

1 NOAS  
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10 Attorneys for Darrell E. White

Electronically Filed  
Aug 21 2018 03:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DARRELL E. WHITE,  
Petitioner,

Case No.: A-17-760282-J  
Dept. No.: 32

**NOTICE OF APPEAL**


v.

STATE OF NEVADA, ex rel. DIVISION  
OF FORESTRY;  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC., aka CCMSI, a foreign  
corporation,

Respondents.

Petitioner Darrell E. White hereby files his Notice of Appeal to the Nevada  
Supreme Court, of the Order denying the Petitioner's Petition for Judicial Review. The  
Notice of Entry of Order was filed on 7/25/18.

DATED this 30<sup>th</sup> day of July 2018.

By:   
Travis N. Barrick, SBN 9257  
GALLIAN WELKER  
& BECKSTROM, LC  
Attorneys for Darrell E. White

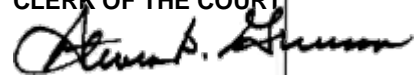
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the <sup>16TH</sup>~~30th~~ day of ~~July~~<sup>AUGUST</sup> 2018, the Petitioner's Notice of Appeal was served upon each of the parties (i) by way of the Eighth Judicial District Court electronic filing system and (ii) by depositing a copy of same in a sealed envelope in the U. S. mail, registered, first-class postage fully prepaid, and addressed to those counsel of record:

STATE OF NEVADA, ex rel. DIVISION OF FORESTRY; 2478 Fairview Drive Carson City, NV 89701	Daniel L. Schwartz, SBN 5125 LEWIS BRISBOIS BISGAARD & SMITH LLP 2300 W. Sahara Avenue Las Vegas, Nevada 89102 Telephone: (702) 893-3383 Facsimile: (702) 366-9563 <a href="mailto:daniel.schwartz@lewisbrisbois.com">daniel.schwartz@lewisbrisbois.com</a> Attorneys for Respondents
CANNON COCHRAN MANAGEMENT SERVICES, INC., aka CCMSI Attn: Elizabeth Hickson PO Box 4990 Carson City, NV 89702-4490	Daniel L. Schwartz, SBN 5125 LEWIS BRISBOIS BISGAARD & SMITH LLP 2300 W. Sahara Avenue Las Vegas, Nevada 89102 Telephone: (702) 893-3383 Facsimile: (702) 366-9563 <a href="mailto:daniel.schwartz@lewisbrisbois.com">daniel.schwartz@lewisbrisbois.com</a> Attorneys for Respondents



Monica Anders, an employee of  
GALLIAN WELKER  
& BECKSTROM, LC



ASTA  
Travis N. Barrick, SBN 9257  
GALLIAN WELKER  
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Telephone: (702) 892-3500  
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[tbarrick@vegascase.com](mailto:tbarrick@vegascase.com)  
Attorneys for Darrell E. White

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DARRELL E. WHITE,

Petitioner,

v.

STATE OF NEVADA, ex rel. DIVISION  
OF FORESTRY;  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC., aka CCMSI, a foreign  
corporation,

Respondents.

Case No.: A-17-760282-J

Dept. No.: 32

**CASE APPEAL STATEMENT**

**CASE APPEAL STATEMENT**

Petitioner Darrell E. White, through his attorneys of the law firm of  
GALLIAN WELKER & BECKSTROM, LC, hereby submits his Case Appeal  
Statement regarding the Order of the District Court denying Petitioner's Petition  
for Judicial Review.

**CASE APPEAL STATEMENT**

1. Name of Appellant:	Darrell E. White
2. Judge:	Hon. Rob Bare Dept. 32

3. Counsel for Appellant:	Travis Barrick, #9257 GALLIAN WELKER & BECKSTROM, L.C. 540 E. St. Louis Avenue Las Vegas, Nevada 89104
4. Respondents:	State of Nevada, ex rel. Division of Forestry; Cannon Cochran Management Services, Inc., aka CCMSI Daniel L. Schwartz, SBN 5125 LEWIS BRISBOIS BISGAARD & SMITH LLP 2300 W. Sahara Avenue Las Vegas, Nevada 89102
5. Pro hac vice:	Not applicable;
6. Representation in District Court:	Yes, Appellant was represented by counsel in the District Court;
7. Representation on Appeal:	Yes, Appellant is represented by counsel on appeal;
8. <i>In forma pauperis</i> :	No;
9. Commencement:	Appellants' Petition for Judicial Review was filed in the District Court on 8/21/17. The District Court's Order denying the Petition was filed on 7/25/18.
10. Description:	Petitioner sought judicial review of the Appeals Officer's determination in favor of the Respondents.
11. Previous appeal or original writ:	None;
12. Child custody or visitation:	No; and
13. Possibility of Settlement:	Yes.

**Appeal Tracking Statement:**

The Appellant believes that this case presents a matter of first impression for the Court, and jurisdiction should therefore be retained by the Supreme Court.

1 DATED this 30<sup>th</sup> day of July 2018.

2 By:

3 Travis N. Barrick, SBN 9257

4 GALLIAN WELKER

5 & BECKSTROM, LC

6 Attorneys for Darrell E. White

7 **CERTIFICATE OF MAILING**


8 I HEREBY CERTIFY that on the <sup>16<sup>th</sup></sup>~~30<sup>th</sup>~~ day of <sup>August</sup>~~July~~ 2018, the Petitioner's Case  
9 Appeal Statement was served upon each of the parties (i) by way of the Eighth Judicial  
10 District Court electronic filing system and (ii) by depositing a copy of same in a sealed  
11 envelope in the U. S. mail, registered, first-class postage fully prepaid, and addressed to  
12 those counsel of record:

13 STATE OF NEVADA, ex rel. DIVISION  
14 OF FORESTRY;  
15 2478 Fairview Drive  
16 Carson City, NV 89701

Daniel L. Schwartz, SBN 5125  
LEWIS BRISBOIS BISGAARD & SMITH  
LLP  
2300 W. Sahara Avenue  
Las Vegas, Nevada 89102  
Telephone: (702) 893-3383  
Facsimile: (702) 366-9563  
[daniel.schwartz@lewisbrisbois.com](mailto:daniel.schwartz@lewisbrisbois.com)  
Attorneys for Respondents

19 CANNON COCHRAN MANAGEMENT  
20 SERVICES, INC., aka CCMSI  
21 Attn: Elizabeth Hickson  
22 PO Box 4990  
23 Carson City, NV 89702-4490

Daniel L. Schwartz, SBN 5125  
LEWIS BRISBOIS BISGAARD & SMITH  
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[daniel.schwartz@lewisbrisbois.com](mailto:daniel.schwartz@lewisbrisbois.com)  
Attorneys for Respondents

26   
27 Monica Anders, an employee of  
28 GALLIAN WELKER  
& BECKSTROM, LC

DEPARTMENT 32  
**CASE SUMMARY**  
**CASE NO. A-17-760282-J**

**Darrell White, Petitioner(s)**  
**vs.**  
**Nevada Division of Forestry, Respondent(s)**

§  
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§  
§

Location: **Department 32**  
Judicial Officer: **Bare, Rob**  
Filed on: **08/21/2017**  
Cross-Reference Case Number: **A760282**

CASE INFORMATION

**Statistical Closures**  
07/25/2018 Summary Judgment

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

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-17-760282-J  
Court Department 32  
Date Assigned 08/21/2017  
Judicial Officer Bare, Rob







PARTY INFORMATION

		<i>Lead Attorneys</i>
<b>Petitioner</b>	<b>White, Darrell E</b>	<b>Barrick, Travis N.</b> <i>Retained</i> 702-892-3500(W)
<b>Respondent</b>	<b>Cannon Cochran Management Service Inc</b>	<b>Schwartz, Daniel L</b> <i>Retained</i> 702-893-3383(W)
	<b>Nevada Division of Forestry</b>	<b>Schwartz, Daniel L</b> <i>Retained</i> 702-893-3383(W)













DATE

EVENTS & ORDERS OF THE COURT

INDEX

08/21/2017	 Petition for Judicial Review Filed by: Petitioner White, Darrell E <i>Petition for Judicial Review</i>	
08/24/2017	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (Pursuant to NRS Chapter 19)</i>	
08/24/2017	 Notice of Intent to Participate Filed By: Respondent Nevada Division of Forestry; Respondent Cannon Cochran Management Service Inc <i>Notice of Intent to Participate</i>	
10/16/2017	 Certification of Transmittal <i>CERTIFICATION OF TRANSMITTAL</i>	
10/16/2017	 Affidavit <i>AFFIDAVIT &amp; CERTIFICATION</i>	
10/16/2017	 Transmittal <i>TRANSMITTAL OF RECORD ON APPEAL</i>	

DEPARTMENT 32  
**CASE SUMMARY**  
**CASE NO. A-17-760282-J**

12/13/2017	 Petitioners Opening Brief Filed by: Petitioner White, Darrell E <i>Petitioner's Opening Brief</i>
12/15/2017	 Order Filed By: Petitioner White, Darrell E <i>Stipulation and Order</i>
12/15/2017	 Notice of Entry of Stipulation and Order Filed By: Petitioner White, Darrell E <i>Notice of Entry of Stipulation and Order</i>
01/12/2018	 Answering Brief Filed By: Respondent Nevada Division of Forestry; Respondent Cannon Cochran Management Service Inc <i>Respondents' Answering Brief</i>
01/19/2018	 Motion Filed By: Petitioner White, Darrell E <i>Motion for Leave to File Reply Brief</i>
01/22/2018	 Petitioner's Reply Brief Filed by: Petitioner White, Darrell E <i>Petitioner's Reply Brief</i>
01/31/2018	 <b>Petition for Judicial Review</b> (3:00 AM) (Judicial Officer: Bare, Rob) <b>01/31/2018, 05/02/2018, 05/30/2018</b> <i>Darrell E. White's Petition for Judicial Review</i>
02/15/2018	<b>CANCELED Minute Order</b> (12:26 PM) (Judicial Officer: Bare, Rob) <i>Vacated - On in Error</i>
03/26/2018	 <b>Minute Order</b> (8:00 AM) (Judicial Officer: Bare, Rob) <i>Re: Petition for Judicial Review</i>
05/22/2018	 <b>Minute Order</b> (8:30 AM) (Judicial Officer: Bare, Rob)
07/25/2018	<b>Order Denying Judicial Review</b> (Judicial Officer: Bare, Rob) Debtors: Darrell E White (Petitioner) Creditors: Nevada Division of Forestry (Respondent), Cannon Cochran Management Service Inc (Respondent) Judgment: 07/25/2018, Docketed: 07/25/2018
07/25/2018	 Decision and Order <i>Decision and Order</i>
07/25/2018	 Notice of Entry of Order Filed By: Respondent Nevada Division of Forestry; Respondent Cannon Cochran Management Service Inc <i>Notice of Entry of Order</i>
08/16/2018	 Notice of Appeal Filed By: Petitioner White, Darrell E <i>Notice of Appeal</i>

DEPARTMENT 32  
**CASE SUMMARY**  
**CASE NO. A-17-760282-J**

08/16/2018



Case Appeal Statement

Filed By: Petitioner White, Darrell E

*Case Appeal Statement*

DATE

FINANCIAL INFORMATION

**Petitioner** White, Darrell E

Total Charges

24.00

Total Payments and Credits

24.00

**Balance Due as of 8/20/2018**

**0.00**

**Respondent** Cannon Cochran Management Service Inc

Total Charges

223.00

Total Payments and Credits

223.00

**Balance Due as of 8/20/2018**

**0.00**



## DISTRICT COURT CIVIL COVER SHEET

A-17-760282-J

County, Nevada

Department 32

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Darrell E. White	NV Division of Forestry
3947 Blue Wave Drive	2478 Fairview Drive, Carson City, NV 89701
Las Vegas, NV 89115	Cannon Cochran Management Service, Inc.
	P.O. Box 7990, Carson City, NV 89701
Attorney (name/address/phone):	Attorney (name/address/phone):
Gallian Welker Beckstrom LC	Lewis Brisbois Bisgaard & Smith LLP
540 E. St. Louis Avenue	2300 W. Sahara Ave., Ste. 300, Box 28
Las Vegas, NV 89104	Las Vegas, NV 89102
702/892-3500	702/893-3383


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

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (select case type and estate value) <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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input checked="" type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <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.

08/21/2017

Date

  
 Signature of initiating party or representative

See other side for family-related case filings.

*Steven D. Grierson*

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 \*\*\*\*\*

5  
6 **DARRELL E. WHITE, an**  
7 **individual;**

8 **Petitioner,**

**CASE NO. A-17-760282-J**

**DEPT. NO. 32**

9 **vs.**

10 **STATE OF NEVADA, ex rel.**  
11 **DIVISION OF FORESTRY;**  
12 **CANNON COCHRAN**  
13 **MANAGEMENT SERVICES,**  
14 **INC. aka CCMSI, a foreign**  
15 **corporation.**

16 **Respondents.**

17 **DECISION AND ORDER**

18 **Procedural and Factual Background**

19 This case arises from the denial of a temporary total disability ("TTD") at an  
20 average monthly wage ("AMW") that was at least equal to the State's minimum wage  
21 for the 174 days, after Petitioner Darrell E. White ("Petitioner") was released from  
22 custody at Nevada Department of Corrections ("NDOC"). On December 22, 2015,  
23 Petitioner injured his right middle finger as a result of stepping off of a porta-potty  
24 trailer and hitting his right hand on the bumper of a crew bus while at work for the  
25 Nevada Department of Forestry as an inmate. Petitioner was subsequently diagnosed  
26 with an open fracture on the right middle finger. On July 7, 2016, Petitioner was  
27 released from the custody of NDOC.  
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

RECEIVED

JUL 25 2018

CLERK OF THE COURT

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1 On August 17, 2016, Petitioner was examined by Dr. Bronstein who observed a  
2 "healed fracture with a dorsal avulsion fragment that is dorsally displaced." Dr.  
3 Bronstein made an entry of "patient may work, full duty."

4 On September 29, 2016 CCSMI, the Third-Party Administrator ("TPA") of  
5 Petitioner's claim, informed Petitioner that his AMW for TTD was \$22.93 for a daily  
6 rate of \$0.50.

7 On October 26, 2016, Petitioner was again examined by Dr. Bronstein, who  
8 recommended surgery on the middle finger and noted that, as of October 19, 2016,  
9 Petitioner was "unable to work." On or about November 15, 2016, Dr. Bronstein  
10 performed surgery on Petitioner's finger and on November 21, 2016, Petitioner was  
11 authorized for continuing physical therapy, which was approved for an additional four  
12 weeks.

13 On December 28, 2016, the TPA informed Petitioner that he had completed his  
14 medical treatment and was referring him out for a PPD. Accordingly, Petitioner was  
15 under physicians care for his injury from July 7, 2016, the date of his release from  
16 NDOC, until December 28, 2016, for a total of 174 days.

17 On March 17, 2017, the Appeals Officer conducted an Appeal Hearing. On  
18 August 17, 2017, the Appeals Officer issued the Decision and Order, wherein it was  
19 determined that the "TPA's determination of AMW was appropriate; because  
20 Petitioner is not entitled to any rights or remedies established by Chapter 616A to 617  
21 of the Nevada Revised Statutes." It was also determined that Petitioner was unable to  
22 work until Dr. Brownstein's release on December 28, 2016.

23 On August 21, 2017, Petitioner filed this Petition for Judicial Review.  
24 Petitioner argues that the decision of the Appeals Officer was contrary to the Nevada  
25 Constitution, Article 15, §16, given that the TPA determined that the appropriate  
26 compensation for the Petitioner was for TTD based upon an AMW that is less than the  
27 State's minimum wage for the 174 days after his release from custody.  
28

1 **Conclusions of Law**


2 When reviewing a record on appeal, NRS 233B.135 provides that the  
3 District Court is limited to the record on appeal and may not “reweigh the  
4 evidence, reassess the witnesses’ credibility, or substitute the administrative law  
5 judge’s judgment with [its] own.” *Nellis Motors v. State, Dep’t of Motor Vehicles*,  
6 197 P.3d 1061, 1066 (Nev. 2008). The burden of proof is on the Petitioner to show  
7 that the Appeals Officer’s decision was not supported by the law, was clearly  
8 erroneous in view of the substantial evidence, or was an abuse of discretion. NRS  
9 233B.135(2), (3)(d)-(f). In determining whether a decision is supported by  
10 substantial evidence, the court should determine whether the evidence is such that  
11 “a reasonable man could accept as adequate to support a conclusion.” *Maxwell v.*  
12 *State Indus. Ins. Sys.*, 109 Nev. 327, 331 (1993). Therefore, the question before  
13 this Court is whether there is substantial evidence in order to support the Appeals  
14 Officer’s decision and whether the Appeals Officer’s decision was clearly  
15 erroneous and an abuse of discretion. *Id.*

16 Petitioner contends NRS 616B.028 did not apply to him once he was  
17 released from custody. NRS 616B.028 provides that inmates who are “engaged in  
18 work in a prison industry or work program” are “entitled to coverage under the  
19 modified program of industrial insurance.” Petitioner asserts that the statute does  
20 not address what occurs after the inmate is released from custody and therefore  
21 could be interpreted for the inmate to accrue new benefits. However, NRS  
22 616C.500(2) does address this issue, by providing that injured employees “are  
23 entitled to receive such benefits if the injured employee is released from  
24 incarceration during the period of disability...” Petitioner reasons that because his  
25 worker’s compensation payments began once he was released from incarceration,  
26 they should be calculated at the minimum wage of his date of release on July 7,  
27 2016, which was \$7.25 per hour, instead of his AMW at the time of his accident.  
28

1       Petitioner contends that it is unconstitutional under the Nevada Constitution  
2 Article 15, §16, for the TPA to compensate Petitioner for TTD based upon an  
3 AMW that is less than the States minimum wage for the 174 days after his release.  
4 However, NRS 616C.425(1) requires "that the amount of compensation and  
5 benefits and the person or persons entitled thereto must be determined as of the  
6 date of the accident or injury to the employee, and their rights thereto become fixed  
7 as of that date." Petitioner does not dispute the date of his injury being December  
8 22, 2015, while still incarcerated with NDOC, nor does he dispute that his AMW at  
9 the time of his injury was \$22.93 for a daily rate of \$0.50. Petitioner's  
10 compensation is therefore set at his AMW at the date of his injury. Petitioner was  
11 "employed" on a voluntary program which allowed him to earn time off of his  
12 sentence in addition to a small amount of wages. As such, the Appeals Officer's  
13 decision that all compensation is determined at the date of the accident was not  
14 erroneous, arbitrary, or an abuse of discretion, and was in fact based upon  
15 substantial evidence.

16       Thus, is hereby ORDERED, ADJUDICATED, and DECREED that  
17 Petitioner's Petition for Judicial Review is DENIED.  
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21                   Dated this 19 day of July 2018.  
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24                     
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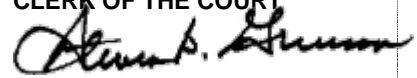
26                   **Rob Bare**  
27                   **Judge, District Court, Department 32**  
28

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TRAVIS BARRICK, ESQ  
Gallian Welker & Beckstrom  
540 E. St. Louis Ave.  
Las Vegas, Nevada 90104  
(702) 892-3500  
*Attorney for Petitioner*

**DANIEL L. SCHWARTZ, ESQ.**  
**Lewis Brisbois Bisgaard & Smith LLP**  
**2300 W. Sahara Ave., Ste 300**  
**Las Vegas, NV 89102**  
**(702) 893-3383**  
*Attorney for Respondents*

  
Tara Moser  
Judicial Executive Assistant, Dept. 32



1 **NEOJ**  
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](mailto:daniel.schwartz@lewisbrisbois.com)  
10 *Attorneys for Respondents,*  
11 *State of Nevada Division of Forestry and*  
12 *Cannon Cochran Management Services, Inc. (CCMSI)*

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

10 DARRELL E. WHITE, an individual,  
11  
12 Petitioner,

13 v.

14 STATE OF NEVADA, ex rel. DIVISION  
15 OF FORESTRY; CANNON COCHRAN  
16 MANAGEMENT SERVICES, INC. aka  
17 CCMSI, a foreign corporation,

18 Respondents.

CASE NO.: A-17-760282-J

DEPT NO.: XXXII

18 **NOTICE OF ENTRY OF ORDER**

19 YOU, AND EACH OF YOU, please take notice than an **ORDER DENYING**  
20 **PETITIONER'S PETITION FOR JUDICIAL REVIEW** was entered on July 25, 2018

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 and is attached hereto and made a part hereof.

2 DATED this 25 day of July, 2018.

3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

4 By: 

5 DANIEL L. SCHWARTZ, ESQ.

6 Nevada Bar No. 5125

7 JOEL P. REEVES, ESQ.

8 Nevada Bar No. 013231

9 2300 W. Sahara Ave. Ste. 300

10 Las Vegas, Nevada 89102

11 *Attorneys for Respondents*



**CERTIFICATE OF SERVICE**

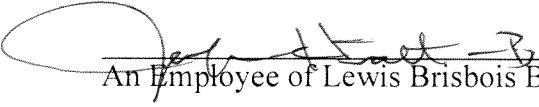
Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 25 day of July, 2018, service of the attached **NOTICE OF ENTRY OF ORDER** was made this date by depositing a true copy of the same for mailing, first class mail, as follows:

Travis Barrick, Esq.  
GALLIAN WELKER & BECKSTROM LC  
540 E. St. Louis Avenue  
Las Vegas, NV 89104

Ana Andrews  
STATE OF NEVADA  
Risk Management Division  
201 South Roop Street, Suite 201  
Carson City, NV 89701

Staci Jones  
CANNON COCHRAN MANAGEMENT SERVICES, INC.  
P. O. Box 4990  
Carson City, NV 89702

Department of Administration  
Hearings Division – Appeals Office  
Attn: Appeals Officer Charles York, Esq.  
2200 S. Rancho Dr. Ste. 220  
Las Vegas, NV 89102  
Appeal No.: 1707925-CJY

  
An Employee of Lewis Brisbois Bisgaard & Smith, LLP

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 \*\*\*\*\*

6 DARRELL E. WHITE, an  
7 individual;

8 Petitioner,

CASE NO. A-17-760282-J

DEPT. NO. 32

9 vs.

10 STATE OF NEVADA, ex rel.  
11 DIVISION OF FORESTRY;  
12 CANNON COCHRAN  
13 MANAGEMENT SERVICES,  
14 INC. aka CCMSI, a foreign  
corporation.

15 Respondents.

17 **DECISION AND ORDER**

18 **Procedural and Factual Background**

19 This case arises from the denial of a temporary total disability ("TTD") at an  
20 average monthly wage ("AMW") that was at least equal to the State's minimum wage  
21 for the 174 days, after Petitioner Darrell E. White ("Petitioner") was released from  
22 custody at Nevada Department of Corrections ("NDOC"). On December 22, 2015,  
23 Petitioner injured his right middle finger as a result of stepping off of a porta-potty  
24 trailer and hitting his right hand on the bumper of a crew bus while at work for the  
25 Nevada Department of Forestry as an inmate. Petitioner was subsequently diagnosed  
26 with an open fracture on the right middle finger. On July 7, 2016, Petitioner was  
27 released from the custody of NDOC.  
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

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1 On August 17, 2016, Petitioner was examined by Dr. Bronstein who observed a  
2 "healed fracture with a dorsal avulsion fragment that is dorsally displaced." Dr.  
3 Bronstein made an entry of "patient may work, full duty."

4 On September 29, 2016 CCSMI, the Third-Party Administrator ("TPA") of  
5 Petitioner's claim, informed Petitioner that his AMW for TTD was \$22.93 for a daily  
6 rate of \$0.50.

7 On October 26, 2016, Petitioner was again examined by Dr. Bronstein, who  
8 recommended surgery on the middle finger and noted that, as of October 19, 2016,  
9 Petitioner was "unable to work." On or about November 15, 2016, Dr. Bronstein  
10 performed surgery on Petitioner's finger and on November 21, 2016, Petitioner was  
11 authorized for continuing physical therapy, which was approved for an additional four  
12 weeks.

13 On December 28, 2016, the TPA informed Petitioner that he had completed his  
14 medical treatment and was referring him out for a PPD. Accordingly, Petitioner was  
15 under physicians care for his injury from July 7, 2016, the date of his release from  
16 NDOC, until December 28, 2016, for a total of 174 days.

17 On March 17, 2017, the Appeals Officer conducted an Appeal Hearing. On  
18 August 17, 2017, the Appeals Officer issued the Decision and Order, wherein it was  
19 determined that the "TPA's determination of AMW was appropriate; because  
20 Petitioner is not entitled to any rights or remedies established by Chapter 616A to 617  
21 of the Nevada Revised Statutes." It was also determined that Petitioner was unable to  
22 work until Dr. Brownstein's release on December 28, 2016.

23 On August 21, 2017, Petitioner filed this Petition for Judicial Review.  
24 Petitioner argues that the decision of the Appeals Officer was contrary to the Nevada  
25 Constitution, Article 15, §16, given that the TPA determined that the appropriate  
26 compensation for the Petitioner was for TTD based upon an AMW that is less than the  
27 State's minimum wage for the 174 days after his release from custody.

1     **Conclusions of Law**

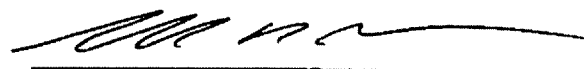
2             When reviewing a record on appeal, NRS 233B.135 provides that the  
3     District Court is limited to the record on appeal and may not “reweigh the  
4     evidence, reassess the witnesses’ credibility, or substitute the administrative law  
5     judge’s judgment with [its] own.” *Nellis Motors v. State, Dep’t of Motor Vehicles*,  
6     197 P.3d 1061, 1066 (Nev. 2008). The burden of proof is on the Petitioner to show  
7     that the Appeals Officer’s decision was not supported by the law, was clearly  
8     erroneous in view of the substantial evidence, or was an abuse of discretion. NRS  
9     233B.135(2), (3)(d)-(f). In determining whether a decision is supported by  
10    substantial evidence, the court should determine whether the evidence is such that  
11    “a reasonable man could accept as adequate to support a conclusion.” *Maxwell v.*  
12    *State Indus. Ins. Sys.*, 109 Nev. 327, 331 (1993). Therefore, the question before  
13    this Court is whether there is substantial evidence in order to support the Appeals  
14    Officer’s decision and whether the Appeals Officer’s decision was clearly  
15    erroneous and an abuse of discretion. *Id.*

16            Petitioner contends NRS 616B.028 did not apply to him once he was  
17    released from custody. NRS 616B.028 provides that inmates who are “engaged in  
18    work in a prison industry or work program” are “entitled to coverage under the  
19    modified program of industrial insurance.” Petitioner asserts that the statute does  
20    not address what occurs after the inmate is released from custody and therefore  
21    could be interpreted for the inmate to accrue new benefits. However, NRS  
22    616C.500(2) does address this issue, by providing that injured employees “are  
23    entitled to receive such benefits if the injured employee is released from  
24    incarceration during the period of disability...” Petitioner reasons that because his  
25    worker’s compensation payments began once he was released from incarceration,  
26    they should be calculated at the minimum wage of his date of release on July 7,  
27    2016, which was \$7.25 per hour, instead of his AMW at the time of his accident.  
28

1 Petitioner contends that it is unconstitutional under the Nevada Constitution  
2 Article 15, §16, for the TPA to compensate Petitioner for TTD based upon an  
3 AMW that is less than the States minimum wage for the 174 days after his release.  
4 However, NRS 616C.425(1) requires "that the amount of compensation and  
5 benefits and the person or persons entitled thereto must be determined as of the  
6 date of the accident or injury to the employee, and their rights thereto become fixed  
7 as of that date." Petitioner does not dispute the date of his injury being December  
8 22, 2015, while still incarcerated with NDOC, nor does he dispute that his AMW at  
9 the time of his injury was \$22.93 for a daily rate of \$0.50. Petitioner's  
10 compensation is therefore set at his AMW at the date of his injury. Petitioner was  
11 "employed" on a voluntary program which allowed him to earn time off of his  
12 sentence in addition to a small amount of wages. As such, the Appeals Officer's  
13 decision that all compensation is determined at the date of the accident was not  
14 erroneous, arbitrary, or an abuse of discretion, and was in fact based upon  
15 substantial evidence.

16 Thus, is hereby ORDERED, ADJUDICATED, and DECREED that  
17 Petitioner's Petition for Judicial Review is DENIED.

18  
19  
20  
21 Dated this 19 day of July 2018.

22  
23  
24 

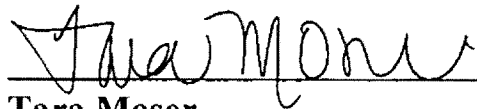
25  
26 **Rob Bare**  
27 **Judge, District Court, Department 32**  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office or mailed or faxed a copy to:

TRAVIS BARRICK, ESQ  
Gallian Welker & Beckstrom  
540 E. St. Louis Ave.  
Las Vegas, Nevada 90104  
(702) 892-3500  
*Attorney for Petitioner*

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Lewis Brisbois Bisgaard & Smith LLP  
2300 W. Sahara Ave., Ste 300  
Las Vegas, NV 89102  
(702) 893-3383  
*Attorney for Respondents*



**Tara Moser**  
**Judicial Executive Assistant, Dept. 32**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Worker's Compensation  
Appeal**

**COURT MINUTES**

**January 31, 2018**

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A-17-760282-J      Darrell White, Petitioner(s)  
vs.  
Nevada Division of Forestry, Respondent(s)

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**January 31, 2018      3:00 AM      Petition for Judicial Review**

**HEARD BY:** Bare, Rob

**COURTROOM:**

**COURT CLERK:**

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- As the Court's Decision on the Petition for Judicial Review has not yet been issued, COURT ORDERED matter Petitioner for Judicial Review currently set for January 31, 2018, shall be CONTINUED to March 14, 2018, in Chambers. Parties need not appear at the next Court date.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Travis Barrick, Esq. (Gallian, W & B); Daniel Schwartz, Esq. (Lewis Brisbois Bisgaard & Smith LLP).

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Worker's Compensation  
Appeal**

**COURT MINUTES**

**March 26, 2018**

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A-17-760282-J      Darrell White, Petitioner(s)  
vs.  
Nevada Division of Forestry, Respondent(s)

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**March 26, 2018      8:00 AM      Minute Order**

**HEARD BY:** Bare, Rob

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- As the Court's Decision on the Petition for Judicial Review has not yet been issued, COURT ORDERED matter Petitioner for Judicial Review currently set for March 14, 2018, shall be CONTINUED to May 2, 2018, in Chambers. Parties need not appear at the next Court date.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Travis Barrick, Esq. (Gallian, Welker & Beckstrom) and Daniel Schwartz, Esq. (Lewis Brisbois Bisgaard & Smith) /mk



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Worker's Compensation  
Appeal**

**COURT MINUTES**

**May 22, 2018**

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A-17-760282-J      Darrell White, Petitioner(s)  
vs.  
Nevada Division of Forestry, Respondent(s)

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**May 22, 2018      8:30 AM      Minute Order**

**HEARD BY:** Bare, Rob      **COURTROOM:** Chambers

**COURT CLERK:** Nancy Maldonado

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- As the Court s decision on the Petition for Judicial Review has not yet been issued, COURT ORDERED matter Petition for Judicial Review currently set for May 2, 2018, shall be CONTINUED to May 30, 2018, in Chambers. Parties need not appear at the next Court date.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Worker's Compensation  
Appeal**

**COURT MINUTES**

**May 30, 2018**

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A-17-760282-J      Darrell White, Petitioner(s)  
vs.  
Nevada Division of Forestry, Respondent(s)

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**May 30, 2018      3:00 AM      Petition for Judicial Review**

**HEARD BY:** Bare, Rob      **COURTROOM:**

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- As the Court's decision on the Petition for Judicial Review has not yet been issued, COURT ORDERED the hearing currently set for March 30, 2018, shall be CONTINUED to August 1, 2018, in Chambers. Parties need not appear at the next Court date. The decision will be issued prior to that date.

CLERK'S NOTE: A copy of this minute order has been placed in the attorney folder(s) of: Travis Barrick, Esq. (Gallian, Welker & Beckstrom, LP) and Daniel Schwartz, Esq. (Lewis, Brisbois, Bisgaard & Smith) /mk 7/9/18



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**TRAVIS N. BARRICK, ESQ.**  
**540 E. ST. LOUIS AVE.**  
**LAS VEGAS, NV 89104**

**DATE: August 20, 2018**  
**CASE: A-17-760282-J**

**RE CASE:** DARRELL E. WHITE vs. STATE OF NEVADA DIVISION OF FORESTRY;  
CANNON COCHRAN MANAGEMENT SERVICES, INC., AKA CCMSI

NOTICE OF APPEAL FILED: August 16, 2018

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# 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; DECISION AND ORDER; NOTICE OF ENTRY OF  
ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DARRELL E. WHITE,

Plaintiff(s),

vs.

STATE OF NEVADA DIVISION OF  
FORESTRY; CANNON COCHRAN  
MANAGEMENT SERVICES, INC., AKA  
CCMSI,

Defendant(s),

Case No: A-17-760282-J

Dept No: XXXII

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 20 day of August 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk