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IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM POREMBA)
)
 Petitioner,)
)
 vs.)
)
 SOUTHERN NEVADA PAVING;)
 S&C CLAIMS SERVICE and)
 DEPARTMENT OF ADMINISTRATION,)
 APPEALS OFFICER,)
)
 Respondent.)

Electronically Filed
Mar 27 2015 08:58 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
Case No.: 66888

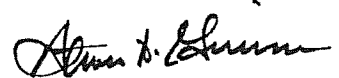
APPENDIX

VOLUME VII

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2450 St. Rose Parkway, Suite 210
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Telephone: (702) 413-6565
Facsimile: (702) 570-5940
Attorneys for Appellant William Poremba

APPENDIX TO APPELLANT'S OPENING BRIEF

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CLERK OF THE COURT

1 PTJR
2 MATTHEW S. DUNKLEY, ESQ.
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8 Attorneys for Petitioner
9

10
11 **EIGHTH JUDICIAL, DISTRICT COURT**
CLARK COUNTY, NEVADA
12

13 WILLIAM POREMBA)
14) CASE NO. : A-14-698184-J
Petitioner,) DEPT NO. : II
15 vs.)
16)
SOUTHERN NEVADA PAVING and)
17 DEPARTMENT OF ADMINISTRATION,)
APPEALS OFFICER,)
18)
Respondent.)
19 _____)

20 **PETITION FOR JUDICIAL REVIEW**

21 COMES NOW the Petitioner, WILLIAM POREMBA, by and through his attorneys,
22 DUNKLEY LAW, petitions this Court for judicially review of the decision of the Appeals Officer
23 in 1306201-SL, filed on, a February 25, 2014, a copy of which is attached hereto as Exhibit 1 and
24 made pursuant to the provisions of NRS 233B.130.
25

26 Petitioner claims substantial rights have been prejudiced because administrative findings,
27 inferences, conclusions or decisions are:
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- 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 error of law;
- e. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and
- f. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, Petitioner prays this Court allow briefs to be filed, oral arguments to be heard and following a review of the record, this Court enter an Order reversing the decision of the Appeals Office.

DATED this 25 day of March, 2014.

DUNKLEY LAW

By 

MATTHEW S. DUNKLEY, ESQ.
Nevada Bar No. 6627
MARK G. LOSEE, ESQ.
Nevada Bar No. 12996
2450 St. Rose Parkway, Suite 210
Henderson, Nevada 89074
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on this 25th day of March, 2014, the foregoing **PETITION FOR JUDICIAL**

REVIEW was served on the following by:

- hand delivery
- Facsimile
- Facsimile and U.S. Mail first class postage prepaid
- U.S. Mail first class postage prepaid

addressed as follows:

Shirley D. Lindsey, Esq.
Appeals Officer
Department of Administration
Hearings Division
2200 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102

Alyssa M. Fischer, Esq.
LEWIS BRISBOIS BISGAAARD & SMITH LLP
2300 West Sahara, Suite 300, Box 28
Las Vegas, NV 89102-4375

Julie Wood
S&C Claims Service
9075 W. Diablo Drive, # 140
Las Vegas, Nevada 89148

Southern Nevada Paving
3101 E. Craig Road
N. Las Vegas, Nevada 89030

William Poremba
168 Red Arches Court
Henderson, Nevada 89012



An Employee of Dunkley Law

EXHIBIT 1

FEB 25 2014

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested Industrial
Insurance Claim

Claim No.: 739255

Appeal No.: 1306201-SL

of

Employer:
SOUTHERN NEVADA PAVING
3101 E. CRAIG ROAD
N. LAS VEGAS, NV 89030

WILLIAM POREMBA
168 RED ARCHES COURT
HENDERSON, NV 89014,

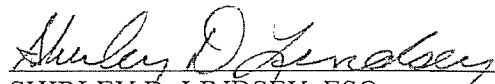
Claimant.

ORDER GRANTING INSURER'S MOTION FOR SUMMARY JUDGMENT

After careful review and consideration of the Insurer's Motion for Summary
Judgment and good cause appearing,

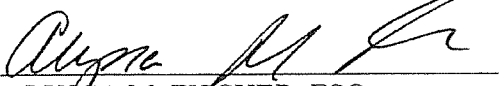
IT IS HEREBY ORDERED that the Insurer's Motion for Summary Judgment is
GRANTED, and the appeal hearing scheduled for April 23, 2013 at 10:30 AM is VACATED.

DATED this 25 day of ^{February} ~~March~~, 2013. 2014 ^{ML}


SHIRLEY D. LINDSEY, ESQ.
Appeals Officer

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
ALYSSA M. FISCHER, ESQ.
Nevada Bar No. 5709
400 S. Fourth Street, Ste. 500
Las Vegas, Nevada 89101
Phone: (702) 893-3383
Fax: (702) 366-9689
Attorneys for Insurer

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP

31833-117
4823-6545-3065.1

07800-53/ao motion for summary judgement william poremba

FEB 26 2014

APP366

CERTIFICATE OF MAILING

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The undersigned, an employee of the State of Nevada, Department of Administration, Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER GRANTING INSURER'S MOTION FOR SUMMARY JUDGMENT** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada, to the following:

Alyssa M. Fischer, Esq.
Lewis, Brisbois, Bisgaard & Smith LLP
400 S. Fourth Street, Ste. 500
Las Vegas, NV 89101

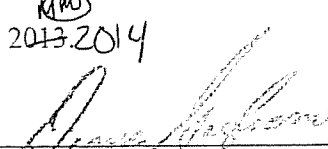
Matthew Dunkley, Esq.
1522 W. Warm Springs Road
Henderson, NV 89014

Julie Wood
S&C Claims Service
9075 W. Diablo Drive, #140
Las Vegas, NV 89148

William Poremba
168 Red Arches Court
Henderson, NV 89012

Southern Nevada Paving
3101 E. Craig Road
N. Las Vegas, NV 89030

DATED this 25th day of ^{MM}~~March~~, 2013.2014



An employee of the State of Nevada

15-11-14

1 TRNS
2 APPEALS OFFICE
3 2200 S. Rancho Drive Suite 220
4 Las Vegas NV 89102
5 (702) 486-2527

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 WILLIAM POREMBA,
9 Petitioner,

10 vs.

11 SOUTHERN NEVADA PAVING;
12 S & C LAIMS SERVICE and,
13 DEPARTMENT OF ADMINISTRATION,
14 APPEALS OFFICER

15 Respondents.

)
)
)
) Case No.: A698184
) Dept. No.: II
) ROA No.: 1409559-SL
) Appeal No.: 1306201-SL
)
)
)
)

16 TRANSMITTAL OF RECORD ON APPEAL

17 TO: STEVEN GRIERSON, Clerk of the above-captioned Court:

18 Pursuant to NRS 233B.140, the transmittal of the entire Record on Appeal, in
19 accordance with the Nevada Administrative Procedure Act (Chapter 233B of the Nevada
20 Revised Statutes), is hereby made as follows:

21 1. The entire Record herein, including each and every pleading, document, affidavit,
22 order, decision and exhibit now on file with the Appeal Office, at 2200 S. Rancho Drive Suite
23 220, 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.

24 2. This Transmittal.

25 DATED this 5th day of May, 2014.

26
27 
28 _____
Monica Medina, Legal Secretary II
An Employee of the Hearings Division

1 ROA
2 APPEALS OFFICE
3 2200 S. Rancho Drive Suite 220
4 Las Vegas NV 89102
5 (702) 486-2527

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 WILLIAM POREMBA,)
9)
10) Petitioner,)
11)
12) vs.)
13) SOUTHERN NEVADA PAVING;)
14) S & C CLAIMS SERVICE and,)
15) DEPARTMENT OF ADMINISTRATION,)
16) APPEALS OFFICER)
17) Respondents.)
18)

Case No.: A698184
Dept. No.: II
ROA No.: 1409559-SL
Appeal No.: 1306201-SL

19 RECORD ON APPEAL IN ACCORDANCE WITH THE
20 NEVADA ADMINISTRATIVE PROCEDURE ACT

21 WILLIAM POREMBA
22 168 RED ARCHES CT
23 HENDERSON NV 89012-6004

ALYSSA M FISCHER ESQ
LEWIS BRISBOIS BISGAARD &
SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

24 MATTHEW S DUNKLEY ESQ
25 DUNKLEY LAW
26 2450 ST ROSE PKWY STE 210
27 HENDERSON NV 89074

28 SOUTHERN NEVADA PAVING
3101 E CRAIG RD
N LAS VEGAS NV 89030-7501

S & C CLAIMS SERVICES INC
9075 W DIABLO DR STE 140
LAS VEGAS NV 89148

DOC002
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INDEX

ROA NUMBER: 1409559-SL
Appeal No.: 1306201-SL

<u>DESCRIPTION</u>	<u>DOC NO</u>	<u>PAGE NUMBERS</u>
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Appeal No.: 1306201-SL

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AFFIDAVIT OF WILLIAM POREMBA (CLAIMANT'S EXHIBIT # 1)	017 018	00265 -00266 00267 -00300
(CLAIMANT'S EXHIBIT # 2)	019	00301 -00374
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CERTIFICATION OF TRANSMITTAL	021	00376 - 00377

1 APPEALS OFFICE
2 2200 S. Rancho Drive Suite 220
3 Las Vegas NV 89102
4 (702) 486-2527

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 WILLIAM POREMBA,
8 Petitioner,

9 vs.

10 SOUTHERN NEVADA PAVING;
11 S & C LAIMS SERVICE and,
12 DEPARTMENT OF ADMINISTRATION,
13 APPEALS OFFICER


14 Respondents.

)
)
)
) Case No.: A698184
) Dept. No.: II
) ROA No.: 1409559-SL
) Appeal No.: 1306201-SL
)
)
)
)

15 AFFIDAVIT & CERTIFICATION

16 This is to certify that the documents for the aforementioned Record On Appeal have
17 been reviewed by the Department of Administration, Hearings Division, and to the best of my
18 knowledge, all personal identifying information has been redacted, and that the enclosed
19 Record On Appeal is a certified copy of the original on file with this agency.

20 DATED this 5th day of May, 2014.

21 
22 _____
23 Monica Medina, Legal Secretary, II
24 An Employee of the Hearings Division
25
26
27
28

1 **CRTF**
2 **APPEALS OFFICE**
3 **2200 S. Rancho Drive Suite 220**
4 **Las Vegas NV 89102**
5 **(702) 486-2527**

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 WILLIAM POREMBA,)

9 Petitioner,)

10 vs.)

11 SOUTHERN NEVADA PAVING;
12 S & C LAIMS SERVICE and,
13 DEPARTMENT OF ADMINISTRATION,
14 APPEALS OFFICER)


15 Respondents.)

16 Case No.: A698184
17 Dept. No.: II
18 ROA No.: 1409559-SL
19 Appeal No.: 1306201-SL

20 **CERTIFICATION OF TRANSMITTAL**

21 I certify that the hereto attached Transcript, and attached papers are all papers and
22 exhibits relating to the above-captioned action filed with the Appeals Officer.

23 Dated this 5th day of May, 2014.

24 
25 _____
26 Monica Medina, Legal Secretary II
27 An Employee of the Hearings Division
28

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing was duly mailed, postage prepaid to the following:
5

6 WILLIAM POREMBA
7 168 RED ARCHES CT
8 HENDERSON NV 89012-6004

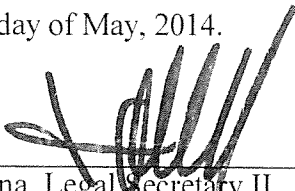
9 MATTHEW S DUNKLEY ESQ
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11 2450 ST ROSE PKWY STE 210
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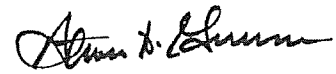
19 ALYSSA M FISCHER ESQ
20 LEWIS BRISBOIS BISGAARD & SMITH LLP
21 2300 W SAHARA AVE STE 300 BOX 28
22 LAS VEGAS NV 89102-4375

23 Dated this 5th day of May, 2014.

24 
25 _____
26 Monica Medina, Legal Secretary II
27 An Employee of the Hearings Division
28

00377

APP374



CLERK OF THE COURT

1 **BREF**
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3 Nevada Bar No. 6627
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5 Nevada Bar No. 12996
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10 Fax (702) 570-5940
11 Attorney for Claimant

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 WILLIAM POREMBA)
12) CASE NO. : A-14-698184
13 Petitioner,) DEPT NO. : II
14 vs.)
15)
16 SOUTHERN NEVADA PAVING;)
17 S&C CLAIMS SERVICE and)
18 DEPARTMENT OF ADMINISTRATION,)
19 APPEALS OFFICER,)
20)
21 Respondent.)
22)
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28)

19 **PETITIONERS OPENING BRIEF**

21 MATTHEW S. DUNKLEY, ESQ.
22 Nevada Bar No. 6627
23 MARK G. LOSEE, ESQ.
24 Nevada Bar No. 12996
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I.

STATEMENT OF THE CASE

Petitioner William Poremba seeks judicial review of an administrative appeals officer's decision and order of February 25, 2014 (Supp ROA 004), denial of reopening his workers compensation claim by granting the Respondent's motion for summary judgment. The Petition for Judicial Review was timely filed on March 25, 2014.

II.

STATEMENT OF THE ISSUES

1. Does a decision by an appeals officer to grant an already dismissed motion for summary judgment without being re-raised fail to meet the notice requirements of NRS 233B.121 making the decision procedurally improper?
2. Does a final order by an appeals officer granting summary judgment without any written findings of fact or conclusions of law make the order procedurally deficient?
3. As a matter of law must a claimant exhaust third party settlement funds solely on medical costs before he can reopen his workers compensation claim?
4. As a matter of law can a failure to exhaust third party settlement funds be used to preclude reopening a workers compensation claim, or does it merely allow withholding?

III.

STATEMENT OF THE FACTS

This case stems from a motor vehicle accident that occurred on July 22, 2005. (Supp ROA 012, p. 108-109). At the time of the accident, Petitioner, William Poremba, was working for Southern Nevada Paving and driving a tractor trailer dump truck. *Id.* On the same day an employee of Pratte Development Company was driving a backhoe near the same jobsite. *Id.* As

1 Poremba was driving his truck on a paved road in a neighborhood that was under development, the
2 Pratte backhoe ran a stop sign hitting the driver's side of Poremba's truck. *Id.*

3 Originally, Poremba made a worker's compensation claim for injuries to his neck, back,
4 and left knee. *Id.* The workers compensation claim was accepted for these body parts, but was
5 closed in January 2006. (Supp ROA 008, p. 92). However, before closure of the workers
6 compensation claim, it was made known that Poremba would need knee surgery in the future. *Id.*

8 Additional to opening a workers compensation claim, a lawsuit was filed against Pratte
9 Development Company and Poremba also sustained costs for medical treatment outside the
10 workers compensation network for the same injuries. (Supp ROA 012, p. 109). The lawsuit settled
11 on July 30, 2009 for \$63,500 and the medical bills contemplated as part of the settlement totaled
12 \$77,064.30. *Id.* at p. 110-111. Poremba personally ended up netting \$34,631.51 after final
13 distributions were made. *Id.*

15 Since the settlement, Poremba has had continuous medical treatment for his work related
16 injuries in this case. *Id.* Since receiving the settlement, Poremba has spent approximately
17 \$14,000.00 for medical insurance payments, prescriptions, and co-pays in medical expenses for
18 injuries relating to his accident (Supp ROA 017, pp. 265-266). The medical bills incurred have
19 exceeded the total net he received of \$34,631.51 and Poremba currently has approximately over
20 \$20,000 in unpaid medical bills. *Id.*

22 Since the accident, Poremba has not been able to work due to the injuries he suffered in the
23 subject accident. *Id.* He tried to go back to work but had to quit due to pain in his cervical spine
24 and was told by his doctor not to go back to work. *Id.* And since his settlement, Poremba has
25 averaged an income of slightly more than \$5,000. *Id.* However, Poremba's costs of living have far
26

1 6-7, 129 Nev. Adv. Rep. 84, 2013 WL 5962093 (Nev. 2013) (internal citations omitted).
2 Substantial evidence exists where a reasonable person can find adequate evidence in the record to
3 support the appeals officer's decision. *Id.* The reviewing court's examination is limited to the
4 record that was before the appeals officer, meaning the weight of the evidence going to questions
5 of fact will not be disturbed by the reviewing court's judgment. *See Manwill v. Clark County*, 123
6 Nev. 28, 162 P.3d 876, 879 (Nev. 2007). However, the reviewing court does independently review
7 purely legal determinations made by the appeals officer. *Id.* Statutory construction is a question of
8 law which invites independent appellate review of an administrative decision, *SIIS v. Bokelman*,
9 113 Nev. 1116, 946 P.2d 179 (1997), and is reviewed de novo, *Construction Indus. V Chalue*, 119
10 Nev. 348, 74 P.3d 595 (2003).
11
12

13 V.

14 ARGUMENT

15 A. **The Appeals Officer's Order granting the Respondent's summary judgment was**
16 **procedurally improper when no motion for summary judgment was pending and fails**
17 **to meet the requirements of NRS 233B.125 by not offering findings of fact and**
18 **conclusions of law.**

19 In response to the Respondent's motion for summary judgment submitted March 26, 2013
20 the Appeals Officer issued an order on April 17, 2013 denying summary judgment. A motion for
21 summary judgment was never raised again. However on February 25, 2014, after considering the
22 briefing of both parties and conducting a scheduled hearing regarding the Petitioners contested
23 claim, the Appeals Officer apparently took it upon herself to resurrect the Respondent's already
24 denied motion and granted summary judgment in favor of the Respondent. The order granting the
25 Respondent's motion for summary judgment lacked any findings of fact and conclusions of law.
26 The order simply states, "[a]fter careful review and consideration of the Insurer's Motion for
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1 summary Judgment and good cause appearing, IT IS HEREBY OREDERED that the Insurer's
2 Motion for Summary Judgment is Granted." (Supp ROA 004, p. 65).

3 It was procedurally improper for the Appeals Officer to revive the Respondent's judgment
4 without any request to do so and particularly without notice to the Petitioner. Moreover, by failing
5 to provide the bases for denying the Petitioner the right to reopen his workers compensation claim,
6 the Appeals Officer committed an error of law warranting the set aside of the issued order.
7

8 The Nevada Administrative Procedure Act establishes minimum procedural requirements
9 for adjudications with the Department of Administration's Hearing Division. NRS 233B.020.
10 Within the Act the legislature requires notice of the nature of the hearing. NRS 233B.121 ("In a
11 contested case, all parties must be afforded an opportunity for hearing after reasonable notice...The
12 notice must include: A statement of the time, place and nature of the hearing").
13

14 In this case, Petitioner was not on notice that the attended hearing on January 29, 2014 was
15 to decide a motion for summary judgment. The Respondent's motion for summary judgment had
16 already been denied. Had Petitioner known the hearing was supposed to be one to hear oral
17 arguments regarding summary judgment he might have fashioned his argument differently.
18 Because Petitioner was not on notice of the nature of the hearing being one for summary judgment
19 it was procedurally improper and unfairly detrimental to the Petitioner for the Appeals Officer to
20 dispose of the contested claim by granting an already dismissed motion for summary judgment.
21

22 Furthermore, additional requirements concerning the procedural deficiencies of the
23 Appeals Officer's decision and order can be found in NRS 233B.125, which states that a final
24 decision must be in writing and include findings of fact and conclusions of law, separately stated.
25 And these findings must be accompanied by a concise and explicit statement of the underlying
26 facts supporting the findings. *Id.* Importantly, not only do factual findings help ensure that the
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1 appeals officer engages in reasoned decision making, but they also facilitate judicial review.

2 *Dickinson v. Am. Med. Response*, 124 Nev. 460, 469, 186 P.3d 878, 884 (2008).

3 Here, none of these requirements were met by the final decision by the Appeals Officer
4 when she dismissed the Petitioner's appeal. As a consequence, because the Appeals Officer's
5 Order is deficient, it precludes this Court from conducting an adequate review on appeal and
6 prevents a determination of whether Petitioner's substantial rights were violated.
7

8 **B. Petitioner has exhausted his third party settlement funds as required by statutory
9 interpretation of NRS 616C.215(2)(a) and analyzed in *Employers Ins. Co. of Nevada
10 v. Chandler*.**

11 Although the Appeals Officer did not provide reasoning via findings of facts and
12 conclusions of law to support her decision of granting the Respondent's motion for summary
13 judgment it must be assumed that the decision was based on the Respondent's arguments outlined
14 in its motion for summary judgment. In its motion for summary judgment Respondent argued that
15 the case of *Employers Ins. Co. of Nevada v. Chandler*, 23 P.3d 255 (Nev. 2001) ("EICON")
16 supports the proposition that a claimant must exhaust third party settlement funds solely on
17 medical care and treatment before the insurer is responsible for reopening the case. (Supp ROA
18 013, p. 119-120). However, Petitioner responded to this argument in his appeals memorandum
19 (Supp ROA 006, p. 84-86) and at the January 29, 2014 hearing (Supp ROA 003, p. 21-22, 55).
20

21 The interpretation of the holding in *EICON* raised by Respondent is a legal question and
22 Petitioner does not accept the Respondents interpretation. Petitioner believes the Respondent is
23 reading *limitations* into the term "compensation" that do not exist. *EICON* is case law interpreting
24 the term "compensation" in workers compensation statutes—particularly NRS 616C.215(2)(a)—to
25 include medical benefits. *EICON v. Chandler*; see also *Valdez v. Employers Ins. Co. of Nevada*,
26 162 P.3d 148, 123 Nev. 21 (Nev. 2007). The definition provided to the term "compensation" in
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1 EICON *broadened* the term—not limited it—to *include* medical benefits, i.e., the addition of
2 medical benefits to the term “compensation” was not all inclusive. *See generally, EICON*. Meaning
3 the term “compensation” can be achieved in a variety of permissible ways that do not necessarily
4 include medical benefits—but can.

5
6 Furthermore, *EICON* only indicates that claimant would have to exhaust any third-party
7 settlement proceeds, but it does not direct how or when. *See, Id* at 258. So, the argument that
8 Poremba has to show that he spent all his third-party settlement solely on medical treatment after
9 he got it, reads solitary requirements into the statute and case law that do not exist. Poremba need
10 only show that his settlement funds have indeed been exhausted—as they have been.

11
12 **C. Petitioner has met the elements of reopening his claim pursuant to NRS 613C390,
13 which statutorily requires reopening.**

14 Petitioner has further argued in response to Respondent’s reasoning of denying reopening
15 his workers compensation claim that he has the medical evidence required to reopen his claim.
16 (Supp ROA 006, p. 84-86). However, Respondent has attempted to use the “exhaustion” argument
17 (supra) to preclude the Petitioner from reopening his workers compensation claim. (Supp ROA
18 003, p. 56 (“he has to expend it on money that would otherwise have been spent on his workers
19 compensation case before he can ask for re-opening”). However, the relevant statute governing
20 reopening a workers compensation claim is NRS 616C.390 which states if a work injury or
21 industrial disease condition changes, the worker may request that the workers' compensation
22 insurer reopen the claim for further medical treatment and benefits.

23
24 In this case, the Petitioner has presented two letters from two different doctors which
25 together (and one individually) meet the reopening requirements of NRS 616C.390. (Supp ROA
26 019, p. 301-302). Both of the doctor’s letter’s together clearly meet the elements (the Petitioner
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1 having provided analysis of each element outlined in his appeals memorandum (Supp ROA 006, p.
2 84-86)) of NRS 616C.390 which states the insurer *shall* reopen a claim if the elements are met.

3 What Petitioner is arguing is that his statutory right under NRS 616C.390 cannot be
4 defeated by the application of Respondent's "exhaustion" interpretation from the *EICON* case.
5 *EICON* is not the standard of reopening. It is the workers' compensation statutes that control the
6 awarding or denial of benefits. *Elizondo v. Hood Mach., Inc.*, 312 P.3d 479, 483. A similar
7 preclusion argument by an insurer was discussed in *Elizondo v. Hood Mach., Inc* (attempting to use
8 res judicata to prevent the statutory right of reopening), however, the Nevada Supreme Court
9 rejected this argument because the proper analysis is whether there is a change of circumstances. *Id*
10 at 484 citing to *Jerry's Nugget v. Keith*, 111 Nev. 49, 888 P.2d 921, 1995 Nev. LEXIS 9 (Nev.
11 1995).

12 Admittedly, the Supreme Court in *EICON* does provide a scenario in which an insurer may
13 withhold payment of medical benefits until an employee has exhausted any third-party settlement
14 proceeds. *EICON v. Chandler* at 258. But this is still under the assumption of the facts of the
15 *EICON* case where the claimant still tacitly had remaining settlement funds. *See generally, Id* at
16 257. In this case, Petitioner has no third-party settlement funds remaining. Moreover, in the
17 scenario provided in *EICON* the insurer is only entitled to withhold payment of medical benefits
18 not deny claim reopening. *See generally id.*

19 Simply the standard for reopening a claim is a statutory one generally found in NRS
20 616C.390, which mandates reopening if its elements are met, as the Petitioner has done.

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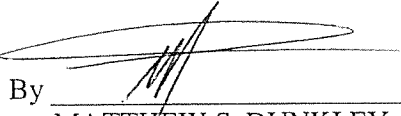
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VI.

CONCLUSION

The Appeals Officer's Order failed to put the Petitioner on notice of the nature of his hearing when she granted a motion for summary judgment that was already dismissed and never re-asserted. The Appeals Officer's Order was also procedurally improper because it lacked the statutorily required findings of fact and conclusions of law. Moreover, arguments made by the Respondent involving issues of law, e.g., using unsuitable interpretations of case law interpretations and statutes that the Appeals Officer presumably relied on in making her decision was arbitrary and capricious.

DATED this 18 day of June, 2014.

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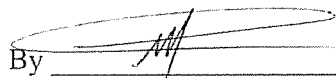
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CERTIFICATE OF COMPLIANCE

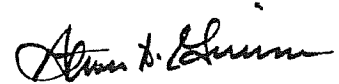
I hereby certify that I have read this appellate brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. 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 18 day of June, 2014.

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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 WILLIAM POREMBA,)
12) CASE NO.: A-14-698184
13) DEPT NO.: II
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Petitioner,
vs.

SOUTHERN NEVADA PAVING; S&C
CLAIMS SERVICE and DEPARTMENT
OF ADMINISTRATION
APPEALS OFFICER,
Repondent.

CERTIFICATE OF SERVICE

I certify that on this 24th day of June, 2014, the foregoing **PETITIONERS OPENING BRIEF**

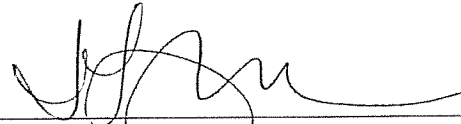
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