

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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Elizabeth A. Brown  
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Case No. : 15-00092

Appeal from a District Court Order  
Denying Petition for Judicial Review  
First Judicial District Court, Carson City  
Department II  
Case No. 15 OC 00092 1B

REPLY TO EMPLOYERS INSURANCE COMPANY OF NEVADA'S  
and CITY OF RENO'S RESPONSE TO  
ORDER TO SHOW CAUSE

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Appellant/Cross-Respondent LAURA DEMARANVILLE, surviving spouse of Daniel DeMaranville (deceased) hereby replies to Employers Insurance Company of Nevada's and City of Reno's responses to the Order to Show Cause filed October 9, 2017.<sup>1</sup>

#### FACTS

Laura Demaranville ("Laura") sought benefits arising from the death of her husband, a former Reno City police officer, in accordance with the Occupational Diseases Act and the Industrial Insurance Act. See, generally, Exhibit A attached hereto.

Daniel Demaranville ("Daniel") was employed by the City of Reno ("Reno") from August 6, 1969 until his retirement from the force in January 1990. Thereafter, Daniel was employed by AKAL as a court security officer for the Federal Marshal's Office. Daniel was employed by AKAL at the time of his death. Exhibit A.

On August 5, 2012, Daniel underwent a laproscopic cholecystectomy (removal of gallbladder). While recovering from the surgery Daniel became hypotensive and experienced tachycardia (low blood pressure and rapid heart rate). Despite the efforts of the treating physicians Daniel suffered cardiac arrest and died. Daniel's surgeon, Myron Gomez, M.D., certified the cause of death

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<sup>1</sup> This Court's Notice of Modification of Caption dated April 6, 2017 is reflected herein.

as cardiac arrest, due to, or as a consequence of atherosclerotic heart disease. Exhibit A.

As surviving spouse of Daniel, Laura filed for death benefits from the City of Reno and also Employers Insurance Company of Nevada ("EICON"), Reno's workers' compensation insurer at the time Daniel retired from the Reno police force. Exhibit A.

Reno, through its claims administrator Cannon Cochran Management Services, Inc. ("CCMSI"), denied the claim for death benefits. EICON also denied the claim. Laura appealed through the administrative hearing process and ultimately she presented her case to Appeals Officer Lorna Ward. Reno was represented by counsel at that hearing as was EICON. By Decision and Order dated March 18, 2015, the Appeals Officer determined Laura proved a compensable claim for death benefits and the Appeals Officer ruled that Reno was liable. The Appeals Officer specifically decided the claim was not compensable as to EICON. Exhibit A.

Reno petitioned the district court for judicial review of the decision of March 18, 2015. EICON also petitioned the district court for judicial review of that decision. Reno was denied a stay on the Appeals Officer's decision and began paying monthly benefits to Laura in an amount which was based upon Daniel's presumed

earnings at the time he retired from Reno's employment. Exhibit B (exhibits to that motion filed in district court omitted here for the sake of brevity).

Believing that she was entitled to benefits based upon her deceased husband's earnings at the time of his death instead of the time of his retirement, Laura again availed herself of the administrative hearing process to appeal Reno's determination as to the amount of monthly benefits. While the initial decision on compensability was under review in district court, Laura's administrative appeal on the sufficiency of payments proceeded. Appeals Officer Ward granted EICON's motion to intervene in Laura's second appeal. At that second hearing, on the issue of calculating the monthly benefit due the widow, both Reno and EICON argued that because at the date of his death Daniel was earning zero as a Reno employee no benefit was owing to Laura. In her Decision and Order dated December 10, 2015, Appeals Officer Ward determined Reno should be paying Laura based upon Daniel's earnings at the date of his death. Exhibit B. EICON filed a petition for judicial review of this second decision and Reno filed its own petition for judicial review of the same decision.

. . .



Laura moved the district court to dismiss EICON from the proceedings on the Appeals Officer's decision regarding the calculation of monthly benefits arguing EICON was not aggrieved by the decision of December 10, 2015. Exhibit C. EICON opposed the motion and the motion was submitted for a decision, but the court never ruled on Laura's motion. The court did consolidate into one case all of the reviews pertaining to Laura's claims then pending before the court. Exhibit D. Ultimately, the court ruled that Daniel did die of heart disease and his death resulted in a compensable claim; that Reno is liable; and, that there is no death benefit owing under the claim because at the time of his death Daniel was earning zero as an employee of Reno. Exhibit E.

Laura appealed the district court decision to the Supreme Court. Reno and its administrator, CCMSI, have filed a cross-appeal. EICON has filed a cross-appeal. The Court issued its order for Reno and EICON to show cause why they should proceed as cross-appellants. Both Reno and EICON have submitted responses and with this brief Laura hereby replies to both Reno and EICON.

#### ARGUMENT

None of the respondents, EICON, the City of Reno, or its administrator CCMSI, have shown standing to cross appeal

pursuant to NRS 233B.150. The district court's Decision and Order filed March 9, 2107, concluded no monthly death benefit would be owed to Laura DeMaranville from any of the respondents. Laura DeMaranville is aggrieved by the decision but none of the respondents are aggrieved parties. NRS 233B.150 requires a party be aggrieved by a district court final judgement to obtain review in the Supreme Court.

The district court concluded that in accordance with this Court's decision in Howard v. City of Las Vegas, 121 Nev. 691, 871 P.2d 317 (1994) the calculation of monthly death benefits owing to Laura would be based on " Mr. Demaranville's average monthly wage from the covered employment at the City of Reno at the time of his death [which] was zero." Exhibit E, p.7. The court adopted the position and the authority Reno and EICON presented in their briefs supporting their petitions for judicial review.

If a party receives the relief it requested in the district court, it is not entitled to appeal because it is not aggrieved. See City of Reno v. Civil Serv. Comm'n of Reno, 117 Nev. 855, n.3, 34 P.3d 120 (2001) (construing NRAP 3A(a), substantially similar to NRS 233B.150 requiring an appealing party to be aggrieved). See also Farnham v. Fanham, 80 Nev. 180, 184,

391 P.2d 26 (1964) (a cross-appeal is ineffective if the party won in the court below because the party is not aggrieved). The Court has jurisdiction to entertain an appeal only where authorized by statute or rule. Valley Bank v. Ginsburg, 110 Nev. 440, 444, 874 P.2d 729 (1994). As a respondent a party may, without cross-appealing, advance any argument in support of the decision below even if the court below rejected the argument. Ford v. Showboat Operating Co., 110 Nev. 752, 755, 877 P.2d 546 (1994).

Our United States Supreme Court has ruled that to satisfy its standing requirements a plaintiff must show injury in fact, which must be actual or imminent, not conjectural or hypothetical. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 119 L. Ed. 2d 351 (2000). It must be likely, not merely speculative, that a favorable decision will redress the injury. *Id.* at 561. The Nevada Supreme Court's rules of appellate procedure and the Nevada Administrative Procedure Act are not dissimilar in application. For a party below to have standing to appeal, that is be sufficiently aggrieved to appeal, the putative appellant must show some actual injury. The putative appellant should show that a favorable decision in the Nevada Supreme Court will redress an injury resulting from the decision below that is not merely

speculative. None of the parties seeking to cross appeal in the DeMaranville appeal have made that showing.

A. Reno is not an aggrieved party given that the district court assessed its liability as zero.

Reno argues that the district court's order "adversely affected the City's property rights" (*Id.* at 5) but fails to demonstrate the existence of a present, contemporaneous obligation to pay monthly sums to Laura. Reno argues that the absence of a stay forced it to honor the Appeal Officer's ruling thereby causing the initiation of death benefits (monthly payments and funeral expenses). These benefits, explains Reno, were ceased after the district court determined no benefits were owing in accordance with the decision in Howard. Clearly, Reno is under no *current* legal obligation or duty to pay monthly death benefits to Laura. The absence of a cognizable, contemporary, outstanding duty to make future monthly death payments obviates Reno's need to appeal the district court decision.

The decision that Reno seeks to appeal does not address prior payments or remedies for recoupment for those payments. There is no theory upon which Reno has or could argue that it is aggrieved by the order stopping any future payments to Laura.

The decision Reno seeks to appeal went only to *the prospective* obligation for the payment of death benefits - not benefits already paid.

Thus, Reno is not aggrieved and cannot establish standing to challenge the district court's order that is limited in scope to future obligations to pay monthly death benefits. By ruling that Reno owes Laura zero each month for death benefits Reno obtained the benefit it sought with its petition for judicial review and cannot now claim it is aggrieved by the order granting that very relief.

B. EICON is not an aggrieved party given that the district court decided it was not liable and could not be liable for benefits.

Initially, at the administrative level, the Appeals Officer decided EICON was not liable to Laura for benefits. The Appeals Officer determined Reno was liable for benefits owing to Laura. Nonetheless, EICON petitioned the district court for judicial review and the district court affirmed the determination that EICON was not liable for benefits to Laura. Now EICON is seeking to appeal that district court decision. In its response to the Court's order to show cause EICON proffers that it is cross-appealing because it has a monetary interest to protect.

The record is clear that EICON is no longer Reno's insurer. The record is void as to what contract or other agreement might exist by which EICON would be liable if Laura is successful on appeal to the Supreme Court.

In Capitol Indem. Corp. v. State, 122 Nev. 815, 138 P.3d 516(2006), the Court was presented with a surety which had been denied its request to intervene in an administrative proceeding where the principal for whom the surety was responsible failed to appear. The Court, for the first time, adopted legal subrogation to allow a surety the opportunity to appear on behalf of its absent principal. In the case now under review here, though, the principal (Reno) has been present at each stage of the proceedings and continues to be present in the appeal. Furthermore, the Court determined the surety in Capitol was aggrieved only because it had a contractual obligation to the principal and the obligation of the surety to pay on its bond was immediate. *Id.* at 820.

In Capitol it was apparent the surety would be aggrieved by the order from below if the ruling stood as written. Here, no obligation exists and no immediacy exists. The district court's ruling expressly holds that the "wage from the covered

employment at the City of Reno at the time of this death was zero...[therefore] there is no death benefit." Decision at 7:12-14.

In its "Response to Order to Show Cause" EICON identifies sums that Reno has expended prior to the district court's order. EICON does not explain how it is liable for those past payments by Reno, nor does EICON identify any contract like the surety bond in Capitol by which it would be the party responsible for benefits to Laura in the event she is successful on appeal. In recognition that it does have to make some showing that it was aggrieved by the district court's order for purposes of its cross-appeal, EICON offers possible future, prospective and speculative scenarios. At page 2 of its "Response to Order to Show Cause" EICON says that "*Should* the Supreme Court determine that the monthly death benefit is not zero, *then* Employers [EICON] would be liable for those payments (emphasis added)." EICON also speculates that *if* the death benefit is ultimately deemed to be zero it would be responsible for the funeral expenses that have been paid. *Id.*

A potential outcome of future litigation and other possibilities hardly passes statutory muster for standing in

accordance with NRS 233B.150. The statute does not provide for being *possibly* aggrieved or that a party *might be* aggrieved in the future.

EICON cannot manufacture standing based on a potential event or ruling that may never occur. EICON cannot identify an actual or imminent harm to EICON that can only be addressed in a cross-appeal by EICON. EICON's attempts to create standing arising from possible events that may occur in the future is insufficient to show it is an aggrieved party entitled to appeal to the Supreme Court pursuant to NRS 233B.150.

#### CONCLUSION

Reno and its claims administrator CCMSI and EICON all lack standing to appeal from the Decision and Order of March 9, 2017. Reno is not adversely affected by the ruling that Laura is entitled to zero compensation for monthly death benefits. Payments already made, including payment for the cost of burying Daniel, were not issues presented below and are not issues for appeal.

EICON was not aggrieved as required under NRS 233B.130(1)(b) when it petitioned the district court for review of the Appeals Officer's order that found Reno liable for benefits to Laura. Nor is EICON aggrieved as required under NRS 233B.150 to



cross-appeal to the Supreme Court for review of the district court order finding Reno liable for monthly benefits in the amount of zero.

AFFIRMATION

The undersigned affirms, pursuant to NAC 616C.303, that no personal identifying information appears in this document.

Dated this 20<sup>th</sup> day of November, 2017.

NEVADA ATTORNEY FOR INJURED WORKERS

A handwritten signature in blue ink, appearing to read 'EB', is written over the printed name of Evan Beavers.

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**EXHIBIT A**

**EXHIBIT A**

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NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

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

177/122  
**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."

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

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 <sup>1</sup> 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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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 Daniels<sup>3</sup>:

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 Mirage<sup>4</sup> 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 <sup>3</sup> Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024  
(2006).

<sup>4</sup> 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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**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. William Street, Carson City, Nevada, to the following:

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

EVAN BEAVERS, ESQ  
1000 E WILLIAM #208  
CARSON CITY NV 89701

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

TIMOTHY ROWE, ESQ  
PO BOX 2670  
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

## **EXHIBIT B**

## **EXHIBIT B**

NHAW

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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1 ORDER

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

5 DATED this 10<sup>th</sup> day of December, 2015.


6 APPEALS OFFICER

7   
8 LORNA L. WARD  
9

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

15 Submitted by:

16 NEVADA ATTORNEY FOR INJURED WORKERS

17   
18 Evan Beavers, Esq.  
19 1000 East William St., #208  
20 Carson City, Nevada 89701  
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## EXHIBIT C

## EXHIBIT C

1 Evan Beavers, Esq.  
Nevada Bar No. 3399  
2 1000 East William Street, Suite 208  
Carson City, Nevada 89701  
3 (775) 684-7555  
Attorney for Respondent Laura DeMaranville  
4  
5

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

7 IN AND FOR CARSON CITY

8  
9 EMPLOYERS INSURANCE COMPANY OF  
NEVADA,  
10

11 Petitioner

12 vs.

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

Respondents.  
17 \_\_\_\_\_/

18 MOTION TO DISMISS

19 COMES NOW Laura DeMaranville, Respondent and surviving  
20 spouse of Daniel DeMaranville, deceased, by and through her  
21 attorney, Evan Beavers, Esq, and the office of the Nevada  
22 Attorney for Injured Workers, and hereby moves the court to  
23 dismiss the Petition for Judicial Review filed by Employers  
24 Insurance Company of Nevada on or about January 7, 2016.

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REC'D & FILED  
2016 FEB -3 PM 4:23  
SUSAN HENNINGSEN  
CLERK  
C. GRIBBLE  
6 OCT 0003 1B  
CASE NO.  
DEPT. NO.

1 This motion is made and based upon NRS 233B.130, the  
2 papers and pleadings on file herein the points and authorities  
3 which follow, and the exhibits attached hereto.

4 DATED this 2<sup>nd</sup> day of February, 2016.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

7  
8 Evan Beavers, Esq.  
9 Nevada Bar No.: 3399  
10 1000 East William Street, Suite 208  
11 Carson City NV 89701

12 Attorney for Respondent  
13 Laura DeMaranville  
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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) 486-3830



POINTS AND AUTHORITIES

Employers Insurance Company of Nevada (EICON) filed with this court a petition seeking judicial review of a decision by an administrative law judge entered after hearing an appeal of a workers' compensation determination. The appeals officer found in favor of the claimant seeking benefits. This motion by the claimant to those benefits seeks to dismiss EICON's petition on the basis that EICON is not aggrieved by the appeals officer's decision and is, therefore, without statutory authority to seek judicial review of the decision.

Background

Daniel DeMaranville was employed by the City of Reno as a policeman from 1969 until his retirement in 1990. Exhibit 1, page 007, lines 7-8. During that period EICON was the city's workers' compensation insurer or successor to the city's insurer. Id., page 012, lines 17-19. In 1992 the city became self-insured. Id. In 2012 Daniel DeMaranville died and his widow, Laura DeMaranville, filed a claim for benefits under Nevada's Occupational Diseases Act (NRS Chapter 617). Id., page 007, lines 13-28. Initially Ms. DeMaranville filed for benefits with the city and then subsequently filed for benefits with EICON. Id., page 007, lines 26-28; page 008, lines 1-28. Both the city and EICON denied her claim and ultimately the matters were consolidated and presented to Appeals Officer Lorna L. Ward for hearing. Id., page 006.

In her decision filed March 18, 2015, the appeals officer found the claim of Laura DeMaranville compensable and found the City of Reno was the responsible insurer on the date of

1 Mr. DeMaranville's death. Id., page 014, lines 16-18. The city  
2 filed a petition for judicial review in the First Judicial  
3 District Court (Exhibit 1) and then EICON filed a cross-petition  
4 for judicial review (Exhibit 2). A decision on those petitions  
5 for judicial review is pending at the time of this motion.

6 In compliance with the appeals officer's decision  
7 finding the claim compensable and the City of Reno liable, the  
8 city's third-party administrator (CCMSI) began paying monthly  
9 benefits to Ms. DeMaranville. Exhibit 3, page 007, lines 15-20.  
10 CCMSI based the amount of those payments on earnings presumed at  
11 the time of Mr. DeMaranville's retirement. Id. Ms. DeMaranville  
12 sought payments based upon the earnings of her deceased husband  
13 at the date of his death, which earnings were greater than at the  
14 time of his retirement from the city. Id., page 008, lines 3-7.  
15 CCMSI, the city's administrator, denied the request to  
16 recalculate the monthly benefits and the widow filed her appeal  
17 into the administrative hearing process. Id., page 007, lines  
18 21-28; page 008, lines 1-2. During the appeal process, EICON  
19 moved to join as an indispensable party and the motion was  
20 granted by the appeals officer. Exhibit 4 and Exhibit 5. The  
21 matter of the sufficiency of the monthly payments was presented  
22 on Ms. DeMaranville's motion for summary judgment and both the  
23 city and EICON filed papers in opposition to the motion. Exhibit  
24 3, page 006, lines 12-20.

25 By Decision and Order filed December 10, 2015, Appeals  
26 Officer Ward determined the monthly payments due from the City of  
27 Reno to Laura DeMaranville for death benefits should be based on  
28 Daniel DeMaranville's earnings at the time of his death. Exhibit

1 3, page 010, lines 8-22. The City of Reno filed a petition for  
2 judicial review of that decision in the Second Judicial District  
3 Court in and for the County of Washoe. Exhibit 3. EICON then  
4 filed a petition for judicial review in the First Judicial  
5 District Court (Exhibit 6) and a cross-petition for judicial  
6 review in the Second Judicial District Court (Exhibit 7). The  
7 City of Reno then filed a cross-petition for judicial review of  
8 the appeals officer's most recent decision in the First Judicial  
9 District Court. Exhibit 8.

10 Legal Argument

11 The Nevada Administrative Procedure Act, at NRS  
12 233B.130(1), states that any party aggrieved by a final decision  
13 in a contested administrative proceeding is entitled to judicial  
14 review. Generally, a reviewing court only has jurisdiction to  
15 consider an appeal if the appeal is authorized by statute or  
16 court rule. See Frank Settelmeier & Sons, Inc. v. Smith &  
17 Harmer, Ltd., 124 Nev. 1206, 1212-1213, 197 P.3d 1051  
18 (2008) (construing substantially similar NRAP 3A(a)). Only  
19 aggrieved parties to the action for which review is sought may  
20 appeal. Id., at 1212. A party is aggrieved when either a  
21 personal right or right of property is adversely and  
22 substantially affected. See Valley Bank v. Ginsburg, 110 Nev.  
23 440, 446, 874 P.2d 729 (1994) (construing NRAP3A(a)), cited in  
24 Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d  
25 1149 (1980) (reviewing an appeal of a probate court order).

26 The decision of the Department of Administration's  
27 appeals officer, which EICON seeks to reverse upon judicial  
28 review, does not adversely or substantially affect EICON. In her

1 first decision now on appeal to the district court, Appeals  
2 Officer Ward determined that Daniel DeMaranville died twenty-two  
3 years after leaving the city's employment. Exhibit 1, page 12,  
4 lines 16-25. That is twenty years after EICON was insuring the  
5 city's liability for workers' compensation benefits. Id. In her  
6 second decision for which EICON now seeks review, the appeals  
7 officer concluded "no exception exists for the City of Reno" to  
8 avoid the obligation for paying death benefits to Laura  
9 DeMaranville based upon the decedent's wages at the date of his  
10 death. Exhibit 4, page 010, lines 8-22. The appeals officer had  
11 already determined the City of Reno was the responsible party for  
12 paying benefits at the time of death. In the decision EICON  
13 petitions for the court to review the appeals officer simply  
14 declares how much the City of Reno should be paying in monthly  
15 benefits. The decision does not identify EICON as the party  
16 responsible for benefits even in the alternative.

#### 17 Conclusion

18 In the first matter brought by Laura DeMaranville  
19 before Appeals Officer Ward, the appeals officer determined the  
20 City of Reno was the insurer responsible for death benefits to  
21 the widow of Daniel DeMaranville. That matter was appealed by  
22 both the city and EICON to the First Judicial District Court for  
23 review. In that review the court may consider the respective  
24 positions of the city and EICON against each other as to who  
25 should be liable. That issue is not present in the second  
26 administrative decision which EICON has also appealed to the  
27 district court. In this most recent decision Appeals Officer  
28 Ward determined the City of Reno should pay benefits based upon

1 the earnings at the date of Mr. DeMaranville's death not earnings  
2 at the time of retirement as proffered by the city's claims  
3 administrator. The result of that second decision by the appeals  
4 officer does not render EICON a party aggrieved by that final  
5 decision and, therefore, EICON is not entitled to judicial review  
6 of the Decision and Order filed December 10, 2015.

7 Respectfully submitted this 2nd day of February, 2016.

8 NEVADA ATTORNEY FOR INJURED WORKERS

9  
10 

11 Evan Beavers, Esq.  
12 Nevada Bar No.: 3399  
13 1000 East William Street, Suite 208  
14 Carson City NV 89701

15 Attorney for Respondent  
16 Laura DeMaranville  
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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

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the  
preceding:

MOTION TO DISMISS

filed in Case Number: 16 OC 000031B

X

Does not contain the Social Security Number of any  
person.

-OR-

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

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

-or-

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



Signature



Date

EVAN BEAVERS, ESQ.  
Nevada Attorney for Injured Workers  
Attorney for Respondent Laura DeMaranville

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the within and foregoing MOTION TO DISMISS addressed to:

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

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

DATED: February 3, 2016

SIGNED: Taney L. Sherwood

# EXHIBIT LIST

Exhibit No.	Description	Number of Pages (incl Exhibit No. page)
Exhibit 1	Petition for Judicial Review - 1 <sup>st</sup> Judicial District	17
Exhibit 2	Cross-Petition for Judicial Review - 1 <sup>st</sup> Judicial District	18
Exhibit 3	Petition for Judicial Review - 2 <sup>nd</sup> Judicial District	13
Exhibit 4	Motion to Intervene and/or for Joinder - Appeals Office	6
Exhibit 5	Order - Appeals Office	3
Exhibit 6	Petition for Judicial Review - 1 <sup>st</sup> Judicial District	13
Exhibit 7	Cross-Petition for Judicial Review - 2 <sup>nd</sup> Judicial District	14
Exhibit 8	Cross-Petition for Judicial Review - 1 <sup>st</sup> Judicial District	13
Exhibit 9	Proposed Order Granting Motion to Dismiss	2



# EXHIBIT D

# EXHIBIT D

REC'D & FILED

2016 APR 14 AM 8:39

SUSAN HERRIN ETHER  
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. 15 OC 00092 1B


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 No.'s 16 OC 00003 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

**CERTIFICATE OF SERVICE**

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 14 day of April 2016 I mailed a true and correct copy of the foregoing Order to:

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

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

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

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

  
Gina Winder  
Judicial Assistant

# EXHIBIT E

# EXHIBIT E

REC'D & FILED

2017 MAR -9 PM 2:51

SUSAN HERRIWETHER  
CLERK

BY SW DEPUTY

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

\*\*\*\*\*

CITY OF RENO,

Petitioner,

Case No. 15 0C 00092 1B

vs.

Dept. No. II

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

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

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

**I. PROCEDURAL BACKGROUND**

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

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

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

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

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

## 13 **II. RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

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

### 14 **III. ANALYSIS**

#### 15 **1. Cause of Death**

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



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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 **DECISION AND ORDER**

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

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

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

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

17 DATED this 8 day of March, 2017.

18  
19   
20 DISTRICT JUDGE  
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25  
26  
27

**CERTIFICATE OF SERVICE**

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

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

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

  
Gina Winder  
Judicial Assistant

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(A-D)(2)(3), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on or about November 20, 2017, the foregoing REPLY TO EMPLOYERS INSURANCE COMPANY OF NEVADA'S and CITY OF RENO'S RESPONSE TO ORDER TO SHOW CAUSE was electronically filed with the clerk of the Supreme Court by using the eFlex system. 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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DATED:

November 20, 2017

SIGNED:

Tanny L. Sherwood