

**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 09:34 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**JOINT APPENDIX, VOLUME III of IV**

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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 III** 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 III 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  
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*Attorneys for Respondent*

/s/ Kelsey R. Heller  
Kelsey R. Heller

ORIGINAL

1 Jason D. Guinasso, Esq.  
Nevada Bar No. 8478  
2 Reese Kintz Guinasso, LLC  
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 In the Matter of the  
8 Industrial Insurance Claim

9 of

10  
11 JODY YTURBIDE  
9732 PYRAMID WAY, #368  
12 SPARKS, 89441

Claim No.: 14853E248257

Hearing No.: 1700074-JL

Appeal No.: 1700698-LLW

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

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

13  
14  
15 JODY YTURBIDE'S

16 PRE-HEARING STATEMENT

17 Pursuant to the Notice of Appeal and Order to Appear, which set this matter to be  
18 heard on **Monday, November 21, 2016 at 3:30 p.m.**, comes now Jason Guinasso, Esq. of  
19 REESE KINTZ GUINASSO, LLC, who will appear on behalf of the Claimant, Jody  
20 Yturbide, and hereby submits the following:

21 **I. STATEMENT OF ISSUES**

22 A. Whether the Hearing Officer's August 11, 2016, Decision and Order to  
23 reverse and remand CCMSI's July 1, 2016, determination offering PPD buyout options for  
24 Mrs. Yturbide's 33% whole person impairment is supported by the evidence and Nevada  
25 law.



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1 **II. SHORT STATEMENT OF MRS. YTURBIDE'S POSITION**

2 Mrs. Yturbide respectfully requests that the Appeals Officer AFFIRM the Hearing  
3 Officer's Decision and Order to reverse and remand CCMSI's July 1, 2016 determination,  
4 instructing them to comply with Nevada statutes and law.

5 **III. PROCEDURAL HISTORY**

6 The Claimant in this matter is Jody Yturbide ("Mrs. Yturbide"). The Employer in  
7 this matter is the City of Reno ("City"). The Third-Party Administrator ("TPA") in this  
8 matter is CCMSI ("CCMSI").

9 **A. Hearing No. 1700074-JL**

10 On July 1, 2016, CCMSI rendered a determination offering Mrs. Yturbide 18% of  
11 her 33% whole person impairment.

12 On July 8, 2016, Mrs. Yturbide filed a Request for Hearing with the Hearings  
13 Division.

14 On July 13, 2016, the Hearing Officer set the hearing in this matter for Wednesday,  
15 August 3, 2016 at 9:00 a.m., in Carson City, Nevada.

16 On August 11, 2016, the Hearing Officer rendered his Decision and Order,  
17 specifically stating, *"On July 1, 2016, the Insurer offered the Claimant a 33% PPD award.*  
18 *The claimant was further advised that he was entitled to a one time lump sum payment of*  
19 *18%, and the remaining 15% in monthly installments, the instant appeal. Having reviewed*  
20 *the submitted evidence and in consideration of the representations made at today's hearing,*  
21 *the Hearing Officer finds the Insurer erred in its 18% one time lump sum offering. As*  
22 *such, the Hearing Officer finds the Claimant is entitled to a one time lump sum offering of*  
23 *25%, with the remaining 8% to be paid in monthly installments, pursuant to NAC 616C.498.*  
24 *Therefore, the Insurer shall recalculate the 33% PPD award based on a lump sum offering*  
25 *of 25%, and upon completion, render a new determination with appeal rights accordingly."*



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1           **B.     Appeal No. 1700698-LLW**

2           On September 12, 2016, the Appeal Officer set the foregoing matter for **Monday,**  
3 **November 21, 2016 at 3:30 p.m.**

4           Also on September 12, 2016, the Appeals Officer granted the Insurer/Employer's  
5 Motion for Stay Pending Appeal.

6           **IV.     STATEMENT OF FACTS**

7           On May 16, 2016, CCMSI issued a determination informing Mrs. Yturbide that she  
8 had been scheduled for a Permanent Partial Disability evaluation with Dr. Katharina  
9 Welborn as her industrial injury had reached maximum medical improvement. **DE#1 at**  
10 **Yturbide0001-3.**

11           Also on May 16, 2016, CCMSI sent a letter to Dr. Welborn confirming the scheduled  
12 appointment and attaching the complete medical file for her review. **DE#1 at**  
13 **Yturbide0004.**

14           Dr. Welborn completed her report on June 19, 2016, awarding a 33% whole person  
15 impairment for Mrs. Yturbide's cervical injury. **DE#1 at Yturbide0005-11.**

16           Following the report, CCMSI issued their determination offering buyout options for  
17 the 33% whole person impairment rating. However, they notified Mrs. Yturbide that she  
18 would only be entitled to 18% in a lump sum due to a prior impairment award being  
19 awarded to Mrs. Yturbide for 7% impairment. **DE#1 at Yturbide0012-26.**

20           On July 9, 2016, counsel for Mrs. Yturbide responded to CCMSI's letter informing  
21 them on their non-compliance with Nevada Revised Statutes and Nevada law. **DE#1 at**  
22 **Yturbide0027-34.**

23 **///**

24 **///**

25 **///**



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V. LAW AND ARGUMENT

A. CCMSI's July 1, 2016 determination letter fails to follow the law in regard to buyout options for PPD evaluations.

Since CCMSI apportioned 7% based on a past PPD award, they violated NRS 616C.490<sup>1</sup> and NAC 616C.490 (c)<sup>2</sup>. In this regard, such apportionment is only permissible

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

5. 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.

6. 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.

7. 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, 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.

8. 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.

9. 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.

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

11. 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.

12. 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.

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

14. 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, 1398, 2009, 3036)

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



1 when the impairment is identical to the current impairment and evaluation related thereto.  
2 Here, Mrs. Yturbide received an evaluation under a different claim for a permanent  
3 disability related to carpal tunnel syndrome at 5% whole person impairment and tendonitis  
4 at 2% whole person impairment. The current evaluation is for a disability related to injuries  
5 to the cervical spine. Clearly, the ratings referenced herein are not identical impairments.  
6 Therefore, Ms. Yturbide is entitled to take a lump sum of 25% and to receive 8% in  
7 installments.

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10  
11 1. If any permanent impairment from which an employee is suffering following an accidental injury or the onset of an occupational  
12 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  
13 chiropractor, except as otherwise provided in subsection 9, shall determine the portion of the impairment which is reasonably attributable  
14 to the injury or occupational disease and the portion which is reasonably attributable to the preexisting or intervening injury, disease or  
15 condition. The injured employee may receive compensation for that portion of his or her impairment which is reasonably attributable to the  
16 present industrial injury or occupational disease and may not receive compensation for that portion which is reasonably attributable to the  
17 preexisting or intervening injury, disease or condition. The injured employee is not entitled to receive compensation for his or her  
18 impairment if the percentage of impairment established for his or her preexisting or intervening injury, disease or condition is equal to or  
19 greater than the percentage of impairment established for the present industrial injury or occupational disease.

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

23 3. A precise apportionment must be completed if a prior evaluation of the percentage of impairment is available and recorded for the  
24 preexisting impairment. The condition, organ or anatomical structure of the preexisting impairment must be identical with that subject to  
25 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 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)

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**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 15<sup>th</sup>, 2016, I served the following:


**JODY YTURBIDE'S**

**PRE-HEARING STATEMENT**

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 <sup>TH</sup> 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 15<sup>th</sup>, 2016, at Reno, Nevada.

  
KATRINA A. TORRES



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Guinesso  
190 W Huffaker Ln  
Suite 402  
Reno, NV 89511  
(775) 851-8746

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NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

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

**FILED**

SEP 12 2016

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

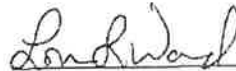
JODY YTURBIDE,

Claimant.

**ORDER**

The Employer filed its Motion for Stay Pending Appeal on  
September 8, 2017. After careful consideration, the Motion for Stay Pending  
Appeal is GRANTED.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Lorna L Ward  
APPEALS OFFICER

CERTIFICATE OF MAILING

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

JODY YTURBIDE  
9732 PYRAMID WAY #368  
SPARKS, NV 89441

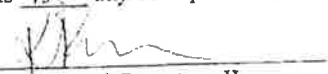
JASON GUINASSO, ESQ  
REESE KINTZ GUINASSO, LLC  
190 WEST HUFFAKER SUITE 402  
RENO NV 89511

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

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

CCMSI  
PO BOX 20068  
RENO, NV 89515-0068

Dated this 12<sup>th</sup> day of September, 2016.

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

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:

Claimant.

MOTION FOR STAY ORDER PENDING APPEAL

The City of Reno ("Employer") respectfully moves the Appeals Officer for a stay order, staying the effect of the Hearing Officer's Decision and Order entered on August 11, 2016, pending full hearing of this matter before the Appeals Officer. The grounds for this Motion are that insurer Cannon Cochran Management Services, Inc.'s ("Insurer") will be prejudiced if required to comply with the Hearing Officer's Decision and Order which mandates payment of 25% of the 33% permanent partial disability ("PPD") evaluation in a lump sum in violation of NRS 616C.495(1)(d) and NAC 616C.498.

This Motion is made and based upon the points and authorities attached hereto, the Insurer's Documentary Evidence ("IDE") filed herein, and the pleadings and papers on file under this claim.

DATED this 8<sup>th</sup> day of September, 2016.

McDONALD CARANO WILSON LLP

By



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LISA M. WILTSHIRE ALSTEAD, ESQ.

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CITY OF RENO

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**POINTS AND AUTHORITIES**

Employer submits the following points and authorities in support of its Motion for Stay Order Pending Appeal.

**I.**

**ISSUE PRESENTED ON APPEAL**

The issue in this case concerns Insurer's offer to pay claimant Jody Yturbide ("Claimant") 18% of the 33% PPD award in lump sum, with the remaining 15% of the award to be paid in installments as required under NRS 616C.495(1) and NAC 616C.498. This determination was based upon the Claimant's receipt of prior lump sum awards amounting to 7% whole person impairment from industrial injuries that occurred in 2008 and 2011. The Employer now appeals and requests a stay of that decision.

**II.**

**STATEMENT OF FACTS**

The Claimant works as Public Safety Dispatcher in the Reno Emergency Communications Division for Employer. On May 23, 2014, Claimant filed a claim for injuries to her right shoulder, forearm, elbow, wrist, and fingers related to severe pain and numbness and loss of sensation in two to three fingers with a date of injury of May 22, 2014. Claimant's job entailed non-stop typing and answering of phones.

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

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

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



**PPD Awards:**

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

**Lump Sum Calculation:**

25% WPI	Award allowed under NAC 616C.498
- 7 % WPI	Prior PPD Awards Accepted in Lump Sum
18% WPI	Balance Available for Lump Sum Award

**Balance of PPD Award for Installments:**

15% WPI	(Calculated as 33%WPI-18%WPI)
---------	-------------------------------

On August 11, 2016, the Hearing Officer reversed and remanded the Insurer's July 1, 2016 determination, determining that the Claimant is entitled to a one time lump sum offering of 25% with the remaining 8% to be paid in monthly installments. Employer now appeals and requests a stay of that Decision and Order.

**III.**

**ARGUMENT**

**A. Legal Standard for Granting a Stay Order.**

Pursuant to NRS 616C.345, an aggrieved party may obtain a review of any decision of the Hearing Officer by appealing to the Appeals Officer. Further, NRS 616C.345(5) also provides that the Appeals Officer may stay the Hearing Officer decision after application "when appropriate."

Although the Nevada Rules of Civil Procedure ("NRCP") are applicable to district courts, their application and interpretation can assist in deciding procedural issues in administrative hearings. (See NRCP 1). In *Nyberg v. Nevada Industrial Comm'n*, 100 Nev. 322, 683 P.2d (1984), the Nevada Supreme Court indicated that the language of NRCP 1 does not limit the application of the rules of civil procedure to solely district court proceedings. NRCP 62 is substantially identical to Rule 62 of the Federal Rules of Civil Procedure. According to the interpretation of the federal rule, an aggrieved party or agency is entitled to a stay of proceedings

as a matter of right upon doing all acts necessary to perfect its appeal. Wright & Miller, Federal Practice and Procedure, Vol. II, p.325, *et. seq.*; Moore's Federal Practice, Sec. 62.02; *see also American Mfrs. Mutual Ins. Co. v. American Broadcasting-Paramount Theaters, Inc.*, 87 S.Ct. 1, 3, 17 L.Ed.2d 37 (1966); *Dewey v. Reynolds Metals Co.*, 304 F.Supp. 1116 (D.C. Mich. 1969); *Ivor B. Clark Co. v. Hogan*, 296 F.Supp. 47 4009 (S.D. NY 1969).

In *DIR v. Circus Circus*, 101 Nev. 405, 411-412, 705 P.2d 645, 649 (1985), the Nevada Supreme Court stated that the insurer's proper procedure when aggrieved by a decision is to seek a stay. *Id.* at fn. 3. The determination that aggrieved parties are entitled to seek a stay has been upheld throughout the most recent Nevada decisions. *Ransier v. SIIS*, 104 Nev. 742, 747, 766 P.2d 274 (1988).

Generally, the Nevada Supreme Court has recognized that a stay should be granted where it can be shown that the appellant would suffer irreparable injury during the pendency of this appeal if the stay is not granted. *White Pine Power v. Public Svc. Comm'n*, 76 Nev. 263, 252 P.2d 256 (1960). The Supreme Court discussed this requirement in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948):

As a rule a supersedes or stay should be granted . . . whenever it appears that without it the object of the appeal or writ of error may be defeated, or that it is reasonably necessary to protect appellant or plaintiff in error from irreparable or serious injury in the case of a reversal, and it does not appear that appellee or defendant in error will sustain irreparable or disproportionate injury in case of affirmance . . . .

*Id.*, 65 Nev. at 17.

As noted, a stay is proper when an appellant demonstrates it will incur irreparable harm. This is established when the appellant demonstrates that it is likely to prevail on the merits of the appeal and, if so, the appellant cannot be returned to its original position. Here, the Hearing Officer failed to appropriately interpret NRS 616C.495, thereby ordering the Insurer to offer 25% of the 33% PPD award in a lump sum. If required to comply with the decision by paying 25% of the PPD award in lump sum prior to hearing on the merits of this case, Employer will be substantially prejudiced and irreparably harmed due to its inability to recover amounts paid pending the Appeals Officer hearing.

1 **B. The Hearing Officer Failed to Properly Interpret the Applicable Statutes.**

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

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

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

17 NAC 616C.498 states:

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

20 1. Does not exceed 25 percent may elect to receive his  
21 compensation in a lump sum.

22 2. Exceeds 25 percent may elect to receive his compensation in a  
23 lump sum equal to the present value of an award for a disability of  
24 25 percent. If the injured employee elects to receive compensation in  
25 a lump sum pursuant to this subsection, the insurer shall pay in  
26 installments to the injured employee that portion of the injured  
27 employee's disability in excess of 25 percent.

28 The Nevada Supreme Court has interpreted these provisions to allow no more than 25%  
whole person impairment to be paid in a lump sum. *Eads v. SIIS*, 857 P.2d 13 (1993).

Here, the Claimant previously accepted lump sum PPD awards totaling 7%. The May 22,  
2014 injury resulted in an additional 33% whole person impairment. The combination of  
Claimant's PPD awards results in whole person impairment greater than 25% after adding the 33%  
PPD award for her right wrist strain, right elbow strain, and cervical strain conditions, and the two  
prior PPD awards. NAC 616C.498 limits payment of the lump sum to 25%. The balance must be  
paid in installments. Although NAC 616C.498 clearly requires payment of installments for PPD  
in excess of 25%, the Hearing Officer's August 11, 2016 Decision and Order requires payment of

1 25% of the 33% PPD award in a lump sum. It does so on the basis that NAC 616C.498 entitles a  
 2 Claimant to "a one time lump sum offering of 25%, with the remaining 8% to be paid in monthly  
 3 installments." The Hearing Officer makes no reference to and does not address the Claimant's two  
 4 prior PPD awards totaling 7% which were paid out in lump sums. The Hearing Officer then  
 5 concludes that the Insurer "shall recalculate the 33% PPD award based on a lump sum offering of  
 6 25%, and upon completion, render a new determination."

7 The Hearing Officer's analysis ignores NAC 616C.498. NAC 616C.498 limits payment of  
 8 the lump sum to 25%. Further, pursuant to the *AMA Guides*' whole person approach to  
 9 impairment, there is a requirement that impairment from different regions be combined to  
 10 determine whole person impairment. See *AMA Guides*, Fifth Ed., Section 1.3 and 1.4, pp. 9, 10.  
 11 The purpose of the statute is to insure that the most seriously injured claimants are compensated  
 12 over time and not left destitute after lump sum payments are exhausted. This purpose is applicable  
 13 here, where, Claimant's total PPD awards exceed 25% and thus the balance must be paid over  
 14 time.

15 Therefore, as illustrated by the above charts, because Claimant had previously elected to  
 16 receive to PPD awards in a lump sum totaling 7%, the remaining amount allowed under statute  
 17 that can be awarded in lump sum is 18%. The balance of the current 33% PPD award, or 33%  
 18 WPI (total award) minus 18% WPI (remaining amount allowed to be paid by lump sum), results in  
 19 a 15% WPI balance remaining which must be paid in monthly installments. The lump sum and  
 20 installment payment information contained in Insurer's July 1, 2016 PPD award letter were  
 21 properly calculated pursuant to the applicable statutes. Nothing in the applicable statutes  
 22 references a "one time lump sum offering" as stated in the Decision and Order. Because whole  
 23 person impairment frequently is the consequence of multiple claims, there is no reason to believe  
 24 the legislature intended the provisions of NRS 616.495(1)(d) or NAC 616C.498 to apply to  
 25 impairment arising from one specific claim unless it was so stated. It was not. Accordingly,  
 26 Employer requests the Appeals Officer issue a stay of the Hearing Officer's August 11, 2016  
 27 Decision and Order pending full hearing on the merits of this case.  
 28

IV.

CONCLUSION

Employer respectfully requests the Appeals Officer issue an Order staying the Hearing Officer's August 11, 2016 Decision and Order requiring the payment of 25% of the 33% PPD award in a lump sum.

DATED this 8<sup>th</sup> day of September, 2016.

McDONALD CARANO WILSON LLP

By



TIMOTHY E. ROWE, ESQ.

LISA M. WILTSHIRE ALSTEAD, ESQ.

P. O. Box 2670

Reno, Nevada 89505-2670

Attorneys for the Employer

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 3<sup>th</sup> day of September, 2016, I served the preceding **MOTION FOR STAY ORDER PENDING APPEAL** by placing a true and correct copy thereof in a sealed envelope and serving said document via hand-delivery at Reno, Nevada, on the following parties at the addresses referenced below:

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

  
Kathleen Morris

McDONALD-CARANO-WILSON

103 WEST LUREBUT STREET 13<sup>th</sup> FLOOR • RENO, NEVADA 89501  
TEL: 775-384-2200 • FAX: 775-384-2070  
WWW.MCDONALDCARANOWILSON.COM

BEFORE THE APPEALS OFFICER

FILED

SEP 12 2016

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.

NOTICE OF APPEAL AND ORDER TO APPEAR

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

**DATE:** Monday, November 21, 2016

**TIME:** 3:30PM

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

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

IT IS SO ORDERED.

*Lorna L. Ward*

LORNA L WARD  
APPEALS OFFICER

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

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

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

Claim No: 14853E248257  
Claimant: Jody Yturbide  
Address: 9732 Pyramid Way #368  
Sparks, NV 89441

Name & Address of Employer AT TIME OF INJURY: **City of Reno**  
1 East First Street, 9<sup>th</sup> Floor  
Reno, NV 89501

Hearing No: 1700074-JL Decision Dated: August 11, 2016

WHO IS APPEALING? (Claimant ☐) (Employer ☒) (Insurer ☐)

REASON FOR APPEALING:

Error of law in the Hearing Officer's Decision and Order.

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

Claimant Note:

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

Check one:

- ☐ Appoint the Nevada Attorneys for Injured Workers (NAIW) at no cost to me.  
☐ I will represent myself.  
☐ I have retained the following attorney: \_\_\_\_\_

Employer Note:

Employers are not entitled to the services of NAIW. The Employer will be represented by:  
**McDonald Carano Wilson LLP**

DATED: This 8<sup>th</sup> day of September, 2016.

Lisa Wilshire Alstead  
LISA WILTSHIRE ALSTEAD, ESQ.

469269.1

1700074 - CW  
mon - 11-21-16  
3:30

244



1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing NOTICE OF APPEAL AND ORDER TO APPEAR was duly mailed, postage  
5 prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration,  
6 Hearings Division, 1050 E. Williams Street, 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 12<sup>th</sup> day of September, 2016.

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

245

✓ AUG 15 2016

McDonald Carano Wilson LLP

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 1700074-JL  
Claim Number: 14853E248257

JODY YTURBIDE  
9732 PYRAMID WAY #368  
SPARKS, NV 89441

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

**BEFORE THE HEARING OFFICER**

The Claimant's request for Hearing was filed on July 8, 2016 and a Hearing was scheduled for August 3, 2016. The Hearing was held on August 3, 2016, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was represented by her attorney, Jason Guinasso, by telephone conference call. The Employer was not present. The Insurer was represented by Lisa Wiltshire Alstead, Esquire, by telephone conference call. Claimant appealed the Insurer's determination dated July 1, 2016. The issue before the Hearing Officer is 33% permanent partial disability (PPD) award. At today's hearing, the Claimant's counsel clarified that they were not contesting the 33% PPD award, only the 18% lump sum offering.

**DECISION AND ORDER**

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

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.

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①

JA270

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

JODY YTURBIDE  
1700074-JL

**NAC 616C.490(3)(4)** provides that 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. 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.

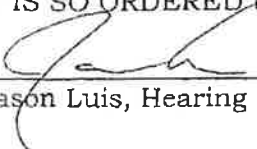
**NRS 616C.495(1)(a)(c)** provides authority for lump sum payments of Permanent Partial Disability awards. If the injury was incurred on or after July 1, 1981, and before July 1, 1995, the injured employee may elect to receive compensation in a lump sum equal to a present value of an award of 30 percent disability. If the injury was incurred after July 1, 1973, and prior to July 1, 1981, the maximum limit for lump sum compensation shall not exceed 12 percent disability. That portion of the award amount in excess of these limits shall be paid in installments.

**NAC 616C.498** provides that an employee injured on or after July 1, 1995, who incurs a permanent partial disability that does not exceed 25 percent may elect to receive compensation in a lump sum. If it exceeds 25 percent, the injured employee may elect to receive 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.

#### APPEAL RIGHTS

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

IT IS SO ORDERED this 11th day of August, 2016.

  
\_\_\_\_\_  
Jason Luis, Hearing Officer

247

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JA271

**CERTIFICATE OF MAILING**

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

JODY YTURBIDE  
9732 PYRAMID WAY #368  
SPARKS, NV 89441

JASON GUINASSO, ESQ  
REESE KINTZ GUINASSO, LLC  
190 WEST HUFFAKER SUITE 402  
RENO NV 89511

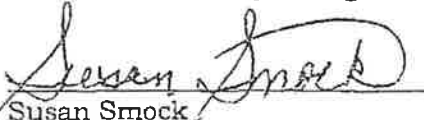
CITY OF RENO  
ATTN: KELLY LEERMAN  
1 EAST FIRST ST 9th FLOOR  
RENO, NV 89501

LISA M WILTSHIRE ALSTEAD ESQ  
MCDONALD CARANO WILSON  
100 W LIBERTY ST 10TH FLOOR  
RENO NV 89501

CCMSI  
PO BOX 20068  
RENO, NV 89515-0068

DIR  
WORKERS COMP SECTION  
INTERDEPARTMENTAL MAIL  
400 W KING ST  
CARSON CITY NV

Dated this 11th day of August, 2016.

  
Susan Smock  
Employee of the State of Nevada

248

3

JA272

CV17-00065 DC-09900084102-084  
CITY OF RENO VS. JODY YTURBIDE 22 Pages  
District Court 03/03/2017 11:16 AM  
Washoe County 4105  
UNIT 105

FILED

MAR 03 2017

JACQUELINE BRYANT, CLERK

By: DEPUTY CLERK

1 CASE NO. CV17-00065

2 DEPT NO. 7

3

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

\* \* \* \* \*

9

CITY OF RENO,

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Petitioner,

11

vs.

12

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

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Respondents.

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ORIGINAL

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SUPPLEMENTAL RECORD

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APPEALS OFFICE  
1050 E. WILLIAM #490  
CARSON CITY NV 89710

JA273

1 CASE NO. CV17-00065

2 DEPT NO. 7

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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

AFFIRMATION

Pursuant to NRS 239B.030

17

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

21

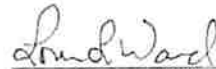
1. Record on Appeal

22

23

APPEALS OFFICER

24



25

LORNA L. WARD

26

27

28

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

JA274

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

March 2, 2017

SECOND JUDICIAL DISTRICT COURT  
75 COURT ST  
RENO NV 89501

RE: JODY YTURBIDE, 1700698-LLW,  
Second Judicial District Court Matter  
Case No. CV17-00065, Dept. 7

Dear Clerk:

Enclosed is the Supplemental Record in the above matter. Please incorporate the Supplemental Record into the established record, which was transmitted to you on February 15, 2017. Also, please return a file-stamped copy of the cover sheet in the self-addressed envelope.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristi Fraser", is written over a circular stamp.

Kristi Fraser  
Secretary to the Appeals  
Officer

Enclosures

cc: Lisa Wiltshire Alstead, Esq.  
Jason Guinasso, Esq.

JA275

CASE NO. CV17-00065

DEPT. NO. 7

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

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Jody Yturbide's Motion for Clarification Regarding February 10, 2017 Order, Submitted by Jason Guinasso, Esq., On behalf of Respondent/Claimant (Filed 02/17/17)	015 - 0018

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NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

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

**FILED**

FEB 22 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

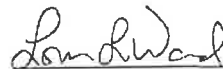
JODY YTURBIDE,

Claimant.

**ORDER**

The Claimant filed her February 17, 2017 Motion for Clarification of February 10, 2017 Order. The Motion for Stay Pending Appeal was GRANTED. The Insurer shall pay the PPD award as follows: 18% lump sum and 15% in installments pending the appeal.

**IT IS SO ORDERED.**



Lorna L Ward  
APPEALS OFFICER

1 CERTIFICATE OF MAILING

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

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

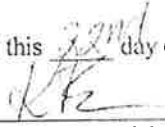
10 JASON GUINASSO, ESQ  
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12 190 WEST HUFFAKER SUITE 402  
13 RENO NV 89511

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 22nd day of February, 2017.

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

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

\* \* \* \* \*

In the Matter of the Contested  
Industrial Insurance Claim

Claim No: 14853E248257

Hearing No: 1700074-JL

Appeal No: 1700698-LLW

of  
Jody Yturbide,

Claimant.

**EMPLOYER'S NOTICE OF NON-OPPOSITION**

The CITY OF RENO ("Employer") hereby submits this Notice of Non-Opposition to Claimant JODY YTURBIDE's ("Claimant") Motion for Clarification Regarding February 10, 2017, Order (the "Motion"). Contrary to Claimant's assertions in the Motion, the Employer has not refused to pay the Claimant the uncontested portion of the PPD award. Rather, the Employer agrees with the Claimant's request in the Motion that the 18% lump sum amount (undisputed amount) should be paid to Claimant. The remaining 7% lump sum amount (disputed amount) should be paid installment payments until resolution of the Petition for Judicial Review. In fact, insurer CCMSI ("Insurer") has already sent Claimant a determination letter to this effect. See **Exhibit 1** attached hereto. As such, Employer does not oppose the Motion, and agrees to pay the 33% PPD award with a lump sum payment of 18% and installment payments of the remaining 15% (which includes installment payments of the 7% contested amount)<sup>1</sup>.

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding **EMPLOYER'S NOTICE OF**

<sup>1</sup> Employer notes that interest is not addressed in the determination letter attached as Exhibit 1 because the Claimant is not entitled to interest under NRS 616C.335. Interest is not yet due under NRS 616C.335 as a final determination has not yet been made and the Petition for Judicial Review remains pending.

McDONALD-CARANO-WILSON

INVESTMENT SERVICES, LLC  
1000 S. 2ND ST., SUITE 200  
RENO, NEVADA 89502-2000  
TEL: 775.788.2000 FAX: 775.788.2000

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JA279

McDONALD-CARANO-WILSON<sup>2</sup>

100 WEST LIBERTY STREET, 10TH FLOOR - RENO, NEVADA 89501  
P.O. BOX 2670 - RENO, NEVADA 89505-2670  
PHONE 775-784-2000 • FAX 775-786-0030

1 NON-OPPOSITION filed in Nevada Department of Administration Hearing No. 1700720-JL  
2 does not contain the social security number of any person.

3 DATED this 24th day of February 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*

MC DONALD-CARANO-WILSON  
100 WEST VIRGINIA STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
TEL: 775.785.2000 • FAX: 775.785.4300

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 24<sup>th</sup> day of February, 2017, I served the preceding EMPLOYER'S NOTICE OF NON-OPPOSITION 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. 9<sup>th</sup> Fl.  
Reno, NV 89501

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

  
Micki Arguello

# EXHIBIT 1

# EXHIBIT 1

006



February 24, 2017

PPD AWARD LETTER

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

RE: Claim No.: 14853E248257  
Date of Injury: 5/22/2014  
Employer: City of Reno

Dear Ms. Yturbide:

Pursuant to the Order granting the Motion for Stay Order Pending Judicial Review dated February 10, 2017, a stay of the December 16, 2016 Appeals Officer Decision has been entered. As such, the disputed lump sum amount of seven percent (7%) will be paid in installments until a final determination is entered by the District Court on the pending Petition for Judicial Review.

You were awarded a total of seven (7%) percent for your prior PPD's. Pursuant to NRS 616C.495 you are entitled to the entire thirty three (33%) percent in monthly installments in the amount of \$1,047.56 until you reach the age of seventy (70) for a total installments of \$311,710.46; or you are entitled to a lump sum payment up to eighteen (18%) percent in the amount of approximately \$81,605.45 and the remaining fifteen (15%) percent in monthly installments of \$476.16 until you reach the age of seventy (70) for a total installment payments of \$137,384.32.

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 89515-0068  
775-324-3301 phone  
775-324-9893 fax

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JA283

Page 2

Claim No.: 14853E248257

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 you 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,  
Jason Guinasso, Esq.  
Tim Rowe, Esq.

008

JA284



Injured Employee: Jody Yturbide  
Claim No: 14853E248257  
Employer: City of Reno

Date: 2/23/2017  
Date of Injury: 5/22/2014  
Insurer: City of Reno

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

NRS 616C.495(2) provides:

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 counseling, training or other rehabilitative 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 payment may be made and his election becomes final.

I, Jody Yturbide  
(Name)

(Social Security Number)

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 2/1/2017 and terminate on 2/16/2041 and will be paid at the monthly rate of \$1,047.56 for a total installment payment of \$311,710.46.

If I elect to receive my entitlement of (18%) on a lump sum basis I will receive approximately \$81,605.45, and additional monthly installments of \$476.16 until you reach the age of seventy (70) for a total monthly installments of \$137,384.32. This sum will vary depending on the date I elect to receive my lump sum payment. As provided by 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 in this case, including but not limited to unresolved issues that are or could become the subject of pending litigation. By so accepting, I waive all of my rights regarding the claim, including, but not limited to, 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 counseling, training or other rehabilitation services provided by the insurer.

**Further, I understand that I have twenty (20) days after this notice has been mailed or personally delivered to me, within which to retract or reaffirm my request for a lump sum. I also understand that I will not be paid a lump sum until I have reaffirmed this election in writing. I also understand that any lump sum I receive is subject to an offset based on any prior PPD payments I received before electing to accept a lump sum.**

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

- 1. ☐ On an installment basis as provided by NRS 616C.490. (33%)
- 2. ☐ A 18% lump sum of approximately \$81,605.45 and 15% monthly installments of \$476.16 until you reach the age of seventy (70) for a total installments of \$137,384.32, as 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).

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JA285

Injured Employee: Jody Yturbide

Social Security No.:

Claim No.: 14853E248257

Employer: City of Reno

Date of Injury: 5/22/2014

REAFFIRMATION/RETRACTION OF LUMP SUM REQUEST

(Pursuant to NRS 616C.495(2) and NAC 616C.499(1))

NAC 616C.499(1) provides: If an injured employee elects to receive his award for a permanent partial disability in a lump sum, he must reaffirm his election within 20 days after receiving notification from the insurer pursuant to subsection 2 of NRS 616C.495 before the lump sum will be paid.

Please indicate whether you wish to reaffirm or retract your request for a lump sum payment by checking the appropriate box below. Your decision as indicated on this form constitutes your final election regarding the lump sum payment.

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. I understand that in doing so, I am waiving all of my rights regarding the claim, except my right to request reopening and vocational rehabilitation.

☐ I retract the request for my lump sum payment.

\_\_\_\_\_  
Signature of Injured Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

D-11 cre 499f

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**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 or occupational disease and you did not receive a permanent partial disability award, you may not request reopening of your claim more than 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 request reopening of 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, and thus no benefits or compensation is available, before the date on which an application for reopening is made unless good cause is shown (NRS 616C.390(8)). If your claim closes under NRS 616C.235(2), then you may not reopen your claim (NRS 616C.390(6)).

**PPD OFFSET**

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

Further, 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 the same 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.

The rate at which the PPD offset is deducted is the same as 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 based on the time period used to calculate the lump sum PPD award. (See NRS 616C.440 for specific information regarding offsets to PTD)

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), this payment represents the present value of all your future PPD payments.

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

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

D-13 (rev 7/99)

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JA287

**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 Yturbide 9732 Pyramid Wy #368 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 775-326-6637	
Third-Party Administrator Information	
Third-Party Administrator's Name and Address CCMSI PO Box 20068 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\_\_\_\_\_.

\_\_\_\_\_  
Signature of Injured Employee/Employer

\_\_\_\_\_  
Injured Employee's/Employer's Rep. (Advisor)  
D-12a (Rev. 12/01)

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JA288

# PERMANENT PARTIAL DISABILITY AWARD CALCULATION WORK SHEET

PERMANENT PARTIAL DISABILITY AWARD CALCULATION WORK SHEET

Injured Employee: Jody Yarbide DOB: 2/17/1971 Sex: Female

SS#: D. O. I.: 5/22/2014 Claim #: 14855E248257

\*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

Body Basis Verification

Description: cervical 33.00 %

Total: 33.00 % BB

Installment Calculation

\*\*

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

Monthly Wage Monthly Rate \*\*\* TPD, or DOI

B. \$1,047.56 x 12 = \$ 12,570.72 1971 2016

Monthly Rate Annual Rate 70 5

C. \$12,570.72 / 365.25 = \$ 34.42 2041 2021

Annual Rate Daily Rate

Installment Calculation

(1) Last Date TTD or TPD paid: 4/29/2016 First Payment Date: 2/1/2017

(2) Time Covered by First Payment\* (a) 4/30/2016 through (b) \*\*\*\* 1/31/2017

\*\*\*\*\* DO/Date of claim reopening or day after last TTD/TPD

(3) First Payment: \$34.42 = \$9,428.04 \$0.00 = \$9,462.46

1 Day(s) 9 Month(s) 0 Year(s)

(4) Time Covered by Annual Payments: 2/1/2017 through 1/31/2041 \$301,697.28

(5) Time Covered by Final Payment: 2/1/2041 through 2/16/2041 \*\*\*\* 24 Years

(6) Final Payment: \$0.00 + \$550.72 = \$550.72

0 Month(s) 16 Day(s)

\*\*\*\*\* Monthly X Annual Total of Installment 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-9b 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.490(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 less than \$100.

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

PREPARED BY:  
CHECKED BY:

*[Signature]*  
*[Signature]*

Date: 2/22/17  
Date: 2/28/17  
2/25/17

D-9a (rev 1/12)

D13

JA289

**PERMANENT PARTIAL DISABILITY AWARD CALCULATION WORK SHEET**  
FOR DISABILITY OVER 25% BODY BASIS  
see NRS 616C.495(1)(c)

Injured Employee: Jada Yarbide DOB: 2/17/1971 Sex: Female  
SS #: 0-0-1 Claim #: 18530258257  
\*Average Monthly Wage: \$5,290.70 \*State Average Wage: \$5,290.70 Date of Rating: 6-19-2016  
Date Award Offered: 6-20-2016 Date Evaluation Report Received: 6-21-2016

Description: servical 33.00 % 0 %  
Total: 33.00 % 0.00 %  
Balance for installment calculation: 15.00 %

**Installment Calculation**

*A	<u>\$5,290.70</u>	<u>0.0060</u>	<u>15.00</u> % <u>BD</u>	=	<u>\$</u>	<u>476.16</u>	Year of Birth	Last TTD
	Monthly Wage					Monthly Rate		TPD, or DOI
B	<u>5476.16</u>	<u>x 12</u>		=	<u>\$</u>	<u>5,713.92</u>	<u>1971</u>	<u>2016</u>
	Monthly Rate					Annual Rate		
C	<u>\$5,713.92</u>	<u>/ 365.25</u>		=	<u>\$</u>	<u>12.64</u>	<u>2041</u>	<u>2021</u>
	Annual Rate					Daily Rate		

**Age-Related Lump Sum**

Transfer (1) through (3) from form D-9a to (1) through (3) on form D-9b  
(1) Last Date TTD or TPD paid: 2-29-2016 First Payment Date: 2/1/2017  
(2) Time Covered by First Payment (a): 4/30/2016 through (b)\*\*\*\*: 1-31-2017  
\*\*\*\*DOI-date of claim reopening or day after last TTD-TPD  
(3) First Payment: \$ 51.42 = \$ 9,425.04 = \$ 0 (from Form D-9a)  
Day(s) 9 Month(s) 0 Year(s) 0  
(4) Time Covered by Annual Payments: 2/1-2017 through 1/31-2041 = 24 Years  
(5) Time Covered by Final Payment: 2/1-2017 through 2/16/2041 \*\*\*\*  
(6) Final Payment: \$0.00 = \$250.24 = \$250.24  
0 Month(s) 16 Day(s)  
\*\*\*\* Monthly X Annual X Total of Installment Payments (4) through (6): \$137,384.32

**Minimum Lump Sum Calculation**

(Payable only if greater than total of installment on form D-9a)  
15.00 % X 18.00 % BD X = \$5,290.70 Monthly Wage from (A) above: \$47,616.50  
(Use Total Percent of Disability) Minimum Lump Sum Amount

	<u>\$5,290.70</u>	<u>X</u>	<u>18.00</u> % <u>BD</u>	=	<u>\$571.40</u>	Monthly Rate
	Average Monthly Wage					
	(from A above)					
(7)	Effective Date of Award (year, month following 2b)				<u>2017</u>	
(8)	Date of Birth (year, month)				<u>1971</u>	
(9)	Injured Employee Age at Award Effective Date - (7) minus (8) (years, months)				<u>46</u>	
(10)	Monthly Rate From (D)				<u>\$571.40</u>	
(11)	Factor from Table for Present Value	<u>X</u>			<u>144.65</u>	
(12)	Insert Sum of (3)					<u>\$82,653.01</u>
(13)	Subtotal of (11) plus (12)					<u>\$92,115.17</u>
(14)	Minus any applicable award payments previously paid:					<u>\$10,510.02</u>
(15)	Net Amount Payable:					<u>\$81,605.15</u>

\* 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.490(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 less than \$100.  
\*\*\*\*\* Use date of claim reopening if TTD-TPD benefits were not paid after the claim was reopened (2)(a).

PREPARED BY: 2-22-17 Date: 2/23/17  
CHECKED BY: 2-23-17 Date: 2/23/17

014

1 Jason D. Guinasso, Esq.  
Nevada Bar No. 8478  
2 Reese Kintz Guinasso, LLC  
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 In the Matter of the  
8 Industrial Insurance Claim

9 of

10  
11 JODY YTURBIDE  
9732 PYRAMID WAY, #368  
12 SPARKS, 89441

Claim No.: 14853E248257

Hearing No.: 1700074-JL

Appeal No.: 1700698-LLW

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

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

13  
14  
15 **JODY YTURBIDE'S**  
16 **MOTION FOR CLARIFICATION REGARDING**  
17 **FEBRUARY 10, 2017, ORDER**

18 COMES NOW, Jody Yturbide (hereafter "Mrs. Yturbide") by and through her  
19 attorney, Jason Guinasso, Esq. of REESE KINTZ GUINASSO, LLC, and hereby submit  
20 their *Motion for Clarification Regarding February 10, 2017, Order*.

21 On February 10, 2017, the Appeal Officer issued an Order granting the City of  
22 Reno's Motion for Stay Pending Judicial Review. This motion is seeking clarification  
23 regarding the scope of the stay order.

24 ///

25 ///



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

1 On February 10, 2017, the Appeals Officer entered an Order stating:

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

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

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

9 IT IS SO ORDERED."

10 The Order of the Appeals Officer that is now stayed provides:

11 The Appeals Officer finds that CCMCI's July 1, 2016, determination to limit Mrs.  
12 Yturbide's right to receive a lump sum of her 33% permanent partial disability  
13 ("PPD") award to 18% is not supported by the evidence or Nevada law and is hereby  
14 REVERSED and REMANDED. Mrs. Yturbide shall be offered 25% of her 33%  
15 permanent partial disability rating in lump sum and the remaining 8% in installments  
16 in accordance with NRS 616C.495(d) and NAC 616C.498

17 In this case, the City has never disputed that it owes 33%. The contested issue is  
18 whether 7% of the 33% owed Mrs. Yturbide should be paid in lump sum or installments  
19 over a period of years. The City does not dispute that the benefits must be paid, only how  
20 the benefits should be paid. Therefore, at the very least, it would appear to Mrs. Yturbide  
21 that the City is required to pay the uncontested 18% in lump sum, while the contested 7% is  
22 paid in installments pending the outcome of the appeal. It does not appear that the is  
23 anything in the Appeals Officer's orders that supports the City refusing to pay the  
24 uncontested portion of the PPD award. Nevertheless, the City has used this stay, as well as  
25 the stay that was granted before the Appeal was heard the underlying appeal on the merits,  
26 to refuse to pay the uncontested portion of the PPD.

27 Therefore, by this motion, Mrs. Yturbide is is requesting clarification regarding the  
28 scope of the Appeals Officer's stay order. Specifically, does the Appeals Officer's order  
29 allow the City to continue to refuse to pay the uncontested portion of the PPD while



Nevada State Bar,  
Guinness  
190 W. Hoffaker Ln  
Suite 402  
Reno, NV 89511  
(775) 851-8746



payment of the contested portion is being appeal? Or, does this Appeals Officer's stay order only apply to the contested portion of the PPD award. Further, since the City has withheld payment of the entire PPD, is Ms. Yturbe entitled to interest on the uncontested portion of the PPD or must she wait to receive interest on the contested and uncontested portions of the PPD until final resolution of the Petition for Judicial Review?

Based on the forgoing unresolved questions left in the wake of the Appeals Officer's February 10, 2017, Order, Mrs. Yturbide hereby respectfully seeks clarification regarding the scope of the Order granting stay.

### AFFIRMATION

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

DATED this 17<sup>th</sup> day of February, 2017.

Jason D. Guinasso, Esq.  
Attorney for Jody Yturbide



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

**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 February 17<sup>th</sup>, 2017, I served the following:

**JODY YTURBIDE'S**

**MOTION FOR CLARIFICATION REGARDING**

**FEBRUARY 10, 2017, ORDER**

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 <sup>TH</sup> 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 February 17<sup>th</sup>, 2017, at Reno, Nevada.

  
KATRINA A. TORRES



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

DC-0000084237-013  
CV17-00065  
CITY OF RENO VS JODY YTURBIDE & Pages  
District Court 03/22/2017 11:19 AM  
Washoe County

FILED

2017 MAR 22 AM 11:19

JAGUELINE BRYANT  
CLERK OF THE COURT

1 CASE NO. CV17-00065

2 DEPT. NO. 7

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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 OFFICE,

15 Respondents.

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

JA295

1 CASE NO. CV17-00065

2 DEPT NO. 7

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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. Supplemental Record

23

24 APPEALS OFFICER

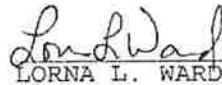
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APPEALS OFFICE  
1050 E. WILLIAM #450  
CARSON CITY NV 89710

  
LORNA L. WARD

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

March 21, 2017

SECOND JUDICIAL DISTRICT COURT  
75 COURT ST  
RENO NV 89501

RE: JODY YTURBIDE, 1700698-LLW  
Second Judicial District Court Matter  
Case No. CV17-00065, Dept. 7

Dear Clerk:

Enclosed is the supplemental in the above matter.  
Please incorporate the supplemental into the established record,  
which was transmitted to you on February 10, 2017. Also, please  
return a file-stamped copy of the cover sheet in the self-  
addressed envelope.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristi Fraser".

Kristi Fraser  
Secretary to the Appeals  
Officer

/kf

Enclosures

cc: Lisa Wiltshire Alstead, Esq.  
Jason Guinasso, Esq.

CASE NO. CV17-00065

DEPT. NO. 7

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

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<u>Item Description</u>	<u>Page No.</u>
Stipulation Regarding Order on Motion For Clarification, submitted by Lisa Wiltshire Alstead, Esq., on Behalf of Employer/Petitioner (Filed 03/14/17)	0001 - 0002

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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.

STIPULATION REGARDING ORDER ON MOTION FOR CLARIFICATION

The CITY OF RENO ("Employer"), its third party administrator CCMSI ("Insurer"), and claimant JODY YTURBIDE ("Claimant"), by and through their undersigned counsel, hereby stipulate and agree as follows:

1. This Stipulation is entered into by the parties to address certain issues that have arisen with respect to the Appeals Officer's Order entered on February 22, 2017. The Order requires that the Insurer shall pay the 33% permanent partial disability ("PPD") award as 18% in lump sum form and the remaining 15% in installment payments pending the appeal.

2. The parties hereby agree that the 18% lump sum payment of the PPD award shall be made by Insurer to Claimant upon receipt of the executed election and reaffirmation paperwork from Claimant which were mailed to Claimant on February 24, 2017. The parties acknowledge and agree that these documents are required to be returned to the Insurer before a lump sum payment can be made pursuant to NAC 616C.499(1) and NRS 616C.495(2).

3. With respect to interest on the lump sum and installment amounts, the parties agree that a dispute exists as to whether NRS 616C.335 requires the payment of interest. As such, following entry of a final determination by the Second Judicial District Court for the State of Nevada on the pending Petition for Judicial Review, Case No. CV17-0065, the Insurer shall issue a new determination letter regarding interest on the PPD award which will have appeal rights.

4. The parties hereby agree and acknowledge that by signing the PPD election and reaffirmation paperwork, Claimant does not waive the right to contest the interest owed on the


001

1 disputed and undisputed amounts of the PPD award and as ordered to be paid by the Appeals  
2 Officer in the February 22, 2017 Order.

3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

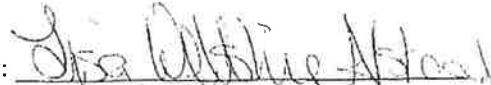
5 The undersigned does hereby affirm that the preceding **STIPULATION REGARDING**  
6 **ORDER ON MOTION FOR CLARIFICATION** filed with the Nevada Department of  
7 Administration does not contain the social security number of any person.

8 REESE KINTZ GUINASSO

9 By:   
10 Jason D. Guinasso, Esq.  
11 936 Southwood Blvd., Suite 301  
12 Incline Village, Nevada 89451  
13 *Attorney for Claimant*

March 13, 2017  
Date

14 MCDONALD CARANO WILSON LLP

15 By:   
16 Timothy E. Rowe, Esq.  
17 Lisa Wiltshire Alstead, Esq.  
18 P.O. Box 2670  
19 Reno, Nevada 89501  
20 *Attorneys for the Employer/Insurer*

March 13, 2017  
Date



1 CODE: 2640  
MCDONALD CARANO  
2 Timothy E. Rowe (SBN 1000)  
Lisa Wiltshire Alstead (SBN 10470)  
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6 lalstead@mcdonaldcarano.com

7 Attorneys for Petitioner  
CITY OF RENO  
8

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

11 CITY OF RENO,

12 Petitioner,

13 vs.

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

17 Respondents.

\* \* \* \* \*

Case No.: CV17-00065

Dept. No.: 7

18 **PETITIONER'S OPENING BRIEF**

19 TIMOTHY E. ROWE  
20 Nevada State Bar No. 1000  
LISA WILTSHIRE ALSTEAD  
21 Nevada State Bar No. 10470  
McDonald Carano Wilson LLP  
22 100 West Liberty Street, 10<sup>th</sup> Floor  
Post Office Box 2670  
23 Reno, Nevada 89505-2670

24 Attorneys for Petitioner  
CITY OF RENO  
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JASON D. GUINASSO  
Nevada State Bar No. 8478  
Reese Kintz Guinasso, LLC  
190 W. Huffaker Lane, Suite 402  
Reno, NV 89511

Attorneys for Respondent  
JODY YTURBIDE

1 DISCLOSURE STATEMENT

2 Pursuant to NRS 233B.133(5), NRAP 28, and NRAP 26.1, the undersigned counsel of  
3 record certifies that the following are persons and entities as described in NRAP 26.1(a), and  
4 must be disclosed:

5 No disclosure is necessary as the City of Reno ("City") is a governmental party.

6 These representations are made in order that the judges of this court may evaluate  
7 possible disqualification or recusal.

8 Dated this 27<sup>th</sup> day of March, 2017.

9  
10 By: /s/ Lisa M. Wiltshire Alstead

11 Timothy E. Rowe  
12 Lisa Wiltshire Alstead  
13 100 W. Liberty Street, 10th Floor  
14 P.O. Box 2670  
15 Reno, NV 89505-2670

16  
17 Attorneys for Petitioner  
18 CITY OF RENO  
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2. The Decision and Order of the Appeals Officer at issue in this proceeding was filed on December 16, 2016. The Petition for Judicial Review was timely filed on January 13, 2017.

3. The Petition for Judicial Review is an appeal from a final order.

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

**STATEMENT OF THE CASE**

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

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

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

The City appealed the Hearing Officer Decision to a Department of Administration Appeals Officer. On December 16, 2016, the Appeals Officer affirmed the Hearing Officer's Decision finding that the Claimant shall be offered 25% of her 33% PPD award in lump sum and the remaining 8% in installments in accordance with NRS 616C.495(d) and NAC 616C.498.

However, these statutes do not include a limitation that the 25% cap on lump sum payments applies to just one claim or the same body part. It was an error of law to read this requirement into the statutes. Rather, because the applicable statutes do not include a requirement that the cap applies to only a specific claim or same body part, it should apply to whole person

1 impairment and previous PPD awards for other claims and separate body parts must be  
2 considered in determining when the 25% lump sum payment cap has been reached. This is the  
3 proper interpretation and consistent with the workers' compensation statutory scheme as a whole,  
4 including NRS 616C.495(e) which provides that previous PPD ratings must be combined when  
5 determining benefits and NRS 616C.490(9) which provides that where there is a previous  
6 permanent disability that percentage must be deducted when calculating the permanent disability  
7 for a subsequent injury. As such, by failing to subtract from the 25% lump sum award Claimant's  
8 prior PPD awards totaling 7%, the Appeals Officer Decision is likewise unsupported by the  
9 substantial evidence. For these reasons, the City seeks a reversal of the Appeals Officer Decision.

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1 **STATEMENT OF FACTS**

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

8 Following treatment, physical therapy, and two surgeries for her right wrist/elbow strain  
9 and cervical strain, Claimant was rated for her conditions. (*Id.* at 34-40.) On June 19, 2016, the  
10 Claimant's PPD evaluation was performed by Dr. Katharina Welborn. (*Id.*) Dr. Welborn  
11 recommended claim closure with a 33% whole person impairment related to the body part of  
12 cervical spine. (*Id.* at 39.)

13 On July 1, 2016, Insurer issued a determination letter awarding 33% disability. (*Id.* at 41.)  
14 The letter also indicated that because Claimant has two prior PPD awards resulting in a total  
15 whole person impairment of 7%, she is only entitled to an 18% lump sum payment on the claim  
16 with the remaining 15% to be paid in installments. (*Id.* at 41, 57, 69.) The Insurer's calculations  
17 in this determination letter are summarized in the below charts:

18 **PPD Awards:**

19

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

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22 **Lump Sum Calculation:**

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25% WPI	Award allowed under NAC 616C.498
-7 % WPI	Prior PPD Awards Accepted in Lump Sum
18% WPI	Balance Available for Lump Sum Award

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28 <sup>1</sup> Exhibit references are to the page numbers of exhibits admitted into evidence at the Appeals Officer Hearing. These exhibits are contained in the Record on Appeal at pages 106 through 225.

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**Balance of PPD Award for Installments:**

15% WPI	(Calculated as 33%WPI-18%WPI)
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On July 8, 2016, the Claimant filed a request for a hearing regarding the Insurer's July 1, 2016 determination letter. (*Id.* at 49.) A hearing was held before the Hearing Officer on August 3, 2016. (*Id.*) On August 11, 2016, the Hearing Officer reversed and remanded the Insurer's July 1, 2016 determination, determining that the Claimant is entitled to a one time lump sum offering of 25% with the remaining 8% to be paid in monthly installments. (*Id.* at 49-51.) The Appeals Officer, after considering the Claimant's two prior PPD awards, issued her decision on December 16, 2016 affirming the Hearing Officer's Decision. (*See* Appeals Officer Decision.)

1 **ARGUMENT SUMMARY**

2 **I. The Appeals Officer Decision is Affected by Errors of Law.**

3 The Appeals Officer concluded that the Insurer's determination to limit Claimant's right  
4 to receive a lump sum of 33% PPD award to 18% is not supported by the evidence or Nevada  
5 law. Further, Claimant shall be offered 25% of her 33% PPD rating in lump sum and the  
6 remaining 8% in installments in accordance with NRS 616C.495(d) and NAC 616C.498. This  
7 conclusion is affected by an error of law as these statute provisions do not limit the 25% cap to  
8 the same claim or body part as determined by the Appeals Officer. With no such limitation in the  
9 plain language of the statutes, it was an error of law to conclude that the cap is inapplicable to  
10 calculation of a lump sum award where the Claimant has multiple claims with injuries to separate  
11 body parts. Further, such a limitation is contrary to the provisions of the statutes as a whole.  
12 Likewise, it was an error of law to fail to subtract Claimant's prior 7% in PPD awards from the  
13 25% cap on lump sum payments to determine the amount of Claimant's current 33% PPD award  
14 that may be received in lump sum form.

15 **II. The Appeals Officer Decision is not Supported by Substantial Evidence.**

16 The Appeals Officer Decision concludes that Claimant is entitled to payment of 25% of  
17 her 33% PPD award in lump sum form. This conclusion fails to consider the substantial evidence  
18 which demonstrates that Claimant has been paid a total of 7% in lump sum PPD awards for prior  
19 claims. As a result, the prior PPD awards must be considered and subtracted from the 25% cap  
20 on PPD awards because this limit applies to whole person impairment and is not limited to the  
21 same claim or body part. Thus, the Appeals Officer Decision is not supported by the substantial  
22 evidence as it does not include the 7% in prior PPD awards in the calculation of the amount  
23 Claimant is entitled to receive in lump sum form for the instant claim.  
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1 ARGUMENT

2 I. Standard of Review

3 A court may set aside a final decision of an agency if the decision is arbitrary, capricious,  
4 in violation of statute, characterized by an abuse of discretion or affected by error of law. NRS  
5 233B.135(3); *Ranieri v. Catholic Community Services*, 111 Nev. 1057, 1061, 901 P.2d 158, 161  
6 (1995).

7 Generally, the reviewing court may not substitute its judgment for that of an agency as to  
8 the weight of the evidence on a question of fact. See NRS 233B.135(3); *Gandy v. State el rel.*  
9 *Div. of Investigation & Narcotics*, 96 Nev. 281, 282, 607 P.2d 581, 583 (1980). However, an  
10 agency's factual determinations that are not supported by "substantial evidence" are unsustainable  
11 and must be reversed. See *State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 87-88, 787 P.2d 408,  
12 409 (1990); see also *Tighe v. Las Vegas Metro. Police Dept.* 110 Nev. 632, 634, 877 P.2d 1032,  
13 1034 (1994).

14 Thus, when reviewing factual issues, the reviewing court must determine whether there is  
15 "substantial evidence" in the record to support the agency's conclusion. *Garcia v. Scolari's Food*  
16 *& Drug*, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009). "Substantial evidence" is defined as  
17 "evidence that a reasonable mind might accept as adequate to support the appeals officer's  
18 conclusion." *Id.* If there is no evidence in the record to support an agency's conclusion,  
19 substantial evidence is obviously lacking. *Ayala v. Caesars Palace*, 119 Nev. 232, 240, 71 P.3d  
20 490, 495 (2003) (abrogated on another point of law).

21 Conversely, the court does not extend deference to the Appeals Officer's legal conclusions  
22 reviewing these issues *de novo*. *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084,  
23 1087-88 (2008).

24 In this case, the City contends that the Appeals Officer's Decision is affected by errors of  
25 law and should be reversed because it is not supported by substantial evidence.

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1 **II. The Appeals Officer Decision is Affected by Errors of Law.**

2 **A. The Applicable Statutes do Not Limit the 25% Cap on Lump Sum Payments**  
3 **to the Same Claim or Body Part.**

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

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

7 \* \* \*

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

17 NAC 616C.498, as enacted at the time of the Appeals Officer Decision<sup>2</sup>, states:

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

20 1. Does not exceed 25 percent may elect to receive his compensation in a lump  
21 sum.

22 2. Exceeds 25 percent may elect to receive his compensation in a lump sum  
23 equal to the present value of an award for a disability of 25 percent. If the injured  
24 employee elects to receive compensation in a lump sum pursuant to this  
25 subsection, the insurer shall pay in installments to the injured employee that  
26 portion of the injured employee's disability in excess of 25 percent.

27 Notably, there is no provision in the two applicable statute sections that limits the 25%  
28 cap on lump sum payments to *impairments for the same claim or disability*. See NRS

23 <sup>2</sup> The version of NAC 616C.498 in place at time of the date of injury, May 22, 2014, caps the  
24 amount a claimant can receive in lump sum form to 25%. See *State Ind. Ins. Sys. V. Conner*, 102  
25 Nev. 335, 337, 721 P.2d 384, 385 (1986) (stating, "entitlement to benefits is determined as of the  
26 date of injury"). Further, while a more recent version of NAC 616C.498 was adopted on January  
27 30, 2017 and effective December 21, 2016, its provisions increasing the lump sum payment cap  
28 from 25% to 30% applies to employees injured on or after January 1, 2016. See 2017 NV REG  
TEXT 398166 (NS); NAC 616C.498(2). Further, the Insurer has not offered a lump sum  
compensation up to 30 percent as allowed under NAC 616C.498(1). Rather, as demonstrated by  
the July 1, 2016 determination letter, the Insurer offered a lump sum payment of 18%. (Ex. 1 at  
9.)

1 616C.495(1)(d) and NAC 616C.498. The Nevada Supreme Court has interpreted these provisions  
2 to allow no more than 25% whole person impairment to be paid in a lump sum PPD award. *See*  
3 *Eads v. State Indus. Ins. System*, 109 Nev. 733, 857 P.2d 13 (1993). In *Eads*, the court concludes  
4 that you must combine disability allowance and limit lump sum payments to a total of 25%. *Id.*,  
5 109 Nev. at 736, 857 P.2d at 15.

6 At the appeal hearing, the City asserted that the legal analysis in *Eads* is directly  
7 applicable here. Meaning, that the Claimant's prior 7% in PPD awards must be considered and  
8 subtracted from the cap amount as done in *Eads*. This is also supported by the plain language of  
9 the statutes. *See* NRS 616C.495(1)(d) and NAC 616C.498.

10 Because no case law in Nevada exists with similar facts (*i.e.*, multiple claims and separate  
11 body parts), the Appeals Officer improperly relied on the specific facts of *Eads*, not just the legal  
12 analysis, to limit application of NRS 616C.495(1)(d) and NAC 616C.498 to only cases involving  
13 the same claim and disability. (*See* Appeals Decision at 5-6.) Because the statutes do not include  
14 a limitation on the cap to the same claim or body part, and because *Eads* is factually  
15 distinguishable as it dealt with the same claim and disability and reopening of a claim, where this  
16 case involves multiple claims and multiple body parts, it was an error of law to limit this case to  
17 the facts of *Eads*. Rather, this limited case law simply provides instruction as to how the lump  
18 sum calculation should be made. It was an error to go beyond the calculation analysis in *Eads*  
19 and conclude that the specific facts of that case limit application of NRS 616C.495(1)(d) and  
20 NAC 616C.498 in factually distinguishable cases such as this.

21 With no express limitation of application of the cap to the same claim or body part in the  
22 plain language of the statutes, *the only way* such a limitation of the statutes' application to the  
23 same claim and body part could exist, as opposed to all claims for a claimant and based on whole  
24 person impairment, would be if the legislature made such an amendment. (*See i.e., In re*  
25 *Christensen*, 122 Nev. 1309, 1320, 149 P.3d 40, 47 (2006) (if the Nevada Legislature meant to  
26 limit these statutes to the facts of *Eads*, it would have done so, as is illustrated in *In re*  
27 *Christensen* which states, "[i]t is clear that, in amending the statute, the Legislature primarily  
28 intended to change the result of our 1999 decision in *In re Galvez*.")) The Legislature commonly

1 amends statutes in response to case law. If the Legislature thought these two statutes should be  
2 limited to the same claim and body part, it would have codified *Eads*. The *Eads* decision was  
3 issued in 1993 and the Legislature has had ample time to make such changes and has not done so.  
4 It is for the Legislature, and not the courts, to limit application of a statute.

5 Ultimately, the Appeals Officer improperly applied the facts of *Eads* to these statutes to  
6 create a limitation that does not exist under their plain language and where no ambiguity exists.  
7 (See Appeals Officer Decision at 5:19 - 6:8); cf. *State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117,  
8 1120 (2001) ("If the words of the statute have a definite and ordinary meaning, this court will not  
9 look beyond the plain language of the statute"). Thus, it was an error of law to not consider the  
10 Claimant's prior 7% PPD awards in calculating the lump sum amount in this case.

11 **B. The Workers' Compensation Statutes, When Read as a Whole, Confirm That**  
12 **All Prior PPD Awards Must be Considered in the Lump Sum Calculation.**

13 To the extent these statutes are deemed silent as to application to the same claim or  
14 different claims, as a matter of statutory construction, the statutes must be considered as a whole.  
15 See *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) ("in interpreting a statute, this  
16 court considers the statute's multiple legislative provisions as a whole. Additionally, statutory  
17 interpretation should not render any part of a statute meaningless, and a statute's language 'should  
18 not be read to produce absurd or unreasonable results.'") (internal citation omitted). The  
19 neighboring statutory provisions confirm that the omission of such a limitation of applicability to  
20 the same claim or disability was intentional. See *Edgington v. Edgington*, 119 Nev. 577, 583, 80  
21 P.3d 1282, 1287 (2003) ("the statute should be read as a whole, and, where possible, the statute  
22 should be read to give meaning to all of its parts.").

23 Specifically, neighboring provision NRS 616C.495(1)(e) states:

24 (e) If the permanent partial disability rating of a claimant seeking compensation  
25 pursuant to this section would, *when combined with any previous permanent*  
26 *partial disability rating of the claimant that resulted in an award of benefits to*  
27 *the claimant*, result in the claimant having a total permanent partial disability  
28 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*

1        *limit the total permanent partial disability rating of the claimant for all injuries*  
2        *to not more than 100 percent.*

3        (Emphasis added).

4        This provision makes it clear that when calculating compensation you must consider  
5        compensation in combination with any previous PPD ratings of a claimant that resulted in an  
6        award of benefits to the claimant.

7        Similarly, NRS 616C.490(9) provides:

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

13        (Emphasis added).

14        This provision demonstrates that for apportionment purposes, the percentage of disability  
15        for a current claim is calculated by first deducting the percentage disability for previous  
16        disabilities. Again, this confirms that a rating physician must consider prior permanent disability  
17        awards and deduct them in order to calculate a the permanent disability for a subsequent injury.

18        In sum, to the extent NRS 616C.695(d) and NAC 616C.498 could be deemed to be silent  
19        as to whether the 25% cap requires consideration of prior PPD ratings, NRS 616C.495(1)(e) and  
20        NRS 616C.490(9) answer this question with a “yes.” As such, “in interpreting a statute, th[e]  
21        court considers the statute’s multiple legislative provisions as a whole. Additionally, statutory  
22        interpretation should not render any part of a statute meaningless, and a statute’s language ‘should  
23        not be read to produce absurd or unreasonable results.’” *Leven*, 123 Nev. at 405, 168 P.3d at 716.  
24        By failing to look to the workers’ compensation statutes as a whole, the Appeals Officer failed to  
25        read NRS 616C.695(d) and NAC 616C.498 in a way that gives meaning to all parts. This failure  
26        is an error of law and the result is absurd and renders the applicable statutes meaningless.

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1           **C.     The AMA Guides and the Purpose of Workers' Compensation Statutes**  
2           **Both Indicate that Prior PPD Awards Must be Considered.**

3           Finally, pursuant to the *AMA Guides'* whole person approach to impairment, there is a  
4 requirement that impairment from different regions be combined to determine whole person  
5 impairment. (*See AMA Guides*, Fifth Ed., Section 1.3 and 1.4, pp. 9, 10 attached hereto as  
6 **Exhibit 1.**) Additionally, the purpose of the applicable statutes is to ensure that the most  
7 seriously injured claimants are compensated over time and not left destitute after lump sum  
8 payments are exhausted. *See* Amount, Payment and Period of Compensation, 0060 Surveys 28  
9 (Dec. 2015) (this publication surveys the 50 states and limitations on lump sum payments,  
10 including Nevada's NRS 616C.495, and states, "Workers' Compensation statutes are enacted to  
11 guarantee that employees who are injured or disabled during work will be compensated and  
12 assured an income during their recovery, and if they are unable to return to work as a result of  
13 their injury that they will receive an income to replace their lost wages.")

14           Therefore, given that the AMA Guides mandate looking to whole person impairment, and  
15 not just a specific claim or body part, this supports that the cap on lump sum payments applies to  
16 whole person impairment and not just a specific claim. This is further supported by the purpose  
17 of workers' compensation statutes which is to ensure employees with serious injuries receive  
18 installment payments over time to compensate for lost wages. Claimant has a 33% impairment  
19 rating, and as such, with this high percentage disability the statutes intend for her to be  
20 compensated over time. Thus, Claimant's lump sum payment should be limited on whole person  
21 impairment and account for prior impairment rating.

22           For these reasons, the Appeals Officer Decision is affected by errors of law because it  
23 improperly limits the 25% cap on a lump sum payment of a PPD award for whole person  
24 impairment established by statute to the facts of *Eads* (same claim and same body part) and  
25 concludes this cap can only apply to the same claim or body part. This interpretation is improper  
26 when the plain language of the statute is clear that there are no limitations as to which prior  
27 awards can be considered and the cap can apply to multiple claims and separate body parts.  
28 Likewise, the surrounding statutes such as NRS 616C.495(1)(e) and NRS 616C.490(9) make

1 clear that you must combine prior PPD awards to determine applicable percentages such as the  
2 cap on lump sum payments at issue here. Thus, it was an error of law to not include the  
3 Claimant's prior 7% of PPD awards in the calculation of determining how much in lump sum  
4 form the Claimant was entitled to. The Appeals Officer Decision should be reversed as the  
5 proper amount that can be paid in a lump sum amount is the 25% cap amount minus 7% for prior  
6 PPD awards which results in 18% of the PPD award that by law can be paid in lump sum form.  
7 The remaining 15% of the 33% PPD award shall be paid in installment payments.

