

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72737

LAURA DEMARANVILLE, surviving spouse of
DANIEL DEMARANVILLE (DECEASED)

Electronically Filed
Jul 25 2018 11:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellant/Cross-Respondent,

v.

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

Respondents,

and

CITY OF RENO,

Respondent/Cross-Appellant.

Appeal and Cross-Appeal From Order Granting In Part and Denying In Part
Consolidated Petitions For Judicial Review

First Judicial District Court, Case No.: 15 0C 00092 1B

**RESPONDENT/CROSS-APPELLANT CITY OF RENO'S
SUPPLEMENTAL APPENDIX – VOLUME I**

McDONALD CARANO LLP
Timothy E. Rowe (NSBN 1000)
Chelsea Latino (NSBN 14227)
100 W. Liberty St., 10th Floor
Reno, Nevada 89501
Tel: (775) 788-2000
Fax: (775) 788-2020
trowe@mcdonaldcarano.com
clatino@mcdonaldcarano.com

*Attorneys for Respondent/Cross-Appellant City of Reno
and Respondent Cannon Cochran Management Services, Inc.*

**INDEX TO SUPPLEMENTAL APPENDIX
(Alphabetical)**

DESCRIPTION OF DOCUMENT	VOLUME	PAGE(S)
Appeals Officer's Correspondence re: Index to Record on Appeal (dated 5/13/15)	I	SA 001- SA 006
Appeals Officer's Correspondence re: Index to Record on Appeal (dated 2/5/16)	I	SA 007- SA 009
Certification of Transmittal (filed 2/5/16)	I	SA 010- SA 012
Record on Appeal – Part 1 of 8	I	SA 013- SA 0100
Record on Appeal – Part 2 of 8	II	SA 101- SA 200
Record on Appeal – Part 3 of 8	III	SA 201- SA 300
Record on Appeal – Part 4 of 8	IV	SA 301- SA 400
Record on Appeal – Part 5 of 8	V	SA 401- SA 500
Record on Appeal – Part 6 of 8	VI	SA 501- SA 600
Record on Appeal – Part 7 of 8	VII	SA 601- SA 700
Record on Appeal – Part 8 of 8	VIII	SA 701- SA 786

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 25th day of July, 2018, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system as listed below:

Evan B. Beavers
Samantha L. Peiffer
Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
Carson City, Nevada 89701

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

/s/ Carole Davis

BRYAN SANDOZAL
Governor

RECEIVED

MAY 18 2015

McDonald Carano Wilson LLP

STATE OF NEVADA



JAMES R. WELLS, CPA
Interim Director

BRYAN A. NIX
Senior Appeals Officer

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

1050 E. William Street

Suite 450

Carson City, Nevada 89701-3102

(775) 687-8420 • Fax (775) 687-8421

May 13, 2015

TIMOTHY ROWE ESQ
PO BOX 2670
RENO NV 89505

MARK SERTIC ESQ
5975 HOME GARDENS DR
RENO NV 89501

Re: DANIEL DEMARANVILLE, 46812-46479-44957-LLW
In The First Judicial District Court
Case No. 15 OC 00092 1B, Dept. No. II

Dear Sirs:

Please be advised that on this date, the entire record on appeal, in the above-referenced claim was transmitted in accordance with the Nevada Administrative Procedure Act to the Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

For your convenience, I have enclosed a photocopy of the index to the transmitted record.

Sincerely,

Lorna L. Ward
Lorna L. Ward
Appeals Officer

LLW/kf
Enclosure

cc: Evan Beavers, Esq., NAIW

CASE NO. 15 OC 00092 1B

DEPT. NO. II

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

EMPLOYERS INSURANCE COMPANY OF NEVADA V. CITY OF RENO, DANIEL
DEMARANVILLE [Deceased], and NEVADA DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER

INDEX

<u>Item Description</u>	<u>Page No.</u>
Clarification of Denial of Partial Stay, Appeals Officer Ward (Filed 04/28/15)	001 - 002
Request for Clarification of Stay Order, Submitted by Timothy Rowe, Esq., On behalf of Employer/Petitioner (Filed 04/23/15)	003 - 007
Order, Appeals Officer Ward (Filed 04/16/15)	008 - 009
Motion for Partial Stay Order, Submitted by Timothy Rowe, Esq., On behalf of Employer/Petitioner (Filed 04/14/15)	010 - 015
Decision, Appeals Officer Ward (Filed 03/18/15)	016 - 026
Points and Authorities and Arguments, submitted by Evan Beavers, Esq., NAIW on Behalf of Claimant/Respondent (Filed 02/17/15)	027 - 032
Points and Authorities of Employers Insurance Company of Nevada, submitted by Mark Sertic, Esq., On behalf of Insurer/Cross-Petitioner (Filed 02/17/15)	033 - 038
City of Reno's Points and Authorities/ Argument on Insurer Liability, Submitted by Timothy Rowe, Esq., On behalf of Employer/Petitioner (Filed 02/17/15)	039 - 042

DEMARANVILLE INDEX
PAGE 2

Transcript of Proceedings Appeal Hearing January 7, 2015 (Filed 05/01/15)	043 - 120
Exhibit I	121 - 319
Exhibit II	320 - 359
Exhibit III	360 - 393
Exhibit IV	394 - 407
Exhibit V	408 - 419
Exhibit VI	420 - 554
Exhibit VII	555 - 561
Exhibit VIII	562 - 567
Exhibit VIV	568 - 584
Order, Appeals Officer Ward (Filed 01/22/15)	585 - 586
Order, Appeals Officer Ward (Filed 11/03/14)	587 - 588
Motion for Continuance and Resetting, submitted by Evan Beavers, Esq., NAIW, on behalf of Claimant/Respondent (Filed 10/29/14)	589 - 591
Order, Appeals Officer Ward (Filed 09/10/04)	592 - 593
Motion for Continuance and Resetting, submitted by Evan Beavers, Esq., NAIW, on behalf of Claimant/Respondent (Filed 09/08/14)	594 - 596
Claimant's Hearing Statement, Submitted by Evan Beavers, Esq., NAIW On behalf of Claimant/Respondent (Filed 09/03/14)	597 - 601
Order, Appeals Officer Ward (Filed 06/12/14)	602 - 603

DEMARANVILLE INDEX
PAGE 3

Motion for Continuance and Notice Of Resetting, submitted by Mark Sertic, Esq. on behalf of Insurer/Cross-Petitioner (Filed 06/11/14)	604 - 606
Order, Appeals Officer Ward (Filed 05/16/14)	607 - 608
Reply Points and Authorities in Support of Motion for Stay Order Pending Appeal, submitted by Mark Sertic, Esq., on behalf of Insurer/Cross-Petitioner (Filed 05/09/14)	609 - 611
Opposition to Motion for Stay, Submitted by Evan Beavers, Esq., NAIW On behalf of Claimant/Respondent (Filed 05/05/14)	612 - 621
Order, Appeals Officer Ward (Filed 04/29/14)	622 - 623
Motion for Continuance and Resetting, submitted by Evan Beavers, Esq., NAIW, on behalf of Claimant/Respondent (Filed 04/24/14)	624 - 626
Order, Appeals Officer Ward (Filed 04/10/14)	627 - 628
Application to Permit Discovery, Submitted by Evan Beavers, Esq., NAIW On behalf of Claimant/Respondent (Filed 04/08/14)	629 - 630
Order, Appeals Officer Ward (Filed 02/07/14)	631 - 632
Motion for Continuance and Notice Of Resetting, submitted by Mark Sertic, Esq., on behalf of Insurer/Cross-Petitioner (Filed 02/05/14)	633 - 635
Employer's [Replacement] Prehearing Statement, submitted by Timothy Rowe, Esq., On behalf of Employer/Petitioner (Filed 02/03/14)	636 - 639

DEMARANVILLE INDEX
PAGE 4

Affidavit of Service (Filed 01/31/14)	640 - 641
Order, Appeals Officer Ward (Filed 12/23/13)	642 - 643
Notice of Appeal and Order to Appear, Appeals Officer Ward (Filed 12/23/13)	644
Order for the Appointment of Nevada Attorney for Injured Workers, Appeals Officer Ward (Filed 12/23/13)	645
Order Transferring Hearing to Appeals Officer, Hearing Officer Amodei (Filed 12/18/13)	646 - 649
Certificate of Mailing (Dated December 23, 2013)	650
Letter of Determination (Dated September 19, 2013)	651 - 653
Order of Consolidation Appeals Officer Ward (Filed 12/12/13)	654 - 655
Order for Appointment of Nevada Attorney for Injured Workers Appeals Officer Ward (Filed 11/27/13)	656 - 658
Order, Appeals Officer Ward (Filed 11/27/13)	659 - 660
Motion for Stay Order Pending Appeal Submitted by Mark Sertic, Esq., On behalf of Insurer/Cross-Petitioner (Filed 11/22/13)	661 - 667
Notice of Appeal and Order to Appear, Appeals Officer Ward (Filed 11/26/13)	668
Letter Offer of NAIW (Dated November 26, 2013)	669

DEMARANVILLE INDEX
PAGE 5

Notice of Appeal and Request for Hearing Before the Appeals Officer, submitted by Mark Sertic, Esq., on behalf of Insurer/Cross-Petitioner (Filed 11/22/13)	670
Certificate of Mailing (Dated November 26, 2013)	671
Decision of Hearing Officer Katherine Diamond (Dated October 28, 2013)	672 - 674
Employer's Prehearing Statement Submitted by Timothy Rowe, Esq., On behalf of Employer/Petitioner (Filed 11/25/13)	675 - 677
Insurer's Prehearing Statement Submitted by Mark Sertic, Esq., On behalf of Insurer/Cross-Petitioner (Filed 11/22/13)	678 - 680
Order, Appeals Officer Ward (Filed 09/30/13)	681 - 682
Motion for Continuance and Resetting, Submitted by Evan Beavers, Esq., NAIW On behalf of Claimant/Respondent (Filed 09/26/13)	683 - 685
Order for the Appointment of Nevada Attorney for Injured Workers, Appeals Officer Ward (Filed 08/14/13)	686 - 687
Notice of Appeal and Order to Appear, Appeals Officer Ward (Filed 07/23/13)	688
Order Transferring Hearing to Appeals Office, Hearing Officer Amodei (Filed 07/18/13)	689 - 691
Certificate of Mailing (Dated July 23, 2013)	692
Letter of Determination (Dated May 23, 2013)	693 - 694

oOo

BRIAN SANDOVAL
Governor

STATE OF NEVADA



PATRICK CATES
Director

BRYAN A. NIX
Senior Appeals Officer

DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE
1050 E. William Street
Suite 450
Carson City, Nevada 89701-3102
(775) 687-8420 • Fax (775) 687-8421

February 5, 2016

MARK SERTIC ESQ
5975 HOME GARDENS DR
RENO NV 89501

Re: Daniel Demaranville, 53387-LLW
In The First Judicial District Court
Case No. 16 OC 0003 1B, Dept. No. II

Dear Mr. Sertic:

Please be advised that on this date, the entire record on appeal, in the above-referenced claim was transmitted in accordance with the Nevada Administrative Procedure Act to the Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

Pursuant to NAC 616C.328 adopted on August 12, 1998, a copy of the final decision of the court must be provided to the Appeals Officer who rendered the opinion for which judicial review was sought.

For your convenience, I have enclosed a photocopy of the index to the transmitted record.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lorna L. Ward".
Lorna L. Ward

LLW/kf
Enclosure

cc: Evan Beavers, Esq.
Timothy Rowe, Esq.

CASE NO. 16 OC 00003 1B

DEPT. NO. II

EMPLOYERS INSURANCE COMPANY OF NEVADA V. DANIEL DEMARANVILLE,
Deceased, LAURA DEMARANVILLE, an individual, CITY OF RENO, and
the NEVADA DEPARTMENT OF ADMINISTRATION, APPEALS OFFICER

INDEX

<u>Item Description</u>	<u>Page No.</u>
Order, Appeals Officer Lorna L. Ward (Filed 02/03/16)	01 - 02
Reply to Opposition to Motion for Stay, submitted by Timothy Rowe, Esq., on behalf of Employer/Respondent (Filed 02/01/06)	03 - 05
Opposition to Motion for Stay, Submitted by Evan Beavers, Esq., NAIW, on behalf of Claimant/Respondent (Filed 01/21/16)	06 - 16
Motion for Stay Order Pending Judicial Review, submitted by Timothy Rowe, Esq., on behalf of Employer/Respondent (Filed 01/06/16)	17 - 23
Decision, Appeals Officer Ward (Filed 12/10/15)	24 - 30
Exhibit I	31 - 724
Order, Appeals Officer Ward (Filed 12/10/15)	725 - 726
Reply to City of Reno's Opposition To Motion for Summary Judgment and Reply to EICON's Response to the Claimant's for Summary Judgment, Submitted by Evan Beavers, Esq., NAIW, on behalf of Claimant/Respondent (Filed 11/05/15)	727 - 735
City of Reno's Opposition to Motion For Summary Judgment, submitted by Timothy Rowe, Esq., on behalf of Employer/Respondent (Filed 10/26/15)	735 - 739

DEMARANVILLE INDEX
PAGE 2

Employers Insurance Company of Nevada's Response to the Claimant's Motion for Summary Judgment, Submitted by Mark Sertic, Esq., On behalf of Insurer/Petitioner (Filed 10/23/15)	740 - 747
Motion for Summary Judgment, submitted By Evan Beavers, Esq., NAIW on Behalf of Claimant/Respondent (Filed 10/06/15)	748 - 756
Stipulation and Order, submitted by Evan Beavers, Esq., NAIW on behalf of Claimant/Respondent (Filed 10/07/15)	757 - 760
Order, Appeals Officer Ward (Filed 09/02/15)	761 - 762
Motion to Intervene and/or for Joinder, submitted by Mark Sertic, Esq., On behalf of Insurer/Petitioner (Filed 09/01/15)	763 - 767
Notice of Appeal and Order to Appear, Appeals Officer Ward (Filed 07/16/15)	768
Order for the Appointment of Nevada Attorney for Injured Workers, Appeals Officer Ward (Filed 07/16/15)	769
Notice of Appeal and Request for Hearing Before the Appeals Officer, submitted by Laura DeMaranville, on behalf of Claimant/Respondent (Filed 07/13/15)	770
Certificate of Mailing (Dated July 16, 2015)	771
Decision of Hearing Officer, Katherine Diamond (Dated June 24, 2015)	772 - 774

oOo

1 CASE NO. 16 OC 00003 1B

2 DEPT NO. II

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

REC'D & FILED

2016 FEB -5 PM 4:05

SUSAN MERRIWETHER
CLERK

BY *[Signature]* DEPUTY

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

* * * * *

EMPLOYERS INSURANCE COMPANY
ON NEVADA,

Petitioner,

vs.

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

Respondents.

CERTIFICATION OF TRANSMITTAL

I, Lorna L. Ward, Appeals Officer under the Department
of Administration, Hearing-Appeals Division, for the State of
Nevada, do hereby certify that the hereto attached record
contains and is a full, true, and correct original record of all
entries made in my docket, as more particularly set forth in the
Index, relating to that certain cause heretofore pending
before me as such Appeals Officer, and that the annexed and

. . .

. . .

1 attached papers are all the process and other papers and
2 exhibits relating to the above-entitled action filed with me.
3

4 APPEALS OFFICER

5 

6 Lorna L. Ward
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28
APPEALS OFFICE
1050 E. WILLIAM #450
CARSON CITY NV 89710

SA 011

1 CASE NO. 16 OC 00003 1B

2 DEPT NO. II

3

4

5

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR CARSON CITY

8 * * * * *

9 EMPLOYERS INSURANCE COMPANY
ON NEVADA,

10 Petitioner,

11 vs.

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

16

AFFIRMATION
Pursuant to NRS 239B.030

17

18 The undersigned does hereby affirm that the following
document **DOES NOT** contain the social security number of any
19 person:

19


20 1. Certification of Transmittal

21

APPEALS OFFICER

22

23


Lorna L. Ward

24

25

26

27

28
APPEALS OFFICE
1050 E. WILLIAM #450
CARSON CITY NV 89710

SA 012

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

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

FILED

FEB 03 2016

DEPT. OF ADMINISTRATION
APPEALS OFFICER

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

} Claim No: 12853C301824

} Hearing No: 52796-KD

} Appeal No: 53387-LLW

8
9 DANIEL DEMARANVILLE, DECEASED,
10

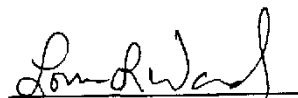
11 Claimant.
12

ORDER

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

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

18 **IT IS SO ORDERED.**
19

20 
21 _____
22 LORNA L WARD
23 APPEALS OFFICER
24
25
26
27
28

1 **CERTIFICATE OF MAILING**

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

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

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

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

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

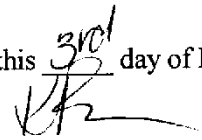
17 LESLIE BELL
18 RENO POLICE PROTECTIVE ASSOCIATION
19 PO BOX 359
RENO NV 89504

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 3rd day of February, 2016.

28 

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

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

2016 FEB -1 PM 1:35

* * * * *

RECEIVED
AND
FILED

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824

of

Hearing No: 52796-KD

DANIEL DEMARANVILLE (Deceased)

Appeal No: 53387-LLW

Claimant.

REPLY TO OPPOSITION TO MOTION FOR STAY

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

I. ARGUMENT

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

1. Likelihood of Success on the Merits:

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

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

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

3 2. Irreparable Harm:

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

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

14 II. CONCLUSION

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

20 Dated this 1st day of February, 2016.

21 MCDONALD CARANO WILSON LLP

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


1 CERTIFICATE OF SERVICE

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

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

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

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

18 
19 Carole Davis



ORIGINAL

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

2016 JAN 21 PM 4:35

RECEIVED
AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE,
DECEASED,

Claimant.

OPPOSITION TO MOTION FOR STAY

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

//

//

//

//

//

//

//

//


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

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

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

4 Dated this 21st day of January, 2016.

5 NEVADA ATTORNEY FOR INJURED WORKERS

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

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

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

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

20
21
22
23
24
25
26
27
28

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

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

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

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

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

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

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

28 //

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

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

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

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

24 Reno's irreparable harm if stay is denied.

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

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 district court should reverse the appeals officer. Reno argues
2 that because it can never recoup these amounts should it be
3 successful on appeal, it will be irreparably harmed if it
4 continues payments to Laura DeMaranville. Our State Supreme
5 Court has considered that argument in the past, and rejected it.
6 In Ransier v. State Indus. Ins. Sys., 104 Nev. 742, 766
7 P.2d 274 (1988), the Nevada Supreme Court considered a district
8 court's review of an appeals officer's ruling apportioning the
9 amount owing on a workers' compensation claim. The Court upheld
10 the appeals officer's decision which would have reduced the lump
11 sum amount the insurer paid to the injured worker. The Court
12 then turned its attention to the insurer's argument that it
13 should be able to recoup any amounts paid to the claimant before
14 the Court determined it paid more than the law required. The
15 claimant contended the insurer could not recoup the payment
16 absent any statutory authority. The Court recognized the burden
17 on insurers and employers to promptly pay benefits but the Court
18 refused to "justify the inclusion of a new cause of action" in
19 the workers' compensation statutes by which recoupment could be
20 justified. *Id.* at 746. The Court acknowledged the duty of
21 employers and insurers to pay workers' compensation claims
22 promptly despite the risk that an overpayment could be determined
23 later after appeal. Still, the Court determined that is a risk
24 insurers and employers undertake under Nevada's Industrial
25 Insurance Act. The Court reached this conclusion only after
26 review of decisions in other states reaching a similar
27 conclusion. *Id.* at 747 (Ftnt 4). See also, 8 Lex K. Larson,
28 Larson's Workers' Compensation Law § 130.08[4] (2003) (Matthew

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

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

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

24 Widow's irreparable harm if stay is denied.

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

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

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

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

12 Likelihood of success on the merits.

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

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

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

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

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

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

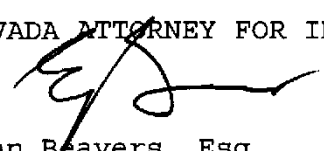
1 Woods, 108 Nev. 11, 15, 823 P.2d 288 (1992). At this juncture in
2 the proceedings, the likelihood of Reno's success on the merits
3 of its petition for judicial review is not apparent, much less
4 likely.

5 CONCLUSION

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

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

18 NEVADA ATTORNEY FOR INJURED WORKERS

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

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

CERTIFICATE OF SERVICE

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

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

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

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

DATED: January 21, 2016

SIGNED: Jane L. Shewood

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

2016 JAN -5 AM 10:11

RECEIVED
AND
FILED

* * * * *

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824

of

Hearing No: 52796-KD

DANIEL DEMARANVILLE (Deceased)
c/o Laura DeMaranville

Appeal No: 53387-LLW

Claimant.

MOTION FOR STAY ORDER PENDING JUDICIAL REVIEW

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

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

DATED this 5th day of January, 2016.

MCDONALD CARANO WILSON LLP

By T.E. Rowe
TIMOTHY E. ROWE, ESQ.
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, NV 89505-2670
Attorneys for
CITY OF RENO

POINTS AND AUTHORITIES

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

I.

STATEMENT OF THE ISSUES

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

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

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

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

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

MC DONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
TEL: 775-788-2000 • FAX: 775-788-2020
TO: BOX 2670 • RENO, NEVADA 89505-2670

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

3 **II. ARGUMENT**

4 **1. The Standard for Granting a Stay Order.**

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

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

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

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

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

26 **2. Likelihood of Success on the Merits.**

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

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

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

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

1 691, 120 P.3d 410 (2005) in which the Nevada Supreme Court determined a retired
2 firefighter was not entitled to disability compensation resulting from a disabling heart
3 attack because the claimant was not earning wages at the time of the heart attack.
4 Although not directly on point, the result in *Howard* is consistent with the interpretation of
5 the applicable regulations relied on by both the City and EICON in this case.

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

12 **3. Irreparable Harm.**

13 In compliance with the appeals officer's decision in appeal number 46812-LLW,
14 46479-LLW and 44957-LLW, the City began payment of benefits based on Mr.
15 DeMaranville's wage on the date of his retirement in 1990. In addition, the City is paying
16 past-due death benefits in monthly installments. This results is a current monthly payment
17 of \$3,367.70, nearly the same amount found due under the Appeals Officer's order
18 (\$3,481.75).

19 In the event the City ultimately prevails in this dispute, none of the benefits paid to
20 Ms. DeMaranville can be recovered. *Ransier v. SIRS*, 104 Nev. 742, 766 P.2d 274
21 (1988). The City has already paid a total of \$36,228.84 to Ms. DeMaranville. The fact that
22 these amounts can never be recouped if the City ultimately prevails in this matter
23 constitutes irreparable harm by definition. Thus, if the Appeals Officer does not enter an
24 order staying the effect of the Appeals Officer Decision, the rights of the City to appeal
25 the decision under NRS 616C.370 will effectively be lost. Under these circumstances, the
26 Nevada Supreme Court has specifically noted that an insurer's remedy is to seek a stay
27 order. *DIR v. Circus Circus*, 101 Nevada 405, 705 P.2d 645 (1985).

28 ///

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

III. CONCLUSION

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

DATED this 5th day of January, 2016.

McDONALD CARANO WILSON LLP

By: *T. E. Rowe*

TIMOTHY E. ROWE, ESQ.

P.O. Box 2670

Reno, Nevada 89505-2670

Attorneys for the Employer

CITY OF RENO

McDONALD CARANO WILSON LLP

100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501

P.O. BOX 2670 • RENO, NEVADA 89505-2670

PHONE 775-788-2000 • FAX 775-788-2020

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2120

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 10th day of January, 2016, I served the preceding **MOTION FOR STAY ORDER PENDING JUDICIAL REVIEW** by placing a true and correct copy thereof in a sealed envelope and serving said document via hand-delivery by Reno Carson Messenger Service the following party at the address referenced below:


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

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

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

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

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


Carole Davis

#437359

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

FILED

DEC 10 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

6 In the Matter of the
7 Industrial Insurance Claim

Claim No.: 12853C301824

8 of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

9 DANIEL DEMARANVILLE
10 _____/

11 DECISION AND ORDER

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

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

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

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

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

3 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

19 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

28 //

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

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

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

23 //

24 //

25 //

26 //

27 //

28 //

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

ORDER

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

DATED this 10th day of December, 2015.

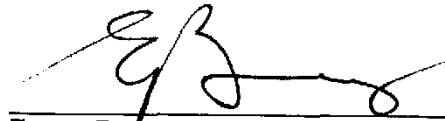
APPEALS OFFICER


LORNA L WARD

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

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


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

1 **CERTIFICATE OF MAILING**

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

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

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

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

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

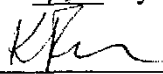
17 LESLIE BELL
18 RENO POLICE PROTECTIVE ASSOCIATION
19 PO BOX 359
RENO NV 89504

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

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

25 CCMSI
26 PO BOX 20068
RENO NV 89515-0068

27 Dated this 10th day of December, 2015.

28 

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

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

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

APR 28 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 12853C301824
1990204572

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

DANIEL DEMARANVILLE,
DECEASED,

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

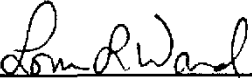
Claimant.

CLARIFICATION OF DENIAL OF PARTIAL STAY

The Appeals Officer finds that NRS 616C.380 (1)(b) applies to death
benefits.¹

Therefore the City of Reno should proceed with payment of past-due
death benefits in monthly installments in addition to payment of the prospective
death benefits.

IT IS SO ORDERED.


LORNA L WARD
APPEALS OFFICER

**ENTERED INTO
EVIDENCE AS EXHIBIT**

1

¹ The Appeals Officer apologizes for any confusion caused by the
April 16, 2015 order.

1 **CERTIFICATE OF MAILING**

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

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

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

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

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

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

25 MARK SERTIC, ESQ
26 5975 HOME GARDENS DRIVE
27 RENO NV 89502
28

Dated this 28th day of April, 2015.

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

002

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 * * * * *

4 In the Matter of the Contested
5 Industrial Insurance Claim of:

Claim No: 12853C301824
1990204572

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

6 DANIEL DEMARANVILLE,
7 DECEASED,

8 Claimant.

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

9
10 REQUEST FOR CLARIFICATION OF STAY ORDER

11 The Employer, CITY OF RENO (hereinafter "CITY"), respectfully moves the
12 Appeals Officer for clarification of the Order entered on April 16, 2015 (attached as Exhibit
13 A). The basis for this motion is that the insurer requests clarification in order to avoid any
14 inadvertent violation of the Appeals Officer's Stay Order.

15 This motion is made and based upon the points and authorities attached hereto,
16 and the Insurer's Documentary Evidence (IDE) submitted.

17 DATED this 22ND day of April 2015.

18 McDONALD CARANO WILSON LLP

19
20 By J. E. Rowe
21 TIMOTHY E. ROWE, ESQ.
22 P. O. Box 2670
23 Reno, Nevada 89505-2670
24 Attorneys for the Employer
25 CITY OF RENO

26
27
28
FILED
AND
RECEIVED
2015 APR 23 PM 4:17
STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

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

POINTS AND AUTHORITIES

The City of Reno respectfully requests the Appeals Officer provide clarification of the April 16, 2015 Order in this matter.

