

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case Nos. 73971

CITY OF RENO,

Appellant.

vs.

JODY YTURBIDE,

Respondent.

Electronically Filed
Apr 25 2018 09:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX, VOLUME I of IV

<p>McDONALD CARANO LLP Timothy E. Rowe (#1000) Lisa Wiltshire Alstead (#10470) 100 West Liberty Street, 10th Floor Reno, NV 89501 775-788-2000 (phone) 775-788-2020 (fax) trowe@mcdonaldcarano.com lalstead@mcdonaldcarano.com</p> <p><i>Attorneys for Appellant</i></p>	<p>HUTCHISON & STEFFEN, PLLC Jason Guinasso (#8478) 500 Damonte Ranch Parkway, Suite 980 Reno, NV 89521 775-853-8746 (phone) 775-201-9611 (fax) jguinasso@hutchlegal.com</p> <p><i>Attorneys for Respondent</i></p>
---	---

ALPHABETICAL INDEX TO APPENDIX

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NOS.</u>
Case Appeal Statement	09/07/17	Vol. IV	JA416
Notice of Appeal	09/07/17	Vol. IV	JA403
Notice of Entry of Order	09/07/17	Vol. IV	JA399
Order Denying Petition for Judicial Review	08/08/17	Vol. IV	JA390
Order Setting Oral Argument	6/15/17	Vol. IV	JA357
Petition for Judicial Review	01/13/17	Vol. I	JA001
Petitioner's Opening Brief	03/27/17	Vol. III	JA301
Petitioner's Reply Brief	05/25/17	Vol. IV	JA343
Record on Appeal	02/15/17	Vol. I	JA020
		Vol. II	JA104
		Vol. III	JA250
Respondent Jody Yturbide's Answering Brief	04/25/17	Vol. IV	JA327
Respondent Jody Yturbide's Notice of Intent to Participate	01/31/17	Vol. I	JA014
Supplemental Record	03/03/17	Vol. III	JA273
Supplemental Record	03/22/17	Vol. III	JA295
Transcript of Proceedings	02/20/18	Vol. IV	JA359
Transmittal of Record on Appeal	02/15/17	Vol. I	JA017

CHRONOLOGICAL INDEX TO APPENDIX

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NOS.</u>
Petition for Judicial Review	01/13/17	Vol. I	JA001
Respondent Jody Yturbide's Notice of Intent to Participate	01/31/17	Vol. I	JA014
Transmittal of Record on Appeal	02/15/17	Vol. I	JA017
Record on Appeal	02/15/17	Vol. I	JA020
		Vol. II	JA104
		Vol. III	JA250
Supplemental Record	03/03/17	Vol. III	JA273
Supplemental Record	03/22/17	Vol. III	JA295
Petitioner's Opening Brief	03/27/17	Vol. III	JA301
Respondent Jody Yturbide's Answering Brief	04/25/17	Vol. IV	JA327
Petitioner's Reply Brief	05/25/17	Vol. IV	JA343
Order Setting Oral Arguments	06/15/17	Vol. IV	JA357
Transcript of Proceedings	7/21/17	Vol. IV	JA359
Order Denying Petition of Judicial Review	08/08/17	Vol. IV	JA390
Notice of Entry Order (Order not recopied)	09/07/17	Vol. IV	JA399
Notice of Appeal	09/07/17	Vol. IV	JA403
Case Appeal	09/07/17	Vol. IV	JA416

IN THE SUPREME COURT OF THE STATE OF NEVADA

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, **JOINT APPENDIX VOLUME I** filed in **Case No. 73971** does not contain the social security number of any person.

Date: April 24, 2018.

/s/ Lisa Wiltshire Alstead

Lisa Wiltshire Alstead

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDonald Carano, LLP and that on April 24, 2018, JOINT APPENDIX VOLUME I was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Pursuant to NRAP 30(f)(2), all Participants in the case will be served and provided an electronic copy via U.S. mail as follows:

Jason Guinasso
HUTCHISON & STEFFEN, PLLC
500 Damonte Ranch Parkway
Suite 980 Reno, NV 89521
Attorneys for Respondent

/s/ Kelsey R. Heller
Kelsey R. Heller

1 CODE: 3550
2 TIMOTHY E. ROWE, ESQ.
3 Nevada Bar No. 1000
4 LISA M. WILTSHIRE ALSTEAD, ESQ.
5 Nevada Bar No. 10470
6 McDonald Carano Wilson LLP.
7 P. O. Box 2670
8 Reno, Nevada 89505-2670
9 775-788-2000

10 Attorneys for Petitioner
11 CITY OF RENO

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

14 *****

15 CITY OF RENO,

16 Petitioner,

Case No:

17 vs.

Department No:

18 JODY YTURBIDE, and the
19 NEVADA DEPARTMENT OF
20 ADMINISTRATION APPEALS OFFICER,

21 Respondents.

22 **PETITION FOR JUDICIAL REVIEW**

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

The grounds upon which this review is sought are:

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

a. affected by error of law;

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

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

5 WHEREFORE, Petitioner prays as follows:

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

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

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

11 Dated this 13th day of January, 2017.

12 McDONALD CARANO WILSON LLP

13
14 By: 

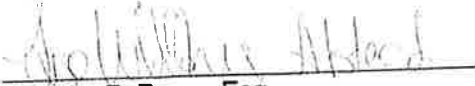
15 TIMOTHY E. ROWE, ESQ.
16 LISA M. WILTSHIRE ALSTEAD, ESQ.
17 P. O. Box 2670
18 Reno, NV 895005-2670

19 Attorneys for the Petitioner
20 CITY OF RENO

21 **AFFIRMATION**

22 Pursuant to NRS 239B.030

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

26 
27 Timothy E. Rowe, Esq.
28 Lisa M. Wiltshire Alstead, Esq.
Attorney for Petitioner
CITY OF RENO

11/13/17
Date

McDONALD-CARANO-WILSON

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
1 East First St. 9th Fl.
Reno, NV 89501

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


Kathleen L. Morris

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

8

Description

Decision of the Appeals Officer

MCDONALD·CARANO·WILSON²

FILED
Electronically
CV17-00065
2017-01-13 08:27:20 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5896451 : csulezic

EXHIBIT 1

 MCDONALD-CARANO-WILSON
ATTORNEYS AT LAW
12000 15th Avenue, Suite 100
Boulder, Colorado 80501
Phone: 303.440.1111
Fax: 303.440.1112
www.mcawlaw.com

EXHIBIT 1

JA005

DEC 19 2016

McClure, Arano & Wilson LLP

FILED

DEC 16 2016

DEPT. OF ADMINISTRATION
APPEALS OFFICER

BEFORE THE APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 14853E248257

Hearing No.: 1700074-JL

of

Appeal No.: 1700698-LLW

JODY YTURBIDE
9732 PYRAMID WAY, #368
SPARKS, 89441

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.

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



Reese Kiniz,
Guinness
190 W. Hufaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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 ///



Reese Kinz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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
manner in which an award for a permanent partial disability may be paid to such a
claimant in installments. Notwithstanding the provisions of NRS 233B.070, any
regulation adopted pursuant to this paragraph does not become effective unless it is
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.



Reese Kintz,
Guinasso
190 W. Hufaker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

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."

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///



Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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 LORNA L. WARD, ESQ.

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

18 Submitted By: _____

19 Jason D. Guinasso, Esq.
20 Nevada Bar No. 8478
21 Reese Kintz Guinasso, LLC
22 190 W. Huffaker Lane
Suite 402
Reno, NV 89511
Attorney for Jody Yturbide



23 Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
24 Reno, NV 89511
(775) 853-6746

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of
3 Administration, Hearings Division, does hereby certify that on the date shown
4 below, a true and correct copy of the foregoing DECISION AND ORDER was
5 duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at
6 the Department of Administration, Hearings Division, 1050 E. William #450,
Carson City, Nevada, to the following:

7 JODY YTURBIDE
8 9732 PYRAMID WAY #368
9 SPARKS, NV 89441

10 JASON GUINASSO, ESQ
11 REESE KINTZ GUINASSO, LLC
12 190 WEST HUFFAKER SUITE 402
13 RENO NV 89511

14 CITY OF RENO
15 ATTN: KELLY LEERMAN
16 1 EAST FIRST ST 9th FLOOR
17 RENO, NV 89501

18 LISA M WILTSHIRE ALSTEAD ESQ
19 100 W LIBERTY ST 10TH FLOOR
20 RENO NV 89505

21 CCMSI
22 PO BOX 20068
23 RENO, NV 89515-0068

24 Dated this 11th day of December, 2016.

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

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Reese Kintz Guinasso, LLC
190 W. Huffaker Lane, Suite 402
3 Reno, NV 89511
Attorney for Jody Yturbide
4

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

7 *****

8 CITY OF RENO,

9 Petitioner,

10 vs.

11 JODY YTURBIDE, et al

12 Respondents.
13

Case No.: CV17-00065

Dept.: 7

14 RESPONDENT, JODY YTURBIDE'S

15 NOTICE OF INTENT TO PARTICIPATE
16

17 COMES NOW Respondent, JODY YTURBIDE, by and through her attorney,
18 JASON D. GUINASSO, ESQ., of Reese Kintz Guinasso, LLC, and hereby submits her
19 Notice of Intent to Participate in the review process regarding the Petition for Judicial
20 Review filed by Petitioner on January 13, 2017. This Notice of Intent to Participate is made
21 pursuant to and based upon NRS 233B.130(3).

22 ///

23 ///

24 ///


25 ///



Reese Kintz Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 By filing this Notice of Intent to Participate the respondents do not waive any
2 argument regarding jurisdiction or any such other available defense.


3 DATED this 31st day of January, 2017.

4
5 
6 Jason D. Guinasso, Esq.
7 Nevada Bar No. 8478
8 Reese Kintz Guinasso
9 190 W. Huffaker Lane, Suite 402
10 Reno, NV 89511
11 Attorney for Respondent, Jody Yturbide

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the foregoing document filed in this matter
14 does not contain the social security number of any person.

15 DATED this 31st day of January, 2017.

16 
17 Jason D. Guinasso, Esq.
18 Nevada Bar No. 8478
19 Reese Kintz Guinasso
20 190 W. Huffaker Lane, Suite 402
21 Reno, NV 89511
22 Attorney for Respondent, Jody Yturbide



24 Reese Kintz, Guinasso
190 W. Huffaker Lane
Suite 402
Reno, NV 89511
(775) 853-8716

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 190 W. Huffaker Lane, Suite 402, Reno, Nevada, 89511.

On January 31st, 2017, I served the following:

NOTICE OF INTENT TO PARTICIPATE

on the following in said cause as indicated below:

JODY YTURBIDE 9732 PYRAMID WAY, NO. 368 SPARKS, NV 89441 (VIA U.S. MAIL)	CCMSI P.O. BOX 20068 RENO, NV 89515-0068 (VIA U.S. MAIL)
LISA WILTSHIRE ALSTEAD, ESQ. MCDONALD CARANO WILSON 100 W LIBERTY ST., 10 TH FLOOR RENO, NV 89505 (VIA E-FLEX)	CITY OF RENO ATTN: KELLY LEERMAN PO BOX 1900 RENO, NV 89505 (VIA U.S. MAIL)
NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST, STE 450 CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)	OFFICE OF THE ATTORNEY GENERAL 100 N CARSON ST. CARSON CITY, NV 89701 (VIA U.S. MAIL)

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 31st, 2017, at Reno, Nevada.


KATRINA TORRES



Rease Kintz, Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

CV17-00065
DC-09900940 1-008
CITY OF RENO VS JODY YTURBIDE
District Court 02/15/2017 02:06 PM
Washoe County

FILED

2017 FEB 15 PM 2:06

JACQUELINE BRYANT
CLERK OF THE COURT
BY *[Signature]*

1 CASE NO. CV17-00065

2 DEPT NO. 7

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

8 * * * * *

9 CITY OF RENO,

10 Petitioner,

11 vs.

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

15 Respondents.

16 TRANSMITTAL OF RECORD ON APPEAL

17 TO: The Clerk of the Second Judicial District Court

18 Pursuant to NRS 233B.140, the transmittal of the
19 entire record on appeal in accordance with the Nevada
20 Administrative Procedure Act (Chapter 233B of NRS) is hereby
21 made as follows:

22 1. The entire record herein, including each and every
23 pleading, document, affidavit, order, decision, and exhibit now
24 on file with the Office of the Appeals Officer under the Nevada
25 Industrial Insurance Act, 1050 East William Street, Suite 450,
26 Carson City, Nevada, in the above-entitled action.

27 * * *
28 * * *

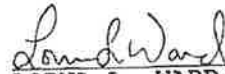
APPEALS OFFICE
1050 E. WILLIAM #450
CARSON CITY NV 89710

JA017

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

- 2. Transcript of proceedings.
- 3. This transmittal.

APPEALS OFFICER


LORNA L. WARD

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

JA018

1 CASE NO. CV17-00065

2 DEPT NO. 7

3

4

5

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

7 IN AND FOR THE COUNTY OF WASHOE

8 * * * * *

9 CITY OF RENO,

10 Petitioner,

11 vs.

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

15 Respondents.

16 _____/

17 AFFIRMATION
18 Pursuant to NRS 239B.030

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

22 1. Transmittal of Record on Appeal

23 APPEALS OFFICER

24 Lorna L. Ward
25 LORNA L. WARD

26

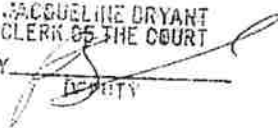
27

28 APPEALS OFFICE
1050 E. WILLIAM #150
CARSON CITY NV 89710

CV17-00065 DC-0950080011-006
CITY OF RENO VS JODY YTURBIDE 253 Pages
District Court 02/15/2017 02:06 PM
Washoe County 3746
JURY NOTE

FILED

2017 FEB 15 PM 2:06

JACQUELINE DRYANT
CLERK OF THE COURT
BY  DEPUTY

1 CASE NO. CV17-00065

2 DEPT NO. 7

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

8 * * * * *

9 CITY OF RENO,

10 Petitioner,

RECORD ON APPEAL

11 vs.

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

15 Respondents.

16 ORIGINAL

17 RECORD ON APPEAL

18 IN ACCORDANCE WITH THE

19 NEVADA ADMINISTRATIVE PROCEDURE ACT
20 (Chapter 233B of NRS)

21 Attorney for Petitioner

Attorney for Respondents

22 LISA WILTSHIRE ALSTEAD ESQ
23 PO BOX 2670
RENO NV 89505

JASON GUINASSO ESQ
190 W HUFFAKER LN STE 402
RENO NV 89511

24
25
26
27
28
APPEALS OFFICE
1050 E. WILLIAM #450
CARSON CITY NV 89710

JA020

1 CASE NO. CV17-00065

2 DEPT NO. 7

3

4

5

6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

* * * * *

9

CITY OF RENO,

10

Petitioner,

11

vs.

12

JODY YTURBIDE, and the NEVADA

13

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICER,

14

Respondents.

