

1 2515
2 Charles C. Diaz
3 NV Bar No. 3349
4 443 Marsh Avenue
5 Reno, Nevada 89509
6 T. 775.324.6443
7 *Attorney for Petitioner*

Electronically Filed
Aug 04 2017 02:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

JASON BUMA (Deceased),)
Petitioner,)
VS.) Case No. CV17-00423
PROVIDENCE CORP. DEVELOPMENT)
dba MILLER HEIMAN, INC., GALLAGHER)
BASSETT SERVICES, INC., CNA CLAIMS PLUS,)
and THE DEPARTMENT OF ADMINISTRATION)
APPEALS DIVISION,)
Respondents,)

NOTICE OF APPEAL

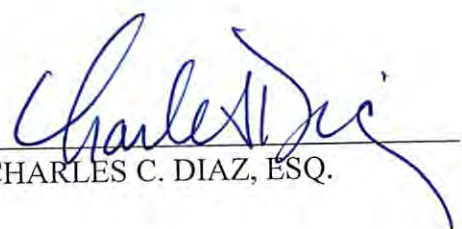
Notice is hereby given that Jason Buma, deceased, and his beneficiaries, Kaceann and Delaney Buma, by and through their attorney, Charles Diaz, Esq., of Diaz and Galt, LLC., hereby appeals to the Supreme Court of Nevada from the Order Denying his Petition for Judicial Review entered on the 25th day of July, 2017. A copy of that Order is attached hereto.

AFFIRMATION

I affirm that this document does not contain the social security number of any person.

DATED this 1st day of August, 2017.

By:


CHARLES C. DIAZ, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I HEREBY CERTIFY I am an employee of Diaz & Galt, LLC,
and that on this date, I served a true and correct copy of the within **Notice Of Appeal** via hand-
delivery by Bootleg Courier, Co., Messenger Service or U.S. Mail as indicated, to the following:

Appeals Office
Department Of Hearings
1050 E. Williams Street, Suite 450
Carson City, NV 89701

[Via Messenger]

Lee E. Davis, Esq.
Lewis, Brisbois, Bisgaard, & Smith, LLP.
2800 W. Sahara Avenue, Suite 300, Box 28,
Las Vegas, NV 89102

[Via U.S. Mail]

DATED this 1st day of August, 2017.



LILA SALINAS

1 1310
2 Charles C. Diaz (NV Bar No. 3349)
3 Diaz & Galt, LLC
4 443 Marsh Avenue
5 Reno, Nevada 89509
6 T. 775.324.6443
7 *Attorney for Petitioner*

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 JASON BUMA (Deceased),

12 Petitioner,

13 vs.

Case No. CV17-00423

14 PROVIDENCE CORP. DEVELOPMENT
15 dba MILLER HEIMAN, INC., GALLAGHER
16 BASSETT SERVICES, INC., CNA CLAIMS PLUS,
17 and THE DEPARTMENT OF ADMINISTRATION
18 APPEALS DIVISION,

Dept No. 8

19 Respondents,

20 **CASE APPEAL STATEMENT**

21 1. Name of appellant filing this case appeal statement:

22 - Jason Buma, deceased, and his beneficiaries, Kaceann and Delaney Buma.

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

24 - Honorable Barry L Breslow.

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

26 - Jason Buma, and his beneficiaries Kaceann and Delaney Buma, are the
27 appellants. His attorney's contact information is as follows:
28

Charles C. Diaz, Esq.
Diaz & Galt, LLC
443 Marsh Avenue
Reno, NV 89509
T: 775.324.6443

1 4. Identify each respondent and the name and address of appellate counsel, if
2 known for each respondent:

3
4 - Providence Corp. Development dba Miller Heiman, Inc

5 -Gallagher Basset Services, Inc,

6 -CNA Claims Plus

7
8 All parties are represented by legal counsel as follows:

9 Lee E. Davis, Esq.
10 Lewis, Brisbois, Bisgaard, & Smith, LLP.
400 W. Sahara Avenue, Suite 300, Box 28,
11 Las Vegas, NV 89102
T: 702.893.3383

12 5. Indicate whether any attorney identified above in response to questions 3 or 4 is
13 not licensed to practice law in Nevada and, if so, whether the district court granted that
14 attorney permission to appear under SCR 42 (attach a copy of any district court order
15 granting such permission).
16

17
18 -Both attorneys are licensed to practice law in Nevada.

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

21 - Yes, appellant Jason Buma, deceased, and his beneficiaries, Kaceann and
22 Delaney Buma, were represented by Charles C. Diaz, Esq., of Diaz & Galt, LLC, retained
23 counsel, at his Appeals Officer Hearing and in Petition for Judicial Review in the district
24 court.

