

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

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

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

JOINT APPENDIX

VOLUME 6 OF 8

Nevada Attorney for Injured
Workers
Evan Beavers, Esq.
Nevada State Bar No. 3399
ebeavers@naiw.nv.gov
Samantha Peiffer, Esq.
Nevada State Bar No. 13269
speiffer@naiw.nv.gov
1000 E. William St., Suite 208
Carson City, NV 89701
775-684-7555
Attorneys for Appellant,
Laura DeMaranville

Mark S. Sertic, Esq.
Nevada Bar No. 403
Sertic Law LTD
5975 Home Gardens Dr.
Reno, NV 89502
Attorney for Respondent,
Employers Insurance Company
of Nevada

Timothy E. Rowe, Esq.
Nevada Bar No. 1000
McDonald Carano
100 W. Liberty St., 10th Floor
Reno, NV 89501
Attorney for Respondents,
City of Reno and Cannon
Cochran Management Services

Electronically Filed
May 24 2018 09:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Affidavit of Service	2	JA 0302 - JA 0304
Affirmation (Initial Appearance)	4	JA 0678 - JA 0681
Affirmation of Record on Appeal	5	JA 0802 - JA 0804
Application to Permit Discovery	3	JA 0494 - JA 0496
Brief of Cross-Petitioner Employers Insurance Company of Nevada	5	JA 0805 - JA 0821
Brief of Petitioner and Cross-Petitioner Employers Insurance Company of Nevada	7	JA 1345 - JA 1361
Briefing Schedule Filed 04/15/2015	4	JA 0671 - JA 0674
Briefing Schedule Filed 04/15/2016	7	JA 1341 - JA 1344
Case Appeal Statement Filed 03/29/2017	8	JA 1525 - JA 1533
Case Appeal Statement Filed 04/05/2017	8	JA 1594 - JA 1599
Case Appeal Statement Filed 04/07/2017	8	JA 1618 - JA 1623
Certification of Transmittal and Affidavit	5	JA 0798 - JA 0801
City of Reno's Opposition to Motion for Stay	8	JA 1632 - JA 1638
City of Reno's Opposition to Motion for Summary Judgement	6	JA 0989 - JA 0994
City of Reno's Points and Authorities/Argument On Insurer Liability	4	JA 0616 - JA 0620

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
City of Reno's Supplemental Points and Authorities in Support of Petition for Judicial Review	8	JA 1476 - JA 1485
Claimant's First Exhibit	3	JA 0358 - JA 0493
Claimant's Fourth Exhibit	4	JA 0595 - JA 0612
Claimant's Hearing Statement	3	JA 0555 - JA 0560
Claimant's Second Exhibit	3	JA 0525 - JA 0532
Claimant's Third Exhibit	4	JA 0581 - JA 0587
Clarification of Denial of Partial Stay	4	JA 0712 - JA 0714
Cross-Petition for Judicial Review Filed 04/20/2015	4	JA 0686 - JA 0703
Cross-Petition for Judicial Review Filed 01/20/2016	6	JA 1053 - JA 1065
Cross-Petitioner Employers Insurance Company of Nevada's Reply Brief	5	JA 0949 - JA 0960
Decision and Order	6	JA 1007 - JA 1014
Decision of the Appeals Officer	4	JA 0635 - JA 0646
Employer's [Replacement] Pre-Hearing Statement	2	JA 0305 - JA 0309
Employers Insurance Company of Nevada's Response to the Claimant's Motion for Summary Judgement	6	JA 0980 - JA 0988
Employer's Pre-Hearing Statement	2	JA 0266 - JA 0269
Errata Notice of Corrected Certificate of Service	8	JA 1572 - JA 1574

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Insurer's Documentary Evidence	1	JA 0012 - JA 0211
Insurer's Evidence Packet	2	JA 0223 - JA 0257
Insurer's First Supplemental Documentary Evidence	2	JA 0310 - JA 0350
Insurer's Pre-Hearing Statement	1	JA 0219 - JA 0222
Insurer's Second Supplemental Evidence Packet	4	JA 0561 - JA 0573
Insurer's Supplemental Evidence Packet	3	JA 0540 - JA 0554
Joinder in Brief of Cross-Petitioner Employers Insurance Company of Nevada	5	JA 0961 - JA 0964
Joinder in Opposition to Motion to Dismiss	7	JA 1238 - JA 1241
Joinder in Opposition to Motion to Dismiss	7	JA 1312 - JA 1315
Joint Response to Order to Respond Regarding Consolidating Cases	7	JA 1309 - JA 1311
Motion for Continuance and Notice of Resetting Filed 02/05/2014	2	JA 0351 - JA 0354
Motion for Continuance and Notice of Resetting Filed 06/11/2014	3	JA 0533 - JA 0536
Motion for Continuance and Resetting Filed 09/26/2013	1	JA 0212 - JA 0215
Motion for Continuance and Resetting Filed 04/24/2014	3	JA 0500 - JA 0503
Motion for Continuance and Resetting Filed 09/08/2014	4	JA 0574 - JA 0577
Motion for Continuance and Resetting Filed 10/28/2014	4	JA 0588 - JA 0591
Motion for Partial Stay Order	4	JA 0664 - JA 0670

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Motion for Stay & Proposed Order Granting Motion for Stay	8	JA 1534 - JA 1571
Motion for Stay Order Pending Appeal	2	JA 0258 - JA 0265
Motion for Stay Order Pending Judicial Review	6	JA 1015 - JA 1022
Motion for Summary Judgement	6	JA 0965 - JA 0974
Motion to Dismiss	6	JA 1093 - JA 1202
Motion to Intervene and/or for Joinder	5	JA 0940 - JA 0945
Notice of Appeal Filed 03/29/2017	8	JA 1508 - JA 1524
Notice of Appeal Filed 04/05/2017	8	JA 1580 - JA 1593
Notice of Appeal Filed 04/07/2017	8	JA 1604 - JA 1617
Notice of Appeal and Order to Appear Filed 07/23/2013	1	JA 0001 - JA 0008
Notice of Appeal and Order to Appear Filed 11/26/2013	2	JA 0270 - JA 0277
Notice of Appeal and Order to Appear Filed 12/23/2013	2	JA 0288 - JA 0298
Notice of Appeal and Order to Appear Filed 07/16/2015	5	JA 0848 - JA 0855
Notice of Entry of Order Filed 03/14/2017	8	JA 1495 - JA 1507
Notice of Entry of Order Filed 05/02/2017	8	JA 1653 - JA 1659
Notice of Filing Cost Bond	8	JA 1600 - JA 1603
Notice of Filing Petition for Judicial Review	6	JA 1035 - JA 1052
Notice of Intent to Participate	4	JA 0682 - JA 0685

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Opening Brief of Petitioner and Cross-Petitioner City of Reno	7	JA 1365 - JA 1380
Opposition to Motion for Stay Filed 05/05/2014	3	JA 0507 - JA 0517
Opposition to Motion for Stay Filed 01/21/2016	6	JA 1069 - JA 1080
Opposition to Motion for Stay Filed 04/05/2017	8	JA 1575 - JA 1579
Opposition to Motion to Dismiss	7	JA 1267 - JA 1303
Opposition to Motion to Dismiss & Proposed Order Denying Motion to Dismiss	7	JA 1203 - JA 1237
Order Consolidating Cases - District Court Case 15 OC 00092 1B	7	JA 1324 - JA 1326
Order Consolidating Cases - District Court Case 15 OC 00049 1B	7	JA 1327 - JA 1329
Order Consolidating Cases - District Court Case 16 OC 00003 1B	7	JA 1330 - JA 1332
Order Denying Motion for Stay	8	JA 1650 - JA 1652
Order for Additional Briefing	8	JA 1453 - JA 1456
Order for Appointment of Nevada Attorney for Injured Workers Filed 08/14/2013	1	JA 0009 - JA 0011
Order for Appointment of Nevada Attorney for Injured Workers Filed 11/27/2013	2	JA 0281 - JA 0284
Order Granting in Part and Denying in Part Petition for Judicial Review	8	JA 1486 - JA 1494
Order of Consolidation	2	JA 0285 - JA 0287
Order of Lorna L. Ward Filed 01/22/2015	4	JA 0613 - JA 0615
Order of Lorna L. Ward Filed 02/03/2016	6	JA 1090 - JA 1092

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Order of Lorna L. Ward Filed 02/07/2014	2	JA 0355 - JA 0357
Order of Lorna L. Ward Filed 04/10/2014	3	JA 0497 - JA 0499
Order of Lorna L. Ward Filed 04/16/2015	4	JA 0675 - JA 0677
Order of Lorna L. Ward Filed 04/29/2014	3	JA 0504 - JA 0506
Order of Lorna L. Ward Filed 05/16/2014	3	JA 0522 - JA 0524
Order of Lorna L. Ward Filed 06/12/2014	3	JA 0537 - JA 0539
Order of Lorna L. Ward Filed 09/02/2015	5	JA 0946 - JA 0948
Order of Lorna L. Ward Filed 09/10/2014	4	JA 0578 - JA 0580
Order of Lorna L. Ward Filed 09/30/2013	1	JA 0216 - JA 0218
Order of Lorna L. Ward Filed 11/03/2014	4	JA 0592 - JA 0594
Order of Lorna L. Ward Filed 11/27/2013	2	JA 0278 - JA 0280
Order of Lorna L. Ward Filed 12/10/2015	6	JA 1004 - JA 1006
Order of Lorna L. Ward Filed 12/23/2013	2	JA 0299 - JA 0301
Order to Respond Regarding Consolidating Cases - 15 OC 00092 1B	7	JA 1258 - JA 1260
Order to Respond Regarding Consolidating Cases - 16 OC 00049 1B	7	JA 1261 - JA 1263
Order to Respond Regarding Consolidating Cases - 16 OC 00003 1B	7	JA 1264 - JA 1266
Petition for Judicial Review Filed 04/14/2015	4	JA 0647 - JA 0663

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Petition for Judicial Review Filed 01/08/2016	6	JA 1023 - JA 1034
Petitioner's Opening Brief & Proposed Order Granting Petitions for Judicial Review	5	JA 0822 - JA 0847
Points and Authorities	8	JA 1468 - JA 1475
Points and Authorities and Arguments	4	JA 0628 - JA 0634
Points and Authorities of Employers Insurance Company of Nevada	4	JA 0621 - JA 0627
Reply Brief of Petitioner and Cross- Petitioner City of Reno	7	JA 1436 - JA 1444
Reply Brief of Petitioner and Cross- Petitioner Employers Insurance Company of Nevada	7	JA 1400 - JA 1410
Reply Points and Authorities In Support of Motion for Stay Order Pending Appeal	3	JA 0518 - JA 0521
Reply to City of Reno's Opposition to Motion for Stay	8	JA 1639 - JA 1646
Reply to City of Reno's Opposition to Motion for Summary Judgement and Reply to EICON's Response to the Claimant's Motion for Summary Judgement	6	JA 0995 - JA 1003
Reply to Opposition to Motion for Stay Filed 02/01/2016	6	JA 1086 - JA 1089
Reply to Opposition to Motion for Stay Filed 04/10/2017	8	JA 1624 - JA 1631
Reply to Opposition to Motion to Dismiss Filed 02/26/2016	7	JA 1246 - JA 1253
Reply to Opposition to Motion to Dismiss Filed 03/30/2016	7	JA 1316 - JA 1323

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Request for Clarification of Stay Order	4	JA 0704 - JA 0707
Request for Oral Argument	7	JA 1445 - JA 1448
Request for Submission	7	JA 1449 - JA 1452
Request for Submission of Motion for Stay	8	JA 1647 - JA 1649
Request for Submission of Motion to Dismiss	7	JA 1254 - JA 1257
Request for Submission of Motion to Dismiss & Proposed Order Granting Motion to Dismiss	7	JA 1333 - JA 1340
Respondent Demaranville's Answering Brief to Opening Brief of Petitioner and Cross- Petitioner City of Reno	7	JA 1414 - JA 1432
Respondent Demaranville's Answering Brief to Respondent Employers Insurance Company of Nevada's Opening Brief	7	JA 1381 - JA 1399
Respondent Employers Insurance Company of Nevada's Answering Brief to the Opening Brief of the City of Reno & Proposed Order Granting Petitions for Judicial Review	5	JA 0922 - JA 0939
Respondent's Answering Brief to Opening Brief of Cross-Petitioner Employers Insurance Company of Nevada	5	JA 0863 - JA 0890
Respondent's Answering Brief to Opening Brief of Petitioner City of Reno	5	JA 0891 - JA 0921
Statement of Intent to Participate Filed 04/27/2015	4	JA 0708 - JA 0711
Statement of Intent to Participate Filed 04/29/2015	4	JA 0715 - JA 0718

INDEX TO JOINT APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE(S)</u>
Statement of Intent to Participate Filed 01/20/2016	6	JA 1066 - JA 1068
Statement of Intent to Participate Filed 01/25/2016	6	JA 1081 - JA 1085
Stipulation and Order	6	JA 0975 - JA 0979
Stipulation and Order for Extension of Time to File Respondent's Answering Brief to City of Reno	7	JA 1411 - JA 1413
Stipulation and Order to Change Venue	7	JA 1242 - JA 1245
Stipulation and Order to Extend Time for Filing Opening Briefs	7	JA 1304 - JA 1308
Stipulation and Order to Extend Time for Filing Petitioner's/Cross Petitioner's Opening Briefs	7	JA 1362 - JA 1364
Stipulation and Order to Extend Time for Filing Petitioner's/Cross Petitioner's Reply Brief	7	JA 1433 - JA 1435
Stipulation to Extend Briefing Schedule & Proposed Order Regarding Briefing Schedule	5	JA 0856 - JA 0862
Supplemental Brief of Petitioner and Cross-Petitioner Employers Insurance Company of Nevada	8	JA 1457 - JA 1467
Transcript of Proceedings Before the Honorable Lorna L. Ward, Esq.	5	JA 0719 - JA 0797



ORIGINAL

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

OCT-6 PM 4:2

RECEIVED
AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

MOTION FOR SUMMARY JUDGMENT

Comes now, Laura Demaranville, claimant and surviving spouse of Daniel Demaranville, deceased, by and through her attorney, Evan Beavers, Esq., Nevada Attorney for Injured Workers, and hereby moves the appeals officer for summary judgment on the claimant's appeal of the Decision and Order by Hearing Officer Katherine Diamond entered on or about June 24, 2015, as captioned above.

This motion is brought pursuant to NRCP 56, the stipulation of counsel heretofore filed in this proceeding and the record identified therein, points and authorities which follow and the arguments to be presented at a hearing on this motion in the event the appeals officer calls for a hearing

DATED this 6th day of October, 2015.

NEVADA ATTORNEY FOR INJURED WORKERS


Evan Beavers, Esq.
Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 POINTS AND AUTHORITIES

2 By Decision of the Appeals Officer entered March 18,
3 2015, in Appeal Nos. 46812-LLW, 46479-LLW and 44957-LLW, it was
4 adjudicated that Daniel DeMaranville died August 5, 2012, of
5 heart disease, that his widow Laura DeMaranville was entitled to
6 death benefits, and that the City of Reno was responsible for
7 payment of those benefits because the City was the responsible
8 insurer on the date of death. Insurer's Documentary Evidence at
9 page 78. In compliance with that decision, CCMSI, the City's
10 claims administrator, issued its determination letter April 15,
11 2015, to Laura DeMaranville advising that the claim had been
12 accepted for death benefits but the monthly payment would be in
13 an amount equal to the maximum wage calculated at the date of Mr.
14 DeMaranville's retirement from the City, January 12, 1990. Id.
15 at p.5. CCMSI began paying \$1,683.85 monthly.

16 Mrs. DeMaranville, seeking benefits calculated on her
17 deceased husband's earnings at the date of death, appealed that
18 determination. After a hearing on that appeal June 17, 2015,
19 Hearing Officer Katherine Diamond acknowledged that at the date
20 of his death Daniel DeMaranville was employed as a security
21 officer at the Federal Court House at a wage then exceeding the
22 state maximum, and acknowledged the surviving spouse became
23 entitled to compensation on August 5, 2012. The hearing officer
24 committed error, however, when she then decided the wages used to
25 calculate the decedent's average monthly wage "are determined by
26 the primary employment in which the injury occurs." Id. at p.1.
27 The hearing officer ultimately affirmed the insurer's calculation
28 of benefits based upon the date of retirement and closed by citing

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 to NAC 616C.444. Id. at pp.1-2. Laura DeMaranville has timely
2 appealed that decision and her appeal is the object of this
3 motion for summary judgment.

4 Nevada Rule of Civil Procedure 56 allows a party
5 seeking to recover upon a claim to move with or without
6 supporting affidavits for summary judgment. NRCP 56(a). By
7 stipulation the parties have agreed for the appeals officer to
8 consider this motion, and the briefs in opposition and reply,
9 relying on the record on appeal of the decision on claim
10 acceptance dated March 18, 2015, and any additional documents
11 submitted with the motion and briefs as permitted by the rules of
12 procedure. Summary judgment is appropriate only when the moving
13 party is entitled to judgment as a matter of law and no genuine
14 issue of material fact remains for trial. Perez v. Las Vegas
15 Medical Center, 107 Nev. 1, 4, 805 P.2nd 589 (1991) (citing
16 Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774 P.2nd 432,
17 433 (1989)). The evidence must be construed in a light most
18 favorable to the party against whom the motion is directed. Id.
19 (citing Mullis v. Nevada National Bank, 98 Nev. 510, 512, 654
20 P.2nd 533, 535 (1982)).

21 Laura DeMaranville seeks to have the benefits to which
22 she is entitled calculated as to the date of her husband's death.
23 Daniel DeMaranville died of an occupational disease and was
24 entitled to the conclusive presumption provided to police
25 officers under NRS 617.457. Unfortunately, the hearing officer
26 relied upon an administrative regulation (NAC 616C.444) that
27 applies in cases of industrial injury by accident. This is a
28 case of death by industrial disease, not industrial accident. In

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 addition, in arriving at her conclusion the hearing officer
2 ignored the previous adjudication by the appeals officer which
3 dictates calculating the benefit due Mrs. DeMaranville on the
4 date of death, not the date of retirement.

5 After hearing the evidence on claim acceptance, the
6 appeals officer sought additional briefing on which party should
7 be liable for the claim - EICON, which was the insurer for the
8 City at the time Daniel DeMaranville retired, or the City itself,
9 which was self-insured at the date of death. ROA 585. In the
10 resulting final decision the appeals officer correctly determined
11 Daniel DeMaranville became entitled to compensation on the date
12 of his disablement, which was the date of his death, and on that
13 date the responsible insurer was the City. ROA 023-025. The
14 hearing officer acknowledged the conclusion of the appeals
15 officer, but then ignored that the decedent died of occupational
16 disease and ignored that under NRS Chapter 617 the date of death
17 is the date upon which to calculate compensation.

18 In 2002 our State Supreme Court determined that persons
19 seeking benefits under NRS 617.456 may be entitled to such
20 benefits even if retired at the time of the heart disease
21 diagnosis. The Court recognized the Legislature's intent to
22 extend heart/lung benefits to retired claimants. See Gallagher
23 v. City of Las Vegas, 114 Nev. 595, 601, 959 P.2d 519 (1998).
24 Three years later, in Howard v. City of Las Vegas, 121 Nev. 691,
25 120 P.3d 410 (2005), the Court revisited the issue. In Howard,
26 the Court considered the claim of a retired fireman seeking
27 temporary disability benefits after retirement. The Court
28 determined the claimant was not entitled to benefits under the

1 statute because he was seeking a wage substitution when he was
2 making no wage. Id. at 695. Nothing in Gallagher or Howard,
3 however, supports the hearing officer's decision to ignore the
4 post-retirement date of disability and retroactively look to the
5 date of retirement for the calculation of benefits.

6 The hearing officer ignored the law and ignored the
7 decision of the appeals officer previously entered on the issue
8 of when the claimant became entitled to compensation. "It is a
9 well-settled rule of law that res judicata may apply to
10 administrative proceedings." Britton v. North Las Vegas, 106
11 Nev. 690, 692, 799 P.2d 568 (1990) (citations omitted). The
12 issue presented in the previous case to the appeals officer was
13 identical to the issue before the hearing officer - when did
14 compensability attach. There was a final judgment on the merits
15 - the decision is under review in the district court but it is a
16 final decision in the administrative appeals process. And, all
17 the parties to the action before the hearing officer were parties
18 to the action before the appeals officer. See Id. at 693. The
19 hearing officer simply ignored the doctrine of res judicata when
20 she jumped from the date of disablement to some date "determined
21 by the primary employment in which the injury occurs." There was
22 no date of injury. There is, however, a date of disability that
23 applies to this occupational disease case.

24 In Mirage v. Nevada Dep't. Of Admin., 110 Nev. 257, 871
25 P.2d 317 (1994), the Court explained the proper analysis for
26 calculating average monthly wage under Chapter 617. First,
27 identify the date of disability and only then is it proper to
28 rely on Chapter 616 determine the method for calculating

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 benefits. Id. at 260. In the DeMaranville appeals the date of
2 disability has already been determined - it is the date of death,
3 August 5, 2012. The hearing officer should have then relied on
4 NAC 616C.441 and used the date the injured employee was no longer
5 able to work as a result of the occupational disease to calculate
6 the average monthly wage. See also, Mirage at 260 (NRS617.420
7 requires compensation in terms of average monthly wage must be
8 computed from the date of disability); Howard at 695 (the period
9 immediately preceding the disability is the date on which to
10 calculate disability benefits).

11 At the date of his death on August 5, 2012, Daniel
12 DeMaranville was earning \$7,314.15 gross monthly salary with
13 vacation pay. ROA 563. His wages would have been capped at that
14 time by NRS 616A.065 at \$5,222.63. See Exhibit "A" attached
15 hereto. Sixty-six and two-thirds of that amount is \$3,481.75.
16 NRS 616C.505. That is the amount CCMSI should be paying Laura
17 DeMaranville, surviving spouse, as her monthly death benefit.

18 DATED this 6th day of October, 2015.

19
20 

21 Evan Beavers, Esq.
22 Nevada Bar No. 3399
23 1000 East William, Suite 208
24 Carson City, Nevada 89701

25 Attorney for Respondent
26 Laura DeMaranville, Surviving Spouse
27
28

EXHIBIT A

EXHIBIT A

State of Nevada
DEPARTMENT OF BUSINESS AND INDUSTRY
Division of Industrial Relations
Workers' Compensation Section
FISCAL YEAR MAXIMUM COMPENSATION CHART

<u>FISCAL YEAR</u>	<u>MAX WAGE ALLOWED</u>	<u>66-2/3%</u>	<u>BI-WEEKLY</u>	<u>DAILY</u>
1975 (7/1/74-6/30/75)	\$ 727.48	\$ 485.01	\$ 223.16	\$ 15.94
1976 (7/1/75-6/30/76)	\$1,142.21	\$ 761.47	\$ 350.42	\$ 25.03
1977 (7/1/76-6/30/77)	\$1,211.00	\$ 807.33	\$ 371.28	\$ 26.52
1978 (7/1/77-6/30/78)	\$1,287.44	\$ 858.29	\$ 394.80	\$ 28.20
1979 (7/1/78-6/30/79)	\$1,377.08	\$ 918.06	\$ 422.24	\$ 30.16
1980 (7/1/79-6/30/80)	\$1,488.46	\$ 992.31	\$ 456.40	\$ 32.60
1981 (7/1/80-6/30/81)	\$1,591.86	\$1,061.24	\$ 488.18	\$ 34.87
1982 (7/1/81-6/30/82)	\$1,754.95	\$1,169.97	\$ 538.16	\$ 38.44
1983 (7/1/82-6/30/83)	\$1,930.38	\$1,286.92	\$ 591.93	\$ 42.28
1984 (7/1/83-6/30/84)	\$2,040.60	\$1,360.40	\$ 625.80	\$ 44.70
1985 (7/1/84-6/30/85)	\$2,117.31	\$1,411.64	\$ 649.32	\$ 46.38
1986 (7/1/85-6/30/86)	\$2,159.33	\$1,439.55	\$ 662.20	\$ 47.30
1987 (7/1/86-6/30/87)	\$2,230.45	\$1,486.97	\$ 683.90	\$ 48.85
1988 (7/1/87-6/30/88)	\$2,302.22	\$1,534.82	\$ 705.88	\$ 50.42
1989 (7/1/88-6/30/89)	\$2,395.49	\$1,596.99	\$ 734.58	\$ 52.47
1990 (7/1/89-6/30/90)	\$2,525.78	\$1,683.85	\$ 774.48	\$ 55.92
1991 (7/1/90-6/30/91)	\$2,624.82	\$1,750.00	\$ 804.86	\$ 57.49
1992 (7/1/91-6/30/92)	\$2,747.65	\$1,831.88	\$ 842.52	\$ 60.18
1993 (7/1/92-6/30/93)	\$2,820.19	\$1,880.13	\$ 864.78	\$ 61.77
1994 (7/1/93-6/30/94)	\$2,996.08	\$1,997.39	\$ 918.68	\$ 65.62
1995 (7/1/94-6/30/95)	\$3,058.43	\$2,038.95	\$ 937.72	\$ 66.98
1996 (7/1/95-6/30/96)	\$3,089.93	\$2,059.95	\$ 947.38	\$ 67.67
1997 (7/1/96-6/30/97)	\$3,211.00	\$2,140.67	\$ 984.48	\$ 70.32
1998 (7/1/97-6/30/98)	\$3,354.34	\$2,236.23	\$1,028.44	\$ 73.46
1999 (7/1/98-6/30/99)	\$3,474.43	\$2,316.29	\$1,065.26	\$ 76.09
2000 (7/1/99-6/30/00)	\$3,667.27	\$2,444.85	\$1,124.48	\$ 80.32
2001 (7/1/00-6/30/01)	\$3,788.07	\$2,525.38	\$1,161.44	\$ 82.96
2002 (7/1/01-6/30/02)	\$3,915.25	\$2,610.16	\$1,200.50	\$ 85.75
2003 (7/1/02-6/30/03)	\$4,022.68	\$2,681.78	\$1,233.40	\$ 88.10
2004 (7/1/03-6/30/04)	\$4,129.39	\$2,752.92	\$1,266.16	\$ 90.44
2005 (7/1/04-6/30/05)	\$4,284.04	\$2,856.02	\$1,313.48	\$ 93.82
2006 (7/1/05-6/30/06)	\$4,505.97	\$3,003.98	\$1,381.66	\$ 98.69
2007 (7/1/06-6/30/07)	\$4,708.68	\$3,139.12	\$1,443.68	\$103.12
2008 (7/1/07-6/30/08)	\$4,862.68	\$3,241.78	\$1,491.00	\$106.50
2009 (7/1/08-6/30/09)	\$5,116.24	\$3,410.82	\$1,568.70	\$112.05
2010 (7/1/09-6/30/10)	\$5,208.60	\$3,472.40	\$1,596.98	\$114.07
2011 (7/1/10-6/30/11)	\$5,179.05	\$3,452.70	\$1,588.02	\$113.43
2012 (7/1/11-6/30/12)	\$5,151.57	\$3,434.38	\$1,579.48	\$112.82
2013 (7/1/12-6/30/13)	\$5,222.63	\$3,481.75	\$1,601.32	\$114.38
2014 (7/1/13-6/30/14)	\$5,290.70	\$3,527.13	\$1,622.18	\$115.87
2015 (7/1/14-6/30/15)	\$5,356.23	\$3,570.82	\$1,642.34	\$117.31
2016 (7/1/15-6/30/16)	\$5,426.25	\$3,617.50	\$1,663.76	\$118.84

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 deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing MOTION FOR SUMMARY JUDGMENT addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

LESLIE BELL
RENO POLICE PROTECTIVE ASSOC
PO BOX 359
RENO NV 89505

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

CCMSI
PO BOX 20068
RENO NV 89515-0068

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

DATED: October 6, 2015

SIGNED: Taney L. Sherwood

THIS PAGE INTENTIONALLY BLANK

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

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

OCT 7 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

STIPULATION AND ORDER

It is hereby stipulated by and between Evan Beavers, Esq., attorney for Laura DeMaranville, claimant as surviving spouse of Daniel DeMaranville, deceased; and Mark S. Sertic, Esq., attorney for Employers Insurance Company of Nevada (EICON); and Timothy E. Rowe, Esq., attorney for the City of Reno (City) and Cannon Cochran Management Services, Inc. (CCMSI), that the evidentiary hearing now scheduled for October 5, 2015, for the above-captioned appeal, upon approval of the appeals officer, shall be continued to a later date, if needed by the appeals officer, and the date of October 6, 2015, shall be, instead, the deadline upon which the claimant is to file a motion for summary judgment. Counsel for the other parties may then file timely briefs in opposition to the claimant's motion and counsel for the claimant may then timely file briefs in reply.

It is further agreed that the evidentiary record to be relied upon by the parties in presenting the motion for summary judgment and briefs in opposition, and any hearing on the motion

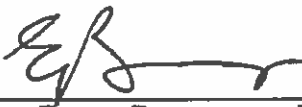
NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 should the appeals officer call for a hearing, shall be that
2 record admitted into evidence in Appeal Nos. 46812-LLW, 46479-LLW
3 and 44957-LLW, resolved by the Decision of the Appeals Officer
4 filed March 18, 2015, and now compiled as the Record on Appeal in
5 Case No. 15 OC 00092 1B, Dept. 2, First Judicial District Court.

6 Additional evidence, including but not limited to that
7 which might show when the City of Reno became self-insured, that
8 which might show when EICON no longer covered the City, and that
9 which might show earnings of the decedent at time of retirement
10 and time of death, may be submitted with the motion and briefs in
11 opposition as permitted by the rules of procedure.


12
13 NEVADA ATTORNEY FOR INJURED WORKERS

14
15 DATED: 09/30, 2015


Evan Beavers, Esq.,
Attorney for the Claimant

16
17 SERTIC LAW LTD.

18
19 DATED: October 1, 2015


Mark S. Sertic, Esq.
Attorney for Employers Insurance
Company of Nevada

20
21
22 MCDONALD CARANO WILSON

23
24 DATED: 10-2-15, 2015

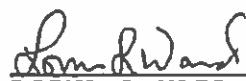

Timothy E. Rowe, Esq.
Attorney for City of Reno and CCMSI

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

This matter having come before the court upon written stipulation, upon terms that are just, IT IS HEREBY ORDERED that the claimant's appeal shall proceed upon motion for summary judgment and the hearing now set for October 5, 2015, shall be continued to a later date, if necessary, to be determined after pleadings and papers are filed and the motion is submitted.

Dated this 6th day of October, 2015.



LORNA L WARD
APPEALS OFFICER

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

JA 0978

THIS PAGE INTENTIONALLY BLANK

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

OCT 23 11:10 AM

RECEIVED
AFO
FILED

In the matter of the Industrial
Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Daniel Demaranville, Deceased,

Appeal No.: 53387-LLW

Claimant.

EMPLOYERS INSURANCE COMPANY OF NEVADA'S RESPONSE TO THE CLAIMANT'S

MOTION FOR SUMMARY JUDGMENT

Employers Insurance Company of Nevada, ("EICON"), hereby
responds to the Claimant's Motion for Summary Judgment.

EICON concurs with the Claimant that the issue presented in
this Appeal is appropriate for determination by summary judgment
since there are no factual issues in dispute and the issue can be
decided as a matter of law. However, the applicable statutes,
regulations and case law establish that the correct death benefit
in this case is zero dollars and not, as the Claimant contends,
some amount based upon the wages the decedent was earning at the
time of his death from a job wholly unrelated to his occupation as
a police officer with the City of Reno.

The relevant and undisputed facts are as follows. Mr.
DeMaranville worked as a police officer for the City of Reno,
retiring in 1990. Exhibit 1, 3. On August 5, 2012 Mr. DeMaranville
died while in the recovery room after undergoing gall bladder
surgery. Exhibit 6, p. 127. At the time of his death Mr.

1 DeMaranville was employed by a private security company. On March
2 18, 2015 the Appeals Officer issued her Decision in which she found
3 that Mr. DeMaranville died as the result of heart disease, that his
4 heart disease was a compensable occupational disease pursuant to
5 NRS 617.457 and that full liability for the claim rests with the
6 City of Reno under its self-insurance plan.

7 On April 15, 2015 the City of Reno issued the determination at
8 issue in this appeal which established the Claimant's monthly death
9 benefit at \$1,683.85 based upon his wages at the time of his
10 retirement in 1990 from the City of Reno.¹ The Claimant appealed
11 and is seeking to have the monthly death benefit set based upon the
12 wages that Mr. DeMaranville was receiving from the private security
13 agency at the time of his death, which would be the maximum
14 allowable benefit as of 2012. As discussed below, both the City's
15 determination and the Claimant's position are incorrect; under the
16 applicable law the correct monthly death benefit is zero dollars.

17 Pursuant to NRS 617.430 dependents of employees who die as a
18 result of an occupational disease are entitled to death benefits as
19 provided by chapters 616A to 616D of the NRS. Additionally, NRS
20 617.015 provides that employees and their dependents "shall be
21 entitled to all the applicable rights, benefits and immunities and
22 shall be subject to all the applicable liabilities and regulations
23 provided for injured employees and their employers by chapters
24 616A to 616D, inclusive, of NRS unless otherwise provided in this
25 chapter." Therefore, the provisions of chapters 616A to 616D and
26

27 ¹ This monthly death benefit was determined based upon the maximum allowable wage
28 at the time of Mr. DeMaranville's retirement in 1990. EICON agrees that Mr.
DeMaranville was earning wages above the allowable maximum at the time of his
retirement.

1 their corresponding regulations apply in determining the benefits
2 to which the Claimant may be entitled.

3 NRS 616C.505(2) provides that a surviving spouse of deceased
4 employee is entitled to a monthly death benefit of 66 2/3 percent
5 of the employee's average monthly wage. The issue here is therefore
6 what was Mr. DeMaranville's average monthly wage?

7 NRS 616A.065 defines average monthly wage to be the "wage
8 actually received...on the date of the accident or injury to the
9 employee..."

10 NRS 616C.420 requires the Administrator to provide by
11 regulation a method for determining the average monthly wage.

12 NAC 616C.420 and NAC 616C.423 define what items of
13 compensation are included in the average monthly wage.

14 NAC 616C.435 is dispositive of the issue in this case. That
15 regulation set forth the period of the employee's earnings that are
16 to be used to calculate the average monthly wage. Generally, with
17 some exceptions not relevant here, that period is the 12 week
18 period immediately preceding the date on which the accident or
19 disease occurred. Most important for this case is subsection 9 of
20 that regulation which states: "As used in this section, 'earnings'
21 means earnings received from the employment in which the injury
22 occurs and in any concurrent employment."² In this case the
23 employment from which the Claimant is seeking to obtain benefits is
24 that as a police officer with the City of Reno. That is the
25 employment on which the claim under NRS 617.457, (heart disease of
26 a police officer), was made by the Claimant and granted by the
27

28 ² Although this regulation speaks to an "injury", NRS 617.430 and 617.015 make it
clear that the same provision is applicable to an occupational disease.

1 Appeals Officer. The wages earned by Mr. DeMaranville from that
2 employment at the time of his death were zero since he had retired
3 from that employment twenty-two years earlier.

4 The fact that Mr. DeMaranville was working for a private
5 security company at the time of his death is irrelevant. His widow
6 is not seeking benefits from an occupational disease that arose
7 from that employment. The wages from that employment cannot be used
8 to calculate the average monthly wage.

9 Upon five continuous years of employment a police officer is
10 entitled to the presumption of NRS 617.457 that his heart disease
11 is an occupational disease. Thus, at the time of his retirement Mr.
12 DeMaranville was entitled to the benefits of that statute although
13 he could not file a claim until such time as he was disabled as a
14 result of the occupational disease. He became disabled from the
15 occupational disease when he died at which time his widow was
16 entitled to compensation under the heart disease statute. However,
17 that does not change the period of the earnings on which the
18 average monthly wage is determined. The presumption of NRS 617.457
19 arose from his employment as a police officer; it did not arise
20 from, and has no connection with, his work as a private security
21 guard.

22 The case of Howard v. City of Las Vegas, 121 Nev. 691, 120
23 P.3d 410 (2005), while not directly on point, is instructive. In
24 that case a firefighter suffered a heart attack eight years after
25 he retired. The Supreme Court held that he was not entitled to
26 collect temporary total disability benefits since he was not
27 earning any wages and thus had no calculable average monthly wage.
28

1 The Supreme Court based its decision on the "Legislature's method
2 for calculating the average monthly wage." 120 P.3d at p. 411.
3 While in that case the claimant was not working at an unrelated
4 non-firefighter job and the Supreme Court did not address the
5 precise issue presented in this case, the holding supports the
6 conclusion that benefits must be calculated in accordance with, and
7 as limited by, the applicable statutes and regulations.

8 NAC 616C.444 provides additional support for the conclusion
9 that the average monthly wage in this case is zero dollars. That
10 regulation provides:

11 The average monthly wage of an employee who permanently
12 or temporarily changes to a job with different duties,
13 rate of pay, or hours of employment, must be calculated
14 using only information concerning payroll which relates
15 to his or her primary job at the time of the accident.
The preceding sections apply in calculating the average
monthly wage for such an employee.

16 The primary job this refers to is clearly the job in which the
17 employee suffers an injury or contracts an occupational disease.
18 This regulation prohibits the use of payroll information from a
19 subsequent employment. This is entirely logical as the benefits to
20 which an injured employee are entitled must be determined based on
21 the employment which caused the injury. The same applies to
22 employees who contract an occupational disease. The entire
23 statutory and regulatory scheme show that benefits are to be
24 calculated based on the employment from which the claimant was
25 injured or contracted the occupational disease.

26 The case of Mirage Casino-Hotel v. Nevada Dept. of
27 Administration, 110 Nev. 257, 871 P.2d 317 (1994) cited by the
28 Claimant does not answer the question in this appeal. That case

1 merely states that the claimant's benefits are to be calculated
2 from the date of disability. That is consistent with the statutes
3 and regulations discussed above. Mr. DeMaranville's earnings from
4 his police officer job at the time of his disability were zero.
5 Mirage does not hold that wages from a totally separate and
6 distinct employment that is unrelated to that from which the
7 occupational disease arose are to be used to calculate the
8 benefits.

9 The Claimant's reliance upon NAC 616C.441 is misplaced. That
10 regulation provides: "The earnings of an injured employee on the
11 date on which an accident occurs or the date on which an injured
12 employee is no longer able to work as a result of contracting an
13 occupational disease will be used to calculate the average monthly
14 wage." This begs the question of what constitute "earnings". As set
15 forth above, Mr. DeMaranville's earnings for this claim are those
16 he earned as a police officer with the City of Reno and not those
17 he was receiving as a private security guard at the time of his
18 death. Thus, his earnings at the time he became disabled were zero.

19 The Claimant's assertion that the Appeals Officer has already
20 determined the amount of the benefits to which the Claimant is
21 entitled is incorrect. While the Appeals Officer's Decision of
22 March 18, 2015 does provide that the Claimant became eligible for
23 benefits as of the date of Mr. DeMaranville's death, nothing
24 contained therein addressed what the amount of those benefits
25 should be. Therefore, the doctrine of res judicata is inapplicable
26 here.

27 For the foregoing reasons, EICON respectfully requests that
28

1 the Appeals Officer issue her Decision finding that the appropriate
2 average monthly wage for this claim be set at zero dollars.

3 DATED this 22nd day of October, 2015.
4

5 SERTIC LAW LTD.

6 By: Mark S. Sertic
7 MARK S. SERTIC, ESQ.
8 5975 Home Gardens Drive
9 Reno, Nevada 89502
10 (775) 327-6300
11 Attorneys for
12 Employers Insurance Company
13 of Nevada
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCF 5(b), I certify that I am an employee of the
3 law firm of Sertic Law Ltd., Attorneys at Law, over the age of
4 eighteen years, not a party to the within matter, and that on the
5 22nd day of October, 2015, I served by U.S. mail, a true copy of
6 the foregoing or attached document, addressed to:

7 NAIW
8 Evan Beavers
9 1000 E William Street #208
10 Carson City, Nevada 89701

11 Timothy Rowe, Esq.
12 P.O. Box 2670
13 Reno, NV 89505

14 Gina L. Walsh
15 Gina L. Walsh

16 AFFIRMATION (Pursuant to NRS 239B.030)

17 The undersigned does hereby affirm to the best of his
18 knowledge that the attached document does not contain the social
19 security number of any person.

20 Dated on this 22nd day of October, 2015.

21
22 Mark S. Sertic
23 Mark S. Sertic
24
25
26
27
28

THIS PAGE INTENTIONALLY BLANK

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

* * * * *

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824

of

Hearing No: 52796-KD

DANIEL DEMARANVILLE (Deceased)

Appeal No: 53387-LLW

Claimant.

CITY OF RENO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

The City of Reno (City) respectfully submits the following Points and Authorities in
Opposition to the Claimant's Motion for Summary Judgment:

POINTS AND AUTHORITIES

I. INTRODUCTION

The issue presented in this case is the calculation of average monthly wage for the purpose of determining the amount of death benefits that may be due to the Claimant's surviving spouse if Daniel DeMaranville's death was caused by heart disease. In her motion for summary judgment, the Claimant, Laura DeMaranville, contends the average monthly wage should be calculated using wages earned in an employment relationship unrelated to the Claimant's occupational disease. The City respectfully submits the Claimant's contention is misguided and ignores fundamental principles underlying Nevada's workers compensation scheme. If Nevada's workers compensation scheme is applied as intended, the applicable statutes, regulations and existing case law require the average monthly wage to be calculated using wages from the employment relationship which give rise to the injury or occupational disease in question. When those principles are applied in this case it becomes apparent that the average monthly wage in this case was zero.

///

1 1. Workers Compensation Benefits Derive From the Employment Relationship

2 The right to workers compensation benefits arises out of an employment relationship. It is
3 the relationship of the events causing the injury or occupational disease to the employment that
4 creates the right to benefits. *Larson's Workers Compensation Law*, Sec. 1.03[1]. The right to
5 benefits does not exist independent of that relationship. Moreover, the rights that do derive from
6 that employment relationship are uniquely legislative in nature. *Weaver v. State Industrial*
7 *Insurance System*, 104 Nev. 305, 306, 756 P. 2d. 1195, 1195 (1988). Additionally, in construing
8 the workers compensation statutes that create these benefits, courts should not disturb the
9 delicate balance created by the legislature by implying provisions not expressly included in the
10 legislative scheme. *Id.*; accord *Ransier v. State Industrial Insurance System*, 104 Nev. 742, 745,
11 766 P. 2d. 274 (1988).

12 There is nothing in Nevada's statutory scheme that indicates that benefits due as a result
13 of an industrial accident or occupational disease are to be based on an employment relationship
14 independent of the employment which causes the injury or occupational disease. Yet, that is
15 precisely what the Claimant argues in this case when it contends that the Claimant's average
16 monthly wage should be based on compensation earned in an employment totally unrelated to
17 the employment which gave rise to the Claimant's occupational disease. If the Claimant's
18 contentions were correct, and if no connection to the employment causing the industrial injury or
19 occupational disease was required, liability would simply fall on the employer and insurer
20 providing workers compensation coverage at the time disability arose from the occupational
21 disease. There would be no need to determine which employer and insurer are responsible for an
22 occupational disease under rules like the last injurious exposure rule if the connection to the
23 employment causing the occupational disease was irrelevant.

24 In this case, the Claimant voluntarily separated from the employment which presumably
25 caused his occupational disease in 1990 with no expectation of a future employment relationship
26 with the City. Although the employment relationship giving rise to the Claimant's right to
27 benefits ended more than 20 years prior to his death from the occupational disease, the Claimant
28 argues that wages earned in his current employment must be used to determine the Claimant's

1 average monthly even though that employment is unrelated to other exposure or development of
2 the occupational disease. The argument is not consistent with the applicable statutes and
3 regulations dealing with average monthly wage.

4 2. Applicable Regulations Require The Wage To Be Based On The Employment Causing
5 The Occupational Disease

6 Nevada's regulatory provisions dealing with the calculation of average monthly wage
7 require the calculations to be based on the employment in which the industrial injury occurs.
8 NAC 616C.435 sets forth the period of earnings used to calculate the average monthly wage and
9 defines the term "earnings" as used in NAC 616C.435 as "... earnings means earnings received
10 from the employment in which the injury occurs and in any concurrent employment."

11 NAC 616C.444 states: "the average monthly wage of an employee who permanently or
12 temporarily changes to a job with different duties, rate of pay or hours of employment, must be
13 calculated using only information concerning payroll which relates to his or her primary job at
14 the time of the accident...."

15 NAC 616C.435 (9) requires the earnings from the employment in which the injury occurs
16 be used to calculate average monthly wage.

17 Although these regulations do not specifically address occupational disease, there is no
18 reason to believe different concepts would apply. Thus, the applicable employment in an
19 occupational disease case would be the employment causing the occupational disease. Here, that
20 employment is presumed to be Mr. DeMaranville's employment with the City which ended in
21 1990.

22 A similar result is suggested by Nevada case law. In *Howard v. City of Las Vegas*, 121
23 Nev. 691, 120 P.3d., 410 (2005). In *Howard*, a retired firefighter suffered a heart attack
24 approximately 8 years following his retirement. The court concluded the Claimant was not
25 entitled to temporary total disability benefits because he was not earning wages at the time he
26 became disabled from his heart attack. The facts of *Howard* are distinguishable from the present
27 case in that *Howard* was not earning wages in another employment unrelated to the employment
28 causing his heart disease. The court determined *Howard* was not entitled to temporary total

1 disability benefits because he was not earning wages on the date disability, the date of his heart
2 attack. There is nothing in the *Howard* decision that suggests the result should be any different
3 in this case. Mr. DeMaranville was not earning wages from the employment that caused his
4 occupational disease at the time of his death.

5 II. CONCLUSION

6 For the foregoing reasons, the City of Reno respectfully submits the Claimant is not
7 entitled to death benefits because the Mr. DeMaranville was not earning wages in the
8 employment responsible for the occupational disease at the time of his death. Because the
9 average monthly wage from the employment responsible for the occupational disease was zero at
10 the time the Claimant became disabled, the rationale expressed in *Howard* would preclude
11 payment of death benefits.

12 Dated this 23rd day of October, 2015

13 MCDONALD CARANO WILSON LLP

14
15 By


TIMOTHY E. ROWE, ESQ.

16 P. O. Box 2670
17 Reno, Nevada 89505-2670
18 Attorneys for the Employer
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the 23rd day of October, 2015, I served the within CITY OF RENO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT by sending a true and correct copy via facsimile to the following parties:

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

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

The following parties were served copies via the United States Postal Service:

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


Carole Davis

431877

THIS PAGE INTENTIONALLY BLANK



ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

2016 NOV -5 PM 4:01

RECEIVED
AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

REPLY TO CITY OF RENO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

AND

REPLY TO EICON'S RESPONSE TO THE CLAIMANT'S MOTION FOR SUMMARY

JUDGMENT

Comes now Laura DeMaranville, claimant and surviving spouse of Daniel DeMaranville, deceased, by and through her attorney, Evan Beavers, Esq., Nevada Attorney for Injured Workers, and hereby replies to the opposition filed by the City of Reno (City) to the claimant's motion for summary judgment and, simultaneously, replies to the opposition of Employers Insurance Company (EICON) to the claimant's motion.

The claimant seeks to have the benefits owing to her as surviving spouse calculated on the average monthly wage her husband was earning as a contract federal security officer at the date of his disability, which was the date of his death. In its opposition City proffers that because the claim for benefits arises from Mr. DeMaranville's employment with City, only the wages City was paying the retired police officer at the date of

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 disability can be used for calculating benefits. The amount of
2 wages City was paying Mr. DeMaranville at the date of his death
3 was zero therefore, according to City, the monthly death benefit
4 owed to his widow is zero.

5 Similarly, in its opposition EICON argues that because
6 Mr. DeMaranville's employment with the City of Reno is the
7 employment upon which the claim is based, state regulation
8 dictates calculating his earnings from that employment.
9 According to EICON, given that at the date of his death Mr.
10 DeMaranville was earning nothing from the City, Mr.
11 DeMaranville's widow is entitled to nothing for monthly death
12 benefits.

13 Neither City's nor EICON's arguments are consistent
14 with the Nevada Occupational Diseases Act (NRS Chapter 617), nor
15 is either position consistent with the earlier determination that
16 under the heart/lung statute Laura DeMaranville is entitled to
17 benefits. It has been determined that City, as the self-insured
18 employer at the date of death, is liable for the claim. Nevada
19 law does not support the position that City is liable for monthly
20 benefits based on wages only if it was paying the decedent a wage
21 at the time of his death.

22 NRS 617.457 declares that heart disease of a person
23 employed continuously for five years as a police officer before
24 the date of disablement is conclusively presumed to have arisen
25 out of and in the course of the employment. It has already been
26 proven to the satisfaction of the appeals officer, and neither
27 City nor EICON refute the finding here, that Dan DeMaranville was
28 employed for more than five consecutive years as a police officer

1 and died of heart disease. That is all that is required for
2 entitlement to benefits under the heart/lung statute. See
3 Manwill v. Clark County, 123 Nev. 238, 242, 162 P.3d 876 (2007) (a
4 firefighter seeking occupational disease benefits under NRS
5 617.457 need only show heart disease and five years qualifying
6 employment before disablement). City and EICON seek to imply the
7 added condition of proving when the disease was contracted in
8 order to determine if the employer was paying a wage to the
9 claimant on that date. City and EICON find support for the
10 position by confusing benefits owing for industrial accidents
11 with benefits owing for industrial disease.

12 Our State Supreme Court has provided instruction on how
13 to calculate benefits for occupational disease. In the case of
14 Mirage v. Nevada Dep't of Administration, 110 Nev. 257, 871 P.2d
15 317 (1994), the Court determined that "[o]nly after the employee
16 becomes disabled does it become necessary to look to NRS Chapter
17 616 for the method of calculating the employee's average monthly
18 wage." Id. at 260. The Occupational Diseases Act (Chapter 617)
19 does not contain the administrative provisions detailed in the
20 Industrial Insurance Act (Chapters 616A, B, C and D). The Court
21 in Mirage gives no indication that the provisions of Chapter 616
22 to calculate benefits should be used to avoid a Chapter 617
23 determination of compensability.

24 City starts with the presumption that the employment
25 relationship must relate to the occupational disease. City next
26 posits that NAC 616C.435 and NAC 616C.444 require that benefits
27 must be based on wages earned at that point in time when the
28 "injury" occurs. City argues that even though the statutes cited

1 do not refer to occupational disease the analysis should be the
2 same given the presumption that the employment which caused Mr.
3 DeMaranville's heart disease must have been his employment with
4 the City of Reno.

5 EICON likewise argues that NAC 616C.435 is dispositive
6 and when used in conjunction with NAC 616C.444 the benefits to
7 which the injured employee is entitled must be based on the
8 employment which caused the "injury." Both City and EICON
9 presume Daniel DeMaranville's heart disease was caused by his
10 employment with the City of Reno and at the time the "injury"
11 occurred Mr. DeMaranville was earning no wages from City therefor
12 no benefits calculated on those wages are owed. As indicated
13 above, however, the heart/lung statute does not require
14 additional proof relating the disease to the qualifying
15 employment. All that need be shown, and that which has already
16 been proven, is that the qualifying employment continued for at
17 least five years. Furthermore, nothing in Chapter 617 allows for
18 an employer to avoid liability for an occupational disease claim
19 by attempting to link the wage calculation provisions in Chapter
20 616 to a presumed date of injury.

21 To carry the opponents' position to its logical
22 conclusion, once an employee the legislature intended to benefit
23 in NRS 617.457 retires the employer's obligation to provide
24 benefits based on wages-the employer will never again be paying a
25 wage to the retired employee. Neither the Nevada legislature nor
26 the Nevada Supreme Court have ever made such a pronouncement.
27 The Court in Mirage directs us to Chapter 616 after the a claim
28 for occupational disease has been determined. In Chapter 616

1 (specifically, NRS 616C.420) regulation is then authorized to
2 determine average monthly wage. NAC 616C.441(1) then mandates
3 that the wage of the injured employee earned on the date the
4 employee was no longer able to work because of the occupational
5 disease will be used to calculate the average monthly wage.

6 The creation of some tie between the date Mr.
7 DeMaranville's disease "occurred" and the date of his employment
8 with the City of Reno is not supported by the decisions of the
9 Court when deciding cases with similar facts. See Gallagher v.
10 City of Las Vegas, 114 Nev. 595, 601, 602, 959 P.2d 519 (1998)
11 (retired firemen are entitled to occupational disease benefits as
12 a matter of law provided the requirements of NRS 617.457 are
13 met). If the legislature believes some limitation is necessary
14 it may amend the statute. Id. at fnnt. 9. A retired employee
15 intended the benefits of NRS 617.457 who suffers a heart attack,
16 after proving the elements for the conclusive presumption, is
17 entitled to benefits for occupational disease. Howard v. City of
18 Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005). The period
19 immediately preceding the heart attack is the date from which
20 disability benefits must be calculated. Id. at 695.

21 Concluding that the provisions of Chapter 616 do not
22 require City pay anything to Laura DeMaranville for monthly
23 benefits is an absurd result. Laura DeMaranville has already
24 proved entitlement to benefits under NRS 617.457 resulting from
25 her husband's heart disease and resulting death. To start from
26 that point and conclude that the amount the City of Reno owes is
27 zero because the City was paying the decedent zero wages at the
28 date of disability defeats the purpose of the Nevada Occupational

1 Diseases Act. The Court clearly intended Chapter 616 be used to
2 calculate benefits, not for the purpose of avoiding payment. The
3 goal should be to read statutes harmoniously with one another to
4 avoid an unreasonable or absurd result. Citizens for Cold
5 Springs v. City of Reno, 125 Nev. 625, 631, 218 P.3d 847, 851
6 (2009); Allstate Ins. Co. v. Fackett, 125 Nev. 132, 138, 206 P.3d
7 572, 577 (2009); Great Basin Water Network v. Taylor, 126 Nev.
8 Adv. Rep. 20, 234 P.3d 912, 918 (Nev. 2010). Where the
9 legislative intent is clear, the court must effectuate that
10 intent. Sheriff, Clark County v. Burcham, 198 P.3d 326, 329, 124
11 Nev. 1247, 1253 (2008).

12 The process of determining Mr. DeMaranville's wages at
13 the time of his disability is being contorted to obscure the
14 findings already entered in Appeal Nos. 46812-LLW, 46479-LLW, and
15 44957-LLW. Mr. DeMaranville died of heart disease on August 5,
16 2012, and Laura DeMaranville is entitled to death benefits. The
17 benefits set out in NRS 616C.505 include, but are not limited to,
18 monthly payment in an amount equal to 66 2/3 percent of the
19 average monthly wage Dan DeMaranville was earning at the date of
20 his death. The amount owed to her monthly should not be capped
21 (as the hearing officer ordered below) based upon the wages Mr.
22 DeMaranville was earning shortly before retirement, nor should
23 that amount be reduced to zero as argued here by the City of Reno
24 and EICON. Laura DeMaranville is entitled to summary judgment

25 //

26 //

27 //

28 //

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 for monthly benefits based upon her deceased husband's wages at
2 the time of his death as more fully set out in her motion.

3 Respectfully submitted this 5th day of November,
4 2015.



5
6 Evan Beavers, Esq.
Nevada Bar No. 3399
7 1000 East William, Suite 208
8 Carson City, Nevada 89701

9 Attorney for Respondent
Laura DeMaranville, Surviving Spouse
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing REPLY TO CITY OF RENO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND REPLY TO EICON'S RESPONSE TO THE CLAIMANT'S MOTION FOR SUMMARY JUDGMENT addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

LESLIE BELL
RENO POLICE PROTECTIVE ASSOC
PO BOX 359
RENO NV 89505

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

CCMSI
PO BOX 20068
RENO NV 89515-0068

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

DATED: November 5, 2015

SIGNED: Taney X. Sherwood

THIS PAGE INTENTIONALLY BLANK

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

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

} Claim No: 12853C301824

} Hearing No: 52796-KD


} Appeal No: 53387-LLW

9 DANIEL DEMARANVILLE, DECEASED,
10 Claimant.
11 _____

12 **ORDER**

13 The 694-page Record on Appeal previously filed in the district court is
14 hereby marked and admitted as Exhibit 1.

15 **IT IS SO ORDERED.**

16
17 
18 _____
19 LORNA L WARD
20 APPEALS OFFICER
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

JA 1005

THIS PAGE INTENTIONALLY BLANK

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

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

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

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

23 //

24 //

25 //

26 //

27 //

28 //


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

ORDER

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

DATED this 10th day of December, 2015.


APPEALS OFFICER


LORNA L WARD

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

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


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

1 CERTIFICATE OF MAILING

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

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

12 NAIW
13 1000 E WILLIAM #208
14 CARSON CITY NV 89701

15 CITY OF RENO
16 ATTN ANDRENA ARREYGUE
17 PO BOX 1900
18 RENO, NV 89505

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

22 LESLIE BELL
23 RENO POLICE PROTECTIVE ASSOCIATION
24 PO BOX 359
25 RENO NV 89504

26 EMPLOYERS INSURANCE COMP OF NV
27 PO BOX 539004
28 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

THIS PAGE INTENTIONALLY BLANK

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT. OF ADMINISTRATION
APPEALS DIVISION
RENO OFFICE
2016 JAN -5 AM 10:11

RECEIVED
AND
FILED

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824

of

Hearing No: 52796-KD

DANIEL DEMARANVILLE (Deceased)
c/o Laura DeMaranville

Appeal No: 53387-LLW

Claimant.

MOTION FOR STAY ORDER PENDING JUDICIAL REVIEW

The CITY OF RENO respectfully moves the Appeals Officer for a stay order, temporarily staying the effect of the Appeals Officer's Decision entered on December 10, 2015 pending resolution of the Petition for Judicial Review filed in the Second Judicial District Court. The grounds for said motion are that the Appeals Officer Decision is affected by error of law, and the City will be irreparably harmed if required to comply with the Decision.

This motion is made and based upon the points and authorities attached hereto, the evidence submitted to the Appeals Officer at hearing, and the pleadings and papers on file.

DATED this 5th day of January, 2016.

McDONALD CARANO WILSON LLP

By

T. E. Rowe
TIMOTHY E. ROWE, ESQ.
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, NV 89505-2670

Attorneys for
CITY OF RENO

McDONALD-CARANO-WILSON

100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • BLVD. PRADA 89503-2670
PHONE 775-786-2800 • FAX 775-786-2030

1 **POINTS AND AUTHORITIES**

2 The CITY OF RENO (hereinafter the "CITY") submits the following points and
3 authorities in support of its Motion for Stay Order:

4 **I.**

5 **STATEMENT OF THE ISSUES**

6 The issue in this case concerns the amount of the death benefits payable to Mr.
7 DeMaranville's widow as a result of his death. Mr. DeMaranville worked as a police
8 officer for the CITY. He retired from the CITY in 1990 when Employers Insurance
9 Company of Nevada (EICON) was the insurer for the City. Thereafter, in 2002, the CITY
10 became self-insured.

11 On August 5, 2012, Mr. DeMaranville died following laparoscopic cholecystectomy
12 surgery. Laura DeMaranville filed a death benefits claim with the CITY. The CITY denied
13 the claim based on a lack of medical evidence establishing the cause of
14 Mr. DeMaranville's death was work-related. Ms. DeMaranville appealed the denial of the
15 claim.

16 The Appeals Officer found Mr. DeMaranville's heart disease was compensable as
17 an occupational disease under NRS 617.457. She also found the applicable date of
18 disability was August 5, 2012, concluding the City as a self-insured employer was liable
19 for the claim.

20 In compliance with the Appeals Officer Decision, the City, through its third-party
21 administrator, CCMSI, began payment of death benefits in the amount of \$1,683.35 per
22 month based on the State's maximum wage at the date of Mr. DeMaranville's retirement
23 on January 12, 1990.

24 Ms. DeMaranville appealed that determination which ultimately resulted in the
25 Appeals Officer Decision finding the appropriate amount of the death benefit to be the
26 state maximum wage at the date of his death (\$3841.75). At the Appeals Officer Hearing
27 both the City and EICON argued the amount of the benefits should be zero since the
28 claimant was not earning a wage from the City at the time of his death.

1 The City has requested judicial review of the Appeals Officer Decision and hereby
2 requests a stay of the decision pending the judicial review.

3 II. ARGUMENT

4 1. The Standard for Granting a Stay Order.

5 NRS 233B.140(2) sets forth the standard for evaluating a motion for a stay
6 order requesting a stay of an administrative decision.

7 2. In determining whether to grant a stay, the court shall consider the
8 same factors as are considered for a preliminary injunction under Rule 65
9 of the Nevada Rules of Civil Procedure.

10 3. In making a ruling, the court shall:

- 11 (a) Give deference to the trier of fact; and
- 12 (b) Consider the risk to the public, if any, of staying the
administrative decision.

13 Thus, the same factors applicable to an injunction under NRCP 65 will apply to the
14 analysis of the Petitioner's request for a temporary stay order. NRCP 65 does not set
15 forth specific factors for consideration of a motion for preliminary injunction. However,
16 case law identifies the factors that should be considered by a court in analyzing a request
17 for preliminary injunction seeking to enjoin a final decision of an administrative agency. In
18 *Labor Commissioner v. Littlefield*, 123 Nev. 35, 153 P.3d 26 (2007), the Nevada Supreme
19 Court set forth those factors: "In exercising its discretion, the district court must determine
20 whether the moving party has shown a likelihood of success on the merits and that the
21 non-moving party's conduct should continue, would cause irreparable harm, for which
22 there is no adequate legal remedy," *i.d.*, 153 P.3d 26 at p. 28. An analysis of those factors
23 in this case demonstrates that this court should stay the Appeal Officer's Decision in the
24 above-entitled matter.

25 2. Likelihood of Success on the Merits.

26 The City hereby incorporates by reference the arguments presented in its
27 opposition to the claimant's motion for summary judgment and the opposition submitted
28 by EICON.

1 The City respectfully submits it is likely to prevail on the merits of its petition for
2 judicial review because the Appeals Officer Decision overlooks specific regulations that
3 require "earnings" for purpose of calculating average monthly wage to be earnings from
4 the employment causing the injury/occupational disease. In this case the Appeals Officer
5 Decision concludes Mr. DeMaranville's death benefits should be based on Mr.
6 DeMaranville's wage at the time of his death. At the time of his death Mr. DeMaranville
7 worked in a position unrelated to the employment that presumptively caused his
8 occupational heart disease. The Decision is based primarily on NRS 616C.441 which
9 mandates the wages earned on the date of disablement be used to calculate average
10 monthly wage.

11 However, the Decision overlooks NAC 616C.435 which defines the term "earnings"
12 as used in the regulation to be earnings received from the employment in which the injury
13 occurs, and, specifically, NAC 616C.435 (9) which requires the earnings from the injury
14 employment to be used to calculate average monthly wage. Although NAC 616C.435
15 and NAC 616C.441 appear to conflict in the situation presented here where the
16 employment causing the injury/occupational disease is not the employment in which the
17 claimant is working at the time of disablement, the City's interpretation of these
18 regulations removes the conflict. At the Appeals Officer Hearing both the City and
19 EICON argued these regulations should be interpreted to mean that wages earned from
20 the employment causing the injury/occupational disease on the date of disablement are
21 the wages that will be used to calculate average monthly wage for the purpose of
22 calculating benefits. That interpretation removes any apparent conflict in the regulations.
23 Here, that interpretation results in an average monthly wage of zero because the claimant
24 was not earning any wage from the employment that caused the occupational disease. If
25 the regulations are interpreted in this manner, it removes the apparent conflict in the
26 regulations and allows them to be interpreted in a manner that gives affected both
27 regulations.

28 The interpretation is also consistent with *Howard v. City of Las Vegas*, 121 Nev.

691, 120 P.3d 410 (2005) in which the Nevada Supreme Court determined a retired firefighter was not entitled to disability compensation resulting from a disabling heart attack because the claimant was not earning wages at the time of the heart attack. Although not directly on point, the result in *Howard* is consistent with the interpretation of the applicable regulations relied on by both the City and EICON in this case.

Under these circumstances, the City respectfully submits it likely to prevail on the merits of its argument. The City's position gives affect to all of the applicable regulations. The Appeals Officer Decision does not and must overlook NAC 616C.435 to reach the result it does. Given the irreparable harm caused in absence of a stay, the City submits it meets the requirements for a stay order, because it is likely to prevail on the merits of its arguments.

3. Irreparable Harm.

In compliance with the appeals officer's decision in appeal number 46812-LLW, 46479-LLW and 44957-LLW, the City began payment of benefits based on Mr. DeMaranville's wage on the date of his retirement in 1990. In addition, the City is paying past-due death benefits in monthly installments. This results is a current monthly payment of \$3,367.70, nearly the same amount found due under the Appeals Officer's order (\$3,481.75).

In the event the City ultimately prevails in this dispute, none of the benefits paid to Ms. DeMaranville can be recovered. *Ransier v. SIIS*, 104 Nev. 742, 766 P.2d 274 (1988). The City has already paid a total of \$36,228.84 to Ms. DeMaranville. The fact that these amounts can never be recouped if the City ultimately prevails in this matter constitutes irreparable harm by definition. Thus, if the Appeals Officer does not enter an order staying the effect of the Appeals Officer Decision, the rights of the City to appeal the decision under NRS 616C.370 will effectively be lost. Under these circumstances, the Nevada Supreme Court has specifically noted that an insurer's remedy is to seek a stay order. *DIR v. Circus Circus*, 101 Nevada 405, 705 P.2d 645 (1985).

///

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
TEL: 775.784.2670 • FAX: 775.784.2620
WWW.MCDONALDCARANOWILSON.COM

III. CONCLUSION

The City respectfully submits the Appeals Officer Decision is affected by error of law. In absence of a stay order staying the effect of the decision, the City suffers irreparable harm. Under these circumstances a stay order is warranted. Accordingly, the City request that the Appeals Officer Decision be stayed pending judicial review.

DATED this 5th day of January, 2016.

McDONALD CARANO WILSON LLP

By: J. E. Rowe
TIMOTHY E. ROWE, ESQ.
P.O. Box 2670
Reno, Nevada 89505-2670
Attorneys for the Employer
CITY OF RENO

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the on the 16th day of January, 2016, I served the preceding ***MOTION FOR STAY ORDER PENDING JUDICIAL REVIEW*** by placing a true and correct copy thereof in a sealed envelope and serving said document via hand-delivery by Reno Carson Messenger Service the following party at the address referenced below:

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

A true and correct copy for the foregoing document was also served via U.S. Mail at Reno, Nevada, on the following parties at the addresses referenced below:

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

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

The City of Reno
Attn: Human Resources
P.O. Box 1900
Reno, NV 89505


Carole Davis

#437359

THIS PAGE INTENTIONALLY BLANK

ORIGINAL

MARK S. SERTIC, ESQ.
SERTIC LAW LTD.
Nevada Bar No. 403
5975 Home Gardens Drive
Reno, Nevada 89502
Telephone: (775) 327-6300
Facsimile: (775) 327-6301
Attorneys for Petitioner
Employers Insurance Company of Nevada

REC'D & FILED
2016 JAN -8 PM 4:40

SUSAN MERTIC, CLERK
BY [Signature] DEPUTY

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

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

Case No. 1609000318

vs.

Department No: 27

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

Respondents.

PETITION FOR JUDICIAL REVIEW

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

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

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

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

8 WHEREFORE, Petitioner prays as follows:

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

14 DATED this 7th day of January, 2016.

15 SERTIC LAW LTD.

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

21 **AFFIRMATION**

22 Pursuant to NRS 239B.030

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

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

26 Mark S. Sertic
27 Mark S. Sertic
28

1 CERTIFICATE OF SERVICE

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

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

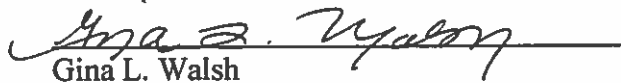
10 NAIW
11 Evan Beavers, Esq.
12 1000 E William Street #208
13 Carson City, Nevada 89701

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

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

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

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

28 
Gina L. Walsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Decision of Appeals Officer	7

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

Hearing No.: 52796-KD

of

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

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

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

23 //

24 //

25 //

26 //

27 //

28 //

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

1 ORDER

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

5 DATED this 10th day of December, 2015.


6 APPEALS OFFICER

7 
8 LORNA L WARD
9

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

14 Submitted by:

15 NEVADA ATTORNEY FOR INJURED WORKERS

16 
17 Evan Beavers, Esq.
18 1000 East William St., #208
19 Carson City, Nevada 89701
20
21
22
23
24
25
26
27
28


- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

JA 1033

THIS PAGE INTENTIONALLY BLANK

ORIGINAL

MARK S. SERTIC, ESQ.
SERTIC LAW LTD.
Nevada Bar No. 403
5975 Home Gardens Drive
Reno, Nevada 89502
Telephone: (775) 327-6300
Facsimile: (775) 327-6301
Attorneys for Petitioner
Employers Insurance Company of Nevada

REC'D & FILED
2016 JAN 14 PM 3:28
SUSAN MERZWEATHER
CLERK
BY  DEPUTY

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

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

Case No. 160C000031B

vs.

Department No: II

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

Respondents.

NOTICE OF FILING PETITION FOR JUDICIAL REVIEW

///

///

///

///

///

///

///

///

1 TO:

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

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

6 Appeals Officer Department of
7 Administration
8 1050 E. William Street, Suite 450
9 Carson City, Nevada 89710

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

10 Department of Administration Director's
11 Office
12 515 East Musser Street, Third Floor
13 Carson City, Nevada 89701

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

14 Please take notice that EMPLOYERS INSURANCE COMPANY OF NEVADA, by and
15 through its attorney, Mark S. Sertic, Esq., of Sertic Law Ltd., filed its Petition for Judicial Review in
16 the above-captioned matter on January 8, 2016. A copy of the Petition for Judicial Review is
17 attached hereto as Exhibit 1.

18 DATED this 14th day of January, 2016.

19 SERTIC LAW LTD.

20 By: Mark S. Sertic
21 MARK S. SERTIC, ESQ.
22 5975 Home Gardens Drive
23 Reno, Nevada 89502
24 *Attorneys for Petitioner*
25 *Employers Insurance Company of Nevada*
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 14th day of January, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

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

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

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

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

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

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


Gina L. Walsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Petition for Judicial Review	12

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

REC'D & FILED
2016 JAN -8 PM 4:40
SUGAN, PETITIONER
C. COOPER
BY _____ CLERK
DEPUTY

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

12 *****

13 EMPLOYERS INSURANCE COMPANY
14 OF NEVADA,

15 Petitioner,

Case No. 160C 0000313

16 vs.

Department No: 27

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

21 Respondents.
22 _____ /

23 **PETITION FOR JUDICIAL REVIEW**

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

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

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

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

WHEREFORE, Petitioner prays as follows:

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

DATED this 7th day of January, 2016.

SERTIC LAW LTD.

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

AFFIRMATION

Pursuant to NRS 239B.030

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

Dated on this 7th day of January, 2016.

Mark S. Sertic
Mark S. Sertic

1 CERTIFICATE OF SERVICE

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

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

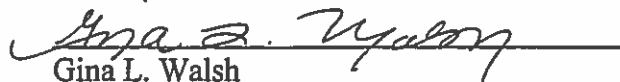
10 NAIW
11 Evan Beavers, Esq.
12 1000 E William Street #208
13 Carson City, Nevada 89701

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

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

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

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

28 
Gina L. Walsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Decision of Appeals Officer	7

EXHIBIT 1

EXHIBIT 1

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

3
4
5
6 In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

7 of

Hearing No.: 52796-KD

8 Appeal No.: 53387-LLW

9 DANIEL DEMARANVILLE
10 _____/

11 DECISION AND ORDER

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

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

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

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

23 //

24 //

25 //

26 //

27 //


28 //

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

1 CERTIFICATE OF MAILING

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

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

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

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

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

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

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 10th day of December, 2015.

28 

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

THIS PAGE INTENTIONALLY BLANK

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

REC'D & FILED
2016 JAN 20 PM 4: 29

SUSAN MERRIWETHER
CLERK
BY  DEPUTY

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

8 EMPLOYERS INSURANCE COMPANY
9 OF NEVADA,

10 Petitioner,

11 vs.

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

17 Respondent.

18 CITY OF RENO,

19 Cross-Petitioner,

20 vs.

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

27 Cross-Respondents.

Case No: 160C000031B

Dept. No: II

28 CROSS-PETITION FOR JUDICIAL REVIEW

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

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

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

3 The grounds upon which this review is sought are:

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


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

11 WHEREFORE, Petitioner prays as follows:

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

16 DATED this 19th day of January 2016.

17 McDONALD CARANO WILSON LLP

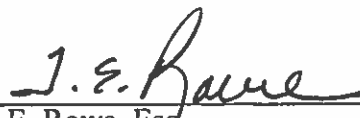
18
19 By: 
20 Timothy E. Rowe, Esq.
21 P.O. Box 2670
22 Reno, Nevada 89505-2670
23 Attorneys for the CITY OF RENO

24 **AFFIRMATION**

25 **Pursuant to NRS 239B.030**

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

28 Dated this 19th day of January 2016.


Timothy E. Rowe, Esq.

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano Wilson LLP and that on the 19th day of January 2016, I caused a copy of the preceding **CROSS-PETITION FOR JUDICIAL REVIEW** to be served by depositing the same for mailing with the U.S. Postal Service, postage prepaid on the following parties:

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

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

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

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

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

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


Carole Davis

#438616[cw1/15/16]

EXHIBIT LIST

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

 McDONALD-CARANO-WILSON

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

EXHIBIT 1

EXHIBIT 1

DEC 11 2015

McDonald Casper Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

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

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

23 //

24 //

25 //

26 //

27 //

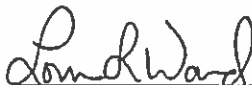
28 //

ORDER

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

DATED this 10th day of December, 2015.


APPEALS OFFICER


LORNA L WARD

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

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


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


1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

JA 1064

THIS PAGE INTENTIONALLY BLANK

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

CODE: 3960
Timothy E. Rowe, Esq.
Nevada Bar No. 1000
McDONALD CARANO WILSON LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89505
Telephone: (775) 788-2000
Attorneys for the Employer
CITY OF RENO

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

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

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

vs.

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

Respondent.

Case No: 160C000031B


Dept. No: II

STATEMENT OF INTENT TO PARTICIPATE

COMES NOW, the CITY OF RENO, by and through its attorney of record, Timothy E. Rowe, Esq., of McDonald Carano Wilson, LLP., and hereby notifies the parties of its intent to participate in the above-captioned Petition for Judicial Review filed by the Petitioner on January 7, 2016, pursuant to the provisions of NRS 233B.130.

The undersigned does hereby affirm that the preceding does not contain the social security number of any person.

McDONALD CARANO WILSON LLP

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

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano Wilson LLP and that on the 20th day of January 2016, I caused a copy of the preceding **STATEMENT OF INTENT TO PARTICIPATE** to be served by depositing the same for mailing with the U.S. Postal Service, postage prepaid on the following parties:

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

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

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

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

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

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


Carole Davis

#438598[cw1/15/16]

THIS PAGE INTENTIONALLY BLANK



ORIGINAL

STATE OF NEVADA
DEPT. OF ADMINISTRATION
WORKERS' COMPENSATION
DIVISION
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

JUN 21 PM 4:30

RECEIVED
JUN 21
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

Hearing No.: 52796-KD

of

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE,
DECEASED,

Claimant.

OPPOSITION TO MOTION FOR STAY

Comes now, Laura DeMaranville, surviving spouse of
Daniel DeMaranville, deceased, by and through her attorney, Evan
Beavers, Esq., and the office of the Nevada Attorney for Injured
Workers, and hereby files her opposition to the City of Reno's
motion for stay, filed on January 5, 2016, on the grounds that
City of Reno has not met the requirements necessary for a stay to
be granted.

//

//

//

//

//

//

//

//


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

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

1 This brief in opposition is based upon the points and
2 authorities which follow and all pleadings and papers on file in
3 the adjudication of Appeal No. 53387-LLW.

4 Dated this 21st day of January, 2016.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 
7 Evan Beavers, Esq.
8 State Bar No. 3399
9 1000 E. William Street, Suite 208
10 Carson City, NV 89701

11 Attorney for Laura DeMaranville,
12 Claimant
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

POINTS AND AUTHORITIES

1
2 By decision entered March 18, 2015, the appeals officer
3 found Daniel DeMaranville died of heart disease and his widow was
4 entitled to statutory death benefits. Both the City of Reno
5 (Reno) and Employers Insurance Company of Nevada (EICON)
6 petitioned for district court review of that decision. With that
7 appeal to the district court Reno also sought an order from the
8 appeals office staying the enforcement of the decision. The
9 appeals officer denied the stay and the district court's review
10 of that order is still pending, nearly one year later.

11 After entry of that 2015 decision Reno's claims
12 administrator began paying Laura DeMaranville \$1,683.85 each
13 month for death benefits, based upon the administrator's
14 calculation of what was presumed to be Mr. DeMaranville's
15 earnings right before he retired from his employment with Reno in
16 1990. These payments were calculated at the date of retirement
17 despite the order determining the date of disability was the date
18 of death, a point in time when Mr. DeMaranville was earning
19 substantially more than when he retired from the City.

20 Laura DeMaranville appealed the determination to pay
21 her an amount based on the date of retirement. Before the
22 hearing officer both Reno and EICON argued that Reno should pay
23 the widow zero. The hearing officer held Reno to payment of the
24 benefit based on earnings at the time of retirement, and that
25 decision was appealed and presented to the appeals officer on Ms.
26 DeMaranville's motion for summary judgment. The appeals officer
27 determined the widow was entitled to benefits based upon Mr.
28 DeMaranville's earnings immediately preceding his fatal heart

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

1 attack, and ordered that Laura DeMaranville receive \$3,481.75
2 each month.

3 On this record Reno has filed in district court for
4 judicial review and seeks an order from the appeals officer to
5 stay enforcement of the Decision and Order filed December 10,
6 2015.

7 According to NRS 233B.140, a petitioner for judicial
8 review shall file and serve a written motion for stay at the time
9 of filing the petition. In determining whether to grant the stay
10 the court shall consider the same factors as a motion for
11 preliminary injunction pursuant to NRCP 65. NRS 233B.140(2). In
12 making the ruling the court shall give deference to the trier of
13 fact and consider the risk to the public, and the petitioner must
14 provide security before the court may issue a stay. NRS
15 233B.140(3).

16 When determining the propriety of a stay, our State
17 Supreme Court has stated the following factors should be
18 considered:

- 19 1) Whether the object of the appeal
- 20 will be defeated if the stay is
- 21 denied;
- 22 2) Whether the petitioner will
- 23 suffer irreparable harm or serious
- 24 injury if the stay is denied;
- 25 3) Whether the respondent will
- 26 suffer irreparable or serious injury
- 27 if the stay is granted; and

28 //

1 4) Whether the petitioner is likely
2 to prevail on the merits in the
3 appeal.

4 Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 657,
5 6 P.3d 982 (2000) (citing NRAP 8(c); Kress v. Corey, 65 Nev. 1, 189
6 P.2d 352 (1948)).

7 Defeat of the object of appeal if the stay is denied.

8 The object of Reno's appeal is the avoidance of paying
9 the surviving spouse of Daniel DeMaranville monthly death
10 benefits. Reno initially rejected Laura DeMaranville's claim for
11 any benefits until the appeals officer ruled Mr. DeMaranville
12 died of heart disease and the claim of the widow was compensable.
13 Mr. DeMaranville died August 5, 2012. The appeals officer
14 entered her decision in favor of compensability March 18, 2015.
15 Thus, Reno avoided paying the widow any benefits for two and one-
16 half years, and now pays her only an amount based on presumed
17 earnings at the time of retirement. The object of Reno's appeal
18 is to seek an order from the district court accepting the premise
19 that Reno pay the widow zero. The passage of time taken for Reno
20 to present its appeal and secure a district court decision will
21 not defeat the object of the appeal. The merits of Reno's legal
22 argument might defeat the object of the appeal, but that is
23 discussed more fully below.

24 Reno's irreparable harm if stay is denied.

25 Reno argues the amount it now underpays according to
26 the second order, in addition to what the law requires it pay
27 toward the amount due for two and one-half years of non-payment,
28 amounts to a substantial amount it will not get back if the

1 district court should reverse the appeals officer. Reno argues
2 that because it can never recoup these amounts should it be
3 successful on appeal, it will be irreparably harmed if it
4 continues payments to Laura DeMaranville. Our State Supreme
5 Court has considered that argument in the past, and rejected it.

6 In Ransier v. State Indus. Ins. Sys., 104 Nev. 742, 766
7 P.2d 274 (1988), the Nevada Supreme Court considered a district
8 court's review of an appeals officer's ruling apportioning the
9 amount owing on a workers' compensation claim. The Court upheld
10 the appeals officer's decision which would have reduced the lump
11 sum amount the insurer paid to the injured worker. The Court
12 then turned its attention to the insurer's argument that it
13 should be able to recoup any amounts paid to the claimant before
14 the Court determined it paid more than the law required. The
15 claimant contended the insurer could not recoup the payment
16 absent any statutory authority. The Court recognized the burden
17 on insurers and employers to promptly pay benefits but the Court
18 refused to "justify the inclusion of a new cause of action" in
19 the workers' compensation statutes by which recoupment could be
20 justified. Id. at 746. The Court acknowledged the duty of
21 employers and insurers to pay workers' compensation claims
22 promptly despite the risk that an overpayment could be determined
23 later after appeal. Still, the Court determined that is a risk
24 insurers and employers undertake under Nevada's Industrial
25 Insurance Act. The Court reached this conclusion only after
26 review of decisions in other states reaching a similar
27 conclusion. Id. at 747 (Ftnt 4). See also, 8 Lex K. Larson,
28 Larson's Workers' Compensation Law § 130.08[4] (2003) (Matthew

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

1 Bender, Rev. Ed.) (federal district courts in California,
2 Massachusetts, and New York have ruled that the prospect of not
3 being able to recover payments made to a claimant was not in
4 itself a sufficient showing of irreparable damage).

5 Payment which the appeals officer's decision of
6 December 10, 2015, requires of the City of Reno, even if it could
7 not be recouped, does not constitute irreparable harm. "[M]oney,
8 time and energy necessarily expended in the absence of a stay are
9 not enough to show irreparable harm." Hansen at 658, citing
10 Wisconsin Gas Co. v. Federal Energy Regulatory Com., 244 U.S.
11 App. D.C. 349, 758 F. 2d 669, 674 (D.C. Cir. 1985) (quoting
12 Virginia Petroleum Jobbers Assn. v. Federal Power Com'n., 104
13 U.S. App. D.C. 106, 259 F.2d 921, 925 (D.C. Cir. 1958)). When a
14 self-insured employer elects to accept the benefits of the
15 Industrial Insurance Act it must also assume the burdens.
16 Department of Indus. Relations v. Circus Circus Enterprises, 101
17 Nev. 405, 411, 705 P.2d 645 (1985). "[T]he self-insured employer
18 cannot properly delay payment, thereby 'starving out' its injured
19 employee and violating the public policy established in our
20 workers' compensation scheme." *Id.* at 411-412. "The injured
21 employee must not be forced to survive on no income for whatever
22 time the employer may expend in pursuing the appeal process."
23 *Id.* at 412.

24 Widow's irreparable harm if stay is denied.

25 The irreparable harm to Laura DeMaranville is obvious-
26 despite having a compensable claim she will receive nothing if
27 the stay is granted. On the strength of its novel legal analysis
28 discussed below, Reno seeks to pay the woman zero each month even

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

1 if the claim is ultimately upheld as compensable in the first
2 petition for judicial review which it filed in 2015.

3 In the three and one-half years since Daniel
4 DeMaranville died Reno has paid his widow monthly benefits for a
5 period of one year, and that is at a level already determined to
6 be insufficient under the law. It is not the City of Reno that
7 will suffer irreparable harm or serious injury if the request for
8 stay is denied and Laura DeMaranville receives benefit payments.
9 It is the continuing harm suffered by the widow if benefit
10 payments stop that deserves the appeals officer's consideration
11 when deciding Reno's motion for stay.

12 Likelihood of success on the merits.

13 In its petition for judicial review Reno claims that
14 the December 10, 2015, decision is affected by error of law and
15 is clearly erroneous, arbitrary and capricious. In its motion
16 for stay Reno elaborates. Although the appeals officer followed
17 the statutory law (NRS 616C.441), Reno argues the appeals
18 officer's error and capriciousness came when she failed to adopt
19 Reno's position that its reliance on the Nevada Administrative
20 Code controls which point in the decedent's life the employer
21 should use to calculate earnings for death benefits. According
22 to Reno's motion, the regulations promulgated by staff with the
23 Division of Industrial Relations (DIR) should control over the
24 statute enacted by the legislature and approved by the Governor.

25 Reno argues the appeals officer overlooked two
26 conflicting regulations of DIR, NAC 616C.435 and NAC 616C.441,
27 and ignored Reno's interpretation around the conflict, before
28 ruling against Reno and concluding wages earned on the date of

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

1 disablement should be used to calculate average monthly wage.
2 Reno posits that Nevada's Occupational Diseases Act mandates
3 wages earned from the employment "causing" the disease are the
4 wages used to calculate benefits under the Act, and presumes
5 Daniel DeMaranville's heart disease was "caused" while serving
6 with the Reno police department before retirement in 1990. The
7 authority cited by Reno, Howard v. City of Las Vegas, 121 Nev.
8 691, 120 P.3d 410 (2005), does not support its position. In
9 Howard the Court held a retired fireman was not entitled to
10 temporary disability payments because such payments are a
11 substitute for wages, and the claimant in that case had no wages
12 because he was retired. Howard does not stand for the
13 proposition that the widow of a deceased heart/lung claimant
14 under the Act is not entitled to death benefits just because the
15 municipality that once employed him was no longer paying him
16 wages at the date of death.

17 Reno's appeal appears to be based on the novel argument
18 that administrative regulations should overrule statutes. In
19 order for the district court to grant Reno's petition for
20 judicial review Reno must establish the appeals officer's
21 decision was invalid pursuant to NRS 233B.135. The decision of
22 the appeals officer is deemed reasonable and lawful until and
23 unless Reno proves the effect of this alleged error of law, or
24 the decision is characterized by an abuse of discretion. See NRS
25 233B.135(2) and (3)(d) and (f). Even in instances where the
26 appeals officer is implying provisions that are not expressly set
27 out in the Industrial Insurance Act, our Supreme Court has upheld
28 the appeals officer's decision. See Southwest Gas Corp. v.

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

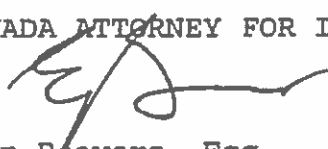
1 Woods, 108 Nev. 11, 15, 823 P.2d 288 (1992). At this juncture in
2 the proceedings, the likelihood of Reno's success on the merits
3 of its petition for judicial review is not apparent, much less
4 likely.

5 CONCLUSION

6 The extraordinary remedy of a stay requires the party
7 seeking judicial review to demonstrate the risk to the object of
8 the appeal if stay is not granted, as well as the respective harm
9 to the parties and the likelihood of success before the district
10 court. The City of Reno has not shown that it will likely
11 prevail on the merits, and the other elements necessary to
12 succeed with its motion for stay may therefore be moot. A full
13 analysis of those elements, however, removes Reno's motion from
14 favorable review. The Motion for Stay Order Pending Judicial
15 Review should be denied.

16 Respectfully submitted this 21st day of January,
17 2016.

18 NEVADA ATTORNEY FOR INJURED WORKERS

19 
20 Evan Beavers, Esq.,
21 Attorney for the Claimant,
22 Laura DeMaranville
23
24
25
26
27
28

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

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 deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing OPPOSITION TO MOTION FOR STAY addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

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: January 21, 2016

SIGNED: Darcy L. Shewood

THIS PAGE INTENTIONALLY BLANK

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

1 Evan Beavers, Esq.
Nevada Bar No. 3399
2 1000 East William Street, Suite 208
Carson City, Nevada 89701
3 (775) 684-7555

4 Attorney for Respondent Laura DeMaranville

REC'D & FILED

2016 JAN 25 PM 3:13

SUSAN HERRIWETHER
CLERK

BY V. Alegria
DEPUTY

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 Petitioner,

11 vs.

CASE NO. 16 OC 00003 1B

DEPT. NO. II

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

15 Respondents.
16 _____/

18 STATEMENT OF INTENT TO PARTICIPATE

19 Comes now, Laura DeMaranville, surviving spouse of
20 Respondent 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 submits this Statement
23 of Intent to Participate in the review process regarding the
24 Petition for Judicial Review filed by Petitioner on January 8,
25 2016. This Statement of Intent to Participate is made pursuant
26 to and based upon NRS 233B.130(3).

27 //


28 //

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

1 Respondent Laura DeMaranville does not, by filing this
2 statement of intent, waive any argument regarding jurisdiction or
3 any other defense available.

4 DATED this 21st day of January, 2016.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 
7 Evan Beavers, Esq.
8 Nevada Bar No. 3399
9 1000 East William Street, Suite 208
Carson City, Nevada 89701

10 Attorney for Respondent
11 Laura DeMaranville
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding: STATEMENT OF INTENT TO PARTICIPATE

filed in Case Number: 16 OC 00003 1B

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

01/22/2016
Date

Evan Beavers, Esq.
Nevada Attorney for Injured Workers

Attorney for Respondent
Laura DeMaranville

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

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 STATEMENT OF INTENT TO PARTICIPATE 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: January 25, 2016

SIGNED: Taney L. Sherwood

THIS PAGE INTENTIONALLY BLANK

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

2015 FEB -1 PM 1:35

* * * * *

RECEIVED
AND
FILED

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824

of

Hearing No: 52796-KD

DANIEL DEMARANVILLE (Deceased)

Appeal No: 53387-LLW

Claimant.

REPLY TO OPPOSITION TO MOTION FOR STAY

The City of Reno (City) respectfully submits the following points and authorities in reply to the claimant's opposition to the City's Motion for Temporary Stay Order:

I. ARGUMENT

As set forth in the City's stay motion, two primary issues must be addressed in deciding a stay motion brought under NRS 233B.140(2): the likelihood of success on the merits and irreparable harm.

1. Likelihood of Success on the Merits:

The City contends it is likely to prevail on the merits of its petition for judicial review because the Appeals Officer Decision overlooks specific regulations that define "earnings" for the purposes of determining average monthly wage. Those regulations define "earnings" to be the earnings receive from employment in which the injury occurs. The Appeals Officer Decision is silent with respect to these regulations and the impact they have on the issue presented in the appeal.

In its opposition to the stay motion, the Claimant argues the City is not likely to prevail on its petition because the regulations conflict with NRS 616C.411. However, as set forth in the City's stay motion, the regulations and the statute can be interpreted in a manner that does not conflict and, in fact, gives affect to both the statute and the regulations. The City respectfully

1 submits it will prevail on its petition because the Appeals Officer Decision does not address
2 these regulations and the impact they have on the issues presented in this appeal.

3 2. Irreparable Harm:

4 In absence of a stay order, the City suffers irreparable harm. It cannot recoup benefits
5 paid to the claimant while the petition for judicial review is pending. There is no legal remedy
6 available to the City by which it can recover the benefits paid to the claimant should it prevail on
7 the petition for judicial review. That constitutes irreparable harm.

8 In contrast, the claimant suffers little harm if a stay order is entered. The claimant would
9 continue to receive the benefits currently being paid at the wage rate Mr. DeMaranville was
10 earning on the date of his retirement from the City. The event the claimant ultimately prevails on
11 the petition for judicial review, payment of any benefits stopped by a stay order would have to be
12 paid with interest. Thus, should the claimant prevail on the petition, she recovers all benefits that
13 would have been payable and suffers little harm other than the delay in obtaining those benefits.

14 II. CONCLUSION

15 The City respectfully submits the Appeals Officer Decision is affected by error of law
16 because it overlooks administrative regulations directly applicable to the issues in dispute in this
17 matter. In absence of a stay order the City will be required to pay benefits that cannot recouped
18 and will suffer irreparable harm as a result. Under these circumstances a stay order is warranted
19 and should be issued by the Appeals Officer.

20 Dated this 1st day of February, 2016.

21 MCDONALD CARANO WILSON LLP

22
23 By J.E. Rowe
24 TIMOTHY E. ROWE, ESQ.
25 P. O. Box 2670
26 Reno, Nevada 89505-2670
27 Attorneys for the Employer
28

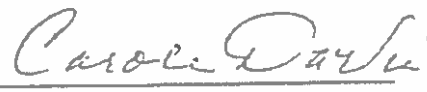
1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO WILSON LLP, and that on the 1st day of ^{February} ~~January~~, 2016, I served the within
4 REPLY TO OPPOSITION TO MOTION FOR STAY by sending a true and correct copy via
5 U.S. mail to the following parties:

6 Evan Beavers, Esq.
7 Nevada Attorney for Injured Workers
8 1000 E. William St., #208
9 Carson City, NV 89701

10 Mark S. Sertic, Esq.
11 Sertic Law Ltd.
12 5975 Home Gardens Dr.
13 Reno, NV 89502

14 CCMSI
15 Attn: Lisa Jones
16 P.O. Box 20068
17 Reno, NV 89515-0068

18 
19 Carole Davis

20
21
22
23
24
25
26
27 439843
28

McDONALD-CARANO-WILSON LLP

100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 20068 • RENO, NEVADA 89515-0068
PHONE 775 786-2100 • FAX 775 786-2600

THIS PAGE INTENTIONALLY BLANK

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

FILED

FEB 03 2016

DEPT. OF ADMINISTRATION
APPEALS OFFICER

5
6 In the Matter of the Contested
7 Industrial Insurance Claim of:

} Claim No: 12853C301824

} Hearing No: 52796-KD

} Appeal No: 53387-LLW

8
9 DANIEL DEMARANVILLE, DECEASED,

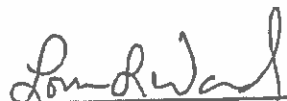
10 Claimant.
11

12 **ORDER**

13 The City of Reno filed its Motion for Stay Order Pending Judicial
14 Review on January 6, 2016. The Claimant filed her Opposition on January 21,
15 2016. The City of Reno filed its Reply on February 1, 2016.

16 After careful consideration, the Motion for Stay Order Pending
17 Judicial Review is DENIED.

18 **IT IS SO ORDERED.**

19
20 

21 LORNA L WARD
22 APPEALS OFFICER
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

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

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

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

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

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

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

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 3rd day of February, 2016.

28 

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

THIS PAGE INTENTIONALLY BLANK

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

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 EMPLOYERS INSURANCE COMPANY OF
NEVADA,
10

11 Petitioner

12 vs.

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

Respondents.
17 _____/

18 MOTION TO DISMISS

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

25 //

26 //

27 //

28 //

CASE NO. 16OC0003 1B

DEPT. NO. CITY

REC'D & FILED
2016 FEB - 3 PM 4:23
SUSAN HERNANDEZ
CLERK
C. CRIBBLE

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

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

4 DATED this 2nd day of February, 2016.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

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

12 Attorney for Respondent
13 Laura DeMaranville
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 POINTS AND AUTHORITIES

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

11 Background

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

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

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

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

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

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

10 Legal Argument

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

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

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

17 Conclusion

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

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

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

8 NEVADA ATTORNEY FOR INJURED WORKERS

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



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
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

2/2/2016
Date

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

CERTIFICATE OF SERVICE

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

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

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

DATED: February 3, 2016

SIGNED: Taney L. Sherwood

EXHIBIT LIST

Exhibit No.	Description	Number of Pages (incl Exhibit No. page)
Exhibit 1	Petition for Judicial Review - 1 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

EXHIBIT 1

12

EXHIBIT 1

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

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

11 * * * * *

12 CITY OF RENO,

13 Petitioner,

Case No:

14 vs.

Department No:

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

19 Respondents.
20 _____/

21 PETITION FOR JUDICIAL REVIEW

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

28 The grounds upon which this review is sought are:

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

a. affected by error of law;

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

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

WHEREFORE, Petitioner prays as follows:

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

Dated this 12th day of April, 2015.

MCDONALD CARANO WILSON LLP

By: T. E. Rowe

TIMOTHY E. ROWE, ESQ.

P. O. Box 2670

Reno, NV 895005-2670

Attorneys for the Petitioner

CITY OF RENO

AFFIRMATION

Pursuant to NRS 239B.030

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

T. E. Rowe
Timothy E. Rowe, Esq.
Attorney for Petitioner
CITY OF RENO

Date 4-13-15

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the on the 14th day of April 2015, I served the preceding **PETITION FOR JUDICIAL REVIEW** by placing a true and correct copy thereof in a sealed envelope and requesting Reno-Carson Messenger Service hand-deliver said document to the following party at the address listed below:

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


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

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

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

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

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



Carole Davis

#416656 [cw4/2/15]

INDEX OF EXHIBITS

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

 MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2610 • RENO, NEVADA 89505-1610
PHONE 775-789-2000 • FAX 775-789-2010

EXHIBIT 1

EXHIBIT 1

RECEIVED

MAR 20 2015

McDonald Carano Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

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

FILED

MAR 18 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 12853C301824
1990204572

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

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

DANIEL DEMARANVILLE, DECEASED,
Claimant.

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

DECISION OF THE APPEALS OFFICER

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

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

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

6 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

12 Review of Expert Medical Opinions

13 Jay E. Betz, M.D.

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 The Claimant became entitled to compensation on the date of his
19 disablement, August 5, 2012, and the responsible insurer on that date was the self-
20 insured City of Reno.
21
22
23
24
25
26
27

28 ³ Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024 (2006).

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

10 EVAN BEAVERS, ESQ
11 1000 E WILLIAM #208
12 CARSON CITY NV 89701

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

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

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

20 MARK SERTIC, ESQ
21 5975 HOME GARDENS DRIVE
RENO NV 89502

22
23 Dated this 19th day of March, 2015.

24 
25 _____
26 Kristi Fraser, Legal Secretary II
27 Employee of the State of Nevada
28

EXHIBIT 2

EXHIBIT 2

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITY OF RENO,

Petitioner,

Case No. 150C000921B

vs.

Department No: II

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

Respondents.

EMPLOYERS INSURANCE COMPANY
OF NEVADA

Cross-Petitioner,

vs.

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

Cross-Respondents,

CROSS-PETITION FOR JUDICIAL REVIEW

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

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

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

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

16
17 WHEREFORE, Cross-Petitioner prays as follows:

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

22
23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 DATED this 17th day of April, 2015.

2 SERTIC LAW LTD.

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

10 AFFIRMATION

11 Pursuant to NRS 239B.030

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

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

17
18 [Signature]
19 Mark S. Sertic

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd.,
3 Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the
4 17th day of April, 2015, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true
5 copy of the foregoing or attached document, addressed to:

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

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

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

18 
19 Gina L. Walsh
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

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

EXHIBIT 1

EXHIBIT 1

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

FILED

MAR 18 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

5
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

8
9
10
11 DANIEL DEMARANVILLE, DECEASED,
12 Claimant.
13

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

10 the Court held:

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

18 The Claimant became entitled to compensation on the date of his
19 disablement, August 5, 2012, and the responsible insurer on that date was the self-
20 insured City of Reno.


21
22
23
24
25
26
27
28 ³ Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024
(2006).

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

1 DECISION

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

8
9 IT IS SO ORDERED.

10
11 
12 Lorna L Ward
13 APPEALS OFFICER
14

15 Notice: Pursuant to NRS 233B.130, should any party desire to appeal this final
16 decision of the Appeals Officer, a Petition for Judicial Review must be filed with
17 the district court within thirty (30) days after service by mail of this decision.
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

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

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

10 EVAN BEAVERS, ESQ
11 1000 E WILLIAM #208
12 CARSON CITY NV 89701

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

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

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

20 MARK SERTIC, ESQ
21 5975 HOME GARDENS DRIVE
RENO NV 89502

22
23 Dated this 18th day of March, 2015.

24 
25 _____
26 Kristi Fraser, Legal Secretary II
27 Employee of the State of Nevada
28

EXHIBIT 3

EXHIBIT 3

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

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

12 *****

13 CITY OF RENO,

14 Petitioner,

Case No: CV16 - 00013

15 vs.

Department No: 8

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

22 Respondents.

23
24 PETITION FOR JUDICIAL REVIEW

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

The grounds upon which this review is sought are:

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

a. affected by error of law;

1 b. clearly erroneous in view of the reliable, probative and substantial
2 evidence on the whole record; and
3 c. arbitrary and capricious and based upon an abuse of discretion by the
4 Appeals Officer.

5 WHEREFORE, Petitioner prays as follows:

- 6 1. That the court grant judicial review of the decision filed on December 10,
7 2015 by the Department of Administration Appeals Officer;
8 2. That the court vacate and set aside the decision issued by the Appeals
9 Officer; and
10 3. For such other and further relief as the court deems just and proper.

