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2017 MAR 29 PM 2:52

SUSAN MERRIWETHER
CLERK

BY **Electronically Filed**
Apr 05 2017 09:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 CASE NO. 15 OC 00092 1B

2 DEPT. II

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

8
9 CITY OF RENO,

10 Petitioner,

11 vs.

NOTICE OF APPEAL

12 DANIEL DEMARANVILLE (Deceased);
13 EMPLOYERS INSURANCE COMPANY OF
14 NEVADA; and NEVADA DEPARTMENT OF
ADMINISTRATION, APPEALS OFFICER

15 Respondents.

16 TO: CITY OF RENO, CCMSI and
17 their attorney of record, Timothy E. Rowe, Esq.;

18 TO: EMPLOYERS INSURANCE COMPANY OF NEVADA, and
19 its attorney of record, Mark S. Sertic, Esq.

20 Notice is hereby given that pursuant to N.R.A.P. 4
21 Appellant Laura DeMaranville, surviving spouse of Daniel
22 DeMaranville, by and through her attorney, Evan Beavers, Esq.,
23 Nevada Attorney for Injured Workers, hereby appeals to the
24 Supreme Court of Nevada from the Order issued by the First
25 judicial District Court on March 9, 2017, and entered on or about
March 14, 2017 (attached hereto at Exhibit A).

26 . . .

27 . . .

28 . . .

1 The Nevada Attorney for Injured Workers is a state
2 agency exempt from fees and therefore is filing no cost bond.

3 DATED this 29 day of March, 2017.

4 NEVADA ATTORNEY FOR INJURED WORKERS

5  #8590

6 Evan Beavers, Esq.
7 Nevada Bar No. 3399
8 1000 E. William Street, Suite 208
9 Carson City, Nevada 89701
Attorneys for Appellant,
Laura DeMaranville

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

NOTICE OF APPEAL TO SUPREME COURT

filed in Case Number: 15 OC 00092 1B

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

-OR-

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

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

-or-

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

8590

W. Daniel Holt for

Signature

3/29/17
Date

EVAN BEAVERS, ESQ.
Nevada Attorney for Injured Workers

Attorneys for Appellant,
Laura DeMaranville

EXHIBIT A

EXHIBIT A

Timothy E. Rowe, Esq.
Nevada Bar No. 1000
McDONALD CARANO WILSON LLP
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, Nevada 89505
Telephone: (775) 788-2000
Facsimile: (775) 788-2020

Attorneys for Respondents, CITY OF RENO and CCMSI

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

CITY OF RENO,

Petitioner,

vs.

DANIEL DEMARANVILLE [Deceased],
EMPLOYER'S INSURANCE COMPANY
OF NEVADA, and NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,

Respondents.

Case No. 15 OC 00092 1B
Dept. No. II

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 8th day of March, 2017, the Court entered its Order Denying Granting in Part and Denying in Part Petition for Judicial Review in the above-referenced matter. A true and correct copy of the Order is attached hereto as Exhibit "1".

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 13th day of March, 2017.

McDONALD CARANO WILSON LLP

By: J. E. Rowe

Timothy E. Rowe, Esq
P.O. Box 2670
Reno, NV 89505-2670

Attorneys for City of Reno and CCMSI


CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on the 13th day of March, 2017, I served true and correct copies of the NOTICE OF ENTRY OF ORDER via the U.S. Postal Service on the following parties:

Evan Beavers, Esq.
Nevada Attorneys for Injured Workers
1000 E. William St., #208
Carson City, NV 89701

Mark Sertic, Esq.
5975 Home Gardens Drive
Reno, NV 89502

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, NV 89701


Carole Davis

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Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
1	Order Granting in Part and Denying in Part Petition For Judicial Review	8

422256

EXHIBIT 1

EXHIBIT 1

RECEIVED

✓ MAR 13 2017

McDonald Carano Wilson LLP

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2017 MAR -9 PM 2:51

SUSAN MERRIWETHER
CLERK

BY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 0C 00092 1B

vs.

Dept. No. II

DANIEL DEMARANVILLE [Deceased],
EMPLOYER'S INSURANCE COMPANY
OF NEVADA, and NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,
Respondents.

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR JUDICIAL REVIEW

This matter involves three consolidated petitions for judicial review involving the City of Reno (City of Reno), Employers Insurance Company of Nevada (EICN), and the widow of Daniel Demaranville, Laura DeMaranville. The case arises out of Ms. Demaranville's claim for death benefits in which Ms. DeMaranville contends her husband's death was caused by occupational heart disease.

I. PROCEDURAL BACKGROUND

Case No. 15 0C 00092 1B is a petition for judicial review filed by the City of Reno seeking review of a March 18, 2015, decision of the Department of Administration Appeals Officer concluding Daniel DeMaranville died as a result of compensable heart disease under Nevada's heart/lung statute, NRS 617.457. The Appeals Officer Decision also addresses which

1 insurer, the City of Reno, which was self-insured in 2012 on the date of Mr. Demaranville's
2 death, or EICN, the City's insurer in 1990 when Mr Demaranville retired as a police officer,
3 was the responsible insurer on the claim. The Appeals Officer concluded that the City was the
4 responsible insurer.

5 Case No. 16 0C 00003 1B is a petition for judicial review filed by the EICN seeking
6 review of an Appeals Officer Decision dated December 10, 2015, concluding that Mr.
7 Demaranville's widow was entitled to the benefits due under NRS 616C.505 based on the
8 wages Mr. Demaranville was earning on the date of his death.

9 Case No. 16 0C 00049 1B is the City of Reno's petition for judicial review of the same
10 December 10, 2016, Appeals Officer Decision at issue in Case No. 16 0C 00003 1B.

11 All three cases were consolidated under Case No. 15 0C 00092 1B by order of this
12 Court dated April 12, 2016.

13 **II. RELEVANT FACTS**

14 Daniel DeMaranville worked as a police officer for the City of Reno ("City") from
15 1969 through his retirement in 1990. (ROA 017, 128.) It is undisputed that when Mr.
16 DeMaranville retired in 1990, the City was insured by the Employer's Insurance Company of
17 Nevada ("EICON"). (ROA 022.) The City became self-insured in 2002.

18 On August 5, 2012, Mr. DeMaranville died following laparoscopic cholecystectomy
19 (gallbladder removal) surgery. (ROA 133-134, 143.) At the time of his death, Mr.
20 DeMaranville was employed by AKAL Security as a security officer for the U.S. Marshal's
21 Office. (ROA 184, 188.)

22 Mr. DeMaranville's widow, claimant Laura DeMaranville, filed an occupational disease
23 claim with the City. (ROA 127.) On May 23, 2013, the City denied the claim based on a lack
24 of medical evidence establishing that heart disease caused Mr. DeMaranville's death. (ROA
25 130 - 131.) Ms. DeMaranville appealed the City's determination. (ROA 125.) The parties
26 then agreed to bypass the hearing officer directly to the Appeals Officer pursuant to NRS
27 616C.315. (ROA 125.)

1 Ms. DeMaranville also submitted the claim to EICON. (ROA 184 – 188.) On
2 September 19, 2013, EICON also denied the claim upon finding that there was no evidence that
3 Mr. DeMaranville died as a result of heart disease. (ROA 321 – 323.) Ms. DeMaranville
4 appealed EICON's determination. (ROA 361.) On October 28, 2013, the Hearing Officer
5 reversed EICON's determination and ruled that EICON was liable for the claim because Mr.
6 DeMaranville died from heart disease. (ROA 361-363.) EICON appealed the Hearing Officer
7 Decision to an Appeals Officer. (ROA 670.)

8 In the meantime, the City also appealed EICON's September 19, 2013 determination.
9 (ROA 324.) The parties then agreed to bypass the hearing officer directly to the Appeals
10 Officer pursuant to NRS 616C.315. (ROA 324.)

11 The three appeals were consolidated before the Appeals Officer. (ROA 642 - 643.)
12 Various medical opinions concerning the cause of Mr. DeMaranville's death were submitted
13 into evidence before the Appeals Officer. (ROA 019 – 021.) The Appeals Officer principally
14 relied upon the opinion of Charles Ruggeroli, M.D., who opined that DeMaranville
15 experienced a catastrophic cardiovascular event secondary to underlying occult occlusive
16 atherosclerosis of the coronary arteries leading to his death. (ROA 021 – 022.) The Appeals
17 Officer found that Mr. DeMaranville's heart disease was compensable as an occupational
18 disease under NRS 617.457. (ROA 022.) She also found the applicable date of disability to be
19 August 5, 2012, the date of Mr. DeMaranville's death. (ROA 022.) She then concluded that
20 the City as a self-insured employer on the date of disability was liable for the claim. (ROA 24.)
21 The Appeals Officer also concluded that EICON, who insured the City through 2002, was not
22 liable for the claim. (ROA 024-025.) The Appeals Officer reversed the Hearing Officer's
23 October 28, 2013 decision finding EICON liable for the claim; reversed the City's May 23,
24 2013 determination letter denying the claim; and affirmed EICON's September 19, 2013
25 determination letter denying the claim. (ROA 025.)

26 The City requested judicial review of the Appeals Officer's March 18, 2015 Decision.
27 (ROA 010 - 015.)

1 On April 15, 2015, in compliance with the Appeals Officer Decision, the City issued its
2 determination accepting the claim for death benefits pursuant to NRS 616C.505. The
3 determination also established the monthly benefit for the death benefits at \$1,683.85, the
4 maximum allowable wage on the date of Mr. DeMaranville's retirement from the City in 1990.

5 The Claimant appealed the determination to the hearing officer who affirmed the City.
6 (ROA 772 – 774)

7 Ms Demaranville appealed the decision to the Appeals Officer seeking to have the
8 monthly death benefits calculated based upon the wages that Mr. DeMaranville was receiving
9 from his private employer at the time of his death 22 years after retiring from the City, which
10 would be the maximum allowable benefit as of 2012. The Appeals Officer in a decision dated
11 December 10, 2015, reversed the decision of the hearing officer and found the monthly benefit
12 should be based on Mr. DeMaranville's wages earned from the private employer at the time of
13 his death in 2012. (ROA 24 – 30)

14 **III. ANALYSIS**

15 **1. Cause of Death**

16 The Appeals Officer found Mr. DeMaranville died as a result of a catastrophic
17 cardiovascular event caused by heart disease. Careful review of the record reveals that
18 conclusion is supported by substantial evidence including the medical opinion of Charles
19 Ruggeroli, M.D. An Appeals Officer's factual findings that are supported by substantial
20 evidence cannot be overturned. *Nassiri v. Chiropractic Physicians Board of Nevada*, 130 Nev.
21 Adv. Op. 27, 327 P. 3d 487, 489 (2014); *Elizondo v. Hood Machine, Inc.* 129 Nev. Adv. Op.
22 84, 312 P. 3d 479 (2013). The court will not reweigh the evidence or revisit an appeals officer's
23 credibility determinations. *City of Las Vegas V. Lawson*, 126 Nev. 567, 245 P. 3d 1175, 1178
24 (2010). Here, the Appeals Officer's conclusion that Mr. DeMaranville died as a result of heart
25 disease is supported by substantial evidence and must be upheld. Given Mr. DeMaranville's
26 past employment as a City of Reno police officer his death as a result of heart disease qualifies
27 as a compensable occupational disease under NRS 617.457.

1 **2. Which insurer is liable for the claim?**

2 The second issue presented for resolution is which insurer is responsible for the
3 occupational disease claim. Reno employed Mr. DeMaranville as a police officer from 1969
4 until he retired in 1990. EICON provided workers compensation coverage for Reno at the time
5 of Mr. DeMaranville's retirement. Reno became self-insured in 1992 and remained self-insured
6 at the time of Mr. DeMaranville's death in 2012.

7 Under NRS 617.457 there is a conclusive presumption that Mr. DeMaranville's heart
8 disease was an occupational disease arising out of and in the course of his employment as a
9 Reno police officer. NRS 617.060 "disablement" means "the event of becoming physically
10 incapacitated by reason of an occupational disease...." The claim for Mr. DeMaranville's death
11 arose at the time of his disability which was the date of his death in 2012.

12 Reno argued that EICON is liable because it covered the risk of exposure when Mr.
13 DeMaranville was last exposed. Reno argued to the Appeals Officer in its post-hearing brief
14 that the last injurious exposure rule did not apply to this case. Reno's position in that brief is
15 correct; the last injurious exposure rule does not apply in this case.

16 Reno cites no contract, statute, or case that supports its argument. The authorities Reno
17 cited involve successive employer, or successive-insurers-under-the- same-employer fact
18 patterns but those are not the fact pattern of this case.

