

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No.: 72737**

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LAURA DEMARANVILLE, surviving spouse of  
DANIEL DEMARANVILLE (DECEASED)

Electronically Filed  
Jul 25 2018 12:04 p.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.

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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

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

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

**INDEX TO SUPPLEMENTAL APPENDIX  
(Alphabetical)**

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## **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

1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

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

**FILED**

NOV 27 2013

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

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

Claim No: 1990204572

8 Hearing No: 45822-KD

9 Appeal No: 46479-LLW

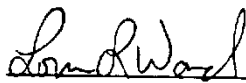
10 DANIEL DEMARANVILLE,  
11 DECEASED,

Claimant.

12 **ORDER**

13 The Insurer's filed its Motion for Stay Pending Appeal on  
14 November 22, 2013. After careful consideration, the Motion for Stay Pending  
15 Appeal is GRANTED pending opposition.

16 **IT IS SO ORDERED.**

17  
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19 Lorna L Ward  
20 APPEALS OFFICER  
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ORIGINAL

STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER 2013 NOV 22 PM 2:07

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AND  
FILED

In the matter of the Industrial  
Insurance Claim

Claim No.: 1990204572

of

Hearing No.: 45822-KD

Daniel Demaranville, Deceased,  
Claimant.

Appeal No.:

MOTION FOR STAY ORDER PENDING APPEAL

The Insurer, Employer's Insurance Company of Nevada,  
("EICON"), by and through its attorney of record, respectfully  
moves the Appeals Officer for a stay of the Hearing Officer's  
Decision entered on October 28, 2013. This Motion is made and based  
upon the Points and Authorities attached hereto and the pleadings  
and papers on file herein.

Dated this 21<sup>st</sup> day of November, 2013.

SERTIC LAW LTD.

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

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POINTS AND AUTHORITIES

The Insurer appeals from the Decision of the Hearing Officer which reversed the Insurer's determination denying the claim. Insurer's Evidence Packet (hereafter Evidence) pp. A-C. The claim was made under the police officer's heart disease statute, NRS 617.457. The Claimant died from a cardiac arrest after gall bladder surgery. The Hearing Officer erred as a result of confusing a cardiac arrest as synonymous with heart disease. The credible medical evidence does not support a finding that the Claimant suffered from heart disease.

The Claimant worked as a police officer for the City of Reno, retiring in 1990. On August 5, 2012 the Claimant died while in the recovery room after gall bladder surgery. The Claimant's wife sent an uncompleted C4 to EICON on July 8, 2013. Evidence, pp. 1, 18. The C4 was not completed by the physician until August 20, 2013. Evidence, p. 2.

The death certificate states the cause of death as cardiac arrest as a consequence of atherosclerotic heart disease. Evidence, p. 4. The C4 form lists the diagnosis as a myocardial infarction. However no autopsy was performed to verify this diagnosis and the medical reporting does not support these findings. EICON had the file reviewed by Yasmine S. Ali, M.D., M.S.C.I., F.A.C.C., F.A.C.P., who is board certified in Internal Medicine and Cardiovascular Disease. Dr. Ali's review report indicates there was no documentation in the records that would support a diagnosis of atherosclerotic heart disease as noted on the death certificate. Evidence, pp. 9-12

1 Dr. Ali also found that there is no evidence of myocardial  
2 infarction, particularly since cardiac enzymes were not drawn, a  
3 12-lead ECG showing evidence of myocardial infarction is absent,  
4 and an autopsy was not performed. Dr. Ali's report also noted there  
5 was no evidence in the records of coronary artery disease, coronary  
6 heart disease or ischemic heart disease. Dr. Ali notes that the  
7 Claimant was referred to a cardiologist in 2011 after an abnormal  
8 EKG. However, after a stress test the Claimant was cleared for  
9 security work without restriction "with impression of right bundle  
10 branch block, no evidence of organic heart disease." Evidence, pp.  
11 9-12, 19 (emphasis added).  
12

13 Dr. Ali states that "it appears most likely that the cardiac  
14 arrest was a post-operative complication." Evidence, p. 12.  
15

16 Even the medical report from Dr. Betz which the Claimant  
17 relies upon, (this was first supplied to the Insurer at the hearing  
18 before the Hearing Officer), does not support the Claimant's  
19 position. Dr. Betz states that he cannot determine the actual cause  
20 of death. See answer to question 1. Evidence, p. 28. In answer to  
21 question 6 he states that he is not able to determine whether the  
22 cardiac arrest was caused by some form of heart disease. Evidence,  
23 p. 29. He recommends having the file reviewed by an expert which is  
24 exactly what the Insurer did when it had the file reviewed by Dr.  
25 Ali. Given these specific answers it is rather difficult to give  
26 any weight to his answer to question 2 that the probability is high  
27 that the Claimant died of heart disease. This statement is directly  
28

1 contradicted by his answers to questions 1 and 6. Evidence, pp. 28-  
2 29.

3 The credible medical evidence does not support the Hearing  
4 Officer's conclusion that the Claimant died from heart disease.  
5 Cardiac arrest is not synonymous with heart disease. One's heart  
6 can stop, (i.e. a cardiac arrest), for a variety of reasons  
7 unrelated to heart disease such as trauma, effects of drugs or  
8 complications from surgery.  
9

10 While NRS 617.457 does create a conclusive presumption that  
11 "diseases of the heart" are compensable for police officers, this  
12 does actually require that the claimant suffer from heart disease  
13 and not simply a stoppage of the heart. Otherwise, every death of a  
14 police officer or firefighter would be compensable.  
15

16 Additionally, the Insurer has been unable to obtain the  
17 mandatory physical examination reports from the City of Reno as  
18 required by NRS 617.457(3). Evidence, p. 8. Thus, there is no proof  
19 that the Claimant complied with this requirement or that he  
20 complied with any requests to correct any predisposing conditions  
21 pursuant to NRS 617.457(10). The records indicate that the Claimant  
22 did smoke, only quitting in 2009. Evidence, pp. 11, 25.  
23

24 It also appears that the claim was filed untimely pursuant to  
25 NRS 617.344(2) and NRS 617.346. While the Claimant's wife sent an  
26 incomplete C4 to the Insurer within one year of the Claimant's  
27 death, a C4 was not completed by a physician until August 20, 2013,  
28 which is beyond the one year deadline. Evidence, p. 2.

1 NRS 616C.345(4) provides that the Appeals Officer may stay the  
2 Hearing Officer's decision upon application "when appropriate". In  
3 DIR v. Circus Circus, 101 Nev. 405, 411-412, 705 P.2d 645, 649  
4 (1985), the Nevada Supreme Court stated that the insurer's proper  
5 procedure when aggrieved by a decision is to seek a stay (p.7,  
6 footnote no. 3). See also, Ransier v. SIIS, 104 Nev. 742, 747, 766  
7 P.2d 274 (1988). While there is no precise standard for issuing a  
8 preliminary injunction, case law reveals four factors utilized by  
9 the courts: (1) The petitioner's likelihood of success on the  
10 merits; (2) The threat of irreparable harm without a stay; (3) The  
11 relative interests of the parties; and (4) The interest of the  
12 public. Nevada Civil Practice Manual, § 28.08[1] (5th Edition). The  
13 first and second factors are those most often cited by courts. Id.  
14 See also, Sobol v Capital Management Consultants, Inc., 102 Nev.  
15 444, 726 P.2d 335 (1986); Clark County Sch. Dist v Buchanan, 112  
16 Nev. 1146, 924 P.2d 716 (1996).

17 The Insurer meets the requirements for entry of a stay in this  
18 case. It enjoys a reasonable likelihood of success on the merits  
19 and will suffer irreparable harm without a stay as it will have to  
20 pay for unwarranted benefits. The relative interests of the parties  
21 weigh in favor of the Insurer as without a stay it will be forced  
22 to make payments to the Claimant to which he is not entitled and  
23 which the Insurer will be unable to recover. The interest of the  
24 public weighs strongly in favor of the Insurer as a stay will  
25 effect the purpose behind the Nevada workers' compensation

1 legislative scheme.

2 For the foregoing reasons, the Insurer respectfully requests  
3 that the Appeals Officer issue a stay order suspending the effect  
4 of the Hearing Officer's Decision until such time as the matter can  
5 be heard before the Appeals Officer.  
6

7 Dated this 21<sup>st</sup> day of November, 2013.

8 SERTIC LAW LTD.

9  
10 By: Mark S. Sertic  
11 Mark S. Sertic, Esq.  
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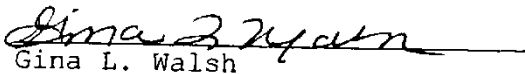
1 CERTIFICATE OF SERVICE

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 22 day of November, 2013, I deposited for mailing at Reno,  
6 Nevada, with postage fully prepaid, a true copy of the foregoing or  
7 attached document, addressed to:

8 Leslie Bell  
9 RPPA  
10 P.O. Box 359  
11 Reno, NV 89504

11 Laura Demaranville  
12 P.O. Box 261  
13 Verdi, NV 89439

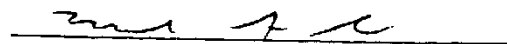
13 City of Reno  
14 Attn. Cara Bowling  
15 P.O. Box 1900  
16 Reno, NV 89505

17   
18 Gina L. Walsh

19  
20 **AFFIRMATION (Pursuant to NRS 239B.030)**

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

24 Dated on this 21<sup>st</sup> day of November, 2013.

25   
26 Mark S. Sertic

BEFORE THE APPEALS OFFICER

FILED

NOV 26 2013

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 1990204572

Hearing No: 45822-KD

Appeal No: 46479-LLW

DANIEL DEMARANVILLE, DECEASED,

Claimant.

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held by the Appeals Officer, pursuant to NRS 616 and 617 on:

**DATE:** Tuesday, February 11, 2014

**TIME:** 1:30PM

**PLACE:** DEPT OF ADMINISTRATION, APPEALS OFFICE  
1050 E. WILLIAMS STREET, SUITE 450  
CARSON CITY, NV 89701

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.
3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.
4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.
5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.
6. Any party wishing to reschedule this hearing should consult with opposing counsel or parties, and immediately make such a request to the Appeals Office in writing supported by an affidavit.
7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED.

*Lorna L. Ward*

LORNA L WARD  
APPEALS OFFICER

698

668

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



JEFF MOHLENKAMP  
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

November 26, 2013

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

Re: Appeal Number: 46479-LLW

Dear DANIEL DEMARANVILLE, DECEASED:

You are entitled to the services of the Nevada Attorney for Injured Workers. They are available to represent you in this workers' compensation appeal at no cost to you.

If you desire the services of the Nevada Attorney for Injured Workers, please fill out the form below and return it within 10 days in the enclosed self-addressed envelope.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

SIGNATURE: \_\_\_\_\_

Please Print:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

ORIGINAL

44957-LLW

**NOTICE OF APPEAL AND REQUEST FOR HEARING BEFORE THE APPEALS OFFICER**

ANY AGGRIEVED PARTY MAY APPEAL THIS DECISION BY FILING THIS NOTICE OF APPEAL WITH THE APPEALS OFFICE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. IF YOU WISH TO APPEAL, PLEASE FILL OUT THIS FORM COMPLETELY AND MAIL TO:

**APPEALS OFFICER**

**1050 East William Street, Suite 450  
Carson City, Nevada 89701**

Claim No: 1990204572  
Claimant: Daniel Demaranville, Deceased  
Address: C/O Laura Demaranville  
P.O. Box 261  
Verdi, NV 89439

Name & Address of Employer AT TIME OF INJURY: City of Reno  
Attn. Cara Bowling  
P.O. Box 1900  
Reno, NV 89505

Hearing No: 45822-KD

Decision Dated: October 28, 2013

WHO IS APPEALING?

(Claimant \_\_\_)  
(Employer \_\_\_)  
(Insurer XX)

REASON FOR APPEALING: Disagree with Hearing Officer Decision.

**ATTACH A COPY OF YOUR HEARING OFFICER'S DECISION TO THIS REQUEST**


**Claimant Note:**

You are entitled to have the Nevada Attorney for Injured Workers (NAIW) appointed to represent you at no cost to you. The NAIW is not associated with the Employer's Insurance Company of America. You may represent yourself or may retain a private attorney at your own expense.

Check one:

- ☐ Appoint the State Industrial Claimants' Attorney at no cost to me.  
☐ I will represent myself.  
☐ I have retained the following attorney: \_\_\_\_\_

DATED: This 21<sup>st</sup> day of November, 2013.

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

44479-LLW  
Tues 2-11-14 1:30

STATE OF NEVADA  
DEPT OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE  
2013 NOV 22 PM 2:07  
RECEIVED  
AND  
FILED

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1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing NOTICE OF APPEAL AND ORDER TO APPEAR was duly mailed, postage  
5 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:

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

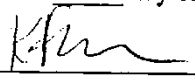
10 CITY OF RENO  
11 ATTN CARA BOWLING  
12 PO BOX 1900  
13 RENO, NV 89505

14 LESLIE BELL  
15 WASHOE COUNTY SHERIFFS DEPUTIES ASSOC  
16 PO BOX 359  
17 RENO NV 89504

18 EMPLOYERS INSURANCE COMPANY OF NEVADA  
19 PO BOX 539004  
20 HENDERSON, NV 89053

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

24 Dated this 26<sup>th</sup> day of November, 2013.

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

**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 45822-KD  
Claim Number: 1990204572

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

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

**BEFORE THE HEARING OFFICER**

The Claimant's request for Hearing was filed on October 2, 2013 and a Hearing was scheduled for October 22, 2013. The Hearing was held on October 22, 2013, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant's widow, Laura and her representative, Leslie Bell, were present. The Employer and Insurer were represented by Mark Sertic, Esquire.

**ISSUE**

The Claimant appealed from the Insurer's determination dated September 19, 2013. The issue before the Hearing Officer is claim denial.

**DECISION AND ORDER**

The determination of the Insurer is hereby **REVERSED**.

The Claimant worked for 5 plus years in continuous employment with the City of Reno Police Department and retired in 1990. On August 5, 2012, the Claimant went into the hospital for gall bladder surgery, but while in the recovery room, he developed complications and died. The death certificate notes cardiac arrest secondary to atherosclerotic heart disease. The Claimant's widow filed a claim for death benefits under the Heart/Lung Bill which the Insurer denied, the instant appeal. However, as the Claimant is afforded the benefits of the presumption under NRS 617.457, the Hearing Officer finds the determination of the Insurer is not proper. The submitted medical reporting supports the Claimant died from heart disease. There is also a question whether the claim was timely filed as provided by NRS 617.344. The Claimant attempted to timely file a claim, but was directed to the wrong Insurer and a second C-4 form was completed. Therefore, the excuse provisions of NRS 617.346 are applicable as the Claimant relied on a mistake of fact when she originally filed the claim.

**NRS 617.457(1)** explains, 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 fireman 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(2).** In the event of the death of the employee resulting from the occupational disease, a dependent of the employee, or a person acting on his or her behalf, shall file a claim for compensation with the insurer within 1 year after the death of the employee.

In the Matter of the Contested  
Industrial Insurance Claim of  
Hearing Number:  
Page two

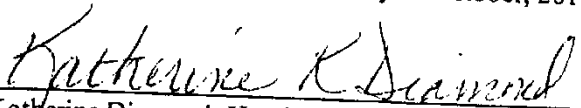
DANIEL DEMARANVILLE, Deceased  
45822-KD

NRS 617.346(2) provides an insurer may excuse the failure to file a notice of an occupational disease or claim for compensation pursuant to the provisions of this section if: (a) The employee's disease or another cause beyond his or her control prevented him or her from providing the notice or the claim; (b) The failure was caused by the employee's or dependent's mistake or ignorance of fact or of law; (c) The failure was caused by the physical or mental inability of the employee or the dependent; or (d) The failure was caused by fraud, misrepresentation or deceit.

**APPEAL RIGHTS**

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 28th day of October, 2013.

  
Katherine Diamond, Hearing Officer

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing DECISION AND ORDER was deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

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

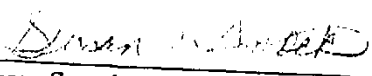
CITY OF RENO  
ATTN CARA BOWLING  
PO BOX 1900  
RENO, NV 89505

LESLIE BELL  
WASHOE COUNTY SHERIFFS DEPUTIES ASSOC  
PO BOX 359  
RENO NV 89504

EMPLOYERS INSURANCE  
PO BOX 539004  
HENDERSON, NV 89053

MARK SERTIC, ESQ  
5975 HOME GARDENS DRIVE  
RENO NV 89502

Dated this 28th day of October, 2013.

  
\_\_\_\_\_  
Susan Smock  
Employee of the State of Nevada

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NEVADA DEPARTMENT OF ADMINISTRATION

STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

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RECEIVED  
AND  
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In the Matter of the Contested  
Industrial Insurance Claim

Claim No: 12853C301624

Hearing No: 44686-SA

Appeal No: 44957-LLW

of  
DANIEL DEMARANVILLE (deceased)  
c/o Laura DeMaranville  
Claimant.

EMPLOYER'S PREHEARING STATEMENT

The Employer, CITY OF RENO, submits the following Prehearing Statement:

I

DOCUMENTARY EVIDENCE

The Employer may rely on the documentary evidence submitted by Insurer and any evidence submitted by any of the parties.

II

STATEMENT OF THE ISSUE

The insurer's May 3, 2013 determination to deny widow benefits based on a lack of evidence of heart disease.

III

WITNESSES

The Employer may call one or more of the following witnesses:

1. Lisa Jones – Ms. Jones and/or another representative of the administrator may testify concerning the administration of the claim;
2. A representative of the Employer may testify concerning the Claimant's industrial claim and/or employment;

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McDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 1670 • RENO, NEVADA 89505-2670  
PHONE: 775-784-2001 • FAX: 775-786-3020

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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 25th day of November 2013, I served the within  
4 **EMPLOYER'S PREHEARING STATEMENT** by placing a true and correct copy thereof  
5 in an enclosed and sealed envelope and causing same to be hand delivered to the  
6 following parties via Reno Carson Messenger Service to the addresses referenced  
7 below:

8 Appeals Officer  
9 Department of Administration  
10 1050 E. William Street, Suite 450  
11 Carson City, NV 89701

12 Nevada Attorney for Injured Workers  
13 1000 E. William Street, Suite 208  
14 Carson City, NV 89701

15 I also caused a copy of the aforementioned document to be served via United States  
16 Mail at Reno, Nevada, on the following parties at the addresses referenced below:

17 Lisa Jones  
18 CCMSI  
19 P. O. Box 20068  
20 Reno, NV 89515-0068

21 City of Reno  
22 Human Resources  
23 P.O. Box 1900  
24 Reno, NV 89505

25   
26 Sandra Pelham

27 #379247.1[cw11/22/13]  
28

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

STATE OF NEVADA  
DEPT OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

2013 NOV 22 PM 2: 07

RECEIVED  
AND  
FILED

In the matter of the Industrial  
Insurance Claim

Claim No.: 1990204572

of

Hearing No.: 45822-KD

Daniel Demaranville, Deceased,  
Claimant.

Appeal No.:

INSURER'S PRE-HEARING STATEMENT

The Insurer, Employers Insurance Company of Nevada, hereby  
files its Pre-Hearing Statement for the hearing scheduled in the  
above-referenced matter.

I.

DOCUMENTS PROPOSED TO BE INTRODUCED AT THE HEARING

The Insurer will rely on the documents contained in the  
Insurer's Evidence Packet filed herewith.

II.

STATEMENT OF ISSUES

The question is whether the Hearing Officer's October 28, 2013  
Decision and Order is incorrect, and should be reversed by the  
Appeals Officer.

III.

WITNESSES

The Insurer will rely on the testimony of the following  
witnesses:

- 1) Representatives of the Employer may testify via telephone concerning the events surrounding the Claimant's claim and employment;
- 2) A representative of the Insurer, including but not limited to claims examiner Amy Caldera, may testify via telephone concerning the events surrounding the Claimant's claim;
- 3) Any physician who examined or treated the Claimant or reviewed his medical records may testify by telephone concerning the Claimant's medical condition;
- 4) Any witnesses called by any other party as well as rebuttal and impeachment witnesses.

IV.

ESTIMATED TIME TO PRESENT CASE

The Insurer estimates that its case will take approximately one hour to present.

Dated this 21<sup>st</sup> day of November, 2013.

SERTIC LAW LTD.

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

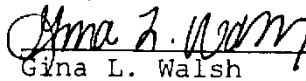
1 **CERTIFICATE OF SERVICE**

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 20 day of November, 2013, I deposited for mailing at Reno,  
6 Nevada, with postage fully prepaid, a true copy of the foregoing or  
7 attached document, addressed to:

8 Leslie Bell  
9 RPPA  
10 P.O. Box 359  
Reno, NV 89504

11 Laura Demaranville  
12 P.O. Box 261  
Verdi, NV 89439

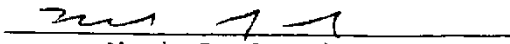
13 City of Reno  
14 Attn. Cara Bowling  
15 P.O. Box 1900  
Reno, NV 89505

16  
17   
18 Gina L. Walsh

19  
20 **AFFIRMATION (Pursuant to NRS 239B.030)**

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

24 Dated on this 21<sup>st</sup> day of November, 2013.

25  
26   
27 Mark S. Sertic  
28

1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

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

**FILED**

SEP 30 2013

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

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

Claim No: 12853C301824

Hearing No: 44686-SA

Appeal No: 44957-LLW

9 DANIEL DEMARANVILLE (DECEASED),

10  
11 Claimant.

12 **ORDER**

13 For good cause, the Claimant's Motion for Continuance is granted.

14 This matter is reset for hearing on:

15 DATE: Wednesday, December 11, 2013

16 TIME: 9:00AM

17 **IT IS SO ORDERED.**

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20 LORNA L WARD  
21 APPEALS OFFICER  
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**CERTIFICATE OF MAILING**

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

DANIEL DEMARANVILLE (DECEASED)  
c/o LAURA DEMARANVILLE  
PO BOX 261  
VERDI, NV 89439


NAIW  
1000 E WILLIAM #208  
CARSON CITY NV 89701

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

TIMOTHY ROWE, ESQ  
PO BOX 2670  
RENO NV 89505

CCMSI  
PO BOX 20068  
RENO, NV 89515-0068

Dated this 20th day of September, 2013.

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



ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

SEP 26 2013

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the  
Industrial Insurance Claim

Claim No.: 12853C301824

Hearing No.: 44686-SA

Appeal No.: 44957-LLW

DANIEL DEMARANVILLE

MOTION FOR CONTINUANCE AND RESETTING

Comes now, Laura Demaranville, surviving spouse of  
Daniel Demaranville, deceased, by and through her counsel, Evan  
Beavers, Esq., Nevada Attorney for Injured Workers, hereby moves  
the Appeals Officer for a continuance of this matter currently  
scheduled for October 7, 2013, to be rescheduled to December 11,  
2013, at 9:00 a.m.


This motion is made and based on NAC 616C.318 and the  
Affidavit of Counsel attached hereto.

AFFIRMATION

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

DATED this 26<sup>th</sup> day of September, 2013.

NEVADA ATTORNEY FOR INJURED WORKERS

  
Evan Beavers, Esq.  
Attorney for the Claimant

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

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SA 726

1 CERTIFICATE OF SERVICE

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

7 LAURA DEMARANVILLE  
8 PO BOX 261  
9 VERDI NV 89439

10 CITY OF RENO  
11 ATTN CARA BOWLING  
12 PO BOX 1900  
13 RENO NV 89505

14 TIMOTHY E ROWE ESQ  
15 MCDONALD CARANO WILSON  
16 100 W LIBERTY ST 10<sup>TH</sup> FL  
17 PO BOX 2670  
18 RENO NV 89505-2670

19 CCMSI  
20 PO BOX 20068  
21 RENO NV 89515-0068

22 DATED: September 26, 2013

23 SIGNED: Taney L Sherwood

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25  
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NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

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1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

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

**FILED**

AUG 14 2013

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

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

} Claim No: 12853C301824

} Hearing No: 44686-SA

} Appeal No: 44957-LLW

9 DANIEL DEMARANVILLE (DECEASED),  
10 c/o LAURA DEMARANVILLE

11 Claimant.  
12

13 ORDER FOR APPOINTMENT OF  
14 NEVADA ATTORNEY FOR INJURED WORKERS

15 The Appeals Officer, having received and considered the Claimant's  
16 written request for the appointment of the Nevada Attorney for Injured Workers;  
17 finds the Claimant would be better served by legal representation and accordingly;

18 IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers  
19 is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this  
20 matter.

21 IT IS SO ORDERED.

22 *Lorna L. Ward*

23 LORNA L WARD  
24 APPEALS OFFICER  
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**CERTIFICATE OF MAILING**

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

DANIEL DEMARANVILLE (DECEASED)  
c/o LAURA DEMARANVILLE  
PO BOX 261  
VERDI, NV 89439

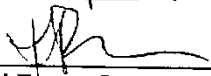
NAIW  
1000 E WILLIAM #208  
CARSON CITY NV 89701

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

TIMOTHY ROWE, ESQ  
PO BOX 2670  
RENO NV 89505

CCMSI  
PO BOX 20068  
RENO, NV 89515-0068

Dated this 14th day of August, 2013.

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

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BEFORE THE APPEALS OFFICER

FILED

JUL 23 2013

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 12853C301824

Hearing No: 44686-SA

Appeal No: 44957-LLW

DANIEL DEMARANVILLE,

Claimant.

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held by the Appeals Officer, pursuant to NRS 616 and 617 on:

**DATE:** Monday, October 7, 2013

**TIME:** 1:30PM

**PLACE:** DEPT OF ADMINISTRATION, APPEALS OFFICE  
1050 E. WILLIAMS STREET, SUITE 450  
CARSON CITY, NV 89701

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.
3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.
4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.
5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.
6. Any party wishing to reschedule this hearing should consult with opposing counsel or parties, and immediately make such a request to the Appeals Office in writing supported by an affidavit.
7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

**IT IS SO ORDERED.**

*Lorna L. Ward*

LORNA L WARD  
APPEALS OFFICER

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**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 44686-SA  
Claim Number: 12853C301824

DANIEL DEMARANVILLE  
PO BOX 261  
VERDO, NV 89439

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

**ORDER TRANSFERRING HEARING TO APPEALS OFFICE**

The Claimant's Request for Hearing was filed on June 28, 2013.

The requesting party appealed the Insurer's determination dated May 23, 2013.

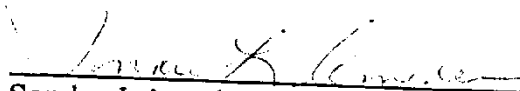
The parties have filed a stipulation to waive a hearing at the Hearing Officer level and to proceed directly to the Appeals Officer level.

**NRS 616C.315(7)** provides that the parties to a contested claim may, if the Claimant is represented by counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer.

THEREFORE, good cause appearing, the Hearing Officer proceeding is **DISMISSED** and this matter shall be and hereby transferred to the Appeals Officer for further proceedings.

**NOTICE:** If any party objects to this transfer to the Appeals Office, an objection thereto must be filed with the Appeals Office at 1050 E. Williams Street #450, Carson City, Nevada 89701, within 15 days of this order.

IT IS SO ORDERED this 17th day of July, 2013.

  
Sondra L Amodei, Hearing Officer

2013 JUL 18 AM 10:11  
RECEIVED  
AND  
FILED  
44957-LLD  
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NEVADA DEPARTMENT OF ADMINISTRATION  
HEARINGS DIVISION

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 12853C301824

DANIEL DEMARANVILLE,  
(Deceased)

Hearing No: 44686-SA

Claimant.

STIPULATION TO BYPASS HEARING OFFICER

Pursuant to NRS 616C.315(6), the undersigned parties stipulate and agree as follows:

1. This is the Claimant's widow's appeal of the May 23, 2013 determination issued by Cannon Cochran Management Services, Inc. (CCMSI) denying widow's benefits. (See attached Hearing Notice.)

2. The Claimant is represented by the Reno Police Protective Association.

3. The parties agree to forego a hearing before a Hearing Officer and hereby submit this contested issue directly to an Appeals Officer for final determination.

RENO POLICE PROTECTIVE ASSOCIATION

By: Leslie Bell  
Leslie Bell  
Representing the Claimant  
DANIEL DEMARANVILLE

Date: July 15th, 2013

MCDONALD CARANO WILSON LLP

By: J. E. Rowe  
Timothy E. Rowe, Esq.  
P.O. Box 2670  
Reno, Nevada 89501  
Attorneys for the Employer  
CITY OF RENO

Date: 7-11, 2013

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**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER TRANSFERRING HEARING TO APPEALS OFFICE** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

DANIEL DEMARANVILLE  
PO BOX 261  
VERDO, NV 89439

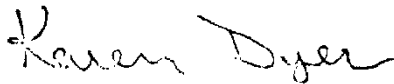
CITY OF RENO  
ATTN CARA BOWLING  
PO BOX 1900  
RENO, NV 89505

TIMOTHY ROWE, ESQ  
PO BOX 2670  
RENO NV 89505

LESLIE BELL  
WASHOE COUNTY SHERIFF'S DEPUTIES ASSOC  
911 PARR BLVD  
RENO NV 89512

CCMSI  
PO BOX 20068  
RENO, NV 89515-0068

Dated this 17th day of July, 2013.



Karen Dyer  
Employee of the State of Nevada

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing NOTICE OF APPEAL AND ORDER TO APPEAR was duly mailed, postage prepaid and 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  
PO BOX 261  
VERDO NV 89439

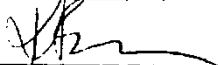
LESLIE BELL  
WASHOE COUNTY SHERIFF'S DEPUTIES ASSOC  
911 PAFF BLVD  
RENO NV 89512

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

TIMOTHY ROWE, ESQ  
PO BOX 2670  
RENO NV 89505

CCMSI  
PO BOX 20068  
RENO, NV 89515-0068

Dated this 23<sup>rd</sup> day of July, 2013.

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



May 23, 2013

Daniel DeMaranville  
PO Box 261  
Verdi, NV 89439

RE: Employer: City of Reno  
DOI: 8/5/2012  
Claim #: 12853C301824

Dear Ms. DeMaranville:

We are the Workers' Compensation Administrator for City of Reno. We are in receipt of your request for widow benefits dated April 25, 2013. Please be advised your request for widow benefits are denied. There is lack of information establishing the cause of death, as there was no autopsy performed. Additionally, we don't have medical records saying Mr. DeMaranville did in fact have heart disease.

**NRS 617.457 Heart diseases as occupational diseases of firefighters and police officers.**

1. 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 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.
2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this State and who has not reached the age of 55 years before the onset of the disease.
3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his employment.
4. A physical examination is not required for a volunteer firefighter more than once every 3 years after an initial examination.
5. All physical examinations required pursuant to subsection 3 must be paid for by the employer.
6. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.
7. A person who is determined to be:
  - (a) Partially disabled from an occupational disease pursuant to the provisions of this section; and
  - (b) Incapable of performing, with or without remuneration, work as a firefighter or police officer,may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

Received

JUL 03 2013

CCMSI-Reno

CANNON COCHRAN MANAGEMENT SERVICES, INC. - P.O. Box 20068 - Reno, NV 89515-0068  
(775) 324-3301 Fax (775) 324-9893 www.ccmsi.com

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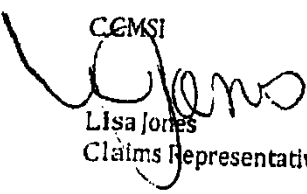
SA 735

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

If you do not agree with this determination, you have the right to request a hearing regarding the matter. If this is your intention, please complete the enclosed "Request for Hearing" form and return it, along with a copy of this letter, to the Department of Administration, Hearing Division, Carson City, NV within seventy (70) days from the date of this letter.

Sincerely,

CCMSI



Lisa Jones

Claims Representative

cc: File  
City of Reno  
DIIR/IIRS  
Tim Rowe, Esq.

Enc: D-12a Appeal Rights

Received

JUL 02 2013

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CCMSI-Reno

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SA 736

1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

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

**FILED**

DEC 10 2015

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

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

} Claim No: 12853C301824

} Hearing No: 52796-KD

} Appeal No: 53387-LLW

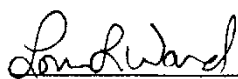
9 DANIEL DEMARANVILLE, DECEASED,  
10

11 Claimant.  
12

**ORDER**

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

15 **IT IS SO ORDERED.**

17 

18 LORNA L WARD  
19 APPEALS OFFICER  
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SA 738



ORIGINAL

STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

2015 NOV -5 PM 4:00

RECEIVED  
AND  
FILED

In the Matter of the  
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

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

AND

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

JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 //  
26 //  
27 //  
28 //

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

3 Respectfully submitted this 5<sup>th</sup> day of November,  
4 2015.



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

10 Attorney for Respondent  
11 Laura DeMaranville, Surviving Spouse  
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CERTIFICATE OF SERVICE

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

LAURA DEMARANVILLE  
PO BOX 261  
VERDI NV 89439

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

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

DATED:

November 5, 2015

SIGNED:

Randy X. Sherwood

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

\* \* \* \* \*

In the Matter of the Contested  
Industrial Insurance Claim

Claim No: 12853C301824

of

Hearing No: 52796-KD

DANIEL DEMARANVILLE (Deceased)

Appeal No: 53387-LLW

Claimant.

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

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

**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

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

///

1           1. Workers Compensation Benefits Derive From the Employment Relationship

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

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

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

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

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

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

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

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

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

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

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

5 II. CONCLUSION

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

12 Dated this 23<sup>rd</sup> day of October, 2015

13 MCDONALD CARANO WILSON LLP

14  
15 By T. E. Rowe  
16 TIMOTHY E. ROWE, ESQ.  
17 P. O. Box 2670  
18 Reno, Nevada 89505-2670  
19 Attorneys for the Employer  
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**CERTIFICATE OF SERVICE**

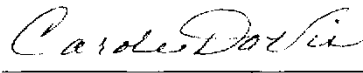
Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP, and that on the 23<sup>rd</sup> day of October, 2015, I served the within **CITY OF RENO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** by sending a true and correct copy via facsimile to the following parties:

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

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

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

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



Carole Davis

431877

FINAL

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

10/30/12 23 11:10:00

RECEIVED  
AND  
FILED

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

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

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

**MOTION FOR SUMMARY JUDGMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 merely states that the claimant's benefits are to be calculated  
2 from the date of disability. That is consistent with the statutes  
3 and regulations discussed above. Mr. DeMaranville's earnings from  
4 his police officer job at the time of his disability were zero.

5 Mirage does not hold that wages from a totally separate and  
6 distinct employment that is unrelated to that from which the  
7 occupational disease arose are to be used to calculate the  
8 benefits.

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

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

27 For the foregoing reasons, EICON respectfully requests that  
28

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

3 DATED this 27<sup>th</sup> day of October, 2015.  
4

5 SERTIC LAW LTD.

6 By: Mark S. Sertic  
7 MARK S. SERTIC, ESQ.  
8 5975 Home Gardens Drive  
9 Reno, Nevada 89502  
10 (775) 327-6300  
11 Attorneys for  
12 Employers Insurance Company  
13 of Nevada  
14  
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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 22nd day of October, 2015, I served by U.S. mail, a true copy of  
6 the foregoing or attached document, addressed to:

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

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

13  
14 Gina L. Walsh  
Gina L. Walsh

15  
16 **AFFIRMATION (Pursuant to NRS 239B.030)**

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

20 Dated on this 22 day of October, 2015.

21  
22 Mark S. Sertic  
Mark S. Sertic



ORIGINAL



STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARD AS A VISION  
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

2015 OCT -6 PM 4:21

RECEIVED  
AND  
FILED

In the Matter of the  
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

MOTION FOR SUMMARY JUDGMENT

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

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

DATED this 6th day of October, 2015.

NEVADA ATTORNEY FOR INJURED WORKERS

Evan Beavers, Esq.  
Attorney for the Claimant

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

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

POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

18 DATED this 6th day of October, 2015.

19  
20 

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

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

**EXHIBIT A**

**EXHIBIT A**

**754**

SA 766

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

<u>FISCAL YEAR</u>	<u>MAX WAGE ALLOWED</u>	<u>66-2/3%</u>	<u>BI-WEEKLY</u>	<u>DAILY</u>
1975 (7/1/74-6/30/75)	\$ 727.48	\$ 485.01	\$ 223.16	\$ 15.94
1976 (7/1/75-6/30/76)	\$1,142.21	\$ 761.47	\$ 350.42	\$ 25.03
1977 (7/1/76-6/30/77)	\$1,211.00	\$ 807.33	\$ 371.28	\$ 26.52
1978 (7/1/77-6/30/78)	\$1,287.44	\$ 855.29	\$ 394.80	\$ 28.20
1979 (7/1/78-6/30/79)	\$1,377.08	\$ 918.05	\$ 422.24	\$ 30.16
1980 (7/1/79-6/30/80)	\$1,488.46	\$ 992.31	\$ 456.40	\$ 32.60
1981 (7/1/80-6/30/81)	\$1,591.86	\$1,061.24	\$ 488.18	\$ 34.87
1982 (7/1/81-6/30/82)	\$1,754.95	\$1,169.97	\$ 538.16	\$ 38.44
1983 (7/1/82-6/30/83)	\$1,930.38	\$1,286.92	\$ 591.93	\$ 42.28
1984 (7/1/83-6/30/84)	\$2,040.60	\$1,360.40	\$ 625.80	\$ 44.70
1985 (7/1/84-6/30/85)	\$2,117.31	\$1,411.54	\$ 649.32	\$ 46.38
1986 (7/1/85-6/30/86)	\$2,159.33	\$1,439.55	\$ 662.20	\$ 47.30
1987 (7/1/86-6/30/87)	\$2,230.45	\$1,486.97	\$ 683.90	\$ 48.85
1988 (7/1/87-6/30/88)	\$2,302.22	\$1,534.82	\$ 705.88	\$ 50.42
1989 (7/1/88-6/30/89)	\$2,395.49	\$1,596.99	\$ 734.58	\$ 52.47
1990 (7/1/89-6/30/90)	\$2,525.78	\$1,683.85	\$ 774.48	\$ 55.32
1991 (7/1/90-6/30/91)	\$2,624.82	\$1,750.00	\$ 804.86	\$ 57.49
1992 (7/1/91-6/30/92)	\$2,747.65	\$1,831.88	\$ 842.52	\$ 60.18
1993 (7/1/92-6/30/93)	\$2,820.19	\$1,880.13	\$ 864.78	\$ 61.77
1994 (7/1/93-6/30/94)	\$2,996.08	\$1,997.39	\$ 918.68	\$ 65.62
1995 (7/1/94-6/30/95)	\$3,058.43	\$2,038.95	\$ 937.72	\$ 66.98
1996 (7/1/95-6/30/96)	\$3,089.93	\$2,059.95	\$ 947.38	\$ 67.67
1997 (7/1/96-6/30/97)	\$3,211.00	\$2,140.67	\$ 984.48	\$ 70.32
1998 (7/1/97-6/30/98)	\$3,354.34	\$2,236.23	\$1,028.44	\$ 73.46
1999 (7/1/98-6/30/99)	\$3,474.43	\$2,316.29	\$1,065.26	\$ 76.09
2000 (7/1/99-6/30/00)	\$3,667.27	\$2,444.85	\$1,124.48	\$ 80.32
2001 (7/1/00-6/30/01)	\$3,788.07	\$2,525.38	\$1,161.44	\$ 82.96
2002 (7/1/01-6/30/02)	\$3,915.25	\$2,610.16	\$1,200.50	\$ 85.75
2003 (7/1/02-6/30/03)	\$4,022.68	\$2,681.78	\$1,233.40	\$ 88.10
2004 (7/1/03-6/30/04)	\$4,129.39	\$2,752.92	\$1,266.16	\$ 90.44
2005 (7/1/04-6/30/05)	\$4,284.04	\$2,856.02	\$1,313.48	\$ 93.82
2006 (7/1/05-6/30/06)	\$4,505.97	\$3,003.98	\$1,381.66	\$ 98.69
2007 (7/1/06-6/30/07)	\$4,708.68	\$3,139.12	\$1,443.68	\$103.12
2008 (7/1/07-6/30/08)	\$4,862.68	\$3,241.78	\$1,491.00	\$106.50
2009 (7/1/08-6/30/09)	\$5,116.24	\$3,410.82	\$1,568.70	\$112.05
2010 (7/1/09-6/30/10)	\$5,208.60	\$3,472.40	\$1,596.98	\$114.07
2011 (7/1/10-6/30/11)	\$5,179.05	\$3,452.70	\$1,588.02	\$113.43
2012 (7/1/11-6/30/12)	\$5,151.57	\$3,434.38	\$1,579.48	\$112.82
2013 (7/1/12-6/30/13)	\$5,222.63	\$3,481.75	\$1,601.32	\$114.38
2014 (7/1/13-6/30/14)	\$5,290.70	\$3,527.13	\$1,622.18	\$115.87
2015 (7/1/14-6/30/15)	\$5,356.23	\$3,570.82	\$1,642.34	\$117.31
2016 (7/1/15-6/30/16)	\$5,426.25	\$3,617.50	\$1,663.76	\$118.84

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2200 South Rancho Drive, Suite 130  
Las Vegas, NV 89102 (702) 486-2830

CERTIFICATE OF SERVICE

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

LAURA DEMARANVILLE  
PO BOX 261  
VERDI NV 89439

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

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

CCMSI  
PO BOX 20068  
RENO NV 89515-0068

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

DATED: October 6, 2015

SIGNED: Tancy L. Sherwood

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

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

**FILED**

OCT 7 2015

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the  
Industrial Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Appeal No.: 53387-LLW

DANIEL DEMARANVILLE

STIPULATION AND ORDER

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

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

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Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

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

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

12

13

NEVADA ATTORNEY FOR INJURED WORKERS

14

15

DATED: 09/30, 2015



Evan Beavers, Esq.,  
Attorney for the Claimant

16

17

SERTIC LAW LTD.

18

19

DATED: October 1, 2015



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

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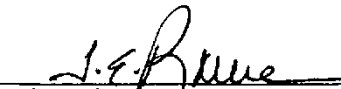
22

MCDONALD CARANO WILSON

23

24

DATED: 10-2-15, 2015



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

25

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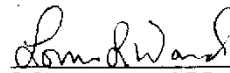
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ORDER

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

Dated this 6<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
LORNA L WARD  
APPEALS OFFICER

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CCMSI  
PO BOX 20068  
RENO NV 89515-0068

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

1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

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

**FILED**

SEP 2 2015

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

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

} Claim No: 12853C301824

} Hearing No: 52796-KD

} Appeal No: 53387-LLW

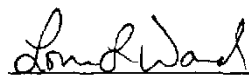
9 DANIEL DEMARANVILLE, DECEASED, }

10 Claimant.  
11

12 **ORDER**

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

16 **IT IS SO ORDERED.**

17  
18   
19 \_\_\_\_\_  
20 LORNA L WARD  
21 APPEALS OFFICER  
22  
23  
24  
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761

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

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

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

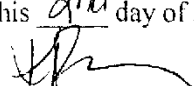
22 LESLIE BELL  
23 RENO POLICE PROTECTIVE ASSOCIATION  
24 PO BOX 359  
25 RENO NV 89504

26 EMPLOYERS INSURANCE COMP OF NV  
27 PO BOX 539004  
28 HENDERSON, NV 89053

MARK SERTIC, ESQ  
5975 HOME GARDENS DRIVE  
RENO NV 89502

CCMSI  
PO BOX 20068  
RENO NV 89515-0068

Dated this 2nd day of September, 2015.

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

762

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

STATE OF NEVADA  
DEPT. OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

2015 SEP -1 PM 1:39

RECEIVED  
AND  
FILED

In the matter of the Industrial  
Insurance Claim

Claim No.: 12853C301824

of

Hearing No.: 52796-KD

Daniel Demaranville, Deceased,

Appeal No.: 53387-LLW

Claimant.

MOTION TO INTERVENE AND/OR FOR JOINDER

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

DATED this 31<sup>st</sup> day of August, 2015.

SERTIC LAW LTD.

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

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POINTS AND AUTHORITIES

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

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

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

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

6 NRCP 24(b) provides:

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

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

20 NRCP 19(a) provides in part:

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

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

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

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

7 DATED this 31<sup>st</sup> day of August, 2015.

9 SERTIC LAW LTD.

10 By: Mark S. Sertic  
11 MARK S. SERTIC, ESQ.  
12 5975 Home Gardens Drive  
13 Reno, Nevada 89502  
14 (775) 327-6300  
15 Attorneys for  
16 Employers Insurance Company  
17 of Nevada  
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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 1st day of ~~August~~<sup>September</sup>, 2015, I served by U.S. mail, a true copy of  
6 the foregoing or attached document, addressed to:

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

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

14 Gina L. Walsh  
15 Gina L. Walsh

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

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

20 Dated on this 31<sup>st</sup> day of August, 2015.

21  
22 Mark S. Sertic  
23 Mark S. Sertic  
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BEFORE THE APPEALS OFFICER

FILED

JUL 16 2015

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 12853C301824

Hearing No: 52796-KD

Appeal No: 53387-LLW

DANIEL DEMARANVILLE, DECEASED,

Claimant.

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held by the Appeals Officer, pursuant to NRS 616 and 617 on:

**DATE:** Monday, October 5, 2015

**TIME:** 2:30PM

**PLACE:** DEPT OF ADMINISTRATION, APPEALS OFFICE  
1050 E. WILLIAMS STREET, SUITE 450  
CARSON CITY, NV 89701

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.
3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.
4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.
5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.
6. Any party wishing to reschedule this hearing should consult with opposing counsel or parties, and immediately make such a request to the Appeals Office in writing supported by an affidavit.
7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED.

*Lorna L. Ward*

LORNA L WARD  
APPEALS OFFICER

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1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

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

**FILED**

JUL 16 2015

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

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

} Claim No: 12853C301824

} Hearing No: 52796-KD

} Appeal No: 53387-LLW

9 DANIEL DEMARANVILLE, DECEASED, )  
10  
11

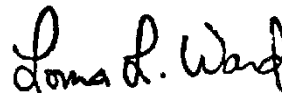
} Claimant.  
12

13 ORDER FOR APPOINTMENT OF  
14 NEVADA ATTORNEY FOR INJURED WORKERS

15 The Appeals Officer, having received and considered the Claimant's  
16 written request for the appointment of the Nevada Attorney for Injured Workers;  
17 finds the Claimant would be better served by legal representation and accordingly;

18 IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers  
19 is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this  
20 matter.

21 **IT IS SO ORDERED.**



22 LORNA L WARD  
23 APPEALS OFFICER  
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**REQUEST FOR HEARING BEFORE THE APPEALS OFFICER**  
**NEVADA DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 52796-KD  
Claim Number: 12853C301824

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

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

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: June 24, 2015

**(Please attach a copy of the Hearing Officer's Decision)**

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER/INSURER

REASON FOR APPEAL: disagree with decision

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

Laura Demaranville  
Person requesting this hearing (please print)

Address

Laura Demaranville  
Person requesting this hearing (signature)

City, State, Zip Code

Telephone Number

345-10530  
Telephone Number

7-7-15  
Date

WILL AN INTERPRETER BE REQUIRED? YES [ ] NO ☒

If so, what language: \_\_\_\_\_

**NOTICE**

If the Hearing Officer Decision is appealed, CLAIMANTS are entitled to free legal representation by the Nevada Attorney for Injured Workers (NAIW). If you want NAIW to represent you, please sign below:

Laura Demaranville  
Claimant's signature

345-10530  
Claimant's Telephone Number

If you are appealing the Hearing Officer's decision, file this form no later than thirty (30) days after that decision at:

NEVADA DEPARTMENT OF ADMINISTRATION  
APPEALS OFFICE  
1050 E. WILLIAMS STREET SUITE 450  
CARSON CITY, NV 89701  
(775) 687-8420

FILED  
AND  
RECEIVED  
2015 JUL 13 AM 10:56  
STATE OF NEVADA  
DEPT OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS OFFICE

53387 - LLW  
Mon - 10-5-15  
2:30

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1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing NOTICE OF APPEAL AND ORDER TO APPEAR was duly mailed, postage  
5 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:

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

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

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

17 TIMOTHY ROWE, ESQ  
18 PO BOX 2670  
19 RENO NV 89505

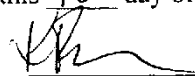
20 LESLIE BELL  
21 RENO POLICE PROTECTIVE ASSOCIATION  
22 PO BOX 359  
23 RENO NV 89504

24 EMPLOYERS INSURANCE COMP OF NV  
25 PO BOX 539004  
26 HENDERSON, NV 89053

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

CCMSI  
PO BOX 20068  
RENO NV 89515-0068

Dated this 16<sup>th</sup> day of July, 2015.

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

**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 52796-KD  
Claim Number: 12853C301824

DANIEL DEMARANVILLE, DECEASED  
C/O LAURA DEMARANVILLE  
PO BOX 261  
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CITY OF RENO  
ATTN ANDRENA ARREYGUE  
PO BOX 1900  
RENO, NV 89505

**BEFORE THE HEARING OFFICER**

The Claimant's widow's request for Hearing was filed on May 26, 2015 and a Hearing was scheduled for June 17, 2015. The Hearing was held on June 17, 2015, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present with her representative, Leslie Bell. The self-insured Employer was represented by Timothy Rowe, Esquire. Also present was Mark Sertic, Esquire, by telephone conference call, representing Employers Insurance Company of Nevada.

**ISSUE**

The Claimant appealed from the Insurer's determination dated April 15, 2015. The issue before the Hearing Officer is calculation of death benefits.

**DECISION AND ORDER**

The determination of the Insurer is hereby **AFFIRMED**.

In Appeal number 44957-LLW, the self-insured Employer, City of Reno, was found liable for a claim for compensation under the Heart and Lung Bill and the third-party administrator, CCMSI, was ordered to pay death benefits. The insurer calculated the award of death benefits based on the Claimant's retirement date, January 12, 1990, the instant appeal. At the time of his death, the Claimant was employed in security at the Federal Court House and his wages exceeded the state maximum for entitlement to compensation. The Appeals Officer determined the Claimant became entitled to compensation on the date of his disablement, August 5, 2012. As such, the Claimant's widow is requesting recalculation of death benefits based on the wages earned for the twelve week period preceding his death. However, after review of the representations made, the Hearing Officer finds the determination of the Insurer is proper. Unless concurrent employment is relevant, wages used to calculate the AMW are determined by the primary employment in which the injury occurs. In the instant matter, the wages earned would be 0. However, in good faith, the Insurer calculated benefits based on the last date wages were earned which was the date of retirement from the City of Reno.

In the Matter of the Contested  
Industrial Insurance Claim of  
Hearing Number:  
Page two


DANIEL DEMARANVILLE, Deceased  
52796-KD

**NAC 616C.444** provides the average monthly wage of an employee who permanently or temporarily changes to a job with different duties, rate of pay, or hours of employment, must be calculated using only information concerning payroll which relates to his or her primary job at the time of the accident. The preceding sections apply in calculating the average monthly wage for such an employee.

**APPEAL RIGHTS**

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 24th day of June, 2015.

  
Katherine Diamond, Hearing Officer

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

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

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

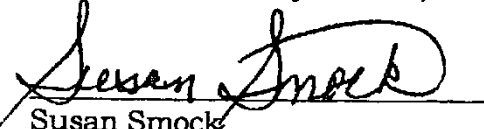
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CCMSI  
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TIMOTHY ROWE, ESQ  
PO BOX 2670  
RENO NV 89505

MARK SERTIC, ESQ  
5975 HOME GARDENS DRIVE  
RENO NV 89502

Dated this 24th day of June, 2015.

  
Susan Smock  
Employee of the State of Nevada