

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No. 72737

LAURA DEMARANVILLE,
SURVIVING SPOUSE OF DANIEL DEMARANVILLE (DECEASED)
Appellant/Cross-Respondent,

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v.

EMPLOYERS INSURANCE COMPANY OF NEVADA and
CANNON COCHRAN MANAGEMENT SERVICES, INC.,
Respondents,

and

CITY OF RENO,
Respondent/Cross-Appellant

Appeal from a District Court Order
Granting in Part and Denying in Part
Petition for Judicial Review
First Judicial District Court
Department II
Case No. 15 OC 00092 1B

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.


Appellant's parent corporations: None.

Firms having appeared: Nevada Attorney for Injured Workers.

Appellant's pseudonyms: None.

Submitted this 23rd day of May, 2018.

NEVADA ATTORNEY FOR INJURED WORKERS



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I.

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II.
JURISDICTIONAL STATEMENT

This is an appeal from a district court order issued upon judicial review of an administrative decision. Presented in this appeal is a district court's decision upon review of two decisions by an appeals officer with The Department of Administration. The Administrative Procedure Act, specifically NRS 233B.150, allows an aggrieved party to obtain a review of any final judgement of the district court by appeal to the appellate court of competent jurisdiction pursuant to rules fixed by the Supreme Court. The Honorable James E. Wilson, Jr., First Judicial District Court, Department II, on March 9, 2017, entered his Order Granting in Part and Denying in Part Petition for Judicial Review. The order minimized workers' compensation death benefits owing to Laura DeMaranville as surviving spouse of Daniel DeMaranville. Mrs. DeMaranville is aggrieved by the order and the order is the final judgement of the district court in regard to Mrs. DeMaranville's claim for death benefits. Mrs. DeMaranville appeals to the Nevada Supreme Court.

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III.
ROUTING STATEMENT

The issues presented in this appeal derive from the Nevada Industrial Insurance Act. NRS 617.457 provides that heart disease diagnosed in a police officer is conclusively presumed to have arisen within the scope of employment and is therefore compensable as an industrial disease. Daniel DeMaranville was a retired Reno police officer at the date of his death. The City of Reno, and its claims administrator Cannon Cochran Management Services, Inc. (CCMSI), denied the claim of Laura DeMaranville for death benefits available under the Act. Employers Insurance Company of Nevada (EICON), the insurer for Reno during much of the period Mr. DeMaranville was employed as a police officer, also denied the widow's claim for benefits. An administrative appeals officer with the Department of Administration decided the issue of compensability in favor of Mrs. DeMaranville and in a later order also decided the calculation of benefits issues in favor of Mrs. DeMaranville. Both Reno and EICON sought judicial review in district court where the appeals officer's decisions were consolidated. The resulting district court order is the focus of this appeal to the Supreme Court.

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Pursuant to NRAP 17(b)(4), cases arising from administrative agencies are presumptively assigned to the Court of Appeals. However, the appellant Mrs. DeMaranville seeks the consideration of the Supreme Court to retain jurisdiction of this appeal pursuant to NRAP 17(d) and (a)(11).

NRS 617.457 provides a conclusive presumption in favor of disability for a firefighter, arson investigator or police officer suffering from heart disease. Prior to 2015 the statute was silent as to its application to retirees.¹ The Court has addressed the entitlement of retired firefighters to certain benefits under NRS 617.457. See Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005); Gallagher v. City of Las Vegas, 114 Nev. 595, 959 P.2d 519 (1998). The Court has not, however, addressed the benefits owing to a retired police officer, or the officer's surviving spouse, whose claim arose prior to the 2015 amendment or who has completed at least 20 years of service. There is no clear rule of law to determine how to calculate compensation benefits in these types of cases.

¹S.B. 153 of the 2015 legislative session added two conditions to NRS 617.457 regarding length of service and retirement. Subsection (c) was added to section 1 requiring 20 years of service as a condition for compensation benefits and section 13 was added proscribing other retirees from receiving compensation benefits other than medical benefits.

The number of persons now retired from the classes of employees covered by NRS 617.457 is significant. The principal issues in this appeal have state-wide public importance and the existing body of case law on these issues is inadequate to provide clarity when determining benefits owing to retired police officers, firefighters and arson investigators, or their survivors. The appellant respectfully requests the Court retain jurisdiction to decide this appeal.

IV.
STATEMENT OF THE ISSUES

A. What is the proper standard of review to be applied to the appeals officer's decisions and the district court's review of those decisions?

B. Whether a surviving spouse is entitled to have occupational disease compensation benefits owing as a result of the death of her husband, who while he was living was entitled to benefits for heart disease, calculated upon his earnings at the date of his death from heart disease?

V.
STATEMENT OF THE CASE

Laura DeMaranville seeks benefits owing to the widow of a retired police officer who died of heart disease. Her husband, Daniel DeMaranville, was a career police officer with the City of

Reno and was entitled to the conclusive presumption granted to police officers pursuant to NRS 617.457. Mr. DeMaranville died many years after retiring from the municipality employing him during his career. At the date of his death he was a contract federal security officer earning substantially more than he was earning before retiring from the City of Reno's employment. The administrative appeals officer first found the widow's claim under the Occupational Diseases Act to be compensable by finding the decedent died of heart disease. In subsequent proceedings the appeals officer determined the monthly death benefit owing to the surviving spouse under the Act was to be calculated on the decedent's earnings at the date of his death.

As the self-insured employer that had once employed the decedent, the city sought judicial review. Also, as the insurer which provided coverage to the city at the time of the police officer's retirement, EICON also sought judicial review. The district court affirmed the determination the decedent died of heart disease and that the claim for death benefits was compensable. The court also affirmed the determination that the city was liable to the surviving spouse for death benefits. The court then reversed the appeals officer on the calculation of

benefits issue. The court decided the amount of monthly benefits owing to the surviving spouse was zero because at the date of death the retired police officer was earning zero from the city.

Laura DeMaranville, the surviving spouse, appeals to the Nevada Supreme Court that part of the district court decision determining compensation benefits to be zero. The City of Reno is appealing that portion of the decision finding that the city is liable for the widow's claim, as opposed to EICON which once insured the city. The cross-appeal by EICON was dismissed by order of the Court filed January 25, 2018.

VI.
STATEMENT OF FACTS

Daniel DeMaranville was a police officer for the City of Reno in a full-time, continuous, uninterrupted and salaried position from 1969 until his retirement from the City of Reno in 1990. 1 JA 0019; 5 JA 730. He died in August of 2012 and at that time he was married to Laura DeMaranville and was employed on a contract basis as a security officer in the federal courthouse in Reno. 5 JA 0730. On August 5, 2012, he underwent elective laparoscopic cholecystectomy (removal of the gallbladder) at Renown Regional Medical Center. 4 JA 0597-98.

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After more than six hours after the surgery he suffered a massive myocardial infarction and died. 5 JA 0735-38; 4 JA 0599-600.

NRS 617.457 provides that a police officer who is disabled by heart disease is conclusively presumed to have a compensable claim for workers' compensation benefits. NRS 616C.505 provides death benefits to a surviving spouse of a person who dies of an industrial injury or disease. On September 5, 2012, Laura DeMaranville initiated her claim for benefits arising from her husband's death by submitting the initial paperwork (Form C-4) to CCMSI, the workers' compensation claims administrator for the city. 1 JA 0018; 5 JA 0742-43. By letter dated May 23, 2013, CCMSI denied Mrs. DeMaranville's claim alleging lack of information establishing the cause of death and no medical records establishing heart disease. 1 JA 0021-22. Mrs. DeMaranville appealed CCMSI's determination to the Hearings Division of the Department of Administration. 1 JA 0001-07.

Mrs. DeMaranville also filed a Form C-4 to initiate a claim for death benefits with EICON, the City of Reno's workers' compensation insurer at the time of Mr. DeMaranville's retirement from the city. 2 JA 0244. By letter dated September 19, 2013, EICON denied the claim on the basis that there was no medical

reporting to support the diagnosis of atherosclerotic heart disease and myocardial infarction. 2 JA 0231-233. Mrs. DeMaranville appealed EICON's determination to the Hearings Division. 2 JA 0224-226.

The appeal of the CCMSI determination and the EICON determination were consolidated and Appeals Officer Lorna L. Ward, Esq., conducted an evidentiary hearing on January 7, 2015. 2 JA 0285. At the conclusion of the hearing the appeals officer requested additional briefing on which insurer was liable. 4 JA 0613. After review of those writings the appeals officer ruled that Mr. DeMaranville died of heart disease, that the claim of Mrs. DeMaranville was compensable for death benefits, and that the City of Reno was liable for the benefits. 4 JA 0634-645. Both City of Reno and EICON filed petitions in district court seeking judicial review of the appeals officer's decision. 4 JA 0647-662; 4 JA 0686-702.

In compliance with the appeals officer's order, CCMSI began paying monthly benefits to Mrs. DeMaranville in the amount of \$1,683.85 based upon the State's maximum allowable wage at the date of retirement from the City of Reno. 5 JA 0830. Mrs. DeMaranville, believing the amount of monthly benefits should be based upon her deceased husband's earnings at the time of his

death, again appealed to the Hearings Division. 5 JA 0848-854.

The appeals officer allowed EICON to intervene in Mrs.

DeMaranville's appeal of the CCMSI payments. 5 JA 0946-947. The

issue of the proper calculation of monthly benefits owing to Mrs.

DeMaranville was submitted on a motion for summary judgement. 6

JA 0965-973. In response to the motion, both CCMSI and EICON

argued the amount of monthly benefit owing to Mrs. DeMaranville

should be zero because at the date of his death Mr. DeMaranville

was earning nothing from the City of Reno.

6 JA 0989-993; 6 JA 0980-987. Appeals Officer Ward ultimately

ruled that the monthly benefit should be based upon Mr.

DeMaranville's earnings at the date of his death. 6 JA 1007-

1013. Both the City of Reno and EICON petitioned the district

court for judicial review of the appeals officer's decision on

the calculation of benefits. 6 JA 1023-1033; 6 JA 1053-1064.

The petitions for judicial review on the issue of compensability and the issue of calculation of benefits were consolidated in Department II of the First Judicial District Court. 7 JA 1324-1331. After full briefing the court determined that Mr. DeMaranville died of heart disease and that given his employment as a police officer for the City of Reno, under NRS

617.457 his claim for heart disease was compensable. 8 JA 1486-1493. The court also determined that the city, as opposed to EICON, was liable for the benefits owing on the claim. 8 JA 1486-1493. Lastly, the court determined the applicable average monthly wage to use for determining benefits is zero because benefits must be based upon the average monthly wage earned in the employment causing the occupational disease. 8 JA 1486-1493.

VII.
SUMMARY OF THE ARGUMENT

The district court was correct to affirm the appeals officer's determination that Daniel DeMaranville died of heart disease and that under NRS 617.457 a compensable claim for benefits is presented. Mrs. DeMaranville does not take a position in the district court's conclusion that the City of Reno (as opposed to EICON) is liable for the claim to Laura DeMaranville as surviving spouse of Daniel DeMaranville. The focus of Mrs. DeMaranville's appeal to the Nevada Supreme Court is the district court's conclusion that benefits owing under the claim must be based on the average monthly wage earned in the employment causing the occupational disease.

NRS 617.457 conclusively presumes a police officer's disability from heart disease arises out of and in the course of

his employment. The analysis used by the district court turns this conclusive presumption on its head by tying the calculation of benefits to causation of heart disease, the very problem of proof the Legislature sought to avoid with the passage of NRS 617.457. Because of the conclusive presumption, benefits are owing without proof of causation. The calculation of the amount of the benefit cannot ignore the Legislature's intent to prevent the need for proof of causation when calculating earnings on which the benefit is to be based.

VIII. ARGUMENT

A. The district court committed an error of law and the standard of review requires de novo review of the conclusion tying heart disease benefits to causation of the disease.

Pursuant to the Administrative Procedure Act, the district court reviewing the consolidated administrative decisions was charged with determining whether the decision to calculate benefits owing to Mrs. DeMaranville was in violation of statutory provisions. NRS 233B.135(3)(a). The appeals officer correctly applied statutory and case law to conclude Mrs. DeMaranville's monthly death benefits should be based upon the earnings of Mr. DeMaranville as of the date of his death. The district court's

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construction of case law and the Nevada Administrative Code limiting compensation to zero warrants reversal.

On appeal, the standard for the Supreme Court to review administrative decisions is the same as it is for district court. Elizondo v. Hood Mach., Inc., 129 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013) (quoting City of N. Las Vegas v. Warburton, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011)). A de novo standard of review is applied when the Court addresses an issue of law like the administrative construction of a statute. Id. The Court can decide a pure legal question without deference to the agency determination. Id.

The Supreme Court, when reviewing the district court's judicial review of an agency decision, evaluates the agency's decision for clear error or an arbitrary and capricious abuse of discretion. City of Las Vegas v. Lawson, 126 Nev. 567, 571, 245 P.3d 1175, 1178 (2010) (citing Law Offices of Barry Levinson v. Milko, 124 Nev 355, 362, 184 P.3d 378, 383 (2008)). No deference is given to the district court decision when reviewing an order regarding a petition for judicial review. Elizondo, 129 Nev., Adv. Op. 84, 312 P.3d at 482. (citing City of Reno v. Bldg. & Constr. Trades Council of N. Nev., 127 Nev. 114, 119, 251 P.3d

718, 721 (2011)). When reviewing an agency's interpretation of a statute the Court should not go beyond the plain and unambiguous meaning of the statute and if multiple provisions are under review the provisions should be read in harmony, unless it is clear the Legislature intended otherwise. Warburton, 127 Nev. at 686-87, 262 P.3d 715, 718 (2011) (citations omitted).

The appeals officer, in determining that the amount owing to Daniel DeMaranville's widow should be the amount he was earning at the date of disability, was correct according to the Occupational Diseases Act, the Industrial Insurance Act, the Nevada Administrative Code and this Court's interpretations of the applicable law. Application of a de novo standard of review is warranted given the variance between the appeals officer and the district court as to which laws apply to the facts presented.

B. The surviving spouse of a police officer qualified for benefits under NRS 617.457 is entitled to death benefits calculated on the deceased officer's earnings at the time of his death.

In her initial decision on compensability, Appeals Officer Ward found, largely on the testimony of Mrs. DeMaranville's expert cardiology witness, that Mr. DeMaranville had died of heart disease. 4 JA 0640-641. Specifically, the appeals officer

found Mr. DeMaranville's heart disease was an occupational disease and that the disability resulting from the disease did not arise until his death on August 5, 2012. 4 JA 0641. In an effort to comply with that first order, CCMSI, on behalf of the City of Reno, tendered to Mrs. DeMaranville monthly death benefits calculated on Mr. DeMaranville's presumed earnings at the time of his retirement in 1990. 5 JA 0830. Believing the benefit payment should have been based upon wages her deceased husband was earning at the date of his death, not his retirement, Mrs. DeMaranville appealed to the Hearings Division again. 5 JA 0848-854. The City of Reno and EICON introduced their argument that the amount of monthly death benefit should be zero because at the date of death the City of Reno was not paying Mr. DeMaranville anything. 5 JA 0851. In her second DeMaranville decision, Appeals Officer Ward determined the monthly death benefit must be based on wages earned at the date of death. 6 JA 1010.

At the date of Mr. DeMaranville's death NRS 617.457 provided that a police officer's disability resulting from a disease of the heart was conclusively presumed compensable if he had been in a full-time continuous, uninterrupted and salaried position for a

period of five years as a police officer "before the date of disablement." Within the Act "disablement" is defined as the event of becoming physically incapacitated by reason of occupational disease. See NRS 617.060. Elsewhere in the Act the Legislature declares every employee who is disabled or dies because of an occupational disease, or the dependents of an employee whose death is caused by occupational disease, are entitled to compensation for death. See NRS 617.430(1). In Mirage v. Nevada Dep't of Admin., 110 Nev. 257, 260, 871 P.2d 317, 319 (1994), the Court explained that although NRS Chapter 617 does not contain a precise method for calculation of benefits, once disability by occupational disease has been determined then it becomes necessary to look to NRS Chapter 616 for the method to calculate average monthly wage.

Appeals Officer Ward, once she determined Mr. DeMaranville became physically incapacitated and therefore disabled, relied on the regulations promulgated for NRS Chapter 616 to calculate the average monthly wage. 6 JA 1010. The appeals officer relied on NAC 616C.441 to determine that the wages earned on the date Mr. DeMaranville was no longer able to work as a result of heart disease were the proper wages on which to calculate the average

monthly wage. 6 JA 1010. The district court, however, found the appeals officer to be in error on that point. 8 JA 1491-1492. The court instead used NAC 616C.435(9) to impose some connection between the heart disease and the employment before concluding the compensation benefit for the death of Mr. DeMaranville was zero. 8 JA 1491-1492. The district court's reliance on Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), to support its position is misdirected. Howard cannot be read to cut off rights to death benefits under NRS 617.457.

In Howard the retired firefighter seeking benefits arising from a heart attack was denied temporary total disability benefits. 121 Nev. at 692, 120 P.3d at 410-411. The Court affirmed the denial because such benefits are a substitute for wages and the retired claimant was not earning a wage, therefore, temporary total disability payments were not warranted. Id. at 695, 120 P.3d at 412. The Court acknowledged that under NRS 617.420 compensation must be paid from the date of the disability and medical benefits must be paid from the time of the application for such benefits. Id. at 694, 120 P.3d at 411. The Court explained the date immediately preceding the heart attack was the date on which to calculate benefits, but firefighter

Howard at the time of his heart attack was not earning a wage. Id. at 695, 120 P.3d at 412. Nothing in the Howard opinion supports the district court's interpretation that the firefighter was entitled to no compensation benefits because he was retired. The claimant in Howard was entitled to no temporary total disability benefits only, and that was because he was not earning a wage. Daniel DeMaranville was earning a wage at the time of his heart attack, and the appeals officer properly calculated his average monthly wage from those earnings.

Additionally, the district court's connection of average monthly wage to "the employment causing the occupational disease" contravenes the Legislature's creation of the conclusive presumption in NRS 617.457. Statutes providing special compensation coverage to police officers and firefighters for disabilities of the heart exist in a number of states, although no two are identical. See Vol. 4 Lex K. Larson, Larson's Workers' Compensation §52.07[2]. Nevada's special compensation provisions in NRS 617.457 were first reviewed in Gallagher v. City of Las Vegas, 114 Nev. 595, 959 P.2d 519 (1998). In that case the municipality was presenting the argument that the Legislature could not have intended a firefighter could retire

and make a compensable claim for heart disease 35 years later. Id. at 599, 959 P.2d at 521. The Court reviewed the history of NRS 617.457 and concluded the City's interpretation to be unreasonable. Id. at 601, 959 P.2d at 522. Specifically, the Court found the Legislature relieved police officers and firefighters from the burden of proving a causal connection between their employment and their disease. Id. at 600, 959 P.2d at 522. In the appeal now before the Court, this very connection declared nonexistent in the statute 30 years ago in Gallagher is the same connection the district court attempts to use with NAC 616C.435 and Howard to minimize the death benefits owing for a well founded NRS 617.457 claim.

In the Seventy-Eighth Session (2015) the Legislature thoroughly reviewed the benefits owing to retired members of the special class of employees covered by NRS 617.457. The result was to limit retirees to medical benefits only, but even then not if they had served 20 years before retiring.² Before the passage of that bill there was no law prohibiting an award for compensation benefits as determined by the appeals officer in

²Daniel DeMaranville began his service in 1969 and retired in 1990, a period of more than 20 years. 1 JA 0019; 5 JA 730.

favor of Mrs. DeMaranville. It appears the Legislature may have been codifying the interpretation of Howard used by the district court on review of the DeMaranville case, but the DeMaranville claim for benefits preceded the change in the law and the district court's interpretation would have no application.³ However, had the Legislature believed the limitation was necessary prior to Daniel DeMaranville's death in 2012 the fact that it did not address the issue should be construed to mean that it chose not to. See Gallagher, 114 Nev. at 601 n.9, 959 P.2d at 522 n.9 (citing SIIS v. Jesch, 101 Nev. 690, 695 n.2, 709 P.2d 172, 176 n.2 (1985)).

The appeals officer was correct to look to NRS 617.060 to conclude Mr. DeMaranville became disabled when he became physically incapacitated by reason of heart disease. The appeals officer was correct that Mr. DeMaranville's disability qualified Mrs. DeMaranville to death benefits under NRS 616C.505. The appeals office was correct that the wage Mr. DeMaranville was earning at the date of his death, being the date he was no longer able to work, was the proper wage on which to base his average

³The district court received supplemental briefing on the 2015 amendment before reaching its decision. 8 JA 1453-1484.

monthly wage pursuant to NAC 616C.441. When read together, these provisions of the statutes and regulations render a harmonious result not inconsistent with the intention of the Legislature. Absent any error of law or resulting arbitrary or capricious conclusion of law, the appeals officer's Decision and Order filed December 10, 2015, should be affirmed.

To claim benefits under NRS 617.457 the employee must be disabled by heart disease. See Emp'rs Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024 (2006) (quoted in Manwill v. Clark Cty., 123 Nev. 238, 244, 162 P.3d 876 (2007)). For a retiree to claim benefits under the statute, it is the date of the heart attack that is the date of disability. See Howard, 121 Nev. at 695, 120 P.3d at 412 (citing Mirage, 110 Nev 257, 871 P.2d 317 (1994)). The appeals officer was correct to conclude in her first decision that the date of death was the date of disablement. 6 JA 0643. She was also correct in her second decision to conclude that on the date of his death Mr. DeMaranville was earning \$7,314.15 in gross monthly salary, to be capped by NRS 616A.065 at \$5,222.63. 6 JA 1009. Pursuant to NRS 616C.505, the appeals officer concluded Mrs. DeMaranville is owed \$3,481.75 as her monthly death benefit. 6 JA 1010.

The district court's methodology was not so well founded. NAC 616C.435 makes no allowance for retirees seeking benefits nor is the court's use of the administrative code consistent with the conclusive presumption in NRS 617.457. NAC 616C.435 requires that for calculating an average monthly wage a history of earnings for 12 weeks must be used, or other means if a 12 week history is not available. Subsection (9) states:

As used in this section, "earnings" means earnings received from the employment in which the injury occurs and in any concurrent employment.

This regulation was relied upon by the district court in a way that eviscerates the benefit intended by the Legislature for firefighters, arson investigators and police officers in NRS 617.457. The heart disease statute for this particular class of Nevada workers was intended to avoid the very proof the district court seeks to impose by use of NAC 616.435. As determined in Gallagher, the Legislature did not intend to cut off benefits to retired members of the class, even after many years of retirement. Gallagher, 114 Nev. at 601, 959 P.2d at 522. Nor did the Legislature require any retired member of the class prove

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his or her employment caused the disease. Id. at 600, 959 P.2d at 522.

IX.
CONCLUSION

The district court affirmed the appeals officer's determinations that Daniel DeMaranville died of heart disease and that his widow, Laura DeMaranville, is entitled to benefits pursuant to Nevada's Occupational Diseases Act and Industrial Insurance Act. The district court, however, reversed the appeals officer's determination as to how to calculate the monthly death benefits owing to the surviving spouse.

The district court's conclusion that benefits should be based on the wage earned in the employment causing the death warrants de novo review. That review should result in the affirmation of the appeals officer's determination to calculate benefits from earnings at the date of death.

DATED this 23rd day of May, 2018.

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CERTIFICATE OF COMPLIANCE

(NRAP 28.2)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

_____ This brief has been prepared in a proportionally spaced typeface using Word Perfect X3 in Times Roman font size 14;
or

 X This brief has been prepared in a monospaced typeface using Word Perfect X3 with 10.5 characters per inch in Courier New Font size 12.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

_____ Proportionately spaced, has a typeface of 14 points or more and contains _____ words; or

_____ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

 X Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief

regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 23rd day of May, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on May _____, 2018, the foregoing APPELLANT'S OPENING BRIEF was electronically filed with the Clerk of Court for the Nevada Supreme Court by using the Nevada Supreme Court's e-filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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