

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 7 OF 8

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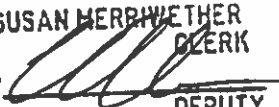
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

Case No. 16 OC 00003 1B

vs.

Department No: II

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

Respondents.

OPPOSITION TO MOTION TO DISMISS

Employers Insurance Company of Nevada, ("EICON"), by and through its attorney, Mark S.
Sertic, Esq., of Sertic Law Ltd., hereby files this Opposition to the Motion to Dismiss filed by
Respondent Laura DeMaranville.

Respondent seeks to have EICON's Petition for Judicial Review of the Appeals Officer's
Decision dated December 10, 2015, Appeal No. 53387-LLW, dismissed on the grounds that EICON
is not an "aggrieved party" pursuant to NRS 233B.130(1). As set forth below, this Motion is
specious and should be denied.

///

FACTS

The salient facts are as follows:

Daniel DeMaranville worked as a police officer for the City of Reno, ("City"), retiring in 1990. He died on August 5, 2012 after undergoing gallbladder surgery. Exhibit 1, page 2, lines 7-8; 13-23. Since 1992, and at the time of Mr. DeMaranville's death, the City of Reno was self-insured for workers' compensation purposes. Prior to 1992 and at the time of Mr. DeMaranville's retirement from the police force, the City was insured by EICON. Exhibit 1, p. 7, lines 16-19.

Respondent filed claims for death benefits under the police officer's heart disease statute with both the City and EICON. Both claims were denied. Exhibit 1, p. 2, lines 26-28; p. 3, lines 15-18. In her Decision of March 18, 2015 the Appeals Officer found that Respondent was entitled to benefits and determined that the City was responsible for the claim. Exhibit 1. The City filed a petition for judicial review of that determination and EICON filed a cross-petition for judicial review. That matter is pending in Case No. 15 0C 00092 1B in the First Judicial District Court. In that case, while both the City and EICON argue that there is no valid claim, the City is also contending that if the claim is valid, then EICON and not the City, should be responsible for the claim.

In the course of administering the claim, the City issued a determination as to the proper amount of the monthly benefit to which the Respondent is entitled. The Respondent appealed that determination and the matter ultimately came before the Appeals Officer. EICON moved to intervene in that appeal hearing. Exhibit 2. Respondent did not oppose that motion and the Appeals Officer granted it, thus making EICON a party to that proceeding. Exhibit 3. Both the City and EICON argued that the proper amount of monthly benefits under the claim should be zero since Mr. DeMaranville had retired from the police force twenty-two years prior to his death. The Appeals Officer issued her Decision of December 10, 2015 which reversed the City's determination and held

1 that the amount of the monthly benefits should be determined using the wages from Mr.
2 DeMaranville's unrelated employment at the time of his death. Exhibit 4.

3 EICON filed its Petition for Judicial Review in this court seeking review of that Decision.
4 The City filed a Cross-Petition for Judicial Review as well.

5 ARGUMENT

6 NRS 233B.130(1) provides in part:

- 7
- 8 1. Any party who is:
 - 9 (a) Identified as a party of record by an agency in an administrative proceeding; and
 - 10 (b) Aggrieved by a final decision in a contested case,
- 11 is entitled to judicial review of the decision.

12 There can be no dispute that EICON was a party to the administrative proceeding which
13 resulted in the Decision that is on review herein. EICON was joined as a party by the Appeals
14 Officer and participated in the proceeding, all without any objection by the Respondent. See Exhibit
15 5.

16 EICON is also clearly aggrieved by the Decision of the Appeals Officer. That Decision sets
17 forth the amount of the monthly benefit payable under the claim, an amount which EICON believes
18 to be incorrect. EICON is aggrieved by this Decision because the issue of whether the City or
19 EICON is ultimately liable for the claim, (if it is found to be a valid claim), has not been finally
20 resolved. While EICON believes that if there is a valid claim, liability therefor lies with the City, the
21 City disagrees and in Case No. 15 0C 00092 1B the City is arguing that any liability should lie with
22 EICON.


23
24 If liability for the claim is shifted to EICON then the City would undoubtedly seek
25 reimbursement from EICON for any amounts the City has paid under the claim, including those
26 amounts that are the subject of this proceeding. See, e.g. NRS 616C.165 and 616C.170. That alone
27 makes EICON an aggrieved party.
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 ~~17th~~ day of February, 2016, I deposited for mailing at Reno, Nevada, with postage fully prepaid, a true copy of the foregoing or attached document, addressed to:

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Gina L. Walsh

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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.

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.
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27 ³ Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024
28 (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.
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DANIEL DEMARANVILLE, DECEASED
C/O LAURA DEMARANVILLE
PO BOX 261
VERDI, NV 89439

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

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

MARK SERTIC, ESQ
5975 HOME GARDENS DRIVE
RENO NV 89502



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

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT. OF ADMINISTRATION
APPEALS DIVISION
APPEALS OFFICE

2015 SEP -1 PM 1:39

RECEIVED
AND
FILED

In the matter of the Industrial
Insurance Claim

of

Daniel Demaranville, Deceased,
Claimant.

Claim No.: 12853C301824

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

MOTION TO INTERVENE AND/OR FOR JOINDER

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

DATED this 31st day of August, 2015.

SERTIC LAW LTD.

By: Mark S. Sertic
MARK S. SERTIC, ESQ.
5975 Home Gardens Drive
Reno, Nevada 89502
(775) 327-6300
Attorneys for
Employers Insurance Company
of Nevada

POINTS AND AUTHORITIES

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

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

Employers is not a party to this appeal. While the Hearing Officer did allow it to attend the hearing and therefore it has been included on the Certificate of Mailing from the Appeals Officer it is neither the issuer nor recipient of the determination 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 There are common questions of law and fact involved here with
17 respect to the appropriate amount of any benefits to which the
18 Claimant may be entitled. Therefore, Employers should be allowed to
19 intervene in this matter.

20 NRCP 19(a) provides in part:

21 A person who is subject to service of process and whose
22 joinder will not deprive the court of jurisdiction over the
23 subject matter of the action shall be joined as a party in the
24 action if (1) in the person's absence complete relief cannot
25 be accorded among those already parties, or (2) the person
26 claims an interest relating to the subject of the action and
27 is so situated that the disposition of the action in the
28 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.


Joinder of Employers into this action is appropriate as there
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.

8
9 SERTIC LAW LTD.

10 By: 
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
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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 1st 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

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

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

FILED

SEP 2 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 Employers Insurance Company of Nevada (EICN) is hereby
14 joined as an indispensable party to this action. The parties shall serve EICN with
15 all pleadings and evidence within ten days of the date of this Order.

16 **IT IS SO ORDERED.**

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19 _____
20 LORNA L WARD
21 APPEALS OFFICER
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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing 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 2nd day of September, 2015.



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

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

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

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

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

28 //

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

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

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

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

9 *****

10 EMPLOYERS INSURANCE COMPANY
11 OF NEVADA,

12 Petitioner,

Case No. 160C000031B

13 vs.

Department No: II

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

17 Respondents.
18 _____ /

19 **PROPOSED ORDER**
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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 February, 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 
15 Gina L. Walsh

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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.

/

ORDER

The Respondent filed a Motion to Dismiss. The Petitioner filed an Opposition thereto.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the Motion to Dismiss is denied.

Dated: _____, 2016.

DISTRICT COURT JUDGE

1 Submitted by:
2 Mark S. Sertic
3 Nevada Bar No. 403
4 5975 Home Gardens Drive
5 Reno, Nevada 89502
6 (775) 327-6300
7 Attorneys for Petitioner
8 Employers Insurance Company of Nevada
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SUSAN MERRIMETHER
CLERK

BY [Signature]
DEPUTY

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

9
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 _____ /

24 CITY OF RENO,

25 Cross-Petitioner,

26 vs.

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

Cross-Respondents.

Case No: 160C000031B

Dept. No: II

JOINDER IN OPPOSITION TO MOTION TO DISMISS

The CITY OF RENO, by and through its attorney of record, Timothy E. Rowe, Esq., of McDonald Carano Wilson, LLP., hereby joins in the Opposition to Motion to Dismiss filed by EICON in this matter on February 17, 2016. The City of Reno incorporates by reference, the

1 argument presented by EICON in its opposition to the Motion as its argument in opposition to the
2 Motion to Dismiss.

3 DATED this 19th day of February, 2016.

4 McDONALD CARANO WILSON LLP

5
6 By: T.E. Rowe
7 Timothy E. Rowe, Esq.
8 P.O. Box 2670
9 Reno, Nevada 89505-2670
10 Attorneys for the CITY OF RENO

11 AFFIRMATION

12 Pursuant to NRS 239B.030

13 The undersigned does hereby affirm that the preceding *Joinder in Opposition to Motion*
14 *to Dismiss* does not contain the social security number of any person.

15 Dated this 19th day of February, 2016.

16 T.E. Rowe
17 Timothy E. Rowe Esq.

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CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano Wilson LLP and that on the 19th day of February 2016, I caused a copy of the preceding ***JOINDER IN OPPOSITION TO MOTION TO DISMISS*** to be served by depositing the same for mailing with the U.S. Postal Service, postage prepaid on the following parties:

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


Carole Davis

#4-11861

MCDONALD-CARANO-WILSON

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1 CODE : 4040
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 CITY OF RENO,

13 Petitioner,

Case No: CV16-00013

14 vs.

Department No: 8

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

21 Respondents.
22 _____/

23 **STIPULATION AND ORDER TO CHANGE VENUE**

24 The above-named parties, by and through their respective attorneys of record, hereby
25 stipulate and agree venue in the above entitled matter may be transferred to Department II of the
26 First Judicial District Court of the State of Nevada in and for Carson City.

27 The grounds for said stipulation are:

28 1. Pursuant to NRS 233B.130(2), venue in this matter is proper in either the Second
Judicial District Court or the First Judicial District Court.

2. The Employer's Insurance Company of Nevada (EICN) has also filed a petition for
judicial review seeking judicial review of the same Appeals Officer Decision that is at issue in
this petition for judicial review. EICN's petition was filed and is pending in Department 11 of the

1 First Judicial District Court.

2 3. There is also a separate petition for judicial review presently pending in Department II
3 of the First Judicial District Court that involves the same industrial insurance claim and parties as
4 this petition for judicial review. That petition presents issues closely related to the issues
5 presented in this petition for judicial review.

6 4. Changing venue to Department II the First Judicial District Court in this matter will
7 allow all of these related petitions for judicial review to be heard by the same court.

8 For the forgoing reasons, the parties to this petition for judicial review respectfully request
9 an Order of this Court changing venue in this matter to Department II the First Judicial District
10 Court of the State of Nevada, in and for Carson City.

11 **AFFIRMATION**
12 **Pursuant to NRS 239B.030**

13 The undersigned does hereby affirm that the preceding ***STIPULATION AND ORDER***

14 ///

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1 **TO CHANGE VENUE** filed in the Second Judicial District Court of the State of Nevada, does
2 not contain the social security numbers of any persons.

3 Dated this 22nd day of February, 2016 Dated this 19th day of February, 2016

4 McDONALD CARANO WILSON LLP NEVADA ATTORNEY FOR INJURED WORKERS

5
6 By: T.E. Rowe
7 TIMOTHY E. ROWE, ESQ.
8 P. O. Box 2670
9 Reno, NV 89505-2670
Attorneys for the Petitioner,
City of Reno

By: E. Beavers
EVAN BEAVERS, ESQ.
1000 E. William St., #208
Carson City, NV 89701
Attorneys for Respondent,
Laura DeMaranville

10 Dated this 22nd day of February, 2016

11 SERTIC LAW LTD.

12
13 By: Mark Sertic
14 MARK SERTIC, ESQ.
15 5975 Home Gardens Drive
16 Reno, Nevada 89502
Attorneys for Respondent/Cross Petitioner,
Employers Insurance Company of Nevada

17 **ORDER**

18 IT IS SO ORDERED this 23rd day of February, 2016.

19
20 W. S. Shindler
21 DISTRICT JUDGE
22
23
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27
28

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

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

REC'D & FILED
2016 FEB 26 PM 1:42
SUSAN MERRIWETHER
CLERK
BY C. Coops DEPUTY

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

9 EMPLOYERS INSURANCE COMPANY OF
10 NEVADA,

11 Petitioner

CASE NO. 16 OC 00003 1B

12 vs.

DEPT. NO. II

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 REPLY TO OPPOSITION TO 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 replies to the
23 opposition filed by Employers Insurance Company of Nevada in
24 which the City of Reno has joined.

25 This reply is based upon the points and authorities
26 which follow and all pleadings and all other papers and documents
27 on file in this matter.
28

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AFFIRMATION

The undersigned affirms, pursuant to NRS 239B.030, that
no personal identifying information appears in this document.

Respectfully submitted this ____ day of February, 2016.

NEVADA ATTORNEY FOR INJURED WORKERS

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

Attorney for Respondent,
Laura DeMaranville

NEVADA ATTORNEY FOR INJURED WORKERS
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2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-3830

As stated in Respondent's motion, NRS 233B.130 gives the district court jurisdiction to consider a petition for judicial review only if the party seeking review was aggrieved by the decision of the administrative law judge. EICON argues it is aggrieved by the decision of December 10, 2015, because it believes the amount of monthly benefit City was ordered to pay was incorrect; the issue as to which of the petitioners, EICON or City, is liable is still on review, and; City takes the position that ultimately the liability to Respondent should be on EICON. None of these allegations define EICON as an aggrieved party under NRS 233B.130 and the Nevada Administrative Procedure Act.

For EICON to fear that the amount City has been ordered to pay is incorrect simply makes EICON an interested, not an aggrieved, party. EICON alleges the existence of neither a personal right nor a right of property adversely and substantially affected by the appeals officer's decision. See Valley Bank v. Ginsburg, 96 Nev. 178, 180, 605 P.2d 1149 (1980). EICON's fears only become substantially affected rights if the district court affirms the appeals officer on review of the

1 previous decision filed March 18, 2015, as to the issue of
2 compensability but reverses the appeals officer as to the issue
3 of liability and determines EICON is responsible for paying
4 benefits to Laura DeMaranville. But EICON has already petitioned
5 this court to review that March decision, and for whatever reason
6 has not submitted its petition for decision even though briefing
7 completed months ago. In that petition for review EICON might be
8 an aggrieved party, but by no stretch of logic can EICON's fears
9 become reality in the petition for review that is the object of
10 Respondent's motion to dismiss.

11 EICON also argues the threat of City seeking reimbursement
12 of amounts City has paid if the March decision is reversed is
13 alone sufficient to make EICON an aggrieved party. EICON cites
14 to NRS 616C.165¹ which would allow an insurer initially paying
15 benefits to seek reimbursement from another insurer determined
16 truly liable after final resolution. However, if cutting off its
17 liability is such a concern as to make EICON "aggrieved" the
18 question must be asked why has it not already submitted its
19 petition for review on the March decision.

20 Lastly, EICON argues issue preclusion as explained in Ayala
21 v. Caesars Palace, 119 Nev. 232, 71 P.3d 490 (2003), would deny
22 it the right to contest a finding on the amount of benefit due
23 Respondent if its petition for review is dismissed. The
24

25
26 ¹EICON also cites to NRS 616C.175, but that statute has no
27 application here. This matter is not before the administrator of
28 the Division of Industrial Relations and the claimant is not
seeking benefits against more than one insurer. The claimant
successfully argued to the appeals officer that she is owed by
one insurer, the City of Reno.

1 authority cited has since been modified by our State Supreme
2 Court in Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d
3 709 (2008), where the Court clarifies the elements necessary for
4 application of the doctrines of issue preclusion and claim
5 preclusion. However, even if EICON could successfully argue
6 either doctrine applies to the facts at bar, the Supreme Court
7 has also determined petitions for judicial review are not
8 necessary in circumstances such as those raised by EICON in
9 opposition to Respondent's motion.

10 In University of Nevada v. Tarkanian, 110 Nev. 581, 879 P.2d
11 1180 (1994), the Court explained why a petition for judicial
12 review such as the one filed by EICON on the December decision is
13 not warranted. The December decision obligates City, not EICON,
14 to pay more in benefits to Laura DeMaranville. EICON admits that
15 "[b]oth the City and EICON argued that the proper amount of
16 monthly benefits under the claim should be zero."² Opposition to
17 Motion to Dismiss, page 2, lines 24-25. On this record EICON is
18 not an aggrieved party because it has not been ordered to pay
19 anything. Alternatively, its petition is superfluous in that it
20 is identical to the cross-petition filed in this matter by City-
21 both City and EICON will present, as they did below, the same
22 arguments. A successful party is not an aggrieved party and
23 cannot appeal. Id. at 602. A cross-appeal is not necessary to
24

25 ²EICON argues it joined the administrative proceedings on
26 the amount of payment due the claimant without objection. EICON
27 served its Motion to Intervene and/or for Joinder by mail on
28 September 1, 2015. Appeals Officer Ward entered an order joining
EICON as an indispensable party the next day. See Exhibits 4 and
5 to Motion to Dismiss.

NEVADA ATTORNEY FOR INJURED WORKERS
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1 assert arguments in support of judgment as entered, even if
2 alternative theories are raised. Id. at 603. EICON can withdraw
3 its petition, or the district court can dismiss the petition, and
4 EICON can still present its theory of why the appeals officer was
5 right or wrong in the proceedings on City's petition to review
6 the December decision.

