

Electronically Filed
Jul 09 2018 04:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 **NOAS**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 5125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
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6 Las Vegas, Nevada 89102
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10 *Attorneys for Respondents,*
11 *City of Henderson and Cochran*
12 *Management Services, Inc. (CCMSI)*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 JARED SPANGLER,

12 Petitioner,

13 v.

14 CITY OF HENDERSON, CANNON
15 COCHRAN MANAGEMENT SERVICES,
16 INC. (CCMSI), THE DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
APPEALS OFFICE,

Respondents.

CASE NO.: A-17-759871-J

DEPT NO.: II

18 **NOTICE OF APPEAL**

19 TO: JARED SPANGLER, Petitioner

20 TO: LISA M. ANDERSON, ESQ., Respondent's Attorney

21 NOTICE IS HEREBY GIVEN that Respondents, CITY OF HENDERSON and CANNON
22 COCHRAN MANAGEMENT SERVICES, INC. (CCMSI), (hereinafter referred to as
23 "Respondents"), in the above-entitled action, hereby appeal to the Supreme Court of the State of
24 Nevada from the attached "Order" entered in this action on or about June 18, 2018 which granted
25

26 ...

27 ...

1 Petitioner's Petition for Judicial Review and the "Notice of Entry of Order" filed on or about June 19,
2 2018.

3 DATED this 2 day of July, 2018.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
8 By: 

DANIEL L. SCHWARTZ, ESQ.

9 LEWIS BRISBOIS BISGAARD & SMITH, LLP

10 2300 West Sahara Avenue, Suite 300, Box 28

11 Las Vegas, Nevada 89102

12 Attorneys for Respondents

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 2nd day of
3 July, 2018, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a true
4 copy of the same for mailing, first class mail and/or electronic service, as follows:

5 Lisa Anderson, Esq.
6 GREENMAN, GOLDBERG, RABY & MARTINEZ
7 601 South Ninth Street
8 Las Vegas, NV 89101

9 City of Henderson
10 Attn: Sally Ihmels
11 P.O. Box 95050, MSC 127
12 Henderson, NV 89009-5050

13 CCMSI
14 Sue Riccio
15 P.O. Box 35350
16 Las Vegas, NV 89133

17 
18 An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP
19
20
21
22
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DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF APPEAL

filed in case number: A-17-759871-J

☒

Document does not contain the Social Security number of any person.

- OR -

☐

Document contains the Social Security number of a person as required by:

☐

A specific state or federal law, to wit:

- or -

☐

For the administration of a public program

- or -

☐

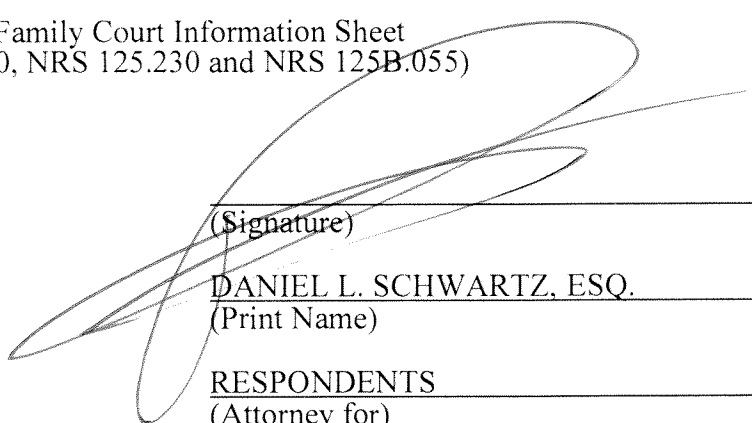
For an application for a federal or state grant

- or -

☐

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/2/18


(Signature)

DANIEL L. SCHWARTZ, ESQ.
(Print Name)

RESPONDENTS
(Attorney for)

EXHIBIT I

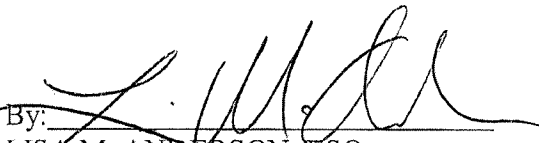
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///

1 entered in the above-entitled matter on the 18th day of June, 2018, a copy of which is attached.

