

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CHAD ZENOR,

Appellant,

vs.

STATE OF NEVADA, ex rel. its  
DEPARTMENT OF  
TRANSPORTATION,

Respondent.

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Jun 13 2017 02:41 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No. 71790

District Court Case No. 15OC002751B

On Appeal from Order Denying Motion for Attorney's Fees  
dated November 17, 2016  
in the First Judicial District Court, Carson City  
The Honorable James Wilson Presiding

**APPELLANT'S APPENDIX  
VOLUME I**

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(Chronological)**

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**Back In Motion Physical Therapy  
Functional Capacity Evaluation**

**Subject Name: Chad Zenor**  
**Date of Evaluation: 07/21/2014**  
**Claim#: 13C62C722865**

**Accepted Industrial Body Part:** 1) Right wrist

**Medical Diagnosis:** 1) TFCC tear

**Date of Accepted Industrial Injury:** 08/01/2013

**Last Date of Work:** 10/30/2013

**Referring Physician:** Dr. Huene

**Referring Insurance Carrier:** Sierra Nevada Administrators/CCMSI

**Employer at Time of Injury:** State of Nevada - NDOT

**Purpose of Functional Capacity Evaluation:** Determine current safe physical abilities for purpose of returning to workforce

This appears to be a **VALID** representation of the patient's current physical abilities. There **ARE NOT** signs or symptoms indicative of behavioral overlay during testing today. Patient appeared to provide **GOOD EFFORT** throughout testing today.

**Based on job description provided by State of Nevada as a a Highway Maintenance Worker III (not dated), patient did not demonstrate the ability to safely perform the physical demands of the pre-injury job due to the following physical demands:**

- 1) Lifting up to 50 lb from shoulder to overhead on a regular and recurring basis.
- 2) Lifting up to 75 pounds from floor to waist and waist to shoulder occasionally (1-33% of day).
- 3) Lifting up to 90 pounds from floor to waist and waist to shoulder occasionally (1-33% of day).
- 4) Pushing/pulling over 90 pounds occasionally (1-33% of day).
- 5) Carrying over 90 pounds up to 50 feet occasionally (1-33% of day).

**FCE Results and Summary**

**Based on the findings of this evaluation, Chad Zenor demonstrated the ability to safely perform at the following physical capacity based on a typical 8 hour work day and 40 hours a week:**

- **LIGHT/MEDIUM level work classification, according to U.S. Department of Labor standards. See below for specific lifting results.**

**In addition, the following recommendations are advised:**

- 1) Able to crawl rarely (0-1% of day).
- 2) Able to climb ladders occasionally (1-33% of day).
- 3) Able to use power tools with right hand occasionally (1-33% of day).
- 4) Able to use power torquing tools with right hand rarely (0-1% of day).
- 5) Able to perform power gripping and power grasping activities with right hand occasionally (1-33% of day).
- 6) Lifting ability as follows based on normal work shift (Maximum lift achieved in pounds).
- 7) Able to perform catching and throwing activities with right hand rarely (0-1% of day).
- 8) No other physical restrictions.

Cc: Insurance carrier

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Functional Capacity Evaluation  
Claim# 13C62C722865  
Chad Zenor  
07/21/2014

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TASK		Occasional (1 - 33% of day)	Frequently (34 - 66% of day)	Constantly (67 - 100% of day)
FLOOR	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	29	14.5	7.25
18 INCHES ABOVE FLOOR	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	31	15.5	7.75
WAIST	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	33	16.5	8.25
SHOULDER	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	28	14	7
OVERHEAD	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	24	12	6
CARRYING X 50 FEET	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	40	20	10
PUSHING	Left	40	20	10
	Right	28	14	7
	Bilateral	40	20	10
PULLING	Left	40	20	10
	Right	28	14	7
	Bilateral	40	20	10

Rhonda Fiorillo, PT, MPT - Physical Therapist's Signature/Date  
 Back In Motion Physical Therapy  
 10789 Double R Blvd., Suite 100  
 Reno, NV 89521  
 PH: 775.746.2206  
 Fax: 775.359.3332

Dr. Huene - Treating Physician/Date

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**Lifting Ability: Maximum Lift Achieved in pounds based on occasional (1 - 33 % of day) basis.**

TASK	LEFT	RIGHT	BILATERAL	REASON TESTING STOPPED
Waist to Floor Floor to Waist	18	10	29	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms. Vitals after lifting 26lb box: pulse = 90 bpm, oxygen saturation = 98% After 29lb box x 5 reps: pulse = 102 bpm, oxygen saturation = 97% Patient reported right wrist pain started to radiate proximally but able to perform for 2 1/2 hours day.
18 inches above floor to waist	18	10	31	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms.
Waist to Waist	18	10	33	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms. Pulse = 101 bpm, oxygen saturation = 97%
Waist to Shoulder	18	10	28	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms. Attempted to increase weight to 30lb; however, patient reported increased weakness. "That felt like my wrist was going to give out". S/P pulse = 98 bpm, oxygen saturation = 97%
Waist to Overhead	18	10	24	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms.
Carrying at waist level x 50"	18	10	40	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms.
Pushing at waist level	40	28	40	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms. Left UE pushing tolerated. Pulse = 90 bpm, oxygen saturation = 97%.
Pulling at waist level	40	28	40	Maximum safe lifting ability based on objective findings, physical therapist observations and subjective feedback from patient. Patient able to perform 5 reps demonstrating proper body mechanics after instruction and without increased symptoms.

Cc: Insurance carrier

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TASK	LEFT	RIGHT	BILATERAL	REASON TESTING STOPPED
				symptoms.

Pre-Test Subjective Pain Rating (SPR): Right wrist = 4/10

Post-Test SPR: Right wrist: 5/10, pulse = 92 bpm, oxygen saturation = 97%

**Positional Tolerances:** Below testing tolerances are for 20 minutes each

	Minutes Completed	Reason Testing Stopped
Sitting Tolerance (continuous)	20	Patient completed 20 minutes of activity continuously without difficulty reported by patient during activity and physical therapist did not observe any difficulty.
Standing Tolerance (continuous)	20	Patient completed 20 minutes of activity continuously without difficulty reported by patient during activity and physical therapist did not observe any difficulty.
Walking Tolerance (continuous)	20	Patient completed 20 minutes of activity on treadmill continuously without difficulty reported by patient during activity and physical therapist did not observe any difficulty.

**Other Physical Demands: Testing:** Patient tested for 5 trials in each position for 30 minutes total.

	Number of Trials Completed	Reason Testing Stopped
Squatting x 60 seconds	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist.
Crouching x 60 seconds	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist. Based on increased pressure of right hand of thigh PT recommends on occasional basis (1-33% of day).
Kneeling x 60 seconds	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist.
Crawling x 60 seconds	5	Patient completed 5 out of 5 trials with difficulty reported by patient or observed by physical therapist due to pain with pressure on right wrist and lack of active range extension in right wrist.
Climbing Up and Down Stairs	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist.
Walk Forward/ Backward on Uneven Terrain	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist.
Reaching Overhead x 60 seconds	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist.
Simple Pinching using Both Hands	5	Patient completed 5 out of 5 trials without difficulty reported by patient or observed by physical therapist.

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Pre-Test Subjective Pain Rating (SPR): Right wrist: 4/10, pulse = 83 bpm, oxygen saturation = 98%  
Post-Test SPR: Right wrist: 4/10

### Communication

Talking	No problems noted.
Hearing	No problems noted.
Seeing	No problems noted.

### Patient Information:

Last Name: Zenor First: Chad  
Gender: Male  
Referring M.D: Dr. Huene  
Workers Comp Carrier: CCMSI  
Patient Age: 47  
Date of Birth: 12/05/1966  
Claim #: 13C62C722865  
Social Security#: XXX-XX-1127

Height: 5'10"  
Weight: 165 lb

### Baseline Vitals:

Resting Blood Pressure: 122/82  
Resting Pulse: 83 bpm  
Oxygen Saturation: 98%

### Medical Information:

Date of Injury: 08/01/2013  
Body part(s) Injured/accepted in this Claim: 1) Right wrist  
Mechanism of Injury: Per patient report, he was working for State of Nevada in the NDOT as a Highway Maintenance Worker III when on 08/01/2013 patient reports he tripped and fell and landed on his right extended wrist. He reports he had immediate pain and the following day he went to Concentra. He was diagnosed with displacement of his right carpal bones and was started in physical therapy. He underwent physical therapy for approximately 6-7 months and he reports he improved. He has not had surgery.

He worked light duty until 10/30/2013 and has been on TTD benefits since then as his employers light duty benefits expired.

PT asked him if he thinks he can return to his pre-injury job as a Highway Maintenance Worker III and he replied, "I don't know - I still struggle with day to day activities. Last week I hit my hand on a little table and it jolted my hand and sent pains up my arm. I played golf yesterday and I had pain in my hand for 24 hours. I played again yesterday and today it's stiff but not as bad".

On average, Mr. Zenor rates his right wrist pain as 3/10. At best it is 01/10 and at worst it is 3/10.

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**Surgeries relating to this claim:**

1) None

**Current Industrial Medications:**

1) Ibuprofen 800mg daily

**Vocational History:**

Employer when Injured: State of Nevada - NDOT

Full duty Job Title: Highway Maintenance Worker III

Basic Physical Demands Requirements of full duty job: See provided Essential Functions for Highway Maintenance Worker III by State of Nevada (not dated).

Last Date of Work? 10/30/2013

If working, is patient working Full Duty or Light Duty? Currently not working.

Current Employer: State of Nevada

**Previous Workers Compensation History:**

Previous Injuries not relating to this claim? None Reported

Previous Workers Compensation claims? None Reported

**Attendance/Punctuality:**

Number of Appointments: One Number of Times Late: None

Total Evaluation Time: 6 hours with write-up

Late Excuses Offered: None

Purpose of the Evaluation: Determine current physical abilities.

**Pain Perception:**

Pain average: Right wrist = 4/10

Pain before FCE today: Right wrist = 4/10

Pain after FCE today: Right wrist = 5/10

**Functional Assessment:**

Sleep: No problems.

Activities that worsen symptoms: "Golf, softball, wiping my butt, shower, twisting of wrist".

Activities that decrease symptoms: "Relaxing".

Current level of activity: Currently on TTD benefits secondary to light duty benefits exhausted.

**Objective Evaluation:**

Dominant hand: Right

Grip Strength: Left = 95, 90, 88 pounds

Average = 91 lb

Right = 54, 60, 56 pounds

Average = 56.7 lb

Mean grip strength 47 y/o male: Right = 109.9 lb, Left = 100.8 lb

Right grip strength is 48% below mean for age and gender.

Left grip strength is 9.7% below mean for age and gender.

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PATIENT NAME: Zenor, Chad  
DATE OF SERVICE: 08/13/14

**HISTORY OF PRESENT ILLNESS:** Mr. Zenor returns for follow up of his non-associative right carpal instability pattern. He reports that he continues to do well. He is getting better. He had an FCE. In reviewing the FCE, we have gone over this which is a light to medium type of work which he feels that he is capable of doing without the brace; however, he feels that he is able to do all of his duties with the brace on as necessary to protect his wrist.

**PHYSICAL EXAMINATION:** His wrist dorsiflexes to 85 degrees and volar flexes to 80 degrees. There is no popping or locking. With ulnar deviation, he has slight ulnar pain but this is very minimal in nature. I cannot get the clunk that we heard before but, again, we did not force this.

**RECOMMENDATIONS:** I have again gone over the complexity of carpal non-associative instability patterns with him. Fortunately, he is doing quite well. Again, the real treatment for this would be limited type of wrist fusion which I think would carry more risks than benefits at this point. He continues to get stronger and stronger as he uses his brace less and less. We will release him to full duties with the brace on as necessary. I will sign off on the FCE but, again, I expect him to continue to improve as he uses his wrist more and more and, hopefully, he will get back to the point he has no restrictions. We will see him back in two months or sooner for any problems.

Donald S. Huene, M.D.  
DSH:scs1

PATIENT NAME: Zenor, Chad  
DATE OF SERVICE: 09/24/2014

**HISTORY OF PRESENT ILLNESS:** Mr. Zenor returns for follow up of his carpal non-associative instability pattern. He reports that, over the last day, he has been having clicking over the dorsal ulnar aspect of his wrist. It has not been reproducible. He has been trying to use it fully. He has been wearing his braces as necessary. He is accompanied by his nurse case manager. He comes in emergently today per the insurance company. His case manager accompanies him and is concerned about the FCE report. The problem is that the FCE was done in July 2014 and his current work restrictions are different than the FCE.

**REVIEW OF RECORDS:** I have reviewed the FCE; again, this was done in July 2014. He was not able to demonstrate the ability to safely perform the physical demands of his pre-injury job; however, now his wrist is in better function. I do not see anywhere where I stated he was permanent and stationary prior to this FCE being done.

**PHYSICAL EXAMINATION:** He has dorsiflexion of 80 degrees and volar flexion of 70 degrees. Negative ulnar impaction test; however, he has clicking over the ECU tendon. There are slight crepitations in this area. Extension of the elbow and volar flexion of the wrist reproduce his symptoms. There is no instability of the ECU tendon. He has 5/5 strength of the ECU tendon, but this causes pain. There is a negative Watson's test. There is a negative scaphoid shift test. There is no lunotriquetral instability.

**IMPRESSION:** FCU tendinitis; fortunately, there is no worsening of his non-associative carpal instability pattern.

**RECOMMENDATIONS:** Again, I have gone over the fact that he is not permanent and stationary per my records. I have gone over with him and his case manager that the FCE was done on July 21, 2014 and that he was not permanent and stationary at that point and he obviously has better function of his wrist at this point. I still do not think he is permanent and stationary. He has tendinitis. I have given him a home exercise program. If he does not improve, we will send him to occupational hand therapy and ultimately we may do an injection of the ECU tendon; fortunately, his carpal instability is not causing a significant problem. We will keep him on work restrictions, brace on as necessary; otherwise, he can use it fully.

Donald S. Huene, M.D.  
DSH:scs1



# Claim Notes for ZENOR, CHAD T (13C62C722865, DOL: 08/01/2013)

Note Type	Created	Last Modified
<p>From: Tani Consiglio Sent: Friday, August 29, 2014 1:19 PM To: Kelly, Diane E (dkelly@dot.state.nv.us) Cc: 'Datu, Amelia'; michelle_green@corvel.com Subject: Change of appt - Chad Zenor</p> <p>Hi Diane,</p> <p>Amelia was able to schedule an appointment earlier with Dr. Huene on Mr. Zenor instead of October. His next appt is scheduled for 9/24/14.</p> <p>Michelle is planning to attend that appointment.</p>		
CLIENT	09/05/2014 by TANI CONSIGLIO	09/05/2014 by TANI CONSIGLIO
8/18/14 - Late Entry		
<p>From: Kelly, Diane E [mailto:dkelly@dot.state.nv.us] Sent: Monday, August 18, 2014 6:47 AM To: Tani Consiglio; Datu, Amelia Cc: michelle_green@corvel.com; Fuentes, Oscar M Subject: RE: Message from "27165ricoh01"/ Chad Zenor report Importance: High Sensitivity: Confidential</p> <p>Why are we going TWO MONTHS before his next appointment??? This is ridiculous and unacceptable. This individual has had his FCE, the physician has signed off on it, he has permanent limits. He needs to be at MMI and the round table session at Risk Management scheduled - - - along with his PPD evaluation.</p>		
CLIENT	09/09/2014 by TANI CONSIGLIO	09/09/2014 by TANI CONSIGLIO
8/28/14- Risk Mgmt letter to lw, scheduling roundtable		
CLIENT	09/21/2014 by TANI CONSIGLIO	09/21/2014 by TANI CONSIGLIO
9/9/14 - Signed Intent to Offer Emplmnt - unable to offer permanent modified position		
CLIENT	10/13/2014 by TANI CONSIGLIO	10/13/2014 by TANI CONSIGLIO
<p>From: Fuentes, Oscar M [mailto:OFuentes@dot.state.nv.us] Sent: Tuesday, September 30, 2014 8:04 AM To: Kelly, Diane E; Tani Consiglio; michelle_green@corvel.com Cc: Datu, Amelia; Sheila Reinhart Subject: RE: New Doc 2Page 1 Sensitivity: Confidential</p> <p>Sheila, please let me know the outcome. We have an employee that does not seem to have trouble riding a motorcycle.</p>		
<p>From: Kelly, Diane E Sent: Monday, September 29, 2014 1:30 PM To: 'Tani Consiglio'; michelle_green@corvel.com Cc: Datu, Amelia; Sheila Reinhart; Fuentes, Oscar M Subject: RE: New Doc 2Page 1 Importance: High Sensitivity: Confidential</p> <p>Employer is standing by the FCE results regardless of what Dr. Huene states, he signed off on the FCE. Subsequently Mr. Zenor was referred to voc rehab as appropriate and he needs to be working with Debra Adler in an active and ongoing manner to pursue other career options available through voc rehab. Mr. Zenor does not seem to have any trouble whatsoever riding around on his new Harley. Last time I checked, it takes quite a bit of wrist action and strength to operate these motorcycles.</p>		
CLIENT	11/03/2014 by TANI CONSIGLIO	11/03/2014 by TANI CONSIGLIO

**PATIENT NAME:** Zenor, Chad  
**DATE OF SERVICE:** 10/22/14

**HISTORY OF PRESENT ILLNESS:** Mr. Zenor returns for follow up of his ECU tendinitis and carpal non-associated instability dissociative pattern. He reports that he is doing well. He has occasional pain over his ECU tendon, but he has been using it without complaint. He does not feel limited from doing anything and he is doing most things that he can.

**PHYSICAL EXAMINATION:** His dorsiflexion is to 80 degrees and volar flexion is to 60 degrees. There is slight clicking in his wrist, but not the large clunk that was appreciated before with his carpal non-associated instability pattern. His ECU tendon is not unstable. I think the clicking is coming from his ECU tendon, but he has 5/5 strength. Extension of the elbow and volar flexion of the wrist cause minimal pain. He has 5/5 grip strength. With loading his wrist, there is no clunking. He has a negative Watson's test. He has a negative scaphoid shift test. There is no lunotriquetral instability.

**IMPRESSION:** Improving ECU tendinitis.

**RECOMMENDATIONS:** At this point, I think he can do full duties without limitations. I have warned him about worsening and ultimately requiring some form of wrist fusion. I think he has reached permanent stationary status and a rating can be performed. This was discussed with his case manager. We will see him back as necessary. I explained to him that, if he had worsening, his claim can be re-opened at that time.

Donald S. Huene, M.D.  
DSH:scs31

*Adler Vocational Rehabilitation Service*  
**Debra Adler M.S. C.R.C**

October 22, 2014

Chad Zenor  
1233 Beverly Drive  
Carson City, Nevada 89706

Dear Mr. Zenor:

As the Vocational Rehabilitation Counselor assisting you with returning to work we have determined that you are eligible for vocational rehabilitation services.

Based on your education and past work history it appears you are eligible for 60-Days of Plan Development. You have up to sixty days, from **October 29, 2014 through December 28, 2014** to finalize a plan for your return to work. Rehabilitation maintenance payments may cease as of December 28, 2014, if an appropriate plan has not been submitted. There are several options to facilitate your return to work.

The first option is the employer of injury making an offer of accommodated work within your permanent limitations. If the employer is unable to accommodate your permanent limitations with a modified accommodated job we will look into evaluating your transferable /marketable skills for other employment. - Your employer will be contacted and asked to make a formal decision about accommodated work.

We will discuss your transferable and marketable skills- although at this time it does not appear as though you have the skills to return to work within your present limitations. The final decision about this will be made during the 60 days of plan development period.

We will start to research potential jobs that you may consider retraining in as well, it is important to start looking at the job market in your areas so you will have a good idea as to the jobs in the local economy, what they are paying, what they qualifications are and what type of work you might like to do. We will look at your past work skills to see if there is any related work that you might be able to be trained in and work that is within your limitations.

If we are unable to return you to work with another employer where you will receive 6 months of job placement assistance through vocational rehabilitation using marketable/transferable skills from your previous employment, training and education in the past then the other options are for return to work:

1. A Rehabilitation lump sum payment instead of Rehabilitation Services.  
Acceptance of the lump sum payment will extinguish any further right to vocational rehabilitation benefits on this claim.  
OR
2. If option 1 is not selected, the next priority is to find an employer able to provide an On-the-Job-Training (OJT) program. The best OJT would be one

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that could build on any skills and training you already have. The employer would need to agree to train you in a new job consistent with your physical abilities and employ you at the end of the training and CCMSI would need to approve the plan. Any OJT training program would have to be completed within the time allotted by NRS 616C.555. During an OJT, the employer pays 50% of the wages CCMSI will pay the balance of the wage to equal your rehab maintenance rate. After 90 days of employment following the OJT, CCMSI will reimburse the employer the amount of wages paid during the training. At the end of the training period, rehabilitation ends.

OR

3. If option 1 is not selected and option 2 is not viable, CCMSI will consider formal training at a vocational/technical or other type of school. CCMSI pays tuition, books, supplies, and possibly travel. During the training, rehabilitation maintenance payments continue. The training must be in an occupation where jobs are available that fit your interests and abilities as well as within your physical limitations. The training would have to be completed within the time allotted by NRS 616C.555. At the completion of training, you may receive up to 28 days of rehabilitation maintenance while looking for work. Rehabilitation ends after 28 days or upon employment which ever comes first.

Please note that NRS 616C.601 states:

"Anyone who rejects a suitable program of vocational rehabilitation which is offered to him; rejects employment which is within the limitations prescribed by a treating physician or chiropractor; or refuses to cooperate with the insurer in the development of a program of vocational rehabilitation or a search for a job, is subject to suspension or termination of vocational rehabilitation benefits."

Enclosed is a Rehabilitation Agreement for the initial sixty (60) day development period, please reviews them and if you have any questions you can contact me. If you choose to participate in vocational rehabilitation please sign the Agreement and return it to me no later than October 29, 2014 by our meeting to assuring continuation of your vocational rehabilitation benefits. I have enclosed an extra copy of the Agreement for your records.

Please contact me at (775) 829-4405 with any questions or concerns.

Sincerely,

Debra L. Adler, M.S. CRC  
Certified Rehabilitation Counselor

DLA/da

Enclosure: Rehabilitation Agreement

CC: File  
Tani Consiglio, CCMSI 775-882-9601



October 24, 2014

Chad Zenor  
1233 Beverly Dr.  
Carson City, NV 89706

Re: Claim Number: 13C62C722865  
Date of Injury: 8/01/2013  
Employer: State of Nevada, Dept. of Transportation

Dear Mr. Zenor:

We recently received a report indicating that you had completed your medical treatment for your work related injury. Prior to closing your claim we would like to schedule you for an impairment evaluation. To expedite scheduling of your evaluation we have enclosed a list of approved physician and chiropractors that you may choose from. You do not have to choose any of these physicians in order to be rated.

If you decide to choose one of the approved rating physicians, please initial the line next to the physician or chiropractor who you wish to complete your evaluation. After choosing the doctor, sign and date the form and return it to our office within 10 days from the date of this letter.

*If you do not choose one of the physicians listed on the enclosed form, an evaluation will be scheduled by random rotation from the list of rating physicians approved by the regulatory agency.*

*Enclosed is a self-addressed stamped envelope for your convenience.*

If you have any questions or wish to discuss this further, please contact me at the number noted below.

Sincerely,

Tani Consiglio  
Claims Representative

cc: File, NDOT



*Adler Vocational Rehabilitation Service*  
Debra Adler M.S.C.R.C.

December 3, 2014

Dr. Donald Huene  
85 Kirman Ave Ste 303  
Reno, Nevada 89502  
Via fax at 775-329-7993

Claimant: Chad Zenor  
Claim No. 13C62C722865  
DOI: 8/1/2013

Dear Dr. Huene:

I am the Certified Rehabilitation Counselor assigned to assist Chad Zenor in his return to work efforts. After an industrial injury Mr. Zenor has been released to participate in vocational rehabilitation services and to return to work.

He was released to light/medium level work. Specific restrictions include:

1. Able to crawl rarely
2. Able to climb ladder occasionally
3. Able to use power tools with right hand occasionally
4. Able to use power torquing tools with right hand rarely
5. Able to perform power gripping and power grasping activities with right hand occasionally
6. Lifting abilities as follows based on normal work shift
7. Able to perform catching and throwing activities with right hand rarely
8. No other physical restrictions
9. Not able to physically perform work as a highway maintenance worker- pre injury work

At the present time Mr. Zenor is interested in pursuing educational retraining in Reno Nevada so that he can acquire general computer and accounting skills and training. He will learn the commonly used applications such as Windows, Microsoft MS Word, Excel, Outlook, and QuickBooks. This training would allow him to seek employment in the occupational area of administrative and account support accounting.

The educational retraining is held in classrooms and computer laboratories, comprised of up to an eight hours day, four days per week. During the course of an average school day Mr. Zenor will sit at a desk and computer, stand and walk to work stations, and participate in book and manual reading. He will have the ability and flexibility to accommodate his posture and positioning as needed, in school as well as subsequent office and business environments.

Upon completion of the formal training, Mr. Zenor will be qualified to obtain employment as an Administrative Assistant and Accounting Clerk. He will most likely

3690 Grant Drive Suite A-1  
Reno, NV. 89509  
Telephone: 775-829-4405  
Fax: 775-829-4407

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DEC. 12 2014

CCMSI-CARSON

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Dr. Huene  
Re: Chad Zenor  
Page 2

work in a sedentary to light level capacity where he will sit, stand, and walk throughout the day, in addition to performing customer relations, computer data entry, and other general office duties. Lifting will be negligible both in the schooling and in subsequent employment, as most computer applications positions are either sedentary or light in nature, according to the Dictionary of Occupational Titles. Sedentary work is defined as lifting up to 10 pounds maximum, where light work is defined as lifting up to twenty pounds maximum. Light work is also defined as positions that require lifting a lesser amount, but may require standing or walking to a significant degree.

**Administrative Assistant**  
**DOT Code: 169.167-010**

Aids executive in staff capacity by coordinating office services, such as personnel, budget preparation and control, housekeeping, records control, and special management studies; Studies management methods in order to improve workflow, simplify reporting procedures, or implement cost reductions. Analyzes unit operating practices, such as recordkeeping systems, forms control, office layout, suggestion systems, personnel and budgetary requirements, and performance standards to create new systems or revise established procedures. Analyzes jobs to delimit position responsibilities for use in wage and salary adjustments, promotions, and evaluation of workflow. Studies methods of improving work measurements or performance standards. Coordinates collection and preparation of operating reports, such as time-and-attendance records, terminations, new hires, transfers, budget expenditures, and statistical records of performance data. Prepares reports including conclusions and recommendations for solution of administrative problems. Issues and interprets operating policies. Reviews and answers correspondence. May assist in preparation of budget needs and annual reports of organization. May interview job applicants, conduct orientation of new employees, and plan training programs. May direct services, such as maintenance, repair, supplies, mail, and files. May compile, store, and retrieve management data, using computer.

GOE: 11.05.02 STRENGTH: S GED: R5 M3 L5 SVP: 7 DLU: 88

**Accounting Clerk**  
**DOT Code: 216.482-010**  
Industry: clerical

Performs any combination of following calculating, posting, and verifying duties to obtain financial data for use in maintaining accounting records: Compiles and sorts documents, such as invoices and checks, substantiating business transactions. Verifies and posts details of business transactions, such as funds received and disbursed, and totals accounts, using calculator or computer. Computes and records charges, refunds, cost of lost or damaged goods, freight charges, rentals, and similar items. May type vouchers, invoices, checks, account statements, reports, and other records, using typewriter or computer. May reconcile bank statements. May be designated according to type of accounting performed, such as Accounts-Payable Clerk (clerical); Accounts-Receiveable Clerk (clerical); Bill-Recapitulation Clerk (utilities); Rent and Miscellaneous Remittance Clerk (insurance); Tax-Record Clerk (utilities).

GOE: 07.02.02 STRENGTH: S GED: R4 M3 L3 SVP: 5 DLU: 88

3690 Grant Drive Suite A-1  
Reno, NV. 89509  
Telephone: 775-829-4405  
Fax: 775-829-4407

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DEC 12 2014

**CCMSI-CARSON**

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**2**

Dr. Huene  
Re: Chad Zenor  
Page 3

**Bookkeeper**

**DOT Code: 210.382-014**


**Industry: clerical**

Keeps records of financial transactions for establishment, using calculator and computer. Verifies, allocates, and posts details of business transactions to subsidiary accounts in journals or computer files from documents, such as sales slips, invoices, receipts, check stubs, and computer printouts. Summarizes details in separate ledgers or computer files and transfers data to general ledger, using calculator or computer. Reconciles and balances accounts. May compile reports to show statistics, such as cash receipts and expenditures, accounts payable and receivable, profit and loss, and other items pertinent to operation of business. May calculate employee wages from plant records or time cards and prepare checks for payment of wages. May prepare withholding, Social Security, and other tax reports. May compute, type, and mail monthly statements to customers. May be designated according to kind of records of financial transactions kept, such as Accounts-Receivable Bookkeeper (clerical), and Accounts-Payable Bookkeeper (clerical). May complete records to or through trial balance.

GOE: 07.02.01 STRENGTH: S GED: R4 M4 L3 SVP: 6 DLU: 87

Mr. Zenor is motivated to participate in this formal training and the tasks of the training and subsequent employment appears to be within his physical capabilities. Please review the information contained in this letter and indicate your decision as to whether you release Mr. Zenor to perform this training and subsequent employment of in an administrative capacity with an emphasis accounting. Your response can then be submitted back to me, via facsimile, at (775) 829-4407. Please respond as quickly as possible, as Mr. Zenor hopes to initiate the training in the next few weeks. I will look for your response by Thursday December 11, 2014 if possible. If you have any questions regarding this vocational objective or the vocational status of Mr. Zenor please feel free to contact me at (775) 829-4405. Thank you for your time and assistance in this matter.

Sincerely,

  
Debra L. Adler, M.S. CRC  
Certified Rehabilitation Counselor

cc: file

3690 Grant Drive Suite A-1  
Reno, NV. 89509  
Telephone: 775-829-4405  
Fax: 775-829-4407

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DEC 12 2014

CCMSI-CARSON

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Dr. Husne  
Re: Chad Zenor  
Page 4

Regarding Mr. Zenor's training and working as an accounting clerk and in  
APPROVED:                     

NOT APPROVED:                     

COMMENTS:                     

                      
Dr. Donald Huens

12-10-14  
Date

3690 Grant Drive, Suite A-1  
Reno, NV 89509  
Telephone: 775-829-4405  
Fax: 775-829-4407

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DEC 12 2014

COMST-CARSON CITY

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STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION  
1263 S. Stewart Street  
Carson City, Nevada 89712



BRIAN SANDOVAL  
Governor

RUDY MALPAGON, P.E., Director  
In Reply Refer to:

December 31, 2014

Chad Zenor  
1233 Beverly Drive  
Carson City, NV 89706

*Ask Dr. Williams*

Dear Mr. Zenor:

We regret to inform you that the District will not be able to continue to approve leave without pay status indefinitely. You have utilized your sick leave and your FMLA leave. The duties of your position have been temporarily assigned to others, which has placed a hardship on our agency. At this time we find that we must address this matter.

*Ask 329-7993* You are instructed to take a copy of the enclosed job description and work performance standards to your physician and have your physician document whether or not you can perform these job duties on a full time basis. Please have your physician identify if there are any work accommodations that we can consider that will assist you in performing your job duties in a full time continuous basis.

If you are unable to provide us with a full duty work release, we will be placed in a regrettable position in which we must, in accordance with NAC 284.611, initiate separation due to a physical disorder. You will be referred to the Division of Vocational Rehabilitation for assistance with job placement and the Public Employee's Retirement System for consideration of possible disability retirement benefits.

Please note that if your condition is cured or improves to a point where you are able to perform full time continuous work within the next two years that you can seek reinstatement within State service in accordance with the provisions of NAC 284.611.

Please provide us with the documentation required from your physician by January 21, 2015.

Sincerely,

*Steve Williams*

Steve Williams  
Highway Maintenance Manager

cc: Kimberley King, HR

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BRIAN SANDOVAL  
Governor

STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION

1263 S. Stewart Street  
Carson City, Nevada 89712

RUDY MALFABON, P.E., Director

In Reply Refer to:

June 1, 2015

June 1, 2015

Chad Zenor  
1233 Beverly Drive  
Carson City, NV 89706

Chad Zenor  
1233 Beverly Drive  
Carson City, NV 89706

Dear Mr. Zenor:

Dear Mr. Zenor:

The Nevada Department of Transportation (NDOT) is in receipt of the independent functional capacity evaluation performed by Rhonda Fiorillo, PT, MPT with Back In Motion Physical Therapy on July 21, 2014, which specifies your permanent physical limitations. The Department reviewed your limitations and determined that you were unable to return to your previous position as part of your Workers' Compensation case. At that time NDOT reviewed all available positions for which you might be qualified and determined we had no available positions for which you qualified and could physically perform. As a result of this determination, you have been provided vocational rehabilitation through Workers' Compensation to retrain you for future employment. You have been receiving vocational rehabilitation benefits as a result of your inability to return to your previous position.

Pursuant to NAC 284.611 the Department of Transportation is pursuing your separation from state service for medical reasons. NDOT will not be referring you to the Bureau of Vocational Rehabilitation, in the Department of Employment, Training and Rehabilitation since you are receiving vocational rehabilitation benefits through Workers' Compensation.

You may be eligible for long-term disability benefits through the Public Employees' Benefit Program. You are encouraged to contact the appropriate representative from PEBS at (800) 326-5496. You are also advised to contact the Public Employees' Retirement System to determine if there are benefits available to you through their agency at (702) 486-3900.

It is with deepest regret, I must inform you the Department will pursue separation under NAC 284.611.

Sincerely,

Kimberley King  
Human Resources Manager

cc: Thor Dyson, District Engineer

Sincerely,

Kimberley King  
Human Resources Manager

cc: Thor Dyson, District Engineer

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STATE OF NEVADA  
RECOMMENDATION OF SEPARATION PURSUANT TO NAC 284.611

Name: Chad Zenor Employee ID#: 227005 Budget Account: 466004

Current Class: HMV III Grade: 29 Step: 2 Supervisor: Ed Shope

Department: Transportation Division: District 2 Section: C227 Date: 6-4-2015 Time: \_\_\_\_\_

A recommendation has been made by: Steven R. Williams Highway Maintenance Manager  
Name Title

that you be separated from State service effective not earlier than: June 26, 2015 Date

DocuSigned by:  
Steven R. Williams  
(Signature of Person recommending separation)

REASONS FOR RECOMMENDED ACTION

Unable to perform the essential functions of your position due to medical reasons. See attached.

☒ In accordance with NAC 284.656, a hearing has been scheduled on your behalf to determine whether such action is warranted. Following the hearing and prior to the proposed effective date, you will be given a copy of the finding(s) and recommendation(s), if any, resulting from the hearing and be informed in writing of the appointing authority's decision regarding the recommended action(s).

☐ In accordance with paragraph 2(b) of NAC 284.6563, the effective date of your separation is immediate as noted above. A hearing in accordance with NAC 284.656 will follow as soon as practicable after the effective date of your separation.

Note: If you wish to appeal your separation, please be aware that pursuant to NRS 284.390, an appeal is deemed timely if it is postmarked within 10 working days after the actual effective date of the separation.

