

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHAD ZENOR,

Appellant,

vs.

THE STATE OF NEVADA,
DEPARTMENT OF
TRANSPORTATION,

Respondent.

Case No. 71790 Electronically Filed
Aug 29 2017 08:41 a.m.
Dist. Ct. Case No. Elizabeth A. Brown
Clerk of Supreme Court

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

**RESPONDENT'S APPENDIX
VOLUME I**

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TO: Chad Zenor
4831 S. Edmonds Dr.
Carson City, NV 89701

Re: Claim No: 13C62C722865
Employer: Dept. of Transportation
Insurer: CCMSI
TPA: CCMSI
Date of Injury: 8/01/2013
Date of Notice: 8/30/2013
Body Part: Right Wrist Strain

NOTICE OF CLAIM ACCEPTANCE
(Pursuant to NRS 616C.065)

Dear Mr. Zenor:

The above referenced claim has been accepted on your behalf by CCMSI. Please check the information contained in this notice. If you find any of the information to be incorrect, please promptly notify this office.

If you do not agree with this determination, you have the right to appeal. If this is your intent, you must complete the enclosed "Request for Hearing" form and return it to the Hearing Division, at the address indicated on the appeal form, within 70 days from the date of this letter.

If you have any questions, please feel free to contact me at (775) 882-9600 ext. 9609 or toll free at (877) 243-1253.

Sincerely,

Staci Jones
Claims Representative

Retain a copy for your records
Cc: File, NDOT, CMC

D-30 (rev. 4/07)

CANNON COCHRAN MANAGEMENT SERVICES, INC. - P.O. Box 4990 - Carson City, NV 89702-4990
(775) 882-9600 Fax: (775) 882-9601 www.ccmsi.com

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RA 000001



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

Note Type	Created	Last Modified
CLIENT	08/07/2013 by KIM CAMPA	08/07/2013 by KIM CAMPA

From: Kim Campa
Sent: Wednesday, August 07, 2013 3:46 PM
To: dkelly@dot.state.nv.us
Subject: CCMSI: Chad Zenor, Hwy. Maint. Worker 3

Claim Number: 13C62C722865
Claim Adjuster: Staci Jones

A copy of the C4 will be sent to your office via fax.

Needed:

Date of Hire: Needed in order to active claim, (please send asap) C3, C1, LCOF, AIR, Essential Job Functions w/Physical Characteristics: Needed by 8/15/2013.

Thank you,

CLIENT	08/07/2013 by KIM CAMPA	08/07/2013 by KIM CAMPA
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RECEIVED:
D8 AND WAGES

CLIENT	08/12/2013 by KIM CAMPA	08/12/2013 by KIM CAMPA
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RECEIVED:
C3, C1, AIR, TMDA, EJF ON FILE

CLIENT	08/12/2013 by STACI JONES	08/12/2013 by STACI JONES
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3 Point Contact

From: Staci Jones
Sent: Monday, August 12, 2013 7:10 PM
To: dkelly@dot.state.nv.us
Subject: CCMSI: Notice of new claim for Hwy Maint Worker II Chad Zenor, 13C62C722865

Hello,

CCMSI has received a new workers compensation claim for Chad Zenor; he states he was injured when he tripped over wire fencing on 8/01/2013. He reported the injury to Dave Wagner on 8/01/2013 and treated at Concentra Medical Centers 8/02/2013. He was evaluated by Dr. Meyer and diagnosed with right wrist strain. He was placed on light duty restrictions.

Does NDOT have any doubts or concerns on this claim?

If yes, please explain

When was this reported and was there a C1 form filled out at the time of injury?

Are there witness statements?

Is NDOT able to accommodate light duty restrictions?

Is there lost time on this claim?

As always the claim will be reviewed for determination upon your response.
Thank you for your assistance,

Staci Jones
CCMSI
Claims Representative

CLIENT	08/27/2013 by STACI JONES	08/27/2013 by STACI JONES
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Claim Notes for ZENOR, CHAD T (13C62C722865, DOL: 08/01/2013)

Note Type	Created	Last Modified
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From: Kelly, Diane E [mailto:dkelly@dot.state.nv.us]
Sent: Tuesday, August 13, 2013 9:00 AM
To: Staci Jones
Subject: CCMSI: Notice of new claim for Hwy Maint Worker II Chad Zenor, 13C62C722865
Importance: High
Sensitivity: Confidential

Hi Staci,
No doubts or concerns. The C-1, C-3, Supervisor's Report of Injury, Employee's Statement, two witness statements and the signed TMD were scanned to Kim Campa yesterday. This is not a lost time claim. Thanks.

CLIENT	09/23/2013 by MEGAN SIMPSON	09/23/2013 by MEGAN SIMPSON
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C3, C1, AIR

CLIENT	09/23/2013 by MEGAN SIMPSON	09/23/2013 by MEGAN SIMPSON
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Wages

CLIENT	09/23/2013 by MEGAN SIMPSON	09/23/2013 by MEGAN SIMPSON
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8/7/13 Fax Conf. Req for Forms

CLIENT	09/25/2013 by STACI JONES	09/25/2013 by STACI JONES
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From: Staci Jones
Sent: Wednesday, September 25, 2013 8:11 AM
To: 'Kelly, Diane E'
Cc: Megan Lusby
Subject: RE: Chad Zenor

Megan,
Please see note below re: wrist MRI.
Thank you,

Staci Jones
CCMSI
Claims Representative

From: Kelly, Diane E [mailto:dkelly@dot.state.nv.us]
Sent: Wednesday, September 25, 2013 7:50 AM
To: Staci Jones
Subject: Chad Zenor

Hello .

From: Kelly, Diane E
Sent: Friday, September 20, 2013 9:15 AM
To: 'sjones@ccmsi.com'
Subject: Chad Zenor

Hi Staci,
Did Chad have a MRI of his wrist? I see where he is being referred to a general surgeon (I sincerely hope NOT Dr. Gabriel).
Please advise, thank you.

CLIENT	10/02/2013 by MEGAN SIMPSON	10/02/2013 by MEGAN SIMPSON
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Claim Notes for ZENOR, CHAD T
(13C62C722865, DOL: 08/01/2013)

Note Type	Created	Last Modified
From: Kelly, Diane E [mailto:dkelly@dot.state.nv.us] Sent: Wednesday, October 02, 2013 10:11 AM To: Megan Lusby Subject: Chad Zenor Importance: High Sensitivity: Confidential		

Megan,
Just so you are aware, it has been reported to me that Mr. Zenor plays baseball on weekends.

CLIENT 10/02/2013 by MEGAN SIMPSON 10/02/2013 by MEGAN SIMPSON

From: Megan Lusby
Sent: Wednesday, October 02, 2013 1:36 PM
To: 'Kelly, Diane E'
Cc: Sheila Reinhart; Nicole Hansen; Fuentes, Oscar M
Subject: RE: Claim #13C62C722865
Sensitivity: Confidential

Diane,

I will set Mr. Zenor up for surveillance. Is anyone aware of his baseball schedule or any other specifics?

Thank you,

Megan Lusby
Claims Representative
775-882-9608
775-882-9601 Fax

From: Kelly, Diane E [mailto:dkelly@dot.state.nv.us]
Sent: Wednesday, October 02, 2013 10:44 AM
To: Megan Lusby
Cc: Sheila Reinhart; Nicole Hansen; Fuentes, Oscar M
Subject: Claim #13C62C722865
Importance: High
Sensitivity: Confidential

Megan,
Oscar wants surveillance on this claimant because we are getting a lot of negative comments and feedback from the rest of the crew, they are upset that this individual gets to be on light duty which means they have to do more of his work when they know he is playing baseball on weekends, please confirm action taken. If you need particulars please contact Oscar, I will be on annual all next week, thank you.

CLIENT 10/15/2013 by MEGAN SIMPSON 10/15/2013 by MEGAN SIMPSON

—Original Message—
From: Kelly, Diane E [mailto:dkelly@dot.state.nv.us]
Sent: Tuesday, October 15, 2013 7:33 AM
To: Megan Lusby
Subject: Chad Zenor
Importance: High
Sensitivity: Confidential

Megan - please see ATTACHED "Application for Reimbursement of Claim Related Travel Expenses" for Chad Zenor, signed by him on October 7th (received by me yesterday), please process as appropriate, thank you.

CLIENT 10/18/2013 by MEGAN SIMPSON 10/18/2013 by MEGAN SIMPSON

PATIENT NAME: Zenor, Chad
DATE OF SERVICE: 09/27/13

IDENTIFICATION: Mr. Zenor is a 46-year-old, right-handed male with a chief complaint of generalized wrist pain.

HISTORY OF PRESENT ILLNESS: Mr. Zenor reports he was in his usual state of health until August 1, 2013. At that time, he tripped over wire fencing and fell on his outstretched wrist. He has had pain ulnarly and radially. The pain is more volarly than dorsally. He reports having popping. He tried therapy, which increased his motion, but he continued to have pain. He has numbness in his median distribution. He has difficulty with use of his fingers. He has been given a brace. He reports that when he wears the brace it makes his symptoms worse. Over the weekends, when he does not wear the brace, it improves. It will wake him up at night with numbness and tingling in the medial distribution.

REVIEW OF RECORDS: There are notes from Concentra noting a referral to a hand surgeon. The MRI report demonstrates a scapholunate ligament tear without complete disruption of the central portion of the TFCC. There is chondromalacia of the lunate and proximal pole of the hamate and moderate triscaphe osteoarthritis.

PAST MEDICAL HISTORY, FAMILY HISTORY, SOCIAL HISTORY, WORK HISTORY, REVIEW OF SYSTEMS: See accompanying note.

PHYSICAL EXAMINATION: Mr. Zenor is a well-nourished, well-developed male who is very pleasant and co-operative. Height is 5 feet 9 inches. Weight is 163 pounds.

I can get him to dorsiflex to 70 degrees and volar flex to 60 degrees. There is pain at the extremes of motion, but there is a soft endpoint. He has a negative Watson's test, positive lunate triquetral pain, a positive ulnar impaction test, positive clicking, and no distal radial joint instability. No tenderness over the ECU and no instability of the ECU, but again he has generalized tenderness over the ulnar aspects. He has a positive Tinel's test, a positive carpal compression test. His monofilaments are nondermatomal. No evidence of thenar or hypothenar atrophy. See accompanying grip strengths.

X-RAYS: X-rays obtained today in the office demonstrate volar flexion of the scaphoid, but this measures to 47 degrees. No evidence of scapholunate widening. No evidence of significant arthritis. On plain films, there is ulnar positivity of a few millimeters.

MRI: The MRI is available for review; this demonstrates an obvious central tear of the TFCC. I think there is a lunotriquetral tear. There seems to be a deformity of his scaphoid angle on this MRI. There is ulnar impaction of the lunate on the distal ulna.

I discussed the case with Dr. Kraemer; he feels that the lunotriquetral is intact, but there is motion and he recommends getting a more detailed MRI scan.

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RA 000005

Chad Zenor
September 27, 2013
Page | 2

IMPRESSION: TFCC tear, possible carpal tunnel syndrome, possible lunotriquetral tear, and ulnar impaction syndrome.

RECOMMENDATIONS: I have gone over all of these findings with him. I have gone over the complexity of treating this. My impression is that, if he has an LT tear, I would fuse this, but I want more information about the LT as recommended by Dr. Kraemer. Will get EMGs and peripheral nerve studies due to the numbness and tingling he is having. I will have him wean out of the brace and get him into therapy for aggressive range of motion to try to maximize his results. I have gone over the fact that, just because he has a TFCC tear, does not mean he requires surgery, but I have gone over the risks, benefits, and options of surgery with him. I have gone over the high complexity of treating this with him. He understands these recommendations. We will see him back determined on his repeat MRI and EMG studies and his response to hand therapy.

Donald S. Huene, M.D.
DSH:scs1
cc: Dr. Mikel Meyer

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RA 000006

ORTHOPEDIC SURGICAL ASSOCIATES
85 Kirman Avenue, Suite #303 Reno NV 89502-1344
(775) 329-8423 / Fax (775) 329-7993

James S. Soblek, M.D.

Donald S. Huene, M.D.

D7994
① cmc
② clicks/popping

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865
Complaint: R Wrist -CCMSI

SUBJECTIVE FINDINGS:

OBJECTIVE FINDINGS:

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

☒ Released to Restricted/Light/Modified Duty on (date) 9/27/13

Permanent and Stationary Yes _____ No X

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting No Standing No Pulling No Carrying

No Stooping No Lifting No Pushing No Walking

No Climbing No Reaching Above Shoulders No Bending at the Waist

No Repetitive Gripping or Grasping No Use L/R Upper Extremity

Lifting Restricted to (lbs) _____ X PRN Brace On Sedentary Only/Sit down Only

Other: No shoveling / sweeping

Next Appointment PMRI / Emg

Physician's Signature [Signature]

Date 9/27/2013

772

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PATIENT NAME: Zenor, Chad
DATE OF SERVICE: 10/16/13

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his right wrist. He reports he is doing well and is improving.

REVIEW OF RECORDS: The therapy notes are available for review; these show he has pain ulnarly over the TFCC and ulnar styloid region. He is not improving with therapy. He has increased his active range of motion, but does not have a decrease in his pain. The MRI report demonstrates a complete disruption of the scaphoid ligaments, except for the palmar bands. There is a small TFCC tear. EMGs show minor problems that are equal. No significant entrapment.

PHYSICAL EXAMINATION: Again, he has tenderness over his lunotriquetral region. He has a negative Watson's test and a negative scaphoid shift test. He has increased lunotriquetral translation; this reproduces his pain but he has no tenderness over the radial aspect of his wrist. No tenderness over his scaphoid. There is negative ulnar impaction test. I do not appreciate any popping, catching, or locking.

XRAYS: X-rays obtained today in the office, again, demonstrate a DC deformity. There is a type II lunate with articulation of the hamate, but I see no degenerative changes in this area. No evidence of scapholunate widening.

MRI: The MRI is available for review; I do not appreciate a lunotriquetral problem. The scapholunate has intact ligaments and is consistent with the exam. I see no lucency or deformity. There is a small TFCC tear.

IMPRESSION: Partial tearing of the scapholunate ligament though, overall, it is intact. There is a lunotriquetral injury without a full tear. There is a possible TFCC tear, but this is relatively asymptomatic. There is no outstanding significant nerve entrapment.

RECOMMENDATIONS: I have gone over these findings with him and his wife at great length. I also discussed this with his therapist. I still want to protect his wrist for three months. I do not want him using it, but I still want to work on his range of motion. After three months, they will start strengthening in therapy and we will see him back shortly after that. He did request something for pain and I have gone over the risks of non-steroidal anti-inflammatories with him, as well as Tylenol. We will put him on nighttime narcotics.

WORK STATUS: No use of the arm and brace as necessary. This was discussed with him, his wife, and his therapist.

Donald S. Huene, M.D.
DSH:scs67

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RA 000008

D-7994

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865 -CCMSI
Complaint: R Wrist -post MRI & EMG

SUBJECTIVE FINDINGS:

Review his MRI + EMG's - hurts the same
pain - has not changed -

OBJECTIVE FINDINGS:

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

☒ Released to Restricted/Light/Modified Duty on (date) 10/16/13

Permanent and Stationary Yes _____ No ☒

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting No Standing No Pulling No Carrying

No Stooping No Lifting No Pushing No Walking

No Climbing No Reaching Above Shoulders No Bending at the Waist

No Repetitive Gripping or Grasping ☒ No Use L/R Upper Extremity

Lifting Restricted to (lbs) _____ ☒ Brace On R/S Sedentary Only/Sit down Only

Other: _____ Wed. Nov. 6, 13

Next Appointment 3 weeks 11:30am

Physician's Signature _____

Date 10/16/2013

KR

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PATIENT NAME: Zenor, Chad
DATE OF SERVICE: 11/06/2013

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his right wrist. He reports that therapy made him better. He subsequently stopped therapy as his insurance company did not approve therapy. He was referred here for follow up. He reports that, since his has been out of therapy, he has had worsening symptoms.

REVIEW OF RECORDS: The therapy notes show that his pain is 6/10 and that he is not improving. They recommended he continue therapy.

PHYSICAL EXAMINATION: He has slight increased lunotriquetral translation, but this is minimal in nature and he no pain today. He has a negative Watson test and a negative scaphoid shift test. He has no radial pain. Dorsiflexion is to 80 degrees and volar flexion is to 70 degrees. He has muscular swelling. With loading him and going into ulnar deviation, there is an audible clunk which is reproducible and reproduces his symptoms.

X-RAYS: X-rays obtained today in the office demonstrate normal carpal alignment. The scapholunate angle is within normal range. There may be slight volar tilting of the lunate, but the scapholunate angle is 51 degrees.

He was subsequently brought under fluoroscopy. Under fluoroscopic examination, he was felt to have a non-dissociative carpal instability pattern.

IMPRESSION: Non-dissociative carpal instability.

RECOMMENDATIONS: I have gone over the complexity of non-dissociative carpal instability patterns with him. This is difficult to treat as we are not treating one specific ligament. My opinion would be a limited fusion for him. I do not think he has lunotriquetral instability. I have gone over the risks, benefits, and options with him. We will cast him in radial deviation for a period of six weeks and, hopefully, stabilize this; if this does not stabilize, we may have to do some form of fusion. He understands these recommendations and wishes to proceed with this course of action.

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

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RA 000010

ORTHOPEDIC SURGICAL ASSOCIATES
85 Kirman Avenue, Suite #303 Reno NV 89502-1344
(775) 329-8423 / Fax (775) 329-7993

James S. Soblek, M.D.

Donald S. Huene, M.D.

D-7994

Patient Name: Chad T. Zenor
DOI: 8/1/2013 (TRK tear)
Surgery On:

Claim #13c62c722865-CCMSI
Complaint: R Wrist

SUBJECTIVE FINDINGS: See OT note - last OT visit was Feb, w/c Comp denied further visits - OT helped some, ~~and~~ pain since he stopped OT

OBJECTIVE FINDINGS: OT ACE R 8/10, Immun Swelling OT R 8/10

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

☒ Released to Restricted/Light/Modified Duty on (date) 11/6/13

Permanent and Stationary Yes _____ No ☒

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting _____ No Standing _____ No Pulling _____ No Carrying _____

No Stooping _____ No Lifting _____ No Pushing _____ No Walking _____

No Climbing _____ No Reaching Above Shoulders _____ No Bending at the Waist _____

No Repetitive Gripping or Grasping _____ ☒ No Use L/R Upper Extremity

Lifting Restricted to (lbs) _____ ☒ Brace On _____ Sedentary Only/Sit down Only

Other: OK to climb in/out of equipment - OK to drive Wed - Dec 18
8:30 AM

Next Appointment _____

Physician's Signature _____

Date 11/6/2013

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

Note Type	Created	Last Modified
11/19/2013 - Letter from Dr. Huene		

Dear Ms. Consiglio:

In reference to your letters dated November 12, 2013 and November 15, 2013; I have had an opportunity to review the video surveillance regarding Mr. Zenor.

To clarify, I initially saw Mr. Zenor for a consultation on September 27, 2013. He was having median nerve sensations, popping of his wrist, and pain more volarly than dorsally, but pain ulnarly and radially. It was felt that there was motion on his MRI scan and this was discussed with Dr. Kraemer. He subsequently had EMGs and a repeat MEI.

On October 7, 2013 his EMGs were noted to be borderline in nature. There was only a 0.1 ms difference and no significant difference compared to the median ulnar sensory on the right side. At worst, there was a mild median neuropathy. It was felt that the right-sided findings on EMG were not work-related. A repeat MRJ on October 4, 2013 noted scarring of the palmar band of the scapholunate ligament, disrupted, a large type 2 accessory facet of the lunate with significant osteoarthritis of the lunate, proximal pole of the hamate, and proximal pole of the capitate. He was seen back on October 16, 2013; it was felt that, overall, the scapholunate ligament was intact. It was felt there was a lunotriquetral injury without a full tear. There was a possible TFCC teas, but this was relatively asymptomatic. It was recommended he protect his wrist for three months and not use it. I wanted him to work on range of motion and, after three months, start therapy. He was to not use his ann and he was to wear the brace as necessary. He was given p.m. narcotics.

The video surveillance that I evaluated after that point, on October 18, 2013 and October 19, 2013, showed that he was in his splint October 18th but not on October 19th. On October 19th, he was seen lifting a large cooler, lifting a wagon, and carrying a shelter despite being told not to use his arm. At other times, he was noted to be throwing clothes and bags and carrying soccer balls.

There is a therapy note dated November 1, 2013; at that time, he reports his pain was 6 out of 10 when he woke up and then his pain increased to 8 out of 10. He was very frustrated. None of this was seen on the videos. It was recommended he continue hand therapy for one or two visits, and then it was felt a strengthening program could be initiated. It was noted that the compensation carrier denied his ongoing therapy.

He was seen back in the office November 6, 2013; at that time, he was noted to have worsening symptoms after being out of therapy. He was noted to have no pain in the lunotriquetral region. Negative Watson's test. Negative scaphoid shift test.

Fluoroscopy demonstrated a non-associated carpal instability pattern; it was felt to be combined as there was noted to be volar tilting of the lunate. It did translate under fluoroscopy dorsally. It was recommended he be casted in radial deviation for a period of six weeks. He was instructed to keep the cast on at all times and to not use the arm. It was noted it was okay to climb in and out of his equipment and it was okay to drive.

On November 9, 2013, he was noted to be in his cast. He was using a shovel to throw dirt. He was noted to be working on a vehicle, on the front wheel. He was noted to be using different wrenches and tools. On November 10, 2013, he was noted to be carrying a coffee cup in his cast; this is in direct contradiction to what he has been told.

Carpal non-associated patterns are very difficult to treat. There is always an attempt at non-surgical management, in hope to tighten up his wrist and prevent an ongoing instability pattern.

He has a type 2 lunate with articulation, both between the hamate and the capitate. The degenerative findings seen on MRI scan would point to this being a chronic problem rather than an acute problem, but he describes having an acute fall on his arm which could have caused the instability. Radiographically, I see no osteoarthritic changes. If he were to fail conservative management, he may ultimately need some form of limited fusion.

In response to your specific questions:

1. At this point, I do not feel that he is capable of returning to his pre-injury employment. I think, without any type of bracing and axial loading, he will have ongoing problems, especially with ulnar deviation. The fact that he is seen wrenching and using his hands with the cast on, although against recommendations, is not indicative of him returning to his pre-injury employment status as the brace is protecting him from the instability pattern seen on exam.

2. I feel that his activities seen on the surveillance video would lean toward non-operative treatment being successful and that he is directly contradicting recommendations of no use of that arm, except for climbing in and out of equipment with his cast. This would prevent the ligaments from scarring in and may necessitate more aggressive treatment.

3. He has never described having previous problems with his wrist prior to his fall. The fall onto his wrist has seemed to cause an acute change; nevertheless, there is an MRI report of osteoarthritis in the lunocapitate hamate joint which would lean towards this being more of a chronic problem. Without him having previous problems to his wrist and being able to use his arm full duties, I would presume that his fall on his outstretched wrist did predispose him to this instability problem. He is not of the age or gender that would predispose him to an instability pattern with his ligaments.

If a formal Independent Medical Exam is necessary, I would be happy to provide one to review his previous records and review the MRI and discuss it with the radiologist.

I hope this has been helpful for you. Please do not hesitate to call if I can be of any further assistance.

PATIENT NAME: Zenor, Chad
DATE OF SERVICE: 12/18/2013

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his carpal non-associated pattern instability. He reports he is having pain throughout his wrist.

PHYSICAL EXAMINATION: His cast is broken down; his cast was subsequently removed. He has no popping today, but he is not stressed. He is able to dorsiflex 40 degrees and volar flex 50 degrees. No palpable tenderness, but he reports having generalized tenderness. No swelling.

RECOMMENDATIONS: At this point, we will put him into a custom brace. He can gently move it. He can do gentle dorsiflexion and volar flexion. I have gone over an exercise program with him. We will see him back in one month. We will consider getting a custom brace for him at a later date. Again, ultimately, he may need some form of fusion but, hopefully, we can treat this conservatively without fusion.

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

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RA 000013

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865
Complaint: R Wrist -ccmsi

~~non-dissociative~~ carpal instability

SUBJECTIVE FINDINGS:

146 (cast 106 wks)
Doing good - the cast is bothering -
him & is worn out -

OBJECTIVE FINDINGS:

40 Pain ALL THROUGH WRIST

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

Released to Restricted/Light/Modified Duty on (date) 12/18/13

Permanent and Stationary Yes _____ No X

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting No Standing No Pulling No Carrying

No Stooping No Lifting No Pushing No Walking

No Climbing No Reaching Above Shoulders No Bending at the Waist

No Repetitive Gripping or Grasping X No Use L/R Upper Extremity

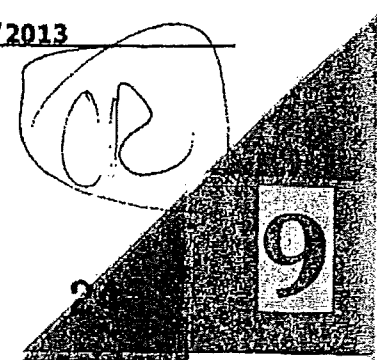
Lifting Restricted to (lbs) _____ X Brace On Sedentary Only/Sit down Only

Other: 1/15/14 @ 8:45 AM
Wednesday

Next Appointment 1/15/14

Physician's Signature _____

Date 12/18/2013



PATIENT NAME: Zenor, Chad
DATE OF SERVICE: 01/15/2014

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his carpal non-associative instability pattern. He is having 5/5 pain. He has pain over his little finger with motion in the brace but, overall, his wrist has not been bothering him in the brace.

PHYSICAL EXAMINATION: The brace is intact. There are no signs of infection. I can get him to dorsiflex to 50 degrees and volar flex to 40 degrees. With gentle radioulnar deviation and compression, there is no evidence of popping but he was not fully stressed. There is no swelling.

RECOMMENDATIONS: At this point, we will start therapy. I have again gone over the high complexity of carpal non-associative pattern with his therapist. We will see him back in a month.

WORK STATUS: Brace on.

PERMANENT AND STATIONARY: Undetermined at this point. Hopefully, we can avoid surgery.

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

246

10

RA 000015

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865
Complaint: R Wrist -ccmsi

SUBJECTIVE FINDINGS: *Gentle Motion - sore, PL5, 1 ROM*
splinting

OBJECTIVE FINDINGS:

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

☒ Released to Restricted/Light/Modified Duty on (date) *1/15/14*

Permanent and Stationary Yes _____ No ☒

Stable & Rateable (date) _____

No repetitive use of: _____

☐ No Sitting ☐ No Standing ☐ No Pulling ☐ No Carrying

☐ No Stooping ☐ No Lifting ☐ No Pushing ☐ No Walking

☐ No Climbing ☐ No Reaching Above Shoulders ☐ No Bending at the Waist

☐ No Repetitive Gripping or Grasping ☐ No Use L/R Upper Extremity

Lifting Restricted to (lbs) _____ ☒ Brace On ☐ Sedentary Only/Sit down Only

Other: _____

Next Appointment *1/15/14* *2-19 @ 845*

Physician's Signature *[Signature]* Date *1/15/2014*

24

11

PATIENT NAME: Zenor, Chad T.
DATE OF SERVICE: 02/19/14

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his carpal non-associated instability pattern of his wrist. He reports he is doing well. He is progressing with therapy.

REVIEW OF RECORDS: The therapy notes are available for review; it is noted that he is slowly progressing. He has occasional flair-ups but he is doing well.

