

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

LAURA DEMARANVILLE, surviving spouse of
DANIEL DEMARANVILLE, (Deceased),

Appellant/Cross-Respondent

No. 72737

vs.

CANNON COCHRAN MANAGEMENT SERVICES,
Respondent

and

EMPLOYERS INSURANCE COMPANY OF NEVADA,
Respondents/Cross-Appellant,

and

CITY OF RENO,
Respondents/Cross-Respondent.

DOCKETING STATEMENT
CIVIL APPEALS

FILED

APR 25 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *J. H. Hines*
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.



17-13774

1. Judicial District First Department II

County Carson City Judge Hon. James E. Wilson, Jr.

District Ct. Case No. 15 OC 00092 1B

2. Attorney filing this docketing statement:

Attorney Timothy E. Rowe Telephone 775-788-2000

Firm McDonald Carano LLP

Address 100 West Liberty St., 10th Floor
Reno, NV 89501

Client(s) CITY OF RENO / CANNON COCHRAN MANAGEMENT SERVICES, INC.

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., #208
Carson City, NV 89701

Client(s) Laura Demaranville, surviving spouse of Daniel Demaranville

Attorney Mark S. Sertic Telephone 775-327-6300

Firm Sertic Law Ltd.

Address 5975 Home Gardens Drive
Reno, NV 89502

Client(s) Employers Insurance Company of Nevada

(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 an appeal from an Order Granting in Part and Denying in Part Petition for Judicial Review in a contested workers compensation case.

The District Court reversed a Department of Administration Appeals Officer Decision awarding death benefits to Laura Demaranville.

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

1. Was the finding that Mr. DeMaranville died as a result of heart disease supported by substantial evidence?
2. Did the Appeals Officer improperly hold that the City, which became self-insured in 2002, was the insurer responsible for Mr. DeMaranville's heart disease when he was last employed by the City in 1990, when EICON insured the City?
3. Does Howard v. City of Las Vegas preclude payment of death benefits?

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 Appeal is presumptively assigned to the Court of Appeals. NRAP 17(b)(4)

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

Was it a bench or jury trial? _____

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(a)(1); NRAP 4(a)(2)

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:

NRS 233B.150 provides for an appeal from final judgment of a District Court reviewing the decision of an administrative agency.

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

(a) Parties:

Laura Demaranville
Employer Insurance Company of Nevada (EICN)
City of Reno

(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:

N/A

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.

Laura Demaranville - claim for workers compensation benefits.
EICN - defending Insurer.
City of Reno - employer and defending Insurer.

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.

CITY OF RENO

Name of appellant

TIMOTHY E. ROWE

Name of counsel of record

Apr 25, 2017

Date

T. E. Rowe

Signature of counsel of record

Washoe County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 25th 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.
Nevada Attorney for Injured Workers
1000 E. William St., #208
Carson City, NV 89701

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

Dated this 25th day of April, 2017

Carole Parker

Signature

EXHIBIT 1

EXHIBIT 1

CODE: 3550
TIMOTHY E. ROWE, ESQ.
Nevada Bar No. 1000
McDonald Carano Wilson LLP.
P. O. Box 2670
Reno, Nevada 89505-2670
775-788-2000
Attorneys for Petitioner

REC'D & FILED
2015 APR 14 PM 2:03
SUSAN MERRIWETHER
CLERK
~~BY C. COOPER DEPUTY~~

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

CITY OF RENO,

Petitioner,

Case No: 15 DC 009213

vs.

Department No: 4

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

Respondents.

PETITION FOR JUDICIAL REVIEW

The Petitioner, the CITY OF RENO, by and through its attorney, Timothy E. Rowe, Esq., of McDonald Carano Wilson LLP, hereby petitions this court for judicial review of the Decision rendered and filed by the Department of Administration Appeals Officer on March 18, 2015 on Claim Nos. 12853C301824 and 1990204572, Appeal Nos. 44957-LLW, 46479-LLW and 46812-LLW. A copy of the Decision is attached hereto as Exhibit 1.

The grounds upon which this review is sought are:

1. The Decision rendered by the Appeals Officer prejudices substantial rights of the Petitioner because it is:

a. affected by error of law;

1 b. clearly erroneous in view of the reliable, probative and substantial
2 evidence on the whole record; and

3 c. arbitrary and capricious and based upon an abuse of discretion by the
4 Appeals Officer.

5 WHEREFORE, Petitioner prays as follows:

6 1. The court grants judicial review of the Decision filed on March 18, 2015 by the
7 Department of Administration Appeals Officer;

8 2. The court vacate and set aside the Decision issued by the Appeals Officer;
9 and

10 3. For such other and further relief as the court deems just and proper.

11 Dated this 13th day of April, 2015.

12 McDONALD CARANO WILSON LLP

13
14 By: 

15 TIMOTHY E. ROWE, ESQ.

16 P. O. Box 2670

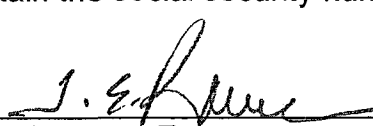
17 Reno, NV 895005-2670

18 Attorneys for the Petitioner
19 CITY OF RENO

20 **AFFIRMATION**

21 Pursuant to NRS 239B.030

22 The undersigned does hereby affirm that the preceding **PETITION FOR**
23 **JUDICIAL REVIEW** filed in the First Judicial District Court of the State of Nevada, does
24 not contain the social security number of any person.

25 
26 Timothy E. Rowe, Esq.
27 Attorney for Petitioner
28 CITY OF RENO

Date 4-13-15

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 on the 14th day of April 2015, I served the preceding **PETITION FOR JUDICIAL REVIEW** by placing a true and correct copy thereof in a sealed envelope and requesting Reno-Carson Messenger Service hand-deliver said document to the following party at the address listed below:

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

Evan Beavers, Esq.
Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
Carson City, NV 89701

A true and correct copy of the within document was also served via U.S. Mail at Reno, Nevada, on the parties/address referenced below:

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

City of Reno
Risk Management
P.O. Box 1900
Reno, Nevada 89505

Lisa Jones
CCMSI
P.O. Box 20068
Reno, NV 89515-0068



Carole Davis

#416656 [cw4/2/15]

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Decision of the Appeals Officer	11


 MCDONALD-CARANO-WILSON^a
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89503-2670
PHONE 775-788-2000 • FAX 775-788-2020

EXHIBIT 1

EXHIBIT 1

RECEIVED

MAR 20 2015

McDonald Carano Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

1050 E. WILLIAM, SUITE 450
CARSON CITY, NV 89701

FILED

MAR 18 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 12853C301824
1990204572

Hearing No: 46538-SA
45822-KD
44686-SA

Appeal No: 46812-LLW
46479-LLW
44957-LLW

DANIEL DEMARANVILLE, DECEASED,
Claimant.

Appeal by the Claimant (Daniel DeMaranville's widow, Laura Demaranville) from the CCMSI determination letter dated May 23, 2013; Appeal by Insurer, Employers Insurance Company of Nevada from the decision of the Hearing Officer dated October 28, 2013; and Appeal by the Employer, City of Reno, from the Employers Insurance Company of Nevada determination letter dated September 19, 2013.

DECISION OF THE APPEALS OFFICER

The above entitled matter was heard on January 7, 2015. After the hearing the Appeals Officer requested briefing on the issue of which insurer has liability for the claim if the Claimant initially establishes that the claim qualifies under the heart/lung statute. This matter was re-submitted for decision on February 17, 2015. The Claimant was represented by Evan Beavers, Esq., Nevada Attorney for Injured Workers. The Employer, City of Reno, and its current third party administrator, CCMSI, were represented by Timothy E. Rowe, Esq. of McDonald-Carano-Wilson, LLP. Employers Insurance Company of

1 Nevada, the Insurer at the time of the Claimant's retirement was represented by
2 Mark S. Sertic, Esq., of Sertic Law Ltd. The hearing was conducted pursuant to
3 Chapters 233B and 616A to D of the Nevada Revised Statutes.

4 Having heard the testimony and considered the documents the
5 Appeals Officer finds as follows:

6 **FINDINGS OF FACT**

7 Daniel DeMaranville was a sworn police officer for the City of Reno
8 from August 6, 1969 until his retirement in January 1990. Exhibit 1, page 3.
9 Officer DeMaranville was employed in a full-time continuous, uninterrupted and
10 salaried occupation as a police officer during his employment with the Reno
11 Police Department. At the time of his death he was employed by AKAL as a
12 court security officer for the Federal District Court. Exhibit 1, page 57.

13 On August 5, 2012, he entered the hospital for a laparoscopic
14 cholecystectomy (removal of the gallbladder). Exhibit 1, page 6. The surgery
15 commenced at approximately 12:00 pm and concluded at approximately 1:45 pm.
16 Exhibit 2, page 23. He was taken to the recovery room in good condition.
17 Exhibit 1, page 7. He became hypotensive and tachycardia while in the recovery
18 room. (Low blood pressure and rapid heart rate). Laboratory work was sent and
19 transfer to ICU was discussed. At 3:35 pm troponin I enzymes (cardiac enzymes)
20 were drawn which revealed a level of 0.32ng/ml. See Exhibit 1, page 10. In
21 addition a cardiac consult was ordered. Exhibit 2, page 27. Daniel DeMaranville
22 suffered a cardiac arrest with unsuccessful resuscitation and died at 7:18 pm.
23 Exhibit 1, page 14, 16. The surgeon, Myron Gomez, M.D., certified the cause of
24 death to be "cardiac arrest, due to, or as a consequence of atherosclerotic heart
25 disease." Exhibit 1, page 16.

26 Daniel DeMaranville's widow, Laura DeMaranville, filed an
27 incomplete C-4 Form, Claim for Compensation on September 5, 2012. Exhibit 1,
28 page 2. The third party administrator for the City of Reno received the C-4 Form

1 on September 6, 2012. Id. The employer sent the insurer a completed C-3 Form,
2 Employer's Report of Industrial Injury or Occupational Disease on September 11,
3 2012. Exhibit 1, page 3. The employer stated on the form that "retired police
4 officer experienced massive heart attack after surgery." Id. The CCMSI claims
5 adjuster began gathering medical records and writing letters to Mrs. DeMaranville
6 in order to make a claims decision. See Exhibit 1, pages 17-49. CCMSI finally
7 received all the medical records in late March 2013 and requested that Mrs.
8 DeMaranville make a written request for widow benefits. Exhibit 1, page 49.

9 On May 23, 2013, after a chart review by Jay Betz, M.D., CCMSI
10 issued a determination letter denying the claim because there was a lack of
11 information establishing a cause of death as no autopsy was performed and the
12 insurer did not have medical records establishing that Daniel DeMaranville had
13 heart disease. Exhibit 1, pages 52-56. Mrs. DeMaranville appealed claim denial.
14 Exhibit 1, page 1.

15 In the meantime, Mrs. DeMaranville filed a separate claim with the
16 Employers Insurance Group because she received information that the proper
17 insurer was the insurer for the City of Reno at the time Officer DeMaranville
18 retired in January 1990. Exhibit 1, pages 57-61. Employers Insurance requested a
19 Cardiologist Records Review IME from Coventry Workers' Comp Services on
20 July 7, 2013. Exhibit 5. On August 20, 2013, a completed C-4 Form was signed
21 by Dr. Gomez noting the diagnosis of cholecystitis and myocardial infarction.
22 Exhibit 3, page 2. On August 31, 2013, Zev Lagstein, M.D., the cardiologist
23 from Coventry provided his opinion regarding the causation of Daniel
24 DeMaranville's death. Exhibit 5, pages 3-8. On September 3, and September 16,
25 2013 Employers Insurance obtained two additional informal reviews of the
26 medical records. Exhibit 2, pages 28-36. On September 19, 2013, Employers
27 Insurance Company of Nevada denied the claim based in part on an informal
28 review by Yasmine Ali, MD. Exhibit 3, pages 5-12.

1 Daniel DeMaranville's prior medical records reveal stable right
2 bundle branch block in his heart with no evidence of organic heart disease.
3 Exhibit 3, page 19-19-26. The right bundle branch block was noted as early as
4 January 2004. Exhibit 6, page 2. In April 2011 he was cleared for security work
5 without restriction. Exhibit 3, page 19.

6 In the Spring and Fall of 2014, Mrs. DeMaranville obtained opinions
7 from Charles Ruggeroli, M.D., of Cardiology & Cardiovascular Consultants in
8 Las Vegas, Nevada. Exhibits 7 and 8.

9 The first issue litigated in this case was whether or not Daniel
10 DeMaranville died of heart disease. Therefore, a careful review of the above
11 mentioned medical opinions is essential.

12 Review of Expert Medical Opinions

13 Jay E. Betz, M.D.

14 Dr. Betz is an occupational medicine specialist. He reviewed the
15 partial medical records provided by the employer. He opined that he was unable
16 to determine the actual cause of death. He further stated that the probability was
17 high that Mr. DeMaranville died of heart disease due to his age. He further
18 opined that it was much less likely that he died of pulmonary embolus or
19 anesthesia related complications. He also opined that:

20 "[n]early everyone develops atherosclerotic heart disease to one
21 degree or another as we age. Often the first sign of significant
22 atherosclerotic heart disease is a myocardial infarction. Sometimes
23 this infarction is massive and fatal. In the case of Mr. DeMaranville,
24 considering his age and the sudden onset of cardiac insufficiency it is
25 most likely he suffered a significant myocardial infarction making a
26 large portion of the his myocardium nonfunctional."

27 He stated that he was unable to determine with "certainty" the
28 cause of death without an autopsy. Exhibit 1, page 52-54.

1 Sankar Pemmaraju, D.O.

2 Dr. Pemmaraju is a physical medicine and rehabilitation specialist.
3 Dr. Pemmaraju opined that there was no evidence of cardiac disease prior to his
4 death except for an irregular EKG. He also opined that Mr. DeMaranville had
5 some risk factors, i.e, smoking and alcohol abuse, prior to his death that could
6 have led to atherosclerotic heart disease and could have predisposed him to a
7 higher risk for any surgical intervention. He stated that as Mr. DeMaranville had
8 some risk factors that would have led to the atherosclerotic heart disease, most
9 likely the myocardial infarction was not due to a postoperative complication of a
10 gallbladder surgery resulting in cardiac arrest. Exhibit 2, pages 28-32.

11 Yasmine Ali, M.D.

12 Dr. Ali is an internal medicine and cardiovascular disease specialist.
13 She noted that there was evidence of cardiovascular disease prior to August 5,
14 2012 in the form of hypertension, right bundle branch block, and mild left
15 ventricular hypertrophy. However, she stated that there was no evidence of
16 coronary artery disease, coronary heart disease, or ischemic heart disease. She
17 found no documentation in the records she reviewed that supported a diagnosis of
18 atherosclerotic heart disease as noted on the death certificate. In addition, she
19 opined that from the records provided, "there is no evidence of a myocardial
20 infarction particularly since *cardiac enzymes were not drawn*, a 12-lead ECG
21 showing evidence of myocardial infarction is absent, and an autopsy was not
22 performed." (emphasis added). She therefore concluded that the cardiac arrest
23 was a post-operative complication. Exhibit 2, pages 33-36.

24 Zev Lagstein, M.D.

25 Dr. Lagstein is an internal medicine and cardiovascular disease
26 specialist. After his review of the provided medical records he concluded that
27 there was not enough information to support a diagnosis of atherosclerotic heart
28 disease. In particular he noted that there was no postoperative EKG to indicate

1 ischemia and/or myocardial infarction, and no autopsy was done and "cardiac
2 enzymes were apparently not drawn." Therefore, he stated that there was no
3 evidence to support the diagnosis noted on the death certificate. He also
4 disagreed with Dr. Ruggeroli's assertion that Mr. DeMaranville had occult
5 occlusive arteriosclerotic heart disease. He opined that there is "no evidence to
6 support diagnosis of myocardial infarction in the absence of abnormal
7 postoperative EKG and *postoperative cardiac enzymes, especially troponin-I*
8 *level.*" (emphasis added). He concluded that the death was due to a postoperative
9 complication of unclear etiology. He further stated that "*clearly, the*
10 *aforementioned diagnostic test with or without autopsy would have clarified this*
11 *issue beyond any doubts.*" (emphasis added). Exhibit 5, pages 3-8.

12 Charles Ruggeroli, M.D.

13 Dr. Ruggeroli is a cardiology specialist. He noted that Mr.
14 DeMaranville no history of antecedent symptomatic coronary artery disease,
15 however he had multiple cardiovascular risk factors with a baseline abnormal
16 resting electrocardiogram. He opined that Mr. DeMaranville had a catastrophic
17 cardiovascular event secondary to underlying occult occlusive atherosclerosis of
18 the coronary arteries leading to his death. Exhibit 7, page 1-2. After Dr. Lagstein
19 commented on his opinion, Dr. Ruggeroli reiterated his opinion. He noted that
20 Mr. DeMaranville arrived in the recovery room with normal vital signs, and
21 afterwards became hypotensive and tachycardic. Laboratory tests were done at
22 3:35 pm which revealed an elevated troponin I level of 0.32 ng/ml. Dr. Ruggeroli
23 opined that the troponin level was consistent with myocardial necrosis or heart
24 damage. His condition worsened and ultimately he was diagnosed with pulseless
25 electric activity and no evidence of ventricular activity and was pronounced dead
26 at approximately 7:30 pm. He opined that the "cardiac troponins drawn
27 approximately 4 hours prior to his death were elevated and consistent with a
28 cardiovascular cause of ... death." Exhibit 8, page 4.

1 Dr. Ruggeroli is the only physician who saw and evaluated the
2 cardiac enzymes (troponin). Dr. Betz and Dr. Pemmaraju do not mention cardiac
3 enzymes in their reporting. However, Dr. Betz notes that the most likely cause of
4 death is a significant myocardial infarction. Dr. Ali and Dr. Lagstein note that, in
5 part, because cardiac enzymes were not drawn it could not be determined whether
6 or not Mr. DeMaranville died of a myocardial infarction. Therefore they ascribe
7 the cause of death to postoperative complications. However, Dr. Lagstein notes
8 that the troponin I "test with or without autopsy would have clarified this issue
9 beyond any doubts."¹

10 Dr. Ruggeroli's opinion is persuasive and credible. The cardiac
11 enzymes were elevated and consistent with heart damage leading to a catastrophic
12 cardiovascular event. Dr. Ali and Dr. Lagstein were apparently unaware of the
13 troponin I level prior to Mr. DeMaranville's death and therefore those opinions
14 are of little weight except to affirm the importance of the levels to determine
15 cause of death. Daniel DeMaranville died of heart disease.

16 The second issue in this case is which insurer is liable for the claim.
17 The City of Reno (City) was insured by Employers Insurance Company of
18 Nevada (EICON) at the time of Daniel DeMaranville's retirement in 1990.
19 Thereafter, in 1992 the City became self-insured. Officer DeMaranville's
20 retirement does not affect his entitlement to benefits. Gallagher v. City of Las
21 Vegas, 114 Nev. 595, 959 P.2d 519 (1998).

22 Daniel DeMaranville's heart disease is an occupational disease. His
23 disability did not arise until his date of death, August 5, 2012. Therefore, the
24 claim for compensation arose on that date. The City was self-insured on August 5,
25 2012.

26
27
28 ¹ The Employers Insurance Company, who offered Dr. Lagstein's IME, did not
provide further comment by Dr. Lagstein after review of the Troponin I
levels.

CONCLUSIONS OF LAW

NRS 617.457 Heart diseases as occupational diseases of firefighters, arson investigators and police officers.

Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

NRS 617.344 provides that in the event of a death of an employee, the time for filing a claim for compensation is expanded to one year after there is knowledge of the disability and its relationship to his or her employment.

NRS 617.060 defines "disablement" as: "the event of becoming physically incapacitated by reason of an occupational disease....".

NRS 617.430 provides: "Every employee who is disabled or dies because of an occupational disease. . ." is entitled to compensation.

Daniel DeMaranville was employed by the City of Reno as a police officer for more than 20 years in a full-time continuous, uninterrupted and salaried position. He had documented heart damage which led to a catastrophic cardiovascular event and his death on August 5, 2012. The cause of his death qualifies as a disease of the heart pursuant to NRS 617.457(1). His wife timely filed a claim for compensation with the City of Reno and its current third party administrator on September 5, 2012.² Later, the Claimant's wife filed another C-4 Claim with the City of Reno's insurer at the time the Claimant retired from the police force.

The issue then becomes which insurer is liable for the claim. Mr. DeMaranville's date of disability is also the date of his death, August 5, 2012.

The Nevada Supreme Court in Manwill v. Clark County, 123 Nev.238,

² Although the C-4 form was incomplete it gave the City of Reno and CCMSI notice of the claim and the City and CCMSI began an investigation of the claim at that time. The City of Reno cannot assert that the claim was late filed.

1 162 P.3d 876 (2007) opined that a claimant seeking benefits under NRS 617.457
2 must “show only two things: heart disease and five years’ qualifying employment
3 before disablement.” 123 Nev. at 242. The Court also held, quoting from Daniels³:

4 [T]o receive occupational disease compensation, a firefighter
5 must be disabled by the heart disease: “[a]n employee is not
6 entitled to compensation ‘from the mere contraction of an
7 occupational disease. Instead, compensation . . . flows from a
8 disablement resulting from such a disease.’” (citations omitted).

123 Nev. at 244, 162 P.3d at 880.

9 In Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005)
10 the Court held:

11 Here, Howard’s heart disease first manifested itself in the form
12 of a heart attack eight years after he retired from his employment
13 as a firefighter. While under NRS 617.457(1)’s presumption,
14 Howard’s heart attack was an occupational disease arising out of
15 and in the course of his employment entitling him to occupational
16 disease benefits, the date of disability under Mirage⁴ is the date of
17 the heart attack. 121 Nev. at 693, 120 P.3d at 412.

18 The Claimant became entitled to compensation on the date of his
19 disablement, August 5, 2012, and the responsible insurer on that date was the self-
20 insured City of Reno.
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28 ³ Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024
(2006).

⁴ Mirage v. State, Dep’t. of Administration, 110 Nev. 257, 871 P.2d 317
(1994)

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IT IS SO ORDERED.

Lorna L Ward
APPEALS OFFICER

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11

EXHIBIT 2

EXHIBIT 2

RECEIVED

APR 20 2015

1 MARK S. SERTIC, ESQ.
McDonald Carson Wilson SERTIC LAW LTD.
2 Nevada Bar No.: 403
5975 Home Gardens Drive
3 Reno, Nevada 89502
Telephone: (775) 327-6300
4 Facsimile: (775) 327-6301
Attorneys for Respondent/Cross-Petitioner
5 Employers Insurance Company of Nevada

6
7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR CARSON CITY

9 *****

10 CITY OF RENO,

11 Petitioner,

Case No. 150C000921B

12 vs.

