

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CITY OF HENDERSON; AND CANNON
COCHRAN MANAGEMENT SERVICES,
INC,
Appellants,
v.
JARED SPANGLER,
Respondent

No. 76295

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Aug 09 2018 09:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department XIV
County Clark Judge Richard F. Scotti
District Ct. Case No. A-17-759871-J

2. Attorney filing this docketing statement:

Attorney Daniel L. Schwartz, Esq. Telephone 702-893-3383
Firm Lewis Brisbois Bisgaard & Smith
Address 2300 W. Sahara Ave. Ste. 300
Las Vegas, Nevada 89102

Client(s) City of Henderson and Cochran Management Services, Inc. (CCMSI)

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

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

Attorney Lisa M. Anderson, Esq Telephone (702)-388-4479
Firm Greenman, Goldberg, Raby and Martinez Law Firm
Address 601 S 9th St
Las Vegas, NV 89101

Client(s) Jared Spangler

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

None

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

None

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

This is a worker's compensation case. Prior to the subject claim, in 2005, Respondent filed a claim for workers' compensation benefits for hearing loss. This claim was denied as Respondent had hearing loss prior to his employment. Respondent did not contest this denial. In the instant claim, on February 9, 2016, Respondent alleged that his non-industrial hearing loss was made worse by his employment. This claim was denied. Respondent appealed. The Appeals Officer affirmed claim denial given that the hearing loss was not related to his employment. Respondent filed the instant Petition for Judicial Review and argued to the District Court that the aggravation over time of his non-industrial condition should be compensable. Despite the fact that the Nevada workers' compensation system does not allow for such a claim, the district court reversed the Appeals Officer. The District Court cited to NRS 616C.175(1) which deals with an industrial aggravation of pre-existing condition due to an accident, finding that every incident of loud noise over the course of Petitioner's career was a separate accident. Appellants appealed to this Court.

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

Whether Appellant Administrator properly denied Respondent's claim for workers' compensation benefits as Nevada does not recognize claims for the degeneration over time of a non-industrial condition.

Whether the Appeals Officer properly affirmed the denial Respondent's claim for workers' compensation benefits.

Whether the District Court erred in granting Respondent's Petition for Judicial Review.

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

None.

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

☐ N/A

☐ Yes

☒ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain: The District Court ordered this claim accepted based on a novel interpretation of the term "accident" as defined by NRS 616A.030. The District Court ruled that, although Respondent was attempting to make out a claim for cumulative hearing loss, each loud noise exposure should be considered a separate accident and that the cumulative effect of each "accident" should be considered. However, such an analysis circumvents the analysis of all injury-over-time cases under NRS 617. To Respondents knowledge, such an interpretation has never been endorsed by either this Court or any other High Court in this country.

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

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(10) as it is a Petition for Judicial Review of a final decision of an administrative agency. However, the Supreme Court should retain jurisdiction given that this case presents an issue of first impression which would affect the statewide administration of workers' compensation insurance.

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Jun 18, 2018

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

17. Date written notice of entry of judgment or order was served Jun 19, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Jul 2, 2018

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is a Petition for Judicial Review of a workers' compensation Appeals Officer. Respondent filed his Petition with the District Court pursuant to NRS 233B.130. The District Court granted Respondents' Petition. As this final judgment of the District Court aggrieved Appellants, this Court has jurisdiction to hear this appeal under NRS 233B.150.

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

(a) Parties:

JARED SPANGLER - Petitioner

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

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

The Department of Administration did not participate in the District Court Petition.

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

JARED SPANGLER - Petition for Judicial Review

CITY OF HENDERSON and CANNON COCHRAN MANAGEMENT SERVICES,
INC. (CCMSI) - Petition for Judicial Review

THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, APPEALS
OFFICE - None

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

CITY OF HENDERSON

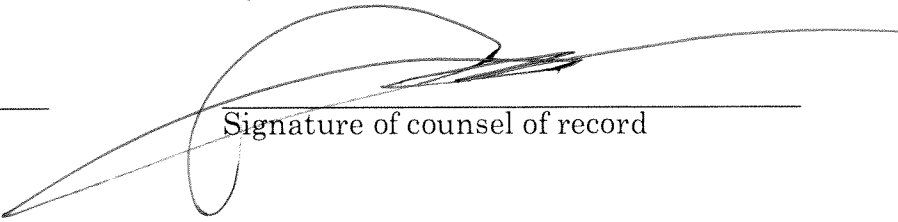
Name of appellant

Daniel L. Schwartz, Esq.

Name of counsel of record

Aug 8, 2018

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 8th day of August, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)
1. Lisa Anderson, Esq.
 2. City of Henderson
 3. CCMSI
 4. Nevada Dept. of Administration
 5. Patrick Cates, Esq., Nevada Dept. of Administration
 6. Adam Paul Laxalt, Esq., Attorney General

Dated this 8th day of August, 2018


Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8th day of August, 2018, a true and correct copy
3 of this **DOCKETING STATEMENT** completed upon all counsel of record by
4 electronically filing the document using the Nevada Supreme Court's electronic
5 filing system and via US Mail.
6

7 Lisa Anderson, Esq.
8 GREENMAN, GOLDBERG, RABY & MARTINEZ
9 601 South Ninth Street
Las Vegas, NV 89101

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

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

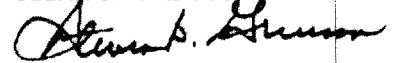
16 Department of Administration
17 2200 S Rancho Dr., Ste. 220
Las Vegas, NV 89102

18 Patrick Cates, Esq.
19 Director, Department of Administration
20 Nevada Department of Administration
515 East Musser Street, Third Floor
Carson City, NV 89701-4298

21 Adam P. Laxalt, Esq.
22 Nevada Attorney General
23 Office of the Attorney General
24 100 North Carson Street
Carson City, NV 89701

25
26 By  _____

27 an Employee of LEWIS BRISBOIS
28 BISGAARD & SMITH LLP



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*

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

11 JERAD SPANGLER,)

12 Petitioner)

13 vs.)

CASE NO. : A-17-759871-J

DEPT. NO. : II

14 CITY OF HENDERSON, CANNON)
15 COCHRAN MANAGEMENT)
16 SERVICES, INC., and THE)
17 DEPARTMENT OF ADMINISTRATION,)
18 HEARINGS DIVISION,)

18 Respondents.)

19 **NOTICE OF ENTRY OF ORDER**

21 TO: All parties of interest.

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

23 ///

24 ///

25 ///

26 ///

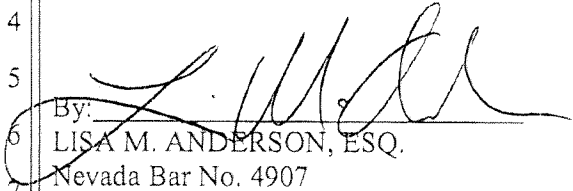
27 ///

28 ///

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.

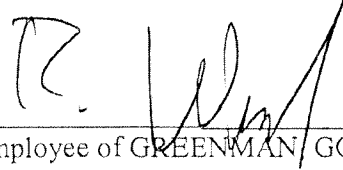
3 GREENMAN, GOLDBERG, RABY & MARTINEZ

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
Las Vegas, Nevada 89101
Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GREENMAN, GOLDBERG, RABY & MARTINEZ, and that on the 14th 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

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 Petitioner

14 vs.

15 CITY OF HENDERSON, CANNON
16 COCHRAN MANAGEMENT
17 SERVICE, INC., and THE DEPARTMENT
18 OF ADMINISTRATION, HEARINGS
19 DIVISION,

20 Respondents.

PLEASE NOTE
DEPARTMENT CHANGE

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

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

21 This matter came before this Court on the Petition for Judicial Review filed by the
22 Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ.
23 of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, CITY OF
24 HENDERSON and CCMSI, were represented by JOEL P. REEVES, ESQ. of the law firm
25 LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.
26
27
28

| | |
|---|--|
| <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:

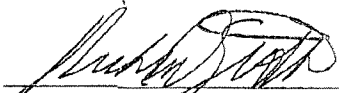

5 "Accident" means an unexpected or unforeseen event happening
6 suddenly and violently, with or without human fault, and
7 producing at the time objective symptoms of an injury.

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.
25
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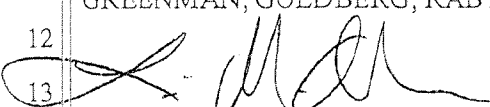
1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.

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

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.

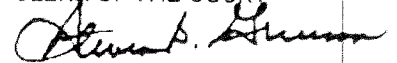
24 Nevada Bar No. 013231

25 2500 West Sahara Avenue

Suite 300, Box 28

Las Vegas, Nevada 89102

Attorneys for Respondent



1 PTJR
2 **LISA M. ANDERSON, ESQ.**
3 Nevada Bar No. 4907
4 **GREENMAN GOLDBERG RABY & MARTINEZ**
5 601 South Ninth Street
6 Las Vegas, NV 89101
7 Phone: 702.384.1616 ~ Fax: 702.384.2990
8 *Attorneys for Petitioner*

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

12 JARED SPANGLER,
13
14 Petitioner,

15 vs.

16)
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25)
26)
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28)
CASE NO.: A-17-759871-J
DEPT. NO.: Department 18

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

17 Respondents.

18 **PETITION FOR JUDICIAL REVIEW**
19 **ARBITRATION EXEMPTION CLAIMED**
20 **REVIEW OF ADMINISTRATIVE DECISION**

21 Date: N/A
22 Time: N/A

23 COMES NOW, Petitioner, JARED SPANGLER, by and through his attorney, Lisa M.
24 Anderson, Esq. of the law firm of Greenman, Goldberg, Raby & Martinez and prays for this
25 Court to judicially review the decision of the Appeals Officer, dated July 20, 2017 attached
26 hereto as Exhibit "I" and made a part hereof. This Petition for Judicial Review is made
27 pursuant to the provisions of NRS 233B.130.

28 Petitioner claims his substantial rights have been prejudiced because the administration
findings, inferences, conclusions or decisions are:

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

9 WHEREFORE, Petitioner prays that this Court allow briefs to be filed, oral argument
10 be heard, and following a review of the record, that this Court enters its Order reversing the
11 above decision of the Appeals Officer.

12 DATED this 14th day of August, 2017.

13
14 GREENMAN, GOLDBERG, RABY
& MARTINEZ


15
16 
17 LISA M. ANDERSON, ESQ.
18 Nevada Bar #4907
19 601 South Ninth Street
20 Las Vegas, NV 89101
21 Attorneys for Petitioner
22
23
24
25
26
27
28

EXHIBIT 1

16-207TY

FILED

JUL 20 2017

NEVADA DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim

of

JARED SPANGLER
3550 TUNDRA SWAN ST.
LAS VEGAS, NV 89122,

Claimant.

Claim No.: 16C52G555847

Hearing No.: 1523393-MT

Appeal No.: 1524756-GB

Employer:

CITY OF HENDERSON
ATTN: SALLY IHMELS
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

DECISION AND ORDER

The above-captioned appeal came on for hearing before Appeals Officer GEORGANNE W. BRADLEY, ESQ. The claimant, JARED SPANGLER (hereinafter referred to as "claimant"), was represented by his counsel, LISA M. ANDERSON, ESQ., of GREENMAN GOLDBERG RABY & MARTINEZ. The Employer, CITY OF HENDERSON (hereinafter referred to as "Employer"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP.

On March 15, 2016, the claimant was informed that his industrial insurance claim was denied. Claimant appealed that determination and the parties agreed to bypass the Hearing Officer and proceed before this Court, generating the instant hearing.

After considering the documentary evidence and the argument of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. On February 9, 2016, the claimant, JARED SPANGLER, alleges that has hearing loss and ringing in the ears which he attributes to job related exposure to loud noises. The claimant was seen by Dr. Blake at Anderson Audiology where hearing loss was noted. The claimant

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1 appears to have failed to have revealed his earlier 2005 denied hearing loss claim or that the claimant
2 apparently has been working a desk job for the last 5-6 years. (Exhibit A at 1)

3 2. The Employer's Report of Industrial Injury or Occupational Disease notes a
4 nearly one month delay in reporting the hearing loss. (Exhibit A at 2)

5 3. The Employer's First Notice of Injury or Occupational Disease notes that the
6 claimant alleges exposure to excessive loud noises and that he has had tinnitus for several years.
7 (Exhibit A at 3)

8 4. The claimant has previously filed a hearing loss claim in November of 2005.
9 On February 22, 2006, Dr. Manthei noted that the claimant's family had a positive history of hearing
10 loss. He noted that MRI testing revealed that the claimant had revealed "a contrast enhancement of
11 the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the
12 brain." It was concluded that the claimant's symptomatology was most likely due to a nonindustrial
13 component, and that the claimant's hearing loss should not be considered to be industrial in nature. A
14 claim denial determination for the November 1, 2005, hearing loss claim was issued on March 7,
15 2006. (Exhibit A at 4-21)

16 5. Hearing testing has been performed throughout the claimant's employment with
17 the City of Henderson. (Exhibit A at 22-34)

18 6. As a result of hearing testing in October of 2015, the claimant was seen by Dr.
19 Blake at Anderson Audiology. A hearing loss was found which was found to be suggestive loss due
20 to noise exposure. (Exhibit A at 35-38)

21 7. A medical release was signed by the claimant on February 9, 2016. (Exhibit A
22 at 39)

23 8. On March 2, 2016, the claimant was seen by Dr. Theobald. The claimant
24 complained of difficulty in hearing conversational speech, particularly women and children's voices,
25 especially in the presence of background noise. It was noted that the claimant has a "possible tumor
26 located in the area of the left cochlear nerve." It was recommended that the claimant be seen by a
27 neuro-otologist to assess the potential likelihood of left sided cochlear pathology. (Exhibit A at 40-
28 43)

9. On March 15, 2016, a claim denial determination was issued. However, it was noted that bills related to Dr. Theobold's evaluation would be paid. (Exhibit A at 44)

10. On March 28, 2016, the claimant appealed the claim denial determination. (Exhibit A at 45) This appeal was transferred directly to the Appeals Officer. (Exhibit A at 46)

11. Claimant provided fifty-one (51) pages of evidence which was reviewed and duly considered. (Exhibits 1-2)

12. These Findings of Fact are based upon substantial evidence within the record.

13. Any Finding of Fact more appropriately deemed a Conclusion of Law shall be so deemed, and vice versa.

CONCLUSIONS OF LAW

1. It is the claimant, not the Employer, who has the burden of proving his case, and that is by a preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567, 688 P.2d 324 (1984); Holley v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

2 In attempting to prove his case, the claimant has the burden of going beyond speculation and conjecture. That means that the claimant must establish the work connection of his injuries, the causal relationship between the work-related injury and his disability, the extent of his disability, and all facets of the claim by a preponderance of all of the evidence. To prevail, a claimant must present and prove more evidence than an amount which would make his case and his opponent's "evenly balanced." Maxwell v. SHS, 109 Nev. 327, 849 P.2d 267 (1993); SHS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SHS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The Law of Workmen's Compensation, §80.33(a)

3. NRS 616A.010 makes it clear that:

A claim for compensation filed pursuant to the provisions of this chapter or chapter 617 of NRS must be decided on its merits and not according to the principle of common law that requires statutes governing worker's compensation to be liberally construed because they are remedial in nature.

1 4. Claimant was unable to meet his burden of proof in this case. He was unable to
2 demonstrate that his hearing loss is a compensable industrial injury.

3 5. Under NRS 616C.150 and NRS 617.358, the claimant has the burden of proof
4 to show that the injury arose out of and in the course of employment. The claimant must satisfy this
5 burden by a preponderance of the evidence. Further, NRS 616B.612 mandates that an employee is
6 only entitled to compensation if he is injured in the course and scope of his employment.

7 6. The Nevada Supreme Court has held that:

8 An accident or injury is said to arise out of employment when
9 there is a causal connection between the injury and the employee's
10 work ... the injured employee must establish a link between the
11 workplace conditions and how those conditions caused the injury ... a
claimant must demonstrate that the origin of the injury is related to
some risk involved within the scope of employment.

12 Rio Suite Hotel v. Gorsky, 113 Nev. 600 (1997).

13 7. Some courts have found a distinction between "the course of employment" and
14 "arising out of employment." In addition to occurring while at work, the injury must result from a
15 hazard connect with the employment. See, Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996).

16 8. In Nevada, the Supreme Court has defined the term "arose out of," as contained
17 in NRS 616C.150, to mean that there is a causal connection between the injury and the employee's
18 work. In other words, the injured party must establish a link between the workplace conditions and
19 how those conditions caused the injury. Further, the claimant must demonstrate that the origin of the
20 injury is related to some risk involved within the scope of employment. The claimant has failed to
21 meet his burden in this regard, especially given the prior 2006 claim denial and the intervening
22 primarily desk job assignment of the claimant.

23 9. NRS 616A.030 defines an accident as "... an unexpected or unforeseen event
24 happening suddenly and violently, with or without human fault, and producing at the time objective
25 symptoms of an injury." As explained above, there is no known acute trauma or specific mechanism
26 of injury, therefore, no statutory accident has been established.

1 10. Furthermore, NRS 616A.265 defines an injury as "... a sudden and tangible
2 happening of a traumatic nature, producing an immediate or prompt result which is established by
3 medical evidence ..." Here, there is no statutory injury for the reasons set forth above.

4 11. The Nevada Supreme Court has held that:

5 An award of compensation cannot be based solely upon possibilities
6 and speculative testimony. A testifying physician must state to a
7 degree of reasonable medical probability that the condition in question
was caused by the industrial injury...

8 United Exposition Services Co. v. SHS, 109 Nev. 421, 851 P.2d 423 (1993).

9 12. This holding has been affirmed and bolstered in the Horne v. SHS, 113 Nev.
10 532, 936 P.2d 839 (1997) case, which held that "mere speculation and belief does not rise to the level
11 of reasonable medical certainty." Given the lack of any fully informed medical opinion making an
12 industrial causal connection to a reasonable degree of medical probability, claim denial was legal and
13 proper.

14 13. Further, the Nevada Supreme Court held in Mitchell v. Clark County School
15 District, 121 Nev. 179, 111 P.3d 1104 (2005):

16 An accident or injury is said to arise out of employment when there is a
17 causal connection between the injury and the employee's work. In
18 other words, the injured party must establish a link between the
19 workplace conditions and how those conditions caused the injury.
20 Further, a claimant must demonstrate that the origin of the injury is
21 related to some risk involved within the scope of employment.
22 However, if an accident is not fairly traceable to the nature of
employment or the workplace environment, then the injury cannot be
said to arise out of the claimant's employment. Finally, resolving
whether an injury arose out of employment is examined by a totality of
the circumstances.

23 14. The Court in Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605 939 P2d.
24 1043 (1997) held that the "Nevada Industrial Insurance Act is not a mechanism which makes
25 employers absolutely liable for injuries suffered by employees who are on the job." The Court
26 concluded by stating, "The requirements of 'arising out of and in the course of employment' make it
27 clear that a claimant must establish more than being at work and suffering an injury in order to
28 recover."

15. The Court in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad. Opn. 34 (2010) clarified Mitchell. It indicated that:

"The appeals officer found that Phillips' case was 'distinguishable' from Mitchell because Phillips' injury did not result from an 'unexplained fall.' Without elaborating, the appeals officer also stated that '[t]he Mitchell [c]ourt mentions the inherent dangerousness of stairways.' . . . [The Court in Rio further discussed Mitchell: 'The employee argued that because she did not have a health affliction that caused her to fall and 'because staircases are inherently dangerous,' her injury 'arose out of her employment.' . . . The appeals officer determined that the employee's fall did not arise out of her employment, and the district court denied her petition for judicial review.' . . . [Our finding in Mitchell was that] "[T]he employee must show that 'the origin of the injury is related to some risk involved within the scope of employment . . . thus, because the [Mitchell] employee could not explain how the conditions of her employment caused her to fall . . . we determined that the appeals officer correctly concluded that she failed to demonstrate the requisite 'causal connection

16. The claimant has failed to establish that the origin of his injury, is related to some risk in the course of employment, given the claimant's past denied hearing loss claim and subsequent apparent assignment to a desk job, and given the lack of any acute trauma or specific mechanism of injury.

17. Furthermore, the claimant has not met the requirements of NRS 617.440 to establish a compensable occupational disease. That statute states:

NRS 617.440 Requirements for occupational disease to be deemed to arise out of and in course of employment; applicability.

1. An occupational disease defined in this chapter shall be deemed to arise out of and in the course of the employment if:

(a) There is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(b) It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(c) It can be fairly traced to the employment as the proximate cause; and

(d) It does not come from a hazard to which workers would have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the business and not independent of the relation of the employer and employee.

1 3. The disease need not have been foreseen or expected,
2 but after its contraction must appear to have had its origin in a risk
3 connected with the employment, and to have flowed from that source
4 as a natural consequence.

5 4. In cases of disability resulting from radium poisoning or
6 exposure to radioactive properties or substances, or to roentgen rays (X
7 rays) or ionizing radiation, the poisoning or illness resulting in
8 disability must have been contracted in the State of Nevada.

9 5. The requirements set forth in this section do not apply to
10 claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485 or
11 617.487.

12 18 Therefore, since the claimant has failed to establish both an injury by accident
13 or an occupational disease, the Appeals Officer finds that claimant has failed to establish a
14 compensable industrial claim and same was properly denied.

15 DECISION AND ORDER

16 The claimant, JARED SPANGLER, has failed to establish a compensable industrial
17 injury claim.

18 IT IS HEREBY ORDERED that the March 15, 2016 determination denying the claim
19 is AFFIRMED.

20 IT IS SO ORDERED.

21 DATED this 20th day of July, 2017.

22 *Georganne W. Bradley*
23 GEORGANNE W. BRADLEY, ESQ.
24 APPEALS OFFICER

25 NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final decision of
26 the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
27 thirty (30) days after service by mail of this decision.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid OR placed in the appropriate addressee file maintained by the Division, 2200 South Rancho Drive, Second Floor, Las Vegas, Nevada, to the following:

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DATED this 20th day of July, 2017.


An employee of the State of Nevada

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