PHYSICAL EXAMINATION: He is wearing tape around the ulnar side of his wrist, supporting it. He has dorsiflexion easily to 70 degrees, volarly to 65 degrees, ulnar deviation is to 15 degrees, radial deviation is to 10 degrees, supination is 70 degrees, and pronation is to 80 degrees. I did not load his wrist. His grip is 4/5.

RECOMMENDATIONS: At this point, I think he is progressing. We will have him continue therapy and wean him down to twice a week and let him out of his brace more. I want him to be able to wear his brace at work and I do not want him to do repetitive gripping/grasping or any type of heavy lifting. He understands these recommendations and wishes to proceed with this course of action.

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

248

12

RA 000017

Frane
in bloom

ORTHOPEDIC SURGICAL ASSOCIATES
85 Kirman Avenue, Suite #303 Reno NV 89502-1344
(775) 329-8423 / Fax (775) 329-7993

James S. Sobiek, M.D.

Donald S. Huene, M.D.

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865
Complaint: R Wrist -CCMSI

SUBJECTIVE FINDINGS: see OT note - improve OT - strength ROM

OBJECTIVE FINDINGS: OT Able - Strong, G. Release

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

☒ Released to Restricted/Light/Modified Duty on (date) 2/19/14

Permanent and Stationary Yes _____ No ☒

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting _____ No Standing _____ No Pulling _____ No Carrying _____

No Stooping _____ No Lifting _____ No Pushing _____ No Walking _____

No Climbing _____ No Reaching Above Shoulders _____ No Bending at the Waist _____

☒ No Repetitive Gripping or Grasping _____ No Use L/R Upper Extremity _____

Lifting Restricted to (lbs) _____ ☒ Brace On PAIN Sedentary Only/Sit down Only

Other: _____ Wed. March 19

Next Appointment With _____ 9:15 Am

Physician's Signature _____ Date 2/19/2014

13

PATIENT NAME: Zenor, Chad T.
DATE OF SERVICE: 03/19/14

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his right wrist nondissociative carpal instability pattern. He is quite happy with his progress. He has been wearing his brace for protection. His employer has no light duty available, so he has not returned to work. He states he is making gains in therapy.

REVIEW OF RECORDS: The therapy notes state that his grip is up to 35 pounds. He is noted to be making steady gains with motion, strength, and functional use.

PHYSICAL EXAMINATION: There is no instability. I can get him to dorsiflex to 65 degrees and volar flex to 50 degrees. With gentle radioulnar deviation, I do not appreciate any popping or snapping of his carpus.

RECOMMENDATIONS: At this point, he will try to work without the brace; he can wear the brace as necessary at work. I will see him back in a month or sooner for any problems. Again, I have gone over the complexity of carpal nondissociative patterns with him. I would rather he have stiffness without surgery than to proceed with some form of limited fusion and have him develop the same amount of stiffness. His current motion is about where I would expect it to be postoperatively, so I am quite happy with his progress. He will work on strengthening at this point and hope that we do not stretch things out and have ongoing instability problems. He understands the high complexity of this and wishes to proceed with this conservative course. I discussed this with his therapist as well.

Donald S. Huene, M.D.
DSH:scs29

25

14

RA 000019

Wife in room

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865

Complaint: R Wrist -CCMSI

(Carpal non-associative instability pattern)

SUBJECTIVE FINDINGS:

566 O.T. note - brace & work - improving

OBJECTIVE FINDINGS:

OTATs were 2nd/med, Grip 35 lb

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

Released to Restricted/Light/Modified Duty on (date) 3/19/14

Permanent and Stationary Yes _____

No X

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting

No Standing

No Pulling

No Carrying

No Stooping

No Lifting

No Pushing

No Walking

No Climbing

No Reaching Above Shoulders

No Bending at the Waist

No Repetitive Gripping or Grasping

No Use L/R Upper Extremity

Lifting Restricted to (lbs) 15

X Brace On
AS needed

Sedentary Only/Sit down Only

Other: _____

Next Appointment 1 month

4-23-14 e 9:15

Physician's Signature _____

Date 3/19/2014

15

PATIENT NAME: Zenor, Chad
DATE OF SERVICE: 04/23/14

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for follow up of his right wrist. He reports he is having ongoing clicking and popping. He is accompanied by his case manager. He states that, yesterday, his therapy was denied; other than this, he is improving.

REVIEW OF RECORDS: The therapy notes report there is clicking over the ECU tendon sheath. There is a progress note from therapy noting increased function of his hand and wrist. There is snapping at the ECU with forearm rotation and wrist flexion. There is no mention of a frank dislocation.

PHYSICAL EXAMINATION: He has a negative compression test. There is no evidence of a carpal non-associated instability pattern. No evidence of a carpal disassociated instability pattern. He has full range of motion of the wrist. Bilaterally, he has subluxation of his ECU tendons without a frank dislocation. There is clicking and crepitations on the injured right side which is not present on the un-injured, left side. With resisted ECU tendon there is tenderness as well.

X-RAYS: X-rays obtained in the office today demonstrate normal carpal alignment.

RECOMMENDATIONS: I had a long discussion with him, his wife, his case manager and his therapist. Fortunately, his carpal instability pattern is not present today and he is doing well. I think his biggest problem right now is ECU tendinitis. He has not had iontophoresis on this area. I have offered him an injection, but the consensus is to try conservative management before proceeding with injections. We will start therapy three times a week for iontophoresis, strengthening, and continued icing and stretching. We will see him back in a month. He understood the risks, benefits, and options and, fortunately, overall, he is doing quite well other than some tendinitis.

WORK STATUS: No repetitive gripping or grasping and wear the brace as necessary.

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

Michelle Green
D7994Ncm -
wife in room

Patient Name: Chad T. Zenor

OI: 8/1/2013

Surgery On:

Claim #13c62c722865

Complaint: R Wrist -CCMSI

SUBJECTIVE FINDINGS: see OT note (w/c denied further OT) - OT helping -
popping, (+) pain SF into arm into elbow
(non dissociative carpal instability)

OBJECTIVE FINDINGS: OT ECU Surgery - Surgery Fe

RECOMMENDATIONS: Xing N/C Capel Surgery

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

Released to Restricted/Light/Modified Duty on (date) 4/23/14

Permanent and Stationary Yes _____ No X

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting No Standing No Pulling No Carrying

No Stooping No Lifting No Pushing No Walking

No Climbing No Reaching Above Shoulders No Bending at the Waist

X No Repetitive Gripping or Grasping No Use L/R Upper Extremity

Lifting Restricted to (lbs) _____ X Brace On PRN Sedentary Only/Sit down Only

Other: Wed. May 21

Next Appointment 4/23/14 9:15 AM

Physician's Signature [Signature] Date 4/23/2014

25

17

PATIENT NAME: Zenor, Chad T.
DATE OF SERVICE: 05/21/14

HISTORY OF PRESENT ILLNESS: Mr. Zenor returns for a recheck of his complex non-dissociative carpal instability pattern of his wrist. He reports having clicking in his wrist. The clunking that he had previously has improved. He continues to improve. He has difficulty pushing and doing push-ups and difficulty with repetitive gripping and grasping. He will have pain with clicking. He describes all of the pain as over the ulnar aspect of his wrist in the region of the TFCC.

REVIEW OF RECORDS: The therapy notes that he has met most of his functional goals and they are recommending discharge to a home exercise program.

MRI: His MRI, again, demonstrates no complete tear of the TFCC and degenerative changes about the lunate and hamate.

PHYSICAL EXAMINATION: He has no clunking like he had prior with gentle stressing. Negative Watson's test and negative scaphoid shift test. He has tenderness with lunotriquetral translation with slight increased translation. Positive ulnar impaction test, but no clicking on the ulnar impaction test, but this causes pain. He has pain even with radial deviation over the ulnar aspect. Good grip strength and full finger range of motion.

RECOMMENDATIONS: At this point, I think his carpal non-dissociative pattern is improved. I am concerned about a possible TFCC tear with underlying arthritis. I have gone over the pathophysiology of TFCC tears with him, his case manager, and wife. At this point, he is improving. I want him on a home exercise program and I will place him on a 50-pound lifting and pushing restriction. We will see him back in a month. If he worsens, we will do an injection of his TFCC under fluoro. He understands these recommendations and wishes to proceed with this course of action. This was discussed with his therapist and she will cancel his upcoming therapy appointments.

Donald S. Huene, M.D.
DSH:scs29

25

18

RA 000023

Case manager
wife.

ORTHOPEDIC SURGICAL ASSOCIATES
85 Kirmann Avenue, Suite #303 Reno NV 89502-1344
(775) 329-8423 / Fax (775) 329-7993

James S. Sobiek, M.D.

Donald S. Huene, M.D.

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865
Complaint: R Wrist -ccmsi

SUBJECTIVE FINDINGS:

See Therapy note.
Therapy helping. Getting better Still popping, sore, stiff, can't push pressure.
HEP - helping
OBJECTIVE FINDINGS: ~~That Patient gets Met & Disrupted Z+HEP~~

RECOMMENDATIONS:

Released to Full Duty without Restrictions on (date) _____

Certified Temporarily Disabled From _____ to _____

☒ Released to Restricted/Light/Modified Duty on (date) 5/21/14

Permanent and Stationary Yes _____ No _____

Stable & Rateable (date) _____

No repetitive use of: _____

No Sitting _____ No Standing _____ No Pulling _____ No Carrying _____

No Stooping _____ No Lifting _____ ☒ No Pushing SOLES No Walking _____

No Climbing _____ No Reaching Above Shoulders _____ No Bending at the Waist _____

No Repetitive Gripping or Grasping _____ No Use L/R Upper Extremity _____

Lifting Restricted to (lbs) SOLES _____ Brace On _____ Sedentary Only/Sit down Only _____

Other: _____ Wed. June 18

Next Appointment 1 month 9 30AM

Physician's Signature _____ Date 5/21/2014

255

19

PATIENT NAME: Zenor, Chad T.
DATE OF SERVICE: 06/25/14

HISTORY OF PRESENT ILLNESS: Mr. Zenor comes in emergently today for his right wrist. He is accompanied by his case manager. They are demanding to have an FCE. I just saw him last week and that was the first time he was released to full duties. I am having a hard time understanding why an FCE would be demanded at this point, as the patient has not even attempted to return to full duty. As I explained last time, I think he will have initial symptoms when returning to full duties. He has had exhaustive therapy. I am at a loss as to what else to do for him. I do not think an FCE is indicated at this point as, two weeks after using it, it will be completely different after he has had an opportunity to build up his endurance.

PHYSICAL EXAMINATION: There is no swelling. There is no tenderness over his wrist and he has good grip strength.

RECOMMENDATIONS: I had a long discussion with him, his case manager, his wife, and the occupational hand therapist who did his hand therapy. I think we have done exhaustive hand therapy. Her suggestion was to try a work hardening program. Michelle Green, his case manager, will attempt to get this going. Again, my opinion stands the same, the only way for him to build up his endurance is to use it. He will continue to try to use it as much as possible at home and will continue to try to use it fully at work, but his work will not allow him to come back. After three weeks of work hardening, I would be happy to get an FCE at that point, if his work hardening program feels he has maxed out on his treatments.

Donald S. Huene, M.D.
DSH:scs29

261

1

RA 000025

PATIENT NAME: Zenor, Chad T.
DATE OF SERVICE: 06/25/14

HISTORY OF PRESENT ILLNESS: Mr. Zenor comes in emergently today for his right wrist. He is accompanied by his case manager. They are demanding to have an FCE. I just saw him last week and that was the first time he was released to full duties. I am having a hard time understanding why an FCE would be demanded at this point, as the patient has not even attempted to return to full duty. As I explained last time, I think he will have initial symptoms when returning to full duties. He has had exhaustive therapy. I am at a loss as to what else to do for him. I do not think an FCE is indicated at this point as, two weeks after using it, it will be completely different after he has had an opportunity to build up his endurance.

PHYSICAL EXAMINATION: There is no swelling. There is no tenderness over his wrist and he has good grip strength.

RECOMMENDATIONS: I had a long discussion with him, his case manager, his wife, and the occupational hand therapist who did his hand therapy. I think we have done exhaustive hand therapy. Her suggestion was to try a work hardening program. Michelle Green, his case manager, will attempt to get this going. Again, my opinion stands the same, the only way for him to build up his endurance is to use it. He will continue to try to use it as much as possible at home and will continue to try to use it fully at work, but his work will not allow him to come back. After three weeks of work hardening, I would be happy to get an FCE at that point, if his work hardening program feels he has maxed out on his treatments.

Donald S. Huene, M.D.
DSH:scs29

Case Manager did not agree to
arranging a work-hardening
program. After review w/therapist
@ appt. OT sessions totalled
over 75 w/ HEP Teaching -
Dr Huene left the room
early - Thanks -

Michelle Green RN
6/27/14

2

Michelle Green
NCM

Patient Name: Chad T. Zenor
DOI: 8/1/2013
Surgery On:

Claim #13c62c722865
Complaint: R Wrist -ccmsi

SUBJECTIVE FINDINGS: pt cannot due full duty-NCM requesting FCE

OBJECTIVE FINDINGS:

RECOMMENDATIONS:

P Released to Full Duty without Restrictions on (date) 6/25/14

_____ Certified Temporarily Disabled From _____ to _____.

_____ Released to Restricted/Light/Modified Duty on (date) _____.

Permanent and Stationary Yes _____ No X

Stable & Rateable (date) _____.

_____ No repetitive use of: _____.

_____ No Sitting _____ No Standing _____ No Pulling _____ No Carrying

_____ No Stooping _____ No Lifting _____ No Pushing _____ No Walking

_____ No Climbing _____ No Reaching Above Shoulders _____ No Bending at the Waist

_____ No Repetitive Gripping or Grasping _____ No Use L/R Upper Extremity

Lifting Restricted to (lbs) _____ Brace On _____ Sedentary Only/Sit down Only

Other: _____

Next Appointment Prima Post

Physician's Signature _____

Date 6/25/2014

3

Back In Motion Physical Therapy Functional Capacity Evaluation

Subject Name: Chad Zenor

Date of Evaluation: 07/21/2014

Claim#: 13C62C722865

Accepted Industrial Body Part(s): Right wrist

Medical Diagnosis: 1) TFCC tear

Date of Accepted Industrial Injury: 05/01/2013

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.

On Insurance carrier:

1 of 8

Back In Motion Physical Therapy
Functional Capacity Evaluation
Claim#: 13C62C722865
Chad Zenor
07/21/2014

RECEIVED
JUL 22 2014
SNVA / MDM

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	28	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 60 FEET	Left	18	9	4.5
	Right	10	5	2.5
	Bilateral	40	20	10
PUSHING	Left	40	20	10
	Right	25	14	7
	Bilateral	40	20	10
PULLING	Left	40	20	10
	Right	25	14	7
	Bilateral	40	20	10

Rhonda Florillo, PT, MPT 07/21/14
 Rhonda Florillo, PT, MPT - Physical Therapist's Signature/Date
 Back In Motion Physical Therapy
 10789 Double R Blvd., Suite 100
 Reno, NV 89521
 PH: 775-746-2205
 Fax: 775-359-3332

Dr. Huens - Treating Physician/Date

On Insurance carrier:

Back In Motion Physical Therapy
 Functional Capacity Evaluation
 Claim #13052722565
 Chad Zeno
 07/21/2014

4 of 6

NDOT 0022

477

RA 000029

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	09	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 20lb box: pulse = 90 bpm, oxygen saturation = 98% After 20lb box x 5 reps: pulse = 102 bpm, oxygen saturation = 97% Patient reported right wrist pain started to radiate proximally but able to perform for a 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 8 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 8 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". B/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 DB 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

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JUL 22 2014

SNVA / MDM

Co: Insurance carrier

Back In Motion Physical Therapy
Functional Capacity Evaluation
Chlorine/CSS/Cym 85g
Chad Zeno
07/21/2014

3 of 8

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 20 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 (1-25% 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 finger 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.

Co: Insurance carrier

4 of 8

RECEIVED
JUL 22 2014
SNVA/MDM
Back In Motion Physical Therapy
Functional Capacity Evaluation
Claims # 1206072886
Chad Zencor
07/21/2014

NDOT 0024

479

RA 000031

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. Huena
 Workers Comp Carrier: CCMSE
 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.

Case Information carrier

Back In Motion Physical Therapy
 Functional Capacity Evaluation
 Claim #: 13C62C722865
 Chad Zenor
 07/11/2014

5 of 8

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 Absences: 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
Right = 54, 60, 56 pounds

Average = 91 lb
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.

Ct: Insurance carrier

Back In Motion Physical Therapy
Functional Capacity Evaluation
Claim # 13C66C72886
Chad Zoner
07/21/2014

6 of 8

Lateral Pinch: Left = 18, 18, 18 pounds Average = 18 lb
 Right = 20, 20, 20 pounds Average = 20 lb

Mean lateral pinch strength 47 y/o male: Right = 25.8 lb, Left = 24.8 lb

Right lateral pinch strength is 22% below mean for age and gender.
 Left lateral pinch strength is 27% below mean for age and gender.

Palmar Pinch: Left = 16, 15, 15 pounds Average = 15.3 lb
 Right = 20, 20, 20 pounds Average = 20 lb

Mean palmar pinch strength 47 y/o male: Right = 24.0 lb, Left = 23.7 lb

Right palmar pinch strength is 17% above mean for age and gender.
 Left palmar pinch strength is 35% below mean for age and gender.

Balance:

Single Limb Stance: (tested for 10 seconds maximum).

Eyes Open: Left = 10 seconds
 Right = 10 seconds

Active Range of Motion/Strength Testing:

	AROM	Strength
Right Upper Extremity:	Shoulder: WFL Elbow: WFL Wrist: Flexion: 50 degrees Extension: 55 degrees Radial deviation: 12 degrees Ulnar deviation: 13 degrees	Shoulder: 5/5 Elbow: 5/5 Wrist: 5/5
Left Upper Extremity:	Shoulder: WFL Elbow: WFL Wrist: WFL	MMT: 5/5
Left Lower Extremity:	WFL	WFL
Right Lower Extremity:	WFL	WFL
Lumbar Spine:	WFL	WFL
Cervical Spine:	WFL	WFL

Single Calf Raises: Tested for 10 reps

Left: 10
 Right: 10

Cc Insurance carrier

Back In Motion Physical Therapy
 Functional Capacity Evaluation
 Claim #137540788568
 Chad Zander
 07/21/2014

7 of 8

NDOT 0027

482

RA 000034

Special Tests:

- 1) Purdue Pegboard Test: Right = 20, Left = 15, Bilateral = 12, Total = 47, Assembly = 27.
Results within mean values for speed and dexterity of bilateral hands for fine motor skills
needed for assembly type work.

Observation:

Braces used: None

Assistive devices used: None

~~~~~ end of report ~~~~

CC Insurance carrier

8 of 8

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JUL 22 2014  
SNVA / MDM

Back In Motion Physical Therapy  
Functional Capacity Evaluation  
Claim # 130610712806  
Chad Zander  
07/21/2014

| TASK                        |           | Occasional<br>(1 - 33% of day) | Frequently<br>(34 - 66% of day) | Constantly<br>(67 - 100% of day) |
|-----------------------------|-----------|--------------------------------|---------------------------------|----------------------------------|
| FLOOR                       | Left      | 18                             | 9                               | 4.5                              |
|                             | Right     | 10                             | 5                               | 2.5                              |
|                             | Bilateral | 29                             | 14.5                            | 7.25                             |
| 18 INCHES<br>ABOVE<br>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 | 18                             | 14                              | 7                                |
| OVERHEAD                    | Left      | 18                             | 9                               | 4.5                              |
|                             | Right     | 10                             | 5                               | 2.5                              |
|                             | Bilateral | 24                             | 12                              | 6                                |
| CARRYING X<br>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 Florillo, PT, MPT 07/21/14*  
 Rhonda Florillo, PT, MPT - Physical Therapist's Signature/Date  
 Back In Motion Physical Therapy  
 10789 Double R Blvd., Suite 100  
 Reno, NV 89521  
 PH: 775.746.3206  
 FCO 775-359-3332

*[Signature]*  
 Dr. Hansen - Treating Physician/Date

PROCESSED BY  
HUMAN RESOURCES DIVISION

AUG 15 2014

SAFETY SECTION

On Insurance carrier

1 of 8

Back In Motion Physical Therapy  
 Functional Capacity Evaluation  
 Claim #13C11C722866  
 Ched Zabor  
 07/21/2014

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AUG 15 2014

CCMSI-CARSON CITY

NDOT 0029

484

RA 000036



**RECEIVED**

AUG 27 2014

HUMAN RESOURCES DIVISION  
DEPT. OF TRANSPORTATION

August 22, 2014

NEVADA DEPT. OF TRANSPORTATION  
ATTN: DIANE KELLY  
1263 S STEWART ST  
CARSON CITY NV 89712

RE: Injured Worker: Chad Zenor  
Claim No.: 13C62C722865  
DOI: 8/1/2013

Dear Ms. Kelly:

Mr. Zenor, who was injured while employed by the Dept. of Transportation, was recently released to return to work with permanent restrictions imposed by his treating physician. Mr. Zenor's restrictions are light/medium work level per the FCE results/findings from Back in Motion. Enclosed is a copy of those results for your reference.

If you are able to provide employment consistent with these limitations, we encourage you to do so as expeditiously as possible, preferably within 30 days. Pursuant to NAC 616C.580, if no offer of employment is provided which is consistent with these restrictions, you waive your right to reemploy this individual and may be liable for the cost of any vocational rehabilitation services to which he/she may be entitled.

The offer of employment must adhere to the criteria set forth in NAC 616C. 583. Such criteria are as follows:

1). An offer of employment at light duty to an injured employee by his employer must:

- (a). Be in writing;
- (b). Be mailed to the injured employee; and
- (c). Include:

- (1). The net wage to be paid the injured employee;
- (2). The hours which the injured employee will be expected to work;
- (3). A reasonable description of the physical requirements of the employment;
- (4). A reasonable description of the duties the injured employee will be expected to

perform;

- (5). A description of any fringe benefits of the employment; and
- (6). The geographical location of the employment.

---

Cannon Cochran Management Services, Inc.

PO Box 4990 • Carson City NV 89702

775-882-9600 • Fax: 775-882-9601 • www.ccmsi.com

NDOT 0030

485

RA 000037

Claimant: Chad Zenor  
Claim No.: 13C62C722865  
Page 2

2. If the actual requirements of the employment at light duty materially differ from the offer of employment and the employer fails to take corrective action, the claimant may be entitled to vocational rehabilitation services.

3. The injured employee must be allowed a reasonable time, not to exceed 7 days after the date the offer of light duty employment is made, within which to accept or reject the offer.

4. If the employment at light duty offered is expected to be of limited duration, the employer shall disclose that fact to the injured employee in the offer of employment and state the expected duration.

5. An employer must not offer temporary or permanent employment at light duty which he does not then expect to be available to the injured employee as offered.

6. An employer does not have to comply with the requirements in subsections 1 to 5, inclusive, if the employer offers the injured employee temporary employment at light duty which is:

(a). Immediately available;

(b). Compatible with the physical limitations of the injured employee as established by the treating physician or chiropractor; and

(c). Substantially similar in terms of the location and the working hours to the position that the injured employee held at the time of his injury.

7. Temporary employment at light duty offered pursuant to subsection 6 must cease within 30 days after the injured employee's physical restrictions are determined to be permanent. Any subsequent offers of employment at light duty by the employer must comply with the requirements of subsections 1 to 5, inclusive.

There are provisions in NAC 616.586 relative to the availability of vocational rehabilitation services upon acceptance or rejection of a valid light duty offer of employment. An offer of employment at light duty is deemed invalid if the job offered is demeaning, degrading or subjects the employee to ridicule or embarrassment. Temporary employment at light duty offered by the employer which is part of the employer's regular business operations shall not be deemed to be demeaning or degrading or to subject the employee to ridicule or embarrassment.

The offer is deemed invalid if the net salary offered at light duty is less than a fellow employee would receive for performing similar duties.

The offer is deemed invalid if the employee has no reasonable prospect of continued employment or if the employee has accepted the offer and has been dismissed through no fault of his own. The offer is deemed invalid if it is made after a program of vocational rehabilitation has commenced. If the employer offers the injured employee temporary employment at light duty, the offer shall be deemed to comply with the requirements of subsection 1.



Claimant: Chad Zenor  
Claim No.: 13C62C722865  
Page 3

State employees with permanent work restrictions, that do not allow them to return to their regular positions, are eligible for re-employment to a vacant position within their department at or below their current job grade. The employee must meet the minimum qualifications of the position as certified by State Personnel and the treating physician must approve the physical requirements of the position. The State Personnel rules that govern this benefit are outlined in NAC 284.6014-6019. These re-employment rights are effective until vocational rehabilitation benefits end or up to a maximum of one year, whichever comes first. State employees can waive this benefit if desired and pursue retirement options with the Public Employees Retirement System.

If you are able to provide employment consistent with the foregoing regulatory requirements, please advise Cannon Cochran Management Services (CCMSI) at your earliest opportunity and provide an outline of the position available, to include all physical requirements. These will be forwarded to the treating physician for approval. If approved, the final offer will be made accordingly. If you are unable to provide employment consistent with the employee's restrictions and the foregoing regulatory authority, the appropriate referral for vocational rehabilitation assessment must be made. Your prompt attention in response to this request is most appreciated.

Should you have any questions, please contact me at 1-775-882-9611 or toll free 877-243-1253.

Sincerely,



Tani Consiglio  
Claims Representative

Cc: File  
Chad Zenor  
Debra Adler MS, CRC  
Risk Management – Via E-Mail

BEFORE THE NEVADA STATE PERSONNEL COMMISSION  
ADMINISTRATIVE HEARING OFFICER

CHAD ZENOR,

Appellant/Employee,

Case No. 53630-CC

vs.

NEVADA DEPARTMENT OF  
TRANSPORTATION,

Decision On Remand  
Addressing Back Pay<sup>1</sup>

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. On November 24, 2015, a Decision was filed by the undersigned hearing officer: "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 related injury. Mr. Zenor's appeal is granted and NDOT is directed to immediately reinstate Mr. Zenor to his former pre-injury position at NDOT and to make Mr. Zenor whole by paying him the appropriate 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 training program and/or other employment following June 26, 2015, and prior to his reinstatement." Zenor Exhibit (ZX) 1, pg. 12;

<sup>1</sup> State of Nevada, ex rel. its Department of Transportation vs. Chad Zenor, Order of Remand, Case No. 15 OC 00275 1B.

1 NDOT filed Petitions for Judicial Review and Stay of the hearing officer's Decision. The  
2 Petitions were denied and on October 19, 2016, the District Court issued an Order Denying Motion for  
3 Order to Show Cause and Order of Remand: "This matter is remanded to the hearing officer to make  
4 findings of fact and conclusions of law regarding the amount NDOT owes Mr. Zenor." The hearing  
