

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY FELTON,

Appellant,

vs.

CASE NO. 15 OC 00048 1B

DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
OFFICE OF THE DEPARTMENT OF
ADMINISTRATION

DEPT. NO. I

Respondents.

Appeal from a District Court Order
Denying Petition for Judicial Review
First Judicial District Court, Carson City
Department I
Case No. 15 OC 00048 1B

APPELLANT'S APPENDIX

VOLUME 3 of 3

Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 8218
Nevada Attorney for Injured
Workers
1000 East William Street
Suite 208
Carson City, Nevada 89701
Attorneys for Appellant,
Gregory Felton

Robert F. Balkenbush, Esq.
Nevada Bar No. 1246
Thorndal Armstrong Delk
Balkenbush & Eisinger
6590 South McCarran Blvd.
Suite B
Reno, Nevada 89509-6112
Attorney for Respondents,
Douglas County and Public
Agency Compensation Trust

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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

1 Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 08218
2 1000 East William Street, Suite 208
Carson City, Nevada 89701
3 Attorney for Petitioner,
Gregory Felton
4
5

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SUSAN MERRIWETHER
V. AIGGUBERK
BY _____ DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,

10 Petitioner,

11 vs.

CASE NO. 15 OC 00048 1B

12 DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
13 OFFICE of the DEPARTMENT OF
ADMINISTRATION,
14

DEPT. NO. I

15 Respondents.
_____ /
16

17 REQUEST FOR SUBMISSION

18 COMES NOW Petitioner, Gregory Felton, by and through
19 his attorney, Edward L. Oueilhe, Esq., deputy, Nevada Attorney
20 for Injured Workers, and hereby requests that the briefs filed by
21 the parties relative to the Petitioner's Petition for Judicial
22 Review be submitted for decision by this Court. This Request is
23 made pursuant to FJDCR 15(6).

24 On June 2, 2015, the Petitioner filed his Opening
25 Brief. On or about August 7, 2015, Respondents, Douglas County
26 and Public Agency Compensation Trust, filed their Answering
27 Brief. Thereafter, on October 8, 2015, the Petitioner filed his
28 Reply Brief.

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

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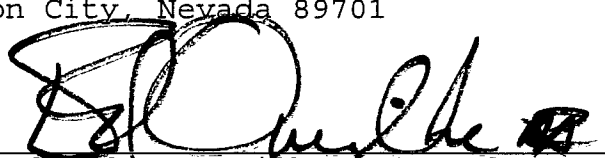
Pursuant to FJDCR 15(6), "(u)pon the expiration of the time for filing the reply memorandum," either party can notify the Clerk to submit the matter for a decision. Petitioner has filed his Reply Brief, and the matter is thereby ripe for decision.

Petitioner respectfully requests the submission of the pleadings filed by the parties so that the Court can consider the arguments presented therein and issue a ruling relative to the Petitioner's Petition for Judicial Review.

The undersigned attorney certifies that a copy of this Request has been mailed to all counsel of record.

DATED this 3rd day of November, 2015.

NEVADA ATTORNEY FOR INJURED WORKERS
Attorney for Petitioner, Gregory Felton
1000 E. William Street, Suite 208
Carson City, Nevada 89701

By: 
Edward L. Oueilhe, Esq., deputy
State Bar No. 08218

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

REQUEST FOR SUBMISSION

filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any person.

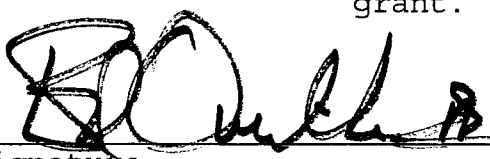
-OR-

Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.


Signature

11/3/15
Date

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

EDWARD L. OUEILHE, ESQ., deputy
Nevada Attorney for Injured Workers
Attorney for Petitioner, Gregory Felton

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

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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, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing REQUEST FOR SUBMISSION OF MOTION addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

DATED: November 3, 2015

SIGNED: Nancy L. Shewood

REC'D & FILED

2016 FEB -2 AM 8:57

SUSAN HERRIWETHER
CLERK

BY [Signature]
DEPUTY

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GREGORY FELTON,

Case No. 15-OC-00048-1B

Petitioner,

Dept. No. 1

vs.

DOUGLAS COUNTY, PUBLIC AGENCY
COMPENSATION TRUST,
ALTERNATIVE SERVICE CONCEPTS,
LLC, and the NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER
WHITNEY DERRAH

**ORDER DENYING
PETITION FOR JUDICIAL REVIEW**

Respondents.

This matter comes before the Court pursuant to an amended Petition for Judicial Review filed on March 5, 2015, by Petitioner, Gregory Felton. The Petitioner's Opening Brief in this matter was filed on June 1, 2015, and on August 7, 2015, Respondents, Douglas County and the Public Agency Compensation Trust, filed their Answering Brief. On October 7, 2015, the Petitioner filed his Reply Brief and the matter was submitted to the Court for decision on November 3, 2015.

I.

PROCEDURAL HISTORY

On March 6, 2012, the Petitioner, Gregory Felton (Felton), injured his knee while volunteering on a Douglas County search-and-rescue team. Although Felton had volunteered on the search-and-rescue team since 2005, at the time of the injury (and at all times relevant

1 hereto) Felton was employed by Hewlett-Packard (HP) as a quality control specialist.

2 Following the March 6, 2012, knee injury, Felton filed a claim for industrial insurance
3 benefits with Douglas County and its workers' compensation insurance carrier, the Public
4 Agency Compensation Trust (PACT).¹ On behalf of Douglas County and PACT, and by written
5 determination dated November 11, 2013, the third party claims administrator (Alternative
6 Service Concepts, LLC (ASC), notified Felton that it had calculated his average monthly wage
7 (AMW) under his workers' compensation claim and further advised that its calculations were
8 based upon the statutory deemed wage of a search-and-rescue volunteer. By written
9 determination dated November 13, 2013, ASC, again on behalf of Douglas County and PACT,
10 awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
11 impairment (WPI), as a result of his March 6, 2012, knee injury.

12 Felton disagreed with both ASC's November 11, 2013 determination, as well as ASC's
13 November 13, 2013 determination. Accordingly, Felton appealed these determinations to a
14 Hearing Officer. By written decision dated February 20, 2014, the Hearing Officer affirmed both
15 determinations made by ASC and, thereafter, Felton appealed to the Appeals Officer. However,
16 Felton later conceded the validity or propriety of the November 13, 2013, determination made by
17 ASC, in which Felton was awarded a 1% PPD or WPI for his left knee injury. Accordingly, the
18 only remaining issue before the Appeals Officer was the Hearing Officer's decision affirming
19 ASC's November 11, 2013, determination that Felton's AMW must be calculated using only the
20 statutory deemed wage of a search-and-rescue volunteer, as opposed to an aggregation of
21 Felton's earned wage at HP and the statutory deemed wage.

22 On August 25, 2014, a trial was held before the Appeals Officer. Having considered the
23 evidence and written arguments submitted by the parties, the Appeals Officer ultimately
24 concluded in a written decision filed and served on February 4, 2015, that Felton was not, as a
25

26 ¹ The Public Agency Compensation Trust is a self-insured association of public employers for workers'
27 compensation claims and, at all times relevant hereto, was the workers' compensation insurance carrier for Douglas
28 County.

1 matter of law, entitled to an AMW based on an aggregation of both his earned wages at HP (his
2 private employer) and his statutory deemed wage as a search-and-rescue volunteer. Accordingly,
3 the Appeals Officer affirmed the Hearing Officer's decision in Hearing No. 47153-KD, as well as
4 ASC's November 11, 2013 determination which assessed the AMW as a deemed wage of
5 \$2,000.00 per month.

6 Felton disagreed with the findings and decision reached by the Appeals Officer and,
7 therefore, on March 5, 2015, Felton filed the present amended Petition for Judicial Review. The
8 Petitioner specifically argues that the Appeals Officer committed legal error by failing to
9 aggregate Felton's earned wage at HP and his deemed wage as a search-and-rescue volunteer. As
10 such, the Petitioner urges the Court to reverse the Appeals Officer's affirmation of ASC's
11 November 11, 2013 determination.

12 II.

13 DISCUSSION

14 A. STANDARD OF REVIEW.

15 A reviewing Court may remand or affirm the final decision or set it aside in whole or in
16 part only if substantial rights of the petitioner have been prejudiced because the final decision of
17 the agency is:

- 18 (a) In violation of constitutional or statutory provisions;
- 19 (b) In excess of the statutory authority of the agency;
- 20 (c) Made upon unlawful procedure;
- 21 (d) Affected by other error of law;
- 22 (e) Clearly erroneous in view of the reliable, probative, and
23 substantial evidence on the whole record; or
- 24 (f) Arbitrary or capricious or characterized by abuse of
discretion.

25 NRS 233B.135(3). Since the parameters of judicial review are established by statute, judicial
26 review of a final decision of an agency must be conducted by the Court without a jury and
27 confined to the record. *See*, NRS 233B.135(1); *see also*, *Employment Security Dept. v. Cline*,
28

1 109 Nev. 74, 847 P.2d 736, 739 (1993)(stating that in reviewing an administrative agency
2 decision appellate courts are limited to the agency record and to the determination of whether the
3 administrative body acted arbitrarily or capriciously.).

4 The burden of proof is on the party attacking the decision to show that the final decision
5 is invalid. *Id.* Generally, an agency's conclusions of law, which will necessarily be closely related
6 to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are
7 supported by "substantial evidence." *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806
8 (1986); *see also State Indus. Ins. Sys. v. Romero*, 110 Nev. 739, 742, 877 P.2d 541 (1994)
9 (stating that review of an administrative decision is limited to a determination of whether that
10 decision is based on substantial evidence or contains errors of law). "Substantial evidence" is
11 defined as that which "a reasonable mind might accept as adequate to support a conclusion."
12 *Richardson v. Perales*, 402 U.S. 389, 401 (1971).² What is more, an agency's interpretation of its
13 own a regulation is clothed with great deference. *City of Reno v. Reno Police Protection Ass'n*,
14 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (Holding that "this court will not readily disturb
15 an administrative interpretation of statutory language").

16 **B. NRS 616A.130 IS THE CONTROLLING STATUTE WITH RESPECT TO FELTON'S MARCH**
17 **2012 INJURY AND HIS AVERAGE MONTHLY WAGE**

18 Under Nevada law, except as otherwise provided by a specific statute, the amount of
19 compensation and benefits, and the person or persons entitled thereto, must be determined as of
20 the date of the accident or injury to the employee and their rights thereto become fixed as of
21 that date. *See*, NRS 616C.425; *see also*, NAC 616C.441; NAC 616C.429. As noted above,
22 Felton's left knee injury occurred in March 2012. At the time of the injury at issue, there was no
23 specific statute providing that search-and-rescue volunteers were "employees" who had a
24 "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
25 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). The Petitioner cites
26 NRS 616A.157 on numerous occasions throughout his briefs; however, NRS 616A.157 was

27 ² *See also, State Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1
28 (1986)(Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as
adequate to support a conclusion").

1 enacted and became law on May 21, 2013, which is one year and two months *after* the
2 occurrence of Felton's accidental injury. *See* Assembly Bill 206, Chapter 26, Section 1 (2013).³
3 Accordingly, as a matter of law, the controlling statute with respect to Felton's March 2012 knee
4 injury is NRS 616A.130. *See* Hearings on Assembly Bill (AB) 206 - Committee on Labor and
5 Energy, 77th Leg. (Nev., March 13, and April 29, 2013). NRS 616A.130 specifically provides
6 that, for purposes of calculating workers' compensation benefits, persons engaged in volunteer
7 work for a local public organization may be deemed employees at a deemed wage of \$100 per
8 month.⁴ *Id.*; *see also* NAC 616C.129.

9 **1. According to the rules of statutory construction, NAC 616C.447 cannot be**
10 **read to permit the aggregation of earned and deemed wages for volunteers**
11 **such as Felton.**

12 Pursuant to the principles of statutory construction, which apply to administrative
13 regulations⁵, NRS 616A.130, which establishes a specific deemed wage for persons engaged in
14 volunteer work, would control over the general rule set forth in NAC 616C.447.

15 In *New Bethlehem Volunteer Fire Co. v. Workmen's Compensation Appeal Board*, 654
16 A.2d 267 (Pa. Commonw. Ct. 1995), the claimant suffered a disabling injury during the course of

17
18 ³ The Court notes that the Appeals Officer appears to have applied NRS 616A.157 retroactively to the matter
19 at bar. In part, the foregoing is evidenced by the Appeals Officer's affirmation of ASC's November 11, 2013
20 determination. Substantive statutes, such as NRS 616A.157, are presumed to operate *prospectively*, unless it is clear that
21 the drafters intended the statute to be applied retroactively. *Sandpointe Apts., LLC v. Eighth Judicial Dist. Court*, 129
22 Nev. ___, 313 P.3d 849, 853 (2013) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273, (1994)). There is simply
23 no indication that the Nevada Legislature intended NRS 616A.157 to be applied retroactively. As such, NRS 616A.130
24 applies to the matter at bar and the statutory deemed wage at the time of Felton's injury was \$100.00 per month.

25 On the matter of the issue of aggregation of wages from concurrent employment, Nowhere in the legislative
26 history of NRS 616A.157 and considerations of its fiscal impact does the Legislature even remotely contemplate that
27 concurrent employment (which most volunteers likely have) would effect the bottom line to be absorbed by the self-
28 insured counties and municipalities. Indeed, every indication is to the contrary and the only contemplated change would
solely involve exposure from a \$100 deemed average monthly wage to a \$2000 deemed average monthly wage. The
foregoing is consistent with the arguments made by Douglas County and PACT and the Decision and Order of the
Appeals Officer in this matter.

29 ⁴ Notwithstanding, in this matter, ASC, as the third party administrator, improperly assessed Felton's deemed
30 average monthly wage (AMW) as being \$2000.00 per month, and neither Douglas County nor the PACT appealed from
31 this determination. Hence, as a matter of equitable estoppel and waiver, in this matter, Felton's deemed AMW is
32 \$2,000.00 per month. *See, Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

33 ⁵ Nevada has recognized that the rules of statutory construction apply to administrative regulations. *Meridian*
34 *Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516 (2003).

1 his work as a volunteer firefighter and was concurrently employed at a local manufacturing
2 company. *New Bethlehem*, 654 A.2d at 267-68. Pennsylvania workers' compensation act (like
3 Nevada's) contained both a statute **specifically** characterizing volunteer firefighters as deemed
4 employees with deemed wages for purposes of benefits under the act ⁶ and Pennsylvania also had
5 a statute **generally** allowing the combination of wages from concurrent employment. ⁷ *Id.* at 642.
6 The court in *New Bethlehem* focused on the language of the two statutes and the rules of statutory
7 interpretation. The court noted that "where there are two statutory provisions in conflict with
8 each other, and this conflict is irreconcilable, the specific provision controls over the general
9 provisions." 1 Pa.C.S. § 1933 and *Paxon Maymar, Inc. v. Pennsylvania Liquor Control Bd.*, 11
10 Pa.Commonw. Ct. 136, 312 A.2d 115 (1973). The court explained that the statute relating to the
11 combination of concurrent wages was a **general** rule of aggregation and that the **specific** statute
12 allowing for a deemed wage for a volunteer firefighter was a specific and narrow "exception to
13 that rule, as a person who performs the task of volunteer fire fighting as well as working a
14 primary job is not in a concurrent employment situation." *New Bethlehem*, 654 A.2d at 268.

15 In *Snyder v. Workmen's Compensation Appeal Bd.* 654 A.2d 641 (Pa. Commonw. Ct.
16 1995), and *Borough of Hensdale v. Workmen's Compensation Appeal Bd.*, 659 A.2d 70 (Pa.
17 Commonw. Ct. 1995), the courts affirmed that volunteer firefighters were treated "differently
18 from other claimants who are permitted to add their concurrent wages for the purpose of
19 calculating their average weekly wage under Section 309(e) of the Act, 77 P.S. § 582(e), up to
20 the amount which would secure for them the greatest maximum benefit, that is, [granting]
21 benefits which equal the statewide average weekly wage." *Borough*, 659 A.2d at 76.

22 A similar logic and statutory interpretation was employed by the Supreme Court of
23 Connecticut in *Going v. Cromwell Fire District* 159 Conn. 53, 267 A.2d 428 (1970), and again in
24 *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993). The Connecticut workers'

25
26 ⁶ The statute provides that when injured during the course of employment as a volunteer firefighter "there is
27 an irrebuttable presumption that his wages shall be at least equal to the Statewide average weekly wage for the purpose
of computing his compensation..." 77 P.S. § 1031(b).

28 ⁷ "Where the employee is working under concurrent contracts with two or more employers, his wages from all
such employers shall be considered as if earned from the employer liable for compensation." 77 P.S. § 582(e).

1 compensation act also contained both a statute **specifically** characterizing volunteer firefighters
2 as deemed employees with deemed wages for purposes of benefits under the act (C.G.S.A. § 7-
3 314(a))⁸ and a statute **generally** allowing the combination of wages from concurrent employment
4 (C.G.S.A. § 31-310).⁹ Notably, the court in *Going* stressed that:

5 “It is significant that section 31-310, as quoted above, provides in part that
6 the employee's ‘average weekly wages shall be calculated upon the basis of
7 wages earned from all such employers’ but that section 7-314a (b), in this
8 connection, provides a different method of computation, viz., ‘(f)or the
9 purpose of this section, the average weekly wage of a volunteer fireman shall
10 be construed to be the average production wage in the state as determined by
11 the labor commissioner under the provisions of section 31-309.’ ”

12 *Going*, 159 Conn. at 60. The court reasoned that it was plausible to suppose that the legislature
13 devised the latter method of computation to protect the volunteer firefighter in cases where
14 wages “actually” earned by them, if any, might be wholly inadequate as a basis for determining
15 their disability benefits. *Id.* The Connecticut Supreme Court summarized that “[w]here there are
16 two inconsistent methods of computation such as we have in the present case, the method of
17 computation which covers the subject matter in **specific** terms, herein as particularly applied to
18 volunteer firemen, will prevail over the general language of another statute which might
19 otherwise prove controlling.” *Going*, 159 Conn. at 60. (Emphasis added).

20 Accordingly, in light of the sound reasoning employed in the foregoing authority, this
21 Court finds that the **specific** language of NRS 616A.130, that the deemed wage of a volunteer is

22 _____
23 ⁸ C.G.S.A. § 7-314(a)(b) provides that “[f]or the purpose of this section, the average weekly wage of a volunteer
24 fireman shall be construed to be the average production wage in the state as determined by the labor commissioner under
25 the provisions of section 31-309.”

26 ⁹ The Connecticut statute governing the combining of wages from concurrent employment allows aggregation
27 up to the legislative maximum average weekly wage in a pro rata calculation which may involve the Second Injury Fund
28 but otherwise simply allows for combining wages from concurrent employers. C.G.S.A. § 31-310, states in pertinent part:

29 Where the injured employee has worked for more than one employer as of the date of the injury
30 and the average weekly wage received from the employer in whose employ the injured employee was
31 injured, as determined under the provisions of this section, are insufficient to obtain the maximum
32 weekly compensation rate from the employer under section 31-309, prevailing as of the date of the
33 injury, the injured employee's average weekly wages shall be calculated upon the basis of wages earned
34 from all such employers in the period of concurrent employment not in excess of fifty-two weeks prior
35 to the date of the injury...The remaining portion of the applicable compensation rate shall be paid from
36 the Second Injury Fund upon submission to the Treasurer by the employer or the employer's insurer of
37 such vouchers and information as the Treasurer may require.

1 \$100.00 a month, would control over the general language of NAC 616C.447. Additionally,
2 regulations cannot be read to expand the scope of the statutes governing them and regulations
3 that cannot be read any other way are invalid.¹⁰

4 **C. APPLICABLE CASE LAW FROM NEVADA AND A MAJORITY OF OTHER JURISDICTIONS**
5 **SUPPORTS THE NON-AGGREGATION OF WAGES FROM DISSIMILAR, CONCURRENT**
6 **EMPLOYMENT.**

7 According to Larson's treatise on workers' compensation law, the rule adopted by a
8 majority of jurisdictions throughout the United States holds that the earnings of an injured
9 worker may be combined if, and only if, the various employments were "related" or "similar,"
10 otherwise these jurisdictions¹¹ bar aggregation of wages from dissimilar concurrent employment.
11 *See A. Larson, Larson's Workers' Compensation Law* § 93.03[1][a] (2011). This is commonly
12 referred to as the related-employment rule. *Id.*

13 While Nevada courts have not specifically addressed the related-employment rule, in

14 ¹⁰ In *Meridian Gold v. Nevada Dep't of Taxation*, 119 Nev. 630, 81 P.3d 5116 (2003), the Nevada Supreme
15 Court stressed that

16 "[w]hen determining the validity of an administrative regulation, courts generally give 'great
17 deference' to an agency's interpretation of a statute that the agency is charged with enforcing."
18 However, we "will not hesitate to declare a regulation invalid when the regulation violates the
constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the
agency or is otherwise arbitrary and capricious."

19 *Meridian Gold*, 119 Nev. at 635; *see also Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694
(2011); *see generally* 73 C.J.S. Public Administrative Law and Procedure § 172.

20 ¹¹ In *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980), the claimant sustained a
21 compensable injury while working at a service station while concurrently employed as a janitor with the school district.
22 In holding that the his compensation was properly based on service station wages rather than the combined incomes of
23 both employments, the Arkansas Court of Appeals noted that "the risk insured by a policy of workers' compensation
could not be determined with any degree of accuracy if compensation rates were computed on incomes outside the
covered employment" and that "[t]he premiums received by the insurance carrier to cover the risk must be determinable."
Hart's Exxon, 268 Ark. at 965. The court further explained that to remain solvent, the insurance carriers must receive
24 a premium "commensurate with the risk." *Id.* (emphasis in original).

25 In *Thompson v. STS Holdings*, 711 S.E. 2d 827 (N.C. Ct. App. 2011) in applying the related employment rule
26 even in the face of a vastly lower weekly wage for the employee, the court reasoned that "the General Assembly enacted
our workers' compensation act considering what it deemed "fair and just" to both parties." *Thompson*, 711 S.E.2d at 832.
27 The court noted that had the Legislature intended to authorize the Commission in the exceptional cases to "combine those
wages from any concurrent employment, we think it would have been equally specific." *Id.* (emphasis in original). *See*
28 *also, In the Matter of Russell*, 37 E.C.A.B. 567 (1986)(federal appeals board recognizing the majority rule holding that
in "[f]ollowing the precedents of the New York courts and of this Board, and the majority rule in other jurisdictions,
earnings from dissimilar private employment cannot be considered in computing appellant's pay rate for purposes of
compensation").

1 *Ayala v. Caesars Palace*, 119 Nev. 232, 71 P.3d 490 (2003), the Nevada Supreme Court
2 seemingly endorsed the sound reasoning behind this rule. In *Ayala*, the claimant fractured her
3 ankle while working as a banquet waitress for Caesars Palace, but provided wage information to
4 Caesar's third party administrator (TPA) that included her income as a cashier for the Mirage.
5 *Ayala*, 119 Nev. at 234. Upon further investigation, the TPA issued a determination reducing the
6 claimant's AMW and excluding the wages she earned as a cashier. Ultimately, the Nevada
7 Supreme Court concluded that the wage adjustment was warranted and the Nevada Supreme
8 Court noted that "the record reflects that Ayala had left her position at the Mirage before the
9 injury, so her employment [at the Mirage] was not a concurrent employment under NAC
10 616C.447. Furthermore, she worked there as a cashier, not as a banquet waitress. Therefore,
11 CDS properly excluded those wages from its calculation." *Id.* at 240. (Emphasis added).

12 Accordingly, based on the Nevada Supreme Court's analysis in *Ayala*, it appears that
13 Nevada is inclined to follow the majority of jurisdictions in utilizing the so-called related-
14 employment rule. As applied to the matter at bar, the related-employment rule would not support
15 the aggregation of Felton's earned wages as a quality control specialist at HP and his deemed
16 wages as a search-and-rescue volunteer with Douglas County, as Felton's employment at HP is
17 completely dissimilar to his activities as a search-and-rescue volunteer.

18 **I. Nevada Law Does Not Support the Aggregation of Earned Wages and**
19 **Deemed Wages for Volunteers Such as Felton.**

20 Generally, the average monthly wage for an injured employee covered under the Nevada
21 Industrial Insurance Act is governed by NRS 616A.065, which provides as follows:

22 "Except as otherwise provided in subsection 3, 'average monthly wage' means
23 the lesser of:

- 24 (a) The monthly wage actually received or deemed to have been received by
25 the employee on the date of the accident or injury to the employee,
26 excluding remuneration from employment:
27 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
28 Occupational Diseases Act; and
(2) For which coverage is elective, but has not been elected; or
(b) One hundred fifty percent of the state average weekly wage as most recently
computed by the Employment Security Division of the Department of
Employment, Training and Rehabilitation during the fiscal year preceding
the date of the injury or accident, multiplied by 4.33."

1 NRS 616A.065(1). (Emphasis added).

2 The Nevada legislature has delegated by statute to the Administrator of the Division of
3 Industrial Relations the authority to promulgate the method of determining the average monthly
4 wage. See NRS 616C.420; see also NRS 6161A.400; and NAC 616A.420-447. Accordingly, the
5 Division of Industrial Relations has issued NAC 616C.447, which provides as follows:

6 The average monthly wage of an employee who is employed by two or more
7 employers covered by a private carrier or by a plan of self-insurance on the
8 date of a disabling accident or disease is equal to the sum of the wages
9 earned *or* deemed to have been earned at each place of employment. The
insurer shall advise an injured employee in writing of his or her entitlement
to compensation for concurrent employment at the time of the initial payment
of the compensation.

10 (Emphasis added).

11 The Court finds that the plain language of the above-cited statute and regulation appears
12 to bar the aggregation of both earned and deemed wages when calculating the average monthly
13 wage (AMW). The relevant statute and regulation (NRS 616A.065 and NAC 616C.447)
14 specifically utilize the disjunctive "or" with respect to the statutory components of the AMW -
15 not the conjunctive "and," and not "and/or." The plain meaning of the cited statute and
16 regulation allow for the AMW to be calculated by "the sum of the wages earned" *or* "the sum of
17 the wages deemed to have been earned." The statute and regulation speaks for themselves and
18 certainly do not mandate or clearly permit that the AMW be calculated by considering "the sum
19 of wages earned" *and* "the sum of wages deemed to be earned," as suggested by the Petitioner.
20 Accordingly, based on the plain, unambiguous wording of the relevant statute and regulation, the
21 aggregation of earned and deemed wages appears to be barred when calculating the AMW for a
22 volunteer such as Felton.

23 **2. Sound public policy militates against exposing private or public employers to**
24 **unknown liability concerning a volunteer's concurrent employment.**

25 Lastly, there is no evidence of any public policy adopted by the legislature showing an
26 intention that Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and
27 unforeseen liabilities based on possible alternative employment by its volunteers. Likewise, there
28 is no evidence of any public policy adopted by the legislature showing an intention to permit

1 through administrative regulations modification of the unambiguous statutory definition of the
2 AMW of volunteers. The language of NRS 616A.130 exists to provide coverage for volunteers at
3 a reasonable rate and has only been expanded by specific provisions adopted by the Nevada
4 Legislature, none of which applied to the Petitioner on March 6, 2012, the date of his accident.¹²
5 See NRS 616A.157 (date of enactment May 21, 2013).

6 In addition, volunteer organizations (such as Douglas County Search-and-Rescue)
7 generally have no knowledge of the concurrent salary or wages of its volunteers, and often no
8 knowledge of concurrent employment at all. Hence, in this Court's opinion it would be roundly
9 unfair to private or public employers to apply NAC 616C.447 to volunteers so as to permit
10 aggregation of wages from concurrent employment.

11 III.

12 CONCLUSION

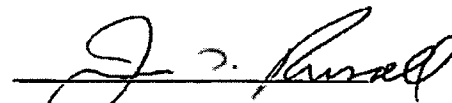
13 In accordance with the rules of statutory construction, applicable case law and
14 sound public policy, the Court affirms the Appeals Officer's February 4, 2015, decision and
15 order, with respect to the non-aggregation of wages from concurrent employment.

16 JUDGMENT

17 Therefore, good cause appearing,

18 IT IS HEREBY ORDERED that the Petition for Judicial Review is hereby DENIED.

19 Dated this 2nd day of February, 2016.

20
21 

22 HON. JAMES T. RUSSELL
23 DISTRICT COURT JUDGE

24
25
26 _____
27 ¹² Volunteers are, frankly, fortunate to have coverage under the Nevada Industrial Insurance Act. Apart from
28 such coverage, it seems to this Court that a volunteer assumes the risk associated with the activity he/she volunteers to perform.

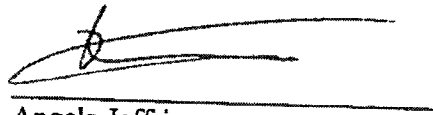
1 **Proposed Order Submitted by:**
2 **ROBERT F. BALKENBUSH, ESQ.**
3 State Bar No. 1246
4 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
5 6590 S. McCarran, Suite B
6 Reno, Nevada 89509
7 Attorneys for Respondents,
8 Douglas County and
9 Public Agency Compensation Trust
10
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2nd day of February, 2016, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Edward L. Oueilhe, Esq.
1000 E. William Street, Suite 208
Carson City, NV 89701

Robert F. Balkenbush, Esq.
6900 S. McCarran, Suite B
Reno, NV 89509



Angela Jeffries
Judicial Assistant, Dept. 1

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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

1 Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
Attorney for Petitioner,
4 Gregory Felton

REC'D & FILED
2016 APR 26 PM 3:00
SUSAN MERRIWETHER
CLERK
BY V. Alegria
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

9 GREGORY FELTON,
10 Petitioner,

11 vs.

CASE NO. 15 OC 00048 1B
DEPT. NO. 1

12 DOUGLAS COUNTY; PUBLIC AGENCY
13 COMPENSATION TRUST; and APPEALS
OFFICE of the DEPARTMENT OF
14 ADMINISTRATION,

15 Respondents.


16 NOTICE OF ENTRY OF ORDER

17 TO: DOUGLAS COUNTY AND PUBLIC AGENCY COMPENSATION
18 TRUST; and

19 TO: ROBERT F. BALKENBUSH, Esq., its attorney.

20 PLEASE TAKE NOTICE that an Order was entered in the
21 above-entitled matter on the 2nd day of February, 2016. A copy
22 of said Order is attached hereto.

23 DATED this 25th day of April, 2016.

24 NEVADA ATTORNEY FOR INJURED WORKERS

25 Edward L. Oueilhe, Esq., deputy
26 Nevada Bar No. 08218
1000 East William Street, Suite 208
27 Carson City, Nevada 89701
Attorney for Petitioner,
28 Gregory Felton

ATTACHMENT

ATTACHMENT

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2016 FEB -2 AM 8: 57

SUSAN HERRIWETHER
CLERK

RY-
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GREGORY FELTON,

Case No. 15-OC-00048-1B

Petitioner,

Dept. No. 1

vs.

DOUGLAS COUNTY, PUBLIC AGENCY
COMPENSATION TRUST,
ALTERNATIVE SERVICE CONCEPTS,
LLC, and the NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER
WHITNEY DERRAH

**ORDER DENYING
PETITION FOR JUDICIAL REVIEW**

Respondents.

_____ /
This matter comes before the Court pursuant to an amended Petition for Judicial Review filed on March 5, 2015, by Petitioner, Gregory Felton. The Petitioner's Opening Brief in this matter was filed on June 1, 2015, and on August 7, 2015, Respondents, Douglas County and the Public Agency Compensation Trust, filed their Answering Brief. On October 7, 2015, the Petitioner filed his Reply Brief and the matter was submitted to the Court for decision on November 3, 2015.

I.

PROCEDURAL HISTORY

On March 6, 2012, the Petitioner, Gregory Felton (Felton), injured his knee while volunteering on a Douglas County search-and-rescue team. Although Felton had volunteered on the search-and-rescue team since 2005, at the time of the injury (and at all times relevant

1 hereto) Felton was employed by Hewlett-Packard (HP) as a quality control specialist.
2 Following the March 6, 2012, knee injury, Felton filed a claim for industrial insurance
3 benefits with Douglas County and its workers' compensation insurance carrier, the Public
4 Agency Compensation Trust (PACT).¹ On behalf of Douglas County and PACT, and by written
5 determination dated November 11, 2013, the third party claims administrator (Alternative
6 Service Concepts, LLC (ASC), notified Felton that it had calculated his average monthly wage
7 (AMW) under his workers' compensation claim and further advised that its calculations were
8 based upon the statutory deemed wage of a search-and-rescue volunteer. By written
9 determination dated November 13, 2013, ASC, again on behalf of Douglas County and PACT,
10 awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
11 impairment (WPI), as a result of his March 6, 2012, knee injury.

12 Felton disagreed with both ASC's November 11, 2013 determination, as well as ASC's
13 November 13, 2013 determination. Accordingly, Felton appealed these determinations to a
14 Hearing Officer. By written decision dated February 20, 2014, the Hearing Officer affirmed both
15 determinations made by ASC and, thereafter, Felton appealed to the Appeals Officer. However,
16 Felton later conceded the validity or propriety of the November 13, 2013, determination made by
17 ASC, in which Felton was awarded a 1% PPD or WPI for his left knee injury. Accordingly, the
18 only remaining issue before the Appeals Officer was the Hearing Officer's decision affirming
19 ASC's November 11, 2013, determination that Felton's AMW must be calculated using only the
20 statutory deemed wage of a search-and-rescue volunteer, as opposed to an aggregation of
21 Felton's earned wage at HP and the statutory deemed wage.

22 On August 25, 2014, a trial was held before the Appeals Officer. Having considered the
23 evidence and written arguments submitted by the parties, the Appeals Officer ultimately
24 concluded in a written decision filed and served on February 4, 2015, that Felton was not, as a
25

26 ¹ The Public Agency Compensation Trust is a self-insured association of public employers for workers'
27 compensation claims and, at all times relevant hereto, was the workers' compensation insurance carrier for Douglas
28 County.

1 matter of law, entitled to an AMW based on an aggregation of both his earned wages at HP (his
2 private employer) and his statutory deemed wage as a search-and-rescue volunteer. Accordingly,
3 the Appeals Officer affirmed the Hearing Officer's decision in Hearing No. 47153-KD, as well as
4 ASC's November 11, 2013 determination which assessed the AMW as a deemed wage of
5 \$2,000.00 per month.

6 Felton disagreed with the findings and decision reached by the Appeals Officer and,
7 therefore, on March 5, 2015, Felton filed the present amended Petition for Judicial Review. The
8 Petitioner specifically argues that the Appeals Officer committed legal error by failing to
9 aggregate Felton's earned wage at HP and his deemed wage as a search-and-rescue volunteer. As
10 such, the Petitioner urges the Court to reverse the Appeals Officer's affirmation of ASC's
11 November 11, 2013 determination.

12 II.

13 DISCUSSION

14 A. STANDARD OF REVIEW.

15 A reviewing Court may remand or affirm the final decision or set it aside in whole or in
16 part only if substantial rights of the petitioner have been prejudiced because the final decision of
17 the agency is:

- 18 (a) In violation of constitutional or statutory provisions;
- 19 (b) In excess of the statutory authority of the agency;
- 20 (c) Made upon unlawful procedure;
- 21 (d) Affected by other error of law;
- 22 (e) Clearly erroneous in view of the reliable, probative, and
23 substantial evidence on the whole record; or
- 24 (f) Arbitrary or capricious or characterized by abuse of
discretion.

25 NRS 233B.135(3). Since the parameters of judicial review are established by statute, judicial
26 review of a final decision of an agency must be conducted by the Court without a jury and
27 confined to the record. *See, NRS 233B.135(1); see also, Employment Security Dept. v. Cline,*
28

1 109 Nev. 74, 847 P.2d 736, 739 (1993)(stating that in reviewing an administrative agency
2 decision appellate courts are limited to the agency record and to the determination of whether the
3 administrative body acted arbitrarily or capriciously.).

4 The burden of proof is on the party attacking the decision to show that the final decision
5 is invalid. *Id.* Generally, an agency's conclusions of law, which will necessarily be closely related
6 to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are
7 supported by "substantial evidence." *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806
8 (1986); *see also State Indus. Ins. Sys. v. Romero*, 110 Nev. 739, 742, 877 P.2d 541 (1994)
9 (stating that review of an administrative decision is limited to a determination of whether that
10 decision is based on substantial evidence or contains errors of law). "Substantial evidence" is
11 defined as that which "a reasonable mind might accept as adequate to support a conclusion."
12 *Richardson v. Perales*, 402 U.S. 389, 401 (1971).² What is more, an agency's interpretation of its
13 own a regulation is clothed with great deference. *City of Reno v. Reno Police Protection Ass'n*,
14 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (Holding that "this court will not readily disturb
15 an administrative interpretation of statutory language").

16 **B. NRS 616A.130 IS THE CONTROLLING STATUTE WITH RESPECT TO FELTON'S MARCH**
17 **2012 INJURY AND HIS AVERAGE MONTHLY WAGE**

18 Under Nevada law, except as otherwise provided by a specific statute, the amount of
19 compensation and benefits, and the person or persons entitled thereto, must be determined as of
20 the date of the accident or injury to the employee and their rights thereto become fixed as of
21 that date. *See*, NRS 616C.425; *see also*, NAC 616C.441; NAC 616C.429. As noted above,
22 Felton's left knee injury occurred in March 2012. At the time of the injury at issue, there was no
23 specific statute providing that search-and-rescue volunteers were "employees" who had a
24 "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
25 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). The Petitioner cites
26 NRS 616A.157 on numerous occasions throughout his briefs; however, NRS 616A.157 was

27 ² *See also, State Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1
28 (1986)(Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as
adequate to support a conclusion").

1 enacted and became law on May 21, 2013, which is one year and two months *after* the
2 occurrence of Felton's accidental injury. *See* Assembly Bill 206, Chapter 26, Section 1 (2013).³
3 Accordingly, as a matter of law, the controlling statute with respect to Felton's March 2012 knee
4 injury is NRS 616A.130. *See* Hearings on Assembly Bill (AB) 206 - Committee on Labor and
5 Energy, 77th Leg. (Nev., March 13, and April 29, 2013). NRS 616A.130 specifically provides
6 that, for purposes of calculating workers' compensation benefits, persons engaged in volunteer
7 work for a local public organization may be deemed employees at a deemed wage of \$100 per
8 month.⁴ *Id.*; *see also* NAC 616C.129.

9 1. **According to the rules of statutory construction, NAC 616C.447 cannot be**
10 **read to permit the aggregation of earned and deemed wages for volunteers**
11 **such as Felton.**

12 Pursuant to the principles of statutory construction, which apply to administrative
13 regulations⁵, NRS 616A.130, which establishes a specific deemed wage for persons engaged in
14 volunteer work, would control over the general rule set forth in NAC 616C.447.

15 In *New Bethlehem Volunteer Fire Co. v. Workmen's Compensation Appeal Board*, 654
16 A.2d 267 (Pa. Commonw. Ct. 1995), the claimant suffered a disabling injury during the course of

17
18 ³ The Court notes that the Appeals Officer appears to have applied NRS 616A.157 retroactively to the matter
19 at bar. In part, the foregoing is evidenced by the Appeals Officer's affirmation of ASC's November 11, 2013
20 determination. Substantive statutes, such as NRS 616A.157, are presumed to operate *prospectively*, unless it is clear that
21 the drafters intended the statute to be applied retroactively. *Sandpointe Apts., LLC v. Eighth Judicial Dist. Court*, 129
22 Nev. ___, 313 P.3d 849, 853 (2013) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273, (1994)). There is simply
23 no indication that the Nevada Legislature intended NRS 616A.157 to be applied retroactively. As such, NRS 616A.130
24 applies to the matter at bar and the statutory deemed wage at the time of Felton's injury was \$100.00 per month.

25 On the matter of the issue of aggregation of wages from concurrent employment, Nowhere in the legislative
26 history of NRS 616A.157 and considerations of its fiscal impact does the Legislature even remotely contemplate that
27 concurrent employment (which most volunteers likely have) would effect the bottom line to be absorbed by the self-
28 insured counties and municipalities. Indeed, every indication is to the contrary and the only contemplated change would
solely involve exposure from a \$100 deemed average monthly wage to a \$2000 deemed average monthly wage. The
foregoing is consistent with the arguments made by Douglas County and PACT and the Decision and Order of the
Appeals Officer in this matter.

29 ⁴ Notwithstanding, in this matter, ASC, as the third party administrator, improperly assessed Felton's deemed
30 average monthly wage (AMW) as being \$2000.00 per month, and neither Douglas County nor the PACT appealed from
31 this determination. Hence, as a matter of equitable estoppel and waiver, in this matter, Felton's deemed AMW is
32 \$2,000.00 per month. *See, Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

33 ⁵ Nevada has recognized that the rules of statutory construction apply to administrative regulations. *Meridian*
34 *Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516 (2003).

1 his work as a volunteer firefighter and was concurrently employed at a local manufacturing
2 company. *New Bethlehem*, 654 A.2d at 267-68. Pennsylvania workers' compensation act (like
3 Nevada's) contained both a statute specifically characterizing volunteer firefighters as deemed
4 employees with deemed wages for purposes of benefits under the act ⁶ and Pennsylvania also had
5 a statute generally allowing the combination of wages from concurrent employment. ⁷ *Id.* at 642.
6 The court in *New Bethlehem* focused on the language of the two statutes and the rules of statutory
7 interpretation. The court noted that "where there are two statutory provisions in conflict with
8 each other, and this conflict is irreconcilable, the specific provision controls over the general
9 provisions." 1 Pa.C.S. § 1933 and *Paxon Maymar, Inc. v. Pennsylvania Liquor Control Bd.*, 11
10 Pa.Commonw. Ct. 136, 312 A.2d 115 (1973). The court explained that the statute relating to the
11 combination of concurrent wages was a general rule of aggregation and that the specific statute
12 allowing for a deemed wage for a volunteer firefighter was a specific and narrow "exception to
13 that rule, as a person who performs the task of volunteer fire fighting as well as working a
14 primary job is not in a concurrent employment situation." *New Bethlehem*, 654 A.2d at 268.

15 In *Snyder v. Workmen's Compensation Appeal Bd.* 654 A.2d 641 (Pa. Commonw. Ct.
16 1995), and *Borough of Hensdale v. Workmen's Compensation Appeal Bd.*, 659 A.2d 70 (Pa.
17 Commonw. Ct. 1995), the courts affirmed that volunteer firefighters were treated "differently
18 from other claimants who are permitted to add their concurrent wages for the purpose of
19 calculating their average weekly wage under Section 309(e) of the Act, 77 P.S. § 582(e), up to
20 the amount which would secure for them the greatest maximum benefit, that is, [granting]
21 benefits which equal the statewide average weekly wage." *Borough*, 659 A.2d at 76.

22 A similar logic and statutory interpretation was employed by the Supreme Court of
23 Connecticut in *Going v. Cromwell Fire District* 159 Conn. 53, 267 A.2d 428 (1970), and again in
24 *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993). The Connecticut workers'

25
26 ⁶ The statute provides that when injured during the course of employment as a volunteer firefighter "there is
27 an irrebuttable presumption that his wages shall be at least equal to the Statewide average weekly wage for the purpose
of computing his compensation..." 77 P.S. § 1031(b).

28 ⁷ "Where the employee is working under concurrent contracts with two or more employers, his wages from all
such employers shall be considered as if earned from the employer liable for compensation." 77 P.S. § 582(e).

1 compensation act also contained both a statute specifically characterizing volunteer firefighters
2 as deemed employees with deemed wages for purposes of benefits under the act (C.G.S.A. § 7-
3 314(a))⁸ and a statute generally allowing the combination of wages from concurrent employment
4 (C.G.S.A. § 31-310).⁹ Notably, the court in *Going* stressed that:

5 "It is significant that section 31-310, as quoted above, provides in part that
6 the employee's 'average weekly wages shall be calculated upon the basis of
7 wages earned from all such employers' but that section 7-314a (b), in this
8 connection, provides a different method of computation, viz., '(f)or the
9 purpose of this section, the average weekly wage of a volunteer fireman shall
10 be construed to be the average production wage in the state as determined by
11 the labor commissioner under the provisions of section 31-309.'"

12 *Going*, 159 Conn. at 60. The court reasoned that it was plausible to suppose that the legislature
13 devised the latter method of computation to protect the volunteer firefighter in cases where
14 wages "actually" earned by them, if any, might be wholly inadequate as a basis for determining
15 their disability benefits. *Id.* The Connecticut Supreme Court summarized that "[w]here there are
16 two inconsistent methods of computation such as we have in the present case, the method of
17 computation which covers the subject matter in specific terms, herein as particularly applied to
18 volunteer firemen, will prevail over the general language of another statute which might
19 otherwise prove controlling." *Going*, 159 Conn. at 60. (Emphasis added).

20 Accordingly, in light of the sound reasoning employed in the foregoing authority, this
21 Court finds that the specific language of NRS 616A.130, that the deemed wage of a volunteer is

22 ⁸ C.G.S.A. § 7-314(a)(b) provides that "[f]or the purpose of this section, the average weekly wage of a volunteer
23 fireman shall be construed to be the average production wage in the state as determined by the labor commissioner under
24 the provisions of section 31-309."

25 ⁹ The Connecticut statute governing the combining of wages from concurrent employment allows aggregation
26 up to the legislative maximum average weekly wage in a pro rata calculation which may involve the Second Injury Fund
27 but otherwise simply allows for combining wages from concurrent employers. C.G.S.A. § 31-310, states in pertinent part:

28 Where the injured employee has worked for more than one employer as of the date of the injury
and the average weekly wage received from the employer in whose employ the injured employee was
injured, as determined under the provisions of this section, are insufficient to obtain the maximum
weekly compensation rate from the employer under section 31-309, prevailing as of the date of the
injury, the injured employee's average weekly wages shall be calculated upon the basis of wages earned
from all such employers in the period of concurrent employment not in excess of fifty-two weeks prior
to the date of the injury...The remaining portion of the applicable compensation rate shall be paid from
the Second Injury Fund upon submission to the Treasurer by the employer or the employer's insurer of
such vouchers and information as the Treasurer may require.

1 \$100.00 a month, would control over the general language of NAC 616C.447. Additionally,
2 regulations cannot be read to expand the scope of the statutes governing them and regulations
3 that cannot be read any other way are invalid.¹⁰

4 **C. APPLICABLE CASE LAW FROM NEVADA AND A MAJORITY OF OTHER JURISDICTIONS**
5 **SUPPORTS THE NON-AGGREGATION OF WAGES FROM DISSIMILAR, CONCURRENT**
6 **EMPLOYMENT.**

7 According to Larson's treatise on workers' compensation law, the rule adopted by a
8 majority of jurisdictions throughout the United States holds that the earnings of an injured
9 worker may be combined if, and only if, the various employments were "related" or "similar,"
10 otherwise these jurisdictions¹¹ bar aggregation of wages from dissimilar concurrent employment.
11 See A. Larson, *Larson's Workers' Compensation Law* § 93.03[1][a] (2011). This is commonly
12 referred to as the related-employment rule. *Id.*

13 While Nevada courts have not specifically addressed the related-employment rule, in

14 ¹⁰ In *Meridian Gold v. Nevada Dep't of Taxation*, 119 Nev. 630, 81 P.3d 5116 (2003), the Nevada Supreme
15 Court stressed that

16 "[w]hen determining the validity of an administrative regulation, courts generally give 'great
17 deference' to an agency's interpretation of a statute that the agency is charged with enforcing."
18 However, we "will not hesitate to declare a regulation invalid when the regulation violates the
constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the
agency or is otherwise arbitrary and capricious."

19 *Meridian Gold*, 119 Nev. at 635; see also *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694
20 (2011); see generally 73 C.J.S. Public Administrative Law and Procedure § 172.

21 ¹¹ In *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980), the claimant sustained a
22 compensable injury while working at a service station while concurrently employed as a janitor with the school district.
23 In holding that the his compensation was properly based on service station wages rather than the combined incomes of
24 both employments, the Arkansas Court of Appeals noted that "the risk insured by a policy of workers' compensation
could not be determined with any degree of accuracy if compensation rates were computed on incomes outside the
covered employment" and that "[t]he premiums received by the insurance carrier to cover the risk must be determinable."
Hart's Exxon, 268 Ark. at 965. The court further explained that to remain solvent, the insurance carriers must receive
a premium "commensurate with the risk." *Id.* (emphasis in original).

25 In *Thompson v. STS Holdings*, 711 S.E. 2d 827 (N.C. Ct. App. 2011) in applying the related employment rule
26 even in the face of a vastly lower weekly wage for the employee, the court reasoned that "the General Assembly enacted
our workers' compensation act considering what it deemed "fair and just" to both parties." *Thompson*, 711 S.E.2d at 832.
27 The court noted that had the Legislature intended to authorize the Commission in the exceptional cases to "combine those
wages from any concurrent employment, we think it would have been equally specific." *Id.* (emphasis in original). See
28 also, *In the Matter of Russell*, 37 E.C.A.B. 567 (1986)(federal appeals board recognizing the majority rule holding that
in "[f]ollowing the precedents of the New York courts and of this Board, and the majority rule in other jurisdictions,
earnings from dissimilar private employment cannot be considered in computing appellant's pay rate for purposes of
compensation").

1 *Ayala v. Caesars Palace*, 119 Nev. 232, 71 P.3d 490 (2003), the Nevada Supreme Court
2 seemingly endorsed the sound reasoning behind this rule. In *Ayala*, the claimant fractured her
3 ankle while working as a banquet waitress for Caesars Palace, but provided wage information to
4 Caesar's third party administrator (TPA) that included her income as a cashier for the Mirage.
5 *Ayala*, 119 Nev. at 234. Upon further investigation, the TPA issued a determination reducing the
6 claimant's AMW and excluding the wages she earned as a cashier. Ultimately, the Nevada
7 Supreme Court concluded that the wage adjustment was warranted and the Nevada Supreme
8 Court noted that "the record reflects that Ayala had left her position at the Mirage before the
9 injury, so her employment [at the Mirage] was not a concurrent employment under NAC
10 616C.447. Furthermore, she worked there as a cashier, not as a banquet waitress. Therefore,
11 CDS properly excluded those wages from its calculation." *Id.* at 240. (Emphasis added).

12 Accordingly, based on the Nevada Supreme Court's analysis in *Ayala*, it appears that
13 Nevada is inclined to follow the majority of jurisdictions in utilizing the so-called related-
14 employment rule. As applied to the matter at bar, the related-employment rule would not support
15 the aggregation of Felton's earned wages as a quality control specialist at HP and his deemed
16 wages as a search-and-rescue volunteer with Douglas County, as Felton's employment at HP is
17 completely dissimilar to his activities as a search-and-rescue volunteer.

18 **1. Nevada Law Does Not Support the Aggregation of Earned Wages and**
19 **Deemed Wages for Volunteers Such as Felton.**

20 Generally, the average monthly wage for an injured employee covered under the Nevada
21 Industrial Insurance Act is governed by NRS 616A.065, which provides as follows:

22 "Except as otherwise provided in subsection 3, 'average monthly wage' means
the lesser of:

- 23 (a) The monthly wage actually received *or* deemed to have been received by
24 the employee on the date of the accident or injury to the employee,
excluding remuneration from employment:
25 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
Occupational Diseases Act; and
26 (2) For which coverage is elective, but has not been elected; or
27 (b) One hundred fifty percent of the state average weekly wage as most recently
28 computed by the Employment Security Division of the Department of
Employment, Training and Rehabilitation during the fiscal year preceding
the date of the injury or accident, multiplied by 4.33."

1 NRS 616A.065(1). (Emphasis added).

2 The Nevada legislature has delegated by statute to the Administrator of the Division of
3 Industrial Relations the authority to promulgate the method of determining the average monthly
4 wage. *See* NRS 616C.420; *see also* NRS 6161A.400; and NAC 616A.420-447. Accordingly, the
5 Division of Industrial Relations has issued NAC 616C.447, which provides as follows:

6 The average monthly wage of an employee who is employed by two or more
7 employers covered by a private carrier or by a plan of self-insurance on the
8 date of a disabling accident or disease is equal to the sum of the wages
9 earned *or* deemed to have been earned at each place of employment. The
insurer shall advise an injured employee in writing of his or her entitlement
to compensation for concurrent employment at the time of the initial payment
of the compensation.

10 (Emphasis added).

11 The Court finds that the plain language of the above-cited statute and regulation appears
12 to bar the aggregation of both earned and deemed wages when calculating the average monthly
13 wage (AMW). The relevant statute and regulation (NRS 616A.065 and NAC 616C.447)
14 specifically utilize the disjunctive "or" with respect to the statutory components of the AMW -
15 not the conjunctive "and," and not "and/or." The plain meaning of the cited statute and
16 regulation allow for the AMW to be calculated by "the sum of the wages earned" *or* "the sum of
17 the wages deemed to have been earned." The statute and regulation speaks for themselves and
18 certainly do not mandate or clearly permit that the AMW be calculated by considering "the sum
19 of wages earned" *and* "the sum of wages deemed to be earned," as suggested by the Petitioner.
20 Accordingly, based on the plain, unambiguous wording of the relevant statute and regulation, the
21 aggregation of earned and deemed wages appears to be barred when calculating the AMW for a
22 volunteer such as Felton.

23 2. **Sound public policy militates against exposing private or public employers to**
24 **unknown liability concerning a volunteer's concurrent employment.**

25 Lastly, there is no evidence of any public policy adopted by the legislature showing an
26 intention that Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and
27 unforeseen liabilities based on possible alternative employment by its volunteers. Likewise, there
28 is no evidence of any public policy adopted by the legislature showing an intention to permit

1 through administrative regulations modification of the unambiguous statutory definition of the
2 AMW of volunteers. The language of NRS 616A.130 exists to provide coverage for volunteers at
3 a reasonable rate and has only been expanded by specific provisions adopted by the Nevada
4 Legislature, none of which applied to the Petitioner on March 6, 2012, the date of his accident.¹²
5 See NRS 616A.157 (date of enactment May 21, 2013).

6 In addition, volunteer organizations (such as Douglas County Search-and-Rescue)
7 generally have no knowledge of the concurrent salary or wages of its volunteers, and often no
8 knowledge of concurrent employment at all. Hence, in this Court's opinion it would be roundly
9 unfair to private or public employers to apply NAC 616C.447 to volunteers so as to permit
10 aggregation of wages from concurrent employment.

11 **III.**

12 **CONCLUSION**

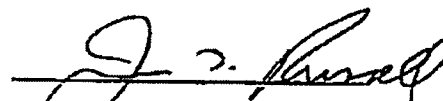
13 In accordance with the rules of statutory construction, applicable case law and
14 sound public policy, the Court affirms the Appeals Officer's February 4, 2015, decision and
15 order, with respect to the non-aggregation of wages from concurrent employment.

16 **JUDGMENT**

17 Therefore, good cause appearing,

18 IT IS HEREBY ORDERED that the Petition for Judicial Review is hereby DENIED.

19 Dated this 2nd day of February, 2016.

20
21 

22 HON. JAMES T. RUSSELL
23 DISTRICT COURT JUDGE

24
25
26 _____
27 ¹² Volunteers are, frankly, fortunate to have coverage under the Nevada Industrial Insurance Act. Apart from
28 such coverage, it seems to this Court that a volunteer assumes the risk associated with the activity he/she volunteers to perform.

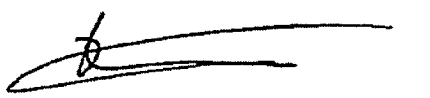
1 Proposed Order Submitted by:
2 ROBERT F. BALKENBUSH, ESQ.
3 State Bar No. 1246
4 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
5 6590 S. McCarran, Suite B
6 Reno, Nevada 89509
7 Attorneys for Respondents,
8 Douglas County and
9 Public Agency Compensation Trust
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2nd day of February, 2016, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Edward L. Oueilhe, Esq.
1000 E. William Street, Suite 208
Carson City, NV 89701

Robert F. Balkenbush, Esq.
6900 S. McCarran, Suite B
Reno, NV 89509



Angela Jeffries
Judicial Assistant, Dept. 1

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

NOTICE OF ENTRY OF ORDER

filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any person.


-OR-

Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.


Signature

4/25/16
Date

EDWARD L. OUEILHE, ESQ., deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner,
Gregory Felton

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

1 Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 8218
2 Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
Attorney for Appellant Gregory Felton
4

REC'D & FILED
2016 MAY 23 PM 3:41
SUSAN MERRIWETHER
CLERK
~~C. Cooper~~
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,
10 Petitioner,

11 vs.

CASE NO. 15 OC 00048 1B

12 DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
13 OFFICE of the DEPARTMENT OF
ADMINISTRATION,
14

DEPT. NO. I

15 Respondents.
16

17 NOTICE OF APPEAL

18 TO: DOUGLAS COUNTY AND PUBLIC AGENCY
COMPENSATION TRUST, and

19 its attorney of record,
20 ROBERT F. BALKENBUSH, Esq.;

21 Notice is hereby given that pursuant to N.R.A.P. 4,
22 GREGORY FELTON, by and through his attorney, EDWARD L. OUEILHE,
23 Esq., deputy, Nevada Attorney for Injured Workers, hereby appeals
24 to the Supreme Court of Nevada from the Order entered in this
25 action on the 2nd day of February, 2016, wherein the subsequent
26 Notice of Entry of Order was filed on the 26th day of April,
27 2016, which is attached hereto as Exhibit A.

28 //

EXHIBIT A

EXHIBIT A

FILED
FEB 04 2015
DEPT. OF ADMINISTRATION
APPEALS OFFICER

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**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER**

In the Matter of the Industrial Insurance Claim	Claim No. C143-12-06693 01
of	Hearing Nos. 47153-KD 47154-KD
<u>GREGORY FELTON</u> /	Appeal No. 47863-WDD

DECISION AND ORDER

Background

In this contested case, the claimant Gregory Felton (hereinafter "Felton"), was represented by Edward Oueilhe, Esq., Deputy Nevada Attorney for Injured Workers. The employer, Douglas County, and the insurer, Public Agency Compensation Trust (hereinafter "PACT"), were represented by Robert Balkenbush, Esq., of the law firm of Thorndal, Armstrong, Delk, Balkenbush & Eisinger. The current third party administrator of Felton's year 2012 workers' compensation claim at issue in this contested case is Alternative Service Concepts, LLC (hereinafter "ASC").

By written determination dated November 11, 2013, ASC, on behalf of Douglas County and the PACT, notified Felton that it had calculated his average monthly wage (AMW) under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and further advised that this calculation was based upon the statutory deemed wage of a search and rescue volunteer.

See, Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.

Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely

1 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
2 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

3
4 By written determination dated November 13, 2013, ASC, on behalf of Douglas County and
5 the PACT, awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
6 impairment (WPI) as a result of his work-related left knee injury. *See*, Exhibit No. 3 at pp. 4; Exhibit
7 No. 4 at pp. 100-03.

8 Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
9 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
10 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

11
12 Following a hearing and by written decision dated February 20, 2014, made under Hearing
13 Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the November 11,
14 2013 and November 13, 2013, written determinations made by ASC. *See*, Exhibit No. 3 at pp. 7-9.

15 Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
16 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and Appeal
17 No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the time of the trial
18 of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals Officer, Douglas
19 County and the PACT that he no longer disagreed with the November 13, 2013, determination made
20 by ASC that awarded him a 1% PPD or WPI for his work-related left knee injury, nor did he disagree
21 with the decision made by the Hearing Officer under Hearing No. 47154-KD that affirmed the legal
22 propriety of this November 13, 2013, determination. Hence, the decision in this contested case
23 (Appeal No. 47863-WDD) will solely resolve the issue whether AMW determination made by ASC
24 in its November 11, 2013, determination was proper under the law.
25
26

27 The trial of Appeal No. 47863-WDD was conducted on August 25, 2014. Mr. Felton
28

1 personally appeared and provided brief testimony at the hearing of this appeal. No other witnesses
2 testified in this matter. Six (6) documentary exhibits were admitted into evidence. In addition,
3 written closing arguments were submitted by legal counsel for the parties.
4

5 Having considered the documentary exhibits admitted into evidence at the trial of this case,
6 the testimony of claimant Gregory Felton, as well as written closing arguments made by legal
7 counsel for the parties, the Appeals Officer hereafter makes the following findings of fact,
8 conclusions of law, and order.

9 **Summary of Decision**

10 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
11 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
12 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
13 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). Indeed, NRS 616A.157
14 was enacted and became law on May 21, 2013, which is one year and two months after the
15 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
16 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
17 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
18 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
19 volunteers" were not employees with a deemed wage under any other category of volunteers with
20 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
21 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
22 employment.
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25

26 There are several additional legal reasons that support the conclusion reached in this
27 contested case.
28

FINDINGS OF FACT

- 1
2 1. In March 2012, Felton was employed with Douglas County as a search and rescue
3 volunteer. *See*, Exhibit No. 4 at pp. 1-2, 7.
- 4
5 2. On or about March 6, 2012, Felton suffered an injury to his left knee while participating
6 in a snow and avalanche rescue training. *See*, Exhibit No. 4 at pp. 1-2, 7. At the time of that this
7 left knee injury was incurred, it appears that Felton was also employed by Hewlett Packard. *See*,
8 Exhibit No. 2; *see also*, Trial Transcript.
- 9
10 3. For his March 2012 left knee injury, Felton initiated a workers' compensation claim with
11 Douglas County, and its workers' compensation insurer, the PACT, assigned Claim No. C143-
12 12-06693-01 to Felton's claim, and workers' compensation insurance coverage of his left knee
13 injury was granted. *See*, Exhibit No. 4 at p. 17.
- 14
15 4. Following medical treatment of Felton's left knee injury, and on or about November 5,
16 2013, Felton was evaluated for a permanent partial disability (PPD). *See*, Exhibit No. 4 at pp. 3-
17 6, 15-16, 18-90, 94-97; Exhibit 5. Nevada rating physician Jay Betz, M.D., assessed Felton as
18 having suffered a 1% whole person impairment (WPI) as a result of his work-related left knee
19 injury, and further recommended closure of his claim. *See*, Exhibit No. 4 at pp. 94-97.
- 20
21 5. By written determination dated November 11, 2013, ASC, on behalf of the Douglas
22 County and the PACT, notified Felton that it had calculated his average monthly wage (AMW)
23 under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and that
24 this calculation was based upon the statutory deemed wage of a search and rescue volunteer. *See*,
25 Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.
- 26
27 6. Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely
28 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was

1 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

2 7. By written determination dated November 13, 2013, ASC, on behalf of the Douglas
3 County and PACT, notified Felton of the result of his PPD evaluation, advising Felton that Dr.
4 Jay Betz had determined he had suffered a one percent (1%) whole person impairment (WPI) or
5 permanent partial disability (PPD) as a result of his work-related left knee injury. *See*, Exhibit
6 No. 3 at pp. 4; Exhibit No. 4 at pp. 100-03. In turn, by means of this determination, ASC
7 awarded Felton a 1% PPD. *Id.*

8
9 8. Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
10 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
11 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12
13 9. Following a hearing and by written decision dated February 20, 2014, made under
14 Hearing Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the
15 November 11, 2013 and November 13, 2013, written determinations made by ASC. *See*,
16 Exhibit No. 3 at pp. 7-9.

17
18 10. Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
19 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and
20 Appeal No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the
21 time of the trial of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals
22 Officer, Douglas County and the PACT that he no longer disagreed with the November 13, 2013,
23 determination made by ASC that awarded him a 1% PPD for his work-related left knee injury,
24 nor did he disagree with the decision made by the Hearing Officer under Hearing No. 47154-KD
25 that affirmed the legal propriety of the November 13, 2013, determination. Hence, the decision
26 in this contested case (Appeal No. 47863-WDD) will solely resolve the issue whether AMW
27
28

1 determination made by ASC in its November 11, 2013, determination was proper under the law.
2 11. At the trial of this contested case (Appeal No. 47863-WDD), Felton presented
3 documentary evidence of what his earned wages were with Hewlett Packard at or about the time
4 that his March 2012 left knee injury was incurred. *See*, Exhibit No. 2.
5

6 CONCLUSIONS OF LAW

7 A. **Governing Law or Legal Principles**

8 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
9 means that the Claimant must establish the work-connection of his/her injuries, the causal
10 relationship between his/her work-connected injury and his disabilities, the extent of his/her
11 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
12 cannot prevail if the evidence is merely evenly balanced. See, 8A Larson, Larson's Workers'
13 Compensation Laws, § 130.06(3)(a)(2006); see also, NRS 616C.150; NRS 616A.010; NRS
14 617.358.
15

16 Generally, the average monthly wage for an injured employee covered under the Nevada
17 Industrial Insurance Act is defined by NRS 616A.065, which provides in part:
18

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been received by the
22 employee on the date of the accident or injury to the employee, excluding
remuneration from employment:

23 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
24 Occupational Diseases Act; and

25 (2) For which coverage is elective, but has not been elected; or

26 (b) One hundred fifty percent of the state average weekly wage as most recently
27 computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding the
date of the injury or accident, multiplied by 4.33.

1 NRS 616A.065(1). (Emphasis added).

2 Except as otherwise provided by a specific statute, the amount of compensation and
3 benefits and the person or persons entitled thereto must be determined as of the date of the
4 accident or injury to the employee and their rights thereto become fixed as of that date. *See*, NRS
5 616C.425; *see also*, NAC 616C.441.

7 Concerning the average monthly wage (AMW) of volunteer members of the search and
8 rescue organization, the Nevada Legislature has specifically defined an "Employee" in pertinent
9 part as follows:

10 Volunteer members of a search and rescue organization that is under the direct
11 supervision of a county sheriff, while acting under the direction of the sheriff or a
12 designee of the sheriff:

- 13 1. In the conduct of any search and rescue operation; or
- 14 2. In training for such an operation, shall be deemed, for the purposes of chapters
15 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of
16 \$2,000 per month, and are entitled to the benefits of those chapters.

17 *See*, NRS 616A.157 (Emphasis added).

18 The Nevada Legislature has delegated by statute to the Administrator of the Division of
19 Industrial Relations (DIR) the authority to promulgate the method of determining the average
20 monthly wage. *See*, NRS 616C.420; NRS 6161A.400; and NAC 616A.420-447. Regulations
21 define average monthly wage to mean "the total gross value of all money, goods and services
22 received by an injured employee from his employment to compensate for his time or services and
23 is used as the base for calculating the rate of compensation for the injured employee." NAC
24 616C.420. In this regard, those wages which are deemed to be established in chapters 616A to
25 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly
26 wage when applicable. *See*, NAC 616C.429.

28

1 The Division of Industrial Relations has also by regulation specifically allowed for the
2 adding or combining of wages in determining an employee's average monthly wage in certain
3 circumstances. See, NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that
4 "the average monthly wage of an employee who is employed by two or more employers covered
5 by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is
6 equal to the sum of the wages earned or deemed to have been earned at each place of
7 employment." (Emphasis added).
8

9 **B. Felton Is Not Legally Entitled to an Average Monthly Wage (AMW) That Is**
10 **Based upon Both His Earned Wages at Hewlett Packard and the Statutory**
11 **Deemed Wage of a Search & Rescue Volunteer**

12 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
13 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
14 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
15 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA).¹ Indeed, NRS 616A.157
16 was enacted and became law on May 21, 2013, which is one year and two months after the
17 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. See, Assembly
18 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
19 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
20 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
21 volunteers" were not employees with a deemed wage under any other category of volunteers with
22 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
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27 ¹ "[A] person providing purely gratuitous voluntary service is not an 'employee' and has not entered into an
28 employment relationship with the person receiving the services for purposes of workers' compensation acts." 82 Am.
Jur. 2d Workers' Compensation § 127 (2012).

1 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
2 employment.²

3
4 There are several additional legal reasons that support the conclusion reached in this
5 contested case.

6 First, while Nevada law is silent on whether it would allow the aggregation of wages from
7 two dissimilar employments, it may very well adopt the related-employment rule accepted by a
8 majority of jurisdictions throughout the country. *See generally*, A. Larson, *Larson's Workers'*
9 *Compensation Law* § 93.03[1][a] (2011).³ In this regard, in *Ayala v. Caesars Palace*, 119 Nev. 232,
10 71 P.3d 490 (2003), the Nevada Supreme Court has indicated its leaning toward the adoption of the
11 majority position on the issue of aggregation of concurrent employment, that is the related-
12 employment rule. In *Ayala*, the Court, in finding that the aggregation of concurrent wages was
13 inappropriate, specifically noted that the two types of employment in consideration (cashier and
14 banquet waitress) were not similar in nature.⁴ *See also*, 100 C.J.S. *Workers' Compensation* § 524
15 (“[w]orkers’ compensation benefits are not allowed to compensate a volunteer for an inability to
16 pursue unrelated concurrent employment for another employer.”)(*citing, Wislocki v. Town of*
17 *Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); *see also, Snyder v. Workmen's Compensation*
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21
22 ² Notwithstanding the foregoing, after the enactment of NRS 616C.157, and by written determination
23 determination dated November 11, 2013, Felton was notified that by the claims administrator that an average monthly
24 wage (AMW) under his workers’ compensation claim had been calculated, and was based upon the statutory deemed
25 wage of a search and rescue volunteer. Neither Douglas County nor the PACT appealed this determination and,
26 therefore, effective the date of the determination, the statutory deemed wage under NRS 616C.157 is Felton’s AMW
27 under the claim. *See generally, Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

28 ³ *See e.g., Hart’s Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980); *Thompson v. STS*
Holdings, 711 S.E.2d 827 (N.C. Ct. App. 2011); *In the Matter of Russell*, 37 E.C.A.B. 567 (1986).

⁴ “[T]he record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at
the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not
as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation.” *See*, 119 Nev. at 240.

1 *Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp.*
2 *v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

3 Second, where a statute (or regulation) is unambiguous the plain language will control. The
4 plain language of NRS 616A.065 and NAC 616C.447 do not mandate the aggregation of earned
5 wages *and* those deemed to have been earned, as they are two different categories of wages.

6 Third, case law in other jurisdictions, barring the aggregation of deemed and earned wages
7 specifically for volunteer firefighters, relies on similar statutory language as found in Nevada. Those
8 courts have held that where two statutes seemingly conflict (one allowing for combined wages and
9 the other setting a deemed wage specifically for firefighters) the more specific statute (setting a
10 deemed wage) would, using the rules of statutory construction, control or be seen as an exception
11 to the general rule. *See, New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal*
12 *Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995); *Snyder v. Workmen's Compensation Appeal Board*,
13 *654 A.2d 641* (Pa. Commonw. Ct. 1995); *Borough of Hensdale v. Workmen's Compensation Appeal*
14 *Bd.*, 659 A.2d 70 (Pa. Commonw. Ct. 1995); *Going v. Cromwell Fire District*, 159 Conn. 53, 267
15 A.2d 428 (1970); *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993); *see also,*
16 *Laird v. State of Nevada Public Employees Retirement Board*, 98 Nev. 42, 639 P.2d 1171 (1982);
17 73 Am. Jur. 2d Statutes § 170 (Explaining that “[w]ith respect to a conflict arising between a statute
18 dealing generally with a subject and another dealing specifically with a certain phase of it, the
19 specific legislation controls in a proper case”); *see also*, NAC 616C.429;

20 Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
21 scholarly publications, and recently the Nevada Supreme Court have held that where an
22 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
23 invalid. *Meridian Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516
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1 (2003); *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011); see
2 generally, 73 C.J.S. Public Administrative Law and Procedure § 172. In this regard, and to the extent
3 that NAC 616C.447 were construed to mandate aggregation of deemed wages and earned wages
4 from concurrent employment, this regulation might be deemed to exceed, modify and conflict with
5 the Nevada statute that specifically defines average monthly wage (NRS 616A.065) and the statute
6 governing the stated average monthly wage of volunteer members of search and rescue organizations
7 (NRS 616A.157), which latter statute does not address, allow for, nor contemplate wages from
8 private/public concurrent employment.
9

10
11 Lastly, there was no evidence of any public policy that the Nevada Legislature intended
12 Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen
13 liabilities based on possible alternative employment by its volunteers.⁵

14 **ORDER**

15 To the extent that any of the foregoing findings of fact may be construed as conclusions
16 of law, or any of the foregoing conclusions of law may be construed as findings of fact, they are
17 hereby adopted as such.
18

19 In accordance with the foregoing, **IT IS HEREBY ORDERED:**

- 20 1. That the November 11, 2013, average monthly wage determination made by ASC, on
21 behalf of Douglas County and the PACT, is hereby affirmed.
22
23 2. That the written decision dated February 20, 2014, made under Hearing No. 47153-KD
24

25 ⁵ Illustratively, the propriety of the ruling in this contested can be seen in a converse example. One can only
26 imagine the reaction of a private employer thrown into such a situation as the claimant intends to place Douglas County
27 and the PACT. A private employer insures his employees for workers' compensation with the expectation of replacing
28 lost wages through insurance based on the wages paid by that employer to the employee. Upon injury and disability from
work, however, the claimant alleges that he happens to also be a volunteer member of a search and rescue organization
when not employed by the private employer. The claimant then alleges that his average monthly wage under the claim
should be supplemented by an amount that includes not only his earned wages but also the deemed wages of his
concurrent employment as a volunteer. It is beyond difficult to imagine legal allowance of such an aggregation.

1 and by Hearing Officer Katherine Diamond, and which affirmed ASC's November 11, 2013
2 average monthly wage determination is hereby affirmed.

3 Dated this 4th ^{February} of ~~January~~, 2015.
4

5
6 Whitney D. Derrah (for)
Whitney D. Derrah, Appeals Officer
7

8 **NOTICE:**

9 Pursuant to NRS 233B.130, if any party desires to appeal this final decision of the
10 Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
11 thirty (30) days after service of this final decision.
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 26 day of January, 2015.

By: 

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 was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO, NV 89509

Dated this 4 day of February, 2015.

Tasha Eaton
Tasha Eaton, Supervising Legal Secretary
Employee of the State of Nevada

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CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing NOTICE OF APPEAL addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and that on this date, I prepared for hand-delivery a true copy of the attached document addressed to:

APPEALS OFFICE
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: May 23, 2016

SIGNED: Taney L. Sherwood

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

NOTICE OF APPEAL

filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any person.

-OR-

Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.



Signature

5/23/16

Date

EDWARD L. OUEILHE, ESQ., deputy
Nevada Attorney for Injured Workers

Attorney for Gregory Felton

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

JOHN D HOOKS ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and caused a copy of the aforementioned document to be served by e-filing to:

rbalkenbush@thorndal.com
ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

DATED: February 3, 2017

SIGNED: Tancy L. Sherwood

COPY

1 Robert F. Balkenbush, Esq.
2 Nevada Bar No. 1246
3 John D. Hooks, Esq.
4 Nevada Bar No. 11605
5 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6 6590 S. McCarran Blvd., Suite B
7 Reno, Nevada 89509
8 Tel.: (775) 786-2882
9 Fax.: (775) 786-8004
10 Attorneys for: Douglas County, Employer and
11 Public Agency Compensation Trust, Insurer

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BY: DEPUTY

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

11 GREGORY FELTON,

Case No. 15-OC-00048-1B

12 Petitioner,

Dept. No. 1

13 vs.

14 DOUGLAS COUNTY, PUBLIC AGENCY
15 COMPENSATION TRUST and the
16 NEVADA DEPARTMENT OF
17 ADMINISTRATION APPEALS OFFICER
18 WHITNEY DERRAH

18 Respondents.

19 _____ /
20
21 **ANSWERING BRIEF OF DOUGLAS COUNTY AND PUBLIC AGENCY**
22 **COMPENSATION TRUST**


23 Douglas County, Employer and Public Agency Compensation Trust, Insurer having
24 previously received a Petition For Judicial Review and Opening Brief requesting review of the
25 decision rendered by Appeals Officer Whitney Derrah, under Appeal No. 47863-WDD, now file this
26 Answering Brief.

27 This Brief is supported by the following points and authorities, the documentary exhibits
28

1 attached hereto, and all other papers and pleadings on file in this matter.

2 DATED this 7th day of August, 2015.

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By 
ROBERT BALKENBUSH, ESQ.
Nevada Bar No. 1246
JOHN D. HOOKS, ESQ.
Nevada Bar No 11605
Douglas County and
Public Agency Compensation Trust

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1 POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 First and foremost, in March 2012, when the left knee injury at issue in this contested case
4 was incurred, Felton was a search and rescue volunteer, there was no statute providing that such
5 volunteers were "employees" who had a "deemed wage" for the purpose of insurance coverage and
6 benefits under the Nevada Industrial Insurance Act (NIIA) or the Nevada Occupational Disease Act
7 (NODA). Hence, at the time of Felton's injury in March 2012, he would have had no deemed wage
8 as a volunteer to consider aggregating with wages from concurrent employment or would, at most,
9 have had a deemed wage of a "volunteer in program for public service" - existing at that time and
10 allowing for \$100 average monthly wage as indicated in the legislative history of the year 2013
11 statute implementing a deemed wage for search and rescue volunteers, NRS 616A.157.
12

13
14 Nevada law concerning the average monthly wage of a volunteer firefighter who is
15 concurrently employed in the private sector and is injured while firefighting does not require or allow
16 for combining the deemed average monthly wage of the volunteer position and the actual wages
17 received (or earned wages) of the concurrent employment in determining the average monthly wage
18 utilized in the workers' compensation claim for the following alternative reasons. First, Nevada law
19 is silent on whether it would allow the aggregation of wages from two dissimilar employments and
20 may very well adopt the related-employment rule accepted by a majority of jurisdictions throughout
21 the country. Second, where a statute (or regulation) is unambiguous the plain language will control.
22 The plain language of NRS 616A.065 and NAC 616C.447 do not allow for the aggregation of earned
23 wages *and* those deemed to have been earned, as they are two different categories of wages. Third,
24 case law in other jurisdictions, barring the aggregation of deemed and earned wages specifically for
25 volunteer firefighters, relies on similar statutory language as found in Nevada. Those courts have
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1 held that where two statutes seemingly conflict (one allowing for combined wages and the other
2 setting a deemed wage specifically for firefighters) the more specific statute (setting a deemed wage)
3 would, using the rules of statutory construction, control or be seen as an exception to the general
4 rule. Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
5 scholarly publications, and recently the Nevada Supreme Court have held that where an
6 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
7 invalid. In this regard, and to the extent that NAC 616C.447 is construed to permit aggregation of
8 deemed wages and earned wages from concurrent employment, this regulation exceeds, modifies and
9 conflicts with the Nevada statute that specifically defines average monthly wage (NRS 616A.065)
10 and the statute governing the stated average monthly wage of volunteer firefighters (NRS 616A.145),
11 which latter statute does not address/allow for/contemplate aggregation of wages from private/public
12 concurrent employment.
13
14

15 Lastly, there is no evidence of any public policy that the Nevada Legislature intended Nevada
16 counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen liabilities
17 based on possible alternative employment by its volunteers. Nor is there any evidence of any public
18 policy that the Legislature intended to have the unambiguous definition of average monthly wage
19 be subject to modification through administrative regulations.
20

21 **II. LEGAL ARGUMENT**

22 **A. Standard of Review**

23 A reviewing Court may remand or affirm the final decision or set it aside in whole or in part
24 only if substantial rights of the petitioner have been prejudiced because the final decision of the
25 agency is:
26

- 27 (a) In violation of constitutional or statutory provisions;
- 28 (b) In excess of the statutory authority of the agency;

- 1 © Made upon unlawful procedure;
- 2 (d) Affected by other error of law;
- 3 (e) Clearly erroneous in view of the reliable, probative, and substantial
evidence on the whole record; or
- 4 (f) Arbitrary or capricious or characterized by abuse of discretion.

5 NRS 233B.135(3); *see also, Employment Security Dept. v. Cline*, 109 Nev. 74, 847 P.2d 736, 739
6 (1993)(stating that in reviewing an administrative agency decision appellate courts are limited to the
7 agency record and to the determination of whether the administrative body acted arbitrarily or
8 capriciously.). None of these conditions or prejudices exist in the underlying Decision and Order,
9 none have been established in Petitioner's Opening Brief and, therefore, it is respectfully submitted
10 that the agency's decision should be affirmed.

11
12 The parameters of judicial review are established by statute. Judicial review of a final
13 decision of an agency must be conducted by the Court without a jury and confined to the record. *See,*
14 NRS 233B.135(1). The burden of proof is on the party attacking the decision to show that the final
15 decision is invalid. *Id.* Generally, an agency's conclusions of law, which will necessarily be closely
16 related to the agency's view of the facts, are entitled to deference, and are not to be disturbed if they
17 are supported by substantial evidence. *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806
18 (1986); *see also State Indus. Ins. Sys. v. Romero*, 110 Nev. 739, 742, 877 P.2d 541 (1994) (stating
19 that review of an administrative decision is limited to a determination of whether that decision is
20 based on substantial evidence or contains errors of law). Substantial evidence is defined as that
21 which "a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*,
22 402 U.S. 389, 401 (1971).¹ As explained below, in the case-at -bar, the agency's decision was
23 supported by substantial evidence and respectfully should be affirmed.
24
25

26
27 ¹ *See also, State Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1
28 (1986)(Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as
adequate to support a conclusion").

1 Claimant argues that this Court should totally ignore the Findings of fact and Conclusions
2 of Law promulgated by the Appeals Officer Whitney Derrah after careful and through review of the
3 record and testimony at the underlying hearing. This is say, Claimant is asserting that the issues
4 brought to the Appeals Officer should be heard by this Court as if for the first time, anew. That is
5 not the intention of the Nevada Legislature and is inconsistent with the efficient adjudication of
6 administrative law and judicial economy. Nevertheless the allegation was made and the contention
7 should be contradicted. As explained below, even under such an improper and less deferential
8 standard of review, the Appeals Officer's Decision and Order respectfully should be affirmed. In
9 this regard, even if, an issue of pure statutory interpretation is at hand, an agency's interpretation of
10 its own a regulation is clothed with great deference. *City of Reno v. Reno Police Protection Ass'n*,
11 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002)(Holding that "this court will not readily disturb an
12 administrative interpretation of statutory language"). In the present case, the Appeal Officer, the
13 administering agent of the administrative agency concerning workers' compensation, would be
14 implementing the agency's own regulation, NAC 616C.447, and is presumed to have correctly done
15 so. *Id.*

16
17
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19 **B. The Statute Establishing A Deemed Wage was Not Adopted until After the**
20 **Subject Industrial Injury and the Legislative History is Otherwise Consistent**
21 **with the Non-Aggregation of Wages from Concurrent Employment.**

22 First and foremost, in March 2012 , when the left knee injury at issue in this contested
23 case was incurred, Felton was a search and rescue volunteer, there was no statute providing that
24 such volunteers were "employees" who had a "deemed wage" for the purpose of insurance
25 coverage and benefits under the Nevada Industrial Insurance Act (NIIA) or the Nevada
26 Occupational Disease Act (NODA). Except as otherwise provided by a specific statute, the
27 amount of compensation and benefits and the person or persons entitled thereto must be
28

1 determined as of the date of the accident or injury to the employee and their rights thereto
2 become fixed as of that date. *See*, NRS 616C.425; *see also*, NAC 616C.441. Indeed, NRS
3 616A.157 was enacted and became law on May 21, 2013, which is one year and two months after
4 the incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*,
5 Assembly Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada
6 Legislature intended this statute to be applied retroactively. Indeed, the enactment of this statute
7 in year 2013 indicates that at the time Felton's March 2012 left knee injury was incurred, "search
8 and rescue volunteers" were not employees with a deemed wage. Hence, at the time of Felton's
9 injury in March 2012, he would have had no deemed wage as a volunteer to consider aggregating
10 with wages from concurrent employment or would, at most, have had a deemed wage of a
11 "volunteer in program for public service" - existing at that time and allowing for \$100 average
12 monthly wage. *See* Hearings on Assembly Bill (AB) 206 - Committee on Labor and Energy, 77th
13 Leg. (Nev., March 13, and April 29, 2013).² At the time of the drafting and discussion
14 concerning the introduction of AB 206 - governing the initial passage of NRS 616A.157 - the
15
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19 ²The discussion during the 2013 legislature focused on the fact that:
20 Assembly Bill 206 establishes provisions for volunteers of county search and rescue teams to receive
21 industrial insurance based on the deemed wage of \$2,000 per month. Assembly Bill 206 is similar to
22 legislation proposed in previous sessions that awarded the same benefits to volunteer firefighters.
23 *See* Hearings on Assembly Bill (AB) 206 - Committee on Labor and Energy, 77th Leg. (Nev., April 29, 2013)(testimony
24 of Assemblyman Michael Sprinkle).

25 It was further argued that:

26 "Under NRS 616A.130, a volunteer who is injured in the course of service is technically covered as
27 a standard volunteer worker. A volunteer in the mailroom who is injured is covered under this statute
28 at a rate of \$100 per month based on the extent of his or her injuries. A volunteer on a rescue mission
is at much greater risk of injury, and we are asking that our volunteers be covered at the same rate
of volunteer firefighters."

See Hearings on Assembly Bill (AB) 206 - Committee on Labor and Energy, 77th Leg. (Nev., April 29, 2013)(testimony
of D. Eric Sprately, Washoe County Sheriff's Office). The propriety of the proposed legislation would assimilate prior
legislation and eliminate the perceived unfairness in that:

The language in NRS Chapter 616 views them as volunteer workers in programs for public service
and are compensated at a wage rate of \$100 a month. If a volunteer lost a limb, became 100 percent
disabled, or died, his family would only receive \$100 a month. We found this inappropriate.

See Hearings on Assembly Bill (AB) 206 - Committee on Labor and Energy, 77th Leg. (Nev., March 13,
2013)(testimony of D. Eric Sprately, Washoe County Sheriff's Office).

1 understanding was that a search and rescue volunteer, if not given their own specific statute for
2 deemed wage, would be considered a volunteer "in program for public service" granting a \$100
3 monthly wage. *See id.* Considering a volunteer firefighter performed similar services and already
4 had their own deemed wage of \$2000 under NRS 616A.145, the Legislature considered that this
5 proposed statute would eliminate any perceived unfairness.³ *See id.*

7 **C. The Statutes Governing the Determination of an Average Monthly Wage and**
8 **Related Employment Rule Bar Aggregation of Wages.**

9 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
10 means that the Claimant must establish the work-connection of his/her injuries, the causal
11 relationship between his/her work-connected injury and his disabilities, the extent of his/her
12 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
13 cannot prevail if the evidence is merely evenly balanced. *See* 8A Larson, *Larson's Workers'*
14 *Compensation Laws*, § 130.06(3)(a)(2006); *see also* NRS 616C.150; NRS 616A.010; NRS
15 617.358.

17 Generally, the average monthly wage for an injured employee covered under the Nevada
18 Industrial Insurance Act is governed by NRS 616A.065, which provides in part:

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been
22 received by the employee on the date of the accident or injury to the
employee, excluding remuneration from employment:

- 23 (1) Not subject to the Nevada Industrial Insurance Act or the
24 Nevada Occupational Diseases Act; and
(2) For which coverage is elective, but has not been elected; or

25 _____
26 ³ No where in the legislative history of NRS 616A.157 and considerations of its fiscal impact does the
27 Legislature even remotely contemplate that a concurrent employment (which most volunteers would likely have) would
28 effect the bottom line to be absorbed by the self-insured counties and municipalities. *Id.* Indeed, every indication is to
the contrary and the only contemplated change would solely involve exposure from a \$100 average monthly wage to a
\$2000 average monthly wage. *Id.* This is consistent with the Employer and Insurer's arguments and the Decision and
Order of the Appeals Officer in this matter.

1 (b) One hundred fifty percent of the state average weekly wage as
2 most recently computed by the Employment Security Division of the
3 Department of Employment, Training and Rehabilitation during the fiscal
year preceding the date of the injury or accident, multiplied by 4.33.

4 NRS 616A.065(1). (Emphasis added).

5 Concerning the average monthly wage (AMW) of volunteer members of the search and rescue
6 organization, the Nevada Legislature has specifically defined an "Employee" in pertinent part as
7 follows:
8

9 Volunteer members of a search and rescue organization that is under the direct
10 supervision of a county sheriff, while acting under the direction of the sheriff
or a designee of the sheriff:

11 1. In the conduct of any search and rescue operation; or

12 2. In training for such an operation, shall be deemed, for the purposes of
13 chapters 616A to 616D, inclusive, of NRS, to be employees of the county at
14 the wage of \$2,000 per month. and are entitled to the benefits of those
chapters.

15 *See* NRS 616A.157 (Emphasis added).

16 The Nevada legislature has delegated by statute to the Administrator of the Division of
17 Industrial Relations the authority to promulgate the method of determining the average monthly
18 wage. *See*, NRS 616C.420; NRS 6161A.400; and NAC 616A.420-447. Regulations define
19 average monthly wage to mean "the total gross value of all money, goods and services received
20 by an injured employee from his employment to compensate for his time or services and is used
21 as the base for calculating the rate of compensation for the injured employee." NAC 616C.420.
22 In this regard, wages which are deemed to be established in chapters 616A to 616D, inclusive, of
23 the NRS for certain groups of employees will be considered the average monthly wage when
24 applicable. *See*, NAC 616C.429.
25
26

27 The Division of Industrial Relations has also by regulation specifically allowed for the
28

1 aggregation or combining of wages in determining an employee's average monthly wage if they
2 are concurrently employed in alternative employment at the time of the subject industrial injury
3 in certain circumstances. *See* NAC 616C.447. This latter cited regulation (NAC 616C.447)
4 provides that "the average monthly wage of an employee who is employed by two or more
5 employers covered by a private carrier or by a plan of self-insurance on the date of a disabling
6 accident or disease is equal to the sum of the wages earned or deemed to have been earned at
7 each place of employment." (Emphasis added).
8

9 According to Larson's treatise on workers' compensation law, the rule adopted by a
10 majority of jurisdictions throughout the United States holds that the earnings may be combined
11 if, but only if, the various employments were "related" or "similar," otherwise these jurisdictions
12 bar aggregation of wages from dissimilar concurrent employment. *See*, A. Larson, *Larson's*
13 *Workers' Compensation Law* § 93.03[1][a] (2011). This is commonly referred to as the related-
14 employment rule.⁴ *Id.*
15

16 Nevada courts have not specifically addressed the related-employment rule as it pertains
17 to the average monthly wage and on this issue the controlling regulation, NAC 616C.447, is
18

19
20 ⁴ In *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980), the claimant sustained a
21 compensable injury while working at a service station while concurrently employed as a janitor with the school district.
22 In holding that the his compensation was properly based on service station wages rather than the combined incomes of
23 both employments, the Arkansas Court of Appeals noted that "the risk insured by a policy of workers' compensation
24 could not be determined with any degree of accuracy if compensation rates were computed on incomes outside the
25 covered employment" and that "[t]he premiums received by the insurance carrier to cover the risk must be determinable."
26 *Hart's Exxon*, 268 Ark. at 965. The court further explained that to remain solvent, the insurance carriers must receive
27 a premium "commensurate with the risk." *Id.* (emphasis in original).

28 In *Thompson v. STS Holdings*, 711 S.E. 2d 827 (N.C. Ct. App. 2011) in applying the related employment rule
even in the face of a vastly lower weekly wage for the employee, the court reasoned that "the General Assembly enacted
our workers' compensation act considering what it deemed "fair and just" to both parties." *Thompson*, 711 S.E.2d at 832.
The court noted that had the Legislature intended to authorize the Commission in the exceptional cases to "combine those
wages from any concurrent employment, we think it would have been equally specific." *Id.* (emphasis in original). *See*
also, *In the Matter of Russell*, 37 E.C.A.B. 567 (1986)(federal appeals board recognizing the majority rule holding that
in "[f]ollowing the precedents of the New York courts and of this Board, and the majority rule in other jurisdictions,
earnings from dissimilar private employment cannot be considered in computing appellant's pay rate for purposes of
compensation").

1 silent. However, in *Ayala v. Caesars Palace*, 119 Nev. 232, 71 P.3d 490 (2003), the Nevada
2 Supreme Court suggests that it imports some significance as to whether concurrent employments
3 are related or similar when making the determination to combine concurrent salaries in
4 calculating an average monthly wage. In *Ayala*, the claimant fractured her ankle while working
5 as a banquet waitress for Caesars Palace. *See*, 119 Nev. at 234. She provided wage information
6 to the third party administrator (TPA) that included income from her work as a cashier for the
7 Mirage. The claimant's combined income was initially utilized by the TPA to determine the
8 average monthly wage. Upon further investigation, however, the TPA issued another
9 determination with a reduced average monthly wage excluding the claimant's wages earned at
10 the Mirage cashier job. The claimant appealed her reduced average monthly wage to a hearing
11 officer, who remanded the matter for further investigation, and instructed the TPA to use a period
12 of one year when recalculating the average monthly wage. *See Id.*

15 Thereafter, the TPA issued another determination reflecting the average monthly wage
16 again utilizing only the claimant's earnings from Caesars, and it appears the TPA only used a
17 period of seven (7) months, instead of one (1) year as instructed by the hearing officer. The
18 claimant appealed. The Nevada Supreme Court, while concluding that the wage adjustment was
19 warranted, ultimately found that the record failed to reflect evidence that the TPA utilized the
20 correct one-year time period as directed by the hearing officer for the determination of the
21 average monthly wage and, thus, the case was remanded for the purpose of requiring the TPA to
22 recalculate the average monthly wage using an earnings period of one year. More significantly to
23 the issue at hand however, the court noted at the end of the opinion that "the record reflects that
24 Ayala had left her position at the Mirage before the injury, so her employment [at the Mirage]
25 was not a concurrent employment under NAC 616C.447. *Furthermore, she worked there as a*
26
27
28

1 cashier, not as a banquet waitress. Therefore, CDS properly excluded those wages from its
2 calculation.” See, 119 Nev. at 240. The *Ayala* decision supports the contention that the Nevada
3 Supreme Court would be inclined to follow the related-employment rule, and would also find
4 that the position of a volunteer search and rescue is very unique indeed.
5

6 In either case, therefore, it is wise to evaluate the two-stated positions relative to a
7 concurrently employed volunteer firefighter who has been given a statutorily-prescribed
8 constructive or deemed wage. Volunteer firefighters, like search and rescue volunteers, while not
9 technically employees,⁵ are deemed employees of a particular municipality, county, etcetera, by
10 statute. Specifically, NRS 616A.145, provides:
11

12 Volunteer firefighters belonging to a regular organized and recognized fire
13 department, while engaged in their duties in any voluntary community service
14 which they may undertake, and while acting under the direction of the fire chief
15 or any of the assistants of the fire chief in the protection of life or property,
16 during fire, flood, earthquake, windstorm, ambulance service or other rescue
17 work, shall be deemed, for the purpose of chapters 616A to 616D, inclusive, of
18 NRS, employees of the city, town, county or district so recognizing them, at the
19 wage of \$2,000 per month, and are entitled to the benefits of those chapters upon
20 such city, town, county or district's complying therewith.

21 NRS 616A.145

22 Thus, for purposes of the Nevada Industrial Insurance Act (NIIA), the legislature has established
23 for voluntary firefighters a constructive or deemed monthly wage of \$2,000.00, for calculation of
24 benefits allowed under the Act identical to that of a search and rescue volunteer. *Id.*

25 Nevada has not specifically addressed the issue whether a volunteer firefighter can
26 combine his deemed average monthly average wage with earned wages from his concurrent
27 employment, presumably under NAC 616C.447, in calculating the average monthly wage for an

28 ⁵ “[A] person providing purely gratuitous voluntary service is not an ‘employee’ and has not entered into an employment relationship with the person receiving the services for purposes of workers' compensation acts.” 82 Am. Jur. 2d Workers' Compensation § 127 (2012).

1 injury sustained while firefighting. However, it seems numerous jurisdictions have found that
2 while volunteer firefighters are usually deemed by statute to be employees under their workers'
3 compensation acts for purposes of benefits they are entitled to under the state's workers'
4 compensation acts, they are not necessarily considered employees entitled to combine concurrent
5 incomes, even where it is generally statutorily allowed. Scholarly publications have recognized
6 the trend that "[w]orkers' compensation benefits are not allowed to compensate a volunteer for
7 an inability to pursue unrelated concurrent employment for another employer." 100 C.J.S.
8 Workers' Compensation § 524 (citing *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d
9 842 (1993)); see also *Snyder v. Workmen's Compensation Appeal Board*, 654 A.2d 641 (Pa.
10 Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation
11 Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

14 In *New Bethlehem*, the claimant suffered a disabling injury during the course of his work
15 as a volunteer firefighter and was concurrently employed at a local manufacturing company. See
16 *New Bethlehem*, 654 A.2d at 267-68. The Pennsylvania workers' compensation act (like
17 Nevada's) contained both a statute specifically characterizing volunteer firefighters as deemed
18 employees with deemed wages for purposes of benefits under the act⁶ and had a statute generally
19 allowing the combination of wages from concurrent employment.⁷ *Snyder*, 654 A.2d at 642. The
20 court, in concluding that a volunteer firefighter who is also engaged in compensated employment
21 is not in a "concurrent employment situation," focused on the language of the two statutes and
22 rules of statutory interpretation. The court noted that "where there are two statutory provisions in
23
24

25
26 ⁶ The statute provides that when injured during the course of employment as a volunteer firefighter "there is
27 an irrebuttable presumption that his wages shall be at least equal to the Statewide average weekly wage for the purpose
of computing his compensation..." 77 P.S. § 1031(b).

28 ⁷ "Where the employee is working under concurrent contracts with two or more employers, his wages from all
such employers shall be considered as if earned from the employer liable for compensation." 77 P.S. § 582(e).

1 conflict with each other, and this conflict is irreconcilable, the specific provision controls over
2 the general provisions.” 1 Pa.C.S. § 1933 and *Paxon Maymar, Inc. v. Pennsylvania Liquor*
3 *Control Bd.*, 11 Pa.Commonw. Ct. 136, 312 A.2d 115 (1973). Viewing the two statutes as
4 irreconcilable, the court explained that the statute relating to the combination of concurrent
5 wages was a general rule of aggregation and that the specific statute allowing for a deemed wage
6 for a volunteer firefighter was a specific and narrow “exception to that rule, as a person who
7 performs the task of volunteer fire fighting as well as working a primary job is not in a
8 concurrent employment situation.” *New Bethlehem*, 654 A.2d at 268.

10 The Commonwealth Court of Pennsylvania, in *Snyder v. Workmen's Compensation*
11 *Appeal Bd.*⁸ and *Borough of Hensdale v. Workmen's Compensation Appeal Bd.*⁹ affirmed,
12 without mention of the statutory construction analysis, the natural and statutory differentiation
13 which treats volunteer firefighters as “differently from other claimants who are permitted to add
14 their concurrent wages for the purpose of calculating their average weekly wage under Section
15 309(e) of the Act, 77 P.S. § 582(e), up to the amount which would secure for them the greatest
16 maximum benefit, that is, [granting] benefits which equal the statewide average weekly wage.”
17 *Borough*, 659 A.2d at 76.

20 A similar logic and statutory interpretation was employed by the Supreme Court of
21 Connecticut in *Going v. Cromwell Fire District*¹⁰ (1970) and again in *Wislocki v. Town of*
22 *Prospect*¹¹ (1993). The Connecticut workers' compensation act also contained both a statute

25 ⁸ 654 A.2d 641 (Pa. Commonw. Ct. 1995).

26 ⁹ 659 A.2d 70 (Pa. Commonw. Ct. 1995).

27 ¹⁰ 159 Conn. 53, 267 A.2d 428 (1970).

28 ¹¹ 224 Conn. 479, 619 A.2d 842 (1993).

1 specifically characterizing volunteer firefighters as deemed employees with deemed wages for
2 purposes of benefits under the act (C.G.S.A. § 7-314(a))¹² and a statute generally allowing the
3 combination of wages from concurrent employment (C.G.S.A. § 31-310).¹³ Notably, the court in
4 *Going* stressed that:

5
6 It is significant that section 31-310, as quoted above, provides in part that the
7 employee's 'average weekly wages shall be calculated upon the basis of wages
8 earned from all such employers' but that section 7-314a (b), in this connection,
9 provides a different method of computation, viz., '(f)or the purpose of this section,
10 the average weekly wage of a volunteer fireman shall be construed to be the
11 average production wage in the state as determined by the labor commissioner
12 under the provisions of section 31-309.'

13 *Going*, 159 Conn. at 60.

14 The court reasoned that it was plausible to suppose that the legislature devised the latter
15 method of computation to protect the volunteer firefighter in cases where wages "actually"
16 earned by them, if any, might be wholly inadequate as a basis for determining their disability
17 benefits. *Id.* The Connecticut Supreme Court summarized that "[w]here there are two
18 inconsistent methods of computation such as we have in the present case, the method of
19 computation which covers the subject matter in specific terms, herein as particularly applied to

20 ¹² C.G.S.A. § 7-314(a)(b) provides that "[f]or the purpose of this section, the average weekly wage of a
21 volunteer fireman shall be construed to be the average production wage in the state as determined by the labor
22 commissioner under the provisions of section 31-309."

23 ¹³ The Connecticut statute governing the combining of wages from concurrent employment allows aggregation
24 up to the legislative maximum average weekly wage in a pro rata calculation which may involve the Second Injury Fund
25 but otherwise simply allows for combining wages from concurrent employers. C.G.S.A. § 31-310, states in pertinent
26 part:

27 Where the injured employee has worked for more than one employer as of the date of the injury
28 and the average weekly wage received from the employer in whose employ the injured employee was
injured, as determined under the provisions of this section, are insufficient to obtain the maximum
weekly compensation rate from the employer under section 31-309, prevailing as of the date of the
injury, the injured employee's average weekly wages shall be calculated upon the basis of wages earned
from all such employers in the period of concurrent employment not in excess of fifty-two weeks prior
to the date of the injury...The remaining portion of the applicable compensation rate shall be paid from
the Second Injury Fund upon submission to the Treasurer by the employer or the employer's insurer of
such vouchers and information as the Treasurer may require.

1 volunteer firemen, will prevail over the general language of another statute which might
2 otherwise prove controlling.” *Going*, 159 Conn. at 60.

3
4 In the present case, as herein previously cited, NAC 616C.447 generally allows for the
5 aggregation of wages from concurrent employments and NRS 616A.145 specifically establishes a
6 deemed monthly wage for volunteer firefighters of \$2,000.00. As explained below, alternative
7 arguments also exist to support the contention that Nevada law, concerning the average monthly
8 wage of a volunteer firefighter who is concurrently employed in the private sector and is injured
9 while firefighting, does not require or allow combining the deemed average monthly wage of the
10 volunteer position and the actual wages received (or wages earned) from concurrent employment
11 in determining the average monthly wage utilized in the workers’ compensation claim.¹⁴

12
13 **D. The Plain Language of the Statute Bars Aggregation of Wages.**

14 The plain language of the governing statute or regulation must control. The Nevada
15 Supreme Court has long held that “[w]hen a statute is clear and unambiguous on its face, a court
16 may not go beyond language of statute in determining legislature’s intent.” *Roberts v. State*, 104
17 Nev. 33, 752 P.2d 221 (1988). The relevant statute and regulation (NRS 616A.065; NAC
18 616C.447) specifically utilize the term “or”, not “and”, or “and/or”. As such the cited statute and
19 regulation allow for the average monthly wage to be considered the “sum of the wages earned”¹⁵
20
21

22
23 ¹⁴ The propriety of the application of this rule can be seen in a converse example. One can only imagine the
24 reaction of a private employer thrown into such a situation as Felton intends to place Douglas County. A private
25 employer insures his employees for workers’ compensation with the expectation of replacing their potential lost wages
26 from a work-related injury through workers’ compensation insurance that is based on the wages the employees are paid
27 by that employer. Upon injury and disability from such private employment, however, the claimant alleges that he
28 happens to also be a volunteer firefighter when not employed by the private employer. The claimant then alleges that
his salary should be supplemented by an amount considering not only his earned wages through private employment but
also the deemed wages of his concurrent employment as a volunteer firefighter. Such an aggregation would not be
allowed.

¹⁵ NRS 616A.065 describes earned wages as “the monthly wage actually received”.

1 or the “sum of the wages deemed to have been earned.”¹⁶ However, the plain language of the
2 statute and regulation do not mandate or permit that the average monthly wage be considered
3 “the sum of wages earned and wages deemed to be earned”, as the two represent two different
4 classes of wages. This plain language argument against the aggregation of a volunteer
5 firefighter’s deemed wage and any concurrent earned wage (or wage actually received) alone
6 obviates the need for further theories of defense. *See also*, NAC 616C.429 (wages which are
7 deemed to be established in chapters 616A to 616D, inclusive, of the NRS for certain groups of
8 employees will be considered the average monthly wage when applicable).
9

10
11 **E. Statutory Construction Principles Bar Aggregation of Wages.**

12 Nevada recognizes the general principle that “where a general and a special statute, each
13 relating to the same subject, are in conflict and they cannot be read together, the special statute
14 controls.” *Laird v. State of Nevada public Employees Retirement Board*, 98 Nev. 42, 639 P.2d
15 1171 (1982); *see also* 73 Am. Jur. 2d Statutes § 170 (Explaining that “[w]ith respect to a conflict
16 arising between a statute dealing generally with a subject and another dealing specifically with a
17 certain phase of it, the specific legislation controls in a proper case”). Thus, the above logic and
18 rules of statutory construction being applied, the two mandates are irreconcilable and the statute
19 establishing a specific deemed wage for volunteer firefighters would control over the general rule
20 of combination of wages. This application of statutory construction is consistent with the cases
21 herein previously discussed.
22

23
24 However, the present analysis also involves the interplay of a statute and an
25 administrative regulation. Nevada has recognized that the rules of statutory construction do
26 apply to administrative regulations. *Meridian Gold Co. v. State ex rel. Department of Taxation*,

27
28 ¹⁶ NRS 616A.145 describes deemed wages as “the monthly wage deemed to have been received”.

1 119 Nev. 630, 81 P.3d 516 (2003). As such, slightly different rules of statutory construction
2 could be preemptively applied before discussing the rules of construction relating to general and
3 specific statutes. Ultimately, however, both principles lead to the same result. It is a well settled
4 principle of statutory construction that "an administrative rule or regulation must be consistent
5 with the statute under which it is promulgated and with other laws and constitutional provisions."
6 73 C.J.S. Public Administrative Law and Procedure § 172. Regulations cannot be read to expand
7 the scope of the statutes governing them and those that cannot be read any other way are invalid.
8
9 *Id.*; see also *Meridian Gold*, 119 Nev. 630, 81 P.3d 516 (2003). The court has stressed that

10
11 [w]hen determining the validity of an administrative regulation, courts
12 generally give 'great deference' to an agency's interpretation of a statute that
13 the agency is charged with enforcing." However, we "will not hesitate to
14 declare a regulation invalid when the regulation violates the constitution,
15 conflicts with existing statutory provisions or exceeds the statutory authority
16 of the agency or is otherwise arbitrary and capricious."

17 *Meridian Gold*, 119 Nev. at 635.

18 Nevada has recently addressed this rule of construction by invalidating an administrative
19 regulation that was found to conflict with the unambiguous language of its governing statute. In
20 *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011), the court
21 found that the plain language of the governing statute, NRS 616C.490(9), required the rating
22 physician to reconcile the different editions of the AMA Guides (hereinafter "Guides") by first
23 recalculating the percentage of the previous impairment rating using the current edition of the
24 Guides and then subtracting that recalculated percentage from the current level of total
25 impairment under the current edition of the Guides. However, the appeals officer, relying on a
26 regulation that addressed apportionment of PPD benefits, NAC 616C.490(4), concluded that the
27 claimant's prior impairment rating, which was calculated using an older version of the AMA
28 Guides, should be deducted from his current overall impairment rating, which was calculated

1 using the current edition of the AMA Guides. In response, the Nevada Supreme Court stressed
2 that while usually it gives deference to an agency's interpretation of the governing statutes, "we
3 will not defer to the agency's interpretation if, for instance, a regulation 'conflicts with existing
4 statutory provisions or exceeds the statutory authority of the agency.'" *Blake*, 127 P.3d at 697.
5
6 The Court explained that because NRS 616C.490(9) requires re-computation of the percentage of
7 disability of the previous injury, NAC 616C.490(4) was in direct conflict with the governing
8 statute. Therefore, "no deference to the agency's interpretation is due, and we conclude that NAC
9 616C.490(4) is invalid." *Blake*, 127 P.3d at 697.

10
11 In the present case, NRS 616A.065 specifically and unambiguously defines "average
12 monthly wages" as "the lesser of: (a) The monthly wage actually received or deemed to have
13 been received by the employee on the date of the accident or injury to the employee...; or (b) One
14 hundred fifty percent of the state average weekly wage." (Emphasis added). To the extent that
15 NAC 616C.447 can be read to apply to volunteer firefighters and expand the scope of NRS
16 616A.065 so as to permit aggregation of earned and deemed wages, it would be invalid.
17 Application of the regulation, NAC 616C.447, would necessarily and impermissibly expand the
18 scope of the statutorily defined term "average monthly wage" as defined by the Nevada
19 Legislature as "the lesser of the monthly wage actually received or deemed to have been
20 received by the employee on the date of the accident or injury to the employee." NRS 616A.065.
21 Additionally, NAC 616C.447 (allowing for concurrent wages) modifies and conflicts with the
22 state statute specifically providing an average monthly deemed wage of \$2,000.00 for the
23 volunteer fire fighter under NRS 616A.145; and this latter statute does not address, allow for or
24 contemplate aggregation of wages from concurrent private/public employment. The court
25 decisions herein previously cited in this memorandum did not have to address this conflict
26
27
28

1 between a statute and regulation, because the two conflicting provisions in the cited decisions
2 were both statutes, and to resolve the statutory conflict the courts applied statutory construction
3 rules concerning general and specific substantive conflicts.
4

5 **F. Public Policy is Against Exposing Public Employers to Unknown Liability**
6 **Concerning Which Insurance Coverage Cannot be Obtained in Advance and**
7 **for Which Premiums have Not Been Paid.**

8 Lastly, there is no evidence of any public policy adopted by the legislature showing an
9 intention that Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and
10 unforeseen liabilities based on possible alternative employment by its volunteers. Likewise,
11 there in no evidence of any public policy adopted by the legislature showing an intention to
12 permit through administrative regulations modification of the unambiguous statutory definition
13 of average monthly wage.

14 **III. CONCLUSION**

15 In accordance with all of the foregoing, Douglas County and PACT respectfully request
16 this Court to enter an order that affirms the Appeals Officer's February 4, 2015, decision and
17 order made under Appeal No. 47863-WDD.
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that the preceding document filed in above-entitled court does not contain the social security number of any person.

DATED this 7th day of August, 2015.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER



By
ROBERT BALKENBUSH, ESQ.
Nevada Bar No. 01246
JOHN D. HOOKS, ESQ.
Nevada Bar No. 11605
Thorndal, Armstrong,
Delk, Balkenbush & Eisinger
Attorneys for: Douglas County and PACT

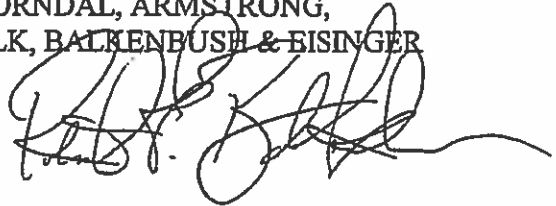
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IV. CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this answering 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 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 7th day of August, 2015.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER



By:
ROBERT F. BALKENBUSH, ESQ.
JOHN D. HOOKS, ESQ.
Attorney for Douglas County and Public Agency
Compensation Trust


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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and
correct copy of the foregoing document, addressed to:

Edward L. Oueilhe, Esq.
1000 East William Street, Suite 208
Carson City, Nevada 89701

DATED this 7th day of August, 2015.


An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

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

1 Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
(775) 684-7555
4 Attorney for Petitioner,
Gregory Felton
5

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6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,

10 Petitioner,

11 vs.

Case No. 15 OC 00048 1B

12 DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
13 OFFICE of the DEPARTMENT OF
ADMINISTRATION,
14

Dept. No. I

15 Respondents.
16

17 PETITIONER'S REPLY BRIEF
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20

21
22 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
23 Nevada Attorney for Injured
Workers
24 1000 E. William Street, #208
Carson City, Nevada 89701
25
26 Attorney for Petitioner,
Gregory Felton
27
28

Robert F. Balkenbush, Esq.
Nevada Bar No. 04665
Thorndal Armstrong Delk
Balkenbush & Eisinger
6590 S. McCarran Blvd., #B
Reno, Nevada 89505

Attorney for Respondents,
Douglas County and PACT

1 DISCLOSURE STATEMENT
2 (NRAP 26.1)

3 The undersigned counsel of record certifies that the
4 following are persons and entities as described in NRAP 26.1(1)
5 and must be disclosed. These representations are made in order
6 that the judges of this court may evaluate possible
7 disqualifications or recusal.


8 Respondents' parent corporations: None

9 Firms having appeared: Nevada Attorney for Injured Workers

10 Respondents' pseudonyms: None

11 SUBMITTED this 7th day of October, 2015.

12 NEVADA ATTORNEY FOR INJURED WORKERS
13 Attorney for Petitioner
14 1000 E. William, Suite 208
15 Carson City, Nevada 89701

16 By: 
17 Edward L. Oueilhe, Esq., deputy
18 State Bar No. 08218

19
20
21
22
23
24
25
26
27
28
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

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

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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

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I.
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NEVADA ATTORNEY FOR INJURED WORKERS
 1000 East William Street, Suite 208
 Carson City, NV 89701 (775) 684-7555
 2300 South Rancho Drive, Suite 230
 Las Vegas, NV 89102 (702) 486-2030

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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

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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

1 COMES NOW Petitioner, GREGORY FELTON, hereinafter "Mr.
2 Felton," by and through his attorney, Edward L. Oueilhe, Esq.,
3 deputy of the Nevada Attorney for Injured Workers, and hereby
4 submits his Reply Brief as follows:

5 II.

6 JURISDICTIONAL STATEMENT

7 As authorized by NRS 233B.130 (2), the First Judicial
8 District Court has jurisdiction to review the February 4, 2015,
9 Decision and Order of the Appeals Officer.

10 III.

11 STATEMENT OF THE ISSUES

12 1. Whether the proper standard for review in regards
13 to the application of NAC 616C.447 is independent review for an
14 error of law?

15 2. Whether the Appeals Officer's order presents an
16 error of law because it fails to properly sum Mr. Felton's earned
17 wage and deemed wage as required by NAC 616C.447 to determine
18 average monthly wage?

19 IV.

20 STATEMENT OF THE CASE

21 In the interest of brevity, the Petitioner refers the
22 Court to the Statement of the Case in Petitioner's Opening brief
23 and states the following:

24 The Petitioner filed his Opening brief with the Court
25 on June 2, 2015. The parties then stipulated to permit the
26 Respondent to have until August 7, 2015, to file Respondent's
27 Answering Brief. The Respondent filed an Answering Brief on
28 August 7, 2015. The parties then stipulated to permit Petitioner

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

1 to have an enlargement of time, until October 8, 2015, to file
2 his Reply Brief. The Court entered an Order on September 10,
3 2015, extending Petitioner's briefing deadline until October 8,
4 2015.

5 V.

6 STATEMENT OF FACTS

7 In the interest of brevity, the Petitioner refers the
8 Court to the Statement of Facts contained within Petitioner's
9 Opening brief. In addition, Respondent mistakenly refers to or
10 states that petitioner Mr. Felton was a volunteer firefighter.
11 As a point of clarity, Mr. Felton was a volunteer search and
12 rescue person when he was injured on March 6, 2012. ROA 26-27.

13 VI.

14 ARGUMENT

15 A. THE PROPER STANDARD FOR REVIEW IN
16 REGARDS TO THE APPLICATION OF NAC
17 616C.447 IS INDEPENDENT REVIEW
18 FOR AN ERROR OF LAW.

19 In the interest of brevity, the Petitioner
20 incorporates the standard of review contained within Petitioner's
21 Opening brief. However the parties are not in agreement
22 regarding the standard of review. Respondent misstates the
23 authority cited in City of Reno v. Reno Police Protective Ass'n,
24 118 Nev. 889, 900, 59 P.3d 1212, 1219-1220 (2002) as to the
25 Court's scope of independent review. The City of Reno Court
26 stated in relevant part:

27 The construction of a statute is a question
28 of law, and therefore, independent review is
appropriate. However, this court will not
readily disturb an administrative
interpretation of statutory language. This

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

1 court has held that "an agency charged with
2 the duty of administering an act is
3 impliedly clothed with power to construe it
4 as a necessary precedent to administrative
5 action [and] great deference should be given
6 to the agency's interpretation when it is
7 within the language of the statute." The
8 EMRB has the authority to interpret and
9 administer NRS Chapter 288.

6 Id., (citations omitted). Construction of a statute is a
7 question of law. Id. Although an agency is clothed with the
8 power to construe the law, deference is only given to the
9 agency's interpretation when it is within the language of a
10 statute. Id.

11 B. APPEALS OFFICER COMMITTED AN
12 ERROR OF LAW BY FAILING TO
13 PROPERLY SUM MR. FELTON'S DEEMED
14 WAGE AND HIS CONCURRENT WAGES WHEN
15 CALCULATING AVERAGE MONTHLY WAGE
16 AS DICTATED BY NAC 626C.447.

15 NRS 616A.157 is the search and rescue deemed wage
16 statute. Respondent argues statutory construction of NRS
17 616A.157 requires a review of legislative intent, and the
18 legislature when enacting NRS 616A.157 did not intend to permit
19 the summing of concurrent employment when calculating a
20 claimant's average monthly wage ("AMW"). This argument fails for
21 four reasons.

22 First, the Appeals Officer's decision and order
23 ("D&O") does not rely upon NRS 616A.157 when construing NAC
24 616C.447. Judicial review of a final decision of an agency must
25 be confined to the record. NRS 233B.135 (1)(b). Second, the
26 respondent failed to argue NRS 616A.157 construction during the
27 hearing or in briefing. The Nevada Supreme Court does not permit
28 parties to make arguments for the first time on appeal. State ex

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

1 rel. State Bd. of Equalization v. Barta, 124 Nev. 612, 621, 188
2 P.3d 1092, 1098, 2008 (2008) (a party waives an argument made
3 for the first time to the district court on judicial review).
4 Third, the Court is not permitted to consider legislative intent
5 when NRS 616A.157 is plain and unambiguous. Reno v. Reno
6 Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989) (when the
7 language of a statute is plain and unambiguous, a court should
8 give that language its ordinary meaning and not go beyond it).
9 Finally had the legislature intended to exclude the summing of
10 the deemed wage in NRS 616A.157 and concurrent employment, the
11 legislature could have. Where the legislature could have easily
12 inserted exception language into the statute but chose not to,
13 the Court will not judicially create an exception. See
14 Department of Motor Vehicles & Pub. Safety v. Brown, 104 Nev.
15 524, 526, 762 P.2d 882, 883 (1988).

16 NRS 616A.065 does not require concurrent employment be
17 related before a deemed and earned wage are to be summed when
18 calculating an AMW. Nor is there a related employment rule in
19 the Nevada Industrial Insurance Act. The Appeals Officer
20 committed error when she concluded that NRS 616A.065 and NAC
21 616C.447 do not require that deemed and earned wages be summed as
22 they are different categories of wages, and there is conflict
23 between the statutes and the Administrator's regulations
24 calculating AMWs. ROA 10. NRS 616A.065 provides a general
25 definition of AMW in which deemed wages and received wages are
26 treated as equivalent.

27 NRS 616A.065 does not state that deemed wages or
28 earned wages cannot be combined in concurrent employment

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) 486-2030

1 situations. In addition, the language in NRS 616A.065 evidences
2 the Legislature did not intend to create two different categories
3 of wages where summed concurrent wages must be from related
4 employment. The plain language in NRS 616A.065 shows that the
5 Legislature knows how to separate categories of wages and place
6 limits on AMWs when they intend to. NRS 616A.065 states in
7 relevant part:

8 1. Except as otherwise provided in
9 subsection 3, "average monthly wage" means
the lesser of:

10 (a) The monthly wage actually received or
11 deemed to have been received by the employee
12 on the date of the accident or injury to the
employee, excluding remuneration from
employment;

13 (B) One hundred fifty percent of the state
14 average weekly wage as most recently
15 computed by the Employment Security Division
16 of the Department of Employment, Training
and Rehabilitation during the fiscal year
preceding the date of the injury or
accident, multiplied by 4.33.

17 2. For the purposes of subsection 1:

(b) "Wage":

18 (1) Does not include any amount paid by an
19 employer for health insurance that covers an
employee or the dependents of the employee,
or both.

20 (2) Is increased by the amount of tips
21 reported by an employee to his or her
22 employer pursuant to 26 U.S.C. § 6053(a),
except:

23 (I) Tips in a form other than cash; and
24 (II) Tips in cash which total less than \$20
per month.

25 3. For the purpose of increasing
26 compensation for permanent total disability
pursuant to NRS 616C.465 or increasing death
benefits pursuant to NRS 616C.520 . . .

27 The fact that the Legislature put deemed wages and
28 actually received wages in the same category/subsection evidences

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

1 that deemed wages and received wages are to be considered
2 equivalent to one another and given equal effect. Cleghorn v.
3 Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262, (1993) (when the
4 language of a statute is clear on its face, its intention must be
5 deduced from such language). NRS 616A.065 does not address or
6 contemplate the concept of concurrent employment or whether that
7 concurrent employment must be related before concurrent wages are
8 to be summed when calculating an AMW. A reviewing court should
9 not go beyond the reasonable import of the words of a statute.
10 Los Angeles v. Eighth Judicial Dist. Court, 58 Nev. 1, 13, 67
11 P.2d 1019, 1023 (1937); and State v. Loveless, 62 Nev. 17, 23,
12 136 P.2d 236, 239 (1943).

13 The appeals officer and the respondent cite generally
14 to Larson's Workers' Compensation Law, arguing that concurrent
15 employment must be related or similar before wages may be summed
16 in an AMW calculation. The AO's order, currently under review,
17 fails to include a factual finding about the similarity of Mr.
18 Felton's concurrent employment. The Supreme Court has opined
19 about this problem recently stating, "[h]ere, under the plain and
20 unambiguous language of NRS 233B.125, the appeals officer's order
21 should have 'include[d] findings of fact and conclusions of law,
22 separately stated.'" Elizondo v. Hood Mach., Inc., 129 Nev. Adv.
23 Rep. 84,3, 312 P.3d 479, 482 (2013) (citation omitted). A proper
24 order cannot simply opine about a legal issue with no finding of
25 fact about the issue.

26 Although the appeals officer and respondent rely upon
27 Larson's, they omit pertinent language from the summary of law
28 found in Larson's which states:

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

1 The majority rule, by a very narrow
2 numerical margin is that the earnings may be
3 combined if, but only if, the employments
4 were "related" or "similar." A substantial
and growing minority rule is that the
earnings may be combined whether or not the
employments were related or similar.

5 § Larson's Workers' Compensation Law § 93.03
6 [1] [a] (Emphasis added).

7 If Larson's is accurate, the very narrow margin will
8 soon be eclipsed by the growing rule that concurrent jobs do not
9 need to be related or similar for an injured worker to have the
10 concurrent wages included in the AMW calculation. It is
11 arbitrary that the AO's order cites to Larson's for the idea that
12 a given position is held by a majority, but then specifically
13 ignore Larson's where the similar employment requirement is
14 criticized as unfair. See Larson's § 93.03[1] [c] - [1] [g].

15 Respondent cites to cases from other jurisdictions
16 involving volunteer firemen and whether a fireman's deemed and
17 actual wages may be combined. Petitioner is not a fireman. The
18 courts in different states arrive at very different outcomes
19 regarding AMW calculations. See the list of jurisdictions
20 rejecting the employment related or similar rule at Larson's
21 Digest Ch. 93 §93.03D[1] [a]. Each court is interpreting the very
22 different statutes and laws which locally control the combination
23 of concurrent wages. In Nevada, the legislature placed
24 responsibility over AMW calculation methods with the
25 Administrator via NRS 616C.420, and the Administrator in turn
26 promulgated NAC 616C.447.

27 To this point, there is no reason to look to a
28 secondary source or other case law when NRS 616C.420 required the

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 200
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2030

1 administrator to provide by regulation for a method of
2 calculating an AMW. The regulation, NAC 616C.447, clearly states
3 that concurrent wages are to be summed with no reference to the
4 similarity of the concurrent employment.

5 The respondent cites to a footnote containing dictum
6 in Ayala v. Caesars Palace, 119 Nev. 232, 240, 71 P.3d 490, 495,
7 Fn. 14 (2003), and then speculates that the Supreme Court might
8 adopt a related employment rule where the legislature has not
9 done so. The Court will not adopt a related employment rule,
10 where the legislature has not done so. See, Weaver v. State
11 Indus. Ins. Sys., 104 Nev. 305, 306, 756 P.2d 1195, 1195
12 (1988) (because workers' compensation is uniquely legislative, the
13 Court refused to imply provisions not expressly included in the
14 legislative scheme).

15 In addition, "dictum is not controlling." St. James
16 Vill., Inc. v. Cunningham, 125 Nev. 211, 216, 210 P.3d 190, 193
17 (2009) (citation omitted). "A statement in a case is dictum when
18 it is "unnecessary to a determination of the questions
19 involved.'" Id., citing Stanley v. Levy & Zentner Co., 60 Nev.
20 432, 448, 112 P.2d 1047, 1054 (1941). The Ayala Court's FN 14
21 was appended to the Courts holding that the matter be remanded
22 because the agency ruling was without substantial evidence.
23 Ayala, at 240. The issue of related employment was not necessary
24 to the Ayala Court's determination.

25 The question whether the current Nevada Court might
26 create a similar employment rule does not arise in the current
27 matter because NRS 616C.420 and NAC 616C.447 are not ambiguous.

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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

1 There is no conflict between the general statute, NRS
2 616A.065 and NAC 616C.470. As described above NRS 616A.065 is a
3 general definition statute requiring wages either paid or deemed
4 be included in an AMW calculation. NRS 616A.065 also limits
5 maximum AMW amount. NRS 616A.065 does not address or contemplate
6 the concept of concurrent employment.

7 The Legislature in NRS 616C.420, a more specific
8 statute, required the Administrator to provide by regulation a
9 method of determining an AMW. The Administrator did so in
10 enacting NAC 616C.420 through NAC 616C.447. NAC 616C.447 sets
11 forth the method for calculating wages from concurrent
12 employment. NAC 616C.447, clearly states that concurrent wages
13 are to be summed with no reference to the similarity of the
14 concurrent employment. "The average monthly wage of an employee
15 . . . on the date of the disabling accident or disease is equal
16 to the sum of wages earned or deemed or deemed to have been
17 earned at each place of employment. NAC 616C.447 (emphasis
18 added)." Under NAC 616C.447, wages deemed or earned from each
19 place of employment are required to be summed when an average
20 monthly wage is to be calculated. Statutes dealing specifically
21 with a subject prevails over a general provision. State Indus.
22 Ins. Sys. V. Surman, 97 Nev. 366, 368, 741 P.2d 1357, 1359
23 (1987). The resulting regulation specifically orders the
24 combining of deemed and received wages for concurrent employment
25 when calculating AMW.

26 There is no conflict with regard to summing of
27 concurrent AMW's (required by NAC 616C.447) with NRS 616A.065 and
28 NRS 616A.157. NRS 616A.065 was enacted before the Legislature

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 (703) 486-2830

1 enacted NRS 616C.420, which required the Administrator to enact a
2 regulatory scheme- NAC 616C.447 calculating AMW's. Section 1 of
3 chapter 389, Statutes of Nevada 1973, at page 530; and, Section 1
4 of chapter 560, Statutes of Nevada 1981, at page 1196. The
5 Legislature enacted NRS 616A.157 after NRS 616C.420 and NAC
6 616C.447 were enacted.

7 If there was a conflict of law between the statutes
8 and the AMW regulations, the Legislature certainly could have
9 acted in 2013 when the Legislature enacted NRS 616A.157. As the
10 Supreme Court has stated, "[i]t is presumed that in enacting a
11 statute the legislature acts with full knowledge of existing
12 statutes relating to the same subject." Boulder City v. General
13 Sales Drivers, Local Union No. 14, 101 Nev. 117, 118-119, 694
14 P.2d 498, 500 (1985).

15 It must be presumed that when the Legislature required
16 the Administrator to come up with a method of determining average
17 monthly wages in NRS 616C.420, the Legislature was aware of the
18 language in NRS 616A.065. Likewise, the Legislature did not
19 intend for NRS 616A.065 to control the calculation of AMW when
20 the Legislature in NRS 616C.420 required the Administrator by
21 regulation to determine the method for calculating an AMW. The
22 resulting regulation, NAC 616C.447, requires deemed and received
23 wages for concurrent employment be summed when calculating an
24 AMW. It cannot be argued the more specific NAC 616C.447 does not
25 prevail over the general definition statute NRS 616A.065.

26 The appeals officer states that NAC 616C.447 might be
27 deemed to exceed, modify and conflict with NRS 616A.065 and the
28 search and rescue statute NRS 616A.157. ROA 11. Respondents

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

1 argue that NAC 616C.447 expands the scope of NRS 616A.065
2 violating Public Agency Comp. Trust v. Blake, 127 Nev. Adv. Rep.
3 77, 265 P.3d 694 (2011). In Blake, the Court stated,
4 "administrative regulations cannot contradict the statute they
5 are designed to implement." Id., (citation omitted).
6 NAC 616C.447 implements the method of determining an AMW as
7 required by NRS 616C.420. Nothing in NRS 616A.065 or NRS
8 616A.157 prohibits the summing of concurrent employment wages
9 whether earned or deemed. In addition, in light of Blake it
10 cannot be argued that NAC 616C.447 contradicts the implementation
11 statute NRS 616C.420.

12 There is no evidence of an unknown liability exposure
13 as respondent claims. In addition, the appeals officer makes no
14 finding of fact regarding an unknown or unforeseen liability.
15 There was no evidence offered supporting a factual conclusion
16 that Douglas County was unaware of Mr. Felton's employment at
17 Hewlett Packard when it accepted his services as a search and
18 rescue worker.

19 The last section of the order erroneously concludes
20 that public policy considerations do not require volunteer
21 employee concurrent wages, characterized as unforeseen
22 liabilities, be included in an AMW. ROA 11. As noted by the
23 Supreme Court, "Nevada's workmen's compensation laws reflect a
24 clear public policy favoring economic security for employees
25 injured while in the course of their employment." Dillard Dep't
26 Stores, Inc. v. Beckwith, 115 Nev. 372, 377, 989 P.2d 882, 885
27 (1999) (citing Hansen v. Harrah's, 100 Nev. 60, 63, 675 P.2d 394,
28 396 (1984)) (Emphasis added).

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

1 The Nevada Legislature recognizes the value of public
2 policy which supports the many volunteer employees who risk life
3 and limb providing needed emergency services to Nevada's many
4 urban and rural communities. The Legislature commonly uses a
5 deemed wage in order to protect volunteers who provide valuable
6 public services. See, volunteer health practitioners (NRS
7 616A.207), Civil Air Patrol volunteers (NRS 616A.140), volunteer
8 firefighters (NRS 616A.145), volunteer ambulance service
9 providers (NRS 616A.155), volunteer search and rescue (NRS
10 616A.157), volunteer peace officers (NRS 616A.160), volunteer
11 junior traffic patrols (NRS 616A.170), volunteer workers at the
12 Department of Health and Human Services (NRS 616A.205), and
13 members of the Nevada Legislature (NRS 616A.185).

14 The public policy of protecting the economic security
15 of injured employees, and the Legislature's practice of providing
16 public service volunteers with deemed wages, taken together,
17 supports a position that earned and deemed wages should be
18 combined in the AMW calculation. Public service jobs tend to be
19 both strenuous and dangerous so it could be expected that
20 individuals doing those jobs would often be at prime earning age.
21 Further, the Legislature knows public service volunteers commonly
22 have concurrent earned wage employment in order to support
23 themselves and their families. Nevada's workers' compensation
24 system is designed to provide an injured worker with medical
25 treatment and lost wages. As noted by the Court, "Workers'
26 compensation is meant to compensate for the actual impairment to
27 the worker caused by an industrial injury." Public Agency Comp.
28 Trust v. Blake, 127 Nev. Adv. Rep. 77 ,265 P.3d 694, 697

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) 486-2810

1 (2011) (Emphasis added). An injured emergency worker who has
2 other concurrent employment would lose the wage from the
3 concurrent job if badly hurt at the volunteer job. For this
4 reason public policy supports the position that wages lost from
5 concurrent employment and deemed wages are to be combined under
6 NAC 616C.447.

7 Summing earned and deemed wages as dictated by NAC
8 616C.447 does not expose any insurer to immeasurable and
9 unforeseen liabilities. No injured worker in Nevada receives
10 full wage replacement when injured, but instead gets 66^{2/3}% of the
11 value of lost wages. Therefore, no insurer is exposed to the
12 actual losses of an injured worker. Further, no workers'
13 compensation insurer is required to cover the actual wage losses
14 of high earners in Nevada because of the maximum wage cap in NRS
15 616A.065.

16 According to Larson's:

17 [F]airness to the employee and fairness to
18 the employer-carrier are not symmetrical,
19 and cannot be judged by the same standards.
20 To this one employee, this one loss is
21 everything—he or she has nothing against
22 which to offset it. To the employer, and
23 even more to the carrier, this is just one
24 case among many. The rule operates
25 impartially in both directions. Today this
26 employer-carrier may be saddled with a
27 slight extra cost; tomorrow the positions
28 may be reversed, and the employer-carrier
will be completely relieved of the cost of
an injury to one of its employees in a
concurrent-employment situation, when it
happens to be the other employment in which
the injury occurs. This is the essence of
the concept of spreading the risk in a
system like workers' compensation.

5 Larson's Workers' Compensation Law § 93.03
[1] [c] (Footnote omitted).

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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

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affirmation of ASC's improper average monthly wage calculation
and order that Mr. Felton's concurrent wages, earned and deemed,
be included in the calculation of his average monthly wage.

RESPECTFULLY SUBMITTED this 7th day of October, 2015.

NEVADA ATTORNEY FOR INJURED WORKERS
Attorney for Petitioner
1000 E. William, Suite 208
Carson City, Nevada 89701

By: 
Edward L. Oueilhe, Esq., deputy
State Bar No. 08218

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

PETITIONER'S REPLY BRIEF

filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any person.

-OR-

Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.



10/7/15
Date

Signature

EDWARD L. OUEILHE, Esq., deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner,
Gregory Felton

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

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) 486-2810

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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, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing PETITIONER'S REPLY BRIEF addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

DATED: October 7, 2015

SIGNED: Taney X. Sherwood

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

JOHN D HOOKS ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and caused a copy of the aforementioned document to be served by e-filing to:

rbalkenbush@thorndal.com
ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

DATED: February 3, 2017

SIGNED: Tanya L. Shewood

1 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
Attorneys for Petitioner
4
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REC'D & FILED
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SUSAN MERRIWETHER
V. Alegria CLERK
BY _____
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,
10 Petitioner,
11 vs.

Case No. 150C000481B
Dept. No. I

12 DOUGLAS COUNTY, PUBLIC
13 AGENCY COMPENSATION TRUST,
and APPEALS OFFICE of the
14 DEPARTMENT OF ADMINISTRATION,
15 Respondents.
_____ /

16 PETITION FOR JUDICIAL REVIEW

17 COMES NOW Petitioner, Gregory Felton, by and through his
18 attorney, Edward L. Oueilhe, Esq., Deputy, Nevada Attorney for
19 Injured Workers, and pursuant to NRS 233B.130, hereby files this
20 Petition for Judicial Review of the Decision and Order of Appeals
21 Officer Whitney D. Derrah, filed on February 4, 2015, a copy of
22 which is attached hereto as Exhibit 1.

23 This Petition is filed with the District Court on the grounds
24 that Petitioner is aggrieved by the Decision and Order of the
25 Appeals Officer.

26 The Decision and Order of the Appeals Officer was an abuse of
27 discretion, clearly erroneous, an error as a matter of law, and is
28 not based on substantial evidence.

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

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

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WHEREFORE, Petitioner prays as follows:

1. That this Court grant judicial review of the Decision and Order of the Appeals Officer issued on February 4, 2015.


2. That this Court vacate and set aside the February 4, 2015, Decision and Order of the Appeals Officer and award Petitioner the benefits to which he is entitled.

3. That pursuant to NRS 233B.133(4), a hearing is requested in this matter.

4. For such other and further relief as the Court deems just and proper in the premises.

DATED this 2nd day of March, 2015.

NEVADA ATTORNEY FOR INJURED WORKERS
Attorney for Petitioner
1000 E. William Street, Suite 208
Carson City, Nevada 89701

By: 
Edward L. Oueilhe, Esq., Deputy
State Bar No. 08218

INDEX OF EXHIBITS

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EXHIBIT
NO.

DESCRIPTION

NO.
OF PAGES

1

Decision and Order
of Appeals Officer,
dated February 4, 2015

14

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

FILED
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APPEALS OFFICER

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**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER**

In the Matter of the Industrial Insurance Claim	Claim No. C143-12-06693 01
of	Hearing Nos. 47153-KD 47154-KD
<u>GREGORY FELTON</u>	Appeal No. 47863-WDD

DECISION AND ORDER

Background

In this contested case, the claimant Gregory Felton (hereinafter "Felton"), was represented by Edward Oueilhe, Esq., Deputy Nevada Attorney for Injured Workers. The employer, Douglas County, and the insurer, Public Agency Compensation Trust (hereinafter "PACT"), were represented by Robert Balkenbush, Esq., of the law firm of Thorndal, Armstrong, Delk, Balkenbush & Eisinger. The current third party administrator of Felton's year 2012 workers' compensation claim at issue in this contested case is Alternative Service Concepts, LLC (hereinafter "ASC").

By written determination dated November 11, 2013, ASC, on behalf of Douglas County and the PACT, notified Felton that it had calculated his average monthly wage (AMW) under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and further advised that this calculation was based upon the statutory deemed wage of a search and rescue volunteer. See, Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.

Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely

1 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
2 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

3
4 By written determination dated November 13, 2013, ASC, on behalf of Douglas County and
5 the PACT, awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
6 impairment (WPI) as a result of his work-related left knee injury. *See*, Exhibit No. 3 at pp. 4; Exhibit
7 No. 4 at pp. 100-03.

8 Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
9 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
10 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

11
12 Following a hearing and by written decision dated February 20, 2014, made under Hearing
13 Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the November 11,
14 2013 and November 13, 2013, written determinations made by ASC. *See*, Exhibit No. 3 at pp. 7-9.

15 Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
16 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and Appeal
17 No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the time of the trial
18 of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals Officer, Douglas
19 County and the PACT that he no longer disagreed with the November 13, 2013, determination made
20 by ASC that awarded him a 1% PPD or WPI for his work-related left knee injury, nor did he disagree
21 with the decision made by the Hearing Officer under Hearing No. 47154-KD that affirmed the legal
22 propriety of this November 13, 2013, determination. Hence, the decision in this contested case
23 (Appeal No. 47863-WDD) will solely resolve the issue whether AMW determination made by ASC
24 in its November 11, 2013, determination was proper under the law.
25
26

27 The trial of Appeal No. 47863-WDD was conducted on August 25, 2014. Mr. Felton
28

1 personally appeared and provided brief testimony at the hearing of this appeal. No other witnesses
2 testified in this matter. Six (6) documentary exhibits were admitted into evidence. In addition,
3 written closing arguments were submitted by legal counsel for the parties.
4

5 Having considered the documentary exhibits admitted into evidence at the trial of this case,
6 the testimony of claimant Gregory Felton, as well as written closing arguments made by legal
7 counsel for the parties, the Appeals Officer hereafter makes the following findings of fact,
8 conclusions of law, and order.

9 **Summary of Decision**

10
11 In March 2012 , when the left knee injury at issue in this contested case was incurred, Felton
12 was a mere volunteer, there was no statute providing that such volunteers were “employees” who
13 had a “deemed wage” for the purpose of insurance coverage and benefits under the Nevada Industrial
14 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). Indeed, NRS 616A.157
15 was enacted and became law on May 21, 2013, which is one year and two months after the
16 incurrence of Felton’s injury as a search and rescue volunteer with Douglas County. *See*, Assembly
17 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
18 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
19 indicates that at the time Felton’s March 2012 left knee injury was incurred, “search and rescue
20 volunteers” were not employees with a deemed wage under any other category of volunteers with
21 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton’s injury in March 2012, he
22 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
23 employment.
24
25

26 There are several additional legal reasons that support the conclusion reached in this
27 contested case.
28

FINDINGS OF FACT

1
2 1. In March 2012, Felton was employed with Douglas County as a search and rescue
3 volunteer. *See*, Exhibit No. 4 at pp. 1-2, 7.
4

5 2. On or about March 6, 2012, Felton suffered an injury to his left knee while participating
6 in a snow and avalanche rescue training. *See*, Exhibit No. 4 at pp. 1-2, 7. At the time of that this
7 left knee injury was incurred, it appears that Felton was also employed by Hewlett Packard. *See*,
8 Exhibit No. 2; *see also*, Trial Transcript.

9 3. For his March 2012 left knee injury, Felton initiated a workers' compensation claim with
10 Douglas County, and its workers' compensation insurer, the PACT, assigned Claim No. C143-
11 12-06693-01 to Felton's claim, and workers' compensation insurance coverage of his left knee
12 injury was granted. *See*, Exhibit No. 4 at p. 17.
13

14 4. Following medical treatment of Felton's left knee injury, and on or about November 5,
15 2013, Felton was evaluated for a permanent partial disability (PPD). *See*, Exhibit No. 4 at pp. 3-
16 6, 15-16, 18-90, 94-97; Exhibit 5. Nevada rating physician Jay Betz, M.D., assessed Felton as
17 having suffered a 1% whole person impairment (WPI) as a result of his work-related left knee
18 injury, and further recommended closure of his claim. *See*, Exhibit No. 4 at pp. 94-97.
19

20 5. By written determination dated November 11, 2013, ASC, on behalf of the Douglas
21 County and the PACT, notified Felton that it had calculated his average monthly wage (AMW)
22 under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and that
23 this calculation was based upon the statutory deemed wage of a search and rescue volunteer. *See*,
24 Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.
25

26 6. Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely
27 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
28

1 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

2 7. By written determination dated November 13, 2013, ASC, on behalf of the Douglas
3 County and PACT, notified Felton of the result of his PPD evaluation, advising Felton that Dr.
4 Jay Betz had determined he had suffered a one percent (1%) whole person impairment (WPI) or
5 permanent partial disability (PPD) as a result of his work-related left knee injury. *See*, Exhibit
6 No. 3 at pp. 4; Exhibit No. 4 at pp. 100-03. In turn, by means of this determination, ASC
7 awarded Felton a 1% PPD. *Id.*

8
9 8. Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
10 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
11 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12
13 9. Following a hearing and by written decision dated February 20, 2014, made under
14 Hearing Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the
15 November 11, 2013 and November 13, 2013, written determinations made by ASC. *See*,
16 Exhibit No. 3 at pp. 7-9.

17
18 10. Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
19 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and
20 Appeal No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the
21 time of the trial of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals
22 Officer, Douglas County and the PACT that he no longer disagreed with the November 13, 2013,
23 determination made by ASC that awarded him a 1% PPD for his work-related left knee injury,
24 nor did he disagree with the decision made by the Hearing Officer under Hearing No. 47154-KD
25 that affirmed the legal propriety of the November 13, 2013, determination. Hence, the decision
26 in this contested case (Appeal No. 47863-WDD) will solely resolve the issue whether AMW
27
28

1 determination made by ASC in its November 11, 2013, determination was proper under the law.
2 11. At the trial of this contested case (Appeal No. 47863-WDD), Felton presented
3 documentary evidence of what his earned wages were with Hewlett Packard at or about the time
4 that his March 2012 left knee injury was incurred. See, Exhibit No. 2.
5

6 CONCLUSIONS OF LAW

7 A. Governing Law or Legal Principles

8 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
9 means that the Claimant must establish the work-connection of his/her injuries, the causal
10 relationship between his/her work-connected injury and his disabilities, the extent of his/her
11 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
12 cannot prevail if the evidence is merely evenly balanced. See, 8A Larson, Larson's Workers'
13 Compensation Laws, § 130.06(3)(a)(2006); see also, NRS 616C.150; NRS 616A.010; NRS
14 617.358.
15

16 Generally, the average monthly wage for an injured employee covered under the Nevada
17 Industrial Insurance Act is defined by NRS 616A.065, which provides in part:
18

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been received by the
22 employee on the date of the accident or injury to the employee, excluding
remuneration from employment:

23 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
24 Occupational Diseases Act; and

25 (2) For which coverage is elective, but has not been elected; or

26 (b) One hundred fifty percent of the state average weekly wage as most recently
27 computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding the
date of the injury or accident, multiplied by 4.33.

1 NRS 616A.065(1). (Emphasis added).

2 Except as otherwise provided by a specific statute, the amount of compensation and
3 benefits and the person or persons entitled thereto must be determined as of the date of the
4 accident or injury to the employee and their rights thereto become fixed as of that date. *See*, NRS
5 616C.425; *see also*, NAC 616C.441.

7 Concerning the average monthly wage (AMW) of volunteer members of the search and
8 rescue organization, the Nevada Legislature has specifically defined an "Employee" in pertinent
9 part as follows:

10 Volunteer members of a search and rescue organization that is under the direct
11 supervision of a county sheriff, while acting under the direction of the sheriff or a
12 designee of the sheriff:

- 13 1. In the conduct of any search and rescue operation; or
- 14 2. In training for such an operation, shall be deemed, for the purposes of chapters
15 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of
16 \$2,000 per month, and are entitled to the benefits of those chapters.

17 *See*, NRS 616A.157 (Emphasis added).

18 The Nevada Legislature has delegated by statute to the Administrator of the Division of
19 Industrial Relations (DIR) the authority to promulgate the method of determining the average
20 monthly wage. *See*, NRS 616C.420; NRS 6161A.400; and NAC 616A.420-447. Regulations
21 define average monthly wage to mean "the total gross value of all money, goods and services
22 received by an injured employee from his employment to compensate for his time or services and
23 is used as the base for calculating the rate of compensation for the injured employee." NAC
24 616C.420. In this regard, those wages which are deemed to be established in chapters 616A to
25 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly
26 wage when applicable. *See*, NAC 616C.429.

28

1 The Division of Industrial Relations has also by regulation specifically allowed for the
2 adding or combining of wages in determining an employee's average monthly wage in certain
3 circumstances. See, NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that
4 "the average monthly wage of an employee who is employed by two or more employers covered
5 by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is
6 equal to the sum of the wages earned or deemed to have been earned at each place of
7 employment." (Emphasis added).
8

9
10 **B. Felton Is Not Legally Entitled to an Average Monthly Wage (AMW) That Is**
11 **Based upon Both His Earned Wages at Hewlett Packard and the Statutory**
12 **Deemed Wage of a Search & Rescue Volunteer**

13 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
14 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
15 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
16 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA).¹ Indeed, NRS 616A.157
17 was enacted and became law on May 21, 2013, which is one year and two months after the
18 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. See, Assembly
19 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
20 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
21 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
22 volunteers" were not employees with a deemed wage under any other category of volunteers with
23 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
24
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27 ¹ "[A] person providing purely gratuitous voluntary service is not an 'employee' and has not entered into an
28 employment relationship with the person receiving the services for purposes of workers' compensation acts." 82 Am.
Jur. 2d Workers' Compensation § 127 (2012).

1 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
2 employment.²

3
4 There are several additional legal reasons that support the conclusion reached in this
5 contested case.

6 First, while Nevada law is silent on whether it would allow the aggregation of wages from
7 two dissimilar employments, it may very well adopt the related-employment rule accepted by a
8 majority of jurisdictions throughout the country. *See generally*, A. Larson, *Larson's Workers'*
9 *Compensation Law* § 93.03[1][a] (2011).³ In this regard, in *Ayala v. Caesars Palace*, 119 Nev. 232,
10 71 P.3d 490 (2003), the Nevada Supreme Court has indicated its leaning toward the adoption of the
11 majority position on the issue of aggregation of concurrent employment, that is the related-
12 majority position on the issue of aggregation of concurrent employment, that is the related-
13 employment rule. In *Ayala*, the Court, in finding that the aggregation of concurrent wages was
14 inappropriate, specifically noted that the two types of employment in consideration (cashier and
15 banquet waitress) were not similar in nature.⁴ *See also*, 100 C.J.S. *Workers' Compensation* § 524
16 (“[w]orkers’ compensation benefits are not allowed to compensate a volunteer for an inability to
17 pursue unrelated concurrent employment for another employer.”)(citing, *Wislocki v. Town of*
18 *Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); *see also*, *Snyder v. Workmen's Compensation*

21
22 ² Notwithstanding the foregoing, after the enactment of NRS 616C.157, and by written determination
23 determination dated November 11, 2013, Felton was notified that by the claims administrator that an average monthly
24 wage (AMW) under his workers’ compensation claim had been calculated, and was based upon the statutory deemed
25 wage of a search and rescue volunteer. Neither Douglas County nor the PACT appealed this determination and,
26 therefore, effective the date of the determination, the statutory deemed wage under NRS 616C.157 is Felton’s AMW
27 under the claim. *See generally*, *Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

28 ³ *See e.g.*, *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980); *Thompson v. STS*
Holdings, 711 S.E.2d 827 (N.C. Ct. App. 2011); *In the Matter of Russell*, 37 E.C.A.B. 567 (1986).

⁴ “[T]he record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at
the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not
as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation.” *See*, 119 Nev. at 240.

1 *Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp.*
2 *v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

3
4 Second, where a statute (or regulation) is unambiguous the plain language will control. The
5 plain language of NRS 616A.065 and NAC 616C.447 do not mandate the aggregation of earned
6 wages *and* those deemed to have been earned, as they are two different categories of wages.

7 Third, case law in other jurisdictions, barring the aggregation of deemed and earned wages
8 specifically for volunteer firefighters, relies on similar statutory language as found in Nevada. Those
9 courts have held that where two statutes seemingly conflict (one allowing for combined wages and
10 the other setting a deemed wage specifically for firefighters) the more specific statute (setting a
11 deemed wage) would, using the rules of statutory construction, control or be seen as an exception
12 to the general rule. *See, New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal*
13 *Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995); *Snyder v. Workmen's Compensation Appeal Board*,
14 654 A.2d 641 (Pa. Commonw. Ct. 1995); *Borough of Hensdale v. Workmen's Compensation Appeal*
15 *Bd.*, 659 A.2d 70 (Pa. Commonw. Ct. 1995); *Going v. Cromwell Fire District*, 159 Conn. 53, 267
16 A.2d 428 (1970); *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993); *see also*,
17 *Laird v. State of Nevada Public Employees Retirement Board*, 98 Nev. 42, 639 P.2d 1171 (1982);
18 73 Am. Jur. 2d Statutes § 170 (Explaining that “[w]ith respect to a conflict arising between a statute
19 dealing generally with a subject and another dealing specifically with a certain phase of it, the
20 specific legislation controls in a proper case”); *see also*, NAC 616C.429;

21
22 Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
23 scholarly publications, and recently the Nevada Supreme Court have held that where an
24 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
25 invalid. *Meridian Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516
26
27
28

1 (2003); *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011); see
2 generally, 73 C.J.S. Public Administrative Law and Procedure § 172. In this regard, and to the extent
3 that NAC 616C.447 were construed to mandate aggregation of deemed wages and earned wages
4 from concurrent employment, this regulation might be deemed to exceed, modify and conflict with
5 the Nevada statute that specifically defines average monthly wage (NRS 616A.065) and the statute
6 governing the stated average monthly wage of volunteer members of search and rescue organizations
7 (NRS 616A.157), which latter statute does not address, allow for, nor contemplate wages from
8 private/public concurrent employment.
9

10
11 Lastly, there was no evidence of any public policy that the Nevada Legislature intended
12 Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen
13 liabilities based on possible alternative employment by its volunteers.⁵

14 **ORDER**

15 To the extent that any of the foregoing findings of fact may be construed as conclusions
16 of law, or any of the foregoing conclusions of law may be construed as findings of fact, they are
17 hereby adopted as such.
18

19 In accordance with the foregoing, **IT IS HEREBY ORDERED:**

- 20 1. That the November 11, 2013, average monthly wage determination made by ASC, on
21 behalf of Douglas County and the PACT, is hereby affirmed.
22
23 2. That the written decision dated February 20, 2014, made under Hearing No. 47153-KD
24

25 ⁵ Illustratively, the propriety of the ruling in this contested can be seen in a converse example. One can only
26 imagine the reaction of a private employer thrown into such a situation as the claimant intends to place Douglas County
27 and the PACT. A private employer insures his employees for workers' compensation with the expectation of replacing
28 lost wages through insurance based on the wages paid by that employer to the employee. Upon injury and disability from
work, however, the claimant alleges that he happens to also be a volunteer member of a search and rescue organization
when not employed by the private employer. The claimant then alleges that his average monthly wage under the claim
should be supplemented by an amount that includes not only his earned wages but also the deemed wages of his
concurrent employment as a volunteer. It is beyond difficult to imagine legal allowance of such an aggregation.

1 and by Hearing Officer Katherine Diamond, and which affirmed ASC's November 11, 2013
2 average monthly wage determination is hereby affirmed.

3 Dated this 4th ^{February} of ~~January~~, 2015.
4

5 
6 _____
7 Whitney D. Derrah, Appeals Officer

8 **NOTICE:**


9 Pursuant to NRS 233B.130, if any party desires to appeal this final decision of the
10 Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
11 thirty (30) days after service of this final decision.
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 26 day of January, 2015.

By: 

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 was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO, NV 89509

Dated this 4 day of February, 2015.

Tasha Eaton
Tasha Eaton, Supervising Legal Secretary
Employee of the State of Nevada

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

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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, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing PETITION FOR JUDICIAL REVIEW addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and caused a copy of the aforementioned document to be served by hand delivery via Reno-Carson Messenger Service to the following party at the address referenced below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
6590 S MCCARRAN BLVD #B
RENO NV 89509

and a copy hand delivered to:

WHITNEY D DERRAH ESQ
APPEALS OFFICER
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: March 2, 2015

SIGNED: *Lisa Merdum*

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranchito Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
Attorneys for Petitioner
4

REC'D & FILED
2015 MAR -3 PM 3:37
SUSAN MERRIWETHER
CLERK
BY ~~_____~~
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,

10 Petitioner,

Case No. 15 OC 00048 1B

11 vs.

Dept. No. I

12 DOUGLAS COUNTY, PUBLIC
13 AGENCY COMPENSATION TRUST,
and APPEALS OFFICE of the
14 DEPARTMENT OF ADMINISTRATION,

15 Respondents.
_____ /

16 NOTICE OF PETITION FOR JUDICIAL REVIEW

17 TO: Whitney D. Derrah, Esq.
18 Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
19 Carson City, Nevada 89701

20 YOU ARE HEREBY GIVEN NOTICE that on the 2nd day of March, 2015,
21 a Petition for Judicial Review was filed in the First Judicial
22 District Court of the State of Nevada, In and For Carson City. A
23 copy is attached. Said Petition seeks judicial review of your
24 Decision and Order rendered on February 4, 2015.

25 / / /

26 / / /

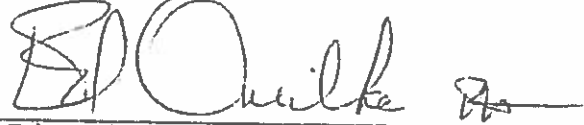
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1 Please prepare, within thirty (30) days from the service
2 hereof, the entire record or a certified copy of the entire record
3 for transmittal to the District Court.

4 DATED this 2nd day of March, 2015.

5 NEVADA ATTORNEY FOR INJURED WORKERS
6 Attorney for Petitioner
7 1000 E. William Street, Suite 208
8 Carson City, Nevada 89701

9 By: 
10 Edward L. Oueilhe, Esq., Deputy
11 State Bar No. 08218

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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

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranccho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding NOTICE OF PETITION FOR JUDICIAL REVIEW
filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any
person.

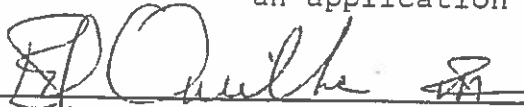
-OR-

Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for
an application for a Federal or State grant.


Signature

3/2/15
Date

Edward L. Oueilhe, Esq., Deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner
Gregory Felton

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

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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, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing NOTICE OF PETITION FOR JUDICIAL REVIEW addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and caused a copy of the aforementioned document to be served by hand delivery via Reno-Carson Messenger Service to the following party at the address referenced below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
6590 S MCCARRAN BLVD #B
RENO NV 89509

and a copy hand delivered to:

WHITNEY D DERRAH ESQ
APPEALS OFFICER
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: March 3, 2015

SIGNED: *Lisa Mindeum*

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

1 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
Attorneys for Petitioner
4
5

REC'D & FILED
2015 MAR -5 AM 10:23
SUSAN HERRIKWETHER
C. COOPER
BY _____ CLERK
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,

10 Petitioner,

Case No. 15 OC 00048 1B

11 vs.

Dept. No. I

12 DOUGLAS COUNTY, PUBLIC
13 AGENCY COMPENSATION TRUST,
14 ALTERNATIVE SERVICE CONCEPTS,
15 LLC, and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

16 Respondents.
17 _____/

18 AMENDED PETITION FOR JUDICIAL REVIEW

19 COMES NOW Petitioner, Gregory Felton, by and through his
20 attorney, Edward L. Oueilhe, Esq., Deputy, Nevada Attorney for
21 Injured Workers, and pursuant to NRS 233B.130, hereby files this
22 Amended Petition for Judicial Review of the Decision and Order of
23 Appeals Officer Whitney D. Derrah, filed on February 4, 2015, a
24 copy of which is attached hereto as Exhibit 1.

25 This Amended Petition is filed with the District Court on the
26 grounds that Petitioner is aggrieved by the Decision and Order of
27 the Appeals Officer.
28 / / /
/ / /

1 The Decision and Order of the Appeals Officer was an abuse of
2 discretion, clearly erroneous, an error as a matter of law, and is
3 not based on substantial evidence.

4 WHEREFORE, Petitioner prays as follows:

5 1. That this Court grant judicial review of the Decision and
6 Order of the Appeals Officer issued on February 4, 2015.


7 2. That this Court vacate and set aside the February 4,
8 2015, Decision and Order of the Appeals Officer and award
9 Petitioner the benefits to which he is entitled.

10 3. That pursuant to NRS 233B.133(4), a hearing is requested
11 in this matter.

12 4. For such other and further relief as the Court deems just
13 and proper in the premises.

14 DATED this 5th day of March, 2015.

15 NEVADA ATTORNEY FOR INJURED WORKERS
16 Attorney for Petitioner
17 1000 E. William Street, Suite 208
18 Carson City, Nevada 89701

19 By: 
20 Edward L. Oueilhe, Esq., Deputy
21 State Bar No. 08218

22 NEVADA ATTORNEY FOR INJURED WORKERS
23 1000 East William Street, Suite 208
24 Carson City, NV 89701 (775) 684-7555
25 2200 South Rancho Drive, Suite 230
26 Las Vegas, NV 89102 (702) 486-2830
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding AMENDED PETITION FOR JUDICIAL REVIEW

X Does not contain the Social Security Number of any
person.

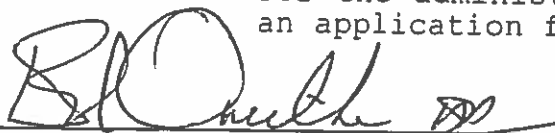
-OR-

Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for
an application for a Federal or State grant.


Signature

3/5/15
Date

Edward L. Oueilhe, Esq., Deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner
Gregory Felton

INDEX OF EXHIBITS

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EXHIBIT
NO.

DESCRIPTION

NO.
OF PAGES

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Decision and Order
of Appeals Officer,
dated February 4, 2015

14

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

1 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
2 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

3 By written determination dated November 13, 2013, ASC, on behalf of Douglas County and
4 the PACT, awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
5 impairment (WPI) as a result of his work-related left knee injury. *See*, Exhibit No. 3 at pp. 4; Exhibit
6 No. 4 at pp. 100-03.

8 Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
9 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
10 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12 Following a hearing and by written decision dated February 20, 2014, made under Hearing
13 Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the November 11,
14 2013 and November 13, 2013, written determinations made by ASC. *See*, Exhibit No. 3 at pp. 7-9.

15 Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
16 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and Appeal
17 No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the time of the trial
18 of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals Officer, Douglas
19 County and the PACT that he no longer disagreed with the November 13, 2013, determination made
20 by ASC that awarded him a 1% PPD or WPI for his work-related left knee injury, nor did he disagree
21 with the decision made by the Hearing Officer under Hearing No. 47154-KD that affirmed the legal
22 propriety of this November 13, 2013, determination. Hence, the decision in this contested case
23 (Appeal No. 47863-WDD) will solely resolve the issue whether AMW determination made by ASC
24 in its November 11, 2013, determination was proper under the law.

27 The trial of Appeal No. 47863-WDD was conducted on August 25, 2014. Mr. Felton
28

1 personally appeared and provided brief testimony at the hearing of this appeal. No other witnesses
2 testified in this matter. Six (6) documentary exhibits were admitted into evidence. In addition,
3 written closing arguments were submitted by legal counsel for the parties.
4

5 Having considered the documentary exhibits admitted into evidence at the trial of this case,
6 the testimony of claimant Gregory Felton, as well as written closing arguments made by legal
7 counsel for the parties, the Appeals Officer hereafter makes the following findings of fact,
8 conclusions of law, and order.

9 **Summary of Decision**

10 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
11 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
12 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
13 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). Indeed, NRS 616A.157
14 was enacted and became law on May 21, 2013, which is one year and two months after the
15 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
16 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
17 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
18 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
19 volunteers" were not employees with a deemed wage under any other category of volunteers with
20 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
21 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
22 employment.
23
24
25

26 There are several additional legal reasons that support the conclusion reached in this
27 contested case.
28

FINDINGS OF FACT

- 1
- 2 1. In March 2012, Felton was employed with Douglas County as a search and rescue
- 3 volunteer. *See*, Exhibit No. 4 at pp. 1-2, 7.
- 4
- 5 2. On or about March 6, 2012, Felton suffered an injury to his left knee while participating
- 6 in a snow and avalanche rescue training. *See*, Exhibit No. 4 at pp. 1-2, 7. At the time of that this
- 7 left knee injury was incurred, it appears that Felton was also employed by Hewlett Packard. *See*,
- 8 Exhibit No. 2; *see also*, Trial Transcript.
- 9
- 10 3. For his March 2012 left knee injury, Felton initiated a workers' compensation claim with
- 11 Douglas County, and its workers' compensation insurer, the PACT, assigned Claim No. C143-
- 12 12-06693-01 to Felton's claim, and workers' compensation insurance coverage of his left knee
- 13 injury was granted. *See*, Exhibit No. 4 at p. 17.
- 14
- 15 4. Following medical treatment of Felton's left knee injury, and on or about November 5,
- 16 2013, Felton was evaluated for a permanent partial disability (PPD). *See*, Exhibit No. 4 at pp. 3-
- 17 6, 15-16, 18-90, 94-97; Exhibit 5. Nevada rating physician Jay Betz, M.D., assessed Felton as
- 18 having suffered a 1% whole person impairment (WPI) as a result of his work-related left knee
- 19 injury, and further recommended closure of his claim. *See*, Exhibit No. 4 at pp. 94-97.
- 20
- 21 5. By written determination dated November 11, 2013, ASC, on behalf of the Douglas
- 22 County and the PACT, notified Felton that it had calculated his average monthly wage (AMW)
- 23 under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and that
- 24 this calculation was based upon the statutory deemed wage of a search and rescue volunteer. *See*,
- 25 Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.
- 26
- 27 6. Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely
- 28 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was

1 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

2 7. By written determination dated November 13, 2013, ASC, on behalf of the Douglas
3 County and PACT, notified Felton of the result of his PPD evaluation, advising Felton that Dr.
4 Jay Betz had determined he had suffered a one percent (1%) whole person impairment (WPI) or
5 permanent partial disability (PPD) as a result of his work-related left knee injury. *See*, Exhibit
6 No. 3 at pp. 4; Exhibit No. 4 at pp. 100-03. In turn, by means of this determination, ASC
7 awarded Felton a 1% PPD. *Id.*

8 8. Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
9 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
10 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

11 9. Following a hearing and by written decision dated February 20, 2014, made under
12 Hearing Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the
13 November 11, 2013 and November 13, 2013, written determinations made by ASC. *See*,
14 Exhibit No. 3 at pp. 7-9.

15 10. Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
16 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and
17 Appeal No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the
18 time of the trial of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals
19 Officer, Douglas County and the PACT that he no longer disagreed with the November 13, 2013,
20 determination made by ASC that awarded him a 1% PPD for his work-related left knee injury,
21 nor did he disagree with the decision made by the Hearing Officer under Hearing No. 47154-KD
22 that affirmed the legal propriety of the November 13, 2013, determination. Hence, the decision
23 in this contested case (Appeal No. 47863-WDD) will solely resolve the issue whether AMW
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1 determination made by ASC in its November 11, 2013, determination was proper under the law.
2 11. At the trial of this contested case (Appeal No. 47863-WDD), Felton presented
3 documentary evidence of what his earned wages were with Hewlett Packard at or about the time
4 that his March 2012 left knee injury was incurred. See, Exhibit No. 2.
5

6 CONCLUSIONS OF LAW

7 A. Governing Law or Legal Principles

8 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
9 means that the Claimant must establish the work-connection of his/her injuries, the causal
10 relationship between his/her work-connected injury and his disabilities, the extent of his/her
11 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
12 cannot prevail if the evidence is merely evenly balanced. See, 8A Larson, Larson's Workers'
13 Compensation Laws, § 130.06(3)(a)(2006); see also, NRS 616C.150; NRS 616A.010; NRS
14 617.358.
15

16 Generally, the average monthly wage for an injured employee covered under the Nevada
17 Industrial Insurance Act is defined by NRS 616A.065, which provides in part:
18

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been received by the
22 employee on the date of the accident or injury to the employee, excluding
remuneration from employment:

23 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
24 Occupational Diseases Act; and

25 (2) For which coverage is elective, but has not been elected; or

26 (b) One hundred fifty percent of the state average weekly wage as most recently
27 computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding the
date of the injury or accident, multiplied by 4.33.

1 NRS 616A.065(1). (Emphasis added).

2 Except as otherwise provided by a specific statute, the amount of compensation and
3 benefits and the person or persons entitled thereto must be determined as of the date of the
4 accident or injury to the employee and their rights thereto become fixed as of that date. See, NRS
5 616C.425; *see also*, NAC 616C.441.

7 Concerning the average monthly wage (AMW) of volunteer members of the search and
8 rescue organization, the Nevada Legislature has specifically defined an "Employee" in pertinent
9 part as follows:

10 Volunteer members of a search and rescue organization that is under the direct
11 supervision of a county sheriff, while acting under the direction of the sheriff or a
12 designee of the sheriff:

- 13 1. In the conduct of any search and rescue operation; or
- 14 2. In training for such an operation, shall be deemed, for the purposes of chapters
15 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of
16 \$2,000 per month, and are entitled to the benefits of those chapters.

17 See, NRS 616A.157 (Emphasis added).

18 The Nevada Legislature has delegated by statute to the Administrator of the Division of
19 Industrial Relations (DIR) the authority to promulgate the method of determining the average
20 monthly wage. See, NRS 616C.420; NRS 616A.400; and NAC 616A.420-447. Regulations
21 define average monthly wage to mean "the total gross value of all money, goods and services
22 received by an injured employee from his employment to compensate for his time or services and
23 is used as the base for calculating the rate of compensation for the injured employee." NAC
24 616C.420. In this regard, those wages which are deemed to be established in chapters 616A to
25 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly
26 wage when applicable. See, NAC 616C.429.

28

1 The Division of Industrial Relations has also by regulation specifically allowed for the
2 adding or combining of wages in determining an employee's average monthly wage in certain
3 circumstances. *See*, NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that
4 "the average monthly wage of an employee who is employed by two or more employers covered
5 by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is
6 equal to the sum of the wages earned or deemed to have been earned at each place of
7 employment." (Emphasis added).
8

9 **B. Felton Is Not Legally Entitled to an Average Monthly Wage (AMW) That Is**
10 **Based upon Both His Earned Wages at Hewlett Packard and the Statutory**
11 **Deemed Wage of a Search & Rescue Volunteer**

12 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
13 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
14 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
15 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA).¹ Indeed, NRS 616A.157
16 was enacted and became law on May 21, 2013, which is one year and two months after the
17 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
18 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
19 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
20 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
21 volunteers" were not employees with a deemed wage under any other category of volunteers with
22 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
23
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26
27 ¹ "[A] person providing purely gratuitous voluntary service is not an 'employee' and has not entered into an
28 employment relationship with the person receiving the services for purposes of workers' compensation acts." 82 Am.
Jur. 2d Workers' Compensation § 127 (2012).

1 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
2 employment.²

3
4 There are several additional legal reasons that support the conclusion reached in this
5 contested case.

6 First, while Nevada law is silent on whether it would allow the aggregation of wages from
7 two dissimilar employments, it may very well adopt the related-employment rule accepted by a
8 majority of jurisdictions throughout the country. *See generally*, A. Larson, *Larson's Workers'*
9 *Compensation Law* § 93.03[1][a] (2011).³ In this regard, in *Ayala v. Caesars Palace*, 119 Nev. 232,
10 71 P.3d 490 (2003), the Nevada Supreme Court has indicated its leaning toward the adoption of the
11 majority position on the issue of aggregation of concurrent employment, that is the related-
12 employment rule. In *Ayala*, the Court, in finding that the aggregation of concurrent wages was
13 inappropriate, specifically noted that the two types of employment in consideration (cashier and
14 banquet waitress) were not similar in nature.⁴ *See also*, 100 C.J.S. *Workers' Compensation* § 524
15 (“[w]orkers’ compensation benefits are not allowed to compensate a volunteer for an inability to
16 pursue unrelated concurrent employment for another employer.”)(citing, *Wislocki v. Town of*
17 *Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); *see also*, *Snyder v. Workmen's Compensation*
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22 ² Notwithstanding the foregoing, after the enactment of NRS 616C.157, and by written determination
23 determination dated November 11, 2013, Felton was notified that by the claims administrator that an average monthly
24 wage (AMW) under his workers’ compensation claim had been calculated, and was based upon the statutory deemed
25 wage of a search and rescue volunteer. Neither Douglas County nor the PACT appealed this determination and,
26 therefore, effective the date of the determination, the statutory deemed wage under NRS 616C.157 is Felton’s AMW
27 under the claim. *See generally*, *Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

28 ³ *See e.g.*, *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980); *Thompson v. STS*
Holdings, 711 S.E.2d 827 (N.C. Ct. App. 2011); *In the Matter of Russell*, 37 E.C.A.B. 567 (1986).

⁴ “[T]he record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at
the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not
as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation.” *See*, 119 Nev. at 240.

1 *Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp.*
2 *v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

3
4 Second, where a statute (or regulation) is unambiguous the plain language will control. The
5 plain language of NRS 616A.065 and NAC 616C.447 do not mandate the aggregation of earned
6 wages *and* those deemed to have been earned, as they are two different categories of wages.

7 Third, case law in other jurisdictions, barring the aggregation of deemed and earned wages
8 specifically for volunteer firefighters, relies on similar statutory language as found in Nevada. Those
9 courts have held that where two statutes seemingly conflict (one allowing for combined wages and
10 the other setting a deemed wage specifically for firefighters) the more specific statute (setting a
11 deemed wage) would, using the rules of statutory construction, control or be seen as an exception
12 to the general rule. *See, New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal*
13 *Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995); *Snyder v. Workmen's Compensation Appeal Board*,
14 654 A.2d 641 (Pa. Commonw. Ct. 1995); *Borough of Hensdale v. Workmen's Compensation Appeal*
15 *Bd.*, 659 A.2d 70 (Pa. Commonw. Ct. 1995); *Going v. Cromwell Fire District*, 159 Conn. 53, 267
16 A.2d 428 (1970); *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993); *see also*,
17 *Laird v. State of Nevada Public Employees Retirement Board*, 98 Nev. 42, 639 P.2d 1171 (1982);
18 73 Am. Jur. 2d Statutes § 170 (Explaining that “[w]ith respect to a conflict arising between a statute
19 dealing generally with a subject and another dealing specifically with a certain phase of it, the
20 specific legislation controls in a proper case”); *see also*, NAC 616C.429;

21
22
23 Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
24 scholarly publications, and recently the Nevada Supreme Court have held that where an
25 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
26 invalid. *Meridian Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516
27
28

1 (2003); *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011); see
2 generally, 73 C.J.S. Public Administrative Law and Procedure § 172. In this regard, and to the extent
3 that NAC 616C.447 were construed to mandate aggregation of deemed wages and earned wages
4 from concurrent employment, this regulation might be deemed to exceed, modify and conflict with
5 the Nevada statute that specifically defines average monthly wage (NRS 616A.065) and the statute
6 governing the stated average monthly wage of volunteer members of search and rescue organizations
7 (NRS 616A.157), which latter statute does not address, allow for, nor contemplate wages from
8 private/public concurrent employment.
9

10
11 Lastly, there was no evidence of any public policy that the Nevada Legislature intended
12 Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen
13 liabilities based on possible alternative employment by its volunteers.⁵

14 ORDER

15 To the extent that any of the foregoing findings of fact may be construed as conclusions
16 of law, or any of the foregoing conclusions of law may be construed as findings of fact, they are
17 hereby adopted as such.
18

19 In accordance with the foregoing, **IT IS HEREBY ORDERED:**

- 20 1. That the November 11, 2013, average monthly wage determination made by ASC, on
21 behalf of Douglas County and the PACT, is hereby affirmed.
- 22 2. That the written decision dated February 20, 2014, made under Hearing No. 47153-KD
23

24
25 ⁵ Illustratively, the propriety of the ruling in this contested can be seen in a converse example. One can only
26 imagine the reaction of a private employer thrown into such a situation as the claimant intends to place Douglas County
27 and the PACT. A private employer insures his employees for workers' compensation with the expectation of replacing
28 lost wages through insurance based on the wages paid by that employer to the employee. Upon injury and disability from
work, however, the claimant alleges that he happens to also be a volunteer member of a search and rescue organization
when not employed by the private employer. The claimant then alleges that his average monthly wage under the claim
should be supplemented by an amount that includes not only his earned wages but also the deemed wages of his
concurrent employment as a volunteer. It is beyond difficult to imagine legal allowance of such an aggregation.

1 and by Hearing Officer Katherine Diamond, and which affirmed ASC's November 11, 2013
2 average monthly wage determination is hereby affirmed.

3 Dated this 4th ^{February} of ~~January~~, 2015.
4

5
6 Lonk Ward (for)
7 Whitney D. Derrah, Appeals Officer

8 **NOTICE:**

9
10 Pursuant to NRS 233B.130, if any party desires to appeal this final decision of the
11 Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
12 thirty (30) days after service of this final decision.
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 26 day of January, 2015.

By: 

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 was deposited into the State of Nevada Interdepartmental mail system. **OR** with the State of Nevada mail system for mailing via United States Postal Service. **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO, NV 89509

Dated this 4 day of February, 2015.

Tasha Eaton
Tasha Eaton, Supervising Legal Secretary
Employee of the State of Nevada

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

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the
3 State of Nevada, Nevada Attorney for Injured Workers, and that on
4 this date I deposited for mailing at Carson City, Nevada, a true
5 and correct copy of the within and foregoing AMENDED PETITION FOR
6 JUDICIAL REVIEW addressed to:

7 GREGORY FELTON
8 PO BOX 2130
9 STATELINE NV 89449

10 DOUGLAS COUNTY
11 PO BOX 218
12 MINDEN NV 89423

13 PUBLIC AGENCY COMPENSATION
14 TRUST
15 201 S ROOP ST STE 102
16 CARSON CITY NV 89701

17 ALTERNATIVE SERVICE CONCEPTS
18 639 ISBELL RD STE 390
19 RENO NV 89509

20 and caused a copy of the aforementioned document to be served by
21 hand delivery via Reno-Carson Messenger Service to the following
22 party at the address referenced below:

23 ROBERT F BALKENBUSH ESQ
24 THORNDAL ARMSTRONG DELK
25 BALKENBUSH & EISINGER
26 6590 S MCCARRAN BLVD #B
27 RENO NV 89509

28 and a copy hand delivered to:

WHITNEY D DERRAH ESQ
APPEALS OFFICER
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: March 5, 2015

SIGNED: Jim Mindrum

1 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
Attorneys for Petitioner
4

REC'D & FILED
2015 MAR -6 AM 11:10
SUSAN MERRIVETHER
BY C. COOPER CLERK
DEPUTY

5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,

10 Petitioner,

Case No. 15 OC 00048 1B

Dept. No. I

11 vs.

12 DOUGLAS COUNTY, PUBLIC
13 AGENCY COMPENSATION TRUST,
and APPEALS OFFICE of the
14 DEPARTMENT OF ADMINISTRATION,

15 Respondents.
_____ /

16 NOTICE OF AMENDED PETITION FOR JUDICIAL REVIEW

17 TO: Whitney D. Derrah, Esq.
18 Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
19 Carson City, Nevada 89701

20 YOU ARE HEREBY GIVEN NOTICE that on the 5th day of March,
21 2015, an Amended Petition for Judicial Review was filed in the
22 First Judicial District Court of the State of Nevada, In and For
23 Carson City. A copy is attached. Said Amended Petition seeks
24 judicial review of your Decision and Order rendered on February 4,
25 2015.

26 / / /

27 / / /

28 / / /

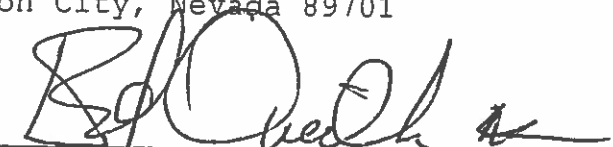
NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 Please prepare, within thirty (30) days from the service
2 hereof, the entire record or a certified copy of the entire record
3 for transmittal to the District Court.

4 DATED this 5th day of March, 2015.

5 NEVADA ATTORNEY FOR INJURED WORKERS
6 Attorney for Petitioner
7 1000 E. William Street, Suite 208
8 Carson City, Nevada 89701

9 By:



Edward L. Oueilhe, Esq., Deputy
10 State Bar No. 08218

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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

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding NOTICE OF AMENDED PETITION FOR JUDICIAL REVIEW
filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any
person.


-OR-

Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for
an application for a Federal or State grant.


Signature

3/5/15
Date

Edward L. Oueilhe, Esq., Deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner
Gregory Felton

1 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
Attorneys for Petitioner
4

REC'D & FILED
2015 MAR -5 AM 10:23
SUSAN MERRIWETHER
CLERK
BY C. COOPER
DEPUTY

5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 GREGORY FELTON,

10 Petitioner,

Case No. 15 OC 00048 1B

11 vs.

Dept. No. I

12 DOUGLAS COUNTY, PUBLIC
AGENCY COMPENSATION TRUST,
13 ALTERNATIVE SERVICE CONCEPTS,
LLC, and APPEALS OFFICE of the
14 DEPARTMENT OF ADMINISTRATION,

15 Respondents.
16 _____ /

17 AMENDED PETITION FOR JUDICIAL REVIEW

18 COMES NOW Petitioner, Gregory Felton, by and through his
19 attorney, Edward L. Oueilhe, Esq., Deputy, Nevada Attorney for
20 Injured Workers, and pursuant to NRS 233B.130, hereby files this
21 Amended Petition for Judicial Review of the Decision and Order of
22 Appeals Officer Whitney D. Derrah, filed on February 4, 2015, a
23 copy of which is attached hereto as Exhibit 1.

24 This Amended Petition is filed with the District Court on the
25 grounds that Petitioner is aggrieved by the Decision and Order of
26 the Appeals Officer.

27 / / /

28 / / /

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

1 The Decision and Order of the Appeals Officer was an abuse of
2 discretion, clearly erroneous, an error as a matter of law, and is
3 not based on substantial evidence.

4 WHEREFORE, Petitioner prays as follows:

5 1. That this Court grant judicial review of the Decision and
6 Order of the Appeals Officer issued on February 4, 2015.

7 2. That this Court vacate and set aside the February 4,
8 2015, Decision and Order of the Appeals Officer and award
9 Petitioner the benefits to which he is entitled.

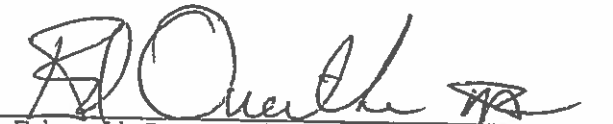
10 3. That pursuant to NRS 233B.133(4), a hearing is requested
11 in this matter.

12 4. For such other and further relief as the Court deems just
13 and proper in the premises.

14 DATED this 5th day of March, 2015.

15 NEVADA ATTORNEY FOR INJURED WORKERS
16 Attorney for Petitioner
17 1000 E. William Street, Suite 208
18 Carson City, Nevada 89701

19 By:


20 Edward L. Oueilhe, Esq., Deputy
21 State Bar No. 08218

22 NEVADA ATTORNEY FOR INJURED WORKERS
23 1000 East William Street, Suite 208
24 Carson City, NV 89701 (775) 684-7555
25 2200 South Rancho Drive, Suite 230
26 Las Vegas, NV 89102 (702) 486-2830
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding AMENDED PETITION FOR JUDICIAL REVIEW

X Does not contain the Social Security Number of any
person.

-OR-

Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for
an application for a Federal or State grant.


Signature

3/5/15
Date

Edward L. Oueilhe, Esq., Deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner
Gregory Felton

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

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

INDEX OF EXHIBITS

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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER

In the Matter of the Industrial Insurance Claim	Claim No. C143-12-06693 01
of	Hearing Nos. 47153-KD 47154-KD
GREGORY FELTON	Appeal No. 47863-WDD

DECISION AND ORDER

Background

In this contested case, the claimant Gregory Felton (hereinafter "Felton"), was represented by Edward Oueilhe, Esq., Deputy Nevada Attorney for Injured Workers. The employer, Douglas County, and the insurer, Public Agency Compensation Trust (hereinafter "PACT"), were represented by Robert Balkenbush, Esq., of the law firm of Thorndal, Armstrong, Delk, Balkenbush & Eisinger. The current third party administrator of Felton's year 2012 workers' compensation claim at issue in this contested case is Alternative Service Concepts, LLC (hereinafter "ASC").

By written determination dated November 11, 2013, ASC, on behalf of Douglas County and the PACT, notified Felton that it had calculated his average monthly wage (AMW) under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and further advised that this calculation was based upon the statutory deemed wage of a search and rescue volunteer.

See, Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.

Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely

1 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
2 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

3
4 By written determination dated November 13, 2013, ASC, on behalf of Douglas County and
5 the PACT, awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
6 impairment (WPI) as a result of his work-related left knee injury. *See*, Exhibit No. 3 at pp. 4; Exhibit
7 No. 4 at pp. 100-03.

8
9 Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
10 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
11 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12
13 Following a hearing and by written decision dated February 20, 2014, made under Hearing
14 Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the November 11,
15 2013 and November 13, 2013, written determinations made by ASC. *See*, Exhibit No. 3 at pp. 7-9.

16
17 Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
18 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and Appeal
19 No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the time of the trial
20 of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals Officer, Douglas
21 County and the PACT that he no longer disagreed with the November 13, 2013, determination made
22 by ASC that awarded him a 1% PPD or WPI for his work-related left knee injury, nor did he disagree
23 with the decision made by the Hearing Officer under Hearing No. 47154-KD that affirmed the legal
24 propriety of this November 13, 2013, determination. Hence, the decision in this contested case
25 (Appeal No. 47863-WDD) will solely resolve the issue whether AMW determination made by ASC
26 in its November 11, 2013, determination was proper under the law.

27
28 The trial of Appeal No. 47863-WDD was conducted on August 25, 2014. Mr. Felton

1 personally appeared and provided brief testimony at the hearing of this appeal. No other witnesses
2 testified in this matter. Six (6) documentary exhibits were admitted into evidence. In addition,
3 written closing arguments were submitted by legal counsel for the parties.
4

5 Having considered the documentary exhibits admitted into evidence at the trial of this case,
6 the testimony of claimant Gregory Felton, as well as written closing arguments made by legal
7 counsel for the parties, the Appeals Officer hereafter makes the following findings of fact,
8 conclusions of law, and order.

9 **Summary of Decision**

10
11 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
12 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
13 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
14 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). Indeed, NRS 616A.157
15 was enacted and became law on May 21, 2013, which is one year and two months after the
16 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
17 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
18 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
19 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
20 volunteers" were not employees with a deemed wage under any other category of volunteers with
21 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
22 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
23 employment.
24
25

26 There are several additional legal reasons that support the conclusion reached in this
27 contested case.
28

FINDINGS OF FACT

- 1
2 1. In March 2012, Felton was employed with Douglas County as a search and rescue
3 volunteer. *See*, Exhibit No. 4 at pp. 1-2, 7.
4
- 5 2. On or about March 6, 2012, Felton suffered an injury to his left knee while participating
6 in a snow and avalanche rescue training. *See*, Exhibit No. 4 at pp. 1-2, 7. At the time of that this
7 left knee injury was incurred, it appears that Felton was also employed by Hewlett Packard. *See*,
8 Exhibit No. 2; *see also*, Trial Transcript.
- 9
10 3. For his March 2012 left knee injury, Felton initiated a workers' compensation claim with
11 Douglas County, and its workers' compensation insurer, the PACT, assigned Claim No. C143-
12 12-06693-01 to Felton's claim, and workers' compensation insurance coverage of his left knee
13 injury was granted. *See*, Exhibit No. 4 at p. 17.
- 14 4. Following medical treatment of Felton's left knee injury, and on or about November 5,
15 2013, Felton was evaluated for a permanent partial disability (PPD). *See*, Exhibit No. 4 at pp. 3-
16 6, 15-16, 18-90, 94-97; Exhibit 5. Nevada rating physician Jay Betz, M.D., assessed Felton as
17 having suffered a 1% whole person impairment (WPI) as a result of his work-related left knee
18 injury, and further recommended closure of his claim. *See*, Exhibit No. 4 at pp. 94-97.
- 19
20 5. By written determination dated November 11, 2013, ASC, on behalf of the Douglas
21 County and the PACT, notified Felton that it had calculated his average monthly wage (AMW)
22 under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and that
23 this calculation was based upon the statutory deemed wage of a search and rescue volunteer. *See*,
24 Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.
- 25
26 6. Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely
27 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
28

1 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

2 7. By written determination dated November 13, 2013, ASC, on behalf of the Douglas
3 County and PACT, notified Felton of the result of his PPD evaluation, advising Felton that Dr.
4 Jay Betz had determined he had suffered a one percent (1%) whole person impairment (WPI) or
5 permanent partial disability (PPD) as a result of his work-related left knee injury. *See*, Exhibit
6 No. 3 at pp. 4; Exhibit No. 4 at pp. 100-03. In turn, by means of this determination, ASC
7 awarded Felton a 1% PPD. *Id.*

8
9 8. Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
10 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
11 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12
13 9. Following a hearing and by written decision dated February 20, 2014, made under
14 Hearing Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the
15 November 11, 2013 and November 13, 2013, written determinations made by ASC. *See*,
16 Exhibit No. 3 at pp. 7-9.

17
18 10. Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
19 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and
20 Appeal No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the
21 time of the trial of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals
22 Officer, Douglas County and the PACT that he no longer disagreed with the November 13, 2013,
23 determination made by ASC that awarded him a 1% PPD for his work-related left knee injury,
24 nor did he disagree with the decision made by the Hearing Officer under Hearing No. 47154-KD
25 that affirmed the legal propriety of the November 13, 2013, determination. Hence, the decision
26 in this contested case (Appeal No. 47863-WDD) will solely resolve the issue whether AMW
27
28

1 determination made by ASC in its November 11, 2013, determination was proper under the law.
2 11. At the trial of this contested case (Appeal No. 47863-WDD), Felton presented
3 documentary evidence of what his earned wages were with Hewlett Packard at or about the time
4 that his March 2012 left knee injury was incurred. See, Exhibit No. 2.
5

6 CONCLUSIONS OF LAW

7 A. Governing Law or Legal Principles

8 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
9 means that the Claimant must establish the work-connection of his/her injuries, the causal
10 relationship between his/her work-connected injury and his disabilities, the extent of his/her
11 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
12 cannot prevail if the evidence is merely evenly balanced. See, 8A Larson, Larson's Workers'
13 Compensation Laws, § 130.06(3)(a)(2006); see also, NRS 616C.150; NRS 616A.010; NRS
14 617.358.
15

16 Generally, the average monthly wage for an injured employee covered under the Nevada
17 Industrial Insurance Act is defined by NRS 616A.065, which provides in part:
18

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been received by the
22 employee on the date of the accident or injury to the employee, excluding
remuneration from employment:

23 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
24 Occupational Diseases Act; and

25 (2) For which coverage is elective, but has not been elected; or

26 (b) One hundred fifty percent of the state average weekly wage as most recently
27 computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding the
date of the injury or accident, multiplied by 4.33.

1 NRS 616A.065(1). (Emphasis added).

2 Except as otherwise provided by a specific statute, the amount of compensation and
3 benefits and the person or persons entitled thereto must be determined as of the date of the
4 accident or injury to the employee and their rights thereto become fixed as of that date. See, NRS
5 616C.425; see also, NAC 616C.441.

7 Concerning the average monthly wage (AMW) of volunteer members of the search and
8 rescue organization, the Nevada Legislature has specifically defined an "Employee" in pertinent
9 part as follows:

10 Volunteer members of a search and rescue organization that is under the direct
11 supervision of a county sheriff, while acting under the direction of the sheriff or a
12 designee of the sheriff:

- 13 1. In the conduct of any search and rescue operation; or
- 14 2. In training for such an operation, shall be deemed, for the purposes of chapters
15 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of
16 \$2,000 per month, and are entitled to the benefits of those chapters.

17 See, NRS 616A.157 (Emphasis added).

18 The Nevada Legislature has delegated by statute to the Administrator of the Division of
19 Industrial Relations (DIR) the authority to promulgate the method of determining the average
20 monthly wage. See, NRS 616C.420; NRS 6161A.400; and NAC 616A.420-447. Regulations
21 define average monthly wage to mean "the total gross value of all money, goods and services
22 received by an injured employee from his employment to compensate for his time or services and
23 is used as the base for calculating the rate of compensation for the injured employee." NAC
24 616C.420. In this regard, those wages which are deemed to be established in chapters 616A to
25 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly
26 wage when applicable. See, NAC 616C.429.

28

1 The Division of Industrial Relations has also by regulation specifically allowed for the
2 adding or combining of wages in determining an employee's average monthly wage in certain
3 circumstances. *See*, NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that
4 "the average monthly wage of an employee who is employed by two or more employers covered
5 by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is
6 equal to the sum of the wages earned or deemed to have been earned at each place of
7 employment." (Emphasis added).
8

9 **B. Felton Is Not Legally Entitled to an Average Monthly Wage (AMW) That Is**
10 **Based upon Both His Earned Wages at Hewlett Packard and the Statutory**
11 **Deemed Wage of a Search & Rescue Volunteer**

12 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
13 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
14 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
15 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA).¹ Indeed, NRS 616A.157
16 was enacted and became law on May 21, 2013, which is one year and two months after the
17 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
18 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
19 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
20 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
21 volunteers" were not employees with a deemed wage under any other category of volunteers with
22 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
23
24
25
26

27 ¹ "[A] person providing purely gratuitous voluntary service is not an 'employee' and has not entered into an
28 employment relationship with the person receiving the services for purposes of workers' compensation acts." 82 Am.
Jur. 2d Workers' Compensation § 127 (2012).

1 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
2 employment.²

3
4 There are several additional legal reasons that support the conclusion reached in this
5 contested case.

6 First, while Nevada law is silent on whether it would allow the aggregation of wages from
7 two dissimilar employments, it may very well adopt the related-employment rule accepted by a
8 majority of jurisdictions throughout the country. *See generally*, A. Larson, *Larson's Workers'*
9 *Compensation Law* § 93.03[1][a] (2011).³ In this regard, in *Ayala v. Caesars Palace*, 119 Nev. 232,
10 71 P.3d 490 (2003), the Nevada Supreme Court has indicated its leaning toward the adoption of the
11 majority position on the issue of aggregation of concurrent employment, that is the related-
12 employment rule. In *Ayala*, the Court, in finding that the aggregation of concurrent wages was
13 inappropriate, specifically noted that the two types of employment in consideration (cashier and
14 banquet waitress) were not similar in nature.⁴ *See also*, 100 C.J.S. *Workers' Compensation* § 524
15 (“[w]orkers’ compensation benefits are not allowed to compensate a volunteer for an inability to
16 pursue unrelated concurrent employment for another employer.”)(citing, *Wislocki v. Town of*
17 *Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); *see also*, *Snyder v. Workmen's Compensation*
18
19
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21

22 ² Notwithstanding the foregoing, after the enactment of NRS 616C.157, and by written determination
23 determination dated November 11, 2013, Felton was notified that by the claims administrator that an average monthly
24 wage (AMW) under his workers’ compensation claim had been calculated, and was based upon the statutory deemed
25 wage of a search and rescue volunteer. Neither Douglas County nor the PACT appealed this determination and,
26 therefore, effective the date of the determination, the statutory deemed wage under NRS 616C.157 is Felton’s AMW
27 under the claim. *See generally*, *Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

28 ³ *See e.g.*, *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980); *Thompson v. STS*
Holdings, 711 S.E.2d 827 (N.C. Ct. App. 2011); *In the Matter of Russell*, 37 E.C.A.B. 567 (1986).

⁴ “[T]he record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at
the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not
as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation.” *See*, 119 Nev. at 240.

1 *Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp.*
2 *v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

3
4 Second, where a statute (or regulation) is unambiguous the plain language will control. The
5 plain language of NRS 616A.065 and NAC 616C.447 do not mandate the aggregation of earned
6 wages *and* those deemed to have been earned, as they are two different categories of wages.

7 Third, case law in other jurisdictions, barring the aggregation of deemed and earned wages
8 specifically for volunteer firefighters, relies on similar statutory language as found in Nevada. Those
9 courts have held that where two statutes seemingly conflict (one allowing for combined wages and
10 the other setting a deemed wage specifically for firefighters) the more specific statute (setting a
11 deemed wage) would, using the rules of statutory construction, control or be seen as an exception
12 to the general rule. *See, New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal*
13 *Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995); *Snyder v. Workmen's Compensation Appeal Board*,
14 654 A.2d 641 (Pa. Commonw. Ct. 1995); *Borough of Hensdale v. Workmen's Compensation Appeal*
15 *Bd.*, 659 A.2d 70 (Pa. Commonw. Ct. 1995); *Going v. Cromwell Fire District*, 159 Conn. 53, 267
16 A.2d 428 (1970); *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993); *see also*,
17 *Laird v. State of Nevada Public Employees Retirement Board*, 98 Nev. 42, 639 P.2d 1171 (1982);
18 73 Am. Jur. 2d Statutes § 170 (Explaining that “[w]ith respect to a conflict arising between a statute
19 dealing generally with a subject and another dealing specifically with a certain phase of it, the
20 specific legislation controls in a proper case”); *see also*, NAC 616C.429;

21
22
23
24 Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
25 scholarly publications, and recently the Nevada Supreme Court have held that where an
26 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
27 invalid. *Meridian Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516
28

1 (2003); *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011); see
2 generally, 73 C.J.S. Public Administrative Law and Procedure § 172. In this regard, and to the extent
3 that NAC 616C.447 were construed to mandate aggregation of deemed wages and earned wages
4 from concurrent employment, this regulation might be deemed to exceed, modify and conflict with
5 the Nevada statute that specifically defines average monthly wage (NRS 616A.065) and the statute
6 governing the stated average monthly wage of volunteer members of search and rescue organizations
7 (NRS 616A.157), which latter statute does not address, allow for, nor contemplate wages from
8 private/public concurrent employment.
9

10
11 Lastly, there was no evidence of any public policy that the Nevada Legislature intended
12 Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen
13 liabilities based on possible alternative employment by its volunteers.⁵

14 **ORDER**

15 To the extent that any of the foregoing findings of fact may be construed as conclusions
16 of law, or any of the foregoing conclusions of law may be construed as findings of fact, they are
17 hereby adopted as such.
18

19 In accordance with the foregoing, **IT IS HEREBY ORDERED:**

- 20 1. That the November 11, 2013, average monthly wage determination made by ASC, on
21 behalf of Douglas County and the PACT, is hereby affirmed.
22
23 2. That the written decision dated February 20, 2014, made under Hearing No. 47153-KD

24
25 ⁵ Illustratively, the propriety of the ruling in this contested can be seen in a converse example. One can only
26 imagine the reaction of a private employer thrown into such a situation as the claimant intends to place Douglas County
27 and the PACT. A private employer insures his employees for workers' compensation with the expectation of replacing
28 lost wages through insurance based on the wages paid by that employer to the employee. Upon injury and disability from
work, however, the claimant alleges that he happens to also be a volunteer member of a search and rescue organization
when not employed by the private employer. The claimant then alleges that his average monthly wage under the claim
should be supplemented by an amount that includes not only his earned wages but also the deemed wages of his
concurrent employment as a volunteer. It is beyond difficult to imagine legal allowance of such an aggregation.

1 and by Hearing Officer Katherine Diamond, and which affirmed ASC's November 11, 2013
2 average monthly wage determination is hereby affirmed.

3 Dated this 4th ^{February} of ~~January~~, 2015.
4

5
6 Lonk Ward (for)
7 Whitney D. Derrah, Appeals Officer

8 **NOTICE:**

9
10 Pursuant to NRS 233B.130, if any party desires to appeal this final decision of the
11 Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
12 thirty (30) days after service of this final decision.
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 26 day of January, 2015.

By: 

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 was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO, NV 89509

Dated this 4 day of February, 2015.

Tasha Eaton
Tasha Eaton, Supervising Legal Secretary
Employee of the State of Nevada

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

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing AMENDED PETITION FOR JUDICIAL REVIEW addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

DOUGLAS COUNTY
PO BOX 218
MINDEN NV 89423

PUBLIC AGENCY COMPENSATION
TRUST
201 S ROOP ST STE 102
CARSON CITY NV 89701

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO NV 89509

and caused a copy of the aforementioned document to be served by hand delivery via Reno-Carson Messenger Service to the following party at the address referenced below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
6590 S MCCARRAN BLVD #B
RENO NV 89509

and a copy hand delivered to:

WHITNEY D DERRAH ESQ
APPEALS OFFICER
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: March 5, 2015

SIGNED: Jim Mindrum

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

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the
3 State of Nevada, Nevada Attorney for Injured Workers, and that on
4 this date I deposited for mailing at Carson City, Nevada, a true
5 and correct copy of the within and foregoing NOTICE OF AMENDED
6 PETITION FOR JUDICIAL REVIEW addressed to:

7 GREGORY FELTON
8 PO BOX 2130
9 STATELINE NV 89449

10 DOUGLAS COUNTY
11 PO BOX 218
12 MINDEN NV 89423

13 PUBLIC AGENCY COMPENSATION
14 TRUST
15 201 S ROOP ST STE 102
16 CARSON CITY NV 89701

17 ALTERNATIVE SERVICE CONCEPTS
18 639 ISBELL RD STE 390
19 RENO NV 89509

20 and caused a copy of the aforementioned document to be served by
21 hand delivery via Reno-Carson Messenger Service to the following
22 party at the address referenced below:

23 ROBERT F BALKENBUSH ESQ
24 THORNDAL ARMSTRONG DELK
25 BALKENBUSH & EISINGER
26 6590 S MCCARRAN BLVD #B
27 RENO NV 89509

28 and a copy hand delivered to:

WHITNEY D DERRAH ESQ
APPEALS OFFICER
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: March 5, 2015

SIGNED: *Lisa M. ...*

1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County, Employer
8 Public Agency Compensation Trust, Insurer

REC'D & FILED

2015 MAR -5 PM 3:11

SUSAN HERRIWETHER
CLERK
BY *[Signature]*
DEPUTY

7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR CARSON CITY

10 GREGORY FELTON

11 Petitioner,

CASE NO.: 15 OC 00048 1B

12 vs.

DEPT. NO.: I

13 DOUGLAS COUNTY;
14 PUBLIC AGENCY COMPENSATION
15 TRUST; NEVADA DEPARTMENT OF
16 ADMINISTRATION, HEARINGS
17 DIVISION, APPEALS OFFICE,
18 an Agency of the State of Nevada,

19 Respondents.
20 _____ /

21 **NOTICE OF INTENT TO**
22 **PARTICIPATE IN PETITION**
23 **FOR JUDICIAL REVIEW**

24 COME NOW, Respondents, DOUGLAS COUNTY, and PUBLIC AGENCY
25 COMPENSATION TRUST, by and through their attorney ROBERT F. BALKENBUSH, ESQ., of
26 the law firm THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, and hereby
27 submit this Notice of Intent to Participate in the review process regarding the Petition for Judicial
28 Review filed by Petitioner on or about March 2, 2015. This Notice of Intent to Participate is made
pursuant to and based upon NRS 233B.130(3).

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Respondents, do not, by filing this Notice of Intent to Participate, waive any argument regarding jurisdiction or any other defense available.

DATED this 5th day of March, 2015

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

ROBERT F. BALKENBUSH, ESQ.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
(775) 786-2882
Douglas County, Employer
and Public Agency Compensation Trust, Insurer

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I caused the foregoing **NOTICE OF INTENT TO PARTICIPATE IN PETITION FOR JUDICIAL REVIEW** to be served on all parties to this action by:


- Placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.
- Personal delivery
- Facsimile (fax)
- Federal Express/UPS or other overnight delivery

Fully addressed as follows:

Edward Oueilhe, Esq.
Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

Whittney D. Derrah, Esq.
Appeals Officer
Department of Administration
1050 E. Williams Street, Suite 450
Carson City, NV 89701

DATED this 5th day of March, 2015.


An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax: (775) 786-8004
7 Attorneys for: Douglas County, Employer
8 Public Agency Compensation Trust, Insurer

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GREGORY FELTON,

Case No. 15 OC 00048 1B

Plaintiff,

Dept. No. I

vs.

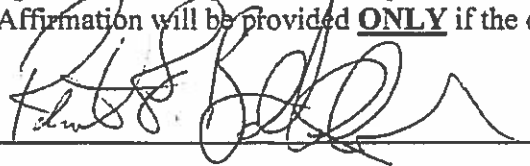
DOUGLAS COUNTY;
PUBLIC AGENCY COMPENSATION
TRUST; NEVADA DEPARTMENT OF
ADMINISTRATION, HEARINGS
DIVISION, APPEALS OFFICE
an Agency of the State of Nevada,

Defendant.

AFFIRMATION
Pursuant to NRS 239B.030
(Initial Appearance)

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided **ONLY** if the document contains a social security number.

Signature



Date

03-05-15

The purpose of this initial affirmation is to ensure that each person who initiates a case, or upon first appearing in a case, acknowledges their understanding that no further affirmations are necessary unless a pleading which is filed contains a social security number.

1 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
3 Carson City, Nevada 89701
Attorneys for Petitioner,
4 Gregory Felton

REC'D & FILED
2015 JUN -2 AM 9:26
SUSAN MERRIN WETTER
CLERK
~~G. COOPER~~
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

9 GREGORY FELTON,

10 Petitioner,

11 vs.

Case No. 15 OC 00048 1B

Dept. No. 1

12 DOUGLAS COUNTY, PUBLIC
AGENCY COMPENSATION TRUST,
13 and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

14 Respondents.
15 _____ /

17 PETITIONER'S OPENING BRIEF

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranchin Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

23 Edward L. Oueilhe, Esq., Deputy
Nevada Bar No. 08218
24 Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
25 Carson City, Nevada 89701
26 Attorney for Petitioner,
Gregory Felton

Robert F. Balkenbush, Esq.
Nevada Bar No. 04665
Thorndal Armstrong Delk
Balkenbush & Eisinger
6590 S. McCarran Bld.,
Suite B
Reno, Nevada 89509

Attorney for Respondents,
Douglas County and PACT

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8 2. WHETHER THE APPEALS OFFICER'S ORDER PRESENTS

9 AN ERROR OF LAW BECAUSE IT FAILS TO PROPERLY

10 SUM MR. FELTON'S CONCURRENT EARNED WAGE AND

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17 REGARDS TO THE APPLICATION OF NAC

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19 FOR AN ERROR OF LAW 4

20 B. THE APPEALS OFFICER COMMITTED AN

21 ERROR OF LAW BY FAILING TO PROPERLY

22 SUM MR FELTON'S DEEMED WAGE AND HIS

23 CONCURRENT WAGES WHEN CALCULATING AMW

24 AS DICTATED BY NAC 626C.447 5

25 a. Nevada law requires that Mr.

26 Felton's deemed wage and

27 concurrent wage be summed when

28 calculating his Average Monthly

Wage. 5

b. Mr. Felton is entitled an average

monthly wage amount that is

calculated within the limits of

NRS 616C.420. 7

c. Mr Felton is entitled to a deemed

wage under Nevada Law. 7

V. CONCLUSION 9

CERTIFICATE OF COMPLIANCE 10

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

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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

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranccho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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I.

ISSUES ON APPEAL

1. Whether the proper standard for review in regards to the application of NAC 616C.447 is independent review for an error of law?

2. Whether the Appeals Officer's order presents an error of law because it fails to properly sum Mr. Felton's earned wage and deemed wage as required by NAC 616C.447 to determine AMW?

II.

STATEMENT OF THE CASE

The Petitioner, Gregory Felton (Mr. Felton), injured his knee on March 6, 2012, while volunteering for the Douglas County Search-and-Rescue team. Record on Appeal (ROA) 27. On the date of the injury, Mr. Felton was concurrently employed by Hewlett-Packard (HP) and did quality control work for HP. ROA 26-27. Mr. Felton has worked as a Douglas County employee-volunteer search and rescue worker since 2005. ROA 28. The Third-Party Administrator ("TPA" or "Insurer") for Douglas County, Associated Service Concepts, ("ASC"), issued a Notice of Claim Acceptance for Mr. Felton's knee injury on July 18, 2012. ROA 69. On November 11, 2013, ASC pursuant to NRS 616A.157 issued a determination to Mr. Felton calculating his average monthly wage ("AMW") based only as a search and rescue employee at the deemed wage of \$2,000.00 per month. ROA 150. ASC's AMW did not include Mr. Felton's concurrent wages he earned at Hewlett-Packard at the time he was injured as a volunteer employee.

Mr. Felton timely appealed the Insurer's AMW determination to the Department of Administration's Hearings' Division, and an

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

1 informal hearing was set before a Hearing Officer ("HO") on
2 February 10, 2014. ROA 171. A February 20, 2014, HO's Decision
3 and Order affirmed the calculation of Mr. Felton's AMW based upon
4 the deemed wage in NRS 616A.157 only. ROA 387-389. Mr. Felton
5 disagreed with the affirmation, and he timely appealed the decision
6 to the Appeals Officer ("AO") on March 18, 2014. ROA 179. The
7 Nevada Attorney for Injured Workers ("NAIW") was appointed to
8 represent Mr. Felton. ROA 182. On August 25, 2014, a hearing was
9 held before Appeals Officer Whitney Derrah. ROA 2-3. Because ASC
10 filed a last minute legal memo regarding the application of NAC
11 616C.447, AO Derrah ordered the parties to submit additional legal
12 briefs as to whether the calculation of Mr. Felton's AMW included
13 his concurrent HP wages. ROA 360-361. On February 4, 2015,
14 Appeals Officer Lorna Ward entered the Decision and Order of the
15 Appeals Officer (ROA 1-14) on behalf of Appeals Officer Whitney
16 Derrah. ROA 12.

17 Mr. Felton disagreed with the AO's Decision and Order. On
18 March 2, 2015, Mr. Felton timely filed a Petition for Judicial
19 Review with the First Judicial District Court.

20 III.

21 STATEMENT OF FACTS

22 The Petitioner, Gregory Felton, injured his knee on March 6,
23 2012, while participating in an avalanche rescue and simulation.
24 ROA 27. Mr. Felton has assisted with search and rescue for Douglas
25 County since 2005. ROA 28. Mr. Felton has a history of
26 volunteering to help with search and rescue work with various
27 counties when his emergency service skills are needed. ROA 28.

28 / / /

1 ASC issued a Notice of Claim Acceptance for Mr. Felton's left
2 knee injury on July 18, 2012. ROA 69. An MRI of Mr. Felton's knee
3 injury showed he had a medial meniscal tear. ROA 74. As a result
4 of the accepted knee injury, Mr. Felton had arthroscopic surgery
5 and a partial meniscectomy was performed on October 17, 2012. ROA
6 81.

7 Because it was determined that Mr. Felton's industrial
8 accident left him with a permanent injury, ASC scheduled a
9 permanent partial disability rating in an October 8, 2013
10 determination. ROA 139. On November 11, 2013, ASC issued a
11 determination to Mr. Felton calculating AMW based on his deemed
12 wage as a volunteer search and rescue worker pursuant to NRS
13 616A.157. ROA 150. Mr. Felton appealed ASC's determination,
14 because he believed wages from his concurrent employment should be
15 included in the AMW calculation.

16 On the date of the injury, Mr. Felton was concurrently
17 employed by Hewlett-Packard ("HP") doing quality control work for
18 HP. ROA 26-27. Mr. Felton has worked for HP a sum total of 20
19 years. ROA 26. Mr. Felton's Hewlett-Packard pay stubs indicate
20 that his average monthly wage from that job was \$12,500.00 a month.
21 ROA 158. It is uncontested that if Mr. Felton's deemed wage and
22 his concurrent Hewlett-Packard wage were used to determine his AMW,
23 Mr. Felton would be entitled to the State maximum under Nevada's
24 workers' compensation law. ROA 24.

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28 / / /

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancilio Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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

1 IV.

2 ARGUMENT

3 A. THE PROPER STANDARD FOR REVIEW IN REGARDS TO THE
4 APPLICATION OF NAC 616C.447 IS INDEPENDENT REVIEW FOR AN
5 ERROR OF LAW.

6 On issues of law, it is appropriate for the reviewing court to
7 make an independent judgment rather than use a more deferential
8 standard of review. Maxwell v. State Indus. Ins. Sys., 109 Nev.
9 327, 849 P.2d 267 (1993). A "pure legal question" is a question
10 that is not dependent upon and must necessarily be resolved without
11 reference to any fact in the case before the court. Beavers v.
12 State, Dep't of Motor Vehicles and Pub. Safety, 109 Nev. 435, 438
13 n.1, 851 P.2d 432 (1993). The reviewing court may undertake
14 independent review of the administrative construction of a statute.
15 State Indus. Ins. Sys. v. Campbell, 109 Nev. 997, 999, 862 P.2d
16 1184 (1993).

17 Independent review is proper in this case because the Appeals
18 Officer concluded NAC 616C.447 does not require the calculation of
19 Mr. Felton's AMW include his concurrent deemed wage pursuant NRS
20 616A.157 and his HP wages. In Maxwell v. State Indus. Ins. Sys.,
21 109 Nev. 327, 329, 849 P.2d 267, 269 (1993), the State Supreme
22 Court considered whether NRS 616.605(3) precluded a permanent
23 partial disability award for psychological impairments, and
24 determined "[t]he construction of a statute is a question of law,
25 and independent appellate review of an administrative ruling,
26 rather than a more deferential standard of review, is appropriate."

27 Independent review is proper in this case, because the AO
28 failed to correctly interpret or apply the plain language of NAC
616C.447. Therefore, Mr. Felton respectfully requests that the

1 Court grant the immediate Petition reversing the Appeals Officer
2 and remand the matter for finding consistent with NAC 616C.447,
3 which requires both concurrent and a deemed wage be summed when
4 calculating an injured employee's AMW.

5 **B. THE APPEALS OFFICER COMMITTED AN ERROR OF LAW BY FAILING**
6 **TO PROPERLY SUM MR. FELTON'S DEEMED WAGE AND HIS CONCURRENT**
7 **WAGE WHEN CALCULATING AMW AS DICTATED BY NAC 616C.447.**

8 a. Nevada law requires that Mr. Felton's
9 deemed wage and his concurrent wage be summed
10 when calculating his Average Monthly Wage.

11 NAC 616C.447, which is titled *Concurrent employment*, governs
12 the calculation of an AMW. NAC 616C.447 clearly states that deemed
13 wages are to be combined with earned wages if an injured worker is
14 concurrently employed. NAC 616C.447 states in relevant part:

15 The average monthly wage of an employee who is
16 employed by two or more employers covered by
17 a private carrier or by a plan of
18 self-insurance on the date of a disabling
19 accident or disease is equal to the sum of the
20 wages earned or deemed to have been earned at
21 each place of employment. The insurer shall
22 advise an injured employee in writing of his
23 or her entitlement to compensation for
24 concurrent employment at the time of the
25 initial payment of the compensation. [Emphasis
26 added].

27 The clear language of the regulation dictates that Mr.
28 Felton's deemed wage as a search and rescue volunteer should have
29 been summed with his concurrent wage from HP when the Insurer
30 calculated Mr. Felton's AMW. As noted in the AO's order, "The
31 Nevada Legislature has delegated by statute to the Administrator
32 for the Division of Industrial Relations ("Administrator" or "DIR")
33 the authority to promulgate the method of determining the average
34 monthly wage." ROA 7, and see NRS 616C.420. The AO committed
35 legal error when she failed to order the Insurer to calculate Mr.

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

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

1 Felton's concurrent wages pursuant to NAC 616C.447.

2 NRS 616C.420 is not ambiguous. NRS 616C.420 requires the
3 Division's Administrator to enact regulations governing the
4 specific AMW calculation process, which includes concurrent
5 employment situations. As the Nevada Supreme Court stated in
6 Ronnow v. Las Vegas, 57 Nev. 332, 342, 65 P.2d 133, 136 (1937),
7 ". . . grants of power are not to be so construed as to defeat the
8 intent of the Legislature or to withhold what is given either
9 expressly or by necessary and fair implication."

10 As directed by NRS 616C.420, NAC 616C.447 carries out the more
11 specific aspect of calculating AMW when an injured worker has
12 concurrent employment. When, "'an agency charged with the duty of
13 administering an act is impliedly clothed with power to construe it
14 as a necessary precedent to administrative action [and] great
15 deference should be given to the agency's interpretation when it is
16 within the language of the statute.'" City of Reno v. Reno Police
17 Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219
18 (2002) (citation omitted).

19 The Legislature in NRS 616C.420 explicitly ordered and
20 entrusted the Administrator of the Division Industrial Relations to
21 enact regulations which dictate the process by which average
22 monthly wages are to be calculated. NAC 616C. 447 does not exceed
23 the bounds of the Administrator's authority. The DIR enacted NAC
24 616C.447 as means to calculate an AMW when there is concurrent
25 employment. The Appeals Officer was required to give effect to the
26 Legislature's entrustment to the Administrator's enactment of a
27 regulations governing the calculation of an AMW and likewise follow
28 NAC 616C. 447.

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) 486-2810

1 b. Mr. Felton is entitled to an average
2 monthly wage amount that is calculated within
3 the limits of NRS 616C.420.

4 Mr. Felton does not argue that his AWW calculation may exceed
5 the statutory cap on calculated wages. No workers' compensation
6 insurer is required to cover the actual wage losses of high earners
7 in Nevada because of the maximum wage cap in NRS 616A.065(1)(b).
8 NRS 616A.065(1)(b) dictates that the maximum wage in Nevada for AMW
9 purposes will never be more than one hundred fifty percent of the
10 state average weekly wage as computed by the Employment Security
11 Division of the Department of Employment, Training and
12 Rehabilitation.

13 Mr. Felton was injured during fiscal year 2012. The maximum
14 AMW per NRS 616A.065(1)(b) for 2012 was capped at \$5,157.57.
15 Maximum and minimum levels of compensation. For FY 2012 (July 1,
16 2011 - June 30, 2012), the maximum considered wage for this
17 calculation is \$5,151.57. See the Divisions frequently asked
18 questions at <http://dirweb.state.nv.us/WCS/FAQs.pdf>. The Appeals
19 Officer committed legal error because Mr. Felton is entitled to the
20 sum of his deemed and concurrent AWG wage that does not exceed the
21 2012 fiscal year limit of \$5,151.57.

22 c. Mr Felton is entitled to a deemed wage
23 under Nevada Law.

24 The Appeals Officer erroneously concludes that Mr. Felton was
25 not entitled to a deemed wage. The AO bases her conclusion only
26 upon concluding NRS 616A.157 was passed two months after he was
27 injured, and there is no evidence that NRS 616A.157 was applied
28 retroactively. Even if Mr. Felton on the day of his injury was not
 covered under the deemed wage in NRS 616A.157, he was entitled to

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

1 the deemed wage under NRS 616A.130, which covers volunteer
2 employees in a program for public service. NRS 616A.130 states in
3 relevant part:

4 Persons who perform volunteer work in any
5 formal program which is being conducted:

6 1. Within a state or local public
7 organization;

8 and who are not specifically covered by any
9 other provisions of chapters 616A to 616D,
10 inclusive, of NRS, while engaged in such
11 volunteer work, may be deemed by an insurer,
12 for the purposes of those chapters, as
13 employees of that organization at a wage of
14 \$100 per month. Such persons are entitled to
15 the benefits of those chapters when the
16 organization approves coverage and complies
17 with the provisions of those chapters and
18 regulations adopted pursuant to them.

19 Mr. Felton was entitled to deemed wage either pursuant to NRS
20 616A.157 or 616A.130. Whether one uses NRS 616A.157 or 616A.130,
21 Mr. Felton as a matter of law is also entitled to have his deemed
22 wage summed with his concurrent HP wage when calculating his AMW.

23 Moreover, the Appeals Officer in her Order applied NRS
24 616A.157 retroactively. ROA 12. Likewise, Insurer ASC in its
25 November 11, 2013, AMW determination applied NRS 616A.157
26 retroactively. ROA 150. The Hearing Officer's February 20, 2014,
27 Decision and Order affirms Insurer ASC's November calculation of
28 Mr. Felton's AMW based upon the deemed wage in NRS 616A.157. ROA
387-389. The Appeals Officer in her February 4, 2015, Decision and
Order affirms the ASC's November 11, 2013, determination as well as
the HO's affirmation. ROA 11-12.

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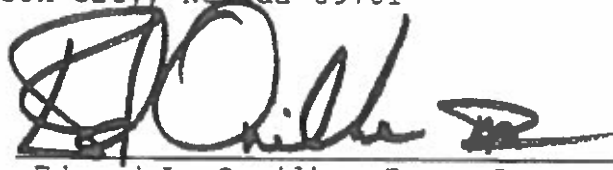
v.

CONCLUSION

The evidence in the record, along with the foregoing arguments, establish that the Appeals Officer committed legal error by failing to sum Mr. Felton's deemed wage and his concurrent wage as required by NAC 616C.447. It is, therefore, respectfully requested that the Court REVERSE the Appeals Officer's affirmation of ASC's improper average monthly wage calculation and order that Mr. Felton's concurrent wage be included in the calculation of his average monthly wage.

RESPECTFULLY SUBMITTED this 1st day of June, 2015.

NEVADA ATTORNEY FOR INJURED WORKERS
Attorney for Petitioner, Gregory Felton
1000 E. William Street, Suite 208
Carson City, Nevada 89701

By: 
Edward L. Oueilhe, Esq., Deputy
State Bar No. 08218

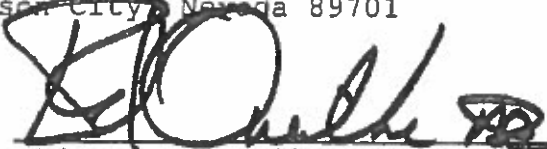
NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranch Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that I have read this PETITIONER'S OPENING
3 BRIEF and to the best of my knowledge, information and belief, it
4 is not frivolous or interposed for any improper purpose. I further
5 certify that this brief complies with all applicable Nevada Rules
6 of Appellate Procedure, in particular NRAP 28(e), which requires
7 every assertion in the brief regarding matters in the record to be
8 supported by a reference to the page of the transcript or appendix
9 where the matter relied on is to be found. I understand that I may
10 be subject to sanctions in the event that the accompanying brief is
11 not in conformity with the requirements of the Nevada Rules of
12 Appellate Procedure.

13 RESPECTFULLY SUBMITTED this 12 day of June, 2015.

14 NEVADA ATTORNEY FOR INJURED WORKERS
15 Attorney for Petitioner, Gregory Felton
16 1000 E. William Street, Suite 208
17 Carson City, Nevada 89701

18 By: 
19 Edward L. Oueilhe, Esq., Deputy
20 State Bar No. 8218

21 NEVADA ATTORNEY FOR INJURED WORKERS
22 1000 East William Street, Suite 208
23 Carson City, NV 89701 (775) 684-7555
24 2200 South Rancho Drive, Suite 230
25 Las Vegas, NV 89102 (702) 486-2830
26
27
28

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCF 5(b), I certify that I am an employee of the
3 State of Nevada, Nevada Attorney for Injured Workers, and that on
4 this date I deposited for mailing at Carson City, Nevada, a true
5 and correct copy of the within and foregoing PETITIONER'S OPENING
6 BRIEF addressed to:

7 GREGORY FELTON
8 PO BOX 2130
9 STATELINE NV 89449

10 and caused a copy of the aforementioned document to be served by
11 hand delivery via Reno-Carson Messenger Service to the following
12 party at the address referenced below:

13 ROBERT F BALKENBUSH ESQ
14 THORNDAL ARMSTRONG DELK
15 BALKENBUSH & EISINGER
16 6590 S MCCARRAN BLVD #B
17 RENO NV 89509

18 and a copy hand delivered to:

19 WHITNEY D DERRAH ESQ
20 APPEALS OFFICER
21 DEPT OF ADMINISTRATION
22 1050 E WILLIAM ST STE 450
23 CARSON CITY NV 89701

24 DATED: June 2, 2015

25 SIGNED: Lisa Mindum

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY FELTON,

Appellant,

vs.

CASE NO. 15 OC 00048 1B

DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
OFFICE OF THE DEPARTMENT OF
ADMINISTRATION

DEPT. NO. I

Respondents.

Appeal from a District Court Order
Denying Petition for Judicial Review
First Judicial District Court, Carson City
Department I
Case No. 15 OC 00048 1B

APPELLANT'S APPENDIX

VOLUME 2 of 3

Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 8218
Nevada Attorney for Injured
Workers
1000 East William Street
Suite 208
Carson City, Nevada 89701
Attorneys for Appellant,
Gregory Felton

Robert F. Balkenbush, Esq.
Nevada Bar No. 1246
Thorndal Armstrong Delk
Balkenbush & Eisinger
6590 South McCarran Blvd.
Suite B
Reno, Nevada 89509-6112
Attorney for Respondents,
Douglas County and Public
Agency Compensation Trust

INDEX TO JOINT APPENDIX

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ORIGINAL

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARD
2014 MAY 13 PM 3:21
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AND
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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

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In the Matter of the
Industrial Insurance Claim

Claim No.: C1431206693 01

of

Hearing No.: 47154-KD
47153-KD

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GREGORY FELTON

Appeal No.: 47863-WDD

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CLAIMANT'S SECOND EXHIBIT

Page #

104-110 Paycheck Stubs from 12/15/2011-
Hewlett-Packard Company 03/15/2012

12
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ENTERED INTO
EVIDENCE AS EXHIBIT #2

16
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AFFIRMATION

Pursuant to NAC 616C.303, I affirm that no personal
information appears in this exhibit.

DATED this 13th day of May, 2014

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28

NEVADA ATTORNEY FOR INJURED WORKERS

Edward L. Ouellette
Edward L. Ouellette, Esq., Deputy
Attorney for Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
(775) 681-7554
(702) 486-2830

Cupertino CA 95014-0604
866/372-2034

Pay Start Date: 12/01/2011
Pay End Date: 12/15/2011

Advice # 00000017892931
Advice Date: 12/15/2011

Gregory Ross Felton PO Box 2130 Stateline, NV 89449 SSN:	Employee ID: 0000255105 Department: USA-United States Location: Teleworker-NV Pay Rate: \$6,250.00 Semi-monthly / \$71.84 Hourly	TAX DATA: Marital Status: Married Allowances: 10 Addr. Pct.: Addr. Amt:	Federal: n/a NV State: 0
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HOURS AND EARNINGS						TAXES	
Description	Current		YTD		Description	YTD	
	Rate	Hours	Earnings	Hours		Earnings	Current
(*does not add to gross pay)							
Regular Earnings	71.839080	87.00	6,250.00	1,755.82	Fed Withholding	621.24	17,697.54
* Voucher - Vacation	71.839080	0.00	574.71	38.00	Fed MEDICAL	85.51	2,028.03
* Imputed Income - CTR			7.50		Fed OASDI	0.00	4,485.60
Cash Award Bonus			0.00				
Signing Bonus			0.00				
TOTAL:		95.00	6,250.00	1,793.82		706.75	24,211.17

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - 401(k)	250.00	4,687.50	Post-tax Group Legal S	0.02	119.16	Pro Tax Benefit - ER	498.32	8,993.10
Health Care Reimb	150.00	2,700.00						
Pre-Tax Benefit	210.03	3,757.22						
TOTAL:	610.03	11,144.72	TOTAL:	6.52	119.16	*TAXABLE		

TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current: 6,250.00	5,647.47	706.75	616.65	4,926.60
YTD: 146,186.49	135,176.77	24,211.17	11,263.88	110,711.44

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY	STOCK CURRENT PERIOD
Start Balance	0.00	n/a	n/a	Intelligible	\$0.00
+ Accrued YTD	134.51	n/a	n/a		
- Taken YTD	38.00	n/a	n/a		
+ Adjust YTD	0.00	n/a	n/a		
Current Balance	96.51	n/a	n/a		
+ Excess (TT) Bal	0.00	n/a	n/a		
Total Balance Available	96.51	n/a	n/a		

Payment Type	Account Type	Account Number	Amount
Advice: 00000017892931	Checking	25103900	\$4,926.60
TOTAL:			\$4,926.60



Hewlett-Packard Company
19483 Pruneridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Date 12/15/2011

Advice No. 17892931

Deposit Amount: **\$4,926.60**

To The Account Of

75.1.24278.1.MB.0.000.57412N11.pb



GREGORY ROSS FELTON
PO BOX 2130
STATELINE NV 89449-2130



NON-NEGOTIABLE

Gregory Ross Felton PO Box 2130 Stateline, NV 89449 SSN:	Employee ID: 00000255105 Department: USA-United States Location: Teleworker-NV Pay Rate: \$6,250.00 Semimonthly / \$71.84 Hourly	TAX DATA: Marital Status: Married Allowances: 10 Adtl. Pct.: Adtl. Amt.:	Federal NY State
			n/a 0 0

HOURS AND EARNINGS						TAXES			
Description	Rate	Current Hours	Current Earnings	YTD Hours	YTD Earnings	Description	Current	YTD	
(*does not add to gross pay)									
Regular Earnings	71.839080	87.00	6,250.00	1,842.82	152,386.47	Fed Withholding	2,232.05	19,929.59	
Variable Performance Bonus			6,443.19		6,443.19	Fed MED/EE	178.94	2,206.97	
* Voucher - Vacation	71.839080	96.00	6,896.55	134.00	9,626.43	Fed OASDI/ICA	0.00	4,485.60	
* Imputed Income - GTI			7.50		142.50				
Cash Award Bonus			0.00		30.00				
Signing Bonus			0.00		20,000.00				
TOTAL:		183.00	12,693.19	1,976.82	158,879.68	TOTAL:	2,410.99	26,622.16	

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - Fidelity	250.00	4,937.50	Post-tax Group Legal Fee	6.62	125.78	Pre Tax Benefit - ER	498.32	9,491.42
Health Care Reimb	150.00	2,850.00						
Pre-Tax Benefit	210.00	3,967.25						
TOTAL:	610.00	11,754.75	TOTAL:	6.62	125.78	*TAXABLE		

TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current 12,693.19	12,090.66	2,410.99	616.63	9,665.55
YTD 158,879.68	147,267.43	26,622.16	11,880.53	120,376.99

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY
Start Balance	0.00	n/a	n/a	Ineligible
+ Accrued YTD	141.18	n/a	n/a	
- Taken YTD	134.00	n/a	n/a	
+ Adjust YTD	0.00	n/a	n/a	
Current Balance	7.18	n/a	n/a	
+ Excess FTD Bal	0.00	n/a	n/a	
Total Balance	7.18	n/a	n/a	
Available	7.18	n/a	n/a	STOCK CURRENT PERIOD \$0.00

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
Advice #000000017964426	Checking	251045900	\$9,665.55
TOTAL			\$9,665.55



Hewlett-Packard Company
19483 Pruneridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Date 12/29/2011

Advice No. 17984426

Deposit Amount: **\$9,665.55**

To The Account Of

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GREGORY ROSS FELTON
PO BOX 2130
STATELINE NV 89449-2130



NON-NEGOTIABLE

Gregory Ross Felton PO Box 2130 Stateline, NV 89449 SSN:	Employee ID: 0000255105 Department: USA-United States Location: Teleworker-NV Pay Rate: \$6,250.00 Semimonthly / \$71.84 Hourly	TAX DATA: Marital Status: Married Allowances: 10 Addl. Pct.: Addl. Amt.:	Federal NV State a/a 0
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HOURS AND EARNINGS						TAXES		
Description	Rate	Current	Earnings	Hours	Earnings	Description	Current	YTD
		Hours						
(*does not add to gross pay)								
Regular Earnings	71.84	87.00	6,250.00	87.00	6,250.00	Fed Withholding	625.89	625.89
*Imputed Income - GTI			18.75		18.75	Fed MED/EE	86.97	86.97
						Fed OASDI/BEI	251.90	251.90
TOTAL:		87.00	6,250.00	87.00	6,250.00	TOTAL:	964.76	964.76

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - Fidelity	250.00	250.00	Post-tax Group Legal	6.62	6.62	Pre Tax Benefit - ER	521.07	521.07
Health Care Reimb	41.66	41.66	Post Tax Benefit	6.13	6.13			
Pre-Tax Benefit	229.38	229.38						
TOTAL:	521.04	521.04	TOTAL:	12.75	12.75	*TAXABLE		

TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current 6,250.00	5,747.71	964.76	533.79	4,751.45
YTD 6,250.00	5,747.71	964.76	533.79	4,751.45

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY
Start Balance	0.00	n/a	n/a	Available
+ Accrued YTD	6.67	n/a	n/a	
- Taken YTD	0.00	n/a	n/a	
+ Adjust YTD	0.00	n/a	n/a	
Current Balance	6.67	n/a	n/a	
+ Excess PTD Bal	0.00	n/a	n/a	
Total Balance	6.67	n/a	n/a	
Available	168.00	n/a	n/a	STOCK CURRENT PERIOD \$0.00

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
Advice #00000018011823	Checking	255105900	\$4,751.45
TOTAL:			\$4,751.45



Hewlett-Packard Company
19483 Pruneridge Ave Step 4248
Cupertino CA 95014-0604
866/372-2034

Date 01/13/2012

Advice No. 18011823

Deposit Amount: \$4,751.45

To The Account Of

75.1.24.11.1 MH 0.390 62442511.jp

GREGORY ROSS FELTON
PO BOX 2130
STATLINE NV 89449-2130



NON-NEGOTIABLE

19483 PRUNERIDGE AVE STOP 4248
Cupertino CA 95014-0604
866/372-2034

Pay Ingt Date: 01/31/2012
Pay End Date: 01/31/2012

Advice #: 000000018086964
Advice Date: 01/31/2012

Gregory Ross Felton PO Box 2130 Stateline, NV 89449 SSN:	Employee ID: 00000255105 Department: USA-United States Location: Teleworker-NV Pay Rate: \$6,250.00 Semimonthly / \$71.84 Hourly	TAX DATA: Marital Status: Married Allowances: 10 Addl. Pct.: Addl. Amt.:	Federal NV State
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HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular Earnings	71.839080	87.00	6,250.00	174.00	12,500.00	Fed Withholding	625.89	1,251.78
* Voucher - Vacation	71.839080	8.00	574.71	8.00	574.71	Fed MEDICAL	86.96	173.93
* Imputed Income - GIL			18.25		37.50	Fed OASDI/SEE	251.91	503.81
TOTAL:		95.00	6,250.00	182.00	12,500.00	TOTAL:	964.76	1,929.52

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - Fidelity	250.00	500.00	Post tax Group Legal Fees	6.62	13.24	Pre Tax Benefit - ER	531.07	1,062.14
Health Care R reimb	41.66	83.32	Post-Tax Benefit	6.13	12.26			
Pre-Tax Benefit	229.38	458.76						
TOTAL:	521.04	1,042.08	TOTAL:	12.75	25.50	*TAXABLE		

TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current: 6,250.00	5,747.71	964.76	333.79	4,751.45
YTD: 12,500.00	11,495.42	1,929.52	1,067.58	9,502.90

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY
Start Balance	0.00	n/a	n/a	Available
+ Accrued YTD	13.34	n/a	n/a	
- Taken YTD	8.00	n/a	n/a	
+ Adjust YTD	0.00	n/a	n/a	
Current Balance	5.34	n/a	n/a	
+ Excess FTO Bal	0.00	n/a	n/a	
Total Balance	5.34	n/a	n/a	
Available	152.08	n/a	n/a	STOCK CURRENT PERIOD \$0.00

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
Advice #000000018086964	Checking	255105900	\$4,751.45
TOTAL			\$4,751.45



Hewlett-Packard Company
19483 Pruneridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Date 01/31/2012

Advice No. 18086964

Deposit Amount: **\$4,751.45**

To The Account Of

76.1.246301 MB 0.404 65013S11.pb



GREGORY ROSS FELTON
PO BOX 2130
STATELINE NV 89449-2130



NON-NEGOTIABLE

19483 Pruneridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Pay Begin Date: 02/15/2012
Pay End Date: 02/15/2012

Advice Date: 02/15/2012

Gregory Ross Felton PO Box 2130 Stateline NV 89449 SSN: _____	Employee ID: 00000255105 Department: USA-United States Location: Tekworker-NV Pay Rate: \$6,250.00 Semimonthly / \$71.84 Hourly	TAX DATA: Marital Status: Married Allowances: 10 Adol. Pct.: 0 Adol. Amt: 0	Federal NV State
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HOURS AND EARNINGS						TAXES		
Description	Rate	Current Hours	Current Earnings	YTD Hours	YTD Earnings	Description	Current	YTD
Regular Earnings	71.84	87.00	6,250.00	261.00	18,750.00	Fed Withholding	627.14	1,878.92
* Imputed Income - GTL			18.75		56.25	Fed MED/EE	67.04	260.97
* Voucher - Vacation			0.00	8.00	574.71	Fed QASDI/EE	252.11	745.92
TOTAL:		87.00	6,250.00	269.00	18,750.00	TOTAL:	966.29	2,885.81

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - Fidelity	250.00	750.00	Post-tax Group Legal Fees	6.62	19.86	Pre-Tax Benefit - ER	526.07	1,568.21
Health Care Reim	41.66	124.98	Post-Tax Benefit	6.13	18.39			
Pre-Tax Benefit	224.38	683.14						
TOTAL:	516.04	1,558.12	TOTAL:	12.75	38.25	*TAXABLE		

TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current: 6,250.00	5,732.71	966.29	526.79	4,754.92
YTD: 18,750.00	17,248.13	2,895.81	1,596.37	14,257.82

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY	STOCK CURRENT PERIOD
Start Balance	0.00	n/a	n/a	Available	\$0.00
+ Accrued YTD	20.01	n/a	n/a		
- Taken YTD	8.00	n/a	n/a		
+ Adjust YTD	0.00	n/a	n/a		
Current Balance	12.01	n/a	n/a		
+ Excess FTO Bal	0.00	n/a	n/a		
Total Balance	12.01	n/a	n/a		
Available	152.08	n/a	n/a		

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
Advice #000000018114743	Checking	255105900	\$4,754.92
TOTAL			\$4,754.92

 Hewlett-Packard Company
19483 Pruneridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Date 02/15/2012

Advice No. 18114743

Deposit Amount: \$4,754.92

To The Account Of

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GREGORY ROSS FELTON
PO BOX 2130
STATELINE NV 89449-2130



NON-NEGOTIABLE

Gregory Ross Felton PO Box 2130 Stateline, NV 89449 SSN:	Employee ID: 0000255105 Department: USA-United States Location: Teleworker-NV Pay Rate: \$6,250.00 Semi-monthly / \$71.84 Hourly	PIA DATA: Marital Status: Married Allowances: 10 Adtl. Pct. Addl. Amt:	Federal NV State Married n/a 10 0

HOURS AND EARNINGS						TAXES		
Description	Rate	Current Hours	Earnings	Hours	YTD Earnings	Description	Current	YTD
(*Does not add to gross pay)								
Regular Earnings	71.839080	87.00	6,250.00	348.00	25,000.00	Fed Withholding	627.14	2,508.06
* Imputed Income - GTI			18.75		75.00	Fed MED/ETH	87.04	348.01
* Voucher - Vacation			0.00	8.00	574.71	Fed OASDI/ITE	152.12	1,008.04
TOTAL:		87.00	6,250.00	356.00	25,000.00	TOTAL:	966.30	3,862.11

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - Fidelity	250.00	1,000.00	Post-tax Group Legal Svcs	6.62	26.48	Pre Tax Benefit - ER	526.07	2,094.28
Health Care Reimb	41.66	166.64	Post-Tax Benefit	6.13	24.52			
Pre-Tax Benefit	224.38	907.52						
TOTAL:	516.04	2,074.16	TOTAL:	12.75	51.00	*TAXABLE		

Current	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
25,000.00	23,000.84	3,862.11	2,123.16	19,012.73

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY	STOCK CURRENT PERIOD
Start Balance	0.00	n/a	n/a	Available	\$0.00
+ Accrued YTD	26.58	n/a	n/a		
- Taken YTD	8.00	n/a	n/a		
+ Adjust YTD	0.00	n/a	n/a		
Current Balance	18.58	n/a	n/a		
+ Excess PTO Bal	0.00	n/a	n/a		
Total Balance	18.58	n/a	n/a		
Available	18.58	n/a	n/a		

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
Advice #000000018165826	Checking	255103900	\$4,754.91
TOTAL			\$4,754.91



Hewlett-Packard Company
19483 Pruneridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Date 02/29/2012

Advice No. 18165826

Deposit Amount: **\$4,754.91**

To The Account Of

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GREGORY ROSS FELTON
PO BOX 2130
STATELINE NV 89449-2130



NON-NEGOTIABLE

Gregory Ross Felton PO Box 2130 Stateline, NV 89449 SSN: *	Employee ID: 00000255105 Department: USA-United States Location: Teleworker-NV Pay Rate: \$6,250.00 Semi-monthly / \$71.84 Hourly	TAX DATA: Marital Status: Married Allowances: 10 Addl. Pct. Addl. Amt:	Federal Married 10 0	NV State n/a 0
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HOURS AND EARNINGS						TAXES				
Description	Rate	Current Hours	Earnings	Hours	Earnings	Description	Current	YTD	Current	YTD
*Values not incl to gross pay)										
Regular Earnings	71.839000	87.00	6,250.00	433.00	31,250.00	Fed Withholding	627.14	3,133.20	87.04	435.05
*Imputed Income - CTR			18.75		93.75	Fed ABLE	87.04	435.05	252.11	1,260.15
*Voucher - Vacation			0.00	8.00	574.71	Fed OASDI				
TOTAL:		87.00	6,250.00	441.00	31,250.00	TOTAL:	966.29	4,828.40		

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
401(k) - Fidelity	250.00	1,250.00	Post-tax Group Legal S	6.62	33.10	Pre Tax Benefit - ER	526.07	2,630.35
Health Care Contrib	41.66	208.30	Post-Tax Benefit	6.13	30.65			
Pre-Tax Benefit	224.38	1,121.90						
TOTAL:	516.04	2,580.20	TOTAL:	12.75	63.75	*TAXABLE		

TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	6,250.00	966.29	526.07	4,754.92
YTD	31,250.00	4,828.40	2,630.35	23,767.65

YEAR-TO-DATE	VACATION	PAID TIME OFF	AWS HOLIDAY	FLOATING HOLIDAY	STOCK CURRENT PERIOD
Start Balance	0.00	n/a	n/a	Available	
+ Accrued YTD	33.35	n/a	n/a		
- Taken YTD	0.00	n/a	n/a		
+ Adjust YTD	0.00	n/a	n/a		
Current Balance	33.35	n/a	n/a		
+ Excess LTD Bal	0.00	n/a	n/a		
Total Balance Available	33.35	n/a	n/a		\$0.00

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
Advice #0000000018209535	Checking	255105900	\$4,754.92
TOTAL:			\$4,754.92

 Hewlett-Packard Company
19483 Prunridge Ave Stop 4248
Cupertino CA 95014-0604
866/372-2034

Date 03/15/2012

Advice No. 18209535

Deposit Amount: **\$4,754.92**

To The Account Of

78.1 25051 1 MID 0.404 72485511 pa



GREGORY ROSS FELTON
PO BOX 2130
STATELINE NV 89449-2130



NON-NEGOTIABLE

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER

In the Matter of the)	Claim No.: C143-12-06693 01
Industrial Insurance Claim of:)	
GREGORY FELTON)	Hearing Nos.: 47153-KD
)	47154-KD
)	Appeal No.: 47863-WDD
)	

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE WHITNEY D. DERRAH, ES Q.

APPEALS OFFICER

MONDAY, August 25, 2014

9:24 A.M.

1050 EAST WILLIAM STREET, SUITE 450

CARSON CITY, NEVADA 89701

RECEIVED
 AND
 FILED
 2015 MAR 12 AM 10:28
 STATE OF NEVADA
 DEPT OF ADMINISTRATION
 HEARINGS DIVISION
 APPEALS OFFICE

Ordered by: State of Nevada
 Appeals Office
 1050 East William Street, Suite 450
 Carson City, Nevada 89701

A P P E A R A N C E S

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On behalf of the Claimant:

Edward L. Oueilhe, Esq.
NAIW
1000 E. William St., Suite 208
Carson City, NV 89701

On behalf of the Insurer:

Robert F. Balkenbush, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran Blvd., Ste. B
Reno, NV 89509

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I N D E X

W I T N E S S E S

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Gregory Felton	12			

E X H I B I T S

EXHIBITS	IDENTIFIED	IN EVIDENCE
Claimant's 1	5	5
Claimant's 2	5	5
Insurer/Employer's 3	5	5
Insurer/Employer's 4	6	6
Insurer/Employer's 5	6	6
Insurer/Employer's 6	6	6

1 PROCEEDINGS

2
3 APPEALS OFFICER DERRAH: Good morning.

4 This is Appeals Officer Derrah. Today is August 25,
5 2014. This is the properly noticed time and place for
6 the hearing of the industrial insurance claim of
7 Gregory Felton. The claimant, Mr. Felton, is present
8 this morning along with his counsel, Edward Oueilhe of
9 Nevada Attorney for Injured Workers, who is also
10 present. The employer in this matter is Douglas
11 County, the insurer is the Public Agency Compensation
12 Trust, both of whom are represented by Mr. Robert
13 Balkenbush, who is also present this morning.

14 This is Appeal Number 47863, which is
15 the claimant's appeal of a Hearing Officer
16 determination dated February 20, 2014 regarding the
17 insurer's determination dated November 11th and
18 November 13, 2013 regarding the claimant's average
19 monthly wage calculation. The parties have indicated
20 to me that the one percent permanent partial disability
21 award is not at issue at today's hearing.

22 We have, I believe, six proposed
23 exhibits. We'll begin with the claimant's first
24 exhibit since this is the claimant's appeal. This is
25 entitled: Claimant's First Exhibit, was filed May 13,

1 2014 and consists of 99 pages -- no, excuse me, 103
2 pages. Mr. Balkenbush, do you have any objection to
3 this exhibit?

4 MR. BALKENBUSH: No, Your Honor.

5 APPEALS OFFICER DERRAH: Okay. Thank
6 you. This will be marked and admitted as Exhibit
7 Number 1. Next, we have claimant's second exhibit
8 filed May 13, 2014, consisting of Pages 104 through
9 110. Mr. Balkenbush, do you have any objection to this
10 exhibit?

11 MR. BALKENBUSH: I have no objection,
12 Your Honor.

13 APPEALS OFFICER DERRAH: Okay. Thank
14 you. This will be marked and admitted as Exhibit
15 Number 2. Next, we have the insurer's and employer's
16 claim history packet. Mr. Oueilhe, do you have any
17 objection to this exhibit?

18 MR. OUEILHE: No, Your Honor.

19 APPEALS OFFICER DERRAH: Okay. Thank
20 you. This will be marked and admitted as Exhibit
21 Number 3. Next, we have insurer's and employer's first
22 documentary exhibit filed April 3, 2014, consisting of
23 103 pages. Any objection, Mr. Oueilhe?

24 MR. OUEILHE: No, Your Honor.

25 APPEALS OFFICER DERRAH: Thank you.

1 This will be marked and admitted as Exhibit Number 4.
2 Next, we have insurer's and employer's second
3 documentary exhibit filed April 3, 2014, consisting of
4 29 pages. Any objection to this exhibit?

5 MR. OUEILHE: No, Your Honor.

6 APPEALS OFFICER DERRAH: Thank you.

7 This will be marked and admitted as Exhibit Number 5.
8 And finally, we have insurer's/employer's third
9 documentary exhibit filed April 3, 2014, consisting of
10 two pages. Any objection, Mr. Oueilhe?

11 MR. OUEILHE: No, Your Honor.

12 APPEALS OFFICER DERRAH: Okay. Thank
13 you. This will be marked and admitted as Exhibit
14 Number 6. And with that, we will begin with opening
15 statements and we'll begin with you Mr. Oueilhe.

16 MR. OUEILHE: Your Honor, there's one
17 other matter. There's been a memorandum that's been
18 provided to Your Honor by Douglas County, the insurer,
19 Your Honor. I had been provided with this memorandum
20 earlier and I had received a call earlier -- or on
21 Friday of this last week asking me if I was going to
22 likewise file this memorandum, file a memorandum in
23 response to this. I had seen most of this in the past,
24 Your Honor. I would like an opportunity to file a
25 memorandum on behalf of the claimant in response to

1 this memorandum, Your Honor, if I could.

2 APPEALS OFFICER DERRAH: Okay. And how
3 long would you like to file that?

4 MR. OUEILHE: Your Honor, could I have
5 two weeks?

6 APPEALS OFFICER DERRAH: Sure. So we'll
7 give you two weeks. This is not going to be marked or
8 admitted as an exhibit, but I'll put it in the file as
9 argument and likewise with yours. So we'll have you
10 two weeks from today to file a response. And the
11 matter will be submitted upon my receipt of your
12 memorandum. Okay.

13 MR. OUEILHE: Thank you, Your Honor.

14 MR. BALKENBUSH: And Your Honor, I just
15 want for the record to indicate when we continued this
16 matter previously -- a couple things about this
17 memorandum. I provided this to Mr. Oueilhe back in,
18 like, the 1st of July or whenever this thing was
19 previously set. So the contents of this memorandum
20 were provided back at the beginning of July.

21 Now, the second thing that I needed to
22 note for the Court is this in the memorandum. This was
23 a memorandum that we prepared initially back in August
24 2012, two years ago, for volunteer firefighters. The
25 volunteer firefighters -- this -- the individual here,

1 Mr. Felton, is essentially a search-and-rescue worker
2 and not a volunteer firefighter, but the analysis is
3 the same, except that there is a statute specific to
4 search-and-rescue individuals. That's -- let me give
5 you the statute cite, NRS 616A.157. NRS 616A.157, but
6 the deemed wage, that is the constructive or deemed
7 wage of a volunteer search-and-rescue worker, which Mr.
8 Felton was, is the same as a volunteer firefighter,
9 which is 2000 -- a deemed wage of \$2,000 per month.
10 The analysis otherwise is exactly the same, so it's
11 just that there's a different statute specific to
12 search-and-rescue that was added in 2013.

13 What I wanted to give to the Court is,
14 is that when we prepared this for volunteer
15 firefighters back in August 2012, we have not had any
16 opposition from volunteer firefighters on the issue
17 before you, which is whether the average monthly wage
18 must be -- must include both the statutory deemed wage
19 or constructive wage plus the wage in private
20 employment. And --

21 MR. OUEILHE: Your Honor, I'm going to
22 object to that representation. That firefighters --
23 that's -- the argument weighted this evidence of this
24 memorandum, Your Honor, by arguing the fact that it
25 hasn't been opposed by firefighters. I need to put an

1 objection on the record because of that.

2 APPEALS OFFICER DERRAH: Okay. Thank
3 you. I understand. And it sounds like you're getting
4 into a little bit of argument, so why don't we just
5 begin with opening statements and then you'll have the
6 opportunity to --

7 MR. BALKENBUSH: Okay.

8 APPEALS OFFICER DERRAH: -- to complete
9 your statement.

10 MR. BALKENBUSH: Thank you.

11 APPEALS OFFICER DERRAH: Go ahead, Mr.
12 Oueilhe.

13 MR. OUEILHE: Your Honor, I believe that
14 we've already made clear the issue we're here on, Your
15 Honor, is whether or not Mr. Felton's concurrent
16 employment, his private wages, should be included in
17 his average monthly calculation, both due to the
18 calculation of his PPD and due to future benefits he
19 might be entitled to in the future should he have to
20 reopen his claim.

21 The rest of the time, Your Honor, I'm
22 going to reserve for closing argument, Your Honor, and
23 I think we can get into this with some very quick
24 testimony and again after the argument without
25 belaboring the matter.

1 APPEALS OFFICER DERRAH: Okay. Thank
2 you very much. Mr. Balkenbush?

3 MR. BALKENBUSH: Your Honor, the -- I
4 think if I understood Mr. Oueilhe correctly, the only
5 issue in the case is simply what should be the average
6 monthly wage of Mr. Felton. Should it be his statutory
7 deemed wage of \$2,000 per month under the statute that
8 governs that, which is NRS 616A.157, or should it
9 include his statutory deemed wage of \$2,000 per month
10 plus what his wages were from working in the private
11 sector for Hewlett-Packard. The insurance company is
12 simply taking the position that he is only entitled to
13 his statutory deemed wage.

14 We've provided a legal memorandum to
15 support that contention and we'll address that just
16 briefly at the end, but I don't know what testimony is
17 being -- there's no contest as to whether Mr. Felton
18 was injured, there's no contest as to what his injury
19 was, there's no contest as to -- in fact, that I think,
20 and Mr. Oueilhe can confirm, that if his private sector
21 wages were added to his statutory deemed wage, that he
22 would be entitled to the State maximum for his claim.
23 So I don't know what value any testimony is going to
24 provide today because all of the operative facts for
25 the claim are essentially not disputed. So perhaps Mr.

1 Oueilhe can illuminate the Court and illuminate me as
2 to what the testimony would be.

3 APPEALS OFFICER DERRAH: Well, I think
4 that Mr. Oueilhe is entitled to call his client to
5 testify, so if you'd like to do that, go ahead.

6 MR. OUEILHE: Thank you, Your Honor.

7 APPEALS OFFICER DERRAH: Okay.

8 MR. OUEILHE: Mr. Felton?

9 APPEALS OFFICER DERRAH: Would you
10 please have a seat here near the microphone? Good
11 morning, Mr. Felton. This is --

12 MR. FELTON: Good morning, Your Honor.

13 APPEALS OFFICER DERRAH: -- being audio
14 recorded --

15 MR. FELTON: Okay.

16 APPEALS OFFICER DERRAH: -- so the first
17 thing we need to do is to place you under oath. Would
18 you please raise your right hand? Do you solemnly
19 swear or affirm that the testimony you give today will
20 be the truth, the whole truth and nothing but the
21 truth?

22 THE WITNESS: I do.

23 APPEALS OFFICER DERRAH: Okay. Thank
24 you very much, sir. Would you please state and spell
25 your first and last name for the record?

1 THE WITNESS: Gregory Felton, G-R-E-G-O-
2 R-Y, Felton, F-E-L-T-O-N.

3 APPEALS OFFICER DERRAH: Okay. Thank
4 you very much, sir. Mr. Oueilhe is going to have a
5 series of questions for you.

6 DIRECT EXAMINATION BY MR. OUEILHE:

7 Q. As you know, Mr. Felton, we're here to discuss
8 whether or not your current employment should be
9 included in your average monthly wage and just some
10 factual foundation for all this, if you could help us
11 out.

12 Can you tell me if you were employed back on March
13 6, 2012?

14 A. I was.

15 Q. And that's private employment?

16 A. That's right.

17 Q. And who were you employed by?

18 A. Hewlett-Packard.

19 Q. And how long have you been working for
20 Hewlett-Packard?

21 A. The sum total of my time with Hewlett-Packard
22 has been about 20 years. At that time, I returned
23 after an eight-month -- or sorry, eight-year venture
24 through some other companies.

25 Q. Okay. And when did you go back to work for

1 Hewlett-Packard, do you recall?

2 A. I don't recall off the top of my head. I
3 believe it was 2011.

4 Q. Okay. And in what capacity were you working
5 for Hewlett-Packard at the time back on March 6, 2012?

6 A. I manage quality for the company.

7 Q. Okay. And what have your job duties required
8 you to do as far as managing quality?

9 A. I investigate cases in which the company has
10 had to replace or repair products and look for
11 weaknesses in design or manufacturing and address --
12 manage projects within the company to fix those
13 problems.

14 Q. Okay. And at the time of March 6, 2010, were
15 you injured that day?

16 A. I was.

17 Q. Okay. And can you tell us what you were doing
18 or who you were assisting when you were injured?

19 A. There was an organized search-and-rescue
20 training for Douglas County search-and-rescue, which I
21 am a part of, and we were doing winter training, which
22 involved avalanche rescue and simulation. And at the
23 conclusion of that training, we were returning to our
24 vehicles when I slipped and injured my knee.

25 Q. Okay. And prior to that March 6, 2012 date,

1 how long had you been working assisting -- was this for
2 Douglas County?

3 A. It was.

4 Q. How long had you been working assisting --
5 working at search-and-rescue?

6 A. I've been involved in search-and-rescue in a
7 couple of different counties. In Douglas County, I
8 believe I joined that team in 2005.

9 Q. Okay. And Mr. Felton, I showed you earlier
10 your exhibit that was identified as claimant's second
11 exhibit and Pages 104 through 110. Would you take a
12 moment, just take a look at those?

13 A. Sure.

14 Q. Would you please review them and then let me
15 know when you've had an opportunity to review them and
16 then I have a question or two.

17 A. You can go ahead with your questions.

18 Q. Okay. Do you recognize these documents?

19 A. I do.

20 Q. And what are they?

21 A. They're paystubs for -- it looks like six or
22 seven different pay periods.

23 Q. And whose paystubs are they?

24 A. They are issued by Hewlett-Packard to me.

25 Q. And would you agree that they're an accurate

1 representation of your gross pay during that time
2 period beginning -- can you tell me -- getting back on
3 -- just a moment, Your Honor.

4 Is it an accurate reflection of your pay beginning
5 on December 15, 2011 through March 6, 2012?

6 A. It appears the first paystub starts at
7 December 1st, but yes, it goes through March 6th.

8 Q. Okay. But the pay periods are actually for
9 periods that began through February 5th -- or I'm
10 sorry, December 15, 2011?

11 A. No, the first pay stub would be for the period
12 December 1st through December 15th.

13 Q. Okay.

14 A. And from that time period up past March 6th.

15 Q. Okay. Thank you. And do you still work for
16 Hewlett-Packard?

17 A. I do.

18 Q. And at the same capacity?

19 A. I do.

20 MR. OUEILHE: Your Honor, I have nothing
21 further on direct.

22 APPEALS OFFICER DERRAH: Okay. Thank
23 you. Mr. Balkenbush, do you have any questions?

24 MR. BALKENBUSH: No questions, Your
25 Honor.

1 APPEALS OFFICER DERRAH: Okay. Thank
2 you very much for your testimony.

3 THE WITNESS: Thank you.

4 APPEALS OFFICER DERRAH: You may return
5 to your seat. Do you have any further witnesses, Mr.
6 Oueilhe?

7 MR. OUEILHE: No, Your Honor, I do not.

8 APPEALS OFFICER DERRAH: And Mr.
9 Balkenbush, do you have any witnesses?

10 MR. BALKENBUSH: No, Your Honor.

11 APPEALS OFFICER DERRAH: Okay. Thank
12 you. We'll move forward then with closing arguments.
13 Go ahead, Mr. Oueilhe.

14 MR. OUEILHE: Your Honor, as you're
15 aware the average monthly wage applies to both Mr.
16 Felton's PPD as well as it will affect any future
17 benefits he should -- he might receive should he have
18 to reopen -- seek reopening of his claim.

19 Your Honor, the Legislature required the
20 Administrator of the Division of Industrial Relations
21 to enact certain regulations that dictate the process
22 of determining average monthly wage and how they were
23 going to be calculated, Your Honor. This is found at
24 NRS 616C.420. The Division of Industrial Relations
25 enacted NAC 61C.447 [sic]. The regulation, Your Honor,

1 NAC 61C -- 616C.447, clearly states that deemed wages
2 are to be combined with paid wages if an injured worker
3 is concurrently employed. All right. Clearly, Mr.
4 Felton was concurrently employed when he was injured.
5 He was employed at Hewlett-Packard. He was rather
6 handsomely compensated, Your Honor. The packet of
7 paystubs in there indicate through that December
8 period, through March 6, 2012, he had an income of
9 \$46,443.19. As Your Honor is probably firmly aware,
10 the maximum wage for 2102 was \$5,151.57 per month, so
11 clearly Mr. Felton, if we are going to include his
12 private wages, was a maximum wage earner.

13 Your Honor, the insurer and the
14 employer, Douglas County, are arguing that NRS 616A.065
15 is the controlling statute, Your Honor. I would just
16 point out to Your Honor this is a definition statute.
17 If Your Honor looks at it, it's what -- how it's
18 clearly defined, so it's a definition statute. To read
19 616A.065, the calculation statute, would nullify the
20 intent of NRS 616C.420, which required the Division of
21 Industrial Relations Administrator to determine the
22 average monthly wage calculation process, Your Honor.

23 Do we want to institute a policy where
24 we have a high wage earner who gets hurt during
25 volunteering and discourage high wage earners from

1 participating in volunteer work because we're not going
2 to include their -- in that average monthly wage
3 calculation as required by the Administrator of the
4 Division of Industrial Relations? Do we want to incur
5 or do we want to encourage that type of policy, Your
6 Honor, where an individual like my client, Mr. Felton,
7 who is a very high wage earner, doesn't even get the
8 average -- the maximum average monthly wage? Do we
9 want to start a policy like that? There's already a
10 cap on maximum monthly wage that already exists. The
11 amount of disability compensation a high wage earner
12 like my client, Mr. Felton, would be entitled to when
13 he's injured. Do we want to discourage -- that in
14 itself discourages participation. Do we want to
15 discourage it even more by telling the high wage
16 volunteer we're not going -- we're only going to use
17 the deemed wage that is required at 616A.157 that deems
18 a deemed wage for search-and-rescue volunteers is 2000?
19 Do we want to cap that? The answer, Your Honor, is no,
20 we don't.

21 We want to follow what the Legislature
22 intended, which the Legislature intended that the
23 Division of Industrial Relations, the Administrator
24 there, go through and create a regulation system where
25 they determine how or -- through delegation by the

1 Legislature where it's determined how these average
2 monthly wages should be calculated. Clearly the
3 Legislature intended that to happen and that's exactly
4 what happened here, Your Honor. We don't want to
5 degrade that process, we don't want to discourage high
6 wage earners such as Mr. Felton from participating in
7 volunteer work simply because they're going to be stuck
8 with this \$2,000 cap.

9 In particular, where the Legislature has
10 delegated this duty, there's been a reg that's been in
11 place now for over 20 years and why would -- Mr.
12 Felton's relied upon that, he's had constructive notice
13 of that, that both his deemed wage and his actual wages
14 would be included in the calculation of the average
15 monthly wage. Why would we want to do that?

16 APPEALS OFFICER DERRAH: Thank you. Mr.
17 Balkenbush?

18 MR. BALKENBUSH: Yeah. Thank you, Your
19 Honor. What I want to indicate to the Court is I
20 provided you a legal memorandum that I think addresses
21 all the fundamental issues that relate to the legal
22 question of whether Mr. Felton should have an average
23 monthly wage that consists of his statutory deemed wage
24 or constructive wage plus his wage from working in the
25 private sector.

1 And our analysis is not limited to the
2 policy argument that Mr. Oueilhe provided, but I would
3 -- he did make that argument, I just want to briefly
4 address that. The policy argument that was pressed in
5 today is sort of fallacious. Do we want to encourage
6 or discourage volunteerism? Well, the Legislature has
7 already decided that they want to encourage
8 volunteerism because they provided a statutory deemed
9 wage. Previously, there -- volunteerism doesn't have a
10 wage because it's volunteer work, but to encourage
11 volunteer work, the Legislature decided to give people
12 essentially a statutory deemed wage.

13 What I think Mr. Felton wants to argue
14 today is that it would -- that it's good public policy
15 and it's clear under the law that exists right now is
16 that the Nevada Legislature intended as a matter of
17 public policy to take on the immeasurable and
18 unforeseen liability of whatever the private wage was
19 of the individual who volunteers plus hit the \$2,000 a
20 month statutory deemed wage. On its face that's
21 plainly absurd. That's saying to the taxpayer, not
22 only do we want you to -- not only are we going to give
23 a volunteer \$2,000 a wage, which is a fiction, it's
24 constructive because he doesn't get a wage, but we're
25 also going to tack you, Mr. Taxpayer, with whatever the

1 private wage is.

2 So as a matter of -- just simply as a
3 matter of public policy, we -- and we put that forth in
4 detail in the memo, there is no evidence. There is no
5 evidence in the -- from the Legislature that that was
6 the intent in situations like this.

7 And in fact, what -- really what the law
8 really does seem to show is three things. We -- you'll
9 see that it's in the brief answer in the opinion
10 memorandum we provided, essentially in summary fashion
11 four bases for helping you conclude that the average
12 monthly wage for Mr. Felton in this case is his
13 statutory deemed wage.

14 One is Nevada law is silent on the issue
15 of aggregation of wages from dissimilar employment.
16 And so, what is the principle of the law that governs
17 that? That's the related employment rule, which is
18 accepted by a majority of jurisdictions across the
19 country. Obviously, the job Mr. Felton did for
20 Hewlett-Packard is totally dissimilar from search-and-
21 rescue work that he was doing as a volunteer.

22 Secondly, there is the plain language
23 principle where -- that is where a statute or
24 regulation is plain, the language is plain, that will
25 control. And what we've argued, as you'll see in the

1 memorandum as you take time to read it, is that the
2 plain language of the Statute NRS 616A.065 and the
3 regulation on a concurrent employment, which is NAC
4 616C.447, does not allow for the aggregation of earned
5 wages and those deemed to have been earned from two
6 different categories of wages.

7 Third, now we provided case law in the
8 memorandum, at the time we did the memorandum, which it
9 was for volunteer firefighters, we certainly would
10 request and ask that if the Court want cases specific
11 to search-and-rescue volunteers, we can supplement the
12 memorandum and provide cases specific to search-and-
13 rescue individuals, but the point is, is that cases we
14 provided in this are for volunteer firefighters. The
15 principle is the same, but the cases from other
16 jurisdictions also bar the aggregation of deemed and
17 earned wages specifically in the cases we cited for
18 volunteer firefighters. At those courts, where there's
19 a conflict between statutes or there's an apparent or a
20 seeming conflict, one allowing for combined wages and
21 the other saying a deemed wage specifically for
22 firefighters, the courts have held the more specific
23 statutes saying the deemed wage would -- is to be used
24 using rules of statutory construction.

25 The fourth is, is that if there is a

1 conflict between the governing statute -- Mr. Oueilhe
2 said that 616A is a definitional statute somehow trying
3 to place a limitation on that, but our position is if
4 there is a conflict between a statute and an
5 administrative regulation, both the Nevada Supreme
6 Court and other scholarly publications, which we've
7 cited in this memorandum, basically I'll tell you that
8 the administrative regulation will not control, the
9 governing statute will control.

10 And then lastly, we cited the public
11 policy argument, which I addressed initially. Now, I
12 wanted to point out one other thing that we didn't have
13 in the memo and I did that initially at the outset --
14 there is a specific statute for volunteers in search-
15 and-rescue, that's NRS 616A.157. That's what sets the
16 statutory deemed wage or constructive wage of \$2,000
17 per month, but in addition, there is a regulation under
18 Chapter 616C, NAC 616C.429. NAC 616C.429, it defines
19 deemed wages and it says, and I quote, "Those wages,
20 which are deemed to be established in Chapter 616A to
21 616D inclusive of NRS for certain groups of employees
22 will be considered the average monthly wage when
23 applicable." So even if you were to try to separate
24 the governing Statute NRS 616A.065, even if you were to
25 do that and go straight to the regulations, there is a

1 regulation in the -- that I just cited that says the
2 average monthly wage is the deemed wage where the
3 employee is given a deemed wage.

4 And so, respectfully, with all due
5 respect to Mr. Felton, he's a fine, fine man. I dealt
6 with him at the Hearing Officer level, but it would be
7 the financial burden that would result to public
8 entities where they simply -- whatever volunteer comes
9 on, they have to be -- the public, the taxpayer, that's
10 the Court, that's me, that's Mr. Oueilhe, that's Mr.
11 Felton, would have to pay both a statutory deemed wage
12 plus whatever the private wage was. That is something
13 that the Legislature would have to specifically state
14 that the taxpayer is responsible for it under the
15 current law; it is not that. The current law is
16 essentially the statutory deemed wage and that not only
17 makes common sense, it should be the result in this
18 case.

19 And I just reserve the right to
20 supplement the memo with cases specific to search-and-
21 rescue individuals, though we believe that would be the
22 exact same as it is for volunteer firefighters.

23 And secondly, I reserve the right to
24 respond to whatever memorandum that Mr. Oueilhe
25 produces in two weeks, simply because I provided this

1 memorandum to him almost two months ago to help him and
2 assist he and his client to resolve this case short of
3 coming to hearing. Thank you.

4 APPEALS OFFICER DERRAH: You're welcome.
5 And I just want to respond to that before we move on.
6 If you intend to file a response, you'll have one week
7 to do it or if you intend to supplement with any cases,
8 which is at your discretion, you'll have one week to do
9 that.

10 MR. BALKENBUSH: Thank you, Your Honor.

11 APPEALS OFFICER DERRAH: One week from
12 the date of when Mr. Oueilhe files his memorandum.

13 MR. BALKENBUSH: Thank you.

14 APPEALS OFFICER DERRAH: You're welcome.
15 Mr. Oueilhe, do you have any response?

16 MR. OUEILHE: Yes, Your Honor, I do.
17 Your Honor, first of all, Nevada law isn't silent
18 whether or not the statutory scheme that they've set up
19 permits for the aggregation of wages from two
20 dissimilar employments. More than that, it's
21 specifically through the implementation of or the
22 enactment of NRS 616C.420. The Legislature, Nevada's
23 actual lawmaking body, explicitly ordered the Division
24 of Industrial Relations, their Administrator, to enact,
25 you know, regulations that dictated the process in

1 which average monthly wages would be calculated.

2 More specifically, Your Honor, and I
3 hate to belabor this, but they promulgated Regulation
4 NAC 616C.447 that permits. Okay. It says the average
5 monthly wage of an employee who was employed by two or
6 more employers covered by a private carrier or a plan
7 of self-insurance on the date of this accident or
8 disease is equal to the sum of wages earned or deemed
9 to have been earned at each place of employment. So
10 it's clear that the Legislature empowered the Division
11 of Industrial Relations to create this statutory
12 scheme. It's clear that in current employment, it's
13 part of that scheme, Your Honor.

14 More than that, if we're going to start
15 reading statutes and getting into statutory
16 interpretation, Your Honor, it's the general rule of
17 construction in Nevada that grants the power that are
18 not to be construed to defeat the intent of the
19 Legislature or to withhold what is given either
20 expressly or by necessary and their implication. And,
21 Your Honor, that's Ronnow versus Las Vegas, 57 Nev.
22 332, 342, 65 P.2d 133, 136 (1937), Your Honor.

23 In addition to that, NAC 616C.447 deals
24 with the more specific aspect of calculating the
25 average monthly wage and including a concurrent

1 employment, Your Honor. In addition to that, it's the
2 accepted rule of statutory construction in Nevada that
3 a provision, which specifically applies to a given
4 situation, will take precedent over only -- over one
5 that applies only generally, Your Honor. 065 is a
6 general definition statute, Your Honor. More than
7 that, 616A.065 actually sets out general definitions
8 what is permitted. There's nothing in it disallows
9 aggregation, Your Honor. There's actually three
10 different categories. One includes monthly wages
11 actually received or deemed to have been received. The
12 other one is 150 percent of the State average monthly
13 weekly wage as most weekly account computed by the
14 Employment Security Division and the Department of
15 Employment Training and Rehabilitation. And thirdly,
16 the average monthly wage has the meaning shown pursuant
17 to the following schedule at 616C.465. Clearly, this
18 was just a statute setting forth definitions as to what
19 could be used to calculate the average monthly wage.

20 More than that, Your Honor, the Supreme
21 Court has noted that it's presumed that when enacting a
22 statute, the Legislature acts with full knowledge of
23 the existing statutes relating to the same subject.
24 That's Boulder City versus General Sales Drivers, Local
25 Union Number 14, 101 Nev. 117, 118 through 119, 694

1 P.2d 498, 500 (1985). It was -- must be presumed that
2 the Legislature knew when it specifically instructed
3 the Division of Industrial Relations to come up with a
4 method for determining the average monthly wage they
5 were also keenly aware of the language in NRS 616A.065.
6 So the statute nor the regulation, okay, disallowed the
7 aggregation of earned wages and deemed wages. Nor are
8 there any other State laws that -- a different category
9 of wages that cannot be aggregated.

10 Again, Your Honor, NRS 616C.065 is just
11 a general definition statute, wherein NAC 616C.447
12 clearly states the average monthly wage is equal to the
13 sum of wages earned or deemed to have been earned in
14 each place of employment, Your Honor.

15 Finally, Your Honor, if we're going to
16 get into an interpretation as to whether or not the
17 statutory construction allows that we're going to look
18 at the definition statute, Your Honor, it says in there
19 received or deemed in 616A.065. Your Honor, the Nevada
20 Supreme Court has looked at "ands" and "ors" in the
21 past and has said when interpreting "or" or either --
22 as either an "and" or "or", it is the accepted practice
23 in questions of statutory construction there have been
24 great laxity in the use of terms "and" or "or" and such
25 terms are interchangeable and one may be substituted

1 for the other. Moreover, a strict interpretation of
2 "or" should be avoided if it leads to potentially
3 dubious results. Your Honor, I would say because 616A
4 is the definition statute, we -- if we read that to
5 exclude deemed wages for average month -- or wages
6 paid, Your Honor, we're doing a disservice to the
7 interpretation of that statute and the fact that it is
8 a definition statute that actually provides three
9 different categories of ways or what's deemed the
10 average monthly wage.

11 In addition to that, Your Honor, I would
12 point out that the long, long term -- it's been long
13 known the Nevada Supreme Court has clear -- has been
14 cleared on the interchangeable nature of "and" and
15 "or"; even going back to older opinions. This would
16 include an opinion Ex Parte Anderson 49 Nev. 208 to
17 209, 242 P.2d 587; that's a 1926 case, Your Honor.
18 Therein it says -- and it cites to Lewis-Sutherland,
19 Statutory Construction, 2d Edition, at that time,
20 popular use of words "or" and "and" is loose when used
21 in a statute that are convertible as the sense may
22 require, Your Honor. And I would argue that they are
23 because we're talking about a definition statute. The
24 -- nothing in the statutory scheme or the regulatory
25 scheme that was instituted by the Division of

1 Industrial Relations prohibits the use of the inclusion
2 of the concurrent wages both in deemed and private
3 employment, Your Honor. And I'll submit on the record.

4 APPEALS OFFICER DERRAH: Okay. Thank
5 you. Do you have anything additional based on --

6 MR. BALKENBUSH: Yeah, but that was
7 quite lengthy, Your Honor. I thought -- probably it's
8 more appropriate, to be honest, Judge, I mean, I think
9 that Mr. Oueilhe needs to prepare a memorandum.