The hearing will be conducted:

By: Eden Lee Admin Services Officer at: 9:00am on: June 24, 2015  
Name Title Time Date

at: District 2 Administration Building, Room 106, 310 Galletti Way, Sparks, Nevada 89431

Location (include complete address)

Pursuant to NAC 284.656, a hearing has been scheduled in your behalf to afford you your right to respond to the proposed action. The hearing is an informal proceeding between you and the appointing authority or his designated representative. Witnesses are not permitted. Each party may be accompanied by a person of his choice. (For information regarding the hearing and your right to waive the hearing, you should refer to NAC 284.6561.)

DocuSigned by:  
[Signature] [Signature]  
Signature of Appointing Authority or Designated Representative

Signature of Employee: *I understand that acknowledgment of receipt of this notice is not an acceptance of the proposed action nor am I giving up any appeal rights I may have under NRS 284.390.*

Employee's Signature

Date

Time

Witness' Signature (Required if employee refuses to sign)

Signature and Title (Person serving this notice)

Copy: Division of Human Resource Management ~ Central Records Service Jacket; Department; Appointing Authority; Employee.

Medical Separation - NAC 284.611

Name: Chad Zenor

Date: 06/05/2015

Due to a reported medical condition with a recorded date of injury on August 1, 2013, you have been out from work between August 2013 and June 2015. You were approved, used and exhausted your leave entitlement under the Family Medical Leave Act.

The Nevada Department of Transportation was notified that you were unable to perform the essential functions of your Highway Maintenance Worker III position, in documentation by Rhonda Fiorillo, PT, MPT, dated July 21, 2014. The Department reviewed your limitations and determined that you were unable to return to your previous position as part of your Workers' Compensation case. At that time, NDOT reviewed all available positions for which you might be qualified and determined we had no available positions for which you qualified and could physically perform. As a result of this determination, you have been provided vocational rehabilitation through Workers' Compensation to retrain you for future employment. You have been receiving vocational rehabilitation benefits as a result of your inability to return to your previous position.

On December 31, 2014, you were advised that you could not remain on Leave Without Pay (LWOP) status indefinitely. The Department is unable to retain your employment in your absence while the duties of your position are performed by others.

Accordingly, it is the intention of the State to separate you from your employment with the Department of Transportation in accordance with NAC 284.611 (attached).



NAC 284.611 Separation for physical, mental or emotional disorder. (~~NRS 284.065, 284.155, 284.355, 284.383, 284.385, 284.390~~)

1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his or her job, the appointing authority must:

- (a) Verify with the employee's physician or by an independent medical evaluation paid for by the appointing authority that the condition does not, or is not expected to, respond to treatment or that an extended absence from work will be required;
- (b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his or her job;
- (c) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the employee is receiving worker's compensation, request the services of the rehabilitation provider, to evaluate the employee's condition and to provide any rehabilitative services possible; and
- (d) Ensure that all reasonable efforts have been made to retain the employee.

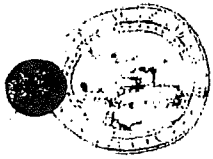
2. A separation pursuant to this section is only justified when:

- (a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;
- (b) The employee is not on sick leave or other approved leave; and
- (c) A referral has been made to the Public Employees' Retirement System and the employee has been determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC 284.655 to 284.6563, inclusive, must be followed, and he or she may appeal the separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he or she recovers from the disorder within 2 years after the termination.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91; 7-6-92; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R143-05, 12-29-2005; R063-09, 11-25-2009)



BRIAN SANDOVAL  
Governor

STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION

1283 S. Stewart Street  
Carson City, Nevada 89712

JUDY THOMPSON, M.E. Director  
Tracy Larkin

June 24, 2015

Mr. Chad Zenor  
1233 Beverly Drive  
Carson City, NV 89706

Dear Mr. Zenor,

I have reviewed the Recommendation of Separation Pursuant to NAC 284.611 (NPD-42) that was served upon you in consideration of your inability to perform the essential functions of your position due to medical reasons. This letter serves as notification that the separation pursuant to NAC 284.611 will be carried out effective June 26, 2015.

It is my determination that there exists a substantial basis for this separation based on the reasons set forth in the NPD-42, and as such, separation is justified. This action may be appealed under the procedures of NRS 284.390.

Regretfully,

DocuSigned by:

832931E9303041F...

Tracy Larkin-Thomason  
Deputy Director

cc: Employee File  
Human Resources

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# STATE OF NEVADA EMPLOYMENT STATUS MAINTENANCE TRANSACTION / ESMT - A

## Job Assignment

EMPLOYEE ID		NAME - FIRST		NAME - LAST		SUFFIX	
APPT ID	EFFECTIVE DATE	EXPIRATION DATE					
PERSONNEL ACTION		REASON	EMP STATUS	RECORDS DATE RECD			
PERSONNEL ACTION		REASON	EMP STATUS	TERMINATION			
PERSONNEL ACTION		REASON	EMP STATUS				

AGENCY		HOME ORG	TEO FULL-TIME	POSITION	FILE DRIVER PAY	GRADE	STEP	RATE OF PAY - BIMEPLY 3
			<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> N/A		<input type="radio"/> YES <input type="radio"/> NO			

PROBATION/INITIAL START	PROBATION/INITIAL END	PAY PROGRESSION START	CURRENT SERVICE DATE	LEAVE PROGRESSION START	JUST #

Assignment Attributes - Position Attributes						Overrides	
PAYROLL NUMBER	TITLE	SUB TITLE	PAY CLASS	TITLE DESCRIPTION	PAY POLICY		

Pay Parameters					
PAY TYPE	AP IND	AMOUNT	PERCENT	EFFECTIVE DATE	EXPIRATION DATE
PAY TYPE	AP IND	AMOUNT	PERCENT	EFFECTIVE DATE	EXPIRATION DATE
PAY TYPE	AP IND	AMOUNT	PERCENT	EFFECTIVE DATE	EXPIRATION DATE
PAY TYPE	AP IND	AMOUNT	PERCENT	EFFECTIVE DATE	EXPIRATION DATE

LEAVE POLICY	
BENEFIT/DEDUCTION POLICY	
OVERRIDE PROFILE	

GYD (Agency Specific Date)		WORK LOCATION		WORK LOCATION PHONE 1	EXTENSION	WORK LOCATION PHONE 2	EXTENSION	WORK CYCLE	Check Distribution:
									<input type="radio"/> HOME <input type="radio"/> PAY LOCATION

PERS (Pension Profile)				Employer Portion				Employee Portion			
PENSION SYSTEM	DEDUCTION TYPE	DEDUCTION PLAN	EFFECTIVE DATE	PENSION SYSTEM	DEDUCTION TYPE	DEDUCTION PLAN	EFFECTIVE DATE				
PERS				PERS							

ax (Employee Tax Parameters)		E. EMPD (Employee Duty Location)		F. EMRA (Employee Roll Assignment)	
EFFECTIVE DATE	TAX CLASS	DUTY LOCATION		MANAGER	SUPERVISOR
				<input type="radio"/> ACTIVE <input type="radio"/> INACTIVE <input type="radio"/> N/A	<input type="radio"/> ACTIVE <input type="radio"/> INACTIVE <input type="radio"/> N/A

NOTIFICATION and SIGNATURE: Required for all actions except where an employee has terminated services with the State and is not able for signature, or for error corrections.

Employee Signature: *Employee Not Available* Date: *6/15/15*

Transfer Only: \_\_\_\_\_ Initial Date if your agency accepts the employee's overtime liability. If no, outgoing agency is required to pay off balance per NAC 284.254.1.

CERTIFICATION OF THE APPROPRIATE AGENCY		CERTIFIED BY DEPARTMENT AGENCY PERSONNEL REP		DATE PERSONS ENTERED OR APPROVED	
WE STATE HEREIN IS CORRECT AND COMPLETE AND IN ACCORDANCE WITH STATE LAW AND REGULATIONS.					
Signature: <i>me b soul</i> Date: <i>6/15/15</i>		Signature		Signature	

ORIGINAL

BEFORE THE NEVADA STATE PERSONNEL COMMISSION  
ADMINISTRATIVE HEARING OFFICER

CHAD ZENOR,

Appellant/Employee,

vs.

NEVADA DEPARTMENT OF  
TRANSPORTATION,

Appellee/Employer.

Case No.: 53630-CC

TRANSCRIPT OF PROCEEDINGS

BEFORE THE  
HONORABLE CHARLES P. COCKERILL  
HEARING OFFICER

Thursday, November 19, 2015

9:00 a.m.

1050 East William, Suite 450

Carson City, Nevada 89701

Ordered by: Department of Administration  
1050 East William, Suite 450  
Carson City, Nevada 89701

Kelly Paulson CCR #628

STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE  
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A P P E A R A N C E S

On behalf of the Employee:

Kevin Ranft, Esq.  
AFSCME Local 4041  
504 East Musser Street, Suite 300  
Carson City, Nevada 89701

On behalf of the Employer:

David R. Keene, II, Esq.  
Office of the Attorney General  
555 East Washington Avenue  
Las Vegas, Nevada 89101

1	I N D E X				
2					
3	EXAMINATION	DIRECT	CROSS	REDIRECT	RECROSS
4					
5	BARBARA PATROUCH	15	30	40	46
6	KIMBERLY KING	57	66	178	180
7	STEVE WILLIAMS	78	82		
8	THOR DYSON	86	88	89	90
9	CHAD ZENOR	92	122	137	
10	KATHY ZENOR	140			
11	TANI CONSIGLIO	144	161	171	
12					
13					
14					
15	EXHIBITS	IDENTIFIED		IN EVIDENCE	
16					
17	STATE'S EXHIBITS 1-102	9		9	
18	STATE'S EXHIBITS 103-115	42		42	
19					
20	EMPLOYEE'S EXHIBITS 1-27	9		9	
21					
22		* * *			
23					
24					
25					

1 P R O C E E D I N G

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3 HEARING OFFICER COCKERILL: Morning. My name is  
4 Charlie Cockerill. I'm the Hearing Officer today in the  
5 case of Chad Zenor versus State of Nevada, Department of  
6 Transportation, Appeal No. 53630-CC.

7 If counsel and their representatives can just  
8 state your appearance, please.

9 MR. KEENE: Good morning. My name is David  
10 Keene. I'm here representing the Department of  
11 Transportation.

12 HEARING OFFICER COCKERILL: Okay, Mr. Keene.

13 MR. RANFT: Good morning. My name is Kevin  
14 Ranft, with AFSCME Local 4041, representing Chad Zenor.

15 HEARING OFFICER COCKERILL: Okay. And I've  
16 received both prehearing statements and exhibits. I'm not  
17 sure if you've got additional exhibit books today to  
18 provide to me?

19 No? Okay.

20 MR. KEENE: I have --

21 HEARING OFFICER COCKERILL: I've got all of the  
22 Employee's exhibits, and I've got all of the Employer's  
23 exhibits which are Bates stamped, so I'll be going off of  
24 those.

25 I've reviewed both prehearing statements. My

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1 understanding, that this is a case involving, really, a  
2 new issue for me as a Hearing Officer, and that's the  
3 application of, I believe, NAC 284.611, separation of  
4 employee for physical, mental or emotional disorder. And  
5 typically the cases I've had have been either a  
6 disciplinary discharge or a whistleblower case, and it's  
7 clearly stated what -- the burdens of proof.

8 My understanding is the burden of proof is still  
9 on the State, and so the State would go forward first. Is  
10 that your --

11 MR. KEENE: That's our understanding as well,  
12 your Honor.

13 HEARING OFFICER COCKERILL: Okay. And Charlie,  
14 both of you just refer to me as Charlie.

15 And so that's the way we'll proceed, is we'll  
16 proceed with the State's case first. We've got a lot of  
17 witnesses here. Typically witnesses are not in the  
18 hearing.

19 Are there any additional witnesses that are  
20 going to be appearing later today?

21 Okay. What I'm going to do is swear all of the  
22 witnesses in. First of all, I'm going to go around from  
23 this side, if you could just state your name and spell  
24 your last name and go one at a time all the way around  
25 starting with you.



1 MS. JONES: My name is Stacy Jones. I'm with  
2 CCMSI.  
3 Did you say spell the last name?  
4 HEARING OFFICER COCKERILL: Yes.  
5 MS. JONES: J-O-N-E-S.  
6 HEARING OFFICER COCKERILL: Okay.  
7 MS. CONSIGLIO: I'm Tani Consiglio. I'm with  
8 CCMSI. It's C-O-N-S-I-G-L-I-O.  
9 HEARING OFFICER COCKERILL: Okay.  
10 MS. ZENOR: My name is Kathy Zenor. I'm Chad's  
11 spouse.  
12 HEARING OFFICER COCKERILL: Okay.  
13 MS. ZENOR: My last name is Z-E-N-O-R.  
14 HEARING OFFICER COCKERILL: Okay. And are you  
15 going to be a witness?  
16 MS. ZENOR: Um-hmm.  
17 MR. DYSON: My name is Thor Dyson. I'm with the  
18 Nevada Department of Transportation. I'm the district  
19 engineer. Last name spelling is D-Y-S-O-N.  
20 HEARING OFFICER COCKERILL: Okay.  
21 MS. MACHADO: Sandy Machado. I'm with the  
22 Department of Transportation. Last name is spelled  
23 M-A-C-H-A-D-O.  
24 HEARING OFFICER COCKERILL: Okay.  
25 MS. DULEY: I'm Melody Duley. I'm an observer

1 with NDOT. And the last name is D-U-L-E-Y.

2 HEARING OFFICER COCKERILL: So you'll not be a  
3 witness?

4 MS. DULEY: No.

5 HEARING OFFICER COCKERILL: Okay.

6 MS. DUNN: I'm Elaina Dunn. Last name is  
7 D-U-N-N. I'm also an observer with the Department of  
8 Transportation.

9 HEARING OFFICER COCKERILL: Okay.

10 MS. SELTZER: Sandi Seltzer (phonetic). I'm an  
11 observer.

12 HEARING OFFICER COCKERILL: Spell your --

13 MS. KING: My name's Kimberly King, K-I-N-G, and  
14 I'm with Department of Transportation. I'm the human  
15 resource manager, and I'm a witness.

16 HEARING OFFICER COCKERILL: Okay.

17 MR. WILLIAMS: My name's Steve Williams, Nevada  
18 Department of Transportation, W-I-L-L-I-A-M-S.

19 HEARING OFFICER COCKERILL: Okay.

20 MR. WILLIAMS: I'm a witness.

21 HEARING OFFICER COCKERILL: Any of you that are  
22 a witness, including people at the table here, if you  
23 could just raise your right hand.

24 You all do solemnly swear that the testimony  
25 that you'll provide in this hearing shall be the truth,

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1 the whole truth, and nothing but the truth so help you  
2 God?

3 Okay. The record will reflect all the witnesses  
4 previously named have been sworn to testify today. And at  
5 this point anyone who is a witness other than the people  
6 that are at the front table will be excused unless there's  
7 some reason that somebody needs to stay here.

8 Okay. So everyone will leave except for the  
9 parties, unless there's someone else that either of you  
10 want me to keep in here.

11 Okay. And observers can definitely stay.

12 (Telephonic interruption)

13 HEARING OFFICER COCKERILL: I apologize.

14 MR. KEENE: I'm just glad you did that.

15 HEARING OFFICER COCKERILL: There we go. My  
16 doctor is calling about the stuff on my hands, but I could  
17 talk to him later. Okay. It's not a big deal. Very  
18 good.

19 Are there any preliminary matters that either  
20 party wants to raise before we start?

21 I've received the exhibits. Let me just take  
22 them one at a time. Attached to the prehearing statement  
23 of the State are NDOT Exhibits 1 through 102.

24 Are there any objection to any of those  
25 exhibits?

1 MR. RANFT: No, there is not.

2 HEARING OFFICER COCKERILL: Okay. Nevada  
3 Department of Transportation Exhibits 1 -- Bates stamp 1  
4 through 102 will be admitted in evidence.

5 Attached to the Employ -- former Employee's  
6 prehearing statement are exhibits, and there's a cover  
7 sheet, it's referring to Exhibits 1 -- numerical 1 through  
8 27. These exhibits are not Bates stamped.

9 Are there any objections to any of Mr. Zenor's  
10 Exhibits 1 through 27?

11 MR. KEENE: No objection.

12 HEARING OFFICER COCKERILL: Okay. The record  
13 will reflect that the -- Mr. Zenor's Exhibits 1 through 27  
14 are admitted.

15 Are there any additional exhibits other than  
16 those that were provided me with the prehearing  
17 statements?

18 Okay. Then what we'll do is proceed --

19 MR. KEENE: Your Honor -- or Charlie.

20 HEARING OFFICER COCKERILL: Charlie, yeah.

21 MR. KEENE: Charlie, I do have some exhibits I  
22 have brought along just for the purposes of rebuttal --

23 HEARING OFFICER COCKERILL: No, that's --

24 MR. KEENE: -- or impeachment.

25 HEARING OFFICER COCKERILL: I understand that

1 there could be rebuttal evidence. I'm talking about case  
2 in chief right now, so . . .

3 MR. KEENE: Thank you. No, no others.

4 HEARING OFFICER COCKERILL: Okay. And so what  
5 the game plan is, with the number of witnesses, do you --  
6 Mr. Keene, do you have an estimate on how long your case  
7 is going to take, approximately, ballpark?

8 MR. KEENE: An hour and a half to two hours.

9 HEARING OFFICER COCKERILL: Okay. And,  
10 Mr. Ranft?

11 THE WITNESS: I would say the same, hour and a  
12 half to two hours.

13 HEARING OFFICER COCKERILL: Okay. So we might  
14 be able to finish before lunch. We'll try. If not, we  
15 will be taking a lunch break at 12:00 noon sharp unless it  
16 looks like we can go 15 or 20 minutes longer to finish  
17 this thing up.

18 So be mindful that I've read your prehearing  
19 statements. I understand that at least the crux of the  
20 issue for me, and correct me if I'm wrong, is that the  
21 State has terminated this employee not for any  
22 disciplinary reason, but because it contends that the  
23 evidence shows that at the time of the termination, and  
24 prior to that, that the -- Mr. Zenor was not able to  
25 perform the essential functions of his job.

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1           And Mr. Zenor takes the position that no, no  
2   you're wrong, my doctor said that I can -- I'm entitled to  
3   a full release back to work and the Department of  
4   Transportation improperly ignored that.

5           So ballpark, that's my understanding of the  
6   case.

7           So Mr. Keene, if you want to make a brief  
8   introductory opening statement.

9           MR. KEENE: I would.

10          HEARING OFFICER COCKERILL: And then, Mr. Ranft,  
11   you can follow, or you can reserve your opening. And then  
12   we'll keep this on track.

13          Thank you.

14          MR. KEENE: Good morning. Thank you for  
15   agreeing to serve as our Hearing Officer today.

16          Mr. Chad Zenor, formerly a Highway Services  
17   Worker III, was injured in August of 2013. After many  
18   months of light duty, not working, numerous physical  
19   therapy sessions and medical exams, it was determined that  
20   Mr. Zenor had a permanent injury that precluded him from  
21   returning to his prior position. His wrist was too badly  
22   injured to return to work.

23          Now, prior to this determination, a lot of  
24   effort went into trying to get Mr. Zenor to return. For  
25   many months, his treating physician held out hope that

1 Mr. Zenor could return. And a few times the physician  
2 said Mr. Zenor was fully cleared to return to work if he  
3 wore a brace on his wrist. But being cleared to return to  
4 work and being cleared to return to work with a brace are  
5 two separate things.

6 Eventually, following a functional capacity exam  
7 and additional visits with the physician, Mr. Zenor's  
8 doctor signed or endorsed numerous documents stating that  
9 Mr. Zenor could not return to his job at NDOT.

10 Further, Mr. Zenor understood this. He, too,  
11 signed many documents indicating that he understood he  
12 couldn't return to work. In fact, it was so clear that  
13 Mr. Zenor underwent vocational rehabilitation in a career  
14 completely dissimilar to that of a highway services  
15 worker. He's now trained as a bookkeeper.

16 Now, Mr. Zenor's claiming that a return to  
17 work -- that he wants to return to work and have his job  
18 back. But the documents prove that a return to work isn't  
19 going to happen. And besides, if Mr. Zenor disagreed with  
20 the diagnosis or he now regrets undergoing training, the  
21 appropriate forum is workers' compensation. It is not  
22 here.

23 In the end, it is -- the documents show that  
24 Mr. Zenor's injury precludes his return. In sum, the  
25 facts will show that NDOT properly terminated Mr. Zenor's

1 employment pursuant to NAC 284.611. Facts will show that  
2 Mr. Zenor cannot return to his previous position. And in  
3 the end, you will affirm NDOT's decision to terminate his  
4 employment.

5 Thank you.

6 HEARING OFFICER COCKERILL: Mr. Ranft?

7 MR. RANFT: Thank you.

8 Again, good morning, Charlie. Thank you for  
9 hearing us today.

10 Today we will show during my client's testimony,  
11 via witness testimony and exhibits that the medical  
12 separation requested by NDOT was not legal nor was it  
13 appropriate for NDOT and the workers' comp insurance  
14 company, CCMSI, to place Mr. Zenor in a vocational rehab  
15 training program.

16 We will show that Mr. Zenor was released to full  
17 duty on October 22nd, 2014, and the prior signed FCE from  
18 July 24th, 2014 was voided.

19 We will also show that Mr. Zenor had been forced  
20 into vocational rehab as he had no choice other than -- he  
21 had no choice to return to work with NDOT as requested by  
22 his approved workmen's comp doctor.

23 Further, my client's medical separation was  
24 unjustified as no one within the Department of  
25 Transportation wanted to provide the truth that Mr. Zenor

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1 was actually released to full duty without restrictions,  
2 and NDOT knowingly and continually provided wrong  
3 information to ensure that Mr. Zenor couldn't return to  
4 his preinjury position as a Highway Maintenance  
5 Worker III.

6 Therefore, my client filed an appeal regarding  
7 his separation and is asking the respected presiding  
8 Appeals Officer to allow Mr. Zenor a chance to have his  
9 details of this case heard and request that medical  
10 separation be set aside and allow Mr. Zenor return to work  
11 requested by his treating physician.

12 Thank you.

13 HEARING OFFICER COCKERILL: Okay. The State can  
14 proceed with its first witness.

15 MR. KEENE: Thank you.

16 The State calls --

17 HEARING OFFICER COCKERILL: And I'll allow you  
18 to go get your witnesses.

19 MR. KEENE: Oh.

20 HEARING OFFICER COCKERILL: I'm not sure how we  
21 do that, so --

22 FEMALE SPEAKER: I can do that.

23 HEARING OFFICER COCKERILL: Okay.

24 MR. KEENE: Thank you.

25 HEARING OFFICER COCKERILL: Good.

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1 MR. KEENE: The state calls Barbara Patrouch.

2 HEARING OFFICER COCKERILL: Ms. Patrouch, I'm  
3 not sure if I had you -- you did raise your hand?

4 THE WITNESS: I rose -- yeah, I raised my hand.

5 HEARING OFFICER COCKERILL: Okay.. Very good.

6 If you could just state your name and spell your  
7 last name.

8 THE WITNESS: It's Barbara Patrouch. It's  
9 P-A-T-R-O-U-C-H.

10 HEARING OFFICER COCKERILL: Thank you very much.  
11 Proceed.

12

13 DIRECT EXAMINATION

14 BY MR. KEENE:

15 Q Ms. Patrouch, who's your employer?

16 A The State of Nevada, Department of  
17 Transportation.

18 Q Okay. And what is your current position?

19 A I'm the workers' compensation claims manager.

20 Q And what are your duties in that position?

21 A I oversee all the workers' compensation claims  
22 for Nevada Department of Transportation.

23 Q Okay. And prior to working for -- immediately  
24 prior to coming to NDOT, where did you work?

25 A I worked for the State of Nevada, Department --

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1 or employment security division.

2 Q And how long were you there?

3 A I was there for five years.

4 Q And prior to that, where did you work?

5 A I worked for Wells Fargo Insurance Services.

6 Q And what were your responsibilities there?

7 A I was a claims specialist.

8 Q Workers' compensation?

9 A Workers -- I'm sorry, workers' compensation

10 claims specialist.

11 Q And how long were you there?

12 A I was there for five years.

13 Q And prior to that, where did you work?

14 A I worked for Employers Insurance Company of

15 Nevada.

16 Q And what were your responsibilities there?

17 A I was a senior claims adjuster there.

18 Q Also in workers' comp?

19 A Workers' compensation, yes.

20 Q And for how long were you there?

21 A I was there for seven years.

22 Q And where were you prior to that?

23 A I was with a State of Nevada -- State of Nevada

24 Industrial Insurance System.

25 Q And what was your job there?

1           A     I was a claims examiner for workers'  
2     compensation.  
3           Q     And how long did you do that?  
4           A     I do that for nine years.  
5           Q     Ms. Patrouch, do you have any specialized  
6     training or certification in workers' compensation?  
7           A     Yeah. With the Michigan State University, I'm a  
8     certified workers' compensation professional.  
9           Q     Any other certifications?  
10          A     Yes. I am on the National Registry for Workers'  
11     Compensation as well.  
12          Q     Thank you.  
13                 Now, Ms. Patrouch, do you know why you're at  
14     this hearing today?  
15          A     I'm here to testify to my knowledge on the  
16     review of Chad Zenor's file.  
17          Q     And are you familiar with Mr. Zenor's claim?  
18          A     Yes, I have reviewed his file since I've began  
19     working for NDOT.  
20          Q     All right. And it's correct that Mr. Zenor  
21     incurred a work-related injury?  
22          A     Yes, that is correct.  
23          Q     Okay. And do you know what his injury was?  
24          A     Yes, he injured his right wrist when he fell.  
25          Q     And what happened with regard to Mr. Zenor's

1 employment after he incurred his injury?

2 A He underwent medical treatment as a result of  
3 his injury. He underwent extensive physical and  
4 occupational therapy as a result of his injury; and  
5 underwent a permanent partial disability evaluation, which  
6 resulted in a 5 percent PPD evaluation; underwent a  
7 functional capacity evaluation as well which limited and  
8 found that he was -- had a light/medium capability to  
9 return to work.

10 HEARING OFFICER COCKERILL: Can you just back up  
11 and just -- you said --

12 THE WITNESS: I'm sorry.

13 HEARING OFFICER COCKERILL: -- TTD --

14 THE WITNESS: I'm sorry.

15 HEARING OFFICER COCKERILL: -- of 5 percent.

16 Could you just --

17 THE WITNESS: Permanent -- I'm sorry. He was  
18 found to have a permanent partial disability award, so he  
19 had a permanent impairment for his wrist based on loss of  
20 range of motion of his wrist for a 5 percent disability.

21 When his -- when his doctor completely released  
22 him from work, so when his doctor said he's as good as  
23 he's going to get medically, he was sent for a rating, and  
24 that was done in November of 2014. He was sent for a  
25 rating, and at that time the doctor said he had limited

1 range of motion. And due to that, he was awarded a final  
2 settlement for the medical portion of his claim.

3 HEARING OFFICER COCKERILL: Thank you.

4 THE WITNESS: And as a result for that.

5 HEARING OFFICER COCKERILL: All I want is when  
6 there's acronyms --

7 THE WITNESS: Oh, I'm sorry.

8 HEARING OFFICER COCKERILL: -- just --

9 THE WITNESS: I won't --

10 HEARING OFFICER COCKERILL: -- because --

11 THE WITNESS: I won't use acronyms. I'm sorry.

12 HEARING OFFICER COCKERILL: -- if there's  
13 acronyms, just so I have a clear record --

14 THE WITNESS: Okay. I'm sorry.

15 HEARING OFFICER COCKERILL: -- to state what the  
16 words are, then you can call it PPD or FCE.

17 THE WITNESS: Okay. I'm sorry.

18 HEARING OFFICER COCKERILL: Thanks.

19 THE WITNESS: Pardon me.

20 HEARING OFFICER COCKERILL: Okay.

21 BY MR. KEENE:

22 Q Now, Ms. Patrouch, during this time frame that  
23 Mr. Zenor was being treated, was he being seen by his  
24 physician?

25 A Yes, he was.

1 Q And why was he being seen by a physician?

2 A Because he has to be medically -- I mean, he has  
3 to be followed by a medical doctor through -- I mean, that  
4 is -- that is the reason why he is -- I mean, that's the  
5 whole goal, to get him the best that he can be up until  
6 the time when he is -- can reach the point where he is  
7 maximally medically improved.

8 Q Now, Ms. Patrouch, you mentioned a functional  
9 capacity examination?

10 A Yes.

11 Q What is a functional capacity examination?

12 A A functional capacity evaluation is done by a  
13 physical therapist, and that is about a four- or five-hour  
14 evaluation performed that can do a good assessment to  
15 determine what a person can do to be able to safely return  
16 to work without reinjury.

17 So they do a lot of different weights, weight  
18 testing, strength testing, lifting, pushing, pulling  
19 exercises, walking, stretching, a lot of different type of  
20 things within this four, five hour, different type of --  
21 to be able to do a good assessment to be able to determine  
22 what can this person do within an eight-hour day to not  
23 reinjure himself.

24 Q All right. Ms. --

25 MR. KEENE: May I approach the witness?

1 HEARING OFFICER COCKERILL: Sure. Absolutely.

2 BY MR. KEENE:

3 Q Then, Ms. Patrouch, I have handed you a document  
4 that starts -- in the bottom, it says NDOT 0020?

5 A Yes.

6 Q Do you recognize this document?

7 A Yes.

8 Q And what is this?

9 A This is the functional capacity evaluation that  
10 was performed by Back In Motion, and that was the facility  
11 that the insurance company utilized to do their functional  
12 capacity evaluation.

13 Q Okay. Now, if you could turn to the second  
14 page, it's marked NDOT 0021?

15 A Yes.

16 Q First of all, what is the date of on this  
17 examination?

18 A The date of the examination itself was  
19 July 21st, 2014.

20 Q Thank you.

21 And back to the second page, approximately  
22 halfway down, there is a bolded paragraph, starts with  
23 words, "Based on job description."

24 Do you see that?

25 A Yes.



1 Q Can you -- can you read that bolded paragraph,  
2 please?

3 A Yes. Says, "Based on job description provided  
4 by the State of Nevada as a Highway Maintenance Worker  
5 III," quoted, "'not dated,' patient did not demonstrate  
6 the ability to safely perform the physical demands of the  
7 preinjury job due to the following physical demands."

8 Q Thank you.

9 And, Ms. Patrouch, if you would skip to page  
10 0029 of this document. You'll see that this document  
11 bears a couple of signatures; is that correct?

12 A Yes.

13 Q And do you know who -- can you tell me whose  
14 signatures those are?

15 A The first signature is the physical therapist  
16 that performed the functional capacity evaluation. And  
17 the second signature is Dr. Huene, which was Mr. Zenor's  
18 treating physician.

19 Q Now, do you know whether Mr. Zenor would have  
20 received a copy of this FCE?

21 A I do not know -- I do not know if he would have  
22 gotten it or not.

23 Q Okay. Now, you testified earlier about  
24 Mr. Zenor being medically cleared to return to work; is  
25 that correct?

1 A Yes.

2 Q His physician said that he could return to work?

3 A Yes.

4 Q And, Ms. Patrouch, I'm going to hand you another  
5 document.

6 A Okay.

7 Q It's No. NDOT 0006?

8 A Yes.

9 Q Do you have that document before you?

10 A Yes, I do.

11 Q And can you tell me what this document is?

12 A It is a general form letter from Dr. Huene and  
13 Dr. Sobiek just indicating that he has subjective  
14 findings. It's saying that he's feeling some discomfort  
15 sometimes but no major problems, very little pain. This  
16 is a full-duty release. This is a stable and ratable, so  
17 basically this is his release from care.

18 Q And what's the date on this?

19 A 10-22-2014.

20 Q Thank you.

21 Now, Ms. Patrouch, you have before you the FCE  
22 stating that Mr. Zenor -- he has a disability that  
23 precludes him from returning to his previous position;  
24 correct?

25 A Correct.

1 Q And you have a letter from his doctor saying  
2 he's cleared to return to his previous position; correct?  
3 A Correct.  
4 Q How do the two of those documents coexist?  
5 A Could you re- -- could you --  
6 Q Well, how is it that Mr. Zenor could have  
7 undergone a four- to five-hour physical examination that  
8 determined he couldn't return to his previous position,  
9 but his physician cleared him to return to that previous  
10 position without restriction?  
11 A Well, he -- well, Mr. Zenor must -- my --  
12 HEARING OFFICER COCKERILL: What are we asking  
13 the witness? Because, I mean --  
14 THE WITNESS: I mean, I can give my opinion, but  
15 I -- I don't want to --  
16 HEARING OFFICER COCKERILL: -- the document  
17 seems pretty clear to me that he's released to full duty  
18 without restriction on 10-22-14.  
19 MR. KEENE: All right. I'll withdraw that  
20 question.  
21 HEARING OFFICER COCKERILL: Unless the doctor  
22 comes and testifies differently or something. I  
23 mean . . .  
24 MR. KEENE: I'll withdraw the question.  
25 HEARING OFFICER COCKERILL: Okay.

1 BY MR. KEENE:

2 Q Now, Ms. Patrouch, I'm going to show you another  
3 document starting with NDOT Bates No. 0034.

4 A Okay.

5 Q And have you seen that document before?

6 A Yes, I have.

7 Q And what's the date on that document?

8 A December 3rd, 2014.

9 Q Okay. And who is that document to?

10 A This document is to Dr. Huene.

11 Q Okay. And on the -- on page 0034, about a third  
12 of the way down, you see that it's paragraph -- it starts,  
13 "He was released to light/medium work level."

14 Do you see that?

15 A Yes.

16 Q Can you read that paragraph, please?

17 A Yes. Says, "He was released to light/medium  
18 level work. Specific restrictions include able to rare  
19 crawl rarely, able to climb ladder occasionally, able to  
20 use power tools with right hand occasionally, able to use  
21 power torquing tools with right hand rarely, able to  
22 perform power gripping and power grasping activities with  
23 right hand occasionally. Lifting abilities as follows:  
24 Based on normal work shift, able to perform catching and  
25 throwing abilities with right hand rarely. No other

1 physical restrictions. Not able to physically perform  
2 work as a highway maintenance worker preinjury work."

3 Do you want me to continue?

4 Q No, please end there. Thank you.

5 A Okay.

6 Q If you would then flip to the page that is  
7 numbered 0037?

8 A Yes.

9 Q Can you tell us who signed this page?

10 A Dr. Huene.

11 Q Okay. And --

12 HEARING OFFICER COCKERILL: What page are you  
13 on? I'm sorry.

14 MR. KEENE: Bates No. 0037. Did you find it?

15 HEARING OFFICER COCKERILL: Yes.

16 MR. KEENE: Okay.

17 BY MR. KEENE:

18 Q Ms. Patrouch, this page, who signed this?

19 A Dr. Huene.

20 Q And is there a check somewhere on this document?

21 A Yes, yes.

22 Q And what is that check by?

23 A The approved.

24 Q And what is it approving?

25 A It says, "regarding Mr. Zenor's training and

1 working as an account clerk."

2 Q Now, Ms. Patrouch, I have another document I'm

3 going to hand you.

4 A Okay.

5 Q Starts with NDOT 0038.

6 A Okay.

7 Q Can you tell me what the date on this document

8 is?