19 Reno had the burden of proof to show that the final decision is invalid. Reno failed to
20 show that the final decision is invalid on any of the grounds stated in NRS 233B.135(3).
21 Therefore the Appeals Officer's conclusion that Reno is the liable insurer is affirmed.

22 **3. The Amount of Benefits Due**

23 The last issue to be resolved is the calculation of the amount of death benefits that are
24 due to Ms. Demaranville. In this case the Appeals Officer ruled the death benefits should be
25 based on the claimant's wages at the time of his death even though his employment at that time
26 had nothing to do with his occupational disease. The City and EICN contend the Appeals
27 Officer decision is erroneous because it ignores applicable regulation and misinterprets existing

1 case law.

2 NAC 616C.435 requires any benefits due be based on the average monthly wage earned
3 in the employment in which the industrial injury or occupational disease occurs. See NAC
4 616C.435(9). Here, Ms. Demaranville's entitlement to benefits, if any, arises from her
5 husband's employment as a police officer with the City of Reno more than 25 years ago. Mr.
6 Demaranville retired from the City of Reno police force in 1990 and had earned no wages from
7 that employment since his retirement.

8 The Appeals Officer Decision overlooked NAC 616C.435(9) and instead concluded the
9 calculation of death benefits would be based on wages earned at the time of Mr.
10 Demaranville's death. That conclusion was erroneous because NAC 616C.435(9) requires
11 benefits to be based on the average monthly wage earned in the employment causing the
12 occupational disease.

13 Existing Nevada case law requires that benefits be determined as of the date of
14 disability. See Mirage v. Nevada Department of Administration, 110 Nev. 257, 871 P.2d 317
15 (1994). In Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), a case factually
16 similar to the present case, the Nevada Supreme Court applied the requirements of the Mirage
17 case to situation in which a retired firefighter sought benefits for temporary total disability. The
18 court determined Howard was not entitled to benefits because he was not earning wages at the
19 time he became disabled. The same rationale applied to this case requires a similar result. Mr.
20 Demaranville was not earning wages from the covered employment at the time of his death, so
21 the calculation of average monthly wage using wages from the covered employment is zero.
22 Since death benefits are calculated using average monthly wage, the calculation of the amount
23 of death benefits due is zero. The Appeals Officer Decision misinterprets Howard when she
24 concluded death benefits were payable in this case.

25 The Appeals Officer Decision is clearly erroneous because it does not correctly apply
26 NAC 616C.435 and the rationale expressed in the Howard decision. If the principles set forth
27 in NRS 616C.435 and in Howard are applied in this case there can be only one conclusion: the

1 applicable average monthly wage was zero, and because the average monthly wage was zero,
2 death benefits were not payable.

3 **DECISION AND ORDER**

4 1. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to the
5 conclusion Mr. Demaranville's death was the result of compensable occupational heart disease
6 under NRS 617.457.

7 2. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to its
8 conclusion the City of Reno is the responsible insurer on the claim.

9 3. The December 10, 2015 Appeals Officer's Decision concluding Ms. Demaranville
10 was entitled to death benefits based on wages Mr. Demaranville was earning from private
11 employment on the date of his death is reversed. Under the rationale expressed in the Howard
12 decision, Mr. Demaranville's average monthly wage from the covered employment at the City
13 of Reno at the time of his death was zero. Because the average monthly wage was zero, there
14 is no death benefit.

15 The Petitions for Judicial Review filed by the City of Reno and EICN are denied in part
16 and granted in part as explained herein.

17 DATED this 8 day of March, 2017.

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20 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

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

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

TIMOTHY E ROWE ESQ
MCDONALD CARANO WILSON
100 W LIBERTY ST 10TH FL
PO BOX 2670
RENO NV 89505-2670

MARK S SERTIC ESQ
SERTIC LAW LTD
5975 HOME GARDENS DR
RENO NV 89502

DATED: March 29, 2017

SIGNED: Taney L. Sherwood

ORIGINAL

1 CASE NO. 15 OC 00092 1B

REC'D & FILED

2 DEPT. II

2017 MAR 29 PM 2:52

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SUSAN HERRIWETHER
CLERK
BY  DEPUTY

6

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR CARSON CITY

8

9

CITY OF RENO,

10

Petitioner,

11

vs.

CASE APPEAL STATEMENT

12

DANIEL DEMARANVILLE (Deceased);
EMPLOYERS INSURANCE COMPANY OF
13 NEVADA; and NEVADA DEPARTMENT OF
ADMINISTRATION, APPEALS OFFICER,

14

Respondents.

15

16

17

1. Name of appellant filing this case appeal

18

statement:

19

Laura DeMaranville, surviving spouse of Daniel

20

DeMaranville.

21

2. Identify the judge issuing the decision, judgment,

22

or order appealed from:

23

Hon. James E. Wilson, District Court Judge.

24

/ / /

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/ / /

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

1 3. *Identify each appellant and the name and address of*
2 *counsel for each appellant:*

3 Laura DeMaranville.

4 Evan Beavers, Esq.
5 Nevada Attorney for Injured Workers
6 1000 East William Street, Suite 208
7 Carson City, NV 89701

8 4. *Identify each respondent and the name and address*
9 *of appellate counsel, if known, for each respondent (if the name*
10 *of a respondent's appellate counsel is unknown, indicate as much*
11 *and provide the name and address of that respondent's trial*
12 *counsel):*

13 City of Reno; Cannon Cochran Management Services, Inc.

14 Timothy E. Rowe, Esq.
15 McDonald Carano Wilson LLP
16 100 West Liberty Street, 10th Floor
17 PO Box 2670
18 Reno, NV 89505-2670

19 Employers Insurance Company of Nevada

20 Mark S. Sertic, Esq.
21 Sertic Law, Ltd.
22 5975 Home Gardens Drive
23 Reno, NV 89502

24 5. *Indicate whether any attorney identified above in*
25 *response to question 3 or 4 is not licensed to practice law in*
26 *Nevada and, if so, whether the district court granted that*
27 *attorney permission to appear under SCR 42 (attach a copy of any*
28 *district court order granting such permission):*

 All counsel are licensed in the State of Nevada.

 6. *Indicate whether appellant was represented by*
appointed or retained counsel in the district court:

 Appointed.

 7. *Indicate whether appellant is represented by*
appointed or retained counsel on appeal:

 Appointed.

/ / /

1 8. *Indicate whether appellant was granted leave to*
2 *proceed in forma pauperis, and the date of entry of the district*
3 *court order granting such leave:*

4 Appellant Laura Demaranville is represented by The
5 Nevada Attorney for Injured Workers, which is a state agency
6 exempt from fees, and therefore, did not file a cost bond and did
7 not pay a filing fee.

8 9. *Indicate the date the proceedings commenced in the*
9 *district court (e.g., date complaint, indictment, information, or*
10 *petition was filed):*

11 Respondents City of Reno and Cannon Cochran Management
12 Services, Inc. filed a Petition for Judicial Review on April 14,
13 2015, relative to an administrative appeals officer's March 18,
14 2015, decision and order. Respondent Employers Insurance Company
15 of Nevada filed a Cross-Petition for Judicial Review of the same
16 March 18, 2015, decision and order on April 17, 2015. Both the
17 petition and cross-petition were filed in the First Judicial
18 District Court and resulted in Case No. 15 OC 00092 1B.

19 On January 5, 2016, Respondent City of Reno filed a
20 petition for judicial review of an administrative appeal
21 officer's December 10, 2015, order granting a summary judgement.
22 This was filed in the Second Judicial District Court. This
23 petition is reflected in Case No. 16 OC 00049.

24 On January 8, 2016, Respondent Employers Insurance
25 Company of Nevada filed a petition for judicial review of the
26 same administrative appeal officer's December 10, 2015, order
27 granting a summary judgement. This was filed in the First
28

Judicial District Court and resulted in Case No. 16 OC 00003 1B.
On February 23, 2016, an order was issued by the First Judicial District Court that changed venue of the City of Reno's petition for judicial review (relative to the December 10, 2015, decision) from the Second Judicial District Court to the First Judicial District Court. This followed a stipulation by the parties.

On April 12, 2016, the First Judicial District Court, pursuant to NRCP 42(a), consolidated Case No. 15 OC 00092 1B, Case No. 16 OC 00049, and Case No. 16 OC 00003 1B.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Respondents City of Reno, Cannon Cochran Management Services, Inc., and Employers Insurance Company of Nevada filed a petition for judicial review and cross-petition for judicial review relative to an administrative appeals officer's March 18, 2015, decision and order.

The March 18, 2015, decision and order reversed Cannon Cochran Management Services, Inc.'s May 23, 2013, denial of a workers' compensation claim filed relative to Daniel Demaranville's August 5, 2012, death due to heart disease.

The March 18, 2015, decision and order also affirmed Employers Insurance Company of Nevada's September 19, 2013, denial of a workers' compensation claim filed relative to Daniel Demaranville's August 5, 2012, death due to heart disease.

/ / /

1 Laura Demaranville filed a workers' compensation claim
2 for Daniel Demaranville's death related heart disease pursuant to
3 NRS 617.457 and his employment as a police officer with the City
4 of Reno.

5 In subsequent proceedings before the appeals officer, a
6 December 10, 2015, order granting summary judgment was issued
7 finding that Laura Demaranville, pursuant to NRS 616C.505, was
8 entitled to death benefits based on the wages Daniel Demaranville
9 was earning at his time of death.

10 On March 9, 2017, the First Judicial District Court
11 issued its Order Granting In Part and Denying In Part Petition
12 for Judicial Review. The District Court affirmed the March 18,
13 2015, decision and order finding Daniel Demaranville's workers'
14 compensation claim for heart disease compensable against the City
15 of Reno, but reversed the December 10, 2015, decision and order
16 findings that Laura Demaranville's death benefits were to be
17 based on zero wages as Daniel Demaranville's wages at death were
18 earned from a private employer, not the City of Reno.

19 **11. Indicate whether the case has previously been the**
20 **subject of an appeal to or original writ proceeding in the**
21 **Supreme Court and, if so, the caption and Supreme Court Docket**
22 **number of the prior proceeding:**

23 No, this case has not previously been subject of an
24 appeal or writ.

25 / / /

26 / / /

27 / / /

12: Indicate whether this appeal involves child
custody or visitation:

This appeal does not involve child custody or
visitation legal issues.

13. If this is a civil case, indicate whether this
appeal involves the possibility of settlement:

Settlement may be explored upon appeal to Supreme
Court.

DATED this 29 day of March, 2017.

NEVADA ATTORNEY FOR INJURED WORKERS

8590 W Daniel Nash for

Evan Beavers, Esq.
Nevada Bar No. 3399
Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, Nevada 89701
Attorneys for Appellant,
Laura DeMaranville

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

CASE APPEAL STATEMENT

filed in Case Number: 15 OC 00092 1B

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

-OR-

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

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

-or-

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

#8590
W Daniel Nash for
Signature

3/29/17
Date

EVAN BEAVERS, ESQ.
Nevada Attorney for Injured Workers

Attorneys for Appellant,
Laura DeMaranville

CERTIFICATE OF SERVICE

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

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

TIMOTHY E ROWE ESQ
MCDONALD CARANO WILSON
100 W LIBERTY ST 10TH FL
PO BOX 2670
RENO NV 89505-2670

MARK S SERTIC ESQ
SERTIC LAW LTD
5975 HOME GARDENS DR
RENO NV 89502

DATED: March 29, 2017

SIGNED: Taney L. Sherwood

Judge: WILSON JR, JAMES E

Case No. 15 OC 00092 1B
Ticket No.
CTN:

CITY OF RENO

By:

-vs-

APPEALS OFFICER

DRSPND

By:

Dob:
Lic:
DEMARANVILLE, LAURA

Sex:
Sid:
DRSPND

By: BEAVERS, EVAN
1625 HIGHWAY 88 SUITE 304
MINDEN, NV 89423

Dob:
Lic:
DEMARANVILLE, DANIEL

Sex:
Sid:
DRSPND

By: SERTIC, MARK S
777 SINCLAIR STREET SUITE
201
RENO, NV 89501

Dob:
Lic:
EMPLOYERS INSURANCE
COMPANY OF NEVADA

Sex:
Sid:
DRSPND

By:

Dob:
Lic:
NEVADA DEPARTMENT OF
ADMINISTRATION

Sex:
Sid:
DRSPND

By:

Dob:
Lic:
Plate#:
Make:
Year:
Type:
Venue:
Location:
Accident:

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Bond:
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CITY OF RENO

PLNTPET

Charges:

Ct.
Offense Dt:
Arrest Dt:
Comments:
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Ct.
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Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	03/29/17	MOTION FOR STAY	1BCCOOPER	0.00	0.00
2	03/29/17	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
3	03/29/17	NOTICE OF APPEAL	1BCCOOPER	0.00	0.00
4	03/14/17	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
5	03/09/17	STIPULATED JUDGMENT	1BJULIEH	0.00	0.00
6	03/09/17	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
30	03/14/16	ORDER TO RESPOND REGARDING CONSOLIDATING CASES	1BJHIGGINS	0.00	0.00
31	09/29/15	JOINDER IN BRIEF OF CROSS-PETITIONER EMPLOYERSINSURANCE COMPANY OF NEVADA	1BCGRIBBLE	0.00	0.00
32	09/29/15	PETITIONER'S REPLY BRIEF	1BCGRIBBLE	0.00	0.00
33	09/28/15	CROSS-PETITIONER EMPLOYERS INSURANCE COMPANY OF NEVADA'S REPLY BRIEF	1BCGRIBBLE	0.00	0.00
34	08/28/15	RESPONDENT EMPLOYERS INSURANCE COMPANY OF NEVADA'S ANSWERING BRIEF TO THE OPENING BRIEF OF THE CITY OF RENO	1BCFRANZ	0.00	0.00
35	08/28/15	RESPONDENT'S ANSWERING BRIEF TO OPENING BRIEF OF PETITIONER CITY OF RENO	1BCFRANZ	0.00	0.00
36	08/28/15	RESPONDENT'S ANSWERING BRIEF TO OPENING BRIEF OR CROSS-PETITIONER EMPLOYERS INSURANCE COMPANY OF NEVADA	1BCFRANZ	0.00	0.00
37	07/31/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
38	07/31/15	ORDER REGARDING BRIEFING SCHEDULE	1BJHIGGINS	0.00	0.00
39	07/28/15	STIPULATION TO EXTEND BRIEFING SCHEDULE	1BCCOOPER	0.00	0.00
40	06/25/15	PETITIONERS OPENING BRIEF	1BCCOOPER	0.00	0.00
41	06/22/15	BRIEF OF CROSS-PETITIONER EMPLOYERS INSURANCE COMPANY OF NEVADA	1BCGRIBBLE	0.00	0.00
42	05/14/15	RECORD ON APPEAL	1BCCOOPER	0.00	0.00
43	05/14/15	PLAINTIFF'S/PETITIONER'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BCCOOPER	0.00	0.00
44	05/14/15	CERTIFICATE OF TRANSMITTAL OF RECORD ON APPEAL	1BCCOOPER	0.00	0.00
45	04/29/15	STATEMENT OF INTENT TO PARTICIPATE	1BCGRIBBLE	0.00	0.00
46	04/27/15	STATEMENT OF INTENT TO PARTICIPATE	1BCFRANZ	0.00	0.00
47	04/20/15	DEFENDANT'S/RESPONDENT'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BJULIEH	0.00	0.00
48	04/20/15	CROSS-PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
49	04/20/15	NOTICE OF INTENT TO PARTICIPATE Receipt: 39172 Date: 04/20/2015	1BCCOOPER	218.00	0.00
50	04/15/15	BRIEFING SCHEDULE	1BCCOOPER	0.00	0.00
51	04/14/15	PETITION FOR JUDICIAL REVIEW Receipt: 39095 Date: 04/14/2015	1BCCOOPER	265.00	0.00
Total:				483.00	0.00
Totals By: COST				483.00	0.00
INFORMATION				0.00	0.00

*** End of Report ***

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SUSAN MERRIWETHER
CLERK

BY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 0C 00092 1B

Dept. No. II

vs.

DANIEL DEMARANVILLE [Deceased],
EMPLOYER'S INSURANCE COMPANY
OF NEVADA, and NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,
Respondents.

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR JUDICIAL REVIEW

This matter involves three consolidated petitions for judicial review involving the City of Reno (City of Reno), Employers Insurance Company of Nevada (EICN), and the widow of Daniel Demaranville, Laura DeMaranville. The case arises out of Ms. Demaranville's claim for death benefits in which Ms. DeMaranville contends her husband's death was caused by occupational heart disease.

I. PROCEDURAL BACKGROUND

Case No. 15 0C 00092 1B is a petition for judicial review filed by the City of Reno seeking review of a March 18, 2015, decision of the Department of Administration Appeals Officer concluding Daniel DeMaranville died as a result of compensable heart disease under Nevada's heart/lung statute, NRS 617.457. The Appeals Officer Decision also addresses which

1 insurer, the City of Reno, which was self-insured in 2012 on the date of Mr. Demaranville's
2 death, or EICN, the City's insurer in 1990 when Mr Demaranville retired as a police officer,
3 was the responsible insurer on the claim. The Appeals Officer concluded that the City was the
4 responsible insurer.

5 Case No. 16 0C 00003 1B is a petition for judicial review filed by the EICN seeking
6 review of an Appeals Officer Decision dated December 10, 2015, concluding that Mr.
7 Demaranville's widow was entitled to the benefits due under NRS 616C.505 based on the
8 wages Mr. Demaranville was earning on the date of his death.

9 Case No. 16 0C 00049 1B is the City of Reno's petition for judicial review of the same
10 December 10, 2016, Appeals Officer Decision at issue in Case No. 16 0C 00003 1B.

11 All three cases were consolidated under Case No. 15 0C 00092 1B by order of this
12 Court dated April 12, 2016.

13 **II. RELEVANT FACTS**

14 Daniel DeMaranville worked as a police officer for the City of Reno ("City") from
15 1969 through his retirement in 1990. (ROA 017, 128.) It is undisputed that when Mr.
16 DeMaranville retired in 1990, the City was insured by the Employer's Insurance Company of
17 Nevada ("EICON"). (ROA 022.) The City became self-insured in 2002.

18 On August 5, 2012, Mr. DeMaranville died following laparoscopic cholecystectomy
19 (gallbladder removal) surgery. (ROA 133-134, 143.) At the time of his death, Mr.
20 DeMaranville was employed by AKAL Security as a security officer for the U.S. Marshal's
21 Office. (ROA 184, 188.)

22 Mr. DeMaranville's widow, claimant Laura DeMaranville, filed an occupational disease
23 claim with the City. (ROA 127.) On May 23, 2013, the City denied the claim based on a lack
24 of medical evidence establishing that heart disease caused Mr. DeMaranville's death. (ROA
25 130 - 131.) Ms. DeMaranville appealed the City's determination. (ROA 125.) The parties
26 then agreed to bypass the hearing officer directly to the Appeals Officer pursuant to NRS
27 616C.315. (ROA 125.)

1 Ms. DeMaranville also submitted the claim to EICON. (ROA 184 – 188.) On
2 September 19, 2013, EICON also denied the claim upon finding that there was no evidence that
3 Mr. DeMaranville died as a result of heart disease. (ROA 321 – 323.) Ms. DeMaranville
4 appealed EICON's determination. (ROA 361.) On October 28, 2013, the Hearing Officer
5 reversed EICON's determination and ruled that EICON was liable for the claim because Mr.
6 DeMaranville died from heart disease. (ROA 361-363.) EICON appealed the Hearing Officer
7 Decision to an Appeals Officer. (ROA 670.)

8 In the meantime, the City also appealed EICON's September 19, 2013 determination.
9 (ROA 324.) The parties then agreed to bypass the hearing officer directly to the Appeals
10 Officer pursuant to NRS 616C.315. (ROA 324.)

11 The three appeals were consolidated before the Appeals Officer. (ROA 642 - 643.)
12 Various medical opinions concerning the cause of Mr. DeMaranville's death were submitted
13 into evidence before the Appeals Officer. (ROA 019 – 021.) The Appeals Officer principally
14 relied upon the opinion of Charles Ruggeroli, M.D., who opined that DeMaranville
15 experienced a catastrophic cardiovascular event secondary to underlying occult occlusive
16 atherosclerosis of the coronary arteries leading to his death. (ROA 021 – 022.) The Appeals
17 Officer found that Mr. DeMaranville's heart disease was compensable as an occupational
18 disease under NRS 617.457. (ROA 022.) She also found the applicable date of disability to be
19 August 5, 2012, the date of Mr. DeMaranville's death. (ROA 022.) She then concluded that
20 the City as a self-insured employer on the date of disability was liable for the claim. (ROA 24.)
21 The Appeals Officer also concluded that EICON, who insured the City through 2002, was not
22 liable for the claim. (ROA 024-025.) The Appeals Officer reversed the Hearing Officer's
23 October 28, 2013 decision finding EICON liable for the claim; reversed the City's May 23,
24 2013 determination letter denying the claim; and affirmed EICON's September 19, 2013
25 determination letter denying the claim. (ROA 025.)

26 The City requested judicial review of the Appeals Officer's March 18, 2015 Decision.
27 (ROA 010 - 015.)

1 On April 15, 2015, in compliance with the Appeals Officer Decision, the City issued its
2 determination accepting the claim for death benefits pursuant to NRS 616C.505. The
3 determination also established the monthly benefit for the death benefits at \$1,683.85, the
4 maximum allowable wage on the date of Mr. DeMaranville's retirement from the City in 1990.

5 The Claimant appealed the determination to the hearing officer who affirmed the City.
6 (ROA 772 – 774)

7 Ms Demaranville appealed the decision to the Appeals Officer seeking to have the
8 monthly death benefits calculated based upon the wages that Mr. DeMaranville was receiving
9 from his private employer at the time of his death 22 years after retiring from the City, which
10 would be the maximum allowable benefit as of 2012. The Appeals Officer in a decision dated
11 December 10, 2015, reversed the decision of the hearing officer and found the monthly benefit
12 should be based on Mr. DeMaranville's wages earned from the private employer at the time of
13 his death in 2012. (ROA 24 – 30)

14 **III. ANALYSIS**

15 **1. Cause of Death**

16 The Appeals Officer found Mr. DeMaranville died as a result of a catastrophic
17 cardiovascular event caused by heart disease. Careful review of the record reveals that
18 conclusion is supported by substantial evidence including the medical opinion of Charles
19 Ruggeroli, M.D. An Appeals Officer's factual findings that are supported by substantial
20 evidence cannot be overturned. *Nassiri v. Chiropractic Physicians Board of Nevada*, 130 Nev.
21 Adv. Op. 27, 327 P. 3d 487, 489 (2014); *Elizondo v. Hood Machine, Inc.* 129 Nev. Adv. Op.
22 84, 312 P. 3d 479 (2013). The court will not reweigh the evidence or revisit an appeals officer's
23 credibility determinations. *City of Las Vegas V. Lawson*, 126 Nev. 567, 245 P. 3d 1175, 1178
24 (2010). Here, the Appeals Officer's conclusion that Mr. DeMaranville died as a result of heart
25 disease is supported by substantial evidence and must be upheld. Given Mr. DeMaranville's
26 past employment as a City of Reno police officer his death as a result of heart disease qualifies
27 as a compensable occupational disease under NRS 617.457.

1 **2. Which insurer is liable for the claim?**

2 The second issue presented for resolution is which insurer is responsible for the
3 occupational disease claim. Reno employed Mr. DeMaranville as a police officer from 1969
4 until he retired in 1990. EICON provided workers compensation coverage for Reno at the time
5 of Mr. DeMaranville's retirement. Reno became self-insured in 1992 and remained self-insured
6 at the time of Mr. DeMaranville's death in 2012.

7 Under NRS 617.457 there is a conclusive presumption that Mr. DeMaranville's heart
8 disease was an occupational disease arising out of and in the course of his employment as a
9 Reno police officer. NRS 617.060 "disablement" means "the event of becoming physically
10 incapacitated by reason of an occupational disease...." The claim for Mr. DeMaranville's death
11 arose at the time of his disability which was the date of his death in 2012.

12 Reno argued that EICON is liable because it covered the risk of exposure when Mr.
13 DeMaranville was last exposed. Reno argued to the Appeals Officer in its post-hearing brief
14 that the last injurious exposure rule did not apply to this case. Reno's position in that brief is
15 correct; the last injurious exposure rule does not apply in this case.

16 Reno cites no contract, statute, or case that supports its argument. The authorities Reno
17 cited involve successive employer, or successive-insurers-under-the- same-employer fact
18 patterns but those are not the fact pattern of this case.

19 Reno had the burden of proof to show that the final decision is invalid. Reno failed to
20 show that the final decision is invalid on any of the grounds stated in NRS 233B.135(3).
21 Therefore the Appeals Officer's conclusion that Reno is the liable insurer is affirmed.

22 **3. The Amount of Benefits Due**

23 The last issue to be resolved is the calculation of the amount of death benefits that are
24 due to Ms. Demaranville. In this case the Appeals Officer ruled the death benefits should be
25 based on the claimant's wages at the time of his death even though his employment at that time
26 had nothing to do with his occupational disease. The City and EICN contend the Appeals
27 Officer decision is erroneous because it ignores applicable regulation and misinterprets existing

1 case law.

2 NAC 616C.435 requires any benefits due be based on the average monthly wage earned
3 in the employment in which the industrial injury or occupational disease occurs. See NAC
4 616C.435(9). Here, Ms. Demaranville's entitlement to benefits, if any, arises from her
5 husband's employment as a police officer with the City of Reno more than 25 years ago. Mr.
6 Demaranville retired from the City of Reno police force in 1990 and had earned no wages from
7 that employment since his retirement.

8 The Appeals Officer Decision overlooked NAC 616C.435(9) and instead concluded the
9 calculation of death benefits would be based on wages earned at the time of Mr.
10 Demaranville's death. That conclusion was erroneous because NAC 616C.435(9) requires
11 benefits to be based on the average monthly wage earned in the employment causing the
12 occupational disease.

13 Existing Nevada case law requires that benefits be determined as of the date of
14 disability. See Mirage v. Nevada Department of Administration, 110 Nev. 257, 871 P.2d 317
15 (1994). In Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), a case factually
16 similar to the present case, the Nevada Supreme Court applied the requirements of the Mirage
17 case to situation in which a retired firefighter sought benefits for temporary total disability. The
18 court determined Howard was not entitled to benefits because he was not earning wages at the
19 time he became disabled. The same rationale applied to this case requires a similar result. Mr.
20 Demaranville was not earning wages from the covered employment at the time of his death, so
21 the calculation of average monthly wage using wages from the covered employment is zero.
22 Since death benefits are calculated using average monthly wage, the calculation of the amount
23 of death benefits due is zero. The Appeals Officer Decision misinterprets Howard when she
24 concluded death benefits were payable in this case.

25 The Appeals Officer Decision is clearly erroneous because it does not correctly apply
26 NAC 616C.435 and the rationale expressed in the Howard decision. If the principles set forth
27 in NRS 616C.435 and in Howard are applied in this case there can be only one conclusion: the

1 applicable average monthly wage was zero, and because the average monthly wage was zero,
2 death benefits were not payable.

3 **DECISION AND ORDER**

4 1. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to the
5 conclusion Mr. Demaranville's death was the result of compensable occupational heart disease
6 under NRS 617.457.

7 2. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to its
8 conclusion the City of Reno is the responsible insurer on the claim.

9 3. The December 10, 2015 Appeals Officer's Decision concluding Ms. Demaranville
10 was entitled to death benefits based on wages Mr. Demaranville was earning from private
11 employment on the date of his death is reversed. Under the rationale expressed in the Howard
12 decision, Mr. Demaranville's average monthly wage from the covered employment at the City
13 of Reno at the time of his death was zero. Because the average monthly wage was zero, there
14 is no death benefit.

15 The Petitions for Judicial Review filed by the City of Reno and EICN are denied in part
16 and granted in part as explained herein.

17 DATED this 8 day of March, 2017.

18
19 
20 DISTRICT JUDGE
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27

CERTIFICATE OF SERVICE

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 9 day of March, 2017 I mailed a true and correct copy of the foregoing Order to:

Timothy Rowe, Esq.
P.O. Box 2670
Reno, NV 89505-2670

Mark Sertic, Esq.
5975 Home Gardens Drive
Reno, NV 89502

Evan Beavers, Esq.
NAIW
1000 E. Williams Street, Ste 208
Carson City, NV 89701

Appeals Officer, DOA
1050 E. William Street, Ste 450
Carson City, NV 89701


Gina Winder
Judicial Assistant

Timothy E. Rowe, Esq.
Nevada Bar No. 1000
McDONALD CARANO WILSON LLP
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, Nevada 89505
Telephone: (775) 788-2000
Facsimile: (775) 788-2020

Attorneys for Respondents, CITY OF RENO and CCMSI

REC'D & FILED

2017 MAR 14 PM 1:46

SUSAN HERRIWETHER
CLERK

BY [Signature] DEPUTY

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

CITY OF RENO,

Petitioner,

vs.

DANIEL DEMARANVILLE [Deceased],
EMPLOYER'S INSURANCE COMPANY
OF NEVADA, and NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,

Respondents.

Case No. 15 OC 00092 1B
Dept. No. II

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 8th day of March, 2017, the Court entered its Order Denying Granting in Part and Denying in Part Petition for Judicial Review in the above-referenced matter. A true and correct copy of the Order is attached hereto as Exhibit "1".

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 13th day of March, 2017.

McDONALD CARANO WILSON LLP

By:

[Signature]
Timothy E. Rowe, Esq.
P.O. Box 2670
Reno, NV 89505-2670

Attorneys for City of Reno and CCMSI

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on the 13th day of March, 2017, I served true and correct copies of the NOTICE OF ENTRY OF ORDER via the U.S. Postal Service on the following parties:

Evan Beavers, Esq.
Nevada Attorneys for Injured Workers
1000 E. William St., #208
Carson City, NV 89701

Mark Sertic, Esq.
5975 Home Gardens Drive
Reno, NV 89502

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, NV 89701


Carole Davis

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Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
1	Order Granting in Part and Denying in Part Petition For Judicial Review	8

422256

EXHIBIT 1

EXHIBIT 1

✓ MAR 13 2017

McDonald Carano Wilson LLP

REC'D & FILED

2017 MAR -9 PM 2:51

SUSAN MERRIWETHER
CLERKBY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 OC 00092 1B

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vs.

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I. PROCEDURAL BACKGROUND

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1 insurer, the City of Reno, which was self-insured in 2012 on the date of Mr. Demaranville's
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11 All three cases were consolidated under Case No. 15 0C 00092 1B by order of this
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13 **II. RELEVANT FACTS**

14 Daniel DeMaranville worked as a police officer for the City of Reno ("City") from
15 1969 through his retirement in 1990. (ROA 017, 128.) It is undisputed that when Mr.
16 DeMaranville retired in 1990, the City was insured by the Employer's Insurance Company of
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20 DeMaranville was employed by AKAL Security as a security officer for the U.S. Marshal's
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24 of medical evidence establishing that heart disease caused Mr. DeMaranville's death. (ROA
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5 reversed EICON's determination and ruled that EICON was liable for the claim because Mr.
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16 atherosclerosis of the coronary arteries leading to his death. (ROA 021 – 022.) The Appeals
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24 2013 determination letter denying the claim; and affirmed EICON's September 19, 2013
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26 The City requested judicial review of the Appeals Officer's March 18, 2015 Decision.
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14 **III. ANALYSIS**

15 **1. Cause of Death**

16 The Appeals Officer found Mr. DeMaranville died as a result of a catastrophic
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12 Reno argued that EICON is liable because it covered the risk of exposure when Mr.
13 DeMaranville was last exposed. Reno argued to the Appeals Officer in its post-hearing brief
14 that the last injurious exposure rule did not apply to this case. Reno's position in that brief is
15 correct; the last injurious exposure rule does not apply in this case.

16 Reno cites no contract, statute, or case that supports its argument. The authorities Reno
17 cited involve successive employer, or successive-insurers-under-the- same-employer fact
18 patterns but those are not the fact pattern of this case.

19 Reno had the burden of proof to show that the final decision is invalid. Reno failed to
20 show that the final decision is invalid on any of the grounds stated in NRS 233B.135(3).
21 Therefore the Appeals Officer's conclusion that Reno is the liable insurer is affirmed.

22 **3. The Amount of Benefits Due**

23 The last issue to be resolved is the calculation of the amount of death benefits that are
24 due to Ms. Demaranville. In this case the Appeals Officer ruled the death benefits should be
25 based on the claimant's wages at the time of his death even though his employment at that time
26 had nothing to do with his occupational disease. The City and EICN contend the Appeals
27 Officer decision is erroneous because it ignores applicable regulation and misinterprets existing

1 case law.

2 NAC 616C.435 requires any benefits due be based on the average monthly wage earned
3 in the employment in which the industrial injury or occupational disease occurs. See NAC
4 616C.435(9). Here, Ms. Demaranville's entitlement to benefits, if any, arises from her
5 husband's employment as a police officer with the City of Reno more than 25 years ago. Mr.
6 Demaranville retired from the City of Reno police force in 1990 and had earned no wages from
7 that employment since his retirement.

8 The Appeals Officer Decision overlooked NAC 616C.435(9) and instead concluded the
9 calculation of death benefits would be based on wages earned at the time of Mr.
10 Demaranville's death. That conclusion was erroneous because NAC 616C.435(9) requires
11 benefits to be based on the average monthly wage earned in the employment causing the
12 occupational disease.

13 Existing Nevada case law requires that benefits be determined as of the date of
14 disability. See Mirage v. Nevada Department of Administration, 110 Nev. 257, 871 P.2d 317
15 (1994). In Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), a case factually
16 similar to the present case, the Nevada Supreme Court applied the requirements of the Mirage
17 case to situation in which a retired firefighter sought benefits for temporary total disability. The
18 court determined Howard was not entitled to benefits because he was not earning wages at the
19 time he became disabled. The same rationale applied to this case requires a similar result. Mr.
20 Demaranville was not earning wages from the covered employment at the time of his death, so
21 the calculation of average monthly wage using wages from the covered employment is zero.
22 Since death benefits are calculated using average monthly wage, the calculation of the amount
23 of death benefits due is zero. The Appeals Officer Decision misinterprets Howard when she
24 concluded death benefits were payable in this case.

25 The Appeals Officer Decision is clearly erroneous because it does not correctly apply
26 NAC 616C.435 and the rationale expressed in the Howard decision. If the principles set forth
27 in NRS 616C.435 and in Howard are applied in this case there can be only one conclusion: the

1 applicable average monthly wage was zero, and because the average monthly wage was zero,
2 death benefits were not payable.

3 **DECISION AND ORDER**

4 1. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to the
5 conclusion Mr. Demaranville's death was the result of compensable occupational heart disease
6 under NRS 617.457.

7 2. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to its
8 conclusion the City of Reno is the responsible insurer on the claim.

9 3. The December 10, 2015 Appeals Officer's Decision concluding Ms. Demaranville
10 was entitled to death benefits based on wages Mr. Demaranville was earning from private
11 employment on the date of his death is reversed. Under the rationale expressed in the Howard
12 decision, Mr. Demaranville's average monthly wage from the covered employment at the City
13 of Reno at the time of his death was zero. Because the average monthly wage was zero, there
14 is no death benefit.

15 The Petitions for Judicial Review filed by the City of Reno and EICN are denied in part
16 and granted in part as explained herein.

17 DATED this 8 day of March, 2017.

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20 DISTRICT JUDGE
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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the First Judicial District Court, hereby certifies
3 that on the 9 day of March, 2017 I mailed a true and correct copy of the foregoing

4 Order to:

5 Timothy Rowe, Esq.
6 P.O. Box 2670
7 Reno, NV 89505-2670

8 Mark Sertic, Esq.
9 5975 Home Gardens Drive
10 Reno, NV 89502

Evan Beavers, Esq.
NAIW
1000 E. Williams Street, Ste 208
Carson City, NV 89701

Appeals Officer, DOA
1050 E. William Street, Ste 450
Carson City, NV 89701

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12 Gina Winder
13 Judicial Assistant
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CIVIL COVER SHEET

Carson County, Nevada

Case No. 150C 00092 B
(Assigned by Clerk's Office)

REC'D & FILED

2015 APR 14 PM 2:03

I. Party Information

Plaintiff(s) (name/address/phone):

CITY OF RENO,

Attorney (name/address/phone):

Timothy E. Rowe, Esq.
McDonald Carano Wilson LLP

P. O. Box 2670, Reno, NV 89505

Defendant(s) (name/address/phone):

DANIEL DEMARANVILLE, Deceased
EMPLOYER'S INSURANCE COMPANY OF NEVADA,
Attorney (name/address/phone):SUSAN MERRIWETHER
CLERK
DEPUTY

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
<input type="checkbox"/> Probate Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Other Civil Filing Types <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input checked="" type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input checked="" type="checkbox"/> Worker's Compensation Appeal	

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

4-14-15

Date

Signature of initiating party or representative

See other side for family-related case filings.