, however case A-10-607874-J has not yet been scheduled for hearing.

If further information is required, please contact Jennifer DaRos directly at 702-933-4829.

Sincerely,

Brigid Wyszomirski

Brigid Wyszomirski
State Director

Encl.: 12/22/09 AO Order, 1/20/06 AO Order, 11/30/04 HO Order

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. LAYNE, CPCU
Administrator

CHARLES E. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0631

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

July 22, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S011243724
	Date of Injury:	09/25/88
	Employer:	Bally's Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

Dear Ms. Reeves:

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS), has completed its investigation into your complaint dated June 1, 2010.

FINDINGS OF FACT:

You alleged that Bally's and CCMSI failed to timely pay temporary total disability (TTD) benefits after a December 1, 2003 Appeals Officer decision ordered that closure of your workers' compensation claim was premature. You alleged that you were due TTD benefits from the date your claim was closed on August 27, 1998.

On August 18, 1998 Dr. Oliveri conducted an independent medical evaluation (IME) in which he was asked to evaluate your capabilities of entering to the work force. Dr. Oliveri stated that your subjective complaints far exceeded objective findings. He diagnosed you with a somatoform pain disorder which was primarily a psychiatric problem which was not something that was caused by an industrial accident. Dr. Oliveri stated, ". . . The criteria for disability under social security are very much different than

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the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury. . ." Dr. Oliveri found that you had overwhelming symptom magnification. He stated that the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder. He found that you were maximum medical improved for the industrial injury. Dr. Oliveri stated that there was no evidence for disability and the current perceived disability was based on your nonindustrial somatoform pain disorder.

On March 26, 2001 Dr. Glyman examined you and diagnosed you with a mild post-concussion syndrome. He stated that you had many subjective symptoms which did not match up with objective physical findings.

On December 20, 2001 Dr. Glyman provided an addendum after reviewing additional medical records. He agreed with the other physician who examined you and concluded that you suffer from a somatoform paid disorder. He did not recommend any further medical treatment.

On December 27, 2001 Gallagher Bassett Services wrote a letter notifying you of their intention to close your claim. They also notified you that if you disagreed with their determination you could file an appeal with the Department of Administration Hearing Division.

On April 19, 2002 Hearing Officer Nora Garcia issued a Decision and Order, hearing number LHS2002-C-4641-NG, regarding your appeal of the insurer's December 27, 2001 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 1, 2003 Appeals Officer Nancy Richins issued a Decision and Order regarding your appeal of the Hearing Officer's Decision affirming claim closure. The Appeals Officer concluded that the somatoform pain disorder was industrially related and required further medical treatment, and ordered the claim to be reopened.

On December 11, 2003 CCMSI wrote a letter notifying you the claim would remain open for further medical treatment, and notified you that they scheduled you for an appointment with Dr. Mortillaro on January 5, 2003 at 9:30 am.

On January 14, 2004 CCMSI wrote a letter that they were aware you were being treated by Dr. Petroff. They advised you that the Appeals Officer instructed them to provide short term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures and appropriate therapy. They notified you that Dr. Mortillaro was authorized to provide these treatments, and they were denying Dr. Petroff's recommended treatment plan.

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On January 21, 2004 Douglas Rowan wrote a letter to CCMSI that he was aware they authorized further medical treatment with Dr. Mortillaro. He also requested TTD benefits from the date of claim closure.

On January 30, 2004 CCMSI faxed a letter to Dr. Petroff authorizing an MRI of your cervical spine. It appears that they also authorized medications prescribed by Dr. Petroff and Dr. Mattimoe, as well as physical therapy.

On March 16, 2004 CCMSI wrote a letter to Mr. Rowan requesting a certificate of disability from your physicians from August 26, 1998 in support for his request of TTD benefits. Once they received the certificates of disability they would render a determination with appeal rights.

On March 30, 2004 Dr. Mortillaro discharged you from his care and noted that you remained under the care of Dr. Petroff.

On July 21, 2004 CCMSI wrote a letter to Mr. Rowan notifying him that they were denying his request for TTD benefits from 1998 based on a medical report by Dr. Petroff dated June 29, 2004, because there was no evidence of certification of disability. They also provided him with a copy of the report.

On January 20, 2006 Appeals Officer Gerald Schwartzer filed a Decision and Order, Appeal Number 14175-GS/14174-GS/13350-GS, regarding your appeal of a Hearing Officer's Decision and Order dated November 30, 2004, affirming denial of TTD benefits. The Appeals Officer dismissed your appeal for denial of TTD benefits due to untimely filing of the appeal.

On September 8, 2006 the insurer was notified that Dr. Petroff was only monitoring your medications and referred further care to Dr. Mattimore, who has been prescribing physical therapy. They were also notified that Dr. Mattimore was not treating you for the workers' compensation claim.

On July 25, 2007 Hearing Officer Steven Evans issued a Decision and Order, hearing number 41025-SE, regarding your appeal of the insurer's September 8, 2006 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 22, 2009 Appeals Officer Gregory Krohn filed a Decision and Order, Appeal Number 39934-GK/42367-GK, regarding your appeal of a Hearing Officer's Decision and Order dated July 25, 2007 which affirmed claim closure. The Appeals Officer affirmed claim closure.

On June 21, 2010 the WCS mailed a letter to CCMSI notifying them of your complaint. The WCS received a letter from CCMSI dated June 29, 2010 in which they informed the WCS that the matters of TTD benefits, medical treatment and claim closure have been affirmed by the Appeals Officer and are currently pending in District Court. You appealed the Hearing Officer's Decision affirming denial of TTD benefits and the

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Appeals Officer affirmed the denial. This case is pending at the District Court. Claim closure was affirmed by a Hearing Officer and Appeals Officer. The case is also pending at the District Court.

DETERMINATION:

Determinations regarding TTD benefits and claim closure were affirmed by a Hearing Officer and Appeals Officer. Certificates of disability were not received for the specific periods in questions. Medical treatment was provided timely as ordered.

ADMINISTRATIVE FINE:

Based on the findings of fact, it is determined that there are no violations that would warrant an administrative fine.

BENEFIT PENALTY:

It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

NOTICE OF RIGHT TO APPEAL:

If a person wishes to contest a written determination of the administrator to refuse to impose a benefit penalty pursuant to NRS 616D.120, he must file a notice of appeal with an appeals officer within 30 days after the date on which the administrator's determination was mailed. The notice of appeal must set forth the reasons the refusal to impose a benefit penalty should not be issued. **If a notice of appeal is not filed as required, the refusal to impose a benefit penalty shall be deemed a final order and is not subject to review by any court or agency.**

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The notice of appeal should be addressed to the Department of Administration, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102 or the Department of Administration, Appeals Office, 1050 East Williams Street, Suite 450 Carson City, Nevada 89701.

Sincerely,
Don Jayne, Administrator
Division of Industrial Relations

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

CJV:cgp

cc: Don Jayne, Administrator, DIR
CCMSI

A37

DAVID J. OLIVERI, M.D.
DIPLOMATE, AMERICAN BOARD OF PHYSICAL MEDICINE AND REHABILITATION
DIPLOMATE, AMERICAN BOARD OF ELECTRODIAGNOSTIC MEDICINE

PM&R

INDEPENDENT MEDICAL EVALUATION

EXAMINEE	:	Susan Reeves
DATE	:	08/18/98
CLAIM #	:	0728800377
D.O.I.	:	09/25/88
EMPLOYER	:	Bally's
REFERRAL SOURCE:		Hilton

The independent medical evaluation process was explained to the examinee, and it is understood that there is no patient/treating physician relationship present. It was explained that the evaluation was requested by the referral source and that a report will be sent to the referral source upon completion. The examinee understands that no conclusions or recommendations will be discussed during today's evaluation. The examinee understands that full, reasonable, and consistent effort is requested during the evaluation. The above is consistent with the standards set forth by the American Board of Independent Medical Examiners.

IDENTIFICATION

46-year-old right-handed female positively identified by a Nevada driver's license.

HISTORY

GENERAL:

The history is obtained from the examinee as well as the extensive medical records outlined below.

HILTON CLAIMS ADM
LAS VEGAS, NEVADA
1998 OCT 19 P 3 27

PREINJURY STATUS:

The examinee states that in July of 1987, she was the belted passenger in a full-sized truck when she was rear-ended and pushed into a Bronco. She states that the front end of the vehicle she was in was crushed and the back end was damaged. She states she hit her head on the window and had problems with primarily headaches. She denies any cervical or upper extremity complaints or any other complaints related to that accident other than headache. In addition to the above, she had an injury to her knee in the 1960's with resolved complaints.

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MECHANISM OF INJURY:

On 09/25/88, the examinee states that she was the belted driver in the same truck that she was in with the previous accident. She had stopped in the employee parking lot when another vehicle entered and rear-ended her truck. She states that her head whipped forward and backward very hard and she states her "brain shifted forward and backward bruising the front per Dr. Mattimoe, Dr. Becker and others."

CURRENT CHIEF COMPLAINT(S):

Constant headache, "bad" dizziness, tingling in the left arm with pain down to the left leg, upset stomach, hemorrhoids due to all of the vomiting associated with the upset stomach, inability to handle lights and sounds, difficulty focusing, and difficulty turning her head to the left.

CLINICAL STATUS:

This examinee, since 1988, has been evaluated and treated by multiple physicians. She is currently under the care of her primary care physician, Dr. Mattimoe. Her main complaint is a headache that she describes in the bitemporal area similar to the pain that a person gets when they eat ice cream too fast. In addition, she has the other complaints that are listed above. She has had treatments including physical therapy. She has been granted social security disability dating back to 1989. She states that at this point, she is wanting to plead with social security to be sent to the Mayo Clinic. She states that she wants to be "fixed."

Aggravating Factors:	Light, tension, noise level, thinking, and concentrating.
Relieving Factors:	Dark and quiet room.
Sleep Cycle:	Usually about four hours per night.
Treatment:	The examinee has had physical therapy.
Home Exercise:	None.

PAST MEDICAL HISTORY:

Allergies:	Iodine, codeine and chemicals in cologne.
Medical Illnesses:	Heart murmur and endometriosis.
Last Menstrual Period:	1976.

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Current Physicians: Dr. Mattimoe.

Past Surgeries: Tonsillectomy and six major operations between 1976 and 1979 after a complete hysterectomy and discovery of the endometriosis.

Current Medications: Darvocet approximately 90 per month, Midrin more than 90 per month, Imitrex Tablets and injections, use of either Belladonna, Phenerbel, Zantac, or Prilosec for her upset stomach. Propranolol for her heart murmur. Vistaril on "real smoggy days or windy days when her skin feels like it is crawling and burning."

SOCIAL HISTORY:

The examinee has been married since 1970. She has two children. She has a high school education and some night school. She rarely drinks alcohol. She smokes cigarettes. She feels as though she is depressed because of the long court fights of her case. She denies any history of abuse or abandonment. She considers herself psychologically stable.

OCCUPATIONAL HISTORY:

The examinee was working in room reservations as well as a shop steward trainee with Bally's. She last worked her regular job on 05/15/89 when she states that they "threw me off my job." She had been with them since 1980.

REVIEW OF SYSTEMS:

Remarkable for visual problems, headaches, vomiting, spitting up blood.

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RECORD REVIEW

09/25/88 **Date of Loss.** Traffic accident report not available.

12/12/88 **Frederick T. Boulware, Jr., M.D.** This 37-year-old lady was previously evaluated in January of this year because of complaints of headache and dizziness which had persisted since an automobile accident which occurred on July 20, 1987. Patient states she progressive improved after that time. Apparently some three days after her complaints had resolved, sometime in September of this year, she was involved in a second automobile accident in which she was the driver of a car that was rear-ended while stopped. She was thrown forward and backwards but did not strike her head. She has since this time experienced constant headache. She describes a dull ache which is primarily bifrontotemporal in location, although it has a posterior head contribution. It is increased by turning of the head to either side. She

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initially had some nausea, but no vomiting. She also has some complaints of lightheadedness, which may occur if she turns her head suddenly or moves quickly. An electroencephalogram reveals low-voltage, fast activity throughout the record in all head regions consistent with medication affect. Patient may have experienced some discomfort with the incident that she describes. There is no suggestion, however, that she has any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activity.

10/09/89 **Joel Lubritz, M.D.** Letter to Allstate Insurance Company. I would suggest that Mrs. Reeves have an audiogram, an electronystagmogram and brain stem evoked response audiometry. The cost of these tests is approximately $600.00. However, as stated in my previous letter to you, I would suggest that these tests be done by a well recognized authority such as the Otologic Medical Group in Los Angeles.

11/29/89 **Louis F. Mortillaro, Ph.D.** Impressions: Axis I: Clinical syndromes: 307.80 Somatoform pain disorder. Axis II: V-71.09 No diagnosis or condition noted on Axis II. It is opinioned that at this time, Mrs. Reeves is experiencing a Somatoform Pain Disorder that has developed out of her inability to successful cope with the physical consequences of both motor vehicle accidents in question. Prognosis for successful resolution of her Somatoform Pain Disorder arising out of the motor vehicle accident is excellent if the following treatment recommendations can be successfully implemented. She should be referred for pain management counseling where she can learn and implement an effective pain management ritual in response to pain stimuli. She would benefit from instruction in biofeedback strategies for pain management to help her resolve problems of somatic pain headaches and moderate interpersonal distress. As soon as possible, Mrs. Reeves should be issued a return to work release based upon objective medical findings. She is desirous of returning to work with the pre-accident employer as soon as possible. [Page 1 of this report unavailable.]

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03/30/90 **Aram Glorig, M.D.** Letter to Allstate Insurance Company. She was complaining chiefly of a dizziness described as "things moving about her", causing her to be dizzy. She said when she moves quickly, she notices that this increases. She says she can prevent this by fixing her eyes on some point and then turning her head. Standing up quickly with quick movements of any kind increases the dizziness. She says when people move across her vision, she notices the dizziness. She says the whole thing is somewhat better now than right after an accident. At that time, she had nausea, but no vomiting and the nausea continued for about four months. She has no real problem with hearing; however, she does have a constant ringing described as a buzzing with high-pitched mixed in. However, it does not bother her sleep and it is worse in quiet. She says these things came on following an accident which occurred in July of 1987. At that time, she hit the back of her head on the window of a pickup truck in which she was riding. She was not knocked unconscious. Following this she went to Dr. Mattimoe who is her family doctor. He said she had whiplash. The dizziness came on about three days

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after the accident while in the shower. Following this, she saw Dr. Becker who is an ear, nose, and throat doctor and a neurologist. By July of 1988, she was feeling quite good. But on September 27, 1988, she was rear ended again and headaches and dizziness became even worse than she had before the second accident. This time, she had a whiplash which started the symptoms all over again, but worse than previously. She has had physical therapy for about nine months. But she did not appear to be too satisfied with what was done. Discussion: Before I can come to any conclusions about Ms. Reeves' dizziness and her hearing, I would like her to return for an electronystagmogram, a brain stem audiogram, an impedance test and an Equi-test, which is a balance test which has recently been developed. It appears to me that Ms. Reeves has something wrong and that she may need treatment. I would like also for an appointment to be made with Dr. Derald Brackmann of this group following the completion of the four tests that I have asked for. Ms. Reeves has told me she has been seen by several physicians and all of them say there is nothing wrong with her and that it is all in her head. But I doubt this and that is why I am asking for these extra tests and for her to see Dr. Brackmann, who is a world-renowned expert on dizziness. As soon as I receive the results of these tests and after the visit with Dr. Brackmann, I will complete this report.

05/21/90 **Dr. Glorig.** Letter to Allstate Insurance Company. The brain stem audiogram indicated that the audiogram we made on 03/13/90 was reasonably valid, except in the low frequencies which I feel showed her to have a little more loss than she actually has. Consequently, her hearing is within normal limits throughout the spectrum. The electronystagmogram showed normal results, as far as the peripheral vestibular system is concerned, and did not show any indication of any central problem. The impedance test indicated that her hearing was within normal limits and that there was no difficulty with her middle ear function. I note that the appointment with Dr. Brackmann was not made and a statement is in her chart indicating that this appointment was to be made at a later date. I would definitely like her to be seen by Dr. Brackmann before coming to any final conclusions.

08/15/90 **Richard W. Kudrewicz, M.D.** On examination of cervical spine, patient has forward flexion full to 45 degrees. Patient has extension limited to 30 degrees. This is a 15 degree loss of range of motion and is equivalent to a 1 percent impairment, whole man. Patient has left and right lateral flexion full to 45 degrees in each direction. Patient has left and right rotation full to 80 degrees in each direction. Therefore, based upon loss of range of motion, cervical spine, patient has a total of 1 percent impairment, whole man. Regarding range of motion in the shoulders, suffice it to say that range of motion in the right shoulder is full and appropriate in all directions. Regarding range of motion in the left shoulder, patient has forward flexion limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has extension full to 40 degrees. Patient has abduction limited to 120 degrees. This is a 30 degree loss of range of motion and is equivalent to a 3 percent impairment, upper extremity. Patient has internal rotation/and external rotation full to 40 degrees and external rotation full to 90 degrees. Therefore, based upon loss of range of

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motion, left shoulder, patient has a total of 6 percent impairment, upper extremity. In summation, in terms of her musculoskeletal situation, this patient appears to have a 4 percent impairment, whole man, based upon loss of range of motion, left shoulder, combined with a 1 percent impairment, whole man, based upon injury to cervical spine. Using Combined Values Charts, this sums to a 5 percent impairment, whole man. I am unable to delineate specific central or peripheral neurologic deficits in this patient. In addition, I need more data referable to the issue of her vertigo before I can classify her any further.

08/16/90 **Dr. Glorig.** Letter to Allstate Insurance Company. Susan Reeves was seen by Dr. Brackmann and I have consulted with him regarding his opinions. We both feel that there is no damage to her vestibular system and that her problems are strictly related to her neck injury. The electronystagmogram which is a test to decide whether the vestibular system end-organ is at fault, was perfectly normal in all respects. The Equi-test which is another test to try and localize any problem as far as the vestibular system is concerned, showed no signs of any localizations. The brain stem audiogram was normal, indicating no problem as far as retrocochlear lesions are concerned. It remains then that the accident has not caused any vestibular problems and that Ms. Reeves' hearing is within normal limits. The only pathology we can find is related to a neck injury which should be taken care of by physical therapy.

09/04/90 **Peter Mattimoe, M.D.** Her main problem is pain in the neck especially the lower half, and of the left shoulder which is quite intense, sometimes radiating into the left upper limb. It is aggravated by movement but not by coughing. She feels she has to hold the left shoulder in almost immobile position with her elbow flexed by 90 degrees across her torso. She also has headaches, photophobia, occasional dizziness and sometimes parasthesiae in some of the left fingers. Exam: There appears to be loss of the cervical lordosis and considerable posterior neck muscle spasm; all neck movements are greatly decreased with pain, similarly with the left shoulder movements. She was referred to Gary Amick for intensive PT and she was prescribed Norgesic Forte and a muscle relaxant. I will see her in one month.

11/07/90 **Gary Amick, P.T.** Susan has received regular and consistent treatment to her back and neck area, consisting of moist heat, electrical stimulation, ultrasound, massage, mobilization and progressive resistive exercises. Presently she reports symptoms are generally improved with episodes of increased symptoms. Her functional activities have increased. Her chief complaint is constant left ear tinnitus which began approximately ten days ago. Her complaints of dizziness and light sensitivity exacerbate two or three times weekly but has improved since therapy. Objective findings reveal moderate improvement in active and passive cervical, thoracic and lumbar range of motion, strength and function. Her left shoulder has significantly improved with range of motion and strength. Recommend Susan continue with treatment as above with emphasis in progressive resistive exercises.

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11/08/90 **Dr. Mattimoe.** Ms. Reeves reports considerable improvement to all areas other than to her ear problem. There is less pain in her neck and especially in her left shoulder, for which PT has been very helpful in assisting her to gain increased mobility - similarly with the low back area. There are still periods which are becoming fewer and more short-lived of intense severity of pain. She appears to have tinnitus and episodes of dizziness not associated with nausea and not precipitated by position. Her whole outlook is optimistic. She is to continue physical therapy and obtain an E & T [sic] consultation.

01/02/91 **Gary Amick, P.T.** Presently she reports symptoms are slowly improving with the exception of dizziness and light sensitivity. She also reported daily episodes of falls and "bouncing off the walls." Her equilibrium is of major concern as is her desire to return to work. Susan has taken steps to seek a release to full duty from another source. Objective findings include improved spinal motion and segmented mobility. She still requires dark glasses and demonstrates poor balance during gait.

01/03/91 **Dr. Mattimoe.** Patient still complains of severe headaches and ataxia meaning a staggering of motion while walking and feeling of loss of balance; she has not fallen but takes care when walking and does not drive any vehicle. Exam is essentially unchanged. I feel this lady requires an independent specialist's work-up.

01/10/91 **Dr. Mattimoe.** Patient telephoned - Haemathemisis [sic] and possible melena. Advised to discontinue ASA and NSAID's and will be prescribed a histamine 2 blocker. She is going to have upper GI at Steinberg's in the morning.

01/11/91 **Dr. Mattimoe.** Dr. Green telephoned - patient shows duodenal ulcer. Advised to make an appointment with Dr. J. Fayad, Gastroenterologist.

01/11/91 **Upper GI Series. R. B. Greene, M.D.** The preliminary film of the abdomen reveals no abnormalities. There are prominent gastric rugae or folds involving the entire stomach. This is consistent with diffuse hypertrophic gastritis. Mild to moderate antral spasm, pylorospasm and duodenal irritability. There are moderately prominent duodenal bulb mucosal folds present. On multiple Hampton views of the duodenal bulb, there is demonstrated one, possibly two 2 mm-3 mm in diameter superficial benign duodenal bulb erosions and/or ulcerations. No gastric outlet obstruction. Normal esophagus. The upper GI series is otherwise not remarkable.

01/31/91 **Dr. Mattimoe.** Her dizziness remains a major feature and she complains of staggering while walking. Her headaches remain and the various medications prescribed have not helped her. She states she gets quite frustrated with her current position and she is not obtaining help from anybody. She mentioned she has had temper tantrums as a result. Dr. Becker, ENT has told her he could not do anything further for her and she is anxious to have

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another opinion. She was prescribed Norflex. I again advised her that in view of her symptomatology, I would not recommend her to resume work although she states she is most anxious to do so. I will write her insurance company recommending another opinion. She also states I never said she was unable to work.

03/13/91 **Joseph Fayad, M.D.** Impression: Hematochezia times two. Likely due to aspirin. The possibility of other pathology has to be ruled out. Plan: Proceed with an EGD. Start patient on Zantac and recommend to avoid any aspirin as well as alcohol for now.

03/30/91 **Dr. Mattimoe.** Patient states her main complaints are severe headaches and ataxia plus considerable stress due to mounting unpaid bills. She states she is most anxious to resume work as soon as possible at her pre-accident position. She is still being investigated by Dr. Fayad, Gastroenterologist, in regard to her recent GI bleeding. He feels this arose from her use of aspirin to relieve those headaches. Since she has discontinued the aspirin she has not noticed any further GI bleeding and does not now have any abdomen complaints. Exam: Patient continues to have an unsteady gait and appears to stagger backwards without actually falling and supports herself, at times, with her hands on the wall while walking. In view of her symptoms and the appearance of ataxia, I feel she is currently unfit to undertake any duty or to drive and, in fact, may need attendance when walking lest she fall. I consider patient would benefit from fresh neurological and ENT evaluations.

06/01/91 **Unsigned typewritten note.** Continues to have severe headaches and a tendency to back into objects. She takes 2 Darvocet N 100 at night to relieve the headache so she may sleep. Her abdominal problems have responded well to Gen. Donnatal once the initial side effects abated. She was prescribed Gen. Donnatal and Darvocet in the 100. I have urged her to have the case settled.

07/26/91 **Ronald A. Weisner, M.D.** Psychiatric diagnosis: Axis I: Somatoform pain disorder. Axis II: No diagnosis. Axis III: Patient was involved in two motor vehicle accidents, in 1988 and 1987. It is uncertain what if any, neurological sequelae ensued from those automobile accidents. Axis IV: Stressors are moderate. Loss of income. Axis V: Current GAF 65. Highest GAF this past year approximately 65.

09/23/91 **Administrative Law Judge Decision Regarding Social Security.** The judge states that "medical evidence establishes that the claimant has severe medically determinable impairments of somatoform pain disorder, postural vertigo, status post cervical strain and obesity but that she does not have an impairment or combination of impairments listed in or medically equal to one listed in appendix A, subpart P, regulation #4." He states "the claimant's subjective complaints preclude the performance of substantial gainful activity on a routine and sustained basis." He states that she does have disability as defined in the Social Security Act.

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01/11/92 **Unsigned typewritten note.** Patient has a number of problems which are MVA related - headaches, back and neck pain, paresthesiae left lower limb. She has considerable photophobia and continuing dizziness. Exam is unchanged and I have referred her to Gary Amick for continuing PT.

03/24/92 **Unsigned typewritten note.** Patient reports she had been doing well since her last visit but has been seriously affected by the recent death of her grandson. She reports severe headaches, dizziness, insomnia and overwhelming grief. Exam remains unchanged and she was offered supportive care.

05/08/93 **Dr. Mattimoe.** Mrs. Reeves has suffered very severe incapacitating headaches since the MVA of 09/25/88. Only Imitrex has provided satisfactory relief. I have therefore prescribed Imitrex for her on a continuing basis.

05/16/98 **Physician unknown. Handwritten note.**

PHYSICAL EXAMINATION

GENERAL:

The examinee stands 5'5" tall and weighs 180 pounds.

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EXTREMITIES:

There is no visible atrophy in the upper or lower extremities. Measurements are taken at the upper arms bilaterally and are 34 cm bilaterally. The forearms measure 27 cm bilaterally. The calf measurements are 38 cm bilaterally. There is subjective limitation in bilateral shoulder abduction at 140 degrees.

TRUNK/SPINE:

The examinee has normal upright posture without scoliosis. She has subjective limitations that are nonanatomic in cervical and lumbar spine motion. Straight leg raises seated are to 90 degrees bilaterally with no pain.

SENSORY:

There is nonanatomic circumferential tingling in the left upper extremity. Sensation is otherwise intact in the right upper extremity and bilateral lower extremities.

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MOTOR:

GRIP	JAMAR DYNAMOMETER
RIGHT	52, 54, 50
LEFT	20, 15, 24

Rapid exchange grip strength testing was attempted although the examinee was unable/unwilling to coordinate the effort. There is breakaway weakness in the upper and lower extremity myotomes.

REFLEXES:

2+ at the bilateral biceps, triceps, brachioradialis, quadriceps and Achilles.

GAIT:

Slow.

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CREDIBILITY/SYMPTOMS REPORTING

PAIN DIAGRAM: Nonanatomic.

MCGILL PAIN QUESTIONNAIRE: 32.

The McGill Pain Questionnaire is a simple, but reliable, measure of a patient's perception of pain. The questionnaire that is used in this case is the Pain Rating Index (Rank Value). The patient is asked to choose words from a list of 20 different categories. A score is obtained based on the range of that word in the category. The maximum score is 78 points. Scores above 30 tend to indicate exaggeration of symptoms, although there is no exact cutoff point accepted.

BECK DEPRESSION INVENTORY: 12.

The Beck Depression Inventory is a 21-item self-report questionnaire that is used as a screening measure for clinical depression. The score can be interpreted as follows: 1 to 10 normal, 11 to 16 mild mood disturbance, 17 to 20 borderline clinical depression, 21 to 30 moderate depression, 31 to 40 severe depression, over 40 extreme depression.

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DIAGNOSES

DIAGNOSIS (PRIMARY INDUSTRIAL CAUSATION):

1. STATUS POST INDUSTRIAL MOTOR VEHICLE ACCIDENT, 09/25/88, WITH DIFFUSE SYMPTOMATOLOGY COMPLICATED BY FUNCTIONAL OVERLAY.

DIAGNOSES (OTHER):

1. SOMATOFORM PAIN DISORDER.
2. HEART MURMUR PER EXAMINEE.
3. ENDOMETRIOSIS PER EXAMINEE WITH REPORTED MULTIPLE SURGICAL INTERVENTIONS.
4. EXCESSIVE DARVOCET/MIDRIN USE.

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DISCUSSION

I was asked to evaluate this examinee. In the cover letter, it is stated that Bally's was unsuccessful in denial of the claim. I have been asked to evaluate the examinee's capabilities in terms of entering the work force. I have reviewed the medical records including the records from the examinee's primary care physician, Dr. Mattimoe. The examinee wants to be "fixed." She stated that she wants to be sent to the Mayo Clinic for treatment, but then told me that if I could help her here in Las Vegas, she would certainly go through that treatment. The difficulty that I believe all involved in this case are experiencing is the fact that this examinee's subjective complaints are far in excess of any objective findings that may be hidden. This type of presentation is completely consistent with the diagnosis of somatoform pain disorder which was noted by Dr. Mortillaro back in November of 1989. The bottom line is that this examinee primarily has a psychiatric problem. Somatoform pain disorder is a psychiatric diagnosis and is not something that is caused by an industrial accident. This examinee has diffuse bodily complaints and has a perceived level of disability that is far in excess of anything that could be causally related to her accident in 1988. Of note is that she has been granted social security disability since 1989. The criteria for disability under social security are very much different than the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury.

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There is also a question in my mind as to the 1987 accident where the examinee hit her head and this resulted in headache complaints. Per Dr. Boulware's report of 12/12/88, he states that her headache complaints from the 1987 accident continued until three days before the September 1988 accident. This is quite unlikely from an objective medical standpoint.

As far as managing an individual with somatoform pain disorder with multiple diffuse bodily complaints such as this examinee, it is important to keep in mind that it is primarily a psychiatric diagnosis. It is clear that the examinee has a great deal of trust in Dr. Mattimoe and undoubtedly, Dr. Mattimoe is doing everything he can to help her although the ongoing use of addictive medications such as Darvocet and Midrin are really contraindicated in a somatoform pain disorder. The bottom line is that there is really no conceivable objective diagnosis resulting from the automobile accident that could justify the use of these medications especially at the numbers per month she is consuming. The examinee's behavior of wanting to seek out additional treatment at a nationally recognized center is also consistent with somatoform pain disorder. She has fixated on her pain and disability to the point that it is an all consuming project. The litigation aspects fall into this pattern also.

The bottom line is that despite the fact that her claim has been accepted, I have no industrial treatment recommendations. From a nonindustrial standpoint, she should be taken off of addictive medications and she should be under the care of a psychiatrist or psychologist. There is nothing of significant concern from a medical standpoint that would warrant urgent treatment and there is nothing that would require multidisciplinary or regional medical center treatment.

CONCLUSIONS/RECOMMENDATIONS

PREEXISTING CONDITIONS:

There was a previous motor vehicle accident in 1987 resulting in headache complaints. I suspect that those complaints are also part of her current presentation. The most overwhelming aspect to this examinee's presentation is what I would consider a preexisting tendency or an actual preexisting diagnosis of somatoform pain disorder in this examinee.

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SYMPTOM MAGNIFICATION/NONORGANIC FINDINGS:

The examinee has overwhelming magnification of symptomatology. In addition to already being diagnosed officially with somatoform pain disorder, she has an elevated McGill Pain Questionnaire score which is in the realm of symptom magnification, she has a nonanatomic pain diagram, she has nonanatomic complaints, and she has nonanatomic findings on examination. For purposes of clarification, it is important to note that this examinee may not have conscious

control over the issues of symptom magnification or functional overlay. In other words, the examinee may truly feel that she has symptomatology severe enough to preclude functional activities. However, this is not justifiable on an objective industrial basis.

CAUSATION:

The motor vehicle accident on 09/25/88 may have caused some minor problems physically but those have undoubtedly resolved. The causation of the examinee's current presentation overwhelmingly is her nonindustrial somatoform pain disorder.

MAXIMUM MEDICAL IMPROVEMENT:

Yes from an industrial standpoint.

RECOMMENDATIONS:

The following recommendations are nonindustrial. I would advise the examinee to wean herself completely from addictive medications. I would recommend that she be under the nonindustrial care of a psychologist or psychiatrist skilled in dealing with somatoform pain disorder.

I was also asked to clarify which medications are necessary for this examinee on an industrial basis. There are no medications necessary objectively on an industrial basis as it relates to the 1988 accident.

WORK CAPACITY/DISABILITY:

As discussed above, this examinee's obtaining of social security disability dating back to 1989 should not be misconstrued as a justification for disability on an industrial basis. It is my very strong opinion that based on the industrial accident and the industrial objective issues, there is no evidence for disability. The examinee's current perceived level of disability is based on her nonindustrial somatoform pain disorder.

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PROGNOSIS:

Exceedingly guarded because of the nonindustrial factors.

DISCLAIMER

The opinions, conclusions, and recommendations expressed above are based upon reasonable medical probability and are independent of the referral source. Multiple factors have been taken into account including the examinee's subjective complaints, provided history, medical records

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reviewed, direct review of diagnostic or radiographic testing, results of credibility and symptoms reporting, and the physical examination findings. Comments on appropriateness of care are professional opinions based upon the specifics of the case and are not to be generalized to the specific involved providers or disciplines. The opinions expressed above to not constitute a recommendation that specific claims or administrative decisions be made or enforced. At the conclusion of the examination today, the examinee left the office without complaints of additional injury.

Respectfully submitted,

David J. Oliveri, M.D.
Board Certified, American Board of Independent Medical Examiners

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NEVADA NEUROLOGICAL CONSULTANTS, LTD.
3131 La Canada Street, Suite #232
Las Vegas, NV 89109
(702) 731-9110

MEDICAL EXAMINATION

March 26, 2001

RE: PATIENT: REEVES, SUSAN LOUISE

To Whom It May Concern:

Susan Louise Reeves is a pleasant 49-year-old woman whom I saw today for a medical examination. The patient supplied the history and provided a questionnaire regarding her current symptoms and complaints. I reviewed the questionnaire with her and took an independent history. I also examined her today. I did not have the benefit of medical records to review at this time to assist in the preparation of this report.

HISTORY OF PRESENT ILLNESS: The patient is seen for a neurological assessment in regards to an accident that occurred on 9/25/88. She says that she was at a stop in the employees' parking lot and she was struck from behind by another vehicle. She said that her truck did not have a headrest and her head whipped forward and backwards. She notes that she eventually did go back to work in the hotel reservations department and worked for another nine months after the accident, at which point she was eventually escorted off her job and placed on a medical leave nine months after the accident, as she was told she was a "hazard." She apparently was employed doing room reservations. She was a shop steward. She was hired in September of 1980. She worked until 5/15/90 when she noted she was escorted off the property. In her daily work activities she trained new hires, helped the supervisors. While sitting she would train a new person, put the order files in, and would be helping with conventions and with phones. She would sit about 80% of the time, walk 20% of the time. She states the accident happened on a Sunday. She notes that she initially saw Dr. Peter Mattimoe on Monday and was referred to Dr. Becker. She saw Dr. Becker, an ENT specialist, and she was advised by Dr. Mattimoe to take Aspirin for her headache. She said that she was taking 100 Aspirins per day around the

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time she was walked off the job. She notes that she was having trouble with bright light bothering the headaches and she wore sunglasses. She notes that she was not allowed to use the sunglasses and almost every day or so she would go to therapy. She had ringing in her ears and noted blackness in her left eye as well as dizziness. She says that Dr. Mattimoe treated the symptoms. She was sent to therapy for about a week after the accident. She was treated also by Dr. Ameriks, Dr. Becker, and Dr. Petroff. She went to physical therapy at NovaCare. As far as her current subjective symptoms, she notes headaches every day constantly. She says that it varies in degree. She notes a tight cap-like feeling at the top of her head. She has dizziness, which gets worse when the headache is worse or when her stomach problems are worse. She says the more the dizziness the more she has other symptoms. She notes that she has tingling in her left shoulder and arms. She has trouble with limited range of motion. She has ringing in her ears. She notes that she has numbness and tingling in her left arm, numbness and tingling in her left leg. She says that she has numbness from her left leg to her big toe. She notes that the big toe movement feels like it is being stretched. She says that her symptoms occur 24 hours a day, seven days a week. She notes that bright light and noises can worsen the symptoms and trigger them. She says that she does not have many spinning sensations or dizziness. She notes now that she feels like she may just fall backwards if she does not concentrate. She says taking medication or going to the bedroom for a few hours may help her symptoms. The bedroom is completely dark without windows or noise. She says that her symptoms are getting worse due to the new medications and therapy. She notes that the dizziness symptoms rarely appear. The medications, particularly Pamelor helps with the ringing in the ears. She says that before this she could barely hear what people said. She said the headaches were so severe that two times a week she would experience very severe symptoms. She notes that she has never been hospitalized. She did have a GI evaluation due to taking too much Aspirin. She was seen by a Dr. Faris. She does not use any assistive devices. She has a prior injury in 1969 at Sears. She hurt her knee but states she had no legal settlement. She had it fixed and then went back to work. She notes that a car accident occurred in July of 1987. Apparently a car rear-ended her on Tropicana Boulevard. She says that her insurance took care of it under the no-fault insurance policy. With respect to her pain, she

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says her pain is reduced by medication, lying down in a dark, quiet room. She says she can look after herself but is slow and careful. She says she can lift everything without pain but is dizzy to watch. She notes that pain does not prevent her from walking as far as she wants; dizziness does. She says that with respect to her activities she can stand a few hours without having to sit but with dizziness it is reduced. She notes that she can stand a few hours without pain before having to sit but also notes dizziness. She says that she does not have any limitations sitting. She has headaches which interfere with her sleeping. She notes that she is restricted to short journeys due to headaches. She says that the pain has reduced her social life. She does not go out as often. She notes that headaches have reduced her sex life. She says that since the accident she does not go dancing as much or go out as much, nor does she go climbing or hiking. She is unable to play any sports now because of pain. As far as her daily routine, she gets up between 7:00 and 8:00 a.m. depending on when the dogs get her up. She relaxes with tea and breakfast, listens to her radio show, thumbs through the newspaper. By 9:00 a.m. she takes her pills and straightens up the bed and brings the dog pillows up to the family room. She opens up the living room blinds and windows. At night she feeds the fish and feather dusts things. She starts the laundry and dishware and lays down for an hour or two. She gets up, finishes walking, she puts away the dishes, and makes sure that she has everything ready for dinner. She goes for the mail and sorts out the trash to be placed in the garbage. In the early morning she sits down to try to watch the birds at the feeder but the sun is too much for her headaches. She goes inside and lays down. She is able to vacuum and mop the floors off and on during the week but does this slowly and carefully. On the weekend the patient and her husband try to do the real cleaning, the bathrooms and such. Around 3:30 p.m. her husband comes home and then she tries to sit out under the back porch, which is shaded for an hour or so. Then they may watch TV, talk, or she tries to do her dizziness exercises, then goes to bed. With respect to her pain diagram, she notes tight muscles in her left shoulder. She has numbness in her entire left arm and a ribbon of numbness along her left leg and calf. She describes the headache as a band-like pain across the front of her head and numbness even noted at the top of her head.

