

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

LAURA DEMARANVILLE, SURVIVING  
SPOUSE OF DANIEL DEMARANVILLE  
(DECEASED),

No. 72737

DOCKETING STATEMENT  
CIVIL APPEALS

Appellant,

v.

CITY OF RENO; EMPLOYERS INSURANCE  
COMPANY OF NEVADA; AND CANNON  
COCHRAN MANAGEMENT SERVICES, INC.,

Respondents.

FILED

APR 25 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *J. Hendrick*  
DEPUTY CLERK

GENERAL INFORMATION

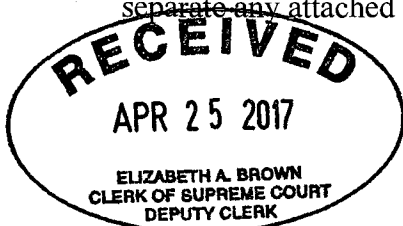
Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Id. Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



17-13759

1. Judicial District First Department Two  
County Carson City Judge The Honorable James E. Wilson, Jr.  
District Ct. Case No. 15 OC 00092 1B

**2. Attorney filing this docketing statement:**

Attorney Mark S. Sertic, Bar # 403 Telephone 775-327-6300  
Firm Sertic Law Ltd.  
Address 5975 Home Gardens Drive  
Reno, NV 89502

Client(s) Employers Insurance Company of Nevada

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Evan Beavers Telephone 775-684-7555  
Firm Nevada Attorney for Injured Workers  
Address 1000 E. William St., Suite 208  
Carson City, NV 89701

Client(s) Laura DeMaranville, Surviving Spouse of Daniel DeMaranville (Deceased)

Attorney Timothy E. Rowe Telephone 775-788-2000  
Firm McDonald Carano  
Address 100 West Liberty St., Tenth Floor  
Reno, NV 89501

Client(s) City of Reno

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial                | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict               | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                          | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                          | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief         | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction                | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief        | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is a workers' compensation case. Daniel DeMaranville worked as a police officer for the City of Reno retiring in 1990. In 2012 he died after having gall bladder surgery. Employers Insurance Company of Nevada was the workers' compensation insurer for the City of Reno until 1992 when the City became self-insured. Laura DeMaranville filed claims against both the City and Employers under the police officers heart disease statute, NRS 617.457. The Appeals Officer found that claim was valid and that full liability for the claim rested with the City. The Appeals Officer also found that the monthly death benefit payable to Laura DeMaranville should be based on the wages Mr. DeMaranville was earning at the time of his death from a private employer unrelated to the City of Reno. The district court affirmed the Appeals Officer's decisions finding that a valid claim existed and the City was the responsible insurer. The district court reversed the Appeals Officer's decision with respect to the amount of the monthly death benefit. The district court found, pursuant to applicable law, that the monthly benefit should be based on the wages Mr. DeMaranville was earning from the City at the time of his death, which were zero.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

There are three issues in this appeal: (1) Whether the Appeals Officer's determination that Mr. DeMaranville did in fact die from heart disease and therefore a valid claim exists is supported by substantial evidence or was arbitrary and capricious?; (2) If a valid claim exists, is the City or Employers liable for it?; and (3) If a valid claim exists, what is the appropriate monthly death benefit?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively assigned to the Court of Appeals under NRAP17(b)(4) since it involves an administrative agency appeal.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? Not applicable

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** March 9, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** March 13, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** \_\_\_\_\_

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

March 29, 2017--Laura DeMaranville

April 5, 2017--Employers Insurance Company of Nevada

April 7, 2017--City of Reno

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a) \_\_\_\_\_

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☒ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

All parties filed appeals from the district court order dated March 9, 2017 Granting in Part Petition for Judicial Review. NRS 233B.150 provides that a party aggrieved by a final order by a district court reviewing an administrative decision may appeal to the the appellate court of competent jurisdiction.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Laura DeMaranville

City of Reno

Employers Insurance Company of Nevada

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Not applicable. This matter involves a review of an administrative agency decision.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Employers Insurance Company of Nev.  
Name of appellant

Mark S. Sertic Bar # 403  
Name of counsel of record

April 25, 2017  
Date

Mark S. Sertic  
Signature of counsel of record

Washoe County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 25<sup>th</sup> day of April, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Evan Beavers, Esq.  
1000 E. William St., Suite 208  
Carson City, NV 89701

Timothy E. Rowe, Esq.  
100 West Liberty St., Tenth Floor  
Reno, NV 89501

Carolyn Worrell, Esq., Settlement Judge  
4236 Furgerson Ranch Road  
Carson City, NV 89701

Dated this 25<sup>th</sup> day of April, 2017

Mark S. Sertic  
Signature

## INDEX OF EXHIBITS

<u>Number</u>	<u>Description</u>	<u>Pages</u>
1.	March 9, 2017 District Court Order	1-8
2.	March 13, 2017 Notice of Entry of Order	1-12

**EXHIBIT 1**

**EXHIBIT 1**

REC'D & FILED

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 OC 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 OC 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  
21  
22  
23  
24  
25  
26  
27

CERTIFICATE OF SERVICE

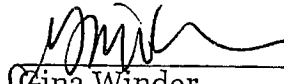
The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 9 day of March, 2017 I mailed a true and correct copy of the foregoing Order to:

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

**EXHIBIT 2**

**EXHIBIT 2**

Timothy E. Rowe, Esq.  
Nevada Bar No. 1000  
McDONALD CARANO WILSON LLP  
100 West Liberty Street, 10<sup>th</sup> 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 13<sup>th</sup> day of March, 2017.

McDONALD CARANO WILSON LLP

By: J.E. Rowe

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**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 13<sup>th</sup> 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:

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Carole Davis



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# **EXHIBIT 1**

# **EXHIBIT 1**

✓ MAR 13 2017

McDonald Carano Wilson LLP

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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 OC 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 OC 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  
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20 DISTRICT JUDGE  
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