

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 72737

Electronically Filed
Nov 08 2017 02:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Appellant/Cross Respondent,

vs.

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

Respondents/Cross-Appellants,

Appeal From Order Granting in Part and Denying in Part
Petition for Judicial Review entered on March 9, 2017
District Court Case No.: 15 OC 00092 1B
First Judicial District Court of Nevada

CITY OF RENO'S RESPONSE TO ORDER TO SHOW CAUSE

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The City of Reno respectfully submits the following response to the Court's October 9, 2017 Order to Show Cause.

I. RELEVANT FACTS

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

On August 5, 2012, Mr. DeMaranville died following laparoscopic cholecystectomy (gallbladder removal) surgery. At the time of his death, Mr. DeMaranville was employed by AKAL Security as a security officer for the U.S. Marshal's Office.

Mr. DeMaranville's widow, claimant Laura DeMaranville, filed an occupational disease claim with the City contending Mr. Demaranville's death was caused by heart disease and compensable under the heart/lung statute, NRS 617.457. On May 23, 2013, the City denied the claim based on a lack of medical evidence establishing that heart disease caused Mr. DeMaranville's death. DeMaranville appealed the City's determination. The parties then agreed to bypass the Hearing Officer directly to the Appeals Officer pursuant to NRS 616C.315.

DeMaranville also submitted the claim to EICON, the City's insurer at the time of Mr. DeMaranville's 1990 retirement. On September 19, 2013, EICON also

denied the claim on the grounds that there was no evidence that Mr. DeMaranville died as a result of heart disease. DeMaranville appealed EICON's determination. On October 28, 2013, the Hearing Officer reversed EICON's determination and ruled that EICON was liable for the claim because Mr. DeMaranville died from heart disease. EICON appealed the Hearing Officer Decision to an Appeals Officer.

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

The three appeals were consolidated before the Appeals Officer. Various medical opinions concerning the cause of Mr. DeMaranville's death were submitted into evidence before the Appeals Officer. Ascertaining the cause of Mr. Demaranville's death was complicated by the fact no autopsy was done. The Appeals Officer found Mr. Demaranville's death was caused by heart disease and was compensable as an occupational disease under NRS 617.457. She also found the applicable date of disability to be August 5, 2012, the date of Mr. DeMaranville's death. She then concluded that the City as a self-insured employer was liable for the claim. Accordingly, the Appeals Officer also concluded that EICON, who insured the City through 2002, was not liable for the claim. The Appeals Officer reversed the Hearing Officer's October 28, 2013 decision that found EICON liable for the claim; reversed the City's May 23, 2013 determination

letter that denied the claim; and affirmed EICON's September 19, 2013 determination letter that denied the claim.

The City requested judicial review and a partial stay of the Appeals Officer's March 18, 2015 Decision. On April 16, 2015, the Appeals Officer denied the stay motion.

On April 15, 2015, in compliance with the Appeals Officer Decision, the City issued its determination accepting the claim for death benefits pursuant to NRS 616C.505. The determination also established the monthly benefit for the death benefits at \$1,683.85, the maximum allowable wage on the date of Mr. DeMaranville's retirement from the City in 1990. The Claimant appealed to the Hearings Officer who affirmed the City's determination. The Claimant appealed that decision to the Appeals Officer seeking to have the monthly death benefit calculated based upon the wages that Mr. DeMaranville received from his private employer at the time of his death 22 years after retiring from the City. The Appeals Officer, in a decision dated December 10, 2015, reversed the decision of the Hearing Officer and found the monthly benefit should be based on his wages earned from the private employer 22 years after his retirement.

Both the City and EICON requested judicial review. Demaranville filed a cross-petition for judicial review. Pursuant to stipulation of the parties, all of the petitions for judicial review were consolidated for hearing by Dept. 11 of the First Judicial District Court. Judge Wilson upheld the Appeals Officer Decision

concluding the claim was compensable and that the City was the responsible insurer. However, Judge Wilson reversed the Appeals Officer Decision awarding death benefits to Demaranville. All parties have appealed Judge Wilson's Decision.

II. ISSUES ON APPEAL

The underlying Appeals Officer Decisions and the District Court Decision lead to three issues on appeal:

1. Was the finding that Mr. DeMaranville died as a result of heart disease supported by substantial evidence when the record contains no actual evidence of heart disease?
2. Did the Appeals Officer and the District Court 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?

III. THE CITY IS AGGRIEVED BY THE DISTRICT COURT ORDER

For purposes of an appeal under NRAP 3A(a), a party is "aggrieved" when a district court's ruling adversely affects a party's personal or property rights. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). Here, both the Appeals Officer Decisions and the District Court Order partially affirming those decisions adversely affected the City's property rights. As a result of the

Appeals Officer's Decision finding Demaranville's claim to be compensable and the City to be the responsible employer, the City was required to pay Demaranville death benefits including funeral expenses. The City was unable to obtain a stay of the Appeals Officer's Decision and was forced to pay Demaranville's death benefits until the District Court issued its decision that Demaranville was not entitled to death benefits under the rationale expressed in *Howard v. City of Las Vegas*, 121 Nev. 691, 120 P.3d 412 (2005). Those benefits amount to approximately \$140,000.

The City has maintained from the outset that it is not the responsible insurer in this case, and that if the Claimant is entitled to benefits, responsibility for the benefits properly falls on EICON. The City was aggrieved by the decisions of the Appeals Officer and the District Court because those decisions found the City was the responsible insurer and required the City to pay Demaranville substantial benefits. The City seeks reversal of the District Court Decision on the issue of which insurer is responsible for the claim and will attempt to recover the benefits paid to Demaranville from EICON should the District Court Decision be reversed on this issue.

The City respectfully submits it is aggrieved by the District Court's affirmation of the Appeals Officer Decision concluding the City was the responsible insurer on Demaranville's claim and requests that its cross appeal not be dismissed.

Dated this 8th day of November, 2017.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 8th day of November, 2017.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 8th day of November, 2017, a copy of the foregoing CITY OF RENO'S RESPONSE TO ORDER TO SHOW CAUSE was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system and others not registered will be served via U.S. mail as follows:

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