9 A December 11, 2014.

10 Q Okay. And can you flip to the page Bates

11 numbered 0040?

12 A Okay.

13 Q And do you see the title there, Medical

14 Limitations/Doctor Approval?

15 A Yes.

16 Q Okay. And there's a paragraph that starts with

17 "He underwent an FCE"?

18 A Yes.

19 Q And there's bullet points under that; correct?

20 A Yes, there are.

21 Q Okay. And could you read me the ninth bullet

22 point, please?

23 A "Not able to physically perform work as a

24 highway maintenance worker preinjury work."

25 Q Okay. And can you flip to the page Bates

1     numbered 0047, please.

2           A     Okay.

3           Q     And is this a signature page?

4           A     Yes, it is.

5           Q     And can you see who has signed this document?

6           A     Yes.

7           Q     And can you tell us who signed it, please?

8           A     There are four signatures. There are two

9     signatures of Chad Zenor, one of Tani Consiglio, and one

10    of a Debra Adler.

11          Q     Okay. Now, Ms. Patrouch, what role does NDOT

12    have in determining whether an employee has a permanent

13    disability?

14          A     They have no say.

15          Q     Who makes that determination?

16          A     Of a permanent disability?

17          Q     Correct.

18          A     The doctor has a say.

19          Q     Okay. And the last doctor note from Mr. Zenor's

20    treating physician is dated December of 2014; correct?

21                HEARING OFFICER COCKERILL: Which note are we

22    from the doctor?

23                THE WITNESS: The last --

24                MR. KEENE: Beginning with Bates No. 0034.

25                THE WITNESS: The last -- the last known

1 limitation provided was provided in December of 2014 by  
2 Dr. Huene.

3 BY MR. KEENE:

4 Q And that was Dr. Huene's determination; correct?

5 A That is correct.

6 MR. KEENE: Thank you very much. No further  
7 questions.

8 HEARING OFFICER COCKERILL: Where does it say  
9 that? I've got a letter to Dr. Huene dated December 3rd,  
10 2014 which clearly says he's not able to physically  
11 perform work. But I don't see it -- and I see that  
12 Dr. Huene has signed --

13 THE WITNESS: Signed -- yes.

14 HEARING OFFICER COCKERILL: What he signed is  
15 approval for training as an accounting clerk.

16 MR. KEENE: That's the letter I was referring  
17 to, your Honor.

18 HEARING OFFICER COCKERILL: Right. But,  
19 Dr. Huene --

20 MR. KEENE: If I misidentified it --

21 HEARING OFFICER COCKERILL: -- Dr. -- I guess my  
22 question is: Between July and this letter, you've got  
23 the full -- you know, the unrestricted release to work, so  
24 is there any other documentation between the unrestricted  
25 release to work and the December 3rd letter?



1           MR. KEENE: Well, we have Dr. Huene's signature  
2 on the FCE, that he acknowledges the limitation on  
3 Mr. Zenor. And then we have this letter that he is  
4 acknowledging that he's received it. This letter states  
5 that Mr. Zenor has this permanent disability, and the  
6 doctor is signing him off on this rehabilitation program.

7           HEARING OFFICER COCKERILL: Okay.

8           MR. KEENE: Which Mr. Zenor also signs off on.

9           HEARING OFFICER COCKERILL: Okay. Proceed.  
10 Thank you.

11           MR. KEENE: I have no further questions for the  
12 witness. Thank you.

13           HEARING OFFICER COCKERILL: Cross-examination?

14           MR. RANFT: Thank you, Charlie.

15

16                           CROSS-EXAMINATION

17 BY MR. RANFT:

18           Q     Referring to State Exhibit 06, can you again  
19 advise us of the date on that document?

20           A     October 22nd, 2014.

21           Q     And what was the release for Chad Zenor on that  
22 date?

23           A     It stated, "Release to full duty without  
24 restrictions on October 22nd 2014."

25           Q     And what -- and was permanent and stationary?

1 A Yes, stable and ratable.

2 Q Okay. And please refer to the FCE,

3 Exhibit 21 -- I'm sorry.

4 Who signed that document on 06? My apologies.

5 A Dr. -- I would assume Dr. Huene.

6 Q And if you'd refer back to the FCE, the

7 functional capacity evaluation, 0021?

8 A Yes.

9 Q And state the date again that this was --

10 HEARING OFFICER COCKERILL: What page are you

11 on? I'm sorry.

12 MR. RANFT: I'm sorry, 0021.

13 THE WITNESS: July 21st, 2014.

14 BY MR. RANFT:

15 Q And the signature on page 0029?

16 A Rhonda Fiorillo, the physical therapist, and

17 Dr. Huene.

18 Q And would it be fair to say that you have a

19 July 21st FCE and a 10-22-2014 full medical release, that

20 the FCE has been voided by Dr. Huene -- well, Dr. Huene --

21 did Dr. Huene sign the FCE?

22 MR. KEENE: Objection. Compound question.

23 MR. RANFT: Let me --

24 HEARING OFFICER COCKERILL: He's restated his

25 question, so he's just asking you whether Dr. Huene --

1 BY MR. RANFT:

2 Q Did Dr. Huene sign the FCE?

3 A Yes, he did.

4 Q On the -- and that was on 7-21, correct, 2014?

5 A FCE was done on 7-21, correct.

6 Q And then Dr. Huene later, after Mr. Zenor  
7 improved, signed a full medical release dated 10-22-2014;  
8 is that correct?

9 A That's correct.

10 Q Regarding -- please refer to State Exhibit -- my  
11 apologies. Okay. I'll go back to that.

12 MR. RANFT: May I approach, your Honor?

13 HEARING OFFICER COCKERILL: Sure. Sure.

14 MR. RANFT: Or, Charlie.

15 BY MR. RANFT:

16 Q I'm going to provide you just with the exact  
17 same packet that everyone else has. You want to  
18 utilize --

19 HEARING OFFICER COCKERILL: Oh, okay, we're  
20 looking at the Employee's exhibits?

21 BY MR. RANFT:

22 Q So I'm going to ask you to look at Employee  
23 Exhibit No. 9, and then if you can just open that book.

24 HEARING OFFICER COCKERILL: Right. Just a  
25 second.

1 BY MR. RANFT:

2 Q Employee Exhibit 9, can you --

3 HEARING OFFICER COCKERILL: Hold on just a  
4 second.

5 MR. RANFT: Okay. Thank you.

6 HEARING OFFICER COCKERILL: About how far down  
7 is this thing?

8 MR. RANFT: We're going to refer to --

9 HEARING OFFICER COCKERILL: I guess I should  
10 have put tabs on all this stuff.

11 MR. RANFT: So, yeah, there was tabs, I'm sorry,  
12 there.

13 HEARING OFFICER COCKERILL: Yeah.

14 MR. RANFT: They must have removed them. So  
15 we're looking at -- can I provide you with one of these?

16 HEARING OFFICER COCKERILL: Hold on just --  
17 yeah. Does that have tabs?

18 MR. RANFT: Yes.

19 HEARING OFFICER COCKERILL: Perfect. Any  
20 objection to that?

21 MR. KEENE: No, not at all.

22 MR. RANFT: Thank you.

23 HEARING OFFICER COCKERILL: So what tab are we  
24 in?

25 MR. RANFT: Tab No. -- Tab No. 9, Page 1.

1 Can I proceed?

2 HEARING OFFICER COCKERILL: I'm there, yeah.

3 MR. RANFT: Okay.

4 BY MR. RANFT:

5 Q This is a dictation report from Dr. Huene dated

6 8-13-2014. Mr. Zenor was in there. Dr. Huene stated that

7 he was doing well, that he reviewed the FCE, he'd gone

8 over the -- he went over it, regarding the light and

9 medium type of work that he feels capable of doing --

10 MR. KEENE: I'm going to object here.

11 MR. RANFT: Okay. I could just have her read

12 it.

13 MR. KEENE: Do you have a question?

14 BY MR. RANFT:

15 Q Okay. Can you please read this report?

16 A In its entirety?

17 Q You can do Paragraphs 1 and 3, if you would

18 like.

19 HEARING OFFICER COCKERILL: You can read it all

20 if you want.

21 MR. RANFT: Okay.

22 THE WITNESS: Okay. "History of present ill" --

23 HEARING OFFICER COCKERILL: No, no, just read it

24 to yourself.

25 THE WITNESS: Oh, okay. Thank you.

1 HEARING OFFICER COCKERILL: Because I can read  
2 it.  
3 THE WITNESS: Okay.  
4 HEARING OFFICER COCKERILL: Any questions for  
5 this witness?  
6 BY MR. RANFT:  
7 Q Are you ready?  
8 A Yes, I'm ready.  
9 Q All right. Thank you.  
10 Dr. Huene stated that -- in this report that he  
11 was signing off on the FCE, but again, he expects to  
12 continue to improve; is that a fair statement?  
13 HEARING OFFICER COCKERILL: Well, you know, I  
14 can read it. I mean, he talks about having a brace --  
15 THE WITNESS: I -- yeah.  
16 HEARING OFFICER COCKERILL: -- as necessary too.  
17 So I can --  
18 THE WITNESS: Yeah.  
19 HEARING OFFICER COCKERILL: -- I can read the  
20 document.  
21 MR. RANFT: Okay. Okay. So I'll withdraw the  
22 question, and I would just like to enter that into  
23 exhibit --  
24 HEARING OFFICER COCKERILL: It's --  
25 MR. RANFT: Okay. Thank you.

1 HEARING OFFICER COCKERILL: It's already been  
2 admitted.

3 MR. RANFT: Okay. Thank you.

4 BY MR. RANFT:

5 Q And then on -- my apologies -- 8:30 -- the next  
6 page, Exhibit 9, Page 2, during this date, can you please  
7 explain the date of this document and if there was a full  
8 release as well.

9 A It's dated 8-13-2014.

10 Q And the bottom where it says, "brace," what is  
11 your determination of "PRN"?

12 A As needed.

13 Q And please refer -- turn to Exhibit 10, and  
14 please read this document. This is a very important  
15 document regarding the FCE report.

16 HEARING OFFICER COCKERILL: Which exhibit are  
17 you in?

18 MR. RANFT: Exhibit 10, Page 1.

19 THE WITNESS: Okay.

20 BY MR. RANFT:

21 Q Under Review of Records, does Dr. Huene dictate  
22 that the FCE was done in July 2014?

23 A Yes.

24 Q Was Mr. Zenor permanent and stationary at the  
25 time of the FCE?

1           A     Well, he states that he was not permanent and  
2 stationary at that time.

3           Q     Thank you.

4                     This date of --

5           HEARING OFFICER COCKERILL: What does "permanent  
6 and stationary" mean?

7           MR. RANFT: Permanent and --

8           HEARING OFFICER COCKERILL: No, from the  
9 witness.

10          THE WITNESS: Permanent and stationary means  
11 that he doesn't need any further medical treatment.

12          HEARING OFFICER COCKERILL: So if you -- if the  
13 opposite is true, then you do need more medical treatment.

14          THE WITNESS: Sometimes they can -- sometimes  
15 people can establish and go forward with vocational  
16 rehabilitation while they're still continuing and  
17 finishing up their medical. They can find a baseline and  
18 go forward with their voc rehab while they're -- while  
19 they're finishing up their medical.

20          HEARING OFFICER COCKERILL: Okay. Thank you.

21          THE WITNESS: So that's not uncommon.

22 BY MR. RANFT:

23          Q     During this dictation on September 24, 2014, in  
24 your opinion, is it clear that Dr. Huene is setting aside  
25 the FCE due to the fact it was done in July 2014?



1 MR. KEENE: Objection. She can't make that  
2 determination.

3 HEARING OFFICER COCKERILL: No. The  
4 recommendations at the bottom say, quote, "I still do not  
5 think he is permanent and stationary," end quote.

6 BY MR. RANFT:

7 Q So --

8 HEARING OFFICER COCKERILL: I mean, I -- again,  
9 this is a medical record. I can read it.

10 MR. RANFT: Okay.

11 HEARING OFFICER COCKERILL: I don't think she  
12 can --

13 MR. RANFT: Make that determination.

14 HEARING OFFICER COCKERILL: I don't think she's  
15 qualified to make a --

16 MR. RANFT: Okay.

17 HEARING OFFICER COCKERILL: -- an opinion on  
18 this document.

19 MR. RANFT: Okay.

20 BY MR. RANFT:

21 Q Please refer to Exhibit 9 -- I'm sorry, 10,  
22 Page 2. And this is dated 9-24-2014; correct?

23 A 9-24-2014; correct.

24 Q Signed off by Dr. Huene. And would -- and is it  
25 clear that he's released to full duty without restrictions

1 on 9-24 with brace as needed, not a restriction, but a  
2 brace as needed. Is that, again, PRN?

3 A Brace is as needed.

4 Q Okay. And I'm going to do one more.

5 HEARING OFFICER COCKERILL: Excuse me, but the  
6 initials "PRN," what does that mean to you?

7 THE WITNESS: As needed.

8 HEARING OFFICER COCKERILL: Okay. Thank you.

9 BY MR. RANFT:

10 Q On 10-22 -- I'm sorry on Exhibit 11, Page 1,  
11 there's a document that -- from Dr. Huene on 10-22-2014.  
12 Again, does this document provide a full-duty release  
13 without restriction?

14 A Yes, it does.

15 Q And is there a brace as needed on this document?

16 A No, there's not.

17 Q On Page 2 of Exhibit 10, I would just like it to  
18 be read to -- I mean, if that's -- as well, if we can.

19 HEARING OFFICER COCKERILL: Well, again, the  
20 October 22nd full release is in evidence.

21 MR. RANFT: Okay.

22 HEARING OFFICER COCKERILL: I've read it, and  
23 I've read Page 2.

24 MR. RANFT: Okay.

25 HEARING OFFICER COCKERILL: It's also a State

1 exhibit.

2 MR. RANFT: Thank you.

3 At this time I have no further questions.

4 THE WITNESS: Okay.

5 HEARING OFFICER COCKERILL: Any redirect?

6 MR. KEENE: Yes, your Honor.

7

8 REDIRECT EXAMINATION

9 BY MR. KEENE:

10 Q Ms. Patrouch, if you could look at Exhibit 9  
11 again, Employee's Exhibit 9.

12 You have that in front of you?

13 A Yes.

14 Q Thank you.

15 Under the History of Present Illness paragraph,  
16 do you see that?

17 A Yes.

18 Q Okay. In the second sentence, it makes  
19 reference to light to medium type of work.

20 Do you see that?

21 A Yes.

22 Q What is that -- what is "light to medium type of  
23 work"?

24 A Light to medium, they -- well, they categorize,  
25 you know, they're -- I mean, obviously light to medium is

Kelly Paulson CCR #628

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1 not full duty. They categorize what type of work they can  
2 safely perform. And that was specifically -- the light to  
3 medium category, was what was established in the FCE.

4 But that is always categorized with the -- in  
5 the light to medium. It can be medium to heavy. But  
6 Mr. Zenor's job, preinjury job, is not in a light to  
7 medium category.

8 Q In what category is it?

9 A Probably a heavy.

10 Q And what would -- what are the characteristics  
11 of a heavy type job?

12 A Probably lifting over a hundred pounds, you  
13 know, being able to, you know -- I don't know the specific  
14 characteristics. I didn't look. You know, I don't want  
15 to give any misinformation since I'm under oath. But the  
16 light/medium was established specifically through, you  
17 know, the FCE.

18 MR. KEENE: Your Honor -- I'm sorry. Charlie, I  
19 have an exhibit I'd like to enter for rebuttal purposes.

20 HEARING OFFICER COCKERILL: For rebuttal  
21 purposes.

22 MR. KEENE: Of comment -- or from the  
23 cross-examination.

24 HEARING OFFICER COCKERILL: Yeah. Proceed.

25 MR. KEENE: Thank you.

1                   How should I mark this?

2                   HEARING OFFICER COCKERILL: Why don't you give

3   it to me.

4                   MR. KEENE: Okay.

5                   HEARING OFFICER COCKERILL: Do you have copies?

6                   MR. KEENE: I have copies for everyone.

7                   HEARING OFFICER COCKERILL: Okay. Why don't you

8   give Mr. Ranft a copy so he can read it.

9                   Okay. What I'm going to do is refer to this as

10   NDOT 103 to 115, 103 being the first page of the exhibit,

11   and then 115 is the last page of the exhibit.

12                  MR. KEENE: Thank you.

13                  HEARING OFFICER COCKERILL: So if you want to

14   go -- if you're going to ask her about any individual

15   pages, I'd just ask you to refer to it as a NDOT 103

16   through 115.

17                  MR. KEENE: I will do that.

18                  HEARING OFFICER COCKERILL: Because the letters

19   aren't really numbered.

20                  Any objection to this document?

21                  MR. RANFT: No, I do not.

22                  HEARING OFFICER COCKERILL: Okay. NDOT 103

23   through 115 is admitted.

24   BY MR. KEENE:

25       Q   Ms. Patrouch, I have a copy of that exhibit for

1 you with numbers down in the corner --

2 A Okay. All right.

3 Q -- so you can refer to it.

4 A Okay. Thank you.

5 Q Ms. Patrouch, do you recognize this document?

6 A Yes, I do.

7 Q And what is this?

8 A This is the permanent partial disability award  
9 letter that was sent to Mr. Zenor on November 21st, 2014  
10 by the insurance carrier.

11 Q I'm sorry. Could you repeat that date one more  
12 time?

13 A November 21st, 2014.

14 Q Thank you.

15 And if you could, please, refer to Page -- I  
16 apologize. Page 114, second from the last, do you see a  
17 paragraph entitled Medical Stability?

18 A Yes. Yes.

19 Q And taking a look at this paragraph, what does  
20 it indicate with regard to Mr. Zenor's condition?

21 MR. RANFT: Objection. She can't make that  
22 determination.

23 HEARING OFFICER COCKERILL: I don't know what  
24 the relevance of this document is. I mean, I understand  
25 that he's got a PPD and he's getting an amount of money

1 for that.

2 MR. KEENE: Well, your Honor, how about I --  
3 I'll skip to the last page. I'll withdraw that question,  
4 and I'll skip to the last page.

5 HEARING OFFICER COCKERILL: Okay.

6 BY MR. KEENE:

7 Q The page No. 115, you see the area where it says  
8 Closing Comments?

9 A Yes.

10 Q Okay. First of all, who signed this document?

11 A Dr. Rovetti.

12 Q And what is his title?

13 A He's the rating physician.

14 Q Okay. And what does the rating physician do?

15 A The rating physician, he actually does the final  
16 impairment rating to determine what type of monetary  
17 settlement their injured employee is entitled to to close  
18 the claim medically. So they do range of motion testing,  
19 and such, to determine what type of physical impairment  
20 Mr. Zenor had to medically close his claim monetarily.

21 Q All right. And do you see the comment -- or I'm  
22 sorry, the paragraph, the bottom third of the page, it  
23 starts "I note that"?

24 A Yes.

25 Q Can you please read that paragraph?

1           A     Yes. Says, "I note that Dr. Huene felt  
2 Mr. Zenor was doing very well when he had released him  
3 from care last month. I, however, noted limited range of  
4 motion and some ADL problems that were significant" --

5           HEARING OFFICER COCKERILL: What is "ADL"?

6           THE WITNESS: It's activities of daily living,  
7 which I think is earlier on, comments earlier on in this  
8 report, if you choose to read it -- "problems that were  
9 significant. I felt Mr. Zenor was giving full effort with  
10 range of motion today and range of motion measurements  
11 were consistent. I did not feel he was exaggerating his  
12 condition or problems. The 5 percent impairment  
13 accurately represents Mr. Zenor's true range of motion  
14 problems."

15 BY MR. KEENE:

16           Q     So in sum, on November 21 of 2014, the final  
17 reviewing physician determined that Mr. Zenor had a  
18 5 percent impairment?

19           A     Actually, the rating impairment took place on  
20 November 11th, 2014. He was just awarded the impairment  
21 on November 21st, 2014.

22           Q     Okay. Thank you.

23           MR. KEENE: No further questions.

24           HEARING OFFICER COCKERILL: Any other questions?

25           MR. RANFT: I do, thank you.



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1 of claims as not only a claims adjuster, as well as claims  
2 oversight, not very often do rating physicians make  
3 closing comments about situations.

4 Q Did Dr. Rovetti state in this document that  
5 Mr. Zenor could not return to work full duty?

6 A No, he did not state that.

7 MR. RANFT: No further questions.

8 HEARING OFFICER COCKERILL: Anything else?

9 MR. KEENE: Nothing further, your Honor -- I  
10 mean, Charlie.

11 HEARING OFFICER COCKERILL: The only question I  
12 have is --

13 THE WITNESS: Yes.

14 HEARING OFFICER COCKERILL: -- you've got a --  
15 the Department of Transportation received a unrestricted  
16 release to work on October 22nd of 2014. Why wasn't he  
17 just returned to work? I don't understand why he wasn't  
18 just returned to work.

19 THE WITNESS: Well, given the fact -- well, I  
20 wasn't there. I only --

21 HEARING OFFICER COCKERILL: If that's not your  
22 job to return him to work, then that's an improper  
23 question. But I'm just trying to get over the hurdle of  
24 there's a full release back to work that's delivered to  
25 the Department of Transportation, so I want to know

1 irrespective of his rating 5 percent, why didn't somebody  
2 just call him up and have him come back to work, or is  
3 that your job to do?

4 THE WITNESS: Can I --

5 MR. KEENE: Yeah.

6 THE WITNESS: -- address it?

7 MR. KEENE: He's asking.

8 THE WITNESS: He had already been released with  
9 the -- okay. So with voc --

10 HEARING OFFICER COCKERILL: All that I'm  
11 asking -- and my question is very simple. There's an  
12 October 22nd full release that doesn't mention the brace.

13 THE WITNESS: Through -- through --

14 HEARING OFFICER COCKERILL: Why isn't he  
15 returned to work?

16 THE WITNESS: Because we had, as the State of  
17 Nevada, already met with him, gone over everything through  
18 the FCE, he had signed the FCE, they had done a round  
19 table with him. He had already --

20 HEARING OFFICER COCKERILL: With who?

21 THE WITNESS: Chad Zenor, a group --

22 HEARING OFFICER COCKERILL: No, no, this is  
23 begging my question. I'm asking a very simple question.

24 Did the NDOT get the release?

25 MR. KEENE: Your Honor -- or Charlie, with all

1 due respect, it's not that simple an answer.

2 HEARING OFFICER COCKERILL: Okay.

3 MR. KEENE: And it requires some background  
4 information to understand why when NDOT received this it  
5 didn't just bring him back. There's clearly a long  
6 history of people saying --

7 HEARING OFFICER COCKERILL: Is there going to be  
8 evidence on that?

9 MR. KEENE: Well, yes, there will.

10 HEARING OFFICER COCKERILL: Because that's a  
11 huge hole to me right now.

12 MR. KEENE: And Ms. Patrouch is explaining  
13 why --

14 HEARING OFFICER COCKERILL: To me, the rating of  
15 5 percent seems to me to be irrelevant on this whole thing  
16 because that's just saying what he's going to get based on  
17 this injury.

18 But you've got a -- the treating physician says  
19 he's released without restriction. So I want to -- that's  
20 why I want to --

21 MR. KEENE: Well, and to answer that question,  
22 Ms. Patrouch has to provide some background information.

23 HEARING OFFICER COCKERILL: Okay. Go ahead.

24 THE WITNESS: Okay. So what happens is he has  
25 this -- he get --

1 HEARING OFFICER COCKERILL: You got to identify  
2 who the hes and who the theys are.  
3 THE WITNESS: I'm sorry. Okay. I'm sorry.  
4 Okay. So what happens is Mr. Zenor -- so we, as  
5 NDOT -- and pardon me, I didn't start in NDOT until  
6 January of this year, so I don't have any personal hand in  
7 this claim.  
8 HEARING OFFICER COCKERILL: January of 2015?  
9 THE WITNESS: '15.  
10 HEARING OFFICER COCKERILL: Okay.  
11 THE WITNESS: So I have no personal hand.  
12 HEARING OFFICER COCKERILL: Okay. Then that's  
13 an improper question for you. You weren't the  
14 decision-maker back then.  
15 THE WITNESS: No.  
16 HEARING OFFICER COCKERILL: You were not  
17 handling this case in October of 2014.  
18 THE WITNESS: No.  
19 HEARING OFFICER COCKERILL: Okay.  
20 MR. KEENE: But she is very familiar --  
21 THE WITNESS: But --  
22 MR. KEENE: -- with the case file, and --  
23 HEARING OFFICER COCKERILL: Well --  
24 MR. KEENE: -- the 20 years experience in  
25 workers" comp, she can explain NDOT's actions.

1 HEARING OFFICER COCKERILL: No. No, what I'm --  
2 I guess the information I need is from whoever received  
3 this document, why they determined not to put him back to  
4 work.

5 THE WITNESS: Right. And --

6 HEARING OFFICER COCKERILL: That's what I --  
7 that's the evidence --

8 THE WITNESS: And I -- yeah, and I can -- I can  
9 explain what happened.

10 HEARING OFFICER COCKERILL: Okay.

11 THE WITNESS: Okay?

12 So what happened is when the physical therapist  
13 from Back In Motion, when Rhonda Fiorillo -- Fiorillo --  
14 when she received that signed copy of that FCE from  
15 Dr. Huene, she sends that signed FCE report to the  
16 insurance company, CCMSI.

17 HEARING OFFICER COCKERILL: Okay.

18 THE WITNESS: They're required by law to send a  
19 copy of that -- which that letter's submitted into  
20 evidence. They're required to send that to -- a letter to  
21 NDOT and say, "Are you able to offer a permanent  
22 light-duty job regarding Mr. Zenor?" Okay. And he has  
23 permanent limits within this light/medium. These are his  
24 permanent restrictions.

25 We have such -- we have a limited period of time

1 by law to address that issue. A letter was sent to  
2 Mr. Zenor to do a round table. Risk management is  
3 involved in that. Mr. Zenor sits in. A revocational  
4 rehabilitator -- excuse me, rehabilitation counselor sits  
5 in.

6 And everybody -- so there's a big group of  
7 people come together, and they talk. And he's given  
8 information about the separation about PERS and  
9 everything. And that took place in September. It and  
10 was -- he was informed at that time about the separation  
11 of employment.

12 So it -- everything took place, and vocational  
13 rehabilitation process on the workers' compensation side  
14 and the separation of employment, as far as NDOT was  
15 concerned, for workers' compensation began in September of  
16 2014. So NDOT believed that Chad Zenor's employment --  
17 and the State of Nevada believed that the separation of  
18 employment truly ended with Chad in September when he went  
19 on to vocational rehabilitation through workers'  
20 compensation in September when we said we could no  
21 longer -- we could not offer him a permanent light-duty  
22 job.

23 He began receiving vocational rehabilitation  
24 benefits through vocational -- through the insurance  
25 company, CCMSI, at that time. And he --

1 HEARING OFFICER COCKERILL: In September of  
2 2014?

3 THE WITNESS: Correct. And he began a plan. He  
4 did -- he did a bookkeeping, you know. And he appeal  
5 rights throughout this entire process. He didn't appeal  
6 anything. He -- through anything. He did a bookkeeping  
7 plan. He did a 28-day job search. He -- and his plan  
8 just ended earlier this month.

9 HEARING OFFICER COCKERILL: But my question  
10 isn't all --

11 THE WITNESS: And we -- and, honestly, we didn't  
12 have -- in October of 2014 -- we weren't given that in  
13 October of 2014.

14 HEARING OFFICER COCKERILL: You weren't given  
15 what?

16 THE WITNESS: The full-duty release.

17 HEARING OFFICER COCKERILL: Where did it go?

18 THE WITNESS: I don't know. NDOT didn't have it  
19 in 2014, so I don't know when NDOT had specifically been  
20 given it. I don't know when Chad provided it to NDOT.  
21 But it wasn't in October of 2014.

22 HEARING OFFICER COCKERILL: That's based on your  
23 personal knowledge? I mean . . .

24 THE WITNESS: Yes.

25 HEARING OFFICER COCKERILL: So the full release



1 by Dr. Huene, October 22nd, where did that go?

2 THE WITNESS: It may have gone to the insurance  
3 carrier.

4 HEARING OFFICER COCKERILL: That's CCMI?

5 THE WITNESS: That's correct.

6 HEARING OFFICER COCKERILL: But that represents  
7 NDOT; right?

8 THE WITNESS: They do the workers' compensation  
9 claim, yes.

10 HEARING OFFICER COCKERILL: You're not saying  
11 that the -- that Dr. Huene kept the work release himself,  
12 that it was never --

13 THE WITNESS: No, I'm not saying anything like  
14 that. I'm just -- I'm just saying that as far as NDOT is  
15 concerned, when -- in September, we said at that time we  
16 specifically give up our right to -- for reemployment of  
17 him. We sign our -- you know, risk management, we all  
18 sign and agree, risk management agrees, NDOT agrees,  
19 everybody, the rehabilitation counselor --

20 HEARING OFFICER COCKERILL: So is there an  
21 agreement that she's describing in these exhibits that  
22 Mr. Zenor signed?

23 MR. KEENE: Yes. And I was going to get that on  
24 through --

25 HEARING OFFICER COCKERILL: Okay.

1 MR. KEENE: -- a different witness, your Honor.  
2 HEARING OFFICER COCKERILL: Okay. Very good.  
3 MR. KEENE: Charlie.  
4 THE WITNESS: Okay. So --  
5 HEARING OFFICER COCKERILL: Okay?  
6 THE WITNESS: So we all state that we -- we all  
7 agree in September that we -- unfortunately, we couldn't  
8 provide, and so NDOT gives up, basically, our reemployment  
9 rights to him at that time. So we --  
10 HEARING OFFICER COCKERILL: But he wasn't  
11 terminated by NDOT until 2015 sometime.  
12 THE WITNESS: Yeah, and this is -- and this was  
13 just --  
14 HEARING OFFICER COCKERILL: He wasn't terminated  
15 by NDOT --  
16 THE WITNESS: I think it was like paper -- I  
17 think --  
18 HEARING OFFICER COCKERILL: Okay. You've  
19 answered your -- the question to the best of your ability.  
20 THE WITNESS: Yeah, I -- yeah, I'm sorry.  
21 HEARING OFFICER COCKERILL: And I understand  
22 that you just came on to NDOT in January of 2015. Maybe  
23 my question wasn't completely fair, but it's a hole for me  
24 that I need plugged as to why a doctor --  
25 THE WITNESS: Yeah, so hopefully I answered the

1 best I could.

2 HEARING OFFICER COCKERILL: Okay. Good.

3 Any questions as a result of the questions that  
4 I asked, Mr. Keene or Mr. Ranft? Okay.

5 MR. KEENE: No.

6 MR. RANFT: No.

7 HEARING OFFICER COCKERILL: Okay. You're  
8 excused.

9 THE WITNESS: Thank you.

10 HEARING OFFICER COCKERILL: Thank you very much.  
11 Next witness? Why don't we take a five-minute  
12 break.

13 MR. RANFT: Sure.

14 HEARING OFFICER COCKERILL: Time for a break for  
15 everybody.

16 MR. RANFT: Sure.

17 HEARING OFFICER COCKERILL: And who is the next  
18 witness?

19 MR. KEENE: It's going to be Kimberly King.

20 HEARING OFFICER COCKERILL: Okay. Thank you.

21 (Recess)

22 HEARING OFFICER COCKERILL: Okay. The record  
23 will reflect that we took a short, five-minute rest break,  
24 and that we're starting again. It's about 10:20 in the  
25 morning.

1 Mr. Keene, your witness.

2 MR. KEENE: Thank you.

3

4 DIRECT EXAMINATION

5 BY MR. KEENE:

6 Q If you would, please state your name for the  
7 record.

8 A Kimberly King.

9 Q And who's your employer?

10 A Nevada Department of Transportation.

11 Q And what is your position there?

12 A I'm the human resource manager for the  
13 department.

14 Q And what do your duties include?

15 A I oversee grievances, employee problems,  
16 classification, recruitment, EEO, the personnel actions  
17 for the department, the safety program and the training  
18 program.

19 Q Okay. Now, do you know why you're at this  
20 hearing today?

21 A Yes, I do.

22 Q Okay. Are you familiar with the facts that --  
23 or facts surrounding Mr. Zenor's separation from NDOT?

24 A Yes, I am.

25 Q And are you familiar with the process that was

1 used to separate Mr. Zenor's employment?

2 A Yes, I am.

3 Q And what was that process?

4 A 284.611 allows for the separation due to  
5 somebody not being able to medically perform the essential  
6 functions of their position.

7 Q I'm going to hand you a document that's been  
8 marked as NDOT 0008.

9 You recognize that?

10 A Yes, I do. This is the regulations that pertain  
11 to the separation.

12 Q Okay. And this is the process you followed to  
13 separate Mr. Zenor?

14 A Yes. Though, Mr. Zenor's process was a little  
15 bit different from some because he was on workers'  
16 compensation.

17 Q Okay. So can you -- let me just skip that.

18 When did you start separation of Mr. Zenor under  
19 this provision?

20 A We started in December of 2014, I believe.

21 Q And I'm going to hand you a document that's been  
22 marked as NDOT 0005.

23 Do you recognize that document?

24 A Yes, I do.

25 Q And what is that?

1           A     This is just the beginning of the process. This  
2 is a standard letter that we use as we go to separate  
3 employees through this process.

4           Q     And what happened after you provided Mr. Zenor  
5 with this letter?

6           A     After we provided him with this letter, he wrote  
7 back to us and gave us a release that -- well, what he  
8 thought was a released dated in October.

9           Q     Okay. And I'm going to hand you two exhibits  
10 marked as NDOT 0006 and 0007.

11                   Are those the documents that were provided by  
12 Mr. Zenor?

13           A     I'm not sure if these are exactly his documents.  
14 These could be ours. But, yes, it's the same information.

15           Q     Okay. And doesn't this -- don't these documents  
16 clear Mr. Zenor to work without restriction?

17           A     No. You see the first one where it says that  
18 subjective findings, "he feels discomfort sometimes, but  
19 no major problems, very little pain." It says he's  
20 released.

21                   But you take a look at that second page, and it  
22 says clearly on the recommendations that, "At this point I  
23 think he can do full duties. I've warned him about  
24 worsening and ultimately requiring some form of wrist  
25 fusion. I think he's reached permanent stationary status

1 and a rating," and they've discussed it with his case  
2 manager.

3 "I've explained to him that he had worsening,  
4 his claim can be reopened at that time." Well, at this  
5 point in time, Mr. Zenor been off for at --

6 HEARING OFFICER COCKERILL: It says, "If he had  
7 worsening."

8 THE WITNESS: If he has worsening.

9 HEARING OFFICER COCKERILL: Not that he had  
10 worsening?

11 THE WITNESS: Okay. "If he has worsening."

12 This point Mr. Zenor had been off for a year  
13 under workers' compensation, and he's not able to do his  
14 job during that time. He had been on vocational  
15 rehabilitation through workers' comp and been paid. And  
16 I'm hoping I've got my dates right, yeah, August 13th, and  
17 this is a year later. And so we've been trying to get him  
18 back to work for over a year. We have a --

19 HEARING OFFICER COCKERILL: So his injury was  
20 August of 2000 --

21 THE WITNESS: 2013.

22 HEARING OFFICER COCKERILL: -- '13.

23 THE WITNESS: And he's been off work. He's been  
24 going through voc rehab this whole time. The whole time  
25 it's like, no, you can't come back. He keeps having

1   exacerbation.  If he does anything, all a sudden he hurts  
2   again.  And they're having him come back to work in a  
3   highly maintenance worker job class where he's going to  
4   have to be running heavy-duty equipment.  He's going to  
5   have to be lifting.  Chances are he's just going to be  
6   back off on workers' comp again.

7               We don't look at this as a full release.  And  
8   ultimately, he ends up getting voc rehab because he can't  
9   come back to work.  And the doctor agrees with that  
10  finally.

11  BY MR. KEENE:

12           Q    Okay.  Now, is there a point in time --

13               HEARING OFFICER COCKERILL:  Which doctor agreed  
14  with that?

15               THE WITNESS:  Dr. Huene, he ended up signing off  
16  on the FCE agreeing that, no, he shouldn't be coming back  
17  to work.

18               HEARING OFFICER COCKERILL:  Okay.  And you're  
19  going -- you've got that document somewhere here?

20               MR. KEENE:  That was already -- been entered.  
21  That was the FCE that was performed and signed by  
22  Dr. Huene which acknowledged that Mr. Zenor had permanent  
23  limitations and could not return to his previous position.

24               HEARING OFFICER COCKERILL:  That Dr. Huene  
25  apparently countermanded that with this October 22nd full



1 release.

2 MR. KEENE: Well, it's our position, your Honor,  
3 that's not a full release. He says right there in that  
4 document that -- sorry, which page is that again?

5 HEARING OFFICER COCKERILL: 006, 007.

6 MR. KEENE: Right. Insists objectively it notes  
7 that he had no major problem, feels discomfort, and  
8 then -- but he says, also, I've learned about worsening,  
9 some form of wrist fusion and we can now do a rating on  
10 him. Well, that rating was performed, and that rating  
11 found he had a 5 percent disability. So another --

12 HEARING OFFICER COCKERILL: Yeah, but that  
13 5 percent disability is for -- you know, my limited  
14 knowledge of this is that that's just saying that he gets  
15 a payment for the impact of this injury to the degree of  
16 5 percent. That doesn't mean that he can't work.

17 MR. KEENE: But it does mean that he can't do  
18 the job he was doing. And Mr. Zenor also signed numerous  
19 documents indicating that he could not return to his  
20 prior --

21 HEARING OFFICER COCKERILL: Okay. Okay. I'll  
22 wait to see those documents. Thank you.

23 BY MR. KEENE:

24 Q Now, at some point, Ms. King, did you send  
25 Mr. Zenor another letter?

1           A     Yes.

2           Q     I'm going to show you what's been marked as NDOT

3     Exhibit 0004.

4                     Do you recognize that document?

5           A     Yes, I do.

6           Q     And is that what you sent to Mr. Zenor?

7           A     Yes, I did.

8           Q     And what did this inform him of?

9           A     Basically it goes back to we went to the FCE.

10    We found out he had permanent limited restrictions. He

11    has been round tabled with workers' compensation where

12    they look for other positions that he might be able to go

13    into. We could not find any throughout the State of

14    Nevada.

15                     He has been informed of his ability to go get

16    long-term disabilities or retirement through PEB. And

17    also, he's gone through a voc rehab process through the

18    workers' comp. And he's probably still in it at this

19    point in time.

20           Q     Now, Ms. King, if you could refer again to

21    NDOT 0008, which is the administrative provision?

22           A     Yes.

23           Q     And this is the provision you followed for

24    discharging Mr. Zenor; correct?

25           A     Yes.

1           Q     Okay. Now, at some point did you verify with  
2 his physician or independent medical evaluation that he  
3 couldn't return to work?

4           A     Well, it was kind of -- there was a gap between  
5 when I first started this in December and June because  
6 when he came back and said I can return to work, I'm like,  
7 well, why? Why are you in voc rehab if you can return to  
8 work? Why are we paying for you to be rehabilitated and  
9 paying for you to be off during that time?

10                   And so I started looking through the file.  
11 There's actually an agreement between us -- or the  
12 insurance company and Mr. Zenor, which also the doctor  
13 signed off on, that says that he cannot perform the -- he  
14 can't work as the highway maintenance worker anymore. And  
15 that was in December.

16           Q     Did there -- did you determine whether you could  
17 make a reasonable accommodation for him to perform the  
18 essential functions of his job?

19           A     Yes, we did that at the beginning during the  
20 round table. We looked at all the positions, not only at  
21 NDOT, but they -- workers' comp also works with the whole  
22 State of Nevada to see if there's anyplace he could be  
23 placed before going to workers' -- before going to voc  
24 rehab. Voc rehab is like one of the last resorts.

25           Q     And did you make a request that he be offered

1 services?

2 A He was offered services through workers'  
3 compensation.

4 Q Okay. And --

5 A We paid for a whole new career path for him.

6 Q And did you make efforts to retain him as an  
7 employee?

8 A At this point in time he could no longer perform  
9 the essential functions of his position. We actually have  
10 to fill the position to have somebody else come do those  
11 jobs.

12 And I guess the answer would be yes, we looked  
13 first to see if we had any other jobs he could do.

14 Q And were you able to find any --

15 A No.

16 Q -- at NDOT?

17 A No. And we have documentation in his workers'  
18 comp file that we looked and we could not find any.

19 Q All right. Thank you.

20 MR. KEENE: No further questions.

21 HEARING OFFICER COCKERILL: Cross?

22 MR. RANFT: Thank you.

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CROSS-EXAMINATION

BY MR. RANFT:

Q Ms. King -- Mrs. King, please refer back to 0007, and this date was 10-22-2014; correct?

A Yes.

Q And under Recommendations, can you read the very first sentence?

A "At this point I think he can do the full duties without limitation."

Q And did you receive this document?

A I did not.

Q Did NDOT receive this document?

A I would assume so because we were still working through the claim and it was in our file.

Q And the FCE was done on July 1st -- I'm sorry, July 21st, 2014; is that correct?

A I don't have that in front of me.

Q I don't know the State Exhibit No., so I can give you -- this is Employee Exhibit 4, Page 2.

Can you tell me what date the Back In Motion did the FCE? Should have been on the very first page.

A I'm looking for the signature.

Q Okay. I think we just have a copy.

I'll just show you State Exhibit 0021. Same document, just has the signatures in place.

1           A     Yes, that's signed by her on -- by Rhonda on  
2     7-21-14.  
3           Q     And did Dr. Huene sign that document?  
4           A     There is a signed version. I don't know -- yep,  
5     he has it right here, yes.  
6           Q     So you received -- NDOT received the document  
7     of -- the release, full release, on 10-22-2014 --  
8           HEARING OFFICER COCKERILL: Wait, wait. Where  
9     does it say that?  
10          MR. RANFT: Doesn't say -- she admitted that --  
11          THE WITNESS: No, I didn't.  
12          MR. RANFT: Not on 2000 -- I'm sorry.  
13          HEARING OFFICER COCKERILL: What she said is  
14     that the --  
15          MR. RANFT: That the DOT received it.  
16          HEARING OFFICER COCKERILL: Received it. We  
17     don't know what the date is that they --  
18          MR. RANFT: Okay.  
19          HEARING OFFICER COCKERILL: She actually saw a  
20     copy, apparently, in January of 2015 after she sent out  
21     the letter, the December letter; is that right --  
22          MR. RANFT: I'll rephrase it.  
23          HEARING OFFICER COCKERILL: -- Ms. King?  
24          THE WITNESS: Yes. I had to go back to the file  
25     after the December letter to figure out what was going on.

1 HEARING OFFICER COCKERILL: So can -- let me  
2 just clarify that. You sent the letter December 31st or  
3 something of 2014 to Mr. Zenor. Mr. Zenor sent you -- did  
4 he send a letter with a copy of the release, the  
5 October 22nd release, or did he just mail you the release  
6 by itself, or how did you get that?

7 THE WITNESS: I received a copy from one of his  
8 managers. And what it was was the letter we sent him --

9 HEARING OFFICER COCKERILL: From one of  
10 Mr. Zenor's managers?

11 THE WITNESS: Yes.

12 MR. RANFT: Dr. Huene's letter.

13 HEARING OFFICER COCKERILL: Okay.

14 THE WITNESS: No, one of Dr. -- one of  
15 Mr. Zenor's managers. So he sent back the letter with a  
16 couple notations on it and the October documentation. So  
17 Exhibit 06 and 07 was attached to 05 with notes.

18 HEARING OFFICER COCKERILL: Notes that aren't on  
19 this one that we see here?

20 THE WITNESS: Correct.

21 HEARING OFFICER COCKERILL: Do you know what the  
22 Michelle Corine at the top is?

23 THE WITNESS: Michelle Green?

24 HEARING OFFICER COCKERILL: Oh, Michelle Green?

25 THE WITNESS: My understanding, that she was a

1 nurse case manager that had to be assigned to the case --  
2 HEARING OFFICER COCKERILL: Okay. I just  
3 wonder --  
4 THE WITNESS: -- because it was dragging out so  
5 long.  
6 HEARING OFFICER COCKERILL: Okay. So the first  
7 time you saw this document was when it was provided to you  
8 in January of 2015?  
9 THE WITNESS: Yes.  
10 HEARING OFFICER COCKERILL: But your review of  
11 the NDOT files showed you that NDOT did have this in their  
12 files; they had received it before you did?  
13 THE WITNESS: We did have this in a file as well  
14 as something that was dated in December showing that the  
15 voc rehab -- because my question about this process is, if  
16 we've got somebody that has to be rehabilitated and given  
17 a whole new vocational -- you know, a different job, and  
18 we've got to train him and put all this money into it, why  
19 would we be doing that if he could return to work.  
20 And so then I found the agreement that --  
21 HEARING OFFICER COCKERILL: Right. We've got --  
22 THE WITNESS: -- that --  
23 HEARING OFFICER COCKERILL: -- that. That's in  
24 evidence.  
25 THE WITNESS: Okay. So there's agreement where



1 the doctor claims that, no, he can't go back to be a  
2 highway maintenance worker. And Mr. Zenor signs it and  
3 says he can't go back to being a highway maintenance  
4 worker. And I believe that's dated in December.  
5 HEARING OFFICER COCKERILL: Okay. Proceed,  
6 Mr. Ranft.  
7 MR. RANFT: Thank you.  
8 BY MR. RANFT:  
9 Q Please look at Exhibit 20 -- sorry 0008, State  
10 Exhibit, regarding NRS 284.611.  
11 A Okay.  
12 Q And --  
13 HEARING OFFICER COCKERILL: Which?  
14 MR. RANFT: Exhibit 00 08, State Exhibit.  
15 HEARING OFFICER COCKERILL: Okay. Thank you.  
16 BY MR. RANFT:  
17 Q Please read Section 1, Subsection A.  
18 A "Verify with the employee's physician or by  
19 independent medical evaluation paid for by the appointing  
20 authority that the condition does not, or is not expected  
21 to, respond to treatment or that an extended absence from  
22 work will be required."  
23 Q Please refer to 0007.  
24 A This is not the most recent document that we  
25 have, so --

1 Q This is the State's exhibit. This is --  
2 A Okay. I can tell you 07, what it says, and I've  
3 already read that for you, but this is not the most  
4 recent.  
5 Q Is this what Dr. Huene sent to NDOT regarding  
6 your verification request to make valid the medical  
7 separation?  
8 A I don't understand that question.  
9 Q NAC 284.611, Section 1, Subsection A, requires  
10 an employer to verify with the employee's physician.  
11 Is this document, 0007, what NDOT received on  
12 that verification?  
13 A It is one of the documents.  
14 Q Okay. Is 0006 another document that was  
15 received?  
16 A Yes.  
17 Q Does the State provide any other documents?  
18 A I wasn't here earlier. I don't know.  
19 MR. RANFT: No further questions. I'd like to  
20 hold the witness, too, to call as my witness, please.  
21 HEARING OFFICER COCKERILL: Is there a reason  
22 that you can't ask her questions now? I mean --  
23 MR. RANFT: I --  
24 HEARING OFFICER COCKERILL: -- if it -- if it --  
25 MR. RANFT: If we want to do --

1 HEARING OFFICER COCKERILL: -- if it hurts your  
2 case, you know, or if you prefer to put this on in your  
3 case, we can hold her. I have no problem with that.  
4 MR. RANFT: Okay. If you're okay with doing the  
5 questions now, I'll be happy to do that as well.  
6 HEARING OFFICER COCKERILL: Do you have any  
7 problem with that, Mr. Keene, with him -- or do you want  
8 to keep the testimony separate?  
9 MR. KEENE: I'd like to keep it separate.  
10 HEARING OFFICER COCKERILL: That's fine.  
11 MR. KEENE: Ms. King is going to be here.  
12 HEARING OFFICER COCKERILL: Okay. Any other  
13 questions of Ms. King at this point?  
14 MR. RANFT: No further questions.  
15 HEARING OFFICER COCKERILL: You know, I have one  
16 question. On 004, this is the letter that you sent to  
17 Mr. Zenor. It says that the FCE, quote, "which" -- well,  
18 what it says is, "Receipt of the functional capacity  
19 evaluation performed by Rhonda Fiorillo." And it goes on,  
20 and it's dated July 21st, 2014, "which specifies your  
21 permanent physical limitations."  
22 See where it says that?  
23 THE WITNESS: Um-hmm.  
24 HEARING OFFICER COCKERILL: If you could turn to  
25 Exhibit 21, which is the FCE.

1 THE WITNESS: Can I get it -- do you have that?

2 HEARING OFFICER COCKERILL: Here, you can have  
3 mine.

4 MR. RANFT: I got her one.

5 HEARING OFFICER COCKERILL: Okay. Where does it  
6 say that those are permanent restrictions in the F -- my  
7 understanding of FCE is that at that point in time those  
8 are restrictions.

9 Again, in this case, we've got this doggone full  
10 release from Dr. Huene in October that says there are no  
11 restrictions. So where does it say that these  
12 restrictions in the FCE are permanent?

13 THE WITNESS: I'm reading.

14 Okay. So he worked light duty from 10-30-13.  
15 He's been on TTD benefits since then.

16 HEARING OFFICER COCKERILL: Wait, wait. Whoa,  
17 whoa. Where are you looking?

18 THE WITNESS: I'm on Page 5. I've kind of gone  
19 past just the charts. So by this time, he's done with his  
20 TTD -- well he's on TTD. He's been on them for almost a  
21 year. His light-duty benefits have expired. He  
22 doesn't -- he says he doesn't know if he can get back to  
23 work. He still struggles with his day-to-day activities.

24 "Last week I hit my hand on a little table, and  
25 it jolted my hand and sent pains up my arms. Played golf

1 yesterday, I had pain for 24 hours."

2 HEARING OFFICER COCKERILL: No. But my question  
3 is --

4 THE WITNESS: Yeah.

5 HEARING OFFICER COCKERILL: -- where does this  
6 document say that these restrictions are permanent?  
7 Because that's what your letter says.

8 And the reason I'm asking that question is  
9 because we've got this document, the State's Exhibit 6 and  
10 7, and there's been a series of documents introduced by  
11 the Employee that led up to NDOT 6 and 7, that show that  
12 he's being released with a brace. And then all a sudden,  
13 he's released -- there's no mention of a brace. It's a  
14 full release without restriction.

15 And I understand the caveat that you've  
16 explained to me that you read into this. But I'm having a  
17 difficulty with understanding the --

18 THE WITNESS: Okay.

19 HEARING OFFICER COCKERILL: -- July 21st, 2014  
20 FCE as being permanent.

21 THE WITNESS: Okay. And I'm not seeing  
22 permanent in here --

23 HEARING OFFICER COCKERILL: Okay.

24 THE WITNESS: -- right now as I quickly go  
25 through this.

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1           When I wrote the letter, I was relying on the  
2   entire file, not just the FCE.

3           HEARING OFFICER COCKERILL:   Okay.

4           THE WITNESS:   But also the fact that, yes, he  
5   says he was released.   But then, yes, the next thing is,  
6   no, he's not released, he can't be a highway maintenance  
7   worker, he's in voc rehab.

8           HEARING OFFICER COCKERILL:   But --

9           THE WITNESS:   And --

10          HEARING OFFICER COCKERILL:   Okay.   So --

11          THE WITNESS:   So --

12          HEARING OFFICER COCKERILL:   But when you wrote  
13   your letter separating him, essentially, in -- or getting  
14   ready to separate him in June, you and the State did have  
15   a copy of this October 22nd --

16          THE WITNESS:   And I also had a copy of the --

17          HEARING OFFICER COCKERILL:   Of the December.

18          THE WITNESS:   -- document that says that he says  
19   he can't go back to highway maintenance worker, the doctor  
20   says he can't go back to highway maintenance worker.

21                I'm not sure why this -- well, it comes down to  
22   that question, why would you pay an employee to go through  
23   voc rehab if you can go back to a highway maintenance  
24   worker?

25          HEARING OFFICER COCKERILL:   That's the question

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1 I'm trying to sort out.

2 THE WITNESS: I can't figure out why we would be  
3 paying for voc rehab, paying for him to be off that whole  
4 time if he can come back. So that final agreement of voc  
5 rehab, that's when the employee says, I can't come back.

6 HEARING OFFICER COCKERILL: Right.

7 THE WITNESS: The doctor says he can't come  
8 back. So we pay for him to go through voc rehab so he can  
9 be reemployed.

10 HEARING OFFICER COCKERILL: And that agreement  
11 that you're talking about, just so I'm clear, this is  
12 the -- if you look at NDOT 0034?

13 THE WITNESS: Do you have a copy of that?

14 Here's your copy to that. Oh, thank you.

15 HEARING OFFICER COCKERILL: It's 0034, and it  
16 goes all the way -- it's actually signed by Dr. Huene on  
17 0037. Just take your time and take a look at that.

18 Is that what you're referring to?

19 THE WITNESS: This is one of them. This is his  
20 signature. There's also one where Chad Zenor actually  
21 signs that he cannot go back as a highway maintenance  
22 worker.

23 And Dr. Huene is -- on the very first page, it  
24 says --

25 HEARING OFFICER COCKERILL: Okay. If you'd just

1 look at --

2 THE WITNESS: Okay.

3 HEARING OFFICER COCKERILL: -- 0038 -- this is  
4 NDOT 0038 through 0047.

5 THE WITNESS: I need a copy of that one.

6 HEARING OFFICER COCKERILL: Here, you can look  
7 at mine.

8 THE WITNESS: Thank you. Is this one yours?

9 HEARING OFFICER COCKERILL: It is. There we go.  
10 Take your time.

11 THE WITNESS: Yeah. That's the one where Chad  
12 signed, so --

13 HEARING OFFICER COCKERILL: So what you're  
14 telling me is that, really, based on the FCE and the --  
15 then the December letter signed by the Dr. Huene, and then  
16 the further letter signed by Dr. Huene -- I mean, by  
17 Mr. Zenor, that's the voc rehab agreement that you're  
18 testifying to.

19 THE WITNESS: Yes.

20 HEARING OFFICER COCKERILL: Okay. Thanks.

21 Any questions as a result of the question I  
22 asked from either side?

23 Okay. Next witness?

24 And you'll have to wait outside --

25 THE WITNESS: Okay.

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1 HEARING OFFICER COCKERILL: -- sorry.

2 THE WITNESS: I was going to ask that question.

3 HEARING OFFICER COCKERILL: Because it sounds  
4 like you're going to be called as a witness still. Thank  
5 you very much, Ms. King.

6 Next witness?

7 MR. KEENE: Next witness will be Steve Williams.

8 HEARING OFFICER COCKERILL: Okay. Mr. Williams,  
9 just state your name, spell your last name. You've been  
10 previously sworn.

11 THE WITNESS: Steve Williams, W-I-L-L-I-A-M-S.

12 HEARING OFFICER COCKERILL: Proceed.

13

14 DIRECT EXAMINATION

15 BY MR. KEENE:

16 Q Mr. Williams, who's your employer?

17 A The Nevada Department of Transportation.

18 Q And what is your current position?

19 A I'm a highway maintenance manager.

20 Q And how long have you been in that position?

21 A Since 2010, so five years.

22 Q And what are your responsibilities?

23 A I manage the maintenance crews, especially crews  
24 in the Carson shop for the western half of District 2.

25 Q And do you know Mr. Zenor?

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A App 0103

1           A     Yes, I do.

2           Q     And how do you know Mr. Zenor?

3           A     He's one of my employees -- or he was one of my

4 employees on Crew 270, which is a Washoe Valley crew.

5           Q     Okay. And you're -- and you know that Mr. Zenor

6 was injured at work?

7           A     Yes, I do.

8           Q     Okay. Approximately how long was Mr. Zenor out

9 of work?

10          A     Since middle of 2013.

11          Q     Now, Mr. Williams, did there come a point in

12 time when you started to separate Mr. Zenor's employment

13 from NDOT?

14          A     Yes, there was.

15          Q     And did you speak to anybody at NDOT about that?

16          A     I was speaking to human resources division.

17          Q     And why were you speaking to them?

18          A     They manage the industrial claims for us.

19          Q     Okay. Mr. Williams, I'm going to show you an

20 item marked at the bottom NDOT 0005.

21          A     Uh-huh.

22          Q     Do you recognize that?

23          A     Yes, I do.

24          Q     And what is that document?

25          A     It was a letter that we sent to Mr. Zenor in

1 December -- December of 2014, to let him know that we  
2 weren't going to be able to keep his position open.

3 Q Okay. Did you hear back from Mr. Zenor?

4 A I received a -- I think it was a fax, it was  
5 laying on my desk, shortly after this, and I forwarded  
6 that to the human resource department.

7 Q And what was the fax that you'd received?

8 A It was a release from his doctor, I think.

9 Yeah.

10 Q Okay. And who did you forward it on to?

11 A To the human resources office.

12 Q And did you speak to anybody there about that?

13 A I spoke with Diane Kelly.

14 Q And who was Diane Kelly?

15 A She was our claims -- or handled our claims for  
16 human resources.

17 Q And what did Ms. Kelly tell you to do?

18 A She just told me she would take care of it.

19 Q Okay.

20 HEARING OFFICER COCKERILL: What's her name?

21 THE WITNESS: Diane Kelly.

22 HEARING OFFICER COCKERILL: Thank you.

23 THE WITNESS: In fact, I may be incorrect on  
24 that one. I'm not positive. She may have been gone. I  
25 just spoke with Diane or I spoke with Kimberly King. I

1 can't remember.

2 BY MR. KEENE:

3 Q Okay. And, Mr. Williams, why did you want to  
4 move forward with terminating Mr. Zenor?

5 A Basically my crews were having a hard time  
6 getting people anymore. The crews are getting  
7 shorthanded. With the workload we have right now, we  
8 needed to have that position filled if Mr. Zenor wasn't  
9 able to come back.

10 Q Was it up to you to decide whether Mr. Zenor  
11 would return?

12 A No, it's not.

13 Q And, Mr. Williams, I'm going to show you another  
14 document. It's NDOT 0001 through 3.

15 Do you recognize that?

16 A Yes, I do.

17 Q And what is this document?

18 A This is the NPD 42 that we sent to Mr. Zenor  
19 saying that we needed to separate his employment.

20 Q Okay. And did you sign -- this indicates that  
21 you recommended termination; correct?

22 A That's correct, yes.

23 Q And you signed this document?

24 A Yes, I did.

25 Q And where is your signature?

1 A In the top middle.

2 Q Okay. Thank you.

3 MR. KEENE: No further questions.

4 HEARING OFFICER COCKERILL: Any questions,

5 Mr. Ranft?

6 MR. RANFT: Yes.

7 HEARING OFFICER COCKERILL: Cross?

8 MR. RANFT: Just a few.

9

10 CROSS-EXAMINATION

11 BY MR. RANFT:

12 Q The letter in question on December 31st, 2014,

13 as you stated, you sent that to Dr. Huene's office;

14 correct -- or you sent it to Mr. Zenor.

15 A Mr. Zenor.

16 HEARING OFFICER COCKERILL: We're talking about

17 0005?

18 MR. RANFT: 0005.

19 BY MR. RANFT:

20 Q And you received -- did you receive a fax back

21 from Dr. Huene?

22 A I did not receive it directly. It was --

23 MR. KEENE: Objection. Mr. Williams has

24 testified he sent this to Mr. Zenor.

25 MR. RANFT: I know. I asked him if he received

1 a fax back from Dr. Huene.

2 MR. KEENE: Well, he never faxed anything to  
3 Dr. --

4 HEARING OFFICER COCKERILL: Wait a minute. He  
5 testified -- Mr. Williams testified on direct that he  
6 believed he received a fax back from -- I can't remember  
7 who he said. So let's explore this and find out.

8 BY MR. RANFT:

9 Q Okay. So --

10 HEARING OFFICER COCKERILL: Because it sounds  
11 like Mr. Williams received 006, 007 and provided that to  
12 HR.

13 THE WITNESS: That's correct.

14 HEARING OFFICER COCKERILL: So that's what I'm  
15 trying to clear up.

16 MR. RANFT: Okay.

17 BY MR. RANFT:

18 Q So you received these two documents along with  
19 that letter?

20 A I remember seeing this one (indicating). This  
21 could possibly be the letter that I remember seeing, yes.  
22 And I really didn't pay much attention to it. I just  
23 forwarded it on to the human resources.

24 Q And you can confirm that an employee of human  
25 resource management received these documents?

1           A     As far as I know, yes.

2                   HEARING OFFICER COCKERILL:  Again, you're  
3     looking at DOT 006 and 007; those are the documents that  
4     you received from Mr. Zenor and forwarded those to HR.

5                   THE WITNESS:  Yes, that's correct.

6     BY MR. RANFT:

7           Q     Okay.  So can you please refer to -- and can you  
8     clarify your position one more time?

9           A     I'm a highway maintenance manager.

10          Q     Okay.  Your intent of a letter was to separate  
11     service; correct?

12                   HEARING OFFICER COCKERILL:  Which letter --

13                   THE WITNESS:  Which letter?

14                   HEARING OFFICER COCKERILL:  -- are we looking  
15     at?

16     BY MR. RANFT:

17          Q     I'm sorry.  December 31st, 2014?

18          A     Not necessarily, no.  The intent of that letter  
19     was to inform him that we weren't able to hold his  
20     position open anymore.

21          Q     And you were requesting what?

22          A     We were requesting to take a copy of the  
23     enclosed job description that we sent with it and work  
24     performance standards to his position and have the  
25     physician document whether or not he could perform the

1 duties on a full-time basis.

2 Q And on document 007 dated 10-22-2014, under  
3 subsection Recommendations, please read the first sentence  
4 for me?

5 A "As presented, returns for follow-up with his  
6 ECU" --

7 Q I'm sorry, Recommendations.

8 A Oh, the recommend, okay.

9 "At this point I think he can do full duties  
10 without limitations."

11 MR. RANFT: No further questions.

12 HEARING OFFICER COCKERILL: Anything else?

13 MR. KEENE: Nothing further.

14 HEARING OFFICER COCKERILL: You're excused.

15 Thank you very much, sir.

16 Any reason that he needs to stick around?

17 MR. RANFT: None on my side.

18 HEARING OFFICER COCKERILL: Okay. Next witness.

19 MR. KEENE: Thor Dyson.

20 HEARING OFFICER COCKERILL: Mr. Dyson, if you  
21 could just state your name, spell your name. You've been  
22 previously sworn.

23 THE WITNESS: Yes, thank you. My name is Thor  
24 Dyson. Thor, T-H-O-R. Dyson, D-Y-S-O-N.

25 ///



DIRECT EXAMINATION

1

2 BY MR. KEENE:

3 Q Mr. Dyson, where do you work?

4 A I work for the Nevada Department of  
5 Transportation.

6 Q And what is your current position?

7 A I'm the district engineer or District 2.

8 Q What are your duties in that position?

9 A Essentially oversee all construction,  
10 maintenance, permitting, administration duties for about  
11 300, 340 employees throughout the year doing construction  
12 projects, maintenance projects, snow and ice removal,  
13 basically executing the Department's mission.

14 Q And do you know Mr. Chad Zenor?

15 A Yes.

16 Q Do you know why he was separated from employment  
17 with NDOT?

18 A Yes.

19 Q And why was that?

20 A He wasn't able to complete the job duties as  
21 required.

22 Q Now, did there come a point in time when someone  
23 recommended to you that he be separated?

24 A Yes.

25 Q And do you know when that was, approximately?

1           A     November, December of 2014.

2           Q     And what happened as a result of that  
3 recommendation?

4           A     I talked with our HR manager, got all  
5 information from her, Ms. Kimberly King, talked with  
6 staff, asked them to -- I have a personnel liaison that  
7 works with me and talked with staff to proceed forward  
8 with the separation.

9           Q     All right. Mr. Zenor (sic), I'm going to show  
10 you a copy of a document marked NDOT 0001 through 3.

11                   Do you recognize those documents?

12          A     Yes, I do.

13          Q     And what are those documents?

14          A     The first one is a letter to Mr. Chad Zenor  
15 recommending a separation. It's an NPD 42 separation due  
16 to the inability to perform essential functions due to  
17 medical reasons for his job classification. So it has a  
18 signature on there, and that's the signature of my  
19 supervisor, my boss, Ms. Tracy Larkin, deputy director out  
20 of Las Vegas.

21                   The second two documents -- the second document,  
22 two pages, is the NPD 42, which contains information  
23 regarding the separation due to medical reasons and has my  
24 signature and Ms. Larkin's signature via the DocuSign  
25 mechanism that the Department uses.

1 Q Thank you.

2 MR. KEENE: No further questions.

3 HEARING OFFICER COCKERILL: Mr. Ranft, any  
4 cross?

5 MR. RANFT: Thank you, yes.

6

7 CROSS-EXAMINATION

8 BY MR. RANFT:

9 Q Mr. Dyson?

10 A Yes.

11 Q Yes.

12 A Thor Dyson.

13 Q Thor Dyson. Okay.

14 And one more time, give me your position in the  
15 Department?

16 A I am the district engineer. It's an  
17 Administrator II position.

18 Q And you testified that you signed off on the  
19 recommendation for separation of service?

20 A I electronically signed off on the  
21 recommendation for separation of service per the NPD 42,  
22 yes.

23 Q And I'm going to hand you State Exhibit  
24 NDOT 0008. And I don't have it in front of me, but please  
25 read (1)(a) under NAC 284.611.

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1           A     So under NAC 284.611, under (1)(a), "Verify with  
2     the employee's physician or by an independent medical  
3     evaluation paid for by the appointing authority that the  
4     condition does not, or is not expected to, respond to  
5     treatment or that an extended absence from work will be  
6     required."

7           Q     Did you verify Mr. Chad Zenor's physical medical  
8     condition, if he had a work release or not, with his  
9     providing doctor?

10          A     I communicated with the HR manager. She  
11     informed me that she had documentation that had stated  
12     that Mr. Chad Zenor was unable to perform the functional  
13     requirements of his job.

14          Q     You didn't personally verify?

15          A     I did not personally verify it.

16                MR. RANFT: No further questions.

17                HEARING OFFICER COCKERILL: Anything further?

18

19                         REDIRECT EXAMINATION

20     BY MR. KEENE:

21          Q     Mr. Dyson, is it your job to personally verify  
22     such information?

23          A     No.

24          Q     Isn't it true, in fact, that you would rely on  
25     the human resources department to verify that information

1 for you?

2 A Absolutely. That's correct.

3 Q Thank you.

4 MR. KEENE: No further questions.

5 HEARING OFFICER COCKERILL: Anything else?

6 MR. RANFT: If I may.

7

8 RECROSS-EXAMINATION

9 BY MR. RANFT:

10 Q But you signed the document, correct, on the  
11 separation of service?

12 A (No audible response).

13 MR. RANFT: No further questions.

14 HEARING OFFICER COCKERILL: Okay. You're  
15 released. Any reason that he needs to stick around?

16 MR. RANFT: No.

17 HEARING OFFICER COCKERILL: If he wants to stay  
18 in the room, he can. Okay.

19 Any other witnesses?

20 MR. KEENE: The State has no further witnesses.

21 HEARING OFFICER COCKERILL: Okay. The State  
22 rests?

23 MR. KEENE: Yes.

24 HEARING OFFICER COCKERILL: Okay. Why don't we  
25 take a five-minute break.

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1                   How many witnesses are you going to be calling?  
2                   MR. RANFT: I'm going to be calling two,  
3 three -- it appears four. Yes, four.  
4                   HEARING OFFICER COCKERILL: Okay. And -- so  
5 just logistically, we'll take about five minutes. I don't  
6 want to rush through this. If it looks like we need a  
7 short lunch break, there's places around here to eat. So  
8 take your time, both sides. Because the State may have  
9 rebuttal. I don't think we're going to finish by --  
10                  MR. KEENE: I don't either.  
11                  HEARING OFFICER COCKERILL: -- by 12 o'clock, so  
12 let's not try to rush through this.  
13                  MR. RANFT: We appreciate that.  
14                  HEARING OFFICER COCKERILL: It's an important  
15 case to both sides, so . . .  
16                  Okay. We're going to take five minutes.  
17                  (Recess)  
18                  HEARING OFFICER COCKERILL: Okay. The record  
19 will show that we took about a five-minute recess. The  
20 State has rested. It's about 11:19, and we're reconvening  
21 with the -- Mr. Zenor's first witness.  
22                  Who's the first witness?  
23                  MR. RANFT: Employee's representative calls Chad  
24 Zenor.  
25                  HEARING OFFICER COCKERILL: Okay, Mr. Zenor.

1           And, Mr. Zenor, I wasn't paying attention, there  
2 was a mob of people in here. When I asked everybody to  
3 raise their hand, were you one of the ones that was  
4 raising your hand that you were going to be telling the  
5 truth?

6           MR. ZENOR: Yes.

7           HEARING OFFICER COCKERILL: Okay. If you could  
8 state your name, spell your last name. And I just remind  
9 you that you are under oath.

10          MR. ZENOR: Okay. My name is Chad Zenor. Last  
11 name is Z-E-N-O-R.

12          HEARING OFFICER COCKERILL: Proceed.

13          MR. RANFT: Thank you, Charlie.

14

15                               DIRECT EXAMINATION

16 BY MR. RANFT:

17       Q     Mr. Zenor, please state your -- you already  
18 stated your name.

19             Please advise what department you formerly  
20 worked for and the previous job title?

21       A     State of Nevada, Department of Transportation,  
22 Highway Maintenance Worker III.

23       Q     And how long did you work at NDOT?

24       A     Three years.

25       Q     Can you please describe your duties while

1 working at NDOT.

2 A My job was to keep the roads publicly safe for  
3 the citizens of the State of Nevada in different areas,  
4 snow removal, shoulder work, road repairs, things of that  
5 nature, sign repairs.

6 Q Just take a deep breath. Little nervous, but  
7 it's okay. It's okay to be nervous. But just take a deep  
8 breath for a second. Really, take a deep breath?

9 A Okay.

10 Q No, really. Because -- you know, I want to see  
11 you take a deep breath so you can really answer these  
12 questions.

13 A Okay.

14 Q Very important.

15 Can you tell me about the injury that occurred  
16 while working on 8-1-2013 while you were working at  
17 position with NDOT.

18 A Yes. I was working with another employee, Jim,  
19 on old U.S. 395 in Washoe Valley. We were repairing some  
20 barbed wire fence that had been damaged in a car accident.  
21 And we had to take down, I want to say it was, about  
22 100 feet of barbed wire to replace it. And one of the  
23 strands had been buried in the soft dirt, and I tripped on  
24 it and fell and injured my right wrist.

25 Q Did you report this to your supervisor?



1           A     I did.

2           Q     And did you seek medical treatment?

3           A     I did.

4           Q     And did you return to work immediately?

5           A     I did.

6           Q     Did the workers' comp insurer accept your claim?

7           A     Yes.

8           Q     Tell us about your visits with Concentra, the

9 workmen's comp doctor, Dr. Meyer?

10          A     Dr. Meyer evaluated my injury. His first

11 assessment, that it was a wrist sprain. When it proceeded

12 not to get better, he did -- he did an x-ray and an MRI

13 and noticed that there was more damage to it than just a

14 wrist sprain.

15          Q     And can you enlighten us on that damage to the

16 best of your ability?

17          A     At that time he didn't know what was going on,

18 so he referred me to a specialist, which come to find out

19 that the tendons between the two sets of bones that are in

20 my wrist had been damaged and needed to be taken care of

21 immediately.

22          Q     And you saw -- you were referred to Dr. Huene by

23 Dr. Meyer?

24          A     That's correct.

25          Q     And was Dr. -- to your knowledge, was Dr. Huene

1 a workmen's comp provider doctor?

2 A Yes.

3 Q And did Dr. Meyer place you on light duty?

4 A Yes, he did.

5 Q And how long was your light duty contract?

6 A 90 days.

7 Q And what happened after that 90 days?

8 A After that 90 days, or --

9 HEARING OFFICER COCKERILL: What are the dates  
10 of light duty, approximately?

11 THE WITNESS: August 2nd to October 31st, I  
12 believe, or 30th.

13 HEARING OFFICER COCKERILL: 2013?

14 THE WITNESS: Yes, sir.

15 HEARING OFFICER COCKERILL: Okay. Thank you.  
16 Proceed.

17 THE WITNESS: On, I believe it was, the 28th, I  
18 was asked to go see Diane Kelly. And I walked over to her  
19 office, and she informed me that my 90 days of light duty  
20 had been up and I had a choice of either using my personal  
21 time after the 30th or to go on workmen's compensation.

22 At that time I didn't have any time left on my  
23 books from all the doctors' visits that I'd been going on,  
24 and I was forced to use workmen's compensation. And they  
25 dismissed me off of light duty on the 30th, I believe.

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1 BY MR. RANFT:

2 Q Did the Employer move to medically separate you  
3 at that time?

4 A Not at that time.

5 Q Referring to Exhibit 5, in this Employee's  
6 exhibit book, there's a series of dictations through your  
7 first visit with Dr. Huene on 9-27-2013 through a period  
8 of 6-17-2014.

9 Can you just -- if you want to take a moment and  
10 look at those dictations from Dr. Huene. And then when  
11 you're done, can you please just enlighten us, that period  
12 of time through 9-27 to 6-17 -- I'm sorry, 9-27-2013 going  
13 into 6-17-2014, what kind of treatment you were doing and  
14 what kind of diagnosis that Dr. Huene was providing to  
15 you, and just give me a little bit of that process in very  
16 basic detail. And if you could do it without referring,  
17 that's great too.

18 A Um-hmm. When I first initially went to  
19 Dr. Huene, he asked me to have some more x-rays done.  
20 After looking at the x-rays, and initially doing a first  
21 patient visit with him, he had me come back and determined  
22 that I had a tear in my tendon between the two bones  
23 that -- in my wrist. And he suggested that I wear a hard  
24 cast for six weeks.

25 And that once the cast was taken off, I believe

1 in January, mid January, I went to treatment at Nevada  
2 Hand Therapy, where I was doing therapy with them, I  
3 believe, three times a week at that time and visiting  
4 Dr. Huene every two weeks.

5 He continued to say that the therapy was helping  
6 and I progressively would be getting better. He at this  
7 time said that there was no reason for surgery and he  
8 hoped that if I continued to progress that I wouldn't need  
9 surgery.

10 Q Was it your understanding that Dr. Huene was  
11 going to put you back to work?

12 A Yes.

13 Q Did he release you on light duty?

14 A Yes.

15 Q Did the State of Nevada offer you any light duty  
16 contract during that time?

17 A Not during that time, no.

18 Q It was prior?

19 A Prior, yes.

20 Q Okay. And during this time of 9-27-2013 to  
21 6-17-2014, did you -- were you in -- did you a desire and  
22 a will to go back to NDOT and your position?

23 A Definitely.

24 Q During these specific visits, 9-27-2013 and  
25 6-17-2014, were you in contact with NDOT's human

1 resources?

2 A I was. I was in contact with Diane Kelly.

3 Q During these specific visits, the dates -- that  
4 we just discussed, were you in contact with workers' comp  
5 insurance, CCMSI?

6 A I was. I was in contact with Tani Consiglio.

7 Q And was that the provider, workmen's comp  
8 insurance for NDOT?

9 A Yes, it was.

10 Q We're going to walk through a couple of  
11 different visits now.

12 Exhibit 6 -- please refer to Exhibit 6.

13 A Um-hmm.

14 Q Just take a minute and read through that, and  
15 then please give me your thoughts of when you were at this  
16 visit.

17 MR. KEENE: I'm going to object. If he wants to  
18 testify about the visit, that's fine, but he doesn't need  
19 to read the doctor's notes to do that.

20 MR. RANFT: We're talking --

21 HEARING OFFICER COCKERILL: Well, if he needs to  
22 refer to them to refresh his memory, I don't have an  
23 objection to that. I mean, he -- this is back -- this is  
24 historical information for me. And so objection  
25 overruled.

1 THE WITNESS: Okay.

2 HEARING OFFICER COCKERILL: Does he have any  
3 testimony?

4 BY MR. RANFT:

5 Q Do you have any thoughts on -- or can you please  
6 describe that visit on 6-18-2014, best of your  
7 recollection?

8 A Yeah. At this visit, this is the time where I  
9 started doing more and more exercises at home. My hand  
10 therapist had told me to not exceed what I'm doing but to  
11 continue to work on it. And Dr. Huene said that some work  
12 therapy would be the best for me to do.

13 Because the type of injury that it is, it's a  
14 rare injury, and basically what they had to do was rebuild  
15 the muscles around my wrist area to get it strengthened  
16 back up. And that's how this type of injury heals.

17 At this time I had done some -- everything that  
18 my doctor had asked me to do and my hand therapist, and I  
19 thought at this point that I would definitely be returning  
20 to work soon.

21 Q Under Exhibit 6, Pages 2 and 3, can you please  
22 explain these two documents?

23 A This is an early return to work. It's a  
24 physical assessment dated 6-18-2014. And it says that my  
25 work restriction's temporary, return to full duty. And

1 then it says "may use brace as needed." And it says that  
2 I can work eight hours to 10 hours a day with no  
3 medication.

4 Q And who signed that document?

5 A Dr. Huene.

6 HEARING OFFICER COCKERILL: What page are we on?

7 MR. RANFT: Page 2.

8 HEARING OFFICER COCKERILL: Of Exhibit?

9 MR. RANFT: Of Exhibit 6.

10 HEARING OFFICER COCKERILL: Thank you.

11 THE WITNESS: Exhibit 6, Page 3 is the findings  
12 of Dr. Huene on that visit, which says that there's no  
13 more clicking or popping, which was one of the main  
14 concerns in the beginning. Sore, no problems, but as  
15 stated in the letter, in Exhibit 6, it says that due to  
16 the intense therapy, that it would be sore on occasion.  
17 It says "release to full duty without restrictions on  
18 6-18-2014. Brace on as needed."

19 BY MR. RANFT:

20 Q And that was signed by?

21 A Dr. Huene.

22 Q And we're going to go to another doctor's  
23 appointment with Dr. Huene on 6-25-2014, Exhibit 7?

24 A Um-hmm.

25 Q And again, if you would like to take a moment to

1 read through that to recollect, and then please provide  
2 your thoughts on that visit.

3 A This was an unscheduled visit that I was called  
4 to that I was told to come in and see Dr. Huene due to the  
5 fact that CCMSI was pushing to -- and the Department of  
6 Transportation was pushing to have an FCE done.

7 MR. KEENE: Objection. Assumes facts not in  
8 evidence. Mr. Zenor can't testify that anybody was  
9 pushing to have anything done in particular and --

10 HEARING OFFICER COCKERILL: Well, the document  
11 from Dr. Huene says they're demanding to have an FCE, so  
12 overruled.

13 MR. KEENE: We don't know who "they" are,  
14 your Honor. He's accompanied by his case manager.

15 HEARING OFFICER COCKERILL: Well, again, this is  
16 background. I know that there was an FCE done. I know  
17 the results of the FCE. I know from the FCE he could not  
18 return to work. This is all a background and he's  
19 entitled to present his case, so overruled.

20 THE WITNESS: At this time I met Michelle Green  
21 prior to that. She informed me that the two agencies were  
22 pushing to have this done so that they can move forward  
23 with whatever they needed to move forward with.

24 And when I walked into the doctor's office,  
25 Dr. Huene was extremely frustrated with the fact that this



1 was going on and was very upset that I hadn't been  
2 returned back to work yet. After talking to him, he went  
3 ahead and -- out of disgust and --

4 MR. KEENE: Objection, your Honor. We don't  
5 need Mr. Zenor characterizing. He can state the facts.

6 HEARING OFFICER COCKERILL: Sustained.

7 THE WITNESS: He went ahead and authorized it.

8 BY MR. RANFT:

9 Q Now, was that on the following visit on 8-13 --  
10 2014 --

11 A Yes.

12 Q -- Exhibit 9 --

13 A Exhibit 9?

14 Q -- that he signed off on it?

15 A Yes, that's correct.

16 Q And going back to Exhibit 7.

17 A Okay.

18 Q Dr. Huene, under his recommendations, stated,  
19 "After three weeks of work hardening, if he still needed  
20 it" -- the FCE, he would be happy to do that.

21 Is that something that was --

22 HEARING OFFICER COCKERILL: All these documents  
23 are in evidence.

24 MR. RANFT: Okay.

25 HEARING OFFICER COCKERILL: I've read them. I

1 will read them --

2 MR. RANFT: Okay.

3 HEARING OFFICER COCKERILL: -- before I write a  
4 decision.

5 MR. RANFT: Thank you.

6 BY MR. RANFT:

7 Q Look at page -- Exhibit 7, Page 3. On this  
8 date, 6-25-2014, he provided you with this document.

9 And did -- can you please describe this  
10 document.

11 A It's a -- it's a findings and doctor's note  
12 stating that I was released to full duty without  
13 restrictions on 6-25-14.

14 Q Under Exhibit 8, Page 1, this is an  
15 authorization for a functional capacity evaluation.

16 Who was it requested by?

17 A CCMSI.

18 Q But what was -- who --

19 A Tani Consiglio.

20 Q And who does she represent?

21 A CCMSI, the insurance adjuster.

22 Q Did Dr. Huene ever recommend or ask for an FCE?

23 HEARING OFFICER COCKERILL: I don't know the  
24 relevance of that. The FCE was done.

25 MR. RANFT: Done. Okay. I'll withdraw that.

1 HEARING OFFICER COCKERILL: The doctor signed  
2 off on it, so --

3 MR. RANFT: Yeah.

4 HEARING OFFICER COCKERILL: -- appears to me  
5 that the insurer is able to require this. Appears  
6 reasonable.

7 MR. RANFT: Okay.

8 HEARING OFFICER COCKERILL: So I'm not sure  
9 where you're going.

10 BY MR. RANFT:

11 Q Let's go to Exhibit No. 9, and if you want to  
12 take a moment and reflect on that, and then just describe  
13 that visit.

14 HEARING OFFICER COCKERILL: And not to cut you  
15 off, but I've read all this stuff.

16 MR. RANFT: Okay.

17 HEARING OFFICER COCKERILL: And these documents  
18 are in evidence.

19 MR. RANFT: Okay.

20 HEARING OFFICER COCKERILL: The historical notes  
21 by Dr. Huene are in evidence, and I will consider them.

22 MR. RANFT: Okay.

23 BY MR. RANFT:

24 Q I'd like to specifically note visit -- under  
25 Exhibit 10, 9-24-2014, can you explain this visit?

1           A     This is the visit when I was supposed to go in  
2     for my original one, and he told me that he still wasn't  
3     excited about the FCE, but he again told me that he  
4     would -- as much as he loves to do surgery, he highly  
5     doesn't recommend it because it would end up causing more  
6     damage. And with the way that I was healing, that he knew  
7     that I would be stable in a short period of time.

8           Q     Can you read the first part of that, just to --  
9     on history of present illness?

10          A     "Mr. Zenor returns for follow-up of his carpal  
11     nonassociated instability pattern."

12          Q     I'm sorry. Regarding -- and let's just -- and  
13     this is really important on this discussion. I know  
14     that's going to be into exhibit, but I just want to make  
15     it known in this, through testimony, that the insurance  
16     company was concerned about the difference between the FCE  
17     and the current work restrictions. And Dr. Huene was --  
18     and I'll just ask you this question.

19                     Was it clear that Dr. Huene said that that FCE  
20     was done in July of 2000 -- July 21st, 2014, and his  
21     current restrictions were as of 9-24?

22                     MR. KEENE: Your Honor, I'm going to object.

23     BY MR. RANFT:

24          Q     Was that clear?

25                     MR. KEENE: This is a matter for a workers'

1 compensation hearing. We're here to see whether NDOT  
2 properly terminated Mr. Zenor under NAC 284.611. And this  
3 testimony doesn't have anything to do with that. This is  
4 argumentation about what happened during doctors'  
5 appointments. This should have been appealed to a  
6 workers' comp judge, not here.

7 MR. RANFT: The ---

8 HEARING OFFICER COCKERILL: All right.

9 MR. RANFT: The FCE has been used as method  
10 of separation.

11 HEARING OFFICER COCKERILL: The objection is  
12 overruled.

13 Proceed.

14 BY MR. RANFT:

15 Q Was it -- was it clear that there was a concern  
16 by Dr. Huene and the insurance company on what work  
17 restrictions were to be used -- was it clear during that  
18 visit that there was a concern by the insurance company  
19 that Dr. Huene was not using the FCE work restrictions?

20 A Yes.

21 Q On 9-24, what -- under Page 2, what work  
22 restrictions did he -- did Dr. Huene provide you with?

23 A On 9-24?

24 Q Page 2 of Exhibit 10.

25 A Based on as needed, released to full duty

1 without restrictions.

2 Q Okay. Please proceed to Exhibit 11. We've all  
3 seen this document.

4 On Page 1 and 2, what happened on October 22nd,  
5 2014?

6 A He -- I went in and saw Dr. Huene, and he said  
7 that I was -- that I had -- that I had healed to my max  
8 capacity and that he felt that I could return to work, no  
9 restrictions, and continue on with my daily duties.

10 He also told me that because of the type of  
11 injury that it was, there was possibilities that I -- that  
12 it could get worse or I could come back to see him if  
13 anything ever happened. But because of the way I healed,  
14 he didn't see that happening at all.

15 Q And so --

16 A But he had to -- he to tell me that -- that  
17 there were those possibilities because that's just --

18 MR. KEENE: Objection. Mr. Zenor -- this is  
19 self-serving testimony about what the doctor said but  
20 never put in his chart.

21 HEARING OFFICER COCKERILL: Well --

22 MR. KEENE: This is --

23 MR. RANFT: Mr. Zenor was there.

24 MR. KEENE: If he wants to put words in the  
25 doctor's mouth, then they should have subpoenaed him to

1 sit here. But Mr. Zenor ad-libbing notes about what the  
2 doctor wrote down is totally inappropriate testimony.

3 HEARING OFFICER COCKERILL: Well, his testimony  
4 is -- to me is tracking what the doctor's notes are. And  
5 you know, I think Mr. Zenor is trying to be as honest as  
6 he can as to, you know, what his impressions were from the  
7 doctor.

8 The doctor's notes are what are going to carry  
9 today for me. So -- and I've read the doctor's notes, and  
10 I will reread them before I make a decision in this case.

11 BY MR. RANFT:

12 Q Regarding these doctor's notes progression --  
13 the doctor progress reports that you were provided by  
14 Dr. Huene during each appointment, what did you do with  
15 those documents --

16 A I took --

17 Q -- on each visit?

18 A After I received a copy from the doctor, I got  
19 two copies, one for my file, and I took one to the  
20 Department of Transportation building across the street  
21 from the DMV.

22 I generally walked in and handed it to Diane  
23 Kelly, except for, I believe it was, the last one I know  
24 of, possibly the last two, and I was told she was not in  
25 her office. And when I turned in the last one, a young

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1 gentleman came up and I told him it was for Diane Kelly,  
2 and he stated that she was no longer there.

3 And I said, "Okay, well, I have a release to go  
4 back to work, so what do I do?"

5 And he said, "Well, I'll get it to the right  
6 people, and they'll contact you."

7 Q And during these visits, did you express desire  
8 to return to work, all these visits that you brought these  
9 notes?

10 A Yes. There was even times when I went in and  
11 talked to supervisors at the NDOT yard and my supervisor  
12 too, Troy Hammond, to see if I could return to work.

13 Q And did you speak to Diane Kelly about returning  
14 to work?

15 A I did, and she told me that I couldn't return to  
16 work because my brace was a restriction.

17 Q And do you consider a brace -- do you consider  
18 the brace a restriction?

19 A No.

20 MR. KEENE: Objection. Mr. Zenor can't  
21 determine whether the brace is a restriction.

22 HEARING OFFICER COCKERILL: Well --

23 MR. KEENE: That's a medical opinion.

24 HEARING OFFICER COCKERILL: -- as of  
25 October 22nd, the brace is no longer an issue. It's



1 not --

2 MR. RANFT: And I'll rephrase that.

3 BY MR. RANFT:

4 Q On October 22nd when you turned in those  
5 documents -- October 22nd, 2014, when you turn in that  
6 document, did you ask and have desire to go to work that  
7 day -- to go back to work?

8 A I did.

9 Q I have a few more questions, will be -- quite a  
10 few more questions, but I'll be quick. Just give me one  
11 second, please.

12 Your FCE was done was July 21st, 2014; correct?

13 A Correct.

14 Q On October 22nd, 2014, did Dr. Huene set aside  
15 the FCE by giving you full release?

16 A Yes.

17 MR. KEENE: Objection. That's a legal  
18 determination Mr. Zenor can't possibly make.

19 MR. RANFT: I mean --

20 HEARING OFFICER COCKERILL: Sustained.

21 MR. RANFT: Okay.

22 BY MR. RANFT:

23 Q Did your doctor tell you throughout that  
24 returning to work would be the best endurance to heal your  
25 wrist?

1           A     Yes, he stated many times that work endurance  
2 would be the best way to heal quicker.

3           Q     And why is that?

4           A     Because of the strengthening that I needed,  
5 everyday repetition of what I was -- would be doing would  
6 build the muscles properly to heal my wrist the right way.

7           Q     And the times that you were released to full  
8 duty, did NDOT ever put you back to work?

9           A     No.

10          Q     Please read Exhibit -- I'm sorry.

11                Please refer to Exhibit 14 of the State  
12 Employer's packet, Exhibit 14, Page 1.

13                HEARING OFFICER COCKERILL: In the State?

14                MR. RANFT: I'm sorry, not State. Employee's  
15 packet.

16                HEARING OFFICER COCKERILL: Okay.

17                MR. RANFT: Thank you.

18 BY MR. RANFT:

19          Q     What was the purpose of receiving this letter?

20          A     If I remember correctly, this letter was so  
21 that -- it stated that I could return back to work full  
22 duty with no restrictions.

23          Q     Knowing that you had -- I mean, so you knew that  
24 you had an appeal coming up.

25          A     Right.

1 Q And you wanted to clarify --

2 A Exactly.

3 Q -- is that --

4 A Yeah.

5 Q Can I ask you a question? Did you want to  
6 clarify this?

7 A I did.

8 MR. KEENE: Objection. Can we not --

9 MR. RANFT: I'll just re- --

10 MR. KEENE: -- have so many leading questions.

11 MR. RANFT: I'll reask the question.

12 HEARING OFFICER COCKERILL: Well, he can ask  
13 what. I mean, it looks to me like he --

14 BY MR. RANFT:

15 Q Did --

16 HEARING OFFICER COCKERILL: -- got this from  
17 his --

18 MR. KEENE: I mean, really, the letter speaks  
19 for itself. It doesn't need any --

20 HEARING OFFICER COCKERILL: Well, but he can --

21 MR. KEENE: -- comment from Mr. Zenor.

22 HEARING OFFICER COCKERILL: -- he can ask why he  
23 produced this. I mean, it just didn't come out of thin  
24 air, I suppose.

25 THE WITNESS: I wanted to clarify to the fact

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1 that I was released to full duty at the time with no  
2 restrictions and I could return to my job on October 22nd,  
3 2014.

4 BY MR. RANFT:

5 Q And the basis -- was the basis for this letter  
6 because you had a pending appeal with the State --

7 A Yes.

8 Q -- regarding medical separation?

9 A That's correct.

10 Q At this time, please go to Employee Exhibit  
11 No. 27, Page 42, very top-hand corner.

12 Can you please read -- well, under Vocational  
13 Rehab heading, NRS 616C.530, "priorities for returning  
14 injured employee to work," and that would be -- just read  
15 that entire -- up to section -- through Section 1.

16 A "An insurer" --

17 MR. KEENE: I'm going to object. This --

18 HEARING OFFICER COCKERILL: Wait, wait, just a  
19 second. Let me --

20 MR. KEENE: This isn't a workers' comp hearing.

21 HEARING OFFICER COCKERILL: What number are you  
22 referring him to? Which paragraph?

23 MR. RANFT: It's Vocational Rehab, Section  
24 NRS 616C.530, prior to returning an employee to work. My  
25 intent in this is to show that Mr. Zenor was forced into

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1    voc rehab, not will -- and he will explain why he signed  
2    those documents later.

3                   HEARING OFFICER COCKERILL: Well, you can ask  
4    him those questions, but that doesn't have anything to do  
5    with the statute. I mean, he's not here to interpret  
6    statutes. If you want to argue the statute at some point,  
7    you can do that. But --

8                   MR. RANFT: Okay. I can do that in closing?

9                   HEARING OFFICER COCKERILL: Certainly.

10                  MR. RANFT: Okay. I would like -- I would like  
11    to ask a question. It does go along with the case that I  
12    probably need to ask now, and then you guys can discuss  
13    that if you don't mind.

14    BY MR. RANFT:

15                  Q     Same page, Page 42 on Exhibit 27, NRS 616C.543,  
16    prohibited acts of vocational rehab counselor?

17                  MR. KEENE: Objection. This isn't --

18                  HEARING OFFICER COCKERILL: Sustained.

19                  MR. KEENE: -- a workers' comp hearing.

20                  HEARING OFFICER COCKERILL: Sustained.

21                  MR. RANFT: And again, I'll argue that at the  
22    later date -- later closing.

23    BY MR. RANFT:

24                  Q     Did you --

25                  HEARING OFFICER COCKERILL: Well, that --

1 Mr. Keene is right. I mean, that's really not before me.  
2 MR. RANFT: Okay.  
3 HEARING OFFICER COCKERILL: What's before me is  
4 whether --  
5 MR. RANFT: Medical separation.  
6 HEARING OFFICER COCKERILL: -- the State went  
7 through the proper requirements, including contacting the  
8 physician, before they terminated him.  
9 MR. RANFT: Okay.  
10 BY MR. RANFT:  
11 Q The State brought up document 0038 through 0047.  
12 I'll provide you those documents.  
13 So did you sign that document?  
14 A Yes.  
15 Q Why did you sign that document?  
16 A I was told that my job with the Department of  
17 Transportation had been terminated and I was not able to  
18 return back to work to them.  
19 Q Do you feel you were forced into voc rehab?  
20 A Yes.  
21 MR. KEENE: Objection.  
22 MR. RANFT: I'll withdraw.  
23 MR. KEENE: He can sue the insurance company.  
24 That has nothing to do with whether we correctly  
25 terminated his employment under NAC 284.611.

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1 MR. RANFT: They're using it as a form of  
2 medical separation that he went to voc rehab.

3 MR. KEENE: And he was --

4 HEARING OFFICER COCKERILL: Well, the voc rehab  
5 is under workers' comp, so they're saying that they don't  
6 have to -- so I don't know that that -- the voc rehab  
7 referral overrules the requirements to still comply with  
8 the statute as far as a medical separation. I mean, you  
9 guys can argue that.

10 MR. RANFT: Okay. Yeah.

11 HEARING OFFICER COCKERILL: I mean, the question  
12 is whether his signature here is somehow a waiver of his  
13 rights that he's provided under the December 31st letter  
14 which says that -- provide a work release, which he did,  
15 and that he's entitled to restatement if he's able to do  
16 his job, which his doctor said he was. So I mean --

17 MR. RANFT: Okay.

18 HEARING OFFICER COCKERILL: -- I'm not --

19 MR. RANFT: I understand. I'll withdraw the  
20 question.

21 BY MR. RANFT:

22 Q Is --

23 HEARING OFFICER COCKERILL: I mean, isn't the  
24 position of the State that the fact that Mr. Zenor signs  
25 this document for voc rehab somehow waives his rights to

1 the State complying with the statute, which is  
2 NAC 284.611.

3 I mean, is it the State's position that the fact  
4 that Dr. Huene and Mr. Zenor signed those documents, does  
5 that waive the State's obligations under NAC 284.611?

6 MR. KEENE: No, that is not our argument.

7 HEARING OFFICER COCKERILL: Okay. Proceed.

8 BY MR. RANFT:

9 Q During your preseparation hearing on June 24,  
10 2015, did you provide Eden Lee, an admin service officer  
11 with NDOT, a copy of Exhibit 11 under the Employee packet?

12 A I did.

13 Q Under Exhibit 2 under the Employee packet,  
14 referring to a letter to you on June 24th, 2015, from  
15 Deputy Director Tracy Larkin with NDOT, did she -- did  
16 Ms. Larkin use the 10-22-2014 doctor release in the  
17 medical separation?

18 MR. KEENE: Objection. That question didn't  
19 make any sense.

20 MR. RANFT: Okay.

21 MR. KEENE: I'm sorry.

22 BY MR. RANFT:

23 Q Did --

24 HEARING OFFICER COCKERILL: Sustained.

25 MR. RANFT: Okay. I'll reword the question.



1 HEARING OFFICER COCKERILL: First, Ms. Larkin is  
2 who?

3 MR. RANFT: She's the deputy director that  
4 approved the medical separation.

5 HEARING OFFICER COCKERILL: Did she conduct a  
6 hearing or something?

7 MR. RANFT: The hearing was conducted by Eden  
8 Lee, who is an employee of NDOT, and she upheld his  
9 hearing recommendation which was medical separation.

10 HEARING OFFICER COCKERILL: Larkin upheld?

11 MR. RANFT: Larkin upheld.

12 HEARING OFFICER COCKERILL: So what is your  
13 question, did they --

14 MR. RANFT: So --

15 HEARING OFFICER COCKERILL: -- did they actually  
16 consider the 10-22-14 document? Is that what the  
17 question --

18 MR. RANFT: That would be -- okay.

19 BY MR. RANFT:

20 Q Then I'll just rephrase the question to had  
21 they -- had NDOT used Exhibit 11, the full release on  
22 10-22-2014, do you feel that Ms. Larkin would have upheld  
23 the medical separation?

24 MR. KEENE: Objection.

25 HEARING OFFICER COCKERILL: Sustained.

1 MR. RANFT: Okay. I can --

2 BY MR. RANFT:

3 Q Okay. I'll just say, did Ms. Larkin uphold the  
4 medical separation on June 24th, 2015, based off the  
5 letter that's written on Exhibit 2?

6 A Not that I can tell.

7 Q Okay. So please reread June 24th, just so it's  
8 clear, just -- you're clear on what this document is. And  
9 I can even just rephrase the question.

10 Were you terminated from this letter of  
11 June 24th, 2015 from State service?

12 A Yes.

13 Q What took place at the round table -- and  
14 nobody -- I don't have no letter from the round table.

15 Can you explain what a round table is?

16 A A round table meeting is a meeting with people  
17 from Department of Transportation, Diane Kelly was there,  
18 Tani Consiglio was there, her supervisor was there, Debra  
19 Adler from voc rehab was there, and it was basically a  
20 meeting to determine whether or not I could return back to  
21 work, and if not, what were my options.

22 One of the first questions was --

23 HEARING OFFICER COCKERILL: Was this the meeting  
24 that was in August of 2014?

25 THE WITNESS: Yes.

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1 HEARING OFFICER COCKERILL: Okay.

2 THE WITNESS: Yeah. When Diane Kelly was asked  
3 if there was a position for me at the tile time, she  
4 replied no, that there was nowhere in NDOT for me to go  
5 back to work. By recommendation of CCMSI, Tani Consiglio,  
6 she recommended to continue with voc rehab with Debra  
7 Adler.

8 And then I can't remember the gal's name, but  
9 Tani's supervisor, I had asked her what's going to happen  
10 with my medical treatments because I'm still under medical  
11 care, I'm still doing rehabilitation. And she was not  
12 under -- she was not aware that I was still doing  
13 rehabilitation and that there was a possibility of me  
14 returning back to work full duty with no restrictions.

15 And at that time she told -- she said that she  
16 wanted to hold off on the voc rehab and going on forward  
17 with anything in that area until I was fully released from  
18 my doctor with or without restrictions.

19 BY MR. RANFT:

20 Q And I'm just going to ask you one more time,  
21 after you received the 10-22-2014 full-duty doctor  
22 release, you had all intentions to return to NDOT as  
23 your --

24 MR. KEENE: Objection. This has been asked and  
25 answered numerous times.

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1 MR. RANFT: Okay.

2 HEARING OFFICER COCKERILL: Sustained.

3 MR. RANFT: No further questions at this time.

4 HEARING OFFICER COCKERILL: Okay. What we're

5 going to do is -- because I assume there's going to be

6 more than five minutes worth of cross-examination, we're

7 going to take a break for an hour.

8 Is that enough time for everybody? We can be

9 back here at 1 o'clock.

10 MR. KEENE: Yes.

11 HEARING OFFICER COCKERILL: So the record will

12 show that it's 12 noon, that we're taking a recess for

13 lunch and that we'll resume at 1 o'clock with the

14 cross-examination of Mr. Zenor. Okay?

15 MR. RANFT: Thank you.

16 HEARING OFFICER COCKERILL: Thank you very much.

17 (Lunch recess)

18 HEARING OFFICER COCKERILL: Okay. The record

19 will reflect that it's about 12:56 and we've taken our

20 lunch break and we're going back on the record.

21 We're in the Appellant's case, cross-examination

22 beginning with the Mr. Zenor.

23 Mr. Keene, proceed.

24 ///

25 ///

CROSS-EXAMINATION

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BY MR. KEENE:

Q Good afternoon Mr. Zenor. I know you've been here the whole time, and I know we've been over these documents a lot of times, so I just want to touch on a few things quickly.

If you could turn to Employee Exhibit 10, the first page?

A Yes, sir.

Q Okay. At the -- under Recommendations, the last sentence, can you just read that for me?

A "We will keep him on work restrictions, brace on as necessary, otherwise he can use it fully."

Q Okay. Now, if you could, could you flip to Employee Exhibit 22, and there are 19 pages in there. If you could flip to Page 9 of 19.

Can you --

HEARING OFFICER COCKERILL: Which exhibit are we in? I'm sorry.

MR. KEENE: Exhibit 22. The Employee's Exhibit 22.

HEARING OFFICER COCKERILL: Okay.

MR. KEENE: And we're on Page 9 of 19.

BY MR. KEENE:

Q Mr. Zenor, at the type -- excuse me.

1                   At the top, can you tell me what the date of  
2   this is?  
3           A     11-19-2013.  
4           Q     And does it say what this document is?  
5           A     Claim note.  
6           Q     And does it indicate it's a letter from  
7   Dr. Huene?  
8           A     Yes, it is.  
9           Q     Okay. If you could go down the page to where it  
10   says -- it has Number 1?  
11          A     Um-hmm.  
12          Q     Can you read that first sentence, please?  
13          A     "At this point I do not feel that he's capable  
14   of returning to work to his preinjury employment."  
15          Q     Okay. And that was pretty soon after you'd been  
16   injured; correct?  
17          A     Yes.  
18          Q     Okay. Now, we now know that you have your  
19   release from October 22nd of 2014; correct?  
20          A     Yes, that's correct.  
21          Q     Okay. So it's fair to say that Dr. Huene has  
22   changed his opinion a few times about your injury and your  
23   ability to return to work?  
24          A     Yes.  
25          Q     Okay. Now, I'd like to --

1 MR. KEENE: You still have the Employer exhibits  
2 up there, or are they for his reference available?

3 MR. RANFT: I have them -- they're all spread  
4 out. So if you would like --

5 MR. KEENE: That's okay.

6 BY MR. KEENE:

7 Q Mr. Zenor, I'm going to show you document  
8 starting at page numbered NDOT 0034.

9 A Um-hmm.

10 Q Do you recognize that document?

11 A Yeah.

12 Q Okay. Do you need a minute to look at it?

13 A Yes, I recognize it.

14 Q Okay. Now, on the first page of that letter,  
15 you see where there's a paragraph, and the sentence starts  
16 with, "He was released to light/medium level work"?

17 A Yes.

18 Q And do you see point No. 9 underneath that?

19 A I do.

20 Q Okay. Could you read that for me, please?

21 A "Not able to physically perform work as a  
22 highway maintenance worker preinjury work."

23 Q And if you could, could you turn to the last  
24 page of this document, 0037?

25 A Um-hmm.

1 Q And is this -- has this letter been signed off  
2 by someone?  
3 A Looks like Dr. Huene's signature.  
4 Q And what's the date on that?  
5 A 12-10-14.  
6 Q Thank you.  
7 Now, Mr. Zenor, when did you start vocational  
8 rehab -- or let me say, you've undergone vocational rehab;  
9 correct?  
10 A Yes.  
11 Q Okay. And when did that start?  
12 A Mid January, I believe.  
13 Q Of what year?  
14 A 2015.  
15 Q And when did that end?  
16 A November 6th of 2015 -- 6th or the 9th. I don't  
17 recall.  
18 Q That's okay.  
19 A Right in that area.  
20 Q Okay. Did you sign a document agreeing to  
21 undergo voc -- vocational rehabilitation?  
22 A Yes.  
23 Q And do you know when you signed that document?  
24 A I want to say --  
25 HEARING OFFICER COCKERILL: What page are we on?



1 THE WITNESS: I want to say it was the first  
2 part of December, 2014, but I don't recall.

3 MR. KEENE: Okay.

4 I wasn't referring to a page.

5 HEARING OFFICER COCKERILL: Okay.

6 MR. KEENE: I was just asking if he remembered.

7 BY MR. KEENE:

8 Q Mr. Zenor, if you had a full release to return  
9 to work in October of 2014, then why did you sign this  
10 training agreement in December of 2014?

11 A At the time I was told that I did not have a job  
12 with the Department of Transportation. They led me to  
13 believe that I would not be returning to work. And I was  
14 trying to raise a family and I was trying to follow all  
15 the rules, and Adler Voc Rehab told me that I would not  
16 return to the State no matter what and my only option was  
17 to either take the voc rehab or to take the buyout.

18 Q So did you -- did you contest that? Did you  
19 argue with anybody about that?

20 A Yes.

21 Q And what did they tell you?

22 A They told me that I had no choice.

23 Q Did you appeal that?

24 A No.

25 Q Now, at some point, did you sign a -- here, I'll

1 just hand this to you, NDOT document Bates numbered 0087  
2 at the bottom.

3 Do you recognize that document?

4 A A little bit, yeah.

5 Q Okay. Can you flip, please, to the last page of  
6 that document?

7 A Um-hmm.

8 Q That's Page 889; correct?

9 A 089.

10 Q At the bottom?

11 A Yes, sir.

12 Q Did you sign this document?

13 A Yes, that's my signature.

14 Q And when did you sign that?

15 A 12-23 of 2014.

16 Q Okay. And right above your signature, do you  
17 see there are four bullet points?

18 A I do.

19 Q Can you please read what that fourth bullet  
20 point is?

21 A "Not able to physically perform work as a  
22 highway maintenance worker preinjury work."

23 Q And, Mr. Zenor, again, if you had a full release  
24 in October of 2014 to return to work, why would you sign  
25 an agreement where you specifically endorsed the fact that

1 you can't return to work?

2 A I was told I had to.

3 Q And who told you that?

4 A Debra Adler.

5 Q And who's she with?

6 A She's with the voc rehabilitation services.

7 Q Okay.

8 A She told me that she had gotten ahold of  
9 Department of Transportation and CCMSI and I had no other  
10 options but to continue on with voc rehab.

11 Q Did you appeal that to anyone?

12 A No.

13 Q And you were, in fact, retrained; is that  
14 correct?

15 HEARING OFFICER COCKERILL: Is there an appeal  
16 process for this, for voc rehab? I mean, a lot of this  
17 stuff does have appeal processes. But I mean, if you sign  
18 off on this -- I mean, is there a method of appealing  
19 this.

20 MR. KEENE: Well, that's a workers' comp issue.  
21 I really don't -- that's beyond the scope --

22 HEARING OFFICER COCKERILL: Okay.

23 MR. KEENE: -- why we're here. And I asked  
24 Mr. Zenor and he said no, so . . .

25 HEARING OFFICER COCKERILL: Okay.

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1 BY MR. KEENE:

2 Q Mr. Zenor, I want to show you a document that's  
3 been Bates numbered NDOT 0094 at the bottom.

4 Do you recognize that document?

5 A I do.

6 Q And what is that?

7 A It's a resume.

8 Q And who's resume is that?

9 A It's mine.

10 Q Okay.

11 HEARING OFFICER COCKERILL: What page are these?

12 MR. KEENE: 0094.

13 HEARING OFFICER COCKERILL: Thanks.

14 BY MR. KEENE:

15 Q And do you see on this document where it says  
16 Objectives?

17 A Yes.

18 Q Can you please read what's written under that?

19 A "To obtain a position in which I can use my  
20 computer and customer service skills to be a positive  
21 long-term employee while continuing to be an active member  
22 of our community."

23 Q Your objective wasn't to return to a Maintenance  
24 Worker III position.

25 A Yes, it was.

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1 Q Where does it say that in here?

2 A On the other -- I have two resumes. One is for  
3 office work, and one is for my highway maintenance and  
4 construction work.

5 Q Do you have a copy of that resume with you?

6 A Not with me, no.

7 Q Now, let's turn to NDOT Exhibit Page 0096  
8 through --

9 HEARING OFFICER COCKERILL: Do we have in the  
10 record what the status of the retraining is?

11 MR. KEENE: Well, I'm going to be getting there  
12 in just a moment.

13 HEARING OFFICER COCKERILL: Okay. Good.  
14 Thanks.

15 BY MR. KEENE:

16 Q So, Mr. Zenor, 96 through 102.

17 A Um-hmm.

18 Q Are these the certificates that you earned?

19 A Yes.

20 Q Okay. And this was part of your voc rehab  
21 program?

22 A Yes.

23 HEARING OFFICER COCKERILL: Thank you.

24 BY MR. KEENE:

25 Q So you have successfully completed your voc

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1 rehab?

2 A Yes.

3 Q Okay. And are you looking for a position now  
4 that utilizes your rehab skills?

5 A I'm looking for a position in anything right  
6 now.

7 Q Mr. Zenor, if you had a letter from your doctor  
8 clearing you to return to your previous job with no  
9 restrictions, why would you spend almost a year in voc  
10 rehab learning another job and gaining all these  
11 certifications?

12 A Because I was told I had to.

13 Q Or what?

14 A Or I wouldn't continue to collect a paycheck  
15 where I could support my family.

16 Q So did you appeal that in workers' comp?

17 A I didn't have an appeal letter, so no.

18 Q So you just said okay?

19 A I was told I had to, yes.

20 Q Well, I mean, you had a letter that's --

21 HEARING OFFICER COCKERILL: Who told you you had  
22 to?

23 THE WITNESS: Adler Voc Rehab --

24 HEARING OFFICER COCKERILL: Who?

25 THE WITNESS: -- and CCMSI.

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1 HEARING OFFICER COCKERILL: What's the name?  
2 THE WITNESS: Adler Vocational Rehab.  
3 HEARING OFFICER COCKERILL: Is there a first  
4 name?  
5 THE WITNESS: Debra Adler.  
6 HEARING OFFICER COCKERILL: Thank you.  
7 THE WITNESS: You're welcome.  
8 BY MR. KEENE:  
9 Q Now, Mr. Zenor, I want to show you document  
10 that's been marked NDOT Exhibit 103 to 115.  
11 Do you recognize this document?  
12 A I do.  
13 Q And do you know -- can you tell us what it is,  
14 please?  
15 A It looks like a letter that says the results of  
16 my partial disability evaluation.  
17 Q Okay. And could you turn to Page 110 of this,  
18 please?  
19 A Is this the one with Dr. Rovetti on it --  
20 Q Yeah.  
21 A -- at the top?  
22 Q At the top.  
23 A Okay.  
24 Q Thank you.  
25 Can you tell us what the date on this document

1 is?

2 A November 11, 2014.

3 Q Okay. And did you visit -- yeah, did you visit  
4 Dr. Rosetti?

5 A I did.

6 Q Rovetti. My apologies.

7 And why did you visit Dr. Rovetti?

8 A I was told that I need -- was supposed to go  
9 there for a -- for an evaluation for a possibility of  
10 permanent partial disability on my wrist.

11 Q Now, did Dr. Rovetti conduct an examination of  
12 you?

13 A He did.

14 Q Did he -- a physical exam of you? Not a mental  
15 check, but --

16 A Of my right wrist, yes.

17 Q Okay. Thank you.

18 Can you please turn to Page 113?

19 A Okay.

20 Q And at the top of the page, it says "Description  
21 of Claimant's Current Symptoms."

22 Do you see that?

23 A Um-hmm.

24 Q And can you read to me, please, what those  
25 symptoms were?

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1           A     "Lack of full movement, pain on occasion and  
2 weakness in wrist."

3           Q     Okay. And can you read the two sentences below  
4 that?

5           A     "Mr. Zenor stated these complaints stem from his  
6 injury on 8-23. He stated the symptoms have been the same  
7 for about three months."

8           Q     So the three months prior to your appointment  
9 with Dr. Rovetti?

10          A     Yes..

11          Q     Okay. And when did you last see Dr. Huene?

12          A     October 22nd, 2014.

13          Q     So a few weeks before you saw Dr. Rovetti?

14          A     That's correct.

15          Q     Okay. And did you tell Dr. Huene at that time  
16 about the lack of full movement, the pain on occasion and  
17 the weakness in your wrist?

18          A     I did.

19          Q     Okay.

20          A     And he said that it would continue to improve as  
21 I used it.

22          Q     I didn't ask you anything else, Mr. Zenor. I  
23 just asked you that. Thank you.

24                 Now, Mr. Zenor, if you would look at the last  
25 page, please, 115. If you see, there's a section called

1 Closing Comments?

2 A Um-hmm.

3 Q And there's a second paragraph, it starts with  
4 "I note"?

5 A Um-hmm.

6 Q Could you please read the first two sentences  
7 there?

8 A "I note that Dr. Huene felt Mr. Zenor was doing  
9 very well when he was released from care last month. I,  
10 however, noted limited range of motion and some ADL  
11 problems that were significant."

12 Q Thank you.

13 Did you appeal this determination by  
14 Dr. Rovetti?

15 A I did not.

16 Q And why was that?

17 A I didn't feel there was a reason to, that it was  
18 a hundred percent accurate.

19 Q Now, you may have -- you made a reference during  
20 your initial testimony about a round table?

21 A Um-hmm.

22 Q What is the round table?

23 A From my point of view, the round table was a  
24 table of people from different departments to determine  
25 whether or not I had an impairment, whether or not I could

1 return back to the place of my previous employment,  
2 preinjury job duties, and if I couldn't, where -- what my  
3 options were to go forward from there and how they were  
4 going to, in a sense, help me further a career or my  
5 previous employment.

6 Q And when was the date of this?

7 A I want to say it was August.

8 Q Doesn't have to be precise.

9 A In August of 2014.

10 Q And you testified at the round table somebody  
11 said you needed to stop doing vocational rehab?

12 A No. They said they wanted to put vocational  
13 rehab on hold until I was fully released from my doctor,  
14 until I fully recovered and completed my rehabilitation.  
15 Because it had been stated that -- in many letters from my  
16 doctor that he saw that I would return back to my full job  
17 duty with no restrictions.

18 Q So they wanted to hold off on retraining you  
19 until you were fully recovered from your injury?

20 A One person did, yes. It would have been Tani's  
21 supervisor over there at CCMSI.

22 Q Okay. And was that the course of action that  
23 was taken?

24 A At that time, yes.

25 Q And how long did they hold off on the voc rehab?

1           A     Until a few days after I got my release from  
2     Dr. Huene.

3           Q     Okay. Thank you.

4           MR. KEENE: I don't have any further questions  
5     on cross.

6           HEARING OFFICER COCKERILL: Any redirect?

7           MR. RANFT: Yes.

8

9                         REDIRECT EXAMINATION

10          BY MR. RANFT:

11          Q     Regarding the State's Exhibit 110?

12          A     Um-hmm.

13          Q     00 -- I'm sorry, 0110, can you please turn to  
14     that page?

15          A     Okay.

16          Q     Was Dr. Rovetti your treating physician?

17          A     No, he was not.

18          Q     Was Dr. Rovetti your rating physician?

19          A     Yes.

20          Q     When you saw Dr. Huene on 10-22-2014, again,  
21     advise how you felt during --

22                 MR. KEENE: The witness has already testified as  
23     to that.

24                 MR. RANFT: You didn't allow him to put his  
25     answer in, but --

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A App 0162

1 MR. KEENE: Well, that -- not going to come back  
2 again then.

3 HEARING OFFICER COCKERILL: Can you restate your  
4 question, please.

5 BY MR. RANFT:

6 Q During your visit on 10-22-2014 with Dr. Huene,  
7 can you describe how you felt? Can you state how you  
8 felt?

9 HEARING OFFICER COCKERILL: He's already  
10 testified to that.

11 MR. RANFT: Okay.

12 BY MR. RANFT:

13 Q On Employee Exhibit 22, Page 9, the State  
14 referenced a letter dated 11-19-2013 from Dr. Huene and  
15 some notes from CCMSI.

16 Do you have that in front of you?

17 A I do.

18 Q Is this date approximately one year and one  
19 month past the date of 10-22-2014?

20 HEARING OFFICER COCKERILL: Wait, whoa? What  
21 page are we on.

22 MR. RANFT: Page 9 of Exhibit 22. State  
23 referenced this exhibit.

24 HEARING OFFICER COCKERILL: I thought this was  
25 November 19th, 2013.

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1 MR. RANFT: Yeah, November -- no. November 19,  
2 2013 is when -- is when this letter was written.

3 THE WITNESS: It's 11 months prior to me being  
4 fully released.

5 HEARING OFFICER COCKERILL: Right.

6 MR. RANFT: Okay. Eleven months.

7 HEARING OFFICER COCKERILL: Yeah. This wasn't  
8 after the 2014 --

9 MR. RANFT: I'm sorry, prior. Thank you for  
10 correcting.

11 HEARING OFFICER COCKERILL: Prior.

12 THE WITNESS: Yes.

13 MR. RANFT: I'll readdress that.

14 BY MR. RANFT:

15 Q So Dr. Huene wrote this letter 11 months prior  
16 to the full release on 10-22-2015?

17 A '14.

18 Q 2014?

19 A Correct.

20 Q NAC 284.611, separation of medical, physical and  
21 emotional disorder, was the -- was the 10-22-2014 document  
22 used to be verified by the Employer?

23 A Yes.

24 MR. RANFT: No further questions.

25 HEARING OFFICER COCKERILL: Any other questions

1 of this witness?

2 MR. KEENE: I have nothing on recross. Thank  
3 you.

4 HEARING OFFICER COCKERILL: Okay. You're  
5 excused.

6 Next witness.

7 MR. RANFT: The Employee will call Kathy Zenor.

8 HEARING OFFICER COCKERILL: All right. Okay.  
9 If you could state your name and spell your last name.  
10 And I remind you that you're under oath.

11 THE WITNESS: Kathy Zenor, Z, as in zebra,  
12 E-N-O-R.

13 HEARING OFFICER COCKERILL: Proceed.

14

15 DIRECT EXAMINATION

16 BY MR. RANFT:

17 Q Kathy, can you please describe what you do  
18 currently?

19 A I'm a retired state employee, and I'm an admin  
20 assistant.

21 Q And how are you related to Chad?

22 A I'm his spouse.

23 Q Did your husband want -- did your husband --  
24 during this time of his process of going through treatment  
25 and during the injury, did he want to return to NDOT?

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1           A     Yes, he did.

2           Q     Did you attend your husband's appointments?

3           A     I attended every single doctor's appointment

4 starting in January of 2012 -- 2013 -- 2014, sorry.

5           Q     No problem.

6           A     My years are getting mixed up.

7           Q     I have the same -- me too.

8                   I'm going to hand you a document packet for

9 exhibits. Please turn to Exhibit 11, Page 1 and 2.

10          A     Uh-huh.

11          Q     What do you recall about this visit after you --

12                   MR. KEENE: I'm going to object. Mr. Zenor has

13 testified to this extensively.

14                   HEARING OFFICER COCKERILL: Yeah. What's the

15 relevance of this?

16                   MR. RANFT: Just to verify Mr. Zenor's

17 statements.

18                   HEARING OFFICER COCKERILL: Well, I mean, I got

19 the doctor's --

20                   MR. RANFT: Okay.

21                   HEARING OFFICER COCKERILL: -- release here and

22 the -- I'm really relying on the doctor's notes.

23                   MR. RANFT: Okay.

24                   HEARING OFFICER COCKERILL: Principally.

25                   MR. RANFT: Okay.



1 HEARING OFFICER COCKERILL: He doesn't have an  
2 ax to grind in this.  
3 BY MR. RANFT:  
4 Q Did you go -- were you -- during the times your  
5 husband had a full release, were you aware or were you  
6 there when Mr. Zenor, your husband, provided NDOT with  
7 those documents?  
8 A Yes, I was with him. We were very excited to  
9 turn that in that day.  
10 Q And that was on, specifically, 10-22 --  
11 A 10-22.  
12 Q -- 2014.  
13 A Yes, it was.  
14 Q Do you feel Chad was forced into vac rehab?  
15 MR. KEENE: Objection.  
16 HEARING OFFICER COCKERILL: Sustained.  
17 MR. RANFT: Take one second.  
18 BY MR. RANFT:  
19 Q Did your husband want to do voc rehab?  
20 A No. He wanted --  
21 MR. KEENE: Objection. Mr. Zenor has testified  
22 to this.  
23 HEARING OFFICER COCKERILL: Yeah. You know,  
24 Mr. Zenor signed the application for voc rehab, and he's  
25 testified that there's somebody that forced him. I heard

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1 it from that witness. So --

2 MR. RANFT: She's medically retired.

3 HEARING OFFICER COCKERILL: -- I'm kind of left  
4 with -- I mean, he signed this.

5 MR. RANFT: So at this time I have no further  
6 comments.

7 HEARING OFFICER COCKERILL: Okay. You're  
8 released.

9 THE WITNESS: Thank you.

10 HEARING OFFICER COCKERILL: Anybody else -- oh,  
11 excuse me. I'm sorry.

12 MR. KEENE: It's okay.

13 HEARING OFFICER COCKERILL: Cross-examination?

14 MR. KEENE: I don't have any. Thank you.

15 HEARING OFFICER COCKERILL: Okay. No  
16 cross-examination. Anybody going to call her anymore?

17 MR. RANFT: No.

18 HEARING OFFICER COCKERILL: You can sit in the  
19 hearing if you'd like, ma'am.

20 THE WITNESS: I can stay?

21 MR. RANFT: Yeah.

22 HEARING OFFICER COCKERILL: You can stay if  
23 you'd like, sure.

24 THE WITNESS: Oh, thank you.

25 MR. RANFT: At this time I'll call Tani

1 Consiglio, and I'll go get her.

2 HEARING OFFICER COCKERILL: Please have a seat  
3 there. And, ma'am, you were here when I had everybody  
4 raise their hand?

5 THE WITNESS: Yes.

6 HEARING OFFICER COCKERILL: Okay. So I remind  
7 you that you're under oath. If you could state your name  
8 and spell your entire name, please?

9 THE WITNESS: My name is Tani Consiglio. First  
10 name is T-A-N-I. Last name is C-O-N-S-I-G-L-I-O.

11 HEARING OFFICER COCKERILL: Thank you.

12 Proceed.

13 MR. RANFT: Thank you.

14

15 DIRECT EXAMINATION

16 BY MR. RANFT:

17 Q Consiglio -- Ms. Consiglio?

18 A Yes.

19 Q What agency -- not agency.

20 What insurance company do you work with?

21 A I work with CCMSI.

22 Q And what is your job title there?

23 A I'm the lost time workers' comp insurance  
24 adjuster.

25 Q And does CCMSI -- tell me the relationship with

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A App 0169

1 CCMSI and NDOT?

2 A We handle the State of Nevada accounts, and NDOT  
3 is a State of Nevada agency that we handle under the  
4 workers' comp.

5 Q And do you know -- are you familiar with a Chad  
6 Zenor case?

7 A Yes.

8 Q Can you -- I'm going to hand you a packet. This  
9 is the Employee exhibit packet. And can you please refer  
10 to Exhibit 9 -- correction, 7.

11 Can you please read it and take a few minutes  
12 to -- and I'll ask you the question, did Dr. Huene send  
13 you this document?

14 A Yes.

15 Q This was on 6-25-2014.

16 Can you -- when you take a second, can you refer  
17 to it, and then comment on this --

18 MR. KEENE: Objection. The document speaks for  
19 itself, and we've had a lot of testimony about this. I  
20 would ask for an offer of proof.

21 HEARING OFFICER COCKERILL: What is the  
22 relevance of this? I mean, we've got the --

23 MR. RANFT: The relevance --

24 HEARING OFFICER COCKERILL: We've got the -- the  
25 fact is is that the test was done in July. No matter who

1 wanted to have it or not have it, it was done. And it had  
2 certain findings. So what's the --

3 MR. RANFT: Okay.

4 BY MR. RANFT:

5 Q Do you -- taking this information, do you  
6 communicate with NDOT, specifically during that period,  
7 Diane Kelly?

8 A Yes.

9 Q Page 3 on Exhibit 7, did you receive this  
10 document?

11 A Yes.

12 Q And that was communicated to Diane Kelly as  
13 well?

14 A Yes.

15 Q Exhibit 9, on August 13, 2014, did you receive  
16 this document from Dr. Huene?

17 A Yes.

18 Q And then on Page 2 of the same exhibit, did you  
19 refer this -- did you receive this document?

20 A Yes.

21 Q And that was communicated to Diane Kelly?

22 A Correct.

23 Q Exhibit 10, this was 9-24-2014, and did you  
24 receive this document from Dr. Huene?

25 And you may take a second to read it.

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1 A Yes.

2 Q During this visit, this was a visit that was  
3 requested by CCMSI; is that correct?

4 A Was this a request -- service -- a request --

5 Q Was this doctor appointment requested by CCMSI?

6 A This is something that he would go in to see the  
7 doctor each time he had an aggravation of his wrist.

8 Q Now, can you read under History of Present  
9 Illness, where it says, halfway through the paragraph, "He  
10 comes in emergent today per the insurance company"?

11 MR. KEENE: Your Honor, I'm going to object. I  
12 don't know what this has to do with his separation.

13 MR. RANFT: The relevance of the communication.

14 HEARING OFFICER COCKERILL: Let's see if she  
15 knows what it means.

16 Do you know what that means?

17 THE WITNESS: No, I do not.

18 HEARING OFFICER COCKERILL: Okay. That takes  
19 care of that.

20 MR. RANFT: Okay.

21 BY MR. RANFT:

22 Q Can you read -- okay. So that's already been  
23 established. I will --

24 Did you receive this document and the second  
25 page document, or Exhibit 10?

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1 A Yes.

2 Q On Exhibit 11, Pages 1 and 2, on 10-22-2014,  
3 from Dr. Huene, can you please review those and see if you  
4 received those documents.

5 A Yes.

6 Q Can you -- and did you relay this information to  
7 NDOT?

8 HEARING OFFICER COCKERILL: When did she receive  
9 it?

10 MR. RANFT: On 10-22 it would have been faxed.

11 HEARING OFFICER COCKERILL: That hasn't been  
12 established.

13 MR. RANFT: Okay.

14 BY MR. RANFT:

15 Q Did you receive this document on 10-22-2014?

16 A That, I could not tell you.

17 Q What is the process for a doctor to -- for,  
18 like, Dr. Huene, what is the process for him to provide  
19 you these documents?

20 A Either he would mail them or he would fax -- his  
21 office would fax it over.

22 Q And you received this document.

23 A I couldn't --

24 Q And then what did you --

25 MR. KEENE: Objection. Let the witness answer

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1 the question.

2 MR. RANFT: Okay.

3 BY MR. RANFT:

4 Q Did you receive the document?

5 MR. RANFT: She shook her head. I'm sorry.

6 THE WITNESS: Yes.

7 BY MR. RANFT:

8 Q What did you do when you received this document?

9 A We went ahead and filed the claim, filed it  
10 away.

11 Q Filed -- can you elaborate on that?

12 A Okay. We filed it away as we understood that he  
13 was given full-duty restrictions based on this date.  
14 However --

15 Q Full duty -- I'm sorry. You said full-duty  
16 restrictions?

17 A Full-duty restrictions.

18 Q Okay.

19 A Released to full duty.

20 Q Okay.

21 A Released to full duty.

22 Q And does he have restrictions?

23 A No, not on this one.

24 Q And would you have contacted NDOT?

25 A That -- I do not know if I did contact DOT on

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1 this one.

2 Q Okay.

3 A Mr. Zenor also has a responsibility of providing  
4 that information to his employer.

5 HEARING OFFICER COCKERILL: Who? Mr. who?

6 THE WITNESS: Mr. Zenor.

7 HEARING OFFICER COCKERILL: Okay.

8 MR. RANFT: Okay.

9 BY MR. RANFT:

10 Q And what is the process for an employee when  
11 they receive a full-duty release without restriction?  
12 What is the process of CCMSI?

13 A Go ahead and terminate any benefits if he is on  
14 benefits, TTD benefits, and then he just goes ahead and,  
15 you know, goes to his employer for his job.

16 Q Is it the responsibility of the workers' comp  
17 insurance, which in this case is CCMSI, and NDOT,  
18 Employer, to try their hardest to return the employee back  
19 to work?

20 A It is our job to make sure -- try to get the  
21 injured worker back to work if possible.

22 Q If they have a full-duty release with no  
23 restrictions, does an employee return to work?

24 A Yes.

25 Q Why did you send Mr. Zenor to -- this is -- I'm

1 only asking this question because the State asked a lot of  
2 voc rehab -- vocational rehab questions.

3 Why did the -- why did CCMSI send Mr. Zenor to  
4 voc rehab when there was a full release?

5 HEARING OFFICER COCKERILL: Well, let's get a  
6 time frame.

7 MR. RANFT: Okay.

8 HEARING OFFICER COCKERILL: I mean, when --

9 MR. RANFT: Okay.

10 BY MR. RANFT:

11 Q On 10-22 --

12 HEARING OFFICER COCKERILL: Because it sounded  
13 to me like he was referred to voc rehab before this, but  
14 I'm not sure.

15 MR. RANFT: Okay, so I can -- let me rephrase  
16 the question.

17 BY MR. RANFT:

18 Q On September 1st, 2014, did CCMSI refer  
19 Mr. Zenor to voc rehab?

20 A Yes.

21 Q Was that prior to --

22 HEARING OFFICER COCKERILL: What was the date?

23 MR. RANFT: September 1st, 2014.

24 HEARING OFFICER COCKERILL: '14.

25 ///

1 BY MR. RANFT:

2 Q Was that prior to him being MMI and stationary  
3 and ratable?

4 A Yes -- at the -- yes.

5 Q Did you have any discussions with Dr. Huene?

6 A We a nurse case manager that would go to each  
7 appointment with Dr. Huene and Chad Zenor's appointments,  
8 and she would get back with us with regards to what was  
9 entailed at that appointment.

10 Q There was a round table approximately August of  
11 2014. Was it founded in that meeting that the September  
12 1st, 2014 vocational rehab request was premature?

13 A No.

14 Q Was there -- and I'll -- let me just -- please  
15 bear with me.

16 Please refer to Exhibit No. 18 on September 1st,  
17 2014, is the date of the letter.

18 A Okay.

19 Q Please refer to -- and just for the record, this  
20 is Exhibit 18, moving on to Exhibit 19.

21 You testified saying that there was not a  
22 premature request for vocational rehab. On the Exhibit 19  
23 on October 22nd, is this not the exact same letter with a  
24 new date?

25 A Yes.

1 Q Does this happen to be on the exact same day  
2 that Mr. Zenor was released to --

3 HEARING OFFICER COCKERILL: I'm sorry. What  
4 page are you on?

5 MR. RANFT: Page 19, Exhibit --

6 HEARING OFFICER COCKERILL: All right.  
7 Exhibit 19? Okay.

8 MR. RANFT: Exhibit 19, Page 1.

9 HEARING OFFICER COCKERILL: Okay.

10 BY MR. RANFT:

11 Q This letter is dated October 22nd, 2014?

12 A Um-hmm.

13 Q Can you please refer back to Exhibit 11 and tell  
14 me the date of 1 and 22, Exhibit 11, Pages 1 and 2.

15 A Yes.

16 Q How would Adler Voc Rehab get that information  
17 so quick?

18 A She was -- she was the rehab counselor at the  
19 round table. At the time that we had the round table, he  
20 kept on aggravating. He did do the FCE. He did the round  
21 table. And at that time he thought he would be done, but  
22 he was not at that -- and we went ahead and he continued  
23 to treat with Dr. Huene after that.

24 Q And that FCE was done on July 21st, 2014?

25 A Correct.

1 Q And were those recommendations permanent?  
2 A Yes.  
3 Q Can you please go to Exhibit 4, Page 2 through  
4 7, and direct me to anywhere on this document that shows  
5 permanent.  
6 A He's at light/medium -- oh. The first page,  
7 Number 2, on the FCE results and summary, "He's at a  
8 light/medium level work classification, according to U.S.  
9 labor standards. See below specific regarding lifting  
10 results."  
11 And it also indicates above that, "Based on the  
12 job description as a highway maintenance worker, patient  
13 did not demonstrate the ability to safely perform physical  
14 demands of the preinjury job due to the following physical  
15 demands."  
16 Q Okay. Again, does it state permanent --  
17 A Not --  
18 Q -- on in document?  
19 A -- on this, no.  
20 Q Was there a chance that --  
21 MR. KEENE: I'm sorry, can we get a --  
22 HEARING OFFICER COCKERILL: She said yes.  
23 MR. KEENE: Counsel is speaking over so fast,  
24 I --  
25 MR. RANFT: I'm sorry.

1 HEARING OFFICER COCKERILL: I heard her say  
2 that, yes, she agreed --

3 MR. RANFT: Okay. I will slow down.

4 HEARING OFFICER COCKERILL: -- that the  
5 document, the FCE, does not say that those restrictions  
6 are permanent; is that correct?

7 THE WITNESS: correct.

8 BY MR. RANFT:

9 Q Would it be fair to say that Mr. Zenor could  
10 improve?

11 A I could say yes.

12 Q Did Dr. Huene say yes?

13 A He said that it'd take a while for him to  
14 improve, but yes, he'd eventually improve to full duty.

15 Q And he was fully released with no restrictions?

16 A As of -- looks like this October is it.

17 Q October 22nd, 2000 --

18 A -- 22nd, 2010.

19 Q '14?

20 A '14, sorry.

21 Q That's okay.

22 Please refer to Exhibit 23 -- I'm sorry,

23 Exhibit 21, Page 23.

24 HEARING OFFICER COCKERILL: Wait. Exhibit 21,

25 Page 20 --

1 MR. RANFT: Exhibit 21.

2 HEARING OFFICER COCKERILL: Page 23, okay.

3 MR. RANFT: Page 23.

4 BY MR. RANFT:

5 Q Can you -- before we go into the actual  
6 notation, can you explain where this document came from?

7 A This is our -- this is from our computer, our  
8 case log.

9 Q And is this written by you?

10 A Yes.

11 Q On the very last -- the very last paragraph,  
12 there's a -- appears to be an e-mail, copy of an e-mail,  
13 from your files, your case logs, from Diane Kelly, do you  
14 see that, dated September 29, 2014, on Page 23?

15 It's the very last paragraph --

16 A Oh.

17 Q -- from Diane Kelly --

18 A Um-hmm.

19 Q -- to you, dated September 29, 2014.

20 A Um-hmm.

21 Q Can you please read what Diane Kelly stated to  
22 you on this date?

23 A "We're standing by the FCE results. Dr. Huene  
24 states he signed off on FCE. Subsequent, Mr. Zenor was  
25 referred to voc rehab as appropriate and he needs to be

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1 working with Debra Adler in an active ongoing matter to  
2 pursue other career options available through voc rehab.  
3 Mr. Zenor does not seem to have any trouble whatsoever  
4 riding around on his new Harley. Last time I checked, it  
5 takes quite a bit of wrist action and strength to operate  
6 these motorcycles."

7 Q And any documents that you received within a few  
8 months of that date, did he have any restrictions that  
9 prevented him to ride a motorcycle?

10 A After the date or prior?

11 Q Or prior to the date.

12 A He had a --

13 Q Prior just two months prior to the date.

14 A Yeah.

15 Q Two.

16 A The FCE indicated that he could not do certain  
17 activities.

18 Q Okay. Two months prior to the date -- let's  
19 refer back to Exhibit 9 -- I'm sorry, Exhibit 10. We can  
20 even go back. Let's see, this is September.

21 Yeah. So Exhibit 10, Page 1 and 2, on  
22 9-24-2014, this is four -- this is -- this is -- this is  
23 five --

24 MR. KEENE: Your Honor, can I ask for --

25 ///



1 BY MR. RANFT:

2 Q -- five days --

3 MR. KEENE: Where are we going with this and  
4 what does this have to do with separation under 611?

5 MR. RANFT: This has --

6 MR. KEENE: This is --

7 HEARING OFFICER COCKERILL: Well, I think what  
8 they're trying to show is that, first of all, by this  
9 e-mail from Diane Kelly, that the Employer's disregarding  
10 anything that Dr. Huene says.

11 MR. KEENE: Well, then they could have appealed  
12 that to workers' comp. It doesn't have anything to do  
13 with the separation under 611.

14 HEARING OFFICER COCKERILL: Well --

15 MR. KEENE: This isn't a workers' comp hearing.

16 HEARING OFFICER COCKERILL: That's your  
17 position. Objection's overruled.

18 Proceed.

19 BY MR. RANFT:

20 Q So this question is simply regarding --

21 HEARING OFFICER COCKERILL: The employee doesn't  
22 get these notes.

23 MR. RANFT: No.

24 HEARING OFFICER COCKERILL: I mean, how would  
25 they -- how would the employee know to appeal this?

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1 MR. KEENE: He could have appealed the FCE if he  
2 didn't agree with it, but he never did that.

3 HEARING OFFICER COCKERILL: There's no reason to  
4 appeal the FCE. It's going through the process with his  
5 doctor, and his doctor more agreed with the FCE, then  
6 releases him to full work. I mean --

7 MR. KEENE: Well, then he --

8 HEARING OFFICER COCKERILL: -- the employee's  
9 not going to know about this e-mail.

10 So proceed.

11 BY MR. RANFT:

12 Q September 29, 2014, this e-mail --

13 HEARING OFFICER COCKERILL: What exhibit are we  
14 on?

15 MR. RANFT: So we're referencing a day from  
16 Exhibit 21, Page 23, an e-mail dated September 29th.

17 BY MR. RANFT:

18 Q On 9-24, just a few days prior to that, on  
19 referencing Pages 1 and 2 of Exhibit 10 -- let's turn to  
20 Exhibit 10. And I'll just ask a simple question.

21 Was Mr. Zenor released to full duty without  
22 restriction on these dates -- on this date?

23 A No, because he had a restriction of using the  
24 brace.

25 Q And that is -- what does "PRN" stand for?

1           A     As needed, if necessary.

2           Q     Please refer back to Exhibit 9, two months

3 prior. On Pages 1 and 2, specifically Page 2 of

4 Exhibit 9, what is checked off on that date?

5           A     Brace.

6           Q     I'm sorry, released to full duty. Can you

7 please -- what is the X on there?

8           A     What's --

9           Q     Can you please --

10           HEARING OFFICER COCKERILL: We've gone through

11 this.

12           MR. RANFT: Okay.

13           HEARING OFFICER COCKERILL: I don't know what --

14           MR. RANFT: I'm just -- with her. I'm just

15 trying to show her --

16           HEARING OFFICER COCKERILL: Does --

17           MR. RANFT: She said that she had -- that he had

18 a restriction and he couldn't ride a motorcycle. My

19 foundation here is clearly that not only did Dr. Huene put

20 him on full duty without restriction, as brace is needed,

21 but he wanted him to use his -- he wanted him to use his

22 wrist, not only at home, but at work. That's the case.

23           So I will continue.

24 BY MR. RANFT:

25           Q     Are you familiar with the NACs and NRSSs that

1 reference the process of CCMSI, what they have to follow?  
2 A To a point, yes.  
3 Q During the October 22nd, 2014 document that --  
4 there's a 90-day period of assessment with voc rehab; is  
5 that correct?  
6 A The 60-day program development.  
7 Q So there's an assessment process?  
8 A Uh-huh.  
9 Q Was Dr. Huene's 10-22-2014 full release taken  
10 into consideration?  
11 A At the round table?  
12 Q No. At the -- during this assessment when  
13 you're working with Adler Voc Rehab?  
14 A No.  
15 Q You guys used the 7-21-2014 FCE?  
16 A Yes.  
17 MR. RANFT: No further questions.  
18 HEARING OFFICER COCKERILL: Cross?  
19 MR. KEENE: Thank you.  
20  
21 CROSS-EXAMINATION  
22 BY MR. KEENE:  
23 Q Now, we've heard a lot of reference to this  
24 10-22-14 note. And you said it was filed with the claim;  
25 is that correct?

1           A     Yes.

2           Q     Okay. You also testified that you try to return  
3 people to work is possible; correct?

4           A     (No audible response).

5           Q     In this instance, after you received this note,  
6 why didn't you return Mr. Zenor to work?

7           A     It was thought that the FCE that he had prior to  
8 that showed what the real restrictions -- or what he can  
9 and can't do with regards to his job. The release to full  
10 duty was initially with the brace.

11                     However, in reviewing his EJF and the  
12 restrictions that -- Back In Motion, it appeared that he  
13 didn't -- could not return back to that preinjury job.

14           Q     And was that functional capacity exam signed off  
15 on by Dr. Huene?

16           A     Yes.

17           Q     Did he file any objections to that?

18           A     Yes..

19           Q     What were the objections he filed to it?

20           A     He just didn't agree. He felt that Mr. Huene  
21 will eventually return back to full duty.

22           Q     Okay. But he still signed it?

23           A     Yes, he did.

24           Q     Okay. Could Dr. Huene have refused to sign that  
25 document?

1           A     Yes.

2           Q     And what would have been the consequence if he  
3 refused to sign it?

4           A     That we would just go ahead and go forward with  
5 the claim. And if it came to full duty, he was full duty.  
6 There was -- actually, that's it.

7           Q     Okay. So this round table that occurred, what  
8 happens at the round table?

9           A     The round table, it --

10           HEARING OFFICER COCKERILL: First of all, the  
11 round table, that's in August of 2014; right?

12           THE WITNESS: Right.

13           HEARING OFFICER COCKERILL: That's before --  
14 that's after the FCE, and that's before the doctor does a  
15 full release to work; right?

16           THE WITNESS: Right.

17           HEARING OFFICER COCKERILL: And you were at that  
18 round table.

19           THE WITNESS: Correct.

20           HEARING OFFICER COCKERILL: Okay.

21           THE WITNESS: Okay.

22 BY MR. KEENE:

23           Q     So this is about a year after Mr. Zenor injured  
24 his wrist; correct?

25           A     Um-hmm.

1 Q And what is discussed at this round table in  
2 August of 2014?

3 A At the time we thought Mr. Zenor was going to be  
4 MMI.

5 Q What does that mean?

6 A Max medically improved.

7 However, it was discussed with regards to his  
8 functional capacity evaluation as when he provided that  
9 information to Diane Kelly about working full duty with a  
10 brace, those are restrictions that we -- those were  
11 considered a restriction, not a full-duty release.

12 So it was decided that we'd do an FCE to  
13 determine precautionary and also determine the permanent  
14 limits, if he could do that job. It was found out that he  
15 would not be able to return to back to -- will be able not  
16 to do his preinjury job, and so we went ahead and sent out  
17 a permanent restriction letter and round table is  
18 discussed with regards to if the Employer can provide a  
19 permanent light-duty position for him.

20 And there was -- certain people are at this  
21 round table, which includes the employer, the insurance  
22 company, the rehab counselor, and also the risk management  
23 for the State of Nevada. And at this round table, the  
24 functional capacity evaluation was reviewed, and it was  
25 requested from the Employer if they could provide. And

1 Diane Kelly indicated, no, she could not -- they could not  
2 provide a permanent modified duty based on this functional  
3 capacity evaluation.

4 So it was -- Debra Adler had, you know, at that  
5 time started 60-day plan development, and it's discussed  
6 with regards to vocational rehab to get a job for  
7 Mr. Zenor that he can do within the restrictions given.

8 HEARING OFFICER COCKERILL: But there are no  
9 restrictions on 10-22.

10 MR. KEENE: Right. But at the time of the round  
11 table --

12 HEARING OFFICER COCKERILL: I'm having a hard  
13 time with that. I mean, you're testifying that you all  
14 were given precedence to the FCE. That was not performed  
15 by a doctor, but was signed off by a doctor. But then  
16 when the doctor that really is the supervising physician  
17 that works for you guys, essentially, Dr. Huene, he says  
18 that he's released with full restrictions, and that's  
19 totally ignored. That's your testimony; right?

20 THE WITNESS: We did not use the 10-22.

21 HEARING OFFICER COCKERILL: You ignored it is my  
22 understanding.

23 THE WITNESS: Mr. Huene -- or Mr. Zenor  
24 requested that he have an FCE twice, both to Michelle  
25 Green and to Diane Kelly.



1 HEARING OFFICER COCKERILL: I'm not asking about  
2 that. I've got two notes here that -- the 10-22-14 voc  
3 rehab letter -- so we've got two things on 10-22-14.  
4 We've got the full release, and we've got a new letter for  
5 voc rehab that starts the new 90 days.

6 And you testified that during that 90-day  
7 period, Dr. Huene's release was not considered; right?

8 THE WITNESS: (No audible response).

9 HEARING OFFICER COCKERILL: And you were asked  
10 on cross why not return him to work, and you said because  
11 the FCE said he had restrictions. But at that point you  
12 had the 10-22 full release.

13 I mean, when is a full release a full release?  
14 I mean, couldn't you have gone back to Dr. Huene and said,  
15 hey, are you sure, you know, can you do -- nobody did  
16 that; right? I mean, there was no contact with Dr. Huene  
17 after he issued his 10-22 release.

18 THE WITNESS: No.

19 HEARING OFFICER COCKERILL: Do you know why?

20 THE WITNESS: We were -- no.

21 HEARING OFFICER COCKERILL: Everybody was  
22 focused on the FCE; is that right?

23 THE WITNESS: (No audible response).

24 HEARING OFFICER COCKERILL: Okay.

25 MR. KEENE: If I could continue.

1 HEARING OFFICER COCKERILL: Yeah. I mean, I  
2 have one other question for -- this e-mail -- this e-mail  
3 is from -- who's Diane Kelly?

4 THE WITNESS: She's with NDOT. She's the  
5 liaison person over there that we work with at HR workers'  
6 comp.

7 HEARING OFFICER COCKERILL: So it was her that  
8 told you that Employer's standing by the FCE results  
9 regardless of what Dr. Huene states, and he states --  
10 signed off FCE. That was sent to you; right?

11 THE WITNESS: Um-hmm.

12 HEARING OFFICER COCKERILL: Okay. Continue.

13 BY MR. KEENE:

14 Q And is Dr. Huene the final decision maker as  
15 regard to Mr. Zenor's wrist?

16 A No. It was felt that due to his capabilities of  
17 the functional capacity evaluation, the possibility of  
18 reinjury, it was requested that the Employer -- or the  
19 Employer had asked the FCE. And in looking at the  
20 examination, it was requested an FCE be done.

21 And we asked Dr. Huene if he disagreed or not.  
22 He could, you know, either sign off or not, but he went  
23 ahead and signed it due to continued little simple acts,  
24 you know. Mr. Zenor continued to treat with Dr. Huene  
25 until he was found MMI in October.

1 Q So Dr. Huene wasn't happy about it but he still  
2 signed the FCE?

3 A Correct.

4 Q Okay. And then he tells you in October that in  
5 his opinion Mr. Zenor can return to work; right?

6 A Uh-huh. Yes.

7 Q And then I want to ask you about this evaluation  
8 done by a Dr. Rovetti in November of 2014.

9 Are you familiar with that?

10 A That was the PPD rating?

11 Q No. Why did Mr. Zenor go see Dr. Rovetti?

12 A Because it was found that he has a residual  
13 impairment as a result of his industrial injury to his  
14 wrist.

15 Q And who said he had a residual impairment?

16 A Dr. Huene.

17 Q So you're stating that despite Dr. Huene giving  
18 Mr. Zenor a full release, he still said Mr. Zenor has  
19 residual impairment?

20 A Yes.

21 Q Now, is Rovetti the final say on whether  
22 Mr. Zenor is cleared to return to his previous employment?

23 HEARING OFFICER COCKERILL: Dr. Rovetti doesn't  
24 have anything to do with him returning to his previous  
25 employment.

1 MR. KEENE: That's what I'm asking.

2 HEARING OFFICER COCKERILL: Dr. Rovetti only has  
3 to deal with the rating on some money that he's going to  
4 get.

5 MR. KEENE: Well, that's not completely  
6 accurate, because he conducted a physical examination of  
7 him and found he had limitations to his wrist.

8 HEARING OFFICER COCKERILL: That's not what  
9 284.611(1)(a) is talking about. It's talking about you  
10 either verify with the employee's physician, who would be  
11 Dr. Huene, or by an independent medical evaluation paid  
12 for by the independent -- by the appointing authority.

13 Dr. Rovetti wasn't retained to do that. I mean,  
14 the State, it looks like, it had an opportunity to get it  
15 from the employee's physician, which they did. That's the  
16 10-22 release. The State could have gone over Dr. Huene's  
17 head, I think, under this statute and gotten an  
18 independent medical evaluation. Doesn't appear to me that  
19 they did that.

20 MR. KEENE: I don't think we're quite there yet,  
21 though.

22 HEARING OFFICER COCKERILL: Okay.

23 MR. KEENE: So I'm going to continue with my --

24 HEARING OFFICER COCKERILL: You may --

25 MR. KEENE: -- cross, if that's okay.

1 HEARING OFFICER COCKERILL: Okay. Certainly.

2 BY MR. KEENE:

3 Q So, ma'am, what was the purpose of sending  
4 Mr. Zenor to see Dr. Rovetti?

5 A He was to see if he was, you know, stable and  
6 rateable so he can have a residual impairment.

7 Q And he found there was a residual impairment?

8 A Yes.

9 Q Now, at some point Mr. Zenor was assigned to  
10 start vocational rehab; correct?

11 A Correct.

12 Q And do you know approximately when that was?

13 A After he was found MMI, we went ahead and  
14 started the vocational rehab process --

15 Q Okay.

16 A -- again.

17 HEARING OFFICER COCKERILL: What is "MMI"?

18 THE WITNESS: Oh. Maximum medically improved.

19 Sorry.

20 HEARING OFFICER COCKERILL: Thanks.

21 BY MR. KEENE:

22 Q And this was -- this voc rehab occurred after  
23 Mr. Zenor had received the note on 10-22; correct?

24 A Yes.

25 Q If you had a full release allowing Mr. Zenor to

1 return to work, why would you put him through vocational  
2 rehab?

3 A We wouldn't have. But the reason why is he --  
4 it was found that per the Employer they did not -- could  
5 not offer a permanent position, and at that time we were  
6 going by the FCE in which -- his job.

7 Q So if Mr. Zenor had a release on 10-22-14 saying  
8 he could return to work fully and it was presented to you,  
9 why didn't that slam the brakes on voc rehab?

10 A It should have, yes.

11 MR. KEENE: Thank you. I don't have any other  
12 questions.

13 HEARING OFFICER COCKERILL: Any other questions?

14 MR. RANFT: Yes. Thank you.

15

16 REDIRECT EXAMINATION

17 BY MR. RANFT:

18 Q Through your own testimony, during the round  
19 table approximately in August 2014, you stated that the  
20 employee -- it was discovered the employee was not MMI; is  
21 that correct?

22 A Correct.

23 Q And a round table is required by law?

24 A Once we get information that we have an FCE and  
25 there's indication that there is possible permanent

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1 restrictions, then, yes, we go ahead and send out a  
2 restriction letter.

3 Q Was a new round table date ever provided?

4 A No. At the time when we had the round table,  
5 Mr. Zenor went back in for medical treatment, so we put  
6 the stop on going forward with vocational rehab until he  
7 had finished that treatment.

8 Q Prior to voc rehab, is a round table required by  
9 law?

10 A Not necessarily, no.

11 MR. RANFT: May I have a moment?

12 HEARING OFFICER COCKERILL: Sure.

13 BY MR. RANFT:

14 Q And while I'm looking at something real quick,  
15 is it normal for a State employee -- not normal.

16 Has it happened where a State employee, in your  
17 experience as a CCMSI, workmen's comp claims -- lost time  
18 claims representative, has an employee received a rating  
19 and gone back to work in their preexisting position,  
20 preexisting injury position, without restriction?

21 And I could repeat that if you would like?

22 A Yes. Go ahead, please.

23 Q So have you seen a State employee that has  
24 received a rating and returned to their preinjury  
25 position?

1 A Yes.

2 Q Is that common?

3 A Yes.

4 MR. RANFT: If you'll just please allow me a few  
5 more minutes, that would be great.

6 HEARING OFFICER COCKERILL: Sure.

7 MR. RANFT: Thank you.

8 I will just -- there's something I can't find.  
9 I have no further questions. Thank you.

10 HEARING OFFICER COCKERILL: Okay. Any others?

11 MR. KEENE: Nothing along recross.

12 HEARING OFFICER COCKERILL: Okay. All right.

13 Just one. You testified regarding Employee's  
14 Exhibits 18 and 19 are letters, voc rehab letters?

15 THE WITNESS: Um-hmm.

16 HEARING OFFICER COCKERILL: Are you involved in  
17 the voc rehab at all?

18 THE WITNESS: Am I involved? I do discuss  
19 the --

20 HEARING OFFICER COCKERILL: Okay.

21 THE WITNESS: -- voc rehab program.

22 HEARING OFFICER COCKERILL: Can you just provide  
23 her the --

24 MR. RANFT: Yeah.

25 HEARING OFFICER COCKERILL: -- 18.



1 MR. RANFT: Exhibit 19, 18 and 19?

2 HEARING OFFICER COCKERILL: Yeah. If you'd just  
3 look at Exhibit 19, Page 2 of that letter, it references  
4 an NRS 616C.601.

5 What is that for, if you know?

6 THE WITNESS: This is --

7 HEARING OFFICER COCKERILL: This is the letter  
8 to Mr. Zenor; right? What it says is, "Anyone who rejects  
9 a suitable program of vocational rehabilitation which is  
10 offered to him rejects employment which is within the  
11 limitations."

12 What is the purpose of that?

13 THE WITNESS: That's if a person has -- if he --  
14 there's a job out there that is within his limitations  
15 prescribed but he rejects the position that is given to  
16 him, he's not eligible for vocational rehabilitation or  
17 his benefits can be subject to suspension.

18 HEARING OFFICER COCKERILL: So if one -- so  
19 Mr. Zenor, basically, if he doesn't sign up for this  
20 thing, then he basically waives it; is that right?

21 THE WITNESS: Well, he could --

22 HEARING OFFICER COCKERILL: Or if he doesn't  
23 follow through on it.

24 THE WITNESS: If he disagreed with going forward  
25 with his vocational, he could have appealed this.

1           HEARING OFFICER COCKERILL: Maybe counsel can  
2 just help me. When I look at the statutes that were  
3 provided by in Exhibit 27, I don't see that statute. But  
4 maybe I'm just missing it, or maybe it's misnumbered or  
5 something. The statutes that were provided by Mr. Ranft  
6 stops at NRS 616C.600.

7           MR. KEENE: I don't know. This is the workers'  
8 compensation statute. It's not anything to do with  
9 termination of a State employee.

10           HEARING OFFICER COCKERILL: Right. But  
11 Mr. Zenor testified that Ms. Adler basically told him that  
12 if he didn't sign the document in whenever it was, that he  
13 would be out of luck.

14           MR. KEENE: Well, then he could have appealed  
15 that through workers' compensation. If he didn't like the  
16 program offered or a job that was being offered, he could  
17 have appealed the workers' compensation.

18           HEARING OFFICER COCKERILL: Okay. But the  
19 statute isn't -- okay. Maybe it's just a typo in the  
20 letter. I don't know.

21           MR. KEENE: Well, the 600 stat- -- that whole  
22 600 series is under industrial relations, benefits for  
23 injuries or death.

24           HEARING OFFICER COCKERILL: Right. But if you  
25 go to the pages -- I don't think -- I don't think that

1 Mr. Ranft deleted section 601.

2 MR. KEENE: I don't think he did either.

3 HEARING OFFICER COCKERILL: It's not in the  
4 statute.

5 MR. KEENE: But what I'm saying is, that  
6 provision has to do with workers' compensation.

7 HEARING OFFICER COCKERILL: Right.

8 MR. KEENE: It doesn't have anything to do with  
9 being a State employee. So under this, if he felt there  
10 was a problem with the voc rehab offered, he should have  
11 appealed it under workers' compensation. He shouldn't be  
12 here trying to get --

13 HEARING OFFICER COCKERILL: That's an option.  
14 Okay. I was just trying to clear up the statutes. Thank  
15 you.

16 Thank you very much, ma'am. You're excused.

17 Any other witnesses?

18 MR. RANFT: Can I have one moment, do you mind?

19 Can I take a two-minute break?

20 HEARING OFFICER COCKERILL: Why don't we take --  
21 why don't we take five minutes and see if you've got any  
22 other witnesses. Mr. Keene, if you've got any rebuttal,  
23 get that lined up, and then -- so we keep this thing  
24 moving.

25 MR. RANFT: Okay.

1 MR. KEENE: Sure.

2 HEARING OFFICER COCKERILL: Perfect. Thank you..

3 (Recess)

4 HEARING OFFICER COCKERILL: Okay. The record  
5 will reflect we took about a five-minute break, and we're  
6 back on the record about 2:21.

7 Next witness, Mr. Ranft?

8 MR. RANFT: Charlie, at this time we would like  
9 to not call any more witnesses and go ahead and close.

10 HEARING OFFICER COCKERILL: Okay. So the  
11 Employee rests?

12 MR. RANFT: Employee does rest.

13 HEARING OFFICER COCKERILL: There was one other  
14 witness that you had indicated that you might call, so  
15 you're not calling Ms. King?

16 MR. RANFT: Yeah. Through discussion, her prior  
17 testimony, was asked and answered.

18 HEARING OFFICER COCKERILL: Okay. So the record  
19 will show that Employee rests.

20 Does the State have any further evidence?

21 MR. KEENE: Yes, I'd like to bring back Ms. King  
22 as a rebuttal witness.

23 HEARING OFFICER COCKERILL: There we go. She's  
24 up.

25 MR. RANFT: Makes it easy.

1 HEARING OFFICER COCKERILL: Okay. So that was  
2 gratuitous. That's Kimberly King, is it?

3 MR. KEENE: Correct.

4 HEARING OFFICER COCKERILL: Okay.

5 MR. KEENE: K-I-N-G.

6 HEARING OFFICER COCKERILL: Ms. King, I just  
7 remind that you're still under oath. You're being  
8 recalled as a rebuttal witness by the State.

9 Just state your name and spell your last name,  
10 though?

11 THE WITNESS: Kimberly King, K-I-N-G.

12 HEARING OFFICER COCKERILL: Thank you.

13 Proceed.

14

15 FURTHER EXAMINATION

16 BY MR. KEENE:

17 Q Ms. King, you were aware of a note from a  
18 Dr. Huene dated in October of 2014 that purported to allow  
19 Mr. Zenor to return to work with a full release; correct?

20 A Yes.

21 Q What did you do when you received that letter?

22 A I didn't specifically receive it. I looked at  
23 it later when I was going through the process of the  
24 separation.

25 Q Okay. And why didn't you return him to work

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1 when you saw that letter?

2 A I wasn't just looking at that letter. I had to  
3 look at the workers' comp file. Mr. Zenor had a workers'  
4 comp claim. It was figured out in that arena. It's a  
5 workers' comp case. So during that period of time, they  
6 are first trying to rehabilitate him, trying to get him  
7 back to work. If that doesn't work, they have to figure  
8 out what else to do.

9 In this case, they did the whole round table of  
10 determining that he can't go back to his previous  
11 position. He was placed into a voc rehab program, and  
12 that's all part of the file. I wasn't looking at just one  
13 document. I'm looking at what happened for a year.

14 He was off from work. He kept reaggravating his  
15 wrist. We have the FCE. We then have this release that  
16 made no sense whatsoever to all of a sudden happen. But  
17 in the file, there's also the documentation that says, no,  
18 he can't go back to work. He signed it. He says he can't  
19 go back as a highway maintenance worker. His doctor signs  
20 he cannot go back as a highway maintenance worker.

21 Because of that, that's the only reason he got  
22 placed into voc rehab. He was put into a voc rehab  
23 program to rehabilitate him because he couldn't go back.  
24 He paid thousands of dollars to rehabilitate him so he  
25 could find a different form of employment.

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1           The file shows -- and again, this is workers'  
2   comp, and he had the ability to appeal at any time during  
3   that process if he didn't like a decision a doctor made,  
4   if he didn't want the voc rehab, you know, whatever  
5   benefits he didn't want. He had the opportunity at that  
6   point.

7           But the final decision is he can't go back to  
8   work. We pay for his voc rehab. We paid thousands of  
9   dollars. Why would we do that if he could come back to  
10   work? And again, that's all in the voc re- -- or the  
11   workers' comp arena where he had appeal rights.

12           This is not the -- I don't believe that this is  
13   proper arena for him to be looking at his voc -- or his  
14   workers' comp.

15           Q     Thank you.

16           MR. KEENE: I don't have any further questions.

17           HEARING OFFICER COCKERILL: Do you have any?

18           MR. RANFT: Yes, thank you.

19

20                       FURTHER EXAMINATION

21   BY MR. RANFT:

22           Q     Under NA -- I'll provide this to you.

23                       Under NAC 284.611, Section A, prior to the  
24   medical separation, specifically, under NAC 284.611,  
25   Section 1(a), did you have a clear -- I don't have it in

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1 front of me, so I'm kind of -- I'm sorry. I should have  
2 two copies.

3 This is the State's copy, 0008, and can you  
4 please read (1)(a)?

5 A "Verify with the employee's physician or an  
6 independent medical evaluation paid for by the appointing  
7 authority that the condition does not, or is expected to,  
8 respond to treatment or that an extended absence from work  
9 will be required."

10 Q And was there a verification process that you  
11 used during this medical separation?

12 A Again, he was on a workers' compensation case.  
13 He was out from work for over a year. That would be an  
14 extended period of time. His doctor signed off at the  
15 very end of the process that he cannot go back to being a  
16 highway maintenance worker in December.

17 Q Specifically for the process of medical  
18 separation, can you please -- I'm going to hand you the  
19 Employee exhibit packet.

20 Was there a letter written December 31st -- and  
21 going to take me one second to find it.

22 HEARING OFFICER COCKERILL: It's State 005. I'm  
23 not sure what it is under the Employee's --

24 MR. RANFT: Yeah, that's fine.

25 ///



1 BY MR. RANFT:

2 Q Is this the document that you used for medical  
3 separation -- your employee used that was cc'd to you for  
4 medical separation?

5 A This is a standard letter that we normally use.  
6 It's -- we hardly ever have a workers' compensation -- a  
7 person under that program go through this process.  
8 Usually they resign and it's a pretty easy process to  
9 separate them.

10 In this case, we used the standard letter. When  
11 I -- when Mr. Zenor responded back that he had a full  
12 release, that's when I went, ooh, let's see what's going  
13 on. And I looked at the full file, and that's when I  
14 looked at the encompassed whole workers' compensation file  
15 and said, we already have the doctor's information saying  
16 that he can't come back to work.

17 And at the same time I could take a look at it  
18 and saw there was a round table. When they go through the  
19 round table with workers' comp, they verify that they  
20 can't come back to work. They verify that they get the  
21 voc rehab benefits, which Mr. Zenor has definitely gotten  
22 voc rehab benefits.

23 He has had more than most employees because  
24 workers' compensation, through that program, the Employer  
25 paid for his voc rehab. We didn't just send him to the

1 division of voc rehab. So he's received more benefits  
2 than our standard separations.

3 At that time he's also told about his standard  
4 insurance and, also, about his ability to retire. So they  
5 met all the requirements in the round table. And in the  
6 workers' compensation program benefit -- the pamphlet  
7 itself, it talks about the fact that they're going to hit  
8 on all those bases.

9 Q Can I please see that one back?

10 And I'll refer back to the December 31st, 2014.  
11 Did you verify specifically and get a response with  
12 Dr. Huene?

13 A I didn't need to. I went to the workers'  
14 compensation file and I saw in December Dr. Huene signed  
15 off that he could not go back to work as a highway  
16 maintenance worker. Mr. Zenor himself signed off that he  
17 could not go back to work as a highway maintenance worker.  
18 That's why we paid thousands of dollars in voc rehab  
19 benefits to Mr. Zenor so he could be retrained.

20 Q I'm going to hand you this document back. On  
21 December 31st letter on the third paragraph, please read  
22 that paragraph.

23 HEARING OFFICER COCKERILL: What exhibit are we  
24 on?

25 MR. RANFT: Exhibit State 005 -- 0005.

1 HEARING OFFICER COCKERILL: Okay.

2 THE WITNESS: It says, "If you are unable to  
3 provide us with a full-duty release, we would be placed in  
4 the regrettable position in which we must in accordance  
5 with NAC 284.611 initiate separation due to a physical  
6 disorder. You will be referred to the division of voc  
7 rehab for assistance with the job placement and the public  
8 employment -- employee's retirement system for  
9 consideration of possible disability retirement benefits."

10 BY MR. RANFT:

11 Q And these two exhibits were sent from Dr. Huene,  
12 received by NDOT, through prior testimony.

13 Is those the documents that you received?

14 A We received -- I don't know if it's these  
15 documents, but something very similar, which is why we  
16 changed what we were doing. We did not go through how I  
17 would normally go through the separation process.

18 I went back to the workers' compensation file to  
19 determine whether or not he was released to return to work  
20 or if it was determine that'd he could not return as a  
21 highway maintenance worker.

22 Q But you just read Paragraph 3. It said if he --  
23 if Mr. Zenor provided full medical release -- if he  
24 didn't, you would terminate his employment.

25 Is that not what you did under NAC 284 -- you

1 have that document, 284.611? Is that not what you did?

2 A Which one do you want?

3 Q Just --

4 A Okay.

5 Q -- you could reference --

6 A You are taking the October out of context.

7 There's another document after October. I looked at the  
8 full workers' compensation file. Yes, Mr. Zenor brought  
9 it to my attention that we needed to look at that file to  
10 make sure that we were doing the correct thing.

11 But once Mr. Zenor brought it to our attention,  
12 whoa, this is workers' comp, we need to take a look at it  
13 and see, you know, what happened, it didn't make sense  
14 that he was on voc rehab being retrained if he could go  
15 back to work. So I looked at the file. And, yes, there  
16 is an October, but there is a December letter. December  
17 comes after October.

18 Q That's not the require -- NAC 284.611 only  
19 requires you to verify -- it requires you to verify if he  
20 has a physical disability or, in this case, verify with  
21 the employee's physician or by independent medical  
22 evaluation paid for by the appointing authority that the  
23 condition is not -- or is not expected to respond to  
24 treatment, that an extended absence from work will be  
25 required.

1           So did Dr. Huene on 10-22-2014, did he say  
2 Mr. Zenor's going to have an extended absence or did he  
3 release him to full duty?

4           A     He'd already had an extended absence. He'd been  
5 off for a year.

6           Q     On that date. On that date, 10-22-2014.

7           A     I didn't separate him based on that. I  
8 separated him based on the fact in December Dr. Huene said  
9 that he could not work as a highway maintenance worker.  
10 He signed off on that.

11          Q     The doctor you're -- is this the letter you're  
12 referencing on Exhibit --

13                   HEARING OFFICER COCKERILL: It's 0034.

14 BY MR. RANFT:

15          Q     -- 0034?

16          A     There's another one as well.

17                   But yes, this is the first one, "Not able to  
18 physically perform work as a highway maintenance worker  
19 preinjury work."

20          Q     Who's that written by?

21          A     I know it's signed by the doctor.

22          Q     Whose it written by?

23          A     Okay. It's written by the certified  
24 rehabilitation counselor, Debra Adler.

25          Q     Is that document not a request to say this is

1 the job -- that the doctor signed off approving that type  
2 of job. Is that document just simply saying that he can  
3 simply do bookkeeping and accounting? Is that not what  
4 the doctor --

5 A I can't interpret what the doctor writes.

6 Q The document speaks for itself. Thank you.

7 Did NDOT, to your knowledge, fail to use a  
8 10-22-2015 document? That's the full release.

9 HEARING OFFICER COCKERILL: '14 document.

10 MR. RANFT: I'm sorry, 2014. Thank you.

11 THE WITNESS: I don't understand that question.

12 BY MR. RANFT:

13 Q Did NDOT, to your knowledge, in your position as  
14 a Personnel Manager III -- is that correct, Personnel  
15 Manager III?

16 A Yes.

17 Q In your position, when you had this in front of  
18 you, did you use Dr. Huene's 10-22-2014 full medical  
19 release when it came to medical separation?

20 A I did not receive that. That was part of his  
21 workers' compensation case, so I did not receive that in  
22 October.

23 Q You read that release.

24 A I read that release when I reviewed the whole  
25 file, including the December.

1 Q Prior to separation, you read that release.

2 A I read the entire file.

3 HEARING OFFICER COCKERILL: Yeah. But the  
4 question is --

5 THE WITNESS: I did read that document.

6 HEARING OFFICER COCKERILL: -- prior to the --  
7 prior to the December 31st, 2014 letter to Mr. Zenor, had  
8 you read the 10-22-14 release by Dr. Huene?

9 THE WITNESS: No.

10 HEARING OFFICER COCKERILL: You hadn't read that  
11 doctor's release prior to the December 31st, 2014 letter?

12 THE WITNESS: Correct.

13 HEARING OFFICER COCKERILL: So the letter to  
14 separate him went out --

15 THE WITNESS: It wasn't a sep- -- oh, sorry.

16 HEARING OFFICER COCKERILL: I'm confused.

17 MR. RANFT: There was a June letter as well.

18 HEARING OFFICER COCKERILL: It's 005. The  
19 letter by Mr. Williams, Steve Williams, did you write this  
20 letter?

21 THE WITNESS: Yes.

22 HEARING OFFICER COCKERILL: Okay. So at the  
23 time you wrote this letter, you did not -- you had not  
24 seen the 10-22-14 release by Dr. Huene.

25 THE WITNESS: That's correct.

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1                   HEARING OFFICER COCKERILL: Okay. And what the  
2 testimony's been is Mr. Williams said that he received the  
3 release and then brought it in to HR.

4                   THE WITNESS: After we wrote that letter --

5                   HEARING OFFICER COCKERILL: Right.

6                   THE WITNESS: -- Mr. Zenor brought that release  
7 that was dated 10-22.

8                   HEARING OFFICER COCKERILL: Okay.

9                   THE WITNESS: And that's when I backed up and  
10 said, wait a minute, what's going on here? This doesn't  
11 make sense. Why do we have an employee being retrained  
12 under voc rehab and paying all that retraining if he can  
13 come back to work.

14                   So then I backed up, started going through the  
15 process and seeing what was going on here. So that's when  
16 we pulled out the workers' compensation file. So I never  
17 looked at that October release in a vacuum, all by itself.  
18 I looked at the entire file trying to figure out why do we  
19 have somebody that we're paying for voc rehab if he can  
20 return to work.

21                   HEARING OFFICER COCKERILL: My question is  
22 still, why, when the 10-22-14 release was provided -- and  
23 the CCMi person testified that they received it, they  
24 forward it to NDOT -- why he wasn't returned to work the  
25 next week after the release came in --



1 THE WITNESS: That's --

2 HEARING OFFICER COCKERILL: -- back in October?

3 THE WITNESS: That's part of the workers'  
4 compensation case. It's however they were working that  
5 workers' compensation case. I don't work the workers'  
6 compensation case.

7 HEARING OFFICER COCKERILL: Okay.

8 THE WITNESS: I have a manager that does that.  
9 So it's not in a vacuum. This is an employee that has had  
10 many medical --

11 HEARING OFFICER COCKERILL: No, no, no, no.

12 That --

13 THE WITNESS: But that's all --

14 HEARING OFFICER COCKERILL: You're confusing  
15 this.

16 THE WITNESS: Okay.

17 HEARING OFFICER COCKERILL: The doctor --  
18 Dr. Huene issued what, in my reading, is a full release on  
19 October 22nd, 2014.

20 THE WITNESS: In the workers' compensation  
21 arena, they decided that that was not a full release and  
22 they did not send him back.

23 HEARING OFFICER COCKERILL: Okay. You don't  
24 have anything to do with that then.

25 THE WITNESS: That's workers' compensation

1 arena.

2 HEARING OFFICER COCKERILL: Okay.

3 THE WITNESS: And he was being paid for time off  
4 work during that period of time. I don't know when that  
5 ended.

6 HEARING OFFICER COCKERILL: This statute that  
7 everybody keeps asking you about, I got two questions  
8 about the statute.

9 This NAC 284.611(a) says, "Verify with the  
10 employee's physician." Now, we're all in agreement that's  
11 Dr. Huene; right?

12 THE WITNESS: In this case, I don't know if  
13 there was other doctors included. Again, this is a  
14 workers' compensation case.

15 HEARING OFFICER COCKERILL: No, no. I'm asking,  
16 this statute applies to you as NDOT separating him. So --

17 THE WITNESS: They im- --

18 HEARING OFFICER COCKERILL: My question is  
19 pretty simple. The record pretty well-established  
20 Dr. Huene was his physician.

21 Did the State ever contract with an independent  
22 medical evaluation paid for by the NDOT that overruled  
23 Dr. Huene?

24 THE WITNESS: Dr. Huene said in December that he  
25 couldn't return to work as a highway, so I wouldn't see

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1 any reason to do that.

2 HEARING OFFICER COCKERILL: Okay. And the  
3 bottom line, in your -- in your December 21st letter, it  
4 says that -- and again, this is 005 -- if your condition  
5 is cured or improves to a point where you are able to  
6 perform full-time continuous work within the next two  
7 years, you can be reinstated; right?

8 THE WITNESS: Yes.

9 HEARING OFFICER COCKERILL: So if Dr. Huene's  
10 opinion continues to be that he's released to work, then  
11 he would be able to come back under that provision as  
12 well; right?

13 THE WITNESS: I haven't even explored that  
14 option.

15 HEARING OFFICER COCKERILL: Okay.

16 THE WITNESS: We haven't got there. The last  
17 one I have is the December.

18 HEARING OFFICER COCKERILL: Okay. Thank you  
19 very much.

20 Any questions as a result of my questions by the  
21 State or by the Employee?

22 MR. RANFT: I have no further -- I'm sorry. Did  
23 you -- I have no further questions.

24 MR. KEENE: I have one question.

25

FURTHER EXAMINATION  
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1 BY MR. KEENE:

2 Q Ms. King, the latest opinion you saw from  
3 Dr. Huene was that he couldn't return to work though;  
4 correct?

5 A Correct.

6 HEARING OFFICER COCKERILL: Well, that's not an  
7 opinion from Dr. Huene. That's a letter written by  
8 Ms. Adler.

9 MR. KEENE: Endorsed by Dr. Huene.

10 HEARING OFFICER COCKERILL: Well, he didn't --

11 MR. KEENE: If he had objected to it, he could  
12 have said so.

13 HEARING OFFICER COCKERILL: Okay. Well, he -- I  
14 mean, I guess you can argue it both ways. I mean, it  
15 looked to me like what he was doing was approving that he  
16 could do a clerical job.

17 MR. KEENE: And that's why this case should be  
18 in workers' compensation and not here.

19 HEARING OFFICER COCKERILL: Okay.

20 MR. KEENE: That's the appropriate forum for  
21 this. It should have been appealed to workers' comp if  
22 Mr. Zenor didn't agree or had problems with it.

23 HEARING OFFICER COCKERILL: Okay. Any other  
24 questions for this witness?

25 You're excused.

1 Any other witnesses on behalf of the State or  
2 any other evidence?

3 MR. KEENE: Nothing, your Honor.

4 HEARING OFFICER COCKERILL: Okay. Any, I guess  
5 they call it, surrebuttal? Any rebuttal evidence that you  
6 want to put on in response to what Ms. King had to say?

7 MR. RANFT: Not at this time. No, I don't. I  
8 would not.

9 HEARING OFFICER COCKERILL: Okay.

10 MR. RANFT: No.

11 HEARING OFFICER COCKERILL: So the evidentiary  
12 portion of this case is done. What we're going to do is,  
13 Mr. Keene, you may argue this. And then, Mr. Ranft,  
14 you're able to respond. And then Mr. Keene gets the final  
15 word.

16 And then what I try to do is get a decision out  
17 within seven working days, if I can. So my decision would  
18 be out a week from Monday or something like that.

19 MR. KEENE: Do you mind if we take five minutes?

20 HEARING OFFICER COCKERILL: Not at all.

21 MR. KEENE: Thank you.

22 HEARING OFFICER COCKERILL: We're off the  
23 record.

24 (Off the record)

25 HEARING OFFICER COCKERILL: Okay. The record

1 will reflect that we took a few-minute rest break. It's  
2 now 10 minutes to 3:00.

3 The parties have both rested. Employee  
4 Exhibits 1 through 27 have been marked and received into  
5 evidence. State's Exhibits NDOT 0001 through 0115 have  
6 been marked and admitted into evidence.

7 Mr. Keene.

8 MR. KEENE: Thank you.

9 Mr. Zenor wants to have his cake and eat it too.  
10 He wants to spend over one year off of work receiving  
11 benefits, undergoing vocal rehab -- vocational rehab and  
12 then walking right back into his prior job. That cannot  
13 be the case. And that cannot be allowed. Mr. Zenor's  
14 workers' compensation case clearly established that by  
15 August of 2014, Mr. Zenor couldn't return to NDOT.

16 Now, in October of 2014, Dr. Huene, despite the  
17 fact that he signed an FCE indicating that he agreed  
18 Mr. Zenor had restrictions, he suddenly decided that Mr. Z  
19 could return to work. But that's just one of the many  
20 instances where Dr. Huene changed his mind about the state  
21 of Mr. Zenor's injury throughout this case.

22 Finally, in December of 2014, Dr. Huene signed  
23 off on a rehabilitation plan that clearly indicated that  
24 Mr. Zenor couldn't return to his prior job. If Dr. Huene  
25 didn't agree with that, he shouldn't have signed the rehab

1 plan. If there were elements of that plan he didn't agree  
2 with, including those indicating that Mr. Zenor couldn't  
3 return to his prior job, he should have struck them out.

4 And in addition to this, Mr. Zenor has numerous  
5 times agreed that he can't return to his prior position.  
6 And if he didn't agree with that, he should have appealed  
7 those issues through workers' compensation.

8 Now, much of the testimony we've heard today  
9 would be more appropriately heard in the workers'  
10 compensation realm. If Mr. Zenor didn't agree with voc  
11 rehab plan or any other part of the process, he should  
12 have appealed that through that mechanism.

13 The evidence is clear that NDOT satisfied the  
14 elements of NAC 284.611 when it termed Mr. Zenor's  
15 employment. NDOT relied on the entire workers'  
16 compensation file to decide whether to terminate  
17 Mr. Zenor. Including, it relied on the opinion of  
18 Dr. Huene, the physician that it paid for, as its own  
19 insurer, thus satisfying the elements of paying for a  
20 physician under 611.

21 Mr. Zenor cannot be allowed to cherry-pick one  
22 letter out of his entire file and use that as the basis of  
23 his return. It is then disingenuous and inflicts damage  
24 on the entire process.

25 NDOT has undoubtedly satisfied it's burden of

1 proof here today, and its decision to terminate  
2 Mr. Zenor's employment should be affirmed.

3 HEARING OFFICER COCKERILL: Mr. Ranft?

4 MR. RANFT: Thank you, Charlie.

5 The respected decision of this Hearing Officer  
6 should not allow the actions of NDOT that we have shown  
7 throughout this hearing via exhibits and testimony that  
8 the State's action in this case was overly excessive and  
9 completely unwarranted for the situation and circumstances  
10 surrounding the medical separation as Dr. Huene voided the  
11 FCE and provided Mr. Zenor with a full release dated  
12 October 22nd, 2014.

13 It was clear through this hearing that NDOT and  
14 CCMSI disregarded Dr. Huene's medical orders dated  
15 October 22nd, 2014, and NDOT knowingly used inappropriate  
16 medical documents dated 7-21-2014 to force Mr. Zenor into  
17 voc rehab and ultimately medical separation.

18 There was a letter on December 31st, 2014 by  
19 NDOT asking Mr. Zenor to verify his current medical  
20 status, and Mr. Zenor provided that full medical release.  
21 As such, the State's illegal action on medical separation  
22 under NAC 284.611 should be found to be unreasonable and  
23 without just cause as NAC 284.611 was not satisfied.

24 We ask that Mr. Zenor be made whole as requested  
25 in the Employee's prehearing statement.

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A App 0222



1 Thank you for your time.

2 HEARING OFFICER COCKERILL: State has final.

3 MR. KEENE: Thank you.

4 Again, I would point out that Dr. Huene didn't  
5 void the FCE with his note on October 22nd. It was just  
6 one other example of Dr. Huene changing his evaluation of  
7 Mr. Zenor. And his final note in December of that year is  
8 what indicates that he agreed Mr. Zenor could not return  
9 to work at his previous position.

10 And the note -- Mr. Zenor's response to NDOT's  
11 12-31 letter is what triggered the entire review of his  
12 file. It, standing alone, does not simply mean that he  
13 gets to return to work. It indicated to NDOT that there  
14 was an issue here, and NDOT acted on that information and,  
15 in doing so, reviewed the entire file to find out that  
16 Mr. Zenor could not return to work.

17 And finally, we've heard again that Mr. Zenor  
18 was forced into some type of rehab program. If that's the  
19 case, then the venue for that is through workers'  
20 compensation. It is not here. Mr. Zenor should not be  
21 allowed to avenge some -- what he believes to be his  
22 rights under workers' compensation through the use of this  
23 statute.

24 Thank you.

25 HEARING OFFICER COCKERILL: Very good.

1           Everybody's submitted all their evidence and  
2 provided very competent arguments on both sides, and it's  
3 a interesting and tough case. So I assure both sides that  
4 I'm going to review all of the exhibits, every one of  
5 them, and will issue a decision in the week following  
6 Thanksgiving. It will be mailed to both counsel.

7           And thank you very much for everyone's  
8 courtesies in this hearing.

9           Thank you very much.

10          MR. ZENOR: Thank you.

11          MR. KEENE: Thank you.

12          MR. RANFT: Thanks, Charlie.

13          (Proceeding concluded at 2:58 p.m.)

14                           \* \* \*

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C E R T I F I C A T I O N

TITLE: CHAD ZENOR

DATE: November 19, 2015

LOCATION: Carson City, Nevada

The below signature certifies that the proceedings and evidence are contained fully and accurately in the tapes and notes as reported at the proceedings in the above referenced matter before the Department of Administration, Appeals Office.

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KELLY PAULSON	DATE
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C E R T I F I C A T I O N

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Department of Administration, Appeals Office.

Kelly Paulson 01/16/2016

KELLY PAULSON DATE

CERTIFIED COURT REPORTER #628

# Signature Certificate

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Kelly Paulson

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IP Address: 68.7.168.105

VERIFIED EMAIL: keltypaulson@gmail.com

Electronic Signature:

*Kelly Paulson*

Multi-Factor  
Digital Fingerprint Checksum

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Page 1 of 1

BEFORE THE NEVADA STATE PERSONNEL COMMISSION  
ADMINISTRATIVE HEARING OFFICER

**FILED**

NOV 24 2015

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

CHAD ZENOR,

Appellant/Employee,

Case No. 53630-CC

vs.

Decision

NEVADA DEPARTMENT OF  
TRANSPORTATION,

Appellee/Employer.

On or about July 8, 2015 Appellant Chad Zenor (Appellant or Mr. Zenor) filed an appeal of his June 26, 2015 non-disciplinary involuntary separation of employment that was imposed by the Nevada Department of Transportation (NDOT) pursuant to the requirements of NAC 284.611 based on Mr. Zenor's physical condition caused by a work related injury.

On November 19, 2015 a hearing was conducted in Carson City, Nevada, pursuant to the requirements of NRS 284.390 to 284.405; and NAC 284.650; 284.774-284.818. Mr. Zenor was present at the hearing represented by Kevin Ranft, Labor Representative, AFSCME Local 4041. The Respondent Nevada Department of Transportation (NDOT) was present represented by Barbara Patrouch, Program Officer III and Deputy Attorney General David R. Keene, II. All parties and their witnesses were sworn in, the hearing was digitally recorded and exhibits were marked and admitted as Appellant Exhibits (AX) 1-27 and State Exhibits (SX) NDOT 1-115. The admitted exhibits were provided to Kristi Fraser at the conclusion of the hearing.

**A. Findings of Fact**

1. Mr. Zenor was employed by NDOT as a Highway Maintenance Worker III and incurred a work related injury to his right wrist on August 1, 2013 and continued his employment with NDOT until June 26, 2015 when he was involuntarily separated pursuant to NAC 284.611;

1 2. Mr. Zenor had an approved workers compensation claim for the August 1, 2013 injury (AX 4)  
2 and he testified that he was assigned light duty from on or about August 2, 2013 until on or about  
3 October 31, 2013 at which time his light duty contract expired and he was transitioned to workers  
4 compensation leave. While there were CCMSI Claim Notes in evidence (AX 21, pgs. 8-10, 14-16) that  
5 indicated that NDOT requested and CCMSI conducted surveillance of Mr. Zenor while he was on  
6 workers compensation claim, there was no evidence introduced at the hearing that NDOT or CCMSI  
7 determined any wrong doing by Mr. Zenor that would affect his rights under NAC 284.611;

8 3. Mr. Zenor's assigned and approved treating physician for the worker's compensation claim was  
9 Donald S. Huene, M.D. who provided medical evaluation and treatment for the August 1, 2013 injury  
10 until October 22, 2014 when Mr. Zenor was released to unrestricted full duty. AX 11 & 14. There was  
11 no other treating physician following October 22, 2014;

12 4. On July 21, 2014 Mr. Zenor underwent a Functional Capacity Evaluation (FCE) which  
13 identified certain physical restrictions and determined that "patient did not demonstrate the ability to  
14 safely perform the physical demands of the pre-injury job" citing the physical demands of his job. SX  
15 0021-0029. The FCE was administered by Physical Therapist (PT) Rhonda Fiorillo, PT, MPT who is  
16 an employee of "Back In Motion Physical Therapy". The FCE was signed off by PT Fiorillo and Dr.  
17 Huene, as Mr. Zenor's treating physician. SX 0029;

18 5. NDOT Program Officer III Barbara Patrouch testified that following the FCE, in August, 2014,  
19 NDOT Human Resources (HR) determined that there were no available positions in NDOT meeting  
20 the work restrictions in the FCE and a "Roundtable" was convened including Mr. Zenor, Certified  
21 Rehabilitation Counselor Debra L. Adler, M.S. CRC and representatives from CCMSI and NDOT HR  
22 to review options for Mr. Zenor including vocational rehabilitation training into a new position  
23 allowed by his physical restrictions;

24 6. Subsequently, Dr. Huene released Mr. Zenor to "Full Duty without Restrictions on 9/24/14"  
25 with the only stipulation being a "Brace" for his wrist "as needed." AX 10. Dr. Huene then released  
26 Mr. Zenor to "Full Duty without Restrictions on 10/22/14." (October 22<sup>nd</sup> release). There were no  
27 stipulations in the October 22<sup>nd</sup> release and Dr. Huene's dictated notes "At this point, I think he can do  
28 full duties without limitations." SX 0006-0007. Dr. Huene verified in a September 22, 2015 letter

1 admitted in evidence without objection: "Chad Zenor was last seen on 10/22/2014 for his right wrist  
2 which he injured on 8/1/2013. At that time, Mr. Zenor reported he was doing well with little pain, and  
3 he did not feel the wrist was limiting his activities. He was released to full duty with no restrictions, as  
4 permanent and stationary, and stable and rateable as of 10/22/2014. He was not scheduled to be seen  
5 again, and he has not returned since 10/22/2014 for any additional treatment or problem." AX 14;

6 7. Mr. Zenor and his wife Kathy Zenor testified convincingly and NDOT did not dispute that he  
7 delivered the October 22<sup>nd</sup> release to NDOT HR the same date. CCMSI Claims Representative Tani  
8 Consiglio testified that she was provided a copy of the October 22<sup>nd</sup> release shortly thereafter and was  
9 aware of same during discussions with Debra L. Adler, M.S. CRC and NDOT HR addressing a  
10 potential vocational rehabilitation program for Mr. Zenor. On October 24, 2014 Ms. Consiglio wrote  
11 Mr. Zenor a letter confirming receipt of the October 22<sup>nd</sup> release: "We recently received a report  
12 indicating that you had completed your medical treatment for your work related injury." AX 15.  
13 CCMSI Claim Notes admitted in evidence verify that CCMSI was aware of the October 22<sup>nd</sup> release  
14 not later than November 10, 2014. AX 22, pg. 18. Ms. Consiglio testified that CCMSI was aware of  
15 the October 22<sup>nd</sup> full release at the time that the vocational rehabilitation option was being pursued by  
16 Ms. Adler, CCMSI and NDOT in the Fall of 2014. In response to question by Mr. Keene why didn't  
17 someone "throw on the brakes" when they became aware of the October 22<sup>nd</sup> release, Ms. Consiglio  
18 testified that "we should have." Ms. Consiglio testified that we "would not do vocational  
19 rehabilitation" program where there is a full release back to work;

20 8. On September 1 and October 22, 2014 Mr. Zenor was provided virtually identical letters from  
21 Adler Vocational Rehabilitation Service providing him until November 8 and then December 28, 2014  
22 "to finalize a plan to return to work" via an approved vocational rehabilitation program. Certified  
23 Rehabilitation Counselor Debra L. Adler, M.S. CRC authored the letters that contained the admonition  
24 "Please note that NRS 616C.601<sup>1</sup> states: 'Anyone who rejects a suitable program of vocational  
25 rehabilitation which is offered to him; rejects employment which is within the limitations prescribed by  
26 a treating physician or chiropractor; or refuses to cooperate with the insurer in the development of a  
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<sup>1</sup> The proper reference is to the "NAC" not the "NRS": NAC 616C.601



1 program of vocational rehabilitation or a search for a job, is subject to suspension or termination of  
2 vocational rehabilitation benefits', " AX 18 & 19

3 9. On September 29, 2015 NDOT employee Diane Kelly sent Ms. Consiglio a "confidential" e-  
4 mail that *"Employer is standing by the FCE results regardless of what Dr. Huene states, he signed off*  
5 *on the FCE. Subsequently Mr. Zenor was referred to voc rehab as appropriate and he needs to be*  
6 *working with Debra Adler in an active and ongoing manner to pursue other career options available*  
7 *through voc rehab. Mr. Zenor does not seem to have any trouble whatsoever riding around on his new*  
8 *Harley. Last time I checked, it takes quite a bit of wrist action and strength to operate these*  
9 *motorcycles."* AX 21, pg. 23;

10 10. On December 3, 2014 Ms. Adler sent Dr. Huene a letter addressing a plan for vocational  
11 rehabilitation containing work restrictions previously listed in the July 21<sup>st</sup> FCE. The letter stated in  
12 part "At the present time Mr. Zenor is interested in pursuing educational retraining in Reno Nevada so  
13 he can acquire general computer and accounting skills and training," SX 0034. The letter concluded  
14 "Please review the information contained in this letter and indicate your decision as to whether you  
15 release Mr. Zenor to perform this training and subsequent employment of in an administrative capacity  
16 with an emphasis in accounting," SX 0036. Dr. Huene checked "Approved" "Regarding Mr. Zenor's  
17 training and working as an accounting clerk". SX 0037;

18 11. On December 23<sup>rd</sup> Mr. Zenor signed a December 11<sup>th</sup> letter addressing a plan for vocational  
19 rehabilitation also containing work restrictions previously listed in the July 21<sup>st</sup> FCE. SX 0047;

20 12. On December 23<sup>rd</sup> Mr. Zenor signed a December 11<sup>th</sup> "School Program Agreement" prepared  
21 by Ms. Adler and which contained the bullet point that "Not able to physically perform work as a  
22 highway maintenance worker pre-injury work." SX 0087-0089. Mr. Zenor testified that he protested  
23 this bullet point but signed when Ms. Adler allegedly threatened him with dismissal from the voc rehab  
24 program if he didn't sign the document as prepared;

25 13. Mr. Keene stated for the record that NDOT was not advocating that the December 11<sup>th</sup> letter  
26 and agreement signed by Mr. Zenor waived the requirements of NAC 284.611;

27 ///  
28

1 14. On December 31, 2014 Highway Maintenance Manager Steve Williams mailed Mr. Zenor a  
2 letter informing him that "We regret to inform you that the District will not be able to continue to  
3 approve leave without pay status indefinitely." The letter continued "If you are unable to provide us  
4 with a full duty work release, we will be placed in a regrettable position in which we must, in  
5 accordance with NAC 284.611, initiate separation due to a physical disorder." SX 0005. Mr. Williams  
6 testified that in response to the December 31<sup>st</sup> letter Mr. Zenor delivered to Mr. Williams a copy of Dr.  
7 Huene's October 22<sup>nd</sup> release and that he, in turn, delivered a copy of the October 22<sup>nd</sup> release to  
8 NDOT HR;

9 15. NDOT HR Manager Kimberly King testified that she oversaw the non-disciplinary separation  
10 process pursuant to the requirements of NAC 284.611 beginning with drafting the December 31<sup>st</sup> letter  
11 for Mr. Williams' signature. She testified that she did not become aware of the October 22<sup>nd</sup> release  
12 until she was reviewing all NDOT personnel files including worker's compensation files addressing  
13 Mr. Zenor's work related injury. She testified that it was her opinion that all records "taken as a whole"  
14 including July 21<sup>st</sup> FCE (SX 0021-0029), the October 22<sup>nd</sup> release (SX 0006-0007) and December 3<sup>rd</sup>  
15 letter (SX 0034-0037) signed by Dr. Huene and December 11<sup>th</sup> letter (SX 0087-0088) and agreement  
16 (SX 0087-0089) signed by Mr. Zenor established that Mr. Zenor's medical "condition does not, or is  
17 not expected to, respond to treatment or that an extended absence from work will be required" pursuant  
18 to NAC 284.611(1)(a). She testified that she did not feel that an "independent medical evaluation"  
19 pursuant to NAC 284.611(1)(a) was warranted under the circumstances;

20 16. On June 1, 2015 Ms. King provided Mr. Zenor a formal written notification that NDOT was  
21 pursuing separation of his employment under NAC 284.611 based on "the independent functional  
22 capacity evaluation . . . which specifies your permanent physical limitations." SX 0004. This letter  
23 did not mention the October 22<sup>nd</sup> release. Ms. King admitted in her testimony that nowhere in the July  
24 21, 2014 FCE were there "permanent physical limitations". The October 22<sup>nd</sup> release established that  
25 there were no such permanent restrictions on Mr. Zenor's return to work in his previous position at  
26 NDOT;

27 17. On June 5, 2015 Administrator II Thor Dyson provided Mr. Zenor notice that Administrative  
28 Services Officer Eden Lee would be conducting a hearing in accordance with NAC 284.656. This

1 notice relied on the July 21<sup>st</sup> FCE and did not mention the October 22<sup>nd</sup> release. At the hearing Mr. nor  
2 again provided a copy of the October 22<sup>nd</sup> release for consideration by NDOT in its separation  
3 proceedings;

4 18. On June 24, 2015 NDOT Deputy Director Tracy Larkin-Thomason issued her decision "I have  
5 reviewed the Recommendation of Separation Pursuant to NAC 284.611 (NPD-42) that was served  
6 upon you in consideration of your inability to perform the essential functions of your position due to  
7 medical reasons. This letter serves as your notification that separation pursuant to NAC 284.611 will  
8 be carried out effective June 26, 2015. It is my determination that there exists a substantial basis for  
9 this separation based on the reasons set forth in the NPD-42, and as such, separation is justified." SX  
10 0001;

11 19. On July 8, 2015 Mr. Zenor timely appealed his separation of employment from NDOT. AX 3;

12 20. Prior to separation of a State employee because of a physical condition the law requires:

13 NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155,  
14 284.355, 284.383, 284.385, 284.390)

15 1. Before separating an employee because of a physical, mental or emotional disorder which results  
16 in the inability of the employee to perform the essential functions of his or her job, the appointing  
17 authority must:

18 (a) Verify with the employee's physician or by an independent medical evaluation paid for by the  
19 appointing authority that the condition does not, or is not expected to, respond to treatment or that an  
20 extended absence from work will be required;

21 (b) Determine whether reasonable accommodation can be made to enable the employee to perform  
22 the essential functions of his or her job;

23 (c) Make a request to the Administrator of the Rehabilitation Division of the Department of  
24 Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the  
25 employee is receiving worker's compensation, request the services of the rehabilitation provider, to  
26 evaluate the employee's condition and to provide any rehabilitative services possible; and

27 (d) Ensure that all reasonable efforts have been made to retain the employee.

28 2. A separation pursuant to this section is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to  
separate;

(b) The employee is not on sick leave or other approved leave; and

(c) A referral has been made to the Public Employees' Retirement System and the employee has been  
determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and  
privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures  
contained in NAC 284.656, 284.6561 and 284.6563 must be followed, and he or she may appeal the  
separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is  
eligible for reinstatement pursuant to NAC 284.386 if he or she recovers from the disorder.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91; 7-6-92;  
R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R143-05, 12-  
29-2005; R063-09, 11-25-2009; R009-14, 6-23-2014)

1 B. Conclusions of Law

2 1. There was substantial evidence that Mr. Zenor provided a copy of Dr. Huene's "Full Duty  
3 without Restrictions on 10/22/14" to NDOT HR on or about October 22, 2014. CCMSI Claims  
4 Representative Tani Consiglio confirmed that CCMSI, Ms. Adler and NDOT HR were aware of the  
5 full release at the time that the vocational rehabilitation option was being pursued in the fall of 2014.  
6 CCMSI Claim Notes admitted in evidence verify this fact as of November 10, 2014. AX 22, pg. 18. In  
7 response to question by Mr. Keene why didn't someone "throw on the brakes" when they became  
8 aware of the October 22<sup>nd</sup> release Ms. Consiglio testified "we should have." Ms. Consiglio testified  
9 that we "would not do vocational rehabilitation" where there is a full release back to work. There was  
10 substantial evidence that Mr. Zenor should have been returned to work in his former position at NDOT  
11 immediately following NDOT's and/or CCMSI's receipt of the October 22<sup>nd</sup> release;

12 2. There was substantial evidence that Mr. Zenor provided a copy of Dr. Huene's "Full Duty  
13 without Restrictions on 10/22/14" (SX 0006-0007) to his immediate supervisor immediately following  
14 receipt of Mr. Williams' December 31, 2014 letter (SX 0005) requesting such release. Mr. Williams  
15 testified that he provided a copy of the October 22<sup>nd</sup> release to NDOT HR which receipt was  
16 acknowledged in testimony by HR Manager King;

17 3. Before NDOT could separate Mr. Zenor because of a physical condition it was required to  
18 comply with the requirements of NAC 284.611(1)(a):

19 NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155,  
20 284.355, 284.383, 284.385, 284.390)

21 1. Before separating an employee because of a physical, mental or emotional disorder which results  
22 in the inability of the employee to perform the essential functions of his or her job, the appointing  
23 authority must:

24 (a) Verify with the employee's physician or by an independent medical evaluation paid for by  
25 the appointing authority that the condition does not, or is not expected to, respond to treatment or  
26 that an extended absence from work will be required (emphasis added);

27 There was substantial evidence provided in the testimony of Mr. Zenor and his wife, CCMSI Claims  
28 Representative Consiglio and Mr. Williams that NDOT HR was provided copies of the October 22<sup>nd</sup>  
release on at least two occasions in October, 2014 and January, 2015 and yet NDOT failed or refused  
to put Mr. Zenor back to work. There was no evidence that NDOT obtained a second "independent

1 medical evaluation" allowed by NAC 284.611 to countermand the October 22<sup>nd</sup> unrestricted release  
2 provided by Dr. Huene. Ms. King testified that she did not feel that an "independent medical  
3 evaluation" pursuant to NAC 284.611(1)(a) was warranted under the circumstances based on the  
4 findings of the July 21, 2015 FCE and December 3, 2014 letter signed by Dr. Huene that reasserted the  
5 findings of the July 21, 2015 FCE. The problem for the Hearing Officer is that Dr. Huene's October  
6 22<sup>nd</sup> release was unequivocal and contained no restrictions. The December 3, 2014 letter prepared by  
7 Ms. Adler and signed by Dr. Huene can at most be characterized as Dr. Huene's approval of "Mr.  
8 Zenor's training and working as an accounting clerk". SX 0037. The fact that the letter recited the  
9 restrictions from the July 21, 2014 FCE cannot be reasonably construed as a change to the unequivocal  
10 October 22<sup>nd</sup> release. This conclusion is reinforced by Dr. Huene's September 22, 2015 letter admitted  
11 in evidence without objection that Mr. Zenor "was released to full duty with no restrictions" on  
12 October 22<sup>nd</sup>, 2014 and was not seen by Dr. Huene after that date. NDOT also relies on 5% impairment  
13 rating by David Rovetti, DC, Qualified DIR Rating Physician, Certified Chiropractic Rehabilitation  
14 Physician and certain of the narrative of DC Rovetti's report as supporting the separation of Mr. Zenor.  
15 In the November 21, 2014 report DC Rovetti narrowly reports on and documents a 5% impairment for  
16 purposes of lump sum payment to a temporary total disability. AX 0103-0115. The problem with this  
17 evidence is DC Rovetti was not retained to perform "an independent medical evaluation" contemplated  
18 by NAC 284.611(1)(a) and in any event he was not addressing return to work restrictions for Mr.  
19 Zenor. DC Rovetti was only narrowly addressing a 5% impairment for purposes of lump sum payment  
20 to a temporary total disability. DC Rovetti's letter and opinion do not satisfy the requirements of NAC  
21 284.611(1)(a). The bottom line is that if NDOT had a problem with or disagreed with Dr. Huene's  
22 October 22<sup>nd</sup> unrestricted release it had every opportunity under NRS 284.611(1)(a) to "Verify . . . by  
23 an independent medical evaluation paid for by the appointing authority that the condition does not, or  
24 is not expected to, respond to treatment or that an extended absence from work will be required."  
25 NDOT did not obtain an "independent medical evaluation" after the December 31, 2014 separation  
26 process was commenced and thus NDOT is bound by Dr. Huene's October 22<sup>nd</sup> release;

27 4. The NDOT argues that a December 11, 2014 letter signed by Mr. Zenor December 23<sup>rd</sup> also  
28 proves that he could not return to work in his former position at NDOT since like the December 3<sup>rd</sup>

1 letter signed by Dr. Huene the December 11<sup>th</sup> letter contained the work restrictions from the July 21,  
2 2014 FCE. This letter authored by Ms. Adler was not addressing any change in Dr. Huene's October  
3 22<sup>nd</sup> release. This letter was solely addressing enrollment in an approved vocational rehabilitation  
4 program. This letter in any event does not satisfy the requirements of NAC 284.611(1)(a). The NDOT  
5 also argues that a December 11, 2014 "School Program Agreement" signed by Mr. Zenor December  
6 23<sup>rd</sup> proves that he could not return to work in his former position at NDOT because it contained the  
7 following "bullet" above Mr. Zenor's signature:  
8

- 9 • "Not able to physically perform work as a highway maintenance pre-injury work." SX 0089

10 Mr. Zenor testified convincingly that he protested this bullet point but signed when Ms. Adler  
11 allegedly threatened him with dismissal from the voc rehab program if he didn't sign the document as  
12 prepared. While Ms. Adler was not called as a witness by either party, her statutory admonition to Mr.  
13 Zenor contained in her September 1<sup>st</sup> and October 22<sup>nd</sup> letters (finding of fact #8) provides  
14 corroboration that Mr. Zenor was "between a rock and a hard place". On the one hand Mr. Zenor had  
15 provided NDOT HR Dr. Huene's October 22<sup>nd</sup> unrestricted release and had not been forthwith returned  
16 to work by NDOT. On the other hand Mr. Zenor is told by Ms. Adler's September 1<sup>st</sup> and October 22<sup>nd</sup>  
17 letters and allegedly on December 23<sup>rd</sup> essentially that if he does not agree to the approved vocational  
18 rehabilitation plan as prepared by Ms. Adler that he was subject to suspension and/or termination from  
19 the vocational rehabilitation plan and benefits. Mr. Zenor testified he was doing what he could to get  
20 back to work "to provide for his family". There is substantial evidence that Mr. Zenor really had no  
21 realistic choice but to sign the December 11<sup>th</sup> "School Program Agreement" as prepared by Ms. Adler.  
22 In any event this "School Program Agreement" prepared by Ms. Adler and signed by Mr. Zenor does  
23 not satisfy the requirements of NAC 284.611(1)(a);  
24  
25  
26  
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///

5. The NDOT argues that Mr. Zenor cannot "have his cake and eat it too" referring to receiving the fruits of his completed vocational rehabilitation training and a return to his former NDOT position of Highway Maintenance Worker III. The hearing officer is sympathetic to the plight of NDOT which expended considerable staff and monetary resources to provide Mr. Zenor vocational rehabilitation training. The problem with this argument is that Mr. Zenor always made it clear that he wanted to return to his pre-injury position at NDOT and in that regard provided NDOT HR copies of his October 22<sup>nd</sup> release not once but twice prior to NDOT proceeding with separation proceedings pursuant to NAC 284.611. As Ms. Consiglio testified everyone "should have" put on the brakes on the vocational rehabilitation option once they became aware of the October 22<sup>nd</sup> release. CCMSI's own records verify that it had the October 22<sup>nd</sup> release at the latest on November 10<sup>th</sup>, 2014. AX 22, pg. 18. When requested on December 31<sup>st</sup>, 2014 to provide "full duty work release" Mr. Zenor again provided NDOT HR with a copy of Dr. Huene's October 22<sup>nd</sup> release. If anyone at NDOT had a problem with the October 22<sup>nd</sup> release NDOT could have requested an "independent medical evaluation" pursuant to NAC 284.611 but did not. NDOT could have returned Mr. Zenor to work on or about October 22, 2014 when it received the October 22<sup>nd</sup> release and at the latest shortly following December 31, 2014 when it received the October 22<sup>nd</sup> release. Such timely return back to work in October, 2014 or at the latest in January, 2015 would have avoided any costs in pursuing costly vocational rehabilitation which was rendered unnecessary based on the October 22<sup>nd</sup> release. Mr. Keene stated for the record that NDOT was not advocating that the December 11<sup>th</sup> letter and agreement signed by Mr. Zenor waived the requirements of NAC 284.611. In any event Mr. Zenor remains eligible for reinstatement under the terms of NDOT's December 31, 2014 letter and NAC 284.611(4): "A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he or she recovers from the disorder". The October 22<sup>nd</sup> release establishes that Mr. Zenor recovered from his "physical disorder" within the parameters of the December 31<sup>st</sup> letter and the requirements of NAC 284.611(1)(a);

6. There is substantial evidence that NDOT failed and/or refused to comply with the requirements of NAC 284.611(1)(a) prior to Mr. Zenor's June 26, 2015 separation by (1) ignoring Dr. Huene's October 22<sup>nd</sup> release and failing to forthwith return Mr. Zenor to work in October, 2014; and/or by (2)

proceeding with separation proceedings on and after December 31, 2014 pursuant to NAC 284.611 in light of Dr. Huene's October 22<sup>nd</sup> unrestricted release and not obtaining an "independent medical evaluation" pursuant to NAC 284.611(1)(a) if NDOT disagreed with Dr. Huene's October 22<sup>nd</sup> unrestricted release. There was substantial evidence based on NDOT employee Diane Kelly's "confidential" September 29, 2014 e-mail to Ms. Consiglio at CCMSI quoted below that at that time NDOT and its representatives intentionally and without factual basis ignored all of Dr. Huene's medical opinions and work releases issued and of record after the July 21, 2015 FCE: *"Employer is standing by the FCE results regardless of what Dr. Huene states, he signed off on the FCE. Subsequently Mr. Zenor was referred to voc rehab as appropriate and he needs to be working with Debra Adler in an active and ongoing manner to pursue other career options available through voc rehab. Mr. Zenor does not seem to have any trouble whatsoever riding around on his new Harley. Last time I checked, it takes quite a bit of wrist action and strength to operate these motorcycles."* AX 21, pg. 23. This e-mail provides direct and substantial evidence that (1) NDOT was intentionally ignoring Dr. Huene's medical opinions and work releases following the July 21, 2014 FCE; and (2) that Ms. Kelly as a representative of NDOT had personal knowledge that Mr. Zenor's wrist had recovered well beyond the physical limitations set forth in the FCE;

7. There was no substantial evidence of just cause to separate Mr. Zenor from his employment with NDOT. There was substantial evidence that the requirements of NAC 284.611(1)(a) were not adhered to or fulfilled by NDOT prior to its June 26, 2015 separation of Mr. Zenor from his employment at NDOT and on that that basis Mr. Zenor should be returned to his former pre-injury position at NDOT with back pay and benefits retroactive to June 26, 2015 with set off for any interim earnings or other benefits Mr. Zenor received as a result of his vocational rehabilitation and/or other employment following June 26, 2015 and prior to his reinstatement.

#### C. Decision

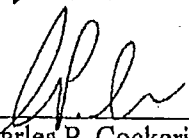
Based on the above findings of fact and conclusions of law it is the determination and decision of the hearing officer that there was no substantial evidence of compliance with NAC 284.611(1)(a) or other just cause justifying the June 26, 2015 involuntary separation of Mr. Zenor's employment from his pre-injury employment at NDOT for his physical condition caused by an August 1, 2013 work



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1 related injury. Mr. Zenor's appeal is granted and NDOT is directed to immediately reinstate Mr. Zenor  
2 to his former pre-injury position at NDOT and to make Mr. Zenor whole by paying him the appropriate  
3 back pay and benefits retroactive to June 26, 2015 with set off for any interim earnings or other  
4 benefits Mr. Zenor received as a result of his vocational rehabilitation training program and/or other  
5 employment following June 26, 2015 and prior to his reinstatement.

6 Dated this 23 day of November, 2015.

7  
8   
9 Charles P. Cockerill, Esq.  
Hearing Officer

10  
11  
12  
13 **NOTICE:** Pursuant to NRS 233B.130, should any party desire to appeal this final determination of  
14 the Appeals Officer, a Petition for Judicial Review must be filed with the district court within thirty  
15 (30) days after service by mail of this decision.  
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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing DECISION AND ORDER was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Carson City, Nevada, to the following:

CHAD ZENOR  
1233 BEVERLY DR  
CARSON CITY, NV 89706

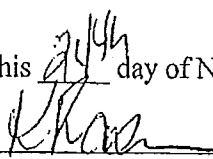
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RODOLFO MALFABON  
DEPARTMENT OF TRANSPORTATION  
1263 S STEWART ST ROOM 201  
CARSON CITY NV 89701

Dated this 24th day of November, 2015:

  
\_\_\_\_\_  
Employee of the State of Nevada