

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 8 OF 8

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Electronically Filed
May 24 2018 09:23 a.m.
Elizabeth A. Brown
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INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

INDEX TO JOINT APPENDIX

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

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SUSAN MERRIWETHER
CLERK

BY SW 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 FOR ADDITIONAL BRIEFING

Additional briefing will assist the court.

IT IS ORDERED:

The request for oral argument is denied.

The parties file a memorandum of points and authorities by January 30, 2017 on the following questions:

1. The first sentence of NRS 616C.505 states in part: "If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer" Does the term "in the employ" mean the employee's death must occur during his employment for the employee to be entitled to wage benefits?

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2. What application, if any, does NRS 617.457(13) have to this case?
January 16, 2017.


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 January, 2017 I mailed a true and correct copy of the foregoing


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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,

Case No. 15 OC 00092 1B

12 vs.

Department No: 2

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

16 Respondents.
17 _____/

19 **SUPPLEMENTAL BRIEF OF PETITIONER AND CROSS-PETITIONER**
20 **EMPLOYERS INSURANCE COMPANY OF NEVADA**

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE STATEMENT.....2

TABLE OF AUTHORITIES.....4

I. ARGUMENT.....5

ATTORNEY'S CERTIFICATE.....14

CERTIFICATE OF SERVICE.....16

TABLE OF AUTHORITIES

CASES

<u>Gallagher v. City of Las Vegas</u> , 114 Nev. 595, 959 P.2d 519 (1998).....	5
<u>Harris Assoc. v. Clark County Sch. Dist.</u> , 119 Nev. 638, 81 P.3d. 532, 534 (2003).....	5
<u>Howard v. City of Las Vegas</u> , 121 Nev. 691, 120 P.3d 410 (2005).....	6, 7
<u>J.E. Dunn Nw. Inc. v. Corus Constr. Venture LLC</u> , 127 Nev. 72, 249 P.3d 501, 506 (2011).....	8
<u>Williams v. Clark County Dist. Attorney</u> , 118 Nev. 473, 479, 50 P.3d 536, 540 (2002).....	5

STATUTES

NRS 616C.505.....	5, 6
NRS 617.015.....	5
NRS 617.457	6

REGULATIONS

NAC 616C.435... ..	7
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LEGISLATION

Senate Bill 153 (2015).....	6
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1 I. ARGUMENT

2 In its Order for Additional Briefing dated January 18, 2017 the court has requested that the
3 parties address two questions. Employers Insurance Company of Nevada, (“Employers”) hereby
4 files its Supplemental Brief in response to that Order. The court’s questions will be discussed in the
5 order set forth by the court:
6

- 7 1. The first sentence of NRS 616C.505 states in part: “If an injury by accident arising out of
8 and in the course of employment causes the death of an employee in the employ of an
9 employer” Does the term “in the employ” mean the employee’s death must occur
during his employment for the employee to be entitled to wage benefits?

10 NRS 617.015 provides that employees and their dependents “shall be entitled to all the
11 applicable rights, benefits and immunities and shall be subject to all the applicable liabilities and
12 regulations provided for injured employees and their employers by chapters 616A to 616D,
13 inclusive, of NRS unless otherwise provided in this chapter.” Therefore, the language referenced in
14 the question clearly applies to claims regarding occupational diseases such as this case.

15 The short answer to the court’s question is yes. The language in NRS 616C.505 which allows
16 death benefits only with respect to those employees whose occupational disease caused their death
17 while they were “in the employ of an employer” certainly is consistent with, and supports, the
18 argument of both Employers and the City of Reno that the Claimant is not entitled to any monthly
19 benefit under this claim. At the time of his death in 2012 Mr. DeMaranville was not in the employ of
20 the City of Reno, having retired in 1990. Record on Appeal 25, lines 4-9. Therefore, under the plain
21 meaning of this language no death benefits are payable under this claim. Nevada courts have
22 consistently held that “[w]hen the words of the statute have a definite and ordinary meaning, this
23 court will not look beyond the plain language of the statute, unless this meaning was not intended.”
24 Harris Assoc. v. Clark County Sch. Dist., 119 Nev. 638, 81 P.3d. 532, 534 (2003). Additionally,
25 courts should interpret a statute to avoid rendering any language nugatory. Williams v. Clark County
26 Dist. Attorney, 118 Nev. 473, 479, 50 P.3d 536, 540 (2002).

27 This is not to say that retired claimants are not entitled to any benefits for occupational
28 diseases. The case of Gallagher v. City of Las Vegas, 114 Nev. 595, 959 P.2d 519 (1998) makes

1 clear that retired firefighters, (and police officers), are entitled to benefits under the heart/lung statute
2 for occupational diseases. However, that does not mean they are entitled to every conceivable
3 benefit. As Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005) establishes, retired
4 police officers and firefighters are not entitled to collect temporary total disability benefits.
5 Similarly, under the plain language in NRS 616C.505, which deals specifically with the death
6 benefits that are at issue in this case, death benefits are not payable in the case of a police officer
7 who is not in the employ of the police department at the time of his death. This is perfectly logical
8 since such death benefits are designed to replace the income lost from the employment that caused
9 the employee's death. Here, since Mr. DeMaranville was not employed by the City of Reno at the
10 time of his death, and thus was not earning any wages from that employment, there was no such lost
11 income and it is not logical for his dependents to be entitled to monthly death benefits.

12
13 2. What application, if any, does NRS 617.457(13) have to this case?

14 There exist two versions in the Nevada Revised Statutes of NRS 617.457. One that was
15 effective until December 31, 2016 and one that is effective beginning January 1, 2017. Section 13 of
16 the former reads: "A person who files a claim for a disease of the heart specified in this section after
17 he or she retires from employment as a firefighter, arson investigator or police officer is not entitled
18 to receive any compensation for that disease other than medical benefits." In the version of the
19 statute effective January 1, 2017 that section is renumbered as section 14 and section 13 relates to
20 reopening of claims. Since this case involves benefits and not reopening, it is presumed that the court
21 is referring to section 13 of the statute effective to December 31, 2016, which is now section 14 of
22 the current version. For consistency and ease of reference, all further citations to the language cited
23 by the court will be referred to as "section 13".

24 This section was adopted by the Nevada Legislature in the 2015 Regular Session as Senate
25 Bill 153. It was signed by the Governor on June 8, 2016 and the part of SB 153 that contained this
26 new language became effective on June 8, 2016. See SB 153, section 7. The new language in section
27 13 was part of section 3 of SB 153. Section 6(1) of SB 153 provides that this new language is to
28 apply "only to disablement which occurs on or after the effective date of this section." Therefore,

1 since Mr. DeMaranville died in 20112, this new language has no legal effect on this case. However,
2 it is still useful in discerning what the intent of the Legislature has been with respect to the
3 availability of death benefits for police officers or firefighters who file claims for heart disease after
4 they retire.

5 This new language in section 13 is entirely consistent with, and indeed codifies, the holding
6 in Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005) in which the Supreme Court
7 held that a retired firefighter was not entitled to collect temporary total disability benefits after he
8 suffered a heart attack. While that case did not involve death benefits, the rationale utilized by the
9 court is the same with respect to death benefits as it is for temporary total disability benefits. Had the
10 Legislature felt that Howard was decided incorrectly, it would not have codified its holding, but,
11 rather, would have undone it via appropriate legislative language. The Howard case, and the new
12 language in section 13, limit the benefits for a retired police officer or firefighter to medical benefits
13 only.

14 This new language in section 13 is also completely consistent with the arguments set forth by
15 Employers and the City of Reno in their opening briefs that the applicable statutes and regulations
16 establish that the Claimant is not entitled to monthly death benefits under this claim. Without
17 restating that entire argument here, it suffices to point out that NAC 616C.435 defines the earnings
18 on which benefits are to be based are those received in the 12 week period immediately preceding
19 the date on which the accident or disease occurred “from the employment in which the injury occurs
20 and in any concurrent employment.” In this case the employment from which the Claimant is
21 seeking to obtain benefits is that as a police officer with the City of Reno and his wages earned from
22 that employment in the 12 week period prior to his death were zero since he had retired from that
23 employment twenty-two years earlier. Thus, under this regulation the Claimant is not entitled to any
24 monthly death benefit. Again, had the Legislature disagreed with the effect of his regulation, it had
25 the perfect opportunity in the 2015 Session to address it. Not only did the Legislature not reverse the
26 effect of this regulation, it confirmed it with the new language in section 13.

27 The new language in section 13 shows that the “sense of the legislature” has consistently
28 been to limit retired police officers and firefighters to only medical benefits under an occupational

1 heart disease claim. It is appropriate for courts to ascertain the "sense of the legislature" in
2 interpreting the effect of statutes. J.E. Dunn Nw. Inc. v. Corus Constr. Venture LLC, 127 Nev. 72,
3 249 P.3d 501, 506 (2011).

4 For the foregoing reasons, as well as those set forth in its prior briefs, Employers Insurance
5 Company of Nevada respectfully requests that its Petitions and Cross-Petitions for Judicial Review
6 be granted.

7 Dated this 26th day of January, 2017.

8
9 SERTIC LAW LTD.

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12 By: Mark S. Sertic
13 Mark S. Sertic
14 Attorneys for Petitioner/Cross-Petitioner
15 Employers Insurance Company
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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.

DATED this 26th day of January, 2017.

SERTIC LAW LTD.

By: 
Mark S. Sertic

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Sertic Law Ltd.,
3 Attorneys at Law, over the age of eighteen years, not a party to the within matter, and that on the
4 26th day of January, 2017, I served by Reno-Carson Messenger Service, a true copy of the
5 foregoing or attached document, addressed to:

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SUSAN HERRERA
BY _____

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

CITY OF RENO,

Petitioner,

vs.

Case No. 15 OC 00092

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

Dept. No. 2

Defendants.

COMES NOW Laura DeMaranville, surviving spouse of Daniel
DeMaranville, Defendant, by and through her attorney, Evan
Beavers, Esq., Nevada Attorney for Injured Workers, and in
response to the Order for Additional Briefing filed January 18,
2017, hereby submits the following points and authorities.

I.

Points and Authorities

The order of January 18, 2017, seeks points and
authorities on two specific questions posed by the Court.

The first question reads as follows:

1. The first sentence of NRS 616C.505
states in part: "If an injury by
accident arising out of and in the
course of employment causes the death of
an employee in the employ of an employer

1" Does the term "in the employ"
2 mean the employee's death must occur
3 during his employment for the employee
4 to be entitled to benefits?

5 The second question posed by the Court reads as follows:

6 2. What application, if any, does NRS
7 617.457(13) have to this case?

8 II.

9 NRS 616C.505 and whether death must occur during the period of
10 employment.

11 Within the Nevada Industrial Insurance Act, chapter
12 616C codifies the requirements for reporting and treating
13 industrial injuries as well as the method for contesting and
14 compensating claims. NRS 616C.505 sets out the benefits owing to
15 the qualifying survivors of an employee whose death resulted from
16 an industrial accident. The first sentence of the statute states
17 that the accident resulting in death must arise out of and in the
18 course of the employment and the phrase "in the employ" appears
19 to enforce the point that the accident resulting in injury must
20 occur during the period of employment. NRS 616C.505 is intended
21 to address the compensability of injuries or death arising from
22 industrial accidents, not industrial disease. The compensability
23 of claims arising from industrial disease is treated elsewhere in
24 the statutes.

25 The Nevada Occupational Disease Act is contained in
26 chapter 617 of the Nevada Revised Statutes. While it
27 incorporates the remaining chapters of the Industrial Insurance
28 Act as may be needed, chapters such as 616C have application in
diseases arising from the employment relationship only if not

1 otherwise provided in chapter 617. See NRS 617.015. NRS 617.430
2 specifically states that an employee whose death is caused by
3 occupational disease is entitled to the compensation set out in
4 those other chapters in the Industrial Insurance Act but subject
5 to the modifications mentioned in chapter 617. Daniel
6 DeMaranville, according to the evidence ruled upon by the appeals
7 officer, died of heart disease. NRS 617.457 presumes the heart
8 disease of this retired police officer arose out of and in the
9 course of his employment. Any reliance upon NRS 616C.505 for the
10 purpose of determining compensability of a police officer's heart
11 disease is therefore misdirected.

12 Our State Supreme Court has considered this issue. In
13 Mirage v. Nevada Dep't of Admin., 110 Nev. 257, 259-260, 871 P.2d
14 317 (1994), the Court noted that once an employee qualifies for
15 benefits under chapter 617, only then does it becomes necessary
16 to rely on other provisions in the Industrial Insurance Act to
17 calculate benefits owing. In that case chapter 616 was used to
18 determine the method for calculating benefits but the Supreme
19 Court intentionally did not rely upon chapter 616 until the issue
20 of compensability was resolved under chapter 617.

21 III.

22 The application of NRS 617.457(13).

23 Daniel DeMaranville died August 5, 2012. ROA 552. At
24 the time of his death NRS 617.457 did not contain subsection 13.
25 See section 2 of chapter 124, Statutes of Nevada 2011, at page
26 585. Subsection 13 was added to NRS 617.457 in 2015 by the
27 Seventy Eighth Legislature. See Senate Bill 153, Chapter 420, §3
28 and §3.5.

1 Subsection 13 of NRS 617.457 first appears in Section 3
2 of S.B. 153 and reads as follows:

3 A person who files a claim for a
4 disease of the heart specified in
5 this section after her or she
6 retires from employment as a
7 firefighter, arson investigator or
8 police officer is not entitled to
9 receive any compensation for that
10 disease other than medical
11 benefits.

12 That provision in the bill appears in the codified version of the
13 statute effective through December 31, 2016. At section 3.5 of
14 the bill the language above was moved to subsection 14 and
15 effective January 1, 2017, the codified version of subsection 13
16 reads as follows:

17 Claims filed under this section may be
18 reopened at any time during the life of the
19 claimant for further examination and
20 treatment of the claimant upon certification
21 by a physician of a change of circumstances
22 related to the occupational disease which
23 would warrant an increase or rearrangement of
24 compensation.

25 Section 3 of S.B. 153 became effective June 8, 2015, and section
26 3.5 became effective January 1, 2017. See section 7 of chapter
27 420, Statutes of Nevada 2015, at page 2433.

28 Thus, the current subsection 13 of NRS 617.457 pertains
to reopening of a closed claim and does not appear to have
application to the DeMaranville case where reopening is not an
issue. Acceptance of the claim for death benefits, though, is an
issue in the case. Both EICON and City seek review of the
appeals officer's decision that Daniel DeMaranville died of heart
disease. As such, the version of subsection 13 codified through
December 31, 2016, and now appearing as subsection 14 may be of

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1 interest to the Court. However, the Court should take note of
2 section 6 of the bill in either of its codified versions.


3 The amendatory provisions of this
4 act:

- 5 1. Apply only to disablement which
6 occurs on or after the effective
7 date of this section; and
8 2. Do not apply to any person who,
9 on the effective date of this
10 section, has completed at least 20
11 years of creditable service, not
12 including any service credit
13 purchased in a retirement system,
14 as a police officer, firefighter,
15 volunteer firefighter or arson
16 investigator in the State.

17 The restriction that heart disease claims under NRS
18 617.457 are limited only to medical benefits if the claimant is
19 retired at the time of filing the claim did not have application
20 before the enactment of S.B. 153, and certainly not at the time
21 Laura DeMaranville filed her claim for benefits arising from the
22 death of her husband. His date of disablement, being the same
23 date as his death, was long before the effective date of S.B.
24 153. In addition, he had also completed more than 20 years of
25 creditable service long before the passage of the act. ROA 053-
26 054.

27 Respectfully submitted this 30th day of January, 2017.

28 NEVADA ATTORNEY FOR INJURED WORKERS


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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 POINTS AND AUTHORITIES addressed to:

TIMOTHY E ROWE ESQ
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100 W LIBERTY ST 10TH FL
RENO NV 89505-2670

MARK S SERTIC ESQ
SERTIC LAW LTD
5975 HOME GARDENS DR
RENO NV 89505

DATED: January 30, 2017

SIGNED: Rancy L. Shewood

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding:

POINTS AND AUTHORITIES

filed in Case Number: 15 OC 00092

X Does not contain the Social Security Number of any
person.

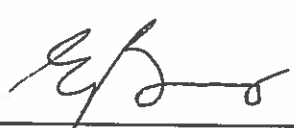
-OR-

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

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

-or-

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




Evan Beavers, Esq.
Nevada Attorney for Injured Workers

01/30/2017
Date

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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 0C 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.

17
18 **CITY OF RENO'S SUPPLEMENTAL POINTS AND AUTHORITIES**
19 **IN SUPPORT OF PETITION FOR JUDICIAL REVIEW**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
CITY OF RENO'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR JUDICIAL REVIEW.....	1
AFFIRMATION	4
CERTIFICATE OF COMPLIANCE	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

Cases Cited

County of Clark ex rel. Univ. Med. Ctr.v. Upchurch 114 Nev. 749, 753, 961 P. 2d. 754, 757 (1998)	1
Goldstein v. Jensen Precast 102 Nev. 630, 633, 729 P. 2d. 1355, 1358 (1986)	3
Harris Ass'n v. Clark County School District 119 Nev. 638, 81 P. 3d. 532, 534 (2003)	1
Howard v. City of Las Vegas 121 Nev. 691, 120 P.3d 410 (2005).....	2,3
Sierra Pacific Power Company V. Dep't of Taxation 96 Nev. 295, 298, 607 P. 2d 1147, 1149 (1980).....	3
State ex rel. Nevada Tax Comm. v. Boerlin 38 Nev.39, 45, 144 P. 738, 740 (1914).....	1
State, Dep't of Motor Vehicles and Public Safety v. Brown 104 Nev. 524, 526, 762 P. 2d 82, 83 (1988).....	2
Williams v. Clark County District Atty. 118 Nev. 473, 479, 50 P. 3d 536, 540 (2002)	1

Statutes Cited:

NRS 616C.505	1,2,3
NRS 617.457	2,3

1 **CITY OF RENO'S SUPPLEMENTAL POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR JUDICIAL REVIEW**

3 The City of Reno respectfully submits the following supplemental Points and
4 Authorities in support of its petition for judicial review as ordered by the court in its
5 January 18, 2017 order:

6 **Question 1:**

- 7 1. The first sentence of NRS 616C.505 states in part: "If an injury by accident
8 arising out of and in the course of employment causes the death of an
9 employee in the employ of an employer ..." Does the term "in the employ"
10 mean the employee's death must occur during his employment for the
11 employee to be entitled to wage benefits?

12 Answer: Yes

13 Statutory construction is a matter of determining legislative intent. *County of*
14 *Clark ex rel. Univ. Med. Ctr.v. Upchurch*, 114 Nev. 749, 753, 961 P. 2d. 754, 757
15 (1998). When the words of a statute have a plain and ordinary meaning, a court should
16 not look beyond the plain meaning of the statute. *Harris Ass'n v. Clark County School*
17 *District*, 119 Nev. 638, 81 P. 3d. 532, 534 (2003). A court should not apply any
18 interpretation of a statute that renders specific wording of the statute meaningless.
19 *Williams v. Clark County District Atty.* 118 Nev. 473, 479, 50 P. 3d 536, 540 (2002).
20 Nor should a court insert language in a statute not included by the legislature. *State ex*
21 *rel. Nevada Tax Comm. v. Boerlin* 38 Nev.39, 45, 144 P. 738, 740 (1914).

22 Here, the plain meaning of NRS 616C.505 limits death benefits to the death of
23 an employee "in the employee" of an employer. The meaning of "in the employ" is
24 plain and clear, and the court should not look beyond the plain meaning of those
25 words.

26 An interpretation of the statute that allows death benefits to a person not "in the
27 employee" of an employer at the time of the death requires either that the court ignore
28 the language in question or that the court add language that expands the meaning of

1 the statute to allow payment of death benefits to a person not in the employ of an
2 employer at the time of death. Neither interpretation is permissible under applicable
3 rules of statutory construction. Accordingly, the City respectfully submits the plain
4 meaning of the wording in NRS 616C.505 should be applied such that death benefits
5 are available only to employees "in the employee" of an employer at the time of death.
6 This interpretation of the statute is entirely consistent with the legislative intent
7 demonstrated by the Legislature's 2015 amendments to NRS 617.457.

8 **Question 2:**

9 2. What application, if any, does NRS 617.457(13) have to this case?

10 Answer: none, except that the Legislature's 2015 modifications to NRS
11 617.457 demonstrate its intent that death benefits are not payable in the
12 circumstances of this case.

13 The 2015 Legislature made two modifications to NRS 617.457 in SB 153, one
14 effective until December 31, 2016, and the other effective beginning January 1, 2017.
15 The modification in question here is the one effective until December 31, 2016. By its
16 own terms, SB 153 became effective on June 8, 2016 when signed by the Governor.
17 However, section 6(1) of SB 153 limits its application to disablement which occurs on
18 or after the effective date of the statute. Thus, the modification contained in NRS
19 617.457(13) has no direct application to this case since Mr. DeMaranville's date of
20 disablement was the date of his death in 2012.

21 However, the 2015 modifications to NRS 617.457 demonstrate the Legislature's
22 intent to limit benefits available to retired police officers and firefighters to medical
23 benefits. Both versions of the statute contain the same limitation. The version of the
24 statute in effect until December 31, 2016 is contained in subsection 13 and the version
25 that becomes effective January 1, 2017, in subsection 14. In effect, this language
26 codifies the holding in *Howard v. City of Las Vegas*, 121 Nev. 691, 120 P.3d 410
27 (2005) which precluded payment of disability benefits to a retired firefighter. The 2015
28 amendments to NRS 617.457 clearly demonstrate the legislative intent to limit benefits

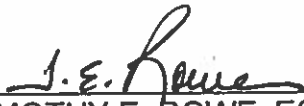
1 consistent with the holding in *Howard*.

2 Had the legislature intended to extend benefits in a manner not consistent
3 with the *Howard* decision, it clearly could have adopted language calling for a result
4 different than that expressed in the *Howard* decision. It did not do so. When the
5 legislature has chosen not to insert language into a statute, it is not the place for the
6 court to do so. *State, Dep't of Motor Vehicles and Public Safety v. Brown*, 104 Nev.
7 524, 526, 762 P. 2d 82, 83 (1988). Particularly when the legislature has not availed
8 itself of the opportunity to amend a statute if it disagreed with the existing
9 interpretation, it would be improper for this court to legislate the change. *Sierra Pacific*
10 *Power Company V. Dep't of Taxation*, 96 Nev. 295, 298, 607 P. 2d 1147, 1149 (1980).

11 The Nevada Supreme Court has described Nevada's workers compensation
12 scheme as a "... delicate balance between the interests of the parties, a balance which
13 we, as a judicial body, are hesitant to disturb." *Goldstein v. Jensen Precast*, 102 Nev.
14 630, 633, 729 P. 2d. 1355, 1358 (1986). The legislature's intent has been
15 demonstrated by the modifications to NRS 617.457. Given the Nevada Supreme
16 Court's view of the workers compensation scheme, the City of Reno's respectfully
17 submits that any interpretation of NRS 616C.505 and NRS 617.457 other than that
18 expressed in the statute and in *Howard* best be left to the legislature.

19 Dated this 30th day of January, 2017.

20 McDONALD CARANO WILSON LLP

21
22 By: 
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24 P. O. Box 2670
25 Reno, NV 895005-2670
26 Attorneys for the Petitioner
27 CITY OF RENO
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding CITY OF RENO'S
SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR
JUDICIAL REVIEW filed in the First Judicial District Court of the State of Nevada, does
not contain the social security number of any person.

T.E. Rowe 1-30-17
Timothy E. Rowe, Esq. Date
Attorney for Petitioner
CITY OF RENO

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this CITY OF RENO'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR JUDICIAL REVIEW 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 January, 2017.


TIMOTHY E. ROWE

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 January 2017, I served the preceding CITY OF RENO'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR JUDICIAL REVIEW by placing a true and correct copy thereof in a sealed envelope and hand-delivering said document to the following parties at the addresses listed below:

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SUSAN HERRIWETHER
CLERK

BY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 OC 00092 1B

vs.

Dept. No. II

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

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

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

I. PROCEDURAL BACKGROUND

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

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

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

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

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

13 **II. RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

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

14 **III. ANALYSIS**

15 **1. Cause of Death**

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

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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 **DECISION AND ORDER**

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

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

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

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

17 DATED this 8 day of March, 2017.

18
19 
20 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

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

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

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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1 Timothy E. Rowe, Esq.
2 Nevada Bar No. 1000
3 McDONALD CARANO WILSON LLP
4 100 West Liberty Street, 10th Floor
5 P.O. Box 2670
6 Reno, Nevada 89505
7 Telephone: (775) 788-2000
8 Facsimile: (775) 788-2020

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SUSAN HERRIWEATHER
C. COOPER CLERK
BY _____ DEPUTY

Attorneys for Respondents, CITY OF RENO and CCMSI

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

11 CITY OF RENO,

12 Petitioner,

13 vs.

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

19 Respondents.

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

20 **NOTICE OF ENTRY OF ORDER**

21 PLEASE TAKE NOTICE that on the 8th day of March, 2017, the Court entered its Order
22 Denying Granting in Part and Denying in Part Petition for Judicial Review in the above-
23 referenced matter. A true and correct copy of the Order is attached hereto as Exhibit "1".

24 The undersigned hereby affirms that this document does not contain the social security
25 number of any person.

26 DATED this 13th day of March, 2017.

27 McDONALD CARANO WILSON LLP

28 By: T. E. Rowe
Timothy E. Rowe, Esq
P.O. Box 2670
Reno, NV 89505-2670
Attorneys for City of Reno and CCMSI

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 13th day of March, 2017, I served true and correct copies of the NOTICE OF ENTRY OF ORDER via the U.S. Postal Service on the following parties:

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

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

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


Carole Davis

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Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
1	Order Granting in Part and Denying in Part Petition For Judicial Review	8

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EXHIBIT 1

EXHIBIT 1

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McDonald Carano Wilson LLP

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SUSAN HERRIWETHER
CLERK

BY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 OC 00092 1B

vs.

Dept. No. II

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

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

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

I. PROCEDURAL BACKGROUND

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

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

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

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

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

13 **II. RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

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

14 III. ANALYSIS

15 1. Cause of Death

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

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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 **DECISION AND ORDER**

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

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

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

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

17 DATED this 8 day of March, 2017.

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20 DISTRICT JUDGE
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SUSAN MERCIWETHER
CLERK
BY Electronically Filed
Apr 05 2017 09:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 CASE NO. 15 OC 00092 1B

2 DEPT. II

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.

NOTICE OF APPEAL

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

15 Respondents.

16 TO: CITY OF RENO, CCMSI and
17 their attorney of record, Timothy E. Rowe, Esq.;

18 TO: EMPLOYERS INSURANCE COMPANY OF NEVADA, and
19 its attorney of record, Mark S. Sertic, Esq.

20 Notice is hereby given that pursuant to N.R.A.P. 4
21 Appellant Laura DeMaranville, surviving spouse of Daniel
22 DeMaranville, by and through her attorney, Evan Beavers, Esq.,
23 Nevada Attorney for Injured Workers, hereby appeals to the
24 Supreme Court of Nevada from the Order issued by the First
25 judicial District Court on March 9, 2017, and entered on or about
March 14, 2017 (attached hereto at Exhibit A).

26 . . .

27 . . .

28 . . .

1 The Nevada Attorney for Injured Workers is a state
2 agency exempt from fees and therefore is filing no cost bond.

3 DATED this 29 day of March, 2017.

4 NEVADA ATTORNEY FOR INJURED WORKERS

5 *W. Daniel Hall for #8590*

6 Evan Beavers, Esq.
7 Nevada Bar No. 3399
8 1000 E. William Street, Suite 208
9 Carson City, Nevada 89701
 Attorneys for Appellant,
 Laura DeMaranville

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

NOTICE OF APPEAL TO SUPREME COURT

filed in Case Number: 15 OC 00092 1B

X Does not contain the Social Security Number of any person.

-OR-

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

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

-or-

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

8590
W. Daniel Holt for

Signature

3/29/17
Date

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

EXHIBIT A

EXHIBIT A

Timothy E. Rowe, Esq.
Nevada Bar No. 1000
McDONALD CARANO WILSON LLP
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, Nevada 89505
Telephone: (775) 788-2000
Facsimile: (775) 788-2020

Attorneys for Respondents, CITY OF RENO and CCMSI

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

CITY OF RENO,

Petitioner,

vs.

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

Respondents.

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 8th day of March, 2017, the Court entered its Order Denying Granting in Part and Denying in Part Petition for Judicial Review in the above-referenced matter. A true and correct copy of the Order is attached hereto as Exhibit "1".

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 13th day of March, 2017.

McDONALD CARANO WILSON LLP

By: J.E. Rowe

Timothy E. Rowe, Esq.
P.O. Box 2670
Reno, NV 89505-2670
Attorneys for City of Reno and CCMSI

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 13th day of March, 2017, I served true and correct copies of the NOTICE OF ENTRY OF ORDER via the U.S. Postal Service on the following parties:

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

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

Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
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Carole Davis

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Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
1	Order Granting in Part and Denying in Part Petition For Judicial Review	8

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EXHIBIT 1

EXHIBIT 1

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McDonald Carano Wilson LLP

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SUSAN HERRIWETHER
CLERK

BY [Signature] 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.

Dept. No. II

DANIEL DEMARANVILLE [Deceased],
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OF NEVADA, and NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,
Respondents.

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

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

I. PROCEDURAL BACKGROUND

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

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

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

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

13 **II. RELEVANT FACTS**

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

18 On August 5, 2012, Mr. DeMaranville died following laparoscopic cholecystectomy
19 (gallbladder removal) surgery. (ROA 133-134, 143.) At the time of his death, Mr.
20 DeMaranville was employed by AKAL Security as a security officer for the U.S. Marshal's
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22 Mr. DeMaranville's widow, claimant Laura DeMaranville, filed an occupational disease
23 claim with the City. (ROA 127.) On May 23, 2013, the City denied the claim based on a lack
24 of medical evidence establishing that heart disease caused Mr. DeMaranville's death. (ROA
25 130 - 131.) Ms. DeMaranville appealed the City's determination. (ROA 125.) The parties
26 then agreed to bypass the hearing officer directly to the Appeals Officer pursuant to NRS
27 616C.315. (ROA 125.)

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

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

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

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

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

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

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

14 **III. ANALYSIS**

15 **1. Cause of Death**

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

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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 **DECISION AND ORDER**

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

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

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

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

17 DATED this 8 day of March, 2017.

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20 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRS 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 NOTICE OF APPEAL addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

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

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

DATED: March 29, 2017

SIGNED: Taney L. Sherwood


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ORIGINAL

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

REC'D & FILED

2017 MAR 29 PM 2:52

SUSAN HERRIWEATHER
CLERK
BY  DEPUTY

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 APPEAL STATEMENT

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

15 Respondents.

16 _____/

17 1. Name of appellant filing this case appeal

18 statement:

19 Laura DeMaranville, surviving spouse of Daniel
20 DeMaranville.

21 2. Identify the judge issuing the decision, judgment,
22 or order appealed from:

23 Hon. James E. Wilson, District Court Judge.

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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 3. Identify each appellant and the name and address of
2 counsel for each appellant:

3 Laura DeMaranville.

4 Evan Beavers, Esq.
5 Nevada Attorney for Injured Workers
6 1000 East William Street, Suite 208
7 Carson City, NV 89701

8 4. Identify each respondent and the name and address
9 of appellate counsel, if known, for each respondent (if the name
10 of a respondent's appellate counsel is unknown, indicate as much
11 and provide the name and address of that respondent's trial
12 counsel):

13 City of Reno; Cannon Cochran Management Services, Inc.

14 Timothy E. Rowe, Esq.
15 McDonald Carano Wilson LLP
16 100 West Liberty Street, 10th Floor
17 PO Box 2670
18 Reno, NV 89505-2670

19 Employers Insurance Company of Nevada

20 Mark S. Sertic, Esq.
21 Sertic Law, Ltd.
22 5975 Home Gardens Drive
23 Reno, NV 89502

24 5. Indicate whether any attorney identified above in
25 response to question 3 or 4 is not licensed to practice law in
26 Nevada and, if so, whether the district court granted that
27 attorney permission to appear under SCR 42 (attach a copy of any
28 district court order granting such permission):

All counsel are licensed in the State of Nevada.

6. Indicate whether appellant was represented by
appointed or retained counsel in the district court:

Appointed.

7. Indicate whether appellant is represented by
appointed or retained counsel on appeal:

Appointed.

/ / /

1 8. Indicate whether appellant was granted leave to
2 proceed in forma pauperis, and the date of entry of the district
3 court order granting such leave:

4 Appellant Laura Demaranville is represented by The
5 Nevada Attorney for Injured Workers, which is a state agency
6 exempt from fees, and therefore, did not file a cost bond and did
7 not pay a filing fee.

8 9. Indicate the date the proceedings commenced in the
9 district court (e.g., date complaint, indictment, information, or
10 petition was filed):

11 Respondents City of Reno and Cannon Cochran Management
12 Services, Inc. filed a Petition for Judicial Review on April 14,
13 2015, relative to an administrative appeals officer's March 18,
14 2015, decision and order. Respondent Employers Insurance Company
15 of Nevada filed a Cross-Petition for Judicial Review of the same
16 March 18, 2015, decision and order on April 17, 2015. Both the
17 petition and cross-petition were filed in the First Judicial
18 District Court and resulted in Case No. 15 OC 00092 1B.

19 On January 5, 2016, Respondent City of Reno filed a
20 petition for judicial review of an administrative appeal
21 officer's December 10, 2015, order granting a summary judgement.
22 This was filed in the Second Judicial District Court. This
23 petition is reflected in Case No. 16 OC 00049.

24 On January 8, 2016, Respondent Employers Insurance
25 Company of Nevada filed a petition for judicial review of the
26 same administrative appeal officer's December 10, 2015, order
27 granting a summary judgement. This was filed in the First
28

1 Judicial District Court and resulted in Case No. 16 OC 00003 1B.
2 On February 23, 2016, an order was issued by the First Judicial
3 District Court that changed venue of the City of Reno's petition
4 for judicial review (relative to the December 10, 2015, decision)
5 from the Second Judicial District Court to the First Judicial
6 District Court. This followed a stipulation by the parties.

7 On April 12, 2016, the First Judicial District Court,
8 pursuant to NRCP 42(a), consolidated Case No. 15 OC 00092 1B,
9 Case No. 16 OC 00049, and Case No. 16 OC 00003 1B.

10 *10. Provide a brief description of the nature of the*
11 *action and result in the district court, including the type of*
12 *judgment or order being appealed and the relief granted by the*
13 *district court:*

14 Respondents City of Reno, Cannon Cochran Management
15 Services, Inc., and Employers Insurance Company of Nevada filed a
16 petition for judicial review and cross-petition for judicial
17 review relative to an administrative appeals officer's March 18,
18 2015, decision and order.

19 The March 18, 2015, decision and order reversed Cannon
20 Cochran Management Services, Inc.'s May 23, 2013, denial of a
21 workers' compensation claim filed relative to Daniel
22 Demaranville's August 5, 2012, death due to heart disease.

23 The March 18, 2015, decision and order also affirmed
24 Employers Insurance Company of Nevada's September 19, 2013,
25 denial of a workers' compensation claim filed relative to Daniel
26 Demaranville's August 5, 2012, death due to heart disease.

27 / / /

1 Laura Demaranville filed a workers' compensation claim
2 for Daniel Demaranville's death related heart disease pursuant to
3 NRS 617.457 and his employment as a police officer with the City
4 of Reno.

5 In subsequent proceedings before the appeals officer, a
6 December 10, 2015, order granting summary judgment was issued
7 finding that Laura Demaranville, pursuant to NRS 616C.505, was
8 entitled to death benefits based on the wages Daniel Demaranville
9 was earning at his time of death.

10 On March 9, 2017, the First Judicial District Court
11 issued its Order Granting In Part and Denying In Part Petition
12 for Judicial Review. The District Court affirmed the March 18,
13 2015, decision and order finding Daniel Demaranville's workers'
14 compensation claim for heart disease compensable against the City
15 of Reno, but reversed the December 10, 2015, decision and order
16 findings that Laura Demaranville's death benefits were to be
17 based on zero wages as Daniel Demaranville's wages at death were
18 earned from a private employer, not the City of Reno.

19 11. Indicate whether the case has previously been the
20 subject of an appeal to or original writ proceeding in the
21 Supreme Court and, if so, the caption and Supreme Court Docket
22 number of the prior proceeding:

23 No, this case has not previously been subject of an
24 appeal or writ.

25 / / /

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2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 12: Indicate whether this appeal involves child
2 custody or visitation:

3 This appeal does not involve child custody or
4 visitation legal issues.

5 13. If this is a civil case, indicate whether this
6 appeal involves the possibility of settlement:

7 Settlement may be explored upon appeal to Supreme
8 Court.

9 DATED this 29 day of March, 2017.

10 NEVADA ATTORNEY FOR INJURED WORKERS

11 # 8590 W Paul Nelson for

12 Evan Beavers, Esq.
13 Nevada Bar No. 3399
14 Nevada Attorney for Injured Workers
15 1000 East William Street, Suite 208
16 Carson City, Nevada 89701
17 Attorneys for Appellant,
18 Laura DeMaranville
19
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding:

CASE APPEAL STATEMENT

filed in Case Number: 15 OC 00092 1B

X Does not contain the Social Security Number of any
person.

-OR-

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

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

-or-

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

#8590
W. Daniel N. H. for
Signature

3/29/17
Date

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

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
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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 deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing CASE APPEAL STATEMENT addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

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

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

DATED: March 29, 2017

SIGNED: Nancy L. Sherwood

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1 CASE NO. 15 OC 00092 1B

2 DEPT. II

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6

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

7

8

9 CITY OF RENO,

10 Petitioner,

11 vs.

MOTION FOR STAY

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

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Respondents.

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Comes now the Appellant, Laura DeMaranville, surviving spouse of Daniel DeMaranville, by and through her attorney, Evan Beavers, Esq., Nevada Attorney for Injured Workers, and hereby moves this Court for an order to stay enforcement of that certain Order Granting In Part and Denying In Part Petition for Judicial Review filed March 9, 2017, and entered March 14, 2017, while the petitioner pursues her appeal of the Order to the Nevada Supreme Court.

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2017 MAR 29 PM 2:52
SUSAN HENNINGER
C. COOPER, CLERK
BY _____
DEPUTY

1 This motion is made and based upon the points and
2 authorities which follow and all papers and pleadings on file
3 herein.

4 DATED this 29 day of March, 2017.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 #8590 *W Daniel Noll for*
7 Evan Beavers, Esq.
8 Nevada Bar No.: 3399
9 Attorney for the Appellant
10 1000 E. William, Suite 208
11 Carson City NV 89701

12 Points and Authorities

13 Laura DeMaranville, as surviving spouse of Daniel
14 DeMaranville, presented evidence to Appeals Officer Lorna L.
15 Ward, Esq., on January 7, 2015, (Exhibit 1) and again on October
16 5, 2015 (through a motion for summary judgement) (Exhibit 2). As
17 a result of the first hearing, Appeals Officer Ward found the
18 death of Daniel DeMaranville to have been caused by heart disease
19 and that the City of Reno (City) was responsible for providing
20 death benefits to Mrs. DeMaranville. As a result of the second
21 hearing, Appeals Officer Ward found the benefit owed to Mrs.
22 DeMaranville should be based upon her deceased husband's earnings
23 at the date of his death.

24 The City sought review of both administrative decisions
25 by petitioning the district court. Employers Insurance Company
26 of Nevada (EICON), the insurer providing coverage to the City
27 during the period of Mr. DeMaranville's employment, also sought
28 judicial review of both decisions. After consolidation, the
Court affirmed the appeals officer's decision that Mr.
DeMaranville died of heart disease and that the death was a

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1 compensable occupational disease. The Court also found the City
2 liable for the benefits owing to Mrs. DeMaranville. Lastly,
3 though, the Court determined the amount of monthly benefits owing
4 to Mrs. DeMaranville was zero because at the date of death Mr.
5 DeMaranville was receiving no wage from the City. It is this
6 last determination by the Court that is the object of Mrs.
7 DeMaranville's request for stay.

8 Concurrent with the filing of this motion, Mrs.
9 DeMaranville will file her notice to appeal the Court's order of
10 March 9, 2017, to the Nevada Supreme Court. NRAP 8(a)(1)
11 requires the appealing party to move in the district court for a
12 stay of the order pending appeal to the Supreme Court or Court of
13 Appeals. Case law identifies four factors to consider for the
14 granting of a stay: first, there must be a substantial likelihood
15 that the appellant will prevail on the merits; second, there is a
16 threat of irreparable injury to the appellant if the stay is not
17 granted; third, the threatened injury to the appellant outweighs
18 the threatened harm the stay will cause to the respondent; and
19 fourth, granting the stay will not disserve the public interest.
20 See Jacksonville Port Auth. v. Adams, 556 F.2d 52, 57 (D.C. Cir.
21 1977); Virginia Petroleum Jobbers Association v. Federal Power
22 Commission, 259 F.2d 921 (D.C. Cir. 1958); See also Fritz Hansen
23 A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 6 P.3d 982
24 (2000); Dangberg Holdings Nev., LLC v. Douglas County., 115 Nev.
25 129, 142, 978 P.2d 311, 319 (1999); Kress v. Corey, 65 Nev. 1, 17
26 (1948).

27 Likelihood of Success on the Merits

28 The district court has determined the appeals officer

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1 overlooked NAC 616C.435(9) which would require basing the
2 benefits due Mrs. DeMaranville upon the average monthly wage
3 "earned in the employment causing the occupational disease."
4 This is despite the law indicating that injury in industrial
5 disease cases is not recognized until the disease causes
6 disability. See NRS 617.420 and NAC 616C.441.

7 There is no evidence in the record presented to the
8 appeals officer proving which employment caused the decedent's
9 industrial heart disease. Indeed, the statute by which Daniel
10 DeMaranville or his surviving spouse is entitled to any benefits
11 is NRS 617.457. The Court found the claim to be compensable and
12 the claim is based upon this statute. The issue to be raised on
13 appeal is how the regulation used to calculate the period for
14 average monthly wages in accident cases has been relied upon by
15 the district court to avoid the statutory presumption in NRS
16 617.457 that obviates proof of "the employment causing the
17 occupational disease." See NRS 617.457. At the time of Daniel
18 DeMaranville's death, all that was required under the Act was to
19 prove five years of full-time continuous, uninterrupted and
20 salaried occupation as a police officer, and proof of heart
21 disease. The appeals officer and the district court have now
22 both concluded that standard has been met. Nothing in the
23 Occupational Diseases Act requires proof of which employment
24 relationship in Mr. DeMaranville's career "caused" the heart
25 disease.

26 NRS 617.430, provides that every employee who is
27 disabled or dies because of an occupational disease, arising out
28 of and in the course of employment in the State of Nevada, or the

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1 dependents of an employee whose death is caused by an
2 occupational disease, are entitled to compensation provided by
3 those chapters for temporary disability, permanent disability or
4 death.

5 In the case of Mirage v. Nevada Dep't of Admin., 110
6 Nev. 257, 871 P.2d 317 (1994) the employer argued that the
7 average monthly wage calculations for occupational disease claims
8 should be controlled by NRS 616 and NAC 616. The court
9 specifically rejected the argument by stating "We disagree. We
10 note that although NRS Chapter 617 does not contain a precise
11 method for the calculation of disability benefits for
12 occupational diseases, its provisions provide sufficient guidance
13 for determining the date of eligibility for such benefits." Id.
14 at 260, 319.

15 Furthermore, the case of Howard v. City of Las Vegas,
16 121 Nev. 691, 120 P.23d 410 (2005), relied upon by the Court in
17 conjunction with NAC 616C.435(9), is not so clearly on point when
18 applied to the DeMaranville facts as to prevent the appellant's
19 success before the Supreme Court or Court of Appeals. If limited
20 to its facts, Howard saves an insurer from paying temporary total
21 disability (TTD) benefits to a retiree who is not working and not
22 earning a wage. In that case our Supreme Court determined that
23 if a retired fireman was not earning a wage at the time he
24 requested TTD, there was no lost wage to substitute.
25 Mr. DeMaranville's heart attack was an occupational disease
26 entitling him to occupational disease benefits. In accordance
27 with Mirage, the date of disability was the date of his heart
28 attack. Therefore, the period immediately preceding the heart

1 attack is the date from which disability benefits must be
2 calculated. Id. at 695, 412.

3 It is likely that Mrs. DeMaranville will succeed with
4 her argument on appeal that her compensable claim is worth more
5 than zero under the Howard analysis because at the date of his
6 death, Daniel DeMaranville was earning a wage and the benefit his
7 widow seeks is not TTD but death benefits.

8 Irreparable Harm if Stay Not Granted

9 Since the appeals officer ordered in March of 2015 that
10 the City pay Laura DeMaranville the benefits owing to her as the
11 surviving spouse of Daniel DeMaranville, she has received those
12 monthly payments. Now with the entry of the Court's order of
13 March 9, 2017, those payments will stop. While she seeks
14 appellate review of that order, the harm for her will be
15 immediate and irreparable.

16 Daniel and Laura DeMaranville lived together as husband
17 and wife for 23 years before he died of heart disease on August
18 12, 2012. ROA 84, Line 5. The wages he was earning up until the
19 day he died stopped as of the date of his death. The
20 Occupational Diseases Act provides a substitute to the surviving
21 spouse for the loss of her husband's wages, and for two years
22 Laura DeMaranville has received and relied upon that benefit.
23 The loss of that income during the lengthy process of appeal is
24 irreparable.

25 Irreparable Harm if Stay Is Granted

26 The Appellant, Laura DeMaranville, seeks a stay of that
27 portion of the Court's order reducing her monthly benefit payment
28 to zero. If the stay is granted the City will be obligated to

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1 pay the same amount it has been paying to her for the past two
2 years. Payment of money during the appellate process should not
3 be construed as irreparable harm to the City.

4 It has been determined that the payment of benefits
5 alone is not irreparable harm to the insurer making the payments.
6 "[M]oney, time and energy necessarily expended in the absence of
7 a stay are not enough to show irreparable harm." Fritz Hansen
8 A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 658, 6 P.3d 982
9 (2000), citing Wisconsin Gas Co. v. F.E.R.C., 244 U.S. App. D.C.
10 349, 758 F.2d 669, 674 (D.C. Cir. 1985) (quoting Virginia
11 Petroleum Jobbers Assn. v. Federal Power Com'n., 104 U.S. App.
12 D.C. 106, 259 F.2d 921, 925 (D.C. Cir. 1985)).

13 The threatened injury to the petitioner, Laura
14 DeMaranville, outweighs the threatened harm the stay may cause to
15 the City.

16 The Public Interest

17 Both the appeals officer and the district court found
18 that Daniel DeMaranville died of heart disease and that under the
19 Occupational Diseases Act his surviving spouse is entitled to
20 death benefits. The Court, however, has determined that because
21 the decedent was not earning a wage from the municipal employer
22 obligated to pay under the Act, the employer pays zero benefits
23 to the surviving spouse. That determination is not supported
24 directly, however, by statute or reported case law of the Nevada
25 Supreme Court. Laura DeMaranville is seeking from the appellate
26 court a review of the City's proffered authority. It is not the
27 City that must seek affirmation of its analysis of NAC
28 616C.435(9) and the expansion of Howard. The surviving spouse

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1 must now do so in order to protect her future benefits. Without
2 a stay in place, she must do so without the monthly income
3 intended by the Occupational Diseases Act.

4 It is against the public interest for the surviving
5 spouse to go without her monthly payments, which is why she seeks
6 appellate review of the City's theory of the case.

7 Conclusion

8 The remedy of a stay requires the Appellant to
9 demonstrate that she will likely prevail on the merits on appeal
10 and that she will suffer irreparable harm should the stay not be
11 granted. Laura DeMaranville, as the Appellant, has shown she will
12 suffer irreparable harm if the stay is not granted. Merely
13 continuing to provide Laura DeMaranville the benefits which have
14 been provided for the past two years does not pose irreparable
15 harm to the City.

16 Therefore, Laura DeMaranville, as the Appellant seeking
17 review of the order of March 9, 2017, hereby requests a stay of
18 that order pending appeal.

19
20 Respectfully submitted this 29 day of March, 2017.

21
22 NEVADA ATTORNEY FOR INJURED WORKERS

23 ⁸⁵⁹⁰ *Evan Beavers*
24 Evan Beavers, Esq.
25 Nevada Bar No. 3399
26 1000 E. William, Suite 208
27 Carson City NV 89701
28 Attorneys for the Appellant,
Laura DeMaranville

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding:

MOTION FOR STAY

filed in Case Number: 15 OC 00092 1B

X Does not contain the Social Security Number of any
person.

-OR-

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

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

-or-

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

#3590
[Signature]
Signature

3/29/17
Date

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

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EXHIBIT 1

EXHIBIT 1

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

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

FILED

MAR 18 2015

DEPT OF ADMINISTRATION
APPEALS OFFICER

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

} Claim No: 12853C301824
1990204572

8 } Hearing No: 46538-SA
9 45822-KD
44686-SA

10 } Appeal No: 46812-LLW
11 46479-LLW
44957-LLW

12 DANIEL DEMARANVILLE, DECEASED,
13 Claimant.

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

20 DECISION OF THE APPEALS OFFICER

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

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

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

6 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

12 Review of Expert Medical Opinions

13 Jay E. Betz, M.D.

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

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

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

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.

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

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

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

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

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

18 The Claimant became entitled to compensation on the date of his
19 disablement, August 5, 2012, and the responsible insurer on that date was the self-
20 insured City of Reno.
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28 ³ Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 145 P.3d 1024
(2006).

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

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CERTIFICATE OF MAILING

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

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

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

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

TIMOTHY ROWE, ESQ
PO BOX 2670
RENO NV 89505

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

MARK SERTIC, ESQ
5975 HOME GARDENS DRIVE
RENO NV 89502

Dated this 18th day of March, 2015.



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

EXHIBIT 2

EXHIBIT 2

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

DECISION AND ORDER

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

28 //

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

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

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

ORDER

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

DATED this 10th day of December, 2015.


APPEALS OFFICER


LORNA L WARD

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

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


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

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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

CERTIFICATE OF SERVICE

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

LAURA DeMaranville
PO BOX 261
VERDI NV 89439

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

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

DATED: March 19, 2017

SIGNED: Tammy V. Sherwood

1 CASE NO. 15 OC 00092 1B

2 DEPT. II

3

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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.

ORDER GRANTING
MOTION FOR STAY

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

15

Respondents.

16

17 This matter comes before the Court on a Petition for
18 Judicial Review filed by Petitioner City of Reno (City) on April
19 14, 2015, along with Petitioner's Motion for Partial Stay filed
20 on April 14, 2015. Petitioner EICON filed a Cross Petition for
21 Judicial Review on April 17, 2015. Cases 16OC 00003 1B, 16 OC
22 00049 1B and 15 OC 00092 were consolidated by order of the Court
on April 12, 2016, with 15 OC 00092 1B being the lead case.

23

24 As to the Appellant's Motion for Stay of the Court's
25 March 9, 2017 Order Granting in Part and Denying in Part the
26 Petition for Judicial Review, NRAP 8(a)(1) requires the appealing
27 party to move in the district court for a stay of the order
pending to the Supreme Court or the Court of Appeals.

28

NRAP 4(a)(1) provides that an appeal of an order from the

1 district court must be filed no later than 30 days after the date
2 that written notice of entry of the order appealed from was
3 served. In this case the notice was served on March 13, 2017 and
4 filed with the court on March 14, 2017. Therefore, the Motion for
5 Stay is time appropriate under NRAP 4(a)(1).

6 NRAP 8(c)(1) requires the appealing party to move in
7 the district court for a stay of the order pending appeal to the
8 Supreme Court or Court of Appeals. Relevant case law has
9 consistently held that four factors are to be considered for the
10 granting of a stay: first, there must be a substantial likelihood
11 that the appellant will prevail on the merits; second, there is a
12 threat of irreparable injury to the appellant if the stay is not
13 granted; third, the threatened injury to the appellant outweighs
14 the threatened harm the stay will cause to the respondent; and
15 fourth, granting the stay will not disserve the public interest.
16 See Jacksonville Port Auth. v. Adams, 556 F.2d 52, 57 (D.C. Cir.
17 1977); Virginia Petroleum Jobbers Association v. Federal Power
18 Commission, 259 F.2d 921 (D.C. Cir. 1958); See also Fritz Hansen
19 A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 6 P.3d 982
20 (2000); Dangberg Holdings Nev., LLC v. Douglas County., 115 Nev.
21 129, 142, 978 P.2d 311, 319 (1999); Kress v. Corey, 65 Nev. 1, 17
22 (1948).

23 Likelihood of Success on the Merits

24 As seen under NRAP 8(c), the Appellant must establish
25 that there is a substantial likelihood that she will prevail on
26 her appeal to the appellate court and ultimately have the court's
27 order overturned. The district court has determined that NAC
28 616C.435(9) would require basing the benefits due Mrs.

1 DeMaranville upon the average monthly wage "earned in the
2 employment causing the occupational disease."

3 There is no evidence in the record presented to the
4 appeals officer proving which employment caused the decedent's
5 industrial heart disease. The statute by which Daniel
6 DeMaranville or his surviving spouse is entitled to benefits is
7 NRS 617.457. The Court finds the claim to be compensable and the
8 claim is based upon this statute. Nothing in the Occupational
9 Diseases Act requires proof of which employment relationship in
10 Mr. DeMaranville's career "caused" the heart disease.

11 In the case of Mirage v. Nevada Dep't of Admin., 110
12 Nev. 257, 871 P.2d 317 (1994) the court considered the date when
13 an employee became entitled to worker's compensation benefits in
14 the event of an occupational disease, as well as the proper
15 period from which to calculate the employee's average monthly
16 wage for purposes of such benefits. The court noted that
17 although NRS Chapter 617 does not contain a precise method for
18 the calculation of disability benefits for occupational diseases,
19 its provisions provide sufficient guidance for determining the
20 date of eligibility for such benefits." Id. at 260, 319.

21 In the case of Howard v. City of Las Vegas, 121 Nev.
22 691, 120 P.23d 410 (2005), relied upon by the Court in
23 conjunction with NAC 616C.435(9). Howard saves an insurer from
24 paying temporary total disability (TTD) benefits to a retiree who
25 is not working and not earning a wage at the time of disability.
26 In that case our Supreme Court determined that if a retired
27 fireman was not earning a wage at the time he requested TTD,
28 there was no lost wage to substitute.

1 Mr. DeMaranville's heart attack was an occupational
2 disease entitling him to occupational disease benefits. In
3 accordance with Mirage, the date of disability was the date of
4 his heart attack. Therefore, the period immediately preceding the
5 heart attack is the date from which disability benefits must be
6 calculated. Id. at 695, 412.

7 It is likely that Mrs. DeMaranville will succeed with
8 her argument on appeal that her compensable claim is worth more
9 than zero under the Howard analysis because at the date of his
10 death, Daniel DeMaranville was earning a wage and the benefit his
11 widow seeks is not TTD but death benefits.

12 Irreparable Harm if Stay Not Granted

13 Laura DeMaranville, has received monthly benefit
14 payments owing to her as the surviving spouse of Daniel
15 DeMaranville. Now with the entry of the Court's order of March
16 9, 2017, those payments will stop. While she seeks appellate
17 review of that order, the harm for her will be immediate and
18 irreparable. She has received the benefit payments from the death
19 of her husband from August 12, 2012 until present. The
20 Occupational Diseases Act provides a substitute to the surviving
21 spouse for the loss of her husband's wages, and for two years
22 Laura DeMaranville has received and relied upon that benefit.
23 The loss of that income during the lengthy process of appeal is
24 irreparable.

25 ///

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1 Irreparable Harm if Stay Is Granted

2 The Appellant, Laura DeMaranville, seeks a stay of that
3 portion of the Court's order reducing her monthly benefit payment
4 to zero. If the stay is granted the City will be obligated to
5 pay the same amount it has been paying to her for the past two
6 years. Payment of money during the appellate process should not
7 be construed as irreparable harm to the City.

8 Payment of benefits alone is not irreparable harm to
9 the insurer making the payments. "[M]oney, time and energy
10 necessarily expended in the absence of a stay are not enough to
11 show irreparable harm." Fritz Hansen A/S v. Eighth Judicial
12 Dist. Court, 116 Nev. 650, 658, 6 P.3d 982 (2000), citing
13 Wisconsin Gas Co. v. F.E.R.C., 244 U.S. App. D.C. 349, 758 F.2d
14 669, 674 (D.C. Cir. 1985) (quoting Virginia Petroleum Jobbers
15 Assn. v. Federal Power Com'n., 104 U.S. App. D.C. 106, 259 F.2d
16 921, 925 (D.C. Cir. 1985)).

17 The threatened injury to the petitioner, Laura
18 DeMaranville, outweighs the threatened harm the stay may cause to
19 the City.

20 The Public Interest

21 Both the appeals officer and the district court found
22 that Daniel DeMaranville died of heart disease and that under the
23 Occupational Diseases Act his surviving spouse is entitled to
24 death benefits. The Court, however, has determined that because
25 the decedent was not earning a wage from the municipal employer
26 obligated to pay under the Act, the employer pays zero benefits
27 to the surviving spouse. Laura DeMaranville is seeking from the
28 appellate court a review of the City's proffered authority. It

1 is not the City that must seek affirmation of its analysis of NAC
2 616C.435(9) and the expansion of Howard. The surviving spouse
3 must now do so in order to protect her future benefits. Without
4 a stay in place, she must do so without the monthly income
5 intended by the Occupational Diseases Act.

6 It is against the public interest for the surviving
7 spouse to go without her monthly payments, which is why she seeks
8 appellate review of the City's theory of the case.

9 JUDGMENT

10 Therefore, based on the foregoing and good cause
11 appearing,

12 IT IS HEREBY ORDERED that the Appellant's Motion for
13 Stay Pending Appeal is GRANTED.

14 DATED this ____ day of March, 2017.

15

16

17

18

JAMES WILSON
District Judge

19

20

21 Submitted by
22 NEVADA ATTORNEY FOR INJURED WORKERS

23

24 Evan Beavers, Esq.
25 Nevada Bar No. 3399
26 Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, Nevada 89701
Attorneys for Appellant, Laura DeMaranville

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CERTIFICATE OF SERVICE

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

EVAN BEAVERS ESQ
NEVADA ATTORNEY FOR INJURED WORKERS
1000 E WILLIAM ST STE 208
CARSON CITY NV 89701

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

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

APPEALS OFFICER
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: _____

SIGNED: _____

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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 CASE NO. 15 OC 00092 1B

2 DEPT. II

REC'D & FILED
2017 MAR 31 PM 1:44
SUSAN MERRIWETHER
CLERK
BY ~~J. CRIBBLE~~
DEPUTY

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

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10 CITY OF RENO,

11 Petitioner,

12 vs.

ERRATA
NOTICE OF CORRECTED
CERTIFICATE OF SERVICE


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

16 Respondents.
17 _____/

18 Please take notice that the Certificate of Service for the
19 Motion for Stay filed and served on March 29, 2017 was
20 inadvertently dated March 19, 2017, not March 29, 2017. Attached
is the corrected Certificate of Service.

21 DATED this 31st day of March, 2017.

22 NEVADA ATTORNEY FOR INJURED WORKERS

23 
24 Evan Beavers, Esq.
25 Nevada Bar No. 3399
26 1000 E. William Street, Suite 208
27 Carson City, Nevada 89701
28 Attorneys for Appellant,
Laura DeMaranville

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

CERTIFICATE OF SERVICE

Pursuant to 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 MOTION FOR STAY addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

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

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

DATED: March 29, 2017

SIGNED: Taney L. Sherwood

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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*

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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 0C 00092 1B

vs.

Department No: 2

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

Respondents.

OPPOSITION TO MOTION FOR STAY

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 for Stay filed by Appellant Laura DeMaranville.

The Appellant is seeking a stay of that portion of the Court's Order Granting in Part and Denying in Part Petition for Judicial Review entered in this action on March 9, 2017 which found that the monthly death benefit under the claim is zero dollars. The Motion for Stay is without merit and should be denied.

The Appellant has not met her burden for the granting of a stay. Nevada case law recognizes four factors utilized by the courts to determine if a stay is proper: (1) The petitioner's likelihood of

1 success on the merits; (2) The threat of irreparable harm without a stay; (3) The relative interests of
2 the parties; and (4) The interest of the public. Nevada Civil Practice Manual, § 28.08[1] (5th
3 Edition). The first and second factors are those most often cited by courts. Id. See also, Sobol v.
4 Capital Management Consultants, Inc., 102 Nev. 444, 726 P.2d 335 (1986); Clark County Sch. Dist.
5 v. Buchanan, 112 Nev. 1146, 924 P.2d 716 (1996).

6 In this case the Appellant is clearly unlikely to prevail on the merits before the Nevada
7 Supreme Court. The issue of the proper amount of the monthly death benefit is a legal issue. The
8 amount of benefits is to be determined as of the date of disability, or in this case, Mr.
9 DeMaranville's death. Mirage Casino-Hotel v. Nevada Dept. of Administration, 110 Nev. 257, 871
10 P.2d 317 (1994). The Court properly found that NAC 616C.435 is dispositive of the issue in this
11 case. That regulation sets forth the period of the employee's earnings that are to be used to calculate
12 the average monthly wage. Subsection 9 of that regulation states: "As used in this section, 'earnings'
13 means earnings received from the employment in which the injury occurs and in any concurrent
14 employment." The Claimant's entitlement to benefits in this case arises from his employment as a
15 police officer with the City of Reno. The wages earned by Mr. DeMaranville from that employment
16 at the time of his death were zero since he had retired from that employment twenty-two years
17 earlier. The Appeals Officer overlooked and did not discuss this controlling law.

18 The Court's ruling is consistent with Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d
19 410 (2005), in which the Nevada Supreme Court held that a retired firefighter was not entitled to
20 collect temporary total disability benefits since he was not earning any wages from his firefighting
21 job at the time he became disabled from heart disease.

22 In her Motion for Stay the Appellant merely restates the arguments she previously made in
23 this case and which this Court properly rejected. Therefore, the Appellant cannot meet the first
24 requirement of a stay: i.e. that she is likely to prevail on the merits of her appeal.


25 Additionally, the Appellant cannot show that she will suffer irreparable harm if a stay is not
26 granted. As acknowledged in her Motion for Stay, the Appellant has been receiving monthly death
27 benefits for the past two years. These are benefits to which she is not, and never has been, entitled.
28 The fact that she is no longer receiving these payments does not constitute irreparable harm. Indeed,

1 it is the City of Reno that would suffer the real harm in the event a stay is granted. The City of Reno
2 has been paying out unwarranted benefits for the past two years. It should not be forced to continue
3 to make these payments during the pendency of the appeal to the Nevada Supreme Court.

4 For the foregoing reasons, it is respectfully requested that the Motion for Stay be denied.

5 Dated this 5th day of April, 2017.

6
7 SERTIC LAW LTD.

8
9 By: 
10 Mark S. Sertic, Esq.
11 Nevada Bar No. 403
12 5975 Home Gardens Drive
13 Reno, Nevada 89502
14 (775) 327-6300
15 Attorneys for Petitioner/Cross-Petitioner
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 5th day of April, 2017, I served by Reno-Carson Messenger Service, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501

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



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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*

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2017 APR -5 PM 1:24

SUSAN M. HARRIS
CLERK
Electronically Filed
BY: J.A.
Apr 10 2017 02:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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.

NOTICE OF APPEAL

Notice is hereby given that Petitioner/Cross-Petitioner/Respondent Employers Insurance Company of Nevada hereby appeals to the Supreme Court of the State of Nevada from the Order Granting in Part and Denying in Part Petition for Judicial Review entered in this action on March 9, 2017. A copy of this Order is attached hereto as Exhibit 1.

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Dated this 5th day of April, 2017.

SERTIC LAW LTD.

By: 
Mark S. Sertic, Esq.
Nevada Bar No. 403
5975 Home Gardens Drive
Reno, Nevada 89502
(775) 327-6300
Attorneys for Petitioner/Cross-Petitioner
Employers Insurance Company
of Nevada

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 5th day of April, 2017, I served by Reno-Carson Messenger Service, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501

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

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INDEX OF EXHIBITS

Number

Description

Pages

1.

March 9, 2017 Order

1-8

EXHIBIT 1

EXHIBIT 1

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2017 MAR -9 PM 2:51

SUSAN HERRIWETHER
CLERK

BY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 0C 00092 1B

vs.

Dept. No. II

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

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

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

I. PROCEDURAL BACKGROUND

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

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

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

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

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

13 **II. RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

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

14 **III. ANALYSIS**

15 **1. Cause of Death**

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

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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 DECISION AND ORDER

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

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

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

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

17 DATED this 8 day of March, 2017.

18
19 
20 DISTRICT JUDGE
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

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

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

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

2017 APR -5 PM 1:24

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.

CASE APPEAL STATEMENT

Petitioner/Cross-Petitioner/Respondent Employers Insurance Company of Nevada hereby
submits its Case Appeal Statement pursuant to NRAP 3(f).

1. Name of appellant filing this case appeal statement:

Employers Insurance Company of Nevada.

2. Identify the judge issuing the decision, judgment, or order appealed from:

District Court Judge James E. Wilson, Jr.

3. Identify each appellant and the name and address of counsel for each appellant:

Employers Insurance Company of Nevada.

Mark S. Sertic, Esq.
Sertic Law Ltd.

1 Nevada Bar No.: 403
2 5975 Home Gardens Drive
3 Reno, Nevada 89502

- 4 4. Identify each respondent and the name and address of appellate counsel, if known, for
5 each respondent (if the name of a respondent's appellate counsel is unknown, indicate as
6 much and provide the name and address of that respondent's trial counsel):

7 Laura DeMaranville

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

12 City of Reno
13 Tim E. Rowe, Esq.
14 McDonald Carano Wilson LLP
15 100 West Liberty Street, 10th Floor
16 Reno, Nevada 89501

- 17 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
18 licensed to practice law in Nevada and, if so, whether the district court granted that
19 attorney permission to appear under SCR 42 (attach a copy of any district court order
20 granting such permission):

21 All counsel are licensed to practice law in the State of Nevada.

- 22 6. Indicate whether appellant was represented by appointed or retained counsel in the
23 district court:

24 Employers Insurance Company of Nevada was represented by retained counsel in the
25 district court.

- 26 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

27 Employers Insurance Company of Nevada is represented by retained counsel on appeal.

- 28 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
of entry of the district court order granting such leave:

Employers Insurance Company of Nevada did not seek and was not granted leave to
proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
indictment, information, or petition was filed):

The City of Reno filed a petition for judicial review in the First Judicial District Court on
April 14, 2015 regarding a decision of the appeals officer dated March 18, 2015.

Employers Insurance Company of Nevada filed a cross-petition for judicial review of that same decision on April 17, 2015. Those matters were filed as Case No. 15 OC 00092 1B in the First Judicial District Court of the State of Nevada.

On January 5, 2016 the City of Reno filed a petition for judicial review in the Second Judicial District Court regarding a decision of the appeals officer dated December 10, 2015. Employers Insurance Company of Nevada filed a cross-petition for judicial review of that same decision on January 12, 2016. On January 8, 2016 Employers Insurance Company of Nevada filed a petition for judicial review of the same decision of the appeals officer in the First Judicial District Court. This was filed as Case Number 16 OC 0003 1B. Venue of the Second Judicial District Court case was transferred to the First Judicial District Court and all of the cases were consolidated under Case No. 15 OC 00092 1B.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

The Appeals Officer, in her decision of March 18, 2015, found that the claimant, Laura DeMaranville had established a valid workers' compensation claim for death benefits as the result of the death of her husband under the police officers' heart disease statute and that full liability therefor rested with the City of Reno under its self-insurance plan and not with Employers Insurance Company of Nevada. In her decision of December 10, 2015 the appeals officer determined that the monthly benefit under the claim should be based, not on the wages Mr. DeMaranville earned as a police officer, but, rather, on the wages he earned at the time of his death from a private company some twenty-two years after he retired as a police officer.

The district court in its Order Granting in Part and Denying in Part Petition for Judicial Review, affirmed the appeals officer's decision that the claimant had established a valid claim and that all liability therefore rested with the City of Reno and reversed the appeals officer decision that the monthly benefit should be based on the wages Mr. DeMaranville earned at the time of his death. The district court found that the monthly benefit should be zero since Mr. DeMaranville was not earning any wages as a police officer at the time of his death.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

No, this case has not been the subject of a previous appeal or original writ proceeding.

12. Indicate whether this appeal involves child custody or visitation:


No, this case does not involve child custody or visitation.

1 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

2 Settlement is possible with the assistance of the Supreme Court Settlement Judge.

3 Dated this 5th day of April, 2017.

5 SERTIC LAW LTD.

7 By: 
8 Mark S. Sertic, Esq.
9 Nevada Bar No. 403
10 5975 Home Gardens Drive
11 Reno, Nevada 89502
12 (775) 327-6300
13 Attorneys for Petitioner/Cross-Petitioner
14 Employers Insurance Company
15 of Nevada

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 5th day of April, 2017, I served by Reno-Carson Messenger Service, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501

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



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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

2017 APR -5 PM 1:24

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.

NOTICE OF FILING COST BOND

Please take notice that Petitioner/Cross-Petitioner/Respondent Employers Insurance
Company of Nevada has posted cash (check) in the amount of \$500.00 for costs on appeal, pursuant
to NRAP 7.


///

///

///

1 Dated this 5th day of April, 2017.

2 SERTIC LAW LTD.

3
4 By: 
5 Mark S. Sertic, Esq.
6 Nevada Bar No. 403
7 5975 Home Gardens Drive
8 Reno, Nevada 89502
9 (775) 327-6300
10 Attorneys for Petitioner/Cross-Petitioner
11 Employers Insurance Company
12 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 5th day of April, 2017, I served by Reno-Carson Messenger Service, a true copy of the foregoing or attached document, addressed to:

Tim E. Rowe, Esq.
McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501

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



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Case No. 15 OC 00092 1B

Dept. No. II

REC'D & FILED
2017 APR -7 PM 3:36
CLERK
C. GRUBBLE

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

CITY OF RENO,

Petitioner,

vs.

NOTICE OF APPEAL

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

Respondents.

TO: DANIEL DEMARANVILLE (Deceased), and their attorney of record, Evan Beavers,
Esq.;

TO: EMPLOYERS INSURANCE COMPANY OF NEVADA, and its attorney of record,
Mark S. Sertic, Esq.

Notice is hereby given that, CITY OF RENO, by and through its attorney of
record, Timothy E. Rowe, Esq. of McDonald Carano, hereby appeals to the Supreme Court of
Nevada from the Order Granting in Part and Denying in Part Petition for Judicial Review, entered
by the above-entitled Court on March 9, 2017. A copy of said Order is attached hereto as Exhibit

A.

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///

AFFIRMATION

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 4th day of April, 2017.

McDONALD CARANO

By:

T. E. Rowe
Timothy E. Rowe, Esq
P.O. Box 2670
Reno, NV 89505-2670
Attorneys for City of Reno and CCMSI

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO and that on the 8th day of April, 2017, I served true and correct copies of the NOTICE OF APPEAL via Reno Carson Messenger Service or via the U.S. Postal Service on the following parties:

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

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

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


Carole Davis

Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
1		
2		
3		
4	1 Order Granting In Part and Denying In Part Petition For Judicial Review	7
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
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EXHIBIT A

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MAR 13 2017

McDonald Carano Wilson LLP

REC'D & FILED

2017 MAR -9 PM 2:51

SUSAN HERRIWETHER
CLERK

BY SW DEPUTY

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

CITY OF RENO,

Petitioner,

Case No. 15 0C 00092 1B

vs.

Dept. No. II

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

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

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

I. PROCEDURAL BACKGROUND

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

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

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

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

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

13 **II. RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

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

14 **III. ANALYSIS**

15 **1. Cause of Death**

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

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

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

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

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

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

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

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

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

1 case law.

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

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

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

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

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

3 **DECISION AND ORDER**

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

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

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

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

17 DATED this 8 day of March, 2017.

18
19 
20 DISTRICT JUDGE
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

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

Order to:

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

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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Case No. 15 OC 00092 1B

Dept. No. II

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SUSAN HENRIKSEN
BY *[Signature]* DEPUTY

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

CITY OF RENO,

Petitioner,

vs.

CASE APPEAL STATEMENT

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

Respondents.

Respondent, City of Reno, submits the following Case Appeal Statement pursuant to
Nevada Rules of Appellate Procedure 3(a)(1):

1. Name of Appellant filing this Case Appeal Statement: CITY OF RENO

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable James E. Wilson, District Judge, First Judicial District Court of the
State of Nevada in and for the County of Washoe

**3. Identify each appellant and the name and address of counsel for each
appellant:**

Laura Demaranville, surviving spouse of
Daniel Demaranville (Deceased)

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

Employers Insurance Company of Nevada

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

City of Reno

Timothy E. Rowe, Esq.
McDonald Carano
1000 West Liberty Street, 10th Floor
PO Box 2670
Reno, NV 89505-2670

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Laura Demaranville, surviving spouse of
Daniel Demaranville (Deceased)

Evan Beavers, Esq.
Nevada Attorney for Injured Workers
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5. Indicate whether any attorney identified above in response to question 3 or

4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

All counsel are licensed in the State of Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

No.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

First Judicial District Court Case No. 15 OC 00092 1B – April 14, 2015.

First Judicial District Court Case No. 16 OC 00003 1B – January 8, 2016.

First Judicial District Court Case No. 16 OC 00049 – February 23, 2016.

(On February 23, 2016 First Judicial District Court issued an order that changed venue of the City of Reno's petition for judicial review of the December 10, 2015, Appeals Officer Decision from the Second Judicial District Court to the First Judicial District Court. This followed a stipulation by the parties.)

On April 12, 2016, the First Judicial District Court consolidated Case No. 15 OC 00092 1B, Case No. 16 OC 00049, and Case No. 16 OC 00003 1B.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

JA 1621

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO and that on the 8th day of April, 2017, I served true and correct copies of the CASE APPEAL STATEMENT via Reno Carson Messenger Service or via the U.S. Postal Service on the following parties:

Evan Beavers, Esq.
Nevada Attorneys for Injured Workers
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Carson City, NV 89701

Mark Sertic, Esq.
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Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
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Carole Davis

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4 Attorneys for Respondent,
Laura DeMaranville
5

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SUSAN HEDRWEATHER
COOPER CLERK
BY _____ DEPUTY

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,
14

DEPT. NO. II

15 Respondents.
16 _____/

17 REPLY TO OPPOSITION TO MOTION FOR STAY

18 Comes now Laura DeMaranville, as Respondent and
19 surviving spouse of Daniel DeMaranville, deceased, by and through
20 her attorney, Evan Beavers, Esq, and the office of the Nevada
21 Attorney for Injured Workers, and hereby replies to the
22 opposition filed by Employers Insurance Company of Nevada (EICON)
23 in response to Respondent's motion for stay.

24 This reply brief is based upon the points and
25 authorities which follow, all pleadings and papers on file
26 herein, and the arguments to be offered and evidence to be
27 adduced at a hearing on the motion for stay, if such a hearing is
28 required by the court.

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1 POINTS AND AUTHORITIES

2 Respondent Laura DeMaranville filed with the court her
3 motion to stay the enforcement of the Order Granting in Part and
4 Denying in Part Petition for Judicial Review filed March 9, 2017,
5 as she seeks review of that decision in the Nevada Supreme Court.
6 In response EICON has timely filed its Opposition to Motion for
7 Stay alleging the respondent is unlikely to prevail on the merits
8 of her appeal and that she cannot show irreparable harm if the
9 stay is denied. EICON's first conclusion as to the likelihood of
10 success on appeal ignores that the court's decision is based on
11 an interpretation of existing law and not a clear declaration of
12 existing law. EICON's second conclusion regarding irreparable
13 harm is a reiteration of the position it took in its briefing-
14 that at no time has Laura DeMaranville been entitled to death
15 benefits. Both the district court and the appeals office have
16 rejected that argument although the district court has overruled
17 the appeals office as to how much is owing in monthly benefits.

18 What EICON fails to address in its opposition, however,
19 is the irreparable harm EICON will suffer if the stay is granted.

20 Likelihood of Success on the Merits

21 On appeal to the State Supreme Court Ms. DeMaranville
22 will argue that her case arising from her husband's heart disease
23 should be determined according to the Occupational Diseases Act
24 and case authority applying the act, and not portions of the
25 administrative code regulating the administration of claims
26 arising from accident as opposed to disease. EICON argues in
27 opposition to the motion for stay that it is unlikely the
28 respondent will prevail given our Supreme Court's rulings in

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1 Mirage v. Nevada Dep't of Admin., 110 Nev. 257, 871 P.2d 317
2 (1994) and Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d
3 410 (2005). Neither case, however, condemns the respondent's
4 likelihood of success on appeal to the court that issued those
5 decisions.

6 In the Mirage case the employer argued the average
7 monthly wage calculations for an occupational disease claim
8 should be controlled by NRS chapter 616 and NAC chapter 616, much
9 like the City of Reno and EICON argued in the DeMaranville
10 petitions for review. In its decision the Supreme Court
11 specifically stated, "We note that although NRS Chapter 617 does
12 not contain a precise method for the calculation of disability
13 benefits for occupational diseases, its provisions provide
14 sufficient guidance for determining the date of eligibility for
15 such benefits." Mirage at 260. The Supreme Court concluded the
16 employee seeking benefits under the Occupational Diseases Act
17 becomes eligible when the employee is no longer able to continue
18 working because of the disease. Id. at 258. The date Daniel
19 DeMaranville could no longer continue working because of heart
20 disease was the date of his death. It is more likely, not less
21 likely, the State Supreme Court will review Ms. DeMaranville's
22 appeal in a manner consistent with its holding in Mirage instead
23 of taking the opportunity to reverse itself.

24 EICON argues the respondent's position on appeal will also
25 be inconsistent with the State Supreme Court's ruling in Howard.
26 However, in Howard the Court concluded that a retired
27 firefighter's entitlement to occupational disease benefits does
28 not include compensation for temporary total disability benefits

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1 when the firefighter is not earning any wages. Howard at 695.
2 The conclusion that Laura DeMaranville is not entitled to death
3 benefits under the Occupational Diseases Act because at the date
4 of her husband's death (a retired policeman) he was not earning a
5 wage from the City of Reno is not a direct application of Howard.
6 At most EICON can argue there may be some analysis to extrapolate
7 from Howard, but it is inaccurate to state that Howard prevents
8 any likelihood of the respondent's success on appeal.

9 Irreparable Harm if Stay is Not Granted

10 EICON summarily dismisses any harm to the respondent Laura
11 DeMaranville by arguing that if the stay is denied she will only
12 be denied benefits to which she was never entitled. The appeals
13 officer concluded Daniel DeMaranville died as a result of heart
14 disease, and the district court upheld that decision. The
15 appeals officer concluded the City of Reno is liable for the
16 benefits owing to the decedent's widow, and the district court
17 upheld that decision. The benefits Laura DeMaranville has
18 received as a result of her husband's death are a substitution
19 for the wages he would have brought home had he not died of heart
20 disease, a disease both the appeals officer and the district
21 court have concluded is compensable under the Occupational
22 Diseases Act. Concluding that Laura DeMaranville's claim for
23 benefits is compensable but that the calculation of the benefit
24 is zero results in a harm to her that goes unaddressed in EICON's
25 analysis. The harm to the party seeking the stay must be
26 addressed. See Fritz Hanson A/S v. Eighth Judicial Dist. Court,
27 116 Nev. 650, 657, 6 P.3d 982 (2000); Dangberg Holdings Nev.,
28 LLC, v. Douglas County, 115 Nev. 129, 142, 978 P.2d 311, 319

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1 (1999); Kress v. Corey, 65 Nev. 1, 17, 189 P.2d 352 (1948).

2 Irreparable Harm if Stay Is Granted

3 It has long been held in Nevada law that a court considering
4 a motion for stay must weigh the harm to the party seeking the
5 stay against the harm to the party opposing the stay. See Kress
6 v. Corey, 65 Nev. 1,17, 189 P.2d 352 (1948). EICON wholly
7 ignores the issue of harm to EICON if the stay is granted.
8 Perhaps that is because there will be no harm to EICON if Laura
9 DeMaranville continues to receive her monthly death benefit
10 payments. As admitted by EICON in its brief, "[i]ndeed, it is
11 the City of Reno that would suffer real harm in the event a stay
12 is granted." (Emphasis added). Given that there is no harm to
13 EICON, irreparable or otherwise, if the stay is granted, EICON
14 has no basis to oppose the stay.

15 Conclusion

16 Based upon the foregoing, the respondent Laura DeMaranville
17 respectfully requests the court stay enforcement of the Order
18 Granting In Part and Denying in Part Petition for Judicial Review

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1 filed March 9, 2017, while an appeal of that decision is
2 prosecuted in the Nevada Supreme Court.

3 AFFIRMATION

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

6 Submitted this 10th day of April, 2017.

7 NEVADA ATTORNEY FOR INJURED WORKERS

8 
9 Evan Beavers, Esq.
Nevada Bar No. 3399
Attorneys for Respondent,
10 Laura DeMaranville
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing REPLY TO OPPOSITION TO MOTION FOR STAY addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

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

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

DATED: April 10, 2017

SIGNED: Taney L. Shewood

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1 Case No. 15 OC 00092 1B

2 Dept. No. II

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SUSAN MERRIWETHER
CLERK

BY  DEPUTY

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5
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);
12 EMPLOYERS INSURANCE COMPANY OF
13 NEVADA; and NEVADA DEPARTMENT OF
ADMINISTRATION, APPEALS OFFICER

14 Respondents.

15
16 **CITY OF RENO'S OPPOSITION TO MOTION FOR STAY**

17 The City of Reno respectfully submits the following Points and Authorities in Opposition
18 of the Claimant's Motion for Stay.

19 **ARGUMENT**

20 **1. Introduction**

21 The Claimant's stay motion seeks to stay that portion of the Court's Decision that
22 concluded Ms. Demaranville was not entitled to payment of death benefits. The Claimant's
23 motion should be denied because she has not established that she is likely to prevail on the merits
24 of her appeal or that she will suffer irreparable harm in absence of a stay.

25 **2. Standard for Granting a Stay Order.**

26 NRS 233B.140 sets forth the procedure for obtaining a stay order in a proceeding seeking
27 judicial review of a decision in a contested administrative proceeding. NRS 233B.140 provides:

28 ///

1 1. A petitioner who applies for a stay of the final decision in a contested case
2 shall file and serve a written motion for the stay on the agency and all parties of
3 record to the proceeding at the time of filing the petition for judicial review.

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

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

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

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

22 **2. Ms. Demaranville Has Not Demonstrated She is Likely to Prevail on the**
23 **Merits of Her Appeal.**

24 The Claimant's Motion for Stay seeks to stay that portion of the Court's Order that
25 determined the Claimant was not entitled to payment of death benefits because Mr. Demaranville
26 was not earning any wages from the City of Reno at the time of his death. In the underlying
27 administrative appeal the Appeals Officer ruled the death benefits should be based on the
28 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 contended the appeals officer decision was erroneous
as a matter of law. This Court agreed. That Decision is correct for two reasons.

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

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

12 Second, existing Nevada case law requires that benefits be determined as of the date
13 disability. See *Mirage v. Nevada Department of Administration*, 110 Nev. 257, 871 P.2d 317
14 (1994). In *Howard v. City of Las Vegas*, 121 Nev. 691, 120 P.3d 410 (2005) the Nevada Supreme
15 Court applied the requirements of the *Mirage* case to situation in which a retired firefighter
16 sought benefits for temporary total disability. The court determined Howard was not entitled to
17 benefits because he was not earning wages at the time he became disabled. The same rationale
18 applied to this case. The Claimant was not earning wages from the covered employment at the
19 time of his death, so the calculation of average monthly wage using wages from the covered
20 employment was zero. Since death benefits are based on the calculation of average monthly
21 wage, death benefits would not be payable.

22 The Claimant's Stay Motion presents no statute or regulation contradicting NAC
23 616C.435 or supporting the proposition that the Claimant's benefits are to be based on wages
24 earned 25 years after retirement from the covered employment. The stay motion does not
25 distinguish *Howard* in any significant way and offers nothing new to the arguments presented in
26 the Petition for Judicial Review. Thus, the Claimant is not likely to prevail on the merits of the
27 appeal because their contentions ignore the requirements of NAC 616C.435 and the rationale
28 expressed in the *Howard* decision.

4. Ms. Demaranville Will Not Suffer Irreparable Harm in Absence of a Stay.

Admittedly, the District Court's Order resolving the dispute in this case stops the payment of death benefits to Ms. Demaranville. However, the loss of those benefits while the appeal is pending is not irreparable. In the event Ms. Demaranville prevails in the appeal, benefits would be reinstated and unpaid back benefits would be paid. Thus, in the event Ms. Demaranville prevails in the appeal, all benefits to which she is entitled will ultimately be paid. That is not the case with respect to the City of Reno's loss in this case.

The City has already been irreparably harmed by the Appeals Officer's Decision. In *Ransier v. State Industrial Insurance System*, 104 Nev. 742, 756 P.2d 274 (1988), the Nevada Supreme Court held that the State Industrial Insurance System could not recoup benefits paid to an injured employee during a pending an appeal which benefits were later found to be inappropriate as a result of the Appeal. In *Wyphoski v. Sparks Nugget, Inc.*, 112 Nev. 413, 915 P.2d 261 (1996), the Nevada Supreme Court extended this analysis to self-insured employers like the City of Reno.

As a result of the Appeals Officer's Decision and her denial of the City's stay motion, the City has paid death benefits to Ms. Demaranville that cannot be recouped. The amount of those benefits paid to date is \$137,086.20.

If this Court enters an order which stays enforcement of its Decision, the payment of death benefits will continue pending resolution of the appeal. However, if the City prevails in the appeal, benefits paid before the resolution of the appeal cannot be recouped. *Ransier, Id.* Thus, as a matter of law, the loss suffered by the City if a stay is granted is irreparable.

CONCLUSION

The Court's Decision is this matter on the issue of the amount of death benefits due the Claimant should not be stayed because it is not supported by substantial evidence and not affected by error of law. Because the City is likely to prevail in the appeal with respect to this issue and will suffer irreparable harm in the absence of a stay, the City respectfully requests the Court to deny Ms. Demaranville's Motion for Stay.

///

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

3 Dated this 12th day of April, 2017.

4 MCDONALD CARANO LLP

5
6 By: J. E. Rowe
7 TIMOTHY E. ROWE, ESQ.

8 P.O. Box 2670
9 Reno, NV 89505-2670
10 Attorneys for the City of Reno

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MCDONALD CARANO

100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
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 12th day of April, 2017, I served the preceding CITY OF RENO'S OPPOSITION TO MOTION FOR STAY on the following party via Reno Carson Messenger Service:

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

Mark Sertic, Esq.
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Carole Davis

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4 Attorneys for Respondent,
Laura DeMaranville
5

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BY DEPUTY

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,
14

DEPT. NO. II

15 Respondents.
16 _____/

17 REPLY TO CITY OF RENO'S OPPOSITION TO MOTION FOR STAY

18 Comes now Laura DeMaranville, as Respondent and
19 surviving spouse of Daniel DeMaranville, deceased, by and through
20 her attorney, Evan Beavers, Esq, and the office of the Nevada
21 Attorney for Injured Workers, and hereby replies to the
22 opposition filed by the City of Reno in response to Respondent's
23 motion for stay.

24 This reply brief is based upon the points and
25 authorities which follow, all pleadings and papers on file
26 herein, and the arguments to be offered and evidence to be
27 adduced at a hearing on the motion for stay, if such a hearing is
28 required by the court.

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1 POINTS AND AUTHORITIES

2 Respondent Laura DeMaranville filed with the court her
3 motion to stay the enforcement of the Order Granting in Part and
4 Denying in Part Petition for Judicial Review filed March 9, 2017,
5 as she seeks review of that decision in the Nevada Supreme Court.
6 In response the City of Reno has timely filed its opposition to
7 the motion alleging the respondent is unlikely to prevail on the
8 merits of her appeal and that she cannot show irreparable harm if
9 the stay is denied.

10 Likelihood of Success on the Merits

11 The City of Reno argues in its opposition to the stay
12 motion that because Daniel DeMaranville was not earning wages
13 from the City of Reno at the time of his death his surviving
14 spouse is not entitled to death benefits from the City.
15 According to the City, applicable regulations require using the
16 wage the City was paying at the date of death and because that
17 wage was zero the benefit owing the surviving spouse is zero.

18 It is not accurate to state the appeals officer ignored
19 NAC 616C.435 when she based the death benefit owed to Ms.
20 DeMaranville on the wage Mr. DeMaranville was earning at the date
21 of his death. The City of Reno presented that argument in
22 closing. ROA 735-739. The appeals officer did not ignore it she
23 simply chose not to use NAC 616C.435 because it does not fit the
24 facts presented. NAC 616C.435(9) states "earnings" as used in
25 that section means earnings received from the employment in which
26 the injury occurs. Mr. DeMaranville did not die of injury
27 resulting from industrial accident, a situation in which NAC
28 616C.435 might apply. Mr. DeMaranville died of industrial

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1 disease to which NAC616C.435 does not apply. There is no
2 authority for the City to present to the Nevada Supreme Court for
3 the proposition that a regulation for calculating average monthly
4 wage for injury by accident relieves the City from owing a police
5 officer's widow monthly benefits arising from occupational
6 disease.

7 The regulation proffered by the City and relied upon by
8 the district court will likely be determined inapposite by our
9 State Supreme Court upon review. It is more likely the Court
10 will find favor with NAC 616C.441 for calculating the average
11 monthly wage of Daniel DeMaranville. That regulation refers
12 specifically to occupational disease and requires that
13 determining average monthly wage must take into consideration the
14 claimant's earnings on the date he or she is no longer able to
15 work. Daniel DeMaranville worked up until the date of his death,
16 according to the appeals officer. ROA 24-30. The district court
17 did not overturn that finding.

18 The City will be presenting to the State Supreme
19 Court an argument similar to that presented to the Court by the
20 employer in Mirage v. Nevada Dep't of Admin., 110 Nev. 257, 871
21 P.2d 317 (1994). In the Mirage case the employer argued the
22 average monthly wage calculations for an occupational disease
23 claim should be controlled by NRS chapter 616 and NAC chapter
24 616, statutes and regulations dealing with injuries by industrial
25 accident. In its decision the Supreme Court specifically stated,
26 "We note that although NRS Chapter 617 [the Occupational Diseases
27 Act] does not contain a precise method for the calculation of
28 disability benefits for occupational diseases, its provisions

1 provide sufficient guidance for determining the date of
2 eligibility for such benefits." Mirage at 260. The Supreme
3 Court concluded that an employee seeking benefits under the Act
4 becomes eligible when the employee is no longer able to continue
5 working because of the disease. Id. at 258. The date Daniel
6 DeMaranville could no longer continue working because of heart
7 disease was the date of his death. ROA 24-30. It is likely the
8 State Supreme Court will review Ms. DeMaranville's appeal in a
9 manner consistent with its holding in Mirage.

10 The City also relies on Howard v. City of Las Vegas, 121
11 Nev. 691, 120 P.3d 410 (2005), to argue that Laura DeMaranville
12 is not entitled to death benefits under the Occupational Diseases
13 Act because at the date of her husband's death he was not earning
14 a wage from the City of Reno. The City's position misinterprets
15 Howard. The Supreme Court specifically stated that "under NRS
16 617.420 [determining average monthly wage for occupational
17 disease], when a retired claimant becomes eligible for
18 occupational disease benefits, the claimant is entitled to
19 receive medical benefits but may not receive any disability
20 compensation *if the claimant is not earning any wages.*" Id. at
21 693-694 (Emphasis added). Like Mr. Howard, Mr. DeMaranville was
22 an intended beneficiary of Nevada's heart/lung statutes and he
23 was retired from the employer responsible for heart/lung
24 benefits. Unlike Mr. Howard, Mr. DeMaranville was still earning
25 a wage at the time his claim for occupational disease became
26 compensable. The italicized language in the quote above excludes
27 the DeMaranville case from the Howard rule. It is likely the
28 State Supreme Court will limit the Howard rule to the facts in

1 that case and less likely the Court will extrapolate from Howard
2 a new rule for the DeMaranville appeal.

3 Irreparable Harm if Stay is Not Granted

4 The City of Reno posits that Ms. DeMaranville will suffer no
5 harm if stay is denied because if she wins on appeal the benefits
6 she loses during the appeal process will be paid back to her.¹
7 It took more than two years from the time her husband died for
8 Laura DeMaranville to secure the order of the appeals officer
9 entitling her to benefits. ROA 24-30. The order of the court
10 reducing those payments to zero should be stayed while Ms.
11 DeMaranville tests the City's novel application of NAC
12 616C.435(9). Cutting off her monthly benefits now, for an
13 undetermined period during the appeal process, simply adds to the
14 harm she suffered getting the City to pay her benefits initially.
15 The Legislature understood the harm to the survivors of deceased
16 injured workers when it enacted NRS 616C.505. The district court
17 here is encouraged to recognize that harm, as well.

18 Consideration of the City's harm in paying benefits during
19 the appeal is not controlling. Our State Supreme Court has
20 determined that as a self-insurer the City assumes the risk of
21 paying benefits which might later be determined erroneous. See
22 Ransier v. SIIS, 104 Nev. 742, 746, 766 P.2d 274 (1988) (quoting
23 Dep't Ind. Relations v. Circus Circus, 101 Nev. 405, 411-412, 705
24 P.2d 645, 649 (1985) (with the benefits of self-insurance comes
25 the burden as employer of paying benefits and then seeking

26
27 ¹That portion of the City's brief at page 4, lines 15-17,
28 regarding amounts paid to date should not be considered. Nothing
in the record on appeal supports the statement. Factual
contentions are to be presented only upon affidavit. DCR 13(6).

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1 recovery later if the payment is in error)).


2 Conclusion

3 The City of Reno on appeal will be seeking a policy
4 determination that municipalities should enjoy a limit to the
5 exposure created by the heart/lung statutes by limiting the
6 calculation of benefit payments to wages paid directly to the
7 beneficiary at the date of disability. State statute and case
8 law do not directly support the City of Reno's legal position.
9 The benefits owing to Laura DeMaranville should not be
10 interrupted while the City's policy argument is tested.

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

13 Submitted this 19th day of April, 2017.

14 NEVADA ATTORNEY FOR INJURED WORKERS

15 
16 _____
17 Evan Beavers, Esq.
18 Nevada Bar No. 3399
19 Attorneys for Respondent,
20 Laura DeMaranville
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CERTIFICATE OF SERVICE

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

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

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

DATED: April 19, 2017

SIGNED: Dancy, L. Sherwood

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

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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,

vs.

CASE NO. 15 OC 00092 1B

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

DEPT. NO. 2

Respondents.

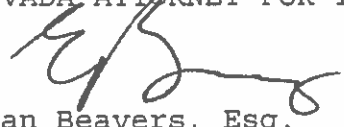
REQUEST FOR SUBMISSION OF MOTION FOR STAY

It is requested that the Motion for Stay which was
filed on the 29th day of March, 2017, in the above-entitled
matter be submitted to the court for decision.

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

DATED this 19th day of April, 2017.

NEVADA ATTORNEY FOR INJURED WORKERS


Evan Beavers, Esq.
Nevada Bar No. 3399
1000 East William Street, Suite 208
Carson City, Nevada 89701
Attorneys for Laura DeMaranville

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RENO NV 89505-2670

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

DATED: April 19, 2017

SIGNED: Taney L Sheworth

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1 Case No. 15 OC 00092 1B

2 Dept. II

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SUSAN HERRIWETHER
CLERK

BY  DEPUTY

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

8 * * * * *

9
10 CITY OF RENO,

11 Petitioner,

12 vs.

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

17 Claimant.
18 _____ /

19 ORDER DENYING MOTION FOR STAY

20 Respondent, Laura DeMaranville (Demaranville), seeks an order staying
21 enforcement of this Court's Order Granting in Part and Denying in Part Petition for Judicial
22 Review filed in this matter on March 9, 2017. Demaranville has appealed to the Nevada
23 Supreme Court and requests a stay order pending appeal. Demaranville contends she is
24 entitled to a stay order because she is likely to prevail on the merits of her appeal and will
25 suffer irreparable harm and absence of a stay order. Both Petitioner the City of Reno
26 (City), and Respondent Employer's Insurance Company of Nevada (EICN) have opposed
DeMaranville's motion.

27 The Court has carefully reviewed DeMaranville's motion, the oppositions filed by
28 the City and EICN and Demaranville's replies to both oppositions and concludes a stay

1 order is not warranted in this case. The Court finds DeMaranville has not establish the
2 grounds necessary to support a stay order. In particular, the Court finds Demaranville has
3 not demonstrated she will suffer irreparable harm in absence of a stay order, whereas, the
4 City is likely to suffer irreparable harm if a stay order is granted. If the stay order is
5 granted, the City will be required to continue the payment of benefits that cannot be
6 recouped if the Court's order is upheld by the Nevada Supreme Court. See: *Ransier v.*
7 *State Industrial Insurance System*, 104 Nev. 742, 756 P.2d 274 (1988). Accordingly, the
8 motion for stay is denied.

9 Dated this 27 day of April, 2017.

10
11 
12 DISTRICT JUDGE

13 Submitted by:
14 TIMOTHY E. ROWE
15 MCDONALD CARANO WILSON LLP
16 100 West Liberty St., 10th Floor
17 Reno, Nevada 89501
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SUSAN MERRIWETHER
CLERK
DEPUTY

Attorneys for Respondents, CITY OF RENO and CCMSI

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

CITY OF RENO,

Petitioner,

vs.

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OF NEVADA, and NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER,

Respondents.

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 27th day of April, 2017, the Court entered its Order Denying Motion for Stay in the above-referenced matter. A true and correct copy of the Order is attached hereto as Exhibit "1".

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 1st day of May, 2017.

McDONALD CARANO WILSON LLP

By:

T. E. Rowe
Timothy E. Rowe, Esq.
P.O. Box 2670
Reno, NV 89505-2670
Attorneys for City of Reno and CCMSI

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 May, 2017, I served true and correct copies of the NOTICE OF ENTRY OF ORDER via the U.S. Postal Service on the following parties:

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

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

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


Carole Davis

Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
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1	Order Denying Motion for Stay	2
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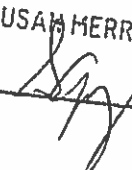
EXHIBIT 1

EXHIBIT 1

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2 Dept. II

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CLERK
BY  DEPUTY

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12 DISTRICT JUDGE

13 Submitted by:
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