Department No: II

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

16 Respondents.
17 _____/

18 EMPLOYERS INSURANCE COMPANY
19 OF NEVADA

20 Cross-Petitioner,

21 vs.

22 CITY OF RENO, DANIEL DEMARANVILLE
[Deceased], and NEVADA DEPARTMENT
OF ADMINISTRATION APPEALS OFFICER

23 Cross-Respondents,
24 _____/

25 CROSS-PETITION FOR JUDICIAL REVIEW

26 EMPLOYERS INSURANCE COMPANY OF NEVADA, by and through its attorney, Mark
27 S. Sertic, Esq., of Sertic Law Ltd., hereby files this Cross-Petition for Judicial Review and petitions
28

1 this Court for judicial review of the Decision rendered and filed by the Department of
2 Administration Appeals Officer on March 18, 2015 on Claim Nos. 12853C301824 and 1990204572,
3 Appeal Nos. 44957-LLW, 46479-LLW and 46812-LLW. A copy of the Decision is attached hereto
4 as Exhibit 1.

5 The grounds upon which this review is sought is that the Decision of the Appeals Officer
6 prejudices substantial rights of the Cross-Petitioner in that it is:
7

- 8 1. In violation of constitutional or statutory provisions;
- 9 2. In excess of the statutory authority of the agency;
- 10 3. Made upon unlawful procedure;
- 11 4. Affected by error of law;
- 12 5. Clearly erroneous in view of the reliable, probative and substantial evidence on the
13 whole record; and
- 14 6. Arbitrary and capricious and characterized by an abuse of discretion by the Appeals
15 Officer.
16

17 WHEREFORE, Cross-Petitioner prays as follows:

- 18 1. The Court grant judicial review of the Decision filed on March 18, 2015 by the
19 Department of Administration Appeals Officer;
- 20 2. The Court vacate and set aside the Decision issued by the Appeals Officer; and
- 21 3. For such other and further relief as the Court deems just and proper.
22

23 ///

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28 ///

1 DATED this 17th day of April, 2015.

2 SERTIC LAW LTD.

3
4 By: Mark S. Sertic
5 MARK S. SERTIC, ESQ.
6 5975 Home Gardens Drive
7 Reno, Nevada 89502
8 *Attorneys for Respondent/Cross-Petitioner*
9 *Employers Insurance Company of Nevada*

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030

12
13 The undersigned does hereby affirm that the preceding ***CROSS-PETITION FOR***
14 ***JUDICIAL REVIEW*** does not contain the social security number of any person.

15
16 Dated on this 17th day of April, 2015.

17
18 Mark S. Sertic
19 Mark S. Sertic

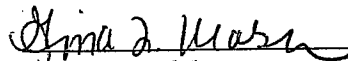
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 17th day of April, 2015, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
P.O. Box 2670
Reno, Nevada 89505

NAIW
Evan Beavers, Esq.
1000 E William Street #208
Carson City, Nevada 89701

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, Nevada 89710


Gina L. Walsh

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Decision of Appeals Officer	11

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EXHIBIT 1

EXHIBIT 1

1050 E. WILLIAM, SUITE 450
CARSON CITY, NV 89701

MAR 18 2015

In the Matter of the Contested
Industrial Insurance Claim of:

Hearing No: 46538-SA
45822-KID
44686-SA

Appeal No: 46812-LLW
46479-LLW
44957-LLW

DANIEL DEMARANVILLE, DECEASED,
Claimant.

DECISION OF THE APPEALS OFFICER

The above entitled matter was heard on January 7, 2015. After the hearing the Appeals Officer requested briefing on the issue of which insurer has liability for the claim if the Claimant initially establishes that the claim qualifies under the heart/lung statute. This matter was re-submitted for decision on February 17, 2015. The Claimant was represented by Evan Beavers, Esq., Nevada Attorney for Injured Workers. The Employer, City of Reno, and its current third party administrator, CCMSI, were represented by Timothy E. Rowe, Esq. of McDonald-Carano-Wilson, LLP. Employers Insurance Company of

1 Nevada, the Insurer at the time of the Claimant's retirement was represented by
2 Mark S. Sertic, Esq., of Sertic Law Ltd. The hearing was conducted pursuant to
3 Chapters 233B and 616A to D of the Nevada Revised Statutes.

4 Having heard the testimony and considered the documents the
5 Appeals Officer finds as follows:

6 **FINDINGS OF FACT**

7 Daniel DeMaranville was a sworn police officer for the City of Reno
8 from August 6, 1969 until his retirement in January 1990. Exhibit 1, page 3.
9 Officer DeMaranville was employed in a full-time continuous, uninterrupted and
10 salaried occupation as a police officer during his employment with the Reno
11 Police Department. At the time of his death he was employed by AKAL as a
12 court security officer for the Federal District Court. Exhibit 1, page 57.

13 On August 5, 2012, he entered the hospital for a laparoscopic
14 cholecystectomy (removal of the gallbladder). Exhibit 1, page 6. The surgery
15 commenced at approximately 12:00 pm and concluded at approximately 1:45 pm.
16 Exhibit 2, page 23. He was taken to the recovery room in good condition.
17 Exhibit 1, page 7. He became hypotensive and tachycardia while in the recovery
18 room. (Low blood pressure and rapid heart rate). Laboratory work was sent and
19 transfer to ICU was discussed. At 3:35 pm troponin I enzymes (cardiac enzymes)
20 were drawn which revealed a level of 0.32ng/ml. See Exhibit 1, page 10. In
21 addition a cardiac consult was ordered. Exhibit 2, page 27. Daniel DeMaranville
22 suffered a cardiac arrest with unsuccessful resuscitation and died at 7:18 pm.
23 Exhibit 1, page 14, 16. The surgeon, Myron Gomez, M.D., certified the cause of
24 death to be "cardiac arrest, due to, or as a consequence of atherosclerotic heart
25 disease." Exhibit 1, page 16.

26 Daniel DeMaranville's widow, Laura DeMaranville, filed an
27 incomplete C-4 Form, Claim for Compensation on September 5, 2012. Exhibit 1,
28 page 2. The third party administrator for the City of Reno received the C-4 Form

1 on September 6, 2012. *Id.* The employer sent the insurer a completed C-3 Form,
2 Employer's Report of Industrial Injury or Occupational Disease on September 11,
3 2012. Exhibit 1, page 3. The employer stated on the form that "retired police
4 officer experienced massive heart attack after surgery." *Id.* The CCMSI claims
5 adjuster began gathering medical records and writing letters to Mrs. DeMaranville
6 in order to make a claims decision. See Exhibit 1, pages 17-49. CCMSI finally
7 received all the medical records in late March 2013 and requested that Mrs.
8 DeMaranville make a written request for widow benefits. Exhibit 1, page 49.

9 On May 23, 2013, after a chart review by Jay Betz, M.D., CCMSI
10 issued a determination letter denying the claim because there was a lack of
11 information establishing a cause of death as no autopsy was performed and the
12 insurer did not have medical records establishing that Daniel DeMaranville had
13 heart disease. Exhibit 1, pages 52-56. Mrs. DeMaranville appealed claim denial.
14 Exhibit 1, page 1.

15 In the meantime, Mrs. DeMaranville filed a separate claim with the
16 Employers Insurance Group because she received information that the proper
17 insurer was the insurer for the City of Reno at the time Officer DeMaranville
18 retired in January 1990. Exhibit 1, pages 57-61. Employers Insurance requested a
19 Cardiologist Records Review IME from Coventry Workers' Comp Services on
20 July 7, 2013. Exhibit 5. On August 20, 2013, a completed C-4 Form was signed
21 by Dr. Gomez noting the diagnosis of cholecystitis and myocardial infarction.
22 Exhibit 3, page 2. On August 31, 2013, Zev Lagstein, M.D., the cardiologist
23 from Coventry provided his opinion regarding the causation of Daniel
24 DeMaranville's death. Exhibit 5, pages 3-8. On September 3, and September 16,
25 2013 Employers Insurance obtained two additional informal reviews of the
26 medical records. Exhibit 2, pages 28-36. On September 19, 2013, Employers
27 Insurance Company of Nevada denied the claim based in part on an informal
28 review by Yasmine Ali, MD. Exhibit 3, pages 5-12.

1 Daniel DeMaranville's prior medical records reveal stable right
2 bundle branch block in his heart with no evidence of organic heart disease.
3 Exhibit 3, page 19-19-26. The right bundle branch block was noted as early as
4 January 2004. Exhibit 6, page 2. In April 2011 he was cleared for security work
5 without restriction. Exhibit 3, page 19.

6 In the Spring and Fall of 2014, Mrs. DeMaranville obtained opinions
7 from Charles Ruggeroli, M.D., of Cardiology & Cardiovascular Consultants in
8 Las Vegas, Nevada. Exhibits 7 and 8.

9 The first issue litigated in this case was whether or not Daniel
10 DeMaranville died of heart disease. Therefore, a careful review of the above
11 mentioned medical opinions is essential.

12 Review of Expert Medical Opinions

13 Jay E. Betz, M.D.

14 Dr. Betz is an occupational medicine specialist. He reviewed the
15 partial medical records provided by the employer. He opined that he was unable
16 to determine the actual cause of death. He further stated that the probability was
17 high that Mr. DeMaranville died of heart disease due to his age. He further
18 opined that it was much less likely that he died of pulmonary embolus or
19 anesthesia related complications. He also opined that:

20 "[n]early everyone develops atherosclerotic heart disease to one
21 degree or another as we age. Often the first sign of significant
22 atherosclerotic heart disease is a myocardial infarction. Sometimes
23 this infarction is massive and fatal. In the case of Mr. DeMaranville,
24 considering his age and the sudden onset of cardiac insufficiency it is
25 most likely he suffered a significant myocardial infarction making a
26 large portion of the his myocardium nonfunctional."

26 He stated that he was unable to determine with "certainty" the
27 cause of death without an autopsy. Exhibit 1, page 52-54.
28

1 Sankar Pemmaraju, D.O.

2 Dr. Pemmaraju is a physical medicine and rehabilitation specialist.
3 Dr. Pemmaraju opined that there was no evidence of cardiac disease prior to his
4 death except for an irregular EKG. He also opined that Mr. DeMaranville had
5 some risk factors, i.e, smoking and alcohol abuse, prior to his death that could
6 have led to atherosclerotic heart disease and could have predisposed him to a
7 higher risk for any surgical intervention. He stated that as Mr. DeMaranville had
8 some risk factors that would have led to the atherosclerotic heart disease, most
9 likely the myocardial infarction was not due to a postoperative complication of a
10 gallbladder surgery resulting in cardiac arrest. Exhibit 2, pages 28-32.

11 Yasmine Ali, M.D.

12 Dr. Ali is an internal medicine and cardiovascular disease specialist.
13 She noted that there was evidence of cardiovascular disease prior to August 5,
14 2012 in the form of hypertension, right bundle branch block, and mild left
15 ventricular hypertrophy. However, she stated that there was no evidence of
16 coronary artery disease, coronary heart disease, or ischemic heart disease. She
17 found no documentation in the records she reviewed that supported a diagnosis of
18 atherosclerotic heart disease as noted on the death certificate. In addition, she
19 opined that from the records provided, "there is no evidence of a myocardial
20 infarction particularly since *cardiac enzymes were not drawn*, a 12-lead ECG
21 showing evidence of myocardial infarction is absent, and an autopsy was not
22 performed." (emphasis added). She therefore concluded that the cardiac arrest
23 was a post-operative complication. Exhibit 2, pages 33-36.

24 Zev Lagstein, M.D.

25 Dr. Lagstein is an internal medicine and cardiovascular disease
26 specialist. After his review of the provided medical records he concluded that
27 there was not enough information to support a diagnosis of atherosclerotic heart
28 disease. In particular he noted that there was no postoperative EKG to indicate

1 ischemia and/or myocardial infarction, and no autopsy was done and "cardiac
2 enzymes were apparently not drawn." Therefore, he stated that there was no
3 evidence to support the diagnosis noted on the death certificate. He also
4 disagreed with Dr. Ruggeroli's assertion that Mr. DeMaranville had occult
5 occlusive arteriosclerotic heart disease. He opined that there is "no evidence to
6 support diagnosis of myocardial infarction in the absence of abnormal
7 postoperative EKG and *postoperative cardiac enzymes, especially troponin-I*
8 *level.*" (emphasis added). He concluded that the death was due to a postoperative
9 complication of unclear etiology. He further stated that "*clearly, the*
10 *mentioned diagnostic test with or without autopsy would have clarified this*
11 *issue beyond any doubts.*" (emphasis added). Exhibit 5, pages 3-8.

12 Charles Ruggeroli, M.D.

13 Dr. Ruggeroli is a cardiology specialist. He noted that Mr.
14 DeMaranville no history of antecedent symptomatic coronary artery disease,
15 however he had multiple cardiovascular risk factors with a baseline abnormal
16 resting electrocardiogram. He opined that Mr. DeMaranville had a catastrophic
17 cardiovascular event secondary to underlying occult occlusive atherosclerosis of
18 the coronary arteries leading to his death. Exhibit 7, page 1-2. After Dr. Lagstein
19 commented on his opinion, Dr. Ruggeroli reiterated his opinion. He noted that
20 Mr. DeMaranville arrived in the recovery room with normal vital signs, and
21 afterwards became hypotensive and tachycardic. Laboratory tests were done at
22 3:35 pm which revealed an elevated troponin I level of 0.32 ng/ml. Dr. Ruggeroli
23 opined that the troponin level was consistent with myocardial necrosis or heart
24 damage. His condition worsened and ultimately he was diagnosed with pulseless
25 electric activity and no evidence of ventricular activity and was pronounced dead
26 at approximately 7:30 pm. He opined that the "cardiac troponins drawn
27 approximately 4 hours prior to his death were elevated and consistent with a
28 cardiovascular cause of ... death." Exhibit 8, page 4.

1 Dr. Ruggeroli is the only physician who saw and evaluated the
2 cardiac enzymes (troponin). Dr. Betz and Dr. Pemmaraju do not mention cardiac
3 enzymes in their reporting. However, Dr. Betz notes that the most likely cause of
4 death is a significant myocardial infarction. Dr. Ali and Dr. Lagstein note that, in
5 part, because cardiac enzymes were not drawn it could not be determined whether
6 or not Mr. DeMaranville died of a myocardial infarction. Therefore they ascribe
7 the cause of death to postoperative complications. However, Dr. Lagstein notes
8 that the troponin I "test with or without autopsy would have clarified this issue
9 beyond any doubts."¹

10 Dr. Ruggeroli's opinion is persuasive and credible. The cardiac
11 enzymes were elevated and consistent with heart damage leading to a catastrophic
12 cardiovascular event. Dr. Ali and Dr. Lagstein were apparently unaware of the
13 troponin I level prior to Mr. DeMaranville's death and therefore those opinions
14 are of little weight except to affirm the importance of the levels to determine
15 cause of death. Daniel DeMaranville died of heart disease.

16 The second issue in this case is which insurer is liable for the claim.
17 The City of Reno (City) was insured by Employers Insurance Company of
18 Nevada (EICON) at the time of Daniel DeMaranville's retirement in 1990.
19 Thereafter, in 1992 the City became self-insured. Officer DeMaranville's
20 retirement does not affect his entitlement to benefits. Gallagher v. City of Las
21 Vegas, 114 Nev. 595, 959 P.2d 519 (1998).

22 Daniel DeMaranville's heart disease is an occupational disease. His
23 disability did not arise until his date of death, August 5, 2012. Therefore, the
24 claim for compensation arose on that date. The City was self-insured on August 5,
25 2012.

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28 ¹ The Employers Insurance Company, who offered Dr. Lagstein's IME, did not
provide further comment by Dr. Lagstein after review of the Troponin I
levels.

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CONCLUSIONS OF LAW

NRS 617.457 Heart diseases as occupational diseases of firefighters, arson investigators and police officers.

Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

NRS 617.344 provides that in the event of a death of an employee, the time for filing a claim for compensation is expanded to one year after there is knowledge of the disability and its relationship to his or her employment.

NRS 617.060 defines "disablement" as: "the event of becoming physically incapacitated by reason of an occupational disease....".

NRS 617.430 provides: "Every employee who is disabled or dies because of an occupational disease. . ." is entitled to compensation.

Daniel DeMaranville was employed by the City of Reno as a police officer for more than 20 years in a full-time continuous, uninterrupted and salaried position. He had documented heart damage which led to a catastrophic cardiovascular event and his death on August 5, 2012. The cause of his death qualifies as a disease of the heart pursuant to NRS 617.457(1). His wife timely filed a claim for compensation with the City of Reno and its current third party administrator on September 5, 2012.² Later, the Claimant's wife filed another C-4 Claim with the City of Reno's insurer at the time the Claimant retired from the police force.

The issue then becomes which insurer is liable for the claim. Mr. DeMaranville's date of disability is also the date of his death, August 5, 2012.

The Nevada Supreme Court in Manwill v. Clark County, 123 Nev.238,

² Although the C-4 form was incomplete it gave the City of Reno and CCMSI notice of the claim and the City and CCMSI began an investigation of the claim at that time. The City of Reno cannot assert that the claim was late filed.

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2 must "show only two things: heart disease and five years' qualifying employment
3 before disablement." 123 Nev. at 242. The Court also held, quoting from Daniels³:

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5 must be disabled by the heart disease: "[a]n employee is not
6 entitled to compensation 'from the mere contraction of an
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123 Nev. at 244, 162 P.3d at 880.

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10 the Court held:

11 Here, Howard's heart disease first manifested itself in the form
12 of a heart attack eight years after he retired from his employment
13 as a firefighter. While under NRS 617.457(1)'s presumption,
14 Howard's heart attack was an occupational disease arising out of
15 and in the course of his employment entitling him to occupational
16 disease benefits, the date of disability under Mirage⁴ is the date of
17 the heart attack. 121 Nev. at 693, 120 P.3d at 412.

18 The Claimant became entitled to compensation on the date of his
19 disablement, August 5, 2012, and the responsible insurer on that date was the self-
20 insured City of Reno.
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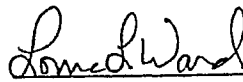
28 ³ Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024
(2006).

⁴ Mirage v. State, Dep't. of Administration, 110 Nev. 257, 871 P.2d 317
(1994)

1 DECISION

2 The May 23, 2013 CCMSI determination letter denying the claim is
3 REVERSED (Appeal No. 44957). The October 28, 2013 decision of the Hearing
4 Officer, which found the Employers Insurance Company of Nevada liable for the
5 claim, is REVERSED (Appeal No. 46479). The September 19, 2013 Employers
6 Insurance Company of Nevada determination letter denying the claim is
7 AFFIRMED (Appeal No. 46812).

8
9 **IT IS SO ORDERED.**

10
11 
12 Lorna L Ward
13 APPEALS OFFICER
14

15 Notice: Pursuant to NRS 233B.130, should any party desire to appeal this final
16 decision of the Appeals Officer, a Petition for Judicial Review must be filed with
17 the district court within thirty (30) days after service by mail of this decision.
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DANIEL DEMARANVILLE, DECEASED
C/O LAURA DEMARANVILLE
PO BOX 261
VERDI, NV 89439

CITY OF RENO
ATTN CARA BOWLING
PO BOX 1900
RENO, NV 89505

EMPLOYERS INSURANCE COMP OF NV
PO BOX 539004
HENDERSON, NV 89053

MARK SERTIC, ESQ
5975 HOME GARDENS DRIVE
RENO NV 89502

Dated this 18th day of March, 2015.

Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

RECEIVED

APR 20 2015

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5 Reno, Nevada 89502
6 Telephone: (775) 327-6300
7 Facsimile: (775) 327-6301
8 *Attorneys for Respondent*
9 *Employers Insurance Company of Nevada*

10
11 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR CARSON CITY**

13 *****

14 CITY OF RENO,

15 Petitioner,

Case No. 150C000921B

16 vs.

Department No: II

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

21 Respondents.
22 _____ /

23 **AFFIRMATION**
24 **Pursuant to NRS 239B.030/603A.040**
25 **(Initial Appearance)**

26 The undersigned does hereby affirm that upon the filing of additional documents in the above
27 matter, an Affirmation will be provided **ONLY** if the document contains a social security number
28 (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first
name or first initial and last name in combination with any one or more of the following data
elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any
required security code, access code or password that would permit access to the person's
financial account.

///
///

1 The term does not include publicly available information that is lawfully made available to the
2 general public.

3 DATED this 17th day of April, 2015.

4 SERTIC LAW LTD.

5
6 By: Mark S. Sertic
7 MARK S. SERTIC, ESQ.
8 5975 Home Gardens Drive
9 Reno, Nevada 89502
10 *Attorneys for Respondent*
11 *Employers Insurance Company of Nevada*

12 The purpose of this initial affirmation is to ensure that each person who initiates a case, or upon first
13 appearing in a case, acknowledges their understanding that no further affirmations are
14 necessary unless a pleading which is filed contains personal information.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 17th day of April, 2015, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
P.O. Box 2670
Reno, Nevada 89505

NAIW
Evan Beavers, Esq.
1000 E William Street #208
Carson City, Nevada 89701

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, Nevada 89710

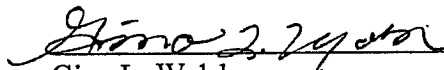

Gina L. Walsh

EXHIBIT 3

EXHIBIT 3

1 CODE: 3550
2 TIMOTHY E. ROWE, ESQ.
3 Nevada Bar No. 1000
4 McDonald Carano Wilson LLP
5 P. O. Box 2670
6 Reno, Nevada 89505-2670
7 775-788-2000
8 Attorneys for Petitioner

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CITY OF RENO,

Petitioner,

Case No: CV16 - 00013

vs.

Department No: 8

DANIEL DEMARANVILLE, Deceased,
LAURA DEMARANVILLE, an individual,
EMPLOYERS INSURANCE COMPANY
OF NEVADA, a Nevada corporation, and
The NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER,

Respondents.

PETITION FOR JUDICIAL REVIEW

The Petitioner, the CITY OF RENO, by and through its attorney, Timothy E. Rowe, Esq., of McDonald Carano Wilson LLP, hereby petitions this court for judicial review of the decision rendered by the Department of Administration Appeals Officer on December 10, 2015 on Claim No. 12853C301824. A copy of the Decision is attached hereto as Exhibit 1.

The grounds upon which this review is sought are:

1. The decision rendered by the Appeals Officer prejudices substantial rights of the Petitioner because it is:

a. affected by error of law;

MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR - RENO, NEVADA 89501
PO BOX 2670 - RENO, NEVADA 89505-2670
PHONE 775-788-2000 - FAX 775-788-2020

1 b. clearly erroneous in view of the reliable, probative and substantial
2 evidence on the whole record; and

3 c. arbitrary and capricious and based upon an abuse of discretion by the
4 Appeals Officer.

5 WHEREFORE, Petitioner prays as follows:

6 1. That the court grant judicial review of the decision filed on December 10,
7 2015 by the Department of Administration Appeals Officer;

8 2. That the court vacate and set aside the decision issued by the Appeals
9 Officer; and

10 3. For such other and further relief as the court deems just and proper.

11 Dated this 5th day of January, 2016.

12 McDONALD CARANO WILSON LLP

13
14 By: T. E. Rowe

15 TIMOTHY E. ROWE, ESQ.
16 P. O. Box 2670
17 Reno, NV 89505-2670

18 Attorneys for the Petitioner,
19 CITY OF RENO

20 **AFFIRMATION**

21 Pursuant to NRS 239B.030

22 The undersigned does hereby affirm that the preceding **PETITION FOR**
23 **JUDICIAL REVIEW** filed in the Second Judicial District Court of the State of Nevada,
24 does not contain the social security number of any person.

25
26 T. E. Rowe
27 Timothy E. Rowe, Esq.
28 Attorney for Petitioner, CITY OF RENO

1-5-16
Date

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 on the 5th day of January, 2016, I served the preceding **PETITION FOR JUDICIAL REVIEW** by placing a true and correct copy thereof in a sealed envelope and requesting Reno-Carson Messenger Service hand-deliver said document to the following party at the address listed below:

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

A true and correct copy of the within document was also served via U.S. Mail at Reno, Nevada, on the parties/address referenced below:

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

City of Reno
Attn: Andrena Arreygue
P. O. Box 1900
Reno, NV 89505

CCMSI
P. O. Box 20068
Reno, NV 89515-0068


Carole Davis

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INDEX OF EXHIBITS

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Exhibit 1	Decision of the Appeals Officer	7

 MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

FILED
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Jacqueline Bryant
Clerk of the Court
Transaction # 5305147 : yvitoria

EXHIBIT 1

EXHIBIT 1

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McDonald Carano Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

Hearing No.: 52796-KD

of

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

This matter is before the appeals officer upon motion by the claimant, Laura DeMaranville, surviving spouse of Daniel DeMaranville, seeking summary judgment on the claimant's appeal of the hearing officer's decision of June 24, 2015, on the issue of death benefits. The motion was opposed by the City of Reno, by and through Timothy Rowe, Esq. Employers Insurance Company of Nevada, by and through Mark Sertic, Esq., joined as an indispensable party to the action, also opposed the claimant's motion for summary judgment.

The matter was submitted for decision after briefing by stipulation of the parties relying on the record admitted into evidence in Appeal Nos. 46812-LLW, 46479-LLW, and 44957-LLW which resulted in the Decision and Order filed March 18, 2015, on the issue of claim acceptance. Based upon the Stipulation and Order entered October 5, 2015, the claimant's motion for summary judgment, the briefs submitted in opposition and reply, and all pleadings and papers admitted in the earlier determination of

1 claim acceptance, the Appeals Officer finds and concludes as
2 follows:

3 FINDINGS OF FACT

4 1. Daniel DeMaranville was a sworn police officer for
5 the City of Reno from August 6, 1969, until his retirement in
6 January of 1990.

7 2. Mr. DeMaranville died August 5, 2012, and at the
8 time of his death he was employed by AKAL as a court security
9 officer for the Federal District Court.

10 3. By decision and order dated March 18, 2015, it was
11 determined that Daniel DeMaranville died of heart disease and
12 that he became entitled to compensation on the date of his death,
13 and that the responsible insurer on that date was the City of
14 Reno.

15 4. In compliance with the order of March 18, 2015,
16 Cannon Cochran Management Services, Inc. (CCMSI), claims
17 administrator for City of Reno, tendered to Laura DeMaranville
18 the amount of \$1,683.85 as the monthly widow benefit based upon
19 the State's maximum wage cap at the date of retirement on
20 January 12, 1990.

21 5. Laura DeMaranville appealed that determination to
22 the hearings officer who, by decision and order filed June 24,
23 2015, affirmed the calculation of benefits based on the date
24 wages were last earned from the City of Reno, which would have
25 been the date of retirement.

26 6. Ms. DeMaranville appealed and moved for summary
27 judgment arguing, *inter alia*, Daniel DeMaranville died of
28 industrial disease and that the date he was no longer able to

1 work as a result of the disease is the proper date on which to
2 calculate wages for the payment of benefits to the widow.

3 7. In her motion, Ms. DeMaranville argues that at the
4 date of his death Mr. DeMaranville was earning \$7,314.15 gross
5 monthly salary and the State maximum wage statute at the time
6 would cap his wages for the calculation of benefits at \$5,222.63,
7 and the monthly widow benefit would amount to \$3,481.75.

8 8. City of Reno opposes summary judgment arguing that
9 if it is the employer responsible for the occupational disease,
10 the wages used to calculate benefits must be the wages the city
11 was paying the decedent at the time of his disability, and at the
12 time of disability, or death, the city was paying Daniel
13 DeMaranville no wage, therefore, the death benefit payable to
14 Laura DeMaranville must be zero.

15 9. EICON opposes summary judgment arguing, similarly,
16 that because Mr. DeMaranville's earnings from his police officer
17 job with the City were zero at the time of disability, the
18 benefits owing the widow are also zero.

19 CONCLUSIONS OF LAW

20 Based upon the preceding findings of fact, the Appeals
21 Officer concludes, as a matter of law, that:

22 1. All that was necessary for Laura DeMaranville to
23 show entitlement of the conclusive presumption in NRS 617.457 was
24 that her husband Daniel died of heart disease and that he was
25 employed for five continuous years with the City of Reno as a
26 police officer at some point prior to his death from heart
27 disease. See Manwill v. Clark County, 123 Nev. 238, 242, 162
28 P.3d 876 (2007).

1 2. The conclusive presumption that the occupational
2 heart disease arose out of and in the scope of his employment
3 with the City of Reno makes the city liable for benefits
4 resulting from the disease, including death benefits to his
5 widow, regardless of whether he was still working for the city or
6 was retired at the date of death from heart disease. See Howard
7 v. City of Las Vegas, 121 Nev. 691, 695, 120 P.3d 410 (2005);
8 Gallagher v. City of Las Vegas, 114 Nev. 595, 601, 602, 959 P.2d
9 519 (1998).

10 3. Upon finding compensability under NRS chapter 617,
11 it then becomes necessary to rely on NRS chapter 616 for the
12 method of calculating benefits. See Mirage v. Nevada Dep't of
13 Administration, 110 Nev. 257, 260, 871 P.2d 317 (1994).

14 4. NRS 616C.505 entitles Laura DeMaranville to monthly
15 payment in an amount equal to 66 2/3 percent of Mr.
16 DeMaranville's average monthly wage earned immediately preceding
17 the heart attack. See Howard at 695. In addition, NAC
18 616C.441(1) mandates that the wage the injured employee earned on
19 the date the employee was no longer able to work because of the
20 occupational disease should be used to calculate the average
21 monthly wage.

22 5. At the date of his death on August 5, 2012, Daniel
23 DeMaranville was earning \$7,314.15 gross monthly salary with
24 vacation pay. At that time his wages would be capped by NRS
25 616A.065 at \$5,222.63. NRS 616C.505 requires that an amount
26 equal to 66 2/3 of that amount, that is \$3,481.75, be paid
27 monthly to Laura DeMaranville as the monthly death benefit.

28 //

1 6. Summary judgment is appropriate when the moving
2 party is entitled to judgment as a matter of law and no genuine
3 issue of material fact remains for trial. NRCP 56(c); Perez v.
4 Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589
5 (1991) (citations omitted). The evidence must be construed in a
6 light most favorable to the party against whom the motion is
7 directed. Id.

8 7. Considering the evidence in a light most favorable
9 to the City of Reno or its insurer, that Daniel DeMaranville died
10 twenty-two years after leaving the city's employment and was at
11 that time earning wages substantially higher than the wages he
12 earned with the city, there is no legal authority to pay his
13 widow zero for her monthly death benefits. His occupational
14 heart disease is conclusively presumed to have arisen from his
15 employment with the City of Reno. The Nevada Occupational
16 Disease Act requires the payment of benefits calculated at the
17 date of disability and no exception exists for the City of Reno
18 to avoid that obligation if, at the time of disability, the city
19 was no longer paying wages to the decedent. The date of
20 disability under the Act is the date of death, and at the date of
21 death Daniel DeMaranville's wage was capped at \$5,222.63 and the
22 monthly death benefit due his widow under the Act is \$3,481.75.

23 //

24 //

25 //

26 //

27 //

28 //

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

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ORDER

THEREFORE, in accordance with the above-stated Findings of Fact and Conclusions of Law, the claimant's MOTION FOR SUMMARY JUDGMENT shall be, and the same hereby is, GRANTED.

DATED this 10th day of December, 2015.

APPEALS OFFICER

Lorna L Ward
LORNA L WARD

N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service by mail of this decision.

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS

Evan Beavers, Esq.
1000 East William St., #208
Carson City, Nevada 89701

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Carson City, Nevada, to the following:

DANIEL DEMARANVILLE, DECEASED
C/O LAURA DEMARANVILLE
PO BOX 261
VERDI, NV 89439

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

CITY OF RENO
ATTN ANDRENA ARREYGUE
PO BOX 1900
RENO, NV 89505

TIMOTHY ROWE, ESQ
PO BOX 2670
RENO NV 89505

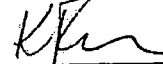
LESLIE BELL
RENO POLICE PROTECTIVE ASSOCIATION
PO BOX 359
RENO NV 89504

EMPLOYERS INSURANCE COMP OF NV
PO BOX 539004
HENDERSON, NV 89053

MARK SERTIC, ESQ
5975 HOME GARDENS DRIVE
RENO NV 89502

CCMSI
PO BOX 20068
RENO NV 89515-0068

Dated this 10th day of December, 2015.



Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

EXHIBIT 4

EXHIBIT 4

RECEIVED

JAN 8 2016

MARK S. SERTIC, ESQ.

SERTIC LAW LTD.

Nevada Bar No. 403

5975 Home Gardens Drive

Reno, Nevada 89502

Telephone: (775) 327-6300

Facsimile: (775) 327-6301

Attorneys for Petitioner

Employers Insurance Company of Nevada

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

Case No.

vs.

Department No:

DANIEL DEMARANVILLE [Deceased],
LAURA DEMARANVILLE, an individual,
THE CITY OF RENO, and THE NEVADA DEPARTMENT
OF ADMINISTRATION APPEALS OFFICER

Respondents.

PETITION FOR JUDICIAL REVIEW

EMPLOYERS INSURANCE COMPANY OF NEVADA, by and through its attorney, Mark
S. Sertic, Esq., of Sertic Law Ltd., hereby petitions this Court for judicial review of the Appeals
Officer's Decision dated December 10, 2015, Appeal No. 53387-LLW. A copy of the Decision is
attached hereto as Exhibit 1.

The grounds upon which this is review is sought is that the Decision of the Appeals Officer
prejudices substantial rights of the Petitioner in that it is:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the agency;

- 1 3. Made upon unlawful procedure;
2 4. Affected by error of law;
3 5. Clearly erroneous in view of the reliable, probative and substantial evidence on the
4 whole record; and
5 6. Arbitrary and capricious and characterized by an abuse of discretion by the Appeals
6 Officer.
7

8 WHEREFORE, Petitioner prays as follows:

- 9 1. The Court grant judicial review of the Decision filed on December 10, 2015 by the
10 Department of Administration Appeals Officer;
11 2. The Court vacate and set aside the Decision issued by the Appeals Officer; and
12 3. For such other and further relief as the Court deems just and proper.
13

14 DATED this 7th day of January, 2016.

15 SERTIC LAW LTD.

16 By: Mark S. Sertic
17 MARK S. SERTIC, ESQ.
18 5975 Home Gardens Drive
19 Reno, Nevada 89502
20 Attorneys for Petitioner
21 Employers Insurance Company of Nevada

22 **AFFIRMATION**

23 Pursuant to NRS 239B.030

24 The undersigned does hereby affirm that the preceding **PETITION FOR JUDICIAL**
25 **REVIEW** does not contain the social security number of any person.

26 Dated on this 7th day of January, 2016.

27 Mark S. Sertic
28 Mark S. Sertic

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 7th day of January, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
P.O. Box 2670
Reno, Nevada 89505

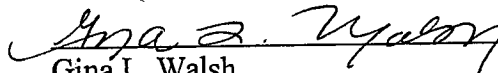
NAIW
Evan Beavers, Esq.
1000 E William Street #208
Carson City, Nevada 89701

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, Nevada 89710

Office of the Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701

Department of Administration Director's Office
515 East Musser Street, Third Floor
Carson City, Nevada 89701

Bryan Nix, Esq., Senior Appeals Officer
Appeals Office
2200 S. Rancho Drive, Ste. 220
Las Vegas, Nevada 89102


Gina L. Walsh

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EXHIBIT 1

EXHIBIT 1

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

This matter is before the appeals officer upon motion by the claimant, Laura DeMaranville, surviving spouse of Daniel DeMaranville, seeking summary judgment on the claimant's appeal of the hearing officer's decision of June 24, 2015, on the issue of death benefits. The motion was opposed by the City of Reno, by and through Timothy Rowe, Esq. Employers Insurance Company of Nevada, by and through Mark Sertic, Esq., joined as an indispensable party to the action, also opposed the claimant's motion for summary judgment.

The matter was submitted for decision after briefing by stipulation of the parties relying on the record admitted into evidence in Appeal Nos. 46812-LLW, 46479-LLW, and 44957-LLW which resulted in the Decision and Order filed March 18, 2015, on the issue of claim acceptance. Based upon the Stipulation and Order entered October 5, 2015, the claimant's motion for summary judgment, the briefs submitted in opposition and reply, and all pleadings and papers admitted in the earlier determination of

1 claim acceptance, the Appeals Officer finds and concludes as
2 follows:

3 FINDINGS OF FACT

4 1. Daniel DeMaranville was a sworn police officer for
5 the City of Reno from August 6, 1969, until his retirement in
6 January of 1990.

7 2. Mr. DeMaranville died August 5, 2012, and at the
8 time of his death he was employed by AKAL as a court security
9 officer for the Federal District Court.

10 3. By decision and order dated March 18, 2015, it was
11 determined that Daniel DeMaranville died of heart disease and
12 that he became entitled to compensation on the date of his death,
13 and that the responsible insurer on that date was the City of
14 Reno.

15 4. In compliance with the order of March 18, 2015,
16 Cannon Cochran Management Services, Inc. (CCMSI), claims
17 administrator for City of Reno, tendered to Laura DeMaranville
18 the amount of \$1,683.85 as the monthly widow benefit based upon
19 the State's maximum wage cap at the date of retirement on
20 January 12, 1990.

21 5. Laura DeMaranville appealed that determination to
22 the hearings officer who, by decision and order filed June 24,
23 2015, affirmed the calculation of benefits based on the date
24 wages were last earned from the City of Reno, which would have
25 been the date of retirement.

26 6. Ms. DeMaranville appealed and moved for summary
27 judgment arguing, *inter alia*, Daniel DeMaranville died of
28 industrial disease and that the date he was no longer able to

1 work as a result of the disease is the proper date on which to
2 calculate wages for the payment of benefits to the widow.

3 7. In her motion, Ms. DeMaranville argues that at the
4 date of his death Mr. DeMaranville was earning \$7,314.15 gross
5 monthly salary and the State maximum wage statute at the time
6 would cap his wages for the calculation of benefits at \$5,222.63,
7 and the monthly widow benefit would amount to \$3,481.75.

8 8. City of Reno opposes summary judgment arguing that
9 if it is the employer responsible for the occupational disease,
10 the wages used to calculate benefits must be the wages the city
11 was paying the decedent at the time of his disability, and at the
12 time of disability, or death, the city was paying Daniel
13 DeMaranville no wage, therefore, the death benefit payable to
14 Laura DeMaranville must be zero.

15 9. EICON opposes summary judgment arguing, similarly,
16 that because Mr. DeMaranville's earnings from his police officer
17 job with the City were zero at the time of disability, the
18 benefits owing the widow are also zero.

19 CONCLUSIONS OF LAW

20 Based upon the preceding findings of fact, the Appeals
21 Officer concludes, as a matter of law, that:

22 1. All that was necessary for Laura DeMaranville to
23 show entitlement of the conclusive presumption in NRS 617.457 was
24 that her husband Daniel died of heart disease and that he was
25 employed for five continuous years with the City of Reno as a
26 police officer at some point prior to his death from heart
27 disease. See Manwill v. Clark County, 123 Nev. 238, 242, 162
28 P.3d 876 (2007).

1 2. The conclusive presumption that the occupational
2 heart disease arose out of and in the scope of his employment
3 with the City of Reno makes the city liable for benefits
4 resulting from the disease, including death benefits to his
5 widow, regardless of whether he was still working for the city or
6 was retired at the date of death from heart disease. See Howard
7 v. City of Las Vegas, 121 Nev. 691, 695, 120 P.3d 410 (2005);
8 Gallagher v. City of Las Vegas, 114 Nev. 595, 601, 602, 959 P.2d
9 519 (1998).

10 3. Upon finding compensability under NRS chapter 617,
11 it then becomes necessary to rely on NRS chapter 616 for the
12 method of calculating benefits. See Mirage v. Nevada Dep't of
13 Administration, 110 Nev. 257, 260, 871 P.2d 317 (1994).

14 4. NRS 616C.505 entitles Laura DeMaranville to monthly
15 payment in an amount equal to 66 2/3 percent of Mr.
16 DeMaranville's average monthly wage earned immediately preceding
17 the heart attack. See Howard at 695. In addition, NAC
18 616C.441(1) mandates that the wage the injured employee earned on
19 the date the employee was no longer able to work because of the
20 occupational disease should be used to calculate the average
21 monthly wage.

22 5. At the date of his death on August 5, 2012, Daniel
23 DeMaranville was earning \$7,314.15 gross monthly salary with
24 vacation pay. At that time his wages would be capped by NRS
25 616A.065 at \$5,222.63. NRS 616C.505 requires that an amount
26 equal to 66 2/3 of that amount, that is \$3,481.75, be paid
27 monthly to Laura DeMaranville as the monthly death benefit.

28 //

1 6. Summary judgment is appropriate when the moving
2 party is entitled to judgment as a matter of law and no genuine
3 issue of material fact remains for trial. NRCP 56(c); Perez v.
4 Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589
5 (1991)(citations omitted). The evidence must be construed in a
6 light most favorable to the party against whom the motion is
7 directed. Id.

8 7. Considering the evidence in a light most favorable
9 to the City of Reno or its insurer, that Daniel DeMaranville died
10 twenty-two years after leaving the city's employment and was at
11 that time earning wages substantially higher than the wages he
12 earned with the city, there is no legal authority to pay his
13 widow zero for her monthly death benefits. His occupational
14 heart disease is conclusively presumed to have arisen from his
15 employment with the City of Reno. The Nevada Occupational
16 Disease Act requires the payment of benefits calculated at the
17 date of disability and no exception exists for the City of Reno
18 to avoid that obligation if, at the time of disability, the city
19 was no longer paying wages to the decedent. The date of
20 disability under the Act is the date of death, and at the date of
21 death Daniel DeMaranville's wage was capped at \$5,222.63 and the
22 monthly death benefit due his widow under the Act is \$3,481.75.

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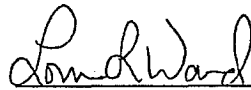
NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

ORDER

THEREFORE, in accordance with the above-stated Findings of Fact and Conclusions of Law, the claimant's MOTION FOR SUMMARY JUDGMENT shall be, and the same hereby is, GRANTED.

DATED this 10th day of December, 2015.

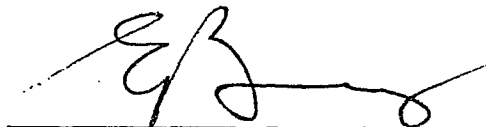
APPEALS OFFICER


LORNA L WARD

N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service by mail of this decision.

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


Evan Beavers, Esq.
1000 East William St., #208
Carson City, Nevada 89701

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of
3 Administration, Hearings Division, does hereby certify that on the date shown
4 below, a true and correct copy of the foregoing DECISION AND ORDER was
5 duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at
6 the Department of Administration, Hearings Division, 1050 E. Williams Street,
Carson City, Nevada, to the following:

7 DANIEL DEMARANVILLE, DECEASED
8 C/O LAURA DEMARANVILLE
9 PO BOX 261
VERDI, NV 89439

10 NAIW
11 1000 E WILLIAM #208
CARSON CITY NV 89701

12 CITY OF RENO
13 ATTN ANDRENA ARREYGUE
14 PO BOX 1900
RENO, NV 89505

15 TIMOTHY ROWE, ESQ
16 PO BOX 2670
RENO NV 89505


17 LESLIE BELL
18 RENO POLICE PROTECTIVE ASSOCIATION
19 PO BOX 359
RENO NV 89504

20 EMPLOYERS INSURANCE COMP OF NV
21 PO BOX 539004
HENDERSON, NV 89053

22 MARK SERTIC, ESQ
23 5975 HOME GARDENS DRIVE
24 RENO NV 89502

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 10th day of December, 2015.

28 

Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

1 MARK S. SERTIC, ESQ.
2 SERTIC LAW LTD.
3 Nevada Bar No. 403
4 5975 Home Gardens Drive
5 Reno, Nevada 89502
6 Telephone: (775) 327-6300
7 Facsimile: (775) 327-6301
8 *Attorneys for Petitioner*
9 *Employers Insurance Company of Nevada*

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

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

Case No.

vs.

Department No:

DANIEL DEMARANVILLE [Deceased],
LAURA DEMARANVILLE, an individual,
THE CITY OF RENO, and THE NEVADA DEPARTMENT
OF ADMINISTRATION APPEALS OFFICER

Respondents.

/

AFFIRMATION
Pursuant to NRS 239B.030/603A.040
(Initial Appearance)

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided **ONLY** if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

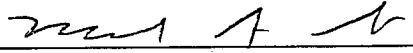
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///

1 The term does not include publicly available information that is lawfully made available to the
2 general public.

3 DATED this 7th day of January, 2016.

4 SERTIC LAW LTD.

5
6 By: 
7 MARK S. SERTIC, ESQ.
8 5975 Home Gardens Drive
9 Reno, Nevada 89502
10 *Attorneys for Petitioner*
11 *Employers Insurance Company of Nevada*

12 The purpose of this initial affirmation is to ensure that each person who initiates a case, or upon first
13 appearing in a case, acknowledges their understanding that no further affirmations are
14 necessary unless a pleading which is filed contains personal information.
15
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd.,
3 Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the
4 7th day of January, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a
5 true copy of the foregoing or attached document, addressed to:

6 Tim E. Rowe, Esq.
7 McDonald Carano Wilson LLP
8 P.O. Box 2670
9 Reno, Nevada 89505

10 NAIW
11 Evan Beavers, Esq.
12 1000 E William Street #208
13 Carson City, Nevada 89701

14 Appeals Officer
15 Department of Administration
16 1050 E. William Street, Suite 450
17 Carson City, Nevada 89710

18 Office of the Nevada Attorney General
19 100 N. Carson St.
20 Carson City, NV 89701

21 Department of Administration Director's Office
22 515 East Musser Street, Third Floor
23 Carson City, Nevada 89701

24 Bryan Nix, Esq., Senior Appeals Officer
25 Appeals Office
26 2200 S. Rancho Drive, Ste. 220
27 Las Vegas, Nevada 89102

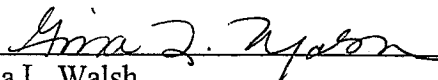
28 
Gina L. Walsh

EXHIBIT 5

EXHIBIT 5

ORIGINAL

FILED

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JACQUELINE BRYANT
CLERK OF THE COURT

BY: [Signature] DEPUTY

1 CODE: \$3550
MARK S. SERTIC, ESQ.
SERTIC LAW LTD.
Nevada Bar No.: 403
5975 Home Gardens Drive
Reno, Nevada 89502
Telephone: (775) 327-6300
Facsimile: (775) 327-6301
*Attorneys for Respondent/Cross-Petitioner
Employers Insurance Company of Nevada*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

9
10 CITY OF RENO,

11 Petitioner,

Case No. CV16-00013

12 vs.

Department No: 8

13
14 DANIEL DEMARANVILLE, Deceased,
15 LAURA DEMARANVILLE, an individual,
16 EMPLOYERS INSURANCE COMPANY
OF NEVADA, a Nevada corporation, and
The NEVADA DEPARTMENT
OF ADMINISTRATION APPEALS OFFICER

17 Respondents.
18 _____/

19 EMPLOYERS INSURANCE COMPANY
20 OF NEVADA,

21 Cross-Petitioner,

22 vs.

23 CITY OF RENO, DANIEL DEMARANVILLE,
24 Deceased, LAURA DEMARANVILLE, an individual,
and The NEVADA DEPARTMENT
OF ADMINISTRATION APPEALS OFFICER

25 Cross-Respondents,
26 _____/

27 CROSS-PETITION FOR JUDICIAL REVIEW
28

DC-09500073250-011
CV16-00013
CITY OF RENO VS DANIEL DEMAR 5 Pages
District Court 01/12/2016 12:33 PM
3550
Washoe County
JAC

1 EMPLOYERS INSURANCE COMPANY OF NEVADA, by and through its attorney, Mark
2 S. Sertic, Esq., of Sertic Law Ltd., hereby files this Cross-Petition for Judicial Review and petitions
3 this Court for judicial review of the Decision rendered and filed by the Department of
4 Administration Appeals Officer dated December 10, 2015, Appeal No. 53387-LLW. A copy of the
5 Decision is attached hereto as Exhibit 1. The grounds upon which this is review is sought is that the
6 Decision of the Appeals Officer prejudices substantial rights of the Cross-Petitioner in that it is:
7

- 8 1. In violation of constitutional or statutory provisions;
- 9 2. In excess of the statutory authority of the agency;
- 10 3. Made upon unlawful procedure;
- 11 4. Affected by error of law;
- 12 5. Clearly erroneous in view of the reliable, probative and substantial evidence on the
13 whole record; and
- 14 6. Arbitrary and capricious and characterized by an abuse of discretion by the Appeals
15 Officer.
16

17 WHEREFORE, Cross-Petitioner prays as follows:

- 18 1. The Court grant judicial review of the Decision filed on December 10, 2015 by the
19 Department of Administration Appeals Officer;
- 20 2. The Court vacate and set aside the Decision issued by the Appeals Officer; and
- 21 3. For such other and further relief as the Court deems just and proper.
22

23 ///

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28 ///

1 DATED this 11th day of January, 2016.

2 SERTIC LAW LTD.

3
4 By: Mark S. Sertic
5 MARK S. SERTIC, ESQ.
6 5975 Home Gardens Drive
7 Reno, Nevada 89502
8 *Attorneys for Respondent/Cross-Petitioner*
9 *Employers Insurance Company of Nevada*

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030

12
13 The undersigned does hereby affirm that the preceding **CROSS-PETITION FOR**
14 **JUDICIAL REVIEW** does not contain the social security number of any person.

15
16 Dated on this 11th day of January, 2016.

17
18 Mark S. Sertic
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 18th day of January, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
P.O. Box 2670
Reno, Nevada 89505

NAIW
Evan Beavers, Esq.
1000 E William Street #208
Carson City, Nevada 89701

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, Nevada 89710

Office of the Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701

Department of Administration Director's Office
515 East Musser Street, Third Floor
Carson City, Nevada 89701

Bryan Nix, Esq., Senior Appeals Officer
Appeals Office
2200 S. Rancho Drive, Ste. 220
Las Vegas, Nevada 89102


Gina L. Walsh

INDEX OF EXHIBITS

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Exhibit #

Description

of Pages

Exhibit 1

Decision of Appeals Officer

7

EXHIBIT 6

EXHIBIT 6

1 CODE: \$3550
2 Timothy E. Rowe, Esq.
3 Nevada Bar No. 1000
4 McDONALD CARANO WILSON LLP
5 100 West Liberty Street, 10th Floor
6 Reno, Nevada 89505
7 Telephone: (775) 788-2000
8 Attorneys for the Employer
9 CITY OF RENO

REC'D & FILED
2016 JAN 20 PM 4:29
SUSAN MERRIWETHER
CLERK
BY V. Alegria
DEPUTY

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

8 EMPLOYERS INSURANCE COMPANY
9 OF NEVADA,

10 Petitioner,

11 vs.

12 DANIEL DEMARANVILLE [Deceased],
13 LAURA DEMARANVILLE, an individual,
14 THE CITY OF RENO, and THE NEVADA
15 DEPARTMENT OF ADMINISTRATION
16 APPEALS OFFICER,

17 Respondent.

18 CITY OF RENO,

19 Cross-Petitioner,

20 vs.

21 DANIEL DEMARANVILLE [Deceased],
22 LAURA DEMARANVILLE, an individual,
23 EMPLOYER'S INSURANCE COMPANY OF
24 NEVADA, and THE NEVADA
25 DEPARTMENT OF ADMINISTRATION
26 APPEALS OFFICER,

27 Cross-Respondents.

Case No: 160C000031B

Dept. No: II

28 CROSS-PETITION FOR JUDICIAL REVIEW

29 The CITY OF RENO, by and through its attorney of record, Timothy E. Rowe, Esq., of
30 McDonald Carano Wilson, LLP., hereby files this Cross-Petition for Judicial Review and
31 petitions this Court for judicial review of the Decision rendered and filed by the department of

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

Administration Appeals Officer dated December 10, 2015, Appeal No. 53387-LLW. A copy of the Decision is attached hereto as Exhibit 1.

The grounds upon which this review is sought are:

1. The Decision rendered by the Appeals Officer prejudices substantial rights of the Petitioner because it is:

- a. affected by error of law;
- b. clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
- c. arbitrary and capricious and based upon an abuse of discretion by the Appeals Officer.

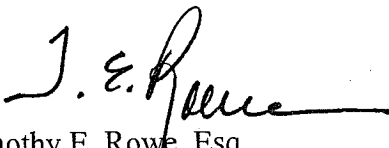
WHEREFORE, Petitioner prays as follows:

1. The court grants judicial review of the Decision filed on March 18, 2015 by the Department of Administration Appeals Officer;
2. The court vacate and set aside the Decision issued by the Appeals Officer; and
3. For such other and further relief as the court deems just and proper.

DATED this 19th day of January 2016.

McDONALD CARANO WILSON LLP

By:

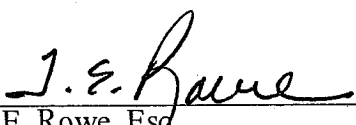

Timothy E. Rowe, Esq.
P.O. Box 2670
Reno, Nevada 89505-2670
Attorneys for the CITY OF RENO

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **CROSS-PETITION FOR JUDICIAL REVIEW** does not contain the social security number of any person.

Dated this 19th day of January 2016.


Timothy E. Rowe, Esq.

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano Wilson LLP and that on the 14th day of January 2016, I caused a copy of the preceding **CROSS-PETITION FOR JUDICIAL REVIEW** to be served by depositing the same for mailing with the U.S. Postal Service, postage prepaid on the following parties:

Lorna L. Ward
Appeals Officer
Department of Administration
1050 W. Williams St., Suite 450
Carson City, NV 89701

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

Evan Beavers, Esq.
Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
Carson City, NV 89701

Office of the Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

Department of Administrations Director's Office
515 E. Musser Street, Third Floor
Carson City, NV 89701

Cannon Cochran Management Services, Inc.
Attn: Lisa Jones
P.O. Box 20068
Reno, NV 89515


Carole Davis

#438616[cw1/15/16]

EXHIBIT LIST

TAB NO.	EXHIBIT
1.	12/10/15 Decision and Order

 McDONALD-CARANO-WILSON²
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

EXHIBIT 1

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EXHIBIT 1

DEC 11 2015

McDonald Carab Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

This matter is before the appeals officer upon motion by the claimant, Laura DeMaranville, surviving spouse of Daniel DeMaranville, seeking summary judgment on the claimant's appeal of the hearing officer's decision of June 24, 2015, on the issue of death benefits. The motion was opposed by the City of Reno, by and through Timothy Rowe, Esq. Employers Insurance Company of Nevada, by and through Mark Sertic, Esq., joined as an indispensable party to the action, also opposed the claimant's motion for summary judgment.

The matter was submitted for decision after briefing by stipulation of the parties relying on the record admitted into evidence in Appeal Nos. 46812-LLW, 46479-LLW, and 44957-LLW which resulted in the Decision and Order filed March 18, 2015, on the issue of claim acceptance. Based upon the Stipulation and Order entered October 5, 2015, the claimant's motion for summary judgment, the briefs submitted in opposition and reply, and all pleadings and papers admitted in the earlier determination of

1 claim acceptance, the Appeals Officer finds and concludes as
2 follows:

3 FINDINGS OF FACT

4 1. Daniel DeMaranville was a sworn police officer for
5 the City of Reno from August 6, 1969, until his retirement in
6 January of 1990.

7 2. Mr. DeMaranville died August 5, 2012, and at the
8 time of his death he was employed by AKAL as a court security
9 officer for the Federal District Court.

10 3. By decision and order dated March 18, 2015, it was
11 determined that Daniel DeMaranville died of heart disease and
12 that he became entitled to compensation on the date of his death,
13 and that the responsible insurer on that date was the City of
14 Reno.

15 4. In compliance with the order of March 18, 2015,
16 Cannon Cochran Management Services, Inc. (CCMSI), claims
17 administrator for City of Reno, tendered to Laura DeMaranville
18 the amount of \$1,683.85 as the monthly widow benefit based upon
19 the State's maximum wage cap at the date of retirement on
20 January 12, 1990.