8 **III. The Appeals Officer Decision is not Supported by Substantial Evidence.**

9 The evidence is undisputed that the Claimant had two prior PPD awards. Claimant was  
10 paid a 5% PPD award in lump sum form related to a right wrist injury in September of 2009. (Ex.  
11 1 at 52-64.) Claimant was paid a 2% PPD award in lump sum form related to a left elbow injury  
12 in April of 2013. (Ex. 1 at 65-77.) The May 22, 2014 injury at issue in this claim resulted in an  
13 additional 33% whole person impairment. (Ex. 1 at 39.)

14 The Appeals Officer finds in the findings of facts that these two prior awards were made.  
15 (Appeals Officer Decision at 3:15-18.) She also finds that the Claimant suffered an additional  
16 33% impairment as a result of the instant claim. (*Id.* at 3:7-9.) Notwithstanding, the Appeals  
17 Officer Decision ignores this substantial evidence and concludes contrary to the substantial  
18 evidence that no prior award should be subtracted from the 25% lump sum amount to account for  
19 prior PPD awards. (*See id.* at 5-6.) As such, the decision is not supported by the substantial  
20 evidence. The combination of Claimant's PPD awards results in whole person impairment  
21 greater than 25% after adding the 33% PPD award for her right wrist strain, right elbow strain,  
22 and cervical strain conditions, and the two prior PPD awards. NAC 616C.498 limits payment of  
23 the lump sum to 25%. The balance must be paid in installments. Thus, because the Appeals  
24 Officer Decision is not supported by the substantial evidence it is unsustainable and must be  
25 reversed.

26 **CONCLUSION**

27 The City submits that the Appeals Officer Decision is affected by multiple errors of law  
28 because it does not find that an ambiguity exists under NRS 616C.495(d) and NAC 616C.498,

1 but yet, interprets the statutes to have a meaning not within the plain language of the statutes.  
2 The decision reads into the limitations of the *Eads* case to limit these statutes to only apply to cap  
3 a PPD award on the same claim and same body part. If the Legislature wanted to limit these  
4 statutes to the specific facts in *Eads* it would have amended the statutes accordingly. It is further  
5 an error of law to refuse to combine prior PPD awards in the calculation of the lump sum amount  
6 that can be awarded to Claimant where NRS Chapter 616C, when read as a whole and with  
7 giving meaning to all its parts, provides that you must combine prior PPD awards. The Appeals  
8 Officer Decision renders these statute provisions meaningless and leads to an absurd result.  
9 Finally, the Appeals Officer Decision is unsupported by, and contrary to, the substantial  
10 evidence. It is undisputed that Claimant has received two prior lump sum awards totaling 7%.  
11 As such, because PPD awards are paid on whole person impairment, the 25% cap on lump sum  
12 payments for whole person impairment should have been reduced by 7% due to the prior PPD  
13 awards. The proper lump sum amount that can be paid by statute, in light of the substantial  
14 evidence of prior awards, is 18% and not 25% as ordered by the Appeals Officer. For these  
15 reasons, the City respectfully requests that the Appeals Officer Decision be reversed by this  
16 Court.

17 **AFFIRMATION**

18 (Pursuant to NRS 239B.030)

19 The undersigned does hereby affirm that the preceding does not contain the social security  
20 number of any person.

21 Dated this 27<sup>th</sup> day of March, 2017.

22 By: /s/ Lisa Wiltshire Alstead

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27 Reno, NV 89505-2670

28 Attorneys for Petitioner  
CITY OF RENO

[illegible]

DATED this 27<sup>th</sup> day of March 2017.

*/s/ Lisa Wiltshire Alstead*  
LISA WILTSHIRE ALSTEAD

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/s/ Kathleen Morris  
KATHLEEN MORRIS

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**INDEX OF EXHIBITS**

**Exhibit 1: Excerpt from AMA Guides . . . . .3 pages**

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**EXHIBIT 1**

**EXHIBIT 1**

American Medical Association  
Physicians dedicated to the health of America



# Guides

*to the* Evaluation  
*of* Permanent  
Impairment

*Fifth Edition*

Linda Cocchiarella, MD, MSc, AMA Medical Editor  
Gunnar B. J. Andersson, MD, PhD, Senior Medical Editor





As discussed in this chapter and illustrated in Figure 1-1, medical impairments are not related to disability in a linear fashion. An individual with a medical impairment **can** have no disability for some occupations, yet be **very** disabled for others. For example, severe degenerative disk disease may impair the functioning of the spine of both a licensed practical nurse and a bank president in a similar fashion when performing their activities of daily living. However, in terms of occupation, the bank president is less likely to be disabled by this impairment than the licensed practical nurse. An individual who develops rheumatoid arthritis may be disabled from work as a tailor but may be able to work as a child care aide. A pilot who develops a visual impairment, correctable with glasses, may be able to perform all of his daily activities but is no longer able to fly a commercial plane. An individual with repeated hernias and repairs may no longer be able to lift more than 20 lb (40 lb) but could work in a factory where mechanical lifts are available.

The *Guides* is not intended to be used for direct estimates of work disability. Impairment percentages derived according to the *Guides* criteria do not measure work disability. Therefore, it is inappropriate to use the *Guides'* criteria or ratings to make direct estimates of work disability.

#### 1.2c Handicap

*Handicap* is a term historically used in both a legal and a policy context to describe disability or people living with disabilities. Though the term continues to be used, generally it is being replaced with the preferred term *disability*.

### 1.3 The Organ System and Whole Body Approach to Impairment

The *Guides* impairment ratings reflect the severity and limitations of the organ/body system impairment and resulting **functional limitations**. Most organ/body systems chapters in the *Guides* provide impairment ratings that represent the extent of whole person impairment. In addition to listing whole person impairments, the musculoskeletal chapters provide regional impairment ratings (eg, upper extremity, lower extremity); regional ratings are then converted into whole person impairment ratings. Within some musculoskeletal regions, a consensus group developed weights to reflect the relative importance of certain regions. For example, different fingers or different areas of the spine are given different weights, representing their unique and relative importance to the region's overall functioning. These weights, which have gained acceptance in clinical practice, have been retained to enable regulatory authorities to convert from a regional body to whole person impairment when needed.

### 1.4 Philosophy and Use of the Combined Values Chart

The **Combined Values Chart** (p. 604) was designed to enable the physician to account for the effects of multiple impairments with a summary value. A standard formula was used to ensure that regardless of the number of impairments, the summary value would not exceed 100% of the whole person. According to the formula listed in the combined values chart, multiple impairments are combined so that the whole person impairment value is equal to or less than the sum of all the individual impairment values.

A scientific formula has not been established to indicate the best way to combine multiple impairments. Given the diversity of impairments and great variability inherent in combining multiple impairments, it is difficult to establish a formula that accounts for all situations. A combination of some impairments could decrease overall functioning more than suggested by just adding the impairment ratings for the separate impairments (eg, blindness and inability to use both hands). When other multiple impairments are combined, a less than additive approach may be more appropriate. States also use different techniques when combining impairments. Many workers' compensation statutes contain provisions that combine impairments to produce a summary rating that is more than additive. Other options are to combine (add, subtract, or multiply) multiple impairments based upon the extent to which they affect an individual's ability to perform activities of daily living. The current edition has retained the same combined values chart, since it has become the standard of practice in many jurisdictions. Other approaches, when published in scientific peer-reviewed literature, will be evaluated for future editions.

In general, impairment ratings within the same region are combined before combining the regional impairment rating with that from another region. For example, when there are multiple impairments involving abnormal motion, neurologic loss, and amputation of an extremity part, these impairments first should be combined for a regional extremity impairment. The regional extremity impairment then is combined with an impairment from another region, such as from the respiratory system. Spinal impairments in multiple regions are combined. Exceptions, as detailed in the musculoskeletal chapter, include impairments of the joints of the thumb, which are added, as are the ankle and subtalar joints in the lower extremity; both situations include complex motions.

## 1.5 Incorporating Science with Clinical Judgment

The *Guides* uses objective and scientifically based data when available and references these sources. When objective data have not been identified, estimates of the degree of impairment are used, based on clinical experience and consensus. Subjective concerns, including fatigue, difficulty in concentrating, and pain, when not accompanied by demonstrable clinical signs or other independent, measurable abnormalities, are generally not given separate impairment ratings. Chronic pain is discussed in Chapter 18. Physicians recognize the local and distant pain that commonly accompanies many disorders. Impairment ratings in the *Guides* already have accounted for commonly associated pain, including that which may be experienced in areas distant to the specific site of pathology. For example, when a cervical spine disorder produces radiating pain down the arm, the arm pain, which is commonly seen, has been accounted for in the cervical spine impairment rating.

The *Guides* does not deny the existence or importance of these subjective complaints to the individual or their functional impact. The *Guides* recommends that the physician ascertain and document subjective concerns. Because the presence and severity of subjective concerns varies among individuals with the same condition, the *Guides* has not yet identified an accepted method within the scientific literature to ascertain how these concerns consistently affect organ or body system functioning. The physician is encouraged to discuss these concerns and symptoms in the impairment evaluation.

Research is limited on the reproducibility and validity of the *Guides*.<sup>19,20</sup> Anecdotal reports indicate that adoption of the *Guides* results in a more standardized impairment assessment process. As relevant research becomes available, subsequent editions of the *Guides* will incorporate these evidence-based studies to improve the *Guides'* reliability and validity.