On April 16, 2015 the Appeals Officer issued her Order denying the partial stay but noting the provisions of NRS 616C.380(1)(b) regarding disputed payments. However, the City is not sure how to proceed since the provisions of NRS 616C.380(1)(b) do not mention death benefits. Accordingly, the City requests clarification of the Stay Order in the following manner:

1. Should the City proceed with payment of past-due death benefits in monthly installments in addition to payment of the prospective death benefits, or

2. Should the City proceed with payment of the past-due death benefits in a lump sum since NRS 616C.380(1)(b) does not mention payment of death benefits.

CONCLUSION

For the foregoing reasons, the City of Reno respectfully requests the Appeals Officer clarify her intent in the April 16, 2015 Order to avoid any inadvertent violation of the Stay Order.

DATED this 22nd day of April 2015.

McDONALD CARANO WILSON LLP

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

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the 32nd day of April 2015, I caused a true and corrected copy of the **MOTION FOR CLARIFICATION OF STAY ORDER** to be mailed via United States Mail at Reno, Nevada, or served by hand delivery via Reno-Carson Messenger Service, as indicated, upon the following parties:

Lorna L. Ward
Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, NV 89710

Evan Beavers, Esq.
1000 E. William St., #208
Carson City, NV 89701

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

and a copy of the within document has been mailed via U.S. mail at Reno Nevada to:

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

City of Reno
Attn: Cara Bowling
P. O. Box 1900
Reno, NV 89505

Employers Insurance Company of Nevada
P. O. Box 539004
Henderson, NV 89053



Carole Davis

418041

RECEIVED

APR 21 2015

McDonald Carson Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

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

FILED

APR 16 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 12853C301824
1990204572

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

DANIEL DEMARANVILLE,
DECEASED,

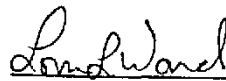
Appeal No: 46812-LLW
46479-LLW
44957-LLW

Claimant.

ORDER

The Employer filed its Motion for Partial Stay Order on April 14, 2015. After careful consideration, the Motion for Partial Stay Order is DENIED. However, see NRS 616C.380(1)(b) and the provisions regarding disputed payments.

IT IS SO ORDERED.



LORNA L WARD
APPEALS OFFICER

EXHIBIT A

006

1
2
3 **CERTIFICATE OF MAILING**
4

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

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

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

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

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

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

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

22 Dated this 16th day of April, 2015.
23
24 Kristi Fraser

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

EXHIBIT A

007

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

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

FILED

APR 16 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

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 DANIEL DEMARANVILLE,
11 DECEASED,

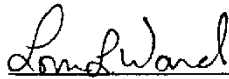
Appeal No: 46812-LLW
46479-LLW
44957-LLW

12 Claimant.
13

14 **ORDER**

15 The Employer filed its Motion for Partial Stay Order on April 14,
16 2015. After careful consideration, the Motion for Partial Stay Order is DENIED.
17 However, see NRS 616C.380(1)(b) and the provisions regarding disputed
18 payments.

19 **IT IS SO ORDERED.**

20
21 

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

008

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

CERTIFICATE OF MAILING

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

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

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 16th day of April, 2015.



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

009

39

NEVADA DEPARTMENT OF ADMINISTRATION

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

2015 APR 14 PM 2:20

* * * * *

RECEIVED
AND
FILED

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824
1990204572

of

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

DANIEL DEMARANVILLE (Deceased)
c/o Laura DeMaranville

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

Claimant.

MOTION FOR PARTIAL STAY ORDER

The CITY OF RENO respectfully moves the Appeals Officer for a partial stay order, temporarily staying the effect of the Appeals Officer's Decision entered on March 18, 2015 pending resolution of the Petition for Judicial Review filed in the Second Judicial District Court. The grounds for said motion are that the CITY OF RENO desires to invoke the provisions of NRS 616C.380(1)(b) which provides for payment of the disputed portion of an award for past benefits in installments.

This motion is made and based upon the points and authorities attached hereto, the Documentary Evidence (IDE) filed herein, and the pleadings and papers on file.

DATED this 14th day of April 2015.

McDONALD CARANO WILSON LLP

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

Attorneys for
CITY OF RENO

010

40

SA 052

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-798-2000 • FAX 775-798-2029

1 POINTS AND AUTHORITIES

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

4 I.

5 STATEMENT OF THE ISSUES

6 The issues in this case concern the compensability of Mr. DeMaranville's death
7 and, if compensable, which insurer was responsible. Mr. DeMaranville worked as a
8 police officer for the CITY. He retired from the CITY in 1990 when Employers Insurance
9 Company of Nevada (EICN) was the insurer. Thereafter, in 2002, the CITY became self-
10 insured.

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

16 Various medical opinions concerning the cause of Mr. DeMaranville's death were
17 submitted into evidence. The Appeals Officer relied on the medical opinion of Charles
18 Ruggeroli, M.D. who opined that Mr. DeMaranville had a catastrophic cardiovascular
19 event secondary to underlying occult occlusive atherosclerosis of the coronary arteries
20 leading to his death. The Appeals Officer found Mr. DeMaranville's heart disease was
21 compensable as an occupational disease under NRS 617.457. She also found the
22 applicable date of disability was August 5, 2012, concluding the City as a self-insured
23 employer was liable for the claim.

24 The CITY OF RENO has requested judicial review of the Appeals Officer's
25 March 18, 2015 decision, and hereby requests a partial stay of the decision pending
26 judicial review.

27 ///

28 ///

II.

ARGUMENT

1. **Standard for Granting a Stay Order.**

Pursuant to NRS 616C.345, an aggrieved party may obtain a review of any decision of the Hearing Officer by appealing to the Appeals Officer. Further, NRS 616C.345(4) also provides that the Appeals Officer may stay the Hearing Officer decision after application "when appropriate."

Although the Nevada Rules of Civil Procedure ("NRCP") are applicable to district courts, their application and interpretation can assist in deciding procedural issues in administrative hearings. (See NRCP Rule 1). In *Nyberg v. Nevada Industrial Commission*, 100 Nev. 322, 683 P.2d, 3,4 (1984), the Nevada Supreme Court indicated that the language of NRCP 1 does not limit the application of the Rules of Civil Procedure to solely district court proceedings. NRCP 62 is substantially identical to Rule 62 of the Federal Rules of Civil Procedure. According to the interpretation of the federal rule, an aggrieved party or agency is entitled to a stay of proceedings as matter of right upon doing all acts necessary to perfect its appeal. Wright & Miller, *Federal Practice and Procedure*, Vol. II, p.325, *et. seq.*; Moore's *Federal Practice*, Sec. 62.02. See also, *American Mfrs. Mutual Insurance Co. v. American Broadcasting-Paramount Theaters, Inc.*, 87 S.Ct. 1, 3,17 L.Ed.2d 37 (1966); *Dewey v. Reynolds Metals Co.*, 304 F.Supp. 1116 (W.D. Mich. 1969); *Ivor B. Manchester Co. v. Hogan*, 296 F.Supp. 47 4009 (S.D. NY 1969).

In *DIR v. Circus Circus*, 101 Nev. 405, 411-412, 705 P.2d 645, 649 (1985), the Nevada Supreme Court stated that the insurer's proper procedure when aggrieved by a decision is to seek a stay (p.7, footnote no. 3). The determination that aggrieved parties are entitled to seek a stay has been upheld throughout the most recent Nevada decisions. *Ransier v. SIIS*, 104 Nev. 742, 747, 766 P.2d 274 (1988).

Generally, the Nevada Supreme Court has recognized that a stay should be granted where it can be shown that the appellant would suffer irreparable injury during

1 the pendency of this appeal if the stay is not granted. *White Pine Power v. Public Service*
2 *Commission*, 76 Nev. 263, 252 P.2d 256 (1960). The Supreme Court discussed this
3 requirement in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948):

4 As a rule a supersedes or stay should be granted...whenever
5 it appears that without it the object of the appeal or writ of
6 error may be defeated, or that it is reasonably necessary to
7 protect appellant or plaintiff in error from irreparable or serious
8 injury in the case of a reversal, and it does not appear that
9 appellee or defendant in error will sustain irreparable or
10 disproportionate injury in case of affirmance.... *Id.*, 65 Nev. at
11 17.

12 As noted, a stay is proper when an appellant demonstrates it will incur irreparable
13 harm. This is established when the appellant demonstrates that it is likely to prevail on
14 the merits of the appeal and, if so, the appellant cannot be returned to its original position.
15 In this case, the underlying compensability of the claim is at issue. If the compensability
16 issue is ultimately resolved in the CITY'S favor, no benefits will be payable. However, in
17 absence of a partial stay, the CITY will be required to pay past death benefits at
18 substantial expense. Conversely, if a partial stay is granted, prospective benefits will be
19 paid, but payment of the substantial amount of past benefits will be held in abeyance
20 pending final resolution of the compensability issue. Accordingly, the CITY requests a
21 partial stay of the Appeals Officer's decision pending resolution of the Petition for Judicial
22 review.

23 **2. Payment of Actual Death Benefits Will Irreparably Harm the CITY.**

24 NRS 616C.380(1)(b) provides that payment of an award must be made in
25 installment payments of 66 2/3 percent of the average wage of the claimant until the
26 claim reaches final resolution if the claim is for more than 3 months of past benefits for a
27 temporary total disability or rehabilitation. The statute does not specifically mention past
28 death benefits. However, the rationale for holding past benefits in abeyance pending final
resolution of the disputed claim would also apply to payment of past death benefits.

///

///

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-798-2000 • FAX 775-798-2020

1 In this case, more than two and one-half (2-1/2) years of past benefits are at issue.
2 Both the compensability of the claim and the responsible insurer are at issue. If the
3 compensability issue is ultimately decided in favor of the CITY, the CITY will have paid a
4 substantial amount of death benefits it cannot recover. Ransier v. SIIS, 104 Nev. 742,
5 766 P.2d 274 (1988).

6 The CITY has no objection to payment of death benefits prospectively while the
7 Petition is pending. However, payment of a substantial sum that cannot be recovered if
8 the Petition is ultimately decided in favor of the CITY constitutes irreparable harm. This is
9 precisely the circumstance NRS 616C.380(1)(b) is designed to prevent. Accordingly, the
10 CITY requests a stay order staying payment of past benefits pending resolution of the
11 Petition for Judicial Review.

12 The CITY respectfully requests the Appeals Officer issue a partial stay order
13 pending judicial review staying the Appeals Officer's March 18, 2015 decision to the
14 extent it requires payment of past death benefits.

15 DATED this 14th day of April 2015.

16 McDONALD CARANO WILSON LLP

17
18 By: J. E. Rowe
19 TIMOTHY E. ROWE, ESQ.
20 P.O. Box 2670
21 Reno, Nevada 89505-2670
22 Attorneys for the Employer
23 CITY OF RENO
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

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

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

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

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


Carole M. Davis

#416658v1[cw4/3/15]

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

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

} Claim No: 12853C301824
1990204572

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

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

11 DANIEL DEMARANVILLE, DECEASED,
12
13 Claimant.

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

20 **DECISION OF THE APPEALS OFFICER**

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

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

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

6 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

12 Review of Expert Medical Opinions

13 Jay E. Betz, M.D.

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

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

27 He stated that he was unable to determine with "certainty" the
28 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.

021

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

9 123 Nev. at 244, 162 P.3d at 880.

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

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

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

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

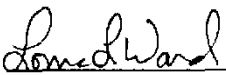
⁴ Mirage v. State, Dep't. of Administration, 110 Nev. 257, 871 P.2d 317
(1994)

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

DECISION

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

IT IS SO ORDERED.



Lorna L Ward
APPEALS OFFICER

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

1 **CERTIFICATE OF MAILING**

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

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

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

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

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

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

25 MARK SERTIC, ESQ
26 5975 HOME GARDENS DRIVE
27 RENO NV 89502
28

Dated this 18th day of March, 2015.

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



ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED
FEB 17 2015
DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 12853C301824

of

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

DANIEL DEMARANVILLE,
DECEASED,
Claimant.

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

POINTS AND AUTHORITIES AND ARGUMENTS

Comes now, Laura Demaranville, surviving spouse of
Daniel Demaranville, deceased, by and through her attorney, Evan
Beavers, Esq., Nevada Attorney for Injured Workers, and hereby
submits her Points and Authorities and Argument as ordered by
Appeals Officer Lorna L. Ward on January 22, 2015.

I.

POINTS AND AUTHORITIES

The order of January 22, 2015, seeks authority and
argument on the issue of which insurer is liable for the claim of
Laura DeMaranville for survivor benefits arising from the death
of her husband, Daniel DeMaranville. The relationship between
the City of Reno, self-insured employer at the date of Dan
DeMaranville's death, and Employer's Insurance Company of Nevada,
successor in interest to State Industrial Insurance System,
insurer of the City of Reno at the time of Mr. DeMaranville's

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

57

027

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 retirement, is unknown to the claimant. There is nothing in the
2 documentary evidence admitted at hearing which might address how
3 the city assigned the risk of future claims when it accepted
4 responsibility for such claims at the point of becoming self-
5 insured. However, the surviving spouse does take this
6 opportunity to address the key issue of when the decedent's
7 average monthly wage must be determined for calculating the
8 benefits to which she is entitled.

9 At hearing Laura testified Dan DeMaranville was hired
10 by the City of Reno as a policeman in 1969. He retired from the
11 City in 1990. After his retirement from the City he was employed
12 by AKAL Security on contract to the Federal Marshall's office.
13 He was employed by AKAL Security at the time of his death August
14 5, 2012. She also presented sufficient evidence to prove by a
15 preponderance that Dan died of heart disease and that prior to
16 his death he had served for five years or more in a full-time
17 continuous, uninterrupted and salaried occupation as a police
18 officer and was, therefore, entitled to the conclusive
19 presumption in NRS 617.457. Having met the presumption that
20 Dan's death arose out of and in the course of his employment
21 Laura has presented a prima facie case that she is entitled to
22 benefits through an employee who died of occupational disease.

23 Survivor benefits pursuant to NRS 616C.505 allow
24 compensation of \$10,000 for burial expenses plus the cost of
25 transporting the remains of her husband to South Dakota. In
26 addition, she is entitled to 66 2/3 percent of the average
27 monthly wage of the decedent payable until the time of her death.
28 Key to calculating the benefit due the surviving spouse is the

1 determination of when to calculate the decedent's average monthly
2 wage. Was that the wage Dan DeMaranville earned at the time of
3 retirement while covered by SIIS (and now its successor EICN) or
4 was that the wage earned on the date of death at which point in
5 time the City was self-insured?

6 The answer to the question requires coordinating the
7 definition of the date of disability in Chapter 617 with the
8 calculation of benefits in Chapter 616. In Mirage v. Nevada
9 Dep't of Admin., 110 Nev. 257, 871 P.2d 317 (1994), the Nevada
10 Supreme Court addressed the issue of defining disablement in
11 Chapter 617 while calculating benefits in Chapter 616. In Mirage
12 the Court considered the case of a card dealer who reported her
13 injury in 1991 but it was not until 1992 that the occupational
14 disease she suffered prevented her from continuing to work. The
15 employer sought to use NRS 616.027 defining average monthly wage
16 as the wage received on the date of the injury to limit
17 compensation due the employee. Id. at 259. Id. The Court noted
18 NRS 617.060 defines disablement of occupational disease as "the
19 event of becoming physically incapacitated." Id. at 260.
20 Furthermore, the Court noted NRS 617.420 prohibits the
21 calculation of benefits until after the date of disability. The
22 Court then declared that only after the employee becomes disabled
23 does it become necessary to look to Chapter 616 for the method of
24 calculating the benefits owing to the claimant. Id.

25 Critical to the appeals officer's determination of the
26 DeMaranville appeals is the State Supreme Court's conclusion in
27 Mirage that the claimant's benefits could only be calculated
28 after the date of disability, i.e., the date the claimant was no

1 longer able to work. Id.¹ The injury date for calculating
2 Laura's disability benefits is when Dan was no longer able to
3 work because heart disease in the form of a massive heart attack
4 disabled him. His date of death is the date of disability. NRS
5 616C.505 must then be used to calculate the benefits owed to
6 Laura. At the date of his death on August 5, 2012, Dan
7 DeMaranville was earning \$7,314.15 gross monthly salary with
8 vacation pay. See page 001 of Exhibit #8 admitted at hearing.
9 NRS 616A.065 would cap that wage at \$5,222.63. Sixty-six and 2/3
10 of that amount is \$3,481.75. Pursuant to NRS 616C.505 Laura
11 DeMaranville is entitled to that amount monthly until her death.

12 At the hearing on the DeMaranville appeals, counsel for
13 the City of Reno in closing argument cited the case of Employers
14 Ins. Co. of Nevada v. Daniels, 122 Nev. 1009, 145 P.3d 1024
15 (2006), for the proposition that the last injurious exposure rule
16 would place the burden of paying compensation for Laura's claims
17 with EICN, arguing EICN was closest in temporal proximity to the
18 disabling event. Respectfully, this is an inappropriate use of
19 the last injurious exposure rule. The rule was adopted in Nevada
20 as a tool for assigning liability in successive-employer cases.
21 See State Indus. Ins. Sys. v. Jesch, 101 Nev. 690, 709 P.2d 172
22 (1985). The Nevada Supreme Court in Daniels did not to expand
23 the rule for assigning liability where there is only one
24 employer. Here, the only employer in the case is the City of

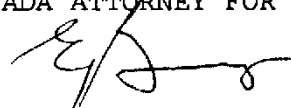
25 _____
26 ¹In Howard v. City of Las Vegas, 121 Nev. 691, 694, 120 P.3d
27 410 (2005), the Court used the Mirage rule for a different
28 result. The Court determined the firefighter claimant was
disabled by heart disease on the date of his heart attack, but
because he was retired at the time and not earning wages he was
not entitled to TTD as a substitution for wages.

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 Reno. Whatever use the last injurious exposure rule might have
2 in the DeMaranville appeals, it cannot be used as legal support
3 for declaring the date of disability as the date of retirement in
4 order to shift the liability for payment to EICN and thereby
5 reduce the amount the surviving spouse is entitled to under the
6 Nevada Industrial Insurance Act.

7 Based upon the authorities cited above and the argument
8 presented, the claimant Laura DeMaranville, as surviving spouse
9 of Daniel DeMaranville, respectfully resubmits her appeal for
10 decision this 17th day of February, 2015.

11 NEVADA ATTORNEY FOR INJURED WORKERS

12 
13 Evan Beavers, Esq.
14 Attorney for the Claimant
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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 AND ARGUMENTS addressed to:

LAURA DEMARANVILLE
PO BOX 261
VERDI NV 89439

CCMSI
PO BOX 20068
RENO NV 89515-0068

and that on this date, I prepared for hand delivery a true and correct copy of the afore-mentioned document, by hand delivery to the following party via Reno Carson Messenger Service, to the address below:

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: February 17, 2015

SIGNED: Tancy L. Shewood

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

FEB 17 2015

DEPT. OF ADMINISTRATION
APPEALS OFFICER

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

Claim No.: 1990204572
12853C301824

Hearing No.: 45822-KD
45538-SA
44686-SA

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

POINTS AND AUTHORITIES OF EMPLOYERS INSURANCE COMPANY OF NEVADA

Employers Insurance Company of Nevada, ("EICON"), hereby files its Points and Authorities pursuant to the Order of the Appeals Officer dated January 22, 2015.

The Appeals Officer has requested supplemental argument regarding which insurer would be liable assuming there is a valid claim. While the credible substantial evidence establishes that the deceased Claimant¹ did not suffer from heart disease and did not die as a result of heart disease, for purposes of this exercise it is necessary to assume that the Claimant's position is correct: i.e. that the Claimant suffered from hidden heart disease that first manifested itself and resulted in the Claimant's death on August 5, 2012 shortly after having gall-bladder surgery. EICON therefore accepts this assumption for purposes of this discussion without waiving any of its rights.

It is undisputed that EICON did insure the City of Reno,

1. Although the claim was filed and maintained by the Claimant's widow, for convenience all references herein will be to "the Claimant".

1 ("City"), at the time of the Claimant's retirement in 1990. It is
2 also undisputed that the City became self-insured as of 1992. The
3 parties also do not dispute the fact that if the requirements of a
4 valid claim are met, the fact that the Claimant was retired does
5 not affect his entitlement to benefits. See, Gallagher v. City of
Las Vegas, 114 Nev. 595, 959 P.2d 519 (1998).

6 The answer to the question of which insurer would be liable
7 for the claim is actually quite simple: there was but one disabling
8 incident which resulted in one claim that occurred in 2012. The
9 City was the responsible insurer at that time and is liable for the
10 claim. This result is mandated by both statutory and case law.

11 While there is no specific definition of "claim" in NRS
12 Chapter 617, a review of the statutes and case law show that a
13 claim for an occupational disease does not arise until the claimant
14 both acquires the occupational disease and is disabled as a result
15 of it. In this case that occurred in 2012 when the City was self-
16 insured.

17 NRS 617.344(1) provides in part: "an employee who has incurred
18 an occupational disease, or a person acting on behalf of the
19 employee, shall file a claim for compensation with the insurer
20 within 90 days after the employee has knowledge of the disability
21 and its relationship to his or her employment" (Emphasis added).²

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

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

27 In the present case the Claimant was not disabled, and
28 therefore no claim for compensation arose, until August 2012 when
the City was self-insured. That the conclusive presumption set
forth in NRS 617.457, (that the Claimant's heart disease arose out

2. Subsection 2 of that statute expands the time for filing a claim for
compensation to one year from the date of the death of an employee.

1 of and in the course of his employment), attached at the end of his
2 first five years of employment which would have been when the City
3 was insured by EICON, is not determinative since a valid claim does
4 not exist until there is an occupational disease and a disablement.
Case law makes this clear.

5 In Mirage Casino-Hotel v. Nevada Dept. of Administration, 110
6 Nev. 257, 871 P.2d 317 (1994) the Nevada Supreme Court held that
7 the provisions of NRS Chapter 617 provide "sufficient guidance for
8 determining the date of eligibility for such benefits," which it
9 went on to show is the date the claimant becomes disabled and not
10 when the claimant first contracts the occupational disease. 871
P.2d at 319.

11 The case of Manwill v. Clark County, 123 Nev. 28, 162 P.3d 876
12 (2007) is quite instructive. In that case a firefighter suffered
13 from a congenital heart condition which was first diagnosed before
14 he completed five years of employment. Subsequently, after the five
15 year period had run, he filed a claim. The claim was denied. In
16 remanding the matter, the Nevada Supreme Court held that a claimant
17 seeking benefits under NRS 617.457 must show two things: (1) heart
18 disease; and, (2) five years' qualifying employment before
19 disablement.³ 162 P.3d at 879. Again, in the present case both of
those conditions were not satisfied until 2012.

20 The Court also held, quoting the Daniels case discussed more
21 fully below, that:

22 [T]o receive occupational disease compensation, a
23 firefighter must be disabled by the heart disease: "[a]n
24 employee is not entitled to compensation 'from the mere
25 contraction of an occupational disease. Instead,
compensation . . . flows from a disablement resulting
from such a disease.'" [Citations omitted]. 162 P.3d at
880.

26 Thus, the Claimant in the present case was not entitled to
27 compensation merely from his five years of employment which

28 3. The Court remanded the matter for a determination as to whether, and if so
when, the claimant was disabled.

1 triggered the presumption of NRS 617.457; rather, his entitlement
2 to benefits, and the corresponding liability of the insurer, did
3 not arise until 2012 when he was disabled. There could be no claim
4 until that date. The responsible insurer at that time was the City
under its self-insurance program.

5 Howard v. City of Las Vegas, 121 Nev. 691, 120 P.3d 410 (2005)
6 is in accord. In that case a firefighter suffered a heart attack
7 eight years after he retired. The Court held:

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

13
14 The case of Employers Insurance Company of Nevada v. Daniels,
15 122 Nev. 1009, 145 P.3d 1024 (2006) is not directly on point since
16 it involves the application of the last injurious exposure rule
17 between two different employers involving two different
18 manifestations of heart disease. In the present case there is but
19 one employer and, more importantly, only one manifestation of heart
20 disease. Nevertheless, that case is helpful in resolving the
question posed by the Appeals Officer.

21 In Daniels, the Appeals Officer assigned liability to the
22 claimant's first employer based upon his first manifestation of
23 heart disease. However, Daniels did not suffer a disablement at
24 that time but only became disabled while working for the second
25 employer at the time of his second manifestation of heart disease.
In reversing, the Supreme Court described the issue as:

26 Which of Daniels' two firefighting employers bears
27 responsibility for his disability necessarily turns on
the date that he became disabled. 145 P.3d at 1027.

28 The Court found that while Daniels may have manifested a heart

1 condition while the first employer was still responsible for his
2 condition, he suffered no disablement at that time and was not
3 disabled until during his employment with the second employer when
4 he suffered a heart attack. The Court therefore held that liability
5 could not attach to the first employer. As set forth above, the
6 Court held "An employee is not entitled to compensation from the
7 mere contraction of an occupational disease. Instead, compensation
8 ... flows from a disablement resulting from such a disease." 4
9 [Citations and internal quotations omitted]. Similarly, in the
10 present case any liability for this claim cannot attach to EICON
11 merely because it was the insurer when the presumption under NRS
12 617.457 first attached. The Claimant's right to compensation and
13 the right to file a claim and the liability for that claim did not
14 arise until 2012 and is the responsibility of the City under its
15 self-insurance.

16 Dated this 16th day of February, 2015.

17 SERTIC LAW LTD.

18 By: Mark S. Sertic
19 Mark S. Sertic, Esq.
20 Nevada Bar No. 403
21 5975 Home Gardens Drive
22 Reno, Nevada 89502
23 (775) 327-6300
24 Attorneys for the Insurer

25 4. The Court then undertook an analysis under the Last Injurious Exposure Rule
26 that is not applicable here since in the present case the Claimant only worked
27 for one employer and became eligible for the presumption of NRS 617.457 while
28 employed by that single employer, the City. Nevertheless, if this rule were
somehow applicable, it is clear that liability would attach to the City's self-
insurance since the Court in Daniels, in determining which employer was liable,
held that liability attaches to that employer which is in closest temporal
proximity to the disabling event. The same logic would apply to which insurer is
liable and that is obviously the City's self-insurance.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the
3 law firm of Sertic Law Ltd., Attorneys at Law, over the age of
4 eighteen years, not a party to the within matter, and that on the
5 17th day of February, 2015, I served by Reno-Carson Messenger
6 Service, a true copy of the foregoing or attached document,
7 addressed to:

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

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

15 Gina L. Walsh
16 Gina L. Walsh

17 **AFFIRMATION (Pursuant to NRS 239B.030)**

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

21 Dated on this 16th day of February, 2015.

22
23 Mark S. Sertic
24 Mark S. Sertic

NEVADA DEPARTMENT OF ADMINISTRATION

FILED

FEB 17 2015

BEFORE THE APPEALS OFFICER

DEPT. OF ADMINISTRATION
APPEALS OFFICER

* * * * *

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 12853C301824
1990204572

of

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

DANIEL DEMARANVILLE (Deceased)
c/o Laura DeMaranville

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

Claimant.

**CITY OF RENO'S POINTS AND AUTHORITIES/ARGUMENT
ON INSURER LIABILITY**

Pursuant to the Appeals Officer's January 22, 2015 Order directing the parties to file simultaneous Points and Authorities/Argument on which Insurer would be liable for a compensable claim, the City of Reno respectfully submits the following Points and Authorities/Argument:

I. THE CITY OF RENO'S POSITION:

The City contends it cannot be the responsible Insurer on this claim because the Claimant was never employed with the City at a time during which it was self-insured. Thus, the presumption criteria set forth in NRS 617.457 have not been satisfied with respect to the City during the period of time it has been self-insured such that the NRS 617.457 presumption would apply to the City.

The Applicable Timeline:

<u>DATE</u>	<u>EVENT</u>	<u>INSURER</u>
08/06/1969	Date of Hire	City of Reno (CR) (EICON)
01/15/1990	Date of Retirement	CR (EICON)
01/16/1990 to ?	Post retirement employment with the US Marshall	?
07/01/2002	City of Reno becomes self-insured	City of Reno (Self)
08/05/2012	Laparoscopic Cholecystectomy (nonindustrial)	City of Reno (Self)
08/05/2012	Date of Death	City of Reno (Self)

1 **II. ARGUMENT:**

2 EICON v. Daniels, 122 Nev 1009, 145 P.3d 1024 (2006) sets forth the applicable law in
3 cases involving successive employer's where the conclusive presumption of NRS 617.457 might
4 apply:

5 "Similarly, in cases like this one, involving a conclusive presumption that can apply to
6 any one of successive employer's, the Last Injurious Exposure rule is the most efficient
7 and reasonable way to establish employer liability. Since a causal relationship between
8 firefighting and heart disease is conclusively presumed if the firefighter's presumption
9 criteria are met, the employer closest in temporal proximity to the disabling event, and to
10 whom the presumption applies, bears the burden of paying disability compensation."
11 (122 Nev 1009 at 1017.)

12 The Last Injurious Exposure rule (LIER) would also apply to situations involving
13 successive carriers where there has been a change of carriers during a single employment. See
14 Larson's, Workers Compensation Law, Chapter 153, Section 153.01, Section 153.02.

15 **1. Daniels and the LIER do not apply to this case.**

16 This is not a successive employer/carrier case. The Claimant was employed by the City
17 from 1969 to 1990. At the time of his retirement on June 15, 1990, the city was insured by
18 EICON. The City did not become self-insured until 2002. The Claimant was not employed at
19 any time during which the City has been self-insured. The only employment under which the
20 Claimant would have qualified for the NRS 617.457 presumption was his employment with the
21 City prior to January 15, 1990 during which time the City was last insured by EICON.

22 Daniels makes it clear the LIER would only apply in successive employer/insurer's cases
23 where the criteria necessary to invoke the NRS 617.457 presumption have been met. That is not
24 the case as between the EICON insured City and the self-insured City because the Claimant was
25 never employed by the self-insured City. The only qualifying employment in this case ended
26 long before the City ever became self-insured when the City was insured by EICON. Thus, the
27 last qualifying employment in closest proximity to any disabling event was the EICON insured
28 employment.

///

///

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

By T.E. Rowe
TIMOTHY E. ROWE, ESQ.
P. O. Box 2670
Reno, Nevada 89505-2670
Attorneys for the Employer

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

CERTIFICATE OF SERVICE

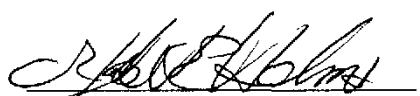
Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the 17th day of February, 2015, I served the within ***CITY OF RENO'S POINTS AND AUTHORITIES/ARGUMENT ON INSURER LIABILITY*** by sending a true and correct copy in a sealed envelope via Reno Carson Messenger Service to the following parties:

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

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

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

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


Elizabeth Helms

413454

ORIGINAL

BEFORE THE APPEALS OFFICER

In the Matter of the Contested)	Claim No.: 12853C301824
Industrial Insurance Claim of:)	1990204572
DANIEL DEMARANVILLE, DECEASED)	Hearing No.: 46538-SA
)	45822-KD
)	44686-SA
Claimant.)	Appeal No.: 46812-LLW
)	46479-LLW
)	44957-LLW

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE LORNA L. WARD, ESQ.

APPEALS OFFICER

TUESDAY, JANUARY 7, 2015

2:32 P.M.

1050 E. WILLIAM STREET, SUITE 450

CARSON CITY, NEVADA 89701

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
APPEALS OFFICE
2015 MAY -1 AM 11:31
RECEIVED
AND
FILED

Ordered by: State of Nevada
Department of Administration
1050 E. William Street, Suite 450
Carson City, Nevada 89701

A P P E A R A N C E S

On behalf of the Claimant:

Evan Beavers, Esq.
1000 E. William #208
Carson City, NV 89101

On behalf of the City of Reno:

Timothy Rowe, Esq.
PO Box 2670
Reno, NV 89505

On behalf of Icon Insurance Company:

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

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

I N D E X

W I T N E S S E S

WITNESS	DIRECT	CROSS
LAURA DEMARANVILLE	11	28

E X H I B I T S

EXHIBITS	IDENTIFIED	IN EVIDENCE
Exhibit 1	5	5
Exhibit 2	5	5
Exhibit 3	5	5
Exhibit 4	5	
Exhibit 5	6	6
Exhibit 6	6	6
Exhibit 7	6	6
Exhibit 8	6	6
Exhibit 9	6	6

1 P R O C E E D I N G S

2
3 APPEALS OFFICER WARD: The date today is
4 January 7, 2015. This is the time set for hearing in
5 the matter of the Industrial Insurance claim of Daniel
6 Demaranville, deceased. And the real party in interest
7 in this case is his widow, Laura. These are two, three
8 consolidated appeals. The first is number 44957, and
9 the second one is 46479, and the third is 46812.

10 Mrs. Demaranville is present and represented
11 by Evan Beavers. The employer, City of Reno, and I
12 believe CCMSI are represented by Timothy Rowe. And the
13 employer's insurance company in Nevada is represented
14 by Mark Sertic. The first appeal is Mrs.
15 Demaranville's appeal of the May 23rd, 2013
16 determination letter, which denied widows' benefits.
17 And I believe that was from the city of Reno.

18 The second appeal is the insurer's appeal of
19 the October 23rd, 2013 hearing officer's decision, which
20 reversed claim denial. And I believe that also is in
21 reference to the City of Reno.

22 MR. ROWE: No, I think --

23 THE COURT: Is that --

24 MR. SERTIC: That's my appeal.

25 MR. ROWE: That's Mark's appeal.

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

THE COURT: Okay.

MR. SERTIC: Yeah. No, it is.

THE COURT: Okay. Yes. Right. The third appeal is the employer's appeal of the September 19, 2013 determination letter which denied liability for the January 31st, 1990 claim. Okay. All right.

So, I have the City of Reno large packet, 178 pages, is first. Is there any objection to any of these exhibits, I guess?

MR. BEAVERS: No.

MR. ROWE: I have none.

MR. SERTIC: No.

THE COURT: Okay. This one is marked and admitted as Exhibit Number 1.

The second one is also from the City of Reno, Mr. Rowe's client, and it is a 36-page exhibit. It's marked and admitted as Exhibit Number 2.

And then I have the Employer's Insurance Company exhibits. The first one is 29 pages. It's marked and admitted as Exhibit Number 3. The Employer's Insurance Company supplemental packet is 12 pages. It's marked and admitted as Exhibit Number 4. And then the last, from the Employer's Insurance Company, is their second supplemental, 10 pages. It's marked and admitted as Exhibit Number 5.

1 And then I have four exhibits from the
2 claimant, and the first one is 129 pages. It's marked
3 and admitted as Exhibit Number 6. The second exhibit,
4 five pages, is marked and admitted as Exhibit Number 7.
5 The next is claimant's 3rd exhibit. It's four pages.
6 It's marked and admitted as Exhibit Number 8. And
7 finally the claimant's fourth exhibit, 15 pages, is
8 marked and admitted as Exhibit Number 9.

9 Is there going to be any testimony in this
10 case?

11 MR. BEAVERS: I will offer testimony of Mrs.
12 Demaranville.

13 THE COURT: Okay. The only reason I was
14 asking is whether we just needed to go to argument, but
15 okay. All right. So, Mr. Beavers, then your opening
16 statement.

17 MR. BEAVERS: May I have just a moment, Your
18 Honor?

19 THE COURT: Oh, sure. Absolutely.

20 MR. BEAVERS: Thank you, Your Honor.

21 THE COURT: Uh-huh.

22 MR. BEAVERS: A brief opening. I think you've
23 probably (inaudible) issues and how we got here, but,
24 if I may, Dan Demaranville was a long-time police
25 officer with the City of Reno. He retired many years

1 ago, and he died in August of 2012. At the time of his
2 death he was married to the claimant before you this
3 afternoon, Laura Demaranville.

4 She comes to you seeking the benefits to
5 which she's entitled under the Nevada Industrial
6 Insurance Act as the survivor, but she only gets to
7 those benefits, Your Honor, if we show by a
8 preponderance of the evidence that Dan died of heart
9 disease and therefore qualifies under Nevada's
10 heart/lung statute as a police officer. And that's
11 much of the evidence that's gonna be presented to you
12 in document form.

13 Her testimony I will offer just to show some
14 background, show that she's entitled ultimately to the
15 benefits of the surviving spouse, but also, Your Honor,
16 she offered some testimony of a critical period in this
17 case. And that is, that period of time between when
18 Dan Demaranville came out of surgery and the time he
19 died.

20 We have expert testimony, matter of fact,
21 you've got a lot of it in front of you, with Dr.
22 Ruggeroli and Dr. Gomez are both doctors on which the
23 claimant relies to show that the decedent did indeed
24 die of heart disease, therefore is entitled to the

1 heart/lung presumption, and that the claimant is
2 entitled to survivor's benefits.

3 So in the conclusion, when I go to close,
4 Your Honor, I'm going to point to you the statutes to
5 which she relies, for her benefits. I'll refer you to
6 case law that I think is important.

7 And there's two other issues that are
8 presented in the case, although they're probably less
9 important in that determination whether we've proven
10 our -- that she's entitled by a preponderance of the
11 evidence.

12 And that is, the issue of, if she's
13 successful as a claimant, when is the benefit
14 calculated? We're prepared to argue that, according to
15 case law, average monthly wage of Dan Demaranville
16 should be calculated as of the date of his death as
17 opposed to the date of his retirement for the purpose
18 of calculating the survivor's benefit.

19 And there's also an issue that Mr. Sertic's
20 client, Icon, raised below in regards to the timeliness
21 of the claim she filed against that insurer. And we
22 will present some testimony and some law to support the
23 fact that she should be excused if indeed it was late
24 at all.

1 The reason why we have two parties present,
2 Your Honor, is we have one employer, Your Honor, and I
3 can't define for you which one of the parties might
4 ultimately be responsible. But by statute the employee
5 has a cause of action against the employer. We brought
6 in all of the employers we could. Thank you.

7 THE COURT: Thank you. Mr. Rowe?

8 MR. ROWE: Thank you, Your Honor. I agree
9 with Mr. Beavers' basic statements as to what the
10 issues in the case are. Obviously what caused the
11 death will be an important factual issue that needs to
12 be decided.

13 The reason you have two separate insurers
14 involved in the case is that Mr. Demaranville retired
15 in 1990. At the time he retired, Icon was the insuring
16 entity for the City of Reno. The City of Reno did not
17 become a self-insured employer until 1992, and so they
18 are - since 1992 they have been self-insured and they
19 are presently self-insured, but Mr. Demaranville did
20 not work for the city at any time during which it was
21 self-insured.

22 So that's why you have two separate insurers.
23 That is what I would call a sub-issue as to which - you
24 know, which insurer is the responsible entity here.

1 Of course, the city as a self-insured
2 employer takes the position it would be the Icon
3 insurer that would be the entity that is responsible
4 if, indeed, any -- either of the entities is
5 responsible in the case.

6 Thank you.

7 THE COURT: Thank you. And Mr. Sertic?

8 MR. SERTIC: Well, very -- very briefly. The
9 issue is whether Mr. Demaranville died as a result of
10 heart disease. And despite a -- the comments of a
11 couple of physicians in this case, it's our position
12 that the evidence will clearly show that there's no
13 credible medical evidence that would support the
14 finding that his death was caused by heart disease,
15 which is, of course, the claimant has to prove in order
16 to prevail in this case.

17 THE COURT: Thank you. Okay. Mr. Beavers.
18 And Mrs. Demaranville, if you'll have a seat in the
19 witness chair there with the microphone. Your
20 testimony today will be recorded, and I need to place
21 you under oath. Could you please raise your right
22 hand?

23 Do you solemnly swear that the testimony you
24 give today will be the truth, the whole truth, and
25 nothing but the truth, so help you God?

1 WITNESS: Yes, I do.

2 THE COURT: Thank you. Could you please state
3 your first name and spell your last name for the
4 record?

5 WITNESS: Laura Demaranville, D-E-M-A-R-A-N-V-
6 I-L-L-E.

7 THE COURT: Thank you. Go ahead, Mr. Beavers.

8 MR. BEAVERS: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. BEAVERS:

10 Q. Ms. Demaranville, were you married to Dan
11 Demaranville?

12 A. Yes.

13 Q. And when did you first meet - may we call him
14 Dan ---

15 A. Yes.

16 Q. -- just to avoid stumbling over that last
17 name? And I apologize.

18 A. Yes.

19 Q. I mean no disrespect. When did you meet Dan?

20 A. 1980.

21 Q. And what was Dan doing for a living at that
22 time?

23 A. He was a detective with the Reno Police
24 Department.

1 Q. Do you recall how long he had been a
2 detective with the Reno Police Department?
3 A. Many, many years before I met him.
4 Q. When did you marry Dan?
5 A. In 1989. April 30th, 1989.
6 Q. Did he retire from Reno PD?
7 A. Yes.
8 Q. When did he retire?
9 A. January of 1990.
10 Q. And what did he do after he retired from Reno
11 PD? Did he continue to earn a living?
12 A. Yes.
13 Q. How?
14 A. He went to work for the -- he was court
15 security officer for the US Marshal Service.
16 Q. All right. Did you and Dan Demaranville have
17 children?
18 A. No.
19 Q. Did he have children prior to your marrying
20 him?
21 A. Yes.
22 Q. How many children?
23 A. Two boys.
24 Q. And how old are those children now?
25 A. One is deceased, and the other one is 55.

1 Q. And not disabled or under a guardianship?
2 A. No.
3 Q. Did there come a time when Dan Demaranville
4 had surgery in 2012?
5 A. Yes.
6 Q. What -- were you privy to his health
7 treatment up to that point of surgery?
8 A. Yes.
9 Q. What do you believe was the need for the
10 surgery?
11 A. Gallbladder.
12 Q. And momentarily, just take us up to where it
13 came to the conclusion that he needed gallbladder
14 surgery?
15 A. About four months prior to surgery Dan
16 started experiencing extreme stomach pain that radiated
17 up his back, vomiting.
18 Q. From the time that you met him to the time
19 that he went in for -- what was the purpose of the
20 surgery?
21 A. The gallbladder surgery.
22 Q. The time he went into gallbladder surgery, do
23 you think you were privy to his health treatment for
24 other ailments?
25 A. Yeah.

1 Q. To your knowledge, did he get annual reviews
2 when he was in law enforcement that were required by
3 his employer?
4 A. Yes.
5 Q. Do you ever -- to your knowledge, was he ever
6 given written instruction there was something he had to
7 cure as a result of his tests?
8 A. No.
9 Q. When you married him, was he a smoker?
10 A. Yes.
11 Q. During the time of the marriage, did he
12 continue to smoke?
13 A. Yes.
14 Q. You didn't make him quit right off the bat?
15 A. I tried.
16 Q. When did he quit smoking?
17 A. Three and a half years before he passed away.
18 Q. Did he drink also?
19 A. Yes.
20 Q. Did he drink up until the time he died, or do
21 you (inaudible) for that?
22 A. No. He didn't quit.
23 Q. He was drinking up until the time of the
24 surgery?
25 A. Yes.

1 Q. Do you know who Katie Ketia is?
2 A. Katie Lyden from ---
3 Q. Lyden, I'm sorry, yes.
4 A. Katie Lyden is the nurse practitioner at
5 Acadia Medical Center.
6 Q. And Acadia Medical Center, is that who saw
7 Dan Demaranville for his principal physician?
8 A. Yes.
9 Q. So who made the determination that Dan had to
10 go to gallbladder surgery?
11 A. Katie Lyden referred him to Dr. Gray, who is
12 an endocrinologist, I believe is his title.
13 Q. Were you with Dan -- first of all, did he go
14 see Dr. Gray?
15 A. Yes.
16 Q. And were you there when he went to see Dr.
17 Gray?
18 A. Yes.
19 Q. And do you remember what Dr. Gray's
20 recommendation was?
21 A. He sent him in for several tests, and it was
22 determined that he needed the gallbladder surgery. And
23 at that point he was referred to a surgeon.
24 Q. And do you remember the name of the surgeon?
25 A. Dr. Myron Gomez.

1 Q. And that was Dr. Gray's referral?
2 A. Yes.
3 Q. What's the time between when you saw Dr. Gray
4 and you recommended Dan for surgery and the time you
5 saw Dr. Gomez?
6 A. Approximately four months.
7 Q. When you went to see Dr. Gomez -- when Dan
8 went to see Dr. Gomez, were you present?
9 A. Yes.
10 Q. And were you present when Dr. Gomez made the
11 recommendation to Dan?
12 A. Yes.
13 Q. And what was the recommendation?
14 A. That he have gallbladder removal.
15 Q. All right. And were you present when Dan
16 went into surgery for gallbladder removal?
17 A. Yes.
18 Q. What's the timeline between the time Dr.
19 Gomez recommended him for surgery and the time he was
20 taken into surgery?
21 A. About four days.
22 Q. Well, let's slow up a little bit. What time
23 of day did Dan's surgery begin?
24 A. It was approximately noon, if I remember
25 right.