2 DATED this 19th day of June, 2018.

3 GREENMAN, GOLDBERG, RABY & MARTINEZ

4
5
6 By: 
7 LISA M. ANDERSON, ESQ.

8 Nevada Bar No. 4907
9 GABRIEL A. MARTINEZ, ESQ.
10 Nevada Bar No. 326
11 601 South Ninth Street
12 Las Vegas, Nevada 89101
13 Attorneys for Petitioner
14
15
16
17
18
19
20
21
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23
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Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GREENMAN, GOLDBERG, RABY & MARTINEZ, and that on the 19th day of June, 2018, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and depositing a true and correct copy in a sealed envelope, postage fully prepaid, addressed as follows:

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
2300 West Sahara Avenue
Suite 300, Box 28
Las Vegas, Nevada 89102


An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

Steven D. Grierson

ORDG
THADDEUS J. YUREK III, ESQ.
Nevada Bar No. 011332
LISA M. ANDERSON, ESQ.
Nevada Bar No. 004907
GREENMAN, GOLDBERG, RABY & MARTINEZ
601 South Ninth Street
Las Vegas, Nevada 89101
Phone: (702) 384-1616
Facsimile: (702) 384-2990
Email: landerson@ggrmlawfirm.com
Attorneys for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

JARED SPANGLER,
Petitioner

vs.

CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT
SERVICE, INC., and THE DEPARTMENT
OF ADMINISTRATION, HEARINGS
DIVISION,

Respondents.

PLEASE NOTE
DEPARTMENT CHANGE

CASE NO. : A-17-759871-J

DEPT. NO. : XXVIII

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

This matter came before this Court on the Petition for Judicial Review filed by the Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ. of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, CITY OF HENDERSON and CCMSI, were represented by JOEL P. REEVES, ESQ. of the law firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

JUN 11 2018

MT

1 Petitioner claims that, in the course of his employment, he incurred an aggravation to his
2 pre-existing hearing loss. The Appeals Officer concluded that the injury was not compensable
3 for several invalid reasons.

4 First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612
5 which prevented Petitioner from recovering because the origin of the injury did not arise out of
6 and in the course of employment. The Appeals Officer failed to consider NRS 616C.175(1)
7 which permits compensation for certain pre-existing conditions where the origin of the injury
8 did not arise out of and in the course of employment, but the aggravation did.

9
10 NRS 616C.175(1) states:

11 1. The resulting condition of an employee who:

12 (a) Has a preexisting condition from a cause or origin that did
13 not arise out of or in the course of the employee's current or past
14 employment; and

15 (b) Subsequently sustains an injury by accident arising out of
16 and in the course of his or her employment which aggravates,
17 precipitates or accelerates the preexisting condition,
18 → shall be deemed to be an injury by accident that is compensable
19 pursuant to the provisions of chapters 616A to 616D, inclusive, of
20 NRS, unless the insurer can prove by a preponderance of the
21 evidence that the subsequent injury is not a substantial
22 contributing cause of the resulting condition.

23 Second, the Appeals Officer wrongly concluded that the aggravation of the pre-existing
24 injury did not arise by an accident, by interpreting the term accident too narrowly. The term
25 accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly
26 and violently, with or without human fault, and producing at the time objective symptoms of an
27 injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which
28 destroys those parts of the human body responsible for hearing, is a separate accident. Such
destruction each occasion is sudden and violent. Further, such accidents that destroy hearing
are objective at the time in that the harm done to the ear is capable of objective, as opposed to

1 subjective, evaluation. The term accident does not require that some person discovered the
2 objective evidence at the time of the accident, only that such objective indicia of the injury arose
3 at the time.

4 NRS 616A.030 defines "accident" as:


5 "Accident" means an unexpected or unforeseen event happening
6 suddenly and violently, with or without human fault, and
7 producing at the time objective symptoms of an injury.

