



A-17-760282-J

Department 32

Pursuant to NRS 233B.133, petitioner Darrell E. White specifically requests that the Court entertain written briefs and oral argument.

DATED this 21st day of August 2017.

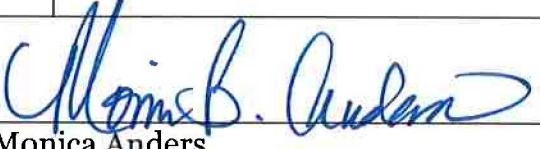
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August 2017, I caused the **PETITION FOR JUDICIAL REVIEW** to be served by depositing a true and correct copy of the same in the U.S. Mail at Las Vegas, Nevada, in a sealed envelope, first class postage fully prepaid to the persons listed below:

Department of Administration Appeals Division 1050 E. William Street, Ste. 450 Carson City, NV 89701	Darrell E. White 3947 Blue Wave Dr. Las Vegas, NV 89115
Nevada Division of Forestry 2478 Fairview Drive Carson City, NV 89701	CCMSI P.O. Box 4990 Carson City, NV 89701
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Monica Anders
An employee of Gallian Welker Beckstrom, LC

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**WHITE V. STATE
EXHIBIT 1
APPEALS OFFICER DECISION AND ORDER**

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WHITE V. STATE
EXHIBIT 1
APPEALS OFFICER DECISION AND ORDER

FILED

AUG 16 2017

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested
Industrial Insurance Claim

of

DARRELL WHITE
3947 BLUE WAVE DRIVE
LAS VEGAS, NV 89115,

Claimant.

Claim No.: 15C62G394045

Hearing No.: 1701007-SA

Appeal No.: 1707925-CJY

Employer:
STATE OF NEVADA
DIVISION OF FORESTRY
2478 FAIRVIEW DRIVE
CARSON CITY, NV 89701

DECISION AND ORDER

The above-captioned appeal came on for hearing before Appeals Officer CHARLES J. YORK, ESQ., on February 17, 2017. The claimant, DARRELL WHITE (hereinafter referred to as "claimant"), was represented by his attorney, TRAVIS BARRICK, ESQ., of GALLIAN WELKER & BECKSTROM. The Employer's Administrator, CCMSI (hereinafter referred to as "Administrator"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP.

On September 29, 2016, Administrator issued a determination regarding claimant's average monthly wage (hereinafter referred to as "AMW") calculation. The claimant filed an appeal of that determination to the Hearing Officer in Carson City, Nevada, to generate Hearing No. 1701007-SA. On November 8, 2016, the Hearing Officer issued a Decision and Order affirming the determination regarding AMW. Claimant appealed that decision to the Appeals Officer in Carson City, Nevada, generating Appeal No. 1701563-RKN. The claimant filed a Motion for Change Venue of Venue to the appeals office in Las Vegas, Nevada. That Motion was granted on December 19, 2016, and the file was transferred to the Department of Administration in Las Vegas, Nevada, generating Appeal No. 1707925-CJY.

1 After reviewing the documentary evidence and considering the arguments of counsel,
2 the Appeals Officer finds and decides as follows:

3 **FINDINGS OF FACT**

4 1. On December 22, 2015, claimant alleged injury to his right hand as a result of
5 stepping off of a porta potty trailer and hitting his right hand on the bumper of the crew bus. The
6 physician on the C-4 Form diagnosed an open fracture of right third MP joint. (Exhibit A at 5)

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8 2. Employer completed the C-3 Form. (Exhibit A at 6)

9 3. The Supervisor Accident/Injury/Incident Report was also completed. (Exhibit
10 A at 1-3)

11 4. Claimant presented to Dr. John Rogers on December 22, 2015. A fracture was
12 noted. (Exhibit A at 7-8)

13 5. Claimant presented to UMC on December 23, 2015. An open comminuted and
14 evulsion fracture of distal 3rd metacarpal was diagnosed. (Exhibit A at 9-34)

15 6. Claimant presented to Dr. David Fadell on January 8, 2016. The impression
16 noted fracture, middle finger, metacarpal head, dorsal aspect, articular but not in need of surgical
17 intervention. A Thermaplast splint for the index finger was applied. (Exhibit A at 35-37)

18 7. On January 25, 2016, the claim was accepted for a right hand 3rd MP joint
19 fracture. (Exhibit A at 38)

20 8. On February 24, 2016, claimant returned to Dr. Fadell. The brace was
21 discontinued. (Exhibit A at 39)

22 9. On April 25, 2016, claimant was advised that he was required to treat even
23 through incarceration. (Exhibit A at 40)

24 10. On April 29, 2016, claimant was advised that his claim would close if he did
25 not follow up with medical treatment. (Exhibit A at 41)

1 11. On June 3, 2016, Administrator advised claimant that his claim would be
2 closed. (Exhibit A at 42)

3 12. On July 7, 2016, claimant was released from the custody of the NDOC.
4

5 13. On August 4, 2016, claimant was advised that the Administrator would
6 schedule him for a consult with Dr. Bronstein. (Exhibit A at 43)

7 14. On August 18, 2016, claimant presented to Dr. Bronstein. He recommended
8 discontinuing the brace and a partial osteotomy. (Exhibit A at 44-52)

9 15. On September 1, 2016, claimant was seen by PA-C Frank Urbina at Urgent
10 Care. Claimant was taken off of work. (Exhibit A at 53-63)

11 16. On September 20, 2016, claimant was advised that the request for compensation
12 during incarceration was denied. (Exhibit A at 64)

13 17. On September 29, 2016, claimant was advised of his average monthly wage.
14 (Exhibit A at 65-74)

15 18. On September 29, 2016, claimant returned to Dr. Bronstein. Surgery was
16 discussed. (Exhibit A at 75-86)

17 19. On October 18, 2016, claimant was advised that he was no longer eligible for
18 TTD benefits effective September 30, 2016, as he was released to full duty. (Exhibit A at 87)

19 20. On October 19, 2016, claimant presented to Dr. Bronstein for surgery. (Exhibit
20 A at 88-93)

21 21. On October 20, 2016, claimant was advised of an overpayment of benefits.
22 (Exhibit A at 94-95)

23 22. On October 25, 2016, claimant returned for postoperative evaluation. (Exhibit
24 A at 96-103)

25 23. Claimant returned to Dr. Bronstein on November 8, 2016. Occupational
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1 therapy was ordered. (Exhibit A at 104)

2 24. Following Hearing No. 1701007-SA, the Hearing Officer issued a Decision and
3 Order dated November 8, 2016, affirming the September 29, 2016 determination related to the average
4 monthly wage. (Exhibit A at 105-107)

5 25. Following Hearing No. 1701217-SA, the Hearing Officer issued a Decision and
6 Order dated November 22, 2016, affirming the October 20, 2016 determination terminating TTD
7 benefits and asserting an overpayment. (Exhibit A at 108-109)

8 26. On December 1, 2016, claimant's counsel appealed the November 8, 2016
9 Decision and Order and the November 22, 2016 Decision and Order. (Exhibit A at 110-111)

10 27. An Order consolidating appeals was filed. (Exhibit A at 112)

11 28. A Motion for Change of Venue was filed by claimant's counsel. (Exhibit A at
12 113-115) An Order granting same was filed. (Exhibit A at 116)

13 29. These findings of fact are based upon substantial evidence within the record.

14 30. Any find of fact more appropriately deemed a conclusion of law shall be so
15 deemed and vice versa.

16 CONCLUSIONS OF LAW

17 1. It is the claimant, not the Administrator, who has the burden of proving his
18 case; and that is by a preponderance of all the evidence. State Industrial Insurance System v. Hicks,
19 100 Nev. 567, 688 P.2d 324 (1984); Holley v. State ex rel. Wyoming Worker's Compensation Div.,
20 798 P.2d 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

21 2. In attempting to prove his case, the claimant has the burden of going beyond
22 speculation and conjecture. That means that the claimant must establish the work related injury and
23 his disability, the extent of his disability, and all facets of the claim by a preponderance of the
24 evidence. To prevail, the claimant must present and prove more evidence than an amount which

1 would make his case and her opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.
2 2d 267 (1993); SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671
3 P.2d 29 (1983); 3, A. Larson, The Law of Workmen's Compensation, §80.33(a)

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Elizabeth A. Brown
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