

ATTACHMENT 1

ATTACHMENT 1

1 CODE: 3550
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7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 *****

11 CITY OF RENO,

12 Petitioner,

Case No:

13 vs.

Department No:

14 JODY YTURBIDE, and the
15 NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER,

16 Respondents.
17 _____/

18 **PETITION FOR JUDICIAL REVIEW**

19 The Petitioner, the CITY OF RENO, by and through its attorneys, Timothy E.
20 Rowe, Esq. and Lisa M. Wiltshire Alstead of McDonald Carano Wilson LLP, in
21 accordance with NRS 233B.130, hereby petitions this Court for judicial review of the
22 Decision rendered and filed by the Department of Administration Appeals Officer on
23 December 16, 2016 on Claim No. 14853E248257, Appeal No. 1700698-LLW. A copy of
24 the Decision is attached hereto as **Exhibit 1**.

25 The grounds upon which this review is sought are:

26 1. The Decision rendered by the Appeals Officer prejudices substantial rights of
27 the Petitioner because it is:

28 a. affected by error of law;

b. clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and

c. arbitrary and capricious and based upon an abuse of discretion by the Appeals Officer.

WHEREFORE, Petitioner prays as follows:

1. The court grants judicial review of the Decision filed on December 16, 2016 by the Department of Administration Appeals Officer;

2. The court vacate and set aside the Decision issued by the Appeals Officer; and

3. For such other and further relief as the court deems just and proper.

Dated this 13th day of January, 2017.

McDONALD CARANO WILSON LLP

By: Lisa M. Wiltshire Alstead
TIMOTHY E. ROWE, ESQ.
LISA M. WILTSHIRE ALSTEAD, ESQ.
P. O. Box 2670
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Attorneys for the Petitioner
CITY OF RENO

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **PETITION FOR JUDICIAL REVIEW** filed in the Second Judicial District Court of the State of Nevada does not contain the social security number of any person.

Lisa M. Wiltshire Alstead
Timothy E. Rowe, Esq.
Lisa M. Wiltshire Alstead, Esq.
Attorney for Petitioner
CITY OF RENO

1/13/17
Date

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDonald Carano Wilson LLP, and that on the on the 13th day of January, 2017, I served the preceding **PETITION FOR JUDICIAL REVIEW** by placing a true and correct copy thereof in a sealed envelope and requesting a runner from McDonald Carano Wilson LLP to hand-deliver said document to the following parties at the addresses listed below:

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

Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

A true and correct copy of the within document was also served via U.S. Mail at Reno, Nevada, on the parties/address referenced below:

Jason Guinasso, Esq.
Reese Kintz Guinasso, LLC
190 West Huffaker, Suite 402
Reno, NV 89511
Counsel for Jody Yturbide

City of Reno
Attn: Kelly Leerman
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Kathleen L. Morris

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Exhibit #	Description	# of Pages
Exhibit 1	Decision of the Appeals Officer	8

EXHIBIT 1

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EXHIBIT 1

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McDonald Carano Wilson LLP

NEVADA DEPARTMENT OF ADMINISTRATION

FILED

DEC 16 2016

DEPT. OF ADMINISTRATION
APPEALS OFFICER

BEFORE THE APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

of

JODY YTURBIDE
9732 PYRAMID WAY, #368
SPARKS, 89441

Claim No.: 14853E248257

Hearing No.: 1700074-JL

Appeal No.: 1700698-LLW

Employer: CITY OF RENO
PO BOX 1900
RENO, NV 89505

TPA: CCMSI
PO BOX 20068
RENO, NV 89515-0068

DECISION AND ORDER OF THE APPEALS OFFICER

This decision addresses Appeal No. 1700698-LLW brought by Cannon Cochran Management Services (hereinafter "CCMSI") and City of Reno, appealing an August 11, 2016, Hearing Officer Decision and Order under Hearing No. 1700074-JL reversing and remanding CCMSI's July 1, 2016 determination offering 18% of her 33% permanent partial disability rating in lump sum and the remaining 15% in monthly installments. In this regard, the Hearing Officer concluded:

"On July 1, 2016, the Insurer offered the Claimant a 33% PPD award. The claimant was further advised that he was entitled to a one time lump sum payment of 18%, and the remaining 15% in monthly installments, the instant appeal. Having reviewed the submitted evidence and in consideration of the representations made at today's hearing, the Hearing Officer finds the Insurer erred in its 18% one time lump sum offering. As such, the Hearing Officer finds the Claimant is entitled to a one time lump sum offering of 25%, with the remaining 8% to be paid in monthly installments, pursuant to NAC 616C.498. Therefore, the Insurer shall recalculate the 33% PPD award based on a lump sum offering of 25%, and upon completion, render a new determination with appeal rights accordingly."

The Claimant, Mrs. Jody Yturbide, was represented by Jason D. Guinasso, Esq., and the law offices of Reese, Kintz, Guinasso, LLC.



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1 The Employer, City of Reno, and Third-Party Administrator, CCMSI, were
2 represented by Lisa Wiltshire Alstead, Esq., and the law offices of McDonald Carano
3 Wilson.

4 The administrative hearing before the Appeals Officer in this contested workers'
5 compensation matter was conducted November 21, 2016, pursuant to Nevada's
6 Administrative Procedure Act under Chapter 233B of the Nevada Revised Statutes ("NRS");
7 the Nevada Industrial Insurance Act ("NIIA") NRS Chapters 616CA through 616D, and
8 related regulations.

9 ISSUES PRESENTED

10 1. Whether CCMSI's July 1, 2016 determination offering 18% of her 33%
11 permanent partial disability rating in lump sum and the remaining 15% in monthly
12 installments is supported by the evidence and Nevada law.

13 2. Whether CCMSI should have offered Mrs. Yturbide 25% of her 33%
14 permanent partial disability rating in lump sum and the remaining 8% in installments in
15 accordance with NRS 616C.495(d) and NAC 616C.498.

16 CONCLUSION

17 The August 11, 2016, Decision and Order of the Hearing Officer under Hearing No.
18 1700074 is affirmed. The Appeals Officer finds that CCMSI's July 1, 2016, determination
19 to limit Mrs. Yturbide's right to receive a lump sum of her 33% permanent partial disability
20 ("PPD") award to 18% is not supported by the evidence or Nevada law. Mrs. Yturbide
21 should have been offered 25% lump sum of her 33% PPD under NRS 616C.495(d) and
22 NAC 616C.498.

23 Having reviewed the documents submitted as evidence as Exhibits 1 through 2, and
24 considered the arguments of counsel for the parties, the Appeals Officer has carefully
25



1 considered and applied the requirements of the governing law and hereby makes the
2 following findings and conclusions;

3 **FINDINGS OF FACT**

4 1. On May 16, 2016, CCMSI issued a determination informing Mrs. Yturbide
5 that she had been scheduled for a Permanent Partial Disability evaluation with Katharina C.
6 Welborn, D.C. **Exhibit 2 at Yturbide0001-3.**

7 2. Chiropractor Welborn completed her evaluation and then issued her findings
8 on June 19, 2016, wherein she concluded that Mrs. Yturbide had sustained a 33% whole
9 person impairment for injuries to her cervical spine. **Exhibit 2 at Yturbide0005-11.**

10 3. On July 1, 2016, CCMSI issued a determination offering 18% of Mrs.
11 Yturbide's 33% permanent partial disability rating in lump sum and the remaining 15% in
12 monthly installments. In this regard, Mrs. Yturbide was informed that she was only entitled
13 to 18% in a lump sum due to the fact that she had received prior impairment ratings of 2%
14 and 5%. **Exhibit 2 at Yturbide0012-26.**

15 4. On or about September 17, 2009, Mrs. Yturbide had received a 5% PPD
16 rating for carpal tunnel syndrome in her right wrist. **Exhibit 1 at 57.**

17 5. Thereafter, on or about April 5, 2013, Mrs. Yturbide had received a 2% PPD
18 rating for injuries to her left elbow. **Exhibit 1 at 67.**

19 6. Mrs. Yturbide contended that she should have been offered 25% of her 33%
20 permanent partial disability rating in lump sum and the remaining 8% in installments in
21 accordance with NRS 616C.495(d) and NAC 616C.498.

22 7. The Hearing Officer agreed with Mrs. Yturbide and rendered a Decision and
23 Order under Hearing No. 1700074-JL reversing and remanding CCMSI's July 1, 2016
24 determination, which has given rise to the present appeal.

25 ///



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1 CONCLUSIONS OF LAW

2 Under the Nevada Industrial Insurance Act ("NIIA"), the burden of proving a case
3 beyond speculation and conjecture is on the claimant. See NRS 616C.150; NRS 616A.010.

4 In this regard, Mrs. Yturbide must establish the work-connection of her injuries, the causal
5 relationship between a work-connected injury and her disabilities, the extent of her
6 disabilities, the work-related necessity for medical treatment and care, and all other facets of
7 her claim by a preponderance of the evidence; he cannot prevail if the evidence is merely
8 evenly balanced. See, A. Larson and L. Larson, Larson's Workers' Compensation Law Vol.
9 8 A., Section 130.06[3][a] (2003); see also, NRS 616C.150; NRS 616A.010.

10 NRS 616C.495(1)(d) provides:

11 Any claimant injured on or after July 1, 1995, **may elect to receive his or her**
12 **compensation in a lump sum in accordance with regulations adopted by the**
13 **Administrator and approved by the Governor.** The Administrator shall adopt
14 regulations for determining the eligibility of such a claimant to receive all or any
15 portion of his or her compensation in a lump sum. Such regulations may include the
16 manner in which an award for a permanent partial disability may be paid to such a
17 claimant in installments. Notwithstanding the provisions of NRS 233B.070, any
18 regulation adopted pursuant to this paragraph does not become effective unless it is
19 first approved by the Governor.

16 **(Emphasis supplied).**

17 NAC 616C.498 is the regulation adopted by the Administrator and approved by the
18 Governor. This regulation provides:

19 An employee injured on or after July 1, 1995, who incurs a permanent partial
20 disability that:

- 21 1. Does not exceed 25 percent may elect to receive compensation in a lump
22 sum.
- 23 2. Exceeds 25 percent may elect to receive compensation in a lump sum
24 equal to the present value of an award for a disability of 25 percent. If the
25 injured employee elects to receive compensation in a lump sum pursuant to
this subsection, the insurer shall pay in installments to the injured employee
that portion of the injured employee's disability in excess of 25 percent.



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1 (emphasis supplied).¹

2 The Appeals Officer has considered and analyzed the foregoing requirements of the
3 governing law, evaluated the evidence and argument proffered by the parties at the hearing,
4 and has concluded as a matter of law:

5 1. CCMSI's July 1, 2016, determination to limit and reduce Mrs. Yturbide's
6 right to receive a lump sum of her 33% permanent partial disability ("PPD") award to 18%
7 is not supported by the evidence or Nevada law.

8 2. Mrs. Yturbide should have been offered 25% lump sum of her 33% PPD
9 under NRS 616C.495(d) and NAC 616C.498.

10 3. NAC 616C.498 explicitly allows an injured worker who receives a PPD
11 rating in up to and in excess of 25% to elect to receive compensation in a lump sum equal to
12 the present value of an award for a disability of 25% and installments payments for that
13 portion of the injured employee's disability in excess of 25%.

14 4. A injured worker's right to receive up to 25% of their PPD rating in lump
15 sum applies to each and every permanent partial disability an injured worker incurs as
16 clearly specified by the plain language of the regulation which attaches the injured workers
17 right to "a" permanent partial disability that meets the criteria of section (1) and (2) of the
18 regulation.

19 5. NAC 616C.498 and NRS 616C.495(1)(d) do not in any way limit or
20 otherwise require a reduction of the lump sum award an injured worker is entitled to receive
21 where an injured worker has multiple claims with injuries to separate body parts.

22 6. Contrary to CCMSI and the City of Reno's assertions, the Nevada Supreme
23 Court has never held nor inferred that an injured worker is limited to a 25% lump sum PPD

24
25 ¹ Contrary to Claimant's assertions, NAC 616C.490 is not applicable to this appeal as there has been no
apportionment of the PPD award by the Insurer in the July 1, 2016 determination letter.



1 in situations involving more than one claim and distinct injuries resulting in disabilities to
2 separate body parts. In Eads v. State Indus. Ins. Sys., 109 Nev. 733, 736, 857 P.2d 13, 15
3 (1993), Eads' PPD award increased from nineteen percent to thirty-five percent "for the
4 same disability;" therefore, the Court held that the lump sum payment available to Eads may
5 not exceed the twenty-five percent limit specified in the statute at that time. In this case, the
6 Court concluded that where "an injured worker's case is reopened for further treatment and
7 evaluation of the original disability . . ." the statute, ". . . applies to the combined disability
8 allowance and limits any lump sum payments to a total of twenty-five percent."

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1 DECISION

2 In accordance with the foregoing findings of fact and conclusions of law, the August
3 11, 2016, Decision and Order of the Hearing Officer under Hearing No. 1700074-JL is
4 AFFIRMED. The Appeals Officer finds that CCMSI's July 1, 2016, determination to limit
5 Mrs. Yturbide's right to receive a lump sum of her 33% permanent partial disability ("PPD")
6 award to 18% is not supported by the evidence or Nevada law and is hereby REVERSED
7 and REMANDED. Mrs. Yturbide shall be offered 25% of her 33% permanent partial
8 disability rating in lump sum and the remaining 8% in installments in accordance with NRS
9 616C.495(d) and NAC 616C.498.

10 IT IS SO ORDERED.

11 DATED this 16th day of December, 2016

12 APPEALS OFFICER

13
14 

15 LORNA L. WARD, ESQ.

16 **NOTICE:** Pursuant to NRS 233B.130, if any party desires to appeal this final decision
17 of the Appeals Officer, petition for judicial review must be filed with the
18 District Court within thirty (30) days after service of this final decision.

19 Submitted By: _____

20 Jason D. Guinasso, Esq.
21 Nevada Bar No. 8478
22 Reese Kintz Guinasso, LLC
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ATTACHMENT 2

ATTACHMENT 2

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

CITY OF RENO, Case No.: CV17-00065
Petitioner, Dept. No.: 7
vs.
JODY YTURBIDE,
Respondent.

ORDER

Currently before the Court is Petitioner CITY OF RENO's (hereinafter "Petitioner") *Petition for Judicial Review*, filed on January 13, 2017. Petitioner seeks review of the Decision rendered by the Department of Administration Appeals Officer on December 16, 2016. Petitioner's *Opening Brief* was filed on March 27, 2017. On April 25, 2017, Respondent JODY YTURBIDE (hereinafter "Respondent") filed her *Answering Brief*. On May 25, 2017, Petitioner filed their *Reply Brief*, and requested oral argument on May 26, 2017. Oral argument was heard on the matter on July 21, 2017.

Factual Background

Respondent was employed by Petitioner as a Public Safety Dispatcher in the Reno Emergency Communications Division. On May 23, 2014, Petitioner filed a claim for injuries to her right shoulder, forearm, elbow, wrist, and fingers related to severe pain and numbness and loss of sensation in two to three fingers. The date of the injury

1 was May 22, 2014. The cause of the injury was attributed to non-stop typing and
2 answering of phones. Respondent sought treatment for her injuries and thereafter,
3 she was rated for her conditions. On June 19, 2016, Respondent's Permanent Partial
4 Disability (PPD) evaluation was performed by Dr. Katharine Welborn. Dr. Welborn
5 recommended claim closure with a 33% whole person impairment related to the body
6 part of the cervical spine. Respondent had previously received a 5% PPD rating in
7 September 2009 for carpal tunnel syndrome and a 2% PPD in April 2013 for injuries
8 to her elbow.

9 On July 1, 2016, the insurer issued a determination offering 18% of the
10 Respondent's 33% PPD rating in lump sum and the remaining 15% in monthly
11 installments. This was based on Respondent having received prior PPD ratings of 2%
12 and 5%. On July 8, 2016, Respondent sought review of the insurer's July 1, 2016
13 determination letter. A hearing was held on August 3, 2016, before the Hearing
14 Officer. On August 11, 2016, the Hearing Officer reversed and remanded the insurer's
15 July 1, 2016 determination, finding that the Respondent is entitled to a one time
16 lump sum offering of 25% with the remaining 8% to be paid in monthly installments.
17 The Appeals Officer affirmed the Hearing Officer's decision on December 16, 2016
18 (hereinafter "Appeals Officer Decision").

19 **Issues Presented**

20 1. Does the Appeals Officer Decision contain errors of law by: (a) failing to
21 subtract Claimant's prior PPD awards from the 25% cap on the amount of a PPD
22 award that can be paid in lump sum form for the instant claim; and (b) by limiting
23 the 25% cap on lump sum payments to the same claim or body part?

24 2. Is the Appeals Officer Decision concluding that the Respondent is entitled
25 to have 25% of the 33% PPD award paid in a lump sum amount supported by the
26 substantial evidence where the record contains evidence that Respondent has
27 received two prior PPD awards totaling 7%?
28

1 **Standard of Review**

2 In reviewing an administrative agency decision, the court is to review the
3 evidence presented to the agency in order to determine whether the agency's decision
4 was arbitrary or capricious and was thus an abuse of the agency's discretion.¹ A
5 district court may not substitute its judgment in the place of an administrative
6 agency's judgment when reviewing findings of fact and must limit their review to
7 whether or not the findings of fact are supported by substantial evidence.² Pure
8 questions of law are reviewed de novo, however "an agency's conclusions of law that
9 are closely related to the agency's view of the facts are entitled to deference and
10 should not be disturbed if they are supported by substantial evidence."³ Substantial
11 evidence is defined as "that quantity and quality of evidence which a reasonable
12 [person] could accept as adequate to support a conclusion."⁴

13 **Discussion**

14 This matter essentially rests on the determination of whether Respondent's
15 two prior PPD determinations have an effect on the application of the 25% cap on the
16 lump sum payments for a current PPD determination. Petitioner argues that because
17 Respondent has already received a 7% lump sum payment based on the two prior
18 PPDs, that the 7% should be subtracted from the 25% cap. Therefore, Petitioner
19 argues that the Appeals Officer Decision finding that the lump sum payment of 25%
20 was appropriate with the remaining payments to be paid in installments, was an
21 error of law. Further, Petitioner argues that the Appeals Officer Decision was not
22 supported by substantial evidence because it failed to take into consideration the
23 prior PPD lump sum payments when determining payments for the current PPD
24 determination. Thus, Petitioner argues that Respondent should only receive an 18%
25 lump sum payment and the remaining 15% in installments.

26

¹ *Clements v. Airport Auth. of Washoe Cty.*, 111 Nev. 717, 721, 896 P.2d 458, 460 (1995)

27 ² *Id.* at 721.

28 ³ *Id.* at 722 (citing *SIIS v. Swinney*, 103 Nev. 17, 20 (1987))

⁴ *Id.* (quoting *State, Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1 (1986) (alteration original)).

1 Respondent argues that the Appeals Officer Decision was not affected by an
2 error of law and was supported by substantial evidence. Respondent argues that the
3 25% cap is not a cumulative determination, meaning that for each and every PPD
4 determination that exceeds 25%, the person should be entitled to collect 25% in a
5 lump sum payment.

6 I. Application of the Relevant Statutes on the 25% Cap on Lump Sum
7 Payments

8 Under NRS 616C.495(1)(d), an award for a permanent partial disability may
9 be paid in a lump sum under the following conditions:

10 (d) Any claimant injured on or after July 1, 1995, and before January 1,
11 2016, who incurs a disability that:

12 ...
13 (2) Exceeds 25 percent may elect to receive his or her compensation in a
14 lump sum equal to the present value of an award for a disability of 25
15 percent. If the claimant elects to receive compensation pursuant to this
16 sub-subparagraph, the insurer shall pay in installments to the claimant
17 that portion of the claimant's disability in excess of 25 percent.

18 Additionally, under NAC 616C.498:

19 1. An employee injured on or after July 1, 1995, but before January 1,
20 2016, who incurs a permanent partial disability that:

21 ...
22 (b) Exceeds 25 percent may:
23 (1) Elect to receive compensation in a lump sum equal to the
24 present value of an award for a disability of 25 percent. If the injured
25 employee elects to receive compensation in a lump sum pursuant to this
26 subparagraph, the insurer shall pay in installments to the injured
27 employee that portion of the injured employee's disability in excess of 25
28 percent.

As stated by the parties, the Nevada Revised Statutes and Nevada Administration
Code are silent as to the application of the 25% cap on lump sum payments when
there has been multiple PPD determinations stemming from multiple injuries. In
Eads v. State Indus. Ins. Sys., 109 Nev. 733, 857 P.2d 13 (1993), the Nevada Supreme
Court addressed the application of the 25% cap on lump sum payments when there
were multiple PPD determinations. There, the plaintiff suffered a single injury with

1 an initial PPD rating of 19%.⁵ However, subsequent to the first rating, the plaintiff
2 received an additional 16% rating, which brought his total PPD rating to 35%.⁶ The
3 Nevada Supreme Court held that the 25% cap applied to the lump sum payment even
4 when there were multiple PPD determinations due the PPD determinations being
5 made on the same injury.⁷ The present action is distinguishable from *Eads v. State*
6 *Indus. Ins. Sys*, due to Respondent's PPD ratings being the result of multiple injuries.
7 If there is a literal reading of the holding in *Eads*, it would appear the 25% cap on the
8 lump sum payment would only apply to individual injuries, not a combination of
9 multiple injuries.

10 However, Petitioner argues that the Appeals Officer Decision's reliance on
11 *Eads* in determining that the 25% cap only applies to a single injury was an error of
12 law. Specifically, Petitioner asserts that if the Nevada Legislature's intent was to
13 limit the application of the 25% cap on PPD determinations to those involving a single
14 injury, it would have done so by codifying *Eads*.⁸ The Court does not agree. In reading
15 NRS 616C.495 and NAC 616C.498, there is nothing in the text that would result in
16 an application that is inconsistent with the holding in *Eads*. Under both NRS
17 616C.495 and NAC 616C.498, if a claimant received a PPD rating in excess of 25%,
18 the claimant "may elect to receive his or her compensation in a lump sum equal to
19 the present of an award for a disability of 25 percent." There is nothing in the
20 language of the Nevada Revised Statutes or the Nevada Administrative Code that
21 would lead to a different result than the one reached in *Eads*. The *Eads* case
22 reaffirmed the appropriate application of the 25% cap on a PPD determination that
23 exceeds 25% when it is based on a single injury. Therefore, the Court does not find
24 the Appeals Officer Decision was affected by an error of law due to the reliance on
25 *Eads*.

26 ⁵ *Eads v. State Indus. Ins. Sys.*, 109 Nev. 733, 857 P.2d 13, (1993).

27 ⁶ *Id.* at 15.

28 ⁷ *Id.*(emphasis added).

⁸ See, *In re Christensen*, 122 Nev. 1309, 1320, 149 P.3d 40, 47 (2006).

1 ///

2 **II. Workers' Compensation Statutes**

3 Next, Petitioner argues that the failure of the Appeals Officer Decision to
4 consider the workers' compensation statutes as a whole, specifically NRS
5 616C.495(1)(g) and NRS 616C.490(9), resulted in a decision that was affected by an
6 error of law. Under NRS 616C.495(1)(g):

7 If the permanent partial disability rating of a claimant seeking
8 compensation pursuant to this section would, when combined with any
9 previous permanent partial disability rating of the claimant that
10 resulted in an award of benefits to the claimant, result in the claimant
11 having a total permanent partial disability rating in excess of 100
12 percent, the claimant's disability rating upon which compensation is
13 calculated must be reduced by such percentage as required to limit the
14 total permanent partial disability rating of the claimant for all injuries
15 to not more than 100 percent.

16 Petitioner argues that this reaffirms their position that when calculating
17 compensation for a PPD rating, the prior PPD ratings must be factored in.

18 Furthermore, under NRS 616C.490(9):

19 [i]f there is a previous disability, as the loss of one eye, one hand, one
20 foot, or any other previous permanent disability, the percentage of
21 disability for a subsequent injury must be determined by computing the
22 percentage of the entire disability and deducting therefrom the
23 percentage of the previous disability as it existed at the time of the
24 subsequent injury.

25 Again, Petitioner argues that the requirement that the rating physician factor in the
26 prior PPD ratings for the purposes of apportionment, reaffirms their position that the
27 calculation of payments must also consider the prior PPD ratings.

28 After review, the Court does not find Petitioner's arguments persuasive. Again,
there is nothing in the text of the statutes that support their argument that the prior
PPD ratings must be subtracted from the 25% cap on lump sum payment and instead
be paid in installments. Both statutes referenced above apply only to the application
of prior PPD ratings as it relates to a PPD rating of a claimant as a whole. It is an
extraordinary leap to apply the reduction of the prior PPD ratings as it relates to a

1 whole person PPD rating, to a reduction of prior PPD ratings as it relates to right to
2 a lump sum payment. Although the Court agrees that the workers' compensation
3 statutes should be considered as a whole, the Court does not find that either of the
4 statutes proffered by Petitioner support a finding that the Appeals Officer Decision
5 was affected by an error of law for failing to consider those statutes.

6 **III. AMA Guides**

7 Petitioner's next argument is similar to the one addressed above. Petitioner
8 argues that the Appeals Officer Decision was affected by an error of law for failing to
9 consider the *AMA Guides* approach to whole person impairment. Specifically, the
10 requirement that impairment from different regions be combined to determine whole
11 person impairment. After review, the Court does not find that the *AMA Guides*
12 dictate that a prior PPD rating must be subtracted from the 25% cap on the lump
13 sum payment under NRS 616C.495 and NAC 616C.489. Rather, the *AMA Guides*
14 focus on the appropriate method in which to ensure that a claimant's PPD rating does
15 not exceed 100%. This is analogous to the statutes referenced above. In an attempt to
16 prevent a PPD rating exceeding 100%, *AMA Guides* and the statutes referenced
17 above attempt to reduce the current PPD rating by taking into account any prior PPD
18 ratings. For example, if a claimant has two prior PPD ratings of 2% and 5% and
19 subsequently receives a 33% PPD rating, the 7% should theoretically be subtracted
20 from the current 33% PPD rating leaving the claimant with a current PPD rating of
21 26% for the purposes of disability payments. Therefore, leaving the claimant with a
22 25% lump sum payment and 1% of installment payments. Under this logic, it would
23 appear that the *AMA Guides* and applicable Nevada Revised Statutes are designed
24 to address the concern of exceeding a 100% PPD rating, not the reduction of the 25%
25 cap on lump sum payments.

26 Again, the Court does not find that the Appeals Officer Decision was affected
27 by an error of law for failing to consider the *AMA Guides* approach to whole person
28 impairment. The approach to whole person impairment relates solely to the

1 determination of a whole person PPD rating, not a calculation of the payments for
2 the purposes of the 25% cap on lump sum payments under NRS 616C.495(1)(d) and
3 NAC 616C.498.

4 **IV. Appeals Officer Decision Was Not Supported by Substantial Evidence**

5 Lastly, Petitioner argues that the Appeals Officer Decision was not supported
6 by substantial evidence because the decision ignores the prior PPD ratings and fails
7 to subtract those prior ratings from the 25% cap on lump sum payments. It is
8 undisputed that Respondent received two prior PPD ratings. Further, it is
9 undisputed that Respondent received payments pursuant to those ratings via lump
10 sum. However, there is nothing in the Nevada Revised Statutes or the Nevada
11 Administrative Code that requires the reduction of the 25% cap on lump sum
12 payments based on prior PPD ratings. Furthermore, the limited case law on the issue
13 stands for the proposition that the cap on a lump sum payment applies only in the
14 context of a single injury. Thus, the Court finds that the Appeals Officer Decision was
15 supported by substantial evidence because it was not required to subtract the prior
16 PPD ratings from the 25% cap on the current PPD rating.

17 **Conclusion**

18 Having fully reviewing the briefing submitted and considering the arguments
19 of counsel, the Court finds that the Appeals Officer Decision was not affected by an
20 error of law and was supported by substantial evidence. Accordingly, and good cause
21 appearing, the December 16, 2016, *Decision and Order of the Appeals Officer* is
22 **AFFIRMED.**

23 **IT IS SO ORDERED.**

24 **DATED** this 8TH day of August, 2017.

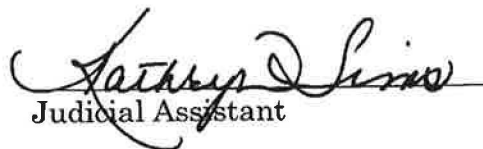
25 
26 PATRICK FLANAGAN
27 District Judge
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 8TH day of August, 2017, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 Jason D. Guinasso, Esq., attorney for Respondent; and

8 Lisa Wiltshire Alstead, Esq., attorney for Petitioner.

9
10 
11 Judicial Assistant
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ATTACHMENT 3

ATTACHMENT 3

1 CODE: 2540
2 Timothy E. Rowe, Esq.,
3 Nevada State Bar No. 1000
4 Lisa Wiltshire Alstead
5 Nevada State Bar No. 10470
6 McDonald Carano LLP
7 P.O. Box 2670
8 Reno, NV 89505-1670
9 775-788-2000
10 Attorneys for City of Reno

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOE**

13 CITY OF RENO,

14 Petitioner,

Case No. CV17-00065

Dept. No. 7

15 vs.

16 JODY YTURBIDE, and the NEVADA
17 DEPARTMENT OF ADMINISTRATION
18 APPEALS OFFICER,

19 Respondents.

20 **NOTICE OF ENTRY OF ORDER**

21 PLEASE TAKE NOTICE that on the 8th day of August, 2017, an Order was entered in the
22 above-captioned case affirming the Appeals Officer's Decision and Order, a copy of which is
23 attached hereto as **Exhibit 1**.

24 **AFFIRMATION**

25 The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding
26 document does not contain the social security number of any person.

27 Dated: September 7, 2017.

28 McDonald CARANO LLP

By: 

Timothy E. Rowe
Lisa Wiltshire Alstead
P.O. Box 2670
Reno, NV 89505-2670
Attorneys for City of Reno

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on September 7, 2017, I caused to be electronically filed the NOTICE OF ENTRY OF ORDER with the Clerk of the Court using the ECF system, which will automatically e-serve the same on the attorney of record set forth below:

Jason Guinasso, Esq.
Reese Kintz Guinasso
190 W. Huffaker Lane, Suite 402
Reno, NV 89511

Additionally, I served the below parties by placing a true copy of the NOTICE OF ENTRY OF ORDER enclosed in a sealed envelope with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:


Jason Guinasso, Esq.
Reese Kintz Guinasso
190 W. Huffaker Lane, Suite 402
Reno, NV 89511

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

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2017 at Reno, Nevada.


An Employee of McDonald Carano LLP

Index of Exhibits

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Clerk of the Court
Transaction # 6288062

EXHIBIT 1

MCDONALD  **CARANO**
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

EXHIBIT 1

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

CITY OF RENO,

Case No.: CV17-00065

Petitioner,

Dept. No.: 7

vs.

JODY YTURBIDE,

Respondent.

ORDER

Currently before the Court is Petitioner CITY OF RENO's (hereinafter "Petitioner") *Petition for Judicial Review*, filed on January 13, 2017. Petitioner seeks review of the Decision rendered by the Department of Administration Appeals Officer on December 16, 2016. Petitioner's *Opening Brief* was filed on March 27, 2017. On April 25, 2017, Respondent JODY YTURBIDE (hereinafter "Respondent") filed her *Answering Brief*. On May 25, 2017, Petitioner filed their *Reply Brief*, and requested oral argument on May 26, 2017. Oral argument was heard on the matter on July 21, 2017.

Factual Background

Respondent was employed by Petitioner as a Public Safety Dispatcher in the Reno Emergency Communications Division. On May 23, 2014, Petitioner filed a claim for injuries to her right shoulder, forearm, elbow, wrist, and fingers related to severe pain and numbness and loss of sensation in two to three fingers. The date of the injury

1 was May 22, 2014. The cause of the injury was attributed to non-stop typing and
2 answering of phones. Respondent sought treatment for her injuries and thereafter,
3 she was rated for her conditions. On June 19, 2016, Respondent's Permanent Partial
4 Disability (PPD) evaluation was performed by Dr. Katharine Welborn. Dr. Welborn
5 recommended claim closure with a 33% whole person impairment related to the body
6 part of the cervical spine. Respondent had previously received a 5% PPD rating in
7 September 2009 for carpal tunnel syndrome and a 2% PPD in April 2013 for injuries
8 to her elbow.

9 On July 1, 2016, the insurer issued a determination offering 18% of the
10 Respondent's 33% PPD rating in lump sum and the remaining 15% in monthly
11 installments. This was based on Respondent having received prior PPD ratings of 2%
12 and 5%. On July 8, 2016, Respondent sought review of the insurer's July 1, 2016
13 determination letter. A hearing was held on August 3, 2016, before the Hearing
14 Officer. On August 11, 2016, the Hearing Officer reversed and remanded the insurer's
15 July 1, 2016 determination, finding that the Respondent is entitled to a one time
16 lump sum offering of 25% with the remaining 8% to be paid in monthly installments.
17 The Appeals Officer affirmed the Hearing Officer's decision on December 16, 2016
18 (hereinafter "Appeals Officer Decision").

19 **Issues Presented**

20 1. Does the Appeals Officer Decision contain errors of law by: (a) failing to
21 subtract Claimant's prior PPD awards from the 25% cap on the amount of a PPD
22 award that can be paid in lump sum form for the instant claim; and (b) by limiting
23 the 25% cap on lump sum payments to the same claim or body part?

24 2. Is the Appeals Officer Decision concluding that the Respondent is entitled
25 to have 25% of the 33% PPD award paid in a lump sum amount supported by the
26 substantial evidence where the record contains evidence that Respondent has
27 received two prior PPD awards totaling 7%?
28

1 **Standard of Review**

2 In reviewing an administrative agency decision, the court is to review the
3 evidence presented to the agency in order to determine whether the agency's decision
4 was arbitrary or capricious and was thus an abuse of the agency's discretion.¹ A
5 district court may not substitute its judgment in the place of an administrative
6 agency's judgment when reviewing findings of fact and must limit their review to
7 whether or not the findings of fact are supported by substantial evidence.² Pure
8 questions of law are reviewed de novo, however "an agency's conclusions of law that
9 are closely related to the agency's view of the facts are entitled to deference and
10 should not be disturbed if they are supported by substantial evidence."³ Substantial
11 evidence is defined as "that quantity and quality of evidence which a reasonable
12 [person] could accept as adequate to support a conclusion."⁴

13 **Discussion**

14 This matter essentially rests on the determination of whether Respondent's
15 two prior PPD determinations have an effect on the application of the 25% cap on the
16 lump sum payments for a current PPD determination. Petitioner argues that because
17 Respondent has already received a 7% lump sum payment based on the two prior
18 PPDs, that the 7% should be subtracted from the 25% cap. Therefore, Petitioner
19 argues that the Appeals Officer Decision finding that the lump sum payment of 25%
20 was appropriate with the remaining payments to be paid in installments, was an
21 error of law. Further, Petitioner argues that the Appeals Officer Decision was not
22 supported by substantial evidence because it failed to take into consideration the
23 prior PPD lump sum payments when determining payments for the current PPD
24 determination. Thus, Petitioner argues that Respondent should only receive an 18%
25 lump sum payment and the remaining 15% in installments.

26

¹ *Clements v. Airport Auth. of Washoe Cty.*, 111 Nev. 717, 721, 896 P.2d 458, 460 (1995)

27 ² *Id.* at 721.

28 ³ *Id.* at 722 (citing *SIIS v. Swinney*, 103 Nev. 17, 20 (1987))

⁴ *Id.* (quoting *State, Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1 (1986) (alteration original)).

1 Respondent argues that the Appeals Officer Decision was not affected by an
2 error of law and was supported by substantial evidence. Respondent argues that the
3 25% cap is not a cumulative determination, meaning that for each and every PPD
4 determination that exceeds 25%, the person should be entitled to collect 25% in a
5 lump sum payment.

6 I. Application of the Relevant Statutes on the 25% Cap on Lump Sum
7 Payments

8 Under NRS 616C.495(1)(d), an award for a permanent partial disability may
9 be paid in a lump sum under the following conditions:

10 (d) Any claimant injured on or after July 1, 1995, and before January 1,
11 2016, who incurs a disability that:

12 ...
13 (2) Exceeds 25 percent may elect to receive his or her compensation in a
14 lump sum equal to the present value of an award for a disability of 25
15 percent. If the claimant elects to receive compensation pursuant to this
16 sub-subparagraph, the insurer shall pay in installments to the claimant
17 that portion of the claimant's disability in excess of 25 percent.

18 Additionally, under NAC 616C.498:

19 1. An employee injured on or after July 1, 1995, but before January 1,
20 2016, who incurs a permanent partial disability that:

21 ...
22 (b) Exceeds 25 percent may:
23 (1) Elect to receive compensation in a lump sum equal to the
24 present value of an award for a disability of 25 percent. If the injured
25 employee elects to receive compensation in a lump sum pursuant to this
26 subparagraph, the insurer shall pay in installments to the injured
27 employee that portion of the injured employee's disability in excess of 25
28 percent.

29 As stated by the parties, the Nevada Revised Statutes and Nevada Administration
30 Code are silent as to the application of the 25% cap on lump sum payments when
31 there has been multiple PPD determinations stemming from multiple injuries. In
32 *Eads v. State Indus. Ins. Sys.*, 109 Nev. 733, 857 P.2d 13 (1993), the Nevada Supreme
33 Court addressed the application of the 25% cap on lump sum payments when there
34 were multiple PPD determinations. There, the plaintiff suffered a single injury with

1 an initial PPD rating of 19%.⁵ However, subsequent to the first rating, the plaintiff
2 received an additional 16% rating, which brought his total PPD rating to 35%.⁶ The
3 Nevada Supreme Court held that the 25% cap applied to the lump sum payment even
4 when there were multiple PPD determinations due the PPD determinations being
5 made on the same injury.⁷ The present action is distinguishable from *Eads v. State*
6 *Indus. Ins. Sys*, due to Respondent's PPD ratings being the result of multiple injuries.
7 If there is a literal reading of the holding in *Eads*, it would appear the 25% cap on the
8 lump sum payment would only apply to individual injuries, not a combination of
9 multiple injuries.

10 However, Petitioner argues that the Appeals Officer Decision's reliance on
11 *Eads* in determining that the 25% cap only applies to a single injury was an error of
12 law. Specifically, Petitioner asserts that if the Nevada Legislature's intent was to
13 limit the application of the 25% cap on PPD determinations to those involving a single
14 injury, it would have done so by codifying *Eads*.⁸ The Court does not agree. In reading
15 NRS 616C.495 and NAC 616C.498, there is nothing in the text that would result in
16 an application that is inconsistent with the holding in *Eads*. Under both NRS
17 616C.495 and NAC 616C.498, if a claimant received a PPD rating in excess of 25%,
18 the claimant "may elect to receive his or her compensation in a lump sum equal to
19 the present of an award for a disability of 25 percent." There is nothing in the
20 language of the Nevada Revised Statutes or the Nevada Administrative Code that
21 would lead to a different result than the one reached in *Eads*. The *Eads* case
22 reaffirmed the appropriate application of the 25% cap on a PPD determination that
23 exceeds 25% when it is based on a single injury. Therefore, the Court does not find
24 the Appeals Officer Decision was affected by an error of law due to the reliance on
25 *Eads*.

26 ⁵ *Eads v. State Indus. Ins. Sys.*, 109 Nev. 733, 857 P.2d 13, (1993).

27 ⁶ *Id.* at 15.

28 ⁷ *Id.*(emphasis added).

⁸ *See, In re Christensen*, 122 Nev. 1309, 1320, 149 P.3d 40, 47 (2006).

1 ///

2 **II. Workers' Compensation Statutes**

3 Next, Petitioner argues that the failure of the Appeals Officer Decision to
4 consider the workers' compensation statutes as a whole, specifically NRS
5 616C.495(1)(g) and NRS 616C.490(9), resulted in a decision that was affected by an
6 error of law. Under NRS 616C.495(1)(g):

7 If the permanent partial disability rating of a claimant seeking
8 compensation pursuant to this section would, when combined with any
9 previous permanent partial disability rating of the claimant that
10 resulted in an award of benefits to the claimant, result in the claimant
11 having a total permanent partial disability rating in excess of 100
12 percent, the claimant's disability rating upon which compensation is
13 calculated must be reduced by such percentage as required to limit the
14 total permanent partial disability rating of the claimant for all injuries
15 to not more than 100 percent.

16 Petitioner argues that this reaffirms their position that when calculating
17 compensation for a PPD rating, the prior PPD ratings must be factored in.

18 Furthermore, under NRS 616C.490(9):

19 [i]f there is a previous disability, as the loss of one eye, one hand, one
20 foot, or any other previous permanent disability, the percentage of
21 disability for a subsequent injury must be determined by computing the
22 percentage of the entire disability and deducting therefrom the
23 percentage of the previous disability as it existed at the time of the
24 subsequent injury.

25 Again, Petitioner argues that the requirement that the rating physician factor in the
26 prior PPD ratings for the purposes of apportionment, reaffirms their position that the
27 calculation of payments must also consider the prior PPD ratings.

28 After review, the Court does not find Petitioner's arguments persuasive. Again,
there is nothing in the text of the statutes that support their argument that the prior
PPD ratings must be subtracted from the 25% cap on lump sum payment and instead
be paid in installments. Both statutes referenced above apply only to the application
of prior PPD ratings as it relates to a PPD rating of a claimant as a whole. It is an
extraordinary leap to apply the reduction of the prior PPD ratings as it relates to a

1 whole person PPD rating, to a reduction of prior PPD ratings as it relates to right to
2 a lump sum payment. Although the Court agrees that the workers' compensation
3 statutes should be considered as a whole, the Court does not find that either of the
4 statutes proffered by Petitioner support a finding that the Appeals Officer Decision
5 was affected by an error of law for failing to consider those statutes.

6 III. AMA Guides

7 Petitioner's next argument is similar to the one addressed above. Petitioner
8 argues that the Appeals Officer Decision was affected by an error of law for failing to
9 consider the *AMA Guides* approach to whole person impairment. Specifically, the
10 requirement that impairment from different regions be combined to determine whole
11 person impairment. After review, the Court does not find that the *AMA Guides*
12 dictate that a prior PPD rating must be subtracted from the 25% cap on the lump
13 sum payment under NRS 616C.495 and NAC 616C.489. Rather, the *AMA Guides*
14 focus on the appropriate method in which to ensure that a claimant's PPD rating does
15 not exceed 100%. This is analogous to the statutes referenced above. In an attempt to
16 prevent a PPD rating exceeding 100%, *AMA Guides* and the statutes referenced
17 above attempt to reduce the current PPD rating by taking into account any prior PPD
18 ratings. For example, if a claimant has two prior PPD ratings of 2% and 5% and
19 subsequently receives a 33% PPD rating, the 7% should theoretically be subtracted
20 from the current 33% PPD rating leaving the claimant with a current PPD rating of
21 26% for the purposes of disability payments. Therefore, leaving the claimant with a
22 25% lump sum payment and 1% of installment payments. Under this logic, it would
23 appear that the *AMA Guides* and applicable Nevada Revised Statutes are designed
24 to address the concern of exceeding a 100% PPD rating, not the reduction of the 25%
25 cap on lump sum payments.

26 Again, the Court does not find that the Appeals Officer Decision was affected
27 by an error of law for failing to consider the *AMA Guides* approach to whole person
28 impairment. The approach to whole person impairment relates solely to the

1 determination of a whole person PPD rating, not a calculation of the payments for
2 the purposes of the 25% cap on lump sum payments under NRS 616C.495(1)(d) and
3 NAC 616C.498.

4 **IV. Appeals Officer Decision Was Not Supported by Substantial Evidence**

5 Lastly, Petitioner argues that the Appeals Officer Decision was not supported
6 by substantial evidence because the decision ignores the prior PPD ratings and fails
7 to subtract those prior ratings from the 25% cap on lump sum payments. It is
8 undisputed that Respondent received two prior PPD ratings. Further, it is
9 undisputed that Respondent received payments pursuant to those ratings via lump
10 sum. However, there is nothing in the Nevada Revised Statutes or the Nevada
11 Administrative Code that requires the reduction of the 25% cap on lump sum
12 payments based on prior PPD ratings. Furthermore, the limited case law on the issue
13 stands for the proposition that the cap on a lump sum payment applies only in the
14 context of a single injury. Thus, the Court finds that the Appeals Officer Decision was
15 supported by substantial evidence because it was not required to subtract the prior
16 PPD ratings from the 25% cap on the current PPD rating.

17 **Conclusion**

18 Having fully reviewing the briefing submitted and considering the arguments
19 of counsel, the Court finds that the Appeals Officer Decision was not affected by an
20 error of law and was supported by substantial evidence. Accordingly, and good cause
21 appearing, the December 16, 2016, *Decision and Order of the Appeals Officer* is
22 **AFFIRMED.**

23 **IT IS SO ORDERED.**

24 **DATED** this 8TH day of August, 2017.

25 
26 PATRICK FLANAGAN
27 District Judge
28

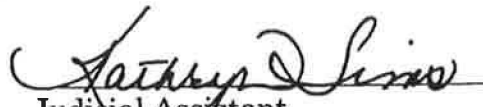
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8th day of August, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jason D. Guinasso, Esq., attorney for Respondent; and

Lisa Wiltshire Alstead, Esq., attorney for Petitioner.


Judicial Assistant

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CITY OF RENO

Appellant,

vs.

JODY YTURBIDE

Respondent.

No. 73971

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Oct 03 2017 02:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 7
County Washoe Judge Honorable Patrick Flanagan
District Ct. Case No. CV17-00065

2. Attorney filing this docketing statement:

Attorney Timothy E. Rowe; Lisa Wiltshire Alstead Telephone 775-788-2000

Firm McDonald Carano, LLP

Address 100 W. Liberty Street, 10th Floor
P.O. Box 2670
Reno, Nevada 89505-2670

Client(s) City of Reno

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jason Guinasso Telephone (775) 853-8746

Firm Reese Kintz Guinasso, LLC

Address 916 Southwood Blvd., Suite 3A
Incline Village, Nevada 89451

Client(s) Jody Yturbide

Attorney N/A (Not a participating party) Telephone (775) 687-8420

Firm _____

Address 1050 E. William Street, Suite 450
Carson City, NV 89701

Client(s) State of Nevada Department of Administration, Appeals Officer

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This appeal arises from a District Court Order denying the City of Reno's Petition for Judicial Review of an Appeals Officer Decision and Order affirming the reversal and remand of the insurer's July 1, 2016 determination. The underlying dispute involves a workers' compensation claim and the distribution of Jody Yturbide's 33% permanent partial disability ("PPD") award. Specifically, the parties dispute whether the calculation of the lump sum payment owed to Jody Yturbide for the instant 33% PPD award must subtract her prior PPD awards of 7% for different claims and disabilities to comply with the 25% statutory cap on lump sum payments under NRS 616C.495 and NAC 616C.498. This is a legal issue and involves a matter of first impression.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Should the District Court have reversed the Appeals Officer Decision which contain errors of law by: (a) failing to subtract Claimant's prior PPD awards, as required by NRS 616C.495 (d) and NAC 616C.498, from the 25% cap on the amount of a PPD award that can be paid in lump sum form for the instant claim; and (b) by limiting the 25% cap on lump sum payments to the same claim or body part which is contrary to the plain language of NRS 616C.495(d) and NAC 616C.498?

2. Should the District Court have reversed the Appeals Officer Decision which is unsupported by the substantial evidence because the Appeals Officer concluded that the Claimant is entitled to have 25% of the 33% PPD award paid in a lump sum amount thereby ignoring the substantial evidence in the record establishing that Claimant has received two prior PPD awards totaling 7%?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal involves a substantial issue of first impression regarding statutory interpretation of workers' compensation statute NRS 616C.495 (d) and regulation NAC 616C.498 and their application to multiple claims and multiple disabilities. This statute and regulation have only been interpreted by case law with respect to one claim and one disability in *Eads v. State Indus. Ins. System*, 109 Nev. 733, 857 P.2d 13 (1993).

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

As this is an appeal from an administrative agency, the case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(4).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from August 8, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served September 7, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 7, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|--|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
NRS 233B.150 provides for an appeal to the Nevada Supreme Court by an aggrieved party from a final judgment of a District Court in a case filed pursuant to Chapter 233B of the Nevada Revised Statutes. The City of Reno's Petition for Judicial Review was governed by NRS Chapter 233B.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

City of Reno;

Jody Yturbide; and,

Nevada Department of Administration (named as required by NRS Chapter 233B but did not participate).

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The Nevada Department of Administration ("Department") did not participate in any of the briefing or oral arguments which led to the District Court's final decision, therefore the Department is not an active party to this appeal.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

City of Reno's Petition for Judicial Review of the Appeals Officer's December 16, 2016 Decision - affirmed by the District Court on August 8, 2017.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

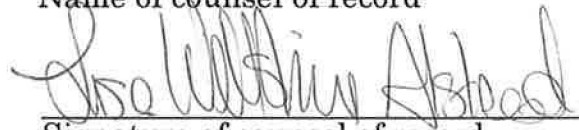
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

City of Reno
Name of appellant

October 3, 2017
Date

Washoe County, Nevada
State and county where signed

Lisa Wiltshire Alstead, Esq.
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 3rd day of October, 2017, I served a copy of this completed docketing statement upon all counsel of record:

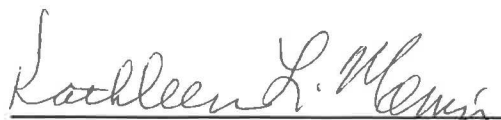
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jason Guinasso, Esq.
Reese Kintz Guinasso
916 Southwood Blvd., Suite 3A
Incline Village, Nevada 89451

David Wasick
Settlement Judge
P.O. Box 658
Glenbrook, NV 89413

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

Dated this 3rd day of October, 2017


Signature