11 Dated this 5th day of January, 2016.

12 McDONALD CARANO WILSON LLP

13
14 By: T. E. Rowe
15 TIMOTHY E. ROWE, ESQ.
16 P. O. Box 2670
17 Reno, NV 89505-2670

18 Attorneys for the Petitioner,
19 CITY OF RENO

20 AFFIRMATION

21 Pursuant to NRS 239B.030

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

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

1-5-16
Date

McDONALD-CARANO-WILSON:
100 WEST HURLEY STREET, 10TH FLOOR, SUITE 1000, RENO, NEVADA 89501
P.O. BOX 2400 - RENO, NEVADA 89501
PHONE 775.785.1000 - FAX 775.785.1001

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the on the 5th day of January, 2016, I served the preceding *PETITION FOR JUDICIAL REVIEW* by placing a true and correct copy thereof in a sealed envelope and requesting Reno-Carson Messenger Service hand-deliver said document to the following party at the address listed below:

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

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

Evan Beavers, Esq.
Nevada Attorneys for Injured Workers
1000 E. William St., #208
Carson City, NV 89701

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

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

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


Carole Davis

#437523

McDONALD-CARANO-WILSON
100 WEST LEXINGTON STREET, 14TH FLOOR - SUITE 1400, NEW YORK, NY 10036
TEL: 212-312-1000 • FAX: 212-312-1001
WWW.MCDONALD-CARANO-WILSON.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Decision of the Appeals Officer	7

FILED
Electronically
2016-01-05 11:45:54 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5305147 : yvitoria

EXHIBIT 1

EXHIBIT 1

RECEIVED

DEC 10 2015

McDonald Caplan Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

Hearing No.: 52796-KD

of

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

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

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

NEVADA ATTORNEY FOR INSURANCE MATTERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2030

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

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

NEVADA ATTORNEY FOR IMPAIRED DRIVERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2280 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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).

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

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 //

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-3830

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

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

23 //
24 //
25 //
26 //
27 //
28 //

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

1 ORDER

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

5 DATED this 10th day of December, 2015.


6 APPEALS OFFICER

7
8 
9 LORNA L. WARD

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

15 Submitted by:

16 NEVADA ATTORNEY FOR INJURED WORKERS

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

CERTIFICATE OF MAILING

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

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

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

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

TIMOTHY ROWE, ESQ
PO BOX 2670
RENO NV 89505

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

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

MARK SERTIC, ESQ
5975 HOME GARDENS DRIVE
RENO NV 89502

CCMSI
PO BOX 20068
RENO NV 89515-0068

Dated this 10th day of December, 2015.



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

EXHIBIT 4

EXHIBIT 4

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER
3
4

5 In the matter of the Industrial
6 Insurance Claim
7 of
8 Daniel Demaranville, Deceased,
9 Claimant.

Claim No.: 12853C301824
Hearing No.: 52796-KD
Appeal No.: 53387-LLW

10
11 MOTION TO INTERVENE AND/OR FOR JOINDER

12 Employers Insurance Company of Nevada hereby moves for an
13 Order allowing it to intervene in this matter or alternatively
14 joining it in this matter. This motion is made and based on the
15 pleadings and papers on file herein and the following Points and
16 Authorities.

17 DATED this 31st day of August, 2015.

18 SERTIC LAW LTD.

19
20 By: Mark S. Sertic
21 MARK S. SERTIC, ESQ.
22 5975 Home Gardens Drive
23 Reno, Nevada 89502
24 (775) 327-6300
25 Attorneys for
26 Employers Insurance Company
27 of Nevada
28

1
2 POINTS AND AUTHORITIES

3 This is an appeal by the Claimant, (Laura DeMaranville, the
4 widow of Mr. DeMaranville), from the Hearing Officer's Decision
5 dated June 24, 2015 which affirmed the City of Reno's determination
6 of April 15, 2015 regarding the calculation of monthly benefits.

7 The Claimant filed claims against both the City of Reno under
8 its self-insured plan and Employers Insurance Company of Nevada,
9 ("Employers"). The claims were filed under the police officer's
10 heart disease statute, NRS 617.457. Mr. DeMaranville worked as a
11 police officer for the City of Reno, retiring in 1990. On August 5,
12 2012 Mr. DeMaranville died after undergoing gall bladder surgery.
13 The City was insured by Employers until 1992 when it became self-
14 insured. In a Decision dated March 18, 2015 the Appeals Officer
15 found that Mr. DeMaranville died as the result of heart disease,
16 that his heart disease was a compensable occupational disease
17 pursuant to NRS 617.457, and that full liability for the claim
18 rests with the City of Reno under its self-insurance plan. The City
19 has filed a Petition for Judicial Review which in part seeks a
20 reversal of the assignment of liability for the claim to the City.
21 Meanwhile, the City is administering the claim, and in that role,
22 issued the determination on appeal herein which established the
23 Claimant's monthly benefit amount.

24 Employers is not a party to this appeal. While the Hearing
25 Officer did allow it to attend the hearing and therefore it has
26 been included on the Certificate of Mailing from the Appeals
27 Officer it is neither the issuer nor recipient of the determination
28 on appeal. However, Employers does have an interest in this matter

1 since: (1) There is at least a possibility that the determination
2 assigning liability for the claim to the City could be overturned
3 on appeal; and, (2) In that event an argument might be raised that
4 the amount of the benefits as determined in this proceeding is
5 binding upon Employers.

6 NRCP 24(b) provides:

7
8 Upon timely application anyone may be permitted to
9 intervene in an action: (1) when a statute confers a
10 conditional right to intervene; or (2) when an applicant's
11 claim or defense and the main action have a question of law or
12 fact in common. In exercising its discretion the court shall
13 consider whether the intervention will unduly delay or
14 prejudice the adjudication of the rights of the original
15 parties.

16
17 There are common questions of law and fact involved here with
18 respect to the appropriate amount of any benefits to which the
19 Claimant may be entitled. Therefore, Employers should be allowed to
20 intervene in this matter.

21 NRCP 19(a) provides in part:

22
23 A person who is subject to service of process and whose
24 joinder will not deprive the court of jurisdiction over the
25 subject matter of the action shall be joined as a party in the
26 action if (1) in the person's absence complete relief cannot
27 be accorded among those already parties, or (2) the person
28 claims an interest relating to the subject of the action and
is so situated that the disposition of the action in the
person's absence may (i) as a practical matter impair or
impede the person's ability to protect that interest or (ii)
leave any of the persons already parties subject to a
substantial risk of incurring double, multiple, or otherwise
inconsistent obligations by reason of the claimed interest.

29 Joinder of Employers into this action is appropriate as there
30 are common questions of law or fact relating to the appropriate

1 amount of any benefit to which the Claimant might be entitled and
2 EICON's participation in this action is necessary in order to
3 protect its interests.

4 Therefore, Employers respectfully requests that it be allowed
5 to intervene in this action, or alternatively that it be joined
6 into this action.

7 DATED this 31st day of August, 2015.

9 SERTIC LAW LTD.

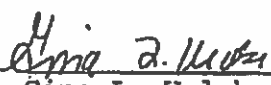
10 By: Mark S. Sertic
11 MARK S. SERTIC, ESQ.
12 5975 Home Gardens Drive
13 Reno, Nevada 89502
14 (775) 327-6300
15 Attorneys for
16 Employers Insurance Company
17 of Nevada
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 15th day of ~~August~~^{September}, 2015, I served by U.S. mail, a true copy of the foregoing or attached document, addressed to:

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

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


Gina L. Walsh

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm to the best of his knowledge that the attached document does not contain the social security number of any person.

Dated on this 31st day of August, 2015.


Mark S. Sertic

EXHIBIT 5

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

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

FILED

SEP 2 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

} Claim No: 12853C301824

} Hearing No: 52796-KD


} Appeal No: 53387-LLW

DANIEL DEMARANVILLE, DECEASED,
Claimant.

ORDER

The Employers Insurance Company of Nevada (EICN) is hereby
joined as an indispensable party to this action. The parties shall serve EICN with
all pleadings and evidence within ten days of the date of this Order.

IT IS SO ORDERED.



LORNA L WARD
APPEALS OFFICER

1 CERTIFICATE OF MAILING

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

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

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

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

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

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

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 2nd day of September, 2015.

28 

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

EXHIBIT 6

EXHIBIT 6

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

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

12 *****

13 EMPLOYERS INSURANCE COMPANY
14 OF NEVADA,

15 Petitioner,

Case No.

16 vs.

Department No:

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

21 Respondents.
22 _____ /

23 **PETITION FOR JUDICIAL REVIEW**

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

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

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

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

8 WHEREFORE, Petitioner prays as follows:

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

14 DATED this 7th day of January, 2016.

15 SERTIC LAW LTD.

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

21 **AFFIRMATION**

22 Pursuant to NRS 239B.030

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

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

26 Mark S. Sertic
27 Mark S. Sertic
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd., Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the 27th day of January, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

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

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

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

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

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

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


Gina L. Walsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

Exhibit #	Description	# of Pages
Exhibit 1	Decision of Appeals Officer	7

EXHIBIT 1

EXHIBIT 1

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

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

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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 //

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

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

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

23 //

24 //

25 //

26 //

27 //

28 //

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

ORDER

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

DATED this 10th day of December, 2015.


APPEALS OFFICER


LORNA L WARD

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

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


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

1 **CERTIFICATE OF MAILING**

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

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

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

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

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

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

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 10th day of December, 2015.

28 

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

EXHIBIT 7

EXHIBIT 7

1 CODE: \$3550
2 MARK S. SERTIC, ESQ.
3 SERTIC LAW LTD.
4 Nevada Bar No.: 403
5 5975 Home Gardens Drive
6 Reno, Nevada 89502
7 Telephone: (775) 327-6300
8 Facsimile: (775) 327-6301
9 *Attorneys for Respondent/Cross-Petitioner*
10 *Employers Insurance Company of Nevada*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CITY OF RENO,

Petitioner,

Case No. CV16-00013

vs.

Department No: 8

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

Respondents.

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Cross-Petitioner,

vs.

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

Cross-Respondents,

CROSS-PETITION FOR JUDICIAL REVIEW

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

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

17 WHEREFORE, Cross-Petitioner prays as follows:

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 DATED this 11th day of January, 2016.

2 SERTIC LAW LTD.

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

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030

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

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

17
18 Mark S. Sertic
19 Mark S. Sertic

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCF 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd.,
3 Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the
4 18th day of January, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a
5 true copy of the foregoing or attached document, addressed to:

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

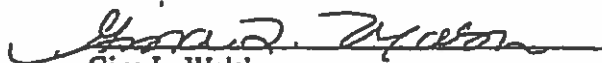
10 NAIW
11 Evan Beavers, Esq.
12 1000 E William Street #208
13 Carson City, Nevada 89701

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

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

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

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

28 
Gina L. Walsh

1

INDEX OF EXHIBITS

2

Exhibit #

Description

of Pages

3

Exhibit 1

Decision of Appeals Officer

7

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT 1

EXHIBIT 1

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 200
Las Vegas, NV 89102 (702) 486-2830

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

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

23 //

24 //

25 //

26 //

27 //

28 //

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

1 ORDER

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

5 DATED this 10th day of December, 2015.


6 APPEALS OFFICER

7 
8 LORNA L. WARD
9

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

15 Submitted by:

16 NEVADA ATTORNEY FOR INJURED WORKERS

17 
18 Evan Beavers, Esq.
19 1000 East William St., #208
20 Carson City, Nevada 89701
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

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

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

12 NAIW
13 1000 E WILLIAM #208
14 CARSON CITY NV 89701

15 CITY OF RENO
16 ATTN ANDRENA ARREYGUE
17 PO BOX 1900
18 RENO, NV 89505

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

22 LESLIE BELL
23 RENO POLICE PROTECTIVE ASSOCIATION
24 PO BOX 359
25 RENO NV 89504

26 EMPLOYERS INSURANCE COMP OF NV
27 PO BOX 539004
28 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 8

EXHIBIT 8

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89507-2670
PHONE 775-788-2000 • FAX 775-788-2020

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

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

13 EMPLOYERS INSURANCE COMPANY
14 OF NEVADA,

15 Petitioner,

16 vs.

17 DANIEL DEMARANVILLE [Deceased],
18 LAURA DEMARANVILLE, an individual,
19 THE CITY OF RENO, and THE NEVADA
20 DEPARTMENT OF ADMINISTRATION
21 APPEALS OFFICER,

22 Respondent.

23 CITY OF RENO,

24 Cross-Petitioner,

25 vs.

26 DANIEL DEMARANVILLE [Deceased],
27 LAURA DEMARANVILLE, an individual,
28 EMPLOYER'S INSURANCE COMPANY OF
NEVADA, and THE NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,

Cross-Respondents.

Case No: 160C000031B

Dept. No: II

CROSS-PETITION FOR JUDICIAL REVIEW

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

McDONALD-CARANO-WILSON
100 WEST 11TH STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE: 775-788-2000 • FAX: 775-788-1020

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

The grounds upon which this review is sought are:

1. The Decision rendered by the Appeals Officer prejudices substantial rights of the Petitioner because it is:
 - a. affected by error of law;
 - b. clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
 - c. arbitrary and capricious and based upon an abuse of discretion by the Appeals Officer.

WHEREFORE, Petitioner prays as follows:

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

DATED this 19th day of January 2016.

McDONALD CARANO WILSON LLP

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

AFFIRMATION

Pursuant to NRS 239B.030

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

Dated this 19th day of January 2016.

J. E. Rowe
Timothy E. Rowe, Esq.

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89701
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE: 775-788-2000 • FAX: 775-788-2040

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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


Carole Davis

#438616[cw1/15/16]

EXHIBIT LIST

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

McDONALD • CARANO • WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-786-2000 • FAX 775-786-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

RECEIVED

DEC 10 2015

McDonald Caputo Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

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

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

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

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

23 //

24 //

25 //

26 //

27 //

28 //

1 ORDER

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

5 DATED this 10th day of December, 2015.


6 APPEALS OFFICER

7 
8 LORNA L WARD
9

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

15 Submitted by:

16 NEVADA ATTORNEY FOR INJURED WORKERS

17 
18 Evan Beavers, Esq.
19 1000 East William St., #208
20 Carson City, Nevada 89701
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

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

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

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

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

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

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

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 10th day of December, 2015.

28 

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

EXHIBIT 9

EXHIBIT 9

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranch Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

1 Evan Beavers, Esq.
Nevada Bar No. 3399
2 1000 East William Street, Suite 208
Carson City, Nevada 89701
3 Attorney for Respondent Daniel DeMaranville
4
5

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 EMPLOYERS INSURANCE COMPANY OF
NEVADA,

10 Petitioner,

CASE NO. 16 OC 00003 1B

11 vs.

DEPT. NO. II

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

15 Respondents.
16 _____/

17
18 ORDER GRANTING MOTION TO DISMISS

19 For good cause, Respondent's Motion to Dismiss is
20 hereby granted.

21 IT IS SO ORDERED.

22 DISTRICT COURT JUDGE
23
24 _____

25 Submitted by:
NEVADA ATTORNEY FOR INJURED WORKERS
26 Evan Beavers, Esq.
1000 E. William, Suite 213
27 Carson City, NV 89701
28

THIS PAGE INTENTIONALLY BLANK