7 CONCLUSION

8 EICON has not shown to be an aggrieved party as is necessary
9 for the district court to accept jurisdiction of EICON's Petition
10 for Judicial Review filed on or about January 7, 2016, regarding
11 the Decision and Order of Appeals Officer Ward filed December 10,
12 2015. Dismissal of the petition will not deprive EICON from
13 presenting its theories for review given that the City of Reno
14 has filed with the court its own cross-petition of the same
15 decision.

16 Respectfully submitted this 26th day of February, 2016.

17 NEVADA ATTORNEY FOR INJURED WORKERS

18 

19
20 Evan Beavers, Esq.
21 Nevada Bar No: 3399
22 1000 East William Street, Suite 208
23 Carson City, NV 89701
24 (775) 684-7555

25 Attorney for Respondent,
26 Laura DeMaranville
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 prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the within and foregoing REPLY TO OPPOSITION TO 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 26, 2016

SIGNED: Taney L. Sherwood

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1000 East William Street, Suite 208
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1 Evan Beavers, Esq.
Nevada Bar No. 3399
2 Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
Attorney for Respondent
4 Laura DeMaranville

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2016 MAR -1 PM 3: 04
SUSAN MERRIWETHER
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BY V. Alegria
DEPUTY

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

9 EMPLOYERS INSURANCE COMPANY OF
10 NEVADA,

11 Petitioner,

12 vs.

CASE NO. 16 OC 00003 1B

DEPT. NO. II

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

16 Respondents.
17 _____/

18 REQUEST FOR SUBMISSION OF MOTION TO DISMISS

19 It is requested that the Motion to Dismiss which was
20 filed on the 26th day of February, 2016, in the above-entitled
matter be submitted to the Court for decision.

21 //

22 //

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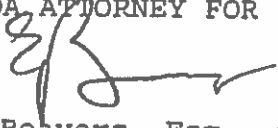
28 //

NEVADA ATTORNEY FOR INJURED WORKERS
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2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 The undersigned attorney certifies that a copy of this
2 request has been mailed to all counsel of record.

3 DATED this 29th day of February, 2016.

4 NEVADA ATTORNEY FOR INJURED WORKERS



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

10 Attorney for Respondent,
11 Laura DeMaranville

NEVADA ATTORNEY FOR INJURED WORKERS
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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 REQUEST FOR SUBMISSION OF 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: March 1, 2016

SIGNED: 

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2016 MAR 14 AM 8:56

399AN HERRIWETHER
CLERK

BY S. WILSON
DEPUTY

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

-o0o-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 15 OC 00092 1B

Dept. No. 2

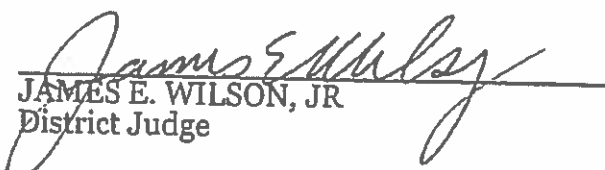
ORDER TO RESPOND REGARDING
CONSOLIDATING CASES

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Plaintiff on April 14, 2015. This action shares common questions of law and fact and the same parties as in case numbers 16 OC 00003 1B and 16 OC 00049 1B. The court is considering whether to consolidate these cases. The parties may inform the court as to their respective positions about consolidation.

IT IS ORDERED:

The parties file a statement regarding their respective positions about consolidation by March 22, 2016.

March 11, 2016.


JAMES E. WILSON, JR.
District Judge

CERTIFICATE OF SERVICE

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


Order to:

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

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

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

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


Gina Winder
Judicial Assistant

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2016 MAR 18 AM 8:35

SUSAN MERRIWETHER
CLERK

BY G. WINDER
DEPUTY

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

-o0o-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 16 OC 00049 1B

Dept. No. 2

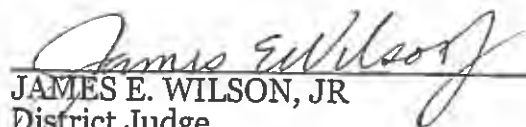
ORDER TO RESPOND REGARDING
CONSOLIDATING CASES

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Plaintiff on April 14, 2015. This action shares common questions of law and fact and the same parties as in case numbers 15 OC 00092 1B and 16 OC 00003 1B. The court is considering whether to consolidate these cases. The parties may inform the court as to their respective positions about consolidation.

IT IS ORDERED:

The parties file a statement regarding their respective positions about consolidation by March 22, 2016.

March 17, 2016.


JAMES E. WILSON, JR.
District Judge

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the First Judicial District Court, hereby certifies
3 that on the 18 day of March, 2016, I mailed a true and correct copy of the foregoing

4 Order to:

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

8 Mark Sertic, Esq.
9 5975 Home Gardens Drive
10 Reno, NV 89502

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

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

11
12 
13 _____
14 Gina Winder
15 Judicial Assistant
16
17
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2016 MAR 18 AM 8:35

SUSAN MERRIWETHER
CLERK

BY G. WINDER
DEPUTY

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

-o0o-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 16 OC 00003 1B

Dept. No. 2

ORDER TO RESPOND REGARDING
CONSOLIDATING CASES

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Plaintiff on April 14, 2015. This action shares common questions of law and fact and the same parties as in case numbers 15 OC 00092 1B and 16 OC 00049 1B. The court is considering whether to consolidate these cases. The parties may inform the court as to their respective positions about consolidation.

IT IS ORDERED:

The parties file a statement regarding their respective positions about consolidation by March 22, 2016.

March 17, 2016.


JAMES E. WILSON, JR.
District Judge

CERTIFICATE OF SERVICE

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 18 day of March, 2016, I mailed a true and correct copy of the foregoing

Order to:

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

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

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


Gina Winder
Judicial Assistant

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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 Cross-Petitioner*
9 *Employers Insurance Company of Nevada*

REC'D & FILED
2016 MAR 23 AM 11:00
SUSAN MERRIWETHER
CLERK
BY V. Alegria
DEPUTY

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

9 *****

10 CITY OF RENO,

11 Petitioner,

Case No. 16 OC 00049 1B

12 vs.

Department No: II

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

17 Respondents.
18 _____/

19 EMPLOYERS INSURANCE COMPANY
20 OF NEVADA,

21 Cross-Petitioner,

22 vs.

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

26 Cross-Respondents,
27 _____/

28 OPPOSITION TO MOTION TO DISMISS

Employers Insurance Company of Nevada, ("EICON"), by and through its attorney, Mark S.

1 Sertic, Esq., of Sertic Law Ltd., hereby files this Opposition to the Motion to Dismiss filed by
2 Respondent Laura DeMaranville. The Respondent's Motion was filed in the Second Judicial District
3 Court in Case No. CV16-00013, which case was transferred to the First Judicial District Court and
4 assigned Case No. 16 OC 00049 1B. That case was initiated by a Petition for Judicial Review filed
5 by the City of Reno. EICON filed a Cross-Petition for Judicial Review in that case. The
6 Respondent's Motion is directed at that Cross-Petition filed by EICON.
7

8 Respondent seeks to have EICON's Cross-Petition for Judicial Review of the Appeals
9 Officer's Decision dated December 10, 2015, Appeal No. 53387-LLW, dismissed on the grounds
10 that EICON is not an "aggrieved party" pursuant to NRS 233B.130(1). As set forth below, this
11 Motion is specious and should be denied.
12

13 FACTS

14 The salient facts are as follows:

15 Daniel DeMaranville worked as a police officer for the City of Reno, ("City"), retiring in
16 1990. He died on August 5, 2012 after undergoing gallbladder surgery. Exhibit 1, page 2, lines 7-8;
17 13-23. Since 1992, and at the time of Mr. DeMaranville's death, the City of Reno was self-insured
18 for workers' compensation purposes. Prior to 1992 and at the time of Mr. DeMaranville's retirement
19 from the police force, the City was insured by EICON. Exhibit 1, p. 7, lines 16-19.
20

21 Respondent filed claims for death benefits under the police officer's heart disease statute
22 with both the City and EICON. Both claims were denied. Exhibit 1, p. 2, lines 26-28; p. 3, lines 15-
23 18. In her Decision of March 18, 2015 the Appeals Officer found that Respondent was entitled to
24 benefits and determined that the City was responsible for the claim. Exhibit 1. The City filed a
25 petition for judicial review of that determination and EICON filed a cross-petition for judicial
26 review. That matter is pending in Case No. 15 OC 00092 1B in the First Judicial District Court. In
27 that case, while both the City and EICON argue that there is no valid claim, the City is also
28

1 contending that if the claim is valid, then EICON and not the City, should be responsible for the
2 claim.

3 In the course of administering the claim, the City issued a determination as to the proper
4 amount of the monthly benefit to which the Respondent is entitled. The Respondent appealed that
5 determination and the matter ultimately came before the Appeals Officer. EICON moved to
6 intervene in that appeal hearing. Exhibit 2. Respondent did not oppose that motion and the Appeals
7 Officer granted it, thus making EICON a party to that proceeding. Exhibit 3. Both the City and
8 EICON argued that the proper amount of monthly benefits under the claim should be zero since Mr.
9 DeMaranville had retired from the police force twenty-two years prior to his death. The Appeals
10 Officer issued her Decision of December 10, 2015 which reversed the City's determination and held
11 that the amount of the monthly benefits should be determined using the wages from Mr.
12 DeMaranville's unrelated employment at the time of his death. Exhibit 4.

13
14
15 The City of Reno filed a Petition for Judicial Review of that Decision in the Second Judicial
16 District Court as Case No. CV16-00013. EICON filed a Cross-Petition in that case. That case was
17 transferred to the First Judicial District Court and assigned Case No. 16 OC 00049 1B.

18 ARGUMENT

19 NRS 233B.130(1) provides in part:

- 20
21 1. Any party who is:
22 (a) Identified as a party of record by an agency in an administrative proceeding; and
23 (b) Aggrieved by a final decision in a contested case,
24 is entitled to judicial review of the decision.

25 There can be no dispute that EICON was a party to the administrative proceeding which
26 resulted in the Decision that is on review herein. EICON was joined as a party by the Appeals
27 Officer and participated in the proceeding, all without any objection by the Respondent. See Exhibit
28 5.

1 EICON is also clearly aggrieved by the Decision of the Appeals Officer. That Decision sets
2 forth the amount of the monthly benefit payable under the claim, an amount which EICON believes
3 to be incorrect. EICON is aggrieved by this Decision because the issue of whether the City or
4 EICON is ultimately liable for the claim, (if it is found to be a valid claim), has not been finally
5 resolved. While EICON believes that if there is a valid claim, liability therefor lies with the City, the
6 City disagrees and in Case No. 15 0C 00092 1B, pending in this Court, the City is arguing that any
7 liability should lie with EICON.
8

9 If liability for the claim is shifted to EICON then the City would undoubtedly seek
10 reimbursement from EICON for any amounts the City has paid under the claim, including those
11 amounts that are the subject of this proceeding. See, e.g. NRS 616C.165 and 616C.170. That alone
12 makes EICON an aggrieved party.
13

14 Additionally, EICON is aggrieved by the Appeals Officer's Decision because in the event
15 liability is shifted from the City to EICON, EICON will be bound by the determination as to the
16 amount of the benefits that are payable. EICON would be precluded from contesting that
17 determination in a subsequent proceeding due to the doctrine of issue preclusion. Issue preclusion
18 applies when the same issue that was decided in a prior action is presented in the current action;
19 there was a final decision on the merits; and, the party against whom the judgment is asserted was
20 the same party in the prior action. Ayala v. Caesars Palace, 119 Nev. 232, 236, note 6, 71 P.3d 490
21 (2003). Since EICON was a party to the underlying administrative proceeding it will be bound by
22 that determination. To deny EICON the right to contest that determination, as Respondent now seeks
23 to do, would deny EICON due process.
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For the foregoing reasons, the Motion to Dismiss should be denied.

DATED this 22nd day of March, 2016.

SERTIC LAW LTD.

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

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 22 day of March, 2016, 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 
15 Gina L. Walsh

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INDEX OF EXHIBITS

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EXHIBIT 1

EXHIBIT 1

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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. Gómez 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.

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.

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

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

1
2
3 **DECISION**

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

10
11 **IT IS SO ORDERED.**

12 

13 Lorna L Ward
14 APPEALS OFFICER

15 Notice: Pursuant to NRS 233B.130, should any party desire to appeal this final
16 decision of the Appeals Officer, a Petition for Judicial Review must be filed with
17 the district court within thirty (30) days after service by mail of this decision.
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JA 1285

EXHIBIT 2

EXHIBIT 2

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT. OF ADMINISTRATION
WORKERS DIVISION
APPEALS OFFICE

2015 SEP -1 PM 1:39

RECEIVED
AND
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In the matter of the Industrial
Insurance Claim
of
Daniel Demaranville, Deceased,
Claimant.


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

MOTION TO INTERVENE AND/OR FOR JOINDER

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

DATED this 31st day of August, 2015.

SERTIC LAW LTD.

By: 
MARK S. SERTIC, ESQ.
5975 Home Gardens Drive
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(775) 327-6300
Attorneys for
Employers Insurance Company
of Nevada

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

20 NRCP 19(a) provides in part:

21 A person who is subject to service of process and whose
22 joinder will not deprive the court of jurisdiction over the
23 subject matter of the action shall be joined as a party in the
24 action if (1) in the person's absence complete relief cannot
25 be accorded among those already parties, or (2) the person
26 claims an interest relating to the subject of the action and
27 is so situated that the disposition of the action in the
28 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.

Joinder of Employers into this action is appropriate as there
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.

8
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
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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 1st day of ~~August~~ ^{September}, 2015, I served by U.S. mail, a true copy of
6 the foregoing or attached document, addressed to:

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

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

13 
14 Gina L. Walsh

15
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 31 day of August, 2015.

21
22 
23 Mark S. Sertic

EXHIBIT 3

EXHIBIT 3

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

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

FILED

SEP 2 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
11 Claimant.

12 ORDER

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

16 **IT IS SO ORDERED.**

17
18 

19 _____
20 LORNA L WARD
21 APPEALS OFFICER
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 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 4

EXHIBIT 4

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 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.

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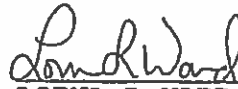
NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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.

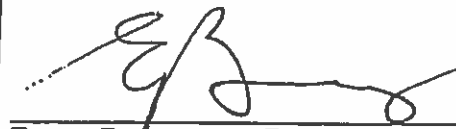
6 APPEALS OFFICER

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
District Court within thirty (30) days after service by mail of
this decision.

13
14 Submitted by:

15 NEVADA ATTORNEY FOR INJURED WORKERS

16 
17
18 Evan Beavers, Esq.
1000 East William St., #208
Carson City, Nevada 89701
19

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 ARREY GUE
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, FSQ
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

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

REC'D & FILED

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SUSAN MERRIWETHER
CLERK

BY [Signature] DEPUTY

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

EMPLOYERS INSURANCE COMPANY
OF NEVADA,

Petitioner,

Case No: 16 OC 00003 1B

vs.

Department No: II

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

Respondents.

CITY OF RENO,

Cross-Petitioner,

vs.

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

Cross-Respondents.

STIPULATION AND ORDER TO EXTEND TIME FOR FILING OPENING BRIEFS

The above named parties by and through their respective attorneys of record hereby stipulate and agree that the time period for filing the petitioners opening briefs in the two Petition

1 for Judicial Review actions described below may be extended up to and including April 21, 2016.

2 The grounds for said stipulation are as follows:

3 On January 5, 2016, the City of Reno (Reno) filed a Petition for Judicial Review (PJR) in
4 the Second Judicial District Court (Case No. CV16-00013) seeking review of a December 10,
5 2015 Appeals Officer Decision in the industrial insurance claim of Daniel DeMaranville.
6 Employers Insurance Company of Nevada (EICN) filed a cross-petition for judicial review in this
7 action on January 12, 2016.

8 On January 7, 2016, EICN filed a PJR in the First Judicial District Court (Case No. 16 OC
9 00003 1B) seeking review of the same December 10, 2015 Appeals Officer Decision. Reno filed
10 its cross-petition for judicial review in this action on January 19, 2016.

11 Pursuant to the stipulation of the parties, Second Judicial District Court Judge Stiglich
12 issued a February 23, 2016 Order changing venue of the PJR filed in the Second Judicial District
13 Court to the First Judicial District Court. The Clerk of the First Judicial District Court has
14 assigned Case No. 16 OC 00049 1B to the PJR transferred from the Second Judicial District
15 Court.

16 Respondent DeMaranville has filed motions to dismiss on both EICN's PJR filed in the
17 First Judicial District and EICN's Cross-Petition filed in the Second Judicial District Court. The
18 Motion to Dismiss filed in the First Judicial District has been briefed and submitted. The Motion
19 to Dismiss filed in the Second Judicial District, due to the efforts to transfer and consolidate
20 matters, has not been briefed nor submitted. Petitioner EICN will respond to Respondent
21 DeMaranville's Motion to Dismiss the Cross-Petition filed in the Second Judicial District on or
22 before March 28, 2016.

23 The parties intend to consolidate both PJR's into one action before the above-entitled
24 Court once the Second Judicial District Court PJR has been processed by the Clerk of the First
25 Judicial District Court.

26 The parties desire to extend the time period for filing opening briefs in both PJR's until
27 such time as the PJR's have been consolidated into one action before the above-entitled Court and
28 until Respondent Demaranville's Motions to Dismiss have been resolved. Accordingly, the

1 parties request an order extending the time period for filing opening briefs in both PJR's until
2 April 21, 2016.

3 **AFFIRMATION**
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding STIPULATION TO EXTEND
6 TIME FOR FILING OPENING BRIEFS filed in the First Judicial District Court of the State of

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1 Nevada, does not contain the social security number of any person.

2 Dated this 16th day of March, 2016.

3 McDONALD CARANO WILSON LLP

4
5 By: *T.E. Rowe*
6 TIMOTHY E. ROWE, ESQ.
7 P. O. Box 2670
8 Reno, NV 89505-2670
9 Attorneys for the CITY OF RENO

10 Dated this 17th day of March, 2016.

11 SERTIC LAW LTD.

12 By: *Mark S. Sertic*
13 MARK S. SERTIC, ESQ.
14 5975 Home Gardens Drive
15 Reno, NV 89502
16 Attorneys for the EMPLOYERS INSURANCE
17 COMPANY OF NEVADA

18 Dated this 15th day of March, 2016.

19 NEVADA ATTORNEY FOR INJURED
20 WORKERS

21 By: *Evan Beavers*
22 EVAN BEAVERS, ESQ.
23 1000 E. William St., #208
24 Carson City, NV 89701
25 Attorneys for LAURA DEMARANVILLE

26 ***

27 **ORDER**

28 IT IS SO ORDERED this 18 day of March, 2016.

James E. Muley
DISTRICT JUDGE



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

REC'D & FILED
2016 MAR 22 PM 3:11
SUSAN HERRIWETHER
CLERK
BY G. Cooper DEPUTY

8
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF CARSON CITY

11 CITY OF RENO,

12 Petitioner,

Case No. 15 OC 00092 1B
Dept. No. 2

13 vs.

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

20 Respondents.

JOINT RESPONSE TO ORDER
TO RESPOND REGARDING
CONSOLIDATING CASES

21 The above-named parties by and through their respective attorneys of record respectfully
22 submit the following Joint Response to the Court's Order to Respond Regarding Consolidating
23 Cases dated March 11, 2016. The parties agree that the two cases identified in the Court's Order
24 should be consolidated and filed a stipulation to that effect on March 18, 2016.

25 AFFIRMATION
26 Pursuant to NRS 239B.030

27 The undersigned does hereby affirm that the preceding Joint Response to Order to
28 Respond Regarding Consolidating Cases filed in the First Judicial District Court of the State of

///

///

///

///

1 Nevada, does not contain the social security number of any person.

2 Dated this 21st day of March, 2016.

3 McDONALD CARANO WILSON LLP

4
5 By: J. E. Rowe
6 TIMOTHY E. ROWE, ESQ.
7 P. O. Box 2670
8 Reno, NV 89505-2670
9 Attorneys for the CITY OF RENO

10 Dated this 21st day of March, 2016.

11 SERTIC LAW LTD.

12 By: Mark S. Sertic
13 MARK S. SERTIC, ESQ.
14 5975 Home Gardens Drive
15 Reno, NV 89502
16 Attorneys for the EMPLOYERS INSURANCE
17 COMPANY OF NEVADA

18 Dated this 22nd day of March, 2016.

19 NEVADA ATTORNEY FOR INJURED
20 WORKERS

21 By: Evan Beavers
22 EVAN BEAVERS, ESQ.
23 1000 E. William St., #208
24 Carson City, NV 89701
25 Attorneys for LAURA DEMARANVILLE
26
27
28

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2016 FEB 19 PM 3:14
SUSAN MERRIWEATHER
CLERK
BY _____ DEPUTY

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

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

8 EMPLOYERS INSURANCE COMPANY
OF NEVADA,
9

10 Petitioner,

Case No: 160C000031B

11 vs.

Dept. No: II

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

Respondent.
16 _____ /

17 CITY OF RENO,

18 Cross-Petitioner,

19 vs.

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

Cross-Respondents.
24

25 **JOINDER IN OPPOSITION TO MOTION TO DISMISS**

26 The CITY OF RENO, by and through its attorney of record, Timothy E. Rowe, Esq., of
27 McDonald Carano Wilson, LLP., hereby joins in the Opposition to Motion to Dismiss filed by
28 EICON in this matter on February 17, 2016. The City of Reno incorporates by reference, the

McDONALD CARANO WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89505
PO BOX 2070 • RENO, NEVADA 89505-2070
PHONE 775-788-2000 • FAX 775-788-2020

argument presented by EICON in its opposition to the Motion as its argument in opposition to the Motion to Dismiss.

McDONALD CARANO WILSON LLP

AFFIRMATION

Dated this 19th day of February, 2016.

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano Wilson LLP and that on the 19th day of February 2016, I caused a copy of the preceding ***JOINDER IN OPPOSITION TO MOTION TO DISMISS*** to be served by depositing the same for mailing with the U.S. Postal Service, postage prepaid on the following parties:

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


Carole Davis

McDONALD-CARANO-WILSON

400 WEST LIBERTY STREET, 12TH FLOOR • RENO, NEVADA 89501
PO BOX 2000 • RENO, NEVADA 89502-2000
PHONE 775 336 3142 • FAX 775 336 3020

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1 Evan Beavers, Esq.
2 Nevada Bar No. 3399
3 Nevada Attorney for Injured Workers
4 1000 East William Street, Suite 208
5 Carson City, Nevada 89701
6 Attorney for Respondent Laura DeMaranville

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2016 MAR 30 PM 4:22
SUSAN MERRIWETHER
CLERK
BY C. G. GONDER
DEPUTY

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

10 CITY OF RENO,

11 Petitioner,

12 vs.

CASE NO. 16 OC 00049 1B

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

DEPT. NO. 2

20 Respondents.

21 EMPLOYERS INSURANCE COMPANY OF
22 NEVADA,

23 Cross-Petitioner,

24 vs.

25 CITY OF RENO, DANIEL
26 DEMARANVILLE, Deceased; LAURA
27 DEMARANVILLE, an individual; and
28 The NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER

Respondents.

REPLY TO OPPOSITION TO MOTION TO DISMISS

1 Comes now Laura DeMaranville, Respondent and surviving
2 spouse of Daniel DeMaranville, deceased, by and through her
3 attorney, Evan Beavers, Esq, and the office of the Nevada
4 Attorney for Injured Workers, and hereby replies to the
5 opposition filed by Employers Insurance Company of Nevada in
6 which the City of Reno has joined.

7 This reply is based upon the points and authorities
8 which follow and all pleadings and all other papers and documents
9 on file in this matter.

10

11

AFFIRMATION

12

13

The undersigned affirms, pursuant to NRS 239B.030, that
no personal identifying information appears in this document.

14

Respectfully submitted this 30 day of March, 2016.

15

NEVADA ATTORNEY FOR INJURED WORKERS

16

W. Daniel Neff, for

17

Evan Beavers, Esq.

18

Nevada Bar No: 3399

19

1000 East William Street, Suite 208

Carson City, NV 89701

(775) 684-7555

20

Attorney for Respondent,
Laura DeMaranville

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

Laura DeMaranville, Respondent, originally filed in the Second Judicial District Court her motion to dismiss the cross-petition for judicial review filed there by Employers Insurance Company of Nevada (EICON) alleging that EICON is not an aggrieved party to the appeals officer's decision which EICON seeks to have reviewed. By stipulation of counsel EICON, Ms. DeMaranville and the City of Reno (which had also filed a petition for judicial review in the Second District Court) seek to transfer all matters pending in the Second District Court to the First District Court. After the filing of that stipulation, EICON filed in the First Judicial District Court a brief in opposition to the Respondent's motion to dismiss and the City of Reno has filed its brief simply joining EICON in its opposition to the motion. The Respondent now files her reply to the opposition of EICON and City.

As stated in Respondent's motion, NRS 233B.130 gives the district court jurisdiction to consider a petition for judicial review only if the party seeking review was aggrieved by the decision of the administrative law judge. EICON argues it is aggrieved by the decision of December 10, 2015, because it believes the amount of monthly benefit City was ordered to pay was incorrect; because the issue as to which of the petitioners, EICON or City, is liable is still on review; and because City takes the position that ultimately the liability to Respondent should be on EICON. None of these allegations define EICON as an aggrieved party under NRS 233B.130 and the Nevada Administrative Procedure Act.

//

1 For EICON to fear that the amount City has been ordered to
2 pay is incorrect simply makes EICON an interested party, but not
3 an aggrieved party. EICON alleges the existence of neither a
4 personal right nor a property right adversely and substantially
5 affected by the appeals officer's decision. See Valley Bank v.
6 Ginsburg, 96 Nev. 178, 180, 605 P.2d 1149 (1980). EICON's fears
7 only become substantially affected rights if the district court
8 should affirm the appeals officer's initial decision of March 18,
9 2015, on the issue of compensability but reverses the appeals
10 officer as to the issue of liability by finding EICON is
11 responsible for paying benefits to Laura DeMaranville. However,
12 EICON has already petitioned this court as an aggrieved party for
13 review of that March decision. In the December decision, which
14 is the object of EICON's cross-petition, EICON is not even
15 mentioned.

16 The threat of City seeking reimbursement from EICON if the
17 March decision is reversed is insufficient to make EICON an
18 aggrieved party in the December decision. EICON cites to NRS
19 616C.165¹ which would allow an insurer initially paying benefits
20 to seek reimbursement from another insurer determined truly
21 liable after final resolution. That action for reimbursement
22 between EICON and City should be separate from Laura
23 //

24
25 ¹EICON also cites to NRS 616C.175, but that statute has no
26 application here. This matter is not before the administrator of
27 the Division of Industrial Relations and the claimant is not
28 seeking benefits against more than one insurer. The claimant
successfully argued to the appeals officer that she is owed by
one insurer, the City of Reno.

1 DeMaranville's claim under the Industrial Insurance Act.
2 Reimbursement is not even an issue in the December decision.

3 Lastly, EICON argues issue preclusion as explained in Ayala
4 v. Caesars Palace, 119 Nev. 232, 71 P.3d 490 (2003), would deny
5 it the right to contest a finding on the amount of benefit due
6 Respondent if its petition for review is dismissed. The
7 authority cited has since been modified by our State Supreme
8 Court in Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d
9 709 (2008), where the Court clarified the elements necessary for
10 application of the doctrines of issue preclusion and claim
11 preclusion. More to the point, however, the State Supreme Court
12 has determined petitions for judicial review are not necessary in
13 circumstances such as those raised by EICON in opposition to
14 Respondent's motion.

15 In University of Nevada v. Tarkanian, 110 Nev. 581, 879 P.2d
16 1180 (1994), the Court explained why a petition for judicial
17 review such as the one filed by EICON on the December decision is
18 not warranted. The December decision obligates City, not EICON,
19 to pay more in benefits to Laura DeMaranville. In Tarkanian the
20 Court held a successful party is not an aggrieved party and
21 cannot appeal. Id. at 602. In the appeals officer's December
22 decision EICON is not an aggrieved party because it was not
23 ordered to pay anything. The City of Reno was ordered to pay
24 Laura DeMaranville a sum certain for monthly benefits, not EICON.

25 EICON can present its theories on compensability and
26 liability through its petition for review of the March decision
27 which is already filed. EICON can also present its theories on
28 the amount due the Respondent by simply participating in the

1 proceedings on City's petition for review of the December
2 decision. A cross-appeal is not necessary even if alternative
3 theories are raised. Id. at 603.

4 CONCLUSION

5 EICON has not shown that it is an aggrieved party as is
6 necessary for the district court to accept jurisdiction of
7 EICON's Cross-Petition for Judicial Review regarding the Decision
8 and Order of Appeals Officer Ward filed December 10, 2015.
9 Dismissal of the cross-petition will not deprive EICON from
10 presenting its theories on the proper amount due the Respondent
11 given that the City of Reno has filed with the court its own
12 petition for review of the same decision.

13 Respectfully submitted this 30 day of March, 2016.

14 NEVADA ATTORNEY FOR INJURED WORKERS

15 
16

17 Evan Beavers, Esq.
18 Nevada Bar No: 3399
19 1000 East William Street, Suite 208
20 Carson City, NV 89701
21 (775) 684-7555

22 Attorney for Respondent,
23 Laura DeMaranville
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 prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the within and foregoing REPLY TO OPPOSITION TO 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: March 30, 2016

SIGNED: 

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REC'D & FILED

2016 APR 14 AM 8:39

SUSAN MERRIVETHER
CLERK

BY G. WINDER
DEPUTY

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

-o0o-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 15 OC 00092 1B

Dept. No. 2

ORDER CONSOLIDATING CASES

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

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

April 12, 2016.


JAMES E. WILSON, JR.
District Judge

CERTIFICATE OF SERVICE

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

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

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

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

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


Gina Winder
Judicial Assistant

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SUSAN HERRINWETHER
CLERK

by G. WINDER
DEPUTY

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

-000-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 16 OC 00049 1B

Dept. No. 2

ORDER CONSOLIDATING CASES

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Plaintiff on April 14, 2015. This action shares common questions of law and fact and involves the same parties as this court's case numbers 16 OC 00003 1B and 15 OC 00092 1B. Under NRCP 42(a) and good cause appearing,

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

April 12, 2016.


JAMES E. WILSON, JR.
District Judge

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P.O. Box 2670
Reno, NV 89505-2670

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

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

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


Gina Winder
Judicial Assistant

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CLERK
G. WINDER

BY _____
DEPUTY

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

-o0o-

CITY OF RENO,

Petitioner,

vs.

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

Defendants.

Case No. 16 OC 00003 1B

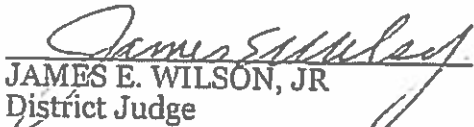
Dept. No. 2

ORDER CONSOLIDATING CASES

This matter comes before the Court pursuant to a Petition for Judicial Review filed by the Plaintiff on April 14, 2015. This action shares common questions of law and fact and involves the same parties as this court's case numbers 15 OC 00092 1B and 16 OC 00049 1B. Under NRCP 42(a) and good cause appearing,

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

April 12, 2016.


JAMES E. WILSON, JR.
District Judge

CERTIFICATE OF SERVICE

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


Order to:

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

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

Evan Beavers, Esq.
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1000 E. Williams Street, Ste 208
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Gina Winder
Judicial Assistant

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1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
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1 Evan Beavers, Esq.,
Nevada Bar No. 3399
2 Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
Attorney for Respondent Laura DeMaranville

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BY C. Cooper
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6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

9 CITY OF RENO,

10 Petitioner,

11 vs.

CASE NO. 16 OC 00049 1B
CASE NO. 16 OC 00003 1B
DEPT. NO. 2

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

16 Respondents.

17 _____/
18 EMPLOYERS INSURANCE COMPANY OF
NEVADA,

19 Cross-Petitioner,

20 vs.

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

24 Respondents.
25 _____/

26 REQUEST FOR SUBMISSION OF MOTIONS TO DISMISS

27 Respondent Laura DeMaranville brought her motion to
28 dismiss the Petition for Judicial Review filed by Employers

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 Insurance in Case No. 16 OC 00049 1B. Briefing is complete and
2 the respondent's motion to dismiss is ready to submit.

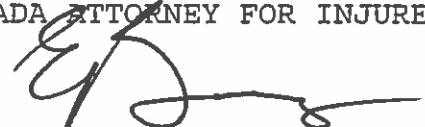
3 Respondent also brought her motion to dismiss the
4 Cross-Petition for Judicial Review filed by Employers Insurance
5 in Case No. 16 OC 00049 1B. Briefing is complete and the
6 respondent's motion to dismiss is ready to submit.

7 It is requested that both motions in the above-entitled
8 matters be submitted to the court for decision.

9 The undersigned attorney certifies that a copy of this
10 request has been mailed to all counsel of record.

11 DATED this 14th day of April, 2016.

12 NEVADA ATTORNEY FOR INJURED WORKERS

13 
14 Evan Beavers, Esq.
15 Nevada Bar No. 3399
16 1000 East William Street, Suite 208
17 Carson City, Nevada 89701
18 Attorney for Laura DeMaranville,
19 Respondent
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCF 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 REQUEST FOR SUBMISSION OF MOTIONS 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: April 14, 2016

SIGNED: Tammy L Sherwood

1 Evan Beavers, Esq.,
Nevada Bar No. 3399
2 NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
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 CITY OF RENO,

10 Petitioner,

11 vs.

CASE NO. 16 OC 00049 1B
CASE NO. 16 OC 00003 1B
DEPT. NO. 2

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

16 Respondents.
17 _____/

18 EMPLOYERS INSURANCE COMPANY OF
NEVADA,

19 Cross-Petitioner,

20 vs.

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

24 Respondents.
25 _____/

26 ORDER GRANTING MOTIONS TO DISMISS
27
28

1 These matters are before the court upon motions to
2 dismiss filed by Laura DeMaranville, the claimant in the
3 administrative appeals process which culminated in the decision
4 of Appeals Officer Lorna L. Ward on December 10, 2015. Ms.
5 DeMaranville, a respondent in these proceedings, seeks to dismiss
6 the petition filed by Employers Insurance Company of Nevada
7 (EICON) in the First Judicial District Court by which EICON seeks
8 review of that administrative decision. By separate motion
9 originally filed in the Second Judicial District Court the
10 respondent also seeks to dismiss EICON's cross-petition for
11 judicial review of that same administrative decision. The
12 proceedings in the Second District have been transferred to this
13 court by Stipulation and Order to Change Venue entered February
14 23, 2016.

15 Counsel for Ms. DeMaranville, EICON and the City of
16 Reno, also a party to EICON's petition and cross-petition, have
17 expressed the parties' desires to consolidate these proceedings
18 in the stipulation to change venue and in their filing to this
19 court's order seeking responses on consolidating these matters.

20 The City of Reno has joined EICON in opposing the
21 respondent's motions to dismiss in both cases.

22 The legal principles in both motions to dismiss are
23 sufficiently similar as to be treated together. The appeals
24 officer, in her decision of December 10, 2015, determined the
25 point in the decedent's earnings history at which calculations
26 are made for the monthly benefits owing from the City of Reno to
27 Laura DeMaranville. EICON was not declared to be the employer or
28 insurer liable for paying those benefits, or any benefits, to the

1 decedent's widow, Laura DeMaranville. Respondent DeMaranville
2 argues in her motions here that EICON is not, therefore, an
3 aggrieved party as required by NRS 233B.130(1) for this court to
4 consider EICON's petition for judicial review or its cross-
5 petition for judicial review. EICON argues that if on appeal of
6 the appeals officer's earlier decision on compensability it is
7 determined that EICON is liable to the claimant, as opposed to
8 the City of Reno being liable, then EICON will aggrieved by the
9 decision of December 10, 2015, which determined how much might be
10 owed.

11 EICON fails to present the existence of a personal
12 right or a property right substantially affected by the appeals
13 officer's decision of December 10, 2015. See Valley Bank v.
14 Ginsburg, 96 Nev. 178, 180, 605 P.2d 1149 (1980). The interest
15 EICON seeks to protect, that is, shielding itself from a finding
16 that it is the insurer liable to the claimant, can be effectively
17 protected by its participation in the proceedings on the City of
18 Reno's petition for judicial review of the December 10, 2015
19 decision. See University of Nevada v. Tarkanian, 110 Nev. 581,
20 879 P.2d 1180 (1994). In addition, EICON already is
21 participating in the judicial review proceedings resulting from
22 the appeals officer's decision of March 18, 2015, specifically
23 addressing whether a compensable claim exists and finding the
24 City of Reno, not EICON, the party liable for benefits to Ms.
25 DeMaranville.

26 For good cause, Respondent Laura DeMaranville's motion
27 to dismiss the Petition for Judicial Review filed February 3,
28 2016, by Employers Insurance Company of Nevada in case No. 16 OC

NEVADA ATTORNEY FOR INJURED WORKERS
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Las Vegas, NV 89102 (702) 486-2830

1 00003 1B, and her motion to dismiss the Cross-Petition for
2 Judicial Review filed that same date in case No. 16 OC 00049 1B,
3 are both granted and the petition and the cross-petition are
4 hereby dismissed with prejudice.

5
6 IT IS SO ORDERED.

7 DISTRICT COURT JUDGE
8
9

10 Submitted by:
11 NEVADA ATTORNEY FOR INJURED WORKERS
12 Evan Beavers, Esq.
1000 E. William, Suite 208
Carson City, NV 89701

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SUSAN MERRIWETHER
CLERK

BY G. WINDER
DEPUTY

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

CITY OF RENO,

CASE NO: 15 OC 00092 1B

Petitioner,

Dept. No.: 2

v.

BRIEFING SCHEDULE

DANIEL DEMARANVILLE, (Deceased),
EMPLOYER'S INSURANCE, and
NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER,

Respondents.

On April 14, 2015, Petitioner filed a Petition for Judicial Review.

IT IS ORDERED:

Petitioner will serve the petition for judicial review upon the agency and every party within 45 days after filing the petition for judicial review. NRS 233B.130(5).

The agency and any party desiring to participate in the judicial review will file and serve a statement of intent to participate within 20 days after service of the petition for judicial review. NRS 233B.130(3).

The agency that rendered the decision will:

- 1) Transmit to this court the entire record, including a transcript, within 30 days after service of the petition for judicial review. The record may be shortened by stipulation of the parties to the proceeding. NRS 233B.131(1); and
- 2) File and serve upon all parties a written notice of transmittal. The written notice of transmittal will include a statement to the effect: "The record of the proceeding

1 was filed with the court on (insert date the record was filed)." NRS 233B.133(1).

2 Petitioner will file and serve an opening brief (memorandum of points and
3 authorities) within 40 days after the agency has given written notice that the record has
4 been filed with the court. NRS 233B.133(1). Petitioner will file a proposed order
5 consistent with their brief at the same time. FJDCR 15(7).

6 Petitioner's failure to file an opening brief within the time limitation shall be
7 deemed an admission the appeal was not well founded and shall constitute adequate
8 cause for dismissal of this action.

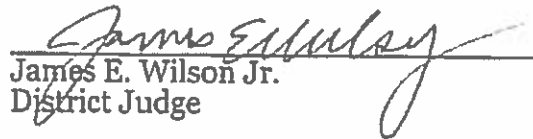
9 Respondent will file and serve an answering brief (memorandum of points and
10 authorities) within 30 days after service of Petitioner's opening brief. NRS 233B.133(2).
11 Respondent will file a proposed order consistent with their answering brief at the same
12 time. FJDCR 15(7).

13 Petitioner may file and serve and reply brief (memorandum of points and
14 authorities) within 30 days after service of Respondent's answering brief. NRS
15 233B.133(3).

16 A request to submit must be filed to bring the matter to this Court's attention.
17 FJDCR 15(6). Either party may file the request.

18 Any party may request a hearing within 7 days after expiration of the time within
19 which Petitioner is required to file a reply brief. NRS 233B.133(4). The grant or denial
20 of a hearing shall lie within the court's discretion. FJDCR 15(9).

21 April 14, 2016.

22
23 
24 James E. Wilson Jr.
25 District Judge
26
27
28

CERTIFICATE OF MAILING

I hereby further certify that on the 15 day of April 2016 I placed a copy
of the foregoing order in the United States Mail postage prepaid, addressed as follows:

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

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

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

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



Gina Winder
Judicial Assistant

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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/Cross-Petitioner/Respondent
Employers Insurance Company of Nevada

REC'D & FILED

2016 APR 19 PM 3:25

SUSAN HERRIWETHER
CLERK

BY  DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 OC 00092 1B

vs.

Department No: 2

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

Respondents.

BRIEF OF PETITIONER AND CROSS-PETITIONER EMPLOYERS
INSURANCE COMPANY OF NEVADA

NRAP 26.1 DISCLOSURE STATEMENT

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

1. There are no corporations that must be disclosed pursuant to this Rule.

2. Employers Insurance Company of Nevada was represented in all of the administrative proceedings below, and is represented before this Court, by Mark S. Sertic of Sertic Law Ltd.

Dated this 19th day of April, 2016.

SERTIC LAW LTD.


By: 
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1 **I. JURISDICTIONAL STATEMENT**

2 The District Court has jurisdiction over this Petition for Judicial Review pursuant to NRS
3 617.405 and NRS 233B.130. The Appeals Officer filed and served her final Decision in this matter
4 on December 10, 2016. The Petitioner Employers Insurance Company of Nevada filed its Petition
5 for Judicial Review on January 8, 2016 which was a timely appeal pursuant to NRS 233B.130.

6 **II. ISSUES PRESENTED FOR REVIEW**

7 The issue on appeal is whether the amount of the monthly benefit under the claim should be
8 established using the wages Mr. DeMaranville earned as a police officer, which is the employment
9 the claim arises from, or the wages he was earning from an unrelated job twenty-two years after he
10 retired from the police force.

11 Mr. DeMaranville worked as a police officer for the City of Reno, retiring in 1990. He died
12 in 2012. The Appeals Officer previously held that the claim qualified for compensation under the
13 police officer's heart disease statute, NRS 617.457. That decision is the subject of a judicial review
14 in Case No. 15 0C 00092 1B in the First Judicial District Court of the State of Nevada. Pending the
15 outcome of that case the City of Reno, who the Appeals Officer found liable for the claim, issued a
16 determination that set the amount of the monthly benefit under the claim based upon Mr.
17 DeMaranville's wages as a police officer with the City. The Claimant appealed and the Appeals
18 Officer found that the monthly benefit should be based on the wages Mr. DeMaranville's was
19 receiving at the time of his death from a private company, fully twenty-two years after he retired as a
20 police officer. That decision is the subject of this Petition for Judicial Review. That decision is
21 legally erroneous.

22 **III. STATEMENT OF THE CASE**

23 In a prior proceeding the Appeals Officer, in her Decision of March 18, 2015, found that the
24 Claimant had established a valid claim for benefits under the police officer's heart disease statute,
25 NRS 617.457, and that full liability therefor rested with the City of Reno under its self-insurance
26 plan. See Record on Appeal at pages 47-57, (Hereinafter, "ROA ____"). All citations to the Record on
27 Appeal in this brief are to the Record on Appeal filed by the Nevada Department of Administration
28

1 with this court on February 5, 2016 in Case No. 16 OC 00003 1B). The City of Reno filed a
2 petition for judicial review of that Decision and Employers filed a cross-petition for judicial review
3 of that Decision. That matter was filed as Case No. 15 OC 00092 1B in the First Judicial District
4 Court of the State of Nevada. That case has been fully briefed.

5 On April 15, 2015 the City issued a determination that set the amount of the monthly benefit
6 under the claim based upon Mr. DeMaranville's wages as a police officer with the City. The
7 Claimant appealed and the Hearing Officer affirmed that determination. ROA 772-774. The Claimant
8 appealed to the Appeals Officer who, in a Decision dated December 10, 2015, reversed the Hearing
9 Officer and determined that the monthly benefit should be based, not on the wages Mr.
10 DeMaranville earned as a police officer, but, rather, on the wages he earned at the time of his death
11 from a private company that was totally unrelated to the City of Reno. ROA 24-30. Employers
12 Insurance Company of Nevada filed a petition for judicial review of that Decision as Case No. 16
13 OC 00003 1B in the First Judicial District Court of the State of Nevada. The City of Reno filed a
14 cross-petition in that case. The City of Reno also filed a petition for judicial review of that same
15 Decision in the Second Judicial District Court which case was transferred to the First Judicial
16 District Court as Case No. 16 OC 00049 1B. Employers Insurance Company of Nevada filed a cross-
17 petition in that case. By its Orders dated April 14, 2016 the Court consolidated all three cases and
18 ordered that all future pleadings be filed under the above caption. This brief represents the opening
19 brief of Employers Insurance Company of Nevada with respect to the petition for judicial review and
20 cross-petition for judicial review of the Appeals Officer's Decision of December 10, 2015.

21 22 **IV. STATEMENT OF FACTS**

23 Mr. DeMaranville worked as a police officer for the City of Reno, retiring in 1990. ROA
24 159. Twenty-two years later, on August 5, 2012 Mr. DeMaranville died while in the recovery room
25 after undergoing gall bladder surgery. ROA 582.

26 Employers Insurance Company of Nevada, (hereinafter, "Employers"), was the workers'
27 compensation insurer for the City of Reno, (hereinafter, "City"), until 1992 when the City became
28 self-insured. ROA 82, lines 15-21. The Claimant, Mr. DeMaranville's wife, submitted claims to both

1 the City of Reno and Employers Insurance Company of Nevada. The City of Reno denied the
2 Claimant's claim on May 23, 2013. ROA 213-214. Employers denied the Claimant's claim on
3 September 19, 2013. ROA 399-401.

4 The Claimant appealed both denials and on March 18, 2015 the Appeals Officer issued her
5 Decision in which she found that Mr. DeMaranville died as the result of heart disease and that full
6 liability for the claim rests with the City of Reno under its self-insurance plan. ROA 47- 57.

7 The City of Reno filed a petition for judicial review of that Decision and Employers filed a
8 cross-petition for judicial review of that Decision. That matter is pending in Case No. 15 0C 00092
9 1B in the First Judicial District Court of the State of Nevada.

10 On April 15, 2015 the City of Reno issued the determination at issue in this appeal which
11 established the Claimant's monthly death benefit at \$1,683.85 based upon his wages at the time of
12 his retirement in 1990 from the City. The Claimant appealed to the Hearing Officer who affirmed
13 the City. ROA 772-774.

14 The Claimant appealed that decision to the Appeals Officer seeking to have the monthly
15 death benefit calculated based upon the wages that Mr. DeMaranville was receiving from his private
16 employer at the time of his death twenty-two years after retiring from the City, which would be the
17 maximum allowable benefit as of 2012. The Appeals Officer, in a Decision dated December 10,
18 2015, reversed the decision of the Hearing Officer and found the monthly benefit should be based on
19 his wages earned from the private employer twenty-two years after his retirement. ROA 24-30.

20 **V. SUMMARY OF ARGUMENT**

21 The monthly benefit for the dependents of a worker who dies due to an occupational disease
22 is, by law, based upon the earnings of the worker from the employment that resulted in the disease.
23 The benefit is calculated on the earnings from that employment in the 12 week period immediately
24 prior to the worker's injury or, in this case, death. In this case the employment on which the benefit
25 must be based is Mr. DeMaranville's employment with the Reno Police Department. However, when
26 he died he was not working for the police department, having retired in 1990. He was working for a
27 private company at the time of his death. The Appeals Officer set the monthly benefit based upon
28

1 what he was earning at the time of his death from this unrelated employment, rather than what he
2 was earning as a police officer, which was nothing. This finding is contrary to law.

3 4 VI. ARGUMENT

5 A. STANDARD OF REVIEW

6 NRS 223B.135 provides that a reviewing court may set aside a decision of an administrative
7 agency if the decision is:

- 8 (a) In violation of constitutional or statutory provisions;
- 9 (b) In excess of the statutory authority of the agency;
- 10 (c) Made upon unlawful procedure;
- 11 (d) Affected by other error of law;
- 12 (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the
13 whole record; or
- 14 (f) Arbitrary or capricious or characterized by abuse of discretion.

15 In reviewing a decision of an administrative agency, it is the function of the court to
16 determine if the agency acted arbitrarily, capriciously or contrary to law. Turk v. Nevada State
17 Prison, 94 Nev. 101, 102, 575 P. 2d 599, 600 (1978). An administrative decision is arbitrary and
18 capricious if it is made in disregard of the facts and circumstances involved. Meadow v. Civil
19 Service Board, 105 Nev. 624, 627, 781 P. 2d 772, 774 (1989). The Nevada Supreme Court has not
20 hesitated to reverse administrative decisions that are arbitrary and capricious, including those by
21 appeals officers in workers' compensation cases. Installation & Dismantle, Inc. v. SIIS, 110 Nev.
22 930, 933, 879 P. 2d 58, 60 (1994). See also, Titanium Metals Corp. v. Clark County, 99 Nev. 397,
23 663 P. 2d 355 (1983); Leslie v. Archie, 89 Nev. 550, 516 P. 2d 469 (1973).

24 The facts in this case are not in dispute; this case involves solely a legal question. Therefore,
25 the standard of review in this case is one of de novo review, without deference to the decision of the
26 administrative agency, since it does not involve a factual dispute but is solely an issue of law. SIIS v.
27 United Exposition Services, Co., 109 Nev. 28, 30, 846 P.2d 294 (1993).

28 Additionally, and of significant importance of this case, a reviewing court will not defer to an
agency's interpretation of its governing statutes or regulations when that interpretation is not "within
the language of the statute." Poremba v. Southern Nevada Paving, 132 Nev. Adv. Op. 24 (April 7,
2016), citing and quoting Taylor v. State, Dep't of Health & Human Services, 129 Nev. Adv. Op.

1 99, 314 P.3d 949 (2013). As set forth below, the Appeals Officer's Decision ignores and is contrary
2 to NAC 616C.435(9), which is directly on point with respect to the issue at hand.

3
4 B. THE DECISION OF THE APPEALS OFFICER IS CONTRARY TO APPLICABLE
5 LAW AND MUST BE REVERSED

6 This claim was brought under the police officer's heart disease statute, NRS 617.457. That
7 statute provides, under certain circumstances, benefits to police officers who contract heart disease
8 and also provides benefits to their dependents. As set forth below, since Mr. DeMaranville had
9 retired from the police force twenty-two years before his death and was not earning any wages from
10 his police officer's job, the proper monthly benefit under the claim is zero. The Appeals Officer's
11 determination to set the monthly benefit at the maximum allowed at the time of his death based on
12 his employment with a private company, wholly unrelated to his police officer career, is incorrect as
13 a matter of law.
14

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

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

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

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

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

5 NAC 616C.435 is dispositive of the issue in this case. That regulation sets forth the period of
6 the employee's earnings that are to be used to calculate the average monthly wage. Generally, with
7 some exceptions not relevant here, that period is the 12 week period immediately preceding the date
8 on which the accident or disease occurred. Most important for this case is subsection 9 of that
9 regulation which states: "As used in this section, 'earnings' means earnings received from the
10 employment in which the injury occurs and in any concurrent employment."¹ In this case the
11 employment from which the Claimant is seeking to obtain benefits is that as a police officer with the
12 City of Reno. That is the employment on which the claim under NRS 617.457, (heart disease of a
13 police officer), was made by the Claimant and granted by the Appeals Officer. The wages earned by
14 Mr. DeMaranville from that employment in the 12 week period prior to his death were zero since he
15 had retired from that employment twenty-two years earlier.

16 Remarkably, the Appeals Officer's Decision ignores and is directly contrary to NAC
17 616C.435 and specifically NAC 616C.435(9) which provides that "earnings" are those that are
18 received from the employment which resulted in the injury or disease. The Appeals Officer does not
19 even cite, much less discuss, this regulation in her Decision. Therefore, the interpretations given by
20 the Appeals Officer to the applicable statutes and regulations are not entitled to any deference.
21 Poremba v. Southern Nevada Paving, 132 Nev. Adv. Op. 24 (April 7, 2016).

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

26 Upon five continuous years of employment a police officer is entitled to the presumption of
27

28 ¹ 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 NRS 617.457 that his heart disease is an occupational disease. Thus, at the time of his retirement Mr.
2 DeMaranville was entitled to the benefits of that statute although he could not file a claim until such
3 time as he was disabled as a result of the occupational disease. He became disabled from the
4 occupational disease when he died at which time his widow was entitled to claim compensation
5 under the heart disease statute. However, that does not change the period of the earnings on which
6 the average monthly wage is determined. The presumption of NRS 617.457 arose from his
7 employment as a police officer; it did not arise from, and has no connection with, his work for the
8 private company.

9 The case of Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), while not
10 directly on point, is instructive. In that case a firefighter suffered a heart attack eight years after he
11 retired. The Supreme Court held that he was not entitled to collect temporary total disability benefits
12 since he was not earning any wages and thus had no calculable average monthly wage. The Supreme
13 Court based its decision on the "Legislature's method for calculating the average monthly wage."
14 120 P.3d at p. 411. While in that case the claimant was not working at an unrelated non-firefighter
15 job and the Supreme Court did not address the precise issue presented in this case, the holding
16 supports the conclusion that benefits must be calculated in accordance with, and as limited by, the
17 applicable statutes and regulations and that the average monthly wage must be based on the
18 employment from which the heart disease claim arose.

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

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

26 The primary job this refers to is clearly the job in which the employee suffers an injury or
27 contracts an occupational disease. This regulation prohibits the use of payroll information from a
28 subsequent employment. This is entirely logical as the benefits to which an injured employee is
entitled must be determined based on the employment which caused the injury. The same applies to

1 employees who contract an occupational disease. The entire statutory and regulatory scheme show
2 that benefits are to be calculated based on the employment from which the claimant was injured or
3 contracted the occupational disease.

4 The case of Mirage Casino-Hotel v. Nevada Dept. of Administration, 110 Nev. 257, 871 P.2d
5 317 (1994) cited by the Claimant in argument before the Appeals Officer does not answer the
6 question in this appeal. That case merely states that the claimant's benefits are to be calculated from
7 the date of disability. That is consistent with the statutes and regulations discussed above. Mr.
8 DeMaranville's earnings from his police officer job at the time of his death were zero. Mirage does
9 not hold that wages from a totally separate and distinct employment that is unrelated to that from
10 which the occupational disease arose are to be used to calculate the benefits.

11 Furthermore, the Claimant's reliance in argument before the Appeals Officer upon NAC
12 616C.441 is misplaced. That regulation provides: "The earnings of an injured employee on the date
13 on which an accident occurs or the date on which an injured employee is no longer able to work as a
14 result of contracting an occupational disease will be used to calculate the average monthly wage."
15 This begs the question of what constitute "earnings". As set forth above, Mr. DeMaranville's
16 earnings for this claim are those he earned as a police officer with the City of Reno and not those he
17 was receiving as a private security guard at the time of his death. Thus, his earnings at the time he
18 became disabled were zero. NAC 616C.435(9) specifically defines "earnings" as those that are
19 received from the employment which resulted in the injury or disease. As set forth above, the
20 Appeals Officer does not address this regulation in her Decision.

21 The absurdity of the position taken by the Appeals Officer can be shown by a simple thought
22 experiment. Imagine two police officers both of whom retire in 1990. One of them, Officer A, never
23 goes back to work in any capacity. The other one, Officer B, gets bored with retirement and
24 subsequently gets a job with a private employer making a salary greatly in excess of what he earned
25 as a police officer. Both officers then die from heart disease on the same day and their dependents
26 qualify for a claim under the police officer's heart disease statute. Under the Appeals Officer's
27 decision at issue here, the two claims receive completely different treatment. Officer A's
28 dependents' monthly benefit would be zero since he had no earnings from his police job in the 12

1 weeks prior to his death. However the dependents of Officer B get a monthly benefit at the
2 maximum rate merely because he had a post-retirement job completely unrelated to his police officer
3 job with the City. There is no logic to this result that gives Officer B's dependents benefits based
4 upon a post-retirement employment wholly unrelated to his role as a police officer. There is no logic
5 in having this disparate result. There is no basis in law for this result.

6
7 **VII. CONCLUSION**

8 Employers Insurance Company of Nevada respectfully requests that its Petition for Judicial
9 Review be granted and the Appeals Officer's Decision be reversed and the monthly benefit be
10 established at zero dollars which is the result required by applicable law.
11

12 Dated this 19th day of April, 2016.

13
14 SERTIC LAW LTD.

15
16
17 By: Mark S. Sertic
18 Mark S. Sertic
19 Attorneys for Petitioner/Cross-Petitioner
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ATTORNEY'S CERTIFICATE

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

☐ This brief has been prepared in a proportionally spaced typeface using [state name and version of word-processing program] in [state font size and name of type style]; or

☒ This brief has been prepared in a monospaced typeface using Times New Roman typeface and Microsoft Word with 10.5 characters per inch.

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

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

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

☒ Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

///

//

//

1 DATED this 19th day of April, 2016.

2
3 SERTIC LAW LTD.

4 By: Mark S. Sertic
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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 10th day of April, 2016, I served by Reno-Carson Messenger Service, a true copy of the foregoing or attached document, addressed to:

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8
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF CARSON CITY**

11 CITY OF RENO,

12 Petitioner,

Case No: 15 OC 00092 1B

13 vs.

Department No: II

14 DANIEL DEMARANVILLE, Deceased,
15 EMPLOYER'S INSURANCE COMPANY
16 OF NEVADA, AND NEVADA DEPARTMENT
17 OF ADMINISTRATION APPEALS OFFICER,

18 Respondents.
19 _____/

20 **STIPULATION AND ORDER TO EXTEND TIME**
21 **FOR FILING PETITIONER'S/CROSS PETITIONER'S OPENING BRIEFS**

22 The above named parties by and through their respective attorneys of record hereby
23 stipulate and agree that Petitioner/Cross Petitioner, City of Reno, may have up to and including
24 May 21, 2016 to file Petitioner's/Cross Petitioner's Opening Briefs in the above entitled matter.
25 The grounds for said stipulation are that there is a pending motion to dismiss filed by Respondent
26 Daniel DeMaranville (Deceased) and the parties have agreed that the City's opening briefs may
27 be postponed until the pending motion to dismiss is decided.

28 **AFFIRMATION**
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding STIPULATION TO EXTEND
TIME FOR FILING OPENING BRIEFS filed in the First Judicial District Court of the State of

///

1 Nevada, does not contain the social security number of any person.

2 Dated this 25th day of April, 2016.

3 McDONALD CARANO WILSON LLP

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18 Dated this 21st day of April, 2016.

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26 * * *

27 **ORDER**

28 IT IS SO ORDERED this 12 day of May, 2016.

James E. Eubank
DISTRICT JUDGE

448460

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

9 CITY OF RENO,

10 Petitioner,

11 vs.

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

17 Respondents.

Case No: 15 OC 00092 1B
Dept. No.: 2

16 **OPENING BRIEF OF PETITIONER and CROSS-PETITIONER CITY OF RENO**

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JURISDICTIONAL STATEMENT

1. Jurisdiction is conferred on the District Court pursuant to NRS 616C.370 and NRS 233B.135.

2. The final Decision and Order of the Appeals Officer at issue in this proceeding was filed on December 10, 2015. The City of Reno timely filed its Petition for Judicial Review in the Second Judicial District Court on January 5, 2016. The City also filed its Cross-Petition for Judicial Review in the First Judicial District Court proceeding on January 19, 2016. These two proceedings have now been consolidated before this Court.

ISSUES PRESENTED FOR REVIEW

1
2 1. Is the Appeals Officer Decision awarding death benefits to the Claimant's widow
3 based on wages earned at the time of his death clearly erroneous and affected by error of law
4 when those wages were earned from employment totally unrelated to the employment from
5 which the Claimant's occupational disease arose?

6 2. Should the wages from the employment causing the occupational disease be used to
7 calculate the Claimant's average monthly for purposes of determining the amount of benefits
8 payable under the occupational disease claim?
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STATEMENT OF THE CASE

This dispute arises out of a contested workers' compensation claim in which the widow of a deceased police officer claims death benefits payable under NRS 616C.505. On December 10, 2015, the Appeals Officer issued a decision concluding the Claimant's death benefits should be calculated using wages from Mr. DeMaranville's employment immediately preceding his death. On January 5, 2016, the City of Reno (Reno) filed a Petition for Judicial Review (PJR) in the Second Judicial District Court (Case No. CV16-00013) seeking review of a December 10, 2015 Appeals Officer Decision. Employers Insurance Company of Nevada (EICN) filed a cross-petition for judicial review in this action on January 12, 2016.

On January 7, 2016, EICN filed a PJR in the First Judicial District Court (Case No. 16 OC 00003 1B) seeking review of the same December 10, 2015 Appeals Officer Decision. Reno filed its cross-petition for judicial review in this action on January 19, 2016.

Pursuant to the stipulation of the parties, Second Judicial District Court Judge Stiglich issued a February 23, 2016 Order changing venue of the PJR filed in the Second Judicial District Court to the First Judicial District Court. The Clerk of the First Judicial District Court has assigned Case No. 16 OC 00049 1B to the PJR transferred from the Second Judicial District Court and the two petitions were subsequently consolidated by Order dated April 12, 2016.

STATEMENT OF FACTS

All relevant facts are set forth in the Brief of Petitioner and Cross-Petitioner Employers Insurance Company of Nevada (EICN). The City of Reno hereby adopts by reference EICN's statement of facts.

ARGUMENT

1. ARGUMENT SUMMARY

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. 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 appropriate monthly wage in this case was zero because Mr. DeMaranville was earning no wage from the employment that caused his occupational disease when he died.

2. STANDARD OF REVIEW

In considering a petition for judicial review, the District Court reviews a decision of an administrative agency to determine if the decision is arbitrary or capricious or characterized by an abuse of discretion. NRS 233B.135(F). *Turk v. Nevada State Prison*, 94 Nev. 101, 575 P.2d 599 (1978). If an administrative agency's decision is arbitrary, capricious, characterized by an abuse of discretion, not supported by substantial evidence, or affected by prejudicial legal error, it must be reversed. NRS 233B.135(3); *United Exposition Serv. Co. v. SIIS*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993); *State Tax Com'n, ex rel., Nev. Dept. of Taxation v. Am. Home Shield of Nev., Inc.*, 127 Nev. ___, 254 P.3d 601, 603 (2011). For purposes of determining whether an administrative decision is supported by substantial evidence, "substantial evidence is that which a 'reasonable mind might accept as adequate to support a conclusion.'" *State, Empl. Sec. v. Hilton Hotels*, 102 Nev. 606, 608 P.2d 497, 498 (1986) (superseded by statute on other grounds) "quoting *Richardson v. Perales*, 402 U.S. 389, 401, (1971)).

A District Court "reviews an administrative Appeals Officer's determination of

1 questions of law, including statutory interpretation, de novo.” Moreover, the de novo review is
2 without deference to the decision of the administrative agency’s interpretation of its governing
3 statutes and regulations when that interpretation is not “within the language of the statute”.
4 *Poremba v. Southern Nevada Paving*, 132 Nev. Adv. Op. 24 (April 7, 2016).

5 Because this petition involves questions of law and an Appeal’s Officer Decision not
6 consistent with the applicable regulation, this Court conducts a de novo review without
7 deference to the Appeals Officer Decision.

8 **3. WORKERS COMPENSATION BENEFITS DERIVE FROM THE**
9 **EMPLOYMENT RELATIONSHIP**

10 The right to workers compensation benefits arises out of an employment relationship. It
11 is the relationship of the events causing the injury or occupational disease to the employment
12 that creates the right to benefits. *Larson’s Workers Compensation Law*, Sec. 1.03[1]. The right
13 to benefits does not exist independent of that relationship. Moreover, the rights that do derive
14 from that employment relationship are uniquely legislative in nature. *Weaver v. State*
15 *Industrial Insurance System*, 104 Nev. 305, 306, 756 P. 2d. 1195, 1195 (1988). Additionally,
16 in construing the workers compensation statutes that create these benefits, courts should not
17 disturb the delicate balance created by the legislature by implying provisions not expressly
18 included in the legislative scheme. *Id.*; accord *Ransier v. State Industrial Insurance System*,
19 104 Nev. 742, 745, 766 P. 2d. 274 (1988).

20 There is nothing in Nevada’s statutory scheme that indicates that benefits due as a result
21 of an industrial accident or occupational disease are to be based on an employment relationship
22 independent of the employment which causes the injury or occupational disease. Yet, that is
23 precisely what the Claimant argues in this case when it contends that the Claimant’s average
24 monthly wage should be based on compensation earned in an employment totally unrelated to
25 the employment which gave rise to the Claimant’s occupational disease. If the Claimant’s
26 contentions were correct, and if no connection to the employment causing the industrial injury
27 or occupational disease was required, liability would simply fall on the employer and insurer
28 providing workers compensation coverage at the time disability arose from the occupational
disease. There would be no need to determine which employer and insurer are responsible for

an occupational disease under rules like the last injurious exposure rule if the connection to the employment causing the occupational disease was irrelevant.

In this case, the Claimant voluntarily separated from the employment which presumably caused his occupational disease in 1990 with no expectation of a future employment relationship with the City. Although the employment relationship giving rise to the Claimant's right to benefits ended more than 20 years prior to his death from the occupational disease, the Claimant argues that wages earned in his current employment must be used to determine the Claimant's average monthly even though that employment is unrelated to other exposure or development of the occupational disease. The argument is not consistent with the applicable statutes and regulations dealing with average monthly wage.

4. APPLICABLE REGULATIONS REQUIRE THE WAGE TO BE BASED ON THE EMPLOYMENT CAUSING THE OCCUPATIONAL DISEASE

Pursuant to NRS 617.430, dependents of an employee who dies from an occupational disease are entitled to the same benefits as an employee injured in an industrial accident. NRS 616C.505 sets forth the amount and duration of compensation payable for an employee who dies as a result of an industrial accident or occupational disease and is based on the Claimant's average monthly wage. NAC 616C.420 through NAC 616C.447 are the applicable regulations dealing with the calculation of average monthly wage.

These regulations dealing with the calculation of average monthly wage require the calculations to be based on the employment in which the industrial injury occurs. NAC 616C.435 sets forth the period of earnings used to calculate the average monthly wage and defines the term "earnings" as used in NAC 616C.435 as "... earnings means earnings received from the employment in which the injury occurs and in any concurrent employment."

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

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

1 These regulations make the applicable employment for the purpose of calculating
2 average monthly wage in an occupational disease case the employment causing the
3 occupational disease. Here, that employment is presumed to be Mr. DeMaranville's
4 employment with the City which ended in 1990. Despite its obvious relevance to this case, the
5 Appeals Officer Decision completely ignores NAC 616C.435. It does not refer to the
6 regulation and does not discuss or explain why the regulations not controlling in this case.
7 Because the Decision ignores NAC 616C.435(9) and reaches a conclusion contrary to the
8 wording of the regulation, the Appeals Officer's Decision is not entitled to deference. *Poremba*
9 *v. Southern Nevada Paving*, 132 Nev. Adv. Op. 24 (April 7, 2016). The Appeals Officer
10 Decision is also contrary to existing Nevada case law.

11 **5. HOWARD V. CITY OF LAS VEGAS PRECLUDES PAYMENT OF DEATH**
12 **BENEFITS IN THIS CASE.**

13 In *Howard v. City of Las Vegas*, 121 Nev. 691, 120 P.3d., 410 (2005) a retired
14 firefighter suffered a heart attack approximately 8 years following his retirement. The Court
15 concluded the Claimant was not entitled to temporary total disability benefits because he was
16 not earning wages at the time he became disabled from his heart attack. Although the facts of
17 *Howard* are distinguishable from the present case in that *Howard* was not earning wages in
18 another employment unrelated to the employment causing his heart disease, there is nothing in
19 the *Howard* decision that suggests the result should be any different in this case. Mr.
20 DeMaranville was not earning wages from the employment that caused his occupational
21 disease at the time of his death. Unless NAC 616.435(9) is ignored as was done in the Appeals
22 Officer's Decision, the *Howard* decision compels the conclusion that Mr. DeMaranville's
23 average monthly wage at the time of his death was zero. NAC 616C.435(9) requires average
24 the monthly wage to be calculated using the wages earned in the employment from which the
25 occupational disease arose. If that is done in this case, the average monthly wage is zero and
26 *Howard* requires a result different than that reached by the Appeals Officer

27 **CONCLUSION**

28 For the foregoing reasons, the City of Reno respectfully submits the Claimant is not
entitled to death benefits because the Mr. DeMaranville was not earning wages in the

1 employment responsible for the occupational disease at the time of his death. Because the
2 average monthly wage from the employment responsible for the occupational disease was zero
3 at the time the Claimant became disabled, the rationale expressed in *Howard* would preclude
4 payment of death benefits.

5 An administrative decision affected by error of law is reversible. NRS 233B.135(3)(d).
6 The Appeals Officer Decision in this case is affected by error of law because it fails to
7 recognize and apply controlling precedent that precludes the result ordered by the Appeals
8 Officer in this case. The City respectfully requests the Court to correct the Appeals Officer's
9 error by reversing the Appeals Officer's Decision.

10 DATED this 18th day of May, 2016.

11 MCDONALD CARANO WILSON LLP

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AFFIRMATION

(Pursuant to NRS 239B.030)

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

T.E. Rowe

Timothy E. Rowe, Esq.
Attorneys for Petitioner, City of Reno

5-18-16

Date

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **OPENING BRIEF OF PETITIONER AND CROSS-PETITIONER CITY OF RENO** and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 18th day of May, 2016.


TIMOTHY E. ROWE

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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 18th day of May, 2016, I did cause a true copy of **PETITIONER'S OPENING BRIEF** to be placed in United States Mail, with first class postage prepaid thereon, and addressed as follows:

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

9 CITY OF RENO,

10 Petitioner,

11 vs.

CASE NO. 15 OC 00092 1B

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

DEPT. NO. 2

14 Respondents.
15 _____/

16
17 RESPONDENT DEMARANVILLE'S ANSWERING BRIEF TO
18 RESPONDENT EMPLOYERS INSURANCE COMPANY'S OPENING BRIEF
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Firms having appeared: Nevada Attorney for Injured Workers
Respondent's pseudonyms: Laura DeMaranville, surviving spouse of
Daniel DeMaranville, deceased. .

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I.

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1 Memorandum of Points and Authorities

2 Pursuant to the Nevada Administrative Procedure Act
3 and NRS 233B.133, Laura DeMaranville, surviving spouse of Daniel
4 DeMaranville, by and through her attorney Evan Beavers, Esq., and
5 the office of the Nevada Attorney for Injured Workers, hereby
6 submits her answering brief in response to the Brief of
7 Petitioner and Cross-Petitioner Employers Insurance Company of
8 Nevada seeking judicial review of that certain decision of the
9 Department of Administration's Appeals Office entered December
10 10, 2015.

11 II.

12 Jurisdictional Statement

13 Laura DeMaranville restates here the points and
14 authorities offered in her motion to dismiss EICON's petition for
15 judicial review of Appeals Officer Ward's decision of December
16 10, 2015. The points and authorities relied upon by the
17 respondent in her Motion to Dismiss filed in this matter February
18 3, 2016, remain valid. The appeals officer determined in her
19 decision of March 18, 2015, that Daniel DeMaranville's widow was
20 entitled to death benefits and that the City of Reno was liable
21 for those benefits. In her decision of December 10, 2015, the
22 appeals officer determined how to calculate the monthly benefits
23 owing from the city to Laura DeMaranville. EICON is not an
24 aggrieved party to that latter decision, and pursuant to the
25 Administrative Procedure Act this court is without jurisdiction
26 to consider EICON's petition to review that decision.¹

27 _____
28 ¹The motion to dismiss has been fully briefed and was
submitted March 1, 2016.

1 III.

2 Statement of the Issues

3 Daniel DeMaranville qualified for benefits under the
4 Nevada Industrial Insurance Act as a retired Reno Police
5 Department employee. He served as a Reno policeman from 1969 to
6 1990. At the date of his death the Act provided Mr.
7 DeMaranville's widow monthly benefits based on the decedent's
8 earnings. EICON, as the insurer that would be liable for a
9 workers' compensation claim against the City of Reno arising
10 before 1992, seeks to be absolved of any payment to Daniel
11 DeMaranville's widow in the event there is ever a determination
12 that EICON could be liable for such a payment. EICON proffers
13 the argument that a police officer's widow may be entitled to
14 monthly death benefits but if the decedent is retired at the date
15 of death the employer(or its putative insurer) owes the widow
16 nothing for that benefit.

17 In an earlier decision the appeals officer determined
18 Laura DeMaranville was entitled to benefits through her deceased
19 husband and Nevada's heart/lung statute, NRS 617.457.² There is
20 no language in the statute limiting the employer's liability to
21 only the period of employment. There is no case law to imply
22 such limiting language in the statute. Nonetheless, EICON seeks
23 an order of the district court declaring the appeals officer
24 wrong on the law for refusing to read such limiting language into
25 the statute.

26
27 ²That earlier decision, entered March 18, 2015, is also
28 before the court and consolidated with this matter by Order
Consolidating Cases entered April 14, 2016.

1 The issue presented is whether the appeals officer
2 committed error by refusing to use state administrative code when
3 determining the correct period for calculating the average
4 monthly wage necessary for paying monthly death benefits. That
5 regulation, NAC 616C.435(9), presented by EICON to be
6 dispositive, ties the calculation of wages to earnings from which
7 the injury occurs. EICON argues that the injury "occurred" while
8 the decedent was employed by the City and since he was no longer
9 employed by the City the wage on which to calculate benefits is
10 zero.

IV.

Statement of the Case

13 Appeals Officer Lorna L. Ward, by Decision and Order
14 dated March 18, 2015, applied NRS 617.457 and determined that
15 Daniel DeMaranville died of heart disease and that the date of
16 disability was the date of death and that the responsible insurer
17 on that date was the City of Reno. ROA 25. In compliance with the
18 appeals officer's decision, CCMSI, the City's claims
19 administrator, issued a determination letter dated April 15,
20 2015, to Laura DeMaranville advising her that the claim had been
21 accepted for death benefits but that the monthly payment would be
22 calculated based on Mr. DeMaranville's wages on the date he
23 retired instead of his wages at the time he became disabled and
24 died. ROA 25. CCMSI began paying \$1,683.85 monthly to Laura
25 DeMaranville. ROA 25. Ms. DeMaranville, seeking monthly
26 benefits calculated on the earnings she and her husband were
27 living on when he died as opposed to when he retired more than 20
28 years earlier, timely appealed that determination. ROA 25.

1 The matter was initially presented to Hearing Officer
2 Katherine Diamond who determined that at the date of his death
3 Daniel DeMaranville was employed as a security officer at the
4 federal court house and determined the surviving spouse became
5 entitled to compensation on the date of death, August 5, 2012.
6 ROA 772. The hearing officer committed error, however, when she
7 then decided the wages used to calculate the decedent's average
8 monthly wage "are determined by the primary employment in which
9 the injury occurs." ROA 772. The hearing officer affirmed the
10 City's payment of benefits in the amount of \$1,683.85 each month
11 which were based upon Daniel DeMaranville's presumed earnings at
12 the time he retired from the Reno Police Department. ROA 772.

13 Laura DeMaranville next brought the matter to the
14 appeals office on a motion for summary judgment. ROA 748-756.
15 In her motion Ms. DeMaranville argued that persons seeking
16 benefits under NRS 617.457 are entitled to benefits calculated at
17 the date of disability and not at the date of separation from the
18 employer liable for the benefits. ROA 752. EICON filed a brief
19 in opposition to the motion arguing that neither the wage earned
20 at death nor the wage earned at retirement should be used in
21 calculating the benefit. ROA 740-747. EICON argued in its brief
22 to the appeals officer that because no wage was paid to Daniel
23 DeMaranville by the City of Reno at the time he suffered the
24 fatal heart attack, no wage existed on which to calculate
25 benefits. ROA 743.

26 On December 10, 2015 the appeals officer entered her
27 Decision and Order granting the widow's motion for summary
28 judgment. ROA 24-30. EICON now petitions for judicial review of

1 that decision.

2 Laura DeMaranville argues that EICON is not an
3 aggrieved party from that decision and the court is without
4 jurisdiction to consider its petition, and the appeals officer
5 did not commit an error of law upon which the court might reverse
6 the appeals officer.

7 V.

8 Statement of the Facts

9 Daniel DeMaranville was a sworn police officer for the
10 City of Reno for more than 20 years, from August 6, 1969, until
11 his retirement in January of 1990. ROA 25.

12 Mr. DeMaranville died on August 5, 2012, and at the
13 time of his death he was employed by AKAL as a court security
14 officer for the Federal District Court. ROA 25.

15 At the date of his death Daniel DeMaranville was
16 earning \$7,314.15 gross monthly salary with vacation pay. ROA 27.

17 By decision and order dated March 18, 2015, the
18 Appeals Officer determined that Daniel DeMaranville died of
19 industrial heart disease and that he became entitled to
20 compensation on the date of his death, and that the responsible
21 insurer on that date was the City of Reno. ROA 25.

22 VI.

23 Summary of the Arguments

24 All that is required for a policeman's widow to be
25 entitled to benefits under Nevada's heart/lung statute is for her
26 deceased spouse to have been employed as a police officer for
27 more than five consecutive years and to have died of heart
28 disease. To calculate the monthly death benefits owing to the

1 widow under the Occupational Diseases Act (Chapter 617) it is
2 necessary to calculate the average monthly wage using the
3 Industrial Insurance Act (Chapter 616). Regulation authorized in
4 Chapter 616 mandates that the wage earned on the date the
5 employee is no longer able to work is the wage to use to
6 calculate the average monthly wage. Daniel DeMaranville worked
7 up until the day he died, and the wage he was earning on that
8 date should be used to calculate his widow's monthly benefits.
9 No decision by our state Supreme Court supports a different
10 conclusion.

11 VII.

12 Legal Argument

13 Standard for Review

14 The standard for the district court to review the
15 decision of the administrative law judge is found in NRS
16 233B.135. The review must be confined to the record. NRS
17 233B.135(1)(b). The final decision of the agency shall be deemed
18 reasonable and lawful until reversed and the burden of proof is
19 on the party attacking or resisting the decision. NRS
20 233B.135(2). The court shall not substitute its judgment for
21 that of the agency as to weight of evidence on a question of
22 fact. NRS 233B.135(3). The court may remand or set aside the
23 final decision if the decision is clearly erroneous in view of
24 the reliable, probative and substantial evidence on the whole
25 record (NRS 233B.135(3)(e)) or arbitrary or capricious or
26 characterized by abuse of discretion (NRS 233B.135(3)(f)).

27 The court must inquire whether the appeals officer's
28 factual determinations are reasonably supported by evidence of

1 sufficient quality and quantity. See Nassiri v. Chiropractic
2 Physicians' Bd. of Nev., 130 Nev. Adv. Op. 27, 327 P.3d 487, 489
3 (2014) (citing Elizondo v. Hood Machine, Inc., 129 Nev. Adv. Op.
4 84, 312 P.3d 479 (2013)).

5 Most issues are not purely questions of law, but rather
6 are issues involving the finding of facts and the application of
7 those facts to the law. Deference is to be given by the
8 reviewing court to conclusions of law made by the appeals officer
9 when they are supported by substantial evidence. Jones v. Rosner,
10 102 Nev. 215, 719 P.2d 805 (1986); State Indus. Ins. Sys. v.
11 Kweiss, 108 Nev. 123, 825 P.2d 218 (1992).

12 In the case presented to Appeals Officer Ward EICON
13 stipulated to the use of the record on appeal from the appeals
14 officer's previous decision finding Laura DeMaranville's claim
15 compensable and the City of Reno liable. ROA 757-760. No
16 controverted facts were presented to the appeals officer leading
17 to the decision EICON now seeks to be reviewed. The standard for
18 review of the decision of December 10, 2015, is exclusively
19 whether Appeals Officer Ward's legal conclusions are arbitrary,
20 capricious or characterized by an abuse of discretion. See NRS
21 233 B.135 (3)(f).

22 Summary Judgment Was Not Based on an Error of Law.

23 Summary judgment is appropriate only when the moving
24 party is entitled to judgment as a matter of law and no genuine
25 issue of material fact remains for trial. Perez v. Las Vegas
26 Medical Center, 107 Nev. 1, 4, 805 P.2nd 589 (1991) (citing
27 Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774 P.2nd 432,
28 433 (1989)). EICON did not present any genuine issue of material

1 fact to the appeals officer before she entered judgment for Ms.
2 DeMaranville. The issue now presented to the district court is
3 whether Ms. DeMaranville is entitled to judgment as a matter of
4 law.

5 All that is necessary for a policeman's entitlement to
6 benefits under NRS 617.457 is employment for more than five
7 consecutive years as a police officer and proof of heart disease.
8 See Manwill v. Clark County, 123 Nev. 238, 242, 162 P.3d 876
9 (2007) (the Court opining on the entitlement of a fireman, also
10 covered under Nevada's heart/lung law). There is no proof
11 required or implied by the statute or case law that the heart
12 disease occur during the period of employment, yet EICON begins
13 with such a premise for its argument that there is no connection
14 between Mr. DeMaranville's wages at the time of death and his
15 employment with the City. EICON presents no evidence of when the
16 disease "occurred" but argues the City cannot be obligated to pay
17 benefits on wages earned after the "occurrence." Our state
18 Supreme Court, when presented with the opportunity, has not
19 adopted such an argument.

20 In Gallagher v. City of Las Vegas, 114 Nev. 595, 601,
21 602, 959 P.2d 519 (1998), the Court determined retired firemen
22 were entitled to benefits under the heart/lung statute and
23 declared that any limitation to the existing law would have to be
24 addressed by the legislature. In Howard v. City of Las Vegas,
25 121 Nev. 691, 695, 120 P.3d 410 (2005), the Court concluded a
26 retired fireman was entitled to benefits for occupational disease
27 under the statute and the period immediately preceding the heart
28 attack is the date from which disability benefits must be

1 calculated.³

2 In Mirage v. Nevada Dep't. Of Admin., 110 Nev. 257, 871
3 P.2nd 317 (1994), the Court explained the proper analysis for
4 calculating average monthly wage under Chapter 617. First,
5 identify the date of disability and then rely on Chapter 616 to
6 determine the method for calculating benefits. Id. at 260. The
7 Court clearly intended Chapter 616 be used to calculate benefits,
8 not to avoid benefits. In addition, NAC 616C.441(1) mandates
9 that the wage the injured employee earned on the date the
10 employee was no longer able to work because of the occupational
11 disease should be used to calculate the average monthly wage.

12 EICON seeks to turn that authority on its head and rely
13 instead on NAC 616C.435 and NAC 616C.444 to imply a required
14 connection between the date of disability from an occupational
15 disease and earnings from pre-retirement employment. Use of
16 department regulations intended to implement the law should not
17 be misconstrued to thwart the very intent of the law. The
18 purpose of workers' compensation in Nevada is to give
19 compensation, not deny it. State Indus. Ins. Sys. v. Weaver, 103
20 Nev. 196, 200, 734 P.2d 740 (1987); NRS 616A.010. Unreasonable
21 or absurd results must be avoided. Great Basin Water Network v.
22 Taylor, 126 Nev. Adv. Rep. 20, 234 P.3d 912, 918 (Nev 2010);
23 Citizens for Cold Springs v. City of Reno, 125 Nev. 625, 631, 218
24 P.3d 847, 851 (2009); Allstate Ins. Co. v. Fackett, 125 Nev. 132,
25 138, 206 P.3d 572, 577 (2009). Where the legislative intent is

26
27 ³The court denied the fireman wage substitution benefits
28 because at the time of his heart attack the retired fireman was
earning no wage to substitute.

1 clear, the court must effectuate that intent. Sheriff, Clark
2 County v. Burcham, 198 P.3d 326, 329, 124 Nev. 1247, 1253 (2008).

3 Appeals Officer Ward, in her previous decision,
4 determined the date of Daniel DeMaranville's disability from
5 heart disease was the date of his death, August 5, 2012. ROA 25.
6 On August 5, 2012, Daniel DeMaranville was earning \$7,314.15
7 gross monthly salary with vacation pay. ROA 27. His wages at
8 that time would have been capped by NRS 616A.065 at \$5,222.63.
9 ROA 27. Sixty-six and two-thirds of that amount is \$3,481.75.
10 NRS 616C.505. In her December 10th order, the appeals officer
11 concluded Laura DeMaranville should be receiving that amount from
12 the City of Reno as her monthly death benefit. ROA 27.

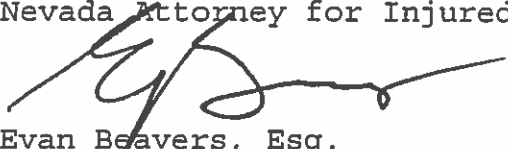
13 VII.

14 Conclusion

15 Laura DeMaranville is entitled to 66 2/3 of the average
16 monthly wage earned by Daniel DeMaranville at the time of his
17 death from compensable heart disease. The law by which she stakes
18 her claim is well settled. Accordingly, she respectfully asks
19 the District Court to deny EICON's petition seeking to reverse
20 the legal conclusions of the appeals officer.

21 Respectfully submitted this 19th day of May, 2016.

22 Nevada Attorney for Injured Workers

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26 1000 East William, Suite 208
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28 Attorney for Laura DeMaranville,
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Certificate of Compliance
NRAP 28.2

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

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

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

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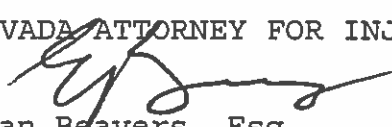
X Does not exceed 30 pages.

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

1 number, if any, of the transcript or appendix where the matter
2 relied on is to be found. I understand that I may be subject to
3 sanctions in the event that the accompanying brief is not in
4 conformity with the requirements of the Nevada Rules of Appellate
5 Procedure.

6 DATED this 19th day of May, 2016.

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Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing RESPONDENT'S ANSWERING BRIEF addressed to:

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DATED: May 19, 2016

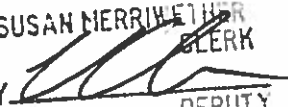
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BY  DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 OC 00092 1B

vs.

Department No: 2

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

Respondents.

**REPLY BRIEF OF PETITIONER AND CROSS-PETITIONER EMPLOYERS
INSURANCE COMPANY OF NEVADA**

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JA 1401

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Gallagher v. City of Las Vegas, 114 Nev. 595, 959 P.2d 519 (1998).....7

REGULATIONS

NAC 616C.435... ..5, 7

NAC 616C.441... ..6

I. ARGUMENT

As set forth in detail in the opening brief of Employers Insurance Company of Nevada, (“Employers”), the Appeals Officer’s Decision dated December 10, 2015, (ROA 24-30), is arbitrary and capricious in that it ignores and is contrary to the controlling law. Specifically, the Appeals Officer’s Decision ignores and is directly contrary to NAC 616C.435(9) which provides that “earnings” are those that are received from the employment which resulted in the injury or disease.

The Claimant fails to address this issue in her answering brief. The sum total of the Claimant’s response to this fact is to assert that Employers is using the controlling regulations “to imply a required connection between the date of disability from an occupational disease and earnings from pre-retirement employment.” Respondent’s Answering Brief, page 9, lines 13-15. Of course, Employers is not implying anything. Rather, it is simply asserting that the clear language of the controlling regulation should be applied in this case.

As set forth in Employers’ opening brief, the application of NAC 616C.435(9) requires the Appeals Officer’s Decision to be reversed. That regulation provides that the “earnings” to be used in calculating the monthly benefit are those that are received during the 12 week period immediately preceding the date of disablement that are received from the employment which resulted in the disease. In this case, since he had retired from the police force twenty-two years earlier, Mr. DeMaranville received no wages from his police officer employment in the 12 week period before he died and the earnings are therefore zero. Therefore, the average monthly wage, and the monthly benefit payable under the law, are zero.

While the Claimant cites Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), she does not state how that case supports her position. As set forth in Employers’ opening brief, that case, while not directly on point, actually supports a reversal of the Appeals Officer’s Decision. In that case a firefighter suffered a heart attack eight years after he retired. The Supreme Court held

1 that he was not entitled to collect temporary total disability benefits since he was not earning any
2 wages and thus had no calculable average monthly wage. The Supreme Court based its decision on
3 the "Legislature's method for calculating the average monthly wage." 120 P.3d at p. 411. While in
4 that case the claimant was not working at an unrelated non-firefighter job and the Supreme Court did
5 not address the precise issue presented in this case, the holding supports the conclusion that benefits
6 must be calculated in accordance with, and as limited by, the applicable statutes and regulations and
7 that the average monthly wage must be based on the employment from which the heart disease claim
8 arose.
9

10 The case of Mirage Casino-Hotel v. Nevada Dept. of Administration, 110 Nev. 257, 871 P.2d
11 317 (1994) cited by the Claimant does not support the Claimant's position. That case merely states
12 that a claimant's benefits are to be calculated from the date of disability, or in this case Mr.
13 DeMaranville's death. Based upon the applicable statutes and regulations, Mr. DeMaranville's
14 earnings at the time of his death were zero since he was not receiving any wages from his police
15 officer job. Mirage does not hold that wages from a totally separate and distinct employment that is
16 unrelated to that from which the occupational disease arose are to be used to calculate the benefits.
17

18 Similarly, the Claimant's reliance upon NAC 616C.441 is misplaced. That regulation
19 provides: "The earnings of an injured employee on the date on which an accident occurs or the date
20 on which an injured employee is no longer able to work as a result of contracting an occupational
21 disease will be used to calculate the average monthly wage." Contrary to the Claimant's position this
22 regulation does not require that the wages from an unrelated employment must be used to calculate
23 the benefit. Instead, this regulation requires that only the claimant's "earnings" be used to calculate
24 the benefit. As discussed above and in more detail in the opening brief, the term "earnings" has a
25 specific definition under the regulations and is specifically limited to those wages earned from the
26
27
28

1 employment which resulted in the disease, i.e. the wages from Mr. DeMaranville's police work,
2 which at the time of his death were zero. NAC 616C.435(9).

3 The Claimant also cites to Gallagher v. City of Las Vegas, 114 Nev. 595, 959 P.2d 519
4 (1998) for the proposition that retired firefighters, (and police officers), are entitled to benefits under
5 the heart/lung statute and that the Legislature is responsible for defining any limits on those benefits.
6 Answering Brief, page 8, lines 20-24. Employers' argument completely consistent with this holding;
7 it is based upon the statutes passed by the Legislature and the regulations adopted in accordance with
8 those statutes.
9


10 The Appeals Officer's determination to set the monthly benefit at the maximum allowed at
11 the time of Mr. DeMaranville's death based on his employment with a private company, wholly
12 unrelated to his police officer career, is incorrect as a matter of law and therefore arbitrary and
13 capricious.
14

15 II. CONCLUSION

16 Employers Insurance Company of Nevada respectfully requests that its Petition for Judicial
17 Review be granted and the Appeals Officer's Decision be reversed and the monthly benefit be
18 established at zero dollars which is the result required by applicable law.
19

20 Dated this 16th day of June, 2016.

21
22 SERTIC LAW LTD.

23
24
25 By: 
26 Mark S. Sertic
27 Attorneys for Petitioner/Cross-Petitioner
28 Employers Insurance Company
of Nevada

ATTORNEY'S CERTIFICATE

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

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☒ This brief has been prepared in a monospaced typeface using Times New Roman typeface and Microsoft Word with 10.5 characters per inch.

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

☒ Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.


///

//

//

1 DATED this 16th day of June, 2016.

2
3 SERTIC LAW LTD.

4 By: 
5 Mark S. Sertic
6 Attorneys for Petitioner/Cross-Petitioner
7 Employers Insurance Company
8 of Nevada
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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 16th day of June, 2016, I served by Reno-Carson Messenger Service, a true copy of the foregoing or attached document, addressed to:

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McDonald Carano Wilson LLP
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Gina L. Walsh

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5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 CITY OF RENO,

10 Petitioner,

11 vs.

CASE NO. 15 OC 00092 1B

12 DANIEL DEMARANVILLE (Deceased);
EMPLOYERS INSURANCE COMPANY OF
13 NEVADA; and NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER,
14

DEPT. NO. II

15 Respondents.
16

17 ORDER
STIPULATION FOR EXTENSION OF TIME TO FILE

18 RESPONDENT'S ANSWERING BRIEF TO CITY OF RENO

19 The above-named parties, by and through their attorneys
20 of record, stipulate that Laura DeMaranville, Respondent and
21 surviving spouse of Daniel DeMaranville, deceased, may have up to
22 and including July 1, 2016, to file Respondent's Answering Brief
23 in response to the Opening Brief of Petitioner and Cross-
24 Petitioner City of Reno. This extension of time is not presented
25 for any improper purpose, such as to cause unnecessary delay or
26 needless increase in the cost of litigation.

27 The above-named parties hereby certify that there have
28 been no previous requests for an extension of time to file
Respondent's Answering Brief filed with this Court.

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AFFIRMATION

The undersigned affirms, pursuant to NAC 616C.303, that no personal identifying information appears in this Stipulation for Extension of Time to File Respondent's Answering Brief to City of Reno.

DATED this 16 day of June, 2016.

NEVADA ATTORNEY FOR INJURED WORKERS

W. Beavers
Evan Beavers, Esq.

1000 East William Street, Suite 208
Carson City, Nevada 89701

Attorneys for Laura DeMaranville,
surviving spouse of Daniel DeMaranville

DATED this 15th day of June, 2016.

MCDONALD CARANO WILSON

T. E. Rowe
Timothy E. Rowe, Esq.

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PO Box 2670

Reno, NV 89505-2670
Attorneys for Employer,
City of Reno

DATED this 15th day of June, 2016.

SERTIC LAW LTD

Mark S. Sertic
Mark S. Sertic, Esq.

5975 Home Gardens Drive
Reno, Nevada 89502

Attorneys for Insurer,
Employers Insurance Company of Nevada

* * * * *

ORDER

IT IS SO ORDERED this 20 day of June, 2016.

Jama E. [Signature]
DISTRICT COURT JUDGE

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

8 CITY OF RENO ,

9 Petitioner,

10 vs.

11 DANIEL DEMARANVILLE, (deceased),
EMPLOYER'S INSURANCE COMPANY OF
12 NEVADA, and NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER,

CASE NO. 15 OC 00092 1B
DEPT. NO. 2

13 Respondents.
14 _____/

16 RESPONDENT DEMARANVILLE'S ANSWERING BRIEF TO
17 OPENING BRIEF OF PETITIONER and CROSS-PETITIONER
18 CITY OF RENO
19
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Disclosure Statement
NRAP 26.1

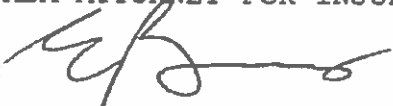
The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

Firms having appeared: Nevada Attorney for Injured Workers

Respondent's pseudonyms: Laura DeMaranville, surviving spouse of Daniel DeMaranville, deceased.

Submitted this 1st day of July, 2016.

NEVADA ATTORNEY FOR INJURED WORKERS


Evan Beavers, Esq.
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Attorneys for Laura DeMaranville,
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I.

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Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P.2nd 432 (1989)	5
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1	<u>Nevada Revised Statutes</u>	
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3	NRS 233B.135	4
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19	NAC 616C.435	8
20	NAC 616C.441 (1)	7
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23	<u>Other Authorities</u>	
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1 II.

2 Jurisdictional Statement

3 Pursuant to the Nevada Administrative Procedure Act and
4 NRS 233B.133, Laura DeMaranville, surviving spouse of Daniel
5 DeMaranville, deceased, by and through her attorney Evan Beavers,
6 Esq., and the office of the Nevada Attorney for Injured Workers,
7 hereby submits her memorandum of points and authorities in
8 response to the Opening Brief of Petitioner and Cross-Petitioner
9 City of Reno seeking judicial review of that certain decision of
10 the Department of Administration's Appeals Office entered
11 December 10, 2015.

12 III.

13 Statement of the Issues

14 Did the administrative law judge commit reversible
15 error by refusing to conclude that no death benefits are owing to
16 the surviving spouse of a retired police officer if, at the time
17 of disability, the employer responsible for workers' compensation
18 benefits pursuant to NRS 617.457 was paying no wage to the
19 retired police officer?

20 IV.

21 Statement of the Case

22 Daniel DeMaranville retired from the Reno Police in
23 1990 after more than 20 years of service. ROA 25. He died
24 August 5, 2012, of cardiac arrest. ROA 198. He was employed at
25 the time of his death as a contract security officer at the Reno
26 Federal Court House. ROA 84. His earnings at the time of his
27 death were substantially larger than his earnings at the time of
28

1 his retirement from the City of Reno. ROA 25.

2 Mr. DeMaranville's widow, Laura DeMaranville, filed a
3 claim against the City of Reno for workers' compensation death
4 benefits. ROA 206. Appeals Officer Lorna L. Ward, by decision
5 dated March 18, 2015, determined the claim for benefits was
6 compensable and the City of Reno was liable. ROA 46-56. The
7 City's claims administrator began paying benefits based upon the
8 decedent's estimated earnings at the time of retirement. ROA 25.
9 The City appealed the compensability decision on a petition for
10 judicial review while Ms. DeMaranville appealed the sufficiency
11 of the payments through the administrative hearing process.

12 Laura DeMaranville's appeal of the sufficiency of the
13 death benefit payments was presented to Appeals Officer Lorna L.
14 Ward by motion for summary judgement. ROA 748-756. The City
15 filed its brief in opposition arguing that the widow should
16 receive zero in the way of benefits given that the City was
17 paying the decedent zero in wages at the date of his death. ROA
18 735-739. Employers Insurance Company of Nevada (EICON), which
19 insured the City during part of the time Mr. DeMaranville was an
20 employee with the City, intervened and joined the City in its
21 argument. ROA 740-747. By Decision and Order dated December 10,
22 2015, the appeals officer concluded Ms. DeMaranville was owed
23 death benefits from the City calculated upon the decedent's
24 earnings at the date of his disability, which was the date of his
25 death. ROA 24-32. Both the City and EICON have filed petitions
26 for judicial review of that decision and the proceedings on both
27 petitions are now consolidated.

28 //

1 V.

2 Statement of the Facts

3 Daniel DeMaranville was a sworn police officer for the
4 City of Reno for more than 20 years, from August 6, 1969, until
5 his retirement in January of 1990. ROA 25.

6 Mr. DeMaranville died on August 5, 2012, and at the
7 time of his death he was employed by AKAL as a court security
8 officer for the Federal District Court. ROA 25.

9 At the date of his death Daniel DeMaranville was
10 earning \$7,314.15 gross monthly salary with vacation pay. ROA 27.

11 By decision and order dated March 18, 2015, the Appeals
12 Officer determined that Daniel DeMaranville died of industrial
13 heart disease and that he became entitled to compensation on the
14 date of his death, and that the responsible insurer on that date
15 was the City of Reno. ROA 25.

16 VI.

17 Summary of the Arguments

18 The City of Reno argues that the appeals officer
19 committed an error of law when she refused to calculate death
20 benefits owing to Ms. DeMaranville on wages the City was paying
21 to the decedent at the date of his death. The City posits there
22 must be a nexus between the employment giving rise to the disease
23 which caused death and wages earned from that employment at the
24 time of death. However, neither state statutes, state
25 regulations nor state case law provide any support for such a
26 principle and the appeals officer committed no error of law.

27 //

28 //

VII.

Legal Argument

1. Standard for Review

The standard for the district court to review the decision of the administrative law judge is found in NRS 233B.135. The review must be confined to the record. NRS 233B.135(1)(b). The final decision of the agency shall be deemed reasonable and lawful until reversed and the burden of proof is on the party attacking or resisting the decision. NRS 233B.135(2). The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. NRS 233B.135(3). The court may remand or set aside the final decision if the decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record (NRS 233B.135(3)(e)) or arbitrary or capricious or characterized by abuse of discretion (NRS 233B.135(3)(f)).

The court must inquire whether the appeals officer's factual determinations are reasonably supported by evidence of sufficient quality and quantity. See Nassiri v. Chiropractic Physicians' Bd. of Nev., 130 Nev. Adv. Op. 27, 327 P.3d 487, 489 (2014) (citing Elizondo v. Hood Machine, Inc., 129 Nev. Adv. Op. 84, 312 P.3d 479 (2013)).

Most issues are not purely questions of law, but rather are issues involving the finding of facts and the application of those facts to the law. Deference is to be given by the reviewing court to conclusions of law made by the appeals officer when they are supported by substantial evidence. Jones v. Rosner, 102 Nev. 215, 719 P.2d 805 (1986); State Indus. Ins. Sys. v.

1 Kweiss, 108 Nev. 123, 825 P.2d 218 (1992).

2 In the case presented to Appeals Officer Ward the City
3 stipulated to the use of the record on appeal from the appeals
4 officer's previous decision finding Laura DeMaranville's claim
5 compensable and the City liable. ROA 757-760. No controverted
6 facts were presented to the appeals officer leading to the
7 decision the City now seeks to be reviewed. The standard for
8 review of the decision of December 10, 2015, is exclusively
9 whether Appeals Officer Ward's legal conclusions are arbitrary,
10 capricious or characterized by an abuse of discretion. See NRS
11 233 B.135 (3)(f).

12 2. Summary Judgment Was Not Based on an Error of Law

13 Summary judgment is appropriate only when the moving
14 party is entitled to judgment as a matter of law and no genuine
15 issue of material fact remains for trial. Perez v. Las Vegas
16 Medical Center, 107 Nev. 1, 4, 805 P.2nd 589 (1991) (citing
17 Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774 P.2nd 432,
18 433 (1989)). The City did not present any genuine issue of
19 material fact to the appeals officer before she entered judgment
20 for Ms. DeMaranville. The issue now presented to the district
21 court is whether Ms. DeMaranville is entitled as a matter of law
22 to benefits based upon her deceased husband's earnings at the
23 date of his death.

24 The City argues the appeals officer ignored state
25 statutes, regulations and case law requiring that wages used for
26 determining occupational disease benefits be only those wages
27 from the employment relationship giving rise to the disease. "In
28 this case, the Claimant voluntarily separated from the employment

1 which *presumably* caused his occupational disease in 1990 with no
2 expectation of a future employment relationship with the City."
3 City's Opening Brief, page 7, lines 3-5 (*italics added*).
4 However, the City cites to no record in the proceedings below
5 that might support a finding as to the cause of Mr.
6 DeMaranville's heart disease. In addition, Nevada statutes,
7 regulations and case law all support the appeals officer's
8 conclusion that wages earned at the date of disability (not the
9 date of "cause") must be used to determine death benefits for
10 occupational disease.

11 Pursuant to the Nevada Occupational Diseases Act,
12 compensation to be paid for incapacity as a result of
13 occupational disease, after a minium period of incapacity, must
14 be computed from the date of incapacity. NRS 617.420. The
15 dependents of every employee who dies of an occupational disease
16 are entitled to compensation. NRS 617.430(1). Diseases of the
17 heart of a person who, for 5 years or more, has been employed in
18 a full-time continuous, uninterrupted and salaried occupation as
19 a policeman before the date of disablement are conclusively
20 presumed to have arisen out of and in the course of employment.
21 NRS 617.457(1).

22 All that is necessary for a policeman's entitlement to
23 benefits under NRS 617.457 is employment for more than five
24 consecutive years as a police officer and proof of heart disease.
25 See Manwill v. Clark County, 123 Nev. 238, 242, 162 P.3d 876
26 (2007) (the Court opining on the entitlement of a fireman, also
27 covered under NRS 617.457). There is no proof required or
28 implied by the statute or case law that the heart disease occur

1 during the period of employment, yet the City begins with such a
2 premise for its argument that there is no connection between Mr.
3 DeMaranville's wages at the time of death and his employment with
4 the City. The City presents no evidence of when the disease was
5 caused but argues the City cannot be obligated to pay benefits on
6 wages "earned in an employment totally unrelated to the
7 employment which gave rise to the Claimant's occupational
8 disease." City's Opening Brief at page 6, lines 24-25. Our
9 state Supreme Court has never conditioned the employer's duty to
10 pay occupational disease benefits to retired policemen or
11 firefighters on some duty of the retiree to prove that the cause
12 of the disease occurred during the employment relationship.

13 In Gallagher v. City of Las Vegas, 114 Nev. 595, 601,
14 602, 959 P.2d 519 (1998), the Court determined retired firemen
15 were entitled to benefits under NRS 617.457 and declared that any
16 limitation to the existing law would have to be addressed by the
17 legislature. In Howard v. City of Las Vegas, 121 Nev. 691, 695,
18 120 P.3d 410 (2005), the Court concluded a retired fireman was
19 entitled to benefits for occupational disease under the statute
20 and the period immediately preceding the retiree's heart attack
21 is the date from which disability benefits must be calculated.

22 In Mirage v. Nevada Dep't. Of Admin., 110 Nev. 257, 871
23 P.2nd 317 (1994), the Court explained the proper analysis for
24 calculating average monthly wage under Chapter 617. First,
25 identify the date of disability and then rely on Chapter 616 to
26 determine the method for calculating benefits. Id. at 260. The
27 Court clearly intended Chapter 616 be used to calculate benefits,
28 not to avoid benefits. In addition, NAC 616C.441(1) mandates

1 that the wage the injured employee earned on the date the
2 employee was no longer able to work because of the occupational
3 disease should be used to calculate the average monthly wage.

4 The City seeks to turn that authority on its head and
5 rely instead on NAC 616C.435 and NAC 616C.444 to imply a required
6 connection between the date of disability from an occupational
7 disease and earnings from pre-retirement employment. Use of
8 department regulations intended to implement the law should not
9 be misconstrued to thwart the very intent of the law. The
10 purpose of workers' compensation in Nevada is to give
11 compensation, not deny it. State Indus. Ins. Sys. v. Weaver, 103
12 Nev. 196, 200, 734 P.2d 740 (1987); NRS 616A.010. Unreasonable
13 or absurd results must be avoided. Great Basin Water Network v.
14 Taylor, 126 Nev. Adv. Rep. 20, 234 P.3d 912, 918 (Nev 2010);
15 Citizens for Cold Springs v. City of Reno, 125 Nev. 625, 631, 218
16 P.3d 847, 851 (2009); Allstate Ins. Co. v. Fackett, 125 Nev. 132,
17 138, 206 P.3d 572, 577 (2009). Where the legislative intent is
18 clear, the court must effectuate that intent. Sheriff, Clark
19 County v. Burcham, 198 P.3d 326, 329, 124 Nev. 1247, 1253 (2008).

20 The City relies on Howard v. City of Las Vegas, 121
21 Nev. 691, 120 P.3d 410 (2005), for the proposition that a retired
22 employee entitled to the benefits of NRS 617.457 is entitled to
23 no benefit based upon wages earned at the time of his heart
24 attack if the employer was paying no wage at the time. That
25 proposition, however, cannot be read into the Howard ruling.

26 In Howard our State Supreme Court was considering a
27 retired fireman's entitlement to temporary total disability
28

1 payments after suffering a disabling heart attack.¹ The Court
2 concluded the retired fireman was not entitled to temporary
3 disability benefits as a substitute for wages because the
4 retirement benefits he was receiving at the time of his
5 disability were not within the definition of "compensation" in
6 NRS 617.050 of the Occupational Diseases Act. What is noteworthy
7 in analysis of the legal basis of Appeals Officer Ward's
8 determination in the case at bar is that NRS 617.050 does include
9 in its definition of "compensation" those benefits payable to
10 dependents of employees. To extrapolate from Howard that the
11 employer liable for death benefits under NRS 617.457 is obligated
12 to pay no benefits if the employer was paying no wages to the
13 deceased employee on the date of disability simply goes too far.

14 Appeals Officer Ward, in her previous decision on
15 compensability, determined the date of Daniel DeMaranville's
16 disability from heart disease was the date of his death, August
17 5, 2012. ROA 25. On August 5, 2012, Daniel DeMaranville was
18 earning \$7,314.15 gross monthly salary with vacation pay. ROA
19 27. His wages at that time would have been capped by NRS
20 616A.065 at \$5,222.63. ROA 27. Sixty-six and two-thirds of that
21 amount is \$3,481.75. NRS 616C.505. In her order of December 10,
22 2015, the appeals officer concluded Laura DeMaranville should be
23 receiving that amount from the City of Reno as her monthly death
24 benefit. ROA 27.

25
26 ¹Every employee injured by industrial accident is entitled
27 to receive as temporary total disability 66 2/3 percent of the
28 average monthly wage until a physician or chiropractor determines
the employee is capable of returning to work. See NRS
616C.475(1) and (5).

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VIII.

Conclusion

Appeals Officer Ward did not commit legal error in her decision of December 10, 2015. It was not an abuse of discretion to grant summary judgment to the surviving spouse and refuse the argument that the City of Reno owes the widow of Daniel DeMaranville zero for death benefits because at the date of the death the City was paying zero in wages to the decedent. The City's liability for benefits to Daniel DeMaranville's dependent stems from the employment relationship giving rise to the claim. For calculating the amount owed there is no required nexus between the employment relationship and a presumed date the disease was contracted, or occurred, or was caused. Tying death benefits to wages earned at any of these presumed dates denies Laura DeMaranville the very benefits the Nevada Legislature intended her to receive.

RESPECTFULLY SUBMITTED this 1st day of July, 2016.

NEVADA ATTORNEY FOR INJURED WORKERS


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Certificate of Compliance
NRAP 28.2

1
2
3 1. I hereby certify that this brief complies with the formatting
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
5 32(a)(5) and the type style requirements of NRAP 32(a)(6)
6 because:

7 ___ This brief has been prepared in a proportionally
8 spaced typeface using Word Perfect X3 in Times Roman
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15 parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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22 3. Finally, I hereby certify that I have read this answering
23 brief, and to the best of my knowledge, information, and belief,
24 it is not frivolous or interposed for any improper purpose. I
25 further certify that this brief complies with all applicable
26 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
27 which requires every assertion in the brief regarding matters in
28 the record to be supported by a reference to the page and volume

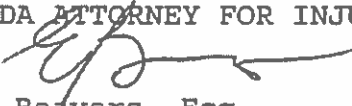
1 number, if any, of the transcript or appendix where the matter
2 relied on is to be found. I understand that I may be subject to
3 sanctions in the event that the accompanying brief is not in
4 conformity with the requirements of the Nevada Rules of Appellate
5 Procedure.

6 AFFIRMATION
7 Pursuant to NRS 239B.030

8 The undersigned does hereby affirm that the preceding
9 RESPONDENT DEMARANVILLE'S ANSWERING BRIEF TO OPENING BRIEF OF
10 PETITIONER AND CROSS-PETITIONER CITY OF RENO filed in the First
11 Judicial District Court of the State of Nevada does not contain
12 the social security number of any person.

13
14 DATED this 1st day of July, 2016.

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Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing RESPONDENT DEMARANVILLE'S ANSWERING BRIEF TO OPENING BRIEF OF PETITIONER and CROSS-PETITIONER CITY OF RENO addressed to:

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BY *[Signature]*
DEPUTY

8
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF CARSON CITY

11 CITY OF RENO,

12 Petitioner,

Case No: 15 OC 00092 1B

13 vs.

Department No: II

14 DANIEL DEMARANVILLE, Deceased,
15 EMPLOYER'S INSURANCE COMPANY
16 OF NEVADA, AND NEVADA DEPARTMENT
17 OF ADMINISTRATION APPEALS OFFICER,

18 Respondents.

19
20 STIPULATION AND ORDER TO EXTEND TIME
21 FOR FILING PETITIONER'S/CROSS PETITIONER'S REPLY BRIEF

22 The above named parties by and through their respective attorneys of record hereby
23 stipulate and agree that Petitioner/Cross Petitioner, City of Reno, may have up to and including
24 August 30, 2016 to file Petitioner's/Cross Petitioner's Reply Brief in the above entitled matter.

25 AFFIRMATION
26 Pursuant to NRS 239B.030

27 The undersigned does hereby affirm that the preceding STIPULATION TO EXTEND
28 TIME FOR FILING PETITIONER'S REPLY BRIEF filed in the First Judicial District Court of

///

///

///

1 the State of Nevada, does not contain the social security number of any person.

2 Dated this 28th day of July, 2016.

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26 * * *

27 **ORDER**

28 IT IS SO ORDERED this 2 day of August, 2016.

James E. Sullivan
DISTRICT JUDGE

461869

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

10 CITY OF RENO,

11 Petitioner,

Case No. 15 OC 00092 1B

12 vs.

Dept. No. II

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

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18 **REPLY BRIEF OF PETITIONER AND CROSS-PETITIONER, CITY OF RENO**

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ARGUMENT

The issue presented in this appeal concerns the calculation of average monthly wage for the purpose of determining the amount of death benefits that may be due to a retired police officer's widow when the police officer died as a result of heart disease. In this case the Appeals Officer ruled the death benefits should be based on the claimant's wages at the time of his death even though his employment at that time had nothing to do with his occupational disease. The City contends the appeals officer decision is erroneous for two important reasons.

First, existing applicable regulations require any benefits due to be based on the average monthly wage earned in the employment in which the industrial injury or occupational disease occurs. See NAC 616C.435 and, specifically, NAC 616C.435(9). Here, the widow's entitlement to benefits, if any, arises from her husband's employment as a police officer with the City of Reno more than 25 years ago. Mr. DeMaranville retired from the City of Reno police force in 1990 and had earned no wages from that employment since his retirement.

Despite the clear wording and intent of NAC 616C.435, the Appeals Officer Decision ignored the regulation and instead concluded the calculation of death benefits would be based on wages earned at the time of Mr. DeMaranville's death. That conclusion was clearly erroneous because it ignores NAC 616C.435(9) which requires benefits to be based on the average monthly wage earned in the employment causing the occupational disease.

Second, existing Nevada case law requires that benefits be determined as of the data disability. See Mirage v. Nevada Department of Administration, 110 Nev. 257, 871 P.2d 317 (1994). In Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005), a case factually similar to the present case, the Nevada Supreme Court applied the requirements of the Mirage case to situation in which a retired firefighter sought benefits for temporary total disability. The court determined Howard was not entitled to benefits because he was not earning wages at the time he became

1 disabled. The same rationale applied to this case dictates a similar result. Claimant
2 was not earning wages from the covered employment at the time of his death, so the
3 calculation of average monthly wage using wages from the covered employment is
4 zero. Since death benefits are based on the calculation of average monthly wage,
5 death benefits would not be payable. The Appeals Officer Decision essentially ignores
6 the rationale expressed in Howard in concluding that death benefits were payable in
7 this case.

8 In reply to these points, the Claimant is offered no statute or regulation
9 contradicting NAC 616C.435 or supporting the proposition that the Claimant's benefits
10 are to be based on wages earned in an employment 25 years after retirement from the
11 covered employment and completely unrelated to the employment which theoretically
12 caused the occupational disease. Nor has the Claimant distinguished Howard in any
13 significant way other than to say the City's position "simply goes too far."

14 The Appeals Officer Decision in this case is clearly erroneous because it
15 ignores the requirements of NAC 616C.435 and the rationale expressed in the Howard
16 decision. In fact, the only way to reach the conclusion set forth in the Appeals Officer
17 Decision is to disregard both NAC 616C.435 and Howard. If the principles set forth in
18 NRS 616C.435 and in Howard are applied in this case there can be only one
19 conclusion: the applicable average monthly wage was zero, and because the average
20 monthly wage was zero, death benefits were not payable.

21 CONCLUSION

22 An administrative decision affected by error of law is reversible. NRS
23 233B.135(3)(d). The Appeals Officer Decision in this case is affected by error of law
24 because it fails to recognize and apply controlling precedent that precludes the result
25 ordered by the Appeals Officer in this case. The City respectfully requests the Court to

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1 correct the Appeals Officer's error by reversing the Appeals Officer Decision.

2 Dated this 30th day of August, 2016

3 McDONALD CARANO WILSON LLP

4
5 By: *T.E. Rowe*
6 TIMOTHY E. ROWE, ESQ.
7 P. O. Box 2670
8 Reno, NV 895005-2670
9 Attorneys for the Petitioner
10 CITY OF RENO

11 **AFFIRMATION**

12 Pursuant to NRS 239B.030

13 The undersigned does hereby affirm that the preceding REPLY BRIEF OF
14 PETITIONER AND CROSS-PETITIONER, CITY OF RENO filed in the First Judicial
15 District Court of the State of Nevada, does not contain the social security number of
16 any person.

17 *T.E. Rowe*
18 Timothy E. Rowe, Esq.
19 Attorney for Petitioner
20 CITY OF RENO

21 8/30/16
22 Date

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this REPLY BRIEF OF PETITIONER AND CROSS-PETITIONER, CITY OF RENO and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 30th day of August, 2016.


TIMOTHY E. ROWE

 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

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 30th day of August 2016, I served the preceding REPLY BRIEF OF PETITIONER AND CROSS-PETITIONER, CITY OF RENO 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


Carole Davis

469604

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Attorneys for Appellant and Petitioner
6 CITY OF RENO

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2016 SEP -6 AM 11:02
SUSAN MERRIWETHER
CLERK
BY  DEPUTY

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

9 * * * * *

10 CITY OF RENO,

11 Petitioner,

12 vs.

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

17 Respondents.

Case No.: ~~CV~~ 15-OC-00092-1B

Dept. No.: II

18
19 **REQUEST FOR ORAL ARGUMENT**

20 TO: Respondents Daniel Demaranville [Deceased], Employer's Insurance Company
of Nevada, and Nevada Department Of Administration Appeals Officer:

21
22 Pursuant to NRS 233B.133(4), Petitioner hereby requests oral argument on the above-
23 entitled Petition for Judicial Review. Petitioner respectfully requests an Order directing the
24 parties to set a hearing date for oral argument.

25 **AFFIRMATION**

26 (Pursuant to NRS 239B.030)

27 The undersigned does hereby affirm that the preceding does not contain the social

28 ///

1 security number of any person.

2 DATED this 2nd day of September, 2016.

3 MCDONALD CARANO WILSON LLP

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5 By: T.E. Rowe
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13 CITY OF RENO

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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 2nd day of September, 2016, true copies of the preceding **REQUEST FOR ORAL ARGUMENT** were deposited in the U.S. Mail at Reno, Nevada, with postage prepaid, addressed to the following parties:

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

Mark Sertic, Esq.
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Reno, NV 89502


Carole Davis

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Attorneys for Appellant and Petitioner
6 City of Reno

REC'D & FILED

2016 DEC -6 PM 3:42

SUSAN M. RIEWE
CLERK
BY *[Signature]*

7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR CARSON CITY**

9 *****

10 CITY OF RENO,

11 Petitioner,

12 vs.

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

18 Respondents.

Case No.: 15-OC-000092-1B

Dept. No.: II

19 **REQUEST FOR SUBMISSION**

20 IT IS REQUESTED THAT the above-entitled matter consisting of consolidated
21 cases 16 OC 0003 1B; 16 OC 00049 1B and 15 OC 00092 1B be submitted to the Court
22 for decision. Petitioner, City of Reno, respectfully requests oral argument pursuant to
23 NRS 233B.133(4).

24 The undersigned does hereby affirm that pursuant to NRS 239B.030, the
25 preceding document entitled Request for Submission filed in Case No. 15-OC-000092-

26 ///

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28 ///

1 1B does not contain the social security number of any person.

2 DATED this 5th day of December, 2016.

3 MCDONALD CARANO WILSON LLP

4
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