

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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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, 2017.¹

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

¹ 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

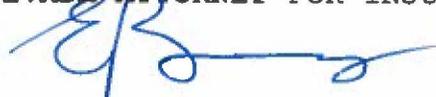
cross-appeal to the Supreme Court for review of the district court order finding Reno liable for monthly benefits in the amount of zero.

AFFIRMATION

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

Dated this 20th day of November, 2017.

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EXHIBIT A

EXHIBIT A

11/11/15

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

6 In the Matter of the Contested
7 Industrial Insurance Claim of:

Claim No: 12853C301824
1990204572

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

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

11 DANIEL DEMARANVILLE, DECEASED,
12
13 Claimant.

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

20 **DECISION OF THE APPEALS OFFICER**

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

1 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

28 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).

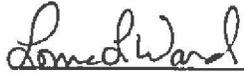
⁴ Mirage v. State, Dep’t. of Administration, 110 Nev. 257, 871 P.2d 317 (1994)

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DECISION

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

IT IS SO ORDERED.



Lorna L Ward
APPEALS OFFICER

Notice: Pursuant to NRS 233B.130, 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.

1 CERTIFICATE OF MAILING

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

9 DANIEL DEMARANVILLE, DECEASED
10 C/O LAURA DEMARANVILLE
11 PO BOX 261
12 VERDI, NV 89439

13 EVAN BEAVERS, ESQ
14 1000 E WILLIAM #208
15 CARSON CITY NV 89701

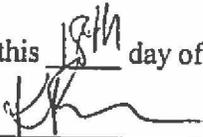
16 CITY OF RENO
17 ATTN CARA BOWLING
18 PO BOX 1900
19 RENO, NV 89505

20 TIMOTHY ROWE, ESQ
21 PO BOX 2670
22 RENO NV 89505

23 EMPLOYERS INSURANCE COMP OF NV
24 PO BOX 539004
25 HENDERSON, NV 89053

26 MARK SERTIC, ESQ
27 5975 HOME GARDENS DRIVE
28 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

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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

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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).

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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 //

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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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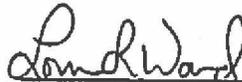
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ORDER

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

NOTICE: 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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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 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

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

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.

REC'D & FILED
2016 FEB -3 9 00 AM
SUSAN MERRITT
C. GRIBBLE
CLERK
CASE NO. 16-0003-1B
DEPT. NO. RENO CITY

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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2300 South Ranocho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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

DATED this 2nd day of February, 2016.

NEVADA ATTORNEY FOR INJURED WORKERS



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

Attorney for Respondent
Laura DeMaranville

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
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Las Vegas, NV 89102 (702) 486-3830

NEVADA ATTORNEY FOR INJURED WORKERS
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Carson City, NV 89701 (775) 684-7555
2200 South Ranchu Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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

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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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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.

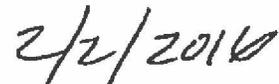
-OR-

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

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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 10TH FL
PO BOX 2670
RENO NV 89505-2670

DATED: February 3, 2016

SIGNED: Taney L. Sherwood

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2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2810

EXHIBIT LIST

Exhibit No.	Description	Number of Pages (incl Exhibit No. page)
Exhibit 1	Petition for Judicial Review - 1 st Judicial District	17
Exhibit 2	Cross-Petition for Judicial Review - 1 st Judicial District	18
Exhibit 3	Petition for Judicial Review - 2 nd 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 st Judicial District	13
Exhibit 7	Cross-Petition for Judicial Review - 2 nd Judicial District	14
Exhibit 8	Cross-Petition for Judicial Review - 1 st Judicial District	13
Exhibit 9	Proposed Order Granting Motion to Dismiss	2

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EXHIBIT D

EXHIBIT D

REC'D & FILED

2016 APR 14 AM 8:39

SUSAN HERRIN WETHER
CLERK

BY G. WINDER
DEPUTY

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

8 -000-

9 **CITY OF RENO,**

10 **Petitioner,**

11 **vs.**

12 **DANIEL DEMARANVILLE, (Deceased),**
13 **EMPLOYER'S INSURANCE**
14 **COMPANY OF NEVADA, and NEVADA**
15 **DEPARTMENT OF ADMINISTRATION**
16 **APPEALS OFFICER,**

17 **Defendants.**

Case No. 15 OC 00092 1B

Dept. No. 2

ORDER CONSOLIDATING CASES

18 This matter comes before the Court pursuant to a Petition for Judicial Review
19 filed by the Plaintiff on April 14, 2015. This action shares common questions of law and
20 fact and involves the same parties as this court's case No.'s 16 OC 00003 1B and 16 OC
21 00049 1B. Under NRCP 42(a) and good cause appearing,

22 **IT IS ORDERED** that 16 OC 00003 1B, 16 OC 00049 1B, and 15 OC 00092 1B are
23 consolidated. All further pleadings and papers shall be filed under case No. 15 OC
24 00092, with the caption styled as "CITY OF RENO" vs. DANIEL DEMARANVILLE,
25 (deceased), EMPLOYER'S INSURANCE COMPANY OF NEVADA, and NEVADA
26 DEPARTMENT OF ADMINISTRATION APPEALS OFFICER.

27 April 12, 2016.

28 
JAMES E. WILSON, JR.
District Judge

1 CERTIFICATE OF SERVICE

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

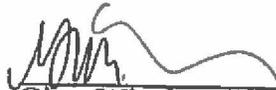
4 Order to:

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12 Gina Winder
13 Judicial Assistant
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EXHIBIT E

EXHIBIT E

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 OC 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 OC 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 OC 00003 1B.

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

13 **II. RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

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

14 **III. ANALYSIS**

15 **1. Cause of Death**

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

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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 **DECISION AND ORDER**

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

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

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

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

17 DATED this 8 day of March, 2017.

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20 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

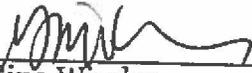
The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 9 day of March, 2017 I mailed a true and correct copy of the foregoing Order to:

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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