21 5. Laura DeMaranville appealed that determination to
22 the hearings officer who, by decision and order filed June 24,
23 2015, affirmed the calculation of benefits based on the date
24 wages were last earned from the City of Reno, which would have
25 been the date of retirement.

26 6. Ms. DeMaranville appealed and moved for summary
27 judgment arguing, *inter alia*, Daniel DeMaranville died of
28 industrial disease and that the date he was no longer able to

1 work as a result of the disease is the proper date on which to
2 calculate wages for the payment of benefits to the widow.

3 7. In her motion, Ms. DeMaranville argues that at the
4 date of his death Mr. DeMaranville was earning \$7,314.15 gross
5 monthly salary and the State maximum wage statute at the time
6 would cap his wages for the calculation of benefits at \$5,222.63,
7 and the monthly widow benefit would amount to \$3,481.75.

8 8. City of Reno opposes summary judgment arguing that
9 if it is the employer responsible for the occupational disease,
10 the wages used to calculate benefits must be the wages the city
11 was paying the decedent at the time of his disability, and at the
12 time of disability, or death, the city was paying Daniel
13 DeMaranville no wage, therefore, the death benefit payable to
14 Laura DeMaranville must be zero.

15 9. EICON opposes summary judgment arguing, similarly,
16 that because Mr. DeMaranville's earnings from his police officer
17 job with the City were zero at the time of disability, the
18 benefits owing the widow are also zero.

19 CONCLUSIONS OF LAW

20 Based upon the preceding findings of fact, the Appeals
21 Officer concludes, as a matter of law, that:

22 1. All that was necessary for Laura DeMaranville to
23 show entitlement of the conclusive presumption in NRS 617.457 was
24 that her husband Daniel died of heart disease and that he was
25 employed for five continuous years with the City of Reno as a
26 police officer at some point prior to his death from heart
27 disease. See Manwill v. Clark County, 123 Nev. 238, 242, 162
28 P.3d 876 (2007).

2. The conclusive presumption that the occupational heart disease arose out of and in the scope of his employment with the City of Reno makes the city liable for benefits resulting from the disease, including death benefits to his widow, regardless of whether he was still working for the city or was retired at the date of death from heart disease. See Howard v. City of Las Vegas, 121 Nev. 691, 695, 120 P.3d 410 (2005); Gallagher v. City of Las Vegas, 114 Nev. 595, 601, 602, 959 P.2d 519 (1998).

3. Upon finding compensability under NRS chapter 617, it then becomes necessary to rely on NRS chapter 616 for the method of calculating benefits. See Mirage v. Nevada Dep't of Administration, 110 Nev. 257, 260, 871 P.2d 317 (1994).

4. NRS 616C.505 entitles Laura DeMaranville to monthly payment in an amount equal to 66 2/3 percent of Mr. DeMaranville's average monthly wage earned immediately preceding the heart attack. See Howard at 695. In addition, NAC 616C.441(1) mandates that the wage the injured employee earned on the date the employee was no longer able to work because of the occupational disease should be used to calculate the average monthly wage.

5. At the date of his death on August 5, 2012, Daniel DeMaranville was earning \$7,314.15 gross monthly salary with vacation pay. At that time his wages would be capped by NRS 616A.065 at \$5,222.63. NRS 616C.505 requires that an amount equal to 66 2/3 of that amount, that is \$3,481.75, be paid monthly to Laura DeMaranville as the monthly death benefit.

//

1 6. Summary judgment is appropriate when the moving
2 party is entitled to judgment as a matter of law and no genuine
3 issue of material fact remains for trial. NRCP 56(c); Perez v.
4 Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589
5 (1991)(citations omitted). The evidence must be construed in a
6 light most favorable to the party against whom the motion is
7 directed. Id.

8 7. Considering the evidence in a light most favorable
9 to the City of Reno or its insurer, that Daniel DeMaranville died
10 twenty-two years after leaving the city's employment and was at
11 that time earning wages substantially higher than the wages he
12 earned with the city, there is no legal authority to pay his
13 widow zero for her monthly death benefits. His occupational
14 heart disease is conclusively presumed to have arisen from his
15 employment with the City of Reno. The Nevada Occupational
16 Disease Act requires the payment of benefits calculated at the
17 date of disability and no exception exists for the City of Reno
18 to avoid that obligation if, at the time of disability, the city
19 was no longer paying wages to the decedent. The date of
20 disability under the Act is the date of death, and at the date of
21 death Daniel DeMaranville's wage was capped at \$5,222.63 and the
22 monthly death benefit due his widow under the Act is \$3,481.75.

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ORDER

THEREFORE, in accordance with the above-stated Findings of Fact and Conclusions of Law, the claimant's MOTION FOR SUMMARY JUDGMENT shall be, and the same hereby is, GRANTED.

DATED this 10th day of December, 2015.

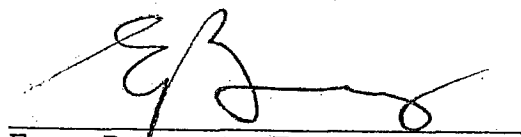
APPEALS OFFICER


LORNA L WARD

N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should any party desire to appeal this final decision of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service by mail of this decision.

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


Evan Beavers, Esq.
1000 East William St., #208
Carson City, Nevada 89701

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EXHIBIT 7

EXHIBIT 7

1 CODE : 4040
2 TIMOTHY E. ROWE, ESQ.
3 Nevada Bar No. 1000
4 McDonald Carano Wilson LLP
5 P. O. Box 2670
6 Reno, Nevada 89505-2670
7 775-788-2000
8 *Attorneys for Petitioner*

9
10
11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 * * * * *

14 CITY OF RENO,

15 Petitioner,

Case No: CV16-00013

16 vs.

Department No: 8

17 DANIEL DEMARANVILLE, Deceased,
18 LAURA DEMARANVILLE, an individual,
19 EMPLOYERS INSURANCE COMPANY
20 OF NEVADA, a Nevada corporation, and
21 The NEVADA DEPARTMENT OF
22 ADMINISTRATION APPEALS OFFICER,

23 Respondents.
24 _____/

25 **STIPULATION AND ORDER TO CHANGE VENUE**

26 The above-named parties, by and through their respective attorneys of record, hereby
27 stipulate and agree venue in the above entitled matter may be transferred to Department II of the
28 First Judicial District Court of the State of Nevada in and for Carson City.

The grounds for said stipulation are:

1. Pursuant to NRS 233B.130(2), venue in this matter is proper in either the Second
Judicial District Court or the First Judicial District Court.

2. The Employer's Insurance Company of Nevada (EICN) has also filed a petition for
judicial review seeking judicial review of the same Appeals Officer Decision that is at issue in
this petition for judicial review. EICN's petition was filed and is pending in Department 11 of the

1 First Judicial District Court.

2 3. There is also a separate petition for judicial review presently pending in Department II
3 of the First Judicial District Court that involves the same industrial insurance claim and parties as
4 this petition for judicial review. That petition presents issues closely related to the issues
5 presented in this petition for judicial review.

6 4. Changing venue to Department II the First Judicial District Court in this matter will
7 allow all of these related petitions for judicial review to be heard by the same court.

8 For the forgoing reasons, the parties to this petition for judicial review respectfully request
9 an Order of this Court changing venue in this matter to Department II the First Judicial District
10 Court of the State of Nevada, in and for Carson City.

11 **AFFIRMATION**
12 **Pursuant to NRS 239B.030**

13 The undersigned does hereby affirm that the preceding ***STIPULATION AND ORDER***

14 ///

15 ///

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1 **TO CHANGE VENUE** filed in the Second Judicial District Court of the State of Nevada, does
2 not contain the social security numbers of any persons.

3 Dated this 22nd day of February, 2016

Dated this 19th day of February, 2016

4 McDONALD CARANO WILSON LLP

NEVADA ATTORNEY FOR INJURED WORKERS

5
6 By:

T.E. Rowe
TIMOTHY E. ROWE, ESQ.
P. O. Box 2670
Reno, NV 89505-2670
Attorneys for the Petitioner,
City of Reno

By:

Evan Beavers
EVAN BEAVERS, ESQ.
1000 E. William St., #208
Carson City, NV 89701
Attorneys for Respondent,
Laura DeMaranville

10 Dated this 21st day of February, 2016

11 SERTIC LAW LTD.

12
13 By:

Mark Sertic
MARK SERTIC, ESQ.
5975 Home Gardens Drive
Reno, Nevada 89502
Attorneys for Respondent/Cross Petitioner,
Employers Insurance Company of Nevada

17 **ORDER**

18 IT IS SO ORDERED this 23rd day of February, 2016.

19
20 W. A. Shidell
DISTRICT JUDGE

EXHIBIT 8

EXHIBIT 8

RECEIVED

APR 15 2016

McDonald Carson Wilson LLP

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SUSAN HERRIWETHER
CLERK

BY G. WINDER
DEPUTY

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

-000-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 16 OC 00003 1E

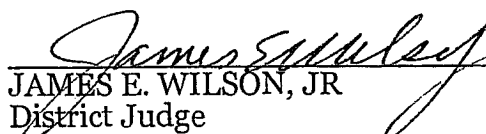
Dept. No. 2

ORDER CONSOLIDATING CASES

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Plaintiff on April 14, 2015. This action shares common questions of law and fact and involves the same parties as this court's case numbers 15 OC 00092 1B and 16 OC 00049 1B. Under NRCP 42(a) and good cause appearing,

IT IS ORDERED that 16 OC 00003 1B, 16 OC 00049 1B, and 15 OC 00092 1B are consolidated. All further pleadings and papers shall be filed under case No. 15 OC 00092, with the caption styled as "CITY OF RENO" vs. DANIEL DEMARANVILLE, (deceased), EMPLOYER'S INSURANCE COMPANY OF NEVADA, and NEVADA DEPARTMENT OF ADMINISTRATION APPEALS OFFICER.

April 12, 2016.


JAMES E. WILSON, JR.
District Judge

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



Gina Winder
Judicial Assistant

EXHIBIT 9

EXHIBIT 9

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McDonald Carano Wilson LLP

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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 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**

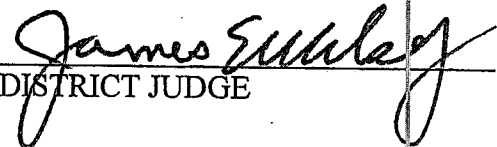
4 1. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to the
5 conclusion Mr. Demaranville's death was the result of compensable occupational heart disease
6 under NRS 617.457.

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.

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20 DISTRICT JUDGE
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Order to:

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 10

EXHIBIT 10

Timothy E. Rowe, Esq.
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2017 MAR 14 PM 1:46
SUSAN MERRIWETHER
BY C. COOPER CLERK
DEPUTY

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: T.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

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

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EXHIBIT 1

EXHIBIT 1

MAR 13 2017

McDonald Carano Wilson LLP

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SUSAN HERRIWETHER
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

Dept. No. II

vs.

DANIEL DEMARANVILLE [Deceased],
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ORDER GRANTING IN PART AND DENYING IN PART
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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
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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
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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.
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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**

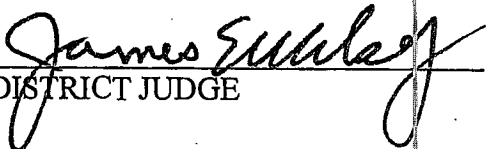
4 1. The March 18, 2015 Appeals Officer's Decision is affirmed with respect to the
5 conclusion Mr. Demaranville's death was the result of compensable occupational heart disease
6 under NRS 617.457.

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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