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PAST MEDICAL HISTORY: Her past medical history is remarkable for hospitalizations in Valley Hospital and was at Loma Linda as well for a tubo-ovarian abscess. She also was hospitalized at Women's Hospital as well.

ALLERGIES: Iodine, Sulfa medications, Codeine, and Novocaine as well as occasional perfumes.

SOCIAL HISORY: She is married. She rarely has an alcoholic beverage. She smokes a pack of tobacco per day. She has had high school and some college degree. She has lost 11 years of work because of her health-related problems.

FAMILY HISTORY: Remarkable for cancer, diabetes, heart disease, hypertension, stroke, and gout.

REVIEW OF SYSTEMS: The following systems have been reviewed and were normal unless otherwise stated below: General, HEENT, cardiovascular, respiratory, gastrointestinal, genitourinary, musculoskeletal, integumentary (skin and/or breasts), neurological, psychiatric, or endocrine.

The patient reports stiffness. She has had spitting up blood, difficulty walking two blocks, heart disease, vomiting, heartburn, indigestion, varicose veins, pain in the calf as noted, allergies.

PHYSICAL EXAMINATION

VITALS SIGNS: Vitals signs are unremarkable.

NEUROLOGICAL EXAMINATION

MENTAL STATUS: Mental status exam is remarkable for pressured speech. She has difficulty stopping talking. She has coherent thoughts however. She wears sunglasses but will take them off during the exam.

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CRANIAL NERVES: Cranial nerves II through XII were examined serially and found to be normal. Range of motion of the cervical spine is diminished due to pain in all planes. Left shoulder voluntary range of motion is decreased as well in all planes subjectively.

MOTOR: Motor examination discloses giveaway weakness in the left deltoid, left biceps, left triceps, and wrist extensor. Strength is normal everywhere else.

REFLEXES: Muscle stretch reflexes are 1+ throughout. Toes are downgoing to plantar stimulation.

SENSORY EXAM: Sensory exam is intact to all modalities except for the left side in the left upper extremity. There is diminished sensation to pinprick in the entire left arm as compared to the right, in the left lower extremity along the medial aspect, and in left foot along the dorsal surface.

COORDINATION: Coordination testing is normal.

GAIT: Gait is normal. She can walk with a narrow base and is able to turn. She is slightly unsteady on turning.

IMPRESSION AND PLAN: After interviewing this woman and examining her, I have the following comments:

1) This is a very unusual and extreme case. I do not have all of her records to review but from what I can gather at the worst this woman has suffered a mild post-concussion syndrome. The term mild is used because this individual did not report loss of consciousness, was not hospitalized, and indeed was able to work in some capacity for nine months after this accident. Certainly this pattern is not consistent with a severe closed-head injury.

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2) This patient has many subjective symptoms, i.e. headache, dizziness, and even sensory loss. Her objective physical findings are hard to match up with her complaints. That is to say, she has giveaway weakness on exam and sensory loss particularly in her left upper extremity, which do not correlate well. I cannot really explain her clinical pattern of findings. In addition on her pain diagram she noted that she had numbness over the top of her head. These findings taken together really do not make sense based on how the nervous system is organized. I cannot think of a lesion that would cause one to have numbness on her scalp in the midline and the pattern of numbness in her arm and her leg. In addition, one would not expect to see giveaway weakness without other reflex changes. As far as her other subjective complaints, i.e. dizziness and headache, these too cannot be verified very well since there is no objective medical test that can tell an individual how much pain one is in or how much dizziness an individual is subjectively feeling.
3) So, her subjective complaints and her physical findings are difficult to reconcile. In addition to this, it would be very unusual for an individual with a mild head injury to have complaints that are so strong and so extreme 13 years later, at least based on what I have read and what I have seen in my medical practice.
4) I do not have her medical records at the present time to review. It will be interesting when they become available to look and see whether her present complaints are the same as she has had in the past. That is to say, if I discovered weakness today that was never noted in the past or a particular sensory pattern that was not noted in the past, this too would also be non-physiologic. I will wait until I have a chance to review her records to comment further on this.
5) As far as diagnostic testing, I do not know what has been done. I will certainly wait to review the studies when they become available and comment further. It would be interesting if she has had posturography done. This type of testing can be done in individuals who are dizzy, and certainly I would expect would be able to determine a true pattern of dizziness from one that was more subjective.

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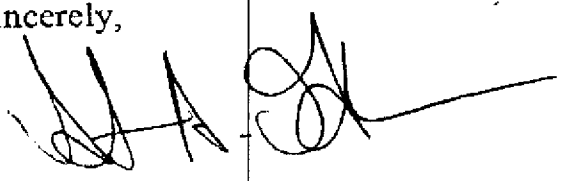
6) I do not know whether this individual has had a psychiatric or psychological assessment in the past. It is interesting in speaking with her that many of her complaints have gotten better since Dr. Petroff started her on Pamelor. Pamelor is an antidepressant and while this is used for many purposes by physicians, it is possible that her symptoms may have been due to a co-morbid depression that was occurring in this individual, which Pamelor is treating. Interestingly Pamelor would not be typically expected to improve tinnitus in most patients and the fact that she is getting better might too suggest that the subjective complaint of tinnitus may have a psychological basis.
7) The conclusions that I have reached at the present time are based solely on the patient's current physical examination, her subjective complaints to me, and the history that was related. I will be happy to review any records as they become available and comment further, and should the medical records provide further history or information that is relevant or important, I will certainly prepare a corrected report. On the other hand the basic issues that I observed today, i.e. her history, her subjective complaints, and what she wrote in her patient questionnaire, make me concerned about her subjective symptoms and their basis in true physiologic mechanisms. I will hold my final conclusions in abeyance until all the records are reviewed.

Sincerely,



Steven A. Glyman, M.D.
SAG/lad

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NEVADA NEUROLOGICAL CONSULTANTS, LTD.
3131 La Canada Street, Suite #232
Las Vegas, NV 89109
(702) 731-9110

December 20, 2001

ADDENDUM

RE: PATIENT: REEVES, SUSAN LOUISE

To Whom It May Concern:

Additional medical records were submitted regarding Susan Reeves, which I have now reviewed. These submitted medical records include the following.

1) Medical records of Dr. George Petroff, which describe medical care from January through February of 1999.
2) Physical therapy records from February of 1999 from Jeff Deitrich, physical therapist.
3) Medical records from Dr. David Oliveri from 8/18/98.
4) Medical records of Dr. Peter Mattimoe from 1987 to 1998.
5) Medical records from Gary Amick, registered physical therapist, from April of 1992 and January of 1992.
6) Psychiatry records from Ronald Weisner from July of 1991.
7) Radiologic reports from Desert Radiology including a CT scan of the abdomen and a barium enema and ultrasound of the gallbladder.
8) Medical records of Joseph Fayad from March of 1991.
9) Laboratory studies from Associated Pathologists Lab from March of 1991 as well as other studies including biopsy report of gastric fundus as interpreted by Dr. Voss (from Associated Pathologists) in 1991.
10) A neuro-otology assessment by Dr. Glorig from August of 1990 which also includes an electronystagmogram.
11) A disability evaluation dated 8/15/90 from Richard Kudrewicz . Medical records from Dr. David Toeller from January of 1990.
12) Neurological consultation from Dr. Leslie Gaelen from 1/5/90.
13) Disability assessment from Jacqueline Joy Borkin, doctor of chiropractic, from 1/3/90.

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PATIENT: REEVES, SUSAN LOUISE
DATE: DECEMBER 20, 2001
PAGE TWO

14) Psychological assessment from Dr. Louis J. Mortillaro, Ph.D., dated 11/28/89.
15) Comprehensive assessment from Dr. David Toeller dated 10/17/89.
16) ENT assessment from Dr. Joel Lubritz 10/9/89.
17) Independent medical examination, Dr. David Toeller, dated 6/1/89.
18) ENT assessment from Dr. Barton Becker, 6/21/89.
19) Neurological assessment from Dr. Frederick Boulware, 12/12/88.
20) Physical therapy notes from NovaCare Outpatient Rehab describing vestibular therapy and physical therapy from February of 1999 to December of 1999.

After reviewing all of these records and evaluating this individual, specifically with regards to the questions submitted to this examiner by Melody Francis in the correspondence dated 6/5/01, I have the following comments.

1) What is the patient's current diagnosis? In answer to this question, I have the following comments. Obviously, this has been an issue since she was originally injured in 9/25/88. Several examiners including Dr. Mortillaro, Dr. Toeller, and Dr. Oliveri, in their independent assessments, have raised the issue of a somatoform disorder. Dr. Gaelen describes non-neuroanatomic findings. In my assessment, which was done initially independently without the benefit of any of these records, I was concerned that this individual had a variety of subjective complaints and physical findings that were difficult to reconcile. It was my opinion in my original assessment that she might have a psychological basis for her symptoms and indeed in reviewing the totality of her records, I am of the opinion that she probably does suffer from a somatoform disorder. I would say that her complaints and findings have been characteristic and continued from the time of her original assessment. As far as the follow-up question to this, whether the current complaints are consistent with the mechanism of the injury, it would appear that her complaints are stable. As noted by other examiners, she is felt to have a strong psychological basis for her symptoms and this is in concurrence with the diagnosis of a somatoform disorder. There is nothing new that I am seeing on my assessment that gives me a different idea of what is occurring in her case, and at this time, it would appear from the looking at the totality of her records there is no new information supplied that would shed insight into the mechanism of injury or some alternative diagnosis.

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PATIENT: REEVES, SUSAN LOUISE
DATE: DECEMBER 20, 2001
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2) Does the patient need further diagnostic work-up? In response to this question, I would say no. I am now the fourth neurologist that she has seen. She has already seen Dr. Frederick Boulware, Dr. Leslie Gaelen, Dr. George Petroff, and myself. In addition to this, she has seen two rehab medicine specialists, Dr. David Toeller and Dr. Oliveri. She has seen three ENT specialists, including Dr. Joel Lubritz, Dr. Barton Becker, and Dr. Glorig, who is a specialist at the House Ear Insititute. In addition, Dr. Glorig in his notes relates that the patient also saw Dr. Derald Brackman. Dr. Brackman is a world-renowned ENT specialist. It would appear that the diagnostic assessment based on their reviews has been adequate. In addition to these specific specialists, she has seen a psychiatraist, Dr. Weisner, a psychologist, Dr. Mortillaro, several physical therapists including a therapist at Gary Amick, a specialist at NovaCare. She has undergone vestibular rehab and had what appears to be adequate testing.
3) In response to the question, are there other factors involved which could contribute to the current complaints? As best I can say, I am in agreement with other examiners that she has a somatoform disorder or a psychological basis of her symptoms. There is nothing really new that I can see at this time in this individual's case.
4) With respect to her work status, it does not appear that she can return to work duty. She has not worked in some time and there is nothing that has changed from the time of her original disability impairment exams that have been done in the past. I certainly see no improvement from how she was when her case was closed and her PPD rating was performed.
5) As far as the question about what treatment plan is available for this individual, I have to say I am at a loss to offer one. I cannot see that there has been a marked worsening or change in this individual's complaints as she has grown older. She has rather static subjective complaints which have not measurably worsened from their initial onset. I do not see the rationale for any further treatment. It is not clear to me that she responded to anything that was done in the past and there is really no rationale to justify further therapy, nor do I have the expectation that she will improve, given the fact that she did not improve the first time despite rather extensive care. At this time, I would say there is little that I can suggest to help this woman and there is little that I can hope to find by doing further tests as prior work-ups have been unyielding and prior treatments have not been particularly successful. There

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PATIENT: REEVES, SUSAN LOUISE
DATE: DECEMBER 20, 2001
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certainly has not been any great advance in either treating or evaluating individuals such as this patient from the time of her original injury to now and there does not appear to be a medical treatment that will reverse or correct her situation.

Should you have further questions, please call me.

The opinions rendered in this case are the opinions of this evaluator. This evaluation has been conducted on the basis of the medical examination and documentation as provided, with the assumption that the material is true and correct. If more information becomes available at a later date, an additional service/report/reconsideration may be requested. Such information may or may not change the opinions rendered in this evaluation. This opinion is based on a clinical assessment, examination, and documentation. This opinion does not constitute per se a recommendation for specific claims or administrative functions to be made or enforced.

Sincerely,

Steven A. Glyman, M.D.
SAG/:fb

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Gallagher Basset Services, Inc.

December 27, 2001

Susan Reeves
4724 E Washington
Las Vegas NV 89110

RE: Employer: Bally's Las Vegas
Claim #: 001504-001083-WC-01
D/Injury: 09/25/88
Body Part(s): Head/Neck/Shoulders

NOTICE OF INTENTION TO CLOSE CLAIM
Pursuant to NRS 616C.235/NAC 616C.112(1)

Dear Ms. Reeves:

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Based on Dr. Glyman's court remanded IME, you have been discharged from care. We do not show that you have sought further medical treatment. Therefore, we are closing your claim for further medical treatment at this time.

Nevada Revised Statutes (NRS) 616C.390 subsection 1 and 4 define your rights to reopen your claim. It states as follows: 1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if: (a) A change of circumstances warrants an increased or rearrangement of compensation during the life of the claimant; (b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and (c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstance which would warrant an increased or rearrangement of compensation. 4. Except as otherwise provided in subsection 5, if an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim only if; (a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and (b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made.

NRS 616C.235 state as follows: 1. Except as otherwise provided in subsection 2,3,and 4; (a) When the insurer determines that a claim should be closed before all benefits to which the claimant maybe entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant. The notice must include a statement that if the claimant does not agree with the determination, he has the right to request a resolution of the dispute pursuant to NRS616C.305 and 616C.315 to 616C.385, inclusive. A suitable form for requesting a

PO Box 70687
Las Vegas NV 89170
Phone: 702-892-0083

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resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection. (b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim. (c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing office may be served by first class mail. 2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less that $300, the insurer may close the claim at any time after he sends, by first class mail addressed to the last known address of the claimant, written notice that: (a) The claim is being closed pursuant to this subsection; (b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS616C.305 and 616C.315 to 616C.385, inclusive; and (c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened. 3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than $300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be: (a) Sent by first-class mail addressed to the last known address of the claimant; and (b) a document that is separate from any other document or form that is used by the insurer. 4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsection 2 and 3.

If you or your employer disagrees with this determination, you may request a Hearing before the Hearing Officer. If you wish to appeal, complete the enclosed Request for Hearing form and attach it to a copy of this letter. The completed request for hearing MUST BE RECEIVED by the Hearing Division within seventy (70) days of the date of this letter. If you do not appeal within seventy (70) days, you lose your right to appeal.

If you have any questions or if I can be of any further assistance to you regarding your industrial injury claim, please do not hesitate to contact me at 702/ 892-0083 or toll free at 877/263-8748.

Sincerely,

Melody Francis

Claims Examiner

Cc: Douglas Rowan, Esq.
Bally's Las Vegas
Claim File

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NEVADA DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested Industrial Insurance Claim of:	Hearing Number: LHS2002-C-4641-NG Claim Number: 001504-001083 Employer:
SUSAN L REEVES 4724 E WASHINGTON AVE LAS VEGAS NV 89110	PAULA KITCHELL BALLY'S 3655 LAS VEGAS BLVD S LAS VEGAS NV 89109

_____/

The Claimant's request for hearing was filed on FEBRUARY 15, 2002 and a hearing was scheduled for THURSDAY, MARCH 14, 2002. The hearing was continued, reset, and heard on TUESDAY, APRIL 9, 2002, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present. The Claimant was represented by Douglas M. Rowan, Esquire. The Employer was not present. The Employer was represented by Lee Davis, Esquire for Santoro, Driggs, et al.

ISSUE

The Claimant appealed the determination of GALLAGHER BASS SERVICES, INC. dated December 27, 2001.

The issue before the Hearing Officer is CLAIM CLOSURE.

DECISION AND ORDER

After careful review and consideration of the totality of the evidence, Dr. Glyman's opinion that there is no further treatment to offer the claimant, is deemed proper and supported by the claim file. Accordingly, the insurer's determination is hereby **AFFIRMED.**

> **NAC 616C.112** (NAC 616.555) provides when the Insurer determines the Claimant has received all benefits known to be due, the Insurer shall close its file concerning the Employee and provide a

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claim closure notice, including appeal rights and claim reopening rights.

IT IS SO ORDERED this 19th day of April, 2002.

NORA GARCIA
HEARING OFFICER

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days after the date of the decision by the Hearing Officer.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 555 E. Washington Ave., #3300, Las Vegas, Nevada, to the following:

SUSAN L REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS M ROWAN ESQ
6900 WESTCLIFF DR 800
LAS VEGAS NV 89128

PAULA KITCHELL
BALLY'S
3655 LAS VEGAS BLVD S
LAS VEGAS NV 89109

LEE DAVIS ESQ
SANTORO DRIGGS ET AL
400 S FOURTH ST 3RD FLR
LAS VEGAS NV 89101

ATTN JULIE VACCA
GALLAGHER BASSETT SERVICES INC
P O BOX 70687
LAS VEGAS NV 89170-0687

DATED this 19th day of April, 2002.

MARY E. HOLM
EMPLOYEE OF THE STATE OF NEVADA

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Claim Note for Reeves, Susan (88H01H243724, DOL: 09/25/1988)

Note Type	Created	Last Modified

Ltr to clmt re appt w/Dr. Mortillaro.

December 11, 2003

Susan Reeves
4724 E. Washington
Las Vegas NV 89110

RE: Claim Closure Rescinded - Appointment Scheduled
CLAIM #: 88H92H243724
EMPLOYER: Bally's Las Vegas
DATE OF INJURY: 09/25/88

Dear Ms. Reeves:

Pursuant to the Appeals Officer's Decision and Order, filed December 1, 2003, the above-referenced claim, will remain open to allow for further treatment. Treatment shall include short-term individual pain and stress management counseling, biofeedback therapy, psychoeducational lectures, and appropriate physical therapy.

We have scheduled an appointment for you with Dr. Louis Mortillaro for January 5, 2003, at 9:30 A.M. Dr. Mortillaro is located at 501 South Rancho Drive, Suite F-37, Las Vegas NV 89106 (702-388-9403. Please plan on attending this appointment.

Sincerely,

Beverly Mandery
Claims Representative, CCMSI

Cc: Bally's Las Vegas
Daniel Schwartz, Esq.
Douglas M. Rowan, Esq.
File

RESERVES 12/11/2003 by Internal Load 12/11/2003 by Internal Load

Reserves increased for meds another $7,700, legal another $3,000, and expense another $2,000. Claim cannot close per Order until further tx received.

LEGAL 01/05/2004 by Internal Load 01/05/2004 by Internal Load

Ltr from Dan Schwartz 1/2/04, re the AO reversing the HO's D&O of 2/25/02. This claim shall remain open. The appeal of the AO determination was not warranted. By our actions, we have already complied with the D&O by setting appt w/Dr. Mortillaro.

MEDICAL 01/13/2004 by Internal Load 01/13/2004 by Internal Load

We have not rec'd any report from Dr. Mortillaro. Apparently he referred clmt to Dr G. Petroff. Copy of letter to Dr. Peter Mattimoe from Dr. Petroff, dated 1/6/04, re his examination of clmt for her headaches. Clmt has headaches infrequently, about once a month or every 6 weeks. Clmt takes Inderal daily. She still has dizziness, but this is much better over time and with intervention by vestibular therapy. She continues to have tinnitus, this is not terribly bothersome at this point. Clmt had flare of her neck and back pain, but this responded to therapy. Clmt treats w/Dr. Mortillaro, psychologist and her pain manager respectively. PT will be up to 2xweek. Impression of Dr. Petroff, Ilcadache, vestibulopathy, cerv strain, cerv degenerative change, lumbosacral strain. He recommends MRI of the C-spine and C-spine x-ray to address current flare and to track degenerative change of superiposed trauma in neck region; refill of Inderal and Elavil and to f/u in 6 months. Auth request rec'd from Dr. Petroff for the MRI and x-ray.

LEGAL 01/13/2004 by Internal Load 01/13/2004 by Internal Load

T/c into Dan Schwartz to address the auth request from Dr. Petroff and the letter.

MEDICAL 01/13/2004 by Internal Load 01/13/2004 by Internal Load

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Note Type	Created	Last Modified

T/c to Dr. Mortillaro's office, spoke to manager. Asked her what Dr. Mortillaro was doing, if he referred clmt to any of these physicians. Was told no, that the counseling, etc. was being done in their office. Only PT 3xweek x 7 weeks was recommended by Dr. Mortillaro. Was told that Dr. Petroff and Dr. Mattimoe were her treating physicians prior to this Order, and that Dr. Mattimoe was clm't personal health physician. Dr. Petroff is asking for auth for MRI of C-spine and C-spine x-ray. I have t/m into Dan Schwartz to discuss. Was told that Dr. Mortillaro's dictation from the 1/5 appt was put in mail today.

LEGAL 01/14/2004 by Internal Load 01/14/2004 by Internal Load

T/m from Dan Schwartz, left cell #: 743-5556, but no answer there. So, l/m at his office to call me.

LEGAL 01/14/2004 by Internal Load 01/14/2004 by Internal Load

T/c back from Dan Schwartz, he states to go ahead and deny the requests from Dr. Petroff. Letter addressed to clmt, copied to Dr. Petroff, and faxed to Dr. Petroff:

January 14, 2004

Susan Reeves
4724 E. Washington
Las Vegas NV 89110

DATE OF INJURY: 09/25/88
EMPLOYER: Bally's Las Vegas
CLAIM #: 88H92H243724

Dear Ms. Reeves:

I am in receipt of Dr. George Petroff's recent medical dictation of January 6, 2004, and subsequent request for an MRI of C-spine and C-spine x-ray. Pursuant to a Decision and Order of the Appeals Officer, dated 12/01/03, we have been instructed to provide only short-term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures, and appropriate therapy. Dr. Louis Mortillaro has been authorized to provide these treatments. Therefore, we are denying Dr. Petroff's request for continued treatment, MRI of C-spine and C-spine x-ray.

If you have any questions regarding this matter, please do not hesitate to contact this office. If you do not agree with this determination, you have a right to request a hearing regarding this matter. If this is your intention, please complete the attached Request for Hearing form and return it, along with a copy of this letter, to the Hearings Division at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

Beverly Mandery,
Claims Representative, CCMSI

Encl. D-12a

Cc: Bally's Las Vegas
Daniel L. Schwartz, Esq.
Douglas M. Rowan, Esq.
File

CLAIMANT 01/15/2004 by Internal Load 01/15/2004 by Internal Load

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PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
April 30 2013 1:27 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

SUSAN REEVES,
Appellant(s),
vs.

DIVISION OF INDUSTRIAL RELATIONS; NEVADA DEPARTMENT OF ADMINISTRATION,
Respondent(s),

Case No: A644791
SC Case No: 62468

RECORD ON APPEAL
VOLUME
1

ATTORNEY FOR APPELLANT
SUSAN REEVES, PROPER PERSON
4724 E. WASHINGTON AVE.
LAS VEGAS, NV 89110

ATTORNEY FOR RESPONDENT
JOHN F. WILES, ESQ.
1301 N. GREEN VALLEY PKWY., SUITE 200
HENDERSON, NV 89074

A644791 SUSAN REEVES vs. DIVISION OF INDUSTRIAL RELATIONS; DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, a State Agency

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A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

I N D E X

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5	01/17/2013	CASE APPEAL STATEMENT	1187 - 1188
5	10/01/2012	CERTIFICATE OF MAILING	1172 - 1176
5	04/30/2013	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
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A-11-644791-J Susan Reeves, Plaintiff(s)
vs.
Division Of Industrial Relations, Defendant(s)

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
5	08/31/2011	RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT (CONTINUATION)	961 - 1113
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Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588
Petitioner in Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARING DIVISION, a State Agency, Respondents	CASE NO. A-11-644791-J DEPT. NO. IV

PETITION FOR JUDICIAL REVIEW

Petitioner, Susan Reeves, hereby requests the Eight Judicial Court of the State of Nevada to review the Decision and Order of an Appeals Officer Shirley D. Lindsey, Esq., entered on June 15, 2011, in the Officially Designated mater of a contested industrial insurance claim of: Susan Reeves. Claim No. 88H92H243724 and Appeals Nos. 78016-SL and 80334-SL. A copy of the Decision and Order is attached as exhibit "A".

Reeves avers that substantial rights of the Petitioner have been prejudiced because the Decision of the Appeals Officer is in violation of statutory provisions, made upon unlawful

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A-11-644791-J
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Petition for Judicial Review
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procedure, affected by a clear error of law and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, thereby an abuse of discretion. Pursuant to NRS 616C. 370, in conducting judicial review of the Appeals Officer's Decision, the court is to determine whether substantial evidence exists in the records to support the agency's ruling. State Industrial Insurance System v Christiansen, 106 Nev. 85, 88, 787 P.2d 408 (1990). " An agency ruling without substantial evidentiary support is arbitrary or capricious and therefore unsustainable." Id; See also State Industrial Insurance System v Swinney, 103 Nev. 17,20, 731 P.2d 359 (1987).

Dated this 12 day of July, 2011.

Respectfully Submitted,

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 12 day of JULY, 2011, I deposited a true and correct copy of the above and foregoing PETITION FOR JUDICIAL REVIEW in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

Shirley D. Lindsey
220 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102
Appeals Officer

Jennifer J. Leonescu
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
DIR Division Counsel

Dalton L. Hooks, Jr.
4570 South Eastern Ave., Suite 28
Las Vegas, Nevada 89119
Attorney for the Employer



Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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NOIP

John F. Wiles, Esq.
Nevada Bar No.: 003844
Jennifer J. Leonescu
Nevada Bar No.: 006036
State of Nevada
Department of Business and Industry
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074-6497
Phone: (702) 486-9070
Fax: (702) 990-0361
jwiles@business.nv.gov
Attorney for Respondent

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

DISTRICT COURT
CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARING DIVISION, a State Agency, Respondents.	Case No.: A-11-644791-J Dept No.: IV

RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' NOTICE AND STATEMENT OF INTENT TO PARTICIPATE – NRS 233B.130(3)

By way of this document and service thereof to all other parties named above and in accordance with §233B.130(3) of the Nevada Revised Statutes, the Respondent, Division of Industrial Relations, hereby gives notice of and proclaims its intent to participate in the Petition

///

///

for Judicial Review filed by the above captioned Petitioner on July 12, 2011.

Dated this 20 day of July, 2011 and respectfully submitted by:

Jennifer J. Leonescu, Esq.,
Division Counsel

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: Respondent Division of Industrial Relations' Notice and Statement of Intent to Participate – A644791 NRS 233B.130(3)

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: Shirley D. Lindsey, Esq. State of Nevada Department of Administration Appeals Division 2200 S. Rancho Dr. #220 Las Vegas, NV 89102	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** X **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:

Person(s) Served: Dalton L. Hooks, Jr., Esq. 4570 S. Eastern Ave. #28 Las Vegas, NV 89119	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____
Person(s) Served: Bally's Attn: Dennis Lindenbach 3645 Las Vegas Blvd S. Las Vegas, NV 89109	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____
Person(s) Served: CCMSI Attn: Bridget Wyszomirski P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

DATED this 21st day of July, 2011.

State of Nevada Employee

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CRTF
APPEALS OFFICE
2200 S. Rancho Drive Suite 220
Las Vegas NV 89102
(702) 486-2527

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, a State Agency, Respondents.	Case No.: A644791 Dept. No.: IV Appeal No.: 88265-SL (78016-SL; 80334-SL)

CERTIFICATION OF TRANSMITTAL

I, SHIRLEY D LINDSEY, Esq., Appeals Officer under the Nevada Industrial Insurance Act of the State of Nevada, do hereby certify that the hereto attached Transcript, relating to that certain cause heretofore pending before me as such Appeals Officer, and that the annexed and attached papers are all the process and other papers and exhibits relating to the above-captioned action filed with me.

Dated this 30th day of August, 2011.

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing was duly mailed, postage prepaid to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI - STATE DIR
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 30th day of August, 2011

Lisa Schiller, Administrative Assistant I
Employee of the State of Nevada

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CLERK OF THE COURT

ROA
APPEALS OFFICE
2200 S. Rancho Drive Suite 220
Las Vegas NV 89102
(702) 486-2527

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES, Petitioner, vs. DIVISION OF INDUSTRIAL RELATIONS and THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, a State Agency, Respondents.	Case No.: A644791 Dept. No.: IV Appeal No.: 88265-SL (78016-SL; 80334-SL)

RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT

(Chapter 233B of NRS)

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

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3645 LAS VEGAS BLVD S
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CCMSI
BRIDGET WYSZOMIRSKI - STATE DIR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dc002
002

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

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APPEAL NO: **88265-SL** (78016-SL; 80334-SL)

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TRANSCRIPT OF PROCEEDING HELD ON APRIL 13, 2011 FILED AUGUST 10, 2011	003	00003 – 00073
ORDER DENYING PETITION FOR REHEARING FILED JUNE 29, 2011	004	00074 – 00075
PETITION FOR REHEARING FILED JUNE 24, 2011	005	00076 – 00081
TPA'S JOINDER OF DIR'S REPLY TO CLAIMANT'S OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT FILED JUNE 17, 2011	006	00082 – 00086
MOTION TO STRIKE OR IN THE ALTERNATIVE, OPPOSITION TO CLAIMANT'S MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS FILED JUNE 17, 2011	007	00087 – 00097
ORDER GRANTING SUMMARY JUDGENT FILED JUNE 15, 2011	008	00098 – 00100
OPPOSITION TO CLAIMANT'S MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND TO EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS FILED JANUARY 8, 2011	009	00101 – 00105
REPLY TO CLAIMANT'S OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMERY JUDGMENT FILED JUNE 8, 2011	010	00106 – 00111

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APPEAL NO: **88265-SL** (78016-SL; 80334-SL)

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MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND TO EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS FILED MAY 27, 2011	012	00117 – 00130
CORRESPONDENCE FROM JENNIFER LEONESCU, ESQ TO APPEALS OFFICER LINDSEY FILED MAY 16, 2011	013	00131
INSURER'S EXHIBIT **(MARKED INSURER'S EXHIBIT D)** FAXED APRIL 13, 2011	014	00132 – 00134
ORDER DENYING PETITION FOR JUDICIAL REVIEW **(MARKED INSURER'S EXHIBIT C)** OFFERED INTO EVIDENCE ON APRIL 13, 2011	015	00135 – 00144
NOTICE OF RESETTING FILED APRIL 19, 2011	016	00145 – 00146
TPA'S JOINDER OF DIR'S MOTION FOR SUMMERY JUDGMENT FILED MAY 31, 2011	017	00147 – 00150
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TPA'S PRODUCTION OF RELATED DOCUMENTS **(MARKED INSURER'S EXHIBIT B)** FILED DECEMBER 6, 2010	020	00161 – 00207

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CLAIMANT'S FIRST EXHIBIT **(MARKED CLAIMANT'S EXHIBIT 2)** FILED DECEMBER 3, 2010	022	00277 – 00313
NOTICE OF APPEARANCE FILED NOVEMBER 12, 2010	023	00314 – 00315
ORDER FOR APPOINTMENT OF NEVADA ATTORNEY FOR INJURED WORKERS FILED OCTOBER 27, 2010	024	00316 – 00317
NOTICE OF APPEAL AND ORDER TO APPEAR FILED OCTOBER 27, 2010	025	00318 – 00320
REQUEST FOR HEARING BEFORE THE APPEALS OFFICER FILED OCTOBER 18, 2010	026	00321
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REPRESENTATION AGREEMENT DATED SEPTEMBER 21, 2010	030	00328
TPA'S PRODUCTION OF RELATED DOCUMENTS **(MARKED INSURER'S EXHIBIT A)** FILED SEPTEMBER 14, 2010	031	00329 – 00410
TPA'S PREHEARING STATEMENT FILED SEPTEMBER 14, 2010	032	00411 – 00418
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CLAIMANT'S EXHIBIT **(MARKED CLAIMANT'S EXHIBIT 1)** FILED SEPTEMBER 7, 2010	036	00502 – 00907
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CORRESPONDENCE **(DETERMINATION LETTER)** FROM CHARLES VERRE TO SUSAN REEVES DATED JULY 22, 2010	041	01065 – 01069
CORRESPONDENCE FROM SUSAN REEVES TO CHUCK VERRE DATED JUNE 1, 2010	042	01070 – 01071
CORRESPONDENCE FROM SUSAN REEVES TO SUSAN SAYAGH DATED APRIL 29, 2010	043	01072 – 01073
CORRESPONDENCE FROM SUSAN SAYEGH TO SUSAN REEVES DATED APRIL 26, 2010	044	01074 – 01076
CORRESPONDENCE FROM SUSAN REEVES TO CHRISTOPHER BROWN DATED APRIL 18, 2010	045	01077 – 01078
TRANSCRIPT OF PROCEEDINGS HELD ON JANUARY 5, 2006 **(MARKED CLAIMANT'S EXHIBIT 3)** FILED MAY 9, 2006	046	01079 - 01098
CERTIFICATION OF TRANSMITTAL	047	01099 - 01100

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BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION
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In the Matter of the Contested Industrial Insurance Claim of:	Claim No:
	Appeal No: 78016-SL 80334-SL
SUSAN REEVES, Claimant.	

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE SHIRLEY D. LINDSEY, ESQ.

APPEALS OFFICER

Wednesday, April 13, 2011

9:23 a.m.

2200 South Rancho Drive, Suite 220

Las Vegas, Nevada 89102

Ordered by: State of Nevada
Department of Administration
2200 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102

Loc003
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1

A P P E A R A N C E S

On behalf of the Claimant:

Teresa A. Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, Nevada 89102

On behalf of Business & Industry:

Jennifer Leonescu, Esq.
John F. Wiles, Esq.
Business & Industry
1301 North Green Valley Parkway, #200
Henderson, Nevada 89014

On behalf of the Insurer:

Dalton Hooks, Jr., Esq.
FS & K, LLP
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119

Also present: Jeff Reeves

004

I N D E X

WITNESSES

	DIRECT	CROSS	REDIR	RECR	FU REDIR
None					

EXHIBITS

EXHIBITS	IDENTIFIED	IN EVIDENCE
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Insurer's A	20	
Insurer's B	21	
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Claimant's 2	25	
Claimant's 3	26	30

005

P R O C E E D I N G S

APPEALS OFFICER LINDSEY: Okay. Let's see. Okay.

MS. LEONESCU: My chair's on wheels. Why can't I wheel?

APPEALS OFFICER LINDSEY: Well, you can trade chairs.

MS. LEONESCU: No, it's okay.

MR. HOOKS: (Unintelligible).

MS. LEONESCU: Oh; it's okay.

MR. HOOKS: (Unintelligible).

MS. LEONESCU: Yeah. It's actually the right height.

APPEALS OFFICER LINDSEY: We were talking about the exhibits. And let me go through this. Maybe I do have a second -- yes, I do. Is that any better, Ms. Reeves?

MS. REEVES: No, but I don't know -- yeah, it's not (unintelligible).

APPEALS OFFICER LINDSEY: Right.

MR. HOOKS: Well, I can check the microphone, Ms. Reeves. Can you hear me? Hello? Test. Can you hear me?

MS. REEVES: No.

006

MS. HORVATH: Can you hear -- can you hear me speaking on the microphone here?

MS. REEVES: Yeah.

MS. HORVATH: I'm testing. Still testing here, trying to determine whether this -- headphones amplify sufficiently for the claimant to hear.

MS. REEVES: That's going down. (Unintelligible).

APPEALS OFFICER LINDSEY: It's down? Okay. I'm trying to figure out if this --

MR. HOOKS: Yeah. It has a volume. I have that.

APPEALS OFFICER LINDSEY: I think it's -- you can play with that. I don't know how it works. These --

MS. LEONESCU: Ms. Reeves, can you hear me from over here?

APPEALS OFFICER LINDSEY: And is this Jeff Reeves?

MR. REEVES: Yes.

APPEALS OFFICER LINDSEY: Okay. Now, the request for an interpreter, you know, indicates that she needs to keep on her hat and her dark glasses, and she needs her husband to help her understand the

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proceedings. And it says, "As even with headphones, she has a hard time hearing and processing exactly what is being said." I don't care how you do this, you know. You can use the mic -- these. That's what we have. Or you can sit back by your husband and he can try to keep you advised as to what's going on. It's your choice. Okay?

MS. REEVES: I (unintelligible) be better for him to talk to me. He's used to this after 22 years.

APPEALS OFFICER LINDSEY: Okay.

MS. REEVES: I can't hear. (Unintelligible).

APPEALS OFFICER LINDSEY: Now, the thing that we're going to have to work with there is to -- because these proceedings are recorded. Only one person can be talking at a time. And so we're going to have to see how your conversation -- if it's picked up for the recording.

MR. REEVES: Okay. It's mostly a matter (unintelligible). Because, see, she hears some stuff and some she doesn't. So it's not like I'm going to repeat everything that everybody says.

MS. REEVES: Just (unintelligible). It's -- with the ringing and the humming and stuff, it

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takes over that sound so I can't hear.

APPEALS OFFICER LINDSEY: Okay.

MR. REEVES: Well, and a lot of people when they're talking, you'll likely hear her saying something at the end of a sentence. So they tend to go down in volume. And then she doesn't hear the end of you. So I'd basically be telling her what they said.

APPEALS OFFICER LINDSEY: Okay.

MR. REEVES: Okay?

APPEALS OFFICER LINDSEY: Well, we'll start out and see how it works.

MR. REEVES: Okay.

APPEALS OFFICER LINDSEY: Okay. We're still on the record. I -- and Appeal Number 80334 is claimant's appeal from an October 1, 2010, determination of the DIR. And it looks like -- and I'm not sure what the issue is in this one. Ms. Horvath, can you enlighten me?

MS. HORVATH: Your Honor, yes. At this point, the -- there are two cases consolidated, Number --

APPEALS OFFICER LINDSEY: 78016.

MS. HORVATH: -- 78016, which is a determination -- that feedback is --

APPEALS OFFICER LINDSEY: Well, the --

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let me see if I can turn the volume down now. Maybe that will help. Because the speakers are off.

MR. HOOKS: I think it's coming through the headphones.

APPEALS OFFICER LINDSEY: Oh, okay. Let me unplug the headphone. Okay. Try it now.

MS. HORVATH: Claimant will correct me if I'm wrong. 78016 is the dispute of the claim closure.

MR. REEVES: Do I get to talk?

MS. HORVATH: No. Just --

APPEALS OFFICER LINDSEY: It looks like -- and then we'll go around the room and see if we can all get on the same page. It looks like that -- well, reading from the October 1, 2010 determination, which I believe was the determination in 80334, that says you did not agree with the way CCMSI closed your workers' compensation. You appealed their determinations. And the Department of Administration affirmed claim closure. This matter is now in litigation in Nevada District Court. Is this the order denying petition for judicial review?

MR. HOOKS: Yes, Your Honor.

APPEALS OFFICER LINDSEY: Well, I'm trying to figure out if there's anything remaining in

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80334, the issue of claim closure. It has -- see, the time for filing a notice of appeal to the Nevada Supreme Court has run. Has anyone appealed this determination to the Nevada Supreme Court?

MR. HOOKS: I'm not --

MS. HORVATH: Yes, Your Honor.

MR. HOOKS: Okay. I'm not aware.

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: That was handled by a different firm.

MR. HOOKS: Still is being handled by.

MS. LEONESCU: (Unintelligible).

APPEALS OFFICER LINDSEY: Okay. Because I can't do anything with the issue of claim closure at this time because it's in the hand -- the District Court has affirmed claim closure and it's pending in front of the Supreme. So I don't have jurisdiction to entertain this issue at this time, so --

MS. HORVATH: And 78016?

APPEALS OFFICER LINDSEY: Well, no. That -- I believe that's the issue in 80334, which is the claimant's appeal from the October 1, 2010 determination.

MS. LEONESCU: Well, I think there's issues with that. That was not really a termination.

011

It was a letter advising -- there were no appeal rights attached to that letter. It was a letter of explanation from Ms. Reeves' continued letters of complaint or requests for assistance, et cetera, et cetera and so this was an attempt to explain how these issues were already discussed with Ms. Reeves. And I think that the problem perhaps is that there's a misunderstanding of the jurisdiction of DIR versus the hearings and appeals process, that DIR does not have the power to investigate claim closures. That goes through the hearings and appeals process. And I think that that's what the problem was.

So this letter was an explanation. But there were no appeal rights attached to this letter because all the issues were previously discussed in the previous determinations and letters.

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: So that's -- and that -- and the claim closure was affirmed. So -- and that's the proper procedure, was to go through the contested claims process, not DIR.

MS. HORVATH: Well, that's oversimplifying, Your Honor. The issue actually is that every time a claim closure was issued, beginning in 1999 by CCMSI, the claim closure was contested and

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appealed in one case or another. It happened at least three times, perhaps four, the claim closure issue. On appeal, it was either remanded or reversed. And yet the claim was treated as though it were closed. So although the issue of claim closure was being appealed in some -- in one case, took almost three years to finish the appeal.

Once it was reversed or remanded, there was never any activity taken on the case. And so that is how we come to say that claim closure is being contested here. It's actually not.

MR. HOOKS: That's just plainly a misrepresentation of facts in every regard. Firstly, claim closure was not remanded --

APPEALS OFFICER LINDSEY: I'm sorry. Ms. Horvath, were you done?

MR. HOOKS: Oh, I'm sorry.

MS. HORVATH: I don't remember.

APPEALS OFFICER LINDSEY: You were saying that -- you were saying that the issue of claim closure isn't about the most recent claim closure, but about --

MS. HORVATH: Right.

APPEALS OFFICER LINDSEY: -- CCMSI's --

MS. HORVATH: Failure to pay over

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benefits once the claim closure issue was decided.

MR. HOOKS: Right. But --

APPEALS OFFICER LINDSEY: Okay. And pay over --

MS. HORVATH: So it was --

APPEALS OFFICER LINDSEY: -- benefits, we're talking about TTD?

MS. HORVATH: Which -- we were talking -- yes.

APPEALS OFFICER LINDSEY: And TTD --

MS. HORVATH: And -- well, and also -- and also medical treatment. And so we were -- the claimant was -- the complaint, which was originally about benefit penalty for failure to provide treatment and benefits.

APPEALS OFFICER LINDSEY: Okay.

MS. HORVATH: Over a series of claim closures and remands or reversals.

APPEALS OFFICER LINDSEY: Okay. I'm still thinking that I don't have jurisdiction to hear that appeal. I mean, I think that you're -- and correct me if I'm wrong. Your theory is that over a period of years, over a decade or more, Ms. Reeves has had to litigate to get medical benefits.

MS. HORVATH: And has still had none to

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date.

APPEALS OFFICER LINDSEY: And has still had none to date?

MS. HORVATH: Right, since 1999.

APPEALS OFFICER LINDSEY: And I know you understand that if the -- if a different Appeals Officer heard the issue of claim closure and determined that she had attained maximum medical stability and no further benefits were currently owed to her, and that's been affirmed by the District Court and is on appeal to the Supreme Court -- you know I'm a lonely -- lowly Court of Special Jurisdiction. I'm a legislative-created court.

MS. HORVATH: I understand, Your Honor. But there's never been a determination that she was at maximum medical improvement and could return to work.

APPEALS OFFICER LINDSEY: Okay.

MS. HORVATH: There's never been that medical determination.

APPEALS OFFICER LINDSEY: Now, let's move on to just --

MR. HOOKS: Your Honor, may I be heard on --

APPEALS OFFICER LINDSEY: Well, you can be heard. But what I'm planning on doing is going

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ahead and taking the testimony and conducting the hearing today and then entertaining motions.

MR. HOOKS: Okay.

APPEALS OFFICER LINDSEY: Because I'm not --

MR. HOOKS: I do understand that, Your Honor.

APPEALS OFFICER LINDSEY: And -- but you can be heard now if you so desire.

MR. HOOKS: I just want to clarify a couple of things. Firstly, the issue with regard to -- Your Honor is right. In the 80334-SL is claim closure. The DIR complaint in that matter does not touch or concern the arguments that counsel is making with respect to her client's position that the claim was closed and she wasn't given benefits that she was entitled to. That's the TTD claim/medical treatment, which is 78016.

So with respect to any argument that counsel is making -- which again, I believe is factually incorrect and once we mark the evidence, we can go through that -- in terms of it being remanded and reversed. That just doesn't comport with the facts.

But with respect to the argument about

016

TTD and benefits not being provided, that is 78016. 80334 is simply claim closure, and I believe perhaps a complaint about not being provided a copy of her file. You have two evidence packets provided by the claimant. And the pre-hearing statement that goes with 80334 is -- well, we haven't marked any evidence yet. But I have that initially was prepared by the claimant and her spouse and then was submitted, I believe, by Ms. Horvath with a cover sheet.

MS. HORVATH: The issue was that the -- DIR finding that there was no violation of NRS 616D.330.

MR. HOOKS: Well, which is -- if I may finish -- which is the issue. To the extent that we clarify which is the right appeal, the subject matter for the Court is whether DIR's determination, as counsel stated, was proper in not finding a benefit penalty. Counsel and the claimant want to reargue the facts of the case. The facts of the case in both instances have been litigated to the nines. The first, as Your Honor rightfully notes, is apparently now pending at the Supreme Court pursuant to the claimant's appeal of her denied petition for judicial review.

The other has come to final order at the appeals office regarding the TTD benefits. So the

D17

issue -- certainly the claimant will want to testify about the 130-some odd pages where the briefing that she provided outlines her grievances as well as the evidence that she's provided to you. None of those, however, are pertinent to the question as to whether DIR was correct or incorrect in finding the benefit penalty under the facts. This isn't the proper forum to re-litigate --

APPEALS OFFICER LINDSEY: Okay. What --

MR. HOOKS: -- the medical evidence.

APPEALS OFFICER LINDSEY: What I see is that TTD -- payment of TTD pursuant to a December 1, 2003 Appeals Officer decision is the subject matter of 78016.

MS. LEONESCU: That was the subject matter of Ms. Reeves' complaint to DIR.

APPEALS OFFICER LINDSEY: Right. And so --

MS. HORVATH: And so we would like at this time to renew our objection to the consolidation of these two cases, because neither one has anything to do with the other. One of them is payment of TTD benefits. And the other one is the failure of DIR to find a violation of 616D.330.

APPEALS OFFICER LINDSEY: Okay. Let me

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ask you. If I did deconsolidate them --

MS. HORVATH: These were consolidated over our objection in December.

APPEALS OFFICER LINDSEY: Okay. My concern is the evidence. You know, is the evidence -- do we need to duplicate the evidence for the two or not?

MS. LEONESCU: We hear benefit penalty cases in the same matter all the time, multiple benefit penalties in the same cases all the time.

APPEALS OFFICER LINDSEY: Right.

MS. LEONESCU: If this case is -- I mean, I would move to dismiss the latter complaint because it wasn't determination.

APPEALS OFFICER LINDSEY: I don't want to make that ruling at this time.

MS. LEONESCU: Right. I understand. But that's what (unintelligible).

APPEALS OFFICER LINDSEY: So I --

MR. HOOKS: And with respect to the TTD, Your Honor, again, the issue -- to the extent that you have anything before you, we have -- it's not one case regarding TTD and one case regarding benefit penalties. You have two denied benefit penalties. That's the issue. We're not here on TTD under the Workers'

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Compensation Act. We're here under whether there was a violation of the 616D.120 on both cases.

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: Right. DIR cannot provide Ms. Reeves her benefits.

APPEALS OFFICER LINDSEY: That's correct.

MS. LEONESCU: That is not the jurisdiction of DIR. And I think that's where there's a fundamental misunderstanding about the roles of the two agencies here.

APPEALS OFFICER LINDSEY: Okay. I have received two exhibits from the DIR. And I'm going to deny the motion to rescind consolidation and/or bifurcate at this time. I have received from the DIR two exhibits. The first one filed -- consisting of 71 pages, filed on December 13, 2010. Have you received that Ms. Horvath?

MS. HORVATH: Yes, Your Honor.

APPEALS OFFICER LINDSEY: And Mr. Hooks, have you received that as well?

MR. HOOKS: Yes, Your Honor. That's in 80334?

MS. LEONESCU: (Unintelligible).

APPEALS OFFICER LINDSEY: That was filed

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with Appeal Number 78016.

MR. HOOKS: I apparently did not receive that, Your Honor. But I don't have an objection to it. I've had a chance to review it. It may have been it was filed before I was on the case.

APPEALS OFFICER LINDSEY: Okay. That will be marked as Agency's Exhibit A and admitted into evidence. I've also received a 46-page packet filed by the DIR on December 6, 2010. Have you received that -- it's signed November 23. But the file stamp is December 6. Have you received that, Ms. Horvath?

MS. HORVATH: Yes, Your Honor.

APPEALS OFFICER LINDSEY: Any objections?

MS. HORVATH: No.

APPEALS OFFICER LINDSEY: Mr. Hooks?

MR. HOOKS: I do have that one. No objection, Your Honor.

APPEALS OFFICER LINDSEY: Okay. So we have the DIR's A and B. B is admitted into evidence in this proceeding.

Then from the TPA -- or CCMSI, I have -- and correct me if I'm wrong. I have -- do I have more than two exhibits?

MR. HOOKS: You now have a total of

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three with (unintelligible) court order regarding (unintelligible).

APPEALS OFFICER LINDSEY: Okay. Well, I have one dated September 14, 2010, consisting of 78 pages. Was there one before that?

MR. HOOKS: There's one after that, Your Honor.

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: And (unintelligible) 80334.

APPEALS OFFICER LINDSEY: When was the second one filed?

MR. HOOKS: I can't read it at all.

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: However, it was signed on December (unintelligible).

APPEALS OFFICER LINDSEY: Well, I'm not finding that. Is it -- does anyone have a copy of that, a clean copy of that that I could make? Oh, wait, wait, wait, wait, wait. I have it.

MS. LEONESCU: Oh, here it is.

MR. HOOKS: (Unintelligible).

APPEALS OFFICER LINDSEY: Forty-three pages filed on December 6?

MR. HOOKS: Yes, Your Honor.

APPEALS OFFICER LINDSEY: Okay. And

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then the decision, which isn't numbered, that was filed today. Ms. Horvath, have you received the TPA's production of documents consisting of 78 pages filed on September 14, 2010?

MS. HORVATH: I'm sure I have, Your Honor. I'm not going to make an objection at this time.

APPEALS OFFICER LINDSEY: It'll be marked as Insurer's Exhibit A. And have you received the insurer's December 6 filing of 43 additional pages?

MS. HORVATH: Both 43 pages?

MS. LEONESCU: No.

MR. HOOKS: One --

APPEALS OFFICER LINDSEY: The first one was 78 pages.

MS. HORVATH: Okay.

APPEALS OFFICER LINDSEY: That's A. And then I have a 43-page filing in December that I'm proposing to mark as Exhibit B and enter into evidence.

MS. HORVATH: Yes, Your Honor.

APPEALS OFFICER LINDSEY: Do you have any objection --

MS. HORVATH: No, Your Honor.

APPEALS OFFICER LINDSEY: -- to the admission of that? And then most recently I have a

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copy of the order denying petition for judicial review that was filed -- that appears to have been signed on February 8, 2011. And I -- this copy isn't file stamped. But I know -- is that the file stamp at the bottom, that 01/19/11, PO-242?

MR. HOOKS: I --

APPEALS OFFICER LINDSEY: Oh, that's probably when it was received --

MR. HOOKS: Right.

MS. LEONESCU: By the department.

APPEALS OFFICER LINDSEY: -- by the department.

MS. LEONESCU: That's usually how they stamp it. But that's (unintelligible). Yeah. It was before the date of the signature.

APPEALS OFFICER LINDSEY: And, Ms. Horvath, you have stated that the claimant's filed a notice of appeal?

MS. HORVATH: That's right.

APPEALS OFFICER LINDSEY: So you have no objection to the admission of this document?

MS. HORVATH: No objection.

APPEALS OFFICER LINDSEY: Now, Ms. Horvath, I have found -- okay -- we're -- claimant's first exhibit filed on December 2, 2010; is that

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correct?

MS. HORVATH: Yes.

APPEALS OFFICER LINDSEY: Mr. Hooks, have you received that?

MR. HOOKS: December 2, 2010? Yes, Your Honor, in 80334?

APPEALS OFFICER LINDSEY: Yes. But before we go ahead and mark that, I'm looking at -- is -- I'm looking at a document that is quite lengthy, and it's entitled "Before the Appeals Officer, Statement of the Issues." Is this offered as evidence, or is this the hearing memorandum? Because I -- what I see attached to it appears to be --

MS. HORVATH: It's a hearing memorandum prepared by the claimant and her husband with exhibits attached.

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: It's 143 pages of briefing and then--

APPEALS OFFICER LINDSEY: And then the exhibits are attached?

MS. HORVATH: Yes.

APPEALS OFFICER LINDSEY: Exhibit A, B, and C?

MS. HORVATH: Yes, Your Honor.

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APPEALS OFFICER LINDSEY: Okay. And that was filed on September 7, 2010. Is the claimant offering this as evidence at this time?

MS. HORVATH: Yes, Your Honor.

APPEALS OFFICER LINDSEY: All of it or just the exhibits?

MS. HORVATH: Just the --

APPEALS OFFICER LINDSEY: Usually I take --

MS. HORVATH: Just the exhibits attached thereto.

APPEALS OFFICER LINDSEY: So Claimant's 1 is approximately 360 -- I'm trying to get to that last page -- 365 pages filed on September 7. Have you received that, Mr. Hooks?

MR. HOOKS: Yes, Your Honor. And you're beginning with page -- with Bates-stamped 1, dated at the top 07/27 (unintelligible)?

APPEALS OFFICER LINDSEY: Yes. And mine -- I have -- they're divided into three sections. But they're Bates-stamped 1 through pages 360 -- did I say 65?

MR. HOOKS: Yes, Your Honor. I have it. I believe that a lot of it isn't relevant. But in the interest of time, I'll waive an objection.

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APPEALS OFFICER LINDSEY: And Ms. Leonescu?

MS. LEONESCU: Yeah, I have the same opinion that it's mostly irrelevant.

APPEALS OFFICER LINDSEY: Then that will be marked as Claimant's Exhibit 1 and admitted into evidence.

MS. LEONESCU: And that's without the briefing?

APPEALS OFFICER LINDSEY: The briefing will be part of the record. But it won't be part of the evidence.

MS. LEONESCU: Thank you.

APPEALS OFFICER LINDSEY: And then I have the December 3, 2010, 35-page exhibit. Have you received that Ms. Leonescu?

MS. LEONESCU: I have no objection.

APPEALS OFFICER LINDSEY: Mr. Hooks?

MR. HOOKS: Same, Your Honor. No objection.

APPEALS OFFICER LINDSEY: That'll be marked as Claimant's 2. Is there any other documentation?

MS. HORVATH: No, Your Honor.

MR. HOOKS: I have (unintelligible).

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APPEALS OFFICER LINDSEY: Okay. Ms. Horvath, do you wish to make an opening statement?

MS. HORVATH: Just briefly that claimant has asked me to restate that it is --

Your Honor, let me back up for a moment please. The claimant requests that we be permitted to admit the transcript of the proceedings of Thursday, January 5, 2006, which has not heretofore been offered. Those are proceedings before the Honorable Geraldine Schwartzer, Appeals Officer, in a hearing on January 5, 2006.

APPEALS OFFICER LINDSEY: Okay. Why don't you give it to me?

MS. HORVATH: I believe the Court can just take judicial notice of transcribed proceedings.

APPEALS OFFICER LINDSEY: And I'll go make a copy and will bring it back and discuss it.

(THEREUPON, A RECESS WAS OBSERVED)

APPEALS OFFICER LINDSEY: Here's the claimant's copy return -- to be returned to Ms. Reeves. And if you would give one to Ms. Leonescu.

MS. LEONESCU: Since I can't move.

MR. HOOKS: I shall, Your Honor.

APPEALS OFFICER LINDSEY: And there's a copy for you.

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MS. REEVES: Thank you.

APPEALS OFFICER LINDSEY: This is the transcript, as you indicated from January 5, 2006. It appears that the only testimony contained in here is the testimony of Ms. Reeves. Is Ms. Reeves going to testify today?

MS. HORVATH: Yes, if necessary.

APPEALS OFFICER LINDSEY: Well, if we enter this, will it be necessary? And it looks like this is about -- this was about timeliness of filing an appeal. I mean, it's only 26 pages, and we already have about 1,000 pages in the record. So I --

MS. HORVATH: It's true. I believe we have most anything. And she would like to make a succinct statement. The claimant would like to make a succinct statement.

APPEALS OFFICER LINDSEY: What are we doing here? Is she withdrawing that? Or are we -- I haven't asked them if they have any objections yet.

MS. HORVATH: To?

APPEALS OFFICER LINDSEY: So --

MS. HORVATH: To the transcript?

APPEALS OFFICER LINDSEY: To the transcript.

MS. HORVATH: Okay.

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APPEALS OFFICER LINDSEY: Counsel, I know you've had a few moments to review this transcript. Do you have any objections to its admission?

MR. HOOKS: I actually didn't hear whether she was withdrawing it or not. Is she?

APPEALS OFFICER LINDSEY: Is she withdrawing it?

MS. HORVATH: No.

APPEALS OFFICER LINDSEY: No.

MR. HOOKS: Okay. So in terms -- yes, you're right, Your Honor. We've had a couple of seconds to review it. It's 44 pages. I don't know what the purpose -- I'd love to hear what the purpose of its introduction is. You know, to agree to it un -- you know, sight unseen -- beyond that, at least I think we're entitled to know why it's being offered.

MS. LEONESCU: It's testimony. It's not really evidence, so --

APPEALS OFFICER LINDSEY: Well, the only evidentiary value --

MS. HORVATH: What?

APPEALS OFFICER LINDSEY: -- I have -- it has to me is it's the claimant's sworn testimony in a prior --

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MS. LEONESCU: Prior proceeding.

APPEALS OFFICER LINDSEY: -- proceeding. So it's claimant's testimony. Whatever she testified to in January of 2006, she doesn't need to -- well, it can be used for many different reasons. But that's the only evidentiary value I see of it.

MR. HOOKS: And I'm not disputing its evidentiary value. I guess I remain confused as to why we're here. I was hoping to hear that --

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: -- in an opening statement.

APPEALS OFFICER LINDSEY: Okay. Well, we may get there. So were you going to withdraw any objections you have to this?

MR. HOOKS: Can I reserve the objection until I've found out --

APPEALS OFFICER LINDSEY: How long do you want to reserve it until?

MR. HOOKS: Just until we're done. Just until we're done today.

APPEALS OFFICER LINDSEY: And, Ms. Leonescu?

MS. LEONESCU: I would say the same thing. If she's going to testify, I'd rather hear what she has to say.

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APPEALS OFFICER LINDSEY: Your objections are overruled and I will admit it as -- mark it as Claimant's Exhibit 3 and admit it into evidence.

MR. HOOKS: Thank you, Your Honor.

APPEALS OFFICER LINDSEY: Okay. Claimant cannot make any unsworn statements today. But if you would like to make an opening statement, Ms. Horvath, you may.

MS. HORVATH: Yes. And as a preliminary to that, it's the claimant's belief that the DIR, the regulatory agency, and the regulated agency, CCMSI should not be allowed to collaborate in the legal defense of the position that CCMSI has taken. They object to the dual handling together of CCMSI and DIR. This complaint has been made in these courts before. Claimant's believes that when she filed the complaints with the DIR about CCMSI's actions and handling of the claim, that those complaints would be looked unto -- into by the DIR without just accepting everything that the CCMSI presented as facts.

She reiterates that her first complaint was about a -- what a written record was and how DIR defined it. She was at a loss as to why the DIR took CCMSI's findings of fact in every aspect of the claim and made it their own without inviting her into the

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investigation. That is to say that the investigation by DIR is one-sided out purely on behalf of CCMSI. CCMSI has been allowed constant access to DIR in order to explain their position, whereas the claimant has not.

That being said, claimant today -- I don't know where we are as to bifurcating these issues or hearing these issues separately. But the original complaint was the failure to pay TTD benefits in 2002. Again in 2003, 2004, and 2006.

In -- at the end of litigation, at all of those times, claimant was in a position to where an Appeals Court or the District Court or the Supreme Court had ordered her to return to the status of an open claim with benefits. And yet no benefits were paid after that time.

The original accident in these proceedings happened in 1988. There was a claim denial in a long, drawn-out litigation that went to the Supreme Court of the United State -- Supreme Court of the State of Nevada. And the Supreme Court of Nevada finally determined in 1999 that the claimant was entitled to benefits -- '97 -- determined in 1997, almost ten years later, that the claimant was entitled to benefits. There was a calculation of benefits made

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at one point by CCMSI. And the benefits totaling $56,000 were never paid over to the claimant. They were -- ostensibly because of social security involvement. Since that time, C --

APPEALS OFFICER LINDSEY: I'm sorry. Counsel, what was the date of loss?

MS. HORVATH: The date of loss was 1988.

APPEALS OFFICER LINDSEY: Okay -- 1988, okay.

MS. HORVATH: 1988. And again, that sat -- benefits sat in abeyance until 1997 when the Supreme Court finally decided in Ms. Reeves' case that benefits were due and payable. At that point there was a big scramble over benefits. Little or nothing was paid over to the claimant, most of it going to social security. The claim was supposed to be open at that time.

APPEALS OFFICER LINDSEY: Now, that was -- and -- is Ms. Reeves -- has she applied for -- is she receiving social security?

MS. HORVATH: She is.

APPEALS OFFICER LINDSEY: And so that was -- I'm sorry. Ms. Reeves, what's your date of birth?

MS. REEVES: 10/06/1951.

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APPEALS OFFICER LINDSEY: So you are getting SSI or disability from social security?

MS. REEVES: Very little.

APPEALS OFFICER LINDSEY: Okay. But so it was paid over to social security to satisfy their lien for medical and compensation?

MS. HORVATH: Right. And in that same case, the, you know, benefits and treatment and acceptance were all ordered. That is, acceptance and full benefits.

APPEALS OFFICER LINDSEY: Okay.

MS. HORVATH: Since that time, there have -- there has been attendance by different physicians and different body parts accepted in the case. And what's happened is that Ms. Reeves' claim, though accepted, has not been treated. And the physicians that she has sent to have not determined that she is in a position to go back to work. The closest that ever came was a statement by Dr. Petroff in -- I'm sorry. Do you remember the year?

MR. REEVES: In 2004.

MS. HORVATH: -- in 2004, some years after the claim was ordered accepted, who said that the claimant could go back to work on a trial basis. But he did not believe that she was capable of fulltime

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work at that time. But he believed she could go back to work on a trial basis. That didn't come until 2004.

At various points in the ensuing years, claimant asked for different treatments and continuing TTD benefits. TTD was paid for the early years of the claim. Since she was not released back to work, she asked for TTD benefits. Those were never reinstated although there was attempts to close the claim in '99, 2002, and 2006. The claim was never closed although it's been handled as closed.

We come to now 2011, and claimant is in a position to where she is still trying to get historical benefits, past benefits that have been due to her.

APPEALS OFFICER LINDSEY: Okay. Now, the scope of this claim is -- and let's see if we can agree on that -- is dizziness, head and neck pain?

MS. HORVATH: Dizziness, head and neck pain.

MS. REEVES: Loss of hearing. They call it loss of hearing.

MS. HORVATH: Yes. Hearing loss. And what is --

MS. REEVES: The left side.

MS. HORVATH: Doctor -- what is Dr.

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Moore -- Mortidious (ph)?

MR. REEVES: Somatoform pain.

MS. REEVES: Pain disorder.

MS. HORVATH: Somatoform pain disorder.

APPEALS OFFICER LINDSEY: Now, has the somato -- have those -- do we have agreement on the scope of the claim?

MR. HOOKS: Absolutely not, absolutely not.

APPEALS OFFICER LINDSEY: Mr. Hooks, what do you believe the scope of the claim is?

MR. HOOKS: Somatoform disorder is not part of the claim. It has been shown to be non-industrial. And specifically -- we're talking in generalities, generally in this opening statement, which --

APPEALS OFFICER LINDSEY: I know. And I'm just -- I know that there's a long and -- there's a long history here.

MR. HOOKS: Well, I think --

APPEALS OFFICER LINDSEY: And I'm trying to get --

MR. HOOKS: I think it would be helpful if counsel didn't make assertions to refer to the records. But in responding to your specific question,

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Your Honor --

APPEALS OFFICER LINDSEY: Uh-huh?

MR. HOOKS: -- with respect to the somatoform disorder, there's a decision and order in the file regarding the scope from Ms. Crone at Page 47 of what I think is my --

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: -- is the actual decision and order. She wanted to expand the scope to include falls that she was having, broken ribs, contusions, and other. That was not expanded.

With respect to the actual scope, I don't know that there is a determination letter or decision in the records regarding laying out the specific scope. This one address -- this was where the scope was (unintelligible).

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: However -- again, it's a difficult question under the circumstances since scope is not even one of the ancillary issues underlying the two DIR appeals.

APPEALS OFFICER LINDSEY: Well, I need to know what the scope of the claim is just to feel comfortable.

MR. HOOKS: I understand, Your Honor.

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MS. HORVATH: Ma'am, if I may continue, Your Honor.

APPEALS OFFICER LINDSEY: Yes.

MS. HORVATH: Counsel has asked for a reference. In Claimant's Exhibit 1, Page 333, it's the final page of an AO decision and order by Nancy K. Richins, dated December 1, 2003, in which the first conclusion of law is, "The claimant's somatoform pain disorder is industrial and requires further treatment, including short-term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures, and appropriate physical therapy."

MR. HOOKS: What page are you on, counsel?

MS. HORVATH: Page 333. "Claimant's claim should not have been closed but should remain open for further benefits." We've got a series of decisions like this. "Claimant's claim should not have been closed but should remain open for further benefits." By 2006, a long-time doctor of the claimant, Dr. Poindexter --

MR. REEVES: Doctor Petroff.

MS. HORVATH: Doctor Petroff. I'm sorry. Has determined, after being asked -- he and

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other doctors, being asked again and again and again, "Can she go back to work?" Dr. Petroff said, "I believe that she can't work fulltime, but I believe she can go back to work on a trial basis."

APPEALS OFFICER LINDSEY: Where is that?

MS. HORVATH: That is at Page -- June -- Dr. Pet -- Claimant's 1, Page --

MR. REEVES: 87.

MS. HORVATH: Let me see if it's Page 87.

APPEALS OFFICER LINDSEY: That's Dr. Petroff, June, 2004.

MR. HOOKS: Eighty what?

APPEALS OFFICER LINDSEY: Page 87.

MR. HOOKS: Thank you.

APPEALS OFFICER LINDSEY: Now, this says psychological. "She -- the patient is not limited from working based on her psychological state of health."

MS. HORVATH: Right. And the psychological, you will -- Court will recall, it's been ordered accepted.

APPEALS OFFICER LINDSEY: The psychological?

MS. HORVATH: Yeah. That's what we just looked at on Page 333.

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APPEALS OFFICER LINDSEY: We were looking at somatoform pain disorder, which is not a psychological condition.

MS. HORVATH: It is a physical manifestation of a psychological condition, yeah.

APPEALS OFFICER LINDSEY: Well, that goes down to what the issue of pain is. I don't know -- I'd have to take a look at it. I don't know what psychological conditions Dr. Petroff was talking about.

MS. HORVATH: Okay. What Dr. Petroff says is that -- okay.

APPEALS OFFICER LINDSEY: "She should go back to work with a five-pound lifting restriction and adjust -- with sedentary work."

MS. REEVES: (Unintelligible).

MS. HORVATH: No. That was modified by Dr. Petroff. Do you have his latest, his last letter?

MR. REEVES: No. Dr. Petroff (unintelligible). Dr. Poindexter did.

MS. HORVATH: Oh, Dr. Poindexter.

MR. REEVES: (Unintelligible). He says to keep track (unintelligible) respect to (unintelligible).

MS. HORVATH: Okay. Page (unintelligible).

MR. REEVES: 87.

MS. HORVATH: 87.

APPEALS OFFICER LINDSEY: Page 87's the report from Dr. Petroff that we've been looking at, P-E-T-R-O-F-F, Petroff?

MR. REEVES: Yeah, yeah.

MS. HORVATH: Okay. This is where he says, "It would be reasonable to recommend the patient undergo a trial of back to work --

APPEALS OFFICER LINDSEY: Yes.

MS. HORVATH: -- sedentary, under appropriate adaptive conditions," including all these restrictions. Okay. That was a trial of back to work. That's certainly not a full-duty release. This is the closest that has come anywhere in this record of sending the claimant back to full duty. And yet still no benefits were paid. Claimant's claim to the -- I mean complaint to the DIR was that the -- there were some different aspects to the complaints. There were lots of things complained about.

But the bottom line of the complaints was that no benefits have been paid over all of these years. And that CCMSI has been obfuscating and preventing her having benefits and arguing with everything that she's asking for and offering, to the

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point where that they are actually trying to impede her getting any benefits. They've come up with suggestions and letters to her talking about forms that she has to have, and "No, they will not supply them," or, "Yes, they will supply them," and, you know, lots of permutations of arguments that don't pertain to the proper issues. They've gotten sidetracked on different issues -- CCMSI has -- saying, "Supply us with this. Supply us with that. Use this form. No, we won't give you the form. You're on your own to get it. We don't supply it." Even to where they've gotten to arguing over what our -- what's the use of specific words in the law.

All of this to avoid the fact that claimant is constantly asking for benefits under the open claim that she's got. And every time the CCMSI is acting like the claim is not open. Because whether or not the claim has been opened has been in litigation for all these years. And every time it was litigated, we come up with an answer like this from the AO that says, "No. The claim should never have been closed. She needs treatment."

APPEALS OFFICER LINDSEY: Mr. Hooks, do we have, or could we get -- and I'm thinking about making a short continuance here to see if you can call

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your client and have them fax over a computer printout or some other evidence that would assist us in determining when TTD was paid and when it wasn't.

MR. HOOKS: I suspect they can (unintelligible).

APPEALS OFFICER LINDSEY: I'm going to make a short recess and ask that you do that. Do you need our fax number?

MR. HOOKS: No, I have it.

APPEALS OFFICER LINDSEY: Okay. And I - -

MR. HOOKS: I've got it.

APPEALS OFFICER LINDSEY: We may need some -- if we need some interpretation on that -- well, we'll see if we do. Usually the ones I've seen are pretty self-explanatory. I don't know what your client's looks like.

MS. REEVES: 1998.

APPEALS OFFICER LINDSEY: Before we go off the record --

MR. REEVES: They're not asking you.

APPEALS OFFICER LINDSEY: This was a claim against Bally's who is a self-insured employer. How is CCMSI involved? I'm not quite sure. Are they the administrator for Bally's?

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MR. HOOKS: Well, the claim goes back to '88.

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: The claim has been adjusted by -- and I don't know what my client will have in terms of (unintelligible).

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: Bally's was self-insured and self-administered at one point. Then the claims went to I believe Sedgwick or someone else. There's actually a Gallagher Bassett determination letter. There is a Sedgwick determination. Then you have CCMSI.

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: So I'm not entirely sure what my client will be able to produce. But I'll call them and we'll find out --

APPEALS OFFICER LINDSEY: Okay.

MR. HOOKS: -- in terms of payment. The -- well, I guess, is counsel still in opening at this point? Is that where we are?

APPEALS OFFICER LINDSEY: Well, I mean, what I've gotten is that you feel like there's been collusion between the DIR and CCMSI, and that the DIR -- or that the administrator has been -- have obstructed

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the administration of this claim as opposed to facilitated the administration of this claim?

MS. HORVATH: Yeah. That was my original objection at the beginning.

APPEALS OFFICER LINDSEY: Okay. Do you have more?

MR. HOOKS: It was an objection though. It wasn't -- that's my --

APPEALS OFFICER LINDSEY: Well, that's her allegation. That's her allegation.

MR. HOOKS: She tells it as an objection though, and I don't know where she's going with that.

MS. HORVATH: Yeah, it was just -- actually, it was in a paragraph I was -- it was a paragraph I was -- had written out and was reading. And on the nature of that objection, the --

APPEALS OFFICER LINDSEY: Objection to what?

MS. LEONESCU: To what?

MR. HOOKS: That's --

MS. HORVATH: To the continued collaboration of the DIR and CCMSI.

MR. HOOKS: Right. When counsel began speaking, I thought that she was going to ask you to somehow bifurcate us from the table. And I wanted to

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respond to that. I'm happy to get the evidence that the Court wants.

APPEALS OFFICER LINDSEY: Well, we're not there. That hasn't happened. So Ms. Horvath, have you completed your opening statement?

MS. HORVATH: Yes, Your Honor. And I do renew our request to separate the DIR and CCMSI.

APPEALS OFFICER LINDSEY: Okay. From -- physically, you're saying, in these proceedings? You want them sitting at your table?

MS. LEONESCU: This is (unintelligible).

APPEALS OFFICER LINDSEY: I'm not going to do that. I mean, this is the way the courtroom's set up. And -- but I am going to take a brief break and ask Mr. Hooks to see what his client can send us so that we have -- perhaps, perhaps not -- some understanding of what benefits actually have been paid in this claim, specifically TTD. But I'm not limiting it to TTD. If they have -- I'd like to see their benefit screens. I don't want to -- you know, that's all.

MS. HORVATH: It's our understanding the last time benefit -- the TTD benefits were paid was in 1998.

APPEALS OFFICER LINDSEY: Okay. Well,

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just make the call.

MR. HOOKS: Okay.

APPEALS OFFICER LINDSEY: We'll be in recess. Well, we'll be back and -- at -- when that just turned from 11 to 12. Be back when that says 10:17.

MS. HORVATH: Thank you.

APPEALS OFFICER LINDSEY: If anyone wants to go to the restroom, this would be a good time to do it.

(OFF THE RECORD AT 10:20 A.M.)

(ON THE RECORD AT 10:37 A.M.)

APPEALS OFFICER LINDSEY: We're back on the record. And in the interim, we've received a one-page fax from CCMSI, which I'm going to go ahead and mark as Administrator's Exhibit C even though it's my understanding that there may not be any useful information.

MR. HOOKS: May I make a few representations, Your Honor?

APPEALS OFFICER LINDSEY: You may.

MR. HOOKS: Per your request, I contacted my client and asked if she could print out all the information on payments that have been made. These are (unintelligible). It's not medical payments,

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but monies that were paid to the claimant on the claim. The date on each of these you will note is 01/11/2011. And the payee says Park Place Conversion. My client explained to me that these are what they call conversion files. It would've collected information that was paid by the prior TPAs and what have you. And the January 11, 2001, date is the date the conversion was done.

So in terms of what the sums that are listed there that total $124,824.80, there is no way from this record to establish what dates it was paid or what it was for. So unfortunately, given the age of the claim and the fact that the claim has moved between several different TPAs, this appears to be the best evidence that we can submit to you.

APPEALS OFFICER LINDSEY: Okay. Can I ask you a couple of questions? Is January 11, 2001, the approximate date when CCMSI took over the administration of this claim?

MR. HOOKS: I do not know the answer to that question. Just it is the date that the conversion was done. That could've been done either by CCMSI or its -- or Sedgwick. And I do believe 2001 -- it seems to me that these were being either adjusted by Sedgwick or perhaps --

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MS. LEONESCU: Yeah, there was --

MR. HOOKS: -- Gallagher Bassett.

MS. LEONESCU: Yeah. Sedgwick definitely handled it before CCMSI, which was subsequent to 2001. So CCMSI -- yeah. Here's a letter dated September 8, 2006, which was Sedgwick at the time.

MR. HOOKS: And I can also point the Court to Page 55 of our first exhibit, which is a December 27, 2001, letter from Gallagher Bassett, which is a notice of intent to close claim. So they appear to be adjusting it around this time. So I don't think that it gives you any information about CCMSI.

APPEALS OFFICER LINDSEY: Okay. Now, you said these --

MS. HORVATH: Your Honor, if I might. Counsel represented these sums were all paid over to the claimant. This we vehemently deny. Not a single one were paid -- was paid over to the claimant. In fact, this $56,000 payment -- $56,995 --

MR. REEVES: These were the back payments that were due (unintelligible). So they paid these. This $56,000 is what they found out --

MS. HORVATH: That's right. Is --

MR. REEVES: But they did give that to

her eventually. But she had to pay it back to social security. This last one was interest.

MS. HORVATH: Right. The -- these payments were held in abeyance for a period of many, many months and were eventually paid over to social security.

APPEALS OFFICER LINDSEY: Okay. To reimburse them for compensation they had paid to the claimant for --

MS. HORVATH: For the previous ten years while the case was in litigation.

APPEALS OFFICER LINDSEY: Okay. And, ma'am, what is your monthly benefit from social security?

MR. REEVES: She doesn't know. Can I answer?

APPEALS OFFICER LINDSEY: You can.

MR. REEVES: Okay. She's getting $790-something dollars.

APPEALS OFFICER LINDSEY: 790?

MR. REEVES: Something like that.

APPEALS OFFICER LINDSEY: And does anyone in the room know what her PPD amounts are, her average monthly wage or anything like that?

MS. HORVATH: Yes. Wait a minute. This

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is -- what was the percentage of PPD, five percent?

MS. LEONESCU: Yeah. I believe she had a five percent PPD.

APPEALS OFFICER LINDSEY: Right. But I'm trying to -- if we see -- you have the page where they calculated that or anything? I'm trying to look -- find out what her average monthly wage is.

MR. HOOKS: I don't think that's (unintelligible).

APPEALS OFFICER LINDSEY: Okay.

MS. HORVATH: We do --

MR. HOOKS: (Unintelligible).

MS. HORVATH: We do have it among these documents.

APPEALS OFFICER LINDSEY: Okay. I'll look for it.

MS. HORVATH: I think it is here.

APPEALS OFFICER LINDSEY: I'll look for it. I just -- if someone knew, then I could, you know --

MS. HORVATH: Right.

APPEALS OFFICER LINDSEY: Okay. And when did she start getting social security?

MR. REEVES: Disability from -- started from 1989.

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APPEALS OFFICER LINDSEY: And was it one of those things where she got it in, say, sometime other than 1989 and it was made retroactive to a certain date?

MR. REEVES: It would've -- I mean, she applied for it. It took I think, a couple years to get it. And --

MS. REEVES: Bally's keeps telling them on workers' comp.

MR. REEVES: Yeah. But --

MS. REEVES: Which I showed her (unintelligible) the other day.

MR. REEVES: They don't (unintelligible). But yeah. So that $56,000 is a -- what they considered an overpayment because they were paying at a rate. And when they paid her some back TTD benefits, they wanted quite a bit of it back.

APPEALS OFFICER LINDSEY: The -- both the state and the federal government have -- well, until recently, the state and the federal government had laws that said, "If you're entitled to benefits from both of us, we're going to offset what you receive from the other guy from what --

MR. REEVES: Uh-huh.

APPEALS OFFICER LINDSEY: -- you receive

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from us." And they recently rescinded the state law. So -- because federal rights of offset are superior to state rights of offset.

MR. REEVES: Uh-huh.

APPEALS OFFICER LINDSEY: So I'm trying to figure out, you know, short and dirty, if her TTD benefits are greater than her social security benefits.

MS. HORVATH: The wage verification forms are in our Exhibit 1, Page 233.

APPEALS OFFICER LINDSEY: And I'm just trying to get sort of a feel for the mechanics of this case. Okay.

MR. HOOKS: Can you repeat the page number, counsel?

APPEALS OFFICER LINDSEY: 233.

MS. HORVATH: Page 233.

MR. HOOKS: Thank you.

MR. REEVES: (Unintelligible). That doesn't say. Because I know they (unintelligible) first place was like 20-something dollars a day. And they had to (unintelligible) 30-something, like 31-something.

APPEALS OFFICER LINDSEY: We're looking. We're looking.

MS. HORVATH: We're looking.

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MR. REEVES: Okay.

APPEALS OFFICER LINDSEY: Her daily rate is $28.01?

MR. REEVES: It was, but then they had to change it because they put on some extra time for time off where she had a broken foot and was excused. So it'd have to be 30 -- I think it was 30-something. I don't have those papers in there.

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: Just as an aside note. While I've been going through this, I notice that this has not been redacted. So there's social security numbers all over.

APPEALS OFFICER LINDSEY: In Exhibit 1? Okay. I -- and I was looking at -- there's a determination from June 2, 1998, at Page 239 that has that $28 daily rate.

MR. HOOKS: And the description of that (unintelligible) $56,955.60. It talks in the first paragraph about some of the monies and how they would be disbursed going to social security.

APPEALS OFFICER LINDSEY: Okay. And it looks like there were also disbursements to Allstate and Safeway. Oh, reimbursement to Allstate for $23,743, and then to Safeway for prescriptions.

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Allstate looks like was a third-party settlement. Is that -- was that a third-party settlement?

MR. REEVES: Well, that was our insurance company. The person who hit her had no insurance.

APPEALS OFFICER LINDSEY: Okay.

MR. REEVES: So our insurance paid for it, for her medical care and stuff up to a certain level.

APPEALS OFFICER LINDSEY: Okay.

MR. REEVES: And then I guess they got reimbursed by --

APPEALS OFFICER LINDSEY: Oh, okay, okay. I'm sorry. I just -- I'm trying to get my hands around some of the basic facts as well as I can. Mr. Hooks, did you have -- did you want to make an opening statement?

MR. HOOKS: Oh, dear. Yes, Your Honor. Let me see if I can remember what counsel said beginning with the issue of the collaboration. Counsel's assertion/objection was that the DIR should not be allowed to collaborate with CCMSI. It's taken us a very long time to get to a cogent statement of what the claimant's position is. And I'm not sure that we're there. I don't know what the claimant wants

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beyond the benefit penalty which, without regard to various discussions that we've had about the substance of the claimant's entitlement to the TTD benefits, wages, and what have you, none of which are on appeal today.

The idea that there is collaboration between DIR and I and my client, because I'm -- we're sitting at the table together is patently absurd. For one, I don't even have -- was not cc'd on the DIR's pre-hearing statement for first evidence packet. The idea that we were working together to develop those is absurd under the facts and of course irrelevant.

The -- this collusion theme seems to be furthered by description that somehow CCMSI, in responding to the DIR's request for information, was listened to over and above information that was provided by the claimant. In fact, I think it was filed as, "Their investigation consisted of listening to what CCMSI had to say, and the claimant hasn't been heard." Well, not only has the claimant been heard in the filing of her complaint, which is her initial opportunity to explain to DIR what her issues are, DIR did nothing more than follow their procedures, which is to first ask for an explanation regarding the complaint and then to go out and conduct the investigation.

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DIR in this case, in the case of both appeals, conducted a thorough investigation and found no violation of the law that would warrant either a fine or payment to the claimant of a benefit penalty. So the -- this idea that there has been collusion because the administrator, who is required by law to maintain the records of the file, had those records, and the DIR went and conducted an investigation based on those records, again, is patently absurd.

The claimant is alleging that she, going back to 1997, counsel's filed, is a decision was made that benefits were due and payable. The decision that was made in 1997 is that the claim was improperly denied, that the claim must be accepted. That is not also a determination that the claimant is entitled to TTD benefits. The claimant asserts variously -- and counsel for some reason, rather than explaining the law to her client, has adopted an argument that is patently false. And that is that somehow there's a special form that the TPA is holding, and at various times requesting that the claimant provide, in order to receive benefits, or that they're requiring it where it doesn't apply, or that there's some semantic argument going on, or that someone is playing hide the ball.

To the extent that the claimant, as a pro se

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litigant, which she no longer is, does not understand the State of Nevada's laws, particularly NRS 616C.475(7) is wholly irrelevant to where we sit today. There's no mystery about what's required. An open claim does not entitle one to TTD benefits. What entitles an individual to TTD benefits is what 616C.475 says. And what it specifically says in Paragraph 7 is, "A certification of disability issued by a physician or chiropractor that explains the period of disability and the limitations that the claimant has." Now, the claimant isn't going to produce one of those for you because they don't exist.

The matter has been litigated up and down this state. The most recent decision that I can find regarding the matter is at Page -- bear with me for one second -- is at Page 38 -- or it ends at Page 38 of our exhibit, which is an Appeals Officer decision from Geraldine Schwartzer in 2006 addressing the issue of the TTD benefits. The claimant had requested through her prior counsel that she receive benefits from 1998 through then present time. The ruling was that the determination denying TTD benefits was proper. Why? Because the claimant's appeal, in part, was untimely. The issue has been settled.

The claimant now wants DIR to issue a

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benefit penalty because, again, the TPA stalled, refused to pay, even though there had been multiple decision that she's entitled to benefits. Didn't happen. That did not happen. She was found to have a compensable claim under the Act.

Going back to the documents that we just discovered together, the social security wage benefit letter at -- in -- at the Claimant's 1, Page 239, this idea that there's somehow now a shift in terms of the TPA's position with regard to certificates of disability as required by the Act, is once again the lie. Taking the date of certification from '89 to 1997, which is showing that there were certificates of disability for that period of time, we're now going to compensate you 3,150 days. So again, the suggestion that there was first, "I was paid benefits and I wasn't required to have this form. And now all of sudden I'm being told that I've got to have the form, but they're not giving it to their doctor. They're not giving it to my doctor. They're not showing my doctor what the form is." There is no form that would be provided by the TPA. Counsel clearly knows that.

The form is the certification of disability that's required under the Act. It existed from the period of time that she was paid. It did not

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exist for the period of time that she hasn't been paid. It's that simple. And moreover, it's irrelevant. That is not the question before the Court.

The question before the Court is, was there a violation of 616D.120? DIR found that there was not. Not through collusion with CCMSI or collaborative effort. By receiving the claimant's complaint, evaluating it, sending out a standard letter to the TPA to answer to these charges, and then conducting a thorough file review and finding no violation. There is no violation. And with that, we'll reserve further comment for later.

APPEALS OFFICER LINDSEY: Thank you. Ms. Leonescu?

MS. LEONESCU: Yeah. Just briefly. We're coming up on almost two hours here. And I still have no basis for the claimant's assertion she's entitled to a benefit penalty here. The only -- you can only get a penalty under Nevada law, as counsel well knows, for violation of 616D.120(1)(a) through (h) -- (a) through (e) and (h). It is the claimant's burden here to prove where the violation stands. The only complaint seeking a benefit penalty here is that the claimant did not receive TTD payment.

The real reason is the claimant simply

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is not happy with decisions of the HO and AOs as the claim was processed. But again, DIR does not have the jurisdiction to modify, change, add, or delete from any Hearing Officer or Appeals Officer's decision. But in any event, we're going back to a decision -- the only decision -- the only document that was attached to her complaint was the 2003 decision. After that, she didn't -- she failed to include any of the other relevant decisions and orders, seven years prior to her filing of the complaint.

What no one's addressed here is that there's a statute of limitation here. It is two years for a penalty for -- there's two years statute of limitations for an action that can result in a penalty.

APPEALS OFFICER LINDSEY: Let me ask you this. Does that mean, if you're talking about a Hearing -- and Appeals Officer decision --

MS. LEONESCU: Yes.

APPEALS OFFICER LINDSEY: -- non-compliance with an Appeals Officer decision -- say it's dated January 1, 2011 -- you have to have that filed by December 31, 2013?

MS. LEONESCU: From the date of the violation.

APPEALS OFFICER LINDSEY: Okay.

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MS. LEONESCU: From the date of the violation.

APPEALS OFFICER LINDSEY: And the violation would occur on the 30th day.

MS. LEONESCU: Right. Or 31st day. Or if it was -- if it said something like, "You're entitled to TTD at some point in the future."

APPEALS OFFICER LINDSEY: Now, when did they enact -- and maybe you know this. I don't know. It seems to me at one time there wasn't a statute of limitations.

MS. LEONESCU: No. It's always -- I don't know when it was changed. But it's 11.190(4). I wrote it down.

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: It's at 11.190(4)(d).

APPEALS OFFICER LINDSEY: In 616D?

MS. LEONESCU: No, no. It's NRS 11.190. There's no statute of limitations specified in the NIAA. So we have to go to the statute of limitations specified by statute.

APPEALS OFFICER LINDSEY: Okay, 11190?

MS. LEONESCU: Yeah.

APPEALS OFFICER LINDSEY: Okay. And you claim that her complaint is time barred?

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MS. LEONESCU: Right. I mean, it's seven years later. If there was a failure to pay a particular TTD payment, it should be two years from that date, not seven --

APPEALS OFFICER LINDSEY: So --

MS. LEONESCU: -- years later.

APPEALS OFFICER LINDSEY: -- her complaint was filed on --

MS. LEONESCU: This particular complaint was filed on 09/11/10. Or no, excuse me. That's the wrong one. That's a later one -- 06/01/10.

APPEALS OFFICER LINDSEY: Yes.

MS. LEONESCU: Attaching -- and she's arguing that there was failure to comply with the December 1, 2003, decision and order.

APPEALS OFFICER LINDSEY: So you -- your argument is you don't think she's entitled to anything at all. But the most that could be looked at would be the two-year -- TTD for the two-year period prior to June 1, 2010?

MS. LEONESCU: But that's been decided by the AO and HO in subsequent decisions that she's not --

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: -- entitled to it. But I

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mean, to say that they didn't comply at all is not shown by the record. And as far as this collusion, I mean, you could see the quality of the investigation done. And this is not the first time this comes up. This is continued argument whenever there's -- a PT is denied, that there's some kind of collusion, ethic -- question of ethics into DIR's investigation.

But the quality of investigation is shown by length. And every date of every decision, every date of every doctor's visit that comply with the decision is in there. So even though it's time barred, we still investigated it to see what the result was. And we could find no violation. Because the claimant does not like the results of a decision or a determination made by insurer, does not mean that a benefit penalty results. That's why there's a contested claim process.

The insurer's allowed to make determinations. Are they always correct? No. And they can get reversed and remanded. And as long as they comply with that decision, there's no violation. But the claimant has provided no basis -- and it's their burden -- for why there should be a benefit penalty here. None.

APPEALS OFFICER LINDSEY: Ms. Horvath,

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you have seven minutes. And I'll tell you what I'm inclined to do at this point. I mean, obviously we're not going to get to the merits of this hearing today. But my inclination is, in the interim between -- now, we've got at least the documents marked. We've had some discussion as what we think the -- so we know what the evidence is. We've had some discussion as to what we think the issues are. When we leave here today, I would like you all -- you each and all to file whatever motions, dispositive or otherwise, you feel are appropriate.

And then I think that we will be able to use our time more effectively in addressing what issues there are. And you can refer -- and you're invited to and encouraged to refer to the exhibits that have been marked into evidence that support your position so that when I consider your motions, I can do so in a detailed and prudent manner.

Ms. Horvath, do you have anything you would like to say before we conclude the hearing today? And you understand that we just don't have time to get to the testamentary evidence today.

MS. HORVATH: Yes, Your Honor. Just briefly. First of all, as to the statute of limitations, DIR has to reach to a general statute of

limitations in order to get workers' comp cases. We're talking about an open claim. The claim has never properly been closed. So --

APPEALS OFFICER LINDSEY: Well --

MS. HORVATH: The notion --

APPEALS OFFICER LINDSEY: The District Court disagrees with you on that, right?

MS. HORVATH: No. The District -- what the District Court said was that the decision of Judge Crone, in failing to expand the scope of the claim, was proper.

APPEALS OFFICER LINDSEY: Okay. Okay.

MS. HORVATH: So we're talking about a case that's -- I mean a claim that's remained open all this time. Applying the statute of limitations for it is reaching for straws. The Act itself, the Industrial Insurance Act provides for remedies as to certain types of errors that can and should be addressed at any time when they're found. We suggest this is one of them.

Counsel for DIR made a comment that the quality of their investigation is shown by its length. It's one of the most funny statements I've ever heard. That is the more pages you can throw in there, the more you've proved you've done hard work. What's happened in this case is that insurer after self-insurer has

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handled the case. And every time it's been taken over by a new administrator, they've tried to close the claim without payment of benefits. There's been one time where there was some attempt to sit down and issue benefits. And that's when the case was remanded by the Supreme Court of the state. That was the only time any benefits were issued in this case.

We have -- in our exhibits, you will see that there is -- there are letters and reports and certifications from doctor after doctor after doctor, none of which show that there is any room for sending the claimant back to work full duty.

The reference to temporary total disability at 4 -- 616C.475, in which CCMSI claims that no forms were ever -- the form argument. Section 6 says, "Each insurer, with each check that it issues to the injured employee for a temporary total disability, may include a form approved by the division for the injured employee to request continued compensation for the temporary total disability." No such form was ever included by any payment --

MR. HOOKS: That's at 236.

MS. HORVATH: -- ever often. It's at D39.

MR. HOOKS: Either way, it's not the

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(unintelligible).

APPEALS OFFICER LINDSEY: I know what the forms say.

MS. HORVATH: What?

APPEALS OFFICER LINDSEY: I know what the forms say.

MS. HORVATH: Yeah.

APPEALS OFFICER LINDSEY: They're on the internet.

MS. HORVATH: Okay. So to make the notion that -- say we made up this business about a form is absurd. You will see in the evidence packets that a "form" is being referred to time after time.

APPEALS OFFICER LINDSEY: But they are talking about the form that the claimant signs that certifies that she's -- that she or he has been disabled.

MS. HORVATH: That a doctor signs.

MR. HOOKS: No, no.

APPEALS OFFICER LINDSEY: Well, they're talking about the ones that the claimant signs that certifies that she's been unemployed and has --

MS. HORVATH: Right.

APPEALS OFFICER LINDSEY: -- for disabled.

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MS. HORVATH: And the onus is placed on the insurer to provide that form to --

APPEALS OFFICER LINDSEY: Well, usually --

MS. HORVATH: -- the claimant.

APPEALS OFFICER LINDSEY: -- what those forms --

MR. HOOKS: (Unintelligible).

APPEALS OFFICER LINDSEY: -- are used for is to prove that the claimant's committed fraud. Because it's the claimant's --

MS. HORVATH: Exactly right.

APPEALS OFFICER LINDSEY: -- declaration.

MS. HORVATH: Again, it's just twisting what's happening here. Exactly right. It's not what we do with those forms. So to say the onus is on her for not getting something into the -- to CCMSI or the insurer, there's never been any attempt to pay anything beyond 1998. There's been nothing issued here. They're out-pay column started when the Supreme Court decision was issued and applied to them and never continued, never continued. There's been no attempt to help her resolve her medical position, although there's been litigation. There's been litigation to say that

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the claim should remain open, that she needs further treatment. No further treatment was first -- forthcoming.

Over and over again, the insurer, whoever it may be, has failed to comply with court orders -- clearly a violation of the benefit and calls for a benefit penalty. So that's what our position is.

APPEALS OFFICER LINDSEY: Okay.

MS. HORVATH: That these people have been standing here helpless for years.

APPEALS OFFICER LINDSEY: Okay. I'll try to get this back on in June or July. So I'd like to get anybody's motions filed within the next 30 days so that the opposition has an opportunity to reply to them and we have -- and I have an opportunity to review them and rule on them before the next hearing, which I will try to get on -- well, it'll be 60 to 90 days.

MR. HOOKS: We'll do, Your Honor. But just for the Court's edification, I'm not going to available the entire month of July.

APPEALS OFFICER LINDSEY: Okay.

MS. HORVATH: Well --

MR. HOOKS: (Unintelligible).

APPEALS OFFICER LINDSEY: Okay.

MS. LEONESCU: Yeah. We're already

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coming up on --

MS. HORVATH: All right. We'll be back in here on the other claim in June -- on the other case.

APPEALS OFFICER LINDSEY: So we're off record.

MS. HORVATH: Thank you.

(Proceedings concluded at 11:08 a.m.)

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CERTIFICATION

TITLE: In The Matter of the Contested Industrial Insurance Claim of : SUSAN REEVES

DATE: June 24, 2011

LOCATION: Las Vegas, Nevada 89102

The below signature certifies that the proceedings and evidence are contained fully and accurately in the digital audio files as reported at the proceedings in the above-referenced matter before the Department of Administration, Appeals Office.

Becki Heckendorf — 8/10/11

BECKI HECKENDORF — **DATE**

COURT REPORTING SERVICES

073

FILED
JUN 29 2011
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	)	Claim No:
SUSAN REEVES,	)	Appeal No: 78016-SL 80334-SL
Claimant.	)	

ORDER DENYING PETITION FOR REHEARING

This matter comes before Appeals Officer, **Shirley D Lindsey, Esq.**, on the Petition for Rehearing filed on June 24, 2011, by the Claimant, Susan Reeves. After reviewing the Petition for Rehearing, and for

Good cause appearing;

IT IS HEREBY ORDERED that the Petition for Rehearing be DENIED.

IT IS SO ORDERED this 29TH day of June, 2011.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

Docs 4
074

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER DENYING PETITION FOR REHEARING** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

TERESA A HORVATH ESQ
NV ATTY FOR INJURED WORKERS
2200 S RANCHO STE 230
LAS VEGAS NV 89102

JENNIFER LEONESCU ESQ
JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI - STATE DIR
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 29th day of June, 2011.

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

075

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588
Petitioner in Proper Person

BEFORE THE APPEALS OFFICER

SUSAN REEVES, Petitioner vs. DIVISION OF INDUSTRIAL RELATIONS Respondent	APPEAL NO: 78016-SL 80334-SL

PETITION FOR REHEARING

Pursuant to NAC 616C. 327, Claimant is requesting a rehearing based upon the following.

APPEAL NO. 78016-SL

It is the Claimant's position that although the matter of TTD benefits has been heard at a Hearing, an Appeal, District Court and is now awaiting a decision from the Nevada Supreme Court, that the evidence presented at Hearing and Appeal was not all of the evidence that was available and as such, pursuant to NRS 616C. 360 (2), is new evidence which must be heard and ruled upon based upon its merits.

Whereas the insurer and the DIR, worker's compensation section, primarily, if not solely, deal with worker's compensation law, that they reasonably should know that according to

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State Industrial Insurance System v Campbell. 108 Nev. 1100, 844 P.2d 795 (1992), under NRS 616.585 (4), that the only circumstance provided by Nevada law allowing for the permanent discontinuance of disability benefits is "when any physician or chiropractor determines that the employee is capable of gainful employment." That "the purpose of the [worker's compensation] system is to provide compensation for industrial injuries." When the Nevada Supreme Court uses the term disability benefits, Claimant believes that that to mean all benefits, including TTD benefits.

Whereas no TTD benefits have been paid since 1998, nor most other benefits, and said benefits were not reinstated after each closure was either remanded or reversed amounts to an unreasonable delay, as no appeal or stay was sought, by the insurer, after each of those Decisions.

Whereas, NRS 616C.475 (1), states that an employee injured by accident is entitled to 66 2/3 percent of the average monthly wage, until the injured employee is capable of returning to gainful employment.

The fact is that there is no physician or chiropractor who has determined that the Claimant is capable of gainful employment, but to the contrary every physician has opined that the Claimant is not capable of returning to gainful employment.

Whereas, NRS 616D.120 states, (c) " Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearings officer, appeals officer," (e), " made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D," (g), " Failed or unreasonably delayed payment to an injured employee", (h), " Intentionally failed to comply with any provision of, or regulation

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adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS". There are Administrative fines and benefit penalties for unreasonably delaying benefit payments that should be applied.

By not reinstating benefits that were being provided prior to the first closure, which was remanded or the second closure, which was reversed, the insurer made it necessary for Claimant to initiate proceedings to obtain benefits, thereby violating NRS 616C.120.

Claimant appealed the insurer's decision to deny TTD benefits in 2004, thereby initiating litigation in this matter at that time.

Also, pursuant to NRS 616C. 065 (3), that the payment of compensation was/is being unreasonably delayed, in as much as the insurer or their counsel reasonably should know what the worker's compensation laws are, that the Claimant is entitled to three (3) times the amount that is being unreasonably delayed.

APPEAL NO. 80334-SL

Whereas the Appeal Officer did not address the issue of whether the log of oral communication provided by the insurer, plainly added after the fact and with incorrect information, is what is required pursuant to NRS 616D. 330 (2).

Whereas, the log in question contains no factual information other than that a meeting was held on a specific date, Claimant feels that it is a violation and that the fruits of that illegal meeting should not be allowed to be used by the insurer in any matter related to Claimant's case.

Therefore, Claimant would like an Decision on that appeal.

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CONCLUSION

It is the Claimant's believe that, based upon case law, if statutes used in a worker's compensation claim appear to be in conflict, the Courts have found that, whereas, the intention of the worker's compensation laws are to provide compensation to injured workers, that the statutes most favorable to the injured worker should be used.

In this case there are statutes that provide the Appeals Officer with jurisdiction to hear and rule upon all of the new evidence, regardless of what has transpired previously and, certainly in appeal no. 80334-SL.

Respectfully Submitted,

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed by,
Jeff Reeves (husband)

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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 24 day of June, 2011, I deposited a true and correct copy of the above and foregoing PETITION FOR REHEARING in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

Jennifer J. Leonescu
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
DIR Division Counsel

Dalton L. Hooks, Jr.
4570 South Eastern Ave., Suite 28
Las Vegas, Nevada 89119
Attorney for the Employer

Hand delivered to:

Teresa Horvath
2200 South Rancho Suite 230
Las Vegas, Nevada 89102
Nv. Attorney for Injured Workers

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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BRIAN SANDOVAL
Governor

STATE OF NEVADA

EVAN B. BEAVERS
Nevada Attorney for Injured Workers

NEVADA ATTORNEY FOR INJURED WORKERS
2200 South Rancho Drive, Suite 230
Las Vegas, Nevada 89102-4413
(702) 486-2830 • Fax (702) 486-2844

June 16, 2011

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

Re: Appeal Nos. 78016-SL, 80334-SL

Dear Ms. Reeves:

I received the Order Granting Summary Judgment in your case and have enclosed a copy for your information. The Appeals Officer has granted the DIR's motion for summary judgment on these appeals. These file will now be closed with this office.

You have the right to appeal the decision to District Court. However, the office of the Nevada Attorney for Injured Workers will not represent you on such appeal. Because the Appeals Officer's decision is fact based, and because the District Court by law must give deference to the Appeals Officer's decision, it is NAIW's policy not to appeal such decisions. NAIW must use its resources for those case which are based upon errors of law which the District Court may reverse.

If you wish to appeal, you must obtain other counsel or proceed on your own. You are advised to seek independent legal advise from an experienced workers' compensation lawyer if considering an appeal. In either event, your Petition for Judicial review must be filed at the District Court within 30 days of the date on the Certificate of Mailing attached to the decision of the Appeals Officer.

Thank you for letting the Nevada Attorney for Injured Workers be of service to you and good luck. Carefully read the claim reopening information I gave you. This is your best remedy at this point.

Sincerely,

NEVADA ATTORNEY FOR INJURED WORKERS

Gary T. Watson, Esq., Deputy

GTW:er
Enclosure: Order Granting Summary Judgment filed 6/15/11
CERTIFIED MAIL-RETURN RECEIPT REQUESTED
ARTICLE NO. 7010 2780 0001 1497 5889
GTW_REEVES, SUSAN_Ord Grg SJ.WPD

Website: http://www.naiw.nv.gov
E-mail: naiw@naiw.nv.gov

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ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third Party Administrator
Cannon Cochran Management Services, Inc.

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Administrative Action of:	APPEAL NOS.: 78016-SL; 80334-SL
	CLAIM NO.: 88S01H243724
SUSAN REEVES	

TPA'S JOINDER OF DIR'S REPLY TO CLAIMANT'S OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

COMES NOW, the Third Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI ("TPA"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and hereby joins in the Division of Industrial Relations' ("DIR") Motion to Dismiss or in the Alternative, for Summary Judgment.

This Motion is made and based upon the papers and pleadings on file herein, and the Points and Authorities submitted in support hereof.

Dated this 15 day of June, 2011.

Respectfully submitted,

FLOYD SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
4570 South Eastern Avenue, Suite 28
Las Vegas NV 89119
Attorney for TPA, CCMSI

Docket 082

I.

MEMORANDUM OF POINTS AND AUTHORITIES

As counsel for DIR clearly and concisely notes in her Reply to Claimant's Opposition to Dismiss or in the Alternative, for Summary Judgment, the Claimant continues to file fugitive documents in proper person while being represented by Ms. Horvath, Esq. As the TPA briefed in its Opposition to another motion filed by Claimant, the TPA agrees with the DIR that any pleadings filed by the Claimant in proper person should be stricken. *See* DIR's Reply at pg. 2; lines 1-3. Moreover, the Claimant failed to serve the TPA with her opposition. The TPA only became aware of the Claimant's Opposition when the TPA was served with DIR's Reply.

Further, Appeal number 78016-SL has been affirmed and is pending before the Nevada Supreme Court. *See* DIR's Reply at pg. 2; lines 14-17. Under Appeal number 80334-SL, DIR investigated the Claimant's request for all TPA communications and issued informational letters finding no violations. *See id* at pg. 3; lines 18-26. The balance of the DIR's Reply to Claimant's Opposition to Motion to Dismiss or in the alternative, for Summary judgment, is hereby adopted and incorporated herein. Because the Claimant has offered no evidence to support her requests for benefit penalty under NRS 616D.120, dismissal of her appeals or in the alternative, summary judgment should be granted.

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Wherefore, the TPA, CCMSI, respectfully joins in requesting that the Appeals Officer grant DIR's Motion to Dismiss or in the alternative, for Summary Judgment.

Dated this 15 day of June, 2011.

Respectfully submitted,

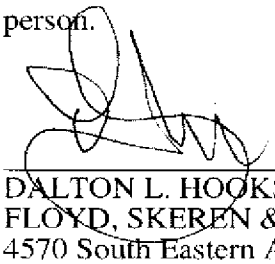
FLOYD SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP
4570 South Eastern Avenue, Suite 28
Las Vegas NV 89119
Attorney for TPA
CCMSI

084

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case Nos.: **78016-SL; 80334-SL** do not contain the social security number of any person.



DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

04/15/11
DATE

085

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **TPA'S JOINDER OF DIR'S REPLY TO CLAIMANT'S OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT; AFFIRMATION PURSUANT TO NRS 239B.030** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves c/o Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Jennifer Leonescu, Esq. Division Counsel Division of Industrial Relations 1301 N. Green Valley Parkway, #200 Henderson, NV 89074
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 16th day of June, 2011.

086

An employee of
FLOYD, SKEREN & KELLY, LLP

ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third Party Administrator
Cannon Cochran Management Services, Inc.

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Administrative Action of:	APPEAL NOS.: 78016-SL; 80334-SL CLAIM NO.: 88S01H243724
SUSAN REEVES	

MOTION TO STRIKE OR IN THE ALTERNATIVE, OPPOSITION TO CLAIMANT'S MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS

COMES NOW, the Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC. / CCMSI ("TPA"), by and through its attorney of record Dalton L. Hooks, Jr., Esq. of the law offices of Floyd, Skeren & Kelly, LLP, and hereby files this Motion to Strike or in the alternative, Opposition to Claimant's Motion to Submit Interrogatory to Persons at the DIR and Exclude Counsel for CCMSI from Hearings.

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Docs 07
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This Motion is supported by the following Memorandum of Points and Authorities, the exhibits attached hereto, and any oral arguments at the time of the hearing.

Dated this 15 day of June, 2011.

FLOYD, SKEREN & KELLY, LLP.
By

DALTON L. HOOKS, JR., ESQ.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for TPA

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

The Claimant's Motion should be stricken since she is represented by counsel, and only counsel may sign and file pleadings with the court. Further, the Claimant's motion is without merit because CCMSI has standing to protect its interest. If the Claimant were to prevail on appeal by reversing DIR's determinations, ultimately, CCMSI would have to pay a benefit penalty to the Claimant. The Claimant's motion should be stricken and/or denied in its entirety.

II.
LEGAL ARGUMENT

A. The Claimant's Motion Should Be Stricken Because She Is Represented by Counsel.

Under court practice rules, when a party is represented by an attorney, only that attorney may sign and file documents with the court. The applicable court rule is NRCP 11 which states in relevant part:

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RULE 11. SIGNING OF PLEADINGS

> **(a) Signature.** Every pleading, written motion, and other paper **shall be signed by at least one attorney of record in the attorney's individual name**, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any.
>
> Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. **An unsigned paper shall be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

See NRCP 11 (a).

Here, the Claimant filed her motion on her own without the signature of her attorney. The Claimant is represented by Teresa Horvath, Esq., Deputy NAIW as ordered by Appeals Officer Shirley Lindsey on 09/22/10 and 10/27/10 for both appeals. *See* attached exhibits at pp. 1 and 4. Further, the Claimant signed a Representation Agreement with NAIW on 09/21/10. *See id* at pg. 3. Since Ms. Horvath is the Claimant's attorney, only Ms. Horvath may sign and file court documents on behalf of the Claimant in this matter. *See* Claimant's Motion at pg. 3. Therefore, the Claimant's motion should be stricken in accordance with NRCP 11.

B. <u>CCMSI Has Standing Because The Relief Sought Is An Administrative Fine Against CCMSI.</u>

CCMSI has standing because it has a concrete stake in the matter. The Claimant requests the Appeals Officer to reverse DIR's findings of no violation of NRS 616D.120 and enforce a benefit penalty. Hence, the underlying appeals ultimately impact CCMSI because the administrative fines would be assessed against CCMSI. *See* NRS 616D.120. Further, the Claimant admits that CCMSI has a stake in this matter. The Claimant specifically states that "Although, CCMSI may be effected by the outcome of these hearings..." *See* Claimant's Motion at pg. 2; line 8. As such, CCMSI has standing and should be allowed to participate in any court hearings to protect its interests. The Claimant's motion should be summarily denied.

IV.

CONCLUSION

As set forth above, the Claimant's motion should be stricken and is without merit. The Claimant is represented by counsel and filed her motion without her attorney's signature. Further, CCMSI has standing to protect its interest in the matter because the Claimant requested an administrative fine be levied against CCMSI. For these very reasons, the TPA respectfully requests that the Appeals Officer strike or in the alternative, deny the Claimant's motion in its entirety.

Dated this 15th day of June, 2011.

FLOYD, SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for TPA

090

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case Nos. **78016-SL** and **80334-SL** do not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

DATE

091

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **MOTION TO STRIKE OR IN THE ALTERNATIVE, OPPOSITION TO CLAIMANT'S MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS; AFFIRMATION PURSUANT TO NRS 239B.030** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves c/o Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Jennifer Leonescu, Esq. Division Counsel Division of Industrial Relations 1301 N. Green Valley Parkway, #200 Henderson, NV 89074
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 14th day of June, 2011.

An employee of
FLOYD, SKEREN & KELLY, LLP

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Hooks

BEFORE THE APPEALS OFFICER

SEP 22 2010

In the Matter of the Contested Industrial Insurance Claim of:	Claim No:
SUSAN REEVES,	Appeal No: 78016-SL
Claimant.	

ORDER FOR APPOINTMENT OF

NEVADA ATTORNEY FOR INJURED WORKERS

The Appeals Officer, having received and considered the Claimant's written request for the appointment of the Nevada Attorney for Injured Workers; finds the Claimant would be better served by legal representation and accordingly;

IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this matter.

IT IS SO ORDERED this 22nd day of September, 2010.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

RECEIVED
SEP 22 2010
LAS VEGAS

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER FOR APPOINTMENT OF NEVADA ATTORNEY FOR INJURED WORKERS** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

NAIW
GENERAL COUNSEL
2200 S RANCHO DR #230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 22nd day of September, 2010.

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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JM GIBBONS
Governor

STATE OF NEVADA

EVAN B. BEAVERS
Nevada Attorney for
Injured Workers

NEVADA ATTORNEY FOR INJURED WORKERS
2200 South Rancho Drive, Suite 230
Las Vegas, Nevada 89102-4413
(702) 486-2830 • Fax (702) 486-2844

REPRESENTATION AGREEMENT

The Nevada Attorney for Injured Workers (NAIW) is a State agency established by the Nevada State Legislature to represent injured workers to ensure a fair hearing procedure.
NAIW handles only workers' compensation industrial insurance matters. It does not handle union matters, Social Security matters, employer-employee disputes, or collection actions. These matters are not within our jurisdiction.
NAIW will attempt to aid you in your appeal. However, you must recognize that you would not be here unless your case involved some problem. This office will make every effort to have the problems with your case resolved in your favor. Please note the following:

1. NAIW will represent you only on the issues ruled upon by the Hearings Officer, and stated in the Hearings Officer decision. Your claim may involve other issues. ***For example, the Hearings Officer may have decided that your claim should be closed, and you have appealed. At the same time, the insurance company may have sent you a letter stating you are not entitled to rehabilitation. This denial of rehabilitation is a separate issue, and you must appeal this issue on your own if you do not agree.***) If at any time while being represented by NAIW you receive a determination letter on a new or related issue, you must appeal it to preserve your rights. ***Be sure to provide a copy to your NAIW attorney as soon as possible.***

2. ***In handling your case, every effort will be made to proceed as quickly as possible. But, if additional evidence needs to be obtained, some delay will occur. Every attempt will be made to minimize the delay; however, this office cannot present a case without having the necessary evidence.***

3. NAIW does not pay money nor does it authorize care. Should you win your case, or if it is settled by stipulation, do not expect immediate payment. Various signatures are required, and it takes time to obtain them. It also takes time to calculate the benefits which may be due. NAIW can only attempt to move the papers along. Your patience is required.

4. If you lose your case, the law provides for a further appeal to the district court. NAIW has discretionary authority to handle district court appeals and considers representation on appeal on a case by case basis. This office does not appeal most cases. You will receive written notice of our decision to appeal. Should this office choose not to represent you on appeal, you may obtain private counsel or proceed on your own behalf. NAIW will advise you of your appeal rights and time requirements.

5. You are responsible for keeping this office informed of your whereabouts and/or any change of your address. If you do not, you may not receive important notices. If our office is unable to contact you, the attorney appointed to represent you will make a motion to the court to withdraw from representing you.

I HAVE READ THE ABOVE AND AGREE TO THE TERMS SET FORTH ABOVE.

APPEAL # 78016

DATED 9-21-10 PRINT NAME Susan Reeves

SIGNED Susan L Reeves TELEPHONE NO 453-2500

095

000003

CCMSI

BEFORE THE APPEALS OFFICER

OCT 27 2010

In the Administrative Action of:	Citation No:
SUSAN REEVES,	Appeal No: 80334-SL
Claimant.	

ORDER FOR APPOINTMENT OF

NEVADA ATTORNEY FOR INJURED WORKERS

The Appeals Officer, having received and considered the Claimant's written request for the appointment of the Nevada Attorney for Injured Workers; finds the Claimant would be better served by legal representation and accordingly;

IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this matter.

IT IS SO ORDERED this 27th day of October, 2010.

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

096

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER FOR APPOINTMENT OF NEVADA ATTORNEY FOR INJURED WORKERS** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

NAIW
GENERAL COUNSEL
2200 S RANCHO DR #230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 27th day of October, 2010.

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

097

000005

FILED

JUN 15 2011

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	)	Claim No:
SUSAN REEVES,	)	Appeal No: 78016-SL 80334-SL
Claimant.	)	

ORDER GRANTING SUMMARY JUDGMENT

The Motion to Dismiss or in the Alternative for Summary Judgment filed by Workers' Compensation Section of the Division of Industrial Relations (DIR), together with the Claimant's opposition thereto and the administrator's joinder therein was came on for considered by the Appeals Officer, **Shirley D. Lindsey, Esq.**, on June 8, 2011.

FINDINGS OF FACT

1. The motor vehicle accident giving rise to this claim occurred on September 25, 1988.

2. The law of the case is that the claimant is not entitled to TTD for the period ending July 21, 2004.

3. This claim was closed on or before November 17, 2006.

4. The DIR determinations underlying the instant proceeding were issued on July 22, 2010 and October 1, 2010 in response to complaints filed by claimant on June 1, 2010 and September 11, 2010, respectively and both concern TTD.

5. An evidentiary hearing was held in this matter on April 13, 2011.

6. There is no evidence that the administrator delayed in paying claimant TTD in this claim.

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CONCLUSIONS OF LAW

1. Viewing the evidence in a light most favorable to claimant, there is no factual basis to support a finding that the administrator delayed in paying claimant TTD in this claim.

2. The DIR is entitled to summary judgment affirming its determinations of July 22, 2010 and October 1, 2010.

ORDER

FOR GOOD CAUSE APPEARING, the DIR's Motion for Summary Judgment is hereby **GRANTED.**

The DIR's determinations of July 22, 2010 and October 1, 2010 are **AFFIRMED.**

IT IS SO ORDERED this 15th day of June, 2011.

SHIRLEY D. LINDSEY, ESQ.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

099

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER OF DISMISSAL** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

TERESA A HORVATH ESQ
NV ATTY FOR INJURED WORKERS
2200 S RANCHO STE 230
LAS VEGAS NV 89102

JOHN F WILES ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

JOHN WILES, ESQ.
JENNIFER LEONESCU ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

CCMSI
BRIDGET WYSZOMIRSKI - STATE DIR
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 15th day of June, 2011.

Diane Gagliano

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

100

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:	Appeal Nos. 78016-SL 80334-SL
SUSAN REEVES,	

OPPOSITION TO CLAIMANT'S MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND TO EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS

Comes now the Workers' Compensation Section of the Division of Industrial Relations (the "Division"), by and through its Division Counsel, Jennifer J. Leonescu, to submit its Oppositions to the Motion to Submit Interrogatory to Persons at the DIR and to Exclude Counsel for CCMSI from Hearings served in proper person by Susan Reeves ("Claimant").

ARGUMENT

A. This Motion should be stricken as a fugitive document.

As discussed in the Division's Reply to the Claimant's proper person Opposition to the Motion to Dismiss, this Claimant is represented in the instant matter by Teresa Horvath, Esq., an attorney appointed to represent her through the Nevada Attorney for Injured Workers. Ms. Horvath should be the only individual serving any legal documents in the Claimant's case until such time as Ms. Horvath withdraws. This Motion is a fugitive documents that has no basis in law and should be stricken.

B. Claimant's Interrogatories are irrelevant to the instant appeal.

Claimant is appealing first, the Division's determination not to assess an administrative fine or benefit penalty against CCMSI and/or Bally's for denying TTD payments to her even though that decision by CCMSI has been affirmed. It should be noted that a two hour hearing on this appeal has already been held and the testimony of the Claimant has already been heard. The

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purpose of interrogatories is to "further the rational and balanced search for accurate facts related to the claims and issues of the case and to secure the just, speedy, and inexpensive determination of every action." 2-15 Moore's Manual – Federal Practice and Procedure §15.25.

The "interrogatories" are not at all related to the instant litigation. The answers to these interrogatives do not tend to prove or disprove whether a violation of any statute or regulation has occurred by CCMSI or Bally's. They are wholly inquiring into the Division's investigation and means of investigation of the Claimant's request for assistance dated February 28, 2010, its response dated April 26, 2010, and the follow-up letter dated October 1, 2010 to her repeated requests dated September 1, 2010.

The remaining interrogatories relate to claims issues. As the Claimant has previously been advised, the Division is not a party to the contested claim process. The Division's powers regarding the imposition of benefit penalties is whether its investigation shows that there was a violation of NRS 616D.120, specifically, in this case, whether there was an unreasonable delay in compliance with the 2003 Appeals Officer's Decision and Order. None of these interrogatories is relevant to this basic question.

Furthermore, it is the Claimant's burden to prove that there was an unreasonable delay or another violation of NRS 616D.120(1) that would entitle her to a benefit penalty-- not whether she subjectively believes the Division's investigation was not thorough enough for her or that she did not like the response she received. That is precisely why there is an appeals process. She now needs to prove her case. The Motion to propound these interrogatories should be denied.

C. The Claimant's Motion to exclude counsel for CCMSI from hearings is patently unreasonable.

Next, the Claimant requests this Appeals Officer to exclude CCMSI's attorney from

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appearing and defending his client from a benefit penalty and/or administrative fine. The basis for this Motion is the Claimant's mistaken belief that CCMSI has no standing. A party has standing when he has sustained or is in danger of sustaining a direct injury. *See, Frothingham v. Mellon*, 262 U.S. 447, 488 (1923). When an insurer, TPA, etc., is in danger of having an administrative fine or benefit penalty levied against it, it is clearly in danger of sustaining a direct injury—the possibility of having to pay that fine or penalty and a report to the Division of Insurance. Therefore, in the instant case, CCMSI has standing and is entitled to appear and defend itself through counsel.[1] In fact, CCMSI is an indispensable party pursuant to NRCP 19; the failure of joinder would necessitate the dismissal of this consolidated appeal.

CONCLUSION

Primarily, the Claimant is required to prove her case, that she is entitled to a benefit penalty. She has now had this opportunity through the production of documentary evidence, and nearly two hours of testimony. The interrogatories she wishes to propound are irrelevant to her case. Her motion to exclude CCMSI, an indispensable party, is utterly baseless. The Division requests the Claimant's Motion be denied in its entirety.

DATED this 3 day of June, 2011.

By: _____
Jennifer I. Leonescu, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway #200
Henderson, NV 89074

[1] The Nevada Supreme Court has consistently held that a corporation such as CCMSI cannot appear **except through counsel.** *Guerin v. Guerin,* 116 Nev. 210, 993 P.2d 1256 (2000).

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: **Division of Industrial Relations' Opposition to Claimant's Motion to Submit Interrogatory to Persons at the DIR and to Exclude Counsel for CCMSI from Hearings**

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Person(s) Served: Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr., Ste. #230 Las Vegas, NV 89102	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** X **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Person(s) Served: Bally's Dennis Lindenbach 3645 Las Vegas Blvd. South Las Vegas, NV 89109	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____

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Person(s) Served: CCMSI Bridget Wyszomirski P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile fax number:** _____
Person(s) Served: Dalton Hooks, Esq. Floyd, Skeren & Kelly, LLP 4570 S. Eastern Ave, Ste 28 Las Vegas, NV 89119	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile fax number:** _____

DATED this 31st day of June, 2011.

An Employee of the Division of Industrial Relations

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:	Appeal Nos. 78016-SL 80334-SL
SUSAN REEVES,	

REPLY TO CLAIMANT'S OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes now the Workers' Compensation Section of the Division of Industrial Relations (the "Division"), by and through its Division Counsel, Jennifer J. Leonescu, to submit its Reply to the Opposition filed in proper person by Susan Reeves ("Claimant"), in the above captioned matter.

ARGUMENT

A. The Opposition and Accompanying Motion are fugitive documents.

First, a procedural issue must be addressed. The Claimant is represented in the instant matter by Teresa Horvath, Esq., an attorney appointed to represent her through the Nevada Attorney for Injured Workers. Ms. Horvath is still serving documents as the Claimant's counsel. The Claimant, however, filed her Opposition, and an accompanying Motion to Submit Interrogatory [sic] to Persons at the DIR and to Exclude Counsel for CCMSI from Hearings in proper person. Pursuant to Nevada Supreme Court Rules 46 and 46, the Claimant was required to submit written notice to the opposing parties that her attorney is removed or a Motion to Withdraw must be filed before any additional proceedings may be held. Pursuant to Nev. SCR 48, without such notice, the undersigned is required to recognize Ms. Horvath and only Ms. Horvath. It is highly improper for a party represented by counsel to serve papers on her own behalf and in fact, the undersigned attorney has never seen it occur before. Either the Claimant

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is represented or she is not. Because they were improperly served by a party represented by counsel, it is the Division's assertion that this Opposition and the accompanying Motion to Submit Interrogatory are fugitive documents that have no basis in law and should be stricken.

B. Claimant fails to address any of the substantive issues raised by her appeals.

In Appeal No. 78016-SL, the Claimant again fails to address the past and pending litigation of her claim. She merely reiterates that Decision and Order dated December 1, 2003 ordered reopening of her claim and therefore, she is entitled to retroactive TTD payments. This is, of course, untrue. Claimant omits all of the events that occurred subsequent to the December 1, 2003 Decision and Order. The insurer denied TTD benefits which determination was appealed by the Claimant. The Hearing Officer affirmed denial off TTD benefits and Claimant appealed. The Appeals Officer dismissed the Claimant's appeal as untimely. The claim was thereafter closed again by the insurer. Claim closure was affirmed by the Hearing Officer and then affirmed again by the Appeals Officer. That Decision and Order was appealed to the District Court which yet again affirmed the Appeals Officer's Decision. That Decision is apparently at the Nevada Supreme Court.

The 2003 Decision and Order merely ordered the claim to be reopened as the somatoform disorder was industrially related and required medical treatment. By law, the Division cannot modify any Decision and Order made by the Appeals Officer. The Claimant's argument that she was entitled to TTD benefits is belied by virtue of the fact that denial of those very benefits was affirmed—repeatedly. There is no basis in law to award a benefit penalty regarding the 2003 Decision and Order which comprises the foundation of Claimant's complaint to DIR and this appeal.

In addition, the time for compliance with the 2003 Decision and Order has long passed. If the Claimant believed that the insurer unreasonably delayed compliance with this Order, she

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should submitted her claim much earlier than waiting seven (7) years. The Division does not dispute that the claim has been litigated since the 1980s. The Division looks to the date of the alleged violation. In this case, had a violation occurred, the Claimant submitted her complaint more than 5 years later. Merely because a claim is under litigation, or even open, does not mean that a Claimant can wait to submit a complaint for investigation to the Division. NRS 11.190 contains the applicable statute of limitations for actions upon a statute—either two or three years at the latest. In addition to the statute of limitations, the doctrine of laches applies to an unreasonable delay in pursuing or right or claim in a way that prejudices the opposing party. *See, Black's Law Dictionary.* Ninth Ed. (*See, also, Carson City v. Price,* 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997) ("[laches] is a delay that works to the disadvantage of another")).

The mere fact the Claimant alleges she was unaware that the Division was the regulatory agency is of no consequence. She was represented by counsel at the time of the 2003 Decision and Order and for some time thereafter. The Claimant knew she was not receiving TTD benefits from Day One. Thus, the applicable statute of limitations still passed regardless of whether she knew about the process; she already believed she sustained an "injury."

Next, in Appeal No. 80334-SL, the Claimant requested assistance with obtaining communications regarding meetings with doctors. The Claimant did not seek a benefit penalty and the Division treated the matter as a request for assistance. The Division responded on April 26, 2010 after it conducted an investigation and advised the Claimant that all communications had been received. This letter did not provide for appeal rights and the Claimant did not appeal it. She wrote again regarding the same letter and the Division responded advising her that all of her issues had been investigated, that the communications were received and her other complaint was handled in the July 22, 2010 determination letter that was appealed in 78016-SL. This letter, too, did not contain any appeal rights because it was informational and all of her matters

were previously investigated and letters sent.

The Division has authority to conduct those investigations it deems reasonable. NRS 616A.400. It does not and cannot look at every letter seeking assistance as a letter demanding a benefit penalty. The Division does not have jurisdiction to address allegations of misconduct where there is no basis to impose liability under Chapters 616A through 616, or Chapter 617 of the Nevada Revised Statutes. The Claimant is looking to the Division to correct the wrongs she feels she has sustained during the course of this 20-plus year claim. However, the Division's investigatory and regulatory functions are separate and apart from the contested claims process.

Therefore, based upon the pleadings, the documentary evidence and the testimony at the hearing, there is no set of facts that Claimant can show to produce the benefit penalty which she now seeks. The Division seeks these consolidated appeals be dismissed.

DATED this 3 day of June, 2011.

By: _____
Jennifer J. Leonescu, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway #200
Henderson, NV 89074

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: Division of Industrial Relations' Reply Brief

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Person(s) Served: Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr., Ste. #230 Las Vegas, NV 89102	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** X **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Person(s) Served: Bally's Dennis Lindenbach 3645 Las Vegas Blvd. South Las Vegas, NV 89109	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: _____
Person(s) Served: CCMSI Bridget Wyszomirski P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile fax number:** _____ 110

Person(s) Served:	U.S. Mail
Dalton Hooks, Esq. Floyd, Skeren & Kelly, LLP 4570 S. Eastern Ave, Ste 28 Las Vegas, NV 89119	X via State Mail room (regular or certified) circle one _____ deposited directly with U.S. Mail Service _____ Overnight Mail _____ Interdepartmental Mail _____ Messenger Service _____ Facsimile fax number: _____

DATED this 3rd day of June, 2011.

An Employee of the Division of Industrial Relations

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STATE OF NEVADA
DEPARTMENT OF ADMINISATION
BEFORE THE APPEALS OFFICER

SUSAN REEVES Petitioner vs. DIVISION of INDUSTRIAL RELATIONS WORKER'S COMPENSATION SECTION Respondents	)	APPEAL NO. 78016-SL 80334-SL

PETITIONER'S OPPOSITION TO MOTION TO DISMISS
OR FOR SUMMARY JUDGMENT

The DIR claims that in Appeal No. 80334-SL, pursuant to NRS 616D.330, what constitutes a written record, that the letter of complaint did not request a benefit penalty, when NRS 616D.330 clearly states what penalties are available to be imposed, as such felt no need to request a benefit penalty, since if it was found that NRS 616D.330 had been violated, whatever penalties were in order would be imposed

Whereas, the DIR found, in their letter of April 26, 2010, that no violation had occurred, and that determination was signed by Ms. Susan Sayegh, formally the case manager, at CCMSI, on Reeves claim at the time of the alleged violation, she sent the letter of April 29, 2010 outlining her dissatisfaction with the handling of her complaint, and requesting how to file a complaint and where to file it.

After a telephone conversation with Ms. Sayegh's manager, Reeves was informed that the

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complaint would be looked into by someone other than Ms. Sayegh. As such did not file an appeal of that letter at that time. In her letters of June 1, 2010 and September 11, 2010, Reeves, having heard nothing from the DIR concerning her complaint, she inquired as to the status of the new investigation.

Reeves believes that the letter of September 11, 2010 prompted the letter of October 1, 2010, which stated that the review of the investigation found that CCMSI had provided the oral communications requested, to mean that no violation had occurred. Reeves then filed to appeal that determination.

The DIR claims that in Appeal No. 78016-SL, pursuant to NRS 616D.120, the complaint does not give rise to a benefit penalty because although the Decision and Order reversed and reopened Reeves' claim with the finding that her claim should not have been closed but remain open for further benefits, to include specific benefits, does not mean that the claim revert back to the status that it was in before it was closed, with TTD benefits being paid, because the Order did not specifically Order TTD benefits. If one were to include specific benefits, they would have to be included into some other benefit, which in this case would be all of the benefits that were being provided prior to closure, including TTD benefits. As such by not providing back and ongoing TTD benefits, CCMSI has violated NRS 616D.120 which provides a benefit penalty for unreasonably delaying payment.

The DIR claims that their letters of April 26, 2010 and October 1, 2010, are for informational purposes only, that they do not comprise a determination, as such are not subject to appeal. In fact they are determinations, as noted in the very letters that they issued. The letter of April 26, clearly states that "a determination has been reached and has concluded

the following", the letter of October 1, 2010, clearly states "You disagreed with the determination by the WCS dated July 22, 2010". In their own letters they state that they have made determinations and now claim that their determinations are not determinations subject to appeal because their letters did not provide appeal rights, to mean that they did not provide forms for appeal. The first time Reeves heard that the DIR consider their letters of determinations to be only for informational purposes was in their Motion to Dismiss.

The DIR claims that a statute of limitations has passed, as it is more than two (2) or three (3) years since the Decision in question was issued, without action. They fail to note that after that Decision, when her claim was not reinstated to the status it was in before it was closed, Reeves requested back and ongoing TTD benefits which was denied by CCMSI, appealed and is still in question, as such action was initiated in 2004. Reeves found out in 2010, that the DIR is the regulatory agency that enforces Appeal Decisions. She then filed complaints with the DIR to have the Decision enforced. Therefore no statute of limitation exists, as action in this matter was initially started in 2004. Reeves believes that as all matters in her claim have been in constant litigation since 1989, that to impose a statute of limitation, where none exists, on the idea that this is somehow a stale issue, where the insurer was not on notice to defend their position is to completely disregard the facts in this case.

Whereas, CCMSI's latest closure was in September of 2006, which is also being disputed, would mean that with the Decision in 2003 reversing and reopening this claim, that the claim should have reverted back to the status that it was in before it was closed, at least up until that time, as the claim was an open and accepted claim where TTD benefits had been paid without any certification of disability forms, but based upon Reeves' medical records.

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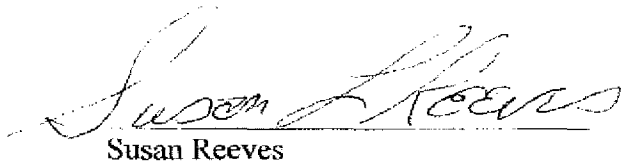
CONCLUSION

Based upon the above, Reeves respectfully requests that the Appeals Officer deny the DIR's Motion to Dismiss or for a Summary Judgment in Appeals No. 78016-SL and 80334-SL.



Susan Reeves
Petitioner
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 27 day of May, 2011, I deposited a true and correct copy of the above and foregoing PETITIONER'S OPPOSITION TO DISMISS OR FOR SUMMARY JUDGMENT in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

Jennifer L. Leonescu, Esq.
Division of Industrial Relations
1301 Nourth Green Valley Parkway, Suite 200
Henderson Nevada 89074

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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STATE OF NEVADA
DEPARTMENT OF ADMINISATION
BEFORE THE APPEALS OFFICER

SUSAN REEVES Petitioner vs. DIVISION of INDUSTRIAL RELATIONS WORKER'S COMPENSATION SECTION Respondents	)	APPEAL NO. 78016-SL 80334-SL

MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND TO EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS

ARGUMENT FOR INTERROGATORIES

Although Ms. Horvath, of the N.A.F.I.W., has the belief that interrogatories can not be submitted to persons at the DIR, Reeves believes that the interrogatories included with this submission are very relevant to her case. They will show that in Appeal No.80334-SL that the very person that found that CCMSI had not violated NRS 616D. 330, was in fact Susan Sayegh, the claims supervisor at CCMSI, on Reeves claim, at the time of the alleged violation.

These interrogatories will further show that after the determination that no violation had occurred, Reeves complained, in her letter of April 29, 2010, about the handling of her complaint by a person that, more than likely, was at the very meeting that she was complaining about, or at least the supervisor of the persons that were at that meeting. Reeves' husband was then contacted by Ms. Sayegh's supervisor at the DIR, by telephone, where the supervisor stated that someone other than Ms. Sayegh would review the complaint.

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Whereas, it is the DIR's statement that Reeves did not file an appeal of that letter, is because after speaking with Ms. Sayegh's supervisor, she believed that the matter was being reviewed by some other employee at the DIR, as noted her letters of June 1, 2010 and September 11, 2010, where she inquired as to the status of her complaint.

ARGUMENT FOR EXCLUSION OF CCMSI'S COUNSEL

Although, CCMSI may be effected by the outcome of these Hearings, the Appeals are from determinations by the DIR, not determinations from CCMSI. As such CCMSI has no standing in these Hearings.

Reeves also believes that although the counsels for CCMSI and the DIR state that they are not collaborating on the defense of the determinations of the DIR, if the Appeals Officer will look at the attached Decision and Order, Appeal No. 33934-GK, written by CCMSI's counsel, the Appeals Officer will find that the finding of facts in that Order and the DIR's finding of facts, in their letter of April 26, 2010, are almost identical, some with the exact wording, others with the same typographical errors, and still others that are taken out of context to present a picture that is not exactly accurate.

Both of these findings of fact mention a 1987 claim, more than once, when in fact there was never a claim in 1987. There has only been one (1) claim, the one (1) from 1988. Both also, make it look like Reeves received a PPD award, in 1991, and treatment for her industrial injuries in 1988, when in fact Bally's did not accept this claim until 1997, and actually did not provide any treatment until after the Decision in 2003, and has never provided a PPD award.

Reeves finds it hard to believe that two (2) separate investigations would contain the exact same wording, typographical and other errors. It is clear that what the DIR presented as

facts, that those facts that were provided by CCMSI, as the DIR did not request anything from Reeves.

Reeves further believes that the regulatory agency and the regulated entity, whom she feels has no standing, should not be allowed to present a common defense for the regulated entity.

CONCLUSION

Whereas, based on the above, CCMSI has no standing in an Appeal of a determination made by the DIR, Reeves respectfully requests that the Appeals Officer exclude CCMSI's counsel from these Hearings and permit the included interrogatories.

Respectfully,

Susan Reeves
Petitioner
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5 (b), I, Susan Reeves, Petitioner, hereby certify that on the 27 day of May, 2011, I deposited a true and correct copy of the above and foregoing MOTION TO SUBMIT INTERROGATORY TO PERSONS AT THE DIR AND TO EXCLUDE COUNSEL FOR CCMSI FROM HEARINGS in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope prepaid postage, addressed to the following:

Jennifer J. Leonescu
Division Counsel. DIR
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Dalton L. Hooks, Jr.
4570 South Eastern Ave., Suite 28
Las Vegas, Nevada 89119
Attorney for the Employer

Susan Reeves
Petitioner in Proper Person
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

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Charles J. Verfe
Division of Industrial Relations
Chief Administrative Officer
Worker's Compensation Section
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

May 25, 2011

SUSAN REEVES
Petitioner

APPEAL NO. 80334-SL
78016-SL

INTERROGATORIES RE: COMPLAINT NO. 11522

1. Did the letter dated April 26, 2010, signed by Ms. Susan Sayegh, provide any reference or forms, that if Ms. Reeves did not agree with the DIR's determination, that she had a right to appeal that determination to any forum?

2. After Ms. Reeves wrote a letter, dated April 29, 2010, outlining her dissatisfaction with the handling of her complaint, and requesting information on how to file a complaint about the handling of her complaint by the DIR, did you or someone from your office inform Ms. Reeves husband, in a telephone conversation, that another investigator, not one under Ms. Sayegh would reinvestigate her complaint No. 11522?

3. Whereas, Mr. Christopher D. Brown was the investigator prior to the letter of April 26, 2010, did you or someone from your office assign a Mr. Christopher Pangallo to reinvestigate Ms. Reeves complaint No. 11522?

4. Did Ms. Reeves, in letters dated June 1, 2010 and September 11, 2010, inquire as to the status of the reinvestigation of complaint No. 11522?

5. Did Ms. Reeves send a letter to you, Mr. Verry (Verfe), dated June 1, 2010, alleging various other violations by CCMSI, and requesting that if your department required more documents, or if your department was going to investigate her entire claim, that she would like to be involved?

6. Did Mr. Brown, Mr. Pangallo or anyone from your office, ever contact Ms. Reeves to request any additional documents or information pertaining to complaint No. 11522 or any of her other complaints?

7. If you would, could you give the DIR's definition of the word including, as the dictionaries and the DIR's definitions appear to be at odds?

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Susan Sayegh
Division of Industrial Relations
Southern District Manager
Worker's Compensation Section
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

May 25, 2011

SUSAN REEVES
Petitioner

APPEAL NO. 80334-SL
78016-SL

INTERROGATORIES RE: COMPLAINT NO. 11522

1. Whereas, you are now the Southern District Manager, Worker's Compensation Section, at the DIR, who signed the letter, of April 26, 2010, which determined that no violation had occurred, are you the same Ms. Susan Sayegh that was the Claims Supervisor, on Ms. Reeves claim, at CCMSI in June 2004, the time of the alleged violation?

2. If in fact you are the same Ms. Sayegh, could you explain the discrepancies between the letter, authored by Dr. Petroff, dated June 29, 2004, about his meeting with representatives from CCMSI, and the log of oral communication supplied by CCMSI, such as why his letter states that there were three (3) representatives and the log states that there were two (2), that his letter states Ms. Reeves and her husband were asked to leave by CCMSI's representatives, but the log states that they were in attendance, along with her attorney, who was never present?

3. Is it not true that CCMSI's attorney was present, but was asked to leave by Ms. Reeves attorney, over the telephone, and why CCMSI brought an attorney to a medical staffing?

4. Was Dr. Petroff's opinion in his letter, dated May 18, 2004, addressed to you, that Ms. Reeves' medical condition that was preventing her from returning to work were the symptoms of dizziness, head and back pain, along with objectively identifying, by MRI and x-ray the basis of Ms. Reeves' neck pain, which he also opined that her dizziness was possibly caused by her neck problems and that her neck problems were significantly contributory to her headaches, along with his opinion that from a medical standpoint that Ms. Reeves would not be able to return to gainful employment, with respect to the pre-accident job description, the reason that CCMSI requested a meeting?

5. In the letter authored by Dr. Petroff, after his meeting with the representatives from

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CCMSI, he only referenced two (2) doctors reports, presented as a doctors from around the time of the accidents, one (1) Dr. Oliveri's, who was not a doctor from around the time, but had preformed an IME, in 1998, ten (10) years after the accidents, and less than two (2) weeks before starting treatment with Dr. Petroff in 1998, and whose opinion was found to have not addressed Ms. Reeves' symptoms, the other Dr. Boulware, whose opinion was completely discounted by the Nevada Supreme Court, can you explain how, out of all of Ms. Reeves' medical documents, only those two (2) were provided by CCMSI?

6. Dr. Petroff stated in his letter that, solely with respect to injury from the industrial accident, it would be reasonable to try a trial of back to work as the representatives from CCMSI had offered to arrange a trial of back to work, based upon sedentary duties, can you explain how Dr. Petroff, with the help of the representatives from CCMSI, managed to separate what injuries were from what accident, sixteen (16) years after the accidents and has any trial of back to work based upon sedentary duties ever been offered to Ms. Reeves?

7. Did Dr. Petroff state, in the last sentence, that if Ms. Reeves could not tolerate this job, he would review and consider her disability based on her advanced cervical degenerative change and migraine syndrome, the very same symptoms that Ms. Reeves has been seeking treatment for since her industrial accident of 1988?

8. On the log of oral communication in question, presented as the written record, there is a date of 9/8/06 on the first line, then a space, then a date of 6/29/04, since the date at the top is more recent than the date further down the page, with incorrect information, can you explain how this could possibly be considered a written record, when everything on it is incorrect?

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FILED
DEC 22 2009
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES 4724 East Washington Avenue Las Vegas, NV 89110 Claimant.	Claim No.: 88H92H243724 Appeal No.: 39934-GK 42367-GK Employer: BALLY'S Attn: Kathy Mone 3645 Las Vegas Boulevard South Las Vegas, NV 89109

DECISION AND ORDER

The above-captioned appeal came on for hearing multiple days before Appeals Officer GREGORY KROHN, ESQ. The claimant, SUSAN REEVES, was represented by, TERESA HORVATH, ESQ., of the NEVADA ATTORNEY FOR INJURED WORKERS. The Employer, BALLY'S, was represented by LEE DAVIS, ESQ., of SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON.

In a letter dated February 16, 2007, the Employer notified the claimant that her claim was accepted for specific injuries only. The claimant appealed that determination to a Hearing Officer.

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

In a letter dated September 8, 2006, the Employer notified the claimant that it was closing her claim. The claimant appealed that determination to a Hearing Officer.

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

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03637-462/537449

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

After reviewing the documentary evidence, hearing the testimony of witnesses, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

I.

FINDINGS OF FACT

1. On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury.

2. The claimant was also involved in a motor vehicle accident again on September 25, 1988.

3. The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim.

4. The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the matter to the Appeals Officer. On March 26, 1991 the Appeals Officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court.

5. The Claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness.

6. The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts.

7. On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that she be sent to pain management.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

8. On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain.

9. On February 27, 1991, the 5% PPD would be offered to the claimant.

10. On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. A second letter of acceptance would be sent to the claimant on May 12, 1998.

11. On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder.

12. On December 27, 2001 the claimant was sent a claim closure notice, that determination would later be reversed by an appeals officer awarding the claimant further medical care. The claimant would be sent to Dr. Mortillaro. In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer.

13. The clamant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004.

14. The claimant also continued to treat with Dr. Dunn in 2004.

15. The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility.

16. On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare.

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SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

17. On September 8, 2006 the claimant was sent a claim closure determination. The claimant appealed that determination.

18. A Hearing Officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

19. The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim.

20. On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination.

21. On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim.

22. The claimant appealed the hearing officer order of dismissal. The claimant brought the issue of her failure to appear to Appeals Officer Richens who issued an order of remand finding that the claimant established that she had not received the notice of hearing. The matter would be referred back to the hearing office for a hearing on the merits.

23. On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination.

24. The claimant appealed that decision. Both of these appeals have been consolidated,

25. The Employer served the claimant with interrogatory questions focused on the claimant providing specific dates when he injured herself as a result of falls. The questions also asked the claimant to provide the medical facilities that she sought medical attention as a result of her fall(s).

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26. At the time of appeal hearing the claimant testified that she had many falls that she thought was caused by her industrial injuries. The claimant further testified that she believed that she was forced to require medical care for these falls.

27. These findings of fact are based upon substantial evidence within the record.

II.

CONCLUSIONS OF LAW

1. Under NRS 616C.160, the claimant must demonstrate that a late manifesting condition is caused by the accepted condition.

> 1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;
>
> 2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. The Claimant is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is the Claimant's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

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It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

III.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the claimant has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally the claimant has failed to establish an entitlement to further medical care and that claim closure was improper;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Officer Decisions dated May 10, 2007 and July 25, 2007 are AFFIRMED.

IT IS SO ORDERED.

DATED this 18th day of December, 2009

GREGORY KROHN, ESQ.
Appeals Officer

Submitted by,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

By: _____
LEE DAVIS, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for the Employer

NOTICE: Pursuant to NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service of this Order.

SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the ____ _____ day of December, 2009, service of the foregoing **DECISION AND ORDER** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following::

Susan Reeves
4724 East Washington Avenue
Las Vegas, NV 89110

Teresa Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, NV 89102

Bally's
3645 Las Vegas Blvd. South
Las Vegas, NV 89109

Sedgwick Claims
P.O. Box 14438
Lexington, KY 40512-4483

Lee Davis, Esq.
Santoro, Driggs, Walch,
Kearney, Holley & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

DATED this 22nd day of December, 2009

An employee of the Department of Administration,
Appeals Office

SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

BRIAN SANDOVAL
Governor

STATE OF NEVADA

TERRY JOHNSON
Director

DONALD E. JAYNE, CPCU
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
DIVISION COUNSEL

May 11, 2011

The Hon. Shirley Lindsey, Esq.
Appeals Officer
2200 S. Rancho Dr., Ste. 220
Las Vegas, NV 89102

Re: SUSAN REEVES
Appeal Nos. 78016-SL/80334-SL

Dear Ms. Lindsey:

Enclosed please find the Division's Motion to Dismiss or in the Alternative Motion for Summary Judgment for filing. Because of the various bases for the decision that could be made on this Motion, I have not included either of the usual proposed Orders.

Once you have advised of your decision and its basis, I would be happy to prepare the appropriate Order, if necessary.

Thank you and please feel free to call if you have any questions or concerns.

Sincerely,

Jennifer J. Leonescu, Esq.
Division Counsel

JL/ms
Enclosure

cc (with enclosure): Dalton Hooks, Esq.
Teresa Horvath, Esq.

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Telephone: (702) 486-9070

1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Fax: (702) 990-0361

Doc 14
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Transactions Table

4-13-2011

Reeves **Susan**

ASSN: 501 **Member Number:** S010046

DOL: September 25, 1988

Check #	Print Date	Input Date	Charged	Discount	Amount	Payee	Class	Status	Trans Type	Pro	Comment
52244	1-11-2001	1-11-2001	($31,275.96)	$0.00	($31,275.96)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980605-CONVERTED DETAIL PAYM
53906	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980818-CONVERTED DETAIL PAYM
54183	1-11-2001	1-11-2001	($10,351.78)	$0.00	($10,351.78)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19990128-CONVERTED DETAIL PAYM
53661	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980708-CONVERTED DETAIL PAYM
53418	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980730-CONVERTED DETAIL PAYM
52190	1-11-2001	1-11-2001	($28.01)	$0.00	($28.01)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19990128-CONVERTED DETAIL PAYM
52207	1-11-2001	1-11-2001	($595.14)	$0.00	($595.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19990202-CONVERTED DETAIL PAYM
55298	1-11-2001	1-11-2001	($56,955.00)	$0.00	($56,955.00)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19981022-CONVERTED DETAIL PAYM
53352	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980717-CONVERTED DETAIL PAYM
52763	1-11-2001	1-11-2001	($5,069.81)	$0.00	($5,069.81)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980626-CONVERTED DETAIL PAYM
200001296	1-11-2001	1-11-2001	($19,000.00)	$0.00	($19,000.00)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19990805-CONVERTED DETAIL PAYM
			($124,824.80)	$0.00	($124,824.80)						

INSURER'S EXHIBIT #

Transactions Table

4-13-2011

Reeves **Susan**

ASSN: 801 **Member Number:** S010038

DOL: September 25, 1988

Check #	Print Date	Input Date	Charged	Discount	Amount	Payee	Class	Status	Trans Type	Prn	Comment
57234	1-11-2001	1-11-2001	($31,275.90)	$0.00	($31,275.90)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980624-CONVERTED DETAIL PAYM
57996	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980818-CONVERTED DETAIL PAYM
57183	1-11-2001	1-11-2001	($10,331.78)	$0.00	($10,331.78)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980128-CONVERTED DETAIL PAYM
57004	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980708-CONVERTED DETAIL PAYM
57318	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980730-CONVERTED DETAIL PAYM
57190	1-11-2001	1-11-2001	($28.01)	$0.00	($28.01)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980128-CONVERTED DETAIL PAYM
57267	1-11-2001	1-11-2001	($595.14)	$0.00	($595.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19990202-CONVERTED DETAIL PAYM
55298	1-11-2001	1-11-2001	($56,955.60)	$0.00	($56,955.60)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19981022-CONVERTED DETAIL PAYM
53352	1-11-2001	1-11-2001	($392.14)	$0.00	($392.14)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980717-CONVERTED DETAIL PAYM
52763	1-11-2001	1-11-2001	($5,069.81)	$0.00	($5,069.81)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19980624-CONVERTED DETAIL PAYM
200001296	1-11-2001	1-11-2001	($19,000.00)	$0.00	($19,000.00)	PARK PLACE CONVERSION	Ind Other	Paid	Payment	Y	19990803-CONVERTED DETAIL PAYM
			($124,823.80)	$0.00	($124,824.80)						

EXHIBIT 133
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Facsimile Transmission

From:
Name: Rosemarie McMorris
Fax Number: 217-477-3073
Voice Phone: 702-933-4833

To:
Name: AO - Shirley Lindsey/Dalton Hooks, Esq.
Company:
Fax Number: 7024862555
Voice Phone:

Fax Notes:

Susan Reeves pay History

Date and time of transmission: Wednesday, April 13, 2011 12:17:56 PM
Number of pages including this cover sheet: 02

CONFIDENTIALITY NOTICE: This facsimile transmission is intended only for the designated recipient(s), and may contain information that is proprietary, privileged, confidential or protected by law. If you are not the designated recipient or if you believe you have received this in error, please notify the sender immediately and destroy all copies of the facsimile. Please do not copy the facsimile or use it for any purposes, or disclose its contents to any other party. Thank you for your cooperation.

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INSURER'S EXHIBIT # 7

ORD
LEE DAVIS, ESQ.
Nevada Bar No. 003932
LEWIS BRISBOIS BISGAARD & SMITH, LLP
400 South Fourth Street, Fifth Floor
Las Vegas, Nevada 89101
Telephone: 702/893-3383
Facsimile: 702/366-9563
Attorney for Respondents BALLY'S

DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES,

Petitioner,

vs.

BALLY'S GRAND HOTEL & CASINO; and The DEPARTMENT OF ADMINISTRATION, HEARING DIVISION , a State Agency,

Respondents.

Case No.: A10-607874-J
Dept. No.: ~~IX~~ XXX

PLEASE NOTE DEPARTMENT CHANGE

ORDER DENYING PETITION FOR JUDICIAL REVIEW

The above-captioned matter came before the Honorable Jennifer Togliatti on Petitioner's Petition for Judicial Review of an Appeals Officer's Decision and Order of December 22, 2009.

The Court, having reviewed the record and considered the arguments of the parties, finds that Petitioner's Petition for Judicial Review is DENIED.

This Court's review is limited by NRS 233B.135 to whether there is substantial evidence to support findings of fact, and the reviewing Court may not substitute its judgment for that of the Appeals Officer on matter of weight or credibility or issues of fact. Apeceche v. White Pine County, 96 Nev. 723, 615 P.2d 975 (1980).

Doc015
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01-19-11P02:42 RCVD

LEWIS BRISBOIS BISGAARD & SMITH LLP

4834-3969-7938.1

Substantial evidence is that quantity and quality of evidence which a reasonable man would accept as adequate to support a conclusion. The statute allowing that the decision of an agency may be reversed if unsupported by substantial evidence in view of the entire record as submitted does not permit the reviewing court to pass on credibility or to reverse an administrative decision because it is against the great weight and clear preponderance of the evidence, if there is substantial evidence to sustain it. State, Employment Sec. Dep't v. Hilton Hotels, 102 Nev. 606, 608 n.1, 729 P.2d 497 (1986).

Most issues are not purely questions of law, but rather are issues involving the finding of facts and the application of those facts to the law. Deference is to be given by the reviewing court to conclusions of law made by the Appeals Officer. Jones v. Rosier, 102 Nev. 215, 719 P.2d 805 (1986); State Indus. Ins. Sys. v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992).

On issues of law it is appropriate for the reviewing Court to make an independent judgment, rather than a more deferential standard of review. Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 849 P.2d 267 (1993). A "pure legal question" is a question that is not dependent upon, and must necessarily be resolved without reference to any fact in the case before the Court. An example of a pure legal question might be a challenge to the facial validity of a statute. Beavers v. State, Dep't of Motor Vehicles and Pub. Safety, 109 Nev. 435, 438 n.1, 851 P.2d 432 (1993). Matters of procedure are issues of law. Nyberg v. Nevada Indus. Comm'n, 100 Nev. 322, 324, 683 P.2d 3 (1984). The reviewing Court may undertake independent review of the administrative construction of a statute. State Indus. Ins. Sys. v. Campbell, 109 Nev. 997, 999, 862 P.2d 1184 (1993).

Hilton, supra, states:

> Substantial evidence was well defined in Robertson Transp. Co. V. P.S.C., 159 N.W. 2d 636, 638 (Wis. 1968):
>
> 1. [S]ubstantial evidence [does] not include the idea of this court weighing the evidence to determine if a burden of proof was met or whether a view was supported by the preponderance of the evidence. Such tests are not applicable to administrative findings and decisions. We [equate] substantial quality of evidence which a reasonable man could accept as adequate to support a conclusion. And, in this process, sec. 227.20 (1) (d) Stats.

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> providing that the decision of an agency may be reversed if unsupported by substantial evidence in view of the entire record as submitted does not permit this court to pass on credibility or to reverse and administrative decision because it is against the great weight and clear preponderance of the evidence, if there is substantial evidence to sustain it.

Emphasis added.

This is an appeal of the Appeals Officer's December 22, 2009 Decision and Order. (ROA at pp. 000013-000019)

In a letter dated February 16, 2007, the Employer notified Ms. Reeves that her claim was accepted for specific injuries only. Ms. Reeves appealed that determination to a Hearing Officer. (ROA at p. 000307)

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. Ms. Reeves timely appealed that decision to this Court. (ROA at pp. 000300-302)

In a letter dated September 8, 2006, the Employer notified Ms. Reeves that it was closing her claim. Ms. Reeves appealed that determination to a Hearing Officer. (ROA at p. 000319)

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. Ms. Reeves timely appealed that decision to this Court. The Appeals Officer's appeal hearing dealt with the Ms. Reeves appeals of both of the Hearing Officer Decision. (ROA at pp. 000282-000283)

The evidentiary hearing took place before Appeals Officer Krohn when Reeves' testimony was given and various documents were entered into evidence.

On December 22, 2009, the Appeals Officer held that Ms. Reeves had failed to establish that her claim should be expanded. In addition the Appeals Officer also held that Ms. Reeves had failed to establish an entitlement to further medical care. (ROA at pp. 000013-000019). The Appeals Officer's Decision and order read in part as:

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CONCLUSIONS OF LAW

1. Under NRS 616C.160, Ms. Reeves must demonstrate that a late manifesting condition is caused by the accepted condition.

1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;

2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. Ms. Reeves is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is Ms. Reeves 's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

It is also noted that there was no evidence that Ms. Reeves provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that Ms. Reeves did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

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DECISION AND ORDER

> WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Ms. Reeves has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally Ms. Reeves has failed to establish an entitlement to further medical care and that claim closure was improper;

Reeves filed her Petition with this reviewing Court. Respondent filed its Response pursuant to NRS 233B.130(3). The Appeals Officer's clerk transmitted the Record on Appeal. (ROA at pp. 000001-000002)

Ms. Reeves sustained work injuries on July 20, 1987 when she was involved in a motor vehicle accident. Ms. Reeves was a passenger when it was rear ended. (ROA at pp. 000124-000127)

Ms. Reeves was also involved in a motor vehicle accident again on September 25, 1988. (ROA at pp. 000130-000135)

Ms. Reeves claim would ultimately be accepted by the District Court in 1994 and later by the Nevada Supreme Court.

Ms. Reeves received treatment for her 1988 claim. Ms. Reeves was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness. (ROA at pp. 000130-000135)

Ms. Reeves was sent for psychological evaluation to determine if psychological factors may impede her healing efforts. (ROA at pp. 000130-000135)

On November 28, 1989, Dr. Mortillaro diagnosed Ms. Reeves with Somatoform Pain Disorder and recommended that she be sent to pain management. (ROA at pp. 000130-000135)

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On August 15, 1990 Ms. Reeves was seen by Dr. Kudrewicz. Ms. Reeves reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. Ms. Reeves reported that her dizziness had improved by 95% before the second auto accident. Ms. Reeves would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain. (ROA at pp. 000136-000142 and 000143-000144)

On February 27, 1991, the 5% PPD would be offered to Ms. Reeves. (ROA at pp. 000145-000150)

On September 26, 1997 Ms. Reeves was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. (ROA at p. 000151) A second letter of acceptance would be sent to Ms. Reeves on May 12, 1998. (ROA at p. 000152)

On December 20, 2001 Dr. Glyman wrote a report concluding that Ms. Reeves had a somatoform disorder. (ROA at pp. 000153-000156)

On December 27, 2001 Ms. Reeves was sent a claim closure notice, (ROA at pp. 000157-000158) that determination would later be reversed by an appeals officer awarding Ms. Reeves further medical care. Ms. Reeves would be sent to Dr. Mortillaro. (ROA at pp. 000160-000161) In December 2003, Ms. Reeves would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer. (ROA at p. 000162)

The Claimant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge Ms. Reeves in March 2004. (ROA at pp. 000163-000185)

Ms. Reeves also continued to treat with Dr. Dunn in 2004. (ROA at pp. 000186-000196)

Ms. Reeves continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that Ms. Reeves' condition had greatly improved over the time period that Ms. Reeves treated at that facility. (ROA at pp. 000197-000199)

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On September 8, 2006 Ms. Reeves' claim examiner learned that Dr. Petroff had released Ms. Reeves to her family physician since he was only monitoring her medication. It was also learned that Ms. Reeves was spending a lot of time out of state and was treating under Medicare. (ROA at p. 200)

On September 8, 2006 Ms. Reeves was sent a claim closure determination. Ms. Reeves appealed that determination.

A Hearing Officer issued an order dismissing Ms. Reeves' appeal for the Ms. Reeves failure to attend the hearing. Ms. Reeves would appeal that decision.

Ms. Reeves would write a letter requesting that her bruised ribs and broken toe be added to her claim. Ms. Reeves alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim. (ROA at p. 000201)

On February 16, 2007 Ms. Reeves was sent a determination denying the expansion of the claim. Ms. Reeves appealed that determination. (ROA at pp. 000202-000203)

On May 10, 2007 the Hearing Officer issued a Decision and Order affirming the February 16, 2007 determination denying the expansion of the claim. (ROA at pp. 000263-000265)

Ms. Reeves appealed the Hearing Officer's Order of Dismissal. Ms. Reeves brought the issue of her failure to appear to Appeals Officer Richens who issued an Order of Remand finding that Ms. Reeves established that she had not received the notice of hearing. The matter would be referred back to the Hearing Officer for a hearing on the merits. (ROA at pp. 000266-000267)

On July 25, 2007 the Hearing Officer issued a Decision and Order affirming the September 8, 2006 claim closure determination. (ROA at pp. 000268-000269)

Both issues were appealed to the Appeals Officer. (ROA at p. 000270)

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On December 22, 2009 the appeals officer held that Ms. Reeves had failed to establish that her claim should be expanded. In addition the Appeals Officer also held that Ms. Reeves had failed to establish an entitlement to further medical care. (ROA at pp. 000013-000019) The Appeals Officer weighed the documentary evidence filed by the parties and considered the testimony of Ms. Reeves.

Ms. Reeves has now filed this appeal alleging that the Appeals Officer should have come to a different conclusion by giving more weight to Ms. Reeves' evidence. Ms. Reeves has asked this court to reweigh her evidence and find that she has established that her claim should be expanded to include new and additional injuries and that she is entitled to further medical care for her already accepted injuries and new injuries that should be added to her claim.

The standard for reviewing administrative action is abuse of discretion; thus, review is limited to determining whether there was substantial evidence in the record to support the determination below. State Indus. Ins. Sys. v. Christensen, 106 Nev. 85, 787 P.2d 408 (1990). Pursuant to NRS 233B.135(3) this reviewing Court shall not substitute its judgment for that of the agency as to the weight of evidence on question of fact. This Court's role in reviewing an administrative decision is to determine whether the agency's decision was arbitrary or capricious and, thus, an abuse of discretion. Jourden v. State Indus. Ins. Sys., 109 Nev. 497, 853 P.2d 99 (1993). The Decision of Appeals Officer Krohn is deemed reasonable and lawful until reversed or set aside in whole or in part by this Court.

Substantial evidence has been defined as "[s]omething of substance and relevant consequence, and not vague, uncertain or irrelevant matter not carrying the quality of 'proof' or having fitness to induce conviction." Peardon v. Peardon, 65 Nev. 717, 765, 102 P.2d 309 (1948). A witness' sworn testimony before an administrative agency can constitute substantial evidence. Washoe County v. John A. Dermody, Inc., 99 Nev. 608, 668 P.2d 280 (1993).

The Appeals Officer has full power and authority to determine the facts presented at administrative hearings and to construe and apply the applicable laws. Nevada Indus. Comm'n v. Reese, 93 Nev. 115, 120, 560 P.2d 1352 (1977).

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The Appeals Officer found that Ms. Reeves' treating physician had released her from medical care.

The Appeals Officer recognized this fact and relied on the medical evidence in his Decision. The Appeals Officer specifically found:

FINDINGS OF FACT

> 15. Ms. Reeves continued to receive physical therapy at the Family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that Ms. Reeves' condition had greatly improved over the time period that ht claimant treated at that facility.
>
> 16. On September 8, 2006, Ms. Reeves' claim examiner learned that Dr. Petroff had released Ms. Reeves to her family physician since he was only monitoring her medication. It was also learned that Ms. Reeves was spending a lot of time out of state and was treating under Medicare.

Ms. Reeves had failed to introduce any credible, persuasive or substantial medical evidence to refute these facts. No physician had indicated that Ms. Reeves needed any further treatment for her industrial condition.

The Appeals Officer even indicated that Ms. Reeves had not provided any information regarding her alleged falls and related injuries. The Appeals Officer not only recognized that Ms. Reeves failed to establish medical causation to any new injuries, but also recognized that Ms. Reeves refused to provide information even after she was served with interrogatory questions.

> It is also noted that there was no evidence that Ms. Reeves provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that Ms. Reeves did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

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The Appeals Officer's findings are supported by the substantial evidence in the record. The issue of whether the Appeals Officer should have found that Ms. Reeves testimony and evidence had establish an entitlement to expand the scope of her claim and establish the need for further medical care for her industrial injuries cannot be re-weighed by this court on judicial review.

The Court having reviewed the pleadings and record on appeal, FINDS that Petitioner failed to demonstrate the late manifesting condition of vertigo and any injuries sustained due to an alleged fall were caused by the accepted condition, and the Appeals Officer's Decision in this case is supported by substantial evidence in the record, and further was not arbitrary or capricious. Further the Appeals Officer's findings regarding the accepted condition is supported by substantial evidence.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner's Petition for Judicial Review is DENIED.

DATED this 8th day of ~~January~~ Feb., 2011

DISTRICT COURT JUDGE AB
Judge Jerry Wiese, II

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By: _____
LEE DAVIS, ESQ.
Nevada Bar No. 3932
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101
Attorneys for Respondents

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LEWIS BRISBOIS BISGAARD & SMITH LLP

BEFORE THE APPEALS OFFICER

APR 19 2011

In the Matter of the Contested Industrial Insurance Claim of:	)	Claim No:
	)	Appeal No: 78016-SL
SUSAN REEVES,	)	80334-SL
Claimant.	)	

NOTICE OF RESETTING

TO ALL PARTIES-IN-INTEREST:

PLEASE TAKE NOTICE that the above-captioned matter will now be heard in front of the Appeals Officer for a **TIME CERTAIN HEARING** on:

DATE: **THURSDAY, AUGUST 4, 2011**

TIME: **1:00 – 3:00 P M**

PLACE: **DEPARTMENT OF ADMINISTRATION**
2200 SOUTH RANCHO DRIVE #220
LAS VEGAS, NV 89102

PLEASE TAKE FURTHER NOTICE that previously scheduled hearing dates in this matter, if any, are hereby vacated and reset to the above referenced date and time.

# # #

CONTINUANCE OF THIS SCHEDULED HEARING DATE SHALL ONLY BE CONSIDERED ON WRITTEN APPLICATION SUPPORTED BY AFFIDAVITS.

# # #

IT IS SO ORDERED this 19TH day of April, 2011.

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF RESETTING** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

TERESA A HORVATH ESQ
NV ATTY FOR INJURED WORKERS
2200 S RANCHO STE 230
LAS VEGAS NV 89102

JOHN F WILES ESQ
JENNIFER LEONESCU ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

CCMSI
BRIDGET WYSZOMIRSKI - STATE DIR
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 19th day of April, 2011.

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
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Telephone No. (702) 369-8820
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Attorneys for Third Party Administrator
CCMSI

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Administrative Action of:	APPEAL NOS.: 78016-SL; 80334-SL
	CLAIM NO.: 88S01H243724
SUSAN REEVES	

TPA'S JOINDER OF DIR'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, the Third Party Administrator, CCMSI ("TPA"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and hereby joins in the Division of Industrial Relations' ("DIR") Motion to Dismiss or in the Alternative, for Summary Judgment.

This Motion is made and based upon the papers and pleadings on file herein, and the Points and Authorities submitted in support hereof.

Dated this 27th day of May, 2011.

Respectfully submitted,

FLOYD SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
4570 South Eastern Avenue, Suite 28
Las Vegas NV 89119
Attorney for TPA
CCMSI

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MEMORANDUM OF POINTS AND AUTHORITIES

As counsel for DIR clearly and concisely notes in her motion to dismiss or in the alternative, for summary judgment, there exists herein no issue of material fact. Under Appeal number 78016-SL, the Division determined that Ms. Reeves was not entitled to a benefit penalty because no TTD was ordered. *See* DIR's Motion to Dismiss at pg. 4; lines 13-19. Nothing in the underlying Decision and Order dated 12/01/03 cited by the Claimant ordered the TPA to pay TTD benefits; hence, no violation was found. *See id.* Moreover, the decision has been affirmed at the hearing officer, appeals officer, and the District Court levels, and is on appeal before the Nevada Supreme Court for final resolution. *See id* at pg. 4; lines 25-26; pg. 5; lines 1-3.

Under Appeal number 80334-SL, based upon the Claimant's request for assistance, the DIR found that TPA provided all communications. *See id* at pg. 5; lines 24-25. The balance of the DIR's Motion to Dismiss or in the alternative, for Summary judgment, is hereby adopted and incorporated herein. Because the Claimant has offered no evidence to support her allegations that there were violations of NRS 616D.120, dismissal of her appeals or in the alternative, summary judgment should be granted against the Claimant in this matter.

Wherefore, the TPA, CCMSI, respectfully joins in requesting that the Appeals Officer grant DIR's Motion to Dismiss or in the alternative, for Summary Judgment.

Dated this 21st day of May, 2011.

Respectfully submitted,

FLOYD SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP
4570 South Eastern Avenue, Suite 28
Las Vegas NV 89119
Attorney for TPA
CCMSI

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case Nos.: **78016-SL; 80334-SL** do not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

DATE

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **TPA'S JOINDER OF DIR'S MOTION FOR SUMMARY JUDGMENT; AFFIRMATION PURSUANT TO NRS 239B.030** was duly served on the following as indicated:

[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Susan Reeves c/o Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	John Wiles Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 27th day of May, 2011.

An employee of
FLOYD, SKEREN & KELLY, LLP

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ORIGINAL

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:	Appeal Nos. 78016-SL 80334-SL
SUSAN REEVES,	

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes now the Workers' Compensation Section of the Division of Industrial Relations (the "Division"), by and through its Division Counsel, Jennifer J. Leonescu, to seek dismissal, with prejudice, of the consolidated appeals filed by Susan Reeves ("Claimant"), in the above captioned matter. This motion is based upon NRCP 12(b)(5) and/or NRCP 56, the testimony at the hearing previously heard, the following memorandum of points and authorities, and the other papers and pleadings on file herein.

INTRODUCTION

On February 28, 2010, the Claimant submitted a letter to the Division requesting that the Division "to help me [Claimant] get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them." Letter attached to Notice to Appear in Appeal No. 80334-SL. The letter stated that the request was made pursuant to NRS 616D.330. The letter did not request a benefit penalty.

The Division responded in a letter dated April 26, 2010 outlining its investigation into the Claimant's letter including an outline of what occurred from the Division's review of the claim file. The Division found no violation of NRS 616D.330. *Id.* The Division did not include any language in its letter regarding the Claimant's right to appeal because the correspondence did

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Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
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not comprise a "determination" of the Division concerning which appeal rights are afforded but was informational in response to a request for assistance. The Claimant did not file an appeal of this letter.

Thereafter, the Claimant submitted a complaint to the Division dated June 1, 2010. In that complaint, she alleged that Bally's and/or CCMSI failed to make TTD payments owing since August 26, 1998, that Bally's and or CCMSI, violated NRS 616D.120(1)(c), (g), and (h). Attached to her complaint as a December 1, 2003 Appeals Officer Decision and Order which reversed claim closure. *See,* letter attached to Notice to Appear filed in Appeal No. 78016-SL The Division issued a determination letter dated July 22, 2010 in which the investigator outlined what has happened in the claim since 1998. In summary, the Division found that CCMSI denied the Claimant's request for TTD benefits from 1998 based on a reporting from Dr. Petroff dated June 29, 2004 because there was no evidence of disability. *Id.*

The Claimant appealed a Hearing Officer decision affirming denial of TTD benefits to the Appeals Officer. On January 20, 2006, the Appeals Officer, in Appeal Nos. 14175-GS/14174-GS/13350-GS, dismissed the Claimant's appeal for denial of TTD benefits based upon the untimely filing of the appeal. On December 22, 2009, in Appeal No. 39934-GK/42367-GK, the Appeals Officer affirmed the Hearing Officer's Decision to affirm claim closure. This matter was appealed to the District Court, which again affirmed claim closure and the matter is now before the Nevada Supreme Court.

Based upon these findings, the Division determined that there were no violations to warrant the imposition of an administrative fine and benefit penalty. *Id.* The Claimant appealed this determination. In her Request for Hearing, the Claimant reiterated her claim that she is owed back TTD benefits.

The Claimant then wrote the Division again on September 11, 2010 requesting it revisit

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its investigation into its February 28, 2010 letter. The Division sent another letter dated October 1, 2010, restating that CCMSI provided the information regarding the oral communications requested that any further communications occurred between CCMSI and the Claimant's treating physician. The letter further reiterated that all of the Claimant's other various complaints were investigated and resulted in the July 22, 2010 Division determination which was currently on appeal with the Appeals Officer. The letter did not contain appeal rights as the previous letter did not contain appeal rights and the other remaining issues were already the subject of a determination already on appeal. The Claimant, however, did appeal this letter which was assigned Appeal No. 80334-SL. The Division submits, however, that because the Claimant's appeal, on its face, does not give rise to any benefit penalty or administrative fine, there is no jurisdiction to hear the Claimant's appeal in this matter. *See* NRS 616D.140. The Division does not have jurisdiction to address allegations of misconduct that present no basis to impose liability under chapters *616A to 616D*, inclusive, or chapter *617* of the Nevada Revised Statutes.

The two appeals were consolidated for hearing. A hearing was previously held and continued for further argument to August 4, 2011.

POINTS AND AUTHORITIES

NRCP 12(b)(5) permits the filing of a Motion to Dismiss when the pleadings fail to give rise to a claim upon which relief can be granted. "Dismissal is proper when the allegations are insufficient to establish the elements of a claim for relief." Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel, 124 Nev. Adv. Rep. 30, 183 P.3d 133 (2008), *citing* Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), *overruled in part on other grounds* by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ____, 181 P.3d 670 (Adv. Op. No. 21, April 17, 2008). *See also* Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).In the alternative, the Motion may be treated as a request for summary judgment

pursuant to NRCP 56(c) should the Appeals Officer consider evidence outside the pleadings filed by the Claimant with the Request for Hearing.

Here, even upon regarding all factual allegations in the Claimant's complaints were true, and drawing all inferences in her favor, the issues raised by the Claimant in her appeals and prior complaint do not give rise to relief under NRS 616D.120, which provides the statutory basis for imposition of an administrative fine and award of benefit penalty.

A. The actions complained of in Appeal No. 78016-SL do not give rise to a benefit penalty.

Pursuant to the express terms of NRS 616D.120(1) and (3), an administrative fine and benefit penalty is mandated only in the event that an insurer, organization for managed care, health care provider, third-party administrator, employer, or employee leasing company has been found to have engaged in the prohibited conduct described in NRS 616D.120(1), subsections (a), (b), (c), (d), (e), (h) or (i). Under the circumstances, the complaint asserted in Appeal No. 78016-SL does not provide for a benefit penalty. In her complaint, the Claimant alleged Bally's and/or CCMSI failed to timely pay TTD benefits ordered by the Appeals Officer in her December 1, 2003 Decision and Order.

However, the Decision and Order reversed claim closure and did not order TTD benefits to be paid. CCMSI timely notified the claimant that the claim would be open for further medical treatment. Thereafter, the claimant's attorney in a letter dated January 21, 2004 requested TTD benefits. Pursuant to NRS 616D.120, the Division is unable to "modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction or a provision contained in a written settlement agreement or written determination." The Insurer's determination not to pay TTD benefits has been affirmed by the Hearing Officer, Appeals Officer, the District Court and is now under Appeal before the

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Henderson, Nevada 89074
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Nevada Supreme Court. Under the circumstances outlined in her complaint and the investigation undertaken by the Division, there is no misconduct to support the imposition of any administrative fine or benefit penalty.

Secondly, the conduct complained of by the Claimant occurred in 2004 at the latest. The applicable statute of limitations for the alleged violation has long passed. NRS 11.190(4)(b) provides that there is a two (2) year statute of limitations for "an action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation." The statute in question, NRS 616D.120 provides for a benefit penalty and administrative fine; thus, the complaint must have been submitted within two (2) years of the alleged violation.[1]

A statute of limitations "represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that 'the right to be free of stale claims in time comes to prevail over the right to prosecute them." United States v. Kubrick, 444, U.S. 111, 117 (1979) (*quoting, Railroad Telegraphers v. Railway Express Agency,* 321 U.S. 342, 349 (1944)). In this case, the Claimant is addressing an Order from 2003. The letter from the Claimant's attorney requesting TTD benefits was dated January, 2004 and was denied. The statute of limitations has long passed.

B. Claimant's Appeal in 80334-SL fail to provide actionable conduct

The Claimant appealed an October 1, 2010 Division letter provided to her for informational purposes only. The letter did not provide appeal rights, just as the previous April 26, 2010 letter from the Division did not do so. The Claimant requested assistance in obtaining communications from her insurer. The Division determined that all of the communications were provided. The

[1] Even if the administrative fine or benefit penalty would not be considered a "penalty" within the meaning of NRS 11.190(4)(b), the complaint must have been filed within three (3) years under NRS 11.190(3)(a), "an action upon a liability created by statute, other than a penalty or forfeiture. In either case, the Claimant filed her complaint more than six (6) years after she alleges a violation occurred.

Claimant did not appeal that April 26, 2010 letter. The October 1, 2010 letter was simply a rehashing of all of the various complaints the Claimant has regarding the handling of her claim. The Division explained that her issues had already been dealt with and her TTD issue had already been handled in the July 22, 2010 determination on Appeal in Appeal No. 78016-SL.

This Complaint fails, on its face, to state a claim upon which relief may be granted, the Division submits that her appeal may be appropriately dismissed pursuant to NRCP 12(b)(5). Issues of jurisdiction before the Court are mandatory and non-discretionary. See *SIIS v. Partlow-Hursh,* 101 Nev. 122, 696 P.2d 462 (1985). The Nevada Supreme Court has held that "[a]dministrative agencies cannot enlarge their own jurisdiction." See *Reno v. Civil Serv. Comm'n of Reno*, 117 Nev. 855 (2002), citing *Southern Nev. Mem. Hosp. v. State*, 101 Nev. 387, 394, 705 P.2d 139, 144 (1985). The scope of an agency's authority is limited to the matters the legislative body has expressly or implicitly delegated to the agency. *Clark Co. v. State, Equal Rights Comm'n*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991).

CONCLUSION

Based upon the foregoing reasons, the Division respectfully requests that the Appeals Officer dismiss consolidated Appeals 78016-SL and 80334-SL with prejudice.

DATED this 11 day of May, 2011.

By: _____
Jennifer J. Leonescu, Esq.
Division Counsel
Division of Industrial Relations
1301 N. Green Valley Parkway #200
Henderson, NV 89074

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STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: **Division of Industrial Relations' Motion to Dismiss or in the Alternative Motion for Summary Judgment**

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____
Person(s) Served: Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr., Ste. #230 Las Vegas, NV 89102	**U.S. Mail** _____ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** __X__ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____
Person(s) Served: Bally's Dennis Lindenbach 3645 Las Vegas Blvd. South Las Vegas, NV 89109	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____

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Person(s) Served: CCMSI Bridget Wyszomirski P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile fax number:** _____
Person(s) Served: Dalton Hooks, Esq. Floyd, Skeren & Kelly, LLP 4570 S. Eastern Ave, Ste 28 Las Vegas, NV 89119	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile fax number:** _____

DATED this 12th day of May, 2011.

An Employee of the Division of Industrial Relations

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STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

FILED
DEC 10 2010
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:	)	Claim No:
SUSAN REEVES,	)	Appeal No: 78016-SL 80334-SL
Claimant.	)	

ORDER OF CONSOLIDATION

Pursuant to the request of the parties;

IT IS HEREBY ORDERED that Appeal No. 78016-SL and Appeal No. 80334-SL will be consolidated, as of this date.

IT IS FURTHER ORDERED that both appeals will now be heard on WEDNESDAY, APRIL 13TH @ 9:00 – 11:00 A.M.

IT IS SO ORDERED this 10th day of December, 2010.

Shirley D Lindsey

SHIRLEY D LINDSEY, ESQ.
APPEALS OFFICER

Doc019
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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER OF CONSOLIDATION** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

TERESA A HORVATH ESQ
NV ATTY FOR INJURED WORKERS
2200 S RANCHO STE 230
LAS VEGAS NV 89102

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

JENNIFER LEONESCU ESQ
BUSINESS & INDUSTRY
1301 N GREEN VALLEY PKWY #200
HENDERSON NV 89014

CCMSI
BRIDGET WYSZOMIRSKI
P O BOX 35350
LAS VEGAS NV 89133-5350

DALTON HOOKS JR ESQ
FS&K, LLP
4570 S EASTERN AVE STE 28
LAS VEGAS NV 89119

Dated this 10th day of December, 2010.

Diane Gagliano, Legal Secretary II
Employee of the State of Nevada

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ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third Party Administrator
CCMSI

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Administrative Action of:	APPEAL NO.: 80334-SL CLAIM NO.: 88S01H243724
SUSAN REEVES	

TPA'S PRODUCTION OF RELATED DOCUMENTS

COMES NOW the Third Party Administrator, CCMSI ("TPA"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and submits its production of related documents concerning the instant matter to be heard on **Wednesday, December 8, 2010 at 9:00 AM.** This production of related documents is filed pursuant to NAC 616D.040.

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. . .

INSURER'S EXHIBIT # B

Dec20
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1

I.
LIST OF EXHIBITS TO BE RELIED UPON

C-4 1

C-3 2

Claimant's Medical Records 3-4

Appeals Officer Decision and Order dated 01/20/06 5-9

Appeals Officer Decision and Order dated 12/22/09 10-16

Correspondence from Claimant 17-28

Correspondence from TPA 29-31

Correspondence from DIR 32-40

DIR's determination dated 10/01/10 41-42

Claimant's Request for Hearing Before the Appeals Officer 43

Dated this 6th day of December, 2010.

Respectfully submitted,

FLOYD, SKEREN & KELLY, LLP
By:

DALTON L. HOOKS, JR., ESQ.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorneys for Third Party Administrator
CCMSI

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case No.: **80334-SL** does not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

12/06/12
DATE

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **TPA'S PRODUCTION OF RELATED DOCUMENTS; AFFIRMATION PURSUANT TO NRS239B.030** was duly served on the following as indicated:

[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Susan Reeves c/o Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	John Wiles, Esq. Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 6th day of December, 2010

An employee of
FLOYD, SKEREN & KELLY, LLP

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EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT
FORM C-4

PLEASE TYPE OR PRINT

EMPLOYEE'S CLAIM – PROVIDE ALL INFORMATION REQUESTED

First Name	M.I.	Last Name	Birthdate	Sex	Claim Number (Insurer's Use Only)
Susan	L	Reeves	10/6/51	☐ M ☒ F	

Home Address	Age	Height	Weight
4724 E. Washington Ave	59	5'5	

City	State	Zip	Telephone
Las Vegas	NV	89110	702 453-2588

Mailing Address	City	State	Zip	Primary Language Spoken
Same				

INSURER	THIRD-PARTY ADMINISTRATOR	Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred

Employer's Name/Company Name	Telephone
Ballys	

Office Mail Address (Number and Street)

Date of Injury (if applicable)	Hours Injury (if applicable)	Date Employer Notified	Last Day of Work After Injury or Occupational Disease	Supervisor to Whom Injury Reported
9/25/88	am pm		5/15/89	Mimi

Address or Location of Accident (if applicable)
Ballys Employee Parking Lot

What were you doing at the time of the accident? (if applicable)
Waiting for car to move in front of me - rearended

How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary)
See above

If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? Call sup from accident

Witnesses to the Accident (if applicable)

Nature of Injury or Occupational Disease: Dizziness, Whipped head, neck, headaches, back, Lethrid

Part(s) of Body Injured or Affected

I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS (NRS 616A TO 616D, INCLUSIVE OR CHAPTER 617 OF NRS). I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGEON, PRACTITIONER, OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING SERVICES AND/OR PAYABLE, PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR ALCOHOLIC/CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.

Date 9/1/10 Place Employer's Signature Susan L Reeves

THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT

Place Name of Facility

Date	Diagnosis and Description of Injury or Occupational Disease	Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident?
7/1/10	Mild contusion	☒ No ☐ Yes (If yes, please explain)
Hour 1245		

Treatment: Exam med.

X-Ray Findings: None

From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? ☐ Yes ☐ No

Is additional medical care by a physician indicated? ☐ Yes ☐ No

Have you advised the patient to remain off work five days or more?
☐ Yes Indicate dates: from _____ to _____
☒ No If no, is the injured employee capable of: ☐ full duty ☐ modified duty
If modified duty, specify any limitations/restrictions: _____

Do you know of any previous injury or disease contributing to this condition or occupational disease? ☐ Yes ☐ No (Explain if yes)

Date	Print Doctor's Name	I certify that the employer's copy of this form was mailed to the employer on:
7/1/10	Holt	

Address	INSURER'S USE ONLY

City	State	Zip	Provider's Tax I.D. Number	Telephone

Doctor's Signature	Degree
[signature]	[signature]

ORIGINAL - TREATING PHYSICIAN OR OCCUPATIONAL DISEASE - INSURER THIRD PARTY - EMPLOYER - DOCTOR - EMPLOYEE

Form C-4 (Rev. 10/97)

PAGE 1

RECEIVED
AUG 30 2010
CCMSI - LAS VEGAS

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000001

2905-509034 170816681

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE C-4 FORM

Please Type or Print

EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

EMPLOYER

Name: SAHARA HOTEL AND CASINO	Nature of Business: HOTEL AND CASINO	Fein: N/A	Client Log #: N/A
Street and Address: 3645 LAS VEGAS BLVD	Location: 3645 LAS VEGAS BLVD LAS VEGAS,NV 89139	Telephone: (000)000-0000	
City: LAS VEGAS,NV 89169	Insurer: NAVIGAD UNDERWRITERS INSURANCE CO	Third Party Administrator: N/A	

EMPLOYEE

First Name: SUSAN L REEVES	MI:	Date of Birth: 10/06/1951	Age: 58
Home Address (Number and Street): 4724 E WASHINGTON AVE	Sex: ☐ Male ☒ Female	Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed UNKNOWN	Primary Language Interpreter: N/A
City: LAS VEGAS	State: NV	Zip: 89110	Was the employee paid for the day of injury? (If applicable) ☒ Yes ☐ No

How long has this person been employed by you as a worker? N/A

In which state was employee hired? N/A	Employee's occupation (job title) when hired or disabled: UNKNOWN	Department in which regularly employed: N/A
Telephone: (702)483-2588	Is the injured employee a corporate officer? ☐ Yes ☐ No N/A ... sole proprietor? ☐ Yes ☐ No ... partner? ☐ Yes ☐ No	Was employee on your property when injured or diagnosed by occupational disease (OD)? ☐ Yes ☐ No N/A

ACCIDENT OR DISEASE

Date of injury (if applicable): 09/25/1988	Time of injury (Hours Worked) (If applicable): 12:00 AM	Date employee notified of injury or OD: 09/25/1988	Supervisor to whom injury or OD reported: UNKNOWN,MIKE

Address or location of accident (Also provide city, county, state) (If applicable): 3645 LAS VEGAS BLVD LAS VEGAS, CLARK, NV 89169

Accident on employer's premises? (If applicable) ☒ Yes ☐ No

What was the employee doing when the accident occurred? (If applicable): UNKNOWN

How did this injury or occupational disease occur? Include any employee began work. Be specific and answer in detail. Use additional sheet if necessary: EMPLOYEE WAS WAITING FOR CAR IN FRONT OF HER TO MOVE AND WAS REAR ENDED BY A VEHICLE.

RECEIVED JUL 22 2010

INJURY OR DISEASE

Specify machine, tool, substance, or object most closely connected with the accident (If applicable): N/A	Witness: N/A RISK	Were there more than one: ☐ Yes ☒ No	
Part of body injured or affected: MULTIPLE NECK INJURY	If fatal, give date of death: N/A	Witness: N/A	
Nature of injury or Occupational Disease (scratch, cut, bruise, strain, etc.): CONTUSION TO HEAD, NECK AND BACK	Witness: N/A		
	Did employee return to work immediately after accident? (If applicable) ☒ Yes ☐ No No. Hours Time	Will you have light duty work available if necessary? ☐ Yes ☐ No N/A	
If validity of claim is doubted, state reason: N/A	Location of initial Treatment: N/A		
Treating physician/chiropractor name: NELLIS OC	Emergency Room: ☐ Yes ☒ No	Hospitalized: ☐ Yes ☒ No	

IMPORTANT LOST TIME INFO

How many days per week does employee work? 5	From N/A ☐ am ☐ pm To N/A ☐ am ☐ pm To		Last day wages were earned: N/A
Scheduled days off: S ☐ M ☐ T ☐ W ☐ T ☐ F ☐ S ☐ Rotating ☐ N/A		Are you paying injured or disabled employee's wages during disability? ☐ Yes ☒ No	
Date employee was hired: 09/25/1988	Last day of work was injury or disability: N/A	Date of return to work: No Lost Time	Number of work days lost: N/A
Was the employee hired to work 40 hours per week? ☒ Yes ☐ No	If not, for how many hours a week was the employee hired? 40	Did the employee receive unemployment compensation any time during the last 12 months? ☐ Yes ☐ No ☐ Do Not Know N/A	

For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not exclude reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability.

Pay period ends on: ☐ SUN ☐ TUE ☐ THUR ☐ SAT ☐ MON ☐ WED ☐ FRI N/A	Employee is paid: ☐ WEEKLY ☐ MONTHLY ☐ OTHER ☐ BI-WEEKLY ☐ SEMI-MONTHLY N/A	On the date of injury or disability the employee's wage was $ (40 Hrs/Wk) per ☐ Hr ☐ Day ☐ Wk ☐ Mo

For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: http://govcha.state.nv.us E-mail cha@govcha.state.nv.us

★		Employer's Signature and Title: UNKNOWN, UNKNOWN UNKNOWN (000)000-0000	Date: 07/21/2010 RECEIVED
Insurance Carrier Only	Claim is: ☐ Accepted ☐ Denied ☐ Delayed ☐ 3rd Party	Deemed Wage	Account No.
	Claims Examiner's Signature	Date	Status Clerk
			Date: AUG 12 2010

Form C-3 (rev. 11/06) ORIGINAL - EMPLOYER PAGE 2 - INSURER/TPA PAGE 3 - EMPLOYEE

CCMSI - LAS VEGAS

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000002

(702) 878-0111 FAX (702) 870-0199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

June 29, 2004

Re: REEVES. Susan

To Whom It May Concern:

I am dictating this letter based on discussion at a meeting taking place in our offices on 6/29/04 between myself, Dr. Mortillaro and three worker's compensation representatives with CCMSI.

Susan Reeves was present here in our offices with her husband, but shortly before the meeting and after a discussion with my office manager and the CCMSI representatives, it was determined that the patient was not allowed to be present at this meeting per her worker's compensation representatives. The patient then left the office.

Issues discussed address the nature, extent and cause of Ms. Reeves current disability.

Basically, I have been seeing Ms. Reeves since September 3, 1998, funded through Medicare, based on a disability from that organization. During that time of treatment and management, I was not aware that there was a worker's compensation claim or issue. After 1/6/04, work compensation began covering the neurological follow-ups and treatment. I was never given an explanation of this change by the patient or by Worker's Comp until yesterday.

With respect to the patient's history, she was in two motor vehicle accidents; one on July 20, 1987, the second in September of 1988. Apparently, she is claiming work-related disability from the second accident, which occurred on the property/premises of her workplace.

With regard to causality, at this point, many years later, I would have to defer to opinions rendered around the time of the second accident. Relating to this, Dr. Bowler, a neurologist, on December 12, 1988 rendered the opinion with respect to the September motor vehicle accident: "This patient may have experienced some discomfort from the incident that she describes. There is no suggestion, however, that she had any type of intracranial structural lesion or a significant problem. I would only urge continued symptomatic measures and encouragement for her to maintain her usual activities."

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This message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes. They are intended only for the use of the addressee. If you are not the intended recipient, any disclosure, copying or distribution of this information is prohibited.

000003

(702) 870-0111 FAX (702) 870-6199

Gerald W. Dunn, M.D. George A. Petroff, M.D.

Also, an Independent Medical Evaluation was performed 8/18/98 by Dr. David Oliveri, Specialist in Rehabilitation and Electrodiagnostic Medicine. His opinion was that the patient had a somatoform pain disorder, which is a psychiatric diagnosis, and is not something that is caused by an industrial accident. He further states, "In this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury."

In discussion with Dr. Mortillaro today, he feels that the patient is not limited from working based on her psychological state of health. Work Compensation representatives today have offered to arrange a trial of back to work, based on sedentary duties. The patient does have Social Security Disability currently.

Based on the review of systems and my observations of the patient's examination over the years, solely with respect to intention of injury from the second motor vehicle accident of September of 1988, it would be reasonable to recommend the patient undergo a trial of back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds. If working at a computer, this should be at a proper height, with an adjustable chair and lumbar roll provided, and with frequent breaks provided for standing, stretching and repositioning. If the patient cannot tolerate this job, I think I would review and consider her disability claim from Social Security, based on advanced cervical degenerative change and migraine syndrome.

Sincerely,

G. Petroff, M.D.
GP/rs

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This message and any attached documents may be confidential and contain information protected by state and federal medical privacy statutes.

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FILED
JAN 20 2006
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial Insurance Claim of:

SUSAN REEVES,

Claimant.

Claim No: 88H92H243724

Appeal No: 14175-GS
14174-GS
13350-GS

DECISION AND ORDER

The above captioned appeals came on for hearing before Appeals Officer, Geraldine H. Schwartzer, Esq., on January 5, 2006. The Claimant was present and was represented by Douglas Rowan, Esq. The Self-insured employer, Bally's, was represented by Lee Davis, Esq. of Santoro Driggs, Walch, Kearney, Johnson & Thompson.

There were three (3) appeals consolidated for hearing. At the time of the hearing, Claimant's counsel advised that appeal numbers 13350 and 14174 were being withdrawn and could be dismissed. Appeal number 13350 was the Claimant's appeal from a November 30, 2004 Hearing Officer's Order of Dismissal. The Hearing Officer dismissed the Claimant's appeal regarding claim closure. The Hearing Officer noted there was no determination and a review of the file failed to indicate the claim was closed. Although the Claimant appealed the November 30, 2004 Hearing Officer's decision, the Claimant withdrew the appeal on January 5, 2006, as the claim is open and claim closure is not an issue.

In regards to appeal number 14174, this was Claimant's appeal from the July 15, 2004 denial of certain medical bills. The Claimant, through counsel, withdrew the appeal as that issue was resolved and no longer at issue.

In regards to appeal number 14175, this was the Claimant's appeal from a November 30, 2004 Hearing Officer's decision. The Hearing Officer affirmed the July 21, 2004 denial of temporary total disability, "TTD" herein, benefits. Upon review of the appeal file, the Claimant's

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appeal was untimely filed on January 12, 2005. The parties were informed as to the date the appeal was filed and Claimant presented testimony regarding the filing of the appeal. After considering the documents and Claimant's testimony, the Appeals Officer renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant testified she received the three Hearing Officers' November 30, 2004 decisions and forms to file the appeals from the Hearing Officer's decision. She further testified she completed all three appeal forms and sent the forms to the appeals office in the same envelope.

2. There is no evidence the appeals office received all three appeal forms on the same day. Each Hearing Officer decision has a different number for that appeal before the Hearing Officer. Although all three decisions were rendered on November 30, 2004, each decision has a different number for that particular issue decided by the Hearing Officer. The appeal forms used to request an appeals officer hearing each contained the hearing officer number that was being appealed. According to the appeal forms, appeal number 13350 was the appeal from Hearing Officer number 10908-SM, the hearing involving the claim closure. This appeal request was received on December 8, 2004. The appeal request for appeal number 14174 was the appeal request for Hearing Officer number 11038-SM, the appeal involving the denial of medical bills. This appeal was received on January 12, 2005. The appeal form used to request an appeal from the denial of TTD, Hearing Officer number 10907-SM, was also received by the appeals office on January 12, 2005.

3. The Claimant's appeal from the Hearing Officer's decision denying TTD was untimely filed on January 12, 2005.

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CONCLUSIONS OF LAW

1. NRS 616C.345(1) provides for a thirty (30) day period for filing an appeal from the hearing officer's decision.

2. Failure to file a request for hearing may be excused where the aggrieved party can demonstrate by a preponderance of the evidence that she did not receive the determination and the forms necessary to file the appeal. NRS 616C.345(8).

3. The time limits for the filing of appeals in Workers' Compensation actions are mandatory and jurisdictional. State Indus.Ins.Sys. v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985). Reno Sparks Visitors Auth. v. Jackson, 112 Nev.62, 910P.2d 267 (1996). The Appeals Officer thus has no discretion to excuse the untimely filing of an appeal, other than as provided by statute.

4. Mailing does not constitute filing. The appeal request must be timely filed. Filing is not timely unless the papers are received by the clerk. SIIS v. Partlow-Hursh, 101 Nev. 122, 696 P. 2d 462 (1985). Although the Claimant testified she mailed the appeal request at the same time as the appeal request in appeal number 13350 which was timely received and filed, the documentary evidence indicates appeal number 14175 was received on January 12, 2005 and was untimely.

ORDER

Pursuant to the Claimant's withdrawal of appeal number 13350 (the Hearing Officer's Order of Dismissal regarding the claim closure issue), and appeal number 14174 (the Hearing Officer's decision regarding payment of medical bills), the appeals are dismissed with prejudice. In regards to appeal number 14175 (the Hearing Officer's decision regarding TTD), the appeal was untimely filed and the Appeals Officer has no discretion to excuse the Claimant's untimely filing of the appeal. Due to the untimely filing of the appeal, there is a lack of jurisdiction to

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decide the appeal involving the TTD issue and the appeal is dismissed.

IT IS SO ORDERED this 20th day of January, 2006

GERALDINE H. SCHWARTZER, ESQ.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

DOUGLAS ROWAN ESQ
THORNDAL ARMSTRONG DELK ET AL
1100 E BRIDGER AVE
LAS VEGAS NV 89101

BALLY'S
KATHY MONE
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

DANIEL SCHWARTZ ESQ
SANTORO DRIGGS ET AL
400 S 4TH ST 3RD FL
LAS VEGAS NV 89101

CCMSI
DEBORAH JONES
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 20th day of January, 2006.

Luciana Della Neve, Legal Secretary II
Employee of the State of Nevada

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NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED
DEC 22 2009
APPEALS OFFICE

In the Matter of the Contested Industrial Insurance Claim of SUSAN REEVES 4724 East Washington Avenue Las Vegas, NV 89110 Claimant.	Claim No.: 88H92H243724 Appeal No.: 39934-GK 42367-GK Employer: BALLY'S Attn: Kathy Mone 3645 Las Vegas Boulevard South Las Vegas, NV 89109

DECISION AND ORDER

The above-captioned appeal came on for hearing multiple days before Appeals Officer GREGORY KROHN, ESQ. The claimant, SUSAN REEVES, was represented by, TERESA HORVATH, ESQ., of the NEVADA ATTORNEY FOR INJURED WORKERS. The Employer, BALLY'S, was represented by LEE DAVIS, ESQ., of SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON.

In a letter dated February 16, 2007, the Employer notified the claimant that her claim was accepted for specific injuries only. The claimant appealed that determination to a Hearing Officer.

The issue of scope of claim was heard before a Hearing Officer. In a written Decision and Order dated May 10, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

In a letter dated September 8, 2006, the Employer notified the claimant that it was closing her claim. The claimant appealed that determination to a Hearing Officer.

The issue of claim closure was heard before a Hearing Officer. In a written Decision and Order dated July 25, 2007, the Hearing Officer affirmed the Employer's determination. The Claimant timely appealed that decision to this Court.

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SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

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After reviewing the documentary evidence, hearing the testimony of witnesses, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

I.

FINDINGS OF FACT

1. On July 20, 1987, the claimant, SUSAN REEVES, was involved in a motor vehicle accident. The claimant was a passenger when it was rear ended. Her injuries were diagnosed as a cervical strain and head injury.

2. The claimant was also involved in a motor vehicle accident again on September 25, 1988.

3. The 1987 claim was denied by her employer, BALLY's GRAND HOTEL. The basis for the denial was that the claimant did not timely file her claim.

4. The denial of the 1987 claim was appealed by the claimant to first the hearing officer and her claim would be denied. The claimant then appealed the matter to the Appeals Officer. On March 26, 1991 the Appeals Officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later the Nevada Supreme Court.

5. The Claimant received treatment for her 1988 claim. The claimant was diagnosed with a cervical strain with no objective orthopedic or neurological findings. She also was diagnosed with positional dizziness.

6. The claimant was sent for psychological evaluation to determine if psychological factors may impede her healing efforts.

7. On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that she be sent to pain management.

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8. On August 15, 1990 the claimant was seen by Dr. Kudrewicz. The claimant reported that the majority of her symptoms from the 1987 auto accident had cleared except for an occasional headache prior to the second accident, 1988. The claimant reported that her dizziness had improved by 95% before the second auto accident. The claimant would eventually be found to have an entitlement to a five (5%) percent PPD award for a cervical strain.

9. On February 27, 1991, the 5% PPD would be offered to the claimant.

10. On September 26, 1997 the claimant was sent a determination letter advising that her claim with a date of injury of July 20, 2007 was being accepted. A second letter of acceptance would be sent to the claimant on May 12, 1998.

11. On December 20, 2001 Dr. Glyman wrote a report concluding that the claimant had a somatoform disorder.

12. On December 27, 2001 the claimant was sent a claim closure notice, that determination would later be reversed by an appeals officer awarding the claimant further medical care. The claimant would be sent to Dr. Mortillaro. In December 2003, the claimant would be refused treatment with Dr. Petroff since that type of treatment was outside the scope of medical care ordered by the appeals officer.

13. The claimant continued her care with Dr. Mortillaro in 2003, and 2004. Dr. Mortillaro would discharge the claimant in March 2004.

14. The claimant also continued to treat with Dr. Dunn in 2004.

15. The claimant continued to receive physical therapy at the family & Sports Physical therapy Center. On January 23, 2006, a therapist indicated that the claimant's condition had greatly improved over the time period that the claimant treated at that facility.

16. On September 8, 2006 the claimant's claim examiner learned that Dr. Petroff had released the claimant to her family physician since he was only monitoring her medication. It was also learned that the claimant was spending a lot of time out of state and was treating under Medicare.

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17. On September 8, 2006 the claimant was sent a claim closure determination. The claimant appealed that determination.

18. A Hearing Officer would dismiss the claimant's appeal for the claimant not attending the hearing. The claimant would appeal that decision.

19. The claimant would write a letter requesting that her bruised ribs and broken toe be added to her claim. The claimant alleged that she injured these body parts as a result of falling caused by her losing her balance and believed this was caused by her industrial claim.

20. On February 16, 2007 the claimant was sent a determination denying the expansion of the claim. The claimant appealed that determination.

21. On May 10, 2007 the hearing officer issued decision and order affirming the February 16, 2007 determination denying the expansion of the claim.

22. The claimant appealed the hearing officer order of dismissal. The claimant brought the issue of her failure to appear to Appeals Officer Richens who issued an order of remand finding that the claimant established that she had not received the notice of hearing. The matter would be referred back to the hearing office for a hearing on the merits.

23. On July 25, 2007 the hearing officer issued a decision and order affirming the September 8, 2006 claim closure determination.

24. The claimant appealed that decision. Both of these appeals have been consolidated,

25. The Employer served the claimant with interrogatory questions focused on the claimant providing specific dates when he injured herself as a result of falls. The questions also asked the claimant to provide the medical facilities that she sought medical attention as a result of her fall(s).

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26. At the time of appeal hearing the claimant testified that she had many falls that she thought was caused by her industrial injuries. The claimant further testified that she believed that she was forced to require medical care for these falls.

27. These findings of fact are based upon substantial evidence within the record.

II.

CONCLUSIONS OF LAW

1. Under NRS 616C.160, the claimant must demonstrate that a late manifesting condition is caused by the accepted condition.

> 1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease;
>
> 2. And the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury described in paragraph (b), (c) or (d) of subsection 2 of NRS 616A.265, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

2. The Claimant is challenging the scope of her claim as well as claim closure. She has identified approximately 10 separate incidents with various injuries that she alleges to have occurred between November of 1998 and January of 2009. She asserts that all of these incidents and injuries are a consequence of her industrial motor vehicle accidents from July 20, 1987 and September 25, 1988.

Under NRS 616C.160, it is the Claimant's burden to establish by medical evidence a causal relationship between the new injuries and the original industrial accidents. However, no physician has stated with any degree of medical probability that the new injuries i.e. broken toe and rib contusions, have any causal relation to the original industrial motor vehicle accidents. Additionally, the preponderance of the credible evidence supports claim closure.

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It is also noted that there was no evidence that the Claimant provided timely written notice of any of the new incidents which she claims are industrially related. It was not until February 14, 2007 that she finally asked the Employer/Insurer to expand the scope of her claim to include the various incidents and injuries, the most recent of which at that time had occurred almost a year earlier. Finally, it is noted that the Claimant did not reveal her most recent incidents and injuries from December of 2008 and January 2009 until she responded to interrogatories, and then she was very selective in providing the information she did.

III.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the claimant has failed to establish that her claim should be expanded to include new injuries allegedly sustained from falls. Additionally the claimant has failed to establish an entitlement to further medical care and that claim closure was improper;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Officer Decisions dated May 10, 2007 and July 25, 2007 are AFFIRMED.

IT IS SO ORDERED.

DATED this 18th day of December, 2009

GREGORY KROHN, ESQ.
Appeals Officer

Submitted by,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

By: _____
LEE DAVIS, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for the Employer

NOTICE: Pursuant to NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service of this Order.

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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the ___ _____ day of December, 2009, service of the foregoing **DECISION AND ORDER** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following::

Susan Reeves
4724 East Washington Avenue
Las Vegas, NV 89110

Teresa Horvath, Esq.
Nevada Attorney for Injured Workers
2200 S. Rancho Drive, Ste. 230
Las Vegas, NV 89102

Bally's
3645 Las Vegas Blvd. South
Las Vegas, NV 89109

Sedgwick Claims
P.O. Box 14438
Lexington, KY 40512-4483

Lee Davis, Esq.
Santoro, Driggs, Walch,
Kearney, Holley & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

DATED this 22nd day of December, 2009

An employee of the Department of Administration,
Appeals Office

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Nevada Division of Industrial Relations
1301 North Green Valley Parkway, Suite 200
Henderson , Nevada 89074
702-486-9080

February 28 2010

To whom it may concern,

I, Susan Reeves, would like the D.I.R. pursuant to NRS 616D.330 to help me get the actual oral communications, the written record, of what was said, by whom and to whom, at meetings with my Doctors, Dr. Louis Mortillaro and Dr. G. Petroff, from CCMSI (Bally's) or whoever would have them. There have been a number of requests for that information. Once by Douglas Rowan, Esq. on May 28 2004 and four times by the Nevada Attorney for Injured Workers, December 15 2004, January 17 2007, May 31 2007 and August 16 2007 and two times by me, January 29 2010 and February 12 2010. Their response was to say that all correspondence was duly copied, letter to Mr. Rowan June 2 2004, or that the copy work supplied was all there was, letter to me February 24 2010. They did send a log of oral communication for a meeting at Dr. Petroff's office that gives no idea of what was said, only that there was a meeting, and the people that they listed at that meeting is wrong. It was not my attorney but theirs, my husband and myself were asked to leave, see letter from Dr. Petroff June 29 2004 and letter from Mr. Rowan July 22 2004. There is also an activity log from May 10 2004 that has a S/W (spoke with?) Dr. Mortillaro that also gives no idea of what was said. I was told when I had my last appointment, by Dr.Mortillaro and Dr. Manuel F. Gamazo, that CCMSI (Bally's) and their attorney had been at their offices for a meeting. The meeting with Dr. Mortillaro and Dr. Gamazo was after my discharge, March 18 2004, but before my last appointment, June 1 2004. I requested a meeting with Dr. Petroff and was informed that I would have to have a court reporter present, letter from Dr. Petroff's office March 22 2004. Letter from my attorney, March 29 2004, about the requirement for a court reporter raises the issue of Dr. Petroff's concerns of what was said at the meeting with CCMSI, they did not have to have one. I feel that NRS 616D.330 would mean that if representatives of an employer have meetings with doctors that they have to have a written record of what was said. The letters written after, not the letters before, said meetings were the reason my claim was closed.

Thank You

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed and Researched by
Jeff Reeves(husband)

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Christopher D. Brown
Compliance/Audit Investigator II
Industrial Insurance Regulation Section
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 18, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I. 9/25/1988
TPA/Insurer: CCMSI

Dear Mr. Brown,

This is a follow up to the conversations, that you had with my husband over the phone. He got the impression that a determination letter would be sent shortly thereafter. As I have not received any such letter, I would appreciate a letter to let me know what stage the investigation is in. Thank you for your attention to this matter.

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (Husband)

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Susan Sayegh
Southern District Manager
Workers Compensation
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 29, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Sayegh,

I am in receipt of your letter, dated April 26, 2010, where my complaint of a violation, pursuant to NRS 616D.130, was found to have no merit. Apparently Bally's representatives, ether Bally's employees or CCMSI employees, do not have to make or keep a written record of oral communications, of what was said at meetings that are held between said representatives and patients doctors. One could assume that since you, Ms. Sayegh, were the Claims Supervisor for CCMSI at the time of the meeting with Dr. Petroff, you could have been one of those representatives. If not, you most certainly would have known who would have been at that meeting and whether or not a written record was kept.

Since your office, the D.I.R., has conducted an investigation and concluded that all Bally's or their representatives have to do, pursuant to NRS 616D.130, is timely respond to a request, not actually keep or have a written record, that there is no violation.

Since my complaint was about written records, pursuant to NRS 616D.130, I have no idea why your office would go to the great lengths of looking into the history of my claim. As for reviewing the information, as it pertains to my claim, your office did not request any information from me. One would then assume that all information supplied for the investigation was supplied by Bally's or CCMSI.

As to your offices findings of fact, since your office is a governmental regulatory agency, that your office would at least verify those facts before presenting those facts as facts. Upon reviewing said facts, they appear to be almost word for word the findings of fact that Bally's attorney presented, at the last appeal hearing I had. They are also the same as in the last Appeals Officers' Decision, written by Bally's attorney. There are a number of errors in those facts, some perhaps are just typed wrong, others are just wrong.

Since it was not my intension to have your office look into my entire claim, I will not go into all the details of which facts are incorrect.

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As I have not received the type of fair and unbiased handling of this matter that one would expect, and since your department, the D.I.R.s, responsibility is to investigate possible violations, by insurers, pursuant to the NRS. I am requesting that your office inform me as to which governmental agency, office or department, investigates possible mishandling of complaints by your office, as I would wish to make a complaint about the handling of this matter.

Thank You

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by
Jeff Reeves (husband)

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Chuck Verry
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

June 1, 2010

Re: Injured Employee: Susan Reeves
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verry,

I would like to file a complaint with the DIR, against Bally's and or CCMSI, as I believe that they are not in compliance with NRS 616C. 475 (1), (5) (a) or (b), NRS 616D.120 (c), (e), (g) and (h), NRS 616C.335 and NRS 616C.065 (3).

It has come to my attention, as I have been researching the NRS, with regards to my workers' compensation claim, that as Bally's accepted my claim in a letter dated September 26, 1997 and again in a letter dated May 12, 1998. Made TTD benefit payments up until the time they wrongly closed my claim in a letter dated August 27, 1998 and have not paid any TTD benefits since 08/26/98. That under NRS 616C.475 (1), as an employee injured by accident, I am entitled to 66 2/3 percent of the average monthly wage, up until the time, under (5) (a), that a physician or chiropractor determines that I am physically capable of gainful employment for which I am suited, after giving consideration to my education, training and experience, or under (5) (b), the employer offers light-duty employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor.

As, none of the above have been done, I feel quite certain, that I am entitled to TTD benefits, along with all other benefits due under workers' compensation, dating from the time Bally's wrongly closed my claim to the present, along with interest, pursuant to NRS 616C.335.

I also believe, that under NRS 616C.065 (4), that the payment of compensation was/is being unreasonably delayed in as much as the insurer should know what the workers' compensation laws are, therefore, I would be entitled to three (3) times the amount that was unreasonably delayed.

There also is NRS 616D.120 (c), that states "Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer", (e), "Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D", (g) "Failed to provide or unreasonably delayed

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payment to an injured employee", (h) "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS."

As, I do not know what kind of documents you may need or where you might get them from, I am attaching an Appeals Officer's Decision and Order, which states that my claim should not have been closed, but remain open for further benefits, "including" specific treatments. Bally's and myself are in dispute over this, as to what "including" means, as are Mr. Christopher Brown, from your office, and myself, as it relates to my other complaint, # 11522. According to the dictionary include means "1. Contain: to have something as a constituent element 2. Bring into group: to make somebody or something part of a group." Bally's and myself are also at odds as to what an open claim entails. Since they were not providing all of the benefits due to an industrially injured employee, except for a very few things, two (2) IMEs. and the specific treatments ordered by the Appeals Officer, but nothing else. If you need more documents to make a statement of facts or if you intend to look over my entire case, I would like to be involved.

Bally's has closed my claim once again, which is scheduled for a Hearing Before the District Court. Although, Mr. Brown, from your office, has informed me that your office can not look into claims that are in litigation, I am not asking your office to become involved in that aspect, only to look into whether or not Bally's is following the workers' compensation statues.

This next may not be in your purview, but as the last Notice of Intention to Close Claim, pursuant to NRS 616C.235, "After a careful and though review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective (70) days from this notice." I am once again confused, as Bally's has none of the above legal reasons to close my claim, they have certainly not paid all benefits due to an injured worker, and yet, they appear to be intent on closing my claim with no regard, as to whether they have any legal grounds or not.

I do not know if you are the person I talked to on the phone, as I forgot to write your name down. If you are not the person I talked to about my other complaint, as to the handing of my initial complaint, would you please see that it goes to the right person, the person above Ms. Susan Sayegh?

Thank You,

_____

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Recsearcked and Typed by,
Jeff Reeves (husband)

cc: Don Jayne

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CCMSI
Jennifer DaRos or Rosemarie McMorris
P. O. Box 35350
Las Vegas, Nevada 89133-5350

June 28, 2010

Re: Subject: Claim Reopening
Injured Employee: Susan Reeves
Claim Number: 88H92H243724
Date of Injury: 09/25.88
Employer: Bally's

Dear Ms. DaRos or Ms. McMorris,

As, I believe that my claim was illegally closed, pursuant to NRS 616C.475 (5), (a), A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience. (b), The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor. (c), The employee is incarcerated.

Whereas, none of the above have occurred, I am requesting that you reopen my claim, and provide all worker's compensation benefits, not just the ones that you feel are required, since my claim should have never been closed.

Since, there is no doctor who has ever stated that I was able to return to gainful employment, and my claim is an accepted claim, I am entitled, pursuant to NRS 616C.475 (i), to receive 66 2/3 percent of the average monthly wage.

Therefore, I am requesting past and ongoing TTD benefits, based upon the above.

I am also requesting payment of co-pays, deductibles and other out of pocket expenses, along with all other worker's compensation benefits.

I am also requesting, pursuant to NRS 616C.335, for interest on the amount that should have been paid since my claim was illegally closed in 1998, the last time that TTD benefits were paid.

Pursuant to NRS 616D.120 (1), (c), refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer, (c), (2), that over thirty (30) days is considered to be unreasonable, (e), made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, (g), failed to provide or unreasonably delayed payment to an injured employee, (h), intentionally failed to comply with any provision of, or regulation adopted pursuant

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to, this chapter or chapter 616A, 616B, 616C or 616D of NRS.

Pursuant to NRS 616C.065 (3), that payment of compensation was / is being unreasonably delayed, in as much as, compensation has not been paid for over twelve (12) years, and Bally's, their insurer CCMSI, or their counsel reasonably should know what the NRS on worker's compensation is, that I am entitled to three (3) times the amount that was / is being unreasonably delayed.

I am also requesting an affidavit from Bally's and their insurer, CCMSI, that should Medicare, the Teamsters Health Care Plan, any other health care provider, company that provides prescription medications or any other payments that should have been paid through worker's compensation benefits, seek reimbursement for those medical payments that they have paid over the years, since 1988, that Bally's or their insurer, CCMSI, will repay those payments, not me.

I also have had an independent IME, preformed by Dr. Curtis W. Poindexter, copy included. After reviewing my medical records, he stated the following;

1. "by history it appears that she has had chronic multiple problems of dizziness, headaches, some decreased balance oct as noted in the above records review which had been present since the rear-ended MVA she was involved in on 09/28/88." [09/25/88]
2. "all of the historical information relates these problems to the MVA of 09/28/88 [09/25/88] and some to the prior MVA of 07/20/87. By history, it appears her problems from the 07/20.87 MVA had improved and apparently resolved shortly before the second MVA."
3. "It is highly medically likely that the multiple problems she experiences today are related some to the prior MVA of 07/20/87; however in my medical opinion, the majority of the symptoms are related to the second MVA in 1988."
4. " They [her symptoms dizziness, headaches, neck and lower back pain] could be a natural progression of the particular injury; however, it appears these symptoms have been historically present since the time of the second MVA."
5. [a way to determine how long ago her injuries were from] "No, not likely; however, in this case it seems apparent that her problems related to the prior MVA due to all of the medical records which include multiple evaluations, testing and notes of various treatments that she received consecutively since that time."
6. "From my review of multiple records and seeing Ms. Reeves, I do feel she could work at least part time in various settings; however, the right modified setting would need to be available for participation in duties that would not tend to flare up or worsen her symptoms. Often, in these scenarios, the appropriate particular job and employer is not always available or is very hard to find."
7. " Yes."[is she still suffering from the injuries from her 09/25/88 accident]
8. "These problems are a constellation of symptoms which appear to be related to 2 injuries, partially to the initial MVA of 07/20/87 and to a larger extent related to the injuries and flare up that she received from the 09/25/88 MVA."
9. "Yes. These symptoms very likely could lead to these problems." [would her

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To believe, that a doctor at an emergency room or at a quick-care, could, without any of my medical records or history, be expected to have an opinion, as to whether or not my dizziness, which resulted in a fall or stumble causing injury, is related to an accident from twenty-two (22) years ago is ludicrous.

I am also, requesting that if Bally's or their representatives, have any oral or written communications, which includes face to face meetings, with any of my physicians, that pursuant to NRS 616D.330 (1), (a), (1), and (2), that the written record of said communications be forwarded to me as soon as possible. I am also requesting copies of any written communications. Whereas, the written record is to include the date, time and subject matter of the communication, as opposed to just the date, time and subject matter. To have a written record is a record of what was said at a meeting, by who and to whom. I feel it necessary to include a dictionary definition of the word "include", 1. Contain: to have something as a constituent element, 2. Bring into the group: to make somebody or something part of a group. I would prefer to be at any face to face meetings.

Thank You, for your attention To this matter,

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Researched and Typed by,
Jeff Reeves (husband)

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To Whom That May Help: 7/29/2010

I, Susan L. Reeves, am requesting the following copy of the Original Document Copies, with Susan L. Reeves signatures. If none of these exist, a letter stating findings on each.

1. Employee Accident Report for the July 20, 1987 car accident/Worker Comp.
2. The request for Worker Comp from anyone about the Accident on July 20, 1987.
3. Written correspondence in the year 1987 until the 2nd accident in September 25, 1988.
4. The Denial from Bally or anyone for the July 20, 1987.
5. Copy of Susan L. Reeves receiving 5% PPD Award with a copy of the canceled check with her signature on it and all paperwork of acceptation.
6. The copy of Dr. Petroff refusing Susan L. Reeves treatment, other than, Susan L. Reeves, at her request, going back to her family doctor since Dr. Petroff could at that time, only offer the same medications he had her on for a long period with no new medical treatments, she had been taking at his request. Susan L. Reeves found her family doctor could prescribe and keep track of all her medications.

If any cost for these documents accrue, Please contact Susan L. Reeves as soon as possible at (702) 453-2588 for payment.

Thank You

Susan L. Reeves

Susan L. Reeves Claimant Employer Bally's Claim No: 88S01H243724 DOI 9/25/1988

cc: Lee Davis Esq.
Lewis Brisbois Bisgaard & Smith
400 South Fourth Street Suite 500
Las Vegas, NV 89101

cc: CCMSI
Rosemarie Mc Morris
Senior Claim Consultant
P. O. Box 35360
Las Vegas, NV 89133-5350

cc: Bally's
DIR/WCS Henderson
3645 Las Vegas Blvd South
Las Vegas, NV 89109-4307

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SEP 14 2010
WCS HND

Chuck Verfe
Division of Industrial Relations
Workers' Compensation Section
1301 North Green Valley Partway, Suite 200
Henderson, Nevada 89074

September 11, 2010

Re: Injured Employee: Susan Reeves (5)
Claim No.: 88H92H243724
Employer: Bally's
Date of Injury: September 25, 1988
TPA: CCMSI

Dear Mr. Verfe,

Whereas, my first complaint was on February 28, 2010, and found to not be a violation by Ms. Susan Sayegh, on April 26, 2010, and my letter of complaint on the handling of that complaint, on April 29, 2010, and speaking on the phone with you, I believe, the matter was going to be looked into by someone other than Ms. Sayegh.

Whereas, it is now the end of September and I have not heard from your office concerning that complaint, No. 11522, I was wondering how the investigation was coming along?

Also, in my letter of June 1, 2010, I filed complaints of NRS 616C.065, NRS 616C.335, NRS 616C.475 and NRS 616D.120. The only letter I received from your office was the finding that there was no violation of NRS 616D.120. What about the other complaints?

I now have another complaint about the way my claim was closed this last time. Bally's (CCMSI) have now closed my claim on the notion that there is no certification of disability, as no disability forms have been filled out by my physicians.

Bally's accepted my claim in 1997 without any certificates of disability forms, and I have never seen one in the twenty-two years that my claim has been ongoing. Bally's has had all of my medical records the entire time. They have also been in correspondence and had meetings with my physicians, and yet they have never supplied any forms.

Whereas, there has never been a physician that opined that I was able to return to gainful employment, to the contrary, as documented in my medical records, all of the physicians opined that I was not capable of returning to work.

Whereas, my medical documentation is very large, and knowing that your office gets the majority of it's documents from CCMSI, I have not included another copy of my records, but if you will, you can look at the documents that I have provided your counsel, Mr. John F. Wiles Esq. for my appeal of your office's finding that there was no violation of NRS 616D.120.

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If Mr. Wiles is not your counsel or you would like your own copy, please let me know and I will make and sent one to you.

Whereas, pursuant to NRS 616C.475, forms are to be approved by the Division. I requested approved forms from CCMSI, only to be informed by CCMSI there are no specific or required forms, in a letter dated August 25, 2010. Copy included.

Pursuant to NRS 616A.400, it is the duty of the Administrator to regulate forms. Therefore, I am requesting that your office supply me with whatever forms that are approved by your office, so I may take them to my physicians to have them filled out, to provide CCMSI with certification of disability.

Thank you for your attention to this matter,

Susan L Reeves.

Susan Reeves
4724 E. Washington Ave.
Las Vegas, Nevada 89110
702-453-2588

Typed by Jeff Reeves (husband)

RECEIVED
SEP 14 2010
WCS HND

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Sedgwick CMS

4955 S. Durango Dr., Ste. 209
Las Vegas, NV 89113
Phone: (702) 568-3800
Fax: (702) 568-3779

September 8, 2006

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE: Employer: Bally's Las Vegas
Claim No: H243724
D.O.I.: 9/25/88

Dear Mrs. Reeves:

NOTICE OF INTENTION TO CLOSE CLAIM
(Pursuant to NRS 616C.235)

After a careful and thorough review of your workers' compensation claim, it has been determined that all benefits have been paid and your claim will be closed effective seventy (70) days from the date of this notice.

Your file reflects that you are not presently undergoing any medical treatment; however, if you are scheduled for future medical appointments, please advise us immediately.

Nevada Revised Statute (NRS) 616C.390 defines your right to reopen your claim. You must make a written request for reopening and your doctor must submit a report relating your problem to the original industrial injury. The report must state that your condition has worsened since the time of claim closure and that the condition requires additional medical care. Reopening is not effective prior to the date of your request for reopening unless good cause is shown. Upon such showing by your doctor, the cost of emergency treatment shall be allowed.

If you disagree with this determination, you have the right to appeal by completing the attached Request For Hearing form and send it directly to the Department of Administration, Hearings Division, at the address on the form, within seventy (70) days from the date of this letter.

If you have any questions, please contact me at (866)464-0159 ext. 83742.

Sincerely,

Jennifer DaRos
WC Claims Examiner

Encl.: Hearing Request

cc: Employer

RECEIVED JAN 11 2007

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C C M S I

August 25, 2010

Susan Reeves
4724 E Washington
Las Vegas, NV 89110

RE:	Claimant:	Susan Reeves
	Claim No.:	88S01H243724
	Employer:	Bally's
	DOI:	09/25/1988

Dear Ms. Reeves:

We are in receipt of the July 29, 2010, August 10, 2010 and August 12, 2010 correspondence from you.

Please be advised that the copy work that was supplied to you is all that there is, there is nothing further in the claim file that has not previously been sent to you.

There is no specific/required form for disability certification, disability certification may be submitted by an authorized treating physician on a open/accepted claim.

Please be reminded that your claim is not open for medical treatment at this time.

If you have any questions, please contact me at (702) 933-4833.

Sincerely,

Rosemarie McMorris
Senior Claim Consultant

CC: File, Bally's, Lee Davis

C C M S I

September 20, 2010

Christopher Pangallo
Department of Industrial Relations
Workers' Compensation Section
1301 N. Green Valley Pkwy, Suite 200
Henderson, NV 89074

Re: RESPONSE TO POSSIBLE VIOLATIONS OF NRS 616C
Employee: Susan Reeves
Employer: Bally's Las Vegas
Date of Injury: 9/25/88
Claim Number: 88S01H243724

Dear Mr. Pangallo:

CCMSI is the current Third Party Administrator for Bally's Las Vegas. We have received and reviewed the complaint of Susan Reeves filed with the DIR WCS on 9/14/10.

Mrs. Reeves' indicates that she has another complaint about the way her claim was closed. Our file records show that the most recent claim closure determination was issued on 9/8/06 and affirmed by both the Hearing Officer and Appeals Officer (Order 39934-GK/42367-GK). Mrs. Reeves has exercised her right to appeal this Order to District Court. Case A-10-607874-J was reportedly heard in chambers with no oral argument, and the Court has not yet issued an Order.

Mrs. Reeves alleges that her claim has been closed "on the notion that there is no certification of disability." Our file records show that claim closure was based on a lack of continued medical treatment (Order 39934-GK/42367-GK) and that the issue of disability benefits had been determined two years prior to claim closure (on 7/21/04).

Mrs. Reeves has filed an additional complaint about claim closure, however no additional claim closure has taken place. Claim 88S01H243724 remains closed per our 9/8/06 determination letter, which is under appeal at the District Court level and was previously reviewed by the DIR WCS and found not to be in violation of NRS 616D.120. Mrs. Reeves has exercised her right to appeal the finding of no violation and the matter is pending before the Appeals Officer (78016-SL)

If further information is required, please contact Jennifer DaRos directly at 702-933-4829.

Sincerely,

Brigid E Wyszomirska

Brigid Wyszomirski
State Director

JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

April 26, 2010

Susan Reeves
4724 E. Washington
Las Vegas, NV 89110

Re: Injured Employee: Susan Reeves (2)
Claim No.: 88H92H243724
Employer: Bally's
D.O.I.: September 25, 1988
TPA: CCMSI
Complaint #: 11522

Dear Ms. Reeves,

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS) has, pursuant to Nevada Revised Statutes (NRS) 616D.130, investigated the complaint you filed. The issue in your complaint that can be addressed by the WCS is a possible violation of NRS 616D.330.

After reviewing the information supplied to this agency and completing the investigation, a determination has been reached and has concluded the following:

FINDINGS OF FACT:

On July 20, 1987, you were involved in a motor vehicle accident wherein you were diagnosed with cervical strain and head injury.

In 1987, Bally's issued a Notice of Claim denial.

On September 25, 1988, you were involved in another motor vehicle accident while employed at Bally's and sustained an industrial injury while working within the course and scope of your employment.

On June 9, 1989, S.I.S. Administrators issued a Notice of Claim Denial. Appropriate appeal rights were given.

On November 28, 1989, Dr. Mortillaro diagnosed the claimant with Somatoform Pain Disorder and recommended that you be sent to pain management.

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You appealed the 1987 claim to the hearing officer and your claim would be denied. You then appealed the matter to the appeals officer.

On August 15, 1990, you were seen by Dr. Kudrewicz and would eventually be found to have an entitlement to a five (5%) percent Permanent Partial Disability (PPD)

On February 27, 1991, you were offered the 5% PPD Award.

On March 26, 1991, the appeals officer issued a decision affirming claim denial. The claim denial determination would later be reversed by the District Court in 1994 and later by the Nevada Supreme Court.

On September 26, 1997, a Notice of Claim Acceptance was issued for your claim with a date of injury July 20, 1987.

On May 12, 1998, a second Notice of Claim Acceptance was issued.

On December 20, 2001, Dr. Glyman wrote a report concluding that you had a somatoform disorder.

On December 27, 2001, a Notice of Claim Closure was issued but would later be reversed by an appeals officer awarding you further medical treatment.

You continued your care with Dr. Mortillaro in 2003 and 2004. In March 2004 Dr. Mortillaro discharged you from his care.

On May 28, 2004, you requested copies of all correspondence between CCMSI and Drs. Mortillaro and Petroff.

On June 2, 2004, CCMSI responded to your May 28, 2004 request.

On December 15, 2004, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from CCMSI.

You continued to receive physical therapy at the Family & Sports Physical Therapy Center. On January 23, 2006, a therapist indicated that your condition had greatly improved over the time period that you had treated at the center.

On September 8, 2006, CCMSI learned that Dr. Petroff had released you to your family physician since he was only monitoring your medication. It was also learned that you had been spending a lot of time out of state and were being treating under Medicare.

On September 8, 2006, CCMSI issued a Notice of Intent to Close Claim. You appealed this determination. The hearing officer would dismiss your appeal because you failed to attend the hearing. You appealed this determination.

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On January 17, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Bally's.

In January 2007, you submitted a written request to expand the scope of your claim to include bruised ribs and a broken toe.

On February 16, 2007, CCMSI issued a determination denying your January 2007 request. Appropriate appeal rights were given.

On May 10, 2007, the hearing officer issued a decision and order affirming the February 16, 2007 determination. You appealed this determination.

On May 31, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services. ("Sedgwick")

On August 16, 2007, your attorney, pursuant to NRS 616D.330, requested a copy of your log of oral communications from Sedgwick Claims Management Services.

January 29, 2010, you requested a copy of your complete industrial claim file from Sedgwick.

On February 24, 2010, CCMSI responded your January 29, 2010 request that was addressed to Sedgwick. They informed you that the copy work of your claim file had been previously supplied to you and that no other documentation exists.

CONCLUSION:

As it relates to a possible violation of NRS 616D.30, no violation was found.

CCMSI timely responded to your request pursuant to statute. You were advised in a previous response that you had been provided with a complete copy of your industrial injury claim file. The investigator reviewed the claim file and found no additional correspondence relating to the logs of oral communication.

As the issue outlined in your complaint has been addressed, the complaint filed with this agency is closed. If you have any further questions, feel free to contact Christopher Brown, Compliance/Audit Investigator II, at (702) 486-9098.

Sincerely,

Susan Sayegh
Southern District Manager
Workers' Compensation Section

cc: George Ward, WCS

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

July 22, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:	Subject:	Violation of NRS 616D.120
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Date of Injury:	09/25/88
	Employer:	Bally's Las Vegas
	TPA:	CCMSI
	WCS Case Number:	14446

Dear Ms. Reeves:

The Division of Industrial Relations (DIR), Workers' Compensation Section (WCS), has completed its investigation into your complaint dated June 1, 2010.

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FINDINGS OF FACT:

You alleged that Bally's and CCMSI failed to timely pay temporary total disability (TTD) benefits after a December 1, 2003 Appeals Officer decision ordered that closure of your workers' compensation claim was premature. You alleged that you were due TTD benefits from the date your claim was closed on August 27, 1998.

On August 18, 1998 Dr. Oliveri conducted an independent medical evaluation (IME) in which he was asked to evaluate your capabilities of entering to the work force. Dr. Oliveri stated that your subjective complaints far exceeded objective findings. He diagnosed you with a somatoform pain disorder which was primarily a psychiatric problem which was not something that was caused by an industrial accident. Dr. Oliveri stated, ". . . The criteria for disability under social security are very much different than

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the criteria under worker's compensation especially when issues of causation need to be established. Individuals with the psychiatric diagnosis of somatoform pain disorder oftentimes are not capable of gainful employment as indicated by the administrative law judge. However, in this examinee's case, this should not be misconstrued as somehow being related to the industrial date of injury. . ." Dr. Oliveri found that you had overwhelming symptom magnification. He stated that the September 25, 1988 accident caused minor physical problems that had been resolved and the cause of your current condition was the result of nonindustrial somatoform pain disorder. He found that you were maximum medical improved for the industrial injury. Dr. Oliveri stated that there was no evidence for disability and the current perceived disability was based on your nonindustrial somatoform pain disorder.

On March 26, 2001 Dr. Glyman examined you and diagnosed you with a mild post-concussion syndrome. He stated that you had many subjective symptoms which did not match up with objective physical findings.

On December 20, 2001 Dr. Glyman provided an addendum after reviewing additional medical records. He agreed with the other physician who examined you and concluded that you suffer from a somatoform paid disorder. He did not recommend any further medical treatment.

On December 27, 2001 Gallagher Bassett Services wrote a letter notifying you of their intention to close your claim. They also notified you that if you disagreed with their determination you could file an appeal with the Department of Administration Hearing Division.

On April 19, 2002 Hearing Officer Nora Garcia issued a Decision and Order, hearing number LHS2002-C-4641-NG, regarding your appeal of the insurer's December 27, 2001 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 1, 2003 Appeals Officer Nancy Richins issued a Decision and Order regarding your appeal of the Hearing Officer's Decision affirming claim closure. The Appeals Officer concluded that the somatoform pain disorder was industrially related and required further medical treatment, and ordered the claim to be reopened.

On December 11, 2003 CCMSI wrote a letter notifying you the claim would remain open for further medical treatment, and notified you that they scheduled you for an appointment with Dr. Mortillaro on January 5, 2003 at 9:30 am.

On January 14, 2004 CCMSI wrote a letter that they were aware you were being treated by Dr. Petroff. They advised you that the Appeals Officer instructed them to provide short term individual pain and stress management counseling, biofeedback therapy, psycho-educational lectures and appropriate therapy. They notified you that Dr. Mortillaro was authorized to provide these treatments, and they were denying Dr. Petroff's recommended treatment plan.

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CCMSI - LAS VEGAS

On January 21, 2004 Douglas Rowan wrote a letter to CCMSI that he was aware they authorized further medical treatment with Dr. Mortillaro. He also requested TTD benefits from the date of claim closure.

On January 30, 2004 CCMSI faxed a letter to Dr. Petroff authorizing an MRI of your cervical spine. It appears that they also authorized medications prescribed by Dr. Petroff and Dr. Mattimoe, as well as physical therapy.

On March 16, 2004 CCMSI wrote a letter to Mr. Rowan requesting a certificate of disability from your physicians from August 26, 1998 in support for his request of TTD benefits. Once they received the certificates of disability they would render a determination with appeal rights.

On March 30, 2004 Dr. Mortillaro discharged you from his care and noted that you remained under the care of Dr. Petroff.

On July 21, 2004 CCMSI wrote a letter to Mr. Rowan notifying him that they were denying his request for TTD benefits from 1998 based on a medical report by Dr. Petroff dated June 29, 2004, because there was no evidence of certification of disability. They also provided him with a copy of the report.

On January 20, 2006 Appeals Officer Gerald Schwartzer filed a Decision and Order, Appeal Number 14175-GS/14174-GS/13350-GS, regarding your appeal of a Hearing Officer's Decision and Order dated November 30, 2004, affirming denial of TTD benefits. The Appeals Officer dismissed your appeal for denial of TTD benefits due to untimely filing of the appeal.

On September 8, 2006 the insurer was notified that Dr. Petroff was only monitoring your medications and referred further care to Dr. Mattimore, who has been prescribing physical therapy. They were also notified that Dr. Mattimore was not treating you for the workers' compensation claim.

On July 25, 2007 Hearing Officer Steven Evans issued a Decision and Order, hearing number 41025-SE, regarding your appeal of the insurer's September 8, 2006 determination of claim closure. The Hearing Officer affirmed claim closure.

On December 22, 2009 Appeals Officer Gregory Krohn filed a Decision and Order, Appeal Number 39934-GK/42367-GK, regarding your appeal of a Hearing Officer's Decision and Order dated July 25, 2007 which affirmed claim closure. The Appeals Officer affirmed claim closure.

On June 21, 2010 the WCS mailed a letter to CCMSI notifying them of your complaint. The WCS received a letter from CCMSI dated June 29, 2010 in which they informed the WCS that the matters of TTD benefits, medical treatment and claim closure have been affirmed by the Appeals Officer and are currently pending in District Court. You appealed the Hearing Officer's Decision affirming denial of TTD benefits and the

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Appeals Officer affirmed the denial. This case is pending at the District Court. Claim closure was affirmed by a Hearing Officer and Appeals Officer. The case is also pending at the District Court.

DETERMINATION:

Determinations regarding TTD benefits and claim closure were affirmed by a Hearing Officer and Appeals Officer. Certificates of disability were not received for the specific periods in questions. Medical treatment was provided timely as ordered.

ADMINISTRATIVE FINE:

Based on the findings of fact, it is determined that there are no violations that would warrant an administrative fine.

BENEFIT PENALTY:

It is determined that there are no violations of NRS 616D.120; therefore, the Administrator will not award you a benefit penalty.

NOTICE OF RIGHT TO APPEAL:

If a person wishes to contest a written determination of the administrator to refuse to impose a benefit penalty pursuant to NRS 616D.120, he must file a notice of appeal with an appeals officer within 30 days after the date on which the administrator's determination was mailed. The notice of appeal must set forth the reasons the refusal to impose a benefit penalty should not be issued. **If a notice of appeal is not filed as required, the refusal to impose a benefit penalty shall be deemed a final order and is not subject to review by any court or agency.**

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CCMSI - LAS VEGAS

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The notice of appeal should be addressed to the Department of Administration, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102 or the Department of Administration, Appeals Office, 1050 East Williams Street, Suite 450 Carson City, Nevada 89701.

Sincerely,
Don Jayne, Administrator
Division of Industrial Relations

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

CJV:cgp

cc: Don Jayne, Administrator, DIR
CCMSI

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JUL 23 2010
CCMSI - LAS VEGAS

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

September 15, 2010

CCMSI
Attn: Brigid Wyszomirski
P. O. Box 35350
Las Vegas, NV 89133-5350

Re: Investigation of Complaint

Injured Employee:	Susan Reeves
Claim Number:	88H92H243724
Date of Injury:	09/25/88
Employer:	Bally's
WCS Case Number:	17940

Dear Wyszomirski:

The Division of Industrial Relations, Workers' Compensation Section (WCS) received the enclosed complaint from Susan Reeves. She disagrees with the closure of her workers' compensation claim.

Pursuant to NAC 616A.410 please ensure that a written response to this allegation is received by the WCS within 10 days after receipt of this letter together with all documentation to substantiate your response.

Sincerely,

Christopher Pangallo
Compliance Audit Investigator

Enc

cc: Susan Reeves

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(NSPO Rev. 6-07)

(D) 314

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JIM GIBBONS
Governor

DIANNE CORNWALL
Director

STATE OF NEVADA

DONALD E. JAYNE, CPCU
Administrator

CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

October 1, 2010

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

Re:		
	Injured Employee:	Susan Reeves
	Claim Number:	88S01H243724
	Employer:	Bally's Las Vegas
	Date of Injury:	09/25/88
	TPA:	CCMSI
	WCS Case Number:	17940

Dear Ms. Reeves:

The Division of Industrial Relations, Workers' Compensation Section (WCS), has completed its investigation into your complaint dated September 11, 2010. You requested that the WCS review the investigation that resulted in the April 26, 2010 WCS letter, which was an investigation of your February 28, 2010 complaint. The investigator found that CCMSI provided you and your attorney with the oral communications requested. There was no indication that any further communications occurred between CCMSI and your treating physicians.

You disagreed with the determination by the WCS dated July 22, 2010. You alleged CCMSI violated multiple statutes and the WCS determined that there were no violations of NRS 616D.120. The WCS determined in its July 22, 2010 letter that CCMSI did not violate any Nevada Workers' Compensation Law. You appealed this determination and the matter is currently in litigation.

You did not agree with the way CCMSI closed your workers' compensation claim. You appealed their determinations and the Hearing Officer and Appeals Officer affirmed claim closure. The matter is now in litigation with the Nevada District Court. The WCS does not have the authority to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction.

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If you have any questions regarding this matter, please Christopher Pangallo at (702) 486-9100.

Sincerely,

Charles J. Verre
Chief Administrative Officer
Workers' Compensation Section

cc: CCMSI

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Nevada Department of Administration Hearings Division
2200 S. Rancho Drive, Ste 220
Las Vegas, NV 89102
(702) 486-2525

Nevada Department of Administration Hearings Division
1050 E. Williams Street
Carson City, NV 89701
(775) 687-5966

RECEIVED AND FILED
OCT 19 2010

REQUEST FOR HEARING BEFORE APPEALS OFFICER

CLAIMANT INFORMATION	EMPLOYER INFORMATION
Claimant: SUSAN REEVES	Claim number: 88SO1H243724
Address: 4724 E. Washington Ave.	Employer: BALLY'S HOTEL
Las Vegas, NV. 89110	Address:
SSN: 572-78-2120	
Telephone: (702) 453-2588	Telephone: ( )

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER INSURER

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: A finding by the DIR of October 1, 2010

YOU MUST ATTACH A COPY OF THE ~~HEARING OFFICER~~ DECISION

DIR

BRIEFLY EXPLAIN REASON FOR APPEAL: On February 28, 2010 I filed a complaint pursuant to NRS 616D.330 and it was found that there was no violation by the same person that was the claims supervisor on my claim for CCMSI. The DIR supposedly reviewed my complaint and made the same finding of no violation. I disagree.

If you are represented by an attorney or other agent, please print the name and address below.

ATTORNEY/REPRESENTATIVE:	INSURANCE COMPANY:
Name: John F. Wiles Esq.	Name: CCMSI
Address: 1301 N. Green Valley Parkway, Suite 200	Address: P.O. Box 35350
Henderson NV. 89074	Las Vegas, NV. 89133-5350
Telephone: ( )	Telephone: ( )

Susan F Reeves
Signature

October 18, 2010
Date

NOTICE

If the Hearing Officer decision is appealed, Claimants are entitled to free legal representation by the Nevada Attorney for Injured Workers (NAIW). If you want NAIW to represent you, please sign below:

Susan F Reeves
Signature

702.453-2588
Telephone Number

If you are appealing the Hearing Officer's Decision, file this form and a copy of the Decision no later than thirty (30) days after the date of the Hearing Officer's Decision.

REVISED 02/14/07

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ORIGINAL

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Attorneys for Third Party Administrator
CCMSI

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Administrative Action of:	APPEAL NO.: 80334-SL CLAIM NO.: 88S01H243724
SUSAN REEVES	

TPA'S PREHEARING STATEMENT

COMES NOW the Third Party Administrator, CCMSI ("TPA"), by and through its attorney, DALTON L. HOOKS, JR., ESQ., and submits its prehearing statement concerning the instant matter to be heard on **Wednesday, December 8, 2010 at 9:00 AM**. This prehearing statement is filed pursuant to NAC 616D.040.

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I.
ISSUES PRESENTED

Whether the Claimant Has Established an Entitlement to a Benefit Penalty Pursuant to NRS616D.120?

II.
STATEMENT OF FACTS

On or about 09/25/88, the claimant, SUSAN REEVES ("Claimant"), a restroom clerk for BALLY'S, suffered an occupational injury or disease during the course and scope of her employment. *See* exhibits attached to TPA's Production of Documents at pg. 1. According to the C-4, the Claimant was involved in a motor vehicle accident while in BALLY'S parking lot. *See id.* BALLY'S subsequently completed a C-3 which similarly described the incident. *See id* at pg. 2. A C-1 was also completed. *See id* at pg. 3. The Claimant apparently suffered head and neck pain as a result of this incident. *See id* at pp. 2-3.

The matter on appeal herein concerns the Claimant's request for a benefit penalty. On or about 09/11/10, the Claimant filed a complaint with the Division of Industrial Relations ("DIR") and alleged that her claim was not properly closed. *See id* at pp. 41. The TPA wrote DIR and supplied a brief chronology of the closing of the Claimant's claim. *See id* at pg. 31. After carefully reviewing the Claimant's file, DIR determined that the Claimant was not entitled to a benefit penalty. *See id* at pg. 41. The Claimant subsequently filed an appeal of that determination on 10/19/10. *See id* at pg. 43. The TPA now submits this Prehearing Statement.

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III.
ARGUMENT

The Claimant Has Not Established an Entitlement to a Benefit Penalty Pursuant to NRS 616D120.

The Claimant has filed entirely to establish an entitlement to a benefit penalty. In this matter, the applicable statute is NRS 616D.120. That statute provides in relevant part that:

> 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has:
>
> (a) Induced a claimant to fail to report an accidental injury or occupational disease;
>
> (b) Without justification, persuaded a claimant to:
>
> (1) Settle for an amount which is less than reasonable;
>
> (2) Settle for an amount which is less than reasonable while a hearing or an appeal is pending; or
>
> (3) Accept less than the compensation found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;
>
> (c) **Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer,** appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:
>
> (1) Later than 10 days after the date of the settlement agreement or stipulation;
>
> (2) Later than 30 days after the date of the decision of a court, hearing officer, appeals officer or the Division, unless a stay has been granted; or
>
> (3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer or the Division has been lifted;

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(d) Refused to process a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(e) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation or other relief found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(f) Failed to comply with the Division's regulations covering the payment of an assessment relating to the funding of costs of administration of chapters 616A to 617, inclusive, of NRS;

(g) Failed to provide or unreasonably delayed payment to an injured employee or reimbursement to an insurer pursuant to NRS 616C.165; or

(h) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS, the Administrator shall impose an administrative fine of $1,500 for each initial violation, or a fine of $15,000 for a second or subsequent violation.

See NRS 616D.120(1) (2007). The Claimant's request for a benefit penalty is baseless. Upon completion of their investigation, DIR found that:

> You did not agree with the way CCMSI closed your workers' compensation claim. You appealed their determination and the Hearing Officer and Appeals Officer affirmed claim closure. The matter is now in litigation with the Nevada District Court. The WCS does not have the authority to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction.

See id at pg. 41. The Claimant has simply failed to support her allegations that the TPA's claim closure determination was not proper. Under these facts, the Claimant's request for a benefit penalty is clearly unfounded and the determination of DIR should be affirmed.

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IV.
CONCLUSION

The Claimant's request for a benefit penalty is without adequate support. The Claimant was provided appropriate medical treatment for her injuries and her claim was properly closed. Under these facts, denial of a benefit penalty was appropriate pursuant to NRS 616D.120. In view of the foregoing, the determination letter of DIR, dated 10/01/10, must be affirmed and the Claimant be given no additional benefits under her application.

Wherefore, the Third Party Administrator, CCMSI, respectfully requests that the Appeals Officer provide the following relief:

1. That the Appeals Officer AFFIRM DIR's determination letter dated 10/01/10, which informed the Claimant that she was not eligible for a benefit penalty.

V.
LIST OF WITNESSES

1. **MS. SUSAN REEVES**
   c/o Teresa Horvath, Esq.
   Nevada Attorney for Injured Workers
   2200 S. Rancho Drive. Suite 230
   Las Vegas, NV 89102

2. Any and all witnesses called by other parties to this litigation.

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VI.
LIST OF EXHIBITS TO BE RELIED UPON[1]

C-4 1

C-3 2

Claimant's Medical Records 3-4

Appeals Officer Decision and Order dated 01/20/06 5-9

Appeals Officer Decision and Order dated 12/22/09 10-16

Correspondence from Claimant 17-28

Correspondence from TPA 29-31

Correspondence from DIR 32-40

DIR's determination dated 10/01/10 41-42

Claimant's Request for Hearing Before the Appeals Officer 43

VII.
ESTIMATED TIME

The TPA estimates that one (1) hour will be required to present this case.

Dated this 14 day of December, 2010.

Respectfully submitted,

FLOYD, SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Third Party Administrator
CCMSI

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[1] Unless otherwise indicated, the exhibits referenced to herein are those attached to the TPA's Production of Documents.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed concerning Department of Administration Case No.: **80334-SL** does not contain the social security number of any person.

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for Third Party Administrator
CCMSI

10/06/11
DATE

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **TPA'S PREHEARING STATEMENT; AFFIRMATION PURSUANT TO NRS239B.030** was duly served on the following as indicated:

[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Susan Reeves c/o Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	John Wiles, Esq. Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
[ ] Via Facsimile [x] Mail [ ] Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
[x] Via Facsimile [ ] Mail [ ] Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 6th day of December, 2010

An employee of
FLOYD, SKEREN & KELLY, LLP

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ORIGINAL

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Administrative Action of:	Appeal No: 80334-SL
SUSAN REEVES	DOH: December 8, 2010 9:00 AM.

DIVISION OF INDUSTRIAL RELATIONS
PRE-HEARING STATEMENT

I.

DOCUMENTARY EVIDENCE

The Workers' Compensation Section of the Division of Industrial Relations (the "Division") now submits one Evidence Packet consisting of forty-six (46) pages (excluding the index) herewith. References to pages within the Evidence Packet shall be designated as "EP" and followed by the specific page number(s) of the document referred to.

The Division reserves the right to submit additional evidence and documentary rebuttal evidence if necessary.

II.

STATEMENT OF THE CASE

1. Issues in Question:

Whether in response to the injured worker's complaint *repeating* various allegations which have already been reviewed, investigated, and determined by the Division (particularly in regard to closure of her claim and the failure to provide temporary total disability benefits), the Division was correct in its October 1, 2010 determination to refuse reconsideration, modification, or further review of the those prior determinations, which included the Division's findings that no violations of any law cited by the Claimant, or any other law, had been committed by either her employer or CCMSI to merit imposition of any administrative fines or benefit penalties pursuant to NRS 616D.120.

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2. Statement of the Facts:

The Division adopts the facts as stated in its Determination Letter dated October 1, 2010.

3. The Division's Brief Position Statement:

NRS 616C.235 Closure of claim by insurer: Procedure; notice; special procedure if medical benefits less than $300.

1. Except as otherwise provided in subsections 2, 3 and 4:

(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant and, if the insurer has been notified that the claimant is represented by an attorney, to the attorney for the claimant by first-class mail addressed to the last known address of the attorney. The notice must include, on a separate page, a statement describing the effects of closing a claim pursuant to this section and a statement that if the claimant does not agree with the determination, the claimant has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, including, without limitation, a statement which prominently displays the limit on the time that the claimant has to request a resolution of the dispute as set forth in NRS 616C.315. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than $300, the insurer may close the claim at any time after the insurer sends, by first-class mail addressed to the last known address of the claimant, written notice that includes a statement which prominently displays that:

(a) The claim is being closed pursuant to this subsection;

(b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive; and

(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.

3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than $300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:

(a) Sent by first-class mail addressed to the last known address of the claimant; and

(b) A document that is separate from any other document or form that is used by

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the insurer.

4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.

NRS 616C.235(1)–(4).

NRS 616C.390 Reopening claim: General requirements and procedure; limitations; applicability.

1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

(a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

(c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation.

2. After a claim has been closed, the insurer, upon receiving an application and for good cause shown, may authorize the reopening of the claim for medical investigation only. The application must be accompanied by a written request for treatment from the physician or chiropractor treating the claimant, certifying that the treatment is indicated by a change in circumstances and is related to the industrial injury sustained by the claimant.

3. If a claimant applies for a claim to be reopened pursuant to subsection 1 or 2 and a final determination denying the reopening is issued, the claimant shall not reapply to reopen the claim until at least 1 year after the date on which the final determination is issued.

4. Except as otherwise provided in subsection 5, if an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim only if:

(a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and

(b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made.

5. An application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if:

(a) The claimant was not off work as a result of the injury; and

(b) The claimant did not receive benefits for a permanent partial disability.

➥ If an application to reopen a claim to increase or rearrange compensation is made pursuant to this subsection, the insurer shall reopen the claim if the requirements set forth in paragraphs (a), (b) and (c) of subsection 1 are met.

6. If an employee's claim is reopened pursuant to this section, the employee is not entitled to vocational rehabilitation services or benefits for a temporary total disability if, before the claim was reopened, the employee:

(a) Retired; or

(b) Otherwise voluntarily removed himself or herself from the workforce,

➥ for reasons unrelated to the injury for which the claim was originally made.

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7. One year after the date on which the claim was closed, an insurer may dispose of the file of a claim authorized to be reopened pursuant to subsection 5, unless an application to reopen the claim has been filed pursuant to that subsection.

8. An increase or rearrangement of compensation is not effective before an application for reopening a claim is made unless good cause is shown. The insurer shall, upon good cause shown, allow the cost of emergency treatment the necessity for which has been certified by a physician or a chiropractor.

9. A claim that closes pursuant to subsection 2 of NRS 616C.235 and is not appealed or is unsuccessfully appealed pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive, may not be reopened pursuant to this section.

10. The provisions of this section apply to any claim for which an application to reopen the claim or to increase or rearrange compensation is made pursuant to this section, regardless of the date of the injury or accident to the claimant. If a claim is reopened pursuant to this section, the amount of any compensation or benefits provided must be determined in accordance with the provisions of NRS 616C.425

NRS 616C.390.

NRS 616C.475 Amount and duration of compensation; limitations; requirements for certification of disability; offer of light-duty employment.

1. Except as otherwise provided in this section, NRS 616C.175 and 616C.390, every employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out of and in the course of employment, or his dependents, is entitled to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.

* * *

5. Payments for a temporary total disability must cease when:

(a) A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience;

(b) The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7; or

(c) Except as otherwise provided in NRS 616B.028 and 616B.029, the employee is incarcerated.

* * *

6. Each insurer *may*, with each check that is issues to an injured employee for a temporary total disability, include a form approved by the Division for the injured employee to request continued compensation for the temporary total disability.

7. A certification of disability issued by a physician or chiropractor must:

(a) Include the period of disability and a description of any physical limitations or restrictions imposed upon the work of the employee;

(b) *Specify whether the limitations or restrictions are permanent or temporary*; and

(c) Be signed by the treating physician or chiropractor authorized pursuant

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to NRS 616B.527 or appropriately chosen pursuant to subsection 3 of NRS 616C.090.

* * *

NRS 616C.475(1), (5), (6) and (7).

NAC 616A.480 Use, alteration, printing and distribution of certain posters and forms. (NRS 616A.400, 616A.417)

1. The following posters and forms or data *must* be used by an insurer, employer, injured employee, provider of health care, organization for managed care or third-party administrator in the administration of claims for workers' compensation:

* * *

(oo) *D-39, Physician's Progress Report - Certification of Disability.*

* * *

3. The forms listed in this section *must be accurately completed*, including, without limitation, a signature and a date if required by the form. An insurer or employer may designate a third-party administrator as an agent to sign any form listed in this section.

4. An insurer, employer, injured employee, provider of health care, organization for managed care or third-party administrator may not use a different form or change a form without the prior written approval of the Administrator.

NAC 616A.480 (1), (3) & (4) [emphasis added].

NRS 616D.120 Administrative fines and benefit penalties for certain violations; powers of Administrator; revocation or withdrawal of certificate of self-insurance or registration as third-party administrator; claim against bond for payment of administrative fines or benefit penalties.

1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:

(a) Induced a claimant to fail to report an accidental injury or occupational disease;

(b) Without justification, persuaded a claimant to:

(1) Settle for an amount which is less than reasonable;

(2) Settle for an amount which is less than reasonable while a hearing or an appeal is pending; or

(3) Accept less than the compensation found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;

(c) Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement,

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written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

(1) Later than 10 days after the date of the settlement agreement or stipulation;

(2) Later than 30 days after the date of the decision of a court, hearing officer, appeals officer or the Division, unless a stay has been granted; or

(3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer or the Division has been lifted;

(d) Refused to process a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(e) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(f) Failed to comply with the Division's regulations covering the payment of an assessment relating to the funding of costs of administration of chapters 616A to 617, inclusive, of NRS;

(g) Failed to provide or unreasonably delayed payment to an injured employee or reimbursement to an insurer pursuant to NRS 616C.165;

(h) Engaged in a pattern of untimely payments to injured employees; or

(i) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,

☐ the Administrator shall impose an administrative fine of $1,500 for each initial violation, or a fine of $15,000 for a second or subsequent violation.

* * *

3. If the Administrator determines that a violation of any of the provisions of paragraphs (a) to (e), inclusive, (h) or (i) of subsection 1 has occurred, the Administrator shall order the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company to pay to the claimant a benefit penalty:

NRS 616D.120(1) & (3).

As described in the Division's October 1, 2010 determination letter subject of the instant appeal (*see* EP 4-5), Ms. Reeves' September 11, 2010 complaint basically repeats the same assertions she has already made, which in response thereto, determinations concerning have already been rendered. See complaint dated February 28, 2010 (EP 6) with responsive April 26, 2010 determination letter (EP 7-8); Ms. Reeves' letter voicing dissatisfaction with April 26, 2010 determination (EP 9-10); and complaint dated June 1, 2010 (EP 11-12) with responsive July 22,

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2010 determination (EP 13-17).

Ms. Reeves incorrectly claims that the Division has not addressed any of her complaints for perceived violations of NRS 616C.065, NRS 616C.335, and NRS 616C.475. The record reflects otherwise. In response to Ms. Reeve's dated complaint of June 1, 2010, in which she alleges that violations of each of these statutes occurred, the Division informed the Claimant on July 22, 2010, that based upon the findings of fact described in its response, there were *no violations* of law committed for which an administrative fine was warranted. Where no circumstances exist to justify imposition of an administrative fine, there can be no benefit penalty. Accordingly, the Division likewise determined that it would not award the Claimant a benefit penalty. That the Division specifically expressed that only no violation of NRS 616D.120 occurred, this presupposes the fact that no other law was violated, as liability under NRS 616D.120 is dependent upon finding that *another violation* of the Nevada Revised Statutes was committed. As explained in the Division's July 22, 2010 determination letter, it is because no violation of NRS 616C.065, NRS 616C.335, or NRS 616C.475 occurred that no violation of *NRS 616D.120* occurred. CCMSI's closure of Ms. Reeves' claim, as affirmed by both the Hearing Officer and Appeals Officer, remains in litigation and the Division has no authority to modify or negate in any matter those determinations. At this time, the Claimant is bound by the decision of the Appeals Officer finding that she failed to satisfy her burden of proof to show why her claim should remain open. (See EP 28-34.)

Moreover, whether her claim was ultimately closed or not, simply because Ms. Reeves' claim had been accepted for benefits does not mean that she was or is entitled to any particular benefit desired, including TTD benefits, upon mere request. Although acceptance of a workers' compensation claim may generally result in the payment of an injured worker's *medical expenses* (where appropriate) to the extent of the stated condition or body party accepted, claims acceptance does not automatically render an injured worker eligible for TTD benefits. Instead, that a claim has

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been accepted means only that a Claimant may subsequently be deemed *eligible* for TTD benefits in accordance with NRS 616C.475. Accordingly, following acceptance of her claim, the Claimant's "right" to TTD benefits was conditioned upon proof that she established the statutory criteria set forth in NRS 616C.475, the express terms of which provide that in the absence of a *signed certification of disability* ***issued*** *by a physician or chiropractor* which actually includes the *period* of disability, as well as a *description* of any *physical limitations or restrictions* imposed which specifies whether *the limitations or restrictions are permanent or temporary*, TTD benefits will not be awarded. The law does not provide for cart blanche provision of TTD benefits.

Here, prior to the 2006 closure of Ms. Reeves' claim, and in response to the request made by Claimant's attorney to provide her TTD benefits from August 26, 1998 to the present, the Division asked that he supply it with *certification of disability* as prepared by Claimant's physicians (see EP 18). In response, however, Claimant's attorney submitted only a June 29, 2004 letter from G. Petroff, M.D., who expressed that he was unaware of any workers' compensation claim or issue, having seen the Claimant since the time of Claimant's second automobile accident in September 1993 based upon a disability for which she was apparently being treated under Medicare. EP 19-20. Dr. Petroff summarized in his letter only the findings of neurologist Dr. Bowler in regard to her September 1998 automobile accident (who reasoned that although the Claimant may have experienced some discomfort from the incident, she had no type of intracranial structural lesion or a significant problem) and the results of Dr. David Oliveri's August 1998 Independent Medical Evaluation of the Claimant, who opined that the Claimant had a somatoform pain disorder, a psychiatric diagnosis which was "not something that is caused by an industrial accident." *Id.* Further, Dr. Petroff pointed to the opinion of Dr. Mortillaro, who "feels that the patient is not limited from working based on her psychological state of health." *Id.* Clearly, Dr. Petroff's reporting not only fails to *certify* that she was totally disabled, temporarily or otherwise for an

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extended period as required by NRS 616C.475, but to the contrary reflects that the Claimant is *not* disabled. Indeed, based upon his review Claimant's systems as well as his own observations of her examination over the years with respect to her September 1998 accident, he expressed that it was reasonable to recommend that although on a sedentary basis and under appropriate adaptive conditions, she undergo a trial of a *back to work* regimen. *Id.* Accordingly, there being no evidence of a certification of disability, on July 21, 2004, as subsequently upheld by both a Hearing Officer and Appeals Officer (EP 23-27), CCMSI appropriately denied the request for TTD benefits from 1998 to the present. EP 21. Because no TTD was due her, there was no TTD payment that could have been unreasonably delayed.

In so far as the issue pertains to the actual certification of disability *form*, the Division notes that although CCMSI's Senior Claims Consultant mistakenly informed the Claimant in August 2010 that no specific/required form for disability certification existed (see EP 3), as NAC 616A.480 expressly requires that Form D-39 be utilized (see blank copy of such form at EP 35), the error makes *no difference* in the resulting determination to deny the TTD benefits Claimant requests, because the law does *not* impose upon the employer, insurer, or third-party administrator, any legal duty that such certification form be *provided or supplied* to the Claimant or Claimant's physician. While NRS 616C.475(6) provides that an insurer *may* include the form with each check that it issues to an injured employee for a temporary total disability, the insurer is *not required* to do so. It is a well-settled principle of statutory construction that statutes using the word "may" are generally discretionary and permissive in nature, while those that employ the term "shall" are presumptively mandatory. *See State v. American Bankers Insurance Company*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990) and *Sengbusch v. Fuller*, 103 Nev. 580, 582, 747 P.2d 240, 241 (1987). In any event, the existence of the certification form being no secret, it is readily assessable and can be obtained and printed out from the Division's *website* in the same manner as any other workers' compensation

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form at http://dirweb.state.nv.us/wcs/wcsform.htm. Here, however, whether Form D-39 was utilized or not, based upon the discussion contained in the physicians' medical reporting received by CCMSI concerning the Claimant's status, there was no basis to conclude that she had any *physical* limitations or restrictions, be they permanent or temporary, which would have even conceivably prevented her from working. Importantly, despite Ms. Reeves' argument to the contrary, review of her voluminous medical records does *not* reveal that "all of her physicians" have opined her to be incapable of returning to work.

Because Ms. Reeves asserts in her September 11, 2010 complaint that upon provision of the requisite certification form, she anticipates taking it to her physician to have it filled out for submission to CCMSI, this matter additionally tests the statutory limits on a worker's ability to *retroactively* document her disability status in order to claim TTD benefits. A Claimant is not entitled to receive TTD benefits based upon a physician's *belated* conclusions that the worker may have been temporarily totally disabled. Pursuant to the express terms of NRS 616C.475(7), the Nevada Legislature was obviously concerned with ensuring that the examining or treating physician had *contemporaneously* authorized an injured worker to be off work before TTD benefits were required to be paid.

The issue as to whether a claimant's condition can be appraised retroactively has come up on occasion. See 4-80 Larson's Workers' Compensation Law § 80.03. The Oregon Supreme Court, for example, in interpreting an Oregon statutory provision similar to NRS 616C.475(3) and (7), determined that a claimant was *not* entitled to receive nearly two years' worth of TTD benefits based on a physician's after-the-fact certification that claimant had been disabled for that period. See *Menasha Corp. v. Crawford*, 332 Or. 404, 413, 29 P.3d 1129 (2001), reproduced herein at EP 36-46. The court concluded that not only was temporary disability not due and payable for any period of time not authorized by the *attending* physician (the doctor or physician who is primarily

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responsible for the treatment of a worker's compensable injury) but no certification for temporary disability is effective to *retroactively authorize* compensation *more than 14 days* prior to its issuance. ORS 656.262(4)(g).

III.

WITNESSES

The Division may call a Compliance/Audit Investigator or other knowledgeable employee of the Division to testify. The Division also reserves the right to examine the other party's witnesses and to examine rebuttal witnesses.

IV.

ESTIMATED TIME

The Division's presentation will take approximately thirty (30) minutes.

Dated this 23 day of November, 2010.

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By: _____

John F. Wiles, Esq., Division Counsel
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AFFIRMATION

NAC 616C.303

The undersigned affirms that except as otherwise provided in NRS 616C.310, the papers and documents described in the Division's preceding Prehearing Statement and submitted in its accompanying supporting Evidence Packet filed in **Appeal No. 80334-SL**:

☑ Do not contain the personal identifying information of any person

OR

☐ Do not contain the personal identifying information of any person except for the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

OR

B. For the administration of a public program or for an application for a federal or state grant.

John F. Wiles, Esq.
Division Counsel
Division of Industrial Relations
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11-23-10
Date

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: **Division of Industrial Relations' Prehearing Statement and Evidence Packet in Appeal No. 80334-SL**

Person(s) Served: Susan Reeves 4724 E. Washington Ave. Las Vegas, NV 89110	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: Bally's Attn: Dennis Lindenbach 3645 Las Vegas Blvd S. Las Vegas, NV 89109	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: CCMSI Attn: Bridget Wyszomirski P.O. Box 35350 Las Vegas, NV 89133-5350	**U.S. Mail** X **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** ____ **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number:
Person(s) Served: Teresa Horvath Esq. NAIW 2200 S. Rancho Dr. #230 Las Vegas, NV 89102	**U.S. Mail** ____ **via State Mail room** (regular or certified) circle one ____ **deposited directly with U.S. Mail Service** ____ **Overnight Mail** X **Interdepartmental Mail** ____ **Messenger Service** ____ **Facsimile** fax number: 228

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PLEADING CONTINUES IN NEXT VOLUME