5 officer scheduled an evidentiary hearing and oral argument for January 27, 2017.

6 On January 20, 2017, the parties both timely filed Pre-Hearing Statements and exhibits which  
7 were reviewed by the hearing officer prior to the January 27, 2017 hearing.

8 On January 27, 2017, an evidentiary hearing and oral argument was conducted in Carson City,  
9 Nevada. Mr. Zenor was present represented by Mark Forsberg, Esq. Kevin Ranft on behalf of  
10 AFSCME, Local 4041 also appeared at the hearing. NDOT was present represented by Deputy  
11 Attorney General Dominika J. Batten and NDOT Personnel Officer Melody Duly. The following  
12 exhibits were marked and admitted in evidence at the evidentiary hearing: Hearing Officer Exhibit  
13 (HOX) 1 (Appeal Documents filed by Kevin Ranft - AFSCME 4041); HOX 2 (Transcript of  
14 November 19, 2015 Appeal Hearing); Zenor Exhibit (ZX) 1 (November 24, 2015 Hearing Officer  
15 Decision); ZX 2 (Motion for Order to Show Cause); NDOT Exhibit (NDOTX) A (Motion for Order to  
16 Show Cause); NDOTX B (Petitioner's Opposition to Respondent's Motion for Order to Show Cause);  
17 NDOTX C (Reply in Support of Respondent's Motion for Order to Show Cause); and NDOTX D  
18 (Affidavit of Desiree M.M. De Graff-Tese). NDOT witness Barbara Foster and Mr. Zenor were sworn  
19 and testified at the hearing. The hearing was digitally recorded.

20 **A. Scope of Issue on Remand**

21 The District Court framed the issue before the hearing officer in its Order of Remand: "This  
22 matter is remanded to the hearing officer to make findings of fact and conclusions of law regarding the  
23 amount NDOT owes Mr. Zenor."

24 The principal difference in the parties' calculations of back pay pursuant to the hearing  
25 officer's November 24, 2015 Decision is whether or not to include any payment for Mr. Zenor's  
26 reduction of salary prior to his June 26, 2015 non-disciplinary dismissal. On or about October 22, 2014  
27 Mr. Zenor was transitioned to vocational rehabilitation maintenance payments pursuant to NRS  
28 616C.575 which were approximately one-third less than the full salary he would have received if

1 NDOT would have simply followed Dr. Huene's September 24, 2014 unrestricted release back to  
2 work. Mr. Zenor never appealed his transition to vocational rehabilitation pursuant to the requirements  
3 of NRS Chapters 615 and/or 616(C). HOX 2, pg. 128, Ins. 11-12

4 In his pre-hearing statement and at the hearing, counsel for Mr. Zenor argued that the hearing  
5 officer must follow the District Court's June 15, 2016 Order Denying Petitioner's Petition for Judicial  
6 Review as "the law of the case" and award a make whole remedy prior to and after Mr. Zenor's June  
7 26, 2015 non-disciplinary dismissal. In addition to back pay after the date of his termination and before  
8 reinstatement, Mr. Zenor seeks the difference in his NDOT salary and his vocational rehabilitation  
9 maintenance payments received on or between October 22, 2014 and June 26, 2015, an amount which  
10 Mr. Zenor calculates at \$10,268.28. Mr. Zenor relies on the District Court's Decision which states in  
11 part "NDOT is hereby ordered to comply with the decision and *make Zenor whole, putting him in the*  
12 *same position he would have enjoyed had NDOT not improperly caused him to enter vocational*  
13 *rehabilitation and then terminated.* The decision of the hearing office (sic) and of this Court mean  
14 that he should suffer no financial impact as a result of NDOT's misconduct, including the necessity of  
15 defending against NDOT's petition for judicial review." (emphasis added) Order Denying Petitioner's  
16 Petition for Judicial Review, pg. 10, Ins. 4-9. Mr. Zenor seeks \$31,976.17 in back wages.

17 In its pre-hearing statement and at the hearing, counsel for NDOT vigorously disagreed with  
18 Mr. Zenor's calculation of back pay which includes \$10,268.28 as the difference between full salary  
19 and vocational rehabilitation payments received prior to his June 26, 2015 termination, and argued that  
20 the hearing officer is limited by the plain language of NRS 284.390(6): "If the hearing officer  
21 determines the dismissal, demotion or suspension was without just cause as provided in NRS 284.385,  
22 the action must be set aside and the employee must be reinstated, *with full pay for the period of*  
23 *dismissal*, demotion or suspension." (emphasis added) NDOT's position is that Mr. Zenor is only  
24 allowed back pay computed after his June 26, 2015 dismissal until his March 7, 2016 reinstatement.<sup>2</sup>  
25 NDOT contends that with offsets for post-dismissal vocational rehabilitation maintenance payments  
26 and Capital Ford net wages against NDOT net back pay it still owes Mr. Zenor \$3,856.36.

27  
28 <sup>2</sup> Mr. Zenor decided to not return to employment with the NDOT and instead remained employed by Capital Ford on and  
after March 7, 2016. The stipulated reinstatement date for purposes of calculating back pay is March 7, 2016.

1 The hearing officer agrees with counsel for NDOT that his jurisdiction is expressly specified  
2 and limited by NRS 284.390(6), to the period of "full pay" for the period from Mr. Zenor's dismissal  
3 on June 26, 2015 until reinstatement on March 7, 2016. The November 19, 2015 hearing was pursuant  
4 to Mr. Zenor's appeal which was limited to NRS Chapter 284 (HOX 1) and not pursuant to NRS  
5 Chapters 615 or 616C. During the November 19<sup>th</sup> hearing counsel for NDOT repeatedly objected to the  
6 scope of the hearing being expanded to any worker's compensation or vocational rehabilitation issues  
7 based on there being a separate appeal procedure for contesting such issues. The hearing officer agreed  
8 then and now that the scope of the November 19<sup>th</sup> hearing did not include the appeal of any worker's  
9 compensation or vocational rehabilitation issues. HOX 2, pgs. 114-115. The hearing officer's decision  
10 clearly only contemplated and encompassed the period following dismissal until reinstatement: "Mr.  
11 Zenor's appeal is granted and NDOT is directed to immediately reinstate Mr. Zenor to his former pre-  
12 injury position at NDOT and to make Mr. Zenor whole by paying him the appropriate back pay and  
13 benefits *retroactive to* June 26, 2015 with set off for any interim earnings or other benefits Mr. Zenor  
14 received as a result of his vocational rehabilitation training program and/or other employment  
15 *following* June 26, 2015 and *prior to* his reinstatement."(emphasis added) The hearing officer had and  
16 has no jurisdiction over Mr. Zenor's workers compensation claim or transition to vocational  
17 rehabilitation including his vocational rehabilitation maintenance payments or alleged improper  
18 reduction of Mr. Zenor's NDOT salary from October 22, 2014 until his June 26, 2015 termination.<sup>3</sup>

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

28 <sup>3</sup> The hearing officer takes no position as to whether or not Mr. Zenor still has any appeal rights under NRS Chapters 615 and/or 616C.

**B. The Parties' Back Pay Calculations**

Mr. Zenor calculates his back pay owed by NDOT as follows:

|                                                                                               |                    |                        |
|-----------------------------------------------------------------------------------------------|--------------------|------------------------|
| Difference between full pay and workers' Compensation<br><i>Oct. 22, 2014 – June 26, 2015</i> | \$10,268.28        |                        |
| Full salary<br><i>June 26, 2015 – March 13, 2016</i>                                          | \$25,858.40        |                        |
| Cash out of leave earned<br><i>June 26, 2015 – March 8, 2016</i>                              | \$1,551.32         |                        |
| <b>Subtotal</b>                                                                               | \$37,678.00        |                        |
| Less setoff for WC pay post termination                                                       | \$5,701.83         |                        |
| <b>NET TOTAL OWED</b>                                                                         | <b>\$31,976.17</b> | ZX 2, pg. 5, lns. 9-16 |

NDOT calculates Mr. Zenor's back pay owed by NDOT as follows:

|                               | Amount Paid          | Notes                                                   |
|-------------------------------|----------------------|---------------------------------------------------------|
| NDOT BACK PAY AWARD           | 25,861.28            | 06/26/15 – 03/07/16                                     |
| NDOT LEAVE PAYOFF             | 1,568.34             | 06/26/15 – 03/07/16                                     |
|                               | 27,429.62            | Gross back pay leave payoff owed by NDOT                |
|                               | (8,521.02)           | FIT (BACK PAY 06/26/15-03/07/16)                        |
|                               | (191.86)             | FIT (LEAVE PAYOFF 06/26/15-03/07/16)                    |
|                               | (374.99)             | MEDEE (BACK PAY 06/26/15-03/07/16)                      |
|                               | (21.53)              | MEDEE (LEAVE PAYOFF 06/26/15-03/07/16)                  |
|                               | (3,723.14)           | Perle (BACK PAY 06/26/15-03/07/16)                      |
|                               | <b>14,597.08</b>     | Net back pay/leave payoff owed by NDOT                  |
| DETR                          | 0.00                 | Reduce unemployment                                     |
| CCMSI                         | (8,105.18)           | Reduce CCMSI workers' comp payments (06/26/15-01/06/15) |
| CAPITAL FORD                  | (2,635.54)           | Reduce Capital Ford wages earned                        |
| <b>TOTAL OWED TO EMPLOYEE</b> | <b>3,856.36 owed</b> | NDOT Brief, pg. 2, lns. 6-22                            |

1 **C. Findings of Fact**

- 2 1. On or about October 22, 2014, Mr. Zenor commenced an approved Vocational Rehabilitation  
3 program for a work-related injury pursuant to NRS Chapter 615 and/or 616C and he never  
4 appealed such Vocational Rehabilitation program pursuant to the requirements of NRS  
5 Chapters 615 and/or 616C;
- 6 2. On July 8, 2015, Mr. Zenor appealed his June 26, 2015 non-disciplinary dismissal imposed  
7 under the authority of NAC 284.611 pursuant to the requirements of NRS 284.390. HOX 1;
- 8 3. On November 19, 2015, an evidentiary appeal hearing into Mr. Zenor's non-disciplinary  
9 dismissal was conducted pursuant to his July 8, 2015 appeal and NRS 284.390. HOX 2;
- 10 4. On November 23, 2015, the hearing officer made the following decision: "Based on the above  
11 findings of fact and conclusions of law it is the determination and decision of the hearing  
12 officer that there was no substantial evidence of compliance with NAC 284.611(1)(a) or other  
13 just cause justifying the June 26, 2015 involuntary separation of Mr. Zenor's employment from  
14 his pre-injury employment at NDOT for his physical condition caused by an August 1, 2013  
15 work related injury. Mr. Zenor's appeal is granted and NDOT is directed to immediately  
16 reinstate Mr. Zenor to his former pre-injury position at NDOT and to make Mr. Zenor whole by  
17 paying him the appropriate back pay and benefits retroactive to June 26, 2015 with set off for  
18 any interim earnings or other benefits Mr. Zenor received as a result of his vocational  
19 rehabilitation training program and/or other employment following June 26, 2015 and prior to  
20 his reinstatement." ZX 1, pg. 12;
- 21 5. On January 27, 2017, counsel for Mr. Zenor and NDOT stipulated to the following facts:
- 22 a) Mr. Zenor's gross base pay from June 26, 2015 until March 7, 2016 was \$25,861.28;  
23 net base pay after required deductions \$14,597.08;
- 24 b) Mr. Zenor's gross annual leave payoff from June 26, 2015 until March 7, 2016 was  
25 \$1,568.34;
- 26 c) Mr. Zenor's gross vocational rehabilitation maintenance payment from October 22,  
27 2014 until March 7, 2016 was \$23,726.97;
- 28

- 1 d) Mr. Zenor's gross vocational rehabilitation mileage reimbursement payment from
- 2 October 22, 2014 until March 7, 2016 was \$3,435.05;
- 3 e) Mr. Zenor's gross wages at Capital Ford from June 26, 2015 until March 7, 2016 were
- 4 \$2,999.08; net wages after required deductions \$2,635.54;
- 5 f) Mr. Zenor received no Nevada unemployment compensation benefits from June 26,
- 6 2015 until March 7, 2016;
- 7 g) Mr. Zenor received no other interim earnings or benefits from June 26, 2015 until
- 8 March 7, 2016;
- 9 6. NDOT witness Barbara Foster testified that vocational rehabilitation maintenance payments to
- 10 Mr. Zenor were gross payments without any deductions;
- 11 7. Mr. Zenor testified that he had exhausted all of his sick and annual leave before he was
- 12 transitioned to vocational rehabilitation maintenance payments and that he received
- 13 approximately one-third less than his regular NDOT salary from October 22, 2014 until his
- 14 June 26, 2015 dismissal;
- 15 8. The parties were in basic disagreement on computation of vocational rehabilitation
- 16 maintenance payments from June 26, 2015 until March 7, 2016 with Mr. Zenor using a figure
- 17 of \$5,701.83 while NDOT used a figure of \$8,105.18. Mr. Zenor never explained his
- 18 computation while NDOT showed in its pleadings before the District Court the methodology
- 19 for its computation including prorating payment. NDOTX B, pgs. 8-9. The hearing officer
- 20 concludes there is substantial evidence supporting NDOT's calculation of \$8,105.18 which is to
- 21 be offset against back pay;
- 22 9. The parties were also in basic disagreement on inclusion of Mr. Zenor's post-dismissal Capital
- 23 Ford wages as a set off against back pay. Mr. Zenor did not include this figure in his back-pay
- 24 computation while NDOT did include this figure in its back-pay computation. The hearing
- 25 officer finds substantial evidence supporting a \$2,635.54 offset of Mr. Zenor's post-dismissal
- 26 Capital Ford wages against back pay;
- 27
- 28



1 10. NDOT already paid \$12,832.54 in required deductions based on Mr. Zenor's gross NDOT  
2 wages and annual leave of \$27,429.62 from the June 26, 2015 dismissal until March 7, 2016  
3 reinstatement. NDOTX D, pg. 1, paragraph 3;

4 11. In accordance with the requirements of NRS 284.390(6) the hearing officer's back pay  
5 calculation from Mr. Zenor's June 26, 2015 dismissal until his March 7, 2016 reinstatement is  
6 as follows:

7 NDOT back pay: \$25,861.28

8 Plus annual leave: \$1,568.34

9 NDOT gross back pay/annual leave: \$27,429.62

10 Less required deductions already paid by NDOT: \$12,832.54

11 Less vocational rehabilitation maintenance payments: \$8,105.18

12 Less Capital Ford net wages: \$2,635.54

13 Total back pay owed to Mr. Zenor: \$3,856.36

14 **D. Conclusions of Law**

- 15 1. Pursuant to NRS 284.390(6) "If the hearing officer determines that the dismissal, demotion or  
16 suspension was without just cause as provided in NRS 284.385, the action must be set aside  
17 and the employee must be reinstated, with full pay for the period of dismissal, demotion or  
18 suspension";
- 19 2. Pursuant to NRS 284.390(6) the hearing officer only has jurisdiction to award back pay for the  
20 period of dismissal until reinstatement and has no jurisdiction to award back pay prior to Mr.  
21 Zenor's non-disciplinary dismissal on June 26, 2015;
- 22 3. Pursuant to NRS 616A.020 the "rights and remedies provided in Chapters 616A to 616D,  
23 inclusive, of NRS for an employee on account of an injury by accident sustained arising out  
24 and in the course of employment shall be exclusive, except as otherwise provided in those  
25 chapters, of all other rights and remedies of the employee, . . . , on account of such injury";
- 26 4. The rights and remedies provided in NRS Chapters 615 and/or 616C are exclusive as to  
27 challenges or appeals of benefits under those statutes including but not limited to Mr. Zenor's  
28 October 22, 2014 transition to vocational rehabilitation and receipt of vocational rehabilitation

- 1 maintenance payments until his June 26, 2015 dismissal and were not subject to the jurisdiction  
2 of the hearing officer;
- 3 5. The hearing officer has no jurisdiction to award any back pay or other benefits for the  
4 difference between Mr. Zenor's NDOT gross regular pay and his vocational rehabilitation  
5 maintenance payments received prior to Mr. Zenor's June 26, 2015 non-disciplinary dismissal;
- 6 6. As discussed in paragraph A above, Mr. Zenor relies on the District Court's Decision which  
7 states in part "NDOT is hereby ordered to comply with the decision and make Zenor whole,  
8 putting him in the same position he would have enjoyed had NDOT not improperly caused him  
9 to enter vocational rehabilitation and then terminated. The decision of the hearing office (sic)  
10 and of this Court mean that he should suffer no financial impact as a result of NDOT's  
11 misconduct, including the necessity of defending against NDOT's petition for judicial review."  
12 Order Denying Petitioner's Petition for Judicial Review, pg. 10, lns. 4-9. Mr. Zenor argues that  
13 the hearing officer is bound by the above finding as "the law of the case" and requires the  
14 hearing officer to also make Mr. Zenor whole during the period from October 22, 2014 to June  
15 26, 2015. While the hearing officer is sympathetic to Mr. Zenor's pre-termination issue based  
16 on his one-third reduction of salary caused by his transition to vocational rehabilitation  
17 pursuant to NRS Chapters 615 and/or 616C, the hearing officer finds that he is bound by the  
18 express requirements of NRS 284.390(6) and the hearing officer's prior Decision in this matter  
19 which limits back pay and the make whole remedy to the period following Mr. Zenor's June  
20 26, 2015 dismissal and prior to his March 7, 2016 reinstatement. To apply the District Court's  
21 decision as advocated by Mr. Zenor would necessarily amend the hearing officer's November  
22 24, 2015 Decision to allow pre-dismissal monetary relief and the hearing officer is of the  
23 opinion that he is bound by and cannot amend his prior Decision and that such pre-dismissal  
24 monetary relief is beyond the jurisdiction of the hearing officer;
- 25 7. The NDOT's computation of post-dismissal vocational rehabilitation maintenance payments  
26 totaling \$8,105.18 and inclusion of the \$8,105.18 and Capital Ford net wages totaling  
27 \$2,635.54 as offsets to NDOT back pay are adopted by the hearing officer as required by NRS  
28 284.390(6);

1 8. Pursuant to NRS 284.390(6) NDOT owes Mr. Zenor net back pay of \$3,856.36 calculated as  
2 follows:

3 NDOT back pay: \$25,861.28

4 Plus annual leave: \$1,568.34

5 NDOT gross back pay/annual leave: \$27,429.62

6 Less required deductions already paid by NDOT: \$12,832.54

7 Less Vocational Rehabilitation Maintenance Payments: \$8,105.18


8 Less Capital Ford net wages: \$2,635.54

9 Total net back pay owed to Mr. Zenor: \$3,856.36

10 **E. Decision**

11 Based on the above findings of fact and conclusions of law it is the determination and decision  
12 of the hearing officer that NDOT owes Mr. Zenor net back pay totaling \$3,856.36 for the period of  
13 dismissal from June 26, 2015 until reinstatement on March 7, 2016.

14 Dated this 1 day of February, 2017.

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16   
17 Charles P. Cockerill, Esq.  
18 Hearing Officer  
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Certificate of Service

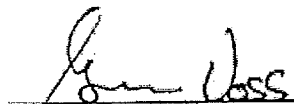
I certify that on the 3<sup>rd</sup> day of February, 2017 the Decision was mailed postage prepaid and e-mailed to the following:

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