10 APPEALS OFFICER DERRAH: I think he
11 intends to.

12 MR. BALKENBUSH: Yeah, so I think that
13 that's a better -- probably a better venue for making
14 arguments that are contrary to what we put forth in our
15 memorandum.

16 But I do want to just make this
17 statement. That the -- both -- the definitional
18 statute is in our papers, but the definitional statute
19 and the concurrent employment regulation, the word "or"
20 is used. It doesn't say "and" even in the definitional
21 statute. The monthly wage actually received, it
22 doesn't say actually received and deemed to have been
23 received, it says "or" and that's what the concurrent
24 employment regulation says as well. It says -- doesn't
25 say average monthly wage and deemed wage, but you'll --

1 you can review that.

2 And I just want to leave you with this.
3 That if you were to agree overall with Mr. Felton's
4 contention, that he should receive -- both his average
5 monthly wage should consist of both his private
6 employment wages plus his constructive or deemed wages,
7 that that would have the opposite effect on
8 volunteerism. It would discourage volunteerism; that
9 is to say that the public entities will simply try to
10 eliminate them. They're not going to take on that risk
11 if they have to pay for both. That is -- that would be
12 a policy that would attempt to discourage volunteerism
13 because ultimately the public's going to not get a --
14 want to share that or take on that burden. Anyway,
15 we'll leave it in your hands. I'll file the reply
16 after I see Mr. Oueilhe's brief and that concludes our
17 case.

18 APPEALS OFFICER DERRAH: Okay. Thank
19 you very much. And I indicated earlier that the matter
20 would be submitted upon my receipt of Mr. Oueilhe's
21 memorandum, but it will be submitted upon receipt of
22 your response, if any.

23 MR. BALKENBUSH: Thank you.

24 APPEALS OFFICER DERRAH: Otherwise, a
25 week after your submission.

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MR. OUEILHE: Thank you, Your Honor.

APPEALS OFFICER DERRAH: Thank you very much. Thank you for your time and testimony. And with that, we'll be going off the record.

(Proceedings conclude at 10:01 a.m.)

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C E R T I F I C A T E

I, Denise van Reyendam, transcriptionist for Court Reporting Services, do hereby certify that the foregoing pages are a direct transcription of an audio/video recording of the matter/cause in this action and that it is as true and accurate as could be determined by such recording.

I do further certify that I am not of counsel for or in the employment of any party to this action.

IN WITNESS WHEREOF, I have hereunto subscribed my name this the 5th day of March, 2015.



Denise van Reyendam

NPLW

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

1050 E. WILLIAM, SUITE 450
CARSON CITY, NV 89701

FILED
SEP 5 2014
DEPT. OF ADMINISTRATION
APPEALS OFFICER

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In the Matter of the Contested
Industrial Insurance Claim of:

GREGORY FELTON,

Claimant.

Claim No: C1431206693 01

Hearing No: 47156-KD
47154-KD

Appeal No: 47863-WDD

ORDER

At the time of the hearing on this matter counsel for the Insurer, Mr. Robert Balkenbush, Esq. presented the Appeals Officer with a legal memorandum in support of his general argument in this matter. This was the first time the Appeals Officer became aware of this legal memorandum. However, counsel for both parties agreed that the memorandum had previously been presented to counsel for the Claimant, Mr. Edward Oueilhe, Esq. Given the fact that Mr. Balkenbush was now presenting the memorandum to the Appeals Officer for consideration in this case, Mr. Oueilhe moved for an opportunity to respond to the memorandum. The verbal motion was granted and Mr. Oueilhe was given two (2) weeks to respond to Mr. Balkenbush's initial memorandum. Mr. Balkenbush then moved for an opportunity to respond to Mr. Oueilhe's memorandum. This motion was granted and Mr. Balkenbush was given five (5) days to file a brief response, should he deem it necessary to do so.

Currently before the Appeals Officer is a request by Mr. Oueilhe for an opportunity to respond to Mr. Balkenbush's reply, if any. This request is based upon the fact that his client bears the burden of proof in this matter and is

1 therefore generally entitled to the final opportunity to present an argument to the
2 Appeals Officer. Mr. Balkenbush opposes this request because, among other
3 reasons, Mr. Oueihle has had the initial memorandum for approximately two (2)
4 months prior to the hearing and was therefore aware of its content and had ample
5 opportunity to prepare a similar memorandum on his client's behalf.

6 Because it is the Claimant's burden to prove his case by a
7 preponderance of the evidence in this matter, because there is no evidence to
8 indicate that Mr. Oueilhe had knowledge that the initial memorandum would be
9 presented to the Appeals Officer at the time of hearing, and because there will be
10 no undue prejudice to either party in allowing the request, Mr. Oueilhe's request
11 for the final opportunity to address this matter is GRANTED. Mr. Oueilhe will
12 have five (5) days to prepare a memorandum in response to Mr. Balkenbush's
13 reply memorandum (should one be filed). The final responsive memorandum
14 shall not exceed five (5) pages and must be faxed to the Appeals Office and to
15 Mr. Balkenbush upon the fifth day. The matter will be submitted upon receipt of
16 the final memorandum. Should any party choose NOT to file a memorandum to
17 which they are entitled as outlined above, they are asked to contact the Appeals
18 Office on or before the date the memorandum would have been due in order that
19 the Appeals officer may deem the matter submitted and issue a timely decision
20 and order.

21 **IT IS SO ORDERED.**

22
23 
24 _____
25 WHITNEY D DERRAH
26 APPEALS OFFICER
27
28

1 CERTIFICATE OF MAILING

2
3 The undersigned, an employee of the State of Nevada, Department of
4 Administration, Hearings Division, does hereby certify that on the date shown
5 below, a true and correct copy of the foregoing ORDER was duly mailed, postage
6 prepaid OR placed in the appropriate addressee runner file at the Department of
Administration, Hearings Division, 1050 E. Williams Street, Carson City, Nevada,
to the following:

7 GREGORY FELTON
8 PO BOX 2130
9 STATELINE, NV 89449-2130

10 NAIW
11 1000 E WILLIAM #208
12 CARSON CITY NV 89701

13 DOUGLAS COUNTY
14 PO BOX 218
15 MINDEN, NV 89423

16 ROBERT F BALKENBUSH, ESQ.
17 6590 S MCCARRAN BLVD #B
18 RENO NV 89509-6112

19 ALTERNATIVE SERVICE CONCEPTS
20 1755 E PLUMB LANE #148
21 RENO, NV 89502-3600

22 Dated this 5 day of September, 2014.

23 Tasha Eaton
24 Tasha Eaton, Supervising Legal Secretary
25 Employee of the State of Nevada
26
27
28

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER 2014 SEP -8 6:14:21

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AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: C1431206693 01

of

Hearing No.: 47154-KD
47153-KD

GREGORY FELTON

Appeal No.: 47863-WDD

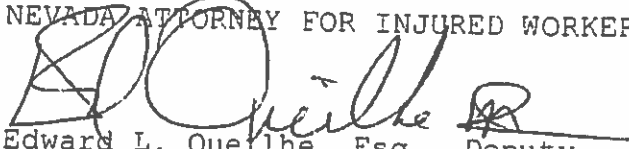
MEMORANDUM OF LAW IN RESPONSE TO INSURER'S HEARING MEMORANDUM

COMES NOW Claimant, Gregory Felton, by and through his attorney, Edward L. Oueilhe, Esq., Deputy, Nevada Attorney for Injured Workers, and hereby submits a Memorandum of Law in Response to Employer, Douglas County, and the Insurer, the Public Agency Compensation Trust, Opinion Memorandum submitted to the Appeals Officer at the August 25, 2014, hearing.

This Memorandum of Law is made pursuant to the Appeals Officer's August 25, 2014, Order from the bench and is based upon the papers and pleadings on file herein and the arguments in the foregoing legal memorandum.

DATED this 8th day of September, 2014.

NEVADA ATTORNEY FOR INJURED WORKERS


Edward L. Oueilhe, Esq., Deputy
Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 which dictates the process by which average monthly wages ("AMW")
2 are to be calculated. The DIR enacted, as part of that
3 responsibility, NAC 616C.447, which clearly states that deemed
4 wages are to be combined with paid wages if an injured worker is
5 concurrently employed. Insurer's argument is based solely on a
6 position that either the Legislature does not have authority to
7 instruct an agency to enact regulations, or that NAC 616C.447 must
8 be repealed because NRS 616A.065 (a definition statute) contains
9 the word "or".

10 With regard to Insurer's related-employment rule
11 argument, Larson's Workers' Compensation Law states:

12 The majority rule, **by a very narrow numerical**
13 **margin** is that the earnings may be combined
14 if, but only if, the employments were
15 "related" or "similar." A substantial **and**
16 **growing** minority rule is that the earnings may
17 be combined whether or not the employments
18 were related or similar.

19 5 Larson's Workers' Compensation Law § 93.03
20 [1][a] (Emphasis added).

21 If the Larson's is accurate, the very narrow margin will
22 soon be eclipsed by the growing rule that concurrent jobs do not
23 need to be related or similar for an injured worker to recover from
24 both employers. It is telling that Insurer cites to Larson's for
25 the idea that a given position is held by a majority, but then
26 specifically ignores the recommendation in Larson's that the
27 "similar employment" method is fraught with problems and should be
28 abandoned. See Larson's § 93.03.

29 The Legislature specifically delegated responsibility to
30 DIR, in NRS 616C.420, to enact law to regulate more specific
31 aspects of the AMW calculation process (such as concurrent

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 employment situations). This triggers a rule of construction for
2 consideration by the Nevada Supreme Court, "It is likewise a rule
3 of construction that grants of power are not to be so construed as
4 to defeat the intent of the Legislature or to withhold what is
5 given either expressly or by necessary and fair implication."
6 Ronnow v. Las Vegas, 57 Nev. 332, 342, 65 P.2d 133, 136, (1937).

7 Generally, a later law which is more specific will
8 control over an earlier general statute with regard to the
9 specifics in the later law:

10 Where one statute deals with a subject in
11 general and comprehensive terms, and another
12 deals with another part of the same subject in
13 a more minute and definite way, the special
14 statute, to the extent of any necessary
15 repugnancy, will prevail over the general one.

16 Id. at 365, 146

17 As directed by NRS 616C.420, NAC 616C.447 carries out the
18 more specific aspect of calculating AMW in concurrent employment
19 situations. NRS 616A.065 provides a general definition of AMW in
20 which deemed wages and received wages are treated as equivalent.
21 In Nevada, "[I]t is an accepted rule of statutory construction that
22 a provision which specifically applies to a given situation will
23 take precedence over one that applies only generally." City of
24 Reno v. Reno Gazette-Journal, 119 Nev. 55, 60, 63 P.3d 1147, 1150,
25 (2003) See also; State Indus. Ins. Sys. v. Surman, 103 Nev. 366,
26 368, 741 P.2d 1357, 1359 (1987); SISS v. Miller, 12 Nev. 1112,
27 1118, 923 P.2d 577 (1996).

28 As the Supreme Court has noted, "[i]t is presumed that in
enacting a statute the legislature acts with full knowledge of
existing statutes relating to the same subject." Boulder City v.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 General Sales Drivers, Local Union No. 14, 101 Nev. 117, 118-119,
2 694 P.2d 498, 500 (1985). It must, therefore, be presumed that
3 when the Legislature specifically instructed DIR to come up with a
4 method of determining average monthly wages, they were aware of the
5 language in NRS 616A.065. Further, it must be presumed that the
6 Legislature did not intend the statute to control the calculation
7 of AMW, but only to give examples of what kind of wages can be
8 considered in the calculation process.

9 **Argument 2:** Insurer argues that where a statute (or
10 regulation) is unambiguous the plain language will control.
11 Insurer attempts to argue the plain language of NRS 616A.065 and
12 NAC 616C.447 do not allow for the aggregation of earned wages and
13 those deemed to have been earned, as they are two different
14 categories of wages.

15 **Response 2:** Neither the statute nor the regulation cited
16 disallow the aggregation of earned wages and deemed wages. Nor do
17 either of the laws state that different categories of wages cannot
18 be aggregated. NRS 616A.065, the general definition statute, is
19 simply defining a method for determining how to calculate how a
20 wage was received, either paid or deemed. NAC 616C.447 clearly
21 states that AMW, "is equal to the sum of the wages earned or deemed
22 to have been earned at each place of employment." The plain
23 language of the regulation clearly anticipates that at one job, a
24 claimant may receive a wage received as "earned" and at another
25 job, the claimant may receive a wage as "deemed" and if those wages
26 are at different concurrent jobs then they are supposed to be
27 added.

28 / / /

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 NRS 616A.065 does not state that deemed wages and earned
2 wages cannot be combined in concurrent employment situations. The
3 language of the statute itself provides the evidence that the
4 Legislature did not intend to create two different categories of
5 wages which can not be combined. The plain language shows that the
6 Legislature knows how to separate categories of wages when they
7 intend to.

8 Category 1. = The monthly wage actually received or
9 deemed to have been received by the employee on the date of the
10 accident or injury to the employee.

11 Category 2. = One hundred fifty percent of the state
12 average weekly wage as most recently computed by the Employment
13 Security Division of the Department of Employment, Training and
14 Rehabilitation during the fiscal year preceding the date of the
15 injury or accident, multiplied by 4.33.

16 Category 3. = "average monthly wage" has the meaning
17 shown in the following schedule for the purpose of increasing
18 compensation for permanent total disability pursuant to NRS
19 616C.465 or increasing death benefits pursuant to NRS 616C.520.
20 (Note: paraphrased from the statute.)

21 The fact that the Legislature put deemed wages and
22 actually received wages in the same category/subsection shows that
23 they are to be considered an equivalent to each other. Further,
24 definition statutes are necessarily written broadly so as to
25 encompass the entirety of anticipated situations. NRS 616A.065
26 does not address or contemplate the concept of concurrent
27 employment. The Legislature in NRS 616C.420 ordered the DIR
28 Administrator to promulgate and to implement law with regard to

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 calculating average monthly wages and concurrent employment, and
2 the DIR did so in enacting NAC 616C.420 through NAC 616C.447.
3 Statutes dealing specifically with a subject prevails over a
4 general provision. State Indus. Ins. Sys. V. Surman, 97 Nev. 366,
5 368, 741 P.2d 1357, 1359 (1987). The resulting implementation
6 regulation specifically orders the combining of deemed and received
7 wages for concurrent employment when calculating AMW.

8 It is important to note that, even if the "or" in the
9 definitions in NRS 616A.065 is used in the disjunctive sense, it
10 does not bar the combining of earned wages and deemed wages. It is
11 inclusive because if an injured worker receives either traditional
12 wages or deemed wages either kind can be used in calculating AMW.
13 Both kinds of wage are included in Category 1 within NRS 616A.065.

14 The entirety of the Insurer's argument is based on the
15 championing of an argument about a rule of statutory construction
16 that does not exist in Nevada. As the Nevada Supreme Court noted
17 previously, the terms "and" and "or" are interchangeable in
18 statutory interpretation. Desert Irrigation, Ltd. v. State, 113
19 Nev. 1049, 1056, 944 P.2d 835, 840, (1997)

20 The Blake case does indeed state that a regulation may be
21 nullified to the extent that it impermissibly conflicts with a
22 statute. However, there is no conflict in this case between the
23 relevant regulation and statute. It is telling that the Blake Court
24 does an in-depth analysis of the phrase, "as it existed at the time
25 of the subsequent injury" including such review of statutory
26 interpretation rules such as:

27 This phrase refers to "previous disability,"
28 not "percentage," because "previous
disability" is the antecedent immediately

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
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1 before it... referential and qualifying
2 phrases generally apply to the last
3 antecedent, meaning the last word to which the
4 phrase can apply without impairing the
5 sentence's meaning...

6 Public Agency Comp. Trust v. Blake, 265 P.3d 694, 697,
7 127 Nev. Adv. Rep. 77 (2011).

8 Insurer argues the meaning of the phrase "or." However,
9 the Blake case does not apply to the current matter, because there
10 is no conflict between the two laws. One is a definition statute,
11 while the other is a calculation regulation the legislature chose
12 to enact by way of the implementation powers delegated in NRS
13 616C.420.

14 **Argument 3:** Insurer attempts to argue case law in other
15 jurisdictions, barring the aggregation of deemed and earned wages
16 specifically for volunteer firefighters, relies on similar
17 statutory language as found in Nevada.

18 **Response 3:** Defining a wage as "deemed" is not more
19 specific than defining a wage as "received". NRS 616A.065 is simply
20 defining two ways in which a wage will fit within the larger
21 umbrella definition of AMW.

22 The Insurer argues that "numerous jurisdictions" disallow
23 the combination of deemed wage and earned wages are overstated.
24 The only jurisdictions that the Insurer has cited to are
25 Pennsylvania and Connecticut. Different states deal with the
26 specific question at hand very differently.

27 The legal reality is that it is not the job of these
28 various supreme courts to create law dictating how AMW is to be
29 calculated, nor whether deemed wages are to be combined with earned
30 wages. If the statutes and regulations promulgated by the various

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 legislatures is in clear language, then the court is to enforce the
2 law that was promulgated.

3 For instance, in the case of Boles v. UNA Water Dist.,
4 291 S.C. 282, 353 S.E.2d 286, 1987 (S.C. 1987), a volunteer
5 firefighter was determined to be permanently and totally disabled
6 after an accident on the job. In his worker's compensation action,
7 the employee's rate of compensation was determined by averaging the
8 weekly wages that he received from both the statutory salary for a
9 voluntary fireman and the wages from his regular job. An
10 administrative body affirmed the decision, but the trial court
11 reversed, finding that the wages from the employee's regular job
12 should not have been included in the calculation. On appeal, the
13 court reversed, finding that the law in existence at the time of
14 the employee's injury, allowed the employee's voluntary fireman's
15 salary to be combined with his other wages to compute his average
16 weekly wages. The court stated that:

17 Generally, however, when an employee works at
18 concurrent jobs, the employee's wages from his
19 multiple jobs may be combined to compute his
20 average weekly wages. Since appellant's lost
21 earning capacity exceeds the statutorily set
22 salary for a voluntary fireman, his voluntary
23 fireman's salary may be combined with his
24 other wages to compute his average weekly
25 wages.

26 Id. at 284, 287 (Citations omitted).

27 In Kentucky, if a volunteer firefighter is injured doing
28 that job, the AMW is calculated using the worker's regular wage. If
a volunteer firefighter does not have a separate regular paying job
at the time of injury, the AMW wage is calculated as zero:

[W]hile we sympathize with [Claimant's] claims
of inequity and unfairness, we are compelled
to follow the plain language of [Kentucky's

1 statute] and conclude that in the absence of
2 being engaged in "regular employment," a
3 workers' compensation claimant has no AWW from
4 which disability income benefits can be based.
5 [Claimant's] arguments to the contrary would
6 require us to read language and meaning into
7 [Kentucky's statute] that simply are not
8 there.

9 Justice v. Kimber Volunteer Fire Dep't, 379
10 S.W.3d 804, 808, (Ky. Ct. App. 2012).

11 Even so, Nevada law by way of NRS 616C.420 dictates a different
12 method for combining concurrent wages.

13 **Argument 4:** The Nevada analysis involves a statute and
14 an administrative regulation. The Insurer argues that courts,
15 scholarly publications, and recently the Nevada Supreme Court have
16 held that where an administrative regulation conflicts, expands or
17 modifies a governing statute it will be deemed invalid. The
18 Insurer further argues, in this regard, and to the extent that NAC
19 616C.447 is construed to permit aggregation of deemed wages and
20 earned wages from concurrent employment, this regulation exceeds,
21 modifies and conflicts with the Nevada statute that specifically
22 defines average monthly wage (NRS 616A.065) and the statute
23 governing the stated average monthly wage of volunteer firefighters
24 (NRS 616A.145), which latter statute does not address/allow
25 for/contemplate wages from private/public concurrent employment.

26 **Response 4:** NAC 616C.447 does not conflict with either
27 NRS 616A.065, NRS 616A.145, nor NRS 616A.157 (the deemed wage
28 statute for volunteer search and rescue persons).

The Nevada Supreme Court has a duty, "[i]f possible, it
is the Nevada Supreme Court's obligation to construe statutory
provisions in such a manner as to render them compatible." Bowyer
v. Taack, 107 Nev. 625, 627, 817 P.2d 1176, 1177, (1991). It would

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 be improper to read the use of the word "or" in a general statute
2 defining AMW for the purposes of a single given job as negating
3 later law specifically controlling the AMW calculation in cases of
4 concurrent employment.

5 The reference to a "scholarly publication" is a reliance
6 on a non-binding secondary source; this is probably because the
7 language, "conflicts, expands or modifies" does not appear in any
8 case law reported in Nevada.

9 The law in Nevada is that, "a court will not hesitate to
10 declare a regulation invalid when the regulation violates the
11 constitution, conflicts with existing statutory provisions or
12 exceeds the statutory authority of the agency or is otherwise
13 arbitrary and capricious." Division of Ins. v. State Farm Mut.
14 Auto. Ins. Co., 116 Nev. 290, 293, 995 P.2d 482, 485 (2000).
15 However, NAC 616C.447 is not in conflict with NRS 616A.065, NRS
16 616A.145, nor NRS 616A.157 where the regulation, NAC 616C.447,
17 simply implements what the legislature delegated in the passing of
18 NRS 616C.420 (a regulation for a method of determining average
19 monthly wages).

20 Insurer's enumerated list of arguments comprise only 2
21 actual arguments, 1) Nevada law does not address the combination of
22 deemed wages and received wages, and 2) the use of the word "or"
23 puts the AMW defining statute in conflict with the AMW calculation
24 process regulation so the regulation should be invalidated. As
25 noted in the foregoing, Nevada law clearly addresses concurrent
26 employment wage calculation, and the Insurer interprets NRS
27 616A.065 incorrectly, so there is no conflict of law.

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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 130
Las Vegas, NV 89102 (702) 486-2830

1 Finally, Mr. Felton was injured while engaged in
2 volunteer search and rescue training on March 6, 2012 for the
3 Douglas County Sheriff's Department. Mr. Felton suffered a partial
4 medial meniscus tear, the Insurer accepted the claim, and Mr.
5 Felton underwent partial medial meniscectomy on October 17, 2012.
6 It is undisputed that if Mr. Felton's concurrent Hewlett Packard
7 employment is combined in his AMW calculation, he is a maximum wage
8 earner for the fiscal year 2012. It is further undisputed that
9 during the twelve weeks prior to his March 6, 2012, industrial
10 injury had some \$46,443.19 in wages from his Hewlett Packard job.
11 Per NRS 616A.065 (1) (b), Mr. Felton's AMW calculation is capped at
12 \$5,151.57 for the period that ended on June 30, 2012.

13 During Mr. Felton's closing argument, it was argued that
14 if his concurrent employment was not combined with his deemed wage,
15 as set for search and rescue volunteers per NRS 616A.157, this
16 would create a bad public policy that would discourage high wage
17 earners like Mr. Felton from volunteering. It was further argued
18 at closing that per NRS 616A.065 (1) (b), the 2012 cap on the
19 maximum wages earned (\$5,151.57/month) was enough to cause high
20 wage earners like Mr. Felton to refrain from volunteering for
21 search and rescue.

22 In rebuttal, the Insurer argued that without the
23 exclusion of concurrent employment in the AMW calculation,
24 employers like Douglas County would not offer volunteer positions,
25 because they would never know what the potential AMW would be.
26 However, this argument fails because the maximum AMW that any one
27 volunteer is entitled to is limited to the amount set forth
28 statutorily by NRS 616A.065 (1) (b). The statutory cap on AMW is a

1 small price that Douglas County might potentially pay for the
2 important search and rescue function that Mr. Felton and other
3 volunteers like him perform if they are injured.

4 CONCLUSION

5 Based on the forgoing, it is respectfully submitted that
6 as a matter of law NRS 616C.420 and NAC 616C.427 govern and control
7 the calculation of an average monthly wage where the claimant has
8 concurrent employment. Mr. Felton's concurrent employment from
9 Hewlett Packard and Douglas County is equal to sum of his wages
10 earned or deemed to have been earned at each place of his
11 employment.

12 DATED this 8th day of September, 2014.

13 NEVADA ATTORNEY FOR INJURED WORKERS

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15 Edward L. Oueilhe, Esq., Deputy
16 Attorney for Claimant

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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 130
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

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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, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing MEMORANDUM OF LAW IN RESPONSE TO INSURER'S HEARING MEMORANDUM addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

DOUGLAS COUNTY
PO BOX 218
MINDEN NV 89423

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LN #148
RENO NV 89502

ROBERT F BALKENBUSH ESQ
6590 S MCCARRAN BLVD #B
RENO NV 89509

and caused a copy of the aforementioned document to be served by facsimile as follows:

ROBERT F BALKENBUSH ESQ
786-8004

DATED: September 8, 2014

SIGNED: *Jisa Mind*

COPY

LEGAL MEMORANDUM APPEAL NO. 47863-WDD

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS
APICAL

TO: APPEALS OFFICER WHITNEY DERRAH

2014 SEP 16 PM 1:31

FROM: ROBERT F. BALKENBUSH, ESQ./on behalf of Douglas County and the Public Agency Compensation Trust

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AND
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RE: Opinion memorandum in support of contention that Nevada law, concerning the average monthly wage of a volunteer firefighter who is concurrently employed in the private sector and is injured while firefighting, does not require combining the deemed average monthly wage of the volunteer position and the actual wages received (or earned wages) from the concurrent employment, in determining the average monthly wage utilized in the workers' compensation claim.

DATE: September 15, 2014

**EMPLOYER'S AND INSURER'S REPLY TO
CLAIMANT'S RESPONSIVE OPINION MEMORANDUM**

Mr. Felton's Responsive Memorandum fails to provide any authority to contradict the proposition that the law governing the average monthly wage of a volunteer firefighter, who is concurrently employed in the private sector and is injured while firefighting, does not require combining the deemed average monthly wage of the volunteer position and the actual wages received (or earned wages) of the concurrent employment in determining the average monthly wage.

Admittedly, this is the majority position in this country, Nevada judiciary has indicated assent, and this common sense approach is mandated in this case.

The propriety of the foregoing legal principle can be seen in the following example. Imagine the reaction of Hewlett Packard, a private employer, thrown into a situation such as the one into which Mr. Felton intends to place Douglas County. Hewlett Packard has the expectation that wage loss benefits will be provided to Mr. Felton, for an injury incurred while he was working for Hewlett Packard, through its policy of workers' compensation insurance that was based on the wages paid

to Mr. Felton by Hewlett Packard. Upon disability from the work-incurred injury, however, Mr. Felton asserts that he happens to also be a volunteer firefighter, when not employed by Hewlett Packard. Mr. Felton then alleges that the average monthly wage under his claim for workers' compensation must be calculated on the basis of not only his earned wages at Hewlett Packard but also the deemed wages of his concurrent employment as a volunteer firefighter. Such an aggregation would not be allowed, and the example illustrates the absurdity of the contention of aggregation, and validity of non-aggregation principle.

The Nevada Legislature has enacted statutes and the Supreme Court has offered guidance that ensures that Douglas County be afforded the same consideration as Hewlett Packard in the previously related example.

NRS 616A.065 defines what constitutes an average monthly wage, stating an "average monthly wage" means the lesser of "[t]he monthly wage actually received or deemed to have been received by the employee on the date of the accident or injury to the employee." This statute does not allow for the aggregation of wages for concurrent employment, rather it treats earned wages and deemed wages as two separate forms of compensation. The Division of Industrial Relations has, however, also by regulation specifically allowed for the combining of wages in determining an employee's average monthly wage if they are concurrently employed in alternative employment at the time of the subject industrial injury. *See* NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that "the average monthly wage of an employee who is employed by two or more employers covered by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is equal to the sum of the wages earned or deemed to have been earned at each place of employment." *Id.* (Emphasis added). Despite, Felton's unsupported contention, NRS

616C.447 does not “clearly state[s] that deemed wages are to be combined with paid wages if an injured worker is concurrently employed.” See, Responsive Memorandum at p. 3. Moreover, on its face, this regulation implies that the concurrent employers are covered by the same private carrier or the same plan of self-insurance. On its face, the regulation also seems to address aggregation of wages earned, and aggregation of deemed wages, but not aggregation of earned and deemed wages. Finally, NAC 616C.429 specifically states that “[r]hose wages which are deemed to be established in chapters 6161A to 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly wage when applicable”.

The Nevada Supreme Court has indicated its leaning towards the adoption of the majority position on the issue of aggregation of wages from concurrent employment, that is, the related-employment rule, in *Ayala v. Caesars Palace*, 119 Nev. 232, 71 P.3d 490 (2003). According to Larson’s treatise on workers’ compensation law, the rule adopted by a majority of jurisdictions throughout the United States holds that the earnings may be combined if, but only if, the various employments were “related” or “similar,” otherwise the majority of jurisdictions bar aggregation of wages from dissimilar concurrent employment. See, A. Larson, *Larson’s Workers’ Compensation Law* § 93.03[1][a] (2011). In *Ayala*, the Nevada Supreme Court, in finding that the aggregation of concurrent wages was inappropriate, specifically noted the two types of employment in consideration (cashier and banquet waitress) were not similar in nature.¹ See also, 100 C.J.S. Workers’ Compensation § 524 (“[w]orkers’ compensation benefits are not allowed to compensate a volunteer for an inability to pursue unrelated concurrent employment for another employer.”) (citing *Wislocki*

¹“the record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation.” See, 119 Nev. at 240.

v. *Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); see also, *Snyder v. Workmen's Compensation Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995). In support of the non-aggregation of such volunteer/deemed wages, those courts in the majority of jurisdictions have held that where two statutes seemingly conflict (one allowing for combined wages and the other setting a deemed wage specifically for rescue workers' firefighters) the more specific statute (setting a deemed wage) would, using the rules of statutory construction, control or be seen as an exception to the general rule. *Id.* Felton has cited no authority to the contrary.

Additionally, at the time of the incurrence of Felton's injury while employed as a search and rescue volunteer in 2012, there was no regulation providing for a "deemed wage" for "search and rescue volunteers" at all. NRS 616C.157 provides:

Volunteer members of a search and rescue organization that is under the direct supervision of a county sheriff, while acting under the direction of the sheriff or a designee of the sheriff:

1. In the conduct of any search and rescue operation; or
2. In training for such an operation, shall be deemed, for the purposes of chapters 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of \$2,000 per month, and are entitled to the benefits of those chapters.

This statute was enacted and became law on May 21, 2013, one year and two months after Felton's injury with Douglas County. See, Assembly Bill 206, Chapter 26, Section 1 (2013). There is no indication that the Nevada Legislature intended this statute to be applied retroactively. Indeed, the adoption of this statute would indicate that at the time of Felton's 2012 injury "search and rescue volunteers" were not covered under any other category of volunteers with a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury, he had no deemed wage as a volunteer

to consider for aggregation with earned wages from concurrent employment. Hence, the issue of concurrent wages in this contested case is moot, that is, an academic issue only to be debated.

Lastly, Felton has provided no evidence of any public policy that the Nevada Legislature intended Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen liabilities based on possible alternative employment by its volunteers. Nor is there any evidence of any public policy that the Nevada Legislature intended to have the unambiguous definition of average monthly wage be subject to modification through administrative regulations.

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

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In the Matter of the
Industrial Insurance Claim

Claim No.: C1431206693 01

of

Hearing No.: 47154-KD
47153-KD

GREGORY FELTON

Appeal No.: 47863-WDD

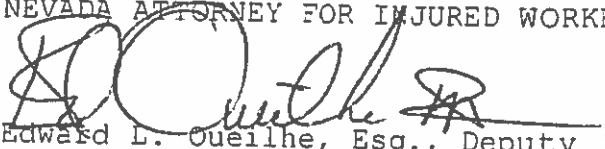
FINAL RESPONSIVE MEMORANDUM

COMES NOW Claimant, Gregory Felton, by and through his attorney, Edward L. Oueilhe, Esq., Deputy, Nevada Attorney for Injured Workers, and hereby submits a Final Responsive Memorandum in response to the memorandum filed by Employer, Douglas County, and Insurer, the Public Agency Compensation Trust (hereinafter "Insurer") entitled EMPLOYER'S AND INSURER'S REPLY TO CLAIMANT'S RESPONSIVE OPINION MEMORANDUM (Insurer's Memo) faxed to the Appeals Officer on September 15, 2014.

This Final Response Memorandum is filed pursuant to the Appeals Officer's September 5, 2014, Order and is based upon the papers and pleadings on file herein and the arguments in the foregoing legal memorandum.

DATED this 22nd day of September, 2014.

NEVADA ATTORNEY FOR INJURED WORKERS


Edward L. Oueilhe, Esq., Deputy
Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 that under NAC 616C.447 concurrent wages are to be combined, "[T]he
2 record reflects that [Appellant] had left her position at the
3 Mirage before the injury, so it was not a concurrent employment
4 under NAC 616C.447" Id. at 240, 495 n.14. The Court's opinion tends
5 to negate the hypothetical argument in the Employer's Memo.

6 The Insurer's hypothetical posits that if an employer is
7 not aware of a worker's other jobs then combining concurrent wages
8 would lead to an absurd result. Leaving aside, for a moment, the
9 insurer's argument that deemed wages are not wages, NAC 616C.447
10 states in relevant part, "The average monthly wage of an employee
11 who is employed by two or more employers... on the date of a
12 disabling accident... is equal to the sum of the wages earned... at
13 each place of employment."

14 Contrary to the insurer's statement that, "Such an
15 aggregation would not be allowed," See, Insurer's Memo at p. 2,
16 such an aggregation is codified in Nevada law.

17 The Insurer's Memo states that NAC 616C.447, "[I]mplies
18 that the concurrent employers are covered by the same private
19 carrier or the same plan of self-insurance." See, Insurer's Memo at
20 p. 3. This statement appears to be another refusal to acknowledge
21 the normal use of the word "or". The regulation simply considers
22 private insurance carriers and self-insurance plans to be
23 equivalent, just as the law dictates that deemed wages and earned
24 wages are both wages.

25 Insurer sites to NAC 616C.429 for the apparent
26 proposition that, because it designates that deemed wages are to be
27 used for the AMW calculation of certain employees, that concurrent
28 wages can never be added to the calculation. NAC 616C.429 is not,

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 of course, considering concurrent employment at all which is dealt
2 with later in the code at NAC 616C.447. The later code section,
3 because it specifically addresses the summing of concurrent wages,
4 is controlling because it is the more specific regulation. See,
5 City of Reno v. Reno Gazette-Journal, 199 Nev. 55, 60, 63 P.3d
6 1147, 1150 (2003).

7 Simply put, Insurer's suggested interpretation of the
8 statutory and regulatory language would render every law that uses
9 the word "or" ambiguous. Likewise, any statute which failed to
10 address every foreseeable situation would function to negate any
11 law later promulgated to address a particular situation. The
12 statutory scheme is not generally interpreted in this fashion.

13 **Employers and Insurers in Nevada Are Not Exposed to Immeasurable**
14 **Unforeseen Liabilities if Concurrent Wages Are Included in AMW**

15 NRS 616A.065, which defines AMW, also dictates, in
16 subsection 1.(b), that there is a maximum wage in Nevada for AMW
17 purposes:

18 "average monthly wage" means the lesser of:
19 (a) The monthly wage actually received... or
20 (b) One hundred fifty percent of the state
21 average weekly wage as most recently computed
22 by the Employment Security Division of the
23 Department of Employment, Training and
24 Rehabilitation during the fiscal year
25 preceding the date of the injury or accident,
26 multiplied by 4.33.

27 Regardless of the hardship on the injured worker,
28 regardless of what kind of wages are combined, no insurer or
employer can ever be exposed to liability beyond the maximum wage
in Nevada. This is why the insurer's citations to cases from other
states are inapplicable. The Nevada Legislature has specifically
capped an insurance company's liability exposure by law. Further,

1 no injured worker in Nevada receives full wage replacement when
2 injured, but instead gets 66^{2/3}% of the value of lost wages.

3 According to Larson's:

4 [F]airness to the employee and fairness to the
5 employer-carrier are not symmetrical, and
6 cannot be judged by the same standards. To
7 this one employee, this one loss is
8 everything—he or she has nothing against which
9 to offset it. To the employer, and even more
10 to the carrier, this is just one case among
11 many. The rule operates impartially in both
12 directions. Today this employer-carrier may be
13 saddled with a slight extra cost; tomorrow the
14 positions may be reversed, and the
15 employer-carrier will be completely relieved
16 of the cost of an injury to one of its
17 employees in a concurrent-employment
18 situation, when it happens to be the other
19 employment in which the injury occurs. This is
20 the essence of the concept of spreading the
21 risk in a system like workers' compensation.

22 5 Larson's Workers' Compensation Law § 93.03
23 [1] [c] (Footnote omitted)

24 **Insurer's Judicial Admissions Do Not Allow It To**
25 **Now Reargue The Claimant's Deemed Wage Amount**

26 "Judicial admissions are defined as deliberate, clear,
27 unequivocal statements by a party about a concrete fact within
28 that party's knowledge." Reyburn Lawn & Landscape Designers, Inc.
v. Plaster Dev. Co., 255 P.3d 268, 276, 127 Nev. Adv. Rep. 26, 10
(2011) (Citation omitted). The Supreme Court cites favorably to
the case of Scalf v. D.B. Log Homes, Inc., 128 Cal. App. 4th
1510, 27 Cal. Rptr. 3d 826, 833 (Ct. App. 2005) for the
proposition that, "concessions in pleadings are judicial
admissions..." Id. at 280,10. The Insurer has judicially admitted
in pleadings and its determination currently on appeal that the
claimant's deemed wage is \$2000 a month.

28 / / /

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranchin Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2810

1 Public Policy Favors the Combining of Deemed Wages and Earned
2 Wages in the AMW Calculation Process

3 As noted by the Supreme Court, "Nevada's workmen's
4 compensation laws reflect a clear public policy favoring economic
5 security for employees injured while in the course of their
6 employment." Dillard Dep't Stores, Inc. v. Beckwith, 115 Nev. 372,
7 377,989 P.2d 882, 885 (1999), Citing Hansen v. Harrah's, 100 Nev.
8 60, 63,675 P.2d 394, 396 (1984).

9 The Nevada Legislature commonly uses a deemed wage in
10 order to protect volunteers who provide valuable public
11 services¹.

12 Taken together, the public policy of protecting the
13 economic security of injured employees, and the Legislature's
14 practice of providing public service volunteers with deemed
15 wages, the combined policies support a position that earned and
16 deemed wages should be combined in the AMW calculation. Public
17 service jobs tend to be both strenuous and dangerous so it would
18 be expected that individuals doing those jobs would be at prime
19 earning age. Further, logic would dictate that the Legislature
20 knows public service volunteers commonly have concurrent earned
21 wage employment in order to support themselves and their
22 families. Nevada's workers' compensation system is designed to
23 provide an injured worker with medical treatment and lost wages.
24 Wages lost from concurrent employment are to be combined under
25 NAC 616C.447.

26
27 ¹Volunteer health practitioners (NRS 616A.207), the Civil Air Patrol (NRS 616A.140),
28 volunteer firefighters (NRS 616A.145), volunteer ambulance service providers (NRS 616A.155),
volunteer search and rescue organizations (NRS 616A.157), volunteer peace officers (NRS
616A.160), volunteer junior traffic patrols (NRS 616A.170), volunteer workers at the Department
of Health and Human Services (NRS 616A.205) and even members of the Nevada Legislature itself
(NRS 616A.185)

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rameho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

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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, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing FINAL RESPONSIVE MEMORANDUM addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

DOUGLAS COUNTY
PO BOX 218
MINDEN NV 89423

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LN #148
RENO NV 89502

ROBERT F BALKENBUSH ESQ
6590 S MCCARRAN BLVD #B
RENO NV 89509

and caused a copy of the aforementioned document to be served by facsimile as follows:

ROBERT F BALKENBUSH ESQ
786-8004

DATED: September 22, 2014

SIGNED: Jim Minden

FILED
FEB 04 2015
DEPT. OF ADMINISTRATION
APPEALS OFFICER

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**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER**

In the Matter of the
Industrial Insurance Claim

Claim No. C143-12-06693 01

of

Hearing Nos. 47153-KD
47154-KD

GREGORY FELTON

Appeal No. 47863-WDD

DECISION AND ORDER

Background

In this contested case, the claimant Gregory Felton (hereinafter "Felton"), was represented by Edward Oueilhe, Esq., Deputy Nevada Attorney for Injured Workers. The employer, Douglas County, and the insurer, Public Agency Compensation Trust (hereinafter "PACT"), were represented by Robert Balkenbush, Esq., of the law firm of Thorndal, Armstrong, Delk, Balkenbush & Eisinger. The current third party administrator of Felton's year 2012 workers' compensation claim at issue in this contested case is Alternative Service Concepts, LLC (hereinafter "ASC").

By written determination dated November 11, 2013, ASC, on behalf of Douglas County and the PACT, notified Felton that it had calculated his average monthly wage (AMW) under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and further advised that this calculation was based upon the statutory deemed wage of a search and rescue volunteer.

See, Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.

Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely

1 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
2 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

3
4 By written determination dated November 13, 2013, ASC, on behalf of Douglas County and
5 the PACT, awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
6 impairment (WPI) as a result of his work-related left knee injury. *See*, Exhibit No. 3 at pp. 4; Exhibit
7 No. 4 at pp. 100-03.

8 Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
9 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
10 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

11
12 Following a hearing and by written decision dated February 20, 2014, made under Hearing
13 Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the November 11,
14 2013 and November 13, 2013, written determinations made by ASC. *See*, Exhibit No. 3 at pp. 7-9.

15 Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
16 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and Appeal
17 No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the time of the trial
18 of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals Officer, Douglas
19 County and the PACT that he no longer disagreed with the November 13, 2013, determination made
20 by ASC that awarded him a 1% PPD or WPI for his work-related left knee injury, nor did he disagree
21 with the decision made by the Hearing Officer under Hearing No. 47154-KD that affirmed the legal
22 propriety of this November 13, 2013, determination. Hence, the decision in this contested case
23 (Appeal No. 47863-WDD) will solely resolve the issue whether AMW determination made by ASC
24 in its November 11, 2013, determination was proper under the law.
25
26

27 The trial of Appeal No. 47863-WDD was conducted on August 25, 2014. Mr. Felton
28

1 personally appeared and provided brief testimony at the hearing of this appeal. No other witnesses
2 testified in this matter. Six (6) documentary exhibits were admitted into evidence. In addition,
3 written closing arguments were submitted by legal counsel for the parties.
4

5 Having considered the documentary exhibits admitted into evidence at the trial of this case,
6 the testimony of claimant Gregory Felton, as well as written closing arguments made by legal
7 counsel for the parties, the Appeals Officer hereafter makes the following findings of fact,
8 conclusions of law, and order.

9 **Summary of Decision**

10
11 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
12 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
13 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
14 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). Indeed, NRS 616A.157
15 was enacted and became law on May 21, 2013, which is one year and two months after the
16 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
17 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
18 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
19 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
20 volunteers" were not employees with a deemed wage under any other category of volunteers with
21 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
22 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
23 employment.
24
25

26 There are several additional legal reasons that support the conclusion reached in this
27 contested case.
28

1 FINDINGS OF FACT

2 1. In March 2012, Felton was employed with Douglas County as a search and rescue
3 volunteer. *See*, Exhibit No. 4 at pp. 1-2, 7.
4

5 2. On or about March 6, 2012, Felton suffered an injury to his left knee while participating
6 in a snow and avalanche rescue training. *See*, Exhibit No. 4 at pp. 1-2, 7. At the time of that this
7 left knee injury was incurred, it appears that Felton was also employed by Hewlett Packard. *See*,
8 Exhibit No. 2; *see also*, Trial Transcript.

9 3. For his March 2012 left knee injury, Felton initiated a workers' compensation claim with
10 Douglas County, and its workers' compensation insurer, the PACT, assigned Claim No. C143-
11 12-06693-01 to Felton's claim, and workers' compensation insurance coverage of his left knee
12 injury was granted. *See*, Exhibit No. 4 at p. 17.
13

14 4. Following medical treatment of Felton's left knee injury, and on or about November 5,
15 2013, Felton was evaluated for a permanent partial disability (PPD). *See*, Exhibit No. 4 at pp. 3-
16 6, 15-16, 18-90, 94-97; Exhibit 5. Nevada rating physician Jay Betz, M.D., assessed Felton as
17 having suffered a 1% whole person impairment (WPI) as a result of his work-related left knee
18 injury, and further recommended closure of his claim. *See*, Exhibit No. 4 at pp. 94-97.
19

20 5. By written determination dated November 11, 2013, ASC, on behalf of the Douglas
21 County and the PACT, notified Felton that it had calculated his average monthly wage (AMW)
22 under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and that
23 this calculation was based upon the statutory deemed wage of a search and rescue volunteer. *See*,
24 Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.
25

26 6. Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely
27 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
28

1 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

2 7. By written determination dated November 13, 2013, ASC, on behalf of the Douglas
3 County and PACT, notified Felton of the result of his PPD evaluation, advising Felton that Dr.
4 Jay Betz had determined he had suffered a one percent (1%) whole person impairment (WPI) or
5 permanent partial disability (PPD) as a result of his work-related left knee injury. *See*, Exhibit
6 No. 3 at pp. 4; Exhibit No. 4 at pp. 100-03. In turn, by means of this determination, ASC
7 awarded Felton a 1% PPD. *Id.*

8
9 8. Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
10 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
11 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12
13 9. Following a hearing and by written decision dated February 20, 2014, made under
14 Hearing Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the
15 November 11, 2013 and November 13, 2013, written determinations made by ASC. *See*,
16 Exhibit No. 3 at pp. 7-9.

17
18 10. Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
19 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and
20 Appeal No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the
21 time of the trial of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals
22 Officer, Douglas County and the PACT that he no longer disagreed with the November 13, 2013,
23 determination made by ASC that awarded him a 1% PPD for his work-related left knee injury,
24 nor did he disagree with the decision made by the Hearing Officer under Hearing No. 47154-KD
25 that affirmed the legal propriety of the November 13, 2013, determination. Hence, the decision
26 in this contested case (Appeal No. 47863-WDD) will solely resolve the issue whether AMW
27
28

1 determination made by ASC in its November 11, 2013, determination was proper under the law.
2 11. At the trial of this contested case (Appeal No. 47863-WDD), Felton presented
3 documentary evidence of what his earned wages were with Hewlett Packard at or about the time
4 that his March 2012 left knee injury was incurred. *See*, Exhibit No. 2.
5

6 CONCLUSIONS OF LAW

7 A. Governing Law or Legal Principles

8 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
9 means that the Claimant must establish the work-connection of his/her injuries, the causal
10 relationship between his/her work-connected injury and his disabilities, the extent of his/her
11 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
12 cannot prevail if the evidence is merely evenly balanced. See, 8A Larson, Larson's Workers'
13 Compensation Laws, § 130.06(3)(a)(2006); see also, NRS 616C.150; NRS 616A.010; NRS
14 617.358.
15

16 Generally, the average monthly wage for an injured employee covered under the Nevada
17 Industrial Insurance Act is defined by NRS 616A.065, which provides in part:
18

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been received by the
22 employee on the date of the accident or injury to the employee, excluding
remuneration from employment:

23 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
24 Occupational Diseases Act; and

25 (2) For which coverage is elective, but has not been elected; or

26 (b) One hundred fifty percent of the state average weekly wage as most recently
27 computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding the
date of the injury or accident, multiplied by 4.33.

1 NRS 616A.065(1). (Emphasis added).

2 Except as otherwise provided by a specific statute, the amount of compensation and
3 benefits and the person or persons entitled thereto must be determined as of the date of the
4 accident or injury to the employee and their rights thereto become fixed as of that date. See, NRS
5 616C.425; see also, NAC 616C.441.

7 Concerning the average monthly wage (AMW) of volunteer members of the search and
8 rescue organization, the Nevada Legislature has specifically defined an "Employee" in pertinent
9 part as follows:

10 Volunteer members of a search and rescue organization that is under the direct
11 supervision of a county sheriff, while acting under the direction of the sheriff or a
12 designee of the sheriff:

- 13 1. In the conduct of any search and rescue operation; or
- 14 2. In training for such an operation, shall be deemed, for the purposes of chapters
15 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of
16 \$2,000 per month, and are entitled to the benefits of those chapters.

17 See, NRS 616A.157 (Emphasis added).

18 The Nevada Legislature has delegated by statute to the Administrator of the Division of
19 Industrial Relations (DIR) the authority to promulgate the method of determining the average
20 monthly wage. See, NRS 616C.420; NRS 6161A.400; and NAC 616A.420-447. Regulations
21 define average monthly wage to mean "the total gross value of all money, goods and services
22 received by an injured employee from his employment to compensate for his time or services and
23 is used as the base for calculating the rate of compensation for the injured employee." NAC
24 616C.420. In this regard, those wages which are deemed to be established in chapters 616A to
25 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly
26 wage when applicable. See, NAC 616C.429.

28

1 The Division of Industrial Relations has also by regulation specifically allowed for the
2 adding or combining of wages in determining an employee's average monthly wage in certain
3 circumstances. *See*, NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that
4 "the average monthly wage of an employee who is employed by two or more employers covered
5 by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is
6 equal to the sum of the wages earned or deemed to have been earned at each place of
7 employment." (Emphasis added).

8
9 **B. Felton Is Not Legally Entitled to an Average Monthly Wage (AMW) That Is
10 Based upon Both His Earned Wages at Hewlett Packard and the Statutory
11 Deemed Wage of a Search & Rescue Volunteer**

12 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
13 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
14 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
15 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA).¹ Indeed, NRS 616A.157
16 was enacted and became law on May 21, 2013, which is one year and two months after the
17 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
18 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
19 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
20 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
21 volunteers" were not employees with a deemed wage under any other category of volunteers with
22 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
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27 ¹ "[A] person providing purely gratuitous voluntary service is not an 'employee' and has not entered into an
28 employment relationship with the person receiving the services for purposes of workers' compensation acts." 82 Am.
Jur. 2d Workers' Compensation § 127 (2012).

1 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
2 employment.²

3
4 There are several additional legal reasons that support the conclusion reached in this
5 contested case.

6 First, while Nevada law is silent on whether it would allow the aggregation of wages from
7 two dissimilar employments, it may very well adopt the related-employment rule accepted by a
8 majority of jurisdictions throughout the country. *See generally*, A. Larson, *Larson's Workers'*
9 *Compensation Law* § 93.03[1][a] (2011).³ In this regard, in *Ayala v. Caesars Palace*, 119 Nev. 232,
10 71 P.3d 490 (2003), the Nevada Supreme Court has indicated its leaning toward the adoption of the
11 majority position on the issue of aggregation of concurrent employment, that is the related-
12 employment rule. In *Ayala*, the Court, in finding that the aggregation of concurrent wages was
13 inappropriate, specifically noted that the two types of employment in consideration (cashier and
14 banquet waitress) were not similar in nature.⁴ *See also*, 100 C.J.S. *Workers' Compensation* § 524
15 (“[w]orkers’ compensation benefits are not allowed to compensate a volunteer for an inability to
16 pursue unrelated concurrent employment for another employer.”)(citing, *Wislocki v. Town of*
17 *Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); *see also*, *Snyder v. Workmen's Compensation*
18
19
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21

22 ² Notwithstanding the foregoing, after the enactment of NRS 616C.157, and by written determination
23 determination dated November 11, 2013, Felton was notified that by the claims administrator that an average monthly
24 wage (AMW) under his workers’ compensation claim had been calculated, and was based upon the statutory deemed
25 wage of a search and rescue volunteer. Neither Douglas County nor the PACT appealed this determination and,
26 therefore, effective the date of the determination, the statutory deemed wage under NRS 616C.157 is Felton’s AMW
27 under the claim. *See generally*, *Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

28 ³ *See e.g.*, *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980); *Thompson v. STS*
Holdings, 711 S.E.2d 827 (N.C. Ct. App. 2011); *In the Matter of Russell*, 37 E.C.A.B. 567 (1986).

⁴ “[T]he record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at
the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not
as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation.” *See*, 119 Nev. at 240.

1 *Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp.*
2 *v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

3 Second, where a statute (or regulation) is unambiguous the plain language will control. The
4 plain language of NRS 616A.065 and NAC 616C.447 do not mandate the aggregation of earned
5 wages *and* those deemed to have been earned, as they are two different categories of wages.

6 Third, case law in other jurisdictions, barring the aggregation of deemed and earned wages
7 specifically for volunteer firefighters, relies on similar statutory language as found in Nevada. Those
8 courts have held that where two statutes seemingly conflict (one allowing for combined wages and
9 the other setting a deemed wage specifically for firefighters) the more specific statute (setting a
10 deemed wage) would, using the rules of statutory construction, control or be seen as an exception
11 to the general rule. *See, New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal*
12 *Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995); *Snyder v. Workmen's Compensation Appeal Board*,
13 *654 A.2d 641* (Pa. Commonw. Ct. 1995); *Borough of Hensdale v. Workmen's Compensation Appeal*
14 *Bd.*, 659 A.2d 70 (Pa. Commonw. Ct. 1995); *Going v. Cromwell Fire District*, 159 Conn. 53, 267
15 A.2d 428 (1970); *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993); *see also*.
16 *Laird v. State of Nevada Public Employees Retirement Board*, 98 Nev. 42, 639 P.2d 1171 (1982);
17 73 Am. Jur. 2d Statutes § 170 (Explaining that “[w]ith respect to a conflict arising between a statute
18 dealing generally with a subject and another dealing specifically with a certain phase of it, the
19 specific legislation controls in a proper case”); *see also*, NAC 616C.429;

20 Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
21 scholarly publications, and recently the Nevada Supreme Court have held that where an
22 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
23 invalid. *Meridian Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516
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1 (2003); *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011); see
2 generally, 73 C.J.S. Public Administrative Law and Procedure § 172. In this regard, and to the extent
3 that NAC 616C.447 were construed to mandate aggregation of deemed wages and earned wages
4 from concurrent employment, this regulation might be deemed to exceed, modify and conflict with
5 the Nevada statute that specifically defines average monthly wage (NRS 616A.065) and the statute
6 governing the stated average monthly wage of volunteer members of search and rescue organizations
7 (NRS 616A.157), which latter statute does not address, allow for, nor contemplate wages from
8 private/public concurrent employment.
9

10
11 Lastly, there was no evidence of any public policy that the Nevada Legislature intended
12 Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen
13 liabilities based on possible alternative employment by its volunteers.⁵

14 ORDER

15 To the extent that any of the foregoing findings of fact may be construed as conclusions
16 of law, or any of the foregoing conclusions of law may be construed as findings of fact, they are
17 hereby adopted as such.
18

19 In accordance with the foregoing, **IT IS HEREBY ORDERED:**

- 20 1. That the November 11, 2013, average monthly wage determination made by ASC, on
21 behalf of Douglas County and the PACT, is hereby affirmed.
22
23 2. That the written decision dated February 20, 2014, made under Hearing No. 47153-KD

24
25 ⁵ Illustratively, the propriety of the ruling in this contested can be seen in a converse example. One can only
26 imagine the reaction of a private employer thrown into such a situation as the claimant intends to place Douglas County
27 and the PACT. A private employer insures his employees for workers' compensation with the expectation of replacing
28 lost wages through insurance based on the wages paid by that employer to the employee. Upon injury and disability from
work, however, the claimant alleges that he happens to also be a volunteer member of a search and rescue organization
when not employed by the private employer. The claimant then alleges that his average monthly wage under the claim
should be supplemented by an amount that includes not only his earned wages but also the deemed wages of his
concurrent employment as a volunteer. It is beyond difficult to imagine legal allowance of such an aggregation.

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and by Hearing Officer Katherine Diamond, and which affirmed ASC's November 11, 2013 average monthly wage determination is hereby affirmed.

Dated this 4th of ~~January~~^{February}, 2015.

Whitney D. Derrah (for)
Whitney D. Derrah, Appeals Officer

NOTICE:

Pursuant to NRS 233B.130, if any party desires 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 final decision.

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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 26 day of January, 2015.

By: 

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 was deposited into the State of Nevada Interdepartmental mail system. **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO, NV 89509

Dated this 4 day of February, 2015.

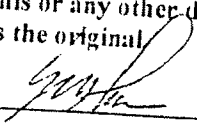
Tasha Eaton
Tasha Eaton, Supervising Legal Secretary
Employee of the State of Nevada

NEVADA INDUSTRIAL MEDICAL INFORMATION RELEASE FORM

128

Injured Worker's Name : GREGORY FELTON
 Social Security No. :
 Date of Birth :
 Claim No. : CI431206693 01
 Injured Worker's Address : P O BOX 2130, STATELINE, NV 89449
 Date of Injury : ~~3/7/2012~~ 3/6/2012
 Employer : DOUGLAS COUNTY
 Name of Insurer/TPA : PACT/ASC

I, the undersigned injured worker, or legal representative of the injured worker's name at the left, do hereby certify that the information provided below is complete, true and correct to the best of my knowledge and that I have provided that information in order to obtain the benefits of Nevada's Industrial Insurance and Occupational Diseases Acts (NRS 616 & 617). I hereby authorize any physician, chiropractor, practitioner, or other person, any hospital, including Veterans Administration or other governmental hospital, any medical service organization, any insurance company, employer or other entity or organization, governmental or private, and/or their representatives or agents, to release to each other any medical, employment or other information acquired, including benefits paid or payable, concerning this or any other disabilities or injuries. A Photostat of this authorization shall be as valid as the original.

Signature  Date 6/21/12

Please provide the information requested below, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This renews the release you signed on your C-4 form at the time your claim was submitted to the insurer. Failure to fully complete and return this form to your claims agent in a timely manner could affect your benefits or delay the resolution of your claim.

PRIOR HISTORY INFORMATION

... Please check the appropriate box below and provide the information requested.

I have no prior conditions, injuries or disabilities, of which I am aware, that might affect the disposition of the claim referenced above.

I have a prior condition, injury or disability that could affect the disposition of the claim referenced above. (This could include birth defects, prior surgeries, injuries, etc., whether work-related or not.)

If you checked this box, indicating a pre-existing condition, please explain in detail in the space below. You are encouraged to attach additional sheets of paper to this form, if necessary, to fully explain the condition.

Page Two of Four
Injured Worker: GREGORY FELTON
Claim No: C1431206693 01
Request for Additional Medical Information and Release Form

LIST OF PAST & PRESENT EMPLOYERS
Information provided may be verified with your past/present employer.

Employer see attached supplement
Address _____
Phone _____
Dates _____
Job Title _____
Job Duties _____
Physical Requirements of the Job _____

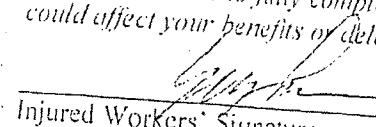
How Many Hours Worked Per Week _____
Was any lifting required? Yes _____ No _____

How many pounds of lifting? _____

Did you have any on the job injuries with this employer? Yes _____ No _____

If yes, please give dates and body parts injured _____

Please provide the information requested above, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This renews the release you signed on your C-4 form at the time your claim was submitted to the insurer. Your signature acts as a release to past employers to release employment records required to adjudicate your claim for workers' compensation benefits. Failure to fully complete and return this form to your claims agent in a timely manner could affect your benefits or delay the resolution of your claim.


Injured Workers' Signature

6/21/12
Date

Injured Worker: GREGORY FELTON
Claim No.: C1431206693 01

LIST OF PAST AND PRESENT EMPLOYERS (last 25 years)
SUPPLEMENT (6/21/12)

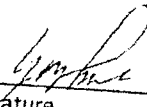
Employer: Douglas County Search and Rescue (volunteer position)
Address: PO Box 218, Minden, NV 89423
Phone: 775 782 9066
Dates: Approx 2005 to Present
Job Title: Search and Rescue team member and ad hoc team lead
Job Duties: "To provide emergency search, rescue, and backcountry medical aid services for residents of and visitors in Douglas County, Nevada. To provide Swiftwater and Technical High / Low Angle Rope Rescue Services. To provide emergency aid and assistance in times of natural and man-caused disasters. To provide assistance and other services to the Douglas County Sheriff's Office as requested. To provide assistance upon request to our neighboring Counties in Nevada and California."
Physical Reqs: Hiking, lifting, carrying, etc.
Hours/Wk: As required for training & missions (est. avg. 6hrs/wk & 2 hrs/wk last 6 months)
Lifting Req: Yes
Pounds: Est. 75 max (typically team of 4 to lift litter with average-sized patient)
Injuries: None prior to this claim

Employer: Hewlett-Packard
Address: 3000 Hanover St, Palo Alto, CA 94304
Phone: 650 857 1501
Dates: 1986-2003 and 2011-2012
Job Title: Engineering Program Manager
Job Duties: Manage teams of engineers to accomplish numerous and varied projects (system and process design, quality improvements, etc)
Physical Reqs: Minimal (office job)
Hours/Wk: 40+
Lifting Req: No
Pounds: N/A
Injuries: None

Employer: Orloff Consulting
Address: 18687 Main St #C, Groveland, CA 95321
Phone: 209 962-6430
Dates: 2008-2010
Job Title: Aviation Accident Consultant
Job Duties: Provided comprehensive accident investigation, analysis, documentation, animation, and expert witness services.
Physical Reqs: Minimal (office job)
Hours/Wk: 40+
Lifting Req: No
Pounds: N/A
Injuries: None

Employer: AirTegrity Wireless
Address: 276 Kingsbury Grade, Stateline, NV 89449
Phone: 775 588 8800
Dates: 2004-2008
Job Title: President
Job Duties: Manage company operations
Physical Reqts: Minimal (office job)
Hours/Wk: 40+
Lifting Req: On occasion
Pounds: Est. 50 max
Injuries: None

Employer: Masterwork Electronics
Address: 630 Martin Avenue, Rohnert Park, CA 94928
Phone: 707 588 9906
Dates: 2003-2004
Job Title: General Manager
Job Duties: Manage company operations
Physical Reqts: Minimal (office job)
Hours/Wk: 40+
Lifting Req: On occasion
Pounds: Est. 50 max
Injuries: None



Signature

6/21/12

Date

Page Three of Four
Injured Worker: GREGORY FELTON
Claim No: C1431206693 01
Request for Additional Medical Information and Release Form

LIST ALL PRIOR CLAIMS FILED FOR ACCIDENTS/INJURIES - BOTH WORK RELATED AND NON-WORK RELATED -- WHICH YOU HAVE FILED THROUGHOUT YOUR LIFETIME.

PER NEVADA REVISED STATUTES 616D.300, 616D.370 AND 617.400 - 617.402, TO DELIBERATELY WITHHOLD ANY MEDICAL INFORMATION IS A FRAUDULENT ACT PUNISHABLE BY LAW.

Claim No: NONE Date of Injury: _____
Employer: _____ Body Part (s): _____
Nature of Injury: Industrial Non-Industrial Settlement/Amount Received: \$ _____

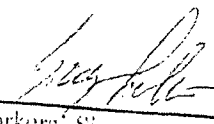
Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part (s): _____
Nature of Injury: Industrial Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part (s): _____
Nature of Injury: Industrial Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury


Injured Workers' Signature

6/21/12
Date

Injured Worker: GREGORY FELTON

Claim No: C1431206693 01

Request for Additional Medical Information and Release Form

Have you ever filed a workers' compensation claim in this state or any other state or country before?

Yes _____ No

If yes, have you ever received a settlement or buyout for the claim?

Yes _____ No _____

Please list the body part (s) and the amount of the settlement or buyout and the employer under whom the award was received.

Please list doctors whom you have seen for the body part(s) affected by this injury/disease and/or underlying medical conditions that may affect this body part (i.e. arthritis, diabetes, etc.) in the past 20 years for non-claim related conditions:

Doctor name, address, phone:

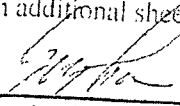
NONE

Doctor name, address, phone:

Doctor name, address, phone:

Doctor name, address, phone:

Please attach additional sheets as needed. Thank you for your cooperation.


Injured Worker's Signature

6/21/12
Date

C143-12-06693-01

Occupational Health Network Progress Report and Disability Certification

Date of Service: 7/2/2012		No Show: No	Date / Time of Next Visit:	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer: OTHER Douglas County		Date of Injury:		
Insurer / TPA: ALT SVC CONC (ASC)		ID / SS:		
Occupation:		Diagnosis: The encounter diagnosis was Sprain of medial collateral ligament of left knee.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Left knee pain				
Objective Findings: Tenderness along medial collateral ligament apprehension with valgus stress				
Pre-Existing Condition(s): None				
Assessment: Condition Improved				
Status: Additional Care Required				
Plan: PT / OT / Speech Therapy		Permanent Disability: No		
Comments: continue ibuprofen 400 mg 3 times daily				
Diagnostics:				
Comments:				
Disability Information				
Status: Released to Full Duty				
From: 7/2/2012				
Through:		Restrictions are:		
Sitting:	Standing:	Stooping:	Bending:	
Squatting:	Walking:	Climbing:	Pushing:	
Pulling:	Other:	Reaching Above / Below Shoulders:	Weight Limit(lb):	
Carrying(hrs):	Weight Limit(lb):	Lifting(hrs):		
Comments: We will recheck in 3-4 weeks				
Physician Name: Carol A Coats		Physician Signature:		e-Signature: Dr. Carol Coats, Medical Director
Clinic Name / Location:	CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:	Dept: 775-782-1615
Appointment Time:	10:30 Am	Visit Start Time:	10:39 AM	
Check-In Time:	10:16 Am	Visit Discharge Time:	10:41 Am	

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee

Progress Note

Greg Felton (MR# 4039732)

Progress Note Info

Author
Carol A Coats, M.D.

Note Status
Signed

Last Update User
Carol A Coats, M.D.

Last Update Date/Time
7/5/12 11:34 AM

Progress Note

Subjective: Greg is here today for followup of his knee pain, which occurred while performing his duties volunteering with search and rescue. His knee has slowly been getting better, but is still not 100%. He has pain on the medial aspect of the knee, especially with any twisting motions that cause strain to the medial collateral ligament.

Objective: This is a well-developed, well-nourished, gentleman in no acute distress. Knee reveals no deformity, or edema. There is significant tenderness of the medial collateral ligament. He has full range of motion. He has marked apprehension with Valgus Stress applied To the knee. The knee is stable to anterior, medial and lateral stress testing. No crepitus is elicited.

Assessment: Medial collateral ligament strain.

Plan: Physical therapy. He may work at full duty. He may continue with ibuprofen 400 mg 3 times a day. We'll plan to see him back in 3-4 weeks.

Alternative Service Concepts
Flexibility · Expertise · Integrity

TO:

GREGORY FELTON
P O BOX 2130
STATELINE, NEVADA 89449

RE: Claim No: C1431206693 01
Employer: Douglas County
Insurer: PACT
TPA: alternative service concepts, L.L.C.
Date of Injury: 3/6/2012
Date of Notice: 7/18/2012
Body Part: Left Knee Strain

NOTICE OF CLAIM ACCEPTANCE
(Pursuant to NRS 616C.060)

Dear Mr. Felton:

The above referenced claim has been accepted on your behalf by the Public Agency Compensation Trust. Liability is limited as stated per Body Part above. Please check the information contained on this notice. If you find any of the information to be incorrect, please notify the insurer handling the claim.

If you disagree with the above determination, you have the right to appeal by completing the enclosed appeal form and submitting it to the Hearing Officer, Department of Administration, at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File
Employer: Douglas County
Treating Physician: CVMC Occ Med
SHC MCO

Form D-12, *Request for Hearing*
Form D-2, *Brief Description of Rights and Benefits*
Form D-52, *Alternative Choice of Physician or Chiropractor & Referral to a Specialist*

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Greg Felton

7/23/2012 10:30 AM Office Visit
MRN: 4039732

Description: 48 year old male
Provider: Kara L Cole, A.P.N.
Department: Cvmc Occ Health

Reason for Visit

Knee Pain
Left Knee

Vitals - Last Recorded

BP
126/78
Pulse: 61

Progress Notes

Kara Cole 7/23/12 11:24 AM Signed

Subjective:
This 48-year-old volunteer search and rescue worker developed medial knee pain after extended hiking through thigh deep snow over steep terrain. Today he reports improvement in his knee pain. He has had 5 visits with the physical therapist and has been performing stretching and strengthening exercises at home. He is able to perform all of his usual activities, but he has occasional discomfort with activities that cause valgus stress on the knee joint, such as using the inside of his foot to push a box on the floor. He no longer takes ibuprofen regularly.

Objective:

BP 126/78 | Pulse 61.

This is a well-developed, well-nourished, male, in no apparent distress. The left knee reveals no discoloration, edema, or deformity. There is mild fullness over the popliteal aspect. There is no discomfort in the popliteal area or over the lateral aspect of the knee. There is very mild medial joint line tenderness and there is tenderness with palpation over the MCL insertion. There is full range of motion in the left knee without crepitus or discomfort. Neurovascular status is intact.

Assessment and plan:

Left knee sprain. The patient will continue with physical therapy and with his home exercises. He may work at full duty. I will see him back in 3 weeks.

Goals (5 Years of Data)

None

History

Last Reviewed by Kara Cole on 7/23/2012 at 11:15 AM

Sections Reviewed

Medical, Surgical, Family, Tobacco, Alcohol, Drug Use, Sexual Activity, ADL

Substances and Sexuality

Smoking Status Amount
Never Smoker N/A

Smokeless Tobacco Status
Unknown

Alcohol Use Amount
Yes N/A
Occasional

Drug Use

Frequency
N/A

Sexually Active

Partners
N/A

RECEIVED

1500

RECEIVED
By RO at 3:21 pm, Jul 30, 2012

Felton, Greg (MR # 4039732) Printed by Pamala A Anderson, Med Ass't [CVM755] at 7/... Page 1 of 4

Occupational Health Network Progress Report and Disability Certification

Date of Service: 7/23/2012		No Show: No	Date / Time of Next Visit:	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer:		Date of Injury: 3/6/2012		
Insurer / TPA: N/A		ID / S		
Occupation: Search and Rescue Member		Diagnosis: There were no encounter diagnoses.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Medial knee discomfort				
Objective Findings: Point tenderness at MCL insertion				
Pre-Existing Condition(s):				
Assessment: Condition Improved				
Status: Additional Care Required				
Plan: PT / OT / Speech Therapy		Permanent Disability: No		
Comments: Continue PT for additional 6 visits				
Diagnostics:				
Comments:				
Disability Information				
Status: Released to Full Duty				
From:				
Through:				
Restrictions are:				
Sitting:	Standing:	Stooping:	Bending:	
Squatting:	Walking:	Climbing:	Pushing:	
Pulling:	Other:	Reaching Above / Below Shoulders:	Lifting (hrs):	
Carrying (hrs):	Weight Limit (lb):	Weight Limit (lb):		
Comments:				
Physician Name: Kara Cole		Physician Signature: e-Sign		e-Signature: Dr. Carol Coats, Medical Director
Clinic Name / Location:	CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:	Dept: 775-782-1615
Appointment Time:	10:30 Am	Visit Start Time:		
Check-In Time:		Visit Discharge Time:		

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee

RECEIVED

RECEIVED
 By RO at 3:20 pm, Jul 30, 2012

Progress Note

Greg Felton (MR# 4039732)

Progress Note Info

Author	Note Status	Last Update User	Last Update Date/Time
Kara Cole	Signed	Kara Cole	8/13/12 10:33 AM

Progress Note

Subjective:

This 48-year-old volunteer search and rescue worker is in for followup of his left knee pain. He has been attending physical therapy and so far has had 12 visits. He reports improvement in his knee pain since beginning physical therapy. He has been diligent about performing his home exercise program. He has no pain with ambulation on flat surfaces, but reports "twinges" of pain over the medial and anterior aspects of the knee joint with some activities, such as when climbing stairs 2 at a time and when bearing all of his weight on his left leg. He rates this pain as a 2/10 in intensity. He denies any popping, clicking or giving way sensations. He has been working at full duty.

Objective:

BP 116/74 | Pulse 65

This is a well-developed, well-nourished, male, in no apparent distress. The left knee reveals no discoloration, edema, or deformity. There is no discomfort in the popliteal area. There is mild to moderate medial joint line tenderness, and there is tenderness with palpation over the MCL insertion. There is no patellar apprehension and no tenderness over the patellar tendon. The patient is able to bear all of his weight on his left leg, but reports discomfort over the medial aspect. There is full range of motion in the left knee without crepitus or discomfort. Neurovascular status is intact.

Assessment and plan:

Left knee sprain. We will get an MRI. The patient has had significant but incomplete improvement with conservative treatment, including physical therapy. He may work at full duty and should continue with his home exercises. I will see him back with the results of his MRI.

8/13/12 10:37 AM

Occupational Health Network Progress Report and Disability Certification

Date of Service: 8/13/2012		No Show: No	Date / Time of Next Visit: After MRI	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer: DOUGLAS COUNTY		Date of Injury:		
Insurer / TPA: ALT SVC CONC (ASC)		ID / SSN:		
Occupation:		Diagnosis: The encounter diagnosis was Left knee sprain.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Knee pain with some activities				
Objective Findings: Medial joint line tenderness				
Pre-Existing Condition(s):				
Assessment: Condition Improved				
Status: Additional Care Required				
Plan: Diagnostics		Permanent Disability: No		
Diagnostics: MRI				
Comments: MRI of left knee				
Comments:				
Disability Information				
Status: Released to Full Duty				
From:				
Through:		Restrictions are:		
Sitting:	Standing:	Stooping:	Bending:	
Squatting:	Walking:	Climbing:	Pushing:	
Pulling:	Other:	Reaching Above / Below Shoulders:	Lifting (hrs):	Weight Limit (lb):
Carrying (hrs):	Weight Limit (lb):			
Comments:				
Physician Name: Kara Cole		Physician Signature: e-Sign		
		e-Signature: Dr. Carol Coats, Medical Director		
Clinic Name / Location:	CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:	Dept: 775-782-1615
Appointment Time:	9:00 Am	Visit Start Time:	9:10 AM	
Check-In Time:	9:04 Am	Visit Discharge Time:		

Original—Treating Physician or Chiropractor Page 2—Insurer/TPA Page 3—Employer Page 4—Employee



143-12-066 93-01 KB
Eagle Medical Center
2874 N. Carson Street, Suite 300
Carson City, Nevada 89706
p 775.888.1180
f 775.888.1190

CAROL COATS, M.D.
1107 HWY 395, STE C
GARDNERVILLE, NV 89410

Patient: FELTON, GREGORY
Patient ID #: 5078959
Exam Date: 9/14/2012
Auth#: OCM564726238
DOB:
Accession: 712756
MR# 1225800149;020364082

PROCEDURE: MRI KNEE WITHOUT CONTRAST - LEFT
COMPARISON: None.
INDICATIONS: Left knee pain, trauma.
TECHNIQUE: Multiplanar, multisequence imaging performed of the knee without contrast.

FINDINGS:
BONE MARROW:

Minimal subchondral edema involves the most medial aspect of both the medial femoral condyle and medial tibial plateau. Minimal subchondral edema involves the posterior lateral aspect of the patella beneath a small osteochondral lesion.
Small joint effusion. Small to moderate size popliteal cyst.
Normal.
Normal.
Normal.
Narrowing and some irregularity of the medial joint space involving the weightbearing surfaces of the medial femoral condyle and medial tibial plateau. Small osteochondral lesion involving the posterior facet of the patellofemoral joint space, posterior surface of the patella.
Obliquely oriented degenerative tear of the posteromedial horn of the medial meniscus, exiting through the inferior articular surface.

JOINT:
CRUCIATE LIGAMENTS:
COLLATERAL LIGAMENTS:
PATELLAR TENDON:
CARTILAGE:

MENISCI:

CONCLUSION: Medial meniscal tear. Early degenerative osteoarthritis with medial joint space.
Small popliteal cyst.
Small osteochondral lesion posterior lateral surface of the patella.

Dictated and Electronically Authenticated by: Keith Shonnard, M.D. on 9/14/2012 at 13:48
Proofread by: Keith Shonnard, M.D. on 9/14/2012 at 13:48

OFFERING: CT, High Field Open MRI, 1.5 MRI, PET, Diagnostic X-ray, Nuclear Medicine, Ultrasound, Digital Mammography with Computer-Aided Diagnosis, Stereotactic Breast Biopsy, Bone Densitometry Scanning, Spine and Pain Management, Interventional Radiology.

This report is based solely on radiological examination -- Correlation with clinical examination is essential.
www.GreatBasinImaging.com



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October 8, 2012
Page 1
Chart Document

Greg Ealton		
Name: Greg Ealton	Age: 49	Sex: M
Patient ID: 248336		Home: (775) 568-3121

10/02/2012 - Office Visit: N patient L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

History of Present Illness
Referring Physician: Carol Coats
Chief Complaint: L Knee
10/02/12

HISTORY:
Greg is a 49-year-old male who is here with regards to his left knee injury that occurred on 07/03/12 while doing a search and rescue exercise. He had a slip type injury and had a twist of his knee and had some pain that gradually got worse. He was hoping this would improve on its own, gave it a couple of months, and it has just been persistent. He has been through physical therapy. The pain has just been symptomatic and problematic for him. Pain is localized in the medial joint line. Pain with twisting, squatting, and rotating.

Location of Injury/Problem:
Left Knee

Result of an Injury?: yes Injury/Problem Onset Date: 03/06/2012
Previous difficulty/injury to area? no
Is this injury more than 3 months old? yes
Previously treated for this injury/problem? yes Who treated you? Specialist
Where did it happen? work

Work related? yes
Current work status: Regular Duty
Previous tests: MRI, X-Rays
Previous treatments: Physical Therapy, Medication
Outcome of treatment: Better

Pain relieved by physical therapy.
Pain worsened with running, standing for long periods of time.

Past Medical History - reviewed
None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.



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October 8, 2012

Page 2

Chart Document

Greg Felton
Male, 48 Years Old, DOB: [REDACTED] Patient ID: 236836 Home: (775) 588-3121

Surgical History - reviewed

Hand Surgery (Right)

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

Patient is married, Never smoker, and lives with spouse/partner. Has 3 children, yes, yes. Education completed: post graduate. Occupation: Engineer. Patient is not claustrophobic.

Review of Systems

General: Patient denies all.
Eyes: Patient denies all.
ENT: Patient denies all.
Cardiovascular: Patient denies all.
Respiratory: Patient denies all.
Gastrointestinal: Patient denies all.
Genitourinary: Patient denies all.
Musculoskeletal: Complains of joint pain.
Skin: Patient denies all.
Neurologic: Patient denies all.
Psychiatric: Patient denies all.
Endocrine: Patient denies all.
Heme/Lymphatic: Patient denies all.
Allergic/Immunologic: Complains of seasonal allergies.

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:



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October 8, 2012

Page 3

Chart Document

Greg Felton

Male 49 Years Old DOB:

Patient ID: 236336

Home: (775) 588-3121

Never smoker

Body:

BMI: 25.20 (Normal)

GENERAL EXAM

General Appearance: Greg Felton is a pleasant 49 years old male

Mood Affect: Pleasant

Coordination: Normal

Orientation: 3+

Gait: Normal



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October 8, 2012

Page 4

Chart Document

Greg Felton
Male 49 years Old DOB: [REDACTED] Patient ID: 236336 Home: (775) 588-3121

RADIOGRAPHS:

He has had an MRI done of that left knee, which shows a tear of the medial meniscus.

PHYSICAL EXAMINATION:

Left knee has no swelling today. The ligaments are stable to varus and valgus stress. No Lachman. No anterior drawer. No posterior drawer. He has tenderness in the medial joint line. Positive McMurray reproducing pain. Calf is soft. No swelling. He has palpable dorsalis pedis and posterior pulse. Good capillary refill. He can flex and extend hips and knees. Good strength, hip flexors, extensors, hamstrings, quadriceps, dorsiflexors, and plantarflexors.

IMPRESSION:

Left knee pain consistent with medial meniscus tear.

PLAN:

We will plan for left knee arthroscopy, partial meniscectomy, and chondroplasty. He understands the risks, the benefits, and alternatives to procedure. The risks include but not limited to infection, bleeding, nerve/blood vessel/tendon damage, heart attack, stroke, death, persistent pain, and need for further surgery.

Jaffrey R. Cummings, M.D.
JRC:csm/smu

Patient: FELTON, GREGORY R
 Location: BARTON LABORATORY
 Adm.date: 10/08/12 Surg.date:
 Species :

MRN: 275764 Room:
 Att.physician: CUMMINGS, JEFFREY
 DOB: Age: 49 Sex: M
 E# : 101066979

Order Id : F708209
 Date&Time Ordered: 10/08/12 12:56
 Requested by: CUMMINGS, JEFFREY
 Copy to: MEDICAL RECORDS

FINAL

HEMATOLOGY

TEST-NAME	RESULT	ABN. NRML-RANGE	UNITS	TIME-DONE	TECH
COLLECTED 10/08/12 12:40 BY GRM					
WBC	5.3				
RBC	5.01				
HEMOGLOBIN	15.7				
HEMATOCRIT	45.9				
MCV	91.6				
MCH	31.3				
MCHC	34.2				
RDW	13.3				
PLATELETS	205				
MPV	7.6				
Instrument Differential					
NEUTROPHIL%	58.3				
LYMPH%	29.5				
MONO%	6.1				
EOSINOPHIL%	3.2				
BASOPHIL%	0.8				
NEUTROPHIL#	3.1				
LYMPH#	1.6				
MONO#	0.3				
EOSINOPHIL#	0.2				
BASOPHIL#	0.0				
		4.8-10.8	x10 ³ /ul	10/08/12 13:25	KBT
		4.70-6.10	x10 ⁶ /ul	10/08/12 13:25	KBT
		14.0-18.0	g/dl	10/08/12 13:25	KBT
		42.0-52.0	%	10/08/12 13:25	KBT
		80.0-94.0	f1	10/08/12 13:25	KBT
		27.0-31.0	pg	10/08/12 13:25	KBT
		33.0-37.0	g/dl	10/08/12 13:25	KBT
		11.5-14.5	%	10/08/12 13:25	KBT
		130-400	x10 ³ /ul	10/08/12 13:25	KBT
		7.4-10.4	f1	10/08/12 13:25	KBT
		39.0-70.0	%	10/08/12 13:25	KBT
		21.0-50.0	%	10/08/12 13:25	KBT
		1.7-9.3	%	10/08/12 13:25	KBT
		0.0-5.0	%	10/08/12 13:25	KBT
		0.0-3.0	%	10/08/12 13:25	KBT
		1.8-7.7	x10 ³ /ul	10/08/12 13:25	KBT
		1.2-4.8	x10 ³ /ul	10/08/12 13:25	KBT
		0.1-0.6	x10 ³ /ul	10/08/12 13:25	KBT
		0.0-0.5	x10 ³ /ul	10/08/12 13:25	KBT
		0.0-0.2	x10 ³ /ul	10/08/12 13:25	KBT

continued on next page

Patient name: FELTON, GREGORY R
 Location: BARTON LABORATORY
 Printed: 10/09/2012 06:13

MRN: 275764 Room:
 Att.physician: CUMMINGS, JEFFREY

FELTON, GREGORY R
ID: 275764 101066979

10/08/2012 13:31:32

MALE 49 YEARS

PRE OP
Dr: CUMMINGS
Tech: JMH

Heart Rate: 52 bpm
RR Interval: 1150 ms
PR Interval: 152 ms
QRS Duration: 92 ms
QT Interval: 440 ms
QTc Interval: 426 ms
QT Dispersion: 16 ms
P-R-T AXIS: 58° -29° 53°

Comment: K117149 1 ROUTINE FAX: 775 267 2933

Sinus bradycardia
Leftward axis

Borderline ECG

* Unconfirmed Analysis *

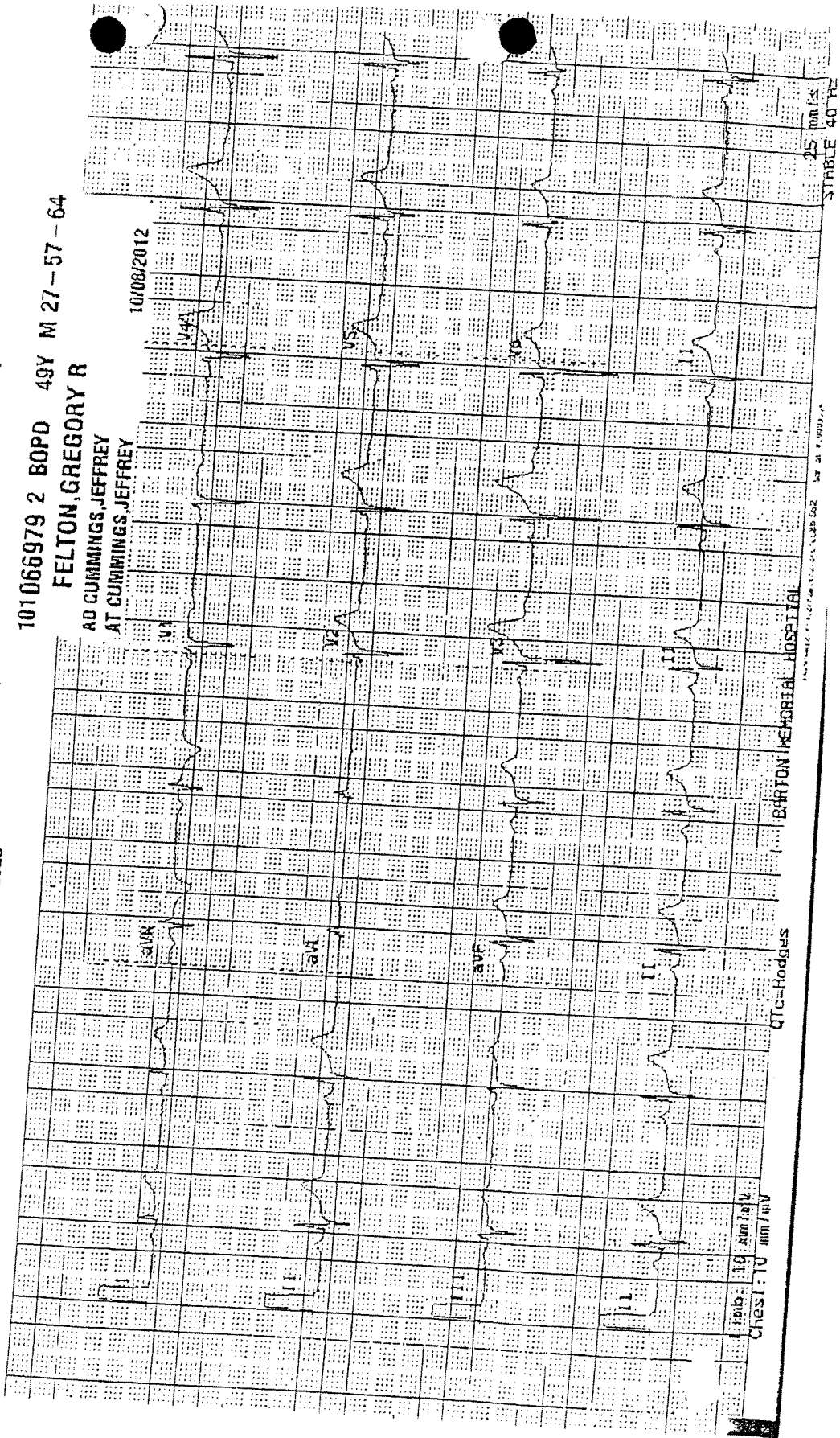
Dr. Cummings

101066979 2 BOPD 49Y M 27-57-64

FELTON, GREGORY R

AD CUMMINGS, JEFFREY
AT CUMMINGS, JEFFREY

10/08/2012



Gain: 3.0 mm/mV
Chest: 10 mm/mV

BARTON MEMORIAL HOSPITAL
QTC-Hodges

2143-12-06693-01

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020364082 ACCT#: 1228600375
NAME: FELTON, GREGORY

Clinician: CUMMINGS, JEFFREY

DATE OF OPERATION:
10/17/2012

ANESTHESIA:
General.

ANESTHESIOLOGIST:
Bruce Baldecchi.

FIRST ASSISTANT:
Stephanie Tonn, PA.

PREOPERATIVE DIAGNOSIS:
Left knee medial meniscus tear.

POSTOPERATIVE DIAGNOSES:
Left knee medial meniscus tear.

NAME OF OPERATION:
Left knee arthroscopy, partial meniscectomy.

INDICATIONS FOR OPERATION:
A 49-year-old male with history of left knee pain, pain at the medial joint line, pain with ambulation, walking, squatting, twisting, work injury, when he was working for a search and rescue. His MRI showed a tear of the posterior horn of the medial meniscus. He understood the risks, benefits and alternatives of the procedure.

PROCEDURE AND FINDINGS:
After informed consent, the patient was taken to the operating room, administered general anesthesia, was sterilely prepped and draped in the left lower extremity. Inferior lateral and inferior medial portals were established, long blade and blunt trocar, scope inserted and visualization of the knee was performed. The patellofemoral compartment had grade II chondromalacia at the apex of the patella and no real loose cartilage flaps or loose bodies. ACL and PCL were intact. The medial compartment had again some diffuse grade II chondromalacia of the weightbearing surface of the medial femoral condyle. No evidence of large flaps or fissuring. He had a tear of the posterior horn of the medial meniscus. Using the basket forceps shaver, partial medial meniscectomy was performed, bringing the meniscus stable rim. The lateral compartment was then probed, stable, it was secured, had a bit of a grade II chondromalacia of the lateral tibial plateau. The shaver was used to debride this small loose flap of cartilage there. The knee was then drained of excess fluid and loose tissue. Wounds were closed with 4-0 Monocryl, Steri-Strips applied. Sterile dressing applied.

JRC:in
DD: 10/17/2012 13:18:10

CONFIDENTIAL INFORMATION *COPY* This document is for ACCT# 1228600375. Printed by Natalia Henderson
perative Report Interfaced - Page 1/2 10/21/2012 3:04PM (GMT-07:00) Doc#

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020364082 ACCT#: 1228600375

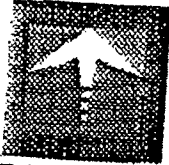
NAME: FELTON, GREGORY

Clinician: CUMMINGS, JEFFREY

DT: 10/18/2012 00:35:27

cc:

CONFIDENTIAL INFORMATION *COPY* This document is for ACCT# 1228600375. Printed by Natalie Henderson
Operative Report Interfaced - Page 2/2 10/21/2012 3:04PM (GMT-07:00) Doc# 1



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November 9, 2012

Page 1

Chart Document

Greg Fallon

Male 48 Years Old, D

Patient ID: 286006

Phone (775) 533-3351

10/25/2012 - Office Visit: Post op L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

10/25/12

HISTORY:

Greg is here for followup regarding his left knee partial medial meniscectomy. He is doing well.

GENERAL EXAM

PHYSICAL EXAMINATION:

The wounds have healed well. He has just a minimal effusion today. The wounds have healed well. No sign of infection. No drainage. No erythema.

PLAN:

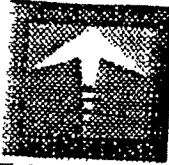
We will have him keep working on his range of motion and strengthening. We will see him back here in three weeks. We will put in a request for physical therapy.

Jeffrey R. Cummings, M.D.
JRC:sj/sb

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NOV 12 2012

JSC



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Phone: 7758419991 Fax:

October 26, 2012

Page 1

Chart Document

Greg Felton

Male 48 Years Old Of

Patient ID: 295906

Home: (775) 588-3121

10/26/2012 - Referrals Consults: PT

Provider: ROGER P ROGALSKI MD

Location of Care: Tahoe Fracture and Orthopedic North Carson

Referral To:

Barton Memorial Hospital (NV)

155 US Hwy 50

Stateline, NV 89449

Office: 775-589-8953

Fax: 775-589-8920

Patient Information

Greg Felton

Date of Birth: 08/27/1963

Please Contact Patient

Home: (775) 588-3121

Diagnosis: KNEE, MMT (ICD-836.0)

Physical Therapy

Evaluate Treat Report

Passive ROM

Other Information

Treatment Frequency is 3X a week for 4 weeks.

Please fax progress notes to Jeffrey R. Cummings, M.D. at (775) 783-6185

Electronically signed by Jeffrey R. Cummings, M.D.

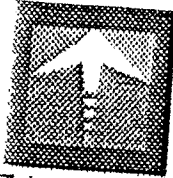
cc: Barton Memorial Hospital (NV) - Fax: 775-589-8920 Phone: 775-589-8953

Signed by Angela Bruno on 10/26/2012 at 9:48 AM

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NOV 12 2012

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November 21, 2012

Page 1

Chart Document

Greg Felton

Male, 49 Years Old, I/O:3

Patient ID: 236336

Home: (775) 588-3121

11/15/2012 - Office Visit: Post op L knee
 Provider: JEFFREY R CUMMINGS MD
 Location of Care: Tahoe Fracture and Orthopedic Mica
 Status: ON HOLD DOCUMENT. Contents are preliminary

11/15/12

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today for follow up of his left knee arthroscopy with partial meniscectomy and chondroplasty on 10/17/12. The patient is doing well. He is not having any pain. He is starting physical therapy.

Surgical History - reviewed
 Arthroscopic Knee Surgery

GENERAL EXAM

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male who presents today with no use of devices. No antalgia. His left knee shows evidence of a previous arthroscopy, but no fusion. No increased warmth, erythema, or ecchymosis. He has full active range of motion. He only has mild tenderness medially.

IMPRESSION:

Left knee arthroscopy with partial meniscectomy and chondroplasty on 10/17/12 with good early result.

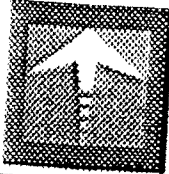
PLAN:

The patient will continue with his physical therapy and full increase his activities as tolerated. He can be released to 22:57 and see if he is comfortable we will see him back as needed.

Stephanie Tonn, PA-C
 For Jeffrey R. Cummings, M.D.
 ST/JRC:pv/smu

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By RO at 3:03 pm, Nov 21, 2012



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November 21, 2012

Page 1

Chart Document

Greg Felton

Male 30 Years Old I/O

Patient ID: 236336

Phone: (775) 566-3121

11/21/2012 - Return to Work

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Work Status Form

This injury is occupational.

Diagnosis: KNEE, MMT (ICD-836.0)

Continue with no restrictions.

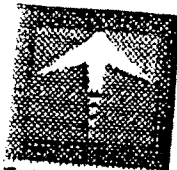
Signed by Angela Bruno on 11/21/2012 at 10:25 AM

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By MO 11 2 04 pm, Nov 21, 2012



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January 9, 2013
 Page 1
 Chart Document

Greg Felton

Date: 12/28/12 Year Old: 3

Patient ID: 225226

Phone: (775) 866-3323

12/28/2012 - Office Visit: Post op L knee
Provider: STEPHANIE N TONN PA
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

12/28/12

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today regarding his left knee. He is complaining of some swelling behind his knee. He states that he skied this past Saturday and Sunday and was sore on Tuesday and noticed a lump behind his knee. He has been going to physical therapy. His left knee arthroscopy with chondroplasty and partial medial meniscectomy was on October 17, 2012. Overall, the patient has been doing well and has had very little swelling and pain. The patient states that the swelling behind his knee causes the knee to feel like it was locked at one point. He has been in full extension and deep flexion.

Surgical History

Arthroscopic Knee Surgery

GENERAL EXAM

PHYSICAL EXAMINATION:

Left knee, the patient has a small effusion. He has no increased warmth or erythema. No ecchymosis. He has full active range of motion, but he has discomfort with terminal extension and flexion. He has some mild tenderness at the medial joint line but a negative McMurray's test. He has no varus or valgus instability. He has evidence of a previous prepatellar bursitis, so there is not much fluid. There is some crepitation superficially over the patella.

IMPRESSION:

Left knee arthroscopy with partial meniscectomy on October 17, 2012 with increased swelling after recent activities.

PLAN:

I do not feel the patient has a new injury at this time, but he is having some persistent swelling after increased activities. We will let us know if his knee continues to bother him, as he would be a good candidate for a cortisone injection. Otherwise, he will try conservative treatment such as icing, anti-inflammatories, and resting his knee.

Stephanie Tonn, PA-C
 For Jeffrey R. Cummings, M.D
 ST:sa/sb

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Toxicology
Laboratories



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Phone: 800-328-6942 • FAX: 818-598-3116

2143-12-06693-01

Pain Management Compliance Testing
Laboratory Report

Donald Simpson MD, PhD • Medical Director
CLIA 05D0542735 • SAMHSA Certified • CAP 29673-01
California DPH CLF442

31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FEITON GREG
Age, DOB:
Sex: M
Other ID: 236336
Requesting Physician: S TONN

Patient ID:
LAB ID: E3091770
Collected: 12/28/2012
Received: 12/31/2012
Reported: 01/02/2013
Requisition#: B875XJG13A

Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

Drug	Test Result	Value	Normalized Result	Comment
PAC PAIN PANEL TESTS	NOT DETECTED			Negative for all drugs tested and is consistent with prescribed medications as listed.

Specimen Validity Testing	Normal Range	Result	Comment
CREATININE, URINE	>19 mg/dL	118.7	Normal
SPECIFIC GRAVITY, URINE	>1.0030	1.0198	Normal
NITRITES, URINE	<200 ug/mL	6	Normal
pH, URINE	4.5-9.0	7.4	Normal

Additional Comments
* All drugs in the PacPain Custom Panel, other than those indicated above, were not detected. * Normalized Result is based upon Creatinine data from a patient population with normal renal function. Normalized results may not be valid for patients with abnormal renal function. Clinical correlation is required. * CH=CRITICAL/ALERT HIGH CL=CRITICAL/ALERT LOW *

PacPain Custom 9621802 - Contains

NARCOTIC ANALGESICS	BENZODIAZEPINES	BARBITURATES
Morphine (Kadian)	Alprazolam (Xanax)	Amobarbital
Codeine (Tylenol III)	Clonazepam	Butabarbital
Hydrocodone (Lortab)	Diazepam (Valium)	Butalbital
Hydromorphone	Lorazepam (Ativan)	Pentobarbital
Metadone	Oxazepam (Serax)	Phenobarbital
Metad. metab. (EDDP)	Temazepam	Secobarbital
Oxycodone (Oxycontin)	MISCELLANEOUS	MISCELLANEOUS
Oxymorphone (Opana)	Acetaminophen	Tramadol
Propoxyphene (Darvon)	Alcohol	Tricyclics
	Carisoprodol	Zolpidem
	Phenothiazines	

Working Together Towards Compliance and Comfort



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 Phone: 800-328-6942 • FAX: 818-598-3116

Pain Management Compliance Testing
Laboratory Report

Donald Simpson MD, PhD • Medical Director
 CLIA 05D0542735 • SAMHSA Certified • CAP 29673-01
 California DPH CLF4442

31627
 ARM/TAHOE FRACTURE & ORTHO MED
 ATTN:
 973 MICA DR, STE 201
 CARSON CITY, NV 89705
 Drug(s) Screened For: PACPAIN PANEL #9621802
 Medication(s) Prescribed:

Patient Name: FELTON, GREG
 Age, DOB:
 Sex: M
 Other ID: 236336
 Requesting Physician: S TONN

Patient ID
 LAB ID: E3091770
 Collected: 12/28/2012
 Received: 12/31/2012
 Reported: 01/02/2013
 Requisition#: B875XJG13A

PACPAIN PANEL - 9621802

ANALYTE	CONFIRMATION		METHOD
	CUTOFF	UNITS	
ACETAMINOPHEN	1.0	ug/ml	FPIA
ALCOHOL	0.02	%	GC
BARBITURATES			
AMOBARBITAL (Amytal)	100	ng/ml	
BUTABARBITAL (Butasol)	100	ng/ml	GCMS
BUTALBITAL (Esgic)	100	ng/ml	GCMS
PENTOBARBITAL (Nembutal)	100	ng/ml	GCMS
PHENOBARBITAL (Solfoton)	100	ng/ml	GCMS
SECOBARBITAL (Seconal)	100	ng/ml	GCMS
CARISOPRODOL (SOMA)			
CARISOPRODOL	1.0	ug/ml	GCFID
MEPROBAMATE	1.0	ug/ml	GCFID
BENZODIAZEPINES			
NORDIAZEPAM	100	ng/ml	GCMS
OXAZEPAM	100	ng/ml	GCMS
LORAZEPAM	100	ng/ml	GCMS
ALPHAHYDROXYALPRAZOLAM	100	ng/ml	GCMS
TEMAZEPAM	100	ng/ml	GCMS
7-AMINO CLONAZEPAM	100	ng/ml	GCMS
METHADONE			
METHADONE	100	ng/ml	GCMS
EDDP	100	ng/ml	GCMS
PROPOXYPHENE			
NORPROPOXYPHENE	100	ng/ml	GCMS
OPIATES			
CODEINE	50	ng/ml	GCMS
MORPHINE	50	ng/ml	GCMS
HYDROCODONE	50	ng/ml	GCMS
HYDROMORPHONE	50	ng/ml	GCMS
OXYCODONE			
OXYCODONE	50	ng/ml	GCMS
OXYMORPHONE	50	ng/ml	GCMS
PHENOTHIAZINES			
CHLORPROMAZINE	1	ug/ml	HPLC
CLOZAPINE	1	ug/ml	HPLC

CONFIRMATION
 REPORT CONTINUED ON NEXT PAGE

Working Together Towards Compliance and Comfort

31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705
Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

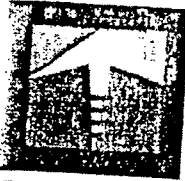
Patient Name: FELTON,GREG
Age, DOB:
Sex: M
Other ID: 236336
Requesting Physician: S TONN

Patient ID:
LAB ID: E3091770
Collected: 12/28/2012
Received: 12/31/2012
Reported: 01/02/2013
Requisition#: B875XJG13A

	CUTOFF	UNITS	METHOD
PHENOTHIAZINES (CONT.)			
FLUPHENAZINE	1	ug/ml	HPLC
HALDOL	1	ug/ml	HPLC
MESORIDAZINE	1	ug/ml	HPLC
PERPHENAZINE	1	ug/ml	HPLC
PROCHLORPERAZINE	1	ug/ml	HPLC
PROMAZINE	1	ug/ml	HPLC
PROMETHAZINE	1	ug/ml	HPLC
THIORIDAZINE	1	ug/ml	HPLC
TRIFLUOPERAZINE	1	ug/ml	HPLC
TRAMADOL			
TRAMADOL	50	ng/ml	LCMS
TRICYCLICS			
AMITRIPTYLINE & NORTRIPTYLINE	1	ug/ml	HPLC
DOXEPIN & DESMETHYLDOXEPIN	1	ug/ml	HPLC
FLUOXETINE & NORFLUOXETINE	1	ug/ml	HPLC
CLOMIPRAMINE	1	ug/ml	HPLC
PROTRIPTYLINE	1	ug/ml	HPLC
ZOLPIDEM	50	ng/ml	HPLC

LAST PAGE OF REPORT

Working Together Towards Compliance and Comfort



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C143-12-06693-01

March 1, 2013
Page 1
Chart Document

Greg Felton

Male 49 Years Old DC...

Patient ID: 236336

Home: (775) 588-3121

01/22/2013 - Office Visit: RE L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: IN PROGRESS DOCUMENT. Contents are preliminary

Past Medical History

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.
01/22/13

HISTORY:

Greg is a 49-year-old gentleman who is here with regards to his left knee issue. He is status post left knee arthroscopy, partial meniscectomy and he feels most part he is plateaued and it looks like he is having persistent swelling of that knee particularly posteriorly in the Baker's cyst area of the knee itself does not have a whole lot of swelling or effusion but has tightness and pain in the posterior aspect of the knee and some persistent pain. It has been problematic posteriorly. He feels when he fully extends seems that he is able to work it down and get the swelling down, however, it has been persistently symptomatic for him. He does not have a history of any injury since the surgery. He has been back skiing half dozen times but it has not been really pushing it and having a trauma to knee at that point.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

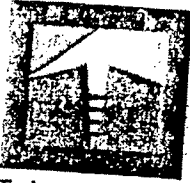
ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History



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March 1, 2013
Page 2
Chart Document

Greg Felton
Male 49 Years Old DO

Patient ID: 236336

Home: (775) 588-3121

Patient is

Review of Systems

General: Patient denies sweats, chills, fevers, malaise, weight loss, appetite loss, fatigue.

Eyes: Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

Gastrointestinal: Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

Genitourinary: Patient denies urinary urgency, urinary frequency.

Musculoskeletal: Complains of joint swelling, joint pain.

Patient denies muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

Skin: Patient denies suspicious lesions, night sweats, changes in color of skin, poor wound healing, dryness, changes in nail beds, unusual hair distribution.

Neurologic: Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

Psychiatric: Patient denies anxiety, depression.

Endocrine: Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

Heme/Lymphatic: Patient denies fevers, abnormal bruising.

Allergic/Immunologic: Patient denies seasonal allergies, persistent infections.

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a pleasant 49 years old male

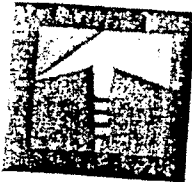
Mood Affect: Pleasant

Coordination: Normal

Orientation: 3+

Gait: Normal

LEFT KNEE EXAM



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March 1, 2013
Page 3
Chart Document

Greg Felton
Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

Gait: Normal
Skin: Unremarkable

Alignment:
Normal

Muscle: Normal
Quadricep Strength: 5/5

Fluid:
Effusion: Normal
Swelling: Normal
Popliteal Cyst: Present
Pes Anserine: Absent
Tenderness:
Medial Joint Line

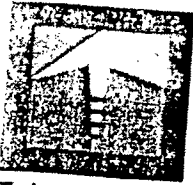
Range of Motion:
Active Flexion: Full
Active Extension: Full
Passive Flexion: Full
Passive Extension: Full

Crepitus:
None

Patella:
Alignment: Normal
Tracking: Normal
Stability: Normal
Apprehension: Negative
Compression: Negative

Collateral Ligaments:
Varus Force: Stable in full extension, Stable in 30 degrees flexion
Valgus Force: Stable in full extension, Stable in 30 degrees flexion

Cruciate Ligaments:
Lachman: Negative
Anterior Drawer: Negative
Posterior Drawer: Negative



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March 1, 2013

Page 4

Chart Document

Greg Felton

Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

Pivot Shift: 0
Posterior Sag: 0

McMurray's:

Medial: Negative

Lateral: Negative

Lymphatic: Normal

Reflexes:

Normal

Neurovascular Status:

Intact

DP Pulse: 2+

Capillary Refill: Immediate

Sensation: Intact

RIGHT KNEE EXAM

Gait: Normal

Skin: Unremarkable

Alignment:

Normal

Muscle: Normal

Quadricep Strength: 5/5

Fluid:

Effusion: Normal

Swelling: None

Popliteal Cyst: Absent

Pes Anserine: Absent

Tenderness:

None

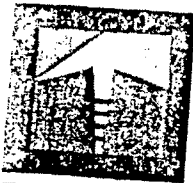
Range of Motion:

Active Flexion: Full

Active Extension: Full

Passive Flexion: Full

Passive Extension: Full



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March 1, 2013
Page 5
Chart Document

Greg Felton
Male 49 Years Old DO

Patient ID: 236336

Home: (775) 588-3121

Crepitus:
None

Patella:
Alignment: Normal
Tracking: Normal
Stability: Normal
Apprehension: Negative
Compression: Negative

Collateral Ligaments:
Varus Force: Stable in full extension, Stable in 30 degrees flexion
Valgus Force: Stable in full extension, Stable in 30 degrees flexion

Cruciate Ligaments:
Lachman: Negative
Anterior Drawer: Negative
Posterior Drawer: Negative
Pivot Shift: 0
Posterior Sag: 0

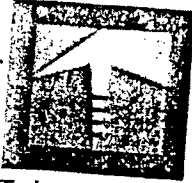
McMurray's:
Medial: Negative
Lateral: Negative

Lymphatic:
Normal

Reflexes:
Normal

Neurovascular Status:
Intact
DP Pulse: 2+
Capillary Refill: Immediate
Sensation: Intact

PHYSICAL EXAMINATION:
On physical exam today, his left knee has an obvious Baker's cyst posterior medially. Ligaments are stable. Sensation is intact. Does not have McMurray. Does have a little bit tenderness to the medial joint.



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March 1, 2013
Page 6
Chart Document

Greg Felton

Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

line. He has no real crepitus. Good strength hamstrings, quadriceps, dorsiflexion, plantar flexors.
Palpable dorsalis pedis, posterior pulse.

IMPRESSION:

Persistent left knee pain concerned for recurrent medial meniscus tear, also persistent asymptomatic Baker's cyst.

PLAN:

We will plan for an MRI. See him back here after the MRI.

Jeffrey R. Cummings, M.D.

JRC:sun



Reno Diagnostic Centers
590 Eureka Avenue, Reno, Nevada 89512
Phone: 775.323.5083 Fax: 775.323.2193

625 Sierra Rose Drive, Reno, Nevada 89511
www.renodiagnosticcenters.com

Patient Exam Report

Patient Name: Gregory Felton
Date of Birth: ..

Medical Record Number: 409205
Gender: Male

Exam Date: 02/25/2013
Accession #: 4049282
Exam Description: 16575 - MR-Knee without contrast Left
Exam Location: Siemens Espree Wide Bore 1.5T MRI, 625 Sierra Rose Drive, NV, 89511

Referring Physician: Jeffrey Cummings, MD

Clinical Indication: Previous surgery October 2012. Recurrent injury. Persistent pain

Technique: Multiple acquisition parameters were utilized to evaluate the left knee, performed with the Siemens Espree Wide Bore 1.5T MRI. No IV contrast was administered.

Comparison: None.

Findings:

Ligaments and tendons: The anterior cruciate ligament is intact as is the posterior cruciate ligament. There is mild increased signal at the femoral insertion site of the PCL with no significant tearing. Medial collateral ligament is intact but mildly thickened (coronal 13 series 7) most consistent with previous injury. Lateral collateral ligament is intact.

Medial compartment: The patient has had a subtotal medial meniscectomy. No obvious recurrent tear is demonstrated.

There is extensive chondral loss involving the weightbearing surface medial femoral condyle and medial tibial plateau with moderately extensive reactive bony changes. No osteochondral defects are demonstrated (coronal 12 series 7, sagittal 9 series 5). Comparison with the patient's prior outside exam may be valuable (preoperative imaging). We do not have these available to us at this time.

Lateral compartment: The lateral meniscus demonstrates no meniscal tears. Focal chondral defect is seen approximately 50% thickness and measuring 3-4 mm in diameter involving the weightbearing surface of the lateral tibial plateau (coronal 12 series 7). No osteochondral defect or other focal abnormalities are seen within the lateral joint compartment.

Patellofemoral joint: Moderate fluid is seen in the joint space. A Baker's cyst is present. There is mild edema surrounding the anterior knee probably related in part to patient's prior surgery with mild prepatellar bursal changes noted. The undersurface of the patella is irregular, particularly the lateral patella demonstrating an appearance suggestive of an incomplete marked bipartite patella. Mild chondromalacic changes are demonstrated. Medial and lateral retinacula are unremarkable.

Impression:

1. Postoperative subtotal medial meniscectomy with extensive chondral loss involving the medial joint compartment as described above. There is a small 2 mm area of signal void within the medial joint compartment that probably represents a small metallic fragment from the patient's previous surgery (coronal 8 series 7).

RECEIVED

2. No ligamentous injury.
3. Moderate joint fluid with mild chondral irregularity lateral joint compartment and lateral retropatellar articular surface. Comparison with the patient's preoperative knee radiographs would be helpful if available.

CC: Carol Coats MD

Dictating Radiologist: Ross Golding, MD
Transcribed by: Sue Clobucker
Electronically signed by: Ross Golding, MD

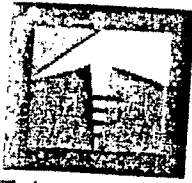
02/26/2013
02/26/2013
02/26/2013

N/A

Gregory Feiton, MRN: 409205, Accession: 4049282
Reno Diagnostic Centers - Patient Exam Report

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02/26/2013

Page 2 of 2



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C143-12-06693-6

March 14, 2013

Page 1

Chart Document

Greg Felton

Male 49 Years Old D:

Patient ID: 236336

Home: (775) 588-3121

02/28/2013 - Office Visit: MRI results

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

02/28/13

HISTORY:

Greg is a 49-year-old gentleman who is here with regards to his left knee pain status post knee arthroscopy. He still is having some pain at that medial aspect of that knee. It is intermittent. Some days are worse than other. The Baker cyst has improved. His repeat MRI was done which shows no evidence of a recurrent tear of the medial meniscus. He does have chondromalacia of the medial compartment but no evidence of bone-on-bone. This was known from the surgery. He has no evidence of osteochondral defects. He has a bit of bony edema in the medial tibia and the medial femoral condyle.

Past Medical History

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

Patient is

Review of Systems

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MAR 14 2013

10:00



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March 14, 2013
Page 2
Chart Document

Greg Felton
Male 49 Years Old D

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

PHYSICAL EXAMINATION:

Physical examination of the left knee, he has no real apparent swelling. He does have a small Baker cyst. Ligaments are stable. He has slight tenderness medially. He has negative McMurray. Ligaments are stable. Sensation is intact.

NOTATION:

Persistent left knee pain status post knee arthroscopy, partial meniscectomy.

... for an intraarticular cortisone injection to be performed today under sterile technique. ... verbal consent. We will see him back here in four weeks.

... R. O'Connors, M.D.

2013 MAR 14 10:10 AM
Tahoe Fracture & Orthopedic Medical Clinic, Inc.
Carson City, NV

31627

ARM/TAHOE FRACTURE & ORTHO MED

ATTN:

973 MICA DR, STE 201

CARSON CITY, NV 89705

Patient Name: FELTON, GREG

Age, DOB:

Sex: M

Other ID: 236336

Requesting Physician: S TONN

Patient ID:

LAB ID: E3093264

Collected: 02/28/2013

Received: 03/01/2013

Reported: 03/04/2013

Requisition#: WF7L591DUW

Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

Drug	Test Result	Value	Normalized Result	Comment
PAC PAIN PANEL TESTS	NOT DETECTED			Negative for all drugs tested and is consistent with prescribed medications as listed.

Specimen Validity Testing	Normal Range	Result	Normalized Result	Comment
CREATININE, URINE	>19 mg/dL	216.2	Normal	
SPECIFIC GRAVITY, URINE	>1.0030	1.0191	Normal	
NITRITES, URINE	<200 ug/mL	16	Normal	
pH, URINE	4.5-9.0	6.0	Normal	

Additional Comments

* All drugs in the PacPain Custom Panel, other than those indicated above, were not detected. * Normalized Result is based upon Creatinine data from a patient population with normal renal function. Normalized results may not be valid for patients with abnormal renal function. Clinical correlation is required. * CH=CRITICAL/ALERT HIGH CL=CRITICAL/ALERT LOW *

PacPain Custom 9621802 - Contains

NARCOTIC ANALGESICS	BENZODIAZEPINES	BARBITURATES
Morphine (Kadian)	Alprazolam (Xanax)	Amobarbital
Codeine (Tylenol III)	Clonazepam	Butabarbital
Hydrocodone (Lortab)	Diazepam (Valium)	Butalbital
Hydromorphone	Lorazepam (Ativan)	Pentobarbital
Methadone	Oxazepam (Serax)	Phenobarbital
Methad. metab. (EDDP)	Temazepam	Secobarbital
Oxycodone (Oxycontin)	MISCELLANEOUS	MISCELLANEOUS
Oxymorphone (Opana)	Acetaminophen	Tramadol
Propoxyphene (Darvon)	Alcohol	Tricyclics
	Carisoprodol	Zolpidem
	Phenothiazines	

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31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG
Age, DOB
Sex: M
Other ID: 236336
Requesting Physician: S TONN

Patient ID:
LAB ID: E3093264
Collected: 02/28/2013
Received: 03/01/2013
Reported: 03/04/2013
Requisition#: WF7L591DUW

Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

PACPAIN PANEL - 9621802

ANALYTE	CONFIRMATION		METHOD
	CUTOFF	UNITS	
ACETAMINOPHEN	1.0	ug/ml	FPIA
ALCOHOL	0.02	%	GC
BARBITURATES			
AMOBARBITAL (Amytal)	100	ng/ml	
BUTABARBITAL (Butasol)	100	ng/ml	GCMS
BUTALBITAL (Esgic)	100	ng/ml	GCMS
PENTOBARBITAL (Nembutal)	100	ng/ml	GCMS
PHENOBARBITAL (Solfoton)	100	ng/ml	GCMS
SECOBARBITAL (Seconal)	100	ng/ml	GCMS
CARISOPRODOL (SOMA)	100	ng/ml	GCMS
CARISOPRODOL			
MEPROBAMATE	1.0	ug/ml	GCFID
BENZODIAZEPINES	1.0	ug/ml	GCFID
NORDIAZEPAM	100	ng/ml	GCMS
OXAZEPAM	100	ng/ml	GCMS
LORAZEPAM	100	ng/ml	GCMS
ALPHAHYDROXYALPRAZOLAM	100	ng/ml	GCMS
TEMAZEPAM	100	ng/ml	GCMS
7-AMINO CLONAZEPAM	100	ng/ml	GCMS
METHADONE			
METHADONE	100	ng/ml	GCMS
EDDP	100	ng/ml	GCMS
PROPOXYPHENE			
NORPROPOXYPHENE	100	ng/ml	GCMS
OPIATES			
CODEINE	50	ng/ml	GCMS
MORPHINE	50	ng/ml	GCMS
HYDROCODONE	50	ng/ml	GCMS
HYDROMORPHONE	50	ng/ml	GCMS
OXYCODONE	50	ng/ml	GCMS
OXYMORPHONE	50	ng/ml	GCMS
PHENOTHIAZINES			
CHLORPROMAZINE	1	ug/ml	HPLC
CLOZAPINE	1	ug/ml	HPLC

REPORT CONTINUED ON NEXT PAGE

Working Together Towards Compliance and Comfort

31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG
Age, DOB:
Sex: M
Other ID: 236336
Requesting Physician: S TONN

Patient ID:
LAB ID: E3093264
Collected: 02/28/2013
Received: 03/01/2013
Reported: 03/04/2013
Requisition#: WF7L591DUW

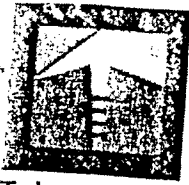
Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

	CUTOFF	UNITS	METHOD
PHENOTHIAZINES (CONT.)			
FLUPHENAZINE	1	ug/ml	HPLC
HALDOL	1	ug/ml	HPLC
MESORIDAZINE	1	ug/ml	HPLC
PERPHENAZINE	1	ug/ml	HPLC
PROCHLORPERAZINE	1	ug/ml	HPLC
PROMAZINE	1	ug/ml	HPLC
PROMETHAZINE	1	ug/ml	HPLC
THIORIDAZINE	1	ug/ml	HPLC
TRIFLUOPERAZINE	1	ug/ml	HPLC
TRAMADOL	1	ug/ml	HPLC
TRAMADOL	50	ng/ml	LCMS
TRICYCLICS			
AMITRIPTYLINE & NORTRIPTYLINE	1	ug/ml	HPLC
DOXEPIN & DESMETHYLDXEPIIN	1	ug/ml	HPLC
FLUOXETINE & NORFLUOXETINE	1	ug/ml	HPLC
CLOMIPRAMINE	1	ug/ml	HPLC
PROTRIPTYLINE	1	ug/ml	HPLC
ZOLPIDEM	50	ng/ml	HPLC

RECEIVED
MAR 11 2013
1:00

LAST PAGE OF REPORT

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C143-12-06693-0

March 28, 2013

Page 1

Chart Document

Greg Felton

Male 49 Years Old DC

Patient ID: 236336

Home: (775) 588-3121

03/19/2013 - Office Visit: RE L knee

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

03/19/13

HISTORY:

Greg Felton presents today for followup of his left knee arthroscopy with partial medial meniscectomy on October 17, 2012. The patient had an injection at his last appointment on February 28, 2013. He says the cortisone has helped approximately 75%. He has not gone back to jogging or running however as his recent MRI did show evidence of a bone bruise.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

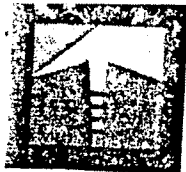
Family History

Arthritis
Heart Disease

Social History

Patient is

Review of Systems



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March 28, 2013

Page 2

Chart Document

Greg Felton

Male 49 Years Old DC

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male who ambulates with no antalgia or use of devices. His left knee shows no deformity. He has minimal tenderness to palpation at the medial joint line. He has no varus or valgus instability. No effusion. He has no patellofemoral crepitation.

IMPRESSION:

1. Left knee arthroscopy with partial medial meniscectomy on October 17, 2012 with good results after recent cortisone injection.
2. Bone bruise per recent MRI, but no recurrent meniscal tear.

PLAN:

We will let the patient return to activity as tolerated. He is encouraged to try jogging and even running to see if his pain returns. He will slowly do these activities however. We will see him back one more time in four weeks and we will likely make him MMI at that time.

Stephanie Tonn, PA-C

For Jeffrey R. Cummings, M.D.

ST/JRC:ab



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Phone: (775) 783-8190 Fax: (775) 783-8191

Return to Work 3/19/2013 1:47:57 PM

Greg Felton HM: (775) 588-3121 WK: None City: Stateline Provider: CUMMINGS, JEFFREY R
M: DOB: ID#: 236336 SS:

Work Status Form

Review

Restrictions are: Temporary

This injury is occupational.

Diagnosis: KNEE PAIN (ICD-719.46)

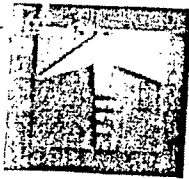
Status

Comments: Employee may return to work as tolerated.
Employee should be re-evaluated for work status by a physician in 4 weeks.

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 3/19/2013 1:47:57 PM

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MARCH 19 2013



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C143-12-06693-

April 25, 2013
Page 1
Chart Document

Greg Felton

Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

04/16/2013 - Office Visit: RE L knee

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

04/16/13

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today for followup of his left knee. He had a knee arthroscopy with partial medial meniscectomy and chondroplasty on October 17, 2012. The patient had a cortisone injection on February 28, 2013 after an MRI on February 25, 2013 and showed some chondral thinning, bone bruise, and a thickened MCL. No evidence of recurrent meniscal tear. The patient states that his knee is still not quite right. He has pain with squatting. He was able to ride a bike without any pain the other day but had pain as soon as he got off the bike. He was taking ibuprofen 600 mg p.o. t.i.d. for a while until it began bothering his stomach. It still is not helping his knee significantly. He feels the Baker's cyst is "still there" behind his knee. He has occasional clicking but denies any grinding in the knee. He has some discomfort with full extension.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

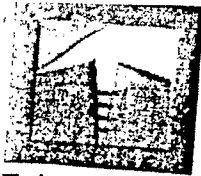
ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

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April 25, 2013
Page 2
Chart Document

Greg Felton
Male 49 Years Old DOB

Patient ID: 236336

Home: (775) 588-3121

Social History

Patient is

Review of Systems

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male. He ambulates with no antalgia or use of devices. The left knee shows a mild varus deformity. There is no effusion. Increased warmth, ecchymosis, and erythema. The patient has full flexion and extension. He has some discomfort with full extension. He has some mild tenderness medially but not over the joint line in particular. He has tenderness just at the medial patellar facet and along the MPFL. He has no patellar apprehension and negative patellar grind test. He has what appears to be some laxity of the MCL but was determined to be a correctible varus deformity. There is a firm endpoint, and the MCL feels stable. There is no other ligamentous laxity noted.

IMPRESSION:

Status post left knee arthroscopy with partial meniscectomy on October 17, 2012 with some persistent pain and arthritis.

PLAN:

At this point, we have tried a cortisone injection and physical therapy. We will try viscosupplementation injection to see if we can give the patient some more relief as it appears that his symptoms are now related to his arthritis. We will order these injections and see him back afterwards.

Stephanie Tonn, PA-C
For Jeffrey R. Cummings, M.D.
ST:sa/sb

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4/25/13



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Tahoe Fracture and Orthopedic Gardnerville
1520 Virginia Ranch Rd Ste 101B Gardnerville, NV 89410
Phone: (775) 782-2442 Fax: (775) 782-7205

Return to Work 4/16/2013 1:12:36 PM

Greg Felton: HM# (775) 588-3121 WK: None City Stateline Provider: CUMMINGS, JEFFREY R
M: DOB ID#: 238338 SSN

Work Status Form

Review

Restrictions are: Temporary

This injury is occupational.

Diagnosis: KNEE PAIN (ICD-719.46)

Status

Comments: Employee may return to work as tolerated
Employee should be re-evaluated for work status by a physician in 4 weeks.

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 4/16/2013 1:12:36 PM

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Alternative Service Concepts

Flexibility · Expertise · Integrity

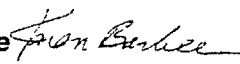
Date: April 25, 2013
FAX #: 775-783-6166
To: Jeffrey Cummings, MD
ATTEN: Antonia
From: Karen Barbee
ASC
Subject: Greg Felton, Claim # C143-12-06693-01

Dear Dr. Cummings:

We have received your chart notes of 4/16/13 together with a request for Euflexxa Injections.

This matter was referred to our medical director for review and opinion regarding the need for the injections. Based on that review, we respectfully deny authorization because it appears that the non-industrial arthritis is what is causing the need for the injections, and not the industrial injury.

If you disagree, please advise further of your findings and opinions.

Sincerely,
Karen Barbee 
Sr. Claims Adjuster

1755 East Plumb Ln., #148, Reno, NV 89502
Phone: 775-329-1181 FAX: 775-329-7418



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Phone: (775) 783-6190 Fax: (775) 783-6191

Return to Work 5/7/2013 3:20:57 PM

Greg Felton: HM: (775) 588-3121 WK: None Clv: Stateline- Provider: CUMMINGS, JEFFREY R.
M: DC ID#: 238338: S:

Work Status Form

Review

Restrictions are: Temporary

This injury is occupational.

Diagnosis: KNEE PAIN (ICD-719.46)

Status

Comments: Employee is able to return to work as tolerated. Thus meaning if it begins to hurt stop, don't push to hard.
Employee should be re-evaluated for work status by a physician in 4 weeks.

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 5/7/2013 3:20:57 PM

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1300



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C143-12-06693-01

June 6, 2013
Page 1
Chart Document

Greg Felton
Male 49 Years Old DC...

Patient ID: 236336

Home: (775) 588-3121

05/28/2013 - Office Visit: RE L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: IN PROGRESS DOCUMENT. Contents are preliminary

05/28/13

HISTORY:

Greg is here with regards to his left knee status post left knee arthroscopy partial medial meniscectomy. He seems to be making progress in the last few weeks. The pain has decreased. He still has a cyst posteriorly, but overall he is doing better. He feels that he currently has started turning the corner and had a tear of the medial meniscus. He did have some chondromalacia throughout the knee. I think that was most likely causing issues directly at the medial compartment. His pain is decreased now.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

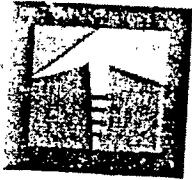
Patient is

Review of Systems

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JUN 10 2013

160



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June 6, 2013
Page 2
Chart Document

Greg Felton

Male 49 Years Old Dr

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a 49 years old male.

PHYSICAL EXAMINATION:

Physical examination, he has no tenderness to medial joint line. He does have a Baker cyst that is still palpable. He has good strength, hamstrings, quadriceps. Ligaments are stable. Sensation is intact. Negative McMurray.

IMPRESSION:

Left knee pain is improved, still somewhat symptomatic, still has a Baker cyst.

PLAN:

Plan for this time just to continue to monitor his full duty. We will let him continue to work but if pain returns or persists I still feel that the Euflexxa injection will be beneficial to get him back to his preoperative baseline even though they have been denied and he will see us back in six weeks.

Jeffrey R. Cummings, M.D.
JRC:mp

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JUN 11 2013
130

Factorx

3048 De Soto Avenue Chatsworth, CA 91311
Phone: 818-323-6942 • FAX: 818-398-3146

2143-12-06693-

Laboratory Report

Dr. Jeffrey R. Cummings, MD, PhD - Medical Director
CLIA #0206042705 - SAMHSA Certified - CAP 02678-01
California DPH 0LF4442

31627
ARMITAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG
Age, DOB:
Sex: M
Other ID:
Requesting Physician: DR JEFFREY R CUMMINGS

Patient ID:
LAB ID: E3094781
Collected: 05/28/2013
Received: 06/03/2013
Reported: 06/04/2013
Requisition#:

Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

Drug	Test Result	Value	Normalized Result	Comment
PAC PAIN PANEL TESTS	NOT DETECTED			Negative for all drugs tested and is consistent with prescribed medications as listed.

Specimen Validity Testing	Normal Range	Result	Normalized Result	Comment
CREATININE, URINE	>19 mg/dL	107.6	Normal	
SPECIFIC GRAVITY, URINE	>1.0030	1.0232	Normal	
NITRITES, URINE	<200 ug/mL	36	Normal	
pH, URINE	4.5-9.0	3.4	Normal	

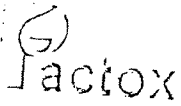
Additional Comments

* All drugs in the PacPain Custom Panel, other than those indicated above, were not detected. * Normalized Result is based upon Creatinine data from a patient population with normal renal function. Normalized results may not be valid for patients with abnormal renal function. Clinical correlation is required. * CH=CRITICAL ALERT HIGH CL=CRITICAL ALERT LOW *

PacPain Custom 9621802 - Contains

- | | | |
|----------------------------|------------------------|----------------------|
| NARCOTIC ANALGESICS | BENZODIAZEPINES | BARBITURATES |
| Morphine (Kadian) | Alprazolam (Xanax) | Amobarbital |
| Codeine (Tylenol III) | Clonazepam | Eutobarbital |
| Hydrocodone (Lortab) | Diazepam (Valium) | Bucalbital |
| Hydromorphone | Lorazepam (Ativan) | Penicobarbital |
| Methadone | Oxazepam (Serax) | Phenobarbital |
| Methad. metab. (ECC) | Temazepam | Secobarbital |
| Oxycodone (Oxycontin) | | |
| Oxymorphone (Opana) | MISCELLANEOUS | MISCELLANEOUS |
| Propoxyphene (Dawson) | Acetaminophen | Tramadol |
| | Alcohol | Tricyclics |
| | Carisoprodol | Zolpidem |
| | Phenothiazines | |

Working Together Towards Compliance and Comfort



3048 De Soto Avenue Chatsworth, CA 91311
 Phone: 800-323-6942 • FAX: 818-398-3116

Laboratory Report

Donna E. Emerson, MD, PhD, Director
 CMA 060642703 • SAMHSA Certified • CAP 19670-01
 California DPH CLF4442

31627
 ARM/TAHOE FRACTURE & ORTHO MED
 ATTN:
 973 MICA DR, STE 201
 CARSON CITY, NV 89705

Patient Name: FELTON, GREG
 Age, DOB:
 Sex: M
 Other ID:

Patient ID:
 LAB ID: E3094781
 Collected: 05/28/2013
 Received: 06/03/2013
 Reported: 06/04/2013
 Requisition#:

Drug(s) Screened For: PACPAIN PANEL #9621802
 Requesting Physician: DR JEFFREY R CUMMINGS

Medication(s) Prescribed:

PACPAIN PANEL - 9621802

ANALYTE	CONFIRMATION		METHOD
	CUTOFF	UNITS	
ACETAMINOPHEN	1.0	ug/ml	FPIA
ALCOHOL	0.02	g/ml	GC
BARBITURATES			
AMOBARBITAL (Amytal)	100	ng/ml	GCMS
BUTABARBITAL (Bucasol)	100	ng/ml	GCMS
BUTALSITAL (Esgic)	100	ng/ml	GCMS
PENTOBARBITAL (Nembutal)	100	ng/ml	GCMS
PHENOBARBITAL (Solfocron)	100	ng/ml	GCMS
SECOBARBITAL (Seconal)	100	ng/ml	GCMS
CARISOPRODOL (SCNA)			
CARISOPRODOL	1.0	ug/ml	GC/FID
MEPROBAMATE	1.0	ug/ml	GC/FID
GENCO DIAZEPINES			
NORDIAZEPAM	100	ng/ml	GCMS
CLAZEPAM	100	ng/ml	GCMS
LORAZEPAM	100	ng/ml	GCMS
ALPHAHYDROXYALERAZOLAM	100	ng/ml	GCMS
TEMAZEPAM	100	ng/ml	GCMS
7-AMINO CLONAZEPAM	100	ng/ml	GCMS
METHADONE			
METHADONE	100	ng/ml	GCMS
EDDP	100	ng/ml	GCMS
PROPOXYPHENE			
NORPROPOXYPHENE	100	ng/ml	GCMS
OPIATES			
CODEINE	50	ng/ml	GCMS
MORPHINE	50	ng/ml	GCMS
HYDROCODONE	50	ng/ml	GCMS
HYDROMORPHONE	50	ng/ml	GCMS
OXYCODONE	50	ng/ml	GCMS
OXYMORPHONE	50	ng/ml	GCMS
PHENOTHIAZINES			
CHLORPROMAZINE	1	ug/ml	RP/LC
CLOZAPINE	1	ug/ml	RP/LC

CONFIRMATION
 REPORT CONTINUED ON NEXT PAGE

Working Together Towards Compliance and Comfort

Lactox

2249 De Soto Avenue Chatsworth, CA 91311
 Phone: 800-368-6642 • FAX: 818-393-3116

Laboratory Report

Donna Simpson MD, PhD, FRCPC, JGIM, Director
 CLIA #5C00840703 • SAMHSA Certified • CAP ID670-01
 California DPH CLF4442

31627
 ARM/TAHOE FRACTURE & ORTHO MED
 ATTN:
 973 MICA DR, STE 201
 CARSON CITY, NV 89705

Patient Name: FELTON, GREG
 Age, DOB:
 Sex: M
 Other ID:

Patient ID:
 LAB ID: E3094781
 Collected: 05/28/2013
 Received: 06/03/2013
 Reported: 06/04/2013
 Requisition#:

Drug(s) Screened For: PACPAIN PANEL #9621802
 Medication(s) Prescribed:

Requesting Physician: DR JEFFREY R CUMMINGS

	CUTOFF	UNITS	METHOD
PHENOTHIAZINES (CONT.)			
FLUPHENAZINE	1	ug/ml	HPLC
HALDOL	1	ug/ml	HPLC
MESORIDAZINE	1	ug/ml	HPLC
PERPHENAZINE	1	ug/ml	HPLC
PROCHLORPERAZINE	1	ug/ml	HPLC
PROMAZINE	1	ug/ml	HPLC
PROMETHAZINE	1	ug/ml	HPLC
THIORIDAZINE	1	ug/ml	HPLC
TRISFLUOPEPAZINE	1	ug/ml	HPLC
TRAMADOL			
TRAMADOL	50	ng/ml	LCMS
TRICYCLICS			
AMITRIPTYLINE & NORTRIPTYLINE	1	ug/ml	HPLC
DOXEPIN & DESMETHYLDXEPEIN	1	ug/ml	HPLC
FLUOXETINE & NORFLUOXETINE	1	ug/ml	HPLC
CLONIPRAMINE	1	ug/ml	HPLC
PROTRIPTYLINE	1	ug/ml	HPLC
SOLPIDEM			
	50	ng/ml	HPLC

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 6/11/13

LAST PAGE OF REPORT

Working Together Towards Compliance and Comfort

URINE TOXICOLOGY REVIEW

Patient Name: FELTON, GREG

Date of Birth

Date of Evaluation: 6/4/2013

Please Note: It is necessary for a physician to review and interpret the toxicology test immediately as to determine the management of the patient's pharmacological treatment and assessment.

The patient is being evaluated for medication management and/or ongoing medication therapy. A qualitative drug screen was administered to the above named patient. The test results are to follow. The results of this drug screen will be used in part during the next scheduled appointment to determine consistent medication management for the patient's prescription drug therapy.

Urine drug testing (UDT) is used to assist in monitoring adherence to a prescription drug treatment regimen (including controlled substances), to diagnose substance misuse (abuse), addiction and/or other aberrant drug-related behavior, to guide treatment, and to advocate for patients.

The test was conducted predicated on the ACOEM guidelines set forth in Chapter 5 and Table 5-1 of the Occupational Medicine Practice Guidelines: Evaluation and Management of Common Health Problems and Functional Recovery in Workers, Second Edition.

Random drug testing screens are recommended by the Official Disability Guidelines (ODG Treatment in Workers' Compensation, Pain Chapter, 2009).

CHRONIC PAIN MEDICAL TREATMENT GUIDELINES - Drug testing (pg. 43) -Recommend screening to differentiate between dependence and addiction with opioids. The screening instruments below have been developed or are in the development stages to aid in differentiation between drug dependence and addiction. See also Opioids, red flags for addiction; Opioids, screening for risk of addiction; Opioids, patients at high-risk for misuse; & Substance abuse (tolerance, dependence, addiction).

Chelminski multi-disciplinary pain management program criteria: (Chelminski, 2005)

Criteria used to define serious substance misuse in a multi-disciplinary pain management program: (a) cocaine or amphetamines on urine toxicology screen (positive cannabinoid was not considered serious substance abuse); (b) procurement of opioids from more than one provider on a regular basis; (c) diversion of opioids; (d) urine toxicology screen negative for prescribed drugs on at least two occasions (an indicator of possible diversion); & (e) urine toxicology screen positive on at least two occasions for opioids not routinely prescribed.

RESULTS for GREG FELTON:

<i>ACETAMINOPHEN</i>	✓ Negative	Detected
<i>ALCOHOL</i>	✓ Negative	Detected
<i>BARBITURATES</i>		
Amobarbital	✓ Negative	Detected
Butabarbital	✓ Negative	Detected
Butalbital	✓ Negative	Detected
Pentobarbital	✓ Negative	Detected
Phenobarbital	✓ Negative	Detected
Secobarbital	✓ Negative	Detected
<i>CARISOPRODOL</i>		
Carisoprodol	✓ Negative	Detected
Meperbamate	✓ Negative	Detected
<i>BENZODIAZEPINES</i>		
Nordiazepam	✓ Negative	Detected
Oxazepam	✓ Negative	Detected
Lorazepam	✓ Negative	Detected
Alphahydroxyalprazolam	✓ Negative	Detected
Femazepam	✓ Negative	Detected
7-Amino Clonazepam	✓ Negative	Detected
<i>METHADONE</i>		
Methadone	✓ Negative	Detected
EDDP	✓ Negative	Detected
<i>PHENOTHIAZINES</i>		
Chlorpromazine	✓ Negative	Detected
Clozapine	✓ Negative	Detected
Fluphenazine	✓ Negative	Detected
Haldol	✓ Negative	Detected
Mesoridazine	✓ Negative	Detected
Perphenazine	✓ Negative	Detected
Prochlorperazine	✓ Negative	Detected
Promazine	✓ Negative	Detected
Promethazine	✓ Negative	Detected
Thioridazine	✓ Negative	Detected
Trifluoperazine	✓ Negative	Detected
<i>PROPOXYPHENE</i>		
Norpropoxyphene	✓ Negative	Detected
<i>OPIATES</i>		
Codeine	✓ Negative	Detected
Morphine	✓ Negative	Detected
Hydrocodone	✓ Negative	Detected
Hydromorphone	✓ Negative	Detected
<i>OXICODONE</i>		
Oxycodone	✓ Negative	Detected
Oxymorphone	✓ Negative	Detected
<i>TRAMADOL</i>	✓ Negative	Detected
<i>TRICYCLICS</i>		
Amitriptyline and Nortriptyline	✓ Negative	Detected
Doxepin and Nordoxepin	✓ Negative	Detected
Fluoxetine and Norfluoxetine	✓ Negative	Detected
Clomipramine	✓ Negative	Detected
Trimipramine	✓ Negative	Detected
Maprotiline	✓ Negative	Detected

Use of the best available evidence to support a medical professional's decision making is often referred to as evidence-based medicine (Sacket et al 1996). The objective of which has been defined as to minimize the effects of bias in determining an optimal course of care. In this case, bias meaning lack of objectivity and other factors that may distort conclusions. A comprehensive drug screen conducted is predicated on the idea of evidence-based medicine. The Center for Disease Control (CDC) attributes the 62.5% rise in drug overdose deaths between 1991-2004 to a higher use of prescription painkillers.

- CDC. Morbidity and Mortality Weekly Report. Feb 9th 2007

The CDC recommends tightening regulatory measures. Improving physician awareness, supporting treatment for drug dependence and possibly modifying drugs themselves to reduce the potential for abuse.

- CDC. Morbidity and Mortality Weekly Report. Feb 9th 2007

"Drug testing should never be used as a punitive measure but rather to enhance patient care."

- "Urinary Drug testing in Pain Management." Practical Pain Management, Florete, Orlando G. Jr., MD. April 2005

"The Federation of State Medical Boards (FSMB) adopted a policy for prescribing controlled substances stressing the critical importance in documenting, evaluating, and monitoring controlled substances in the management of pain patients. This is consistent with the guidelines set forth by federal agencies including the Drug Enforcement Agency (DEA). Part of this policy - dealing with the implementation of monitoring drug compliance - is the regular use of UDT."

- "Urinary Drug testing in Pain Management." Practical Pain Management, Florete, Orlando G. Jr., MD. April 2005

SEARCHED
SERIALIZED

857012047 51

• "Role of Urine Toxicology Testing in the Management of Chronic Opioid Therapy". The Clinical Journal of Pain, Katz, Nathaniel MD; Fanciullo, Gilbert MD, July/August 2002

"Urine toxicology testing may reveal the presence of illicit drugs, such as heroin or cocaine, or controlled substances not prescribed by the physician ordering the test (e.g., hydromorphone in a patient prescribed oxycodone)."

• "Role of Urine Toxicology Testing in the Management of Chronic Opioid Therapy". The Clinical Journal of Pain, Katz, Nathaniel MD; Fanciullo, Gilbert MD, July/August 2002

Rule out drug diversion by documenting that you are able to recover the prescribed medications with a urine drug screen. Urine screens also show that you are alert to a patient's potential use of illicit substances.

• "Prescribing Opioids Wisely: Strategies for helping your patients and avoiding problems with regulators". Clinical Practice, Cole, B. Elliot MD, MPA, Winter 1998

In preparation of this report, I reviewed all test results, as well as the patient's medical chart.
Time spent reviewing records: 30 minutes

Disclosure Statement:

Upon presentation to me of the final report, I thoroughly reviewed the document prior to affixing my signature.

I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others.

I hereby declare under penalty of perjury that I have not offered, delivered, received or accepted any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referral of this evaluation or consultation.

I declare under penalty of perjury that this report is true and correct to the best of my knowledge.

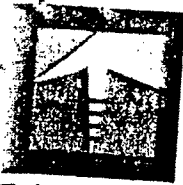
Thank you for allowing us to participate in the care of your patient. If there are any questions related to this patient's care, please do not hesitate to call me.

Sincerely,

Jeffrey R Cummings MD

RECEIVED
JUL 17 2002

85 5012 017 000



Tahoe Fracture & Orthopedic Medical Clinic, Inc.

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Tahoe Fracture and Orthopedic Medical Clinic
973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

C143-12-06693-0

July 25, 2013
Page 1
Chart Document

Greg Felton

Male 49 Years Old DO

Patient ID: 236336

Home: (775) 588-3121

07/01/2013 - Office Visit: RE L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: IN PROGRESS DOCUMENT. Contents are preliminary

07/01/13

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today for followup of his left knee arthroscopy back in October of 2012. The patient still complains of discomfort in the back of his knee. He states that it is tight when he stretches it out, and he has some pain with jogging but otherwise has been able to do bicycling without much discomfort. He still is adamant that he had no pain in his left knee prior to this injury and surgery.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

Patient is

Review of Systems

RECEIVED

JUL 29 2013

137



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& Orthopedic
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July 25, 2013

Page 2
Chart Document

Greg Felton

Male 49 Years Old DOB:

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a 49 years old male.

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male. He is alert and oriented, in no acute distress. He ambulates with no antalgia or use of devices. Left knee, the patient has slight varus deformity. He has no tenderness at the joint line today. He does have a significant and firm Baker's cyst. It is somewhat tender to palpation. Calf and thigh are otherwise soft. There is no edema in the lower extremity. Left knee does show some soft tissue swelling compared to the right knee. There is no increase in warmth. There is no varus or valgus instability. There is some crepitation with flexion and extension.

IMPRESSION:

Left knee arthroscopy on October 17, 2012 with some grade-IV chondromalacia and persistent pain.

PLAN:

I still think the patient would benefit from viscosupplementation injections. They have been denied once already, and we still think this would help alleviate the patient's arthritic symptoms, which I believe were likely exacerbated as a result of this injury. Unfortunately, if these injections are not approved, we will have to keep the patient and refer him for an FCE. We have no restrictions for the patient today from our standpoint, but he does have some subjective pain and arthritis per x-ray, MRI, and knee arthroscopy.

Stephanie Tonn, PA-C

For Jeffrey R. Cummings, M.D.

ST/JRC:sa/sb

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JUL 29 2013

11:30



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973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: (775) 783-6190 Fax: (775) 783-6191

Return to Work 7/1/2013 2:30:19 PM

Greg Falton: HM: (775) 588-3121 WK: None City: Stateline Provider: CUMMINGS, JEFFREY R.
M DOB: ID#: 236338 SSN:

Work Status Form

Review

Restrictions are: Permanent

This injury is occupational.

Diagnosis: KNEE PAIN (ICD-719.46)

Status

Comments: Patient is released to full duty. No restrictions-FCE

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 7/1/2013 2:30:19 PM

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7/1/13

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July 11, 2013

Patricia Morales, M.D.
Specialty Health Clinic
330 E. Liberty St., #100
Reno, NV 89501

RE: Employee: GREGORY FELTON
Claim No: C1431206693 01
D.O.I.: 3/6/2012
Employer: DOUGLAS COUNTY
Age at Injury: 48
Occupation: VOLUNTEER SEARCH AND RESCUE MEMBER
Body part: Left Knee

Dear Dr. Morales:

Thank you for agreeing to see this patient for a second opinion on July 22, 2013 at 2:00 PM.

A copy of the medical file has been previously provided for your review. You will note that Mr. Felton underwent a left knee arthroscopy, partial meniscectomy, on 10/12/12. There are also MRI reports pre-operative and post-operative for your review. Please also note that it was reported that Mr. Felton went skiing in December and aggravated his knee. Upon evaluation of the patient and review of the medical records, your response to the following questions would be greatly appreciated:

1. What is the industrial diagnosis?
2. Are there any pre-existing or non-industrial conditions present, and if so what is their impact on the industrial condition?
3. What treatment do you recommend for the industrial condition?

Thank you for your time and consideration in this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File DOUGLAS COUNTY GREGORY FELTON

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

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July 11, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01 D. O. I.: 3/6/2012 Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

An appointment has been scheduled for you with **Patricia Morales, M.D.** on **Monday, July 22, 2013 at 2:00 PM** for a second opinion. The doctor's office is located at **Specialty Health Clinic, 330 E. Liberty St., # 100, Reno, NV 89501**, and the telephone number is **775-398-3630**

Please plan to arrive **15 minutes early** to the appointment to complete the intake process. For this visit you will need to **bring with you (i.e. hand carry) all X-ray, MRI or other diagnostic films** that have been taken since your industrial accident. You are requested to **contact the doctor's office on receipt of this letter, to confirm** that you will attend, and that the doctor will be available for the appointment.

If for any reason you are unable to make the appointment, please contact the doctor's office as soon as possible, in advance, to reschedule, advising our office of any change in scheduled dates and the reason you cannot attend.

Failure to attend the appointment or to call ahead of time to notify of non-attendance may result in charges that will be deducted from prospective benefits to which you may become entitled.

Although we anticipate your cooperation in attending this appointment, please note that if you fail to attend this appointment, your benefits may be suspended, pursuant to NRS 616C.140, until such time as the appointment is re-scheduled and the evaluation completed.

If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File DOUGLAS COUNTY Patricia Morales, MD SHC MCO

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

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July 31, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01 D. O. I.: 3/6/2012 Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

An appointment has been scheduled for you with **Patricia Morales, M.D.** on **Monday, August 19, 2013 at 3:00 PM** for a second opinion. The doctor's office is located at **Specialty Health Clinic, 330 E. Liberty St., # 100, Reno, NV 89501**, and the telephone number is **775-398-3630**

Please plan to **arrive 15 minutes early** to the appointment to complete the intake process. For this visit you will need to **bring with you (i.e. hand carry) all X-ray, MRI or other diagnostic films** that have been taken since your industrial accident. You are requested to **contact the doctor's office on receipt of this letter, to confirm** that you will attend, and that the doctor will be available for the appointment.

If for any reason you are unable to make the appointment, please contact the doctor's office as soon as possible, in advance, to reschedule, advising our office of any change in scheduled dates and the reason you cannot attend.

Failure to attend the appointment or to call ahead of time to notify of non-attendance may result in charges that will be deducted from prospective benefits to which you may become entitled.

Although we anticipate your cooperation in attending this appointment, please note that if you fail to attend this appointment, your benefits may be suspended, pursuant to NRS 616C.140, until such time as the appointment is re-scheduled and the evaluation completed.

If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File DOUGLAS COUNTY Patricia Morales, MD SHC MCO

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

SpecialtyHealth

Specialty Health
330 E Liberty St
200
Reno, NV 89501
Phone: 775-398-3630
Fax: 775-322-2663

2143-12-06693-01
FELTON, GREGORY
PO BOX 2130
STATELINE, NV 89449
Bor (49 years)
775-588-3121
Employer DOUGLAS COUNTY

Visit Date 08/19/2013 Visit With Morales MD, Patricia (16) Visit At SH (s1) SH

Visit Description
WC New

VITALS

Smoking Status entered on 08/19/2013 recorded as Never smoker

DATE: 08/19/2013 TIME: 15:39:00 BP (SYS/DIA): 125/92 (L) HR: 57 RESP: 12 HT: 69.5 WT: 172 BMI: 25

SOCIAL HISTORY

HANDEDNESS: RIGHT

MARITAL STATUS: married

OCCUPATION: SEARCH & RESCUE FOR DOUGLAS CO., Ski Patrol for Heavenly Valley Resort, HP Process Evaluator

TOBACCO USE: non smoker

PAST MEDICAL HISTORY

ALLERGIES: none

CURRENT MEDS: none

MEDICAL HISTORY: none

SURGICAL HISTORY: Left Knee Scope 10/12, vasectomy 2000, Right Wrist ORIF

FAMILY HISTORY

longevity

ACTIVE PROBLEMS

Derangement of posterior horn of medial meniscus 717.2

Pain in joint, lower leg 719.46

Synovitis and tenosynovitis, unspecified 727.00

RX PRESCRIPTIONS

Mobic 15 mg (1 tablet DAILY) Qty: 30, Refills: 0

C/C OR REASON FOR VISIT

LEFT KNEE

2ND OPINION

HISTORY OF PRESENT ILLNESS

RE: 2ND OPINION

Injured his knee on the job in March 2012, had surgery for medial meniscus in October 2012, and persists with chronic pain. He has swelling in the back of his knee that gets worse and then when it is bad it is very annoying and painful. The knee feels like it locks, or stiffens and catches with the sensation of grabbing. It does not give out on him. He has not been able to go back to S & R since this happend. Going down hill is considerably worse then up hill. With biking w/o resistance he is fine, adding resistance and weight bothers him.

He had one steroid injection through Dr. Cummins office which helped briefly. The constant swelling that seems to just worsen and return to a baseline that is still swollen and the aching that accompanies this, is what bothers him the most. It is effectively controlling his life. He did ski some this past year, but nothing for recreation, nothing of note to him, as he was very conservative due to the swelling and aching. Of note it was not quite so bad at that time. He did not have any increase in pain, nor did he have any mishaps. He trains people for the SP and did that job without incident. He has been skiing for 30 years.

REVIEW OF SYSTEMS

RE: 2ND OPINION

GENERAL: no insomnia, no snoring, no chronic fatigue

CARDIOVASCULAR: no chest pain, no leg swelling, no palpitations,

RESPIRATORY: no cough, no shortness of breath, no wheeze.

ENDOCRINE: no weight changes, no night sweats, no temperature sensit

ENT: no hearing changes, no tinnitus, no dental issues, no hoarseness

EYES: no vision changes, no redness

GASTROINTESTINAL: no black stools, no blood in stool, no constipation, no

heartburn, no nausea/vomiting.

GENITOURINARY: no incontinence, no nocturia, no painful urination.

HEME ONCOLOGY: no anemia.

MUSCULOSKELETAL: no joint/muscle pain, no back/ neck pain.

NEUROLOGICAL: no fainting, no headache, no numbness/weakness

PHYSICAL EXAM

RE: 2ND OPINION

GEN: Well developed, good posture, still antalgic gait to the left

STANCE: Legs are straight with moderate int torsion of his tibia, no varus nor valgus

LEFT KNEE: Marked swelling, tense effusion with palpable tension from swelling posteriorly. Feels at least to be close to 80 cc of fluid. Marked medial joint line tenderness, nothing particular tender on the lateral joint line, some slight tenderness at the anterolateral joint line. No instability to the collaterals, but the remainder of the exam is not done due to the tense effusion and how that impacts pain and function

NEURO: NV intact, skin without changes

ASSESSMENT

SpecialtyHealth

Specialty Health
330 E Liberty St
200
Reno, NV 89501
Phone: 775-398-3630
Fax: 775-322-2663

FELTON, GREGORY
PO BOX 2130
STATELINE, NV 89449
Boi (49 years)
775-588-3121
Employer DOUGLAS COUNTY

Visit Date 08/19/2013 Visit With Morales MD, Patricia (16) Visit At SH (s1) SH

Visit Description
WC New

To Summarize his case: He injured his left knee with an training exercise for Search & Rescue in March of 2012. Under the care of Dr. Cummins he failed conservative care with increasing symptoms and finally had a MRI which showed a complex medial meniscus tear. He underwent arthroscopic subtotal medial menisectomy in October of 2012. Since that time he has smoldered with continued pain and now ever increasing and unrelenting swelling. He had a second MRI post-op, due to his symptoms, in Feb 2013. He has had one steroid injection with brief improvement. He has not had any other medical treatment and at this time Dr. Cummins is considering Synvisc injections or something similar.

Upon review of the studies and the patient I would say that the industrial diagnosis of a medial meniscus tear is correct. The patient had photos from the surgery, intra-articular, which I was able to review. This shows the medial meniscus tear and removal of shredded portions. It also shows the chondral lesions on the patella and medial condyle. If one compares the two MRIs you will see that there is dramatic change to the medial compartment, most notably the edema within the bone of the medial compartment on both the femoral and tibial aspects. Likewise you see the thinning of the cartilage of the articular surface. More specifics to this are difficult with an MRI. There may in fact be some discrete areas of erosion. The question is why does this happen? Without question it is linked to the meniscus injury and then the loss of meniscus. At this time I do NOT think that hylauronic acid product injections (synvisc) are indicated. There is no medical evidence to support its use in this setting. I recommend that he go on crutches for complete non-weight bearing to allow healing. In addition he would benefit from oral NSAID. Aspiration and steroid injection will likely help at some point as well. Then depending on his progress and response to this strict rest he could begin partial weight bearing and advance slowly. He might benefit from yet another arthroscopy for chondroplasty including possible micro-fx, and less likely a mosaicplasty as the problem seems to be more diffuse than discrete. As I explained to him this is a very difficult problem to treat and the exact outcome difficult to predict. In his favor is his excellent health, including BMI and non-smoking history. His knee problem might completely turn around with the strict rest and graduated weight bearing with meds. But there is no easy quick answer.

To answer the questions by his claims adjuster:

1. The industrial diagnosis? Medial Meniscus tear with subtotal Medial Menisectomy and resultant medial compartment (knee) inflammation and severe Synovitis
2. What are the pre-existing or non-industrial conditons and their impact on this?
This is more difficult to answer. The Chondromalacia (and chondral erosions) seen at the time of surgery could have been pre-existing, HOWEVER, his injury was in March of 2012 and he did not get a MRI until Septmeber and surgey wasn't until October of 2012. Thus he could have easily caused the damage to the cartilage seen at arthroscopy from his resultant injury 8 months prior. This in conjunction with his history of no problems prior to this incident nor the presence of any significant risk factors leads me to conclude that there is no contribution of a pre-existing condition and that the problems and diagnosis he has now are the direct result of his industrial injury.

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330 E Liberty St
200
Reno, NV 89501
Phone: 775-398-3630
Fax: 775-322-2663

FELTON, GREGORY
PO BOX 2130
STATELINE, NV 89449
Born (49 years)
775-588-3121
Employer DOUGLAS COUNTY

Visit Date 08/19/2013 Visit With Morales MD, Patricia (16) Visit At SH (s1) SH

Visit Description
WC New

3. Recommended treatment? As stated above I think he needs a protracted period of non-weightbearing status for this left leg followed by progressive partial WB, depending on his response. Also he needs to be on a NSAID that can help decrease this synovial reaction. He will likely need an aspiration and steroid injection, but these cannot be given too freely, but strategically placed will help calm down the synovial response. And finally, he might, depending on his response to initial treatment modalities, need another scope. That would be determined after these other first recommended therapies.

DIAGNOSES

Synovitis NOS	
Joint pain-l/leg	727.00
Derang post med meniscus	719.46
	717.2

PLAN

VISIT CODE

Occupational Medicine Services Evaluation and Management Evaluation and Management, new patient - complex (99204)

FOLLOW UP

Follow-up pm

E-SIGNATURES

Authenticated By: Morales MD, Patricia @ 8/21/2013 10:34 AM

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Specialty Health
330 E. Liberty St. Ste. 100
Reno, NV 89501
Ph# 775-398-3630
Fax# 775-322-2663

RETURN TO WORK

IT IS THE INJURED WORKER'S RESPONSIBILITY TO INFORM THE EMPLOYER OF CURRENT WORK STATUS

Patients Name: FELTON, GREGORY "WC"
Employer: DOUGLAS COUNTY
Diagnosis: knee pain

Date of Injury: 03/07/2012
Date of Appointment: 8/19/2013

EMPLOYEE IS ABLE TO: walk with crutches only, he needs to be non weightbearing

Restrictions Are: Temporary

Date of next appt: pending
Restrictions expire at the date of next appointment unless otherwise noted.
Signed: Patricia Morales, MD

RECEIVED
By SH MCCO at 3:11 pm, Aug 20, 2013

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AUG 21 2013
BSC



SpecialtyHealth
HEALTH CARE SERVICES

330 East Liberty Street, Suite 300
 Reno, Nevada 89501-3222

T 775.398.3601
 F 775.339.9921

T 888.428.2973
 F 888.463.1265

August 22, 2013

Jeffrey Cummings, MD
 Tahoe Fracture and Orthopedic Medical Clinic
 973 Mica Drive
 Carson City, NV 89705

Case Name: Gregory Felton
 Employer: Douglas County
 Claim Number: C143-12-06693-01
 Date of Injury: June 14, 2012

Dear Dr. Cummings,

I am the Medical Director for the Douglas County's workers' compensation claims.

On August 18th, 2013, Mr. Felton was seen in consultation by Dr. Patricia Morales. I have enclosed the report of the findings and recommendations which include:

Findings:

- Industrial Diagnosis: left knee medial meniscus tear with subtotal medial meniscectomy and resultant left knee medial compartment inflammation and severe synovitis.
- When the pre-op and post-op MRI films are compared, there is dramatic change to the medial compartment, most notably the edema within the bone of the medial compartment on both the femoral and tibial aspects.
- There may be discrete areas of cartilage erosion.
- Hyaluronic acid product injections (Synvisc) are NOT indicated.

Recommended:

- A protracted period of non-weightbearing status for the left leg followed by progressive partial weightbearing, depending on Mr. Felton's response.
- Recommend NSAIDS to help decrease the synovial reaction.
- Mr. Felton will likely need an aspiration and a strategically placed steroid injection to further calm down the synovial response.
- Depending on his reaction to the above mentioned treatment recommendations, Mr. Felton may need another scope.

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 SEP 09 2013

asc

RECEIVED
 By SH MCO at 12:08 pm, Aug 30, 2013

08/22/2013 4:34PM (GMT-07:00)

Jeffrey Cummings, MD
Feiton, Gregory
August 22, 2013
Page 2

Please review these findings and recommendations and provide your comments after checking one of the boxes below. In order to expedite consistent care for this injured worker, please return your response by August 29, 2013.

I concur with the findings and recommendations.

I do not concur with the findings and recommendations:

Comments: I still feel hysterical
acid injection maybe
beneficial

Signed [Signature]

Dated 8/29/13

Thank you in advance for your prompt attention and cooperation in this matter. Should you have any questions, please do not hesitate to contact me at 775-329-6200.

Sincerely,

[Signature]

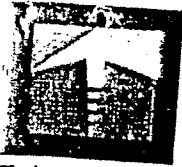
E. James Greenwald, M.D.
Medical Director
SpecialtyHealth MCO
330 East Liberty, Suite 200
Reno, NV 89501

Enclosure: As noted above.

CC: ASC
Patient
Attorney, if applicable
File

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ASC

08/22/2013 4:34PM (GMT-07:00)



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September 30, 2013
Page 1
Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DOB

Patient ID: 236336

09/20/2013 - Office Visit: Re: L Knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Gardnerville
Status: ON HOLD DOCUMENT. Contents are preliminary

09/20/13

HISTORY:

Greg Felton is here with regards to his left knee. His left knee pain has improved. The swelling has decreased. His function has improved. He is back active. He is doing much better. He has been on Mobic using a magnetic brace or wrap around the knee which seems to have helped as well.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

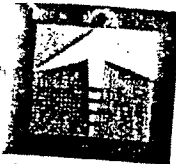
Patient is

Review of Systems

General: Patient denies sweats, chills, fevers, malaise, weight loss, appetite loss, fatigue.

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OCT 07 2013



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Phone: 7757836190 Fax: 7757836191

September 30, 2013

Page 2
Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DC

Patient ID: 236336

Eyes: Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

Gastrointestinal: Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

Genitourinary: Patient denies urinary urgency, urinary frequency.

Musculoskeletal: Complains of joint swelling, joint pain.

Skin: Complains of Normal.

Neurologic: Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

Psychiatric: Patient denies anxiety, depression.

Endocrine: Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

Heme/Lymphatic: Patient denies fevers, abnormal bruising.

Allergic/Immunologic: Complains of Patient complains of seasonal allergies.

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a pleasant 50 years old well developed, well nourished male.

Coordination: Normal

Orientation: 3+

Gait: Normal

LEFT KNEE EXAM

Gait: Normal

Skin: Unremarkable

Alignment:

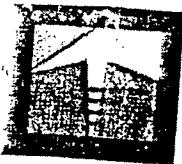
Normal

Muscle: Normal

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OCT 07 2013

450



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973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

September 30, 2013

Page 3

Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DOB

Patient ID: 236336

Quadriceps Strength: 5/5

Fluid:

Effusion: Normal

Swelling: Normal

Popliteal Cyst: Normal

Pes Anserine: Absent

Tenderness:

None

Range of Motion:

Active Flexion: Full

Active Extension: Full

Passive Flexion: Full

Passive Extension: Full

Crepitus:

None

Patella:

Alignment: Normal

Tracking: Normal

Stability: Normal

Apprehension: Negative

Compression: Negative

Collateral Ligaments:

Varus Force: Stable in full extension, Stable in 30 degrees flexion

Valgus Force: Stable in full extension, Stable in 30 degrees flexion

Cruciate Ligaments:

Lachman: Negative

Anterior Drawer: Negative

Posterior Drawer: Negative

Pivot Shift: 0

Posterior Sag: 0

McMurray's:

Medial: Negative

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OCT 07 2013



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September 30, 2013
Page 4
Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DO

Patient ID: 236336

Lateral: Negative
Lymphatic: Normal
Reflexes:
Normal

Neurovascular Status:
Intact
DP Pulse: 2+
Capillary Refill: Immediate
Sensation: Intact

PHYSICAL EXAMINATION:
His exam today, has no swelling. Ligament is stable, no tenderness in the medial joint line. He is neurovascularly intact. Sensation is intact.

IMPRESSION:
Left knee status post partial medial meniscectomy, has some chondromalacia throughout the knee.

PLAN:
At this time he is doing great. Swelling has resolved. The patient has settled down. We will let him continue full duty. No restrictions. He has maximally medically improved. We will see him back here as needed.

Jeffrey R. Cummings, M.D.
JRC:hjm

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SEP 07 2013

130



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Tahoe Fracture and Orthopedic Mica
973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: (775) 783-6190 Fax: (775) 783-6191

Return to Work 9/20/2013 10:55:08 AM

Greg Felton HM: (775) 588-3121 WK: None City: Stateline Provider: CUMMINGS, JEFFREY R.
M: DOB ID#: 236338 SS

Work Status Form

Review

Is this employee's condition permanent and stationary? Yes

This injury is occupational.

Diagnosis: KNEE, MMT (ICD-836.0)

Continue with no restrictions.

Additional Instructions: MMI no restriction

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 9/20/2013 10:55:08 AM

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4:50

Alternative Service Concepts
Flexibility · Expertise · Integrity

October 8, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/6/2012

Dear GREGORY FELTON:

As you know, your treating physician has discharged you from care for your industrial injury referenced above. Hence, it is now time to refer you for permanent partial disability (PPD) rating to settle and close this claim.

To facilitate this process, we would like to seek your agreement to utilize Richard Kudrewicz, M.D., or Jay Betz, M.D. in Reno to perform the rating, who, based upon our experience, conduct accurate and fair ratings.

You are not required to agree with this selection, and, in the alternative to our jointly agreeing to use this physician, you may request we obtain a lottery-like assignment, as set forth in NRS 616C.490, from the Workers Compensation Section of the Division of Industrial Relations (DIR) rotating list of physicians.

If you decline to use the above physician or we do not receive your agreement within the time allowed by statute, we will obtain an assignment from the Workers Compensation Section of the Division of Industrial Relations (DIR) rotating list of physicians.

If you will indicate your agreement or not to use this physician where indicated on the attached letter, we'll be able to proceed with scheduling accordingly. To facilitate this process, please fax or mail the agreement letter back to our office within seven (7) days to facilitate scheduling within the statutory time constraint.

If you have any questions about this process or need further information, please contact me at the direct number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Alternative Service Concepts

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October 8, 2013

To:

Alternative Service Concepts, LLC.
1755 East Plumb Lane, Suite 148
Reno, NV 89502

RE: Claimant: GREGORY FELTON
Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/6/2012

To Whom It May Concern:

I agree to the use of Dr. _____ to perform my PPD rating on this claim.

YES _____ NO _____

SIGNED: _____ Date: _____
 Claimant

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418



Alternative Service Concepts

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LB

October 8, 2013

To:

Alternative Service Concepts, LLC.
1755 East Plumb Lane, Suite 148
Reno, NV 89502

RE: Claimant: GREGORY FELTON
Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/6/2012

To Whom It May Concern:

I agree to the use of Dr. Betz to perform my PPD rating on this claim.

YES NO

SIGNED: *Gregory Felton* Date: 10/16/13
Claimant

RECEIVED
OCT 17 2013
esc

RECEIVED
OCT 17 2013

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

State of Nevada
Department of Business and Industry
DIVISION OF INDUSTRIAL RELATIONS

Workers' Compensation Section
400 West King Street, Suite 400
Carson City, Nevada 89703
(775-684-7261 (775) 687-6305 (fax))

REQUEST FOR A ROTATING RATING PHYSICIAN OR CHIROPRACTOR

Name of Requestor: KAREN BARBEE Date October 21, 2013
Address: 1755 E. Plumb Ln., Suite 148 Phone: 775-329-1181 FAX: 775-329-7418
City: Reno State: Nevada Zip: 89502
Requestor is: Insurer/Third-Party Administrator; Injured Employee;
 * Injured Employee's Attorney or Representative; Other (Specify) _____

**Please provide a signed release or power of attorney*

Insurer/Third-Party Administrator/

Association of Self-Insured Employers Name: ASC Certificate #: 17070
Self-Insured Employer's Name: _____ Certificate #: _____
Employer Name: Douglas County
Injured Employee's Name: GREGORY FELTON
Injured Employee's Address: P O BOX 2130
City: STATELINE State: NV Zip: 89449
Social Security Number: _____ Claim Number: C1431206693 01 Date of Injury: 3/6/2012

INSURER'S INITIAL REQUEST

Stable & Ratable Received: 10/7/13 Name(s) of Treating & Evaluating Doctor(s): Jeffrey Cummings, MD
Body Part(s) Codes: 53
Body Part(s) to be evaluated: Left Knee
Diagnosis: Medial Meniscus Tear

Name(s) of Doctor(s) who reviewed for possible PPD _____

If a specific specialty is ordered by a hearing or appeals officer, the decision must be attached

FOR ADDITIONAL RATING PHYSICIAN/CHIROPRACTOR REQUESTS ONLY

Date(s) of prior PPD Evaluation(s): _____ Prior Rating Doctor(s): _____
Name of Treating Physician(s)/Chiropractor(s): _____
Body Part(s) Codes: _____
Body Part(s) to be evaluated: _____
Diagnosis: _____

Reason for additional request: _____

If a specific specialty is ordered by a hearing or appeals officer, the decision must be attached

INSURER AND INJURED EMPLOYEE ASSIGNMENT/AGREEMENT OF RATER

Assigned or Agreed by: both parties Date of Assignment/Agreement: 10/16/13
Physician/Chiropractor Assigned or Mutually Agreed to: Jay Betz, M.D.
Assigned Rating Physician/Chiropractor's Phone Number: 775-356-8181

****Notice to requestor: Hard copy will not follow by mail.**

Compliance with NAC 616C.103(3)(1)(2)(3)(4)(5) is required

D-35 (rev 06/13)

Alternative Service Concepts

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October 21, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01 Injured: 3/6/2012 Employer: Douglas County

Dear Mr. Felton:

A Permanent Partial Disability (PPD) Rating Evaluation appointment has been scheduled for you to see Dr. Jay Betz, M.D., on Tuesday, November 5, 2013 at 2:00 PM in the office at 3488 Goni Rd., Carson City, NV 89706, telephone (775) 356-8181. Please contact the doctor's office to confirm your appointment on receipt of this letter.

Please plan to arrive 15 minutes early to the appointment to complete the intake process. The necessary medical records from the claim file will be provided to the rating physician, however, if there were any x-rays, MRI's or other diagnostic films taken of your injury during your treatment, please arrange to bring those with you (i.e. hand carry them) to the appointment. Failure to bring needed diagnostic films to the appointment may delay settlement of the claim.

If for any reason you are unable to attend the rating examination, please contact the rating physician at least three days in advance to reschedule, advising our office of any change in scheduled dates. Failure to attend the appointment or call ahead of time to reschedule will result in non-attendance charges that will be deducted from any award to which you may be entitled.

As of the date of the rating appointment, whether or not you attend, your claim will be closed for all benefits other than PPD compensation, vocational rehabilitation and reopening to which you may become entitled. Once we have the disability evaluation report, we will notify you regarding the rating and conclusion of your claim.

If you disagree with the above determination, you have the right to appeal by completing the enclosed appeal form and submitting it to the Hearing Officer, Department of Administration, at the address indicated on the form, within seventy (70) days from the date of this letter.

Please note that when you are provided with your PPD award election papers, you will again receive appeal rights on the subject of the rating itself.

If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enclosures: Request for Hearing Form, Reopening Rights
cc: File Jay Betz, M.D. Douglas County

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

REQUEST FOR HEARING - CONTESTED CLAIM

(Pursuant to NAC 616C.274)

REPLY TO: Department of Administration Hearings Division
 1050 E. William Street, Ste. 400
 Carson City, NV 89701
 (775) 687-5966

OR Department of Administration Hearings Division
 2200 S. Rancho Drive, Suite 210
 Las Vegas, NV 89102
 (702) 486-2525

EMPLOYEE INFORMATION		
Employee's Name: GREGORY FELTON		
Address: P O BOX 2130		
City: STATELINE	State: NV	Zip: 89449
Employee's Telephone Number: (775) 588-3121		
Claim #: C1431206693 01	Date of Injury: 3/6/2012	
INSURER INFORMATION		
Insurer's Name: Public Agency Compensation Trust		
Address: 201 South Roop Street, Suite 102		
City: Carson City	State: NV	Zip: 89701-4790
Insurer's Telephone Number: 775-885-7475		

Employer Information		
Employer's Name: Douglas County		
Address:		
City:	State:	Zip:
Employer's Telephone Number:		
HIRD ARTY DMINISTRATOR INFORMATION		
TPA's Name: alternative service concepts, L.L.C.		
Address: 1755 E. Plumb Lane, Suite 148		
City: Reno	State: NV	Zip: 89502
TPA's Telephone Number: 775-329-1181		

Do Not Complete or Mail This Form Unless You Disagree With the Insurer's Determination.

YOU MUST INCLUDE A COPY OF THE DETERMINATION LETTER OR A HEARING WILL NOT BE SCHEDULED PURSUANT TO NRS 616C.315.

Briefly explain the basis for this appeal: {}

This request for hearing is filed by, or on behalf of: The Injured Employee The Employer

and is dated this _____ day of _____, 20__

 Signature of Injured Employee/Employer Injured Employee's/Employer's Rep. (Advisor)

D-12a (Rev. 09.04)

Alternative Service Concepts

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October 21, 2013

Jay Betz, M.D.
255 Glendale Ave., #12
Sparks, NV 89431

Re: Claimant: GREGORY FELTON Claim #: C1431206693 01
Injured: 3/6/2012 Employer: Douglas County

Dear Dr. Betz:

We have scheduled an appointment for this injured employee to see you on November 5, 2013 at 2:00 PM in your Carson City office, for an examination and evaluation of permanent partial disability as a result of the industrial injury on the datereferenced above. A copy of the scheduling letter is enclosed together with the Division of Industrial Regulation (DIR), Workers Compensation Section (WCS) assignment forms or claimant's agreement for you to be rating physician. The body parts to be rated are indicated on the D-35 form. Date-ordered copies of the medical records are enclosed for your review. Please clearly explain the basis for each of your findings.

If records for prior conditions, surgeries, injuries, etc., are needed to properly apportion the impairment findings, please so state in your report and indicate that a final award will be determined once they have been provided. If x-rays are needed to determine impairment in accordance with the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed., and are not brought to the examination appointment by the claimant as directed (see attached letter), please so state in your report and indicate that a final award will be determined once they have been provided. If necessary, a return appointment should be scheduled to accomplish your review of needed x-rays. If new or repeat x-rays are needed to complete your rating, please accept this as authorization to proceed.

Based on the medical indications, we respectfully request you carefully address all tests of consistency for each body part. Please detail in your report whether or not the results of your measurements or tests are plausible and realistically relate to the impairment being evaluated and the objective injury record. If the medical evidence does not support the results of your observation or test result, we request you modify the impairment estimate accordingly, describing the modification and explaining the reason for it in writing, as directed by the AMA Guides.

Thank you for your time and cooperation in this matter. If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File Douglas County GREGORY FELTON

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

KB

Concentra

November 5, 2013

Karen Barbee
Alternative Service Concepts
1755 East Plumb Lane
Suite 148
Reno, NV 89502

Re: Gregory Felton
Claim # C1431206693 01
DOI: 3/6/2012

PERMANENT PARTIAL IMPAIRMENT EVALUATION

Dear Ms. Barbee,

I reviewed the medical record of Gregory Felton and examined him on November 5, 2013 to render an opinion of permanent partial impairment resulting from an occupational injury to his left knee on March 6, 2012. This evaluation was conducted in conjunction with the *AMA Guides to the Evaluation of Permanent Impairment, 5th edition*.

It was explained to the patient that I am not authorized to treat him and that the sole purpose of this evaluation was for the determination of permanent partial impairment.

The opinions expressed in this report are stated to a reasonable degree of medical probability.

HISTORY:

Mr. Gregory Felton is a 50 year old gentleman who worked as a search and rescue volunteer for the Douglas County Sheriff's Department.

On March 6, 2012 he was descending a snowy slope when he slipped and twisted his left knee. He had pain within a few minutes but did not seek care until 4 months later on June 14, 2012 when he was seen by Dr. Coats. X-ray showed early joint space narrowing but no acute abnormalities. He was diagnosed with a left knee sprain.

Mr. Felton continue to have pain and an MRI scan was obtained on September 14, 2012 showing a medial meniscal tear with early degenerative osteoarthritis of the medial compartment and a small popliteal cyst as well as small osteochondral lesion of the posterior lateral surface of the patella.

Referral was made to Dr. Cummings, orthopedist, who initially saw the patient on October 8, 2012 and felt arthroscopic intervention was appropriate.

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NOV 11 2013

Concentra Medical Center
6410 S. Virginia Street • Reno, NV 89511
Telephone: 775.322.5757 • Facsimile: 775.322.5775

On October 17, 2012 Dr. Cummings performed an arthroscopic partial medial meniscectomy. He noted the patient also had diffuse grade 2 chondromalacia of the medial femoral condyle and of the apex at the patella.

Postoperatively, the patient continued to have some pain and swelling with activity.

A repeat MRI scan was obtained on February 25, 2013 showing prior partial medial meniscectomy with extensive chondral loss involving the medial compartment and mild chondral irregularity of the lateral compartment and lateral retropatellar articular surface.

After review on February 28, 2013, Dr. Cummings recommended and performed a steroid injection of the patient's knee.

In followup on March 19, 2013, Mr. Felton reported 75% improvement following the steroid injection and Dr. Cummings encouraged him to try jogging and running to see if he could tolerate it.

On April 16, 2013, the patient complained of persistent pain. Dr. Cummings felt Mr. Felton was a candidate for Visco supplementation injections but the request was apparently denied by the insurer.

On May 28, 2013, Mr. Felton reported some improvement. Dr. Cummings felt it was most likely the patient's chondromalacia that was causing his persistent symptoms. He felt he could just be monitored with reconsideration of Visco supplementation injections if his symptoms worsened.

Followup on July 1, 2013 Mr. Felton still had some discomfort in the knee and Dr. Cummings again recommended proceeding with Visco supplementation injections noting the patient now had grade 4 chondromalacia with persistent pain which he felt was likely exacerbated by the patient's injury. Dr. Cummings recommended an independent medical evaluation.

On August 19, 2013, another opinion was obtained from Dr. Morales, orthopedist, who felt the patient's chondromalacia might have resulted from his injury. She recommended a protracted period of nonweightbearing as well as nonsteroidal anti-inflammatory medication with possible future aspiration and steroid injection to reduce synovitis. She felt that a repeat arthroscopic evaluation might be needed if the patient did not improve.

In a final note from Dr. Cummings dated September 20, 2013 he noted Mr. Felton's left knee pain had improved and swelling had decreased. He noted the patient was taking Mobic and using a wrap on the knee which seemed to help. Dr. Cummings felt that Mr. Felton had reached a medically stationary point and released him from care without restrictions.

CURRENT COMPLAINT:

Mr. Felton states that his left knee continues to bother him. It generally does not hurt much with sedentary activities or brief periods of walking but gets increasingly painful over the medial joint line with significant walking, kneeling and climbing. He cannot run without significant pain. There is tightness behind the knee when he tries to straighten fully but he is able to do so. No significant swelling, locking or giving way. The joint feels stable.

He is no longer taking any medication for his knee and is not wearing any braces.

He continues to do his normal job as an engineer but no longer volunteers with the Sheriff's Department.

ACTIVITIES OF DAILY LIVING:

Self-care and personal hygiene are not significantly impaired. However he must be careful about excess stress on the knee or moving in certain directions. Walking and standing are limited to a few hours before he must sit down and unweight the leg. Communication is unaffected. Driving is not restricted. Sleep is generally restful. Recreational activities that involve running or doing strenuous workouts involving the lower extremities are now avoided.

PAST MEDICAL HISTORY:

Mr. Felton denies any prior problems with his left knee. He recently had an extensor tendon injury requiring surgical repair of his right wrist. He takes no prescription medications.

SOCIAL HISTORY:

The patient is married with 3 children. He does not smoke and drinks alcohol only rarely.

PHYSICAL EXAMINATION:

This is a well-nourished fit-appearing gentleman in no distress. He has an extensor tendon brace on his right wrist and hand. He has a non-limping gait. He is cooperative.

Examination of the left knee reveals well-healed arthroscopic scars. There is no varus or valgus deformity. No redness or warmth is noted. He does have some anteromedial joint line tenderness. No effusion is present. The knee is stable to varus valgus and drawer stress. He has a negative McMurray's.

Range of motion of the left knee as measured by goniometer according to *The Guides* finds extension to 0° and flexion to 145°.

Neurologically he is intact with good sensation over all dermatomes. DTRs are symmetrical at the knees and ankles bilaterally. Calves are symmetrical at 38 centimeters in circumference bilaterally. Strength is symmetrical.

IMPRESSION:

1. Status post partial medial meniscectomy left knee
2. Chondromalacia of left knee

DISCUSSION & RATING:

Referencing Table 17-33 on page 546 of the *Guides*, there is a 1% whole person impairment allowance for partial medial meniscectomy.

Mr. Felton has also experienced advancing chondromalacia and degenerative changes of the knee since his injury primarily in the medial compartment. However there is no indication in the medical record or on examination that he has suffered significant loss of the cartilage interval in the medial compartment to date. Consequently this finding does not represent a ratable impairment at this point.

RE: Gregory Felton
Page 4 of 4

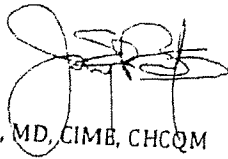
There are no other ratable impairments in this case.

Regarding apportionment, while there was some evidence of early medial compartment narrowing 3 months after his injury, there is no ratable impairment associated with osteoarthritis and consequently apportionment does not apply at this time.

In summary, Mr. Felton is allowed 1% whole person impairment related to the occupational injury on March 6, 2012.

It is also my opinion that Mr. Felton is medically stationary and I recommend claim closure.

Sincerely,



Jay E. Betz, MD, CIME, CHCOM

JEB/tlt

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MAY 1 2012

Alternative Service Concepts

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November 11, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim #: C1431206693 01

Injured: 3/6/2012

Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

Please be advised that we have calculated your Average Monthly Wage (AMW) based on statutory deemed wage. The AMW forms the basis for the amount of all disability compensation payable to you under this claim.

The maximum AMW allowed by NRS 616A.157 for your occupation as a volunteer member of a search and rescue organization, shall be a deemed wage of \$2,000 per month.

If you disagree with the insurer determination, you have the right to appeal by completing and filing with the Hearing Officer, Department of Administration, the enclosed Request for Hearing form within seventy (70) days from the date of this letter.

For questions or further information about the AMW calculation or other aspects of your claim, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enc.: Compensation Check Distribution Notice
Physician's Progress Report (Form D-39)
cc: File DOUGLAS COUNTY

Request for Compensation (Form D-6)
Explanation of Wage Calculation (D-7 form)

Computer Calculation Worksheet
Request for Hearing (D-12a form)

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

WAGE CALCULATION FORM FOR CLAIMS AGENT'S USE

RE: Injured Employee Gregory Felton Date of Injury: 3/6/2012
 Social Security No. _____ Claim No. C1431206693 01
 Employer: Douglas County Insurer: PACT
 Third-Party Administrator asc

Average Monthly Wage is defined in NAC 516C.420 through 516C.447.
 NAC 516C.429 is applicable to this claim.

AVERAGE MONTHLY WAGE - Calculate AMW in the following manner:

Period of earnings: beginning date 12/14/2011 end date 03/06/2012
 Gross earnings \$ _____ plus tips 0 divide by number of days
 in wage history 84 X 30.44 equal Average Monthly Wage: \$ 0.00

HOURLY RATE - Hourly rate of pay \$ 0.00 x number of hours
 projected to work per week 0 divide by 7 x 30.44 equal Average Monthly Wage: \$ 0.00

VALUE OF ROOM AND/OR BOARD

Room (Monthly Value) _____ \$ 0.00
 Board (Monthly Value) _____ \$ 0.00

VALUE OF MEALS - If meals are provided by the employer, see NAC 616C.423(l)(p) and use the following formula:

Amount for meals per day _____ x number of days hired
 to work per week _____ equals _____ divide by 7 x 30.44 equal Meals per Month: \$ 0.00

ADD applicable lines to obtain total Average Monthly Wage: \$ 0.00

DAILY RATE - is to be calculated in the following manner:

Statutory Deemed Wage= \$2,000.00 Statutory Maximum Daily Rate: \$ 43.60
 7/1/2011 6/30/2012 x7 = \$306.60 x14 613.20

Date: November 11, 2013 Signature Karen Barbee Title Claims Adjuster

Alternative Service Concepts
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November 13, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Date of Injury: 3/6/2012
Employer: Douglas County

Dear Mr. Felton:

As a result of your permanent partial disability (PPD) evaluation by Dr. Betz on 11/5/2013, it has been determined you have **one percent (1%)** whole-body basis disability. This award entitles you to annual payments of \$144.00 until 8/26/2033. You also have the right to request a lump-sum payment in the amount of approximately \$1,800.53 [depending on the date of your election] in lieu of installment payments.

You may accept this award, or, if you disagree with the award, you have the right to appeal. If you choose to accept the award, complete the enclosed "Election of Method of Payment of Compensation" and "Reaffirmation of Lump-sum Request", and return the signed, witnessed originals of the forms to this office. If you choose to appeal the award, you must complete and return the enclosed appeal form to the Department of Administration, at the address listed on the form, within seventy (70) days from the date of this letter.

A copy of NRS 616C.390, the "Injured Worker's Right to Reopen a Claim Which Has Been Closed", is also enclosed.

If you have questions or need further information, you may contact our office at 800-291-6826.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enclosures: Appeal form D-12a, D-13 (Reopening Rights), PPD rating report, PPD Calculation, Election of Method, Reaffirmation, Effects of Accepting Payment of Permanent Partial Disability in a Lump Sum

cc: File
Employer: Douglas County

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Injured Employee: Gregory Felton
Claim No: C1431206693 01
Employer: Douglas County

Date: 11/11/13
Date of Injury: 3/6/2012
Insurer: PACT

ELECTION OF METHOD OF PAYMENT OF COMPENSATION
(Pursuant to NRS 616C.495)

I, Gregory Felton (Name) _____ (Social Security Number) _____

have been advised that I may elect to receive my permanent partial disability compensation 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 8/26/2033 and will be paid at the *annual rate of 3/6/2012 and terminate on _____
for a total installment payment of \$ 3,092.50 \$ 144.00

If I elect to receive my entitlement on a lump sum basis I will receive approximately \$ 1,800.53

This will vary depending on the date I elect to receive my lump sum payment. According to NRS 616C.495, if I elect to receive my payment for permanent partial disability in a lump sum, all of my benefits for compensation terminate.

My acceptance of the 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 pe

- (a) My right to request reopening in accordance with the provisions of NRS 616C.390; and
- (b) Any services for counseling, training or other rehabilitation services provided by the insurer.

Further, I realize that I have twenty (20) days after the mailing or personal delivery of this notice within which to retract or reaffirm my request for a lump sum. I also realize that I will not be paid a lump sum until I have reaffirmed this election in writing.

Check one to indicate method of payment desired and sign below.

- 1. On an installment basis as provided by NRS 616C.490.
- 2. A lump sum of approximately ** \$ 1,800.53 as calculated pursuant to NRS 616C.495.

DATE: _____ INJURED EMPLOYEE: _____
DATE: _____ WITNESS: _____

*Insurer: Designate whether monthly or annual rate.
** Amount depends on actual effective date (date elected).

Injured Worker: Gregory Felton
 Claim No: C1431206693 01
 Employer: Douglas County
 Date of Injury: 3/6/2012

REAFFIRMATION OF LUMP SUM REQUEST

NRS 616.607 requires:

2. If the injured worker elects to receive his payment for a permanent partial disability in a lump sum, all of his benefits for compensation terminate. His acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting he waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability except:
 - (a) His right to reopen his claim according to the provisions of NRS 616C.390; and
 - (b) Any services for counseling, training or other rehabilitation services provided by the insurer.

The injured worker must be advised in writing of the provisions of this subsection when he demands his payment in a lump sum, and has **20 days after the mailing or personal delivery of this notice within which to retract or reaffirm his demand before his election becomes final.**

Pursuant to this statute, if you still choose to accept the lump sum amount, please reaffirm your decision in the space provided below.

Failure to return this form or not checking one of the boxes will result in the processing of your award for installment payments.

- I reaffirm the request for my lump sum payment.
- I do **not** reaffirm the request for my lump sum payment.

Signature of Injured Worker

Date

Witness

Date

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee
3 of the State of Nevada, Nevada Attorney for Injured Workers, and
4 that on this date I deposited for mailing at Carson City, Nevada,
5 a true and correct copy of the within and foregoing CLAIMANT'S
6 FIRST EXHIBIT addressed to:

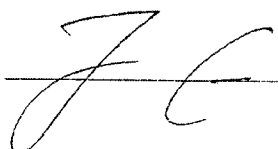
7 GREGORY FELTON
8 PO BOX 2130
9 STATELINE NV 89449

10 DOUGLAS COUNTY
11 PO BOX 218
12 MINDEN NV 89423

13 ROBERT BALKENBUSH ESQ
14 6590 S MCCARRAN BLVD STE B
15 RENO NV 89509

16 ALTERNATIVE SERVICE CONCEPTS
17 1755 E PLUMB LN STE 148
18 RENO NV 89502

19 DATED: May 13, 2014

20 SIGNED:  _____

21
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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

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

JOHN D HOOKS ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and caused a copy of the aforementioned document to be served by e-filing to:

rbalkenbush@thorndal.com
ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

DATED: February 3, 2017

SIGNED: Nancy L. Sherwood

Iactox

1148 De Soto Avenue, Grass Valley, CA 95931
Phone: 909-323-6942 • FAX: 913-598-3115

FACTORY LABORATORY
Laboratory Report

Dr. Jeffrey R. Cummings, M.D., Ph.D., Medical Director
CLIA 05DC 040705 • SAMHSA Certified • CAP 06673-01
California DPH 0LF4442

31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG
Age, DOB:
Sex: M
Other ID:

Patient ID:
LAB ID: E3094781
Collected: 05/28/2013
Received: 06/03/2013
Reported: 06/04/2013
Requisition#:

Requesting Physician: DR JEFFREY R CUMMINGS

Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

	CUTOFF	UNITS	METHOD
PHENOTHIAZINES (CONT.)			
FLUPHENAZINE	1	ug/ml	HPLC
HALDOL	1	ug/ml	HPLC
MESORIDAZINE	1	ug/ml	HPLC
PERPHENAZINE	1	ug/ml	HPLC
PROCHLORPERAZINE	1	ug/ml	HPLC
PROMAZINE	1	ug/ml	HPLC
PROMETHAZINE	1	ug/ml	HPLC
THIORIDAZINE	1	ug/ml	HPLC
TRIFLUOPERAZINE	1	ug/ml	HPLC
TRAMADOL			
TRAMADOL	50	ng/ml	LCMS
TRICYCLICS			
AMITRIPTYLINE & NORTRIPTYLINE	1	ug/ml	HPLC
DOXEPIN & DESMETHYLDXEKPIN	1	ug/ml	HPLC
FLUOXETINE & NORFLUOXETINE	1	ug/ml	HPLC
CLONIPRAMINE	1	ug/ml	HPLC
PROTRIPTYLINE	1	ug/ml	HPLC
ZOLPIDEM	50	ng/ml	HPLC

5/28/2013
06/04/2013

LAST PAGE OF REPORT

Working Together Towards Compliance and Comfort

URINE TOXICOLOGY REVIEW

Patient Name: FELTON, GREG

Date of Birth

Date of Evaluation: 6/4/2013

Please Note: It is necessary for a physician to review and interpret the toxicology test immediately as to determine the management of the patient's pharmacological treatment and assessment.

The patient is being evaluated for medication management and/or ongoing medication therapy. A qualitative drug screen was administered to the above named patient. The test results are to follow. The results of this drug screen will be used in part during the next scheduled appointment to determine consistent medication management for the patient's prescription drug therapy.

Urine drug testing (UDT) is used to assist in monitoring adherence to a prescription drug treatment regimen (including controlled substances), to diagnose substance misuse (abuse), addiction and/or other aberrant drug-related behavior, to guide treatment, and to advocate for patients.

The test was conducted predicated on the ACOEM guidelines set forth in Chapter 5 and Table 5-1 of the Occupational Medicine Practice Guidelines: Evaluation and Management of Common Health Problems and Functional Recovery in Workers, Second Edition.

Random drug testing screens are recommended by the Official Disability Guidelines (ODG Treatment in Workers' Compensation, Pain Chapter, 2009).

CHRONIC PAIN MEDICAL TREATMENT GUIDELINES - Drug testing (pg. 43) -Recommend screening to differentiate between dependence and addiction with opioids. The screening instruments below have been developed or are in the development stages to aid in differentiation between drug dependence and addiction. See also Opioids, red flags for addiction; Opioids, screening for risk of addiction; Opioids, patients at high-risk for misuse; & Substance abuse (tolerance, dependence, addiction).

Chelminski multi-disciplinary pain management program criteria: (Chelminski, 2005)

Criteria used to define serious substance misuse in a multi-disciplinary pain management program: (a) cocaine or amphetamines on urine toxicology screen (positive cannabinoid was not considered serious substance abuse); (b) procurement of opioids from more than one provider on a regular basis; (c) diversion of opioids; (d) urine toxicology screen negative for prescribed drugs on at least two occasions (an indicator of possible diversion); & (e) urine toxicology screen positive on at least two occasions for opioids not routinely prescribed.

RESULTS for GREG FELTON:

<i>ACETAMINOPHEN</i>	✓ Negative	Detected
<i>ALCOHOL</i>	✓ Negative	Detected
<i>BARBITURATES</i>		
Amobarbital	✓ Negative	Detected
Butobarbital	✓ Negative	Detected
Butalbital	✓ Negative	Detected
Pentobarbital	✓ Negative	Detected
Phenobarbital	✓ Negative	Detected
Secobarbital	✓ Negative	Detected
<i>CARISOPRODOL</i>		
Carisoprodol	✓ Negative	Detected
Meprobamate	✓ Negative	Detected
<i>BENZODIAZEPINES</i>		
Nordiazepam	✓ Negative	Detected
Oxazepam	✓ Negative	Detected
Lorazepam	✓ Negative	Detected
Alphahydroxyalprazolam	✓ Negative	Detected
Temazepam	✓ Negative	Detected
7-Amino Clonazepam	✓ Negative	Detected
<i>METHADONE</i>		
Methadone	✓ Negative	Detected
EDDP	✓ Negative	Detected
<i>PHENOTHIAZINES</i>		
Chlorpromazine	✓ Negative	Detected
Clozapine	✓ Negative	Detected
Fluphenazine	✓ Negative	Detected
Haldol	✓ Negative	Detected
Mesoridazine	✓ Negative	Detected
Perphenazine	✓ Negative	Detected
Prochlorperazine	✓ Negative	Detected
Promazine	✓ Negative	Detected
Promethazine	✓ Negative	Detected
Thioridazine	✓ Negative	Detected
Trifluoperazine	✓ Negative	Detected
<i>PROPANOXYPHENE</i>		
Norpropoxyphene	✓ Negative	Detected
<i>OPIATES</i>		
Codeine	✓ Negative	Detected
Morphine	✓ Negative	Detected
Hydrocodone	✓ Negative	Detected
Hydromorphone	✓ Negative	Detected
<i>OXYCODONE</i>		
Oxycodone	✓ Negative	Detected
Oxymorphone	✓ Negative	Detected
<i>TRIMIPRAMINE</i>	✓ Negative	Detected
<i>TRICYCLICS</i>		
Amitriptyline and Nortriptyline	✓ Negative	Detected
Doxepin and Norkosipin	✓ Negative	Detected
Fluoxetine and Norfluoxetine	✓ Negative	Detected
Clomipramine	✓ Negative	Detected
Imipramine	✓ Negative	Detected
Neproziline	✓ Negative	Detected

use of the best available evidence to support a medical professional's decision making is often referred to as evidence-based medicine (Sackett et al 1996). The objective of which has been defined as to minimize the effects of bias in determining an optimal course of care. In this case, bias meaning lack of objectivity and other factors that may distort conclusions. A comprehensive drug screen conducted is predicated on the idea of evidence-based medicine. The Center for Disease Control (CDC) attributes the 62.5% rise in drug overdose deaths between 1991-2004 to a higher use of prescription painkillers.

- CDC, *Morbidity and Mortality Weekly Report*, Feb 9th 2007

The CDC recommends tightening regulatory measures. Improving physician awareness, supporting treatment for drug dependence and possibly modifying drugs themselves to reduce the potential for abuse.

- CDC, *Morbidity and Mortality Weekly Report*, Feb 9th 2007

"Drug testing should never be used as a punitive measure but rather to enhance patient care."

- "Urinary Drug testing in Pain Management." Practical Pain Management, Florete, Orlando G. Jr., MD, April 2005

"The Federation of State Medical Boards (FSMB) adopted a policy for prescribing controlled substances stressing the critical importance in documenting, evaluating, and monitoring controlled substances in the management of pain patients. This is consistent with the guidelines set forth by federal agencies including the Drug Enforcement Agency (DEA). Part of this policy - dealing with the implementation of monitoring drug compliance - is the regular use of UDT."

- "Urinary Drug testing in Pain Management." Practical Pain Management, Florete, Orlando G. Jr., MD, April 2005

- "Role of Urine Toxicology Testing in the Management of Chronic Opioid Therapy". The Clinical Journal of Pain, Katz, Nathaniel MD; Fanciullo, Gilbert MD, July-August 2002

"Urine toxicology testing may reveal the presence of illicit drugs, such as heroin or cocaine, or controlled substances not prescribed by the physician ordering the test (e.g., hydromorphone in a patient prescribed oxycodone)."

- "Role of Urine Toxicology Testing in the Management of Chronic Opioid Therapy". The Clinical Journal of Pain, Katz, Nathaniel MD; Fanciullo, Gilbert MD, July-August 2002

Rule out drug diversion by documenting that you are able to recover the prescribed medications with a urine drug screen. Urine screens also show that you are alert to a patient's potential use of illicit substances.

- "Prescribing Opioids Wisely: Strategies for helping your patients and avoiding problems with regulators". Clinical Practice, Cole, B. Elliot MD, MPA, Winter 1998

In preparation of this report, I reviewed all test results, as well as the patient's medical chart.
Time spent reviewing records: 30 minutes

Disclosure Statement:

Upon presentation to me of the final report, I thoroughly reviewed the document prior to affixing my signature.

I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others.

I hereby declare under penalty of perjury that I have not offered, delivered, received or accepted any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referral of this evaluation or consultation.

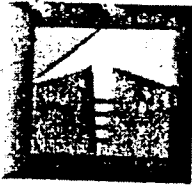
I declare under penalty of perjury that this report is true and correct to the best of my knowledge.

Thank you for allowing us to participate in the care of your patient. If there are any questions related to this patient's care, please do not hesitate to call me.

Sincerely,

Jeffrey R Cummings MD

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JUL 17 2002



Tahoe Fracture & Orthopedic Medical Clinic, Inc.
Relieving your pain. Restoring your function. Returning your life.

C143-12-066937

Tahoe Fracture and Orthopedic Medical Clinic
973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

July 25, 2013
Page 1
Chart Document

Greg Felton

Male 49 Years Old DO

Patient ID: 236336

Home: (775) 588-3121

07/01/2013 - Office Visit: RE L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: IN PROGRESS DOCUMENT. Contents are preliminary

07/01/13

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today for followup of his left knee arthroscopy back in October of 2012. The patient still complains of discomfort in the back of his knee. He states that it is tight when he stretches it out, and he has some pain with jogging but otherwise has been able to do bicycling without much discomfort. He still is adamant that he had no pain in his left knee prior to this injury and surgery.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

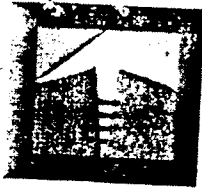
Patient is

Review of Systems

RECEIVED

JUL 29 2013

152



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& Orthopedic
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973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

July 25, 2013

Page 2
Chart Document

Greg Felton

Male 49 Years Old DOB:

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a 49 years old male.

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male. He is alert and oriented, in no acute distress. He ambulates with no antalgia or use of devices. Left knee, the patient has slight varus deformity. He has no tenderness at the joint line today. He does have a significant and firm Baker's cyst. It is somewhat tender to palpation. Calf and thigh are otherwise soft. There is no edema in the lower extremity. Left knee does show some soft tissue swelling compared to the right knee. There is no increase in warmth. There is no varus or valgus instability. There is some crepitation with flexion and extension.

IMPRESSION:

Left knee arthroscopy on October 17, 2012 with some grade-IV chondromalacia and persistent pain.

PLAN:

I still think the patient would benefit from viscosupplementation injections. They have been denied once already, and we still think this would help alleviate the patient's arthritic symptoms, which I believe were likely exacerbated as a result of this injury. Unfortunately, if these injections are not approved, we will have to keep the patient and refer him for an FCE. We have no restrictions for the patient today from our standpoint, but he does have some subjective pain and arthritis per x-ray, MRI, and knee arthroscopy.

Stephanie Tonn, PA-C

For Jeffrey R. Cummings, M.D.

ST/JRC:sa/sb

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JUL 27 2013

100



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Phone: (775) 783-6190 Fax: (775) 783-6191

Return to Work 7/1/2013 2:30:19 PM

Greg Felton: HM: (775) 588-3121 WK: None City: Stateline Provider: CUMMINGS, JEFFREY R.
M DOB: ID#: 236338 SSN:

Work Status Form

Review

Restrictions are: Permanent

This injury is occupational.

Diagnosis: KNEE PAIN (ICD-719.46)

Status

Comments: Patient is released to full duty. No restrictions-FCE

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 7/1/2013 2:30:19 PM

RECEIVED

7/1/13

105

Alternative Service Concepts

Flexibility · Expertise · Integrity

July 11, 2013

Patricia Morales, M.D.
Specialty Health Clinic
330 E. Liberty St., #100
Reno, NV 89501

RE: Employee: GREGORY FELTON
Claim No: C1431206693 01
D.O.I.: 3/6/2012
Employer: DOUGLAS COUNTY
Age at Injury: 48
Occupation: VOLUNTEER SEARCH AND RESCUE MEMBER
Body part: Left Knee

Dear Dr. Morales:

Thank you for agreeing to see this patient for a second opinion on July 22, 2013 at 2:00 PM.

A copy of the medical file has been previously provided for your review. You will note that Mr. Felton underwent a left knee arthroscopy, partial meniscectomy, on 10/12/12. There are also MRI reports pre-operative and post-operative for your review. Please also note that it was reported that Mr. Felton went skiing in December and aggravated his knee. Upon evaluation of the patient and review of the medical records, your response to the following questions would be greatly appreciated:

1. What is the industrial diagnosis?
2. Are there any pre-existing or non-industrial conditions present, and if so what is their impact on the industrial condition?
3. What treatment do you recommend for the industrial condition?

Thank you for your time and consideration in this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File DOUGLAS COUNTY GREGORY FELTON

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Alternative Service Concepts
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July 11, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01 D. O. I.: 3/6/2012 Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

An appointment has been scheduled for you with **Patricia Morales, M.D.** on **Monday, July 22, 2013 at 2:00 PM** for a second opinion. The doctor's office is located at **Specialty Health Clinic, 330 E. Liberty St., # 100, Reno, NV 89501**, and the telephone number is **775-398-3630**

Please plan to **arrive 15 minutes early** to the appointment to complete the intake process. For this visit you will need to **bring with you (i.e. hand carry) all X-ray, MRI or other diagnostic films** that have been taken since your industrial accident. You are requested to **contact the doctor's office on receipt of this letter, to confirm that you will attend, and that the doctor will be available** for the appointment.

If for any reason you are unable to make the appointment, please contact the doctor's office as soon as possible, in advance, to reschedule, advising our office of any change in scheduled dates and the reason you cannot attend.

Failure to attend the appointment or to call ahead of time to notify of non-attendance may result in charges that will be deducted from prospective benefits to which you may become entitled.

Although we anticipate your cooperation in attending this appointment, please note that if you fail to attend this appointment, your benefits may be suspended, pursuant to NRS 616C.140, until such time as the appointment is re-scheduled and the evaluation completed.

If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File DOUGLAS COUNTY Patricia Morales, MD SHC MCO

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Alternative Service Concepts

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July 31, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01 D. O. I.: 3/6/2012 Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

An appointment has been scheduled for you with **Patricia Morales, M.D.** on **Monday, August 19, 2013 at 3:00 PM** for a second opinion. The doctor's office is located at **Specialty Health Clinic, 330 E. Liberty St., # 100, Reno, NV 89501**, and the telephone number is **775-398-3630**

Please plan to **arrive 15 minutes early** to the appointment to complete the intake process. For this visit you will need to **bring with you (i.e. hand carry) all X-ray, MRI or other diagnostic films** that have been taken since your industrial accident. You are requested to **contact the doctor's office on receipt of this letter, to confirm** that you will attend, and that the doctor will be available for the appointment.

If for any reason you are unable to make the appointment, please contact the doctor's office as soon as possible, in advance, to reschedule, advising our office of any change in scheduled dates and the reason you cannot attend.

Failure to attend the appointment or to call ahead of time to notify of non-attendance may result in charges that will be deducted from prospective benefits to which you may become entitled.

Although we anticipate your cooperation in attending this appointment, please note that if you fail to attend this appointment, your benefits may be suspended, pursuant to NRS 616C.140, until such time as the appointment is re-scheduled and the evaluation completed.

If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File DOUGLAS COUNTY Patricia Morales, MD SHC MCO

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

SpecialtyHealth

Specialty
330 E Liberty St
200
Reno, NV 89501
Phone: 775-398-3630
Fax: 775-322-2663

2143-12-06693-01

FELTON, GREGORY
PO BOX 2130
STATELINE, NV 89449
(49 years)
775-588-3121
Employer DOUGLAS COUNTY

Visit Date 08/19/2013 Visit With Morales MD, Patricia (16) Visit At SH (s1) SH

Visit Description
WC New

VITALS

Smoking Status entered on 08/19/2013 recorded as Never smoker

DATE: 08/19/2013 TIME: 15:39:00 BP (SYS/DIA): 125/92 (L) HR: 57 RESP: 12 HT: 69.5 WT: 172 BMI: 25

SOCIAL HISTORY

HANDEDNESS: RIGHT
MARITAL STATUS: married
OCCUPATION: SEARCH & RESCUE FOR DOUGLAS CO., Ski Patrol for Heavenly Valley Resort, HP Process Evaluator
TOBACCO USE: non smoker

PAST MEDICAL HISTORY

ALLERGIES: none
CURRENT MEDS: none
MEDICAL HISTORY: none
SURGICAL HISTORY: Left Knee Scope 10/12, vasectomy 2000, Right Wrist ORIF

FAMILY HISTORY

longevity

ACTIVE PROBLEMS

Derangement of posterior horn of medial meniscus 717.2
Pain in joint, lower leg 719.46
Synovitis and tenosynovitis, unspecified 727.00

RX PRESCRIPTIONS

Mobic 15 mg (1 tablet DAILY) Qty: 30, Refills: 0

C/C OR REASON FOR VISIT

LEFT KNEE
2ND OPINION

HISTORY OF PRESENT ILLNESS

RE: 2ND OPINION

Injured his knee on the job in March 2012, had surgery for medial meniscus in October 2012, and persists with chronic pain. He has swelling in the back of his knee that gets worse and then when it is bad it is very annoying and painful. The knee feels like it locks, or stiffens and catches with the sensation of grabbing. It does not give out on him. He has not been able to go back to S & R since this happend. Going down hill is considerably worse then up hill. With biking w/o resistance he is fine, adding resistance and weight bothers him.

He had one steroid injection through Dr. Cummins office which helped briefly. The constant swelling that seems to just worsen and return to a baseline that is still swollen and the aching that accompanies this, is what bothers him the most. It is effectively contolling his life. He did ski some this past year, but nothing for recreation, nothing of note to him, as he was very conservative due to the swelling and aching. Of note it was not quite so bad at that time. He did not have any increase in pain, nor did he have any mishaps. He trains people for the SP and did that job without incident. He has been skiing for 30 years.

REVIEW OF SYSTEMS

RE: 2ND OPINION

GENERAL: no insomnia, no snoring, no chronic fatigue
CARDIOVASCULAR: no chest pain, no leg swelling, no palpitations,
RESPIRATORY: no cough, no shortness of breath, no wheeze.
ENDOCRINE: no weight changes, no night sweats, no temperature sensit
ENT: no hearing changes, no tinnitus, no dental issues, no hoarseness
EYES: no vision changes, no redness
GASTROINTESTINAL: no black stools, no blood in stool, no constipation, ;
heartburn, no nausea/vomiting.
GENITOURINARY: no incontinence, no nocturia, no painful urination.
HEME ONCOLOGY: no anemia.
MUSCULOSKELETAL: no joint/muscle pain, no back/ neck pain.
NEUROLOGICAL: no fainting, no headache, no numbness/weakness

PHYSICAL EXAM

RE: 2ND OPINION

GEN: Well developed, good posture, still antalgic gait to the left
STANCE: Legs are straight with moderate Int torsion of his tibia, no varus nor
valgus

LEFT KNEE: Marked swelling, tense effusion with palpable tension from swelling
posteriorly. Feels at least to be close to 80 cc of fluid. Marked medial joint line
tenderness, nothing particular tender on the lateral joint line, some slight tenderness
at the anterolateral joint line. No instability to the collaterals, but the remainder of
the exam is not done due to the tense effusion and how that impacts pain and
function

NEURO: NV intact, skin without changes

ASSESSMENT

SpecialtyHealth

Specialty Health
330 E Liberty St
200
Reno, NV 89501
Phone: 775-398-3630
Fax: 775-322-2663

FELTON, GREGORY
PO BOX 2130
STATELINE, NV 89449
Born (49 years)
775-588-3121
Employer DOUGLAS COUNTY

Visit Date 08/19/2013 Visit With Morales MD, Patricia (16) Visit At SH (s1) SH Visit Description WC New

To Summarize his case: He injured his left knee with an training exercise for Search & Rescue in March of 2012. Under the care of Dr. Cummins he failed conservative care with increasing symptoms and finally had a MRI which showed a complex medial meniscus tear. He underwent arthroscopic subtotal medial meniscectomy in October of 2012. Since that time he has smoldered with continued pain and now ever increasing and unrelenting swelling. He had a second MRI post-op, due to his symptoms, in Feb 2013. He has had one steroid injection with brief improvement. He has not had any other medical treatment and at this time Dr. Cummins is considering Synvisc injections or something similar.

Upon review of the studies and the patient I would say that the industrial diagnosis of a medial meniscus tear is correct. The patient had photos from the surgery, intra-articular, which I was able to review. This shows the medial meniscus tear and removal of shredded portions. It also shows the chondral lesions on the patella and medial condyle. If one compares the two MRIs you will see that there is dramatic change to the medial compartment, most notably the edema within the bone of the medial compartment on both the femoral and tibial aspects. Likewise you see the thinning of the cartilage of the articular surface. More specifics to this are difficult with an MRI. There may in fact be some discrete areas of erosion. The question is why does this happen? Without question it is linked to the meniscus injury and then the loss of meniscus. At this time I do NOT think that hylauronic acid product injections (synvisc) are indicated. There is no medical evidence to support its use in this setting. I recommend that he go on crutches for complete non-weight bearing to allow healing. In addition he would benefit from oral NSAID. Aspiration and steroid injection will likely help at some point as well. Then depending on his progress and response to this strict rest he could begin partial weight bearing and advance slowly. He might benefit from yet another arthroscopy for chondroplasty including possible micro-fx, and less likely a mosaicplasty as the problem seems to be more diffuse than discrete. As I explained to him this is a very difficult problem to treat and the exact outcome difficult to predict. In his favor is his excellent health, including BMI and non-smoking history. His knee problem might completely turn around with the strict rest and graduated weight bearing with meds. But there is no easy quick answer.

To answer the questions by his claims adjuster:

1. The industrial diagnosis? Medial Meniscus tear with subtotal Medial Meniscectomy and resultant medial compartment (knee) inflammation and severe Synovitis
2. What are the pre-existing or non-industrial conditons and their impact on this?
This is more difficult to answer. The Chondromalacia (and chondral erosions) seen at the time of surgery could have been pre-existing, HOWEVER, his injury was in March of 2012 and he did not get a MRI until Septmeber and surgery wasn't until October of 2012. Thus he could have easily caused the damage to the cartilage seen at arthroscopy from his resultant injury 8 months prior. This in conjunction with his history of no problems prior to this incident nor the presence of any significant risk factors leads me to conclude that there is no contribution of a pre-existing condition and that the problems and diagnosis he has now are the direct result of his industrial injury.

SpecialtyHealth

Specialty Health
330 E Liberty St
200
Reno, NV 89501
Phone: 775-398-3630
Fax: 775-322-2663

FELTON, GREGORY
PO BOX 2130
STATELINE, NV 89449
Born ((49 years)
775-588-3121
Employer DOUGLAS COUNTY

Visit Date 08/19/2013 Visit With Morales MD, Patricia (16) Visit At SH (s1) SH

Visit Description
WC New

3. Recommended treatment? As stated above I think he needs a protracted period of non-weightbearing status for this left leg followed by progressive partial WB, depending on his response. Also he needs to be on a NSAID that can help decrease this synovial reaction. He will likely need an aspiration and steroid injection, but these cannot be given too freely, but strategically placed will help calm down the synovial response. And finally, he might, depending on his response to initial treatment modalities, need another scope. That would be determined after these other first recommended therapies.

DIAGNOSES

Synovitis NOS	727.00
Joint pain-l/leg	719.46
Derang post med meniscus	717.2

PLAN

VISIT CODE

Occupational Medicine Services Evaluation and Management Evaluation and Management, new patient - complex (99204)

FOLLOW UP

Follow-up pm

E-SIGNATURES

Authenticated By: Morales MD, Patricia @ 8/21/2013 10:34 AM

RECEIVED

Specialty Health
330 E. Liberty St. Ste. 100
Reno, NV 89501
Ph# 775-398-3630
Fax# 775-322-2663

RETURN TO WORK

IT IS THE INJURED WORKER'S RESPONSIBILITY TO INFORM THE EMPLOYER OF CURRENT WORK STATUS

Patients Name: FELTON, GREGORY "WC"
Employer: DOUGLAS COUNTY
Diagnosis: knee pain

Date of Injury: 03/07/2012
Date of Appointment: 8/19/2013

EMPLOYEE IS ABLE TO: walk with crutches only, he needs to be non weightbearing

Restrictions Are: Temporary

Date of next appt: pending

Restrictions expire at the date of next appointment unless otherwise noted.

Signed: Patricia Morales, MD

RECEIVED
By SHMCO on 08/21/13, Aug 20, 2013

RECEIVED
AUG 21 2013
BSC

AUG. 22. 2013 4:30PM

SPECIALTY HEALTH 7753296203

NO. 9065 P. 2/3



SpecialtyHealth

330 East Liberty Street, Suite 200
Reno, Nevada 89501-3221

T 775.398.3601
F 775.329.9921

T 888.426.2973
F 888.861.1265

August 22, 2013

Jeffrey Cummings, MD
Tahoe Fracture and Orthopedic Medical Clinic
973 Mica Drive
Carson City, NV 89705

Case Name: Gregory Felton
Employer: Douglas County
Claim Number: C143-12-06693-01
Date of Injury: June 14, 2012

Dear Dr. Cummings,

I am the Medical Director for the Douglas County's workers' compensation claims.

On August 18th, 2013, Mr. Felton was seen in consultation by Dr. Patricia Morales. I have enclosed the report of the findings and recommendations which include:

Findings:

- Industrial Diagnosis: left knee medial meniscus tear with subtotal medial meniscectomy and resultant left knee medial compartment inflammation and severe synovitis.
- When the pre-op and post-op MRI films are compared, there is dramatic change to the medial compartment, most notably the edema within the bone of the medial compartment on both the femoral and tibial aspects.
- There may be discrete areas of cartilage erosion.
- Hyaluronic acid product injections (Synvisc) are NOT indicated.

Recommended:

- A protracted period of non-weightbearing status for the left leg followed by progressive partial weightbearing, depending on Mr. Felton's response.
- Recommend NSAIDS to help decrease the synovial reaction.
- Mr. Felton will likely need an aspiration and a strategically placed steroid injection to further calm down the synovial response.
- Depending on his reaction to the above mentioned treatment recommendations, Mr. Felton may need another scope.

RECEIVED
SEP 19 2013
asc

RECEIVED
By SH MCO at 12:08 pm, Aug 30, 2013

08/22/2013 4:34PM (GMT-07:00)

Jeffrey Cummings, MD
Feiton, Gregory
August 22, 2013
Page 2

Please review these findings and recommendations and provide your comments after checking one of the boxes below. In order to expedite consistent care for this injured worker, please return your response by August 29, 2013.

I concur with the findings and recommendations.

I do not concur with the findings and recommendations:

Comments: I still feel mylaric
acid injection would
beneficial

Signed [Signature]

Dated 8/29/13

Thank you in advance for your prompt attention and cooperation in this matter. Should you have any questions, please do not hesitate to contact me at 775-329-6200.

Sincerely,

[Signature]

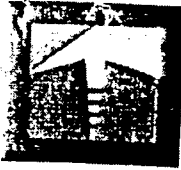
E. James Greenwald, M.D.
Medical Director
SpecialtyHealth MCO
330 East Liberty, Suite 200
Reno, NV 89501

Enclosure: As noted above.

CC: ASC
Patient
Attorney, if applicable
File

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SEP 09 2013
ASC

08/22/2013 4:34PM (GMT-07:00)



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Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

September 30, 2013

Page 1
Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DOE

Patient ID: 236336

09/20/2013 - Office Visit: Re: L Knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Gardnerville
Status: ON HOLD DOCUMENT. Contents are preliminary

09/20/13

HISTORY:

Greg Felton is here with regards to his left knee. His left knee pain has improved. The swelling has decreased. His function has improved. He is back active. He is doing much better. He has been on Mobic using a magnetic brace or wrap around the knee which seems to have helped as well.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

Patient is

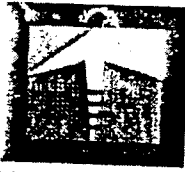
Review of Systems

General: Patient denies sweats, chills, fevers, malaise, weight loss, appetite loss, fatigue.

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SEP 27 2013

1:30



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September 30, 2013

Page 2

Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DC

Patient ID: 236336

Eyes: Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

Gastrointestinal: Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

Genitourinary: Patient denies urinary urgency, urinary frequency.

Musculoskeletal: Complains of joint swelling, joint pain .

Skin: Complains of Normal.

Neurologic: Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

Psychiatric: Patient denies anxiety, depression.

Endocrine: Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

Heme/Lymphatic: Patient denies fevers, abnormal bruising.

Allergic/Immunologic: Complains of Patient complains of seasonal allergies.

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a pleasant 50 years old well developed, well nourished male.

Coordination: Normal

Orientation: 3+

Gait: Normal

LEFT KNEE EXAM

Gait: Normal

Skin: Unremarkable

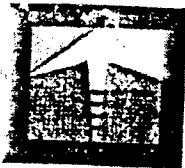
Alignment:

Normal

Muscle: Normal

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OCT 07 2013

ISS



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Phone: 7757836190 Fax: 7757836191

September 30, 2013

Page 3
Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DOB

Patient ID: 236336

Quadricep Strength: 5/5

Fluid:

Effusion: Normal

Swelling: Normal

Popliteal Cyst: Normal

Pes Anserine: Absent

Tenderness:

None

Range of Motion:

Active Flexion: Full

Active Extension: Full

Passive Flexion: Full

Passive Extension: Full

Crepitus:

None

Patella:

Alignment: Normal

Tracking: Normal

Stability: Normal

Apprehension: Negative

Compression: Negative

Collateral Ligaments:

Varus Force: Stable in full extension, Stable in 30 degrees flexion

Valgus Force: Stable in full extension, Stable in 30 degrees flexion

Cruciate Ligaments:

Lachman: Negative

Anterior Drawer: Negative

Posterior Drawer: Negative

Pivot Shift: 0

Posterior Sag: 0

McMurray's:

Medial: Negative

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OCT 07 2013



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Phone: 7757836190 Fax: 7757836191

September 30, 2013

Page 4

Office Visit

Greg Felton Home: (775) 588-3121
Male 50 Years Old DO

Patient ID: 236336

Lateral: Negative

Lymphatic: Normal

Reflexes:

Normal

Neurovascular Status:

Intact

DP Pulse: 2+

Capillary Refill: Immediate

Sensation: Intact

PHYSICAL EXAMINATION:

His exam today, has no swelling. Ligament is stable, no tenderness in the medial joint line. He is neurovascularly intact. Sensation is intact.

IMPRESSION:

Left knee status post partial medial meniscectomy, has some chondromalacia throughout the knee.

PLAN:

At this time he is doing great. Swelling has resolved. The patient has settled down. We will let him continue full duty. No restrictions. He has maximally medically improved. We will see him back here as needed.

Jeffrey R. Cummings, M.D.

JRC:him

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OCT 17 2013

118



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Tahoe Fracture and Orthopedic Mica
973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: (775) 783-6190 Fax: (775) 783-6191

Return to Work 9/20/2013 10:55:08 AM

Greg Felton HM: (775) 588-3121 WK: None City: State/line: Provider: CUMMINGS, JEFFREY R.
M: DOB ID#: 238338 SS

Work Status Form

Review

Is this employee's condition permanent and stationary? Yes

This injury is occupational.

Diagnosis: KNEE, MMT (ICD-836.0)

Continue with no restrictions.

Additional Instructions: MMI no restriction

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 9/20/2013 10:55:08 AM

RECEIVED
OCT 21 2013
4:50

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October 8, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/6/2012

Dear GREGORY FELTON:

As you know, your treating physician has discharged you from care for your industrial injury referenced above. Hence, it is now time to refer you for permanent partial disability (PPD) rating to settle and close this claim.

To facilitate this process, we would like to seek your agreement to utilize Richard Kudrewicz, M.D., or Jay Betz, M.D. in Reno to perform the rating, who, based upon our experience, conduct accurate and fair ratings.

You are not required to agree with this selection, and, in the alternative to our jointly agreeing to use this physician, you may request we obtain a lottery-like assignment, as set forth in NRS 616C.490, from the Workers Compensation Section of the Division of Industrial Relations (DIR) rotating list of physicians.

If you decline to use the above physician or we do not receive your agreement within the time allowed by statute, we will obtain an assignment from the Workers Compensation Section of the Division of Industrial Relations (DIR) rotating list of physicians.

If you will indicate your agreement or not to use this physician where indicated on the attached letter, we'll be able to proceed with scheduling accordingly. To facilitate this process, please fax or mail the agreement letter back to our office within seven (7) days to facilitate scheduling within the statutory time constraint.

If you have any questions about this process or need further information, please contact me at the direct number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418



Alternative Service Concepts

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October 8, 2013

To:

Alternative Service Concepts, LLC.
1755 East Plumb Lane, Suite 148
Reno, NV 89502

RE: Claimant: GREGORY FELTON
Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/6/2012

To Whom It May Concern:

I agree to the use of Dr. _____ to perform my PPD rating on this claim.

YES _____ NO _____

SIGNED: _____ Date: _____
 Claimant

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

KB



Alternative Service Concepts

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October 8, 2013

To:

Alternative Service Concepts, LLC.
1755 East Plumb Lane, Suite 148
Reno, NV 89502

RE: Claimant: GREGORY FELTON
Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/6/2012

To Whom It May Concern:

I agree to the use of Dr. Betz to perform my PPD rating on this claim.

YES NO

SIGNED: *Gregory Felton* Date: 10/16/13
Claimant

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OCT 17 2013
ASC

RECEIVED
OCT 17 2013

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

State of Nevada
Department of Business and Industry
DIVISION OF INDUSTRIAL RELATIONS

Workers' Compensation Section
400 West King Street, Suite 400
Carson City, Nevada 89703
(775-684-7261 (775) 687-6305 (fax))

REQUEST FOR A ROTATING RATING PHYSICIAN OR CHIROPRACTOR

Name of Requestor: KAREN BARBEE Date October 21, 2013
Address: 1755 E. Plumb Ln., Suite 148 Phone: 775-329-1181 FAX: 775-329-7418
City: Reno State: Nevada Zip: 89502
Requestor is: Insurer/Third-Party Administrator; Injured Employee;
 * Injured Employee's Attorney or Representative; Other (Specify) _____

**Please provide a signed release or power of attorney*

Insurer/Third-Party Administrator/

Association of Self-Insured Employers Name: ASC Certificate #: 17070
Self-Insured Employer's Name: _____ Certificate #: _____
Employer Name: Douglas County
Injured Employee's Name: GREGORY FELTON
Injured Employee's Address: P O BOX 2130
City: STATELINE State: NV Zip: 89449
Social Security Number: _____ Claim Number: C1431206693 01 Date of Injury: 3/6/2012

INSURER'S INITIAL REQUEST

Carol Coats, MD; Patricia Morales, M.D.

Stable & Ratable Received: 10/7/13 Name(s) of Treating & Evaluating Doctor(s): Jeffrey Cummings, MD
Body Part(s) Codes: 53
Body Part(s) to be evaluated: Left Knee
Diagnosis: Medial Meniscus Tear

Name(s) of Doctor(s) who reviewed for possible PPD _____

If a specific specialty is ordered by a hearing or appeals officer, the decision must be attached

FOR ADDITIONAL RATING PHYSICIAN/CHIROPRACTOR REQUESTS ONLY

Date(s) of prior PPD Evaluation(s): _____ Prior Rating Doctor(s): _____
Name of Treating Physician(s)/Chiropractor(s): _____
Body Part(s) Codes: _____
Body Part(s) to be evaluated: _____
Diagnosis: _____

Reason for additional request: _____

If a specific specialty is ordered by a hearing or appeals officer, the decision must be attached

INSURER AND INJURED EMPLOYEE ASSIGNMENT/AGREEMENT OF RATER

Assigned or Agreed by: both parties Date of Assignment/Agreement: 10/16/13
Physician/Chiropractor Assigned or Mutually Agreed to: Jay Betz, M.D.
Assigned Rating Physician/Chiropractor's Phone Number: 775-356-8181

****Notice to requestor: Hard copy will not follow by mail.**
Compliance with NAC 616C.103(3)(1)(2)(3)(4)(5) is required

D-35 (rev 06/13)

Alternative Service Concepts

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October 21, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01 Injured: 3/6/2012 Employer: Douglas County

Dear Mr. Felton:

A Permanent Partial Disability (PPD) Rating Evaluation appointment has been scheduled for you to see **Dr. Jay Betz, M.D.**, on **Tuesday, November 5, 2013 at 2:00 PM** in the office at **3488 Goni Rd., Carson City, NV 89706**, telephone **(775) 356-8181**. Please contact the doctor's office to confirm your appointment on receipt of this letter.

Please plan to **arrive 15 minutes early** to the appointment to complete the intake process. The necessary medical records from the claim file will be provided to the rating physician, however, if there were any x-rays, MRI's or other diagnostic films taken of your injury during your treatment, please arrange to bring those with you (i.e. hand carry them) to the appointment. Failure to bring needed diagnostic films to the appointment may delay settlement of the claim.

If for any reason you are unable to attend the rating examination, please contact the rating physician at least three days in advance to reschedule, advising our office of any change in scheduled dates. Failure to attend the appointment or call ahead of time to reschedule will result in non-attendance charges that will be deducted from any award to which you may be entitled.

As of the date of the rating appointment, whether or not you attend, your claim will be closed for all benefits other than PPD compensation, vocational rehabilitation and reopening to which you may become entitled. Once we have the disability evaluation report, we will notify you regarding the rating and conclusion of your claim.

If you disagree with the above determination, you have the right to appeal by completing the enclosed appeal form and submitting it to the Hearing Officer, Department of Administration, at the address indicated on the form, within seventy (70) days from the date of this letter.

Please note that when you are provided with your PPD award election papers, you will again receive appeal rights on the subject of the rating itself.

If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enclosures: Request for Hearing Form, Reopening Rights
cc: File Jay Betz, M.D. Douglas County

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

REQUEST FOR HEARING - CONTESTED CLAIM

(Pursuant to NAC 616C.274)

REPLY TO: Department of Administration Hearings Division
 1050 E. William Street, Ste. 400
 Carson City, NV 89701
 (775) 687-5966

OR Department of Administration Hearings Division
 2200 S. Rancho Drive, Suite 210
 Las Vegas, NV 89102
 (702) 486-2525

EMPLOYEE INFORMATION		
Employee's Name: GREGORY FELTON		
Address: P O BOX 2130		
City: STATELINE	State: NV	Zip: 89449
Employee's Telephone Number: (775) 588-3121		
Claim #: C1431206693 01	Date of Injury: 3/6/2012	
INSURER INFORMATION		
Insurer's Name: Public Agency Compensation Trust		
Address: 201 South Roop Street, Suite 102		
City: Carson City	State: NV	Zip: 89701-4790
Insurer's Telephone Number: 775-885-7475		

<i>Employer Information</i>		
Employer's Name: Douglas County		
Address:		
City:	State:	Zip:
Employer's Telephone Number:		
HIRD ARTY DMINISTRATOR INFORMATION		
TPA's Name: alternative service concepts, L.L.C.		
Address: 1755 E. Plumb Lane, Suite 148		
City: Reno	State: NV	Zip: 89502
TPA's Telephone Number: 775-329-1181		

Do Not Complete or Mail This Form Unless You Disagree With the Insurer's Determination.

YOU MUST INCLUDE A COPY OF THE DETERMINATION LETTER OR A HEARING WILL NOT BE SCHEDULED PURSUANT TO NRS 616C.315.

Briefly explain the basis for this appeal: []

This request for hearing is filed by, or on behalf of:

The Injured Employee

The Employer

and is dated this _____ day of _____, 20__

 Signature of Injured Employee/Employer

 Injured Employee's/Employer's Rep. (Advisor)

D-12a (Rev. 09/04)

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October 21, 2013

Jay Betz, M.D.
255 Glendale Ave., #12
Sparks, NV 89431

Re: Claimant: GREGORY FELTON Claim #: C1431206693 01
Injured: 3/6/2012 Employer: Douglas County

Dear Dr. Betz:

We have scheduled an appointment for this injured employee to see you on November 5, 2013 at 2:00 PM in your Carson City office, for an examination and evaluation of permanent partial disability as a result of the industrial injury on the datereferenced above. A copy of the scheduling letter is enclosed together with the Division of Industrial Regulation (DIR), Workers Compensation Section (WCS) assignment forms or claimant's agreement for you to be rating physician. The body parts to be rated are indicated on the D-35 form. Date-ordered copies of the medical records are enclosed for your review. Please clearly explain the basis for each of your findings.

If records for prior conditions, surgeries, injuries, etc., are needed to properly apportion the impairment findings, please so state in your report and indicate that a final award will be determined once they have been provided. If x-rays are needed to determine impairment in accordance with the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed., and are not brought to the examination appointment by the claimant as directed (see attached letter), please so state in your report and indicate that a final award will be determined once they have been provided. If necessary, a return appointment should be scheduled to accomplish your review of needed x-rays. If new or repeat x-rays are needed to complete your rating, please accept this as authorization to proceed.

Based on the medical indications, we respectfully request you carefully address all tests of consistency for each body part. Please detail in your report whether or not the results of your measurements or tests are plausible and realistically relate to the impairment being evaluated and the objective injury record. If the medical evidence does not support the results of your observation or test result, we request you modify the impairment estimate accordingly, describing the modification and explaining the reason for it in writing, as directed by the AMA Guides.

Thank you for your time and cooperation in this matter. If you have questions or need further information, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File Douglas County GREGORY FELTON

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

November 5, 2013

Karen Barbee
Alternative Service Concepts
1755 East Plumb Lane
Suite 148
Reno, NV 89502

Re: Gregory Felton
Claim # C1431206693 01
DOI: 3/6/2012

PERMANENT PARTIAL IMPAIRMENT EVALUATION

Dear Ms. Barbee,

I reviewed the medical record of Gregory Felton and examined him on November 5, 2013 to render an opinion of permanent partial impairment resulting from an occupational injury to his left knee on March 6, 2012. This evaluation was conducted in conjunction with the *AMA Guides to the Evaluation of Permanent Impairment, 5th edition*.

It was explained to the patient that I am not authorized to treat him and that the sole purpose of this evaluation was for the determination of permanent partial impairment.

The opinions expressed in this report are stated to a reasonable degree of medical probability.

HISTORY:

Mr. Gregory Felton is a 50 year old gentleman who worked as a search and rescue volunteer for the Douglas County Sheriff's Department.

On March 6, 2012 he was descending a snowy slope when he slipped and twisted his left knee. He had pain within a few minutes but did not seek care until 4 months later on June 14, 2012 when he was seen by Dr. Coats. X-ray showed early joint space narrowing but no acute abnormalities. He was diagnosed with a left knee sprain.

Mr. Felton continue to have pain and an MRI scan was obtained on September 14, 2012 showing a medial meniscal tear with early degenerative osteoarthritis of the medial compartment and a small popliteal cyst as well as small osteochondral lesion of the posterior lateral surface of the patella.

Referral was made to Dr. Cummings, orthopedist, who initially saw the patient on October 8, 2012 and felt arthroscopic intervention was appropriate.

Concentra Medical Center
6410 S. Virginia Street • Reno, NV 89511
Telephone: 775.322.5757 • Facsimile: 775.322.5776

On October 17, 2012 Dr. Cummings performed an arthroscopic partial medial meniscectomy. He noted the patient also had diffuse grade 2 chondromalacia of the medial femoral condyle and of the apex at the patella.

Postoperatively, the patient continued to have some pain and swelling with activity.

A repeat MRI scan was obtained on February 25, 2013 showing prior partial medial meniscectomy with extensive chondral loss involving the medial compartment and mild chondral irregularity of the lateral compartment and lateral retropatellar articular surface.

After review on February 28, 2013, Dr. Cummings recommended and performed a steroid injection of the patient's knee.

In followup on March 19, 2013, Mr. Felton reported 75% improvement following the steroid injection and Dr. Cummings encouraged him to try jogging and running to see if he could tolerate it.

On April 16, 2013, the patient complained of persistent pain. Dr. Cummings felt Mr. Felton was a candidate for Visco supplementation injections but the request was apparently denied by the insurer.

On May 28, 2013, Mr. Felton reported some improvement. Dr. Cummings felt it was most likely the patient's chondromalacia that was causing his persistent symptoms. He felt he could just be monitored with reconsideration of Visco supplementation injections if his symptoms worsened.

Followup on July 1, 2013 Mr. Felton still had some discomfort in the knee and Dr. Cummings again recommended proceeding with Visco supplementation injections noting the patient now had grade 4 chondromalacia with persistent pain which he felt was likely exacerbated by the patient's injury. Dr. Cummings recommended an independent medical evaluation.

On August 19, 2013, another opinion was obtained from Dr. Morales, orthopedist, who felt the patient's chondromalacia might have resulted from his injury. She recommended a protracted period of nonweightbearing as well as nonsteroidal anti-inflammatory medication with possible future aspiration and steroid injection to reduce synovitis. She felt that a repeat arthroscopic evaluation might be needed if the patient did not improve.

In a final note from Dr. Cummings dated September 20, 2013 he noted Mr. Felton's left knee pain had improved and swelling had decreased. He noted the patient was taking Mobic and using a wrap on the knee which seemed to help. Dr. Cummings felt that Mr. Felton had reached a medically stationary point and released him from care without restrictions.

CURRENT COMPLAINT:

Mr. Felton states that his left knee continues to bother him. It generally does not hurt much with sedentary activities or brief periods of walking but gets increasingly painful over the medial joint line with significant walking, kneeling and climbing. He cannot run without significant pain. There is tightness behind the knee when he tries to straighten fully but he is able to do so. No significant swelling, locking or giving way. The joint feels stable.

He is no longer taking any medication for his knee and is not wearing any braces.

He continues to do his normal job as an engineer but no longer volunteers with the Sheriff's Department.

ACTIVITIES OF DAILY LIVING:

Self-care and personal hygiene are not significantly impaired. However he must be careful about excess stress on the knee or moving in certain directions. Walking and standing are limited to a few hours before he must sit down and unweight the leg. Communication is unaffected. Driving is not restricted. Sleep is generally restful. Recreational activities that involve running or doing strenuous workouts involving the lower extremities are now avoided.

PAST MEDICAL HISTORY:

Mr. Felton denies any prior problems with his left knee. He recently had an extensor tendon injury requiring surgical repair of his right wrist. He takes no prescription medications.

SOCIAL HISTORY:

The patient is married with 3 children. He does not smoke and drinks alcohol only rarely.

PHYSICAL EXAMINATION:

This is a well-nourished fit-appearing gentleman in no distress. He has an extensor tendon brace on his right wrist and hand. He has a non-limping gait. He is cooperative.

Examination of the left knee reveals well-healed arthroscopic scars. There is no varus or valgus deformity. No redness or warmth is noted. He does have some anteromedial joint line tenderness. No effusion is present. The knee is stable to varus valgus and drawer stress. He has a negative McMurray's.

Range of motion of the left knee as measured by goniometer according to *The Guides* finds extension to 0° and flexion to 145°.

Neurologically he is intact with good sensation over all dermatomes. DTRs are symmetrical at the knees and ankles bilaterally. Calves are symmetrical at 38 centimeters in circumference bilaterally. Strength is symmetrical.

IMPRESSION:

1. Status post partial medial meniscectomy left knee
2. Chondromalacia of left knee

DISCUSSION & RATING:

Referencing Table 17-33 on page 546 of the *Guides*, there is a 1% whole person impairment allowance for partial medial meniscectomy.

Mr. Felton has also experienced advancing chondromalacia and degenerative changes of the knee since his injury primarily in the medial compartment. However there is no indication in the medical record or on examination that he has suffered significant loss of the cartilage interval in the medial compartment to date. Consequently this finding does not represent a ratable impairment at this point.

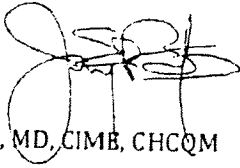
There are no other ratable impairments in this case.

Regarding apportionment, while there was some evidence of early medial compartment narrowing 3 months after his injury, there is no ratable impairment associated with osteoarthritis and consequently apportionment does not apply at this time.

In summary, Mr. Felton is allowed 1% whole person impairment related to the occupational injury on March 6, 2012.

It is also my opinion that Mr. Felton is medically stationary and I recommend claim closure.

Sincerely,



Jay E. Betz, MD, CIME, CHCQM

JEB/tlt

RECEIVED
MAY 10 2012

Alternative Service Concepts

Flexibility · Expertise · Integrity

November 11, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim #: C1431206693 01

Injured: 3/6/2012

Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

Please be advised that we have calculated your Average Monthly Wage (AMW) based on statutory deemed wage. The AMW forms the basis for the amount of all disability compensation payable to you under this claim.

The maximum AMW allowed by NRS 616A.157 for your occupation as a volunteer member of a search and rescue organization, shall be a deemed wage of \$2,000 per month.

If you disagree with the insurer determination, you have the right to appeal by completing and filing with the Hearing Officer, Department of Administration, the enclosed Request for Hearing form within seventy (70) days from the date of this letter.

For questions or further information about the AMW calculation or other aspects of your claim, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enc: Compensation Check Distribution Notice Request for Compensation (Form D-6) Computer Calculation Worksheet
Physician's Progress Report (Form D-39) Explanation of Wage Calculation (D-7 form) Request for Hearing (D-12a form)
cc. File DOUGLAS COUNTY

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

WAGE CALCULATION FORM FOR CLAIMS AGENT'S USE

RE: Injured Employee Gregory Felton Date of Injury: 3/6/2012
 Social Security No. _____ Claim No. C1431206693 01
 Employer: Douglas County Insurer: PACT
 Third-Party Administrator asc

Average Monthly Wage is defined in NAC 616C.420 through 616C.447.
 NAC 616C.429 is applicable to this claim.

AVERAGE MONTHLY WAGE - Calculate AMW in the following manner:

Period of earnings: beginning date 12/14/2011 end date 03/06/2012
 Gross earnings \$ _____ plus tips 0 divide by number of days
 in wage history 84 X 30.44 equal Average Monthly Wage: \$ 0.00

HOURLY RATE - Hourly rate of pay \$ 0.00 x number of hours
 projected to work per week 0 divide by 7 x 30.44 equal Average Monthly Wage: \$ 0.00

VALUE OF ROOM AND/OR BOARD
 Room (Monthly Value) _____ \$ 0.00
 Board (Monthly Value) _____ \$ 0.00

VALUE OF MEALS - If meals are provided by the employer, see NAC 616C.423(l)(p) and use the following formula:
 Amount for meals per day _____ x number of days hired
 to work per week _____ equals _____ divide by 7 x 30.44 equal Meals per Month \$ 0.00
 ADD applicable lines to obtain total Average Monthly Wage: \$ 0.00

DAILY RATE - is to be calculated in the following manner

Statutory / Deemed Wage=	\$2,000.00	Statutory Maximum Daily Rate: \$	43.80
7/1/2011	6/30/2012	x7 =	\$306.60
			x14
			613.20

Date: November 11, 2013 Signature: Karen Barbee Title: Claims Adjuster

Alternative Service Concepts
Flexibility · Expertise · Integrity

November 13, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Date of Injury: 3/6/2012
Employer: Douglas County

Dear Mr. Felton:

As a result of your permanent partial disability (PPD) evaluation by Dr. Betz on 11/5/2013, it has been determined you have **one percent (1%)** whole-body basis disability. This award entitles you to annual payments of **\$144.00** until **8/26/2033**. You also have the right to request a lump-sum payment in the amount of approximately **\$1,800.53** [depending on the date of your election] in lieu of installment payments.

You may accept this award, or, if you disagree with the award, you have the right to appeal. If you choose to accept the award, complete the enclosed "Election of Method of Payment of Compensation" and "Reaffirmation of Lump-sum Request", and return the signed, witnessed originals of the forms to this office. If you choose to appeal the award, you must complete and return the enclosed appeal form to the Department of Administration, at the address listed on the form, within seventy (70) days from the date of this letter.

A copy of NRS 616C.390, the "Injured Worker's Right to Reopen a Claim Which Has Been Closed", is also enclosed.

If you have questions or need further information, you may contact our office at 800-291-6826.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enclosures: Appeal form D-12a, D-13 (Reopening Rights), PPD rating report, PPD Calculation, Election of Method, Reaffirmation, Effects of Accepting Payment of Permanent Partial Disability in a Lump Sum
cc: File
Employer: Douglas County

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Injured Employee: Gregory Felton
Claim No: C1431206693 01
Employer: Douglas County

Date: 11/11/13
Date of Injury: 3/6/2012
Insurer: PACT

ELECTION OF METHOD OF PAYMENT OF COMPENSATION
(Pursuant to NRS 616C.495)

I, Gregory Felton _____
(Name) (Social Security Number)

have been advised that I may elect to receive my permanent partial disability compensation 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 3/6/2012 and terminate on 8/26/2033 and will be paid at the *annual rate of \$ 144.00 for a total installment payment of \$ 3,092.50.

If I elect to receive my entitlement on a lump sum basis I will receive approximately \$ 1,800.53

This will vary depending on the date I elect to receive my lump sum payment. According to NRS 616C.495, if I elect to receive my payment for permanent partial disability in a lump sum, all of my benefits for compensation terminate.

My acceptance of the 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 pe

- (a) My right to request reopening in accordance with the provisions of NRS 616C.390; and
- (b) Any services for counseling, training or other rehabilitation services provided by the insurer.

Further, I realize that I have twenty (20) days after the mailing or personal delivery of this notice within which to retract or reaffirm my request for a lump sum. I also realize that I will not be paid a lump sum until I have reaffirmed this election in writing.

Check one to indicate method of payment desired and sign below.

- 1. On an installment basis as provided by NRS 616C.490.
- 2. A lump sum of approximately ** \$ 1,800.53 as calculated pursuant to NRS 616C.495.

DATE: _____ INJURED EMPLOYEE: _____

DATE: _____ WITNESS: _____

*Insurer: Designate whether monthly or annual rate.

** Amount depends on actual effective date (date elected).

Injured Worker: Gregory Felton
 Claim No: C1431206693 01
 Employer: Douglas County
 Date of Injury: 3/6/2012

REAFFIRMATION OF LUMP SUM REQUEST

NRS 616.607 requires:

2. If the injured worker elects to receive his payment for a permanent partial disability in a lump sum, all of his benefits for compensation terminate. His acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting he waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability except:
 - (a) His right to reopen his claim according to the provisions of NRS 616C.390; and
 - (b) Any services for counseling, training or other rehabilitation services provided by the insurer.

The injured worker must be advised in writing of the provisions of this subsection when he demands his payment in a lump sum, **and has 20 days after the mailing or personal delivery of this notice within which to retract or reaffirm his demand before his election becomes final.**

Pursuant to this statute, if you still choose to accept the lump sum amount, please reaffirm your decision in the space provided below.

Failure to return this form or not checking one of the boxes will result in the processing of your award for installment payments.

- I reaffirm the request for my lump sum payment.
- I do not reaffirm the request for my lump sum payment.

Signature of Injured Worker

Date

Witness

Date

PPD AWARD CALCULATION WORKSHEET

Injured Employee: Gregory Felton DOB: _____ Sex: Male
 SS #: _____ DOI: 3/6/2012 Claim # C1431206693 01
 *Average Monthly Wage: \$2,000.00 *State Average Wage: \$2,000.00 Date of Rating: 11/5/2013
 Date Award Offered: 11/11/2013 Date Evaluation Report Received: 11/11/2013

Description: L Knee Body Basis - Verification _____ %
 _____ % Total _____ 1 % BB

		<u>Installment Calculation</u>					
*A	<u>\$ 2,000.00</u> X	0.0050	X	<u>1</u> % BB =	<u>\$ 12.00</u>	Last TTD, Year of Birth	
	Monthly Wage	0.0060			Monthly Rate	<u>70</u>	TPD, or DOI
B.	<u>\$ 12.00</u> X 12	0.0054			= <u>\$ 144.00</u>	<u>1963</u>	
	Monthly Rate				Annual Rate	<u>2033</u>	+ 5 Yr.
C.	<u>\$ 144.00</u> / 365.25				= <u>\$ 0.39</u>		
	Annual Rate				Daily Rate		

(1) Last Date TTD or TPD Paid: 3/6/2012 First Payment Date: 11/01/2013
 (2) Time Covered by First Payment: (a) 3/6/2012 through (b) ***** 10/31/2013
 *****DATE OF INJURY or date of claim (opening or day after last TTD/TPD)
 (3) First Payment: \$ 10.25 + \$ 84.00 + \$ 144.00 = \$ 238.25
26 Day(s) 7 Month(s) 1 Year(s)
 (4) Time Covered by Annual Payments: 11/1/2013 through 10/31/2032 = \$ 2,736.00
19 *****Year(s)
 (5) Time Covered by Final Payment: 11/1/2032 through 8/26/2033
 (6) Final Payment: \$ 108.00 + \$ 10.25 = \$ 118.25
9 Month(s) 26 Day(s)
 ***** Monthly [] Annual [X] Total of Installment Payments: = \$ 3,092.50

0.5% X 1 % BB X \$ 2,000.00 Monthly Wage from (A) above: \$ 1,000.00
 Minimum Lump Sum Calculation Minimum Lump Sum Amount

Lump Sum Calculation of Disability Up To and Including 25%
 (Use form D-9b for disability greater than 25%)
 (7) Effective Date of Award (year, month following 2 b) Per NAC 616C 502 2013 11
 (8) Date of Birth (year, month) 1963 8
 (9) Injured Employee Age at Award Effective Date = (7) minus (8) (years, months) 50 3
 (10) Monthly Rate from (B) \$ 12.00
 (11) Factor from Table for Present Value X \$ 130.19 equal \$1,562.28
 (12) Insert sum of (3) Add to sum of (11) only. plus \$ 238.25
 (13) Subtotal of (11) plus (12): \$ 1,800.53
 (14) Greater of (13) Full Lump Sum or Minimum Lump Sum. \$ 1,800.53
 (15) Minus any applicable award payments previously paid: minus 0
 (16) Net Amount Payable: \$ 1,800.53

* Use the Average Monthly Wage or the State Average Wage, whichever is lower. If the average monthly wage (AMW) for TTD on this claim is subject to the "frozen" 1993 rate, recalculate the AMW for PPD purposes.
 ** Use .005 for injuries sustained before 07/01/81. Use .006 for injuries sustained after 07/01/81, through 05/17/93. Use .0054 for injuries sustained on or after 05/18/93. Use .006 for injuries sustained on or after 1/1/00.
 *** Per [NRS 616.605(5)] NRS 616C 490(5), age at which entitlement ceases.
 **** This must reflect the end of the month prior to election of the lump sum payment. Recalculation may be required to bring the award to present day value. If (2)(b) is December date, use caution on line (4) to assure correct number of years. (If subtracting dates, add one year)
 ***** Must pay monthly installments if monthly entitlement is \$100 or more. May pay annual installments if monthly entitlement is less than \$100.
 ***** Use date of claim reopening if TTD/TPD benefits were not paid after the claim was reopened. (2)(a)

PREPARED BY: Karen Barbee DATE: 11/11/2013
 CHECKED BY: _____ DATE: 11/12/13

ORIGINAL

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE
2014 APR -3 PM 12:33

RECEIVED
AND
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1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County. Employer, and
8 Public Agency Compensation Trust, Insurer

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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Matter of the Claim No. C143120669301
Industrial Insurance Claim
of Hearing No. 47154-KD
47153-KD
GREGORY FELTON Appeal No. 47863-WDD

INSURER'S AND EMPLOYER'S
SECOND DOCUMENTARY EXHIBIT
PHYSICAL THERAPY REPORTS

ENTERED INTO
EVIDENCE AS EXHIBIT

#5

**INDEX TO INSURER'S AND EMPLOYER'S
SECOND DOCUMENTARY EXHIBIT
PHYSICAL THERAPY REPORTS**

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8	4	07/09/12	Physical Therapy Charting from Stateline Medical Center
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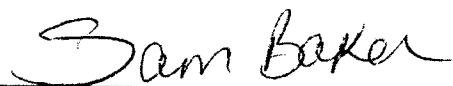
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and correct copy of the foregoing document, addressed to:

Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

DATED this 3 day of April, 2014.



SAM BAKER

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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 3 day of April, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

Robert F. Balkenbush, Esq.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

Barton Rehabilitation Center
 3rd Street

BARTON MEMORIAL HOSPITAL

2170 South Ave
South Lake Tahoe, CA 96150
530-543-5896
Provider ID: 05-0352

Stateline Rehabilitation Center

Patient Name: Greg Felton DOB: _____ HICN: _____

Primary Diagnosis/ICD-9: DMCL Strain R/L Medical Record #: _____

Treatment Diagnosis/ICD-9: Knee Pain Precautions: _____

Referring Physician: Contz Start of Care: 7/6/12

Date of Injury/Onset: 3/6/12 Date of Surgery: _____ Prior Hospitalizations: _____

Describe Incident: Training in knee to be pulling around for hours. Walked down a steep slope, slipped - caught himself by grabbing a bar. 3 months of injury - some M.D. to correct, but the entire leg - but on 8/10/12. New source of injury in knee.

Chief Complaint: Sharp pain medial knee w/ rotation. For example - pushing on pedal at bike, twisting to work with back of foot - sharp pain. Pain at leg on stairs going down.

Sleep Disturbance: Y (N) AM/PM Worse: None noted

Pain Rating (10 = Worst Pain): 4 / 10

Pain worse by: Stair master, twists Better: Changing position

Functional Limitations/ADLs: Avoid stairs

Work: SAR Volunteer

Numbness or Tingling: Yes No Location: _____

Prior Level of Function: limited

Past Med Hx: Bleed (at knee) - non-op. - most noted it's 1 month

Medications: See chart

Diagnostic Testing: X-ray @ R

Patient's Goals: bc work

Objective:

Observation/Posture: Circling MP - (R) 110 (L) 5.7.2 cm

ROM: 0-145° (B)
pain and range ✓ (C) Medial knee

Strength: 3/5 Hy (B) 1.25

RECEIVED

Special Test: SLS - 2 (B)

Singly Squat - XS (B) - 1st round @ 1000 lbs

(-) MCL Test

? (+) Mc Murray (L) - no click, but (+) par

Palpation: LTP (MCL) > fluid medially

Assessment: ? Saphenous Nerve Entrapment, Mc Murray, RPTTP over MCL w/ fluid

Problem List

- Strength ↓
- ROM ↓
- Functional Mobility ↓
- Pain ↑
- Swelling ↑
- ↓ Balance
- ↓ Gait
-
-

Functional Short Term Goals (Timeline 3 wks)

- Strength ↑
- ROM ↑
- Mobility ↑ Run 1/4 mile without 4 pr
- Pain ↓ 0/10 Rest
- Swelling ↓
- Balance ↑
- Gait ↑
-
-

Goal discussed with patient: Yes No
Functional Long Term Goals/Timeline: see below

Plan:

Frequency & Duration: 2-3 / week for 4 weeks 12 visits

Skilled P.T. is necessary for:

- Strengthening Exercises
- ROM
- Therapeutic Exercises
- Manual Therapy
- Balance Exercises
- Gait Training
- Functional Training
- Traction Mechanical/Manual
- Modalities:
- Phono/Iontophoresis
- Home Exercise Program
- Patient/Caregiver Education
- Safety Awareness Training

Prognosis:

Rehabilitation potential to obtain functional goals: Excellent Good Fair due to ability to follow directions
 previous rehabilitation success

Therapist Signature: Chris Kralawski, PT Date: 7/6/12

Medicare Part B only:

I certify the need for these services furnished under this plan of treatment and while under my care:
Certification Dates: from _____ to _____

Physician Signature: _____ Date: _____

RECEIVED

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

C143-12-06693-0
open

S

Patient Name: FELTON, GREG

Date: 7/6/12
In Time: 10:00
Out Time: 11:00

Extreme Pain

10
9
8
7
6
5
4
3
2
1
0
No Pain

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Therex / PRE	
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

[Signature]
1ontz 40ma @ 2.5
Saphens N. Stahl

A Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: _____
- Progressing towards goals

P Plan:

- will continue Treatment
- to progress treatment plan
- 2-3 Times / Week
- Other: _____
- re-evaluation on _____
- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature]
7770-7500 (12/7/11)

VISIT # 1/6

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

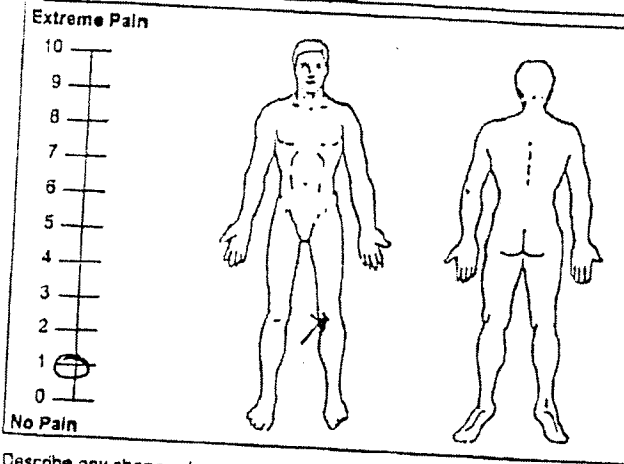
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Patient Name: Greg Felton

Date: 7/9/12

In Time: 7:30

Out Time: 8-



Impr!!
Notes more chldg.
Carton x 1 or week

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

O *Tleep p f s*
TFM MCL,
Sophomors w. Glidiz
lonto 2.0 malin 2
oic to try running

- A** Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to _____
 - Other: _____
 - Progressing towards goals

P Plan:

- will continue Treatment
- to progress treatment plan

72 Times / Week Other _____

re-evaluation on _____

will be referred to: MD Other _____

is discharged

- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature]

VISIT # 2/6

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

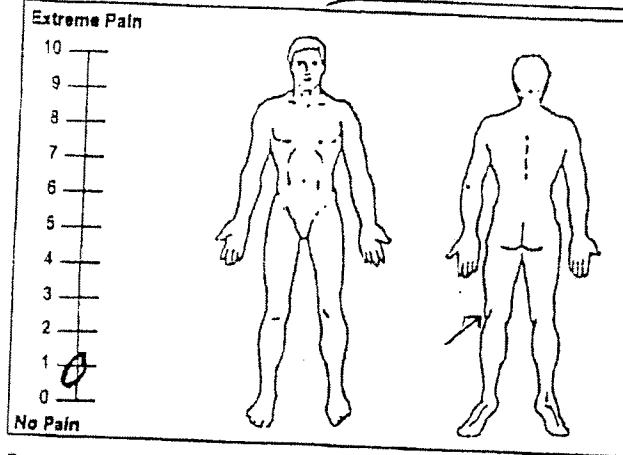
S

Patient Name: Greg Felton

Date: 7-12-12

In Time: 7:10 Am

Out Time: 7:40



feel 95%
locked when he was in hyperext

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Therex / PRE	
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	✓
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

O Mal TRM MCL, less than
 x 8'
 Saphens N m.b. LK x 3'
 Quad pump m.g. x 5'
 Ionto 40ma @ 2.0 min x 2

A Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: _____
- Progressing towards goals

P Plan:

- will continue Treatment
- to progress treatment plan
- will be referred to: MD Other _____
- is discharged.
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital

_____ Times / Week Other _____

_____ re-evaluation on _____

Do walk - run, stairmaster

SIGNATURE: [Signature]

VISIT # 3/6

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

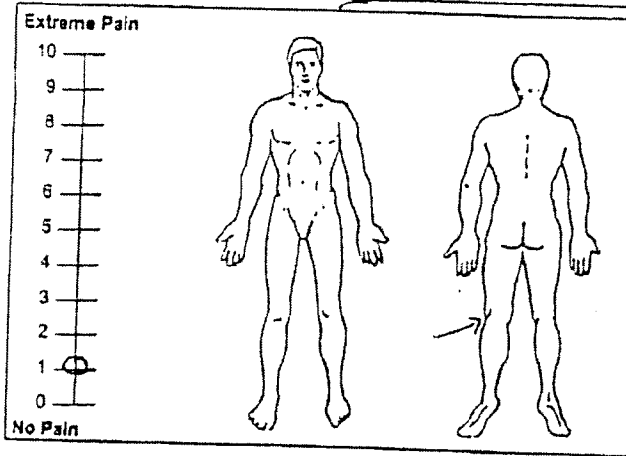
S

Patient Name: Greg Felton

Date: 7/16/12

In Time: 7:58

Out Time: 8-



Fed good!!

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

O

Treat p/B
TFM, MCC, Supina R
Mobilized
into @ MCC

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input checked="" type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: _____
- Progressing towards goals

P

Plan:

- will continue Treatment
- to progress treatment plan
- Times / Week
- Other _____
- re-evaluation on _____

- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature]

7773-7500 (12/7/11)

VISIT # 4/1

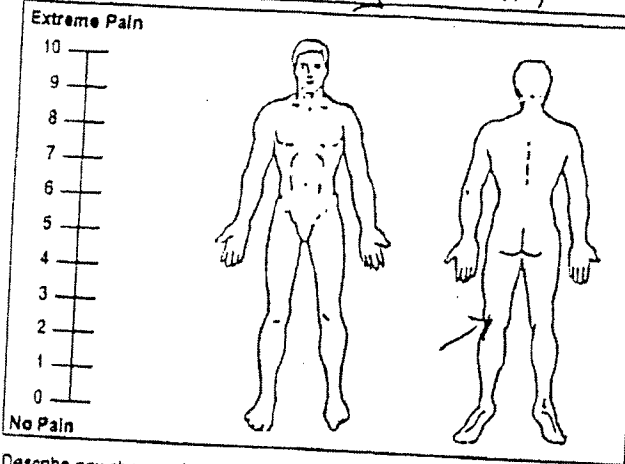
- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 7-19-12
 In Time: 7:13 AM
 Out Time: 8-



Only really hurts if really loading it - Dic - 2 steps @ a time

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

O

*Therex p/s starts
 TIM Res M, MCL
 + 8'
 onto @ MCL*

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: _____
- Progressing towards goals

P

Plan:

- will continue Treatment
- to progress treatment plan
- Times / Week
- Other _____
- re-evaluation on _____

- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature]

VISIT # 5/6

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 7/23/12

In Time: 7:00

Out Time: 7:45

Extreme Pain

10
9
8
7
6
5
4
3
2
1
0
No Pain

Have 4 medial knee pain
with soccer lunge motion
or that type of medial strain.

Describe any changes in your condition or any new concerns:

O

Treat pfs
TFM MCL x 8'
lonto MCL 2.5 maln 2
for 40

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input checked="" type="checkbox"/>
Ice / MHP / Paraffin	<input checked="" type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input checked="" type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: _____
- Progressing towards goals

P

Plan:

will continue Treatment

to progress treatment plan

2 Times / Week

Other _____

re-evaluation on _____

will be referred to: MD Other _____

is discharged

Goals were accomplished

Due to non-compliance

Decline in medical status / Discharge to acute hospital

Home exercise program provided

Patient understands home program / instruction

SIGNATURE: [Signature]

VISIT # 16/12

- Barton Memorial Hospital
- Stalene Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

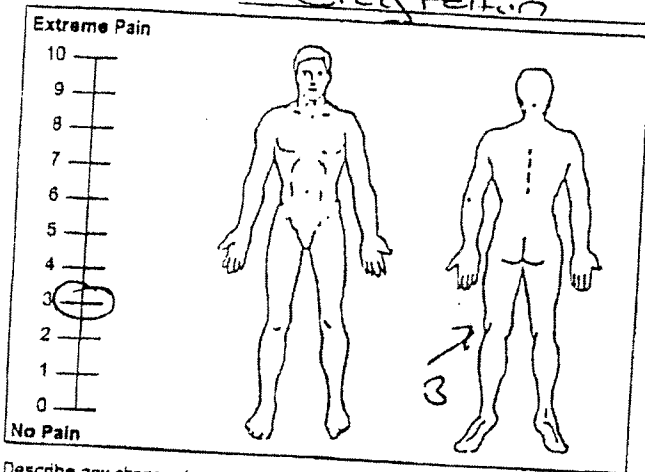
S

Patient Name: Greg Felton

Date: 7/27/12

In Time: 7-

Out Time: 7:30



1 ↓ SF hills
4 screws knee p driving
back from SF → Tech

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

O

Treat pt
TAM MCL, 5mm tendon x 8'
into UOMA @ 3:0
to OMLL

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased 0/10
- Able to _____
- Other: _____
- Progressing towards goals

P

Plan:

- will continue Treatment
- to progress treatment plan
- Times / Week _____
- Other _____
- re-evaluation on _____

- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature]

1770-7500 (12/7/11)

VISIT # 46

- Barton Memorial Hospital
- Stalene Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 7/30/12

In Time: 730

Out Time: 815

Extreme Pain

10
9
8
7
6
5
4
3
2
1
0
No Pain

*Twisted in SX over walk
once or top of knee cap*

Describe any changes in your condition or any new concerns:

O

Threat parts

*Mal - TFM MCL,
ITB, and patella*

*lateral UOMA @ 2.5 to
MCL*

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: _____
- Progressing towards goals

P Plan:

- will continue Treatment
- to progress treatment plan
- Times / Week
- Other _____
- re-evaluation on _____

- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature]

VISIT # 2/0

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

C143-12-06693-0

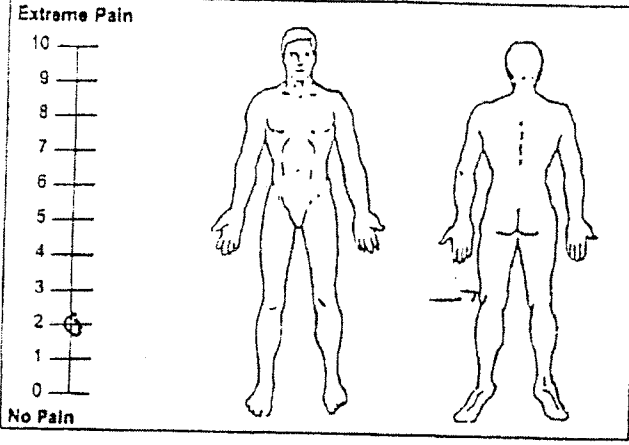
S

Patient Name: Greg Felton

Date: 8/2/12

In Time: 730

Out Time: 813



the pain waxy up this am!!!

Describe any changes in your condition or any new concerns:

Patient Signature: *Greg Felton*

O

Therex pass

TFM MCL

Sophus N. Glid

1 onto 2 isomane 40min

Therex / PRE		
ROM / Stretching		
Ice / MHP / Paraffin		
Electrical Stimulation / Iontophoresis		
Traction Mechanical/Manual		
Whirlpool / Wound Care		
Massage		
Aquatic Therapy		
Ultrasound		
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)		
Functional Training		
Balance Training		
Gait Training		
Home - Program		
Patient Education		
Evaluation		

A

- Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to _____
 - Other: _____
 - Progressing towards goals

P

Plan: will continue Treatment _____ Times / Week Other _____

to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Due to non-compliance Patient understands home program / instruction

Decline in medical status / Discharge to acute hospital

SIGNATURE: *Chris [unclear]*

VISIT # 3/6

1770-7500 (12/7/11)

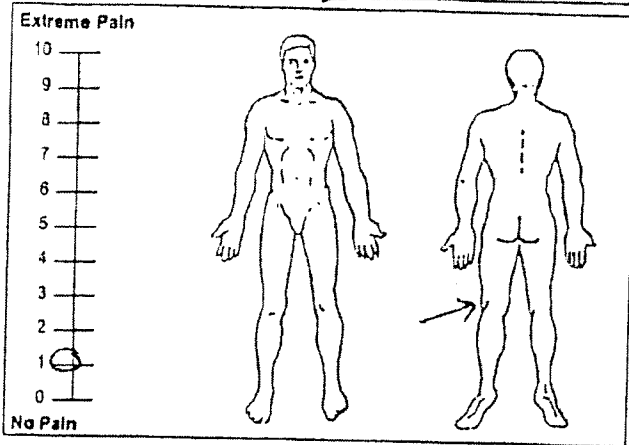
- Barton Memorial Hospital
- Slateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 8/16/12
 In Time: 7:27
 Out Time: 8:10



Describe any changes in your condition or any new concerns: _____

Patient Signature: _____

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Ionophoresis	<input checked="" type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

O Traction
 TFM MLL x 8'
 Aquaprog x 3'
 Joint down @ 2.5 to MLL

- A** Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to _____
 - Other: _____
 - Progressing towards goals

P

Plan: will continue Treatment Times / Week Other _____

to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Due to non-compliance Patient understands home program / instruction

Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature]

VISIT # 4/4

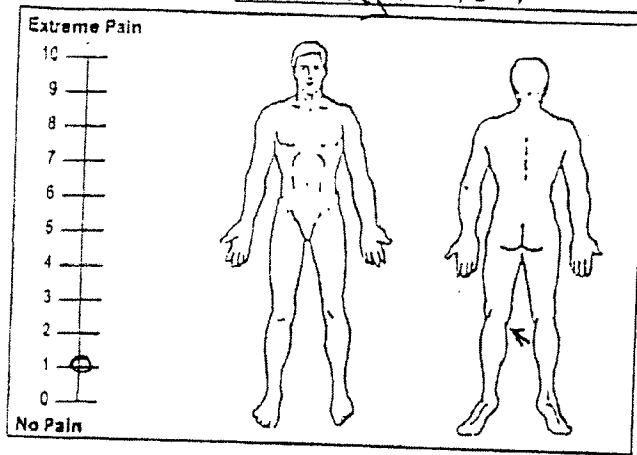
- Barton Memorial Hospital
- Stalene Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 8-9-12
 In Time: 8:00 AM
 Out Time: 9:45



Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

O Therex pofS
 TRM MCL x 6'
 onto 3.0 for 40min
 @ DMCL

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	<input checked="" type="checkbox"/>
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<u>16'</u>
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

- A** Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to _____
 - Other: _____
 - Progressing towards goals

P Plan:

- will continue Treatment 2 Times / Week Other _____
- to progress treatment plan re-evaluation on _____
- will be referred to: MD Other _____
- is discharged Goals were accomplished Home exercise program provided
- Due to non-compliance Patient understands home program / instruction
- Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature]

VISIT # 5/6

- Barton Memorial Hospital
- Stalene Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

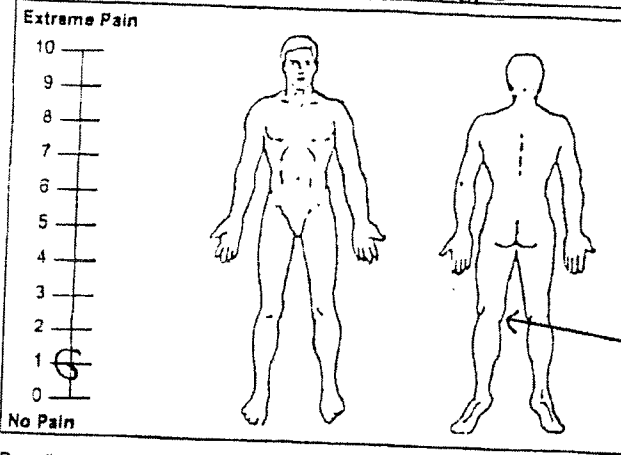
S

Patient Name: GREG FELTON

Date: 8/13/12

In Time: 7:05

Out Time: 8-



*Low level ache ant-med side
occasional twinges distal patel*

Describe any changes in your condition or any new concerns:

O

Treat p's

Patient Signature: [Signature]

*TFM MCL, caudal
pat mobs, med il gl's 8' TV*

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input checked="" type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input checked="" type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

1 unit mce 40min @ 3.0

A

- Response to Treatment:
- ROM after treatment See RN
 - Pain decreased _____
 - Able to _____
 - Other: _____
 - Progressing towards goals

P

- Plan:
- will continue Treatment
 - to progress treatment plan
 - _____ Times / Week
 - Other: _____
 - re-evaluation on _____
 - will be referred to: MD Other _____
 - is discharged
 - Goals were accomplished
 - Home exercise program provided
 - Due to non-compliance
 - Patient understands home program / instruction
 - Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature]

VISIT # 10/1

Barton Memorial Hospital

BARTON MEMORIAL HOSPITAL
REHABILITATION SERVICES
PHYSICAL THERAPY
PROGRESS NOTE

StateLine Medical Center

Patient: Gregory Feldon Physician: Cummings
Medical Record #: _____ DOB: _____ Onset Date: surgery 10/17/12 Start of Care: 11/12/12
Visits from Start of Care: 13/13 Patient Goal: PLDF

Primary Diagnosis/ICD-9: kn... trauma
Progress: pt continues to have (1) knee pain and posterior knee swelling. Pt still has (2) medial knee pain & twisting/burning motions, as well as moving from flexion to extension. Pt has ↓ pain of manual therapy and stretching, as well as ↓ posterior knee swelling. Pt will benefit from continued PT to ↓ soft tissue & capsular tightness, as well as progress ther-ex for ↑ knee stability in ADL's and twisting motion. Pt rechecks w/ MD in 2 weeks.

ROM: flexion

Functional Short Term Goals (Timeline: 2 weeks)

- ↓ Pain 1-2/10 in ADL's especially turning
- ↑ Functional Mobility able to sit stand & pain
- ↑ Strength _____
- ↑ Balance _____
- ↑ ROM _____
- ↑ Gait _____
- ↓ Swelling _____

Functional Long Term Goals/Timeline: 3-6 weeks

(2) in HEP, PLDF, and pain in ADL's

Plan:

- Strengthening Exercises _____
- Traction Mechanical/Manual _____
- ROM _____
- Modalities: Ice, electro
- Therapeutic Exercises _____
- Phonolaryphoresis _____
- Manual Therapy _____
- Home Exercise Program _____
- Balance Exercises _____
- Patient/Caregiver Education _____
- Gait Training _____
- Safety Awareness Training _____
- Functional Training _____

Continue Treatment 2 x/wk 3 weeks

Therapist Signature: Kelly Kelly, DPT Date: 1/9/13

I have reviewed and approved this plan of care

Physician Signature: [Signature] Date: _____

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

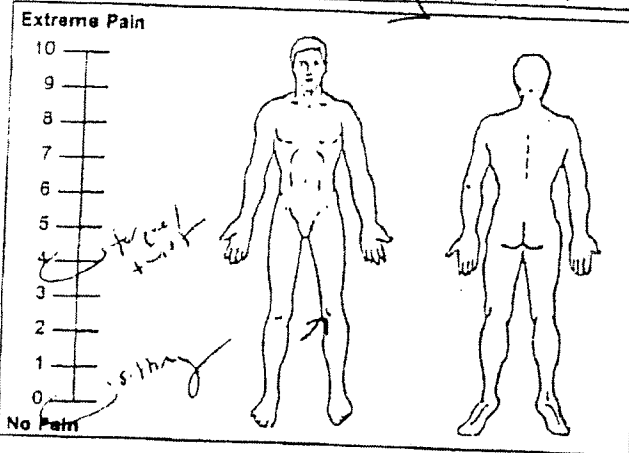
2143-12-06693-0

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 11-12-12
 In Time: 3:34
 Out Time: 4:50



• See rest of evaluation.

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

O

- See initial eval.
- Inf/Sup/Medial/Lateral/Medial Tilt/Lateral Tilt patellar glides to @ patella 1 x 60 sec ea. grade III.
- STM to @ lateral patellar retinaculum & surgical sites x 6 min.
- Ther-Ex. HEP initiated

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input checked="" type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input checked="" type="checkbox"/>
Patient Education	<input checked="" type="checkbox"/>
Evaluation	<input checked="" type="checkbox"/>

A

- Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to begin HEP _____
 - Other: _____
 - Progressing towards goals

P

- Plan: will continue Treatment 2-3 Times / Week Other _____
- to progress treatment plan re-evaluation on _____
- will be referred to: MD Other _____
- is discharged Goals were accomplished Home exercise program provided
- Due to non-compliance Patient understands home program / instruction
- Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature] / [Signature] DPT

VISIT # 1/12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

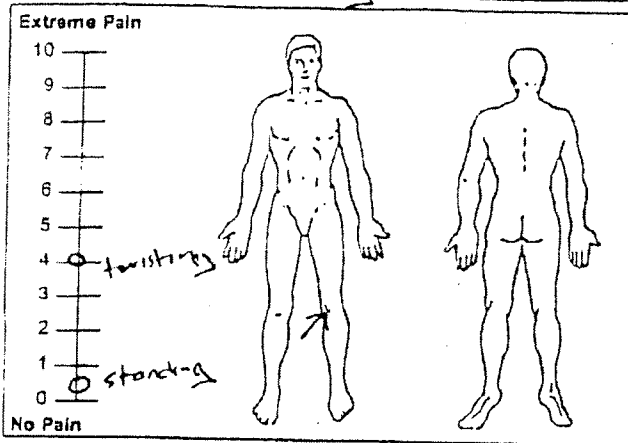
PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 11-14-12

In Time: 2:37
Out Time: 3:30



• feeling good, working on exercises, worked out at gym this ~~week~~ morning, mostly upper body exercises. performed self-massage to surgery sites.

Describe any changes in your condition or any new concerns:

Patient Signature: _____

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input checked="" type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

O

- Inf/Sup, Med/Lat patellar joint mobs grade III 1x 60 sec ea.
- Med/Lateral Tibi Patellar mobs grade III 1x 60 sec ea.
- STM to infra-patellar surgical sites, lateral retinaculum x 5 min
- Ther-Fx per flow sheet x 30 min
- HEP updated

A

- Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to progress thru-ex _____
 - Other: _____
 - Progressing towards goals

P

Plan: will continue Treatment 2-3 Times / Week Other _____

to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Due to non-compliance Patient understands home program / instruction

Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature], SPT / [Signature]

VISIT # 2 / 12

- Barton Memorial Hospital
- Stalene Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

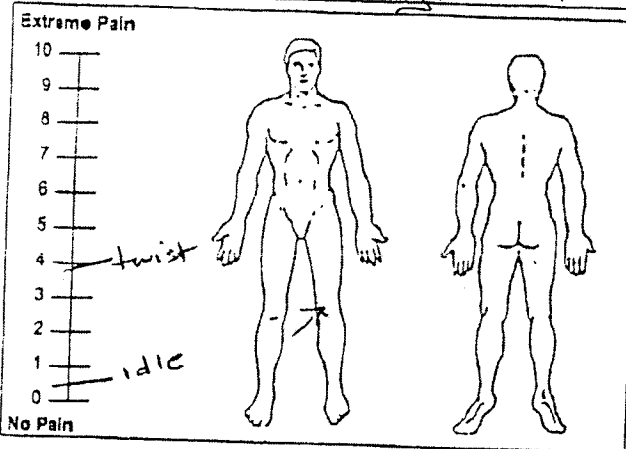
S

Patient Name: Greg Felton

Date: 11-16-12

In Time: 4:00

Out Time: 5:00



feeling good

Describe any changes in your condition or any new concerns: _____

Patient Signature: _____

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

O

Ther-Ex per flow sheet
x 45 min

5M to scar/surgical sites at
1-foot and under patellar
region x 5 min

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to perform ther-ex
- Other: _____
- Progressing towards goals

P

Plan:

- will continue Treatment
- to progress treatment plan
- 2-3 Times / Week
- Other _____
- will be referred to: MD Other _____
- is discharged
- re-evaluation on _____
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: [Signature] / Kelly Gally, DPT

VISIT # 3/12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

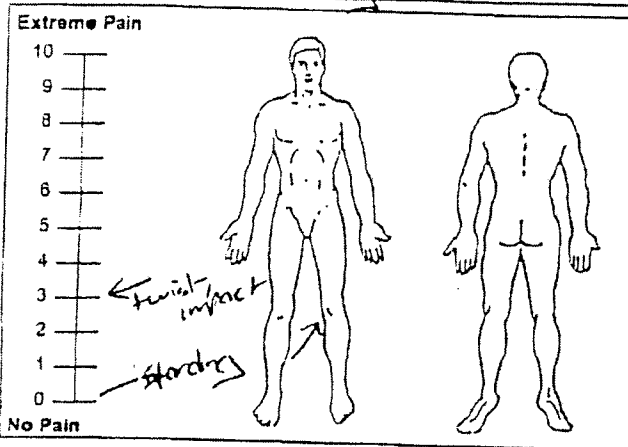
S

Patient Name: Greg Felton

Date: 11-20-12

In Time: 4:00

Out Time: 5:00



• knee is feeling great.

Describe any changes in your condition or any new concerns:

O

- Int/Sup & Mod/Lat & Mod/Lat hit*
- (c) pelvic mbr 1x low back.*
- STM to lateral pelvic rotation, ITB, suggest rotation vides*
- (c) knee x 6 min.*
- Therapeutic exercise per flow sheet x 45 min.*

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

A

- Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to _____
 - Other: project their exercises
 - Progressing towards goals

P

- Plan:
- will continue Treatment
 - to progress treatment plan
 - 2 Times / Week
 - Other _____
 - re-evaluation on _____
 - will be referred to: MD Other _____
 - is discharged
 - Goals were accomplished
 - Home exercise program provided
 - Due to non-compliance
 - Patient understands home program / instruction
 - Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature] / [Signature]

VISIT # 4/12

- Barton Memorial Hospital
- StateLine Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 11-26-12

In Time: 4:00

Out Time: 5:00

Extreme Pain	
10	
9	
8	
7	
6	
5	
4	
3	
2	
1	
0	
No Pain	

- tourist

- 2 - sore

• (L) knee feeling a little stiff today

Describe any changes in your condition or any new concerns:

O

- Ther-ex per flow sheet x 60 min
- Int. patellar glide 3 x 60 sec
- (L) knee scar mobs, med rat x 4 min

Patient Signature:

Therex / PRE	✓
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	✓
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to progress ther-ex
- Other: _____
- Progressing towards goals

P

Plan: will continue Treatment 2 Times / Week Other _____
 to progress treatment plan re-evaluation on _____

- will be referred to: MD Other _____
- is discharged Goals were accomplished Home exercise program provided
- Due to non-compliance Patient understands home program / instruction
- Decline in medical status / Discharge to acute hospital

SIGNATURE:

VISIT # 512

1170-7500 (12/7/11)

Barton Memorial Hospital
 Stateline Medical Center
 Outpatient Services
 3rd Street

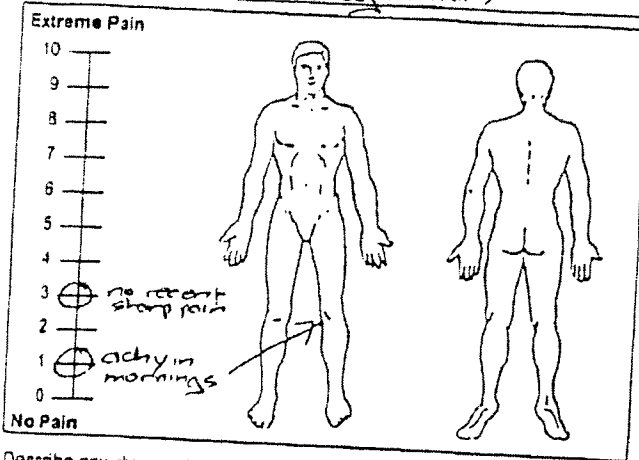
PHYSICAL THERAPY CHARTING

C143-12-06693-01

S

Patient Name: Greg Felton

Date: 12-4-12
 In Time: 8:00 AM
 Out Time: 9:00



No recent sharp pain, feeling stiff and achy in the mornings.

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input checked="" type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input checked="" type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

O

- JTM to @ knee row / medial side, and lateral patellar sub-nucleus x 5 min.
- @ patellar jt. mob, inf, med, lat 1x 60 sec.
- All 4 P/A tibio-femoral jt. mob ~~1x 60 sec~~ 1x 60 sec.
- Tibio-femoral jt. distraction 1x 60 sec.
- Therex per these sheet x 20 min

A

- Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to beg. light plyo / dynamic strength-training therapy
 - Other: _____
 - Progressing towards goals

P

Plan: will continue Treatment 2 Times / Week Other _____
 to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged

Goals were accomplished Home exercise program provided
 Due to non-compliance Patient understands home program / instruction
 Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature] / [Signature] DPT

VISIT # 6/12

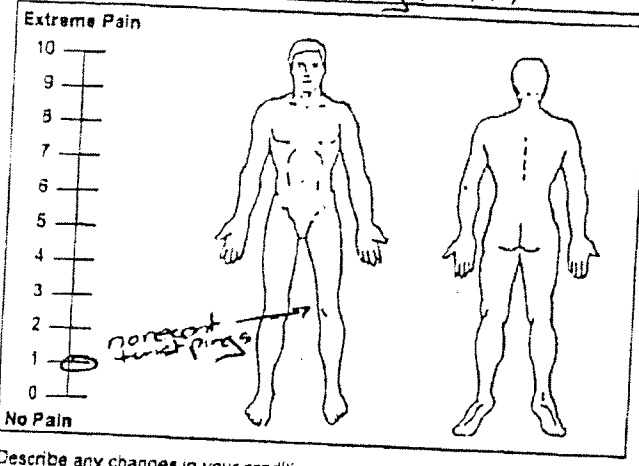
Barton Memorial Hospital
 Stateline Medical Center
 Outpatient Services
 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Gregg Felton

Date: 12-6-12
 In Time: 10:03 AM
 Out Time: 10:55 AM



• feeling good, no reports of any
 activities or twisting

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input checked="" type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input checked="" type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

O

- STM to (L) quadriceps and lateral patellar retinaculum and IT-Band x 10 min.
- (L) patellar nerve med/lat/inf + med/lat tilt x 5 min
- (L) patellar tendon tacking stretch
- Therex per flow sheet x 25 min

A

- Response to Treatment:
- ROM after treatment _____
 - Pain decreased _____
 - Able to progress thru rx / dynamic exercises
 - Other: _____
 - Progressing towards goals

P

Plan: Will continue Treatment 2 Times / Week Other _____

to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Decline in medical status / Discharge to acute hospital Patient understands home program / instruction

SIGNATURE: [Signature] SPT / [Signature] DPT

VISIT # 7/12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

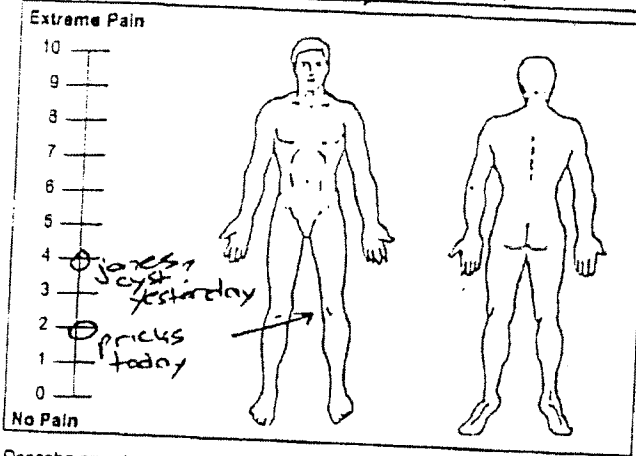
S

Patient Name: Greg Felton

Date: 12-14-12

In Time: 3:00

Out Time: 4:15



Went skiing over the weekend, knee held up good. Developed a little cyst-like bump on back of knee wed, that is new gone.

Describe any changes in your condition or any new concerns:

O • Ther - tx per flow sheet x 45 min

Patient Signature: [Signature]

• STM @ MPFL, Quads, MCL, patello ligament
• @ patella mobs III x 4 min x 8 min

Therex / PRE	
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	✓
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

Ice 10 min @ knee

A Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to ski - cross 5 much pain
- Other: _____
- Progressing towards goals

P

Plan: will continue Treatment to progress treatment plan

1-2 Times / Week Other _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Due to non-compliance Patient understands home program / instruction

Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature] / [Signature] (PT)

VISIT # 8/12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 12/19/12

In Time: 9:05

Out Time: 10:10

Extreme Pain

10
9
8
7
6
5
4
3
2
1
0
No Pain

Did fine in PT last time. Very sore yesterday medial knee & certain motions

Describe any changes in your condition or any new concerns:

Patient Signature: _____

O

*sim @ quadrats, gastroc, hamstringing + 7min
@ knee scar mobs and myofascial release 6min*

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

Ther. Ex per flow sheet x 55min

Ice x 10min @ knee to ↓ inflammatory pain

A

Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to rise 5 ft pain
- Other: some pain @ knee ext on ASU
- Progressing towards goals

P

Plan:

- will continue Treatment
- to progress treatment plan
- 1-2 Times / Week
- Other _____
- re-evaluation on _____

- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Due to non-compliance
- Decline in medical status / Discharge to acute hospital
- Home exercise program provided
- Patient understands home program / instruction

SIGNATURE: _____

Kelley Snell, DPT

VISIT # 9/12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

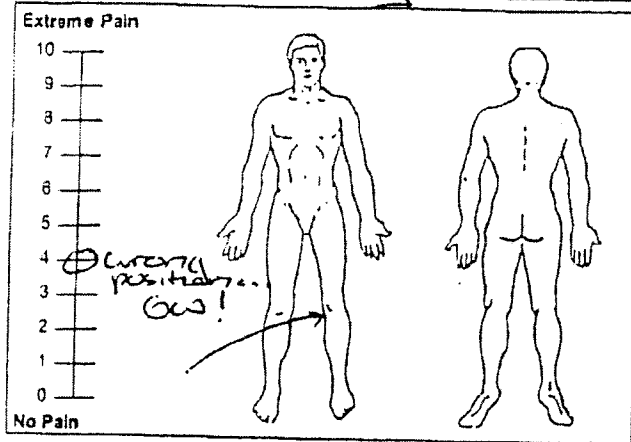
S

Patient Name: Greg Felton

Date: 12-21-12

In Time: 2:03

Out Time: 3:00



6- "haven't done much past few days still get occasional sharp pains"

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Therex / PRE	1
ROM / Stretching	1
Ice / MHP / Paraffin	1
Electrical Stimulation / Iontophoresis	1
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	1
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

O Tx Upright Bike x 10 - -

- 1.) DFM / STM to medial gastroc head, medial hamstring, medial i-tro patella, suprapatella ITB -> TFL.
- 2.) Therex per slow sheet. Added gerals stretch, quad, stretch, hamstring stretch

3.) IFC + CPT @ knee p Tx x 15'

- A** Response to Treatment:
- ROM after treatment WNL
 - Pain decreased _____
 - Able to _____
 - Other: Tender/swell @ medial
 - Progressing towards goals i-tro patella in situ
Swell @ Medial
post knee

P Plan:

will continue Treatment _____ Times / Week Other _____

to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Due to non-compliance Patient understands home program / instruction

Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature]
777-1500 (12/7/11)

VISIT # 10 / 12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

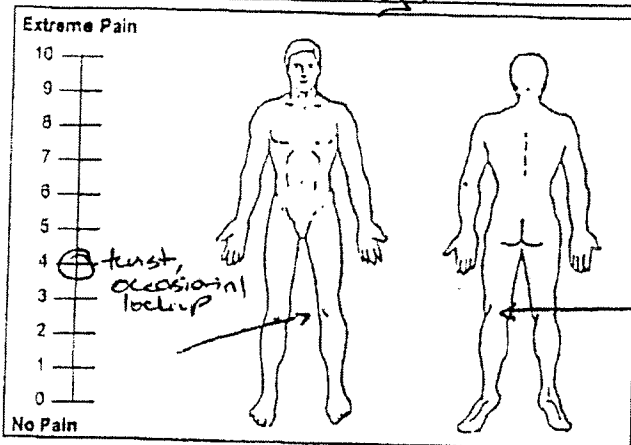
S

Patient Name: Greg Felton

Date: 12-26-12

In Time: 10:50

Out Time: 12:00



No change. Still sore back of knee & swelling and sharp pins @ med knee

baker cyst frequently

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

O

STM @gastroc, hamstring, quads, IT band x 20 min

Ther. Ex per flow sheet x 30 min

Ice @ knee x 15 min

Therex / PRE	
ROM / Stretching	
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

A Response to Treatment:

- ROM after treatment _____
- Pain decreased slightly
- Able to _____
- Other: still some soreness posterior + medial
- Progressing towards goals @ knee

P

Plan:

- will continue Treatment
- to progress treatment plan
- 1-2 Times / Week
- Other _____
- will be referred to: MD Other _____
- is discharged
- Goals were accomplished
- Home exercise program provided: _____
- Due to non-compliance
- Patient understands home program / instruction
- Decline in medical status / Discharge to acute hospital

SIGNATURE: Kelly Kelly, DPT

VISIT # 11/12

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

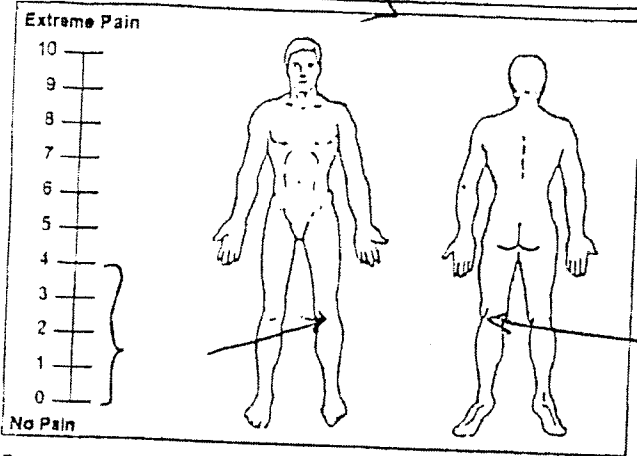
2143-12-06693-01

S

Patient Name: Greg Felton

Date: 1-2-13

In Time: 4:05
Out Time: 5:00



Went to MD office. PA recommended ice/Advil for knee & call back in a few weeks & status.

Felt better w/ manual therapy

Frequent Baker Cyst

locked this am. hurts on twisting when idle no pain

Describe any changes in your condition or any new concerns:

O

Bike x 10 min warm-up

STM @ quads, IT band, gastroc, hamstring x 20 min

Review stretches per MPT to keep @ UE soft tissue loose x 10 min

Ice @ knee x 15 min to ↓ inflammation

Patient Signature: [Signature]

Therex / PRE	<input checked="" type="checkbox"/>
ROM / Stretching	<input type="checkbox"/>
Ice / MHP / Paraffin	<input type="checkbox"/>
Electrical Stimulation / Iontophoresis	<input type="checkbox"/>
Traction Mechanical/Manual	<input type="checkbox"/>
Whirlpool / Wound Care	<input type="checkbox"/>
Massage	<input type="checkbox"/>
Aquatic Therapy	<input type="checkbox"/>
Ultrasound	<input type="checkbox"/>
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	<input checked="" type="checkbox"/>
Functional Training	<input type="checkbox"/>
Balance Training	<input type="checkbox"/>
Gait Training	<input type="checkbox"/>
Home - Program	<input type="checkbox"/>
Patient Education	<input type="checkbox"/>
Evaluation	<input type="checkbox"/>

A Response to Treatment:

- ROM after treatment _____
- Pain decreased _____
- Able to _____
- Other: stiff w/ ice
- Progressing towards goals

P

Plan: will continue Treatment 1-2 Times / Week Other _____

to progress treatment plan re-evaluation on _____

will be referred to: MD Other _____

is discharged Goals were accomplished Home exercise program provided

Decline in medical status / Discharge to acute hospital Patient understands home program / instruction

SIGNATURE: Kelly Seelby, DPT

VISIT # 12/14

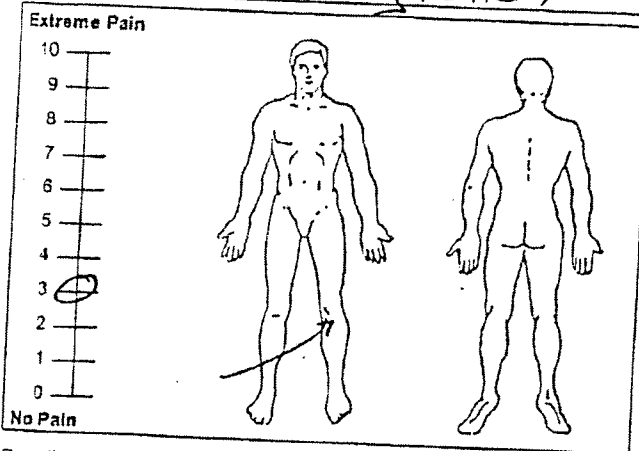
- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

PHYSICAL THERAPY CHARTING

S

Patient Name: Greg Felton

Date: 4-3-13
 In Time: 3-
 Out Time: 4:30



3- Pt received a cortisone shot & salt water x 3-4 wks
 Now pain/lacke has returned
 medial knee & Baker's cyst.

RECEIVED

MAY 16 2013

JSC

Describe any changes in your condition or any new concerns:

O Tx

Patient Signature: [Signature]

1.) Therex per Slowsheet

2.) Manual STM/DFM to
 medial knee & suprapatella, ITB, gastroc.

CPT to medial knee P Tx x 10'

Therex / PRE	
ROM / Stretching	2/
Ice / MHP / Paraffin	/
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	1
Functional Training	
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

A Response to Treatment:

- ROM after treatment 0° - 145° (A)
- Pain decreased _____
- Able to _____
- Other: Tender Medial St line & medial - suprapatella Baker's cyst.
- Progressing towards goals _____

P

Plan:

- will continue Treatment _____ Times / Week Other _____
- to progress treatment plan re-evaluation on _____
- will be referred to: MD Other _____
- is discharged Goals were accomplished Home exercise program provided
- Decline in medical status / Discharge to acute hospital Patient understands home program / instruction

SIGNATURE [Signature]
 7770-7500 (12/7/11)

VISIT # 1/4

- Barton Memorial Hospital
- Stateline Medical Center
- Outpatient Services
- 3rd Street

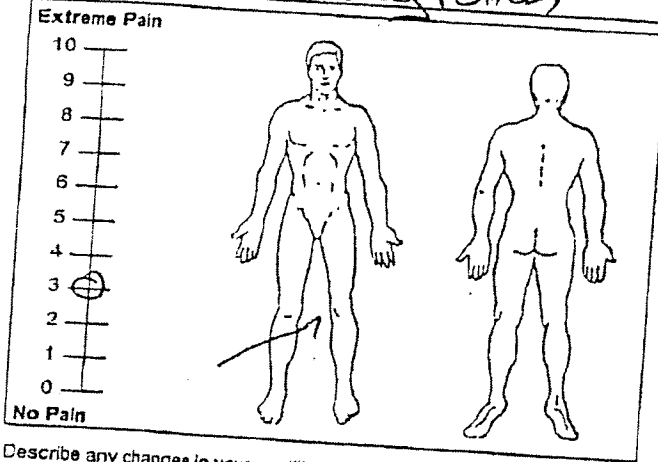
PHYSICAL THERAPY CHARTING

C14312-06693-

S

Patient Name: Greg Felton

Date: 4-10-13
 In Time: 9-
 Out Time: 5-



S. Baker's cystic better this week pain under patella & i-side/medial knee.

RECEIVED

MAY 16 2013

ASC

Describe any changes in your condition or any new concerns:

Patient Signature: [Signature]

Tx

- Manual STM/CFM to patella tendon, medial i-Sra patella, ITB.

- Therex per flowsheet

CP to A/P (R) keep Tx x 10'

Therex / PRE	
ROM / Stretching	✓
Ice / MHP / Paraffin	
Electrical Stimulation / Iontophoresis	
Traction Mechanical/Manual	
Whirlpool / Wound Care	
Massage	
Aquatic Therapy	
Ultrasound	
Manual Therapy (manual traction, joint mobilization, soft tissue mobilization)	✓
Functional Training	✓
Balance Training	
Gait Training	
Home - Program	
Patient Education	
Evaluation	

A Response to Treatment:

- ROM after treatment _____
- Pain decreased - post knee p ✓ Stretch
- Able to _____
- Other: _____
- Progressing towards goals

P Plan:

- will continue Treatment _____ Times / Week Other _____
- to progress treatment plan re-evaluation on _____

- will be referred to: MD Other _____
- is discharged Goals were accomplished Home exercise program provided
- Due to non-compliance Patient understands home program / Instruction
- Decline in medical status / Discharge to acute hospital

SIGNATURE: [Signature]
 7775-1500 (12/7/11)

VISIT # 2/4

ORIGINAL

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

2014 APR -3 PM 12:39

RECEIVED
AND
FILED

1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County, Employer and
8 Public Agency Compensation Trust, Insurer

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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim

Claim No. C143120669301

of

Hearing No. 47154-KD
47153-KD

GREGORY FELTON

Appeal No. 47863-WDD

INSURER'S AND EMPLOYER'S
THIRD DOCUMENTARY EXHIBIT

PLACED INTO
FILE AS TAKEN

6

INDEX TO INSURER'S AND EMPLOYER'S
THIRD DOCUMENTARY EXHIBIT

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<u>PAGE(S)</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1-2	04/02/14	Letter from Insurer's and Employer's legal counsel to Claimant's legal counsel requesting all correspondence and documentary exhibits prior to hearing

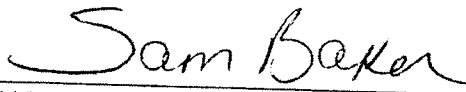
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I served by U.S. Mail at Reno, Nevada, a true and correct copy of the foregoing document, addressed to:

Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

DATED this 3 day of April, 2014.


SAM BAKER

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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer
does not contain the social security number of any person.

DATED this 3 day of April, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

Robert F. Balkenbush, Esq.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

JOHN L. THORNDAL
JAMES G. ARMSTRONG
CRAIG R. DELK
STEPHEN C. BALKENBUSH
PAUL F. EISINGER
CHARLES L. BURCHAM
BRIAN K. TERRY
BRENT T. KOLVET
ROBERT F. BALKENBUSH

PHILIP GOODHART
DEBORAH L. ELSASSER
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KATHERINE F. PARKS
KEVIN R. DIAMOND
BRIAN M. BROWN

THERRY V. BARKLEY**
SUSAN E. FRASCA*
MICHAEL P. LOWRY
KENNETH R. LUND
JOHN D. HOOKS
BRANDON R. PRICE
KEVIN A. PICK
MEGHAN M. GOODWIN
GREGORY M. SCHULMAN**
MEREDITH L. HOLMES
ALEXANDRA B. MCLEOD

Of Counsel**
Special Counsel *



LAW OFFICES
**THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER**
A PROFESSIONAL CORPORATION
thorndal.com

Robert F. Balkenbush, Esq.
RENO OFFICE
rbalkenbush@thorndal.com

April 2, 2014

LAS VEGAS

1100 E. BRIDGER AVENUE
LAS VEGAS, NV 89101
MAILING:
P.O. BOX 2070
LAS VEGAS, NV 89125-2070
(702) 366-0622
FAX: (702) 366-0327

RENO

6590 S. MCCARRAN BLVD. #B
RENO, NV 89509
(775) 786-2382
FAX: (775) 786-8004

ELKO

919 IDAHO STREET
ELKO, NV 89801
(775) 777-3011
FAX: (775) 786-8004

JAMES J. JACKSON
(1958-2014)

Sent by facsimile: (775) 684-7575
Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

*RE: Claimant: Gregory Felton
Employer: Douglas County
Insurer: Public Agency Compensation Trust
Third Party Administrator: ASC
Claim No.: C143120669301
Appeal No.: 47863-WDD*

Dear NAIW,

As you are aware, our office has been retained to represent the Insurer, Public Agency Compensation Trust, and the Employer, Douglas County, in the above-referenced matter.

In accordance with the spirit of NRS 616D.330, please supply our office with copies of all correspondence from your office or from the Claimant himself to any and all treating, examining, or consulting health care providers under the umbrella of this contested case. Please consider this request an ongoing request and supplement the production of all your written communications to such health care providers and their responses to same, until this contested case is resolved. *See generally, Holiday Inn v. Barnett*, 103 Nev. 60, 732 P.2d 1376 (1987); see also NRCP 5(b). *See generally, Nyberg v. Nev. Indus. Comm'n*, 100 Nev. 322, 683 P.2d 3 (1984) (Application of rules of civil procedure are not limited to district court proceedings).

///

Attorneys also licensed to practice in:
California, Colorado, Illinois, Kansas, Maryland, New Jersey, New York, Oklahoma, Oregon, Texas, Utah

Also, please supply our office with copies of any and all medical records obtained from these referenced health care providers before the scheduled hearing. *Id.* We want to ensure that our clients have adequate time to initiate an inquiry, if necessary, regarding information and/or opinions contained in such documentation.

Finally, please serve our office with any and all documentary exhibits as soon as possible before the hearings scheduled to be heard on **June 10, 2014**. If you have any questions or concerns regarding the matter herein above discussed, please contact my office at your earliest convenience.

Thank you for your cooperation.

Very truly yours,



ROBERT F. BALKENBUSH

RFB/nls

cc: File

ORIGINAL

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION
APPEALS SECTION

2014 APR 15 PM 12:43

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AND
FILED

1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County, Employer, and
8 Public Agency Compensation Trust, Insurer

9 **NEVADA DEPARTMENT OF ADMINISTRATION**
10 **BEFORE THE APPEALS OFFICER**

11 In the Matter of the Contested Claim No. C143120669301
12 Industrial Insurance Claim Hearing Nos. 47154-KD
13 of 47153-KD
14 GREGORY FELTON Appeal No. 47863-WDD

15 **INSURER'S AND EMPLOYER'S**
16 **PRE-HEARING STATEMENT**

17 **I**
18 **DOCUMENTARY EVIDENCE**

19 The Insurer and Employer will rely on four (4) documentary exhibits previously
20 submitted. The Insurer and Employer reserve the right to submit additional documentary exhibits.

21 **II**
22 **STATEMENT OF ISSUES**

- 23 1. Whether the November 11, 2013, average monthly wage (AMW) determination
24 was lawful or proper?
- 25 2. Whether the written determination dated November 13, 2013, awarding the
26 Claimant a one percent (1%) permanent partial disability (PPD) was lawful or proper?
- 27 3. Whether the Hearing Officer correctly affirmed both the November 11, 2013,
28 AMW determination and the November 13, 2013, AMW determination awarding the Claimant a

1 one percent (1%) PPD.

2 **III**
3 **WITNESSES**

4 The Insurer and Employer may call one or more of the following witnesses to testify in
5 person or by telephone about various aspects of the claim:

6 1. A claims representative(s) from Alternative Service Concepts may testify
7 concerning the carrier's administration of Claimant's claim for workers' compensation at issue in
8 this contested case.

9 2. A representative(s) from the Employer may testify in person or by telephone about
10 the facts of the accident forming the basis of the within claim.

11 3. Any and all health care providers who have treated the Claimant or been consulted
12 concerning Claimant's industrial injury of March 6, 2012, may testify.

13 4. Jay Betz, M.D., may testify regarding the Claimant's Permanent Partial
14 Impairment Evaluation:

15 5. An expert witness, not yet identified, may testify concerning the Claimant's
16 industrial injury of March 6, 2012.

17 6. The Insurer and Employer also reserve the right to call any witnesses called by the
18 Claimant or identified in his respective pre-hearing statement, and rebuttal witnesses. The
19 Insurer and Employer also reserve the right to introduce documentary rebuttal evidence, if
20 necessary.
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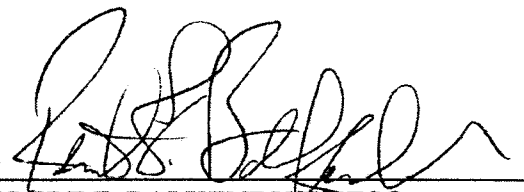
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**IV
ESTIMATED TIME**

The presentation by the Insurer and Employer will take approximately one and one half (1 ½) hours.

DATED this 9th day of April, 2014.

By 
ROBERT F. BALKENBUSH, ESQ.
Attorney for Douglas County, Employer, and
Public Agency Compensation Trust, Insurer

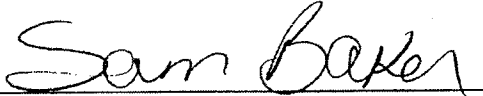
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and
correct copy of the foregoing document, addressed to:

Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

DATED this 15 day of April, 2014.


SAM BAKER

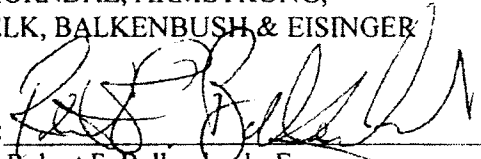
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 15 day of April, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

Robert F. Balkenbush, Esq.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

STATE OF NEVADA
ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

3 2014 MAY 13 PM 3:22

4 RECEIVED
5 AND
6 FILED

6 In the Matter of the
7 Industrial Insurance Claim

Claim No.: C1431206693 01

8 of

Hearing No.: 47154-KD
47153-KD

9 GREGORY FELTON

Appeal No.: 47863-WDD

10
11 CLAIMANT'S HEARING STATEMENT

12 I

13 DOCUMENTARY EVIDENCE

14 1. Claimant may rely on portions of any evidence
15 packet previously submitted, or to be submitted, by the Insurer
16 and/or Employer.

17 2. Claimant will also rely on any evidence packet
18 submitted, or to be submitted, on his behalf.

19 3. Claimant reserves the right to file additional
20 evidence and to rely on all subsequently-filed evidence.

21 II

22 STATEMENT OF THE ISSUE

23 The issues before the Appeals Officer are whether the
24 Insurer correctly calculated the Claimant's average monthly wage
25 when the Insurer failed to include the Claimant's concurrent
26 employment as is required by NAC 616C.447 and whether the 1% WPI
27 permanent partial disability rating accurately reflects the
28 rating guides.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
(775) 684-7555
(702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
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III

POSSIBLE WITNESSES

1. Claimant may testify, either in person or by telephone, concerning the facts and circumstances underlying his claim.
2. Claimant reserves the right to call additional witnesses who may testify, either in person or by telephone, regarding the claimant's industrial injury.
3. Any witness named or called by any other party.
4. Impeaching or rebuttal witnesses as necessary.

IV

ESTIMATED TIME


Estimated hearing time: One (1) hour.

AFFIRMATION

Pursuant to NRS 239B.030, I affirm that no personal identifying information appears in this Hearing Statement.

Respectfully submitted this 13th day of May, 2014.

NEVADA ATTORNEY FOR INJURED WORKERS


Edward L. Oueilhe, Esq., Deputy
Attorney for the Claimant

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing CLAIMANT'S HEARING STATEMENT addressed to:

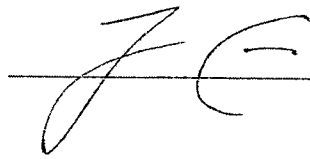
GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

DOUGLAS COUNTY
PO BOX 218
MINDEN NV 89423

ROBERT BALKENBUSH ESQ
6590 S MCCARRAN BLVD STE B
RENO NV 89509

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LN STE 148
RENO NV 89502

DATED: May 13, 2014

SIGNED: 

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

ORIGINAL

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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

ENTERED INTO
EVIDENCE AS EXHIBIT #1

In the Matter of the Claim No.: C1431206693 01
Industrial Insurance Claim
of Hearing No.: 47154-KD
47153-KD
GREGORY FELTON Appeal No.: 47863-WDD

CLAIMANT'S FIRST EXHIBIT

Page #	Description	Date
001	Form C-1	03/09/2012
002	Form C-4	06/14/2012
003	Renown Occupational Health Network Progress Report and Disability Certification by Sarah Stapp, of Carson Valley Medical Center	06/14/2012
004	Report of Findings: Left Knee X-Ray by Carson Valley Medical Center	06/14/2012
005	Progress Notes by Kara Cole, APN, of Occupational Health Services	06/14/2012
006	Progress Note by Kara Cole, APN, of Carson Valley Medical Center	06/15/2012
007	Form C-3	06/20/2012
008	Letter from Third Party Administrator (TPA) to Claimant	06/20/2012
009-014	Completed "Request for Additional Medical Information and Release Form"	06/21/2012
015	Occupational Health Network Progress Report and Disability Certification by Carol Coats, M.D., of Carson Valley Medical Center	07/02/2012

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89401
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
(702) 486-2830

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
MAY 13 2012
RECEIVED
AND
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2012 MAY 13 PM 3:22

NEVADA ATTORNEY FOR INJURED WORKERS
 1000 East William Street, Suite 208
 Carson City, NV 89701
 2200 South Rancho Drive, Suite 230
 Las Vegas, NV 89102
 (775) 684-7555
 (702) 486-2830

1	016	Progress Notes by Carol Coats, M.D., of Carson Valley Medical Center	07/05/2012
2			
3	017	Notice of Claim Acceptance	07/18/2012
4	018-019	Progress Note by Kara Cole, APN, of Carson Valley Medical Center; to include Occupational Health Network Progress Report and Disability Certification	07/23/2012
5			
6			
7	020-021	Progress Note by Kara Cole, APN, of Carson Valley Medical Center; to include Occupational Health Network Progress Report and Disability Certification	08/13/2012
8			
9			
10	022	MRI-Left Knee without Contrast by Great Basin Imaging	08/27/2012
11	023-026	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	10/02/2012
12			
13	027	Barton Memorial Hospital Lab Results	10/08/2012
14	028	Barton Memorial Hospital ECG Report	10/08/2012
15	029-031	Carson Tahoe Regional Healthcare Operative Report by Jeffrey Cummings, M.D.	10/17/2012
16			
17	032	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	10/25/2012
18			
19	033	Referral Consults: PT by Roger Rogalski, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	10/26/2012
20			
21	034	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	11/15/2012
22			
23	035	Work Status Form by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	11/21/2012
24			
25	036	Office Visit by Stephanie Tonn, PA, of Tahoe Fracture & Orthopedic Medical Clinic	12/28/2012
26			
27	037-039	Laboratory Report by Pactox	12/28/2012
28		

NEVADA ATTORNEY FOR INJURED WORKERS

1000 East William Street, Suite 208
 Carson City, NV 89701
 2200 South Rancho Drive, Suite 230
 Las Vegas, NV 89102

(775) 684-7555

(702) 486-2830

1	040-045	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	01/22/2013
2			
3	046-047	Patient Exam Report by Reno Diagnostic Centers MR-Left Knee without Contrast	02/25/2013
4			
5	048-049	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	02/28/2013
6			
7	050-052	Laboratory Report by Pactox	03/01/2013
8	053-055	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form	03/19/2013
9			
10	056-058	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form	04/16/2013
11			
12			
13	059	Facsimile from TPA to Jeffrey Cummings, M.D., regarding Euflexxa injections	04/25/2013
14			
15	060	Work Status Form by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	05/07/2013
16			
17	061-062	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic	05/28/2013
18			
19	063-065	Laboratory Report by Pactox	06/03/2013
20	066-069	Urine Toxicology Review from Tahoe Fracture & Orthopedic Medical Clinic	06/04/2013
21			
22	070-072	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form	07/01/2013
23			
24			
25	073	Letter from TPA to Patricia Morales, M.D., of Specialty Health Clinic	07/11/2013
26			
27	074	Letter from TPA to Claimant Regarding Upcoming Appointment with Patricia Morales, M.D.	07/11/2013
28		

NEVADA ATTORNEY FOR INJURED WORKERS
 1000 East William Street, Suite 208
 Carson City, NV 89701
 2200 South Rancho Drive, Suite 230
 Las Vegas, NV 89102
 (775) 684-7555
 (702) 486-2830

1	075	Letter from TPA to Claimant Regarding Upcoming Appointment with Patricia Morales, M.D.	07/31/2013
2			
3	076-079	Medical Report by Patricia Morales, M.D., of Specialty Health; to include Return to Work	08/19/2013
4			
5	080-081	Letter from James Greenwald, M.D., of Specialty Health, to Jeffrey Cummings, M.D.; to include response dated 08/29/2013	08/22/2013
6			
7			
8	082-086	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form	09/20/2013
9			
10	087-088	Letter from TPA to Claimant Regarding PPD Rating Physician	10/08/2013
11			
12	089	Executed PPD Rating Physician Agreement	10/16/2013
13	090	DIR Request for Rotating Rating Physician or Chiropractor	10/16/2013
14			
15	091-092	Letter from TPA to Claimant Regarding Upcoming PPD Rating Appointment	10/21/2013
16	093	Letter from TPA to Jay Betz, M.D.	10/21/2013
17	094-097	Permanent Partial Impairment Evaluation by Jay Betz, M.D.	11/05/2013
18			
19	098-099	Average Monthly Wage (AMW) Determination Letter from TPA to Claimant; to include Wage Calculation Form For Claims Agent's Use	11/11/2013
20			
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1 100-103 Permanent Partial Disability Award 11/13/2013
2 Letter from TPA to Claimant; to
3 include D-10a, D-11, and D-9a

4 AFFIRMATION

5 Pursuant to NAC 616C.303, I affirm that no personal
6 information appears in this exhibit.

7 DATED this 13th day of May, 2014

8 NEVADA ATTORNEY FOR INJURED WORKERS

9 
Edward L. Ouellette, Esq., Deputy
10 Attorney for Claimant
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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 (702) 486-2830
Las Vegas, NV 89102

Employer's
Name

DOUGLAS COUNTY NEVADA

Incident Report
Notes: This form is to be completed by
the employee with receipt acknowledgment
by the employer.

Employee's Name: <u>GREGORY FELTON</u>		SOCIAL SECURITY #	Telephone Number: <u>775 588 3121</u>
Date of Accident: <u>3/21/12</u>	Time of Accident: <u>~ 2100</u>	Place Where Accident Occurred: <u>North end of Andria Drive, Stateline, NV</u>	
What is the Nature of the Injury? <u>Pain around patella, generally upon extension</u>		List the Body Parts Involved: <u>Left knee</u>	

Briefly Describe the Accident or Circumstances:

Upon completion of search + rescue winter rescue/avalanche training, the team proceeded downhill, cross-country in snow up to knee deep, toward our vehicles. We encountered several locations in which we slid, including on the snow-covered icy road, the final leg of our walk. Upon reaching the parking lot, I was aware of pain + was concerned about weakness in my knee.

Volunteer? YES NO

Did you see a doctor? YES NO

Name(s) of Witness(es):

Did You Leave Work Because of the Injury? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, Give Date and Time:	Have You Returned to Work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, Give Date and Time:
Was First Aid Provided? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, By Whom?	Name and Address of the Treating Physician, if Applicable or Known:	
Did the Accident Happen in the Normal Course of Your Work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Was Anyone Else Involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, Provide Name(s) of the Person(s) Involved:		

My employer/insurer may have made arrangements to direct me to a health care provider for medical treatment of my industrial injuries. I have been notified of these arrangements.

The employee must sign and date this form in the space provided below. The employee is also advised to retain a copy of the completed form.

Signature of the Injured Employee [Signature] Date 3/21/12

To file a claim for compensation, see the Claim for Compensation, or C-4, form.

With my signature below, I acknowledge receipt of this form on behalf of the employer named above.

Name (Print) SHAN THOMAS Signature of Supervisor [Signature] Date 3/7/12

**EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT
FORM C-4**

PLEASE TYPE OR PRINT

EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT		FORM C-4		PLEASE TYPE OR PRINT		PROVIDE ALL INFORMATION REQUESTED	
First Name Gregory	M.I. R	Last Name FELTON	Birthdate	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurer's Use Only)		
Home Address PO BOX 2130		Age 48	Height 6'0"	Weight 172	Social Security Number		
City Stateline	State NV	Zip 89449	Telephone 775 588 3121		Primary Language Spoken English		
Physical Address 204 HUBBARD RD		City Stateline	State NV	Zip 89449	Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred Search + Rescue Member		
INSURER		THIRD-PARTY ADMINISTRATOR			Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred Search + Rescue Member		
Employer's Name/Company Name Douglas County		Office Mail Address (Number and Street) PO BOX 218			Telephone 775 782 9066		
Date of Injury (if applicable) 3/7/12	Hours Injury (if applicable) am 11:00 pm	Date Employer Notified 3/7/12	Last Day of Work After Injury or Occupational Disease		Supervisor to Whom Injury Reported Shawn Thomas		
Address or Location of Accident (if applicable) End of America Drive							
What were you doing at the time of the accident? (if applicable) Training at snow + ice removal							
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) Injury in knee - High deep snow, searching at high speed for available locations and buried targets, up and down steep hills.							
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? Upon return to SAR vehicles					Witnesses to the Accident (if applicable)		
Nature of Injury or Occupational Disease Left knee pain			Part(s) of Body Injured or Affected Left knee				
<p>I CERTIFY THAT THIS ASSESS 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 INJURY AND OCCUPATIONAL DISEASES ACTS (NRS 618A TO 618D, INCLUDING 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 BENEFITS PAID OR PAYABLE PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR ADDICTION, PSYCHOLOGICAL CONDITIONS, ALCOHOL, OR CONTROLLED SUBSTANCES FOR WHICH I MUST OBTAIN SPECIFIC AUTHORIZATION. A PHOTOCOPY OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.</p>							
Date 6/14/12	Employee's Signature [Signature]		THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 5 WORKING DAYS OF TREATMENT				
Place GARDNERVILLE, NV 89410		Name of Facility CARSON VALLEY MEDICAL CENTER					
Date 6/14/12	Diagnosis and Description of Injury or Occupational Disease ① Knee sprain		Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input type="checkbox"/> No <input type="checkbox"/> Yes (if yes, please explain)				
Hour	Treatment Rest, ice, compression, ibuprofen		Have you advised the patient to remain off work five days or more? <input type="checkbox"/> Yes Indicate dates from _____ to _____ <input checked="" type="checkbox"/> No If no, is the injured employee capable of: <input type="checkbox"/> full duty <input type="checkbox"/> modified duty If modified duty, specify any limitations/restrictions:				
X-Ray Findings negative		From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)					
Date 6/14/12	Print Doctor's Name Carol Coats, M.D.		I certify that the employer's copy of this form was mailed to the employer on:				
Address 1107 HIGHWAY 395		INSURER'S USE ONLY					
City GARDNERVILLE, NV	State NV	Zip 89410	Provider's Tax I.D. Number 88-0405927	Telephone 775-782-1813	Degree M.D.		
Doctor's Signature Kara Coats							

Renown Occupational Health Network Progress Report and Disability Certification

Date of Service: 6/14/2012		No Show: No	Date / Time of Next Visit:	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer: OTHER		Date of Injury: 3/6/2012		
Insurer / TPA: ALT SVC CONC (ASC)		ID / SSN:		
Occupation: Search and Rescue MEmber		Diagnosis: The encounter diagnosis was Left knee sprain.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Intermittent medial knee pain				
Objective Findings: Point tenderness				
Pre-Existing Condition(s):				
Assessment: Initial Visit				
Status: Additional Care Required				
Plan: Medication		Permanent Disability: No		
Comments: Ibuprofen 3x/day				
Diagnostics: X-ray				
Comments:				
Disability Information				
Status: Released to Full Duty				
From:				
Through:				
Restrictions are:				
Sitting:	Standing:	Stooping:	Bending:	
Squatting:	Walking:	Climbing:	Pushing:	
Pulling:	Other:	Reaching Above / Below Shoulders:	Lifting(hrs):	
Carrying(hrs):	Weight Limit(lb):	Weight Limit(lb):		
Comments: Return in 2 weeks.				
Physician Name: Sarah D Stapp		Physician Signature:		e-Signature: Dr Tibor Toplenszky, Medical Director
Clinic Name / Location:	CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:	Dept: 775-782-1615
Appointment Time:	3:15 Pm		Visit Start Time:	10:34 AM
Check-In Time:	3:22 Pm		Visit Discharge Time:	4:16 Pm

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee

RECEIVED
 JUL 09 2012

... MEDICAL CENTER
1107 Highway 395 S
Gardnerville, NV 89410
(775) 782-1533
FAX (775) 782-1543
Department of Medical Imaging
REPORT OF FINDINGS

2143-12-06693

Medical Record No: 894410
Exam Date: 06/14/2012 Time: 1642

LEFT KNEE (FOUR VIEWS)

CLINICAL INDICATIONS: Left knee sprain.

FINDINGS:

There is very early joint space narrowing.

There is no evidence for fracture, dislocation, or joint effusion.

IMPRESSION: No acute bony abnormality is seen.

Interpretation by Dr. Leonard P. Holmgren

Date/Time: 6/14/2012 1642

Transcribed 06/14/2012 by: ld

Time: 4:59 PM

JOB I.D. 3103093

Electronically signed by LEONARD HOLMGREN, MD

FELTON, GREG
08/27/1963
894410
COLE, KARA, APN
CRAD

48Y M

800555675

(Page 1 of 1)

PROGRESS NOTES

Patient's name: Greg Felton SS # _____
 Date of injury: 3/7/12
 Employer: _____
 Previous injuries/diseases/surgeries contributing to the condition: _____

OBJECTIVE FINDINGS:

Condition worsened: _____ Condition same: _____ Conditioned Improved: _____
 Maximum medical improvement: yes: no:
 May have suffered permanent disability: yes: no:

DIAGNOSIS: (L) knee sprain

Injury consistent with history: yes: no: _____

TREATMENT PLAN:

No change in therapy _____
 PT/OT prescribed: _____ PT/OT discontinued: _____
 Diagnostic studies: _____
 Prescriptions: Ibuprofen 400 mg 3x/day with food
 Medications may be used while working: yes: _____ no: _____
 Released to FULL DUTY/NO RESTRICTIONS: on (date): 6/14/12
 Released to RESTRICTED/MODIFIED DUTY from: _____ until next appointment
 Restrictions are temporary unless checked here _____

ACTIVITY

	N O F C				Wt. limits for:	LIFTING				CARRYING			
	N	O	F	C		N	O	F	C	N	O	F	C
Sitting					01 - 10 lbs								
Walking					11 - 20 lbs								
Standing					21 - 50 lbs								
Bending at waist					51 - 75 lbs								
Stooping					over 76 lbs								
Reaching above shoulder													
Climbing													
Repetitive use of hand(s)													

N = never O = occasionally, approximately 15 min/hr F = frequently, approximately 40 min/hr C = continuously

Carol Coats, MD
 Kara Cole, APN

Kara Cole APN

Date: 6/14/12

Next visit: July 2, 12
2 wks.

Time: 10:00

Signature of patient: X [Signature]

Encounter Date: 06/14/2012

2143-12-06693-0,

Greg Felton (MR# 4039732)

Progress Note

Progress Note Info

Author	Notes Status	Last Update User	Last Update Date
Kara Cole	Signed	Kara Cole	6/15/12 10:34 AM

Progress Note

Subjective:

This 48-year-old Search and Rescue volunteer developed pain over the medial aspect of his left knee after trudging through thigh deep snow over steep terrain during a training exercise. His injury occurred over 3 months ago, and he has noticed slow, steady improvement in his knee pain. However, he continues to have discomfort over the medial aspect of his knee with certain activities, and he presents to this office today for initial evaluation. He has no pain with ambulation and with most of his usual activities. He has not been using his StairMaster, but otherwise he has continued with all of his normal activities, including participating recently in a prolonged and strenuous rescue operation. He occasionally has a sharp twinge of pain over the medial aspect of his knee, such as when he twists his knee or turns the corner.

He states that following the original injury, he noticed a quarter-sized red mark over the medial aspect of his knee. He never had pronounced swelling, but did notice a golf ball-sized area of painless swelling over the posterior knee, which now has resolved. Initially, his knee pain was relieved by fully flexing his left knee and sitting on his foot. He iced his knee a few times initially, but has not iced it recently. He has taken an occasional 200 mg dose of ibuprofen for his knee pain with some relief. He denies previous injuries to his left knee.

Physical examination:

This is a well-developed, well-nourished, male, in no apparent distress. His head is normocephalic and atraumatic. Neck is supple without lymphadenopathy or thyromegaly. His lung sounds are clear bilaterally to auscultation. His heart is regular in rate and rhythm. Abdomen is soft and nontender.

The left knee reveals no discoloration, edema, or deformity. There is mild point tenderness at the medial fat pad and there is mild medial joint line tenderness. There is mild popliteal edema without discomfort. There is no tenderness over the lateral aspect of the knee. There is no patellar apprehension. The knee is stable to anterior, medial and lateral stress testing. Neurovascular status is intact.

Impression:

Left knee sprain.

Plan:

I think the patient's mild residual discomfort will continue to resolve with attention to anti-inflammatory measures. The patient will take ibuprofen 3 times per day to help with inflammation. I encouraged him to ice his knee, especially after strenuous or prolonged activities. He may also use an Ace wrap or neoprene knee sleeve to provide compression when he is active.

I will see him back in 2 weeks. He may work at full duty.

RECEIVED

JUL 03 2012

155

Felton, Greg (MR # 4039732) Printed by Sarah D Stapp, Med Ass't [CVM437] at 7/3/12 3:50 PM

EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

EMPLOYER

Employer's Name: Alternative Service Concepts L.L.C.
 Office Mail Address: 1775 E Flamb Lane, #148 Reno, Nevada 89502
 Nature of Business (Ind., etc.): 777 FEIN: 777 OSHA Log #:
 Location (if different from mailing address): Telephone: 777-7777
 First Name: Last Name: Social Security: Birthdate: THRD-PARTY ADMINISTRATOR
 Home Address (Number and Street): Age: Primary Language Spoken:

EMPLOYEE

Employee's occupation (job title) when hired or disabled: Warehouse Associate
 Department in which regularly employed: Warehouse
 Was the employee paid for the day of injury? (if applicable) Yes No
 How long has this person been employed by you in Nevada? 1 year
 Is the injured employee a corporate officer? Yes No
 sole proprietor? Yes No partner? Yes No
 Date of injury (if applicable): 02/06/12 Time of injury (Hours, Minute AM/PM) (if applicable): 10:00 PM
 Was employee in your employ when injured or disabled by occupational disease (O/D)? Yes No
 Address or location of accident (Also provide city, county, state) (if applicable): 1000 S. Virginia St. Reno NV
 Supervisor or to whom injury or O/D reported: STEVEN THOMAS
 What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.) (if applicable): training on how to use a forklift
 Accident on employer's premises? (if applicable) Yes No

ACCIDENT OR DISEASE

What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.) (if applicable): training on how to use a forklift
 Date of this injury or occupational disease onset: 02/06/12 Include time if applicable. Be specific and answer in detail. Use additional sheet if needed.
 Specify machine, tool, substance, or object most closely connected with the accident: forklift
 Part of body injured or affected: back
 Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.): back sprain
 If fatal, give date of death: NR
 Witness: Unknown
 Was there more than one person injured in this accident? (if applicable) Yes No

INJURY OR DISEASE

Did employee return to next scheduled shift after accident? (if applicable) Yes No
 Will you have light duty work available if necessary? Yes No
 Treating physician or chiropractor name: Fara Dole
 Location of Initial Treatment:
 Emergency Room Yes No Hospitalized Yes No
 Last day wages were earned: 02/06/12
 How many days per week does employee work? 40
 Scheduled days off: S M T W T F S
 Date employee was hired: 01/01/12 Last day of work after injury or disability: 02/06/12
 Are you paying injured or disabled employee's wages during disability? Yes No
 Date of return to work: 02/06/12 Number of work days lost: 0

IMPORTANT LOST TIME INFO

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 weeks prior to the date of injury or disability? Yes No
 Do not know
 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. 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, provide gross earnings from the date of hire to the date of injury or disability.
 Pay period: SUN TUE THUR SAT MON WED FRI
 Employee is paid: WEEKLY MONTHLY OTHER BI-WKLY SEMI-MONTHLY
 On the date of injury or disability the employee's wage was: \$ 10.00 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

CLAIMS

I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I do understand that providing false information is a violation of Nevada law.
 Claim is: Accepted Denied Deferred 3rd Party? Deemed Wage: 10.00
 Claims Examiner's Signature: [Signature] Date: 02/07/12
 Employer's Signature and Title: [Signature] Date: 02/07/12
 Account No: [Signature] Class Code: [Signature]
 Status Clerk: [Signature] Date: [Signature]

Form C-3 (rev. 11/05)

ORIGINAL - EMPLOYER

PAGE 2 - INSURER/TPA

PAGE 3 - EMPLOYEE

Alternative Service Concepts
Flexibility · Expertise · Integrity

June 20, 2012

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/7/2012

Dear Mr. Felton:

In order to assist with the investigation of your claim, you will soon be contacted by the investigative company, Global Options. They will be asking to meet with you on our behalf to obtain your detailed recorded statement concerning the facts of your claim referenced above.

If you have questions or need further information or assistance, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File
Employer: Douglas County
Global Options

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY FELTON,

Appellant,

vs.

DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
OFFICE OF THE DEPARTMENT OF
ADMINISTRATION

Respondents.

Electronically Filed
Feb 03 2017 02:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 15 OC 00048 1B

DEPT. NO. I

Appeal from a District Court Order
Denying Petition for Judicial Review
First Judicial District Court, Carson City
Department I
Case No. 15 OC 00048 1B

APPELLANT'S APPENDIX

VOLUME 1 of 3

Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 8218
Nevada Attorney for Injured
Workers
1000 East William Street
Suite 208
Carson City, Nevada 89701
Attorneys for Appellant,
Gregory Felton

Robert F. Balkenbush, Esq.
Nevada Bar No. 1246
Thorndal Armstrong Delk
Balkenbush & Eisinger
6590 South McCarran Blvd.
Suite B
Reno, Nevada 89509-6112
Attorney for Respondents,
Douglas County and Public
Agency Compensation Trust

INDEX TO JOINT APPENDIX

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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 47153-KD/47154-KD
Claim Number: C14321206693 01

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

BEFORE THE HEARING OFFICER

The Claimant's requests for Hearings were filed on January 17, 2014 and Hearings were scheduled for February 10, 2014. The Hearings were held on February 10, 2014, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present. The Employer and Insurer were represented by Robert Balkenbush, Esquire, by telephone conference call.

ISSUE

The Claimant appealed from the Insurer's determinations dated November 11, 2013 and November 13, 2013. The issues before the Hearing Officer are the average monthly wage (AMW) calculation and a 1% permanent partial disability (PPD) award.

DECISION AND ORDER

The determinations of the Insurer are hereby **AFFIRMED**.

The Claimant injured his left knee in the course and scope of his employment on March 6, 2012. He treated surgically for his injury and was released to maximum medical improvement with a ratable impairment. The Claimant was seen by Dr. Betz and awarded a 1% PPD. The Claimant appealed the 1% PPD award and the AMW calculation and is requesting further treatment. After review of the medical reporting submitted, the Hearing Officer finds the determinations of the Insurer are proper. The AMW was calculated using the deemed wage as determined by NRS 616A.157. In addition, the medical reporting supports Dr. Betz's PPD was conducted in accordance with the *AMA Guides*. As such and absent any medical reporting to the contrary or a second PPD pursuant to NRS 616C.100, the Hearing Officer finds the Insurer properly awarded a 1% PPD. Regarding the request for further treatment, the Hearing Officer finds she has no jurisdiction over continued treatment as the claim closed by a determination letter dated October 21, 2013 and said determination was not appealed.

NRS 616A.157 "Employee": Volunteer members of search and rescue organization. Volunteer members of a search and rescue organization that is under the direct supervision of a county sheriff, while acting under the direction of the sheriff or a designee of the sheriff: 1. In the conduct of any search and rescue operation; or
2. In training for such an operation, shall be deemed, for the purposes of chapters 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of \$2,000 per month, and are entitled to the benefits of those chapters.

In the Matter of the Contested
Industrial Insurance Claim of
Hearing Number:
Page two

GREGORY FELTON
47153/47154-KD

NRS 616C.490(2)(a) provides the percentage of disability shall be determined in accordance with the AMA Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the Division, per NRS 616C.110.

NRS 616C.100 provides if an injured employee disagrees with the percentage of disability determined by a physician or chiropractor, the injured employee may obtain a second determination, at his own expense, by selecting the next physician or chiropractor in rotation from the rating physician list maintained by the administrator per NRS 616C.490(2), and the results of a second determination may be offered at any hearing or settlement conference.

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 20th day of February, 2014.



Katherine Diamond, 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 deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

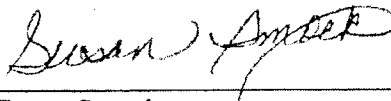
GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LANE #148
RENO, NV 89502-3600

Dated this 20th day of February, 2014.



Susan Smock
Employee of the State of Nevada

**REQUEST FOR HEARING BEFORE THE APPEALS OFFICER
NEVADA DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 47153/47154-KD
Claim Number: C14321206693 01

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

FAXED

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: February 20, 2014

(Please attach a copy of the Hearing Officer's Decision)

PERSON REQUESTING APPEAL: (circle one) CLAIMANT/EMPLOYER/INSURER

REASON FOR APPEAL: Disagree with decision

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

Gregory Felton
Person requesting this hearing (please print)

Address

[Signature]
Person requesting this hearing (signature)

City, State, Zip Code

Telephone Number

775 588 3121 3/18/14
Telephone Number Date

WILL AN INTERPRETER BE REQUIRED? YES [] NO
If so, what language: _____

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:

Claimant's signature

775 588 3121
Claimant's Telephone Number

If you are appealing the Hearing Officer's decision, file this form no later than thirty (30) days after that decision at:

NEVADA DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE
1050 E. WILLIAMS STREET SUITE 450
CARSON CITY, NV 89701
(775) 687-8420
FAX (775) 687 8425

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE
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original to follow via US post. FAX transmitted 3/18/14.

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

FILED
MAR 20 2014
DEPT. OF ADMINISTRATION
APPEALS OFFICER

6 In the Matter of the Contested
7 Industrial Insurance Claim of:

Claim No: C1431206693 01

8 Hearing No: 47154-KD
9 47153-KD

10 Appeal No: 47863-WDD

11 GREGORY FELTON,

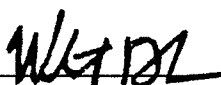
Claimant.

12 ORDER FOR APPOINTMENT OF
13 NEVADA ATTORNEY FOR INJURED WORKERS

14 The Appeals Officer, having received and considered the Claimant's
15 written request for the appointment of the Nevada Attorney for Injured Workers;
16 finds the Claimant would be better served by legal representation and accordingly;

17 IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers
18 is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this
19 matter.

20 IT IS SO ORDERED.

21 
22 _____
23 WHITNEY D DERRAH
24 APPEALS OFFICER
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ORIGINAL

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

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1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County, Employer, and
8 Public Agency Compensation Trust, Insurer

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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No. C143-12-06693 01

of

Hearing Nos. 47153-KD
47154-KD

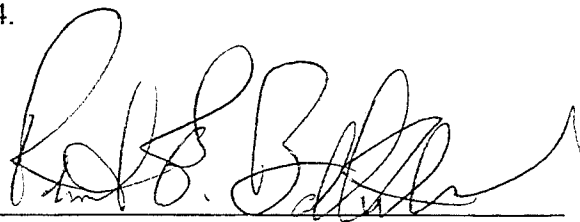
GREGORY FELTON

Appeal No. 47863-WDD

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE, Robert F. Balkenbush, Esq., will appear as counsel for Employer.
Douglas County, and the Insurer, Public Agency Compensation Trust, in the above-referenced
matter.

DATED this 24th day of March, 2014.

By 

ROBERT F. BALKENBUSH, ESQ.
Attorneys for Douglas County and
Public Agency Compensation Trust

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and correct copy of the foregoing document, addressed to:

Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

DATED this 24 day of March, 2014.


SAM BAKER

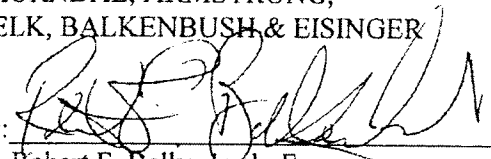
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 24th day of March, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

Robert F. Balkenbush, Esq.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

ORIGINAL

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION
APPEALS SECTION

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1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County, Employer, and
8 Public Agency Compensation Trust, Insurer

9
10 **NEVADA DEPARTMENT OF ADMINISTRATION**
11 **BEFORE THE APPEAL OFFICER**

12 In the Matter of the
13 Industrial Insurance Claim

Claim No. C143120669301

14 of

Hearing Nos. 47154-KD
47154-KD

15 GREGORY FELTON
16 _____/

Appeal No. 47863-WDD

17 **INSURER'S AND EMPLOYER'S**
18 **CLAIM HISTORY PACKET**

19 ENTERED INTO

20 EVIDENCE AS EXHIBIT

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INDEX TO INSURER'S AND EMPLOYER'S
CLAIM HISTORY PACKET

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<u>PAGE(S)</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	11/11/13	Determination letter from Third Party Administrator (TPA) to Claimant
2-3	01/22/14	Notice of Hearing Before the Hearing Officer / Hearing No. 47153-KD
4	11/13/13	Determination Letter from TPA to Claimant
5-6	01/22/14	Notice of Hearing Before the Hearing Officer / Hearing No. 47154-KD
7-9	02/20/14	Hearing Nos. 47153-KD & 47154-KD, Decision and Order
10	03/18/14	Request For Hearing Before the Appeals Officer
11-12	03/20/14	Notice of Appeal and Order to Appear
13	03/20/14	Order For Appointment of Nevada Attorney for Injured Workers

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and
correct copy of the foregoing document, addressed to:

Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

DATED this 3 day of April, 2014.

Sam Baker
SAM BAKER

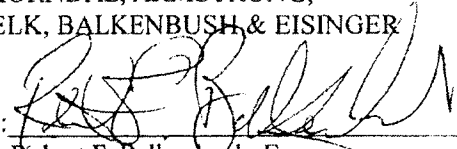
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer
does not contain the social security number of any person.

DATED this 3 day of April, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH, & EISINGER

By: 

Robert F. Balkenbush, Esq.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509



Alternative Service Concepts

Flexibility · Expertise · Integrity

November 11, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim #: C1431206693 01

Injured: 3/6/2012

Employer: DOUGLAS COUNTY

Dear GREGORY FELTON:

Please be advised that we have calculated your Average Monthly Wage (AMW) based on statutory deemed wage. The AMW forms the basis for the amount of all disability compensation payable to you under this claim.

The maximum AMW allowed by NRS 616A.157 for your occupation as a volunteer member of a search and rescue organization, shall be a deemed wage of \$2,000 per month.

If you disagree with the insurer determination, you have the right to appeal by completing and filing with the Hearing Officer, Department of Administration, the enclosed Request for Hearing form within seventy (70) days from the date of this letter.

For questions or further information about the AMW calculation or other aspects of your claim, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enc.: Compensation Check Distribution Notice
Physician's Progress Report (Form D-39)
cc: File DOUGLAS COUNTY

Request for Compensation (Form D-6)
Explanation of Wage Calculation (D-7 form)

Computer Calculation Worksheet
Request for Hearing (D-12a form)

RECEIVED

JAN 23 2014

960

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 47153-KD
Claim Number: C14321206693 01

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

NOTICE OF HEARING BEFORE THE HEARING OFFICER

Pursuant to the **Claimant's** request for a Hearing Officer review of the Insurer's Determination under Chapters 616 and 617 of the Nevada Revised Statutes, you are hereby notified a hearing will be held:

DATE: MONDAY, FEBRUARY 10, 2014

TIME: 9:00AM

PLACE: Department of Administration, HEARINGS DIVISION
1050 E. Williams Street (Hwy 50 East), Suite 400
Carson City, NV 89701
Phone (775) 687-8440 Fax (775) 687-8441

The matter to be ascertained from this Hearing shall be whether the determination rendered by the Insurer is proper. Failure of the appealing party to attend this Hearing may result in dismissal of the appeal.

NOTE: The Claimant may be represented at the Hearing by a private attorney or may seek assistance and advice from the Nevada Attorney for Injured Worker's at (775) 684-7555. If you have an attorney or other representative, please confirm with them the date and time for this hearing.

If you would prefer to testify by telephone, please contact this office one day prior to the hearing date at (775) 687-8440 to make those arrangements. Telephone hearings will generally take place within 1 hour of the time designated for the Hearing. **Long distance calls will be billed to the party requesting telephone participation in the hearing.**

NOTE: This Hearing will be scheduled on a **STACKED** calendar.

Dated this 22nd day of January, 2014.

Katherine Diamond, Hearing Officer

RECEIVED

JAN 23 2014

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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 HEARING BEFORE THE HEARING OFFICER was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LANE #148
RENO, NV 89502-3600

Dated this 22nd day of January, 2014.

Carol Hohn

Carol Hohn
Employee of the State of Nevada

RECEIVED

JAN 23 2014

asc



Alternative Service Concepts

Flexibility · Expertise · Integrity

November 13, 2013

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Date of Injury: 3/6/2012
Employer: Douglas County

Dear Mr. Felton:

As a result of your permanent partial disability (PPD) evaluation by Dr. Betz on 11/5/2013, it has been determined you have one percent (1%) whole-body basis disability. This award entitles you to annual payments of \$144.00 until 8/26/2033. You also have the right to request a lump-sum payment in the amount of approximately \$1,800.53 [depending on the date of your election] in lieu of installment payments.

You may accept this award, or, if you disagree with the award, you have the right to appeal. If you choose to accept the award, complete the enclosed "Election of Method of Payment of Compensation" and "Reaffirmation of Lump-sum Request", and return the signed, witnessed originals of the forms to this office. If you choose to appeal the award, you must complete and return the enclosed appeal form to the Department of Administration, at the address listed on the form, within seventy (70) days from the date of this letter.

A copy of NRS 616C.390, the "Injured Worker's Right to Reopen a Claim Which Has Been Closed", is also enclosed.

If you have questions or need further information, you may contact our office at 800-291-6826.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

Enclosures: Appeal Form D-12a, D-13 (Reopening Rights), PPD rating report, PPD Calculation, Election of Method, Reaffirmation, Effects of Accepting Payment of Permanent Partial Disability in a Lump Sum

cc: File
Employer: Douglas County

RECEIVED

JAN 23 2014

as

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 47154-KD
Claim Number: C1431206693 01

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

NOTICE OF HEARING BEFORE THE HEARING OFFICER

Pursuant to the **Claimant's** request for a Hearing Officer review of the Insurer's Determination under Chapters 616 and 617 of the Nevada Revised Statutes, you are hereby notified a hearing will be held:

DATE: MONDAY, FEBRUARY 10, 2014

TIME: 9:00AM

PLACE: Department of Administration, HEARINGS DIVISION
1050 E. Williams Street (Hwy 50 East), Suite 400
Carson City, NV 89701
Phone (775) 687-8440 Fax (775) 687-8441

The matter to be ascertained from this Hearing shall be whether the determination rendered by the Insurer is proper. Failure of the appealing party to attend this Hearing may result in dismissal of the appeal.

NOTE: The Claimant may be represented at the Hearing by a private attorney or may seek assistance and advice from the Nevada Attorney for Injured Worker's at (775) 684-7555. If you have an attorney or other representative, please confirm with them the date and time for this hearing.

If you would prefer to testify by telephone, please contact this office one day prior to the hearing date at (775) 687-8440 to make those arrangements. Telephone hearings will generally take place within 1 hour of the time designated for the Hearing. **Long distance calls will be billed to the party requesting telephone participation in the hearing.**

NOTE: This Hearing will be scheduled on a **STACKED** calendar.

Dated this 22nd day of January, 2014.

Katherine Diamond, Hearing Officer

RECEIVED

JAN 23 2014

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CERTIFICATE OF MAILING

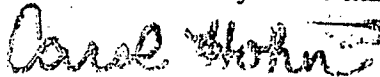
The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF HEARING BEFORE THE HEARING OFFICER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LANE #148
RENO, NV 89502-3600

Dated this 22nd day of January, 2014.



Carol Hohn
Employee of the State of Nevada

RECEIVED

JAN 23 2014

asc

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 47153-KD/47154-KD
Claim Number: C14321206693 01

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

BEFORE THE HEARING OFFICER

The Claimant's requests for Hearings were filed on January 17, 2014 and Hearings were scheduled for February 10, 2014. The Hearings were held on February 10, 2014, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present. The Employer and Insurer were represented by Robert Balkenbush, Esquire, by telephone conference call.

ISSUE

The Claimant appealed from the Insurer's determinations dated November 11, 2013 and November 13, 2013. The issues before the Hearing Officer are the average monthly wage (AMW) calculation and a 1% permanent partial disability (PPD) award.

DECISION AND ORDER

The determinations of the Insurer are hereby **AFFIRMED**.

The Claimant injured his left knee in the course and scope of his employment on March 6, 2012. He treated surgically for his injury and was released to maximum medical improvement with a ratable impairment. The Claimant was seen by Dr. Betz and awarded a 1% PPD. The Claimant appealed the 1% PPD award and the AMW calculation and is requesting further treatment. After review of the medical reporting submitted, the Hearing Officer finds the determinations of the Insurer are proper. The AMW was calculated using the deemed wage as determined by NRS 616A.157. In addition, the medical reporting supports Dr. Betz's PPD was conducted in accordance with the *AMA Guides*. As such and absent any medical reporting to the contrary or a second PPD pursuant to NRS 616C.100, the Hearing Officer finds the Insurer properly awarded a 1% PPD. Regarding the request for further treatment, the Hearing Officer finds she has no jurisdiction over continued treatment as the claim closed by a determination letter dated October 21, 2013 and said determination was not appealed.

NRS 616A.157 "Employee": Volunteer members of search and rescue organization. Volunteer members of a search and rescue organization that is under the direct supervision of a county sheriff, while acting under the direction of the sheriff or a designee of the sheriff: 1. In the conduct of any search and rescue operation; or 2. In training for such an operation, shall be deemed, for the purposes of chapters 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of \$2,000 per month, and are entitled to the benefits of those chapters.

In the Matter of the Contested
Industrial Insurance Claim of
Hearing Number:
Page two

GREGORY FELTON
47153/47154-KD

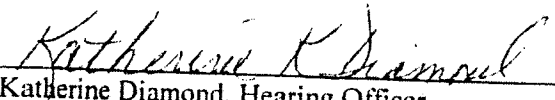
NRS 616C.490(2)(a) provides the percentage of disability shall be determined in accordance with the AMA Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the Division, per NRS 616C.110.

NRS 616C.100 provides if an injured employee disagrees with the percentage of disability determined by a physician or chiropractor, the injured employee may obtain a second determination, at his own expense, by selecting the next physician or chiropractor in rotation from the rating physician list maintained by the administrator per NRS 616C.490(2), and the results of a second determination may be offered at any hearing or settlement conference.

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 20th day of February, 2014.


Katherine Diamond, 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 deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

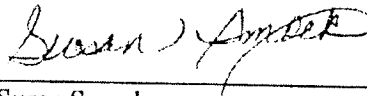
GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
1755 E PLUMB LANE #148
RENO, NV 89502-3600

Dated this 20th day of February, 2014.



Susan Smock
Employee of the State of Nevada

**REQUEST FOR HEARING BEFORE THE APPEALS OFFICER
NEVADA DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 47153/47154-KD
Claim Number: C14321206693 01

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

FAXED

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: February 20, 2014

(Please attach a copy of the Hearing Officer's Decision)

PERSON REQUESTING APPEAL: (circle one) CLAIMANT/EMPLOYER/INSURER

REASON FOR APPEAL: Disagree with decision

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

Gregory Felton
Person requesting this hearing (please print)

Address

[Signature]
Person requesting this hearing (signature)

City, State, Zip Code

Telephone Number

775 588 3121 3/18/14
Telephone Number Date

WILL AN INTERPRETER BE REQUIRED? YES [] NO
If so, what language: _____

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:

Claimant's signature

[Signature]
775 588 3121
Claimant's Telephone Number

If you are appealing the Hearing Officer's decision, file this form no later than thirty (30) days after that decision at:

NEVADA DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE
1050 E. WILLIAMS STREET SUITE 450
CARSON CITY, NV 89701
(775) 687-8420
FAX (775) 687 8420

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE
RECEIVED
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20 MAR 18 PM 5:01

original to follow via US post. FAX transmitted 3/18/14.

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

FILED

MAR 20 2014

DEPT. OF ADMINISTRATION
APPEALS OFFICER

5
6 In the Matter of the Contested
7 Industrial Insurance Claim of:

Claim No: C1431206693 01

8 Hearing No: 47154-KD
47153-KD

9 Appeal No: 47863-WDD

10 GREGORY FELTON,

11 Claimant.

12 ORDER FOR APPOINTMENT OF
13 NEVADA ATTORNEY FOR INJURED WORKERS

14 The Appeals Officer, having received and considered the Claimant's
15 written request for the appointment of the Nevada Attorney for Injured Workers;
16 finds the Claimant would be better served by legal representation and accordingly;

17 IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers
18 is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this
19 matter.

20 IT IS SO ORDERED.

21 
22 _____
23 WHITNEY D DERRAH
24 APPEALS OFFICER

ORIGINAL

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

2014 APR -3 PM 12:39

RECEIVED
AND
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1 Robert F. Balkenbush, Esq.
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 Tel.: (775) 786-2882
6 Fax.: (775) 786-8004
7 Attorneys for: Douglas County, Employer, and
8 Public Agency Compensation Trust, Insurer

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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No. C143120669301

of

Hearing No. 47154-KD
47153-KD

GREGORY FELTON

Appeal No. 47863-WDD

INSURER'S AND EMPLOYER'S
FIRST DOCUMENTARY EXHIBIT

ENTERED INTO
EVIDENCE AS EXHIBIT _____

4

**INDEX TO INSURER'S AND EMPLOYER'S
FIRST DOCUMENTARY EXHIBIT**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
<u>PAGE(S)</u>	<u>DATE</u>	<u>DESCRIPTION</u>																									
1	03/09/12	Form C-1																									
2	06/14/12	Form C-4																									
3	06/14/12	Renown Occupational Health Network Progress Report and Disability Certification by Sarah Stapp, of Carson Valley Medical Center																									
4	06/14/12	Report of Findings: Left knee x-ray by Carson Valley Medical Center																									
5	06/14/12	Progress Notes by Kara Cole, APN, of Occupational Health Services																									
6	06/15/12	Progress Note by Kara Cole, APN, of Carson Valley Medical Center																									
7	06/20/12	Form C-3																									
8	06/20/12	Letter from the Third Party Administrator (TPA) to Claimant																									
9-14	06/21/12	Completed "Request For Additional Medical Information and Release Form"																									
15	07/02/12	Occupational Health Network Progress and Report of Disability Certification by Carol Coats, M.D., of Carson Valley Medical Center																									
16	07/05/12	Progress Notes by Carol Coats, M.D., of Carson Valley Medical Center																									
17	07/18/12	Notice of Claim Acceptance																									
18-19	07/23/12	Progress Note by Kara Cole, APN, of Carson Valley Medical Center; to include Occupational Health Network Progress Report and Disability Certification																									
20-21	08/13/12	Progress Note by Kara Cole, APN, of Carson Valley Medical Center; to include Occupational Health Network Progress Report and Disability Certification																									

1	22	08/27/12	MRI-left knee without contrast by Great Basin Imaging
2	23-26	10/02/12	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic
3			
4	27	10/08/12	Barton Memorial Hospital Lab Results
5	28	10/08/12	Barton Memorial Hospital ECG report
6	29-31	10/17/12	Carson Tahoe Regional Healthcare Operative Report by Jeffrey Cummings, M.D.
7			
8	32	10/25/12	Office Visit by Jeffrey Cummings of Tahoe Fracture & Orthopedic Medical Clinic
9			
10	33	10/26/12	Referral Consults: PT by Roger Rogalski, M.D., of Tahoe Fracture & Orthopedic Medical Clinic
11			
12	34	11/15/12	Office Visit by Jeffrey Cummings of Tahoe Fracture & Orthopedic Medical Clinic
13			
14	35	11/21/12	Work Status Form by Jeffrey Cummings of Tahoe Fracture & Orthopedic Medical Clinic
15			
16	36	12/28/12	Office Visit by Stephanie Tonn, PA, of Tahoe Fracture & Orthopedic Medical Clinic
17	37-39	12/28/12	Laboratory Report by Pactox
18	40-45	01/22/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic
19			
20	46-47	02/25/13	Patient Exam Report by Reno Diagnostic Centers MR-left knee without contrast
21			
22	48-49	02/28/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic
23			
24	50-52	03/01/13	Laboratory Report by Pactox
25	53-55	03/19/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form
26			
27	56-58	04/16/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form
28			

1	59	04/25/13	Facsimile from TPA to Dr. Cummings regarding Euflexxa injections
2			
3	60	05/07/13	Work Status Form by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic
4			
5	61-62	05/28/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic
6			
7	63-65	06/03/13	Laboratory Report by Pactox
8	66-69	06/04/13	Urine Toxicology Review from Tahoe Fracture and Orthopedic
9	70-72	07/01/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form
10			
11	73	07/11/13	Letter from TPA to Patricia Morales, M.D., of Specialty Health Clinic
12			
13	74	07/11/13	Letter from TPA to Claimant regarding upcoming appointment with Patricia Morales, M.D.
14			
15	75	07/31/13	Letter from TPA to Claimant regarding upcoming appointment with Patricia Morales, M.D.
16	76-79	08/19/13	Medical Report by Patricia Morales, M.D., of Specialty Health; to include Return to Work
17			
18	80-81	08/22/13	Letter from James Greenwald, M.D., of Specialty Health to Jeffrey Cummings, M.D.; to include response dated 08/29/13
19			
20	82-86	09/20/13	Office Visit by Jeffrey Cummings, M.D., of Tahoe Fracture & Orthopedic Medical Clinic; to include Work Status Form
21			
22	87-88	10/08/13	Letter from TPA to Claimant regarding PPD rating physician
23	89	10/16/13	Executed PPD rating physician agreement
24	90	10/16/13	DIR Request for Rotating Rating Physician or Chiropractor
25	91-92	10/21/13	Letter from TPA to Claimant regarding upcoming PPD rating appointment
26			
27	93	10/21/13	Letter from TPA to Jay Betz, M.D.
28	94-97	11/05/13	Permanent Partial Impairment Evaluation by Jay Betz, M.D.

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98-99 11/11/13

100-103 11/13/13

Average Monthly Wage (AMW) determination letter from TPA to Claimant; to include Wage Calculation Form For Claims Agent's Use

Permanent Partial Disability Award letter from TPA to Claimant; to include D-10a, D-11, and D-9a

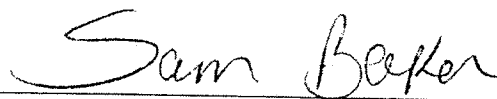
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and correct copy of the foregoing document, addressed to:

Nevada Attorney for Injured Workers
1000 E. William #208
Carson City, NV 89701

DATED this 3 day of April, 2014.



SAM BAKER

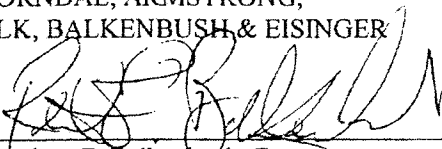
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer does not contain the social security number of any person.

DATED this 3 day of April, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

Robert F. Balkenbush, Esq.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

Form C-1

ALTERNATIVE SERVICE
CONCEPTS, LLC

**Notice of Injury or
Occupational
Disease**

Incident Report

Note: This form is to be completed by the employee with receipt acknowledgment by the employer.

Employer's
Name

DOUGLAS COUNTY NEVADA

Employee's Name: <u>Grosby, FELTON</u>		SOCIAL SECURITY #	Telephone Number: <u>776 588 3121</u>
Date of Accident: <u>4/3/12</u>	Time of Accident: <u>~ 2100</u>	Place Where Accident Occurred: <u>North end of Andria Drive, Stateline, NV</u>	
What is the Nature of the Injury? <u>Pain around patella, generally upon extension</u>		List the Body Parts Involved: <u>Left knee</u>	

Briefly Describe the Accident or Circumstances:

Upon completion of search + rescue winter rescue/avalanche training, the team proceeded downhill, cross-country in snow up to knee deep, toward our vehicles. We encountered several locations in which we slid, including on the snow-covered icy road, the final leg of our walk. Upon reaching the parking lot, I was aware of pain + was concerned about weakness in my knee.

Volunteer? YES NO

Did you see a doctor? YES NO

Name(s) of Witness(es):

Did You Leave Work Because of the Injury? <input type="radio"/> Yes <input checked="" type="radio"/> No	If Yes, Give Date and Time:	Have You Returned to Work? <input type="radio"/> Yes <input type="radio"/> No	If Yes, Give Date and Time:
Was First Aid Provided? <input type="radio"/> Yes <input checked="" type="radio"/> No	If Yes, By Whom?	Name and Address of the Treating Physician, if Applicable or Known:	
Did the Accident Happen in the Normal Course of Your Work? <input checked="" type="radio"/> Yes <input type="radio"/> No	If Yes, Provide Name(s) of the Person(s) Involved:		
Was Anyone Else Involved? <input type="radio"/> Yes <input checked="" type="radio"/> No			

My employer/insurer may have made arrangements to direct me to a health care provider for medical treatment of my industrial injuries. I have been notified of these arrangements.

The employee must sign and date this form in the space provided below. The employee is also advised to retain a copy of the completed form.

Signature of the Injured Employee [Signature] Date 3/18/12

To file a claim for compensation, see the Claim for Compensation, or C-4, form.

With my signature below, I acknowledge receipt of this form on behalf of the employer named above.

Name (Print): SHAWN THOMAS Signature of Supervisor [Signature] Date 3/7/12

REVISED MAY 2002

Original to Employer, Copy to Employee

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 Gregory	M.I. R	Last Name FELTON	Birthdate	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurer's Use Only)
Home Address PO BOX 2130			Age 48	Height 60"	Weight 172
City Stateline		State NV	Zip 89423	Social Security Number	
Physical Address 204 HUBBARD RD			City Stateline	State NV	Zip 89423
INSURER			THIRD-PARTY ADMINISTRATOR	Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred Search & Rescue member	
Employer's Name/Company Name Douglas County			Primary Language Spoken English		Telephone 775 782 9066
Office Mail Address (Number and Street) PO BOX 213			City Stateline		State NV
Date of Injury (if applicable) 3/7/12 4P	Hours Injury (if applicable) am 110 pm	Date Employer Notified 3/7/12 4P	Last Day of Work After Injury or Occupational Disease	Supervisor to Whom Injury Reported Shawn Thomas	
Address or Location of Accident (if applicable) End of Andrus Drive					
What were you doing at the time of the accident? (if applicable) Training on snow & ice removal					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) Walking in knee - high deep snow, searching at high speed for avalanche beacons and buried targets, up and down steep hills.					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? Upon return to SAR vehicles				Witnesses to the Accident (if applicable)	
Nature of Injury or Occupational Disease Left knee pain			Part(s) of Body Injured or Affected Left knee		
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 INJURY AND OCCUPATIONAL DISEASES ACT'S (NRS 616 TO 619), INCLUDES OR CHAPTER 617 OF NRSB. I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGICAL PRACTITIONER, OR OTHER PROVIDER, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR CHAPTER 617 OF NRSB, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER ANY INFORMATION, INCLUDING BENEFITS PAID OR PAYABLE, PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR ACUTE PSYCHOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOGRAPH OF THE AUTHORIZATOR SHALL BE AS VALID AS THE ORIGINAL.					
Date 6/14/12	Place CVMC	Employee's Signature <i>[Signature]</i>			

THIS REPORT MUST BE COMPLETED AND MAILED DURING WORKING DAYS OF TREATMENT

Place GARDNERVILLE, NV 89410	Name of Facility CARSON VALLEY MEDICAL CENTER	
Date 6/14/12	Diagnosis and Description of Injury or Occupational Disease Ⓚ Knee sprain	Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (if yes, please explain)
Hour		
Treatment Rest, ice, compression, ibuprofen		Have you advised the patient to remain off work five days or more? <input type="checkbox"/> Yes Indicate dates from _____ to _____ <input checked="" type="checkbox"/> No If no, is the injured employee capable of: <input checked="" type="checkbox"/> Full duty <input type="checkbox"/> Modified duty If modified duty, specify any limitations/restrictions: _____
X-Ray Findings negative		
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)		
Date 6/14/12	Print Doctor's Name Carol Coats, M.D.	I certify that the employer's copy of this form was mailed to the employer on:
Address 1107 HIGHWAY 395		INSURER'S USE ONLY
City GARDNERVILLE, NV	State NV	Zip 89410
Provider's Tax I.D. Number 88-0405927	Telephone 775-782-1615	
Doctor's Signature <i>Kara Coats MD</i>	Degree M.D.	

Renown Occupational Health Network Progress Report and Disability Certification

Date of Service: 6/14/2012		No Show: No	Date / Time of Next Visit:	
Patient Name: Greg Felton			Claim Information	
Employer: OTHER		Claim Number:		
Insurer / TPA: ALT SVC CONC (ASC)		Date of Injury: 3/6/2012		
Occupation: Search and Rescue MEmber		ID / SSN:		
		Diagnosis: The encounter diagnosis was Left knee sprain.		
Related to Industrial Injury? Yes				
Medical Information				
Subjective Complaints: Intermittent medial knee pain				
Objective Findings: Point tenderness				
Pre-Existing Condition(s):				
Assessment: Initial Visit				
Status: Additional Care Required				
Plan: Medication		Permanent Disability: No		
Comments: Ibuprofen 3x/day				
Diagnostics: X-ray				
Comments:				
Disability Information				
Status: Released to Full Duty				
From:				
Through:				
Sitting:		Restrictions are:		
Squatting:		Standing:		
Pulling:		Walking:		
Carrying(hrs):		Other:		
Comments: Return in 2 weeks.		Weight Limit(lb):		
Physician Name:		Physician Signature:		
Sarah D Stapp		e-Signature: Dr Tibor Toplenszky, Medical Director		
Clinic Name / Location:		Clinic Phone Number:		
CARSON VALLEY MEDICAL CENTER OHS CYMC OCCUPATIONAL HEALTH & MEDICINE		Dept: 775-782-1615		
Appointment Time:		Visit Start Time:		
3:15 Pm		10:34 AM		
Check-In Time:		Visit Discharge Time:		
3:22 Pm		4:16 Pm		

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee

RECEIVED
 JUL 09 2012

JOHN VALLEY MEDICAL CENTER
1107 Highway 395 S
Gardnerville, NV 89410
(775) 782-1533
FAX (775) 782-1543
Department of Medical Imaging
REPORT OF FINDINGS

Medical Record No: 894410
Exam Date: 06/14/2012 Time: 1642

LEFT KNEE (FOUR VIEWS)

CLINICAL INDICATIONS: Left knee sprain.

FINDINGS:

There is very early joint space narrowing.

There is no evidence for fracture, dislocation, or joint effusion.

IMPRESSION: No acute bony abnormality is seen.

Interpretation by Dr. Leonard P. Holmgren

Date/Time: 6/14/2012 1642

Transcribed 06/14/2012 by: ld

Time: 4:59 PM

JOB I.D. 3103093

Electronically signed by LEONARD HOLMGREN, MD

FELTON, GREG
08/27/1963
894410
COLE, KARA, APN
CRAD

48Y M

800555675

PROGRESS NOTES

Patient's name: Greg Felton SS # _____
 Date of injury: 3/7/12
 Employer: _____
 Previous injuries/diseases/surgeries contributing to the condition: _____

OBJECTIVE FINDINGS:

Condition worsened: _____ Condition same: _____ Conditioned Improved: _____
 Maximum medical improvement: yes: no:
 May have suffered permanent disability: yes: no:

DIAGNOSIS: (L) knee sprain

Injury consistent with history: yes: no:

TREATMENT PLAN:

No change in therapy _____
 PT/OT prescribed: _____ PT/OT discontinued: _____
 Diagnostic studies: _____
 Prescriptions: Ibuprofen 400 mg 3x/day with food
 Medications may be used while working: yes: no:
 Released to FULL DUTY/NO RESTRICTIONS: on (date): 6/14/12
 Released to RESTRICTED/MODIFIED DUTY from: _____ until next appointment
 Restrictions are temporary unless checked here _____

ACTIVITY

	N O F C				Wt. limits for:	LIFTING				CARRYING			
	N	O	F	C		N	O	F	C	N	O	F	C
Sitting					01 - 10 lbs								
Walking					11 - 20 lbs								
Standing					21 - 50 lbs								
Bending at waist					51 - 75 lbs								
Stooping					over 76 lbs								
Reaching above shoulder													
Climbing													
Repetitive use of hand(s)													

N = never O = occasionally, approximately 15 min/hr F = frequently, approximately 40 min/hr C = continuously

Carol Coats, MD
 Kara Cole, APN Kara Cole APN

Date: 6/14/12

Next visit: July 2, 12
2 wks. Time: 10:00

Signature of patient: X [Signature]

Progress Note

Greg Felton (MR# 4039732)

Progress Note Info

Author

Kara Cole

Reviewed
Signed

Last Update User
Kara Cole

Last Update Date
6/15/12 10:34 AM

Progress Note

Subjective:

This 48-year-old Search and Rescue volunteer developed pain over the medial aspect of his left knee after trudging through thigh deep snow over steep terrain during a training exercise. His injury occurred over 3 months ago, and he has noticed slow, steady improvement in his knee pain. However, he continues to have discomfort over the medial aspect of his knee with certain activities, and he presents to this office today for initial evaluation. He has no pain with ambulation and with most of his usual activities. He has not been using his StairMaster, but otherwise he has continued with all of his normal activities, including participating recently in a prolonged and strenuous rescue operation. He occasionally has a sharp twinge of pain over the medial aspect of his knee, such as when he twists his knee or turns the corner.

He states that following the original injury, he noticed a quarter-sized red mark over the medial aspect of his knee. He never had pronounced swelling, but did notice a golf ball-sized area of painless swelling over the posterior knee, which now has resolved. Initially, his knee pain was relieved by fully flexing his left knee and sitting on his foot. He iced his knee a few times initially, but has not iced it recently. He has taken an occasional 200 mg dose of ibuprofen for his knee pain with some relief. He denies previous injuries to his left knee.

Physical examination:

This is a well-developed, well-nourished, male, in no apparent distress. His head is normocephalic and atraumatic. Neck is supple without lymphadenopathy or thyromegaly. His lung sounds are clear bilaterally to auscultation. His heart is regular in rate and rhythm. Abdomen is soft and nontender.

The left knee reveals no discoloration, edema, or deformity. There is mild point tenderness at the medial fat pad and there is mild medial joint line tenderness. There is mild popliteal edema without discomfort. There is no tenderness over the lateral aspect of the knee. There is no patellar apprehension. The knee is stable to anterior, medial and lateral stress testing. Neurovascular status is intact.

Impression:

Left knee sprain.

Plan:

I think the patient's mild residual discomfort will continue to resolve with attention to anti-inflammatory measures. The patient will take ibuprofen 3 times per day to help with inflammation. I encouraged him to ice his knee, especially after strenuous or prolonged activities. He may also use an Ace wrap or neoprene knee sleeve to provide compression when he is active.

I will see him back in 2 weeks. He may work at full duty.

RECEIVED

JUL 03 2012

EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

TO AVOID PENALTIES FOR PROVIDING FALSE INFORMATION, COMPLETE THIS REPORT CAREFULLY AND HONESTLY WITHIN 30 WORKING DAYS OF RECEIPT OF THIS FORM.		Please Type or Print Alternative Service Concepts L.L.C. 1-800-291-6826 Fax 775-329-7418	1755 E Plumb Lane #148 Reno, Nevada 89502
Employer's Name Alternative Service Concepts L.L.C.		Nature of Business (Trig., etc.) Security	FEIN 117
Office Mailing Address 1755 E Plumb Lane #148		Location (if different from mailing address) 1755 E Plumb Lane #148	OSHA Log # 117
Telephone 775-329-7418		Telephone 775-329-7418	
First Name [Redacted]		Social Security [Redacted]	
Last Name [Redacted]		Birthdate [Redacted]	
Home Address (Number and Street) [Redacted]		Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed
State NV		Was the employee paid for the day of injury? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
In which state was employee hired? NV		How long has this person been employed by you in Nevada? [Redacted]	
Telephone 775-329-7418		Department in which regularly employed: [Redacted]	
Is the injured employee a corporate officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Date of injury (if applicable) 10/26/12		Time of injury (Hours, Minute AM/PM) (if applicable) 10:00 AM	
Address or location of accident (Also provide city, county, state) (if applicable) 1755 E Plumb Lane #148 Reno NV		Date employer notified of injury or O/D 10/26/12	
What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) Working in the office		Supervisor to whom injury or O/D reported Shawn Thomas	
Accident on employer's premises? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Specify machine, tool, substance or object most closely connected with the accident (if applicable) [Redacted]			
Part of body injured or affected Left knee		Witness [Redacted]	
Nature of injury or occupational disease (scratch, cut, bruise, strain, etc.) Left knee sprain		Witness [Redacted]	
If fatal, give date of death N/A		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If validity of claim is doubted, state reason [Redacted]		Did employee return to next scheduled shift after accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Treating physician/therapist name [Redacted]		Location of initial treatment [Redacted]	
How many days per week does employee work? 5 days		Emergency Room <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Scheduled days off S M T W T F S		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Date employee was hired 1/1/12		Last day of work after injury or disability 10/26/12	
Was the employee hired to work 40 hours per week? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Are you paying injured or disabled employee's wages during disability? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire.		Date of return to work 11/1/12	
Pay period: <input type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THUR <input type="checkbox"/> SAT and on <input type="checkbox"/> MON <input type="checkbox"/> WED <input checked="" type="checkbox"/> FRI		Number of work days lost 1	
Employee is paid: <input checked="" type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER		Did the employee receive unemployment compensation any time during the last 12 weeks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
On the date of injury or disability the employee's wage was: \$ [Redacted] per [] Hr [] Day [] Wk [] Mo		Do not know	
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			
I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I do understand that providing false information is a violation of Nevada law.		Employer's Signature and Title [Redacted]	
Claim status: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3 rd Party		Date 10/26/12	
Claims Examiner's Signature [Redacted]		Account No. [Redacted]	
Date [Redacted]		Class Code [Redacted]	
Status Clerk [Redacted]		Date [Redacted]	

Form 5-3 (rev 11/05)

ORIGINAL - EMPLOYER

PAGE 2 - INSURER/TPA

PAGE 3 - EMPLOYEE

Alternative Service Concepts
Flexibility · Expertise · Integrity

June 20, 2012

GREGORY FELTON
P O BOX 2130
STATELINE, NV 89449

RE: Claim No: C1431206693 01
Employer: Douglas County
Date of Injury: 3/7/2012

Dear Mr. Felton:

In order to assist with the investigation of your claim, you will soon be contacted by the investigative company, Global Options. They will be asking to meet with you on our behalf to obtain your detailed recorded statement concerning the facts of your claim referenced above.

If you have questions or need further information or assistance, please contact our office at the number below.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File
Employer: Douglas County
Global Options

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

REQUEST FOR ADDITIONAL MEDICAL INFORMATION RELEASE FORM

Injured Worker's Name : GREGORY FELTON
Social Security No. :
Date of Birth :
Claim No. : C1431206093 01
Injured Worker's Address : P O BOX 2130, STATELINE, NV 89449
Date of Injury : 3/7/2012 - 3/6/2012
Employer : DOUGLAS COUNTY
Name of Insurer/TPA : PACT/ASC

I, the undersigned injured worker, or legal representative of the injured worker's name at the left, do hereby certify that the information provided below is complete, true and correct to the best of my knowledge and that I have provided that information in order to obtain the benefits of Nevada's Industrial Insurance and Occupational Diseases Acts (NRS 616 & 617). I hereby authorize any physician, chiropractor, practitioner, or other person, any hospital, including Veterans Administration or other governmental hospital, any medical service organization, any insurance company, employer or other entity or organization, governmental or private, and/or their representatives or agents, to release to each other any medical, employment or other information acquired, including benefits paid or payable, concerning this or any other disabilities or injuries. A Photostat of this authorization shall be as valid as the original.

Signature [Handwritten Signature] Date 6/21/12

Please provide the information requested below, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This renews the release you signed on your C-4 form at the time your claim was submitted to the insurer. Failure to fully complete and return this form to your claims agent in a timely manner could affect your benefits or delay the resolution of your claim.

PRIOR HISTORY INFORMATION

... Please check the appropriate box below and provide the information requested.

[X] I have no prior conditions, injuries or disabilities, of which I am aware, that might affect the disposition of the claim referenced above.

[] I have a prior condition, injury or disability that could affect the disposition of the claim referenced above. (This could include birth defects, prior surgeries, injuries, etc., whether work-related or not.)

If you checked this box, indicating a pre-existing condition, please explain in detail in the space below. You are encouraged to attach additional sheets of paper to this form, if necessary, to fully explain the condition.

Three horizontal lines for providing details of a pre-existing condition.

Page Two of Four

Injured Worker:

GREGORY FELTON

Claim No:

C1431206693 01

Request for Additional Medical Information and Release Form

LIST OF PAST & PRESENT EMPLOYERS

Information provided may be verified with your past/present employer.

Employer see attached supplement

Address _____

Phone _____

Dates _____

Job Title _____

Job Duties _____

Physical Requirements of the Job _____

How Many Hours Worked Per Week _____

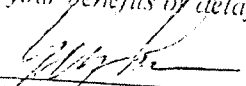
Was any lifting required? Yes _____ No _____

How many pounds of lifting? _____

Did you have any on the job injuries with this employer? Yes _____ No _____

If yes, please give dates and body parts injured _____

Please provide the information requested above, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This renews the release you signed on your C-4 form at the time your claim was submitted to the insurer. Your signature acts as a release to past employers to release employment records required to adjudicate your claim for workers' compensation benefits. Failure to fully complete and return this form to your claims agent in a timely manner could affect your benefits or delay the resolution of your claim.


Injured Workers' Signature

6/21/12
Date

Injured Worker: GREGORY FELTON
Claim No.: C1431206693 01

LIST OF PAST AND PRESENT EMPLOYERS (last 25 years)
SUPPLEMENT (6/21/12)


Employer: Douglas County Search and Rescue (volunteer position)
Address: PO Box 218, Minden, NV 89423
Phone: 775 782 9066
Dates: Approx 2005 to Present
Job Title: Search and Rescue team member and ad hoc team lead
Job Duties: "To provide emergency search, rescue, and backcountry medical aid services for residents of and visitors in Douglas County, Nevada. To provide Swiftwater and Technical High / Low Angle Rope Rescue Services. To provide emergency aid and assistance in times of natural and man-caused disasters. To provide assistance and other services to the Douglas County Sheriff's Office as requested. To provide assistance upon request to our neighboring Counties in Nevada and California."
Physical Reqs: Hiking, lifting, carrying, etc.
Hours/Wk: As required for training & missions (est. avg. 6hrs/wk & 2 hrs/wk last 6 months)
Lifting Req: Yes
Pounds: Est. 75 max (typically team of 4 to lift litter with average-sized patient)
Injuries: None prior to this claim

Employer: Hewlett-Packard
Address: 3000 Hanover St, Palo Alto, CA 94304
Phone: 650 857 1501
Dates: 1986-2003 and 2011-2012
Job Title: Engineering Program Manager
Job Duties: Manage teams of engineers to accomplish numerous and varied projects (system and process design, quality improvements, etc)
Physical Reqs: Minimal (office job)
Hours/Wk: 40+
Lifting Req: No
Pounds: N/A
Injuries: None

Employer: Orloff Consulting
Address: 18687 Main St #C, Groveland, CA 95321
Phone: 209 962-6430
Dates: 2008-2010
Job Title: Aviation Accident Consultant
Job Duties: Provided comprehensive accident investigation, analysis, documentation, animation, and expert witness services.
Physical Reqs: Minimal (office job)
Hours/Wk: 40+
Lifting Req: No
Pounds: N/A
Injuries: None

Employer: AirTegrity Wireless
Address: 276 Kingsbury Grade, Stateline, NV 89449
Phone: 775 588 8800
Dates: 2004-2008
Job Title: President
Job Duties: Manage company operations
Physical Reqts: Minimal (office job)
Hours/Wk: 40+
Lifting Req: On occasion
Pounds: Est. 50 max
Injuries: None

Employer: Masterwork Electronics
Address: 630 Martin Avenue, Rohnert Park, CA 94928
Phone: 707 588 9906
Dates: 2003-2004
Job Title: General Manager
Job Duties: Manage company operations
Physical Reqts: Minimal (office job)
Hours/Wk: 40+
Lifting Req: On occasion
Pounds: Est. 50 max
Injuries: None



Signature

6/21/12

Date

Page Three of Four
Injured Worker: GREGORY FELTON
Claim No: C1431206693 01
Request for Additional Medical Information and Release Form

LIST ALL PRIOR CLAIMS FILED FOR ACCIDENTS/INJURIES -- BOTH WORK RELATED AND NON-WORK RELATED -- WHICH YOU HAVE FILED THROUGHOUT YOUR LIFETIME.

PER NEVADA REVISED STATUTES 616D.300, 616D.370 AND 617.400 - 617.402, TO DELIBERATELY WITHHOLD ANY MEDICAL INFORMATION IS A FRAUDULENT ACT PUNISHABLE BY LAW.

Claim No: NONE Date of Injury: _____
Employer: _____ Body Part (s): _____
Nature of Injury: Industrial Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury _____

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part (s): _____
Nature of Injury: Industrial Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury _____

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part (s): _____
Nature of Injury: Industrial Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury _____


Injured Workers' Signature _____ Date 6/21/12

Injured Worker: GREGORY FELTON

Claim No: C1431206693 01

Request for Additional Medical Information and Release Form

Have you ever filed a workers' compensation claim in this state or any other state or country before?

Yes _____ No

If yes, have you ever received a settlement or buyout for the claim?

Yes _____ No _____

Please list the body part (s) and the amount of the settlement or buyout and the employer under whom the award was received.

Please list doctors whom you have seen for the body part(s) affected by this injury/disease and/or underlying medical conditions that may affect this body part (i.e. arthritis, diabetes, etc.) in the past 20 years for non-claim related conditions:

Doctor name, address, phone:

NONE

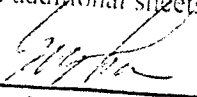
Doctor name, address, phone:

Doctor name, address, phone:

Doctor name, address, phone:

Please attach additional sheets as needed. Thank you for your cooperation.

Injured Worker's Signature



6/21/12
Date

C143-12-06693-01

Occupational Health Network Progress Report and Disability Certification

Date of Service: 7/2/2012		No Show: No	Date / Time of Next Visit:	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer: OTHER Douglas County		Date of Injury:		
Insurer / TPA: ALT SVC CONC (ASC)		ID / SSN:		
Occupation:		Diagnosis: The encounter diagnosis was Sprain of medial collateral ligament of left knee.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Left knee pain				
Objective Findings: Tenderness along medial collateral ligament apprehension with valgus stress				
Pre-Existing Condition(s): None				
Assessment: Condition Improved				
Status: Additional Care Required				
Plan: PT / OT / Speech Therapy		Permanent Disability: No		
Comments: continue ibuprofen 400 mg 3 times daily				
Diagnostics:				
Comments:				
Disability Information				
Status: Released to Full Duty				
From: 7/2/2012		Restrictions are:		
Through:		Sitting:		
Standing:		Stooping:		Bending:
Squatting:		Walking:		Pushing:
Pulling:		Other:		Reaching Above / Below Shoulders:
Carrying(hrs):		Weight Limit(lb):		Lifting(hrs):
Comments: We will recheck in 3-4 weeks		Weight Limit(lb):		
Physician Name: Carol A Coats		Physician Signature:		e-Signature: Dr. Carol Coats, Medical Director
Clinic Name / Location: CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:		Dept: 775-782-1615
Appointment Time: 10:30 Am		Visit Start Time:		10:39 AM
Check-In Time: 10:16 Am		Visit Discharge Time:		10:41 Am

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee

Progress Note

Greg Felton (MR# 4039732)

Progress Note Info

Author	Note Status	Last Update User	Last Update Date/Time
Carol A Coats, M.D.	Signed	Carol A Coats, M.D.	7/5/12 11:34 AM

Progress Note

Subjective: Greg is here today for followup of his knee pain, which occurred while performing his duties volunteering with search and rescue. His knee has slowly been getting better, but is still not 100%. He has pain on the medial aspect of the knee, especially with any twisting motions that cause strain to the medial collateral ligament.

Objective: This is a well-developed, well-nourished, gentleman in no acute distress. Knee reveals no deformity, or edema. There is significant tenderness of the medial collateral ligament. He has full range of motion. He has marked apprehension with Valgus Stress applied To the knee. The knee is stable to anterior, medial and lateral stress testing. No crepitus is elicited.

Assessment: Medial collateral ligament strain.

Plan: Physical therapy. He may work at full duty. He may continue with ibuprofen 400 mg 3 times a day. We'll plan to see him back in 3-4 weeks.

Alternative Service Concepts

Flexibility · Expertise · Integrity

TO:

GREGORY FELTON
P O BOX 2130
STATELINE, NEVADA 89449

RE: Claim No: C1431206693 01
Employer: Douglas County
Insurer: PACT
TPA: alternative service concepts, L.L.C.
Date of Injury: 3/6/2012
Date of Notice: 7/18/2012
Body Part: Left Knee Strain

NOTICE OF CLAIM ACCEPTANCE

(Pursuant to NRS 616C.060)

Dear Mr. Felton:

The above referenced claim has been accepted on your behalf by the Public Agency Compensation Trust. Liability is limited as stated per Body Part above. Please check the information contained on this notice. If you find any of the information to be incorrect, please notify the insurer handling the claim.

If you disagree with the above determination, you have the right to appeal by completing the enclosed appeal form and submitting it to the Hearing Officer, Department of Administration, at the address indicated on the form, within seventy (70) days from the date of this letter.

Sincerely,

KAREN BARBEE
Sr. Claims Adjuster

cc: File
Employer: Douglas County
Treating Physician: CVMC Occ Med
SHC MCO

Form D-12, *Request for Hearing*
Form D-2, *Brief Description of Rights and Benefits*
Form D-52, *Alternative Choice of Physician or Chiropractor & Referral to a Specialist*

1755 East Plumb Lane, Suite 148, Reno, NV 89502
Phone: (775) 329-1181 Toll Free: (800) 291-6826 Fax: (775) 329-7418

Greg Felton

7/23/2012 10:30 AM Office Visit
MRN: 4039732

Description: 48 year old male
Provider: Kara L Cole, A.P.N.
Department: Cvme Occ Health

Reason for Visit

Knee Pain
Left Knee

Vitals - Last Recorded

BP
126/78
Pulse: 61

Progress Notes

Kara Cole 7/23/12 11:24 AM Signed

Subjective:

This 48-year-old volunteer search and rescue worker developed medial knee pain after extended hiking through thigh deep snow over steep terrain. Today he reports improvement in his knee pain. He has had 5 visits with the physical therapist and has been performing stretching and strengthening exercises at home. He is able to perform all of his usual activities, but he has occasional discomfort with activities that cause valgus stress on the knee joint, such as using the inside of his foot to push a box on the floor. He no longer takes ibuprofen regularly.

Objective:

BP 126/78 | Pulse 61.

This is a well-developed, well-nourished, male, in no apparent distress. The left knee reveals no discoloration, edema, or deformity. There is mild fullness over the popliteal aspect. There is no discomfort in the popliteal area or over the lateral aspect of the knee. There is very mild medial joint line tenderness and there is tenderness with palpation over the MCL insertion. There is full range of motion in the left knee without crepitus or discomfort. Neurovascular status is intact.

Assessment and plan:

Left knee sprain. The patient will continue with physical therapy and with his home exercises. He may work at full duty. I will see him back in 3 weeks.

Goals (5 Years of Data)

None

History

Last Reviewed by Kara Cole on 7/23/2012 at 11:15 AM

Sections Reviewed

Medical, Surgical, Family, Tobacco, Alcohol, Drug Use, Sexual Activity, ADL

Substances and Sexuality

Smoking Status Amount
Never Smoker N/A

Smokeless Tobacco Status
Unknown

Alcohol Use Amount
Yes N/A
Occasional

Drug Use Frequency
N/A

Sexually Active Partners
N/A

RECEIVED

RECEIVED
By RO at 3:21 pm, Jul 30, 2012

Occupational Health Network Progress Report and Disability Certification

Date of Service: 7/23/2012		No Show: No	Date / Time of Next Visit:	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer:		Date of Injury: 3/6/2012		
Insurer / TPA: N/A		ID / S		
Occupation: Search and Rescue Member		Diagnosis: There were no encounter diagnoses.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Medial knee discomfort				
Objective Findings: Point tenderness at MCL insertion				
Pre-Existing Condition(s):				
Assessment: Condition Improved				
Status: Additional Care Required		Permanent Disability: No		
Plan: PT / OT / Speech Therapy				
Comments: Continue PT for additional 6 visits				
Diagnostics:				
Comments:				
Disability Information				
Status: Released to Full Duty				
From:		Restrictions are:		
Through:				
Sitting:	Standing:	Stooping:	Bending:	
Squatting:	Walking:	Climbing:	Pushing:	
Pulling:	Other:	Reaching Above / Below Shoulders:		
Carrying (hrs):	Weight Limit (lb):	Lifting (hrs):	Weight Limit (lb):	
Comments:				
Physician Name: Karn Cole		Physician Signature: e-Sign		e-Signature: Dr. Carol Coats, Medical Director
Clinic Name / Location:	CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:	Dept: 775-782-1615
Appointment Time:	10:30 Am	Visit Start Time:		
Check-In Time:		Visit Discharge Time:		

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee

RECEIVED

RECEIVED
By RO at 3:20 pm, Jul 30, 2012

Progress Note

Greg Felton (MR# 4039732)

Progress Note Info

Author	Note Status	Last Update User	Last Update Date/Time
Kara Cole	Signed	Kara Cole	8/13/12 10:33 AM

Progress Note

Subjective:

This 48-year-old volunteer search and rescue worker is in for followup of his left knee pain. He has been attending physical therapy and so far has had 12 visits. He reports improvement in his knee pain since beginning physical therapy. He has been diligent about performing his home exercise program. He has no pain with ambulation on flat surfaces, but reports "twinges" of pain over the medial and anterior aspects of the knee joint with some activities, such as when climbing stairs 2 at a time and when bearing all of his weight on his left leg. He rates this pain as a 2/10 in intensity. He denies any popping, clicking or giving way sensations. He has been working at full duty.

Objective:

BP 116/74 | Pulse 65

This is a well-developed, well-nourished, male, in no apparent distress. The left knee reveals no discoloration, edema, or deformity. There is no discomfort in the popliteal area. There is mild to moderate medial joint line tenderness, and there is tenderness with palpation over the MCL insertion. There is no patellar apprehension and no tenderness over the patellar tendon. The patient is able to bear all of his weight on his left leg, but reports discomfort over the medial aspect. There is full range of motion in the left knee without crepitus or discomfort. Neurovascular status is intact.

Assessment and plan:

Left knee sprain. We will get an MRI. The patient has had significant but incomplete improvement with conservative treatment, including physical therapy. He may work at full duty and should continue with his home exercises. I will see him back with the results of his MRI.

PROGRESS NOTE

Occupational Health Network Progress Report and Disability Certification

Date of Service: 8/13/2012		No Show: No	Date / Time of Next Visit: After MRI	
Claim Information				
Patient Name: Greg Felton		Claim Number:		
Employer: DOUGLAS COUNTY		Date of Injury:		
Insurer / TPA: ALT SVC CONC (ASC)		ID / SSN:		
Occupation:		Diagnosis: The encounter diagnosis was Left knee sprain.		
Medical Information				
Related to Industrial Injury? Yes				
Subjective Complaints: Knee pain with some activities				
Objective Findings: Medial joint line tenderness				
Pre-Existing Condition(s):				
Assessment: Condition Improved				
Status: Additional Care Required				
Plan: Diagnostics		Permanent Disability: No		
Diagnostics: MRI				
Comments: MRI of left knee				
Comments:				
Disability Information				
Status: Released to Full Duty				
From:				
Through:		Restrictions are:		
Sitting:	Standing:	Stooping:		Bending:
Squaring:	Walking:	Climbing:	Pushing:	
Pulling:	Other:	Reaching Above / Below Shoulders:		Lifting(hrs):
Carrying(hrs):	Weight Limit(lb):	Weight Limit(lb):		
Comments:				
Physician Name: Kara Cole		Physician Signature: e-Sign		e-Signature: Dr. Carol Coats, Medical Director
Clinic Name / Location: CARSON VALLEY MEDICAL CENTER OHS CVMC OCCUPATIONAL HEALTH & MEDICINE		Clinic Phone Number:	Dept: 775-782-1615	
Appointment Time: 9:00 Am	Visit Start Time:		9:10 AM	
Check-In Time: 9:04 Am	Visit Discharge Time:			

Original-Treating Physician or Chiropractor Page 2-Insurer/TPA Page 3-Employer Page 4-Employee



A Service of Carson Tahoe Regional Healthcare

KB
C143-12-04693-01
Eagle Medical Center
2874 N. Carson Street, Suite 300
Carson City, Nevada 89706
p 775.888.1180
f 775.888.1190

CAROL COATS, M.D.
1107 HWY 395, STE C
GARDNERVILLE, NV 89410

Patient: FELTON, GREGORY
Patient ID #: 5078959
Exam Date: 9/14/2012
Auth#: OCM564726238
DOB:
Accession: 712756
MR#: 1225800149;020364082

PROCEDURE: MRI KNEE WITHOUT CONTRAST - LEFT
COMPARISON: None.
INDICATIONS: Left knee pain, trauma.
TECHNIQUE: Multiplanar, multisequence imaging performed of the knee without contrast.

FINDINGS:

BONE MARROW:

Minimal subchondral edema involves the most medial aspect of both the medial femoral condyle and medial tibial plateau. Minimal subchondral edema involves the posterior lateral aspect of the patella beneath a small osteochondral lesion. Small joint effusion. Small to moderate size popliteal cyst.

JOINT:

- CRUCIATE LIGAMENTS:**
- COLLATERAL LIGAMENTS:**
- PATELLAR TENDON:**
- CARTILAGE:**

Normal.
Normal.
Normal.
Narrowing and some irregularity of the medial joint space involving the weightbearing surfaces of the medial femoral condyle and medial tibial plateau. Small osteochondral lesion involving the posterior facet of the patellofemoral joint space, posterior surface of the patella. Obliquely oriented degenerative tear of the posteromedial horn of the medial meniscus, exiting through the inferior articular surface.

MENISCI:

CONCLUSION: Medial meniscal tear. Early degenerative osteoarthritis with medial joint space.
Small popliteal cyst.
Small osteochondral lesion posterior lateral surface of the patella.

Dictated and Electronically Authenticated by: Keith Shonnard, M.D. on 9/14/2012 at 13:48
Proofread by: Keith Shonnard, M.D. on 9/14/2012 at 13:48

OFFERING: CT, High Field Open MRI, 1.5 MRI, PET, Diagnostic X-ray, Nuclear Medicine, Ultrasound, Digital Mammography with Computer-Aided Diagnosis, Stereotactic Breast Biopsy, Bone Densitometry Scanning, Spine and Pain Management, Interventional Radiology.

This report is based solely on radiological examination - Correlation with clinical examination is essential.

www.GreatBasinImaging.com



Tahoe Fracture & Orthopedic Medical Clinic, Inc.

Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic
973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

October 8, 2012
Page 1
Chart Document

Greg Felton
Male 49 Years Old DO Patient ID: 238336 Home: (775) 588-3121

10/02/2012 - Office Visit: N patient L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

History of Present Illness

Referring Physician: Carol Coats
Chief Complaint: L Knee
10/02/12

HISTORY:

Greg is a 49-year-old male who is here with regards to his left knee injury that occurred on 07/03/12 while doing a search and rescue exercise. He had a slip type injury and had a twist of his knee and had some pain that gradually got worse. He was hoping this would improve on its own, gave it a couple of months, and it has just been persistent. He has been through physical therapy. The pain has just been symptomatic and problematic for him. Pain is localized in the medial joint line. Pain with twisting, squatting, and rotating.

Location of Injury/Problem:

Left Knee

Result of an Injury?: yes Injury/Problem Onset Date: 03/06/2012

Previous difficulty/injury to area? no
Is this injury more than 3 months old? yes
Previously treated for this injury/problem? yes Who treated you? Specialist
Where did it happen? work

Work related? yes
Current work status: Regular Duty
Previous tests: MRI, X-Rays
Previous treatments: Physical Therapy, Medication
Outcome of treatment: Better

Pain relieved by physical therapy.
Pain worsened with running, standing for long periods of time.

Past Medical History - reviewed

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.



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 Phone: 7757836190 Fax: 7757838191

October 8, 2012
 Page 2
 Chart Document

Greg Felton
 Male, 49 Years Old, DOB: [REDACTED] Patient ID: 236336 Home: (775) 588-3121

Surgical History - reviewed

Hand Surgery (Right)

Medications and Allergies

Patient denies drug allergies.
 Patient denies food allergies.
 Patient denies metal allergies.
 Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
 Heart Disease

Social History

Patient is married, Never smoker, and lives with spouse/partner. Has 3 children, yes. yes. Education completed: post graduate. Occupation: Engineer. Patient is not claustrophobic.

Review of Systems

General: Patient denies all.
Eyes: Patient denies all.
ENT: Patient denies all.
Cardiovascular: Patient denies all.
Respiratory: Patient denies all.
Gastrointestinal: Patient denies all.
Genitourinary: Patient denies all.
Musculoskeletal: Complains of joint pain.
Skin: Patient denies all.
Neurologic: Patient denies all.
Psychiatric: Patient denies all.
Endocrine: Patient denies all.
Heme/Lymphatic: Patient denies all.
Allergic/Immunologic: Complains of seasonal allergies.
Vital Signs:
 Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:



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Phone: 7757838190 Fax: 7757838191

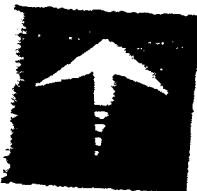
October 8, 2012
Page 3
Chart Document

Greg Felton
Male 49 Years Old DOB: _____ Patient ID: 236336 Home: (775) 588-3121

Never smoker
Body:
BMI: 25.20 (Normal)

GENERAL EXAM

General Appearance: Greg Felton is a pleasant 49 years old male
Mood Affect: Pleasant
Coordination: Normal
Orientation: 3+
Gait: Normal



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Phone: 7757836190 Fax: 7757836191

October 8, 2012
Page 4
Chart Document

Greg Felton
Male 49 Years Old DOB: [REDACTED] Patient ID: 236336 Home: (775) 588-3121

RADIOGRAPHS:

He has had an MRI done of that left knee, which shows a tear of the medial meniscus.

PHYSICAL EXAMINATION:

Left knee has no swelling today. The ligaments are stable to varus and valgus stress. No Lachman. No anterior drawer. No posterior drawer. He has tenderness in the medial joint line. Positive McMurray reproducing pain. Calf is soft. No swelling. He has palpable dorsalis pedis and posterior pulse. Good capillary refill. He can flex and extend hips and knees. Good strength, hip flexors, extensors, hamstrings, quadriceps, dorsiflexors, and plantarflexors.

IMPRESSION:

Left knee pain consistent with medial meniscus tear.

PLAN:

We will plan for left knee arthroscopy, partial meniscectomy, and chondroplasty. He understands the risks, the benefits, and alternatives to procedure. The risks include but not limited to infection, bleeding, nerve/blood vessel/tendon damage, heart attack, stroke, death, persistent pain, and need for further surgery.

Jeffrey R. Cummings, M.D.
JRC:csm/smu

Patient: FELTON, GREGORY R
 Location: BARTON LABORATORY
 Adm.date: 10/08/12 Surg.date:
 Species :

MRN: 275764 Room:
 Att.physician: CUMMINGS, JEFFREY
 DOB: Age: 49 Sex: M
 B# : 101066979

Order Id : T708209
 Date&Time Ordered: 10/08/12 12:56
 Requested by: CUMMINGS, JEFFREY
 Copy to: MEDICAL RECORDS

FINAL

HEMATOLOGY

TEST-NAME	RESULT	ABN.	NRML-RANGE	UNITS	TIME-DONE	TECH
COLLECTED 10/08/12 12:40 BY GRM						
WBC	5.3		4.8-10.8	x10 ³ /ul	10/08/12 13:25	KBT
REB	5.01		4.70-6.10	x10 ⁶ /ul	10/08/12 13:25	KBT
HEMOGLOBIN	15.7		14.0-18.0	g/dl	10/08/12 13:25	KBT
HEMATOCRIT	45.9		42.0-52.0	%	10/08/12 13:25	KBT
MCV	91.6		80.0-94.0	f1	10/08/12 13:25	KBT
MCH	31.3		27.0-31.0	pg	10/08/12 13:25	KBT
MCHC	34.2	H	33.0-37.0	g/dl	10/08/12 13:25	KBT
RDW	13.3		11.5-14.5	%	10/08/12 13:25	KBT
PLATELETS	205		130-400	x10 ³ /ul	10/08/12 13:25	KBT
MPV	7.6		7.4-10.4	f1	10/08/12 13:25	KBT
Instrument Differential						
NEUTROPHIL%	58.3		39.0-70.0	%	10/08/12 13:25	KBT
LYMPH%	29.5		21.0-50.0	%	10/08/12 13:25	KBT
MONO%	6.1		1.7-9.3	%	10/08/12 13:25	KBT
EOSINOPHIL%	3.2		0.0-5.0	%	10/08/12 13:25	KBT
BASOPHIL%	0.8		0.0-3.0	%	10/08/12 13:25	KBT
NEUTROPHIL#	3.1		1.8-7.7	x10 ³ /ul	10/08/12 13:25	KBT
LYMPH#	1.6		1.2-4.8	x10 ³ /ul	10/08/12 13:25	KBT
MONO#	0.3		0.1-0.6	x10 ³ /ul	10/08/12 13:25	KBT
EOSINOPHIL#	0.2		0.0-0.5	x10 ³ /ul	10/08/12 13:25	KBT
BASOPHIL#	0.0		0.0-0.2	x10 ³ /ul	10/08/12 13:25	KBT

continued on next page

Patient name: FELTON, GREGORY R
 Location: BARTON LABORATORY
 Printed: 10/09/2012 06:13

MRN: 275764 Room:
 Att.physician: CUMMINGS, JEFFREY

FELTON, GREGORY R
ID: 275764 101066979

10/08/2012 13:31:32

Sinus bradycardia
Leftward axis

49 YEARS

Male
PRE OP
Dr: CUMMINGS
Tech: JMH

Heart Rate:	52 bpm
RR Interval:	1150 ms
PR Interval:	152 ms
QRS Duration:	92 ms
QT Interval:	440 ms
QTc Interval:	426 ms
QT Dispersion:	16 ms
P-R-T AXIS:	58° -29° S3°

Comment: K117149 1 ROUTINE FAX: 775 267 2933

* Unconfirmed Analysis *

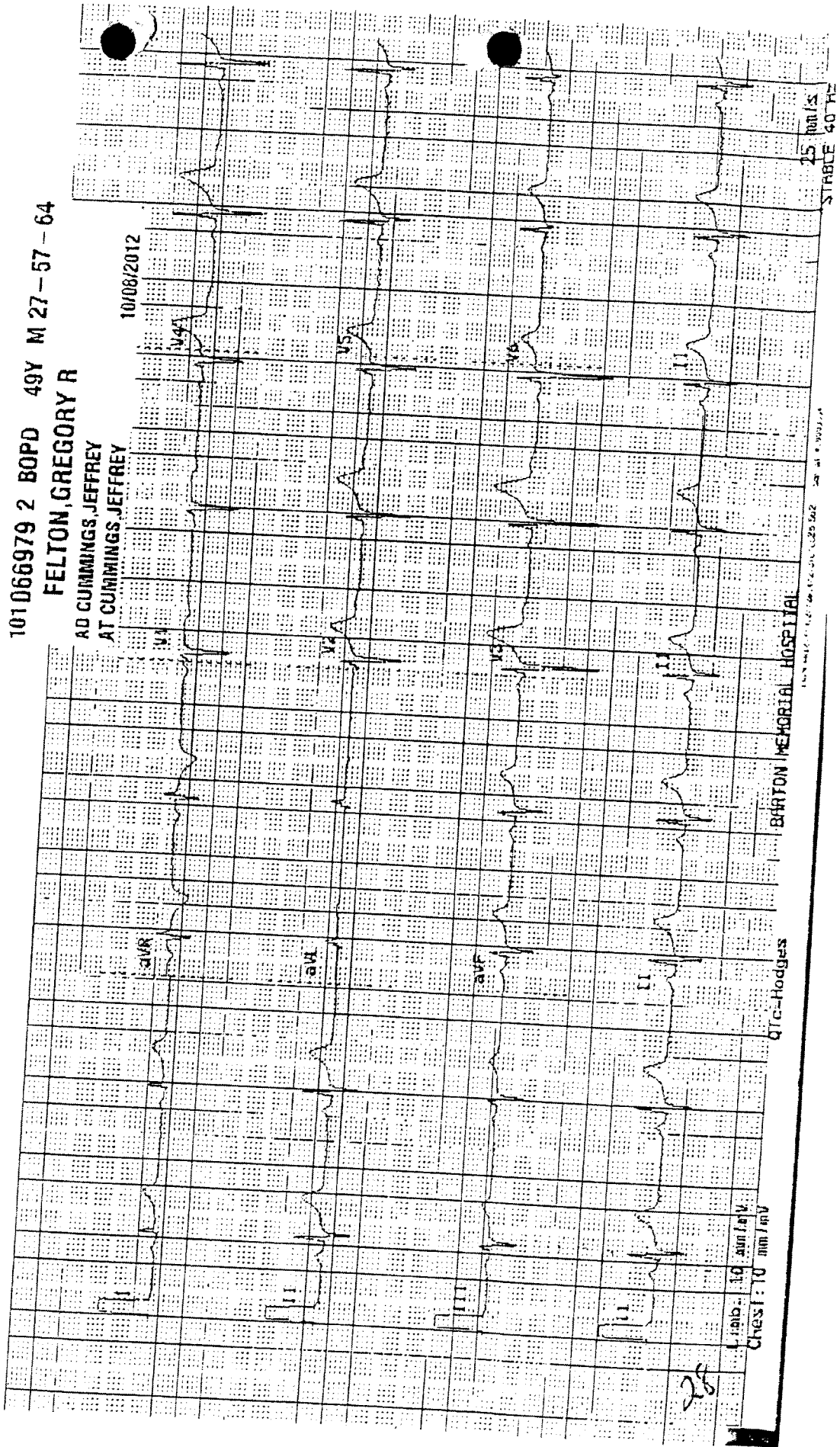
Handwritten: 10/08/2012

101066979 2 BOPD 49Y M 27-57-64

FELTON, GREGORY R

AD CUMMINGS, JEFFREY
AT CUMMINGS, JEFFREY

10/08/2012



25
10 mm/mV
Chest: 10 mm/mV

BARTON MEMORIAL HOSPITAL

STABLE 40 Hz
25 mm/s

C143-12-06693-01

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020364082 ACCT#: 1228600375
NAME: FELTON, GREGORY

Clinician: CUMMINGS, JEFFREY

DATE OF OPERATION:
10/17/2012

ANESTHESIA:
General.

ANESTHESIOLOGIST:
Bruce Baldecchi.

FIRST ASSISTANT:
Stephanie Tonn, PA.

PREOPERATIVE DIAGNOSIS:
Left knee medial meniscus tear.

POSTOPERATIVE DIAGNOSES:
Left knee medial meniscus tear.

NAME OF OPERATION:
Left knee arthroscopy, partial meniscectomy.

INDICATIONS FOR OPERATION:
A 49-year-old male with history of left knee pain, pain at the medial joint line, pain with ambulation, walking, squatting, twisting, work injury, when he was working for a search and rescue. His MRI showed a tear of the posterior horn of the medial meniscus. He understood the risks, benefits and alternatives of the procedure.

PROCEDURE AND FINDINGS:
After informed consent, the patient was taken to the operating room, administered general anesthesia, was sterilely prepped and draped in the left lower extremity. Inferior lateral and inferior medial portals were established, long blade and blunt trocar, scope inserted and visualization of the knee was performed. The patellofemoral compartment had grade II chondromalacia at the apex of the patella and no real loose cartilage flaps or loose bodies. ACL and PCL were intact. The medial compartment had again some diffuse grade II chondromalacia of the weightbearing surface of the medial femoral condyle. No evidence of large flaps or fissuring. He had a tear of the posterior horn of the medial meniscus. Using the basket forceps shaver, partial medial meniscectomy was performed, bringing the meniscus stable rim. The lateral compartment was then probed, stable, it was secured, had a bit of a grade II chondromalacia of the lateral tibial plateau. The shaver was used to debride this small loose flap of cartilage there. The knee was then drained of excess fluid and loose tissue. Wounds were closed with 4-0 Monocryl, Steri-Strips applied. Sterile dressing applied.

JRC:in
DD: 10/17/2012 13:18:10

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020364082 ACCT#: 1228600375

NAME: FELTON, GREGORY

Clinician: CUMMINGS, JEFFREY

DT: 10/18/2012 00:35:27

cc:

CARSON TAHOE Surgery Center

CASE: _____ BP: _____ NPO: _____
 SEX: M F HR: _____ RESP: _____ O₂ SAT: _____
 WT: _____ lbs. HT: _____ TEMP: _____
 SURG START: 12:30 SURG END: 13:14 DATE: 10-17-12
 ANES. END: 13:24 ANES. TIME: _____
 IN ROOM: 1233 OUT ROOM: 1318 ROOM TIME: _____

ALLERGIES: NKOA MEDICATIONS: NONE PSM: NONE
 ACTIVITY LEVEL: _____ PE: HEART RRR LUNGS CTAB
 AIRWAY: TEETH INTACT YOUTH FROM _____
 HMD YES FROM _____
 MALL: I II III IV

CV: NONE HTN ASCVD MI ANGINA ARRHYTHMIAS CHF OTHER
 RESP: NONE ASTHMA COPD ORTHOPNEA COUGH RECENTURI OTHER
 ENDO: NONE DM THYROID ADRENAL OTHER
 GH: NONE OBESITY PUD GERD HEPATITIS OTHER
 OTHER: NONE RENAL HEME NEURO OTHER
 LABS/ECG: _____
 ASAPS: 1 2 3
 PLAN: GA SAB EPIDURAL MAC ISS
 PATIENT OR GUARDIAN COUNSELED REGARDING RISKS, RELATIVE BENEFITS, AND ALTERNATIVE ANESTHESIA TECHNIQUES; ALL QUESTIONS ANSWERED, UNDERSTANDS AND ACCEPTS THE RECOMMENDED PLAN.
 _____ M.D.

ANES. EQUIP. CHECKED
 PATIENT ID
 CHART REVIEWED
 CONSENT AND SITE CONFIRMED
 CLINICAL STATUS UNCHANGED SINCE PRE-OP

TIME: 1200 - 1300 - 1400

DRUG	AMOUNT	TIME	OTHER	TOTAL
OXYGEN LMIN				
SEVO	2.0	12:30		
PROPOFOL	100	12:30		
ROCURONIUM	20	12:30		
FENTANYL	2	12:30		
MIDAZOLAM	2	12:30		
FLUID: LR/NS	1000	12:30		
EVENT				
PRE O ₂	200			
SMOOTH I	150			
IV	100			
RSI	50			
MASK				

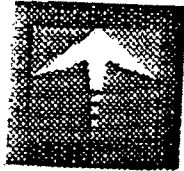
IV: RT ARM FOOT
 LT HAND

BP: RT ARM LEG
 LT ARM LEG

TOURNIQUET: RT LT ARM
 THIGH ANKLE
 _____ mm Hg
 _____ mm Hg

AIRWAY: ETT LMA SIZE 5
 ORAL NASAL RAE
 AIRWAY ORAL NASAL
 BLADE: EBBS CUFF +ET CO₂
 ATRAUMATIC
 EASY DIFF
 GRADE 1 2 3 4
 REGIONAL: EPID SAB ISS
 BIER
 POSITION: _____ NEEDLE: _____
 CATH PARESTHESIA
 TRANSIENT: YES NO
 CSF: NO YES
 NEG. ASP. q5 min
 NEG TEST DOSES
 AGENT

REMARKS:
 12:30 - IV ch...
 12:35 - 1000 LR/NS
 12:40 - 20 Rocuronium
 12:45 - 2 Fentanyl
 12:50 - 2 Midazolam
 12:55 - 2.0 Sevo
 1:00 - 100 Propofol
 1:05 - 1000 LR/NS
 1:10 - 1000 LR/NS
 1:15 - 1000 LR/NS
 1:20 - 1000 LR/NS
 1:25 - 1000 LR/NS
 1:30 - 1000 LR/NS
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Preserving your vision. Restoring your function. Rebuilding your life.
Tahoe Fracture and Orthopedic Medical Clinic
973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

November 9, 2012
Page 1
Chart Document

Greg Fallon

Male, 49-year-old, D

Patient ID: 286006

Phone: (775) 582-1121

10/25/2012 - Office Visit: Post op L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

10/25/12

HISTORY:

Greg is here for followup regarding his left knee partial medial meniscectomy. He is doing well.

GENERAL EXAM

PHYSICAL EXAMINATION:

The wounds have healed well. He has just a minimal effusion today. The wounds have healed well. No sign of infection. No drainage. No erythema.

PLAN:

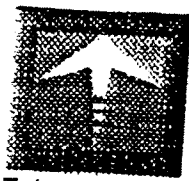
We will have him keep working on his range of motion and strengthening. We will see him back here in three weeks. We will put in a request for physical therapy.

Jeffrey R. Cummings, M.D.
JRC:sa/sb

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NOV 12 2012

ASC



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October 26, 2012
Page 1
Chart Document

Greg Felton
Male, 45 Years Old, Dr Patient ID: 2559358 Home: (775) 588-3121

10/26/2012 - Referrals Consults: PT
Provider: ROGER P ROGALSKI MD
Location of Care: Tahoe Fracture and Orthopedic North Carson

Referral To:
Barton Memorial Hospital (NV)
155 US Hwy 50
Stateline, NV 89449
Office: 775-589-8953
Fax: 775-589-8920

Patient Information
Greg Felton
Date of Birth: 08/27/1963
Please Contact Patient
Home: (775) 588-3121

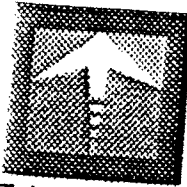
Diagnosis: KNEE, MMT (ICD-836.0)

Physical Therapy
Evaluate Treat Report
Passive ROM

Other Information
Treatment Frequency is 3X a week for 4 weeks.
Please fax progress notes to Jeffrey R. Cummings, M.D. at (775) 783-6185
Electronically signed by Jeffrey R. Cummings, M.D.
cc: Barton Memorial Hospital (NV) - Fax: 775-589-8920 Phone: 775-589-8953

Signed by Angela Bruno on 10/26/2012 at 9:48 AM

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NOV 12 2012
JSC



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November 21, 2012

Page 1

Chart Document

Greg Felton

Male 49 Years Old IIC3

Patient ID: 236236

Home: (775) 366-3121

11/15/2012 - Office Visit: Post op L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

11/15/12

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today for follow up of his left knee arthroscopy with partial meniscectomy and chondroplasty on 10/17/12. The patient is doing well. He is not having any pain. He is starting physical therapy.

Surgical History - reviewed
Arthroscopic Knee Surgery

GENERAL EXAM

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male who presents today with no use of devices. No antalgia. His left knee shows evidence of a previous arthroscopy, but no fusion. No increased warmth, erythema, or ecchymosis. He has full active range of motion. He only has mild tenderness medially.

IMPRESSION:

Left knee arthroscopy with partial meniscectomy and chondroplasty on 10/17/12 with good early result.

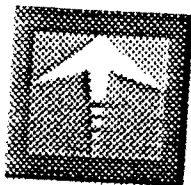
PLAN:

The patient will continue with his physical therapy and full increase his activities as tolerated. He can be released to 22:57 and see if he is comfortable we will see him back as needed.

Stephanie Tonn, PA-C
For Jeffrey R. Cummings, M.D.
ST/JRC:pv/smu

RECEIVED

By RO at 3:03 pm, Nov 21, 2012



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November 21, 2012
Page 1
Chart Document

Greg Felton
Male 49 Years Old (IC) Patient ID: 236336 Home: (775) 326-3121

11/21/2012 - Return to Work
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica

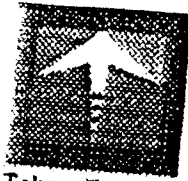
Work Status Form

This injury is occupational.
Diagnosis: KNEE, MMT (ICD-836.0)
Continue with no restrictions.

Signed by Angela Bruno on 11/21/2012 at 10:25 AM

RECEIVED

RECEIVED
By: O at 1:04 pm, Nov 21, 2012



Tahoe Fracture & Orthopedic Medical Clinic, Inc.

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January 9, 2013
Page 1
Chart Document

Greg Felton
Male 19 Years Old, D
Patient ID: 226238
Phone: (775) 783-3321

12/28/2012 - Office Visit: Post op L knee
Provider: STEPHANIE N TONN PA
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: ON HOLD DOCUMENT. Contents are preliminary

12/28/12

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today regarding his left knee. He is complaining of some swelling behind his knee. He states that he skied this past Saturday and Sunday and was sore on Tuesday and noticed a lump behind his knee. He has been going to physical therapy. His left knee arthroscopy with chondroplasty and partial medial meniscectomy was on October 17, 2012. Overall, the patient has been doing well and has had very little swelling and pain. The patient states that the swelling behind his knee causes the knee to feel like it was locked at one point. He has been in full extension and deep flexion.

Surgical History

Arthroscopic Knee Surgery

GENERAL EXAM

PHYSICAL EXAMINATION:

Left knee, the patient has a small effusion. He has no increased warmth or erythema. No ecchymosis. He has full active range of motion, but he has discomfort with terminal extension and flexion. He has some mild tenderness at the medial joint line but a negative McMurray's test. He has no varus or valgus instability. He has evidence of a previous prepatellar bursitis, so there is not much fluid. There is some crepitation superficially over the patella.

IMPRESSION:

Left knee arthroscopy with partial meniscectomy on October 17, 2012 with increased swelling after recent activities.

PLAN:

I do not feel the patient has a new injury at this time, but he is having some persistent swelling after increased activities. He will let us know if his knee continues to bother him, as he would be a good candidate for a cortisone injection. Otherwise, he will try conservative treatment such as icing, anti-inflammatories, and resting his knee.

Stephanie Tonn, PA-C
For Jeffrey R. Cummings, M.D
ST:ea/sb



9348 De Soto Avenue Chatsworth, CA 91311
Phone: 800-328-6942 • FAX: 818-598-3116

C143-12-06693-01

Pain Management Compliance Testing

Laboratory Report

Donald Simpson MD, PhD • Medical Director
CLIA 05D0542735 • SAMHSA Certified • CAP 29673-01
California DPH CLF4442

31627

ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FFI TON GREG

Age, DOB:

Sex: M

Other ID: 236336

Requesting Physician: S TONN

Patient ID:

LAB ID: E3091770

Collected: 12/28/2012

Received: 12/31/2012

Reported: 01/02/2013

Requisition#: B875XJG13A

Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

Drug	Test Result	Value	Normalized Result	Comment
PAC PAIN PANEL TESTS	NOT DETECTED			Negative for all drugs listed and is consistent with prescribed medications as listed.

Specimen Validity Testing	Normal Range	Result	Normalized Result	Comment
CREATININE, URINE	>19 mg/dL	118.7	Normal	
SPECIFIC GRAVITY, URINE	>1.0030	1.0198	Normal	
NITRITES, URINE	<200 ug/mL	6	Normal	
pH, URINE	4-9.0	7.4	Normal	

Additional Comments

* All drugs in the PacPain Custom Panel, other than those indicated above, were not detected. * Normalized Result is based upon Creatinine data from a patient population with normal renal function. Normalized results may not be valid for patients with abnormal renal function. Clinical correlation is required. *CH=CRITICAL/ALERT HIGH CL=CRITICAL/ALERT LOW*

PacPain Custom 9621802 - Contains

NARCOTIC ANALGESICS	BENZODIAZEPINES	BARBITURATES
Morphine (Kadian)	Alprazolam (Xanax)	Amobarbital
Codeine (Tylenol III)	Clonazepam	Butabarbital
Hydrocodone (Lortab)	Diazepam (Valium)	Butalbital
Hydromorphone	Lorazepam (Ativan)	Pentobarbital
Metadone	Oxazepam (Serax)	Phenobarbital
Metad. metab. (EDDP)	Temazepam	Secobarbital
Oxycodone (Oxycontin)		
Oxymorphone (Opana)	MISCELLANEOUS	MISCELLANEOUS
Propoxyphene (Darvon)	Acetaminophen	Tramadol
	Alcohol	Tricyclics
	Carisoprodol	Zolpidem
	Phenothiazines	

Working Together Towards Compliance and Comfort



9348 De Soto Avenue Chatsworth, CA 91311
Phone: 800-328-6942 • FAX: 818-598-3116

Pain Management Compliance Testing
Laboratory Report

Donald Simpson MD, PhD • Medical Director
CLIA 05D0542735 • SAMHSA Certified • CAP 29673-01
California DPH CLF4442

31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG
Age, DOB:
Sex: M
Other ID: 236336
Requesting Physician: S TONN

Patient ID
LAB ID: E3091770
Collected: 12/28/2012
Received: 12/31/2012
Reported: 01/02/2013
Requisition#: B875XJG13A

Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

PACPAIN PANEL - 9621802

ANALYTE	CONFIRMATION		
	CUTOFF	UNITS	METHOD
ACETAMINOPHEN	1.0	ug/ml	FPIA
ALCOHOL	0.02	%	GC
BARBITURATES			
AMOBARBITAL (Amytal)	100	ng/ml	
BUTABARBITAL (Butasol)	100	ng/ml	GCMS
BUTALBITAL (Esgic)	100	ng/ml	GCMS
PENTOBARBITAL (Nembutal)	100	ng/ml	GCMS
PHENOBARBITAL (Solfoton)	100	ng/ml	GCMS
SECOBARBITAL (Seconal)	100	ng/ml	GCMS
CARISOPRODOL (SOMA)			
CARISOPRODOL	1.0	ug/ml	GCFID
MEPROBAMATE	1.0	ug/ml	GCFID
BENZODIAZEPINES			
NORDIAZEPAM	100	ng/ml	GCMS
OXAZEPAM	100	ng/ml	GCMS
LORAZEPAM	100	ng/ml	GCMS
ALPHAHYDROXYALPRAZOLAM	100	ng/ml	GCMS
TEMAZEPAM	100	ng/ml	GCMS
7-AMINO CLONAZEPAM	100	ng/ml	GCMS
METHADONE			
METHADONE	100	ng/ml	GCMS
EDDP	100	ng/ml	GCMS
PROPOXYPHENE			
NORPROPOXYPHENE	100	ng/ml	GCMS
OPIATES			
CODEINE	50	ng/ml	GCMS
MORPHINE	50	ng/ml	GCMS
HYDROCODONE	50	ng/ml	GCMS
HYDROMORPHONE	50	ng/ml	GCMS
OXYCODONE			
OKXYCODONE	50	ng/ml	GCMS
OKYMORPHONE	50	ng/ml	GCMS
PHENOTHIAZINES			
CHLORPRIMAZINE	1	ug/ml	HPLC
CLOZAPINE	1	ug/ml	HPLC

CONFIRMATION

REPORT CONTINUED ON NEXT PAGE

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Pain Management Compliance Testing

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California DPH CLF4442

31627

ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG

Age, DOB

Sex: M

Other ID: 236336

Requesting Physician: S TONN

Patient ID:

LAB ID: E3091770

Collected: 12/28/2012

Received: 12/31/2012

Reported: 01/02/2013

Requisition#: B875XJG13A

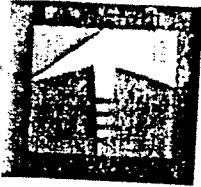
Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

	CUTOFF	UNITS	METHOD
PHENOTHIAZINES (CONT.)			
FLUPHENAZINE	1	ug/ml	HPLC
HALDOL	1	ug/ml	HPLC
MESORIDAZINE	1	ug/ml	HPLC
PERPHENAZINE	1	ug/ml	HPLC
PROCHLORPERAZINE	1	ug/ml	HPLC
PROMAZINE	1	ug/ml	HPLC
PROMETHAZINE	1	ug/ml	HPLC
THIORIDAZINE	1	ug/ml	HPLC
TRIFLUOPERAZINE	1	ug/ml	HPLC
TRAMADOL			
TRAMADOL	50	ng/ml	LCMS
TRICYCLICS			
AMITRIPTYLINE & NORTRIPTYLINE	1	ug/ml	HPLC
DOXEPIN & DESMETHYLDOXEPIN	1	ug/ml	HPLC
FLUOXETINE & NORFLUOXETINE	1	ug/ml	HPLC
CLOMIPRAMINE	1	ug/ml	HPLC
PROTRIPTYLINE	1	ug/ml	HPLC
ZOLPIDEM	50	ng/ml	HPLC

LAST PAGE OF REPORT

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C143-12-06693-01

March 1, 2013

Page 1

Chart Document

Greg Felton

Male 49 Years Old DC

Patient ID: 236336

Home: (775) 588-3121

01/22/2013 - Office Visit: RE L knee

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

Past Medical History

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.
01/22/13

HISTORY:

Greg is a 49-year-old gentleman who is here with regards to his left knee issue. He is status post left knee arthroscopy, partial meniscectomy and he feels most part he is plateaued and it looks like he is having persistent swelling of that knee particularly posteriorly in the Baker's cyst area of the knee itself does not have a whole lot of swelling or effusion but has tightness and pain in the posterior aspect of the knee and some persistent pain. It has been problematic posteriorly. He feels when he fully extends seems that he is able to work it down and get the swelling down, however, it has been persistently symptomatic for him. He does not have a history of any injury since the surgery. He has been back skiing half dozen times but it has not been really pushing it and having a trauma to knee at that point.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

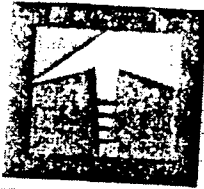
ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History



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March 1, 2013
Page 2
Chart Document

Greg Felton

Male 49 Years Old DO

Patient ID: 236336

Home: (775) 588-3121

Patient is

Review of Systems

General: Patient denies sweats, chills, fevers, malaise, weight loss, appetite loss, fatigue.

Eyes: Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

Gastrointestinal: Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

Genitourinary: Patient denies urinary urgency, urinary frequency.

Musculoskeletal: Complains of joint swelling, joint pain.

Patient denies muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

Skin: Patient denies suspicious lesions, night sweats, changes in color of skin, poor wound healing, dryness, changes in nail beds, unusual hair distribution.

Neurologic: Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

Psychiatric: Patient denies anxiety, depression.

Endocrine: Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

Heme/Lymphatic: Patient denies fevers, abnormal bruising.

Allergic/Immunologic: Patient denies seasonal allergies, persistent infections.

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a pleasant 49 years old male

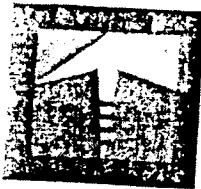
Mood Affect: Pleasant

Coordination: Normal

Orientation: 3+

Gait: Normal

LEFT KNEE EXAM



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March 1, 2013
Page 3
Chart Document

Greg Felton

Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

Gait: Normal
Skin: Unremarkable

Alignment:
Normal

Muscle: Normal
Quadricep Strength: 5/5

Fluid:
Effusion: Normal
Swelling: Normal
Popliteal Cyst: Present
Pes Anserine: Absent
Tenderness:
Medial Joint Line

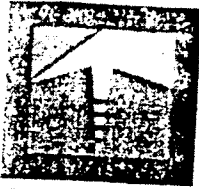
Range of Motion:
Active Flexion: Full
Active Extension: Full
Passive Flexion: Full
Passive Extension: Full

Crepitus:
None

Patella:
Alignment: Normal
Tracking: Normal
Stability: Normal
Apprehension: Negative
Compression: Negative

Collateral Ligaments:
Varus Force: Stable in full extension, Stable in 30 degrees flexion
Valgus Force: Stable in full extension, Stable in 30 degrees flexion

Cruciate Ligaments:
Lachman: Negative
Anterior Drawer: Negative
Posterior Drawer: Negative



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March 1, 2013

Page 4

Chart Document

Greg Felton

Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

Pivot Shift: 0
Posterior Sag: 0

McMurray's:

Medial: Negative

Lateral: Negative

Lymphatic: Normal

Reflexes:

Normal

Neurovascular Status:

Intact

DP Pulse: 2+

Capillary Refill: Immediate

Sensation: Intact

RIGHT KNEE EXAM

Gait: Normal

Skin: Unremarkable

Alignment:

Normal

Muscle: Normal

Quadricep Strength: 5/5

Fluid:

Effusion: Normal

Swelling: None

Popliteal Cyst: Absent

Pes Anserine: Absent

Tenderness:

None

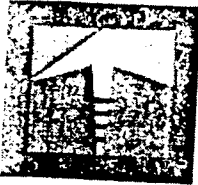
Range of Motion:

Active Flexion: Full

Active Extension: Full

Passive Flexion: Full

Passive Extension: Full



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March 1, 2013

Page 5

Chart Document

Greg Felton

Male 49 Years Old DO

Patient ID: 236336

Home: (775) 588-3121

Crepitus:

None

Patella:

Alignment: Normal

Tracking: Normal

Stability: Normal

Apprehension: Negative

Compression: Negative

Collateral Ligaments:

Varus Force: Stable in full extension, Stable in 30 degrees flexion

Valgus Force: Stable in full extension, Stable in 30 degrees flexion

Cruciate Ligaments:

Lachman: Negative

Anterior Drawer: Negative

Posterior Drawer: Negative

Pivot Shift: 0

Posterior Sag: 0

McMurray's:

Medial: Negative

Lateral: Negative

Lymphatic:

Normal

Reflexes:

Normal

Neurovascular Status:

Intact

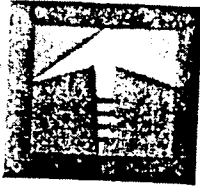
DP Pulse: 2+

Capillary Refill: Immediate

Sensation: Intact

PHYSICAL EXAMINATION:

On physical exam today, his left knee has an obvious Baker's cyst posterior medially. Ligaments are stable. Sensation is intact. Does not have McMurray. Does have a little bit tenderness to the medial joint.



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March 1, 2013

Page 6

Chart Document

Greg Felton

Male 49 Years Old DCE

Patient ID: 236336

Home: (775) 588-3121

line. He has no real crepitus. Good strength hamstrings, quadriceps, dorsiflexion, plantar flexors.
Palpable dorsalis pedis, posterior pulse.

IMPRESSION:

Persistent left knee pain concerned for recurrent medial meniscus tear, also persistent asymptomatic Baker's cyst.

PLAN:

We will plan for an MRI. See him back here after the MRI.

Jeffrey R. Cummings, M.D.

JRC:sun



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Reno Diagnostic Centers
590 Eureka Avenue, Reno, Nevada 89512
Phone: 775.323.5083 Fax: 775.323.2193

625 Sierra Rose Drive, Reno, Nevada 89511
www.renodiagnosticcenters.com

Patient Exam Report

Patient Name: Gregory Felton
Date of Birth:

Medical Record Number: 409205
Gender: Male

Exam Date: 02/25/2013

Accession #: 4049282

Referring Physician: Jeffrey Cummings, MD

Exam Description: 16575 - MR-Knee without contrast Left

Exam Location: Siemens Espree Wide Bore 1.5T MRI, 625 Sierra Rose Drive, NV, 89511

Clinical Indication: Previous surgery October 2012. Recurrent injury. Persistent pain

Technique: Multiple acquisition parameters were utilized to evaluate the left knee, performed with the Siemens Espree Wide Bore 1.5T MRI. No IV contrast was administered.

Comparison: None.

Findings:

Ligaments and tendons: The anterior cruciate ligament is intact as is the posterior cruciate ligament. There is mild increased signal at the femoral insertion site of the PCL with no significant tearing. Medial collateral ligament is intact but mildly thickened (coronal 13 series 7) most consistent with previous injury. Lateral collateral ligament is intact.

Medial compartment: The patient has had a subtotal medial meniscectomy. No obvious recurrent tear is demonstrated.

There is extensive chondral loss involving the weightbearing surface medial femoral condyle and medial tibial plateau with moderately extensive reactive bony changes. No osteochondral defects are demonstrated (coronal 12 series 7, sagittal 9 series 5). Comparison with the patient's prior outside exam may be valuable (preoperative imaging). We do not have these available to us at this time.

Lateral compartment: The lateral meniscus demonstrates no meniscal tears. Focal chondral defect is seen approximately 50% thickness and measuring 3-4 mm in diameter involving the weightbearing surface of the lateral tibial plateau (coronal 12 series 7). No osteochondral defect or other focal abnormalities are seen within the lateral joint compartment.

Patellofemoral joint: Moderate fluid is seen in the joint space. A Baker's cyst is present. There is mild edema surrounding the anterior knee probably related in part to patient's prior surgery with mild prepatellar bursal changes noted. The undersurface of the patella is irregular, particularly the lateral patella demonstrating an appearance suggestive of an incomplete marked bipartite patella. Mild chondromalacic changes are demonstrated. Medial and lateral retinacula are unremarkable.

Impression:

- 1. Postoperative subtotal medial meniscectomy with extensive chondral loss involving the medial joint compartment as described above. There is a small 2 mm area of signal void within the medial joint compartment that probably represents a small metallic fragment from the patient's previous surgery (coronal 8 series 7).

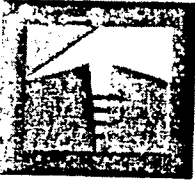
- 2. No ligamentous injury.
- 3. Moderate joint fluid with mild chondral irregularity lateral joint compartment and lateral retropatellar articular surface. Comparison with the patient's preoperative knee radiographs would be helpful if available.

CC: Carol Coats MD

Dictating Radiologist:	Ross Golding, MD	02/26/2013
Transcribed by:	Sue Clobucker	02/26/2013
Electronically signed by:	Ross Golding, MD	02/26/2013

N/A

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FEB 27 2013



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C143-12-06693-6

March 14, 2013

Page 1

Chart Document

Greg Felton

Male 49 Years Old D

Patient ID: 236336

Home: (775) 588-3121

02/28/2013 - Office Visit: MRI results

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

02/28/13

HISTORY:

Greg is a 49-year-old gentleman who is here with regards to his left knee pain status post knee arthroscopy. He still is having some pain at that medial aspect of that knee. It is intermittent. Some days are worse than other. The Baker cyst has improved. His repeat MRI was done which shows no evidence of a recurrent tear of the medial meniscus. He does have chondromalacia of the medial compartment but no evidence of bone-on-bone. This was known from the surgery. He has no evidence of osteochondral defects. He has a bit of bony edema in the medial tibia and the medial femoral condyle.

Past Medical History

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

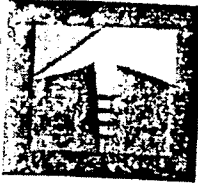
Arthritis
Heart Disease

Social History

Patient is

Review of Systems

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March 14, 2013

Page 2

Chart Document

Greg Felton

Male 49 Years Old D

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

PHYSICAL EXAMINATION:

Physical examination of the left knee, he has no real apparent swelling. He does have a small Baker cyst. Ligaments are stable. He has slight tenderness medially. He has negative McMurray. Ligaments are stable. Sensation is intact.

DISCUSSION:

Persistent left knee pain status post knee arthroscopy, partial meniscectomy.

for an intraarticular cortisone injection to be performed today under sterile technique. Verbal consent. We will see him back here in four weeks.

Dr. R. O. Amings, M.D.

PLEASE PRINT NAME AND ID

DATE

TIME



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2143-12-06693-

Pain Management Compliance Testing

Laboratory Report

Donald Simpson MD, PhD • Medical Director
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California DPH CLF4442

31627
ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG
Age, DOB:
Sex: M
Other ID: 236336
Requesting Physician: S TONN

Patient ID:
LAB ID: E3093264
Collected: 02/28/2013
Received: 03/01/2013
Reported: 03/04/2013
Requisition#: WF7L591DUW

Drug(s) Screened For: PACPAIN PANEL #9621802
Medication(s) Prescribed:

Drug	Test Result	Value	Normalized Result	Comment
PAC PAIN PANEL TESTS	NOT DETECTED			Negative for all drugs tested and is consistent with prescribed medications as listed.

Specimen Validity Testing	Normal Range	Result	Normalized Result	Comment
CREATININE, URINE	>19 mg/dL	216.2	Normal	
SPECIFIC GRAVITY, URINE	>1.0030	1.0191	Normal	
NITRITES, URINE	<200 ug/mL	16	Normal	
pH, URINE	4.5-9.0	6.0	Normal	

Additional Comments

* All drugs in the PacPain Custom Panel, other than those indicated above, were not detected. * Normalized Result is based upon Creatinine data from a patient population with normal renal function. Normalized results may not be valid for patients with abnormal renal function. Clinical correlation is required. * CH=CRITICAL/ALERT HIGH CL=CRITICAL/ALERT LOW *

PacPain Custom 9621802 - Contains

NARCOTIC ANALGESICS	BENZODIAZEPINES	BARBITURATES
Morphine (Kadian)	Alprazolam (Xanax)	Amobarbital
Codeine (Tylenol III)	Clonazepam	Butabarbital
Hydrocodone (Lortab)	Diazepam (Valium)	Butalbital
Hydromorphone	Lorazepam (Ativan)	Pentobarbital
Methadone	Oxazepam (Serax)	Phenobarbital
Methad. metab. (EDDP)	Temazepam	Secobarbital
Oxycodone (Oxycontin)		
Oxymorphone (Opana)	MISCELLANEOUS	MISCELLANEOUS
Propoxyphene (Darvon)	Acetaminophen	Tramadol
	Alcohol	Tricyclics
	Carisoprodol	Zolpidem
	Phenothiazines	

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31627

ARM/TAHOE FRACTURE & ORTHO MED
ATTN:
973 MICA DR, STE 201
CARSON CITY, NV 89705

Patient Name: FELTON, GREG

Age, DOB

Sex: M

Other ID: 236336

Requesting Physician: S TONN

Patient ID:

LAB ID: E3093264

Collected: 02/28/2013

Received: 03/01/2013

Reported: 03/04/2013

Requisition#: WF7L591DUW

Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

PACPAIN PANEL - 9621802

ANALYTE	CONFIRMATION		
	CUTOFF	UNITS	METHOD
ACETAMINOPHEN	1.0	ug/ml	FPIA
ALCOHOL	0.02	%	GC
BARBITURATES			
AMOBARBITAL (Amytal)	100	ng/ml	
BUTABARBITAL (Butasol)	100	ng/ml	GCMS
BUTALBITAL (Esgic)	100	ng/ml	GCMS
PENTOBARBITAL (Nembutal)	100	ng/ml	GCMS
PHENOBARBITAL (Solofoton)	100	ng/ml	GCMS
SECOBARBITAL (Seconal)	100	ng/ml	GCMS
CARISOPRODOL (SOMA)			
CARISOPRODOL			
MEPROBAMATE	1.0	ug/ml	GCFID
BENZODIAZEPINES	1.0	ug/ml	GCFID
NORDIAZEPAM			
OXAZEPAM	100	ng/ml	GCMS
LORAZEPAM	100	ng/ml	GCMS
ALPHAHYDROXYALPRAZOLAM	100	ng/ml	GCMS
TEMAZEPAM	100	ng/ml	GCMS
7-AMINO CLONAZEPAM	100	ng/ml	GCMS
METHADONE			
METHADONE	100	ng/ml	GCMS
EDDP	100	ng/ml	GCMS
PROPOXYPHENE			
NORPROPOXYPHENE	100	ng/ml	GCMS
OPIATES			
CODEINE	50	ng/ml	GCMS
MORPHINE	50	ng/ml	GCMS
HYDROCODONE	50	ng/ml	GCMS
HYDROMORPHONE	50	ng/ml	GCMS
OXYCODONE			
OXYCODONE	50	ng/ml	GCMS
OXYMORPHONE	50	ng/ml	GCMS
PHENOTHIAZINES			
CHLORPROMAZINE	1	ug/ml	HPLC
CLOZAPINE	1	ug/ml	HPLC

REPORT CONTINUED ON NEXT PAGE

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Pain Management Compliance Testing

Laboratory Report

Donald Simpson MD, PhD • Medical Director
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California DPH CLF4442

31627

ARM/TAHOE FRACTURE & ORTHO MED

ATTN:

973 MICA DR, STE 201

CARSON CITY, NV 89705

Patient Name: FELTON,GREG

Age, DOB:

Sex: M

Other ID: 236336

Requesting Physician: S TONN

Patient ID:

LAB ID: E3093264

Collected: 02/28/2013

Received: 03/01/2013

Reported: 03/04/2013

Requisition#: WF7L591DUW

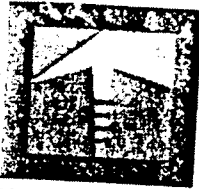
Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

	CUTOFF	UNITS	METHOD
PHENOTHIAZINES (CONT.)			
FLUPHENAZINE	1	ug/ml	HPLC
HALDOL	1	ug/ml	HPLC
MESORIDAZINE	1	ug/ml	HPLC
PERPHENAZINE	1	ug/ml	HPLC
PROCHLORPERAZINE	1	ug/ml	HPLC
PROMAZINE	1	ug/ml	HPLC
PROMETHAZINE	1	ug/ml	HPLC
THIORIDAZINE	1	ug/ml	HPLC
TRIFLUOPERAZINE	1	ug/ml	HPLC
TRAMADOL			
TRAMADOL	50	ng/ml	LCMS
TRICYCLICS			
AMITRIPTYLINE & NORTRIPTYLINE	1	ug/ml	HPLC
DOXEPIN & DESMETHYLDOXEPIN	1	ug/ml	HPLC
FLUOXETINE & NORFLUOXETINE	1	ug/ml	HPLC
CLOMIPRAMINE	1	ug/ml	HPLC
PROTRIPTYLINE	1	ug/ml	HPLC
ZOLPIDEM	50	ng/ml	HPLC

LAST PAGE OF REPORT

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C143-12-06693-0

March 28, 2013
Page 1
Chart Document

Greg Felton

Male 49 Years Old DC

Patient ID: 236336

Home: (775) 588-3121

03/19/2013 - Office Visit: RE L knee
Provider: JEFFREY R CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica
Status: IN PROGRESS DOCUMENT. Contents are preliminary

03/19/13

HISTORY:

Greg Felton presents today for followup of his left knee arthroscopy with partial medial meniscectomy on October 17, 2012. The patient had an injection at his last appointment on February 28, 2013. He says the cortisone has helped approximately 75%. He has not gone back to jogging or running however as his recent MRI did show evidence of a bone bruise.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

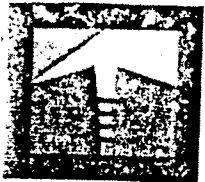
Family History

Arthritis
Heart Disease

Social History

Patient is

Review of Systems



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March 28, 2013

Page 2

Chart Document

Greg Felton

Male 49 Years Old DC

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male who ambulates with no analgesia or use of devices. His left knee shows no deformity. He has minimal tenderness to palpation at the medial joint line. He has no varus or valgus instability. No effusion. He has no patellofemoral crepitation.

IMPRESSION:

1. Left knee arthroscopy with partial medial meniscectomy on October 17, 2012 with good results after recent cortisone injection.
2. Bone bruise per recent MRI, but no recurrent meniscal tear.

PLAN:

We will let the patient return to activity as tolerated. He is encouraged to try jogging and even running to see if his pain returns. He will slowly do these activities however. We will see him back one more time in four weeks and we will likely make him MMI at that time.

Stephanie Tonn, PA-C

For Jeffrey R. Cummings, M.D.

ST/JRC:ab



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Phone: (775) 783-6190 Fax: (775) 783-6191

Return to Work 3/19/2013 1:47:57 PM

Greg Felton HM: (775) 588-3121 WK: None Citv: Stateline Provider: CUMMINGS, JEFFREY R
M DOB: ID#: 236338 SS:

Work Status Form

Review

Restrictions are: Temporary

This injury is occupational.

Diagnosis: **KNEE PAIN (ICD-719.46)**

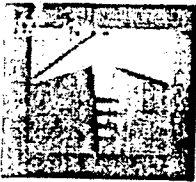
Status

Comments: Employee may return to work as tolerated.
Employee should be re-evaluated for work status by a physician in 4 weeks.

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 3/19/2013 1:47:57 PM

FILED
3/19/13



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C143-12-06693

April 25, 2013

Page 1

Chart Document

Greg Felton

Male 49 Years Old DOE

Patient ID: 236336

Home: (775) 588-3121

04/16/2013 - Office Visit: RE L knee

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

04/16/13

HISTORY OF PRESENT ILLNESS:

Greg Felton presents today for followup of his left knee. He had a knee arthroscopy with partial medial meniscectomy and chondroplasty on October 17, 2012. The patient had a cortisone injection on February 28, 2013 after an MRI on February 25, 2013 and showed some chondral thinning, bone bruise, and a thickened MCL. No evidence of recurrent meniscal tear. The patient states that his knee is still not quite right. He has pain with squatting. He was able to ride a bike without any pain the other day but had pain as soon as he got off the bike. He was taking ibuprofen 600 mg p.o. t.i.d. for a while until it began bothering his stomach. It still is not helping his knee significantly. He feels the Baker's cyst is "still there" behind his knee. He has occasional clicking but denies any grinding in the knee. He has some discomfort with full extension.

Past Medical History

None

He does not have pacemaker.

He does not have metal in his body.

He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

ALLERGIES

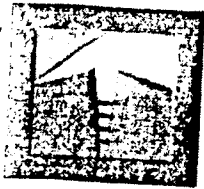
No known allergies

Family History

Arthritis

Heart Disease

JEFFREY R CUMMINGS MD



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April 25, 2013
Page 2
Chart Document

Greg Felton
Male 49 Years Old DOB

Patient ID: 236336

Home: (775) 588-3121

Social History

Patient is

Review of Systems

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

PHYSICAL EXAMINATION:

Greg Felton is a pleasant 49-year-old male. He ambulates with no antalgia or use of devices. The left knee shows a mild varus deformity. There is no effusion. Increased warmth, ecchymosis, and erythema. The patient has full flexion and extension. He has some discomfort with full extension. He has some mild tenderness medially but not over the joint line in particular. He has tenderness just at the medial patellar facet and along the MPFL. He has no patellar apprehension and negative patellar grind test. He has what appears to be some laxity of the MCL but was determined to be a correctible varus deformity. There is a firm endpoint, and the MCL feels stable. There is no other ligamentous laxity noted.

IMPRESSION:

Status post left knee arthroscopy with partial meniscectomy on October 17, 2012 with some persistent pain and arthritis.

PLAN:

At this point, we have tried a cortisone injection and physical therapy. We will try viscosupplementation injection to see if we can give the patient some more relief as it appears that his symptoms are now related to his arthritis. We will order these injections and see him back afterwards.

Stephanie Tonn, PA-C
For Jeffrey R. Cummings, M.D.
ST:sa/sb



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1520 Virginia Ranch Rd Ste 101B Gardnerville, NV 89410
Phone: (775) 782-2442 Fax: (775) 782-7205

Return to Work 4/16/2013 1:12:36 PM

Greg Felton: HM: (775) 588-3121 WK: None City: Stateline Provider: CUMMINGS, JEFFREY R.
M: DOB ID#: 236338 SSN

Work Status Form

Review

Restrictions are: Temporary

This injury is occupational.

Diagnosis: KNEE PAIN (ICD-719.46)

Status

Comments: Employee may return to work as tolerated
Employee should be re-evaluated for work status by a physician in 4 weeks.

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 4/16/2013 1:12:36 PM

RECEIVED



Alternative Service Concepts

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Date: April 25, 2013

FAX #: 775-783-6166

To: Jeffrey Cummings, MD
ATTEN: Antonia

From: Karen Barbee
ASC

Subject: Greg Felton, Claim # C143-12-06693-01

Dear Dr. Cummings:

We have received your chart notes of 4/16/13 together with a request for Euflexxa Injections.

This matter was referred to our medical director for review and opinion regarding the need for the injections. Based on that review, we respectfully deny authorization because it appears that the non-industrial arthritis is what is causing the need for the injections, and not the industrial injury.

If you disagree, please advise further of your findings and opinions.

Sincerely,
Karen Barbee 
Sr. Claims Adjuster

1755 East Plumb Ln., #148, Reno, NV 89502
Phone: 775-329-1181 FAX: 775-329-7418



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Return to Work 5/7/2013 3:20:57 PM

Greg Felton: HM: (775) 588-3121 WK: None Ctr: Stateline Provider: CUMMINGS, JEFFREY R
M: DC ID#: 236336 S

Work Status Form

Review

Restrictions are: Temporary

This injury is occupational.

Diagnosis: **KNEE PAIN (ICD-719.46)**

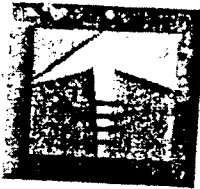
Status

Comments: Employee is able to return to work as tolerated. Thus meaning if it begins to hurt stop, don't push to hard.
Employee should be re-evaluated for work status by a physician in 4 weeks.

cc:
Industrial Carrier (Karen Barbee) - Fax: 7753297418

Signed by JEFFREY CUMMINGS MD on 5/7/2013 3:20:57 PM

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C143-12-06693-01

June 6, 2013

Page 1

Chart Document

Greg Felton

Male 49 Years Old DC

Patient ID: 236336

Home: (775) 588-3121

05/28/2013 - Office Visit: RE L knee

Provider: JEFFREY R CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: IN PROGRESS DOCUMENT. Contents are preliminary

05/28/13

HISTORY:

Greg is here with regards to his left knee status post left knee arthroscopy partial medial meniscectomy. He seems to be making progress in the last few weeks. The pain has decreased. He still has a cyst posteriorly, but overall he is doing better. He feels that he currently has started turning the corner and had a tear of the medial meniscus. He did have some chondromalacia throughout the knee. I think that was most likely causing issues directly at the medial compartment. His pain is decreased now.

Past Medical History

None

He does not have pacemaker.
He does not have metal in his body.
He does not have a hearing aid.

Surgical History

Arthroscopic Knee Surgery

Medications and Allergies

Patient denies drug allergies.
Patient denies food allergies.
Patient denies metal allergies.
Patient denies latex allergy.

ALLERGIES

No known allergies

Family History

Arthritis
Heart Disease

Social History

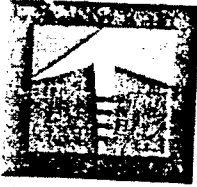
Patient is

Review of Systems

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JUN 10 2013

330



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June 6, 2013

Page 2

Chart Document

Greg Felton

Male 49 Years Old Dr.

Patient ID: 236336

Home: (775) 588-3121

Vital Signs:

Ht (in.): 70 Wt (lbs.): 175

Tobacco Use:

Never smoker

GENERAL EXAM

General Appearance: Greg Felton is a 49 years old male.

PHYSICAL EXAMINATION:

Physical examination, he has no tenderness to medial joint line. He does have a Baker cyst that is still palpable. He has good strength, hamstrings, quadriceps. Ligaments are stable. Sensation is intact. Negative McMurray.

IMPRESSION:

Left knee pain is improved, still somewhat symptomatic, still has a Baker cyst.

PLAN:

Plan for this time just to continue to monitor his full duty. We will let him continue to work but if pain returns or persists I still feel that the Euflexxa injection will be beneficial to get him back to his preoperative baseline even though they have been denied and he will see us back in six weeks.

Jeffrey R. Cummings, M.D.

JRC:mp

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JUN 11 2013

130

Factorx

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Laboratory Report

Dr. Jeffrey R. Cummings, MD, PhD, Medical Director
 CLIA 15D06541703 • SAMHSA Certified • CAP 10673-01
 California DPH CLF1442

2143-12-06693-

31627
 ARM/TAHOE FRACTURE & ORTHO MED
 ATTN:
 973 MICA DR, STE 201
 CARSON CITY, NV 89705

Patient Name: FELTON, GREG
 Age, DOB:
 Sex: M
 Other ID:

Patient ID:
 LAB ID: E3094781
 Collected: 05/28/2013
 Received: 06/03/2013
 Reported: 06/04/2013
 Requisition#:

Requesting Physician: DR JEFFREY R CUMMINGS

Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

Drug	Test Result	Value	Normalized Result	Comment
PAC PAIN PANEL TESTS	NOT DETECTED			Negative for all drugs tested and is consistent with prescribed medications as listed.

Specimen Validity Testing	Normal Range	Result	Normalized Result	Comment
CREATININE, URINE	>19 mg/dL	107.8	Normal	
SPECIFIC GRAVITY, URINE	>1.0020	1.0232	Normal	
NITRITES, URINE	<200 ug/mL	36	Normal	
CH, URINE	4.5-9.0	3.4	Normal	

Additional Comments

* All drugs in the PacPain Custom Panel, other than those indicated above, were not detected. * Normalized Result is based upon Creatinine data from a patient population with normal renal function. Normalized results may not be valid for patients with abnormal renal function. Clinical correlation is required. * CH=CRITICAL ALERT HIGH CL=CRITICAL ALERT LOW *

PacPain Custom 9621802 - Contains

- | | | |
|----------------------------|------------------------|----------------------|
| NARCOTIC ANALGESICS | BENZODIAZEPINES | BARBITURATES |
| Morphine (Kadian) | Alprazolam (Xanax) | Amobarbital |
| Codeine (Tylenol III) | Clonazepam | Butabarbital |
| Hydrocodone (Lortab) | Diazepam (Valium) | Butalbital |
| Hydromorphone | Lorazepam (Ativan) | Phenobarbital |
| Methadone | Oxazepam (Serax) | Phenobarbital |
| Methad. metab. (Etona) | Temazepam | Secobarbital |
| Oxycodone (Oxycontin) | | |
| Oxymorphone (Opana) | MISCELLANEOUS | MISCELLANEOUS |
| Propoxyphene (Darvon) | Acetaminophen | Tramadol |
| | Alcohol | Tricyclics |
| | Carisoprodol | Zolpidem |
| | Phenothiazines | |

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3146 De Boto Avenue Chatsworth, CA 91311
 Phone: 800-313-6942 • FAX: 818-598-3116

Laboratory Report

Dr. Jeffrey R. Cummings MD, PhD, FRCPC, FRCPC
 CLIA 05DN040703 • SAMHSA Certified • CAP 06670-01
 California CPH CLF4442

31627

ARM/TAHOE FRACTURE & ORTHO MED
 ATTN:
 973 MICA DR, STE 201
 CARSON CITY, NV 89705

Patient Name: FELTON, GREG

Age, DOB:
 Sex: M
 Other ID:

Requesting Physician: DR JEFFREY R CUMMINGS

Patient ID:

LAB ID: E3094781

Collected: 05/28/2013

Received: 06/03/2013

Reported: 06/04/2013

Requisition#:

Drug(s) Screened For: PACPAIN PANEL #9621802

Medication(s) Prescribed:

PACPAIN PANEL - 9621802

ANALYTE	CONFIRMATION		METHOD
	CUTOFF	UNITS	
ACETAMINOPHEN	1.0	ug/ml	FPIA
ALCOHOL	0.02	%	GC
BARBITURATES			
AMOBARBITAL (Amytal)	100	ng/ml	
BUTABARBITAL (Butasol)	100	ng/ml	GCMS
BUTALSITAL (Egic)	100	ng/ml	GCMS
PENTOBARBITAL (Nembutal)	100	ng/ml	GCMS
PHENOBARBITAL (Solfecon)	100	ng/ml	GCMS
SECOBARBITAL (Seconal)	100	ng/ml	GCMS
CARISOPRODOL (SOMA)			
CARISOPRODOL	1.0	ug/ml	GC/MS
MEPROBAMATE	1.0	ug/ml	GC/MS
BENZODIAZEPINES			
NORDIAZEPAM	100	ng/ml	GCMS
OXAZEPAM	100	ng/ml	GCMS
LORAZEPAM	100	ng/ml	GCMS
ALPHAHYDROXYALPRAZOLAM	100	ng/ml	GCMS
TEMAZEPAM	100	ng/ml	GCMS
7-AMINO CLOVAZEPAM	100	ng/ml	GCMS
METHADONE			
METHADONE	100	ng/ml	GCMS
EDDP	100	ng/ml	GCMS
PROPOXYPHENE			
NORPROPOXYPHENE	100	ng/ml	GCMS
OPIATES			
CODEINE	50	ng/ml	GCMS
MORPHINE	50	ng/ml	GCMS
HYDROCODONE	50	ng/ml	GCMS
HYDROMORPHONE	50	ng/ml	GCMS
OXYCODONE			
OXYCODONE	50	ng/ml	GCMS
OXYMORPHONE	50	ng/ml	GCMS
PHENOTHIAZINES			
CHLORPROMAZINE	1	ug/ml	HPLC
CLOZAPINE	1	ug/ml	HPLC

CONFIRMATION

REPORT CONTINUED ON NEXT PAGE

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