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

27 - Appellant is represented by retained counsel: Charles C. Diaz of Diaz & Galt,
28 LLC.

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

3 - Appellant did not proceed in forma pauperis in district court.

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

6 - Petition for Judicial Review was filed on or about February 27, 2017.

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

10 - This is an appeal of a district court order affirming the appeals officer's decision
11 and order, in a worker's compensation case, wherein the appeals officer improperly
12 denied claim acceptance. The district court denied petition for judicial review.

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

16 -This case has not been previously appealed to the Supreme Court.

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

18 -No.

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


21 -No

1 **AFFIRMATION**

2 I affirm this document does not contain any person's social security number.

3
4 DATED this 1st day of August, 2017.

5
6 By:

7 
Charles C. Diaz, Esq.

8
9 **CERTIFICATE OF SERVICE**

10 Pursuant to NRCP 5(b), I HEREBY CERTIFY I am an employee of Diaz & Galt,
11 LLC, and that on this date, I served a true and correct copy of the within **Case Appeal**
12 **Statement** via hand-delivery by Bootleg Courier, Co., Messenger Service or U.S. Mail as
13 indicated, to the following:

14 Department of Administration
15 Appeals Division
16 1050 E. Williams Street, Suite 450
17 Carson City, NV 89701

[Via Messenger]

18 Lee E. Davis, Esq.
19 Lewis, Brisbois, Bisgaard, & Smith, LLP.
20 2300 W. Sahara Avenue, Suite 500, Box 300,
Las Vegas, NV 89193

[Via U.S. Mail]

21
22 DATED this 1st day of August, 2017.

23 
24 LILA SALINAS

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV17-00423****Case Description: JASON BUMA VS. PROVIDENCE CORP; ET AL (D8)****Case Number: CV17-00423 Case Type: OTHER JUDICIAL REVIEW/APPEAL - Initially Filed On: 2/28/2017****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - BARRY L. BRESLOW - D8	Active
ATTY - Lee E. Davis - 3932	Active
ATTY - John P. Lavery, Esq. - 4665	Active
ATTY - Charles C. Diaz, Esq. - 3349	Active
PETR - JASON BUMA - @1305719	Active
RESP - DEPARTMENT OF ADMINISTRATION - @879697	Active
RESP - GALLAGHER BASSETT SERVICES, INC. - @1305718	Active
RESP - MILLER HEIMAN, INC. - @115512	Active

Disposed Hearings

- 1 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 7/3/2017 at 15:39:00
Extra Event Text: RESPONDENTS'/INTERESTED UNNAMED RESPONDENT'S SPECIAL APPEARANCE AND MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW
Event Disposition: S200 - 7/24/2017

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 2/28/2017 | - | \$3550 - \$Pet for Judicial Review
Additional Text: DFX: EXHIBITS SHOULD BE IN SEPARATE SCANS - Transaction 5972232 - Approved By: PMSEWELL : 03-01-2017:08:27:22 |
| 2 | 3/1/2017 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC567625. |
| 3 | 3/7/2017 | - | 2610 - Notice ...
Additional Text: NOTICE OF APPEAL - Transaction 5983696 - Approved By: YVILORIA : 03-07-2017:12:19:13 |
| 4 | 3/7/2017 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 5983845 - Approved By: NOREVIEW : 03-07-2017:12:20:14 |
| 5 | 3/17/2017 | - | 2520 - Notice of Appearance
Additional Text: Transaction 6003320 - Approved By: YVILORIA : 03-17-2017:10:41:15 |
| 6 | 3/17/2017 | - | \$1560 - \$Def 1st Appearance - CV
Additional Text: PROVIDENCE CORP. DEVELOPMENT DBA MILLER HEIMAN INC. - Transaction 6003320 - Approved By: YVILORIA : 03-17-2017:10:41:15 |
| 7 | 3/17/2017 | - | \$DEFT - \$Addl Def/Answer - Prty/Appear
Additional Text: GALLAGHER BASSETT SERVICES - Transaction 6003320 - Approved By: YVILORIA : 03-17-2017:10:41:15 |
| 8 | 3/17/2017 | - | 1817 - Initial Appear. Fee Disclosure
Additional Text: Transaction 6003320 - Approved By: YVILORIA : 03-17-2017:10:41:15 |

Report Does Not Contain Sealed Cases or Confidential Information

- 9 3/17/2017 - PAYRC - **Payment Received
Additional Text: A Payment of \$243.00 was made on receipt DCDC569840.
- 10 3/17/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6003521 - Approved By: NOREVIEW : 03-17-2017:10:42:23
- 11 3/30/2017 - 3746 - Record on Appeal
No additional text exists for this entry.
- 12 3/30/2017 - 4195 - Transmittal of Rec. on Appeal
No additional text exists for this entry.
- 13 3/30/2017 - 1365 - Certificate of Transmittal
No additional text exists for this entry.
- 14 5/10/2017 - 2880 - Ord for Briefing Schedule
Additional Text: Transaction 6094382 - Approved By: NOREVIEW : 05-10-2017:15:30:40
- 15 5/10/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6094385 - Approved By: NOREVIEW : 05-10-2017:15:31:32
- 16 5/12/2017 - 4047 - Stip Extension of Time ...
Additional Text: STIPULATION TO EXTEND BRIEFING SCHEDULE - Transaction 6099008 - Approved By: TBRITTON : 05-12-2017:16:45:45
- 17 5/12/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6099254 - Approved By: NOREVIEW : 05-12-2017:16:47:40
- 18 5/15/2017 - 2777 - Ord Approving ...
Additional Text: STIPULATION - Transaction 6101217 - Approved By: NOREVIEW : 05-15-2017:16:22:25
- 19 5/15/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6101222 - Approved By: NOREVIEW : 05-15-2017:16:23:15
- 20 6/8/2017 - 2640 - Opening Brief
Additional Text: PETITIONER'S OPENING BRIEF PETITION FOR JUDICIAL REVIEW - Transaction 6140121 - Approved By: CSULEZIC : 06-08-2017:16:20:31
- 21 6/8/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6140406 - Approved By: NOREVIEW : 06-08-2017:16:21:33
- 22 6/22/2017 - 2305 - Mtn Dismiss with Prejudice
Additional Text: Respondents' and Interested Unnamed Respondent's Special Appearance and Motion to Dismiss Petition for Judicial Review - Transaction 6162195 - Approved By: TBRITTON : 06-22-2017:13:47:36
- 23 6/22/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6162273 - Approved By: NOREVIEW : 06-22-2017:13:48:23
- 24 6/29/2017 - 2645 - Opposition to Mtn ...
Additional Text: Petitioners Opposition to Motion to Dismiss Petition for Judicial Review - Transaction 6174352 - Approved By: PMSEWELL : 06-30-2017:08:48:51
- 25 6/30/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6174705 - Approved By: NOREVIEW : 06-30-2017:08:49:43
- 26 7/3/2017 - 3860 - Request for Submission

Additional Text: RESPONDENTS' AND INTERESTED UNNAMED RESPONDENTS' SPECIAL APPEARANCE AND MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW (PAPER ORDER NOT PROVIDED) - Transaction 6177961 - Approved By: TBRITTON : 07-03-2017:15:10:46

PARTY SUBMITTING: JOHN P. LAVERY, ESQ.

DATE SUBMITTED: JULY 3, 2017

SUBMITTED BY: TBRITTON

DATE RECEIVED JUDGE OFFICE:

27 7/3/2017 - 1170 - Answering Brief

Additional Text: Respondents' Answering Brief in Opposition to Petition for Judicial Review - Transaction 6177966 - Approved By: TBRITTON : 07-03-2017:15:13:44

28 7/3/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6177975 - Approved By: NOREVIEW : 07-03-2017:15:13:10

29 7/3/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6177978 - Approved By: NOREVIEW : 07-03-2017:15:14:29

30 7/24/2017 - S200 - Request for Submission Complet

No additional text exists for this entry.

31 7/24/2017 - 2840 - Ord Denying ...

Additional Text: PETITION FOR JUDICIAL REVIEW - Transaction 6210438 - Approved By: NOREVIEW : 07-24-2017:11:57:25

32 7/24/2017 - F230 - Other Manner of Disposition

No additional text exists for this entry.

33 7/24/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6210445 - Approved By: NOREVIEW : 07-24-2017:11:58:33

34 7/25/2017 - 2540 - Notice of Entry of Ord

Additional Text: Transaction 6212700 - Approved By: NOREVIEW : 07-25-2017:10:31:40

35 7/25/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6212708 - Approved By: NOREVIEW : 07-25-2017:10:32:39

36 8/1/2017 - \$2515 - \$Notice/Appeal Supreme Court

Additional Text: Transaction 6226377 - Approved By: YVILORIA : 08-01-2017:15:17:18

37 8/1/2017 - 1310 - Case Appeal Statement

Additional Text: Transaction 6226384 - Approved By: YVILORIA : 08-01-2017:15:17:31

38 8/1/2017 - PAYRC - **Payment Receipted

Additional Text: A Payment of \$34.00 was made on receipt DCDC582424.

39 8/1/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6226431 - Approved By: NOREVIEW : 08-01-2017:15:18:15

40 8/1/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6226433 - Approved By: NOREVIEW : 08-01-2017:15:18:29

41 8/2/2017 - SAB - **Supreme Court Appeal Bond

Additional Text: Bond ID: SAB-17-00045; Total Bond Amount: \$500.00.

Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 02-AUG-2017 in the amount of \$500.00 on case ID CV17-00423.

42 8/3/2017 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6229733 - Approved By: NOREVIEW : 08-03-2017:08:21:44

43 8/3/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6229738 - Approved By: NOREVIEW : 08-03-2017:08:22:40

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

JASON BUMA,

Case No.: CV17-00423

Petitioner,

Dept. No.: 8

vs.

PROVIDENCE CORP. DEVELOPMENT
dba MILLER HEIMAN, INC.;
GALLAGHER BASSETT SERVICES,
INC.; and THE DEPARTMENT OF
ADMINISTRATION APPEALS
DIVISION,

Respondent.

ORDER DENYING PETITION FOR JUDICIAL REVIEW

Before the court is Petitioner Jason Buma's ("Buma") *Petition for Judicial Review* filed on February 28, 2017. The petition is fully briefed. In addition, Providence Corp., dba Miller Heiman Inc.; Gallagher Basset Services, and the Department of Administration Appeals Division ("Respondents") filed a *Motion to Dismiss* for failure to name all parties on June 22, 2017. Burma asks that this court review the decision of the Nevada Department of Administration with regard to Petitioner's workers' compensation claim. After considering the parties' briefs, reviewing the underlying file, and good cause appearing, the court will deny the petition.

BACKGROUND

Jason Buma suffered a tragic accident that resulted in his death on March 29, 2015. Burma was employed as Vice President of Sales by Miller Heiman, Inc. He suffered an accident while riding an ATV at a coworker's ranch house, owned by Michael O'Callaghan, that he was

1 staying at prior to a business meeting in Huston, Texas. Miller Heiman, Inc. is a business that
2 provides sales training and develops strategies for other companies to increase their sales. Buma
3 planned on meeting with his client at an Oil and Gas convention the following day. He made his
4 own travel arrangements and chose to stay with O'Callaghan. He would be reimbursed by his
5 employer or the employer had provided him with a credit card to use for travel expenses.

6 Buma arrived at O'Callaghan's property around 3:30 in the afternoon after arriving in the
7 Houston area. The two of them had worked together for approximately three years prior to the
8 accident. Before the two went to dinner to prepare for the meeting, they decided to ride around
9 the property on ATVs. These vehicles were not owned by Miller Heiman, Inc., and Michael
10 O'Callaghan was not an employee of Miller Heiman, Inc., but an independent contractor who
11 works with Miller Heiman, Inc. Approximately 20 minutes into the ride down an unpaved road,
12 O'Callaghan lost sight of Buma when they went around a curve in a road. When O'Callaghan
13 found Buma, he was lying injured in the road with a damaged ATV nearby. Mr. Buma died at
14 the scene of the accident.

15 On May 11, 2015, Buma's surviving wife and daughter's attorney sent a letter to the
16 Third-Party Administrator seeking death benefits. The letter included a copy of the death
17 certificate, Ms. Buma's Marriage Certificate, as well as police and emergency service reports of
18 the accident. The adjuster for the Employer responded on July 8, 2015 noting that: (1) there were
19 no company events scheduled for the day of the accident, (2) Buma was not required to ride the
20 ATV for work purposes, and (3) that Buma was not meeting with clients until the following day.
21 As a result, the claim was denied by the adjuster on July 25, 2015.

22 Ms. Buma filed an appeal of the claim denial on August 13, 2015. On October 23, 2015,
23 the Hearing Officer affirmed the denial of the claim. Ms. Buma further appealed that denial,
24 which was heard by Appeals Officer Lorna L. Ward. Officer Ward denied the appeal with a
25 comprehensive decision on February 7, 2017.

26 After the petition was filed by Buma in this court, Respondents filed a *Motion to Dismiss*
27 for Buma failing to name all the parties. Buma, in the initial petition with this court, did not
28 name CNA CLAIMPLUS who was a party in the case before the Appeals Officer. This is

1 disputed by Buma who argues that the party was not an official party to the administrative
2 proceedings. Nonetheless, the court will consider the *Petition for Judicial Review* on the merits.

3 STANDARD OF REVIEW

4 NRS 233B.135(3) provides that the district court may overturn the decision of an
5 administrative agency only if the petitioner demonstrates the decision is:

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

12 Courts review local government decisions under the “substantial evidence” standard. *Kay v.*
13 *Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006) (citations omitted). Under this standard,
14 a court will defer to the findings of the administrative agency so long as they are supported by
15 substantial evidence even if this court may have weighed the evidence differently. NRS
16 233B.135(2); *Knapp v. State, Dept. of Prisons*, 111 Nev. 420, 423, 892 P.2d 575, 577 (1995).
17 Nonetheless, this court reviews questions of law *de novo*. *Elizondo v. Hood Mach., Inc.*, 129
18 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013). Finally, absent allegations of irregularity in the
19 prior proceedings, this court’s review is confined to the record below. NRS 233B.135(1).

20 DISCUSSION

21 Employers in the State of Nevada must provide compensation to employees who are
22 injured “arising out of and in the course of the employment.” NRS 616B.612(1). The Nevada
23 Supreme Court has defined “arises out of” the course of employment as where there is a causal
24 connection between the injury and the work being done for the employer. *Rio Suite Hotel &*
25 *Casino v. Gorsky*, 113 Nev. 600, 604, 939 P.2d 1043 (1997). If an employee who is outside the
26 scope of normal employment they must be performing an errand or confer a distinct benefit for
27 the employer for it to fall within the course of that employee’s work. *Evans v. Southwest Gas*
28

1 *Corp*, 108 Nev. 1002, 1005-1006, 842 P.2d 719 (1992).¹ Buma attempts to justify that the act of
2 riding an ATV was in the course of his employment with two principal arguments: the Traveling
3 Employee Doctrine, and the Personal Comfort Doctrine. With regard to the Traveling Employee
4 Doctrine, Buma argues that since his work entailed traveling for business, any injuries sustained
5 during the trip would be held compensable. The court finds these arguments to be unpersuasive
6 and factually distinguishable from the present case and declines to apply the doctrine. Burma
7 notes that the Traveling Employee Doctrine has not been adopted in Nevada and this court
8 declines to expand on the current jurisprudence for it would not change the outcome of this
9 court's decision.

10 Under Buma's second argument, the Personal Comfort Doctrine, he reasons that a worker
11 who engages in acts of personal comfort does not leave the course of employment unless there is
12 a substantial personal deviation from the job. Buma cites to *Fitzgeralds Casino/Hotel v. Mogg*,
13 127 Nev. 1134, 373 P.3d 913 (2011) to argue that the Personal Comfort Doctrine should apply in
14 this case. However, not only is it an unpublished case, but it is also distinct from the present
15 situation's facts. The injured worker in *Fitzgerald* was injured when they put their feet up on
16 their desk during their shift. *Id.* Here Buma was injured when he was not on the job, but when he
17 was riding an ATV. The other cases cited to support Buma's argument are again non-binding law
18 and do not persuade the court to extend the Personal Comfort Doctrine beyond what is presently
19 is.

20 The administrative appeals officer thoroughly documented the events leading up to
21 Burma's ATV accident. There is ample evidence that Burma was not "on the job" while he was
22 involved in his accident. He was staying with a friend and coworker and did not have any
23 business activities at the ranch, but in Houston the next day with the Oil and Gas convention.
24 Additionally, the accident did not occur on the Employer's property, riding an ATV was not part
25 of Burma's job duties, and the ATV was not owned by the Employer. The core arguments of
26

27
28 ¹ *Evans v. Southwest Gas Corp*, 108 Nev. 1002, 1005-1006, 842 P.2d 719 (1992) was overruled on other grounds by
GES, Inc. v. Corbitt 117 Nev. 265, 21 P.3d 11 (2001)

1 Buma's petition do not persuade the court that the Appeals Officer's decision was arbitrary or
2 capricious. As a result, as tragic as the loss was, the Appeals Officer's decision was reasonable,
3 lawful, and not an abuse of its discretion.

4 **CONCLUSION**

5 Accordingly, because "substantial evidence" exists to support the Appeals Officer's
6 decision, *see Kay*, 122 Nev. at 1105, 146 P.3d at 805 (citations omitted), Buma's *Petition for*
7 *Judicial Review* is **DENIED**.

8 Additionally, because the court denies the petition, it declines to decide on the
9 Respondents' *Motion to Dismiss* for failing to name a party, which is rendered moot.

10 **IT IS SO ORDERED**

11 **DATED** this 24th day of July, 2017.

12
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14 BARRY L. BRESLOW
15 District Judge
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial
3 District Court of the State of Nevada, County of Washoe; that on this 24th day of July, 2017, I
4 electronically filed the following with the Clerk of the Court by using the ECF system which will
5 send a notice of electronic filing to the following:

6 John P. Lavery, Esq.

7 Charles C. Diaz, Esq.

8 I deposited in the Washoe County mailing system for postage and mailing with the
9 United States Postal Service in Reno, Nevada, a true copy of the attached document addressed
10 to:

11
12 
13 CHRISTINE KUHL
14 Judicial Assistant
15
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17
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1 **NOE**
JOHN P. LAVERY, ESQ.
2 Nevada Bar No. 004665
LEE E. DAVIS, ESQ.
3 Nevada Bar No. 003932
LEWIS BRISBOIS BISGAARD & SMITH LLP
4 2300 W. Sahara Avenue, Ste. 500, Box 300
Las Vegas, Nevada 89102
5 Telephone: 702/583-6002
Facsimile: 702/366-9563
6 Attorney for Respondents,
Providence Corp. Development dba Miller
7 *Heiman, Inc., and Gallagher Bassett Services*

8 **IN THE SECOND JUDICIAL DISTRICT COURT**
9 **WASHOE COUNTY, NEVADA**

10 JASON BUMA,

11 Petitioner,

12 vs.

13 PROVIDENCE CORP. DEVELOPMENT dba
14 MILLER HEIMAN, INC.; GALLAGHER
BASSETT SERVICES, INC.; and THE
DEPARTMENT OF ADMINISTRATION
APPEALS DIVISION;

15 Respondents.

CASE NO: CV17-00423

DEPT. NO.: 8

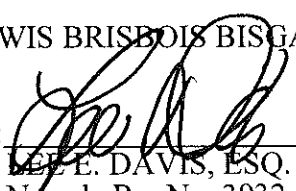
16 **NOTICE OF ENTRY OF ORDER**

17 YOU, AND EACH OF YOU, please take notice that a **ORDER DENYING**
18 **PETITION FOR JUDICIAL REVIEW** denying Petitioner's Petition for Judicial Review was
19 entered in the above-captioned matter on the 24TH day of July, 2017, a copy of which is attached
20 hereto and made a part hereof.

21 DATED this 25th day of July, 2017.

22 Respectfully submitted,

23 LEWIS BRISBOIS BISGAARD & SMITH LLP

24 By: 
25 LEE E. DAVIS, ESQ.
26 Nevada Bar No. 3932
27 2300 W. Sahara Avenue, Ste. 300, Box 28
28 Las Vegas, NV 89102
Attorneys for Respondents

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of
3 the attached **NOTICE OF ENTRY OF ORDER** was made this date by depositing a true copy of
4 the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

5 Department of Administration
6 1050 E. William Street, Ste. 450
7 Carson City, NV 89701

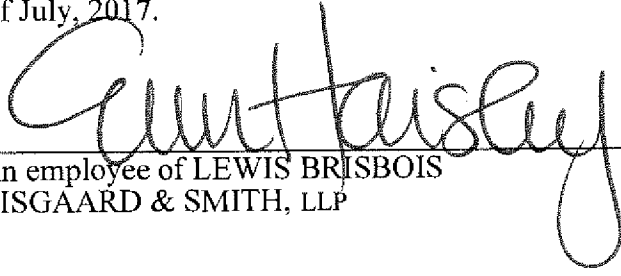
8 Charles Diaz, Esq.
9 Diaz & Galt
10 443 Marsh Avenue
11 Reno, NV 89509

12 Providence Corp. Development
13 dba Miller Heiman, Inc.
14 10509 Professional Circle
15 Reno, NV 89521

16 Gallagher Bassett
17 PO Box 400970
18 Las Vegas, NV 89140

19 CNA ClaimPlus
20 Attn: Valerie Carson
21 PO Box 8317
22 Chicago, IL 60680

23 DATED this 25th day of July, 2017.

24 
25 An employee of LEWIS BRISBOIS
26 BISGAARD & SMITH, LLP
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of Entry of Order in
Case No. CV17-00423:

☒ Does not contain the Social Security number of any person.

- OR -

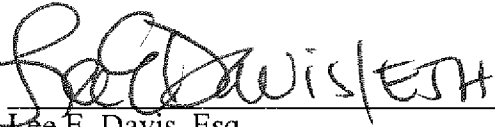
☐ Contains the Social Security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law.)

- or -

B. For the administration of a public program or for an application
for a federal or state grant.



Lee E. Davis, Esq.
Attorneys for Respondents

7/25/17

Date

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LIST OF EXHIBITS

Exhibit "1": Order Denying Petition for Judicial
Review filed 07/24/17 1-6

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

JASON BUMA,

Case No.: CV17-00423

Petitioner,

Dept. No.: 8

vs.

PROVIDENCE CORP. DEVELOPMENT
dba MILLER HEIMAN, INC.;
GALLAGHER BASSETT SERVICES,
INC.; and THE DEPARTMENT OF
ADMINISTRATION APPEALS
DIVISION,

Respondent.

ORDER DENYING PETITION FOR JUDICIAL REVIEW

Before the court is Petitioner Jason Buma's ("Buma") *Petition for Judicial Review* filed on February 28, 2017. The petition is fully briefed. In addition, Providence Corp., dba Miller Heiman Inc.; Gallagher Basset Services, and the Department of Administration Appeals Division ("Respondents") filed a *Motion to Dismiss* for failure to name all parties on June 22, 2017. Burma asks that this court review the decision of the Nevada Department of Administration with regard to Petitioner's workers' compensation claim. After considering the parties' briefs, reviewing the underlying file, and good cause appearing, the court will deny the petition.

BACKGROUND

Jason Buma suffered a tragic accident that resulted in his death on March 29, 2015. Burma was employed as Vice President of Sales by Miller Heiman, Inc. He suffered an accident while riding an ATV at a coworker's ranch house, owned by Michael O'Callaghan, that he was

1 staying at prior to a business meeting in Huston, Texas. Miller Heiman, Inc. is a business that
2 provides sales training and develops strategies for other companies to increase their sales. Buma
3 planned on meeting with his client at an Oil and Gas convention the following day. He made his
4 own travel arrangements and chose to stay with O'Callaghan. He would be reimbursed by his
5 employer or the employer had provided him with a credit card to use for travel expenses.

6 Buma arrived at O'Callaghan's property around 3:30 in the afternoon after arriving in the
7 Houston area. The two of them had worked together for approximately three years prior to the
8 accident. Before the two went to dinner to prepare for the meeting, they decided to ride around
9 the property on ATVs. These vehicles were not owned by Miller Heiman, Inc., and Michael
10 O'Callaghan was not an employee of Miller Heiman, Inc., but an independent contractor who
11 works with Miller Heiman, Inc. Approximately 20 minutes into the ride down an unpaved road,
12 O'Callaghan lost sight of Buma when they went around a curve in a road. When O'Callaghan
13 found Buma, he was lying injured in the road with a damaged ATV nearby. Mr. Buma died at
14 the scene of the accident.

15 On May 11, 2015, Buma's surviving wife and daughter's attorney sent a letter to the
16 Third-Party Administrator seeking death benefits. The letter included a copy of the death
17 certificate, Ms. Buma's Marriage Certificate, as well as police and emergency service reports of
18 the accident. The adjuster for the Employer responded on July 8, 2015 noting that: (1) there were
19 no company events scheduled for the day of the accident, (2) Buma was not required to ride the
20 ATV for work purposes, and (3) that Buma was not meeting with clients until the following day.
21 As a result, the claim was denied by the adjuster on July 25, 2015.

22 Ms. Buma filed an appeal of the claim denial on August 13, 2015. On October 23, 2015,
23 the Hearing Officer affirmed the denial of the claim. Ms. Buma further appealed that denial,
24 which was heard by Appeals Officer Lorna L. Ward. Officer Ward denied the appeal with a
25 comprehensive decision on February 7, 2017.

26 After the petition was filed by Buma in this court, Respondents filed a *Motion to Dismiss*
27 for Buma failing to name all the parties. Buma, in the initial petition with this court, did not
28 name CNA CLAIMPLUS who was a party in the case before the Appeals Officer. This is

1 disputed by Buma who argues that the party was not an official party to the administrative
2 proceedings. Nonetheless, the court will consider the *Petition for Judicial Review* on the merits.

3 STANDARD OF REVIEW

4 NRS 233B.135(3) provides that the district court may overturn the decision of an
5 administrative agency only if the petitioner demonstrates the decision is:

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

12 Courts review local government decisions under the “substantial evidence” standard. *Kay v.*
13 *Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006) (citations omitted). Under this standard,
14 a court will defer to the findings of the administrative agency so long as they are supported by
15 substantial evidence even if this court may have weighed the evidence differently. NRS
16 233B.135(2); *Knapp v. State, Dept. of Prisons*, 111 Nev. 420, 423, 892 P.2d 575, 577 (1995).
17 Nonetheless, this court reviews questions of law *de novo*. *Elizondo v. Hood Mach., Inc.*, 129
18 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013). Finally, absent allegations of irregularity in the
19 prior proceedings, this court’s review is confined to the record below. NRS 233B.135(1).

20 DISCUSSION

21 Employers in the State of Nevada must provide compensation to employees who are
22 injured “arising out of and in the course of the employment.” NRS 616B.612(1). The Nevada
23 Supreme Court has defined “arises out of” the course of employment as where there is a causal
24 connection between the injury and the work being done for the employer. *Rio Suite Hotel &*
25 *Casino v. Gorsky*, 113 Nev. 600, 604, 939 P.2d 1043 (1997). If an employee who is outside the
26 scope of normal employment they must be performing an errand or confer a distinct benefit for
27 the employer for it to fall within the course of that employee’s work. *Evans v. Southwest Gas*
28

1 *Corp.*, 108 Nev. 1002, 1005-1006, 842 P.2d 719 (1992).¹ Burma attempts to justify that the act of
2 riding an ATV was in the course of his employment with two principal arguments: the Traveling
3 Employee Doctrine, and the Personal Comfort Doctrine. With regard to the Traveling Employee
4 Doctrine, Burma argues that since his work entailed traveling for business, any injuries sustained
5 during the trip would be held compensable. The court finds these arguments to be unpersuasive
6 and factually distinguishable from the present case and declines to apply the doctrine. Burma
7 notes that the Traveling Employee Doctrine has not been adopted in Nevada and this court
8 declines to expand on the current jurisprudence for it would not change the outcome of this
9 court's decision.

10 Under Burma's second argument, the Personal Comfort Doctrine, he reasons that a worker
11 who engages in acts of personal comfort does not leave the course of employment unless there is
12 a substantial personal deviation from the job. Burma cites to *Fitzgeralds Casino/Hotel v. Mogg*,
13 127 Nev. 1134, 373 P.3d 913 (2011) to argue that the Personal Comfort Doctrine should apply in
14 this case. However, not only is it an unpublished case, but it is also distinct from the present
15 situation's facts. The injured worker in *Fitzgerald* was injured when they put their feet up on
16 their desk during their shift. *Id.* Here Burma was injured when he was not on the job, but when he
17 was riding an ATV. The other cases cited to support Burma's argument are again non-binding law
18 and do not persuade the court to extend the Personal Comfort Doctrine beyond what is presently
19 is.

20 The administrative appeals officer thoroughly documented the events leading up to
21 Burma's ATV accident. There is ample evidence that Burma was not "on the job" while he was
22 involved in his accident. He was staying with a friend and coworker and did not have any
23 business activities at the ranch, but in Houston the next day with the Oil and Gas convention.
24 Additionally, the accident did not occur on the Employer's property, riding an ATV was not part
25 of Burma's job duties, and the ATV was not owned by the Employer. The core arguments of
26

27
28 ¹ *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 1005-1006, 842 P.2d 719 (1992) was overruled on other grounds by
GES, Inc. v. Corbitt 117 Nev. 265, 21 P.3d 11 (2001)

1 Buma's petition do not persuade the court that the Appeals Officer's decision was arbitrary or
2 capricious. As a result, as tragic as the loss was, the Appeals Officer's decision was reasonable,
3 lawful, and not an abuse of its discretion.

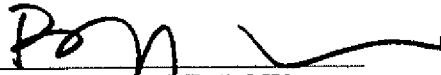
4 **CONCLUSION**

5 Accordingly, because "substantial evidence" exists to support the Appeals Officer's
6 decision, *see Kay*, 122 Nev. at 1105, 146 P.3d at 805 (citations omitted), Buma's *Petition for*
7 *Judicial Review* is **DENIED**.

8 Additionally, because the court denies the petition, it declines to decide on the
9 Respondents' *Motion to Dismiss* for failing to name a party, which is rendered moot.

10 **IT IS SO ORDERED**

11 **DATED** this 24th day of July, 2017.

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14 **BARRY L. BRESLOW**
15 District Judge
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial
3 District Court of the State of Nevada, County of Washoe; that on this 24th day of July, 2017, I
4 electronically filed the following with the Clerk of the Court by using the ECF system which will
5 send a notice of electronic filing to the following:

6 John P. Lavery, Esq.

7 Charles C. Diaz, Esq.

8 I deposited in the Washoe County mailing system for postage and mailing with the
9 United States Postal Service in Reno, Nevada, a true copy of the attached document addressed
10 to:

11
12 
13 CHRISTINE KUHL
14 Judicial Assistant
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1 **Code 1350**

2
3
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **JASON BUMA,**

Case No. CV17-00423

7
8 **Petitioner,**

Dept. No. 8

9 **vs.**

10 **PROVIDENCE CORP. DEVELOPMENT dba MILLER**
11 **HEIMAN, INC.; GALLAGHER BASSETT SERVICES,**
12 **INC.; and THE DEPARTMENT OF ADMINISTRATION**
13 **APPEALS DIVISION,**

14 **Respondent.**

15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
17 County of Washoe; that on the 3rd day of August, 2017, I electronically filed the Notice of Appeal in
18 the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.

Dated this 3rd day of August, 2017

21 Jacqueline Bryant
22 Clerk of the Court

23 By /s/ Yvonne Vilorio
24 Yvonne Vilorio
25 Deputy Clerk
26
27
28



DIAZ & GALT, LLC
ATTORNEYS AT LAW
443 MARSH AVENUE
RENO, NV 89509-1522

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Nevada Supreme Court

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Nevada Supreme Court

VOID AFTER 90 DAYS

MEMO

Jason Buma/Filing Fee/CV17-00423

Charles Diaz
AUTHORIZED SIGNATURE

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