15

AFFIRMATION

16

Pursuant to NRS 239B.030

17

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

19

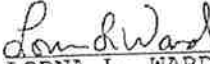
1. Record on Appeal

20

21

APPEALS OFFICER

22


LORNA L. WARD

23

24

25

26

27

APPEALS OFFICE 28

1050 E. WILLIAM #450
CARSON CITY NV 89710

JA021

BRIAN SANDOVAL
Governor

STATE OF NEVADA

PATRICK CATES
Director

BRYAN A. NIX
Senior Appeals Officer



DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE

1050 E. William Street

Suite 450

Carson City, Nevada 89701-3102

(775) 687-8420 • Fax (775) 687-8421

February 10, 2017

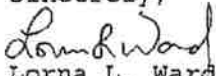
LISA MILTSHIRE ALSTEAD ESQ
PO BOX 2670
RENO NV 89505

Re: JULIO CASTRO-ROSALES, 57084-LLW
In The Second Judicial District Court
Case No. CV17-00065, Dept. No. 7

Dear Ms. Alstead:

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

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

Sincerely,

Lorna L. Ward
Appeals Officer

LLW/kf
Enclosure

cc: Jason Guinasso, Esq.

CASE NO. CV17-00065

DEPT. NO. 7

CITY OF RENO V. JODY YTURBIDE, and the NEVADA DEPARTMENT OF
ADMINISTRATION, APPEALS OFFICE

INDEX

<u>Item Description</u>	<u>Page No.</u>
Order, Appeals Officer Lorna L. Ward (Filed 02/10/17)	001 - 002
Reply in Support of Motion for Stay Order Pending Judicial Review, submitted By Timothy Rowe, Esq., on behalf of Employer/Petitioner (Filed 02/08/17)	003 - 007
Jody Yturbide's Opposition to Motion for Stay, submitted by Jason Guinasso, Esq., on behalf of Claimant/Respondent (Filed 02/02/17)	008 - 061
Motion for Stay Order Pending Judicial Review, submitted by Lisa Wilshire Alstead, Esq., on behalf of Employer/Petitioner (Filed 01/13/17)	062 - 071
Decision, Appeals Officer Ward (Filed 12/16/16)	072 - 079
Transcript of Proceedings Appeals hearing, November 21, 2016 (Filed 01/30/17)	080 - 105
Exhibit I	106 - 187
Exhibit II	188 - 225
Jody Yturbide's Prehearing Statement, Submitted by Jason Guinasso, Esq., on Behalf of Claimant/Respondent (Filed 11/15/16)	226 - 232
Order, Appeals Officer Ward (Filed 09/12/16)	233 - 234
Motion for Stay Order Pending Appeal, Submitted by Lisa Wiltshire Alstead, Esq., On behalf of Employer/Petitioner (Filed 09/08/16)	235 - 242

YTURBIDE INDEX
PAGE 2

Notice of Appeal and Order to Appear, Appeals Officer Ward (Filed 09/12/16)	243
Notice of Appeal and Request for Hearing Before the Appeals Officer submitted by Lisa Wiltshire Alstead, Esq., on behalf of Employer/Petitioner (Filed 09/08/17)	244
Certificate of Mailing (Dated September 12, 2016)	245
Decision of Hearing Officer (Dated August 11, 2016)	246 - 248

oOo

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

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

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

FILED

FEB 10 2017

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 14853E248257
Hearing No: 1700074-JL
Appeal No: 1700698-LLW

JODY YTURBIDE,

Claimant.

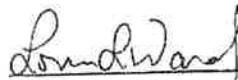
ORDER

The City of Reno filed its Motion for Stay Order Pending Judicial Review on January 13, 2017. The Claimant filed her Opposition on February 2, 2017. The City of Reno filed its Reply on February 8, 2017.

This matter involves questions and conclusions of law only. In addition, if the Stay is not granted the underlying issue in the instant circumstances become moot.

After careful consideration, the Motion for Stay Pending Judicial Review is GRANTED.

IT IS SO ORDERED.



Lorna L Ward
APPEALS OFFICER

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

JA026

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

* * * * *

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 14853E248257

of

Hearing No: 1700074-JL

Jody Yturbide,

Appeal No: 1700698-LLW

Claimant.

REPLY IN SUPPORT OF MOTION FOR STAY ORDER PENDING JUDICIAL REVIEW

The CITY OF RENO ("City" or "Petitioner") respectfully submits the following Points and Authorities in reply (the "Reply") to the Claimant's Opposition to Motion for Stay.

POINTS AND AUTHORITIES

The Claimant argues the legal requirements for a stay order have not been met in this case. The City respectfully disagrees for the following reasons:

1. **The Object Of The City's Appeal Will Be Defeated If The Motion For Stay Is Not Granted.**

Claimant argues that the City will not be harmed by having to pay 7% more in a lump sum payment than it would be required to pay if successful on appeal. This argument ignores that the payment would be in violation of the applicable statute capping lump sum payments at 25%. In addition to the payment being violation of the statute, the City cannot recoup the additional lump sum payment. Thus, the reason for the appeal becomes moot and the object of the appeal is defeated. These are precisely the circumstances a stay order is designed to prevent. It is also precisely why the Nevada Supreme Court stated the stay order is a proper procedure for an insurer to pursue when aggrieved by a hearing officer decision. *See DIR vs. Circus-Circus*, 101 Nev. 405, 411, 412, 705 P.2d 645, 649 (1985). Further, an overpayment of the lump sum amount is against the purpose of the statute. Meaning, that where a claimant has been injured resulting in a PPID

003

1 award that exceeds 25%, that the statute provides for installment payments so that the claimant
2 does not spend all the disability money at one time but rather is ensured benefits over a period of
3 years. It is in the Claimant's best interest to not have an overpayment of the lump sum amount.
4 For these reasons, the object of the appeal will be defeated if a stay is not in place.

5 **2. The City Will Be Irreparably Harmed In Absence Of A Stay.**

6 Irreparable harm is serious injury for which compensable damages are inadequate. *Hansen*
7 *vs. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000). Benefits that will be paid in this case in
8 absence of a stay order will be substantial (an extra 7% lump sum payment). Once paid those
9 benefits cannot be recouped. Claimant contends the City will not suffer irreparable harm whether
10 benefits are paid in lump sum or installments over a period of years since ultimately all parties
11 agree Claimant is owed a 33% PPD award. However, monetary harm that cannot be compensated
12 is, by definition, irreparable. Here, Claimant acknowledges that if the City is successful, 7% of the
13 lump sum payment (as currently ordered by the Appeals Officer to be paid in lump sum form)
14 should be instead made in installment payments to be paid over years. Without a stay in place, in
15 violation of the statute, Claimant would receive an extra 7% of the PPD award in a lump sum
16 form. That amount cannot be recouped for purposes of making statutorily required installment
17 payments down the road. Without a stay that amount will have already been paid to Claimant.
18 Thus, the City's loss in absence of a stay order is irreparable.

19 **3. Claimant Will Not Be Irreparably Harmed.**

20 Claimant will not be harmed. She has already received medical treatment. As Claimant
21 concedes, either way the payment of disability benefits totals a PPD award for a 33% whole
22 person impairment. The Claimant will receive the undisputed portion of the PPD award in lump
23 sum. Only the disputed 7% will be paid in installments. In fact, an overpayment of 7% in lump
24 sum form would be more harmful to Claimant and against the purpose of the statute which is to
25 spread out disability payments over time for claimants with serious injuries. Under these
26 circumstances, Claimant suffers no irreparable harm and arguably suffers little, if any, harm as she
27 will ultimately be paid 33% whole person impairment disability benefits. It is just the form of the
28 payment of these benefits (lump sum or installment) that is in dispute.

1 4. Based On The Evidence Presented To The Hearing Officer, the City Will
2 Prevail On The Merits.

3 As explained in the City's Motion, the applicable statutes, NRS 616C.495(1)(d) and NAC
4 616C.498 do not limit the 25% cap on lump sum payments of a PPD award to one claim or injury.
5 In fact, surrounding statutory provisions make clear that previous PPD awards must be combined
6 with the current award to determine benefits. See NRS 616C.495(1)(e). Notwithstanding,
7 Claimant seeks to limit the application of these statutes based on the fact pattern of limited case
8 law applying these provisions.

9 Claimant argues that because the *Eads* case involved a PPD award "for the same
10 disability," that the statutes should likewise be limited to the same disability. (Opp. at 6-7.)
11 However, this is contrary to the policy expressed in *Eads* and the plain language of the applicable
12 statutes which nowhere limit the 25% cap on lump sum payments to the same disability. Rather,
13 when the statutes are read as a whole, the surrounding statutory provisions such as NRS
14 616C.495(e) make clear that previous PPD awards, claims and injuries must be considered.
15 Here, the Claimant's two prior claims for different injuries must be considered when calculating
16 the lump sum payment amount. The limitation under the statutes identified in *Eads* of a lump sum
17 payment not exceeding 25% is applicable here but, as evidenced by the plain language of the
18 statutes which contains no limitation to a single claim or disability, the statutes should not be
19 limited to the specific facts of *Eads*. If the legislature intended the 25% cap on lump sum
20 payments to be only on the same claim or disability, it would have expressly stated that. Thus, the
21 City will likely prevail on the merits given the plain language of the statutes.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

Conclusion

Bccause all of the requirements for a stay order exist in this case, the City respectfully requests that the Stay Order issued by the Appeals Officer on December 16, 2016, remain in place pending full hearing before the Appeals Officer.

DATED this 8th day of February 2017.

McDONALD CARANO WILSON LLP

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

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 8th day of February , 2017, I served the preceding REPLY IN SUPPORT OF MOTION FOR STAY ORDER PENDING 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:

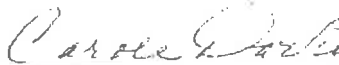
Appeals Officer
Department of Administration
1050 E. William Street, Suite 450
Carson City, Nevada 89701

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
1 East First St. 9th Fl.
Reno, NV 89501

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



Carole Davis

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Reese Kintz Guinasso, LLC
190 W. Huffaker Lane, Suite 402
3 Reno, NV 89511
Attorney for Jody Yturbide
4

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

7 *****

8 CITY OF RENO,

9 Petitioner,

Case No.: CV17-00065

10 vs.

Dept.: 7

11 JODY YTURBIDE, et al

12 Respondents.
13

14 JODY YTURBIDE'S OPPOSITION TO MOTION FOR STAY

15 COMES NOW, Jody Yturbide, by and through her counsel of record, JASON D.
16 GUINASSO, ESQ., of Reese Kintz Guinasso, LLC, having received the City of Reno's
17 Motion for Stay Order Pending Judicial Review, and now hereby files her Opposition.

18 This Opposition is supported by the following points and authorities, the
19 documentary evidence contained in the Record on Appeal, and all other papers and
20 pleadings on file in this matter.

21 ///

22 ///

23 ///

24 ///

25 ///



Reese Kintz Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

FILED
FEB -2 2018
CLERK OF COURT
JUDICIAL DISTRICT
COUNTY OF WASHOE
STATE OF NEVADA

008

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTUAL AND PROCEDURAL BACKGROUND

3 The Petitioners in this matter are the City of Reno ("the City" or "Petitioner") and its
4 third party administrator Cannon Cochran Management Services (hereinafter "CCMSI").
5 The Respondent in this matter is Jody Yturbide ("Mrs. Yturbide" or "Respondent"). This
6 matter concerns payment of permanent partial disability benefits under a workers'
7 compensation claim filed by Mrs. Yturbide.

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

11 Chiropractor Welborn completed her evaluation and then issued her findings on June
12 19, 2016, wherein she concluded that Mrs. Yturbide had sustained a 33% whole person
13 impairment for injuries to her cervical spine. **Exhibit 3 at Yturbide0005-11.**

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

19 On July 8, 2016, Mrs. Yturbide filed a Request for Hearing with the Hearings
20 Division. Mrs. Yturbide contended that she should have been offered 25% of her 33%

21
22
23 ¹ On or about April 5, 2013, Mrs. Yturbide had received a 2% PPD rating for injuries to her
left elbow. **Exhibit 2.**

24 ² On or about September 17, 2009, Mrs. Yturbide had received a 5% PPD rating for carpal
tunnel syndrome in her right wrist. **Exhibit 1.**



Reese Kintz, Guinaso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

0199

1 permanent partial disability rating in lump sum and the remaining 8% in installments in
2 accordance with NRS 616C.495(d) and NAC 616C.498.

3 The Hearing Officer agreed with Mrs. Yturbide and rendered a Decision and Order
4 under Hearing No. 1700074-JL reversing and remanding CCMSI's July 1, 2016
5 determination, which has given rise to the present appeal. In this regard, on August 11,
6 2016, the Hearing Officer rendered his Decision and Order, specifically stating:

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

17 Thereafter, the City appealed this decision to the Appeals Officer. On September 12,
18 2016, the Appeal Officer set the matter for Monday, November 21, 2016 at 3:30 p.m.

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

24 On December 16, 2016, the Appeal Officer issued her Findings of Fact and
25 Conclusions of Law affirming the August 11, 2016, Decision and Order of the Hearing
Officer under Hearing No. 1700074-JL. In this regard, the the Appeals Officer found that
CCMSI's July 1, 2016, determination to limit Mrs. Yturbide's right to receive a lump sum of
her 33% permanent partial disability ("PPD") award to 18% was not supported by the
evidence or Nevada law. Further, the Appeals Officer concluded that Mrs. Yturbide should



Reese Kiniz, Guiness
190 W. Huffer Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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

3 **II. LAW AND ARGUMENT**

4 **A. The City's Motion Should Be Denied Because the City Cannot Satisfy the**
5 **Requirements for a Stay Pending Appeal.**

6 The City's Motion for Stay should be denied because the City cannot satisfy the four
7 requirements for a stay pending appeal. To obtain a stay pending appeal, an appellant, such
8 as the City, must demonstrate the following: (1) whether the object of the appeal will be
9 defeated if the stay is denied, (2) whether appellant will suffer irreparable or serious injury if
10 the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay
11 is granted, and (4) whether appellant is likely to prevail on the merits in the appeal. Mikohn
12 Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004); see also NRAP 8(c).

13 The City's motion fails under each of these four requirements for the following reasons.

14 **1. The Object Of The City's Appeal Will Be Not Be Defeated If The**
15 **Motion For Stay Is Denied.**

16 The object of the City's motion for stay is to avoid paying Mrs. Yturbide 7% of the
17 33% permanent partial disability award in lump sum. However, the City does not contest
18 that it owes 33%. Denying the City's stay will not defeat the object of the City's appeal
19 because whether the City pays the 7% at issue in lump sum or the 7% in installments is of no
20 consequence regarding the City's obligation to pay the 33% permanent partial disability
21 award. Moreover, if the City were to prevail on the merits of its Petition for Judicial Review
22 after additional proceedings are conducted (which is not likely), it will not have absorbed
23 any loss by paying the benefits it has conceded are due Mrs. Yturbide. The object of the
24 City's appeal is largely academic and does not substantively impact Mrs. Yturbide's total
25 benefit entitlement.



Reese Kintz, Guinn & Associates
190 W. Huffaker Ln.
Suite 402
Reno, NV 89511
(775) 852-8746

011

1 **2. The City Will Not Suffer Irreparable Or Serious Injury If The Stay**
2 **Is Denied.**

3 Whether the City pays benefits in lump sum or in installments it will not be
4 irreparably harmed or caused serious injury. Again, at issue is a dispute over whether 7% of
5 the 33% owed Mrs. Yturbide should be paid in lump sum or installments over a period of
6 years. The City does not dispute that the benefits must be paid, only how the benefits should
7 be paid. However, how benefits are paid to Mrs. Yturbide does not harm the City in any
8 meaningful way.

9 **3. Mrs. Yturbide Will Suffer Irreparable Harm If The Stay Is Granted.**

10 It has been over eight months since Mrs. Yturbide reached maximum medical
11 improvement and was rated. During that time, Mrs. Yturbide has not been paid the
12 permanent partial disability benefits she is entitled to receive as compensation for her
13 permanent disability. Mrs. Yturbide sustained serious injuries that resulted in permanent
14 disability, which in turn resulted in her losing her job. The City refusing to pay the
15 permanent disability benefits due to her in lump sum will continue to inflict financial
16 hardship on Mrs. Yturbide and her family.

17 **4. The City Is Not Likely To Prevail On The Merits In The Appeal.**

18 Contrary to CCMSI and the City of Reno's assertions, the Nevada Supreme Court
19 has never held nor inferred that an injured worker is limited to a 25% lump sum PPD in
20 situations involving more than one claim and distinct injuries resulting in disabilities to
21 separate body parts. In Eads v. State Indus. Ins. Sys., 109 Nev. 733, 736, 857 P.2d 13, 15
22 (1993), Eads' PPD award increased from nineteen percent to thirty-five percent "for the
23 same disability;" therefore, the Court held that the lump sum payment available to Eads may
24 not exceed the twenty-five percent limit specified in the statute at that time.



Renee XIntz, Guinnaso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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

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

7 (Emphasis supplied).

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

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

- 12 1. Does not exceed 25 percent may elect to receive compensation in a lump
13 sum.
- 14 2. Exceeds 25 percent may elect to receive compensation in a lump sum
15 equal to the present value of an award for a disability of 25 percent. If the
16 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.

17 (emphasis supplied).

18 CCMSI's July 1, 2016, determination to limit and reduce Mrs. Yturbide's right to
19 receive a lump sum of her 33% permanent partial disability ("PPD") award to 18% is not
20 supported by the evidence or Nevada law. Mrs. Yturbide should have been offered 25%
21 lump sum of her 33% PPD under NRS 616C.495(d) and NAC 616C.498.

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



Rose Kintz, Guinesso
190 W Hufaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 25% of their PPD rating in lump sum applies to each and every permanent partial disability
2 an injured worker incurs as clearly specified by the plain language of the regulation which
3 attaches the injured workers right to "a" permanent partial disability that meets the criteria
4 of section (1) and (2) of the regulation. NAC 616C.498 and NRS 616C.495(1)(d) do not in
5 any way limit or otherwise require a reduction of the lump sum award an injured worker is
6 entitled to receive where an injured worker has multiple claims with injuries to separate
7 body parts.

8 **III. CONCLUSION**

9 In accordance with the foregoing, Respondent respectfully requests that the
10 Petitioner's Motion for Stay be **DENIED**.

11 **AFFIRMATION**

12 The undersigned does hereby affirm that the foregoing document filed in this matter
13 does not contain the social security number of any person.

14 DATED this 31st day of January, 2017.



Jason D. Guinasso, Esq.
Nevada Bar No. 8478
Reese Kintz Guinasso
190 W. Huffaker Lane, Suite 402
Reno, NV 89511
Attorney for Jody Yturbide



Reese Kintz, Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

014

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 190 W. Huffaker Lane, Suite 402, Reno, Nevada, 89511.

On January 31st, 2017, I served the following:

OPPOSITION TO MOTION FOR STAY

on the following in said cause as indicated below:

JODY YTURBIDE 9732 PYRAMID WAY, NO. 368 SPARKS, NV 89441 (VIA U.S. MAIL)	CCMSI P.O. BOX 20068 RENO, NV 89515-0068 (VIA U.S. MAIL)
LISA WILTSHIRE ALSTEAD, ESQ. MCDONALD CARANO WILSON 100 W LIBERTY ST., 10 TH FLOOR RENO, NV 89505 (VIA E-FLEX)	CITY OF RENO ATTN: KELLY LEERMAN PO BOX 1900 RENO, NV 89505 (VIA U.S. MAIL)
NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST, STE 450 CARSON CITY, NEVADA 89701 (VIA U.S. MAIL.)	OFFICE OF THE ATTORNEY GENERAL 100 N CARSON ST. CARSON CITY, NV 89701 (VIA U.S. MAIL)

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 31st, 2017, at Reno, Nevada.


KATRINA TORRES



Reese Kintz, Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

LIST OF EXHIBITS
OPPOSITION TO MOTION FOR STAY

EXHIBIT	DOCUMENT TITLE	# OF PAGES
Exhibit 1	September 17, 2009, 5% award letter from CCMSI	2
Exhibit 2	April 15, 2013, 2% award letter from CCMSI	2
Exhibit 3	November 14, 2016, Documentary Exhibit #1	38



Reese Kinz, Guinesso
190 W. Humboldt La
Suite 402
Reno, NV 89511
(775) 853-8746

0116

EXHIBIT 1

EXHIBIT 1

017



CCMSI

September 17, 2009

Jody Yturbide
PO Box 17428
Reno, NV 89511

RE: Claim No.: 08853A368316
Date of Injury: 1/23/2008
Employer: City of Reno

Dear Ms. Yturbide:

As a result of your permanent partial disability (PPD) evaluation, you have been found to have an impairment rating of five (5) percent on a whole body basis. As indicated in the enclosed documents, you may elect to receive your PPD compensation either on an installment or lump sum basis.

As of the date of your PPD evaluation, your claim is closed for any further benefits except:

- (a) Right to request reopening in accordance with the provisions of NRS 616C.390; and
- (b) Any counseling, training or other vocational rehabilitation services, if applicable.

The following documents are enclosed.

- Election of Method of Payment of Compensation, Form D-10a (revised 7/99)
- Reaffirmation/retraction of Lump Sum Request, Form D-11 (revised 7/99)
- Injured Employee's Right to Reopen a Claim Which Has Been Closed/PPD Offset, Form D-13 (revised 7/99)
- Copy of PPD Rating Evaluation
- Copy of PPD Award Calculation Work Sheet, Form D-9a (revised 7/99)
- Request for Hearing, Form D-12a (revised 7/99)

Please sign one copy of the first two forms listed above. The second set is for your records.

P.O. Box 20088
Reno, NV 89515-0088
775-324-3301 phone
775-324-

57

018

JA042

Page 2
Claim No.: 08853A368316

If you disagree with this decision, you have the right to file an appeal and mail it directly to the Hearing Officer, Department of Administration, 1050 E. William Street, Ste. 400, Carson City, NV 89710. If your request does not reach the Hearing Officer within seventy (70) days from the date of this letter, you may lose your right to appeal the decision.

If you have questions, please contact this office at (775) 324-3301x1029.

Sincerely,


Lisa Jones
Claims Representative

Enclosure

cc: File
City of Reno
DIR

(58)

019

JA043

EXHIBIT 2

EXHIBIT 2

020

JA044



C C M S I

April 15, 2013

Jody Yturbide
9732 Pyramid Way #368
Sparks, NV 89441

RE: Claim No.: 11853C036358
Date of Injury: 11/17/2011
Employer: City of Reno

Dear Mrs. Yturbide:

As a result of your permanent partial disability (PPD) evaluation, you have been found to have an impairment rating of two (2%) percent on a whole body basis. As indicated in the enclosed documents, you may elect to receive your PPD compensation either on an installment or lump sum basis.

As of the date of your PPD evaluation, your claim is closed for any further benefits except:

- (a) Right to request reopening in accordance with the provisions of NRS 616C.390; and
- (b) Any counseling, training or other vocational rehabilitation services, if applicable.

The following documents are enclosed.

- Election of Method of Payment of Compensation, Form D-10a (revised 7/99)
- Reaffirmation/retraction of Lump Sum Request, Form D-11 (revised 7/99)
- Injured Employee's Right to Reopen a Claim Which Has Been Closed/PPD Offset, Form D-13 (revised 7/99)
- Copy of PPD Rating Evaluation
- Copy of PPD Award Calculation Work Sheet, Form D-9a (revised 7/99)
- Request for Hearing, Form D-12a (revised 7/99)

Please sign one copy of the first two forms listed above. The second set is for your records.

P.O. Box 20068
Reno, NV 89615-0068
775-324-3301 phone
775-324-9893 fax

69

021

JA045

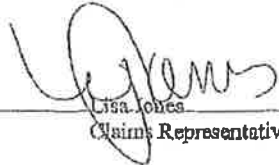
Page 2

Claim No.: 11853C036358

If you disagree with this decision, you have the right to file an appeal and mail it directly to the Hearing Officer, Department of Administration, 1050 E. William Street, Ste. 400, Carson City, NV 89710. If your request does not reach the Hearing Officer within seventy (70) days from the date of this letter, you may lose your right to appeal the decision.

If you have questions, please contact this office at (775) 324-3301x1029.

Sincerely,



Lisa Jones
Claims Representative

Enclosure

cc: File, City of Reno, DIR,
Kathleen Sigurdson, Esq.

70

022

JA046

EXHIBIT 3

EXHIBIT 3

D23

JA047

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Reese Kintz Guinasso
190 W. Huffaker Lane
3 Suite 402
Reno, NV 89511
4 Attorney for Jody Yturbide

5 NEVADA DEPARTMENT OF ADMINISTRATION

6 BEFORE THE APPEALS OFFICER

7
8 In the Matter of the
Industrial Insurance Claim

9
10 of

11 JODY YTURBIDE
12 9732 PYRAMID WAY, #368
SPARKS, NV 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

15
16 JODY YTURBIDE'S

17 DOCUMENTARY EXHIBIT #1



23 Reese Kintz,
Guinasso
190 W. Huffaker Ln.
Suite 402
24 Reno, NV 89511
(775) 851-8746

024

JA048

AFFIRMATION

The undersigned does hereby affirm that the JODY YTURBIDE'S
DOCUMENTARY EXHIBIT #1 filed under Appeal No. 1700698-LLW;

☒ Does not contain the social security number of any person.

-OR-


☐ Contains the social security number of a person as required by:

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

-or-

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

DATED this 14th day of November, 2016


Jason D. Guinasso, Esq.
Attorney for Jody Yturbide



Reato Kline,
Guinasso
190 W Main Street
Suite 402
Ream, NY 89511
(775) 853-8746

025

JA049

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 190 W Huffaker Lane, Suite 402, Reno, Nevada, 89511.

On November 14th, 2016, I served the following:

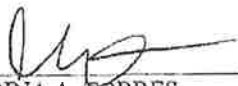
JODY YTURBIDE'S

DOCUMENTARY EXHIBIT #1

on the following in said cause as indicated below:

JODY YTURBIDE 9732 PYRAMID WAY, NO. 368 SPARKS, NV 89441 (VIA U.S. MAIL)	CCMSI P.O. BOX 20068 RENO, NV 89515-0068 (VIA U.S. MAIL)
LISA WILTSHIRE ALSTEAD, ESQ. MCDONALD CARANO WILSON 100 W LIBERTY ST., 10 TH FLOOR RENO, NV 89505 (VIA HAND DELIVERY)	CITY OF RENO ATTN: KELLY LEERMAN PO BOX 1900 RENO, NV 89505 (VIA U.S. MAIL)
NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST, STE 450 CARSON CITY, NEVADA 89701 (VIA HAND DELIVERY)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 14th, 2016, at Reno, Nevada.


KATRINA A. TORRES



Reese Kints,
Glomasto
100 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 852-1746

026

JA050

INDEX TO JODY YTURBIDE'S
DOCUMENTARY EXHIBIT #1
Appeal No. 1700698-LLW

DATE	SUMMARY	PAGE
05/16/16	Lisa Jones, Claim Examiner; CCMSI; Letter to Jody Yturbide informing her of the PPD evaluation scheduled for her with Dr. Welborn as she had reached MMI.	Yturbide0001-3
05/16/16	Lisa Jones, Claim Examiner; CCMSI; Letter to Dr. Katharina Welborn confirming the PPD evaluation appointment and attaching medical file.	Yturbide0004
06/19/16	Katharina Welborn, DC; Permanent Partial Disability Rating; <ul style="list-style-type: none">• 33% Whole Person Impairment	Yturbide0005-11
07/01/16	Lisa Jones, Claim Examiner; CCMSI; Letter to Jody Yturbide offering buyout options for 33% impairment rating.	Yturbide0012-26
07/09/16	Jason Guinasso, Esq; Reese Kintz Guinasso; Letter to CCMSI requesting that they re-issue determination that is compliant with Nevada statutes.	Yturbide0027-34



Reese Kintz,
Guinasso
190 W. Huffer Ln
Suite 402
Reno, NV 89511
(775) 853-8746

027

JA051



May 16, 2016

Jody Yturbide
9732 Pyramid Way #368
Sparks, NV 89441

Re: Claim No.: 14859E248257
D.O.I.: 05/22/2014
Employer: City of Reno
Body part: Neck-Cervical

Dear Ms. Yturbide:

Based on recent medical reporting from your treating physician, you have reached maximum medical improvement for your injuries. As it appears you may have a permanent impairment, you have been scheduled for a Permanent Partial Disability evaluation with Dr. Welborn on 6/9/2016 at 3:00 p.m. Please check in at least 15 minutes early to your appointment. The physician's office is located at Sierra Chiropractic at 3670 Grant Dr., Suite 101, Reno, NV 89509. Please call the physician's office at (877) 796-8601 to confirm this appointment.

If your injury involves your back or a lower extremity (i.e. knee, ankle, leg), please wear comfortable clothing and bring gym shorts or cut offs for your evaluation.

One of the necessary factors in computing a monetary award is the injured worker's age. Please bring a copy of your driver's license, birth certificate, or other official record that documents your exact age with you to the evaluation, or send a copy to CCMSI at the address below.

You are asked to hand carry any diagnostic films to this appointment, including but not limited to ALL MRI films taken for your injury. If you do not bring films to the evaluation the rating physician may not perform the evaluation.

As of the date of your scheduled evaluation, whether or not you are present, your claim will close for all benefits, except the right to request reopening and any ongoing rehabilitation programs.

Also, as of the date of this letter, CCMSI will not authorize payment of any further medical treatment. However, payments will be honored for any treatments and/or prescriptions authorized prior to the date of this letter up through the date of this evaluation.

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-6165 • 775-324-3301 • Fax: 775-324-9893 • www.ccmsi.com

Yturbide0001

028

JA052



Page 2
Re: Jody Yturbe
May 16, 2016

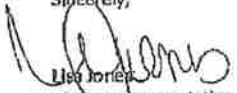
It is very important that you keep this appointment and cooperate fully with the physician. NRS 616C.140 (5) states: "If the employee refuses to submit to an examination ordered or requested pursuant to subsection 1 or 2 or obstructs the examination, his right to compensation is suspended until the examination has taken place, and no compensation is payable during or for the period of suspension."

If you are a no call / no show for this appointment, or if you fail to cancel at least 24 hours prior to the examination, you will be responsible for any associated charges (NRS 616C.230).

If you disagree with this determination, you have the right to request a hearing by completing the bottom portion of the enclosed Request for Hearing form, and sending it to the State of Nevada, Department of Administration, Hearings Division, Carson City address, within seventy (70) days from the date of this letter.

If you have questions regarding this letter, you may contact me at (775) 324-9891.

Sincerely,


Lisa Jorjic
Claims Representative
CCMSI - Reno, Nevada

cc: file
City of Reno
Dr. Welborn
Jason Guinasso, Esq.

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-6165 • 775-324-3301 • Fax: 775-324-9893 • www.ccmsi.com

Yturbe0002

029

JA053

REQUEST FOR HEARING - CONTESTED CLAIM
(Pursuant to NAC 616C.274)

REPLY TO:

Department of Administration
Hearings Division
1050 E. William Street, Ste. 400
Carson City, NV 89701
(775) 687-8440

OR

Department of Administration
Hearings Division
2200 S. Rancho Drive, Suite 210
Las Vegas, NV 89102
(702) 486-2525

Employee Information	
Employee's Name and Address Jody Yturbe 9732 Pyramid Wy #388 Sparks, NV 89441	
Employee's Telephone Number 775-830-5707	Claim No. 14853E248257 Date of Injury 05/22/2014
Insurer Information	
Insurer's Name and Address	
Insurer's Telephone Number	

Employer Information	
Employer's Name and Address CITY OF RENO 1 EAST FIRST STREET, 9TH FLOOR RENO, NV 89505	
Employer's Telephone Number 775-326-8837	
Third-Party Administrator Information	
Third-Party Administrator's Name and Address CCMSI PO Box 20088 Reno, NV 89515	
Third-Party Administrator's Telephone Number 775-324-3301	

Do Not Complete or Mail This Form Unless You Disagree With the Insurer's Determination.

YOU MUST INCLUDE A COPY OF THE DETERMINATION LETTER OR A HEARING WILL NOT BE SCHEDULED PURSUANT TO NRS 616C.315.

Briefly explain the basis for this appeal:

The Injured Employee

This request for hearing is filed by, or on behalf of:

The Employer

and is dated this _____ day of _____, 20____

Yturbe0003

Signature of Injured Employee/Employer

Injured Employee's/Employer's Rep. (Advisor)
D-12a (Rev. 11/07)

030



May 16, 2016

Dr. Katharina Weilborn
Attn: Peggy Wood
1544 Picetti Ct.
Fernley, NV 89408

Re: Employee: Jody Yturbe
Employer: City of Reno
D.O.I.: 06/22/2014
Claim #: 14853E248257
Rateable Body Part: Neck-Cervical

Dear Dr. Weilborn:

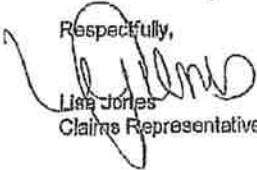
This letter is to confirm an appointment for Impairment Rating of the above captioned workers' compensation claimant. The appointment is scheduled for 6/9/2016 at 3:00 p.m.

Enclosed are copies of all medical records that we have pertaining to the treatment of this worker, along with a copy of the notice of assignment from the Nevada Department of Business & Industry, Division of Industrial Relations.

Please apply apportionment if applicable regarding this case.

I would like to thank you in advance for your professional cooperation and courtesy regarding this matter. Please do not hesitate to contact me at (775) 324-9891 if you have any questions or need additional information.

Respectfully,


Lisa Jones
Claims Representative

Encl: Medical Records
cc: file
City of Reno
Ms. Yturbe
Jason Guinasso, Esq.

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-6365 • 775-324-3301 • Fax: 775-324-9893 • www.ccmst.com

Yturbe0004

031

JA055

6

Jody Yturbe

SCANNED

Katharina C. Welborn, DC
404 Shannon Way
Roseville, CA 95678
Ph: (550) 401-6512
Fax: (916) 285-9355

Date: June 19, 2016

Company: CCMSI

Attention: Lea Jones

Permanent Partial Disability Rating

Claimant: Jody Yturbe
Claim #: 14853E248257
DOI: 05/22/14
Employer: City of Reno
Evaluation Date: 06/09/16

RECEIVED

JUN 21 2016

CCMSI - RENO

Body Part(s): Cervical spine

The following permanent impairment evaluation was performed according to the methodologies and criteria of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 5th edition, Second Printing February 2002, (hereinafter referred to as "Guides").

Identity was confirmed with Nevada Driver License #0800930808.

HISTORY and RECORDS REVIEW:

On 5/22/14 while working as a public safety dispatcher for the City of Reno, Jody Yturbe reported the onset of severe pain in her right fingers, forearm, elbow, and her shoulder. Her job entailed non-stop typing and answering phones.

On 5/23/14, Ms. Yturbe went to Concostra Medical Center where Michael Panlari, MD examined her for right arm pain. The assessment was recurrent right elbow tenosynovitis and status post bilateral arthroscopic carpal tunnel release. Dr. Panlari prescribed ketoprofen gel and Celebrex. Ms. Yturbe was released to light-duty work with limited use of her right hand.

On 5/27/14, Ms. Yturbe went to Specialty Health where Scott Hall, MD examined her for complaints of right wrist, fingers, elbow and shoulder pain. Ms.

032

July Yturbe

Yturbe was taken off work for two days to let her symptoms calm down. She was given a trial of Lyrica.

On 6/9/14, Ms. Yturbe went to Sierra Regional Spine Institute for a Pain Management Evaluation. John Reyher, DO examined the claimant. Past treatments included bilateral carpal tunnel release 5-6 years prior, chiropractic treatment that was not helpful, physical therapy, and bilateral epicondyle injections. Electrodagnostic and nerve conduction studies of the claimant's bilateral upper extremities showed mild sensory median nerve slowing across the carpal tunnel and no evidence of cervical radiculopathy or brachial plexopathy. The assessment was chronic right upper extremity neuropathic pain secondary to an industrial injury. History and physical were consistent with mild right carpal tunnel syndrome, possible subclinical cervical radiculopathy, status post gastric bypass surgery, and bilateral right greater than left lateral epicondylitis. Ms. Yturbe was advised to continue physical therapy. Dr. Reyher requested cervical radiographs.

On 6/23/14, Dr. Hall noted that the claimant had been to a chiropractor the week prior and had no improvement. Ms. Yturbe had severe right arm pain and tingling. A trial of Medrol was prescribed and the claimant was transferred to physiatry.

On 6/26/14, right shoulder radiographs were taken at Reno Diagnostic Centers and read as normal. Cervical spine radiographs showed spondylosis that was most pronounced at C5-6 and to a lesser extent at C6-7. No instability with flexion/extension views was noted.

On 7/7/14, Dr. Reyher ordered a cervical MRI study and prescribed amitriptyline. Ms. Yturbe was placed on light-duty work with no lifting more than 10 pounds.

On 7/23/14, Ms. Yturbe underwent a cervical MRI study without contrast at Reno Diagnostic Centers that showed apparent foreshortening of the lateral masses that resulted in an element of congenital epinal canal narrowing with superimposed degenerative changes that caused severe canal stenosis at C5-6 and moderate to severe canal stenosis at C6-7 without abnormal signal intensity in the cord to suggest cord edema or myelomalacia at the time.

On 7/29/14, Dr. Reyher reviewed the MRI study. He requested a C7-T1 epidural steroid injection for the claimant. Ms. Yturbe remained on light-duty work.

On 9/24/14, the assessment was chronic cervicgia and right upper extremity pain. Dr. Reyher recommended ongoing physical therapy.

On 11/19/14, physical therapy, Voltaren gel, and light-duty work continued.

On 12/2/14, Ms. Yturbe went to Sierra Neurosurgery Group where Hilari Fleming, MD examined her. The impression was severe cervical stenosis with

RECEIVED

Page 2 of 7

JUN 21 2016

CCMSI - RENO

Yturbe0006

033

JA057

Jody Yturbe

quite significant cord flattening at C5-6 into a lesser extent at C6-7, and multi-level foraminal narrowing on the right most significant at C5-6, but also involving C6-7. Surgical intervention was recommended.

On 12/17/14, Dr. Reyher prescribed Cymbalta and Flexeril.

On 1/28/15, Dr. Reyher transferred the claimant's care to Dr. Fleming.

On 2/13/15, Dr. Fleming performed surgery at St. Mary's Regional Medical Center that was described as anterior cervical microdiscectomy with foraminotomies at C5-6 and C6-7, arthrodesis C5-6 and C6-7 with Cornerstone allograft, and internal fixation segmental C5 through C7 with Atlantis plate.

On 5/26/15, Ms. Yturbe had some discomfort in her right shoulder and slight numbness in her thumb and index finger. The assessment was cervical spondylosis with myelopathy. A new MRI was recommended.

On 6/15/15, a cervical MRI study without contrast was performed at Reno Diagnostic Centers that showed foreshortened lateral masses that resulted in an element of congenital central spinal canal narrowing, interval AODF C5-7 without evidence of complication or myelomalacia of the cord, no significant central canal stenosis from C5 to C7 with mild central canal stenosis noted at the C3-4 level, uncovertebral arthropathy most pronounced at the C5-6 level with moderate bilateral neural foraminal narrowing, similar compared to prior studies.

On 6/23/15, the assessment was congenital spinal stenosis with some superimposed degenerative changes, fusion at C5-6 and C6-7, no new problems. The claimant's upper cervical levels had some degenerative changes, but nothing that required intervention. Dr. Fleming released the claimant to full duty work with the necessity of a headset for the majority of her work.

On 7/23/15, Ms. Yturbe was having trouble even working six hours per day. The assessment was cervical spondylosis with myelopathy. The accommodations recommended did not give the claimant adequate relief of her symptoms. Dr. Fleming recommended a neurology evaluation.

On 8/27/15, Robert G. Berry Jr., MD performed an initial physiatry consultation at Sierra Regional Spine Institute. The assessment was electrodiagnostic evidence of a very mild median neuropathy condition in the right upper extremity that was consistent with residual carpal tunnel syndrome. Dr. Berry felt that, from a clinical standpoint, the claimant had a C6 sensory radiculitis condition and that a nerve root block at C6 in the right upper extremity would be helpful for diagnostic and therapeutic purposes.

RECEIVED

JUN 21 2016

Page 9 of 7

CCMSI - RENO

Yturbe0007

034

JA058

Jody Yturbe.

On 10/27/15, Ms. Yturbe underwent a Functional Capacity Evaluation (FCE) at Advanced Testing, Ltd that placed her in the "light" work category.

On 10/29/15, Dr. Fleming agreed that a nerve root block may be informative and provide some long-term benefit.

On 12/9/15, Jacob Blake, MD administered a right C6 cervical selective nerve root block.

On 1/5/16, Ms. Yturbe reported that the nerve block gave her good relief, but only lasted for one week. The plan was for a right-sided C5-C6 laminoforaminotomy.

On 1/26/16, Dr. Fleming performed surgery at Reno described as right-sided posterior C5-6 laminoforaminotomy.

On 2/8/16, Ms. Yturbe's right arm pain was much better than prior to surgery. Dr. Fleming referred the claimant to physical therapy.

On 3/8/16, Ms. Yturbe had some numbness in her right index finger and felt that her right arm was not as strong as her left. Overall, she felt she had some significant improvement. The impression was that the claimant was doing well following posterior decompression. Her radiculopathy was markedly better. She was ready to begin physical therapy.

On 4/22/16, Ms. Yturbe was tolerating the physical therapy. She was getting some new sensations in the thumb that had been numb. Dr. Fleming felt that the claimant was progressing as expected. Dr. Fleming deemed the claimant to be at maximum medical improvement for her neck injury and wanted Ms. Yturbe to resume her vocational rehabilitation activities.

PAST MEDICAL HISTORY:

Jody Yturbe denied previous injury to the affected cervical spine. She also denied previous worker's compensation claim.

WORK STATUS:

Jody was no longer able to perform her job duties as a dispatcher, even at a decreased duty. Her injury forced early retirement. She had a FCE which placed her in the light category; they are attempting to find vocational rehabilitation for her.

FUNCTIONAL STATUS and ACTIVITIES OF DAILY LIVING ASSESSMENT:

Jody continues to have difficulties with her daily activities as well as self care. She notices fatigue and pain in her right arm when she puts her arm up over shoulder height as well as a burning sensation when she tries to do small movements, such as curling her hair or buttoning a shirt. She is having a hard

RECEIVED

Page 4 of 7

JUN 21 2016

CCMSI - RENO

Yturbe0008

035

JA059

Jody Yturbe

time reading for longer periods because of difficulty with looking down. She has a pins and needles sensation between her shoulder blades when she is writing and her fatigues and eventually has increased pain and cramping from the right hand all the way to her shoulder. Sitting for longer periods increases discomfort. She is able to stand and walk without increased pain. Carrying, lifting and pulling are all pain inducing, especially if it is over 30 pounds. Her thumb and first finger of her right hand are usually numb which makes it difficult to grasp things for her, including her fork to eat. She notices that she has a difficulty with swallowing sometimes, or feels like her food will get stuck. She was told this is most likely due to the plate and scar tissue in her neck. Numbness is continually present in the first two fingers of the right hand as well as between the shoulder blades. She has difficulty traveling if it is over 25 minutes. Sleep is extremely problematic for and she states she has the worst sleep of her life. She tosses and turns due to numbness and tingling in the upper extremity as well as pain in her neck. She has not been as social or participating in recreational activities as she used to due to pain. She is also suffering severe headaches almost daily. She is not using pain medications, she is relying on her TENS unit as well as ice for pain control.

CHIEF COMPLAINTS:

Jody continues to have pain and difficulties in her day to day life. She has severe headaches several time per week. She has numbness in her first two finger on the right hand as well as a burning sensation between her shoulders at the surgical site. Her entire neck will feel like pins and needles and burning with certain activities or movements and she is having a very difficult time sleeping.

EXAMINATION:

Jody Yturbe is a friendly and cooperative woman who appears her stated age of 45. She presents for evaluation of her cervical spine today, which she states is worse on the right and involves the entire right upper extremity. Visualization of the skin on her neck shows a 2" posterior mid line scar as well as a 1 3/4" anterior scar which is to the right of midline. Dermatome evaluation shows decreased sensation in the right C6 and C7 distribution. Grip strength shows 68 pounds bilaterally when tested with JAMAR dynamometer, though it got progressively more painful for her with repeat testing. She has visual as well as palpable spasm at the cervicothoracic junction bilaterally; this is where she points to as the location of her burning sensation. When testing cervical muscle strength against examiner resistance, she noticed pain on flexion, left lateral flexion hurt on the right side, and rotation was painful bilaterally. Rotation was the most uncomfortable for her. She did not have an increase in pain with extension or right lateral flexion. Cervical compression increased pain and she was not able to complete Soto-Hall due to pain and inability to flex forward. Range of motion is very limited due to her arthrodesis. Warm up movements were completed and motion she was able to do is tabulated below:

RECEIVED

JUN 21 2016

Page 5 of 7

CCMSI - RENO

Yturbe0009

036

JA060

Jody Yturbe

Cervical spine	Flexion	Extension	Impairment %	Table
Angle	15	10	9	15-12
Impairment %	4	5		page 418
	Right lat flex	Left lat flex	Impairment %	Table
Angle	20	20	4	15-13
Impairment %	2	2		page 420
	Right rotate	Left rotate	Impairment %	Table
Angle	30	40	5	15-14
Impairment %	3	2		page 421

Impairment due to range of motion disability is 18% whole person.

DIAGNOSIS:

Status post anterior cervical microdiscectomy with foraminotomies at C5-6 and C6-7, arthrodesis C5-6 and C6-7 with Cornerstone allograft, and internal fixation segmental C5 through C7 with Atlante plate and then subsequent right-sided posterior C5-6 laminoforaminotomy.

PERMANENT PARTIAL DISABILITY SUMMARY:

From reviewing the records and from examining Jody Yturbe today, it is my opinion that she has reached a point of being stable and reliable.

Mrs. Yturbe had an injury and subsequent fusion to multiple spinal levels C5-C7 which means that for her the most appropriate rating method is the ROM method, as shown on page 380 Figure 15-4.

1. Diagnosis: Table 15-7 page 404 category IV.E
She had multiple levels operated on with residual pain and symptoms. This gives her 10% for single level fusion and another 1% for the second level. She also had a second operation for another 2%. Overall whole person impairment from diagnosis method is 13%.
2. Range of motion: Table 15-12, 13, 14 page 418-21
As tabulated above her range of motion impairment is 18% whole person.
3. Neurological Deficit: Table 15-15 and 15-17 page 424
Maximum % loss of function due to sensory deficit at C6 is 8%. This is multiplied by her Sensory loss grade of 2 with 75% deficit to give her 6% sensory deficit.

All three of the above categories (13%, 18%, 6%) are then combined using the Combined Values Chart on page 604 for a total of 33% whole person impairment.

RECEIVED

JUN 21 2016

CCMSI - RENO

Yturbe0010

037

Jody Yturbe

I recommend closure of claim number 14853E248267 with 33 percent whole person impairment.

Though this is a high number, I do believe it reflects her level of impairment. Even if the DRE method were to be used for a similar single-level injury, she would have been placed in category IV due to fusion and radiculopathy, which wasn't even necessary to be present for the category IV placement. This would have already given her 28% impairment for the single level. She has had multiple surgeries over multiple levels with residual radicular involvement. In my medical opinion, the 33% is easily justified in her case.

APPORTIONMENT:

In accordance with NAC 815C.490 this patient has no prior history of injury to the examined area. Therefore, there is no basis for apportionment in this case.

I do not believe there is inconsistency between the history of the accident and the physical examination findings in this case:

This examination was performed in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Second printing. All extremity ranges of motion and measure active range of motion measurements were performed utilizing a goniometer. All spinal ranges of motion were performed using inclinometers and measured during active range of motion.

Respectfully submitted,

Katharine O. Welborn, DC

RECEIVED

JUN 21 2016

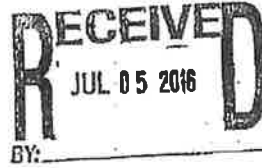
Page 7 of 7

CCMSI - RENO

Yturbe0011

038

JA062



July 1, 2016

Jody L Yturbide
9732 Pyramid Wy #368
Sparks, NV 89441

RE: Claim #: 14853E248257
Date of Injury: 5/22/2014
Employer: City of Reno
Body Part: cervical

Dear Ms. Yturbide:

We are enclosing a copy of the Permanent Partial Disability rating report from Katharina Welborn, D.C. Based on your permanent impairment as a result of this industrial injury, you have been awarded thirty three (33%) percent disability of the whole man as a direct result of this industrial injury to your listed body parts as described above.

Pursuant to NRS 616C.495 since prior PPDs have resulted in a total whole person impairment of 7%, you are only entitled to a 18% lump sum on this claim and the remaining 15% in installments

Based on the 33% percent of disability, you are entitled to receive all monthly installments of \$1,047.56 until you reach the age of seventy (70) for a total installment of \$311,710.46; or you are entitled to a one time lump sum payment of eighteen (18%) percent in the amount of approximately \$85,788.21 and the remaining 15% in monthly installments of \$476.16 until you reach the age of seventy (70) for a total monthly installments of \$140,717.44.

Enclosed is the Election of Method of Payment of Compensation form and the Reaffirmation/retraction of Lump Sum Request form. If you choose to accept the award, please sign, date and return the Election of Method of Payment of Compensation form. Three (3) days later, if you still choose to accept the award, please sign, date and return the Reaffirmation/Retraction of Lump Sum Request form. Both forms must have a witness to your signature.

Please note, if a response is not received in this office within 30 days from the date of this letter, it will be necessary to initiate installment payments.

Yturbide0012

INDUSTRIAL COMPENSATION MANAGEMENT SERVICES, INC. 1000 N. RIVER ST. SUITE 1000 SPARKS, NV 89411-1000

039


JA063

Your claim was closed for any further medical treatment effective 6/19/2016, the date you were rated for a permanent partial disability.

Pursuant to NRS 616C495 (2), acceptance of payment for a permanent partial disability lump sum terminates all benefits for compensation and constitutes a final settlement of all factual and legal issues in the case. By so accepting the lump sum, you waive all rights regarding the claim, including the right to appeal the closure of this case or the percentage of disability, except for Vocational Rehabilitation Services. You will have lifetime reopening rights, which are explained in the enclosed form D-13, "Injured Workers Right to Reopen a Claim".

If you disagree with this determination, you may appeal by filing the enclosed "REQUEST FOR HEARING" form within seventy (70) days of the date of this notice by contacting the Hearing Division at the address applicable to the jurisdiction.

Sincerely,
CCMSI


Lisa Jones
Claims Representative

Cc: file
City of Reno
Jason Guinasso, Esq.

Yturbide0013

040

JA064

Injured Employee: Jody Yurbide Date: 7/1/2016
Claim No.: 14853E248257 Date of Injury: 5/22/2014
Employer: City of Reno Insurer: City of Reno

ELECTION OF METHOD OF PAYMENT OF COMPENSATION
(Pursuant to NRS 616C.495)

I, Jody Yurbide, have been advised that I may elect to receive my permanent partial disability compensation on an installment basis or, if eligible, and I so elect, on a lump sum basis.

Should I elect to receive my compensation on an installment basis, payments will begin on 7/1/2016 and terminate on 2/16/2041 and will be paid at the monthly rate of \$1,047.56 or a total installment payment of \$311,710.46.

If I elect to receive my entitlement on a lump sum basis I will receive approximately \$85,788.21 and additional monthly installments of \$476.16 until you reach the age of seventy (70) for a total annual installments of \$140,717.44. This will vary depending on the date I elect to receive my lump sum payment. According to NRS 616C.495, if I elect to receive my payment for permanent partial disability in a lump sum, all of my benefits for compensation terminate.

My acceptance of the lump sum payment constitutes a final settlement of all factual and legal issues regarding this claim. By so accepting, I waive all of my rights regarding the claim, including the right to appeal from the closure of the case or the percentage of my disability, except:

- (a) My right to request reopening in accordance with the provisions of NRS 616C.390; and
- (b) Any services for counselling, training or other rehabilitation services provided by the insurer.

Further, I realize that I have twenty (20) days after the mailing or personal delivery of this notice within which to retract or reaffirm my request for a lump sum. I also realize that I will not be paid a lump sum until I have reaffirmed this election in writing.

Check one to indicate method of payment desired and sign below.

1. ☐ On an installment basis as provided by NRS 616C.490.
2. ☐ A lump sum of approximately \$85,788.21 and additional monthly installments of \$476.16 until you reach the age of seventy (70) for total annual installments of \$140,717.44. According to NRS calculated pursuant to NRS 616C.495.

DATE: _____ INJURED EMPLOYEE: _____

DATE: _____ WITNESS: _____
Insurer: Designate whether monthly or annual rate.
**Amount depends on actual effective date (date elected) D-10a (Rev. 2/98)

Yurbide0014

041

JA065

Claimant:
Social Security No:
Claim No:
Employer:
Date of Injury:

Judy Yturbe
14853E248257
City of Reno
5/22/2014

REAFFIRMATION OF LUMP SUM REQUEST
(Pursuant to NRS 616C.495(2))

NRS 616C.495 requires:

2.

If the injured employee elects to receive his payment for a permanent partial disability in a lump sum, all of his benefits for compensation terminate. His acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting he waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability, except:

- (a) His right to reopen his claim according to the provisions of NRS 616C.390; and
 - (b) Any services for counseling, training or other rehabilitation services provided by the insurer.
- The injured employee must be advised in writing of the provisions of this subsection when he demands his payment in a lump sum, and has 20 days after the mailing or personal delivery of this notice within which to retract or reaffirm his demand before his election becomes final.

Pursuant to this statute, if you still choose to accept the lump sum amount, please reaffirm your decision in the space provided below.

Failure to return this form or not checking one of the boxes may result in a delay in the processing of your award.

- ☐ I reaffirm the request for my lump sum payment and required installment payments for PPD over 25%.
- ☐ I do not reaffirm the request for my lump sum payment and required installment payments for PPD over 25%.

Signature of Injured Employee

Date

Witness

Date

D-11 (rev. 2/98)

Yturbe0015

042

JA066

**INJURED EMPLOYEE'S RIGHT
TO REOPEN A CLAIM WHICH HAS BEEN CLOSED**

Nevada Revised Statutes 616C.390 defines your right to reopen your worker's compensation claim after it has been determined that all benefits have been paid and your claim has been closed.

An application to reopen a claim must be in writing and accompanied by a certificate from a physician or chiropractor showing a change in medical condition.

If you did not lose time from work as a result of your industrial injury and you did not receive a permanent partial disability award, reopening of your claim must be requested within one (1) year after the date on which your claim was closed.

Except as otherwise provided in NRS 616C.390(4), if the request for reopening is denied, the injured employee shall not reapply to reopen the claim until at least one (1) year after the date on which the final determination of an insurer is issued.

Reopening of a claim is not effective before an application for reopening is made unless good cause is shown (NRS 616C.390(8)).

PPD OFFSET

Nevada Revised Statutes (NRS) 616C.405 prohibits an injured employee from receiving a permanent partial disability (PPD) benefit at the same time he/she is receiving temporary total disability (TTD), temporary partial disability (TPD), or permanent total disability (PTD).

This means that if you have received a PPD on a claim and you were paid the award in a lump sum, future TTD, TPD, or PTD you receive on that claim must be reduced by a portion of the PPD lump sum; or, if you are receiving installment payments for PPD, those payments will be suspended while TTD, TPD, or PTD is being paid.

Your PPD lump sum was computed through the day before your 70th birthday. In other words, the lump sum represents permanent partial disability payments due you from the effective date of your initial PPD payment until you turn 70 years old (unless otherwise entitled to the minimum lump sum). Although you received just one lump sum payment(s), in essence you received your future PPD payments as well.

The rate at which the PPD offset is deducted is based on the daily/monthly rate of the PPD award. Except for minimum lump sum awards, for each day/month you receive TTD, TPD, or PTD on the claim, the daily/monthly PPD rate is deducted for the time period used to calculate the lump sum PPD award. (See NRS 616C.440 for specific information regarding offsets to PTD)

*PPD awards are calculated using the maximum age established by law and, depending on the date of the injury, may be less than 70 years of age.

NOTE: This form is to be used by the Claims Agent when sending out permanent partial disability awards or whenever applicable.

D-13 (Rev. 2/98)

Yturbide0016

043

JA067

PERMANENT PARTIAL DISABILITY AWARD CALCULATION WORK SHEET

PERMANENT PARTIAL DISABILITY AWARD CALCULATION WORK SHEET

Injured Employee: Jody Yturbide DOB: 2/7/1971 Sex: Female

SSN: 148536248257 D.O.I.: 5/22/2014 Claim #: 148536248257

*Average Monthly Wage: \$5,820.76 * State Average Wage: \$5,290.70 Date of Rating: 6/19/2016

Date Award Offered: 6/29/2016 Date Evaluation Report Received: 6/21/2016

Healy Bridge Verification

Description: service 33.00 % % Total: 33.00 % BB

Instalment Calculation

*A. \$5,290.70 0.0060 33.00 %BB = \$ 1,047.56 Year of Birth: 1971 Last TTD: 2015

Monthly Wage: \$1,047.56 Monthly Rate: 12,570.72 TPD, or DOI: 2015

B. \$1,047.56 x 12 = \$ 12,570.72 Annual Rate: 70 5

Monthly Rate: \$12,570.72 / 365.25 = \$ 34.42 Daily Rate: 2011 2021

C. Annual Rate

Instalment Calculation

(1) Last Date TTD or TPD paid: 4/29/2016 First Payment Date: 7/1/2016

(2) Time Covered by First Payment: (n) 4/30/2016 through (b) 6/30/2016

(3) First Payment: \$34.42 + \$2,095.12 + \$0.00 = \$2,129.54

(4) Time Covered by Annual Payments: 7/1/2016 through 6/30/2040 24 Years

(5) Time Covered by Final Payment: 7/1/2040 through 2/16/2041

(6) Final Payment: \$7,332.92 + \$550.72 = \$7,883.64

**** Monthly X Annual 16 Day(s) 311,710.46

Total of Instalment Payments: \$311,710.46

Minimum Lump Sum Calculation

.5 % X 18.00 % BB X \$5,290.70 Monthly Wage from (A) above: \$47,616.30

Minimum Lump Sum Amount

Lump Sum Calculation of Disability Up To and Including 25%
(Use form D-5b for disability greater 25%)

(7) Effective Date of Award (year, month following 2b) Per NAC 616C.502

(8) Date of Birth (year, month)

(9) Injured Employee Age at Award Effective Date = (7) minus (8) (years, months)

(10) Monthly Rate From (B)

(11) Factor from Table for Present Value X

(12) Insert Sum of (3). Add to sum of (11) only.

(13) Subtotal of (11) plus (12):

(14) Greater of (13) full Lump Sum or Minimum Lump Sum:

(15) Minus any applicable award payments previously paid:

(16) Net Amount Payable:

* Use the Average Monthly Wage or the State Average Wage, whichever is lower. If the average monthly wage (AMW) for TTD on this claim is subject to the frozen 1993 rate, recalculate the AMW for PPD purposes.

** Use .005 for injuries sustained before 07/01/81. Use .006 for injuries sustained after 07/01/81, through 06/17/93. Use .0054 for injuries sustained on or after 06/18/93. Use .006 for injuries sustained on or after 1/1/00.

*** Per NRS 616C.400(7), age at which entitlement ceases.

**** This must reflect the end of the month prior to election of the lump sum payment. Recalculation may be required to bring the award to present day value. If (2)(b) is December date, use caution on line (4) to assure correct number of years. (If subtracting dates, add one year)

***** Must pay monthly installments if monthly entitlement is \$100 or more. May pay annual installment if monthly entitlement is then \$100.

***** Use date of claim reopening if TTD/TPD benefits were not paid after the claim was reopened (2)(a).

PREPARED BY: [Signature]

CHECKED BY: [Signature]

Date: 6/30/16

Date: 6/30/16

Yturbide0017

044

PERMANENT PARTIAL DISABILITY AWARD CALCULATION WORK SHEET
FOR DISABILITY OVER 15% BODY BASIS
 sec NRS 616C.491(1)(a)

Injured Employee: Jody Yurbide DOB: 2/17/1971 Soc: Transo
 SS #: 55 230 70 D. O. B. 5/27/2014 Claim #: 146425248357
 *Average Monthly Wage: \$5,230.70 *State Average Wage: \$5,230.70 Date of Injury: 6/19/2016
 Date Award Offered: 6/22/2016 Date Evaluation Report Received: 6/21/2016

Disability: partial 33.00 % 33.00 % DB
 Total: 33.00 % DB
 Difference for installment calculation: 13.16 %

Installment Calculation

A. \$5,230.70 * 0.0050 15 % DB = \$ 476.16 Year of Birth 1971 Last TTD 2016
 Monthly Wage \$5,230.70 = \$ 5,230.70 TPD, or DOT
 Monthly Rate \$5,230.70 / 12 = \$ 435.89 Annual Rate 20 → 5
 Annual Rate \$5,230.70 / 12 = \$ 435.89 Daily Rate 2041 → 2021

Installment Calculation

Transfer (1) through (3) from form D-9a to (1) through (3) on form D-9b
 (1) Last Date TTD or TPD paid: 4/20/2016 First Payment Date: 7/1/2016
 (2) Time Covered by First Payment: (a) 4/20/2016 through (b) 6/30/2016
 (3) First Payment: \$ 34.42 + \$ 2,095.12 = \$ 2,129.54 (from Form D-5a)
 (4) Time Covered by Annual Payments: 7/1/2016 through 6/30/2017 = 24 Years
 (5) Time Covered by First Payment: 7/1/2016 through 6/30/2017 = 24 Years
 (6) First Payment: \$2,129.54 Total of Installment Payments (4) through (6) \$51,583.36
 **** Monthly X Annual 16 Days 16 Days 16 Days

Minimum Lump Sum Calculation

(Payable only if greater than last of installment on form D-9a)
 .5 % X 12.00 % DB X = \$5,230.70 Monthly Wage from (A) above
 (Use Total Percent of Disability)
 D. \$5,230.70 X .5 % X 18 % DB = \$571.40 Monthly Rate
 Average Monthly Wage (from A above)
 (7) Effective Date of Award (year, month following 24) 2016
 (8) Date of Birth (year, month) 1971
 (9) Injured Employee Age at Award Effective Date (2) minus (8) (year, month) 45
 (10) Monthly Rate from (D) \$571.40
 (11) Factor from Table for Present Value X 146.41 = \$83,636.67
 (12) Interest Sum of (3) + \$2,129.54
 (13) Subtotal of (11) plus (12) \$85,766.21
 (14) Minus any applicable award payments previously paid: \$0.00
 (15) Net Amount Payable: \$85,766.21

* Use the Average Monthly Wage or the State Average Wage, whichever is lower. If the average monthly wage (in 50) for TTD on life claim is subject to the former 1993 rate, recalculate the AMW for FPD purposes.
 ** Use .005 for injuries sustained before 6/1/81. Use .006 for injuries sustained after 6/1/81, through 6/30/93. Use .0054 for injuries sustained on or after 6/1/93. Use .006 for injuries sustained on or after 1/1/00.
 *** Per NRS 616C.491(7), age at which entitlement ceases.
 **** This must reflect the end of the month prior to election of the lump sum payment. Recalculation may be required to bring the award to present day value. If (2)(b) is December date, use election on Jan (4) to ensure correct number of years. (If scheduling dates add one year)
 ***** Must pay monthly installments if monthly contribution is \$100 or more. May pay annual installment if monthly contribution is less than \$100.
 ***** Use date of claim opening if TTD/TPD benefits were not paid other than claim was reopened (2)(b).

PREPARED BY:
 CHECKED BY:

[Handwritten Signature]
[Handwritten Signature]

Date:
 Date:

[Handwritten Signature]
[Handwritten Signature]

Yurbide0018

045

REQUEST FOR HEARING

REPLY TO: Department of Administration
Hearings Division
1050 E. William Street, Ste. 400
Carson City, NV 89710
(702) 687-5966

OR

Department of Administration
Hearings Division
2200 South Runcho, Ste. 210
Las Vegas, NV 89102
(702) 486-2525

Do Not Complete or Mail This Form Unless You Disagree With Your Insurer's Determination.
If you disagree with the determination, complete the Employee and Employer Information below and the bottom portion of this form. INCLUDE A COPY OF YOUR DETERMINATION LETTER with this form and mail to the above address.

Employee Information
Employee's Telephone Number
Employee's Name and Address

Employer Information
Employer's Telephone Number
Employer's Name and Address

Briefly explain the basis for this appeal:

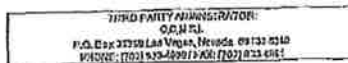
This request for hearing is filed by, or on behalf of:

- ☐ The Injured Employee
☐ The Employer

and is dated this _____ day of, 19 _____

Signature of Injured Employee/Employer

Injured Employee's/Employer's Rep. (Advisor)



D-12a (Rev. 10/03)

Yturbide0019

046

JA070

Jody Yturbe

Katharina C. Welborn, DC
404 Shannon Way
Roseville, CA 95678
Ph: (930) 401-6512
Fax: (916) 285-9355

SCANNED

Date: June 19, 2016

Company: CCMSI

Attention: Lisa Jones

Permanent Partial Disability Rating

Claimant: Jody Yturbe
Claim #: 14853E248257
DOI: 05/22/14
Employer: City of Reno
Evaluation Date: 06/09/16

RECEIVED

JUN 21 2016

CCMSI - RENO

Body Part(s): Cervical spine

The following permanent impairment evaluation was performed according to the methodologies and criteria of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 6th edition, Second Printing February 2002, (herein referred to as "Guides").

Identity was confirmed with Nevada Driver License #0900930905.

HISTORY and RECORDS REVIEW:

On 5/22/14 while working as a public safety dispatcher for the City of Reno, Jody Yturbe reported the onset of severe pain in her right fingers, forearm, elbow, and her shoulder. Her job entailed non-stop typing and answering phones.

On 5/23/14, Ms. Yturbe went to Concentra Medical Center where Michael Panlcati, MD examined her for right arm pain. The assessment was recurrent right elbow tenosynovitis and status post bilateral arthroscopic carpal tunnel release. Dr. Panlcati prescribed ketoprofen gel and Celebrex. Ms. Yturbe was released to light-duty work with limited use of her right hand.

On 5/27/14, Ms. Yturbe went to Specialty Health where Scott Hall, MD examined her for complaints of right wrist, fingers, elbow and shoulder pain. Ms.

Yturbe0020

047

Jody Yturbe:

Yturbe was taken off work for two days to let her symptoms calm down. She was given a trial of Lyrica.

On 6/9/14, Ms. Yturbe went to Sierra Regional Spine Institute for a Pain Management Evaluation. John Reyher, DO examined the claimant. Past treatments included bilateral carpal tunnel release 5-6 years prior, chiropractic treatment that was not helpful, physical therapy, and bilateral epicondyle injections. Electrodagnostic and nerve conduction studies of the claimant's bilateral upper extremities showed mild sensory median nerve slowing across the carpal tunnel and no evidence of cervical radiculopathy or brachial plexopathy. The assessment was chronic right upper extremity neuropathic pain secondary to an Industrial Injury. History and physical were consistent with mild right carpal tunnel syndrome, possible subclinical cervical radiculopathy, status post gastric bypass surgery, and bilateral right greater than left lateral epicondylitis. Ms. Yturbe was advised to continue physical therapy. Dr. Reyher requested cervical radiographs.

On 6/23/14, Dr. Hall noted that the claimant had been to a chiropractor the week prior and had no improvement. Ms. Yturbe had severe right arm pain and tingling. A trial of Medrol was prescribed and the claimant was transferred to physiatry.

On 6/26/14, right shoulder radiographs were taken at Reno Diagnostic Centers and read as normal. Cervical spine radiographs showed spondylosis that was most pronounced at C5-6 and to a lesser extent at C6-7. No instability with flexion/extension views was noted.

On 7/7/14, Dr. Reyher ordered a cervical MRI study and prescribed amitriptyline. Ms. Yturbe was placed on light-duty work with no lifting more than 10 pounds.

On 7/23/14, Ms. Yturbe underwent a cervical MRI study without contrast at Reno Diagnostic Centers that showed apparent foreshortening of the lateral masses that resulted in an element of congenital spinal canal narrowing with superimposed degenerative changes that caused severe canal stenosis at C5-6 and moderate to severe canal stenosis at C6-7 without abnormal signal intensity in the cord to suggest cord edema or myelomalacia at the time.

On 7/29/14, Dr. Reyher reviewed the MRI study. He requested a C7-T1 epidural steroid injection for the claimant. Ms. Yturbe remained on light-duty work.

On 9/24/14, the assessment was chronic cervicalgia and right upper extremity pain. Dr. Reyher recommended ongoing physical therapy.

On 11/19/14, physical therapy, Voltaren gel, and light-duty work continued.

On 12/2/14, Ms. Yturbe went to Sierra Neurosurgery Group where Hilari Fleming, MD examined her. The impression was severe cervical stenosis with

RECEIVED

Yturbe0021

Page 2 of 7

JUN 21 2016

048

JA072

Jody Yturbe

quite significant cord flattening at C5-6 into a lesser extent at C6-7, and multi-level foraminal narrowing on the right most significant at C5-6, but also involving C6-7. Surgical intervention was recommended.

On 12/17/14, Dr. Reyher prescribed Cymbalta and Flexeril.

On 1/29/15, Dr. Reyher transferred the claimant's care to Dr. Fleming.

On 2/13/15, Dr. Fleming performed surgery at St. Mary's Regional Medical Center that was described as anterior cervical microdiscectomy with foraminotomies at C5-6 and C6-7, arthrodesis C5-6 and C6-7 with Cornerstone allograft, and internal fixation segmental C5 through C7 with Atlantis plate.

On 5/26/15, Ms. Yturbe had some discomfort in her right shoulder and slight numbness in her thumb and index finger. The assessment was cervical spondylosis with myelopathy. A new MRI was recommended.

On 6/15/15, a cervical MRI study without contrast was performed at Reno Diagnostic Centers that showed foreshortened lateral masses that resulted in an element of congenital central spinal canal narrowing, interval ACDF C5-7 without evidence of complication or myelomalacia of the cord, no significant central canal stenosis from C5 to C7 with mild central canal stenosis noted at the C3-4 level, uncovertebral arthropathy most pronounced at the C5-6 level with moderate bilateral neural foraminal narrowing, similar compared to prior studies.

On 6/23/15, the assessment was congenital spinal stenosis with some superimposed degenerative changes, fusion at C5-6 and C6-7, no new problems. The claimant's upper cervical levels had some degenerative changes, but nothing that required intervention. Dr. Fleming released the claimant to full-duty work with the necessity of a headset for the majority of her work.

On 7/23/15, Ms. Yturbe was having trouble even working six hours per day. The assessment was cervical spondylosis with myelopathy. The accommodations recommended did not give the claimant adequate relief of her symptoms. Dr. Fleming recommended a neurology evaluation.

On 8/27/15, Robert G. Berry Jr., MD performed an initial physiatry consultation at Sierra Regional Spine Institute. The assessment was electrodiagnostic evidence of a very mild median neuropathy condition in the right upper extremity that was consistent with residual carpal tunnel syndrome. Dr. Berry felt that, from a clinical standpoint, the claimant had a C6 sensory radiculopathy condition and that a nerve root block at C6 in the right upper extremity would be helpful for diagnostic and therapeutic purposes.

RECEIVED

JUN 21 2016

Yturbe0022

Page 3 of 7

CCMST - DEMO

049

JA073

Jody Yturbe

On 10/27/15, Ms. Yturbe underwent a Functional Capacity Evaluation (FCE) at Advanced Testing, Ltd that placed her in the "light" work category.

On 10/29/15, Dr. Fleming agreed that a nerve root block may be informative and provide some long-term benefit.

On 12/9/15, Jacob Blake, MD administered a right C6 cervical selective nerve root block.

On 1/5/16, Ms. Yturbe reported that the nerve block gave her good relief, but only lasted for one week. The plan was for a right-sided C5-C6 laminoforaminotomy.

On 1/26/16, Dr. Fleming performed surgery at Renown described as right-sided posterior C5-6 laminoforaminotomy.

On 2/8/16, Ms. Yturbe's right arm pain was much better than prior to surgery. Dr. Fleming referred the claimant to physical therapy.

On 3/8/16, Ms. Yturbe had some numbness in her right index finger and felt that her right arm was not as strong as her left. Overall, she felt she had some significant improvement. The impression was that the claimant was doing well following posterior decompression. Her radiculopathy was markedly better. She was ready to begin physical therapy.

On 4/22/16, Ms. Yturbe was tolerating the physical therapy. She was getting some new sensations in the thumb that had been numb. Dr. Fleming felt that the claimant was progressing as expected. Dr. Fleming deemed the claimant to be at maximum medical improvement for her neck injury and wanted Ms. Yturbe to resume her vocational rehabilitation activities.

PAST MEDICAL HISTORY:

Jody Yturbe denied previous injury to the affected cervical spine. She also denied previous worker's compensation claim.

WORK STATUS:

Jody was no longer able to perform her job duties as a dispatcher, even at a decreased duty. Her injury forced early retirement. She had a FCE which placed her in the light category; they are attempting to find vocational rehabilitation for her.

FUNCTIONAL STATUS and ACTIVITIES OF DAILY LIVING ASSESSMENT:

Jody continues to have difficulties with her daily activities as well as self care. She notices fatigue and pain in her right arm when she puts her arm up over shoulder height as well as a burning sensation when she tries to do small movements, such as curling her hair or buttoning a shirt. She is having a hard

RECEIVED

Yturbe0023

050

Jody Yturbe

time reading for longer periods because of difficulty with looking down. She has a pins and needles sensation between her shoulder blades when she is sitting and her fatigues and eventually has increased pain and cramping from the right hand all the way to her shoulder. Sitting for longer periods increases discomfort. She is able to stand and walk without increased pain. Carrying, lifting and pulling are all pain inducing, especially if it is over 30 pounds. Her thumb and first finger of her right hand are usually numb which makes it difficult to grasp things for her, including her fork to eat. She notices that she has a difficulty with swallowing sometimes, or feels like her food will get stuck. She was told this is most likely due to the plate and scar tissue in her neck. Numbness is continually present in the first two fingers of the right hand as well as between the shoulder blades. She has difficulty traveling if it is over 25 minutes. Sleep is extremely problematic for and she states she has the worst sleep of her life. She tosses and turns due to numbness and tingling in the upper extremity as well as pain in her neck. She has not been as social or participating in recreational activities as she used to due to pain. She is also suffering severe headaches almost daily. She is not using pain medications, she is relying on her TENS unit as well as ice for pain control.

CHIEF COMPLAINTS:

Jody continues to have pain and difficulties in her day to day life. She has severe headaches several times per week. She has numbness in her first two fingers on the right hand as well as a burning sensation between her shoulders at the surgical site. Her entire back will feel like pins and needles and burning with certain activities or movements and she is having a very difficult time sleeping.

EXAMINATION:

Jody Yturbe is a friendly and cooperative woman who appears her stated age of 45. She presents for evaluation of her cervical spine today, which she states is worse on the right and involves the entire right upper extremity. Visualization of the skin on her neck shows a 2" posterior mid line scar as well as a 1 3/4" anterior scar which is to the right of midline. Dermatome evaluation shows decreased sensation in the right C6 and C7 distribution. Grip strength shows 65 pounds bilaterally when tested with JAMAR dynamometer, though it got progressively more painful for her with repeat testing. She has visual as well as palpable spasm at the cervicothoracic junction bilaterally; this is where she points to as the location of her burning sensation. When testing cervical muscle strength against examiner resistance, she noticed pain on flexion, left lateral flexion hurt on the right side, and rotation was painful bilaterally. Rotation was the most uncomfortable for her. She did not have an increase in pain with extension or right lateral flexion. Cervical compression increased pain and she was not able to complete Bot-hall due to pain and inability to flex forward. Range of motion is very limited due to her arthrodesis. Warm up movements were completed and motion she was able to do is tabulated below:

RECEIVED

Yturbe0024

JUN 21 2016

Page 5 of 7

051

JA075

Jody Yturbide

Cervical spine	Flexion	Extension	Impairment %	Table
Angle	15	10	9	15-12
Impairment %	4	5		page 418
	Right lat flex	Left lat flex	Impairment %	Table
Angle	20	20	4	15-13
Impairment %	2	2		page 420
	Right rotate	Left rotate	Impairment %	Table
Angle	30	40	5	15-14
Impairment %	3	2		page 421

Impairment due to range of motion difficulty is 18% whole person.

DIAGNOSIS:

Status post anterior cervical microdiscectomy with foraminotomies at C5-6 and C6-7, arthrodesis C5-6 and C6-7 with Cornerstone allograft, and internal fixation segmental C5 through C7 with Atlantis plate and then subsequent right-sided posterior C5-6 laminoforaminotomy.

PERMANENT PARTIAL DISABILITY SUMMARY:

From reviewing the records and from examining Jody Yturbide today, it is my opinion that she has reached a point of being stable and ratable.

Mrs. Yturbide had an injury and subsequent fusion to multiple spinal levels C5-C7 which means that for her the most appropriate rating method is the ROM method, as shown on page 380 Figure 15-4.

1. Diagnosis: Table 15-7 page 404 category IV.E
She had multiple levels operated on with residual pain and symptoms. This gives her 10% for single level fusion and another 1% for the second level. She also had a second operation for another 2%. Overall whole person impairment from diagnosis method is 13%.
2. Range of motion: Table 15-12, 13, 14 page 418-21
As tabulated above her range of motion impairment is 18% whole person.
3. Neurological Deficit: Table 15-15 and 15-17 page 424
Maximum % loss of function due to sensory deficit at C6 is 8%. This is multiplied by her Sensory loss grade of 2 with 75% deficit to give her 6% sensory deficit.

All three of the above categories (13%, 18%, 6%) are then combined using the Combined Values Chart on page 604 for a total of 33% whole person impairment.

RECEIVED

JUN 21 2016

Yturbide0025

Page 6 of 7

052

JA076

Jody Yturbe

I recommend closure of claim number 14853E248257 with 33 percent whole person impairment.

Though this is a high number, I do believe it reflects her level of impairment. Even if the DRE method were to be used for a similar single-level injury, she would have been placed in category IV due to fusion and radiculopathy, which wasn't even necessary to be present for the category IV placement. This would have already given her 28% impairment for the single level. She has had multiple surgeries over multiple levels with residual radicular involvement. In my medical opinion, the 33% is easily justified in her case.

APPORTIONMENT:

In accordance with NAC 616C.490 this patient has no prior history of injury to the examined area. Therefore, there is no basis for apportionment in this case.

I do not believe there is inconsistency between the history of the accident and the physical examination findings in this case.

This examination was performed in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Second printing. All extremity ranges of motion and measure active range of motion measurements were performed utilizing a goniometer. All spinal ranges of motion were performed using inclinometers and measured during active range of motion.

Respectfully submitted,

Katharina C. Welborn, DC

RECEIVED

JUN 21 2016

Yturbe0026

Page 7 of 7

CCMSI - RENO

053

JA077



Dorothy T. Reese *
Suzanne T. Kintz *
Jason D. Guinasso *

D. Gena Munchelli *
Kimberly Manti Guinasso *
Eric C. Werner *

Alvin L. Wechsler *
* Vincent L. Murphy

* Licensed in Nevada
* Licensed in Nevada and California
* Licensed in Illinois
* Of Counsel
* Non-Attorney/Government Affairs
Director

July 9, 2016

SENT VIA FACSIMILE & U.S. MAIL
(775-324-3301)

Lisa Jones
CCMSI
PO Box 20068
Reno, NV 89515

Re: Claimant:
Claim No.:
Employer:
TPA:

Jody Yturbide
14853E248257
City of Reno
CCMSI

Dear Ms. Jones,

I am in receipt of your July 1, 2016 letter regarding my clients, Jody Yturbide, PPD rating of 33% whole person impairment. The purpose of this letter is to address and resolve several misstatements of law and to ask you to re-issue your determination.

First, you state that you apportioned 7% based on a past PPD award. However, such apportionment is only permissible when the impairment is identical to the current impairment and evaluation related thereto. Here, Mrs. Yturbide received an evaluation under a different claim for a permanent disability related to carpal tunnel syndrome at 5% whole person impairment and tendonitis at 2% whole person impairment. The current evaluation is for a disability related to injuries to the cervical spine. Clearly, the ratings referenced herein are not identical impairments. See NRS 616C.490 and NAC 616C.490 (c), attached hereto.

Second, as you conceded in your letter, Mrs. Yturbide is entitled to 33% whole person impairment. This means that she can elect to take a lump sum buyout of 30% not 25%. As you may or may not be aware, NRS 616C.495 was amended in 2015, increasing the amount a claimant could take in a lump sum to 30% from 25%.

Therefore, in accordance with the foregoing, please render a new determination with appeal rights offering 30% in lump sum and 3% in installments in compliance with NRS 616C.490, NRS 616C.495, and NAC 616.490, attached hereto.

INCLINE OFFICE: 936 Southwood Blvd., Suite 301, Incline Village, Nevada 89451

RENO OFFICE: 190 W. Huffaker Lane, Suite 402, Reno, Nevada 89511.

LAS VEGAS: 2300 W. Sahara Ave., Suite 800, Las Vegas, NV 89102

PHONE 775.832.6800 FAX 775.832.6801 EMAIL info@rkglawyers.com WEB www.rkglawyers.com

Yturbide0027

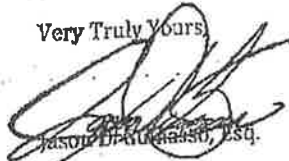
054

JA078

Our office has initiated an appeal of your July 1, 2016 determination letter. However, we anticipate that you will see the errors in your determination and correct these errors without the time and expense associated with unnecessary litigation. If you will agree to correct the determination letter, we will dismiss our appeal.

Thank you for your anticipated assistance. Please do not hesitate to contact me if you have any questions or concerns.

Very Truly Yours,



Jason D. Gurnea, Esq.

ENCLOSURES

CC: Jody Yturbide

Yturbide0028

055

JA079

NRS 616C.490 Permanent partial disability: Compensation.

1. Except as otherwise provided in NRS 616C.175, every employee, in the employ of an employer within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided for permanent partial disability. As used in this section, "disability" and "impairment of the whole person" are equivalent terms.

2. Within 30 days after receiving from a physician or chiropractor a report indicating that the injured employee may have suffered a permanent disability and is stable and ratable, the insurer shall schedule an appointment with the rating physician or chiropractor selected pursuant to this subsection to determine the extent of the employee's disability. Unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor:

(a) The insurer shall select the rating physician or chiropractor from the list of qualified rating physicians and chiropractors designated by the Administrator, to determine the percentage of disability in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as adopted and supplemented by the Division pursuant to NRS 616C.110.

(b) Rating physicians and chiropractors must be selected in rotation from the list of qualified physicians and chiropractors designated by the Administrator, according to their area of specialization and the order in which their names appear on the list unless the next physician or chiropractor is currently an employee of the insurer making the selection, in which case the insurer must select the physician or chiropractor who is next on the list and who is not currently an employee of the insurer.

3. If an insurer contacts the treating physician or chiropractor to determine whether an injured employee has suffered a permanent disability, the insurer shall deliver to the treating physician or chiropractor that portion or a summary of that portion of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as adopted by the Division pursuant to NRS 616C.110 that is relevant to the type of injury incurred by the employee.

4. At the request of the insurer, the injured employee shall, before an evaluation by a rating physician or chiropractor is performed, notify the insurer of:

(a) Any previous evaluations performed to determine the extent of any of the employee's disabilities; and

(b) Any previous injury, disease or condition sustained by the employee which is relevant to the evaluation performed pursuant to this section.

→ The notice must be on a form approved by the Administrator and provided to the injured employee by the insurer at the time of the insurer's request.

5. Unless the regulations adopted pursuant to NRS 616C.110 provide otherwise, a rating evaluation must include an evaluation of the loss of motion, sensation and strength of an injured employee if the injury is of a type that might have caused such a loss. Except in the case of claims accepted pursuant to NRS 616C.180, no factors other than the degree of physical impairment of the whole person may be considered in calculating the entitlement to compensation for a permanent partial disability.

6. The rating physician or chiropractor shall provide the insurer with his or her evaluation of the injured employee. After receiving the evaluation, the insurer shall,

Yturbide0029

056

within 14 days, provide the employee with a copy of the evaluation and notify the employee:

- (a) Of the compensation to which the employee is entitled pursuant to this section; or
- (b) That the employee is not entitled to benefits for permanent partial disability.

7. Each 1 percent of impairment of the whole person must be compensated by a monthly payment:

- (a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;
- (b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993;
- (c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993, and before January 1, 2000; and
- (d) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after January 1, 2000.

→ Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

8. Compensation benefits may be paid annually to claimants who will be receiving less than \$100 a month.

9. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

10. The Division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

11. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

12. This section does not entitle any person to double payments for the death of an employee and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

[63:168:1947; A 1949, 659; 1953, 292] — (NRS A 1959, 204; 1966, 46; 1967, 691; 1969, 475; 1971, 326; 1973, 531; 1975, 605; 1977, 1006; 1979, 1057; 1981, 1170, 1493, 1653; 1983, 428, 1295; 1985, 308, 374; 1987, 78; 1991, 493, 2423, 2424; 1993, 748, 1871; 1995, 579, 2156; 1999, 1791; 2001, 1898; 2009, 3036)

Yturbe0030

057

JA081

NAC 616C.490 Apportionment of impairments. (NRS 616A.400, 616C.490)

1. If any permanent impairment from which an employee is suffering following an accidental injury or the onset of an occupational disease is due in part to the injury or disease, and in part to a preexisting or intervening injury, disease or condition, the rating physician or chiropractor, except as otherwise provided in subsection 9, shall determine the portion of the impairment which is reasonably attributable to the injury or occupational disease and the portion which is reasonably attributable to the preexisting or intervening injury, disease or condition. The injured employee may receive compensation for that portion of his or her impairment which is reasonably attributable to the present industrial injury or occupational disease and may not receive compensation for that portion which is reasonably attributable to the preexisting or intervening injury, disease or condition. The injured employee is not entitled to receive compensation for his or her impairment if the percentage of impairment established for his or her preexisting or intervening injury, disease or condition is equal to or greater than the percentage of impairment established for the present industrial injury or occupational disease.

2. Except as otherwise provided in subsection 9, the rating of a permanent partial disability must be apportioned if there is a preexisting permanent impairment or intervening injury, disease or condition, whether it resulted from an industrial or nonindustrial injury, disease or condition.

3. A precise apportionment must be completed if a prior evaluation of the percentage of impairment is available and recorded for the preexisting impairment. The condition, organ or anatomical structure of the preexisting impairment must be identical with that subject to current evaluation. Sources of information upon which an apportionment may be based include, but are not limited to:

- (a) Prior ratings of the insurer;
- (b) Other ratings;
- (c) Findings of the loss of range of motion;
- (d) Information concerning previous surgeries; or
- (e) For claims accepted pursuant to NRS 616C.180, other medical or psychological records regarding the prior mental or behavioral condition.

4. If a rating evaluation was completed in this State for a previous industrial injury or occupational disease involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present industrial injury or occupational disease, an apportionment must be determined by subtracting the percentage of impairment established for the previous industrial injury or occupational disease from the percentage of impairment established for the present industrial injury or occupational disease, regardless of the edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* used to determine the percentage of impairment for the previous industrial injury or occupational disease.

5. Except as otherwise provided in subsection 6, if a rating evaluation was completed in another state for a previous injury or disease involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present industrial injury or occupational disease, or if no previous rating evaluation was performed, the percentage of impairment for the previous injury or

Yturblde0031

058

disease and the present industrial injury or occupational disease must be determined by using the *Guide*, as adopted by reference pursuant to NAC 616C.002. The apportionment must be determined by subtracting the percentage of impairment established for the previous injury or disease from the percentage of impairment established for the present industrial injury or occupational disease.

6. If precise information is not available, and the rating physician or chiropractor is unable to determine an apportionment using the *Guide* as set forth in subsection 5, an apportionment may be allowed if at least 50 percent of the total present impairment is due to a preexisting or intervening injury, disease or condition. The rating physician or chiropractor may base the apportionment upon X rays, historical records and diagnoses made by physicians or chiropractors or records of treatment which confirm the prior impairment.

7. If there are preexisting conditions, including, without limitation, degenerative arthritis, rheumatoid variants, obesity, congenital malformations or, for claims accepted under NRS 616C.180, mental or behavioral disorders, the apportionment must be supported by documentation concerning the scope and the nature of the impairment which existed before the industrial injury or the onset of disease.

8. A rating physician or chiropractor shall always explain the underlying basis of the apportionment as specifically as possible by citing pertinent data in the health care records or other records.

9. If no documentation exists pursuant to subsection 7 or 8, the impairment may not be apportioned.

[Comm'r of Insurance & Industrial Comm'n, No. 41 § 9, eff. 5-13-82]—(NAC A by Dep't of Industrial Relations, 10-26-83; 6-23-86; A by Div. of Industrial Insurance Regulation, 2-22-88; A by Div. of Industrial Relations by R009-97, 10-27-97; R105-00, 1-18-2001, eff. 3-1-2001; R108-09, 6-30-2010)

Yturbide0032

059

JA083

NRS 616C.495 Permanent partial disability: Payments in lump sum.

1. Except as otherwise provided in NRS 616C.380, an award for a permanent partial disability may be paid in a lump sum under the following conditions:

(a) A claimant injured on or after July 1, 1973, and before July 1, 1981, who incurs a disability that does not exceed 12 percent may elect to receive his or her compensation in a lump sum. A claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that does not exceed 30 percent may elect to receive his or her compensation in a lump sum.

(b) The spouse, or in the absence of a spouse, any dependent child of a deceased claimant injured on or after July 1, 1973, who is not entitled to compensation in accordance with NRS 616C.505, is entitled to a lump sum equal to the present value of the deceased claimant's undisbursed award for a permanent partial disability.

(c) Any claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that exceeds 30 percent may elect to receive his or her compensation in a lump sum equal to the present value of an award for a disability of 30 percent. If the claimant elects to receive compensation pursuant to this paragraph, the insurer shall pay in installments to the claimant that portion of the claimant's disability in excess of 30 percent.

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

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

2. If the claimant elects to receive his or her payment for a permanent partial disability in a lump sum pursuant to subsection 1, all of the claimant's benefits for compensation terminate. The claimant's acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting the claimant waives all of his or her rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his or her disability, except:

(a) The right of the claimant to:

(1) Reopen his or her claim in accordance with the provisions of NRS 616C.390;

or

(2) Have his or her claim considered by his or her insurer pursuant to NRS 616C.392;

(b) Any counseling, training or other rehabilitative services provided by the insurer;

Yturbide0033

060

and

(c) The right of the claimant to receive a benefit penalty in accordance with NRS 616D.120.

2. The claimant, when he or she demands payment in a lump sum, must be provided with a written notice which prominently displays a statement describing the effects of accepting payment in a lump sum of an entire permanent partial disability award, any portion of such an award or any uncontested portion of such an award, and that the claimant has 20 days after the mailing or personal delivery of the notice within which to retract or reaffirm the demand, before payment may be made and the claimant's election becomes final.

3. Any lump-sum payment which has been paid on a claim incurred on or after July 1, 1973, must be supplemented if necessary to conform to the provisions of this section.

4. Except as otherwise provided in this subsection, the total lump-sum payment for disablement must not be less than one-half the product of the average monthly wage multiplied by the percentage of disability. If the claimant received compensation in installment payments for his or her permanent partial disability before electing to receive payment for that disability in a lump sum, the lump-sum payment must be calculated for the remaining payment of compensation.

5. The lump sum payable must be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value must be calculated using monthly payments in the amounts prescribed in subsection 7 of NRS 616C.490 and actuarial annuity tables adopted by the Division. The tables must be reviewed annually by a consulting actuary.

6. If a claimant would receive more money by electing to receive compensation in a lump sum than the claimant would if he or she receives installment payments, the claimant may elect to receive the lump-sum payment.

(Added to NRS by 1983, 430; A 1983, 646, 1296; 1987, 1465; 1989, 687, 1162, 2001, 2002; 1991, 493, 2425; 1993, 749, 1872; 1995, 579, 2157; 2001, 1899; 2003, 1675; 2005, 1493; 2007, 3357; 2015, 1141)

Yturbide0034

061

JA085

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

* * * * *

In the Matter of the Contested
Industrial Insurance Claim

Claim No: 14853E248257

of

Hearing No: 1700074-JL

Jody Yturbide,

Appeal No: 1700698-LLW

Claimant.

MOTION FOR STAY ORDER PENDING JUDICIAL REVIEW

The CITY OF RENO ("City" or "Petitioner") hereby moves for an order from the Department of Administration staying the Appeals Officer Decision entered on December 16, 2016, pending judicial review of the decision by the Second Judicial District Court of the State of Nevada.


The grounds for said motion are that the Appeals Officer Decision is arbitrary and capricious, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record and affected by error of law. The City will be substantially prejudiced in absence of a stay order.

This Motion is made pursuant to NRS 233B.140 and is based upon the Points and Authorities attached hereto.

DATED this 13th day of January 2017.

McDONALD CARANO WILSON LLP

By:


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

062

1 POINTS AND AUTHORITIES

2 The City respectfully submits the following Points and Authorities in support of its Motion
3 for Stay Order Pending Judicial Review:

4 **I. INTRODUCTION**

5 This matter involves a dispute as to whether the calculation of the lump sum payment
6 amount for claimant Jody Yturbide's ("Claimant") 33% permanent partial disability ("PPD")
7 award must subtract her prior PPD awards for different claims or disabilities to comply with the
8 25% statutory cap on lump sum payments. The Claimant worked as a Public Safety Dispatcher in
9 the Reno Emergency Communications Division for the City. On May 23, 2014, Claimant filed a
10 claim for injuries to her right shoulder, forearm, elbow, wrist, and fingers related to severe pain
11 and numbness and loss of sensation in two to three fingers with a date of injury of May 22, 2014.
12 Claimant's job entailed non-stop typing and answering of phones.

13 Following treatment, physical therapy, and two surgeries for her right wrist/elbow strain
14 and cervical strain, Claimant was rated for her conditions. On June 19, 2016, the Claimant's PPD
15 evaluation was performed by Dr. Katharina Welborn. Dr. Welborn recommended claim closure
16 with a 33% whole person impairment.

17 On July 1, 2016, insurer Cannon Cochran Management Services, Inc. ("Insurer") issued a
18 determination letter awarding a 33% disability. The letter also indicated that because Claimant has
19 prior PPDs resulting in a total whole person impairment of 7%, she is only entitled to an 18%
20 lump sum payment on the claim with the remaining 15% to be paid in installments. The Claimant
21 appealed this determination. On August 11, 2016, the Hearing Officer reversed and remanded the
22 Insurer's July 1, 2016 determination, determining that the Claimant is entitled to a one time lump
23 sum offering of 25% with the remaining 8% to be paid in monthly installments.

24 The City appealed the Hearing Officer decision to a Department of Administration Appeals
25 Officer. On December 16, 2016, the Appeals Officer affirmed the Hearing Officer's Decision
26 finding that the Claimant shall be offered 25% of her 33% PPD award in lump sum and the
27 remaining 8% in installments in accordance with NRS 616C.495(d) and NAC 616C.498.
28 However, these statutes do not include a limitation that the 25% cap on lump sum payments

1 applies to just one claim. It was an error of law to read this requirement into the statutes. Rather,
2 because the applicable statutes do not include a requirement that the cap applies to only a specific
3 claim, it should apply to whole person impairment and previous PPD awards for other claims must
4 be considered in determining when the 25% lump sum payment cap has been reached. This is the
5 proper interpretation and consistent with provisions of the applicable statutes as a whole including
6 NRS 616C.495(e) which specifically provides that previous PPD ratings must be considered when
7 compensation is calculated. For these reasons the City seeks a stay of the Appeals Officer
8 decision pending judicial review by the Second Judicial District Court of the State of Nevada.

9 II. STATEMENT OF FACTS

10 The Claimant worked as a Public Safety Dispatcher in the Reno Emergency
11 Communications Division for the City. (Exhibit 1 to Appeal Hearing ("Ex. 1"), at 4.) On May
12 23, 2014, Claimant filed a claim for injuries to her right shoulder, forearm, elbow, wrist, and
13 fingers related to severe pain and numbness and loss of sensation in two to three fingers with a
14 date of injury of May 22, 2014. (*Id.*) Claimant's job entailed non-stop typing and answering of
15 phones. (*Id.*)

16 Following treatment, physical therapy, and two surgeries for her right wrist/elbow strain
17 and cervical strain, Claimant was rated for her conditions. (Ex. 1 at 34-40.) On June 19, 2016, the
18 Claimant's PPD evaluation was performed by Dr. Katharina Welborn. (*Id.*) Dr. Welborn
19 recommended claim closure with a 33% whole person impairment. (Ex. 1 at 39.)

20 On July 1, 2016, Insurer issued a determination letter awarding 33% disability. (Ex. 1 at
21 41.) The letter also indicated that because Claimant has prior PPDs resulting in a total whole
22 person impairment of 7%, she is only entitled to an 18% lump sum payment on the claim with the
23 remaining 15% to be paid in installments. (*Id.*) The Claimant appealed this determination.

24 The following is a summary of the PPD awards and lump sum calculation:

25 PPD Awards:

26 Date of Injury	PPD Award	Lump Sum	Installments	Body Part
1/23/08	5%	X		Right Wrist
27 11/17/11	2%	X		Left Elbow
28 5/22/14	33%	X	X	Cervical

1 *Littlefield*, 123 Nev. 35, 153 P.3d 26 (2007), the Nevada Supreme Court set forth those factors: "In
 2 exercising its discretion, the district court must determine whether the moving party has shown a
 3 likelihood of success on the merits and that the non-moving party's conduct should continue,
 4 would cause irreparable harm, for which there is no adequate legal remedy," *Id.*, 153 P.3d 26 at p.
 5 28. An analysis of those factors in this case demonstrates that this court should stay the Appeal
 6 Officer's Decision in the above-entitled matter.

7 **2. The City is Likely to Prevail on the Merits Because Substantial Evidence**
 8 **Does Not Support the Appeals Officer Decision.**

9 NRS 616C.495(1)(d) states:

10 1. Except as otherwise provided in NRS 616C.380, an award for a
 11 permanent partial disability may be paid in a lump sum under the
 12 following conditions:

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

25 NAC 616C.498 states:

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

- 28 1. Does not exceed 25 percent may elect to receive his
 compensation in a lump sum.
2. Exceeds 25 percent may elect to receive his compensation in a
 lump sum equal to the present value of an award for a disability of
 25 percent. If the 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.

The Nevada Supreme Court has interpreted these provisions to allow no more than 25%
 whole person impairment to be paid in a lump sum. *See Eads v. SIIS*, 857 P.2d 13 (1993) (the
 facts of the *Eads* case involved the same disability and reopening of a claim as opposed to multiple

1 claims with PPD awards which is the issue here). Notably, there is no provision in the two
2 applicable statute sections that limits the 25% cap on lump sum payments to *impairments for the*
3 *same claim or disability*. Rather, there is limited case law interpreting these statutes and the facts
4 of *Eads* are limited to the same claim. As such, with no express limitation in the statutes, the only
5 way such a limitation of the statutes' application to the same claim could exist, as opposed to all
6 claims for a claimant and whole person impairment, would be if the legislature made an
7 amendment.

8 To the extent these statutes are deemed silent as to application to the same claim or
9 different claims, as a matter of statutory construction, the statutes must be considered as a whole.
10 The neighboring statutory provisions confirm that the omission of such a limitation of applicability
11 to the same claim or disability was intentional. Specifically, NRS 616C.495(1)(e) states:

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

17 (Emphasis added).

18 This provision makes it clear that when calculating compensation you must consider
19 compensation in combination with any previous PPD ratings of a claimant that resulted in an
20 award of benefits to the claimant. Therefore, to the extent NRS 616C.695(d) and NAC 616C.498
21 could be deemed to be silent as to whether the 25% cap requires consideration of prior PPD
22 ratings, NRS 616C.495(1)(e) answers this question with a "yes." As such, "in interpreting a
23 statute, th[e] court considers the statute's multiple legislative provisions as a whole. Additionally,
24 statutory interpretation should not render any part of a statute meaningless, and a statute's
25 language 'should not be read to produce absurd or unreasonable results.'" *Leven v. Frey*, 123 Nev.
26 399, 405, 168 P.3d 712, 716 (2007). The failure to consider prior PPD awards is an error of law
27 and the result is absurd and renders the applicable statutes meaningless.
28

7 The May 22, 2014 injury at issue in this claim resulted in an additional 33% whole person
8 impairment. The combination of Claimant's PPD awards results in whole person impairment
9 greater than 25% after adding the 33% PPD award for her right wrist strain, right elbow strain, and
10 cervical strain conditions, and the two prior PPD awards. NAC 616C.498 limits payment of the
11 lump sum to 25%. The balance must be paid in installments.

27 || 111

28 |||

3. The City will Suffer Irreparable Harm in Absence of a Stay.

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

If the Appeals Officer does not enter an order which stays enforcement of the Appeals Officer's Decision, the rights of the City to appeal that decision under NRS 616C.345 will effectively be lost. In other words, absent a stay, the City would be obligated to make a lump sum payment of 25% of the PPD award, which is an additional 7% more of a lump sum payment than is allowed by statute based on the Insurer's and City's calculation of only 18% being allowed to be paid in a lump sum amount. If the City prevails on the merits of its Petition for Judicial Review, benefits paid before the outcome of the judicial review cannot be recouped including the extra 7% lump sum payment that would be made using the calculation in the Appeals Officer's Decision. Under these circumstances, the Nevada Supreme Court has specifically noted that an insurer's remedy under these circumstances is to seek stay. In *DIR v. Circus Circus*, 101 Nev. 405, 705 P.2d 645 (1985), the Nevada Supreme Court stated that the insurer's proper procedure, when aggrieved by a decision, is to seek a stay. *Id.* at fn. 3.

In contrast, the Claimant suffers little relative harm. She has already received all necessary medical treatment. The Claimant will ultimately receive any benefits to which she may be entitled should she ultimately prevail on the Petition for Judicial Review and while those benefits may be delayed, they will not be lost. Further, it is to the Claimant's benefit to receive more in installment payments, as opposed to a lump sum payment, which ensures she will have benefits to assist her over time given her 33% whole person impairment.

IV. CONCLUSION

The City submits the Appeals Officer Decision is arbitrary and capricious because substantial evidence does not support the Appeals Officer's conclusion that the Claimant should

McDONALD-CARANO-WILSON

POWER OF ATTORNEY
FILED IN CLERK'S OFFICE
COUNTY OF WYOMING
JAN 13 2017

1 be paid 25% of the 33% PPD award in a lump sum. The Claimant's medical history of two prior
2 PPD awards totaling 7% must be considered in the calculation of the amount of the 33% PPD
3 award that can be paid in lump sum. Because the Appeals Officer's Decision is not supported by
4 substantial evidence, is arbitrary and capricious, and contains an error of law, Nevada law
5 mandates that it be reversed. For these reasons, the City respectfully requests that the Appeals
6 Officer Decision be stayed pending judicial review before the Second Judicial District Court of
7 the State of Nevada.

8 Dated this 13th day of January 2017.

McDONALD CARANO WILSON LLP

By:

Timothy E. Rowe, Esq.

Lisa M. Wiltshire Alstead, Esq.

P.O. Box 2670

Reno, NV 89505-2670

Attorneys for City of Reno

1 CERTIFICATE OF SERVICE

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

7 Appeals Officer
8 Department of Administration
9 1050 E. William Street, Suite 450
Carson City, Nevada 89701

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

12 Jason Guinasso, Esq.
13 Reese Kintz Guinasso, LLC
14 190 West Huffaker, Suite 402
15 Reno, NV 89511
Counsel for Jody Yturbide

16 City of Reno
17 Attn: Kelly Leerman
1 East First St. 9th Fl.
Reno, NV 89501

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

22
23 
24 Kathleen L. Morris

25
26 481961.1
27
28

NEVADA DEPARTMENT OF ADMINISTRATION

FILED

DEC 16 2016

BEFORE THE APPEALS OFFICER

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

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

of

JODY YTURBIDE
9732 PYRAMID WAY, #368
SPARKS, 89441

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."



Reese Kintz,
Guinasso
190 W. Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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

072

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



Reese Kintz,
Quinasso
190 W. Huffaker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

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 ///



Reese Kintz,
Guinasco
190 W. Hufaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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.



Reese Kintz,
Quinnaso
190 W. Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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."

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///



Reese Kintz,
Guinasso
190 W. Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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

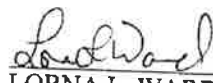
DECISION

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

IT IS SO ORDERED.

DATED this 16th day of December, 2016

APPEALS OFFICER


LORNA L. WARD, ESQ.

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

Submitted By: _____

Jason D. Guinasso, Esq.
Nevada Bar No. 8478
Reese Kintz Guinasso, LLC
190 W. Huffaker Lane
Suite 402
Reno, NV 89511
Attorney for Jody Yturbide



Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

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

JA103