8 Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove
9 by a preponderance of the evidence that the claim was compensable. NRS 616C.175 placed the
10 initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he had
11 a pre-existing condition, and that the pre-existing condition was aggravated by an accident in
12 the course of his employment, resulting in a subsequent injury. Then the burden shifts to the
13 insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a
14 substantial contributing cause of the resulting condition.
15

16 This matter is remanded back to the Appeals Officer to conduct a further hearing and
17 applying the law as set forth herein. In this further hearing, the Appeals Officer must reevaluate
18 the evidence, to determine whether Petitioner suffered accidents in the course of his employment
19 which aggravated his pre-existing conditions, and then to determine the course of his
20 employment which aggravated his pre-existing conditions, and then to determine whether the
21 insurer met its burden of proving by a preponderance of the evidence, that the subsequent injury
22 was not a substantial contributing cause of the Petitioners aggravation to a pre-existing injury.
23 The Court elects not to consider, at this time, Petitioner's other arguments of errors, and
24 contention of lack of substantial evidence.
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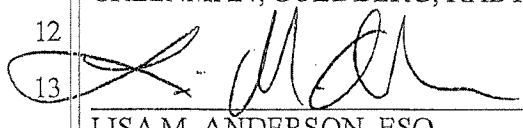
1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.
5

6
7 
8 RICHARD F. SCOTTI
9 DISTRICT COURT JUDGE
10

11 Submitted by:

12 GREENMAN, GOLDBERG, RABY & MARTINEZ
13

14 
LISA M. ANDERSON, ESQ.

15 Nevada Bar No. 004907

16 GREENMAN, GOLDBERG, RABY & MARTINEZ

17 601 South Ninth Street

18 Las Vegas, Nevada 89101

19 (702) 384-1616

20 Attorneys for Petitioner
21

22 Approved as to form and content:

23 LEWIS BRISBOIS-BISGAARD & SMITH
24

25 
JOEL REEVES, ESQ.

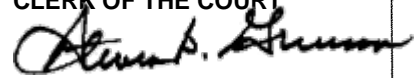
26 Nevada Bar No. 013231

27 2300 West Sahara Avenue

28 Suite 300, Box 28

Las Vegas, Nevada 89102

Attorneys for Respondent



1 **ASTA**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 5125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
5 2300 W. Sahara Ave. Ste. 300
6 Las Vegas, Nevada 89102
7 Telephone: (702) 893-3383
8 Facsimile: (702) 366-9563
9 Email: daniel.schwartz@lewisbrisbois.com
10 *Attorneys for Respondents,*
11 *City of Henderson and Cochran*
12 *Management Services, Inc. (CCMSI)*
13
14
15
16
17

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 JARED SPANGLER,

12 Petitioner,

13 v.

14 CITY OF HENDERSON, CANNON
15 COCHRAN MANAGEMENT SERVICES,
16 INC. (CCMSI), THE DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
APPEALS OFFICE,

Respondents.

CASE NO.: A-17-759871-J

DEPT NO.: II

18 **CASE APPEAL STATEMENT**

19 1. Name of Petitioners filing this case appeal statement:

20 **City of Henderson and Cochran Management Services, Inc. (CCMSI)**

21 2. Identify the Judge issuing the decision, judgment, or order appealed from:

22 **Hon. Richard F. Scotti, District Court Judge**

23 3. Identify all parties to the proceedings in the district court (the use of et al. to denote
24 parties is prohibited):

25 **Jared Spangler, City of Henderson and Cochran Management Services, Inc.**
26 **(CCMSI)**
27 ...
28

1 4. Identify all parties involved in this appeal (the use of et al. to denote parties is
2 prohibited):

3 **Jared Spangler, City of Henderson and Cochran Management Services, Inc.**
4 **(CCMSI)**

5 5. Set forth the name, law firm, address, and telephone number of all counsel on
6 appeal and identify the party or parties whom they represent:

7 **DANIEL L. SCHWARTZ, ESQ.**
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 **2300 W. Sahara Avenue, Suite 300, Box 28**
10 **Las Vegas, Nevada 89102-4375**
11 ***Attorneys for Respondents,***
12 ***City of Henderson and Cochran***
13 ***Management Services, Inc. (CCMSI)***

14 **LISA M. ANDERSON, ESQ.**
15 **GREENMAN, GOLDBERG, RABY & MARTINEZ**
16 **601 South Ninth Street**
17 **Las Vegas, NV 89101**
18 ***Attorney for Petitioner***
19 ***Jared Spangler***

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

22 **Petitioner was represented by retained counsel in the District Court.**

23 7. Indicate whether Respondents were represented by appointed or retained counsel in
24 the district court:

25 **Respondents were represented by retained counsel in the District Court.**

26 8. Indicate whether Petitioner is represented by appointed or retained counsel on
27 appeal:

28 **Petitioner is represented by retained counsel on appeal.**

 9. Indicate whether Respondents are represented by appointed or retained counsel on
 appeal:

Respondents are represented by retained counsel on appeal.

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

3 **Petitioner was not granted leave to proceed in forma pauperis.**

4 11. Indicate whether Respondents were granted leave to proceed in forma pauperis, and
5 the date of entry of the district court order granting such leave:

6 **Respondents were not granted leave to proceed in forma pauperis.**

7 12. Indicate the date the proceedings commenced in the district court (e.g., date
8 complaint, indictment, information, or petition was filed):

9 **The Petition for Judicial Review of the Appeals Officer's Decision of July 20, 2017,**
10 **was filed on August 14, 2017.**

11 13. Provide a brief description of the nature of the action and result in the district court,
12 including the type of judgment or order being appealed and the relief granted by the district court:

13 **This is a worker's compensation case. Prior to the subject claim, in 2005, Petitioner**
14 **JARED SPANGLER (hereinafter "Petitioner") filed a claim for workers' compensation**
15 **benefits alleging that he had a hearing loss that was job incurred. This claim was denied as**
16 **there was evidence that Petitioner had hearing loss prior to his employment. Petitioner did**
17 **not contest this denial.**

18 **In the instant claim, on February 9, 2016, Petitioner filed a second claim alleging that**
19 **his non-industrial hearing loss was made worse over time by his employment. This claim was**
20 **denied. Petitioner appealed. On July 20, 2017, the Appeals Officer affirmed claim denial**
21 **given that there was no conclusive evidence that his hearing loss was related to his**
22 **employment. Petitioner filed the instant Petition for Judicial Review contesting this July 20,**
23 **2017 Decision.**

24 ...
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1 Petitioner argued to the District Court that the aggravation over time of his non-
2 industrial condition should be compensable. Despite the fact that the Nevada workers'
3 compensation system does not allow for such a claim, the district court reversed the Appeals
4 Officer. The District Court cited to NRS 616C.175(1) which deals with an industrial
5 aggravation of pre-existing condition due to an accident, finding that every incident of loud
6 noise over the course of Petitioner's career was a separate accident.

8 Respondents appeal to this Honorable Court seeking reversal of the District Court's
9 erroneous Decision.

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

13 No.

14 15. Indicate whether this appeal involves child custody or visitation:

15 No.

16 16. If this is a civil case, indicate whether this appeal involves the possibility of
17 settlement:

18 No.

19 DATED this 2 day of July, 2018.

20 Respectfully submitted,

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 By: 

23 DANIEL L. SCHWARTZ, ESQ.
24 LEWIS BRISBOIS BISGAARD & SMITH, LLP
25 2300 West Sahara Avenue, Suite 300, Box 28
26 Las Vegas, Nevada 89102
27 Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

CASE APPEAL STATEMENT

filed in case number: A-17-759871-J :

☒ Document does not contain the Social Security number of any person.

- OR -

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

☐ A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/2/18


(Signature)

DANIEL L. SCHWARTZ, ESQ.
(Print Name)

RESPONDENTS
(Attorney for)

DEPARTMENT 2
CASE SUMMARY
CASE NO. A-17-759871-J

Jared Spangler, Petitioner(s)
vs.
Henderson City of, Respondent(s)

§
§
§
§
§

Location: **Department 2**
Judicial Officer: **Scotti, Richard F.**
Filed on: **08/14/2017**
Case Number History:
Cross-Reference Case Number: **A759871**

CASE INFORMATION

Statistical Closures
05/25/2018 Summary Judgment

Case Type: **Worker's Compensation Appeal**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-17-759871-J
Court	Department 2
Date Assigned	08/21/2017
Judicial Officer	Scotti, Richard F.

PARTY INFORMATION

Petitioner **Spangler, Jared**

Lead Attorneys
Anderson, Lisa M
Retained
7023841616(W)

Respondent **Cannon Cochran Management Services Inc**

Schwartz, Daniel L
Retained
702-893-3383(W)

Department of Administration Hearing Division

Henderson City of


Schwartz, Daniel L
Retained
702-893-3383(W)

DATE


EVENTS & ORDERS OF THE COURT

INDEX

08/14/2017

 **Petition for Judicial Review**
Filed by: Petitioner Spangler, Jared
Petition for Judicial Review


08/18/2017

 **Notice of Intent to Participate**
Filed By: Respondent Henderson City of; Respondent Cannon Cochran Management Services Inc
Notice of Intent to Participate


08/21/2017

Case Reassigned to Department 2
Civil Case Reassignment to Judge Richard F. Scotti













08/23/2017

 **Certificate of Mailing**
Certificate of Mailing

09/08/2017

 **Affidavit of Service**
Affidavits of Service

DEPARTMENT 2
CASE SUMMARY
CASE NO. A-17-759871-J

09/12/2017	 Transmittal Party: Respondent Department of Administration Hearing Division <i>Transmittal of Record on Appeal</i>
09/12/2017	 Affidavit Filed By: Respondent Department of Administration Hearing Division <i>Affidavit & Certification</i>
09/12/2017	 Certificate of Mailing Filed By: Respondent Department of Administration Hearing Division <i>Certification of Transmittal</i>
10/20/2017	 Brief <i>Petitioner's Opening Brief</i>
03/12/2018	 Notice of Hearing <i>Order Scheduling Hearing and Briefing Schedule</i>
04/09/2018	 Brief Filed By: Respondent Henderson City of; Respondent Cannon Cochran Management Services Inc <i>Respondents' Answering Brief</i>
05/07/2018	 Petition for Judicial Review (3:00 AM) (Judicial Officer: Scotti, Richard F.) 05/07/2018, 05/16/2018
05/25/2018	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
06/18/2018	Order Granting Judicial Review (Judicial Officer: Scotti, Richard F.) Debtors: Henderson City of (Respondent), Department of Administration Hearing Division (Respondent), Cannon Cochran Management Services Inc (Respondent) Creditors: Jared Spangler (Petitioner) Judgment: 06/18/2018, Docketed: 06/18/2018
06/18/2018	 Order Granting Filed By: Petitioner Spangler, Jared <i>Order Granting Petition for Judicial Review</i>
06/19/2018	 Notice of Entry of Order Filed By: Petitioner Spangler, Jared <i>Notice of Entry of Order</i>
07/02/2018	 Case Appeal Statement Filed By: Respondent Henderson City of; Respondent Cannon Cochran Management Services Inc <i>Case Appeal Statement</i>
07/02/2018	 Notice of Appeal Filed By: Respondent Henderson City of; Respondent Cannon Cochran Management Services Inc <i>Notice of Appeal</i>

DATE

FINANCIAL INFORMATION

| **Respondent** Cannon Cochran Management Services Inc

DEPARTMENT 2
CASE SUMMARY
CASE NO. A-17-759871-J

Total Charges	24.00
Total Payments and Credits	24.00
Balance Due as of 7/3/2018	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

A-17-759871-J

Department 18

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <p style="text-align: center;">Jared Spangler</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">City of Henderson, CCMSI, The Department of Administration, Hearings Division</p>
Attorney (name/address/phone): <p style="text-align: center;">Lisa M. Anderson, Esq. Greenman, Goldberg, Raby & Martinez 601 South Ninth Street Las Vegas, NV 89101 (702) 384-1616</p>	Attorney (name/address/phone): <p style="text-align: center;">Unknown</p>

II. Nature of Controversy *(please select the one most applicable filing type below)*

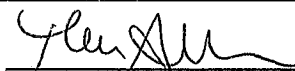
Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input checked="" type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

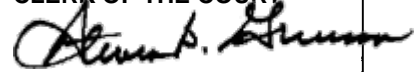
Business Court filings should be filed using the Business Court civil coversheet.

August 14, 2017

Date


 Signature of Initiating party or representative

See other side for family-related case filings.



ORDG
THADDEUS J. YUREK III, ESQ.
Nevada Bar No. 011332
LISA M. ANDERSON, ESQ.
Nevada Bar No. 004907
GREENMAN, GOLDBERG, RABY & MARTINEZ
601 South Ninth Street
Las Vegas, Nevada 89101
Phone: (702) 384-1616
Facsimile: (702) 384-2990
Email: landerson@ggrmlawfirm.com
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

JARED SPANGLER,)
)
Petitioner)
)
vs.)
)
CITY OF HENDERSON, CANNON)
COCHRAN MANAGEMENT)
SERVICE, INC., and THE DEPARTMENT)
OF ADMINISTRATION, HEARINGS)
DIVISION,)
)
Respondents.)

PLEASE NOTE
DEPARTMENT CHANGE

CASE NO. : A-17-759871-J
DEPT. NO. : XXVIII



ORDER GRANTING PETITION FOR JUDICIAL REVIEW

This matter came before this Court on the Petition for Judicial Review filed by the Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ. of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, CITY OF HENDERSON and CCMSI, were represented by JOEL P. REEVES, ESQ. of the law firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

JUN 11 2018

MT

1 Petitioner claims that, in the course of his employment, he incurred an aggravation to his
2 pre-existing hearing loss. The Appeals Officer concluded that the injury was not compensable
3 for several invalid reasons.

4
5 First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612
6 which prevented Petitioner from recovering because the origin of the injury did not arise out of
7 and in the course of employment. The Appeals Officer failed to consider NRS 616C.175(1)
8 which permits compensation for certain pre-existing conditions where the origin of the injury
9 did not arise out of and in the course of employment, but the aggravation did.

10 NRS 616C.175(1) states:

11 1. The resulting condition of an employee who:

12 (a) Has a preexisting condition from a cause or origin that did
13 not arise out of or in the course of the employee's current or past
14 employment; and

15 (b) Subsequently sustains an injury by accident arising out of
16 and in the course of his or her employment which aggravates,
17 precipitates or accelerates the preexisting condition,

18 ↪ shall be deemed to be an injury by accident that is compensable
19 pursuant to the provisions of chapters 616A to 616D, inclusive, of
20 NRS, unless the insurer can prove by a preponderance of the
21 evidence that the subsequent injury is not a substantial
22 contributing cause of the resulting condition.

23
24 Second, the Appeals Officer wrongly concluded that the aggravation of the pre-existing
25 injury did not arise by an accident, by interpreting the term accident too narrowly. The term
26 accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly
27 and violently, with or without human fault, and producing at the time objective symptoms of an
28 injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which
destroys those parts of the human body responsible for hearing, is a separate accident. Such
destruction each occasion is sudden and violent. Further, such accidents that destroy hearing
are objective at the time in that the harm done to the ear is capable of objective, as opposed to

1 subjective, evaluation. The term accident does not require that some person discovered the
2 objective evidence at the time of the accident, only that such objective indicia of the injury arose
3 at the time.

4
5 NRS 616A.030 defines "accident" as:

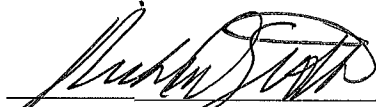

6 "Accident" means an unexpected or unforeseen event happening
7 suddenly and violently, with or without human fault, and
8 producing at the time objective symptoms of an injury.

9
10 Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove
11 by a preponderance of the evidence that the claim was compensable. NRS 616C.175 placed the
12 initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he had
13 a pre-existing condition, and that the pre-existing condition was aggravated by an accident in
14 the course of his employment, resulting in a subsequent injury. Then the burden shifts to the
15 insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a
16 substantial contributing cause of the resulting condition.

17 This matter is remanded back to the Appeals Officer to conduct a further hearing and
18 applying the law as set forth herein. In this further hearing, the Appeals Officer must reevaluate
19 the evidence, to determine whether Petitioner suffered accidents in the course of his employment
20 which aggravated his pre-existing conditions, and then to determine the course of his
21 employment which aggravated his pre-existing conditions, and then to determine whether the
22 insurer met its burden of proving by a preponderance of the evidence, that the subsequent injury
23 was not a substantial contributing cause of the Petitioners aggravation to a pre-existing injury.
24 The Court elects not to consider, at this time, Petitioner's other arguments of errors, and
25 contention of lack of substantial evidence.
26
27
28

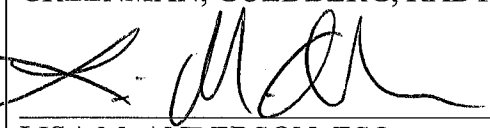
1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.

5
6
7
8 
RICHARD F. SCOTTI
DISTRICT COURT JUDGE
9 

10 Submitted by:

11 GREENMAN, GOLDBERG, RABY & MARTINEZ

12
13 
LISA M. ANDERSON, ESQ.

14 Nevada Bar No. 004907

15 GREENMAN, GOLDBERG, RABY & MARTINEZ

16 601 South Ninth Street

17 Las Vegas, Nevada 89101

(702) 384-1616

Attorneys for Petitioner

18
19 Approved as to form and content:

20 LEWIS BRISBOIS BISGAARD & SMITH

21
22
23 
JOEL REEVES, ESQ.

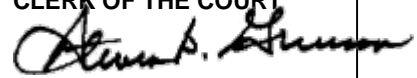
24 Nevada Bar No. 013231

25 2300 West Sahara Avenue

Suite 300, Box 28

Las Vegas, Nevada 89102

Attorneys for Respondent



1 NEOJ
2 **LISA M. ANDERSON, ESQ.**
3 Nevada Bar No. 4907
4 **GABRIEL A. MARTINEZ, ESQ.**
5 Nevada Bar No. 326
6 **GREENMAN GOLDBERG RABY & MARTINEZ**
7 601 South Ninth Street
8 Las Vegas, Nevada 89101
9 Phone: 702.384.1616 ~ Fax: 702.384.2990
10 Email: landerson@ggrmlawfirm.com
11 Email: gmartinez@ggrmlawfirm.com
12 *Attorneys for Petitioner*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 JERAD SPANGLER,)
16)
17 Petitioner)
18)
19 vs.)
20)
21 CITY OF HENDERSON, CANNON)
22 COCHRAN MANAGEMENT)
23 SERVICES, INC., and THE)
24 DEPARTMENT OF ADMINISTRATION,)
25 HEARINGS DIVISION,)
26)
27 Respondents.)
28)

CASE NO. : A-17-759871-J
DEPT. NO. : II

29 **NOTICE OF ENTRY OF ORDER**

30 TO: All parties of interest.

31 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was

32 ///

33 ///

34 ///

35 ///

36 ///

1 entered in the above-entitled matter on the 18th day of June, 2018, a copy of which is attached.

2 DATED this 19th day of June, 2018.

3 GREENMAN, GOLDBERG, RABY & MARTINEZ

4
5 
6 By: LISA M. ANDERSON, ESQ.

7 Nevada Bar No. 4907


8 GABRIEL A. MARTINEZ, ESQ.

9 Nevada Bar No. 326

601 South Ninth Street

10 Las Vegas, Nevada 89101

11 Attorneys for Petitioner


Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GREENMAN, GOLDBERG, RABY & MARTINEZ, and that on the 19th day of June, 2018, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and depositing a true and correct copy in a sealed envelope, postage fully prepaid, addressed as follows:

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
2300 West Sahara Avenue
Suite 300, Box 28
Las Vegas, Nevada 89102


An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Steven D. Grierson

1 **ORDG**
2 **THADDEUS J. YUREK III, ESQ.**
3 Nevada Bar No. 011332
4 **LISA M. ANDERSON, ESQ.**
5 Nevada Bar No. 004907
6 **GREENMAN, GOLDBERG, RABY & MARTINEZ**
7 601 South Ninth Street
8 Las Vegas, Nevada 89101
9 Phone: (702) 384-1616
10 Facsimile: (702) 384-2990
11 Email: landerson@ggrmlawfirm.com
12 *Attorneys for Petitioner*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JARED SPANGLER,
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Petitioner

vs.

CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT
SERVICE, INC., and THE DEPARTMENT
OF ADMINISTRATION, HEARINGS
DIVISION,

Respondents.

PLEASE NOTE
DEPARTMENT CHANGE

CASE NO. : A-17-759871-J
DEPT. NO. : XXVIII

J

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

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Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ.
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JUN 11 2018

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23 Second, the Appeals Officer wrongly concluded that the aggravation of the pre-existing
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16

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18 applying the law as set forth herein. In this further hearing, the Appeals Officer must reevaluate
19 the evidence, to determine whether Petitioner suffered accidents in the course of his employment
20 which aggravated his pre-existing conditions, and then to determine the course of his
21 employment which aggravated his pre-existing conditions, and then to determine whether the
22 insurer met its burden of proving by a preponderance of the evidence, that the subsequent injury
23 was not a substantial contributing cause of the Petitioners aggravation to a pre-existing injury.
24 The Court elects not to consider, at this time, Petitioner's other arguments of errors, and
25 contention of lack of substantial evidence.
26
27
28


1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.

6
7 
8 RICHARD F. SCOTTI
9 DISTRICT COURT JUDGE
10 

11 Submitted by:

12 GREENMAN, GOLDBERG, RABY & MARTINEZ

13 
14 LISA M. ANDERSON, ESQ.

15 Nevada Bar No. 004907

16 GREENMAN, GOLDBERG, RABY & MARTINEZ

17 601 South Ninth Street

18 Las Vegas, Nevada 89101

19 (702) 384-1616

20 *Attorneys for Petitioner*

21 Approved as to form and content:

22 LEWIS BRISBOIS BISGAARD & SMITH
23 

24 JOEL REEVES, ESQ.

25 Nevada Bar No. 013231

26 2300 West Sahara Avenue

27 Suite 300, Box 28

28 Las Vegas, Nevada 89102

Attorneys for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

May 07, 2018

A-17-759871-J Jared Spangler, Petitioner(s)
vs.
Henderson City of, Respondent(s)

May 07, 2018 3:00 AM Petition for Judicial Review

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that it has not yet received a courtesy copy of the Transmittal of the Record on Appeal filed 9/12/2018. The Court instructs Petitioner to provide a courtesy copy of the Record on Appeal to Chambers no later than Friday, May 11, 2018, before noon.

This matter is hereby CONTINUED to the May 16, 2018 Chambers Calendar.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/05/09/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

May 16, 2018

A-17-759871-J Jared Spangler, Petitioner(s)
vs.
Henderson City of, Respondent(s)

May 16, 2018 3:00 AM Petition for Judicial Review

HEARD BY: Scotti, Richard F. **COURTROOM:**

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court GRANTS Petitioner s Petition for Judicial Review, REVERSES the Decision and Order dated July 20, 2017, and REMANDS this matter back to the Appeals Officer for further proceedings. The Appeals Officer committed clear error of law, as explained below.

Petitioner claims that, in the course of his employment he incurred an aggravation to his pre-existing hearing loss. The Appeals Officer wrongly concluded that the injury was not compensable for several invalid reasons. First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612 which prevented Petitioner from recovering because the origin of the injury did not arise out of and in the course of employment. The Appeals officer failed to consider NRS 616.175(1) which permits compensation for certain pre-existing conditions where the origin of the injury did not arise out of and in the course of employment, but the aggravation did. Second, the Appeals Officer wrongly concluded that the aggravation of the preexisting injury did not arise by an accident, by interpreting the term accident too narrowly. The term accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which destroys those parts of the human body responsible for hearing, is a separate accident. Such destruction each occasion is sudden and violent. Further,

such accidents that destroy hearing are objective at the time in that the harm done to the ear is capable of objective, as opposed to subjective, evaluation. The term accident does not require that some person discovered the objective evidence at the time of the accident, only that such objective indicia of the injury arose at the time. Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove by a preponderance of that the claim was compensable. NRS 616C.175 places the initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he had a preexisting condition, and that the preexisting condition was aggravated by an accident in the course of an in his employment, resulting in a subsequent injury. Then the burden shifts to the insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a substantial contributing cause of the resulting condition. This matter is remanded back to the Appeals Officer to conduct a further hearing and applying the law as set forth herein. In this further hearing the Appeals Officer must re-evaluate the evidence, to determine whether Petitioner suffered accidents in the course of his employment which aggravated his preexisting conditions, and then to determine whether the insurer met its burden of proving, by a preponderance of the evidence, that the subsequent injury was not a substantial contributing cause of the Petitioners aggravation to a preexisting injury. The Court elects not to consider, at this time, Petitioner s other arguments of errors, and contention of lack of substantial evidence. The Petitioner shall prepare the proposed order, consistent herewith, adding appropriate context as appropriate, and correcting for any scrivener errors.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Daniel Schwartz, Esq. (Lewis Brisbois Bisgaard & Smith LLP) and Lisa Anderson, Esq. (Greenman, Goldberg, Raby & Martinez) / mk 5/17/18

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITION FOR JUDICIAL
REVIEW; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

JARED SPANGLER,

Petitioner(s),

vs.

CITY OF HENDERSON; CANNON
COCHRAN MANAGEMENT SERVICES INC.,
(CCMSI); THE DEPARTMENT OF
ADMINISTRATION, HEARING DIVISION,

Respondent(s),

Case No: A-17-759871-J

Dept No: II

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 3 day of July 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk