

1 PTJR

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4 Telephone No. (702) 766-4672

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5 Attorneys for Petitioner

CLARK COUNTY

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 CLARK COUNTY, Self-Insured Employer,

9 Petitioners,

10 vs.

11 BRENT BEAN; STATE OF NEVADA,
12 NEVADA DEPARTMENT OF
ADMINISTRATIONS APPEAL OFFICE,

13 Respondents.

CASE NO: A-18-773957-J

DEPT NO: Department 16

Arbitration Exemption: Review of
Administrative Decision

14 **PETITION FOR JUDICIAL REVIEW**

15 (Arbitration Exemption: Review of Administrative Decision)

16 COMES NOW the Petitioner, CLARK COUNTY, by and through its attorney, DALTON
17 L. HOOKS, JR., ESQ. and requests judicial review of the Appeals Officer Decision and Order
18 dated April 19, 2018. A copy of the Decision and Order is attached hereto as **EXHIBIT A**.
19

20 This Petition is filed with the District Court on the grounds that Petitioner is aggrieved by
21 said Decision of the Appeals Officer which was arbitrary and capricious and contrary to the
22 substantial evidence presented in this case.

23 ...

Further, that this Appeals Officer committed an error of law in rendering this decision. The decision of the Appeals Officer was an abuse of discretion and clearly erroneous as a matter of law. The grounds on which review is sought are the following:

1. The instant Petition for Judicial Review is filed pursuant to NRS Chapter 233B.130, which mandates that judicial review shall be the sole and exclusive authorized judicial proceeding in contested industrial insurance claims.
2. That an order be granted, reversing said Decision and Order from the Appeals Officer, dated April 19, 2018.

It is specifically requested, pursuant to NRS 233B133(4), that this Court hear oral argument and receive written briefs on this Petition for Judicial Review.

WHEREFORE, Petitioner prays as follows:

1. That an order be granted reversing the decision titled DECISION AND ORDER dated April 19, 2018 from the Appeals Officer.
2. For such other and further relief as the Court deems just and proper.

Dated this 2nd day of May, 2018.

Respectfully submitted,

HOOKS MENG SCHAAN & CLEMENT

By: 

DALTON L. HOOKS, JR., ESQ.
JOHN A. CLEMENT, ESQ.
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, NV 89102
Attorneys for Self-Insured Employer
CLARK COUNTY

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5-2-18

DATE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of the law firm of HOOKS MENG SCHAAN & CLEMENT, and on this 2^D day of May, 2018, service of the foregoing **PETITION FOR JUDICIAL REVIEW** was made this day by depositing a true and correct copy thereof in the folder for such delivery as is located in the Appeals Office from which an employee daily takes possession of the contents addressed to:

APPEALS OFFICER GEORGANNE W. BRADLEY
DEPARTMENT OF ADMINISTRATION
2200 SOUTH RANCHO DRIVE, SUITE 220,
LAS VEGAS, NV 89102
APPEAL NO.: 1710715-GB

and that on this date I deposited for mailing at Las Vegas, Nevada, a true copy of the attached document addressed to:

LISA M. ANDERSON, ESQ.
GREENMAN GOLDBERG RABY & MARTINEZ
601 S. NINTH ST.
ATTORNEY FOR RESPONDENT BRENT BEAN

BRENT BEAN
3405 AMISH AVENUE
NORTH LAS VEGAS, NV 89031

KIMBERLY BUCHANAN/LESLIE RIBADENEIRA
CLARK COUNTY RISK MANAGEMENT
500 S. GRAND CENTRAL PARKWAY 5TH FLOOR
LAS VEGAS NV 89106
CLAIM NO.: 0583-WC-15-0000098

PATRICK CATES, DIR, STATE OF NEVADA,
DEPARTMENT OF ADMINISTRATION
5151 E. MUSSER ST.
CARSON CITY, NV 89701

ADAM LAXALT, ESQ.
ATTORNEY GENERAL, STATE OF NEVADA
100 NORTH CARSON STREET
CARSON CITY, NV 89701

BY:

☒ Placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices.

☒ Personal delivery by runner or messenger service.

Dated this 2^D day of May, 2018.


An Employee of HOOKS MENG
SCHAAN & CLEMENT

EXHIBIT A

APR 19 2018

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No. : 0583WC150000098

Appeal No. : 1710715-GB

BRENT BEAN

Claimant.

DECISION AND ORDER

The above-referenced matter came on for hearing before Appeals Officer GEORGANNE W. BRADLEY, ESQ. Claimant, BRENT BEAN (hereinafter referred to as "Claimant"), was represented by counsel, THADDEUS J. YUREK III, ESQ. and LISA M. ANDERSON, ESQ. of the law firm GREENMAN, GOLDBERG, RABY & MARTINEZ. The Employer, CLARK COUNTY FIRE DEPARTMENT (hereinafter referred to as "Employer") and the Insurer, CORVEL (hereinafter referred to as "Insurer"), were represented by DALTON L. HOOKS, JR., ESQ. of the law firm ALVERSON TAYLOR MORTENSEN & SANDERS.

On January 24, 2016, the Insurer notified Claimant that they were not offering a permanent partial disability award. The Insurer's rationale was that Claimant was not entitled to any compensation benefits, including permanent partial disability, for his claim for occupationally related cancer because he was retired when the claim was filed. Claimant appealed that determination to the Hearing Officer, who affirmed the Insurer's determination. Claimant timely appealed the Hearing Officer's decision.

After considering the arguments of counsel and reviewing the documentary evidence herein, including the written briefs submitted by the parties, the Appeals Officer finds and decides as follows:

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APR 19 2018

1 FINDINGS OF FACT

2 1. That Claimant retired as a firefighter with the Clark County Fire Department on July 25,
3 2011.

4 2. That on October 15, 2014, Claimant completed blood work that revealed elevated
5 prostate specific antigen (PSA) levels. Claimant came under the care of Dr. David Ludlow for
6 his prostate condition.
7

8 3. That Claimant was diagnosed with malignant neoplasm of prostate and underwent a
9 prostatectomy on February 24, 2015. Claimant was subsequently declared medically stable and
10 ratable. Dr. Ludlow opined that Claimant would require ongoing medication for erectile
11 dysfunction following claim closure. Dr. Ludlow confirmed that the medication was needed as
12 a direct result of the prostate cancer.
13

14 4. That on November 2, 2016, Dr. Charles Quaglieri evaluated Claimant for permanent
15 partial disability evaluation. Dr. Quaglieri concluded that Claimant qualified for thirty-nine
16 percent (39%) whole person impairment as a result of the occupationally related prostate cancer
17 condition. Claimant was granted sixteen percent (16%) whole person impairment for the
18 prostatectomy, ten percent (10%) whole person impairment for incontinence and twenty percent
19 (20%) whole person impairment for loss of sexual function.
20

21 5. That on November 30, 2016, Claimant notified the Insurer that Dr. Quaglieri had
22 miscalculated the impairment and that the correct whole person impairment sum was forty
23 percent (40%). For that reason, the Insurer was asked to offer Claimant a forty percent (40%)
24 whole person impairment award.
25

26 6. That on November 30, 2016, the Insurer was asked to authorize ongoing erectile
27 dysfunction medication following claim closure.
28

1 7. That on December 1, 2016, the Insurer notified Claimant that there appeared to be a
2 calculation error in Dr. Quaglieri's disability report and was seeking clarification.

3 8. That on January 4, 2017, Dr. Quaglieri issued a statement acknowledging his calculation
4 error and confirmed that Claimant's whole person impairment was forty percent (40%).
5

6 9. That on January 9, 2017, an electronic mail communication was sent to the Insurer
7 outlining that the Attorney General Opinion 2002-28 established that firefighter's "date of
8 separation from service in such capacity and wages earned immediately prior to such date of
9 separate form the basis upon which disability benefits are to be calculated."
10

11 10. That on January 24, 2017, the Insurer notified Claimant that they were declining to offer
12 a permanent partial disability award because the claim for occupational disease was filed after
13 his retirement. The Insurer concluded that Claimant was therefore not entitled to receive any
14 compensation benefits, including permanent partial disability, for his industrial injury.
15

16 11. That Claimant appealed that determination to the Hearing Officer. The parties
17 subsequently agreed to transfer the matter directly to the Appeals Officer for final administrative
18 decision.

19 12. That this Court ordered the parties to submit briefs concerning the legal question as to
20 whether Howard v. City of Las Vegas, 120 P.3d 410 (2005) disqualified Claimant from being
21 entitled to permanent partial disability compensation benefits.
22

23 13. That Claimant submitted his Opening Brief on the application of Howard on September
24 20, 2017.

25 14. That the Insurer/Employer submitted their Answering Brief on the application of
26 Howard on October 30, 2017.
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1 15. That Claimant submitted his Reply Brief on the application of Howard on December 11,
2 2017.

3 16. That the evidence supports Claimant's entitlement to permanent partial disability
4 compensation benefits on the grounds that neither Howard nor any applicable ^{statute} ~~statute~~ disqualifies
5 Claimant from those benefits.
6

7 17. That these findings of fact are based upon the credible and substantial evidence within
8 the record.

9 18. That any Findings of Fact more appropriately deemed a Conclusion of Law shall be so
10 deemed, and vice versa.
11

12 CONCLUSIONS OF LAW

13 1. Claimant retired from the Clark County Fire Department effective July 25, 2011. On or
14 about December 22, 2014, Claimant filed a claim for compensation under NRS 617. Effective
15 January 13, 2015, the Insurer issued its determination accepting the claim for prostate cancer.
16 Following treatment, Claimant was found to have a forty percent (40%) whole person
17 impairment as a result of his occupationally related prostate cancer. The Insurer declined to
18 offer the award because the claim was made after retirement. The Insurer contends that Claimant
19 is only entitled to the payment of medical benefits and not any monetary compensation.
20

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1 2. NRS 617.452(4) provides in pertinent part that compensation awarded to a firefighter or
2 his or her dependents for disabling cancer pursuant to this section must include full
3 reimbursement for related expenses incurred for medical treatments, surgery and hospitalization
4 and the compensation provided in chapters 616A to 616D, inclusive of NRS for the disability or
5 death. Subsection 5 of the statute makes it clear that the firefighter's retirement prior to
6 submitting a claim does not bar compensation for his claim simply because he has retired. The
7 rebuttable presumption provided by subsection 5 applied to disabling cancer diagnosed after the
8 termination of his employment. Also relevant is NRS 617.430(1), which provides in pertinent
9 part that every employee who is disabled or dies because of an occupational disease, or the
10 dependents of an employee whose death is caused by an occupational disease, is entitled to the
11 compensation provided by NRS 616A-D for temporary disability, permanent disability, or death,
12 as the facts may warrant, subject to the modifications mentioned in Chapter 617.

13
14
15 3. The Nevada Supreme Court case of Howard considered the extent to which a firefighter
16 who retires and, thereafter, suffers a heart attack, is entitled to temporary total disability benefits.
17 The Court held that although Nevada law is clear that retired firefighters who sustain a disability
18 post-retirement are entitled to medical benefits, the Legislature's method for calculating
19 compensation precludes an award for temporary total disability benefits when the retired
20 firefighters are not earning wages at the time of the disability. In Howard, the specific issue was
21 whether the retired firefighter, who submitted a claim for heart disease, was entitled to temporary
22 total disability benefits.

23
24
25 4. For the reasons set forth in Claimant's Opening and Reply Briefs, this Court finds and
26 concludes that Claimant is entitled to receive an otherwise proper permanent partial disability
27 award despite the fact that he was retired when his claim was filed and permanent disability
28

1 determined to exist. NRS 617.453(4) provides that a firefighter with a cancer claim is entitled
2 to not only medical benefits but also disability benefits to which is entitled pursuant to NRS
3 616A-D. Nothing set forth in NRS 616C.490 or the regulations governing permanent partial
4 disability provides that a person is not entitled to permanent partial disability benefits once he is
5 no longer working. NRS 616C.390 expressly provides that a retired person, upon reopening,
6 may not receive temporary total disability benefits or vocational rehabilitation benefits. The
7 Legislature could have, but did not, exclude permanent partial disability benefits from the
8 benefits to which a claimant is entitled after retirement. Unlike temporary total disability
9 benefits, which are intended to compensate the injured worker during the temporary period in
10 which he is not working, permanent partial disability benefits are intended to compensate the
11 injured worker for permanent physical impairment. This Court therefore declines to extend the
12 Supreme Court's holding in Howard to permanent partial disability awards.

13
14
15 5. There is no statute, regulation, or case law that provides that a retired firefighter with an
16 accepted occupational disease claim may be deprived of an otherwise properly determined
17 permanent partial disability award. Furthermore, no other grounds for denial were asserted or
18 argued by the Insurer, this Court finds Dr. Quaglieri's permanent partial disability rating
19 evaluation to be thorough and properly performed.

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6. For the reasons stated in Claimant's written briefs, the Appeals Officer concludes that the permanent partial disability award shall be calculated based upon the wages the Claimant was earning at the time of his retirement from the Clark County Fire Department. The Nevada Supreme Court's decision in Howard does not address permanent partial disability awards and, as stated above, the Appeals Officer declines to extend the Court's holding in that case to permanent partial disability awards; the Court's holding was not based on NRS 617.453 or 616C.490 which are applicable in the instant case. To conclude that the Claimant's PPD award must be calculated based on his wages on the date of disability (i.e., zero) would, from a practical perspective, render subsection (5) of NRS 617.453 meaningless. By its very terms, subsection (5) refers to cancer diagnosed after the firefighter is no longer employed; the "date of disability" would always be post-retirement for purposes of awarding of benefits pursuant to NRS 617.453 unless evidence to rebut the presumption is presented.

ORDER

IT IS HEREBY ORDERED that the Insurer's January 24, 2017 determination is REVERSED. The Insurer is REMANDED to offer Claimant the forty percent (40%) whole person permanent partial disability award as found by Dr. Quaglieri.

IT IS SO ORDERED this 19th day of April, 2018.

Georgianne W. Bradley
Georgianne W Bradley, Esq.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision. *(SATS/19) 11/11/19*

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing was duly mailed, postage prepaid OR placed in the appropriate addressee file
5 maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, to
6 the following:
7

8 BRENT BEAN
9 3405 AMISH AVENUE
10 NORTH LAS VEGAS, NEVADA 89031

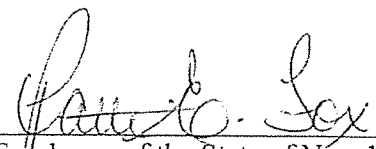
11 LISA M. ANDERSON, ESQ.
12 GREENMAN GOLDBERG RABY & MARTINES
13 601 SOUTH NINTH STREET
14 LAS VEGAS, NEVADA 89101

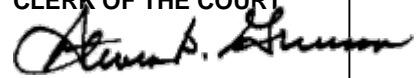
15 DALTON L. HOOKS, JR., ESQ.
16 ALVERSON TAYLOR MORTENSEN & SANDERS
17 6605 GRAND MONTECITO PARKWAY
18 SUITE 200
19 LAS VEGAS, NEVADA 89149

20 SANDRA SWICKARD
21 CLARK COUNTY RISK MANAGEMENT
22 500 SOUTH GRAND CENTRAL PARKWAY
23 SUITE 200
24 LAS VEGAS, NEVADA 89106

25 CORVEL
26 P.O. BOX 61228
27 LAS VEGAS, NEVADA 89160

28 DATED this 19th day of April, 2018.


Employee of the State of Nevada



1 NEOJ
2 **LISA M. ANDERSON, ESQ.**
3 Nevada Bar No. 0004907
4 **GABRIEL A. MARTINEZ, ESQ.**
5 Nevada Bar No. 000326
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 Respondent*

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

15 CLARK COUNTY)
16)
17 Petitioner)
18)
19 vs.)
20)
21 BRENT BEAN and THE DEPARTMENT)
22 OF ADMINISTRATION, HEARINGS)
23 DIVISION,)
24)
25 Respondents.)
26)
27)
28)

CASE NO. : A-18-773957-J
DEPT. NO. : XVI

29 **NOTICE OF ENTRY OF ORDER**

30 TO: All parties of interest.

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

32 ///

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34 ///

35 ///

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37 ///

1 entered in the above-entitled matter on the 4th day of March, 2019, a copy of which is attached.

2 DATED this 4th day of March, 2019.

3 GREENMAN, GOLDBERG, RABY & MARTINEZ

4
5 By: 

6 LISA A. ANDERSON, ESQ.

7 Nevada Bar No. 4907


8 GABRIEL A. MARTINEZ, ESQ.

9 Nevada Bar No. 326

601 South Ninth Street

10 Las Vegas, Nevada 89101

11 Attorneys for Petitioner


Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

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28 **CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of GREENMAN, GOLDBERG, RABY & MARTINEZ, and that on the 4th day of March, 2019, 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:

Dalton L. Hooks, Jr., Esq.
HOOKS MENG & CLEMENT
2820 West Charleston Boulevard
Suite C-23
Las Vegas, Nevada 89102


An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Steven D. Grierson

1 **ORDD**
2 **LISA M. ANDERSON, ESQ.**
Nevada Bar No. 004907
3 **THADDEUS J. YUREK III, ESQ.**
Nevada Bar No. 011332
4 **GREENMAN, GOLDBERG, RABY & MARTINEZ**
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7 Email: lanserson@ggrmlawfirm.com
tyurek@ggrmlawfirm.com
8 *Attorneys for Respondent*

9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 CLARK COUNTY,)
13)
14 Petitioner)
15 vs.) CASE NO. : A-18-773957-J
DEPT. NO. : XVI
16 BRENT BEAN and THE DEPARTMENT)
17 OF ADMINISTRATION, HEARINGS)
18 DIVISION,)
19 Respondents.)

20 **ORDER DENYING PETITION FOR JUDICIAL REVIEW**

21 This matter came before this Court on October 25, 2018 on the Petition for Judicial
22 Review filed by Petitioner, CLARK COUNTY. Petitioner was represented by DALTON L.
23 HOOKS, JR., ESQ. of the law firm HOOKS MENG & CLEMENT. Respondent, BRENT
24 BEAN, was represented by LISA M. ANDERSON, ESQ. of the law firm of GREENMAN
25 GOLDBERG RABY & MARTINEZ. No other parties were present or represented.
26
27
28

Greenman Goldberg Raby Martinez / ACCIDENT INJURY ATTORNEYS

☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)

1 After a review and consideration of the record, the Points and Authorities on file herein,
2 and oral arguments of counsel, the Court determined as follows:

3 Petitioner argued the legal question as to whether Howard v. City of Las Vegas, 120 P.3d
4 410 (2005) disqualified Respondent from being entitled to permanent partial disability
5 compensation benefits. Respondent argued that, for the purpose of calculating his permanent
6 partial disability, his average monthly wage must be calculated using the wages from the date
7 of his retirement.
8

9 In Howard, the Court considered whether a firefighter who retires and, thereafter, suffers
10 a heart attack, is entitled to temporary total disability benefits. The Court confirmed that retired
11 firefighters are entitled to all medical benefits for their occupationally related condition,
12 however, the "method for calculating compensation precludes an award for temporary total
13 disability benefits when the retired firefighters are not earning wages at the time of the
14 disability."
15

16
17 Howard is distinguishable from the case at hand because Respondent is not seeking
18 temporary total disability for lost wages. Under Howard, the Court differentiated between
19 workers' compensation benefits related to medical benefits and those benefits associated with
20 disability compensation in the form of lost wages caused by the occupational disease. While the
21 Court made it clear that it intended for the injured worker to be precluded from obtaining
22 temporary total disability compensation if the claim for disability was filed after retirement, the
23 Court further made it clear that it did not intend for the decision to affect medical benefits.
24

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1 Permanent partial disability is a medical benefit intended to compensate the injured
2 worker for permanent physical damage caused by the industrial injury or occupational disease
3 and not a form of disability compensation associated with lost wages. In this case, Respondent's
4 prostate was removed due to a compensable occupationally related cancer. Respondent was
5 found to have sustained forty percent (40%) whole person impairment related to his significant
6 occupational disease. Permanent partial disability is a medical benefit directly related to the
7 removal of the prostate and its residual effects. Thus, permanent partial disability is not intended
8 to replace lost wages, as was held in Howard.
9

10 NRS 616C.490(5) states in part:
11

12 5. Unless the regulations adopted pursuant to NRS
13 616C.110 provide otherwise, a rating evaluation must include an
14 evaluation of the loss of motion, sensation