

No. 62468
IN THE
SUPREME COURT FOR THE STATE OF NEVADA

SUSAN REEVES,

Appellant,

Electronically Filed
May 23 2014 10:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

V.

DIVISION OF INDUSTRIAL RELATIONS; AND NEVADA DEPARTMENT
OF ADMINISTRATION,

Respondents.

APPELLANT'S OPENING BRIEF
(Supplement To Appellant's Previously Filed 3/14/13 Proper Person Appeal
Statement)

Appeal from the Eighth Judicial District Court
Case No. A644791 (Dept. 4)

LIONEL SAWYER & COLLINS
Maximiliano D. Couvillier, Esq.
Nevada Bar No.: 7661
300 S. Fourth Street, Ste. 1700
Las Vegas, Nevada 89101
Telephone (702) 383-8888
mcouvillier@lionelsawyer.com

In conjunction with
LEGAL AID CENTER OF SOUTHERN NEVADA PRO BONO PROJECT

Attorney for the Appellant

DISCLOSURE STATEMENT PER NRAP 26.1

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

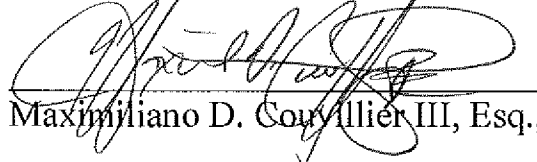
Appellant is an individual. There are no parent corporations or publicly held companies that own 10% or more of the appellant's stock.

The following are the law firms whose partners or associates have appeared for the appellant (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

Lionel Sawyer & Collins
300 S. Fourth Street, Suite 1700
Las Vegas, Nevada 89101

Nevada Attorney For Injured Workers
2200 S. Rancho Drive, Suite 230
Las Vegas, Nevada 89102

Respectfully,
LIONEL SAWYER & COLLINS



Maximiliano D. Courville III, Esq., Bar #7661

In conjunction with
LEGAL AID CENTER OF SOUTHERN
NEVADA PRO BONO PROJECT

Attorney for the Appellant

TABLE OF CONTENTS

I. JURISDICTIONAL STATEMENT..... 1

 A. Basis For Supreme Court Jurisdiction 1

 B. File Dates Establishing The Timeliness Of Appeal 1

 C. Appeal Is From A Final Order Or Judgment..... 2

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW 2

III. STATEMENT OF CASE..... 2

 A. Nature of Case..... 2

 B. Course of Proceedings And Disposition Of Administrative
 Proceedings.....5

 C. Course of Proceedings And Disposition At District Court Level.....7

IV. STATEMENT OF FACTS.....8

V. SUMMARY OF ARGUMENT15

VI. ARGUMENT.....16

 1. STANDARD OF REVIEW.....16

 2. THIS COURT HAS INHERENT AUTHORITY TO STAY
 DETERMINATION OF THE ISSUE OF WHETHER APPELLANT
 REEVES IS ENTITLED TO A BENEFIT PENALTY UNDER NRS
 616D.120 PENDING RESOLUTION OF A RELATED APPEAL.....16

 3. THE PROCEDURAL WRONGS WHICH TAINED THE
 SUBSTANTIVE RESOLUTION OF APPELLANT REEVES'
 WORKER'S COMPENSATION RIGHTS SUFFICIENTLY
 PREJUDICED APPELLANT THAT THE COURT SHOULD
 VACATE THE ADMINISTRATIVE DECISIONS BELOW 17

VII. CONCLUSION.....20

TABLE OF AUTHORITIES

Cases

<u>Bally's Grand Hotel & Casino v. Reeves,</u> 112 Nev. 1487, 929 P.2d 936 (1996).....	3
<u>Bally's Grand Hotel & Casino v. Reeves,</u> 113 Nev. 926, 948 P.2d 1200 (1997).....	3
<u>Elizondo v. Hood Mach., Inc.,</u> 129 Nev. Adv. Op. 84, 312 P.3d 479 (2013).....	16
<u>Mishler v. State of Nev. Bd. of Medical Examiners,</u> 109 Nev. 287, 849 P.2d 291 (1993).....	19,20
<u>Morgan v. U.S.,</u> 304 U.S. 1, 58 S.Ct. 773, 775 (1938).....	19
<u>Nassiri v. Chiropractic Physicians' Bd.,</u> 2014 WL 1325754, 130 Nev. Adv. Op. 27 (April 3, 2014).....	16, 19
<u>Reeves v. Bally's Grand Hotel & Casino, Nevada Supreme Court</u> Case No. 63950 (filed September 5, 2013).....	3
<u>Reeves vs. Bally's Grand Hotel & Casino, Nevada Supreme Court</u> Case No. 62981 (filed April 11, 2013).....	3,15, 17, 21
<u>Ryan's Express v. Amador Stage Lines,</u> 128 Nev. Adv. Op. 27, 279 P.3d 166 (Nev. 2012).....	17
<u>Southwest Gas Corp. v. Woods,</u> 108 Nev. 11, 823 P.2d 288 (Nev. 1992).....	18
<u>State, Dept. of Motor Vehicles v. Bremer,</u> 113 Nev. 805, 942 P.2d 145 (Nev. 1997).....	1
<u>Willner v. Committee on Character and Fitness,</u> 373 U.S. 96, 83 S.Ct. 1175 (1963).....	10

Statutes

Article 6, section 4 of the Nevada Constitution	1
NRS 233B.125.....	14
NRS 233B.135(3)(e) and (f).....	16
NRS 233B.150.....	1
NRS 616D.120.....	3, 4, 15, 16, 20
NRS 616D.130	7
NRS 616D.140	4
NRS 616D.330	5,17

Rules

NRAP 26.1	ii
NRAP 26.1(a).....	ii
NRAP 28(e)(1)	22

NRAP 32(a)(4) 22
NRAP 32(a)(5) 22
NRAP 32(a)(6) 22
NRAP 32(a)(7) 22
NRAP 32(a)(7)(C)..... 22
NRAP 9..... 1
NRCPC 28.2..... 22

I. JURISDICTIONAL STATEMENT

A. Basis For Supreme Court Jurisdiction

The basis for Nevada Supreme Court jurisdiction over this appeal is NRS 233B.150, which provides: "An aggrieved party may obtain a review of any final judgment of the district court by appeal to the Supreme Court. The appeal shall be taken as in other civil cases." Article 6, section 4 of the Nevada Constitution further provides, in relevant part, that the Nevada Supreme Court "shall have appellate jurisdiction in all civil cases arising in district courts." *Nevada Const. art. 6, §4. See also State, Dept. of Motor Vehicles v. Bremer*, 113 Nev. 805, 942 P.2d 145 (Nev. 1997)(Nevada Supreme Court has jurisdiction to review decisions of district courts on judicial review of administrative proceedings).

B. File Dates Establishing The Timeliness Of Appeal

The Notice of Entry of Order Denying Petition for Judicial Review was filed and served (by regular U.S. Mail) on December 28, 2012. *See Trial Court Record ("TCR") Vol. 5 at 1179-1183.*¹ Within 30 days thereafter, the appellant filed her *pro per* Notice of Appeal of said order with the District Court Clerk on January 15, 2013. *See TRC Vol. 5 at 1185-1186.*

¹ Pursuant to the Court's December 23, 2013, *Order Directing Compliance With NRAP 9 And Setting Briefing Schedule*, Appellant elects to cite to the trial court record in lieu of filing a separate appendix.

On October 17, 2013, this Court entered an Order Regarding Pro Bono Counsel, finding that "this court has determined that the appointment of pro bono counsel to represent appellant would assist this court in reviewing this appeal."

C. Appeal Is From A Final Order Or Judgment

This appeal is from a final Order Denying Petition for Judicial Review. *See TCR Vol. 5 at 1179-1183.*

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellant Susan Reeves ("Appellant Reeves") submits the following issues for which she seeks resolution:

1. Whether Appellant Reeves is entitled to a benefit penalty pursuant to NRS 616D.120?
2. Alternatively, whether the administrative process was so unfair that it tainted the substantive treatment and disposition of Appellant Reeves' worker's compensation claim so that this Court should vacate all administrative determinations below and issue a remand for corrective, fair proceedings?

III. STATEMENT OF CASE

A. Nature of Case

The case arises from a motor vehicle accident suffered by Appellant Reeves on September 25, 1998, while she was employed by Bally's Casino. *See TCR Vol.*

I at 110. This incident has led to considerable litigation and given rise to numerous issues. See e.g, *Bally's Grand Hotel & Casino v. Reeves*, 113 Nev. 926, 948 P.2d 1200 (1997); *Bally's Grand Hotel & Casino v. Reeves*, 112 Nev. 1487, 929 P.2d 936 (1996); *Reeves v. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 63950 (filed September 5, 2013); *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013).

This appeal only concerns the two issues presented for review that are identified above. Appellant Reeves submits that the primary issue of whether she is entitled to a benefit penalty under NRS 616D.120 depends on a determination of whether her worker's compensation claim was rightfully terminated, which is pending in the separate appeal before this Court in the matter captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013). If the Court in Case No. 62981 reverses the corresponding administrative decision and concludes that Appellant Reeves' claim was wrongfully terminated, then the Court should accordingly reverse the administrative decision in this appeal which denied Appellant Reeves benefit penalty because, *inter alia*, her claim had been terminated. Thus, Appellant Reeves respectfully requests the Court to stay the determination of whether she is entitled

to a benefit penalty under NRS 616D.120 until after it has first determined whether her worker's compensation claim was properly terminated the 62981 matter.²

Alternatively, Appellant Reeves asks the Court to consider whether the underlying administrative determinations should be vacated to remedy an unfair administrative process that prejudiced her substantive rights, which included a disturbing meeting between the insurance company and Appellant Reeves' doctor:

- at which the insurance company barred Appellant Reeves and her then counsel from either participating or even witnessing; and
- during which the insurance company somehow influenced Appellant Reeves' doctor into completely reversing his prognosis and suddenly opining that she could return to work - after he had time and again concluded that Appellant Reeves could not return to work - which Respondent Department of Industrial Relations ("DIR") then relied on

² This Court's October 17, 2013, Order Regarding Pro Bono Counsel included what appeared to be a summary of the matter which stated that "the appeals officer dismissed the matter for lack of jurisdiction, finding the appellant had not requested a benefit penalty, *see* NRS 616D.140, NRS 616D.120." Appellant Reeves respectfully states that the record demonstrates that she timely requested a benefit penalty under NRS 616D.120, but that the appeals officer refused to grant such penalty finding that no grounds existed to impose such penalty because, *inter alia*, Appellant Reeves' worker's compensation claim had been terminated and such termination had been upheld in separate proceedings. *See TCR Vol. 1 at 214 (Doc. Bates 00038)*.

to affirm denial of worker's compensation benefits to Appellant Reeves and eventually affirm the closure of her claim altogether.

The DIR also failed to consider whether the insurance company's false communication log about the disturbing *ex parte* meeting that it had with Appellant Reeves' doctor - a log the insurance company hastily produced only after Appellant Reeves raised the issue that no log existed - violated NRS 616D.330.

B. Course of Proceedings And Disposition Of Administrative Proceedings

On February 28, 2010, Appellant Reeves lodged a complaint with DIR regarding the *ex parte* and unfair communications between CCMSI and her physician and also alleging that the CCMSI did not comply with NRS 616D.330, which required CCMSI to provide a compliant communication log of such communications. *See TCR Vol. 1 at 193 (Doc. Bates 000017)*. DIR responded to Appellant Reeves on April 26, 2010 (*see TCR Vol. 1 at 208-210, Docs. Bates 00032-34*), but seemingly ignored Appellant Reeves' complaint and concerns. Instead, the DIR determined that no violations of NRS 616D.330 occurred because CCMSI had purportedly produced a "complete copy of [Appellant Reeves'] industrial injury claim file." *See TCR Vol. 1 at 210, Doc. Bates 00034*). DIR did not address: (a) the demonstrable unfairness of not only being excluded from participating in but even witnessing discussions between her doctor and CCMSI;

(b) the resulting highly suspicious reversal of prognosis by Appellant Reeves' doctor after such meeting; and (c) the patently false communication log concocted by CCMSI in a veiled, after-the-fact effort to try to comply with NRS 616D.330. Appellant Reeves alerted DIR of such omissions on April 29, 2010, and on September 11, 2010. *See TCR Vol. 1 at 195 (Docs. Bates 00019-20) and TCR Vol. 1 at 203-204 (Docs. Bates 00027-28)*. DIR responded to Appellant Reeves on October 1, 2010 ("10/1/10 Determination"), but again did not address her substantive grievances and the unfair process. Instead, the DIR simply dismissed Appellant Reeves' grievances and affirmed its April 26, 2010, determination.

On June 1, 2010, Appellant Reeves lodged a complaint with DIR alleging, *inter alia*, that she was entitled to a benefit penalty pursuant to NRS 616D.120 because CCMSI failed to timely make temporary total disability ("TTD") payments. *See TCR Vol. 1 at 197-197 (Doc. Bates 00021-22)*. The DIR responded to her complaint on July 22, 2010 ("07/22/10 Determination"), and, among other things, determined that Appellant Reeves was not entitled to a benefit penalty under NRS 616D.120 because there were no violations of NRS 616D.120. *See TCR Vol. 1 at 211-215 (Docs. Bates 00035-39)*. Relevant here, the DIR found no delays in payments of TTD in violation of NRS 616D.120 because CCMSI had closed Appellant Reeves' worker's compensation claim and that such closure had

been affirmed in separate proceedings by an Administrative Hearing Officer and Appeals Officer. *Id.* at 214 (*Doc. Bates 00038*).

Appellant Reeves appealed the DIR's 07/22/10 and 10/01/10 Determinations to the Department of Administration Appeals Office and the Appeals Officer held an evidentiary hearing on April 13, 2011. *See TCR Vol. 1 at 15-85*. On June 15, 2011, the Appeals Officer entered an order ("06/15/11 ADM APPEAL ORDER") granting the DIR's motion for summary judgment and affirming the DIR's 07/22/10 and 10/01/10 Determinations, finding that "[t]here is no evidence that the administrator delayed in paying claimant TTD in this claim" and relying on the fact that CCMSI was not obligated to make TTD payments because Appellant Reeves' worker's compensation claim had been closed. *See TCR Vol. 1 at 110-112 (Doc. marked "Doc0008")*. The Appeals Officer did not make any findings regarding CCMSI's false log, whether CCMSI complied with NRS 616D.130 or about the unfair process that victimized Appellant Reeves. *Id.* On June 24, 2011, Appellant Reeves filed a Petition For Rehearing requesting reconsideration of the 06/15/11 ADM APPEAL ORDER. *See TCR Vol. 1 at 88-92*. On June 29, 2011, the Appeals Officer denied Appellant Reeves' Petition for Rehearing. *See TCR Vol. 1 at 86 (Doc. marked "Doc004")*.

C. Course of Proceedings And Disposition At District Court Level

On July 12, 2011, Appellant Reeves filed a Petition for Judicial Review in the Eighth Judicial District Court ("District Court"). *See TCR Vol. 1 at 1-3*. On December 24, 2012, after a hearing on Appellant Reeves' Petition for Judicial Review, the District Court entered an order denying Appellant Reeves' petition and affirming the 06/15/11 ADM APPEAL ORDER. *See TCR Vol. 5 at 1179-1183*.³

IV. STATEMENT OF FACTS

On September 25, 1998, Appellant Reeves was the victim of a motor vehicle accident while she was employed by Bally's Casino. *See TCR Vol. 1 at 110*. The accident has had a negative and profound impact on Appellant Reeves, who has required constant medical treatment ever since. As may be gleaned from the date of the accident to the date of these proceedings, Appellant Reeves has fought vigorously for her worker compensation rights. In this appeal, Appellant Reeves seeks review of whether she is entitled to a benefit penalty because she was not paid TTD benefits and whether she was subjected to an unfair process that was so prejudicial that it compromised her substantive rights.

The relevant facts of this appeal may be traced back to a January 21, 2004, letter by Appellant Reeves' then attorney requesting payment of TTD benefits from

³ According to the District Court's December 24, 2012, Order, the hearing on Appellant Reeves' Petition for Judicial Review occurred on December 13, 2012. After Appellant Reeves filed her Request for Transcript of Proceedings on January 6, 2014, Department 4 Court Reporter informed undersigned counsel for Appellant Reeves that there is no transcript of that December 13 hearing.

CCMSI. *See TCR Vol. 2 at 393-394 (Docs. Bates 00049-50)*. CCMSI responded on March 16, 2004, and requested that Appellant Reeves supply a certification of disability from her physicians to support her claim for TTD benefits. *See Vol. 2 at 406 (Doc. Bates 000062)*.

Appellant Reeves engaged in considerable efforts to provide CCMSI evidence of her disability and that she was unable to return to work. By letter dated April 13, 2004, Dr. George A. Petroff ("Dr. Petroff"), Appellant Reeves' treating physician, made the following conclusions:

- "It is doubtful whether [Appellant Reeves] 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 could further make it difficult to return to the work force."

See TCR Vol. 2 at 321 (Doc. Bates 000032).

Similarly, Dr. Petroff sent a letter to CCMSI dated May 18, 2004, in which he again concludes that Appellant Reeves is unable to work:

- "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."

See TCR Vol. 2 at 322-23 (Doc Bates. 000033-34)(emphasis added).

CCMSI, however, did not accept Dr. Petroff's conclusions. Instead, it demanded a face-to-face meeting with Dr. Petroff, which occurred on June 29, 2004. Appellant Reeves and her then attorney arrived at that meeting, but CCMSI demanded to meet with Dr. Petroff alone and prohibited Appellant Reeves and her attorney from being present. *See TCR Vol. 2 at 261-62.* Manifestly, CCMSI's insistence upon concealing its discussions with Appellant Reeves' treating physician from both Appellant Reeves and her counsel was unfair and highly suspicious and raises extremely serious due process questions. *See e.g., Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175 (1963)*(administrative body which relied, even partially, on *ex parte* evidence in determining substantive rights of party violated procedural due process).

Indeed, after the clandestine meeting between CCMSI and Dr. Petroff, Dr. Petroff completely reversed his prognosis about Appellant Reeves' ability to work. Just one month prior to the coerced secret meeting with CCMSI, Dr. Petroff clearly and unequivocally concluded that Appellant Reeves would not be able to return to gainful employment. After the closed-door meeting with CCMSI, CCMSI somehow turned Dr. Petroff completely around and he suddenly concluded that "it would be reasonable to recommend the patient undergo a trial back to work, sedentary, under appropriate adaptive conditions, including no lifting, carrying or pulling more than five pounds." *See TCR Vol. 2 at 262.*

CCMSI then relied on Dr. Petroff's suspiciously changed conclusion and, on July 21, 2004, denied Appellant Reeves' request for TTD benefits. *See TCR Vol. 2 at 263*. Obviously, both disturbed and concerned by the circumstances, Appellant Reeves requested CCMSI to produce copies of all communications with Dr. Petroff and the log pursuant to NRS 616D.330. *See TCR Vol. 2 at 303 (Doc. Bates 00014)*. NRS 616D.330 provides:

1. An insurer, an employer, an organization for managed care, a third-party administrator or the representative of any of those persons, the Nevada Attorney for Injured Workers or an attorney or other compensated representative of an injured employee shall not initiate:

(a) Any oral communication relating to the medical disposition of the claim of an injured employee with the injured employee's examining or treating physician or chiropractor unless the initiator of the oral communication:

(1) Maintains, in written form or in a form from which a written record may be produced, a log that includes the date, time and subject matter of the communication; and

(2) Makes the log available, upon request, to each insurer, organization for managed care and third-party administrator interested in the claim or the representative of each of those persons, the Administrator and the injured employee, the injured employee's representative and the injured employee's employer; or

(b) Any written communication relating to the medical disposition of the claim with the injured employee's examining or treating physician or chiropractor unless a copy of the communication is submitted to the injured employee or the injured employee's representative in a timely manner.

2. If the Administrator determines that a person has violated the provisions of this section, the Administrator shall:

(a) For an initial violation, issue a notice of correction.

(b) For a second violation, impose an administrative fine of not more than \$250.

(c) For a third or subsequent violation, impose an administrative fine of not more than \$1,000.

Id.

In response to her request, Appellant Reeves was provided with a document captioned "Claim File Log of Oral Communication." *See TCR Vol. 2 at 298 (Doc. Bates 000009).* The very first entry in the so-called log is a purported communication with a "Jeff Dietich, PT," dated September 8, 2006. After said entry is a purported entry of the June 29, 2004, closed-door meeting with Dr. Petroff which occurred two years prior to the first log entry:

CLAIM FILE
LOG OF
ORAL COMMUNICATION

WORKERS' COMPENSATION

Claimant's Name: Susan Reeves	Claim Number: 88801 H243724
Claimant's Attorney:	Treating Physician:
DATE	ACTIVITY
9/8/06	Adjuster phone call to Jeff Dietrich, PT
6/29/04	Medical staffing with adjuster, supervisor, Dr. Louis Martillaro, Dr. Petroff, defense attorney, claimant, and claimant's husband

See TCR Vol. 2 at 298 (Doc. Bates 000009). The so-called "Claim File Log of Oral Communication" is false. First, it states that claimant and claimant's husband were present at the meeting when, in fact, CCMSI expressly prohibited them from attending. *See TCR Vol. 2 at 261-62.* Second, the purported entry of the communication with Dr. Petroff was manifestly created well over a year and a half after-the-fact.

Appellant Reeves appealed the July 21, 2004, denial of her TTD benefits. However, while the entire process was unfair and tainted by CCMSI's clandestine misconduct and false and fraudulent misrepresentation, Appellant Reeves ultimately lost her appeal due to an unfortunate late filing of her notice of appeal to the Administrative Appeals Officer. *See TCR Vol. 2 at 265-69* (January 20, 2006, Appeals Officer Decision and Order).⁴

Appellant Reeves suffered another blow on September 8, 2006, when her worker's compensation claim was closed altogether. *See TCR Vol. 2 at 264.* In separate proceedings, the closure of Appellant Reeves' claim was affirmed by the Appeals Officer (*see TCR Vol. 2 at 270-76*) and the District Court, and it is

⁴ While the issue is not before this Court, Appellant Reeves submits that her error in timing is understandable and should have been considered excusable neglect because she was juggling several other appeals seeking to rectify a host of other issues in which her claim was handled. *See TCR Vol. 2 at 266* (discussing at least three different appeals being contemporaneously pursued by Appellant Reeves).

currently pending in the matter captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013).

The DIR then relied on Dr. Petroff's highly suspicious and stunning June 29, 2004, reversed prognosis (*see TCR Vol. 1 at 213, Doc. Bates 00037*) and the fact that Appellant Reeves' worker's compensation claim had been closed to deny her benefit penalties under NRS 616D.120 (*see id.; see also TCR Vol. 1 at 217-218 (Doc. Bates 000041-42)(10/01/10 Determination)*).

As the record shows, the DIR's determination of Appellant Reeves' substantive rights was infected by an unfair, unjust, suspicious and fraudulent process. Appellant Reeves did not even get a semblance of a fair process as the DIR also failed to make any findings regarding whether the false "Claim File Log of Oral Communication" even complied with NRS 616D.330. *See TCR Vol. 1 at 211-215 (Doc. Bates 00035-39)(07/22/10 Determination); TCR Vol. 1 at 217-218 (Doc. Bates 000041-42)(10/01/10 Determination); TCR Vol. 1 at 88-92 (06/15/11 ADM APPEAL ORDER); and TCR Vol. 5 at 1179-1183 (District Court's December 24, 2012, Order Denying Petition for Judicial Review)*. *See NRS 233B.125 (final administrative orders must set forth separate factual findings and conclusions of law)*.

//

//

V. SUMMARY OF ARGUMENT

1. The Court should stay making a determination as to whether Appellant Reeves is entitled to a benefit penalty under NRS 616D.120 until it determines whether her worker's compensation claim was properly closed in the matter captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013).

2. The procedural wrongs which tainted the substantive resolution of Appellant Reeves' worker's compensation rights sufficiently prejudiced Appellant Reeves' rights and interests that the Court should vacate the administrative decisions below. CCMSI disturbingly abused its power to keep Appellant Reeves and her counsel not only from participating in CCMSI's discussions with her treating physician but from witnessing such discussions. The result of such clandestine discussions was a complete reversal of prognosis by Appellant Reeves' treating physician regarding her ability to return to work. Before the secret meeting, Appellant Reeves' treating physician opined several times that Appellant Reeves could not return to work. After the *ex parte* meeting demanded by CCMSI, Appellant Reeves' treating physician suddenly opined that she could return to work. The DIR then accepted - without question - the highly suspicious reversed prognosis procured by CCMSI to affirm CCMSI's denial of Appellant Reeves' benefits and, ultimately, claim closure.

VI. ARGUMENT

1. STANDARD OF REVIEW

This Court "reviews the administrative decision in the same manner as the district court." *Nassiri v. Chiropractic Physicians' Bd.*, 2014 WL 1325754, *2, 130 Nev. Adv. Op. 27 (April 3, 2014)(citing *Elizondo v. Hood Mach., Inc.*, 129 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013)). Thus, factual determinations of administrative agencies are reviewed for clear error in view of the whole record and are overturned only if they are not supported by substantial evidence. *Nassiri*, 2014 WL 1325754 at *2, 130 Nev. Adv. Op. 27 (citing NRS (NRS 233B.135(3)(e) and (f)). Substantial evidence is evidence that a reasonable mind could accept as adequately supporting the agency's conclusions. *Id.*

However, the Court reviews *de novo* all questions of law, which include statutory construction. *Id.* The Court "will decide purely legal issues without deference to the agency's conclusions of law." *Id.*

2. THIS COURT HAS INHERENT AUTHORITY TO STAY DETERMINATION OF THE ISSUE OF WHETHER APPELLANT REEVES IS ENTITLED TO A BENEFIT PENALTY UNDER NRS 616D.120 PENDING RESOLUTION OF A RELATED APPEAL

As stated above, the main issue of whether Appellant Reeves is entitled to a benefit penalty under NRS 616D.120 depends on a determination of whether her worker's compensation claim was properly terminated. The issue of whether Appellant Reeves' worker's compensation claim was properly terminated is

pending before this Court in the separate matter captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013). Appellant Reeves respectfully requests the Court to stay the determination of whether she is entitled to a benefit penalty under NRS 616D.120 until after it has first determined whether her worker's compensation claim was properly terminated in Nevada Supreme Court Case No. 62981.

This Court has the inherent authority stay such a determination:

[T]his court is vested with inherent authority to accomplish or carry out basic functions of the judiciary. The court's authority encompasses powers reasonable and necessary for the administration of court procedure and management of judicial affairs.

Ryan's Express v. Amador Stage Lines, 128 Nev. Adv. Op. 27, *9, 279 P.3d 166, 173 (Nev. 2012)(internal citations and quotations omitted).

3. THE PROCEDURAL WRONGS WHICH TAINTED THE SUBSTANTIVE RESOLUTION OF APPELLANT REEVES' WORKER'S COMPENSATION RIGHTS SUFFICIENTLY PREJUDICED APPELLANT REEVES THAT THE COURT SHOULD VACATE THE ADMINISTRATIVE DECISIONS BELOW

As discussed above, Appellant Reeves was trampled by an unfair and unjust process where CCMSI coerced a closed-door meeting with Appellant Reeves' physician and somehow induced him to completely reverse his prognosis about whether Appellant Reeves could return to work. CCMSI then provided an obviously false log to give the appearance that it complied with NRS 616D.330.

The DIR ignored the whole unfair process, closed its eyes to the false log and the disturbing implication of its obviously false after-the-fact false entry, and affirmed CCMSI's closure of Appellant Reeves' workers' compensation claim and then relied on such closure to find that Appellant Reeves was not entitled to a benefit penalty under NRS 616D.120 because her claim had been closed and thus no rights to TTD existed.

This Court has time and again recognized a general policy to protect injured workers and to liberally construe worker's compensation laws broadly and in favor of an injured worker:

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. The modern trend is to construe the industrial insurance acts broadly and liberally, to protect the interest of the injured worker and his dependents. 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.

Southwest Gas Corp. v. Woods, 108 Nev. 11, 14-15, 823 P.2d 288, 290 (Nev. 1992)(citations omitted).

The record shows that the DIR did not protect Appellant Reeves' rights to a fair and just process. The DIR not only ignored (or simply turned a blind eye to) the dubious manner in which CCMSI obtained a changed prognosis from Dr.

Petroff, CCMSI's fraud upon the administrative process and NRS 616D.330 with a proffer of a patently false log, but then relied on the resulting tainted evidence to support its determinations. As this Court recently confirmed, administrative agencies like the DIR are charged with the obligation to ensure a fair and just process. *See Nassiri v. Chiropractic Physicians' Bd.*, 2014 WL 1325754, *2, 130 Nev. Adv. Op. 27 (April 3, 2014)("Although administrative proceedings typically need not strictly follow the rules of evidence...the fact-finder is charged with making a decision based only on evidence of a type and amount that will ensure a fair and impartial hearing."); *see also Morgan v. U.S.*, 304 U.S. 1, 14-15, 58 S.Ct. 773, 775 (1938)("in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play").

The Court "may set aside an administrative agency's decision if the agency has prejudiced substantial rights." *Mishler v. State of Nev. Bd. of Medical Examiners*, 109 Nev. 287, 292, 849 P.2d 291, 294 (1993). In *Mishler*, the Court reversed a District Court's dismissal of a petition for judicial review because the record demonstrated that appellant's substantive rights had been prejudiced by an unfair process:

[T]he underlying nature of the proceedings against Dr. Mishler deserves inspection....The Board timed its proceedings against Dr. Mishler to limit the evidence available to him for his defense, because WMC's

retention policy operated to destroy important films. Also, while the Board used its own rules of confidentiality as an excuse to obstruct Dr. Mishler's access to evidence, it violated the same policy with respect to Dr. Mishler's confidential reports. The Board knew that Dr. Mishler was so impoverished that he had declared bankruptcy, and that he could ill afford to hire counsel. Finally, even though the Board had the right to obtain the records and Dr. Mishler did not, the Board attempted to shift the burden for the preservation of evidence to Dr. Mishler. Despite the absence of this evidence—office records, X-rays, and diagnostic films—at the hearing, the Board disciplined Dr. Mishler.

In short, we conclude that the Board's actions and the proceedings against Dr. Mishler constituted a disturbing abuse of its power. Therefore, we reverse the disciplinary order of the Board in its entirety and dismiss all proceedings against Dr. Mishler with prejudice.

Mishler, 109 Nev. at 296-97, 849 P.2d at 296-97. As the foregoing and the record demonstrate, Appellant Reeves was similarly victimized by a disturbing abuse of power and an unfair process.

VII. CONCLUSION

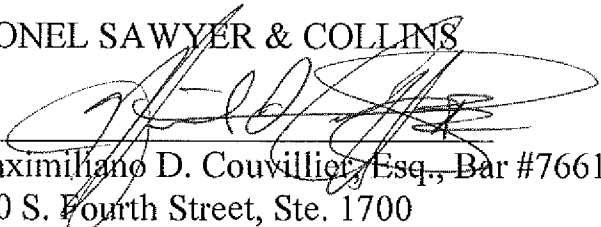
For the foregoing reasons, Appellant Reeves requests the Court to STAY a determination of whether the DIR improperly denied her a benefit penalty under NRS 616D.120 because her claim had been closed until the Court resolves the issue of whether Appellant Reeves' claim was properly closed in the matter

captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013).

Alternatively, the Court should VACATE the administrative determinations below because they were the product of an unfair and unjust process, tainted by fraudulent deception and misrepresentations, which prejudiced her substantive rights.

Respectfully,

LIONEL SAWYER & COLLINS



Maximiliano D. Couvillier, Esq., Bar #7661
300 S. Fourth Street, Ste. 1700
Las Vegas, Nevada 89101
Telephone (702) 383-8888
mcouvillier@lionelsawyer.com

In conjunction with
LEGAL AID CENTER OF SOUTHERN
NEVADA PRO BONO PROJECT

Attorney for Appellant

ATTORNEY'S CERTIFICATE PER NRCP 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Word Perfect in font size 14.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

Proportionately spaced, has a typeface of 14 points or more, and contains 4,170 words and does not exceed 30 pages.

Finally, I certify that I have read this appellate brief and, to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. 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 22nd day of May, 2014.

Respectfully,

LIONEL SAWYER & COLLINS


Maximiliano D. Couvillier, Esq., Bar #7661
300 S. Fourth Street, Ste. 1700
Las Vegas, Nevada 89101
Telephone (702) 383-8888
mcouvillier@lionelsawyer.com
In conjunction with
LEGAL AID CENTER OF SOUTHERN
NEVADA PRO BONO PROJECT

Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on May 22, 2014, I deposited in the U.S. Mail, correct postage pre-paid, a true and correct copy of the foregoing **APPELLANT'S OPENING BRIEF (Supplement To Appellant's Previously Filed 3/14/13 Proper Person Appeal Statement)**, addressed to the following at their last known address:

Jennifer Leonescu, Esq.
Donald Smith, Esq.
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074-6497

*Attorneys for Respondent Nevada Department of Business &
Industry, Division of Industrial Relations*

Nevada Department of Administration
Shirley D, Lindsey, Esq.
2200 S. Rancho Dr. #220
Las Vegas, NV 89102

Floyd, Skeren & Kelley, LLP
Dalton L. Hooks, Esq.
4570 S. Eastern Ave., Suite 28
Las Vegas, NV 89119

*Attorneys for Cannon Cochran Mgmt. Services, Inc.
("CCMSI")*

Anne Traum, Associate Professor of Law &
University of Nevada Las Vegas
William S. Boyd School of Law
P.O. Box 71075
Las Vegas, NV 89170-1075
Coordinator of Appellate Litigation Section
Pro Bono Committee, State Bar of Nevada

Legal Aid Center of Southern Nevada
Barbara Buckley, Executive Director
725 E. Charleston Blvd.
Las Vegas, NV 89104


An employee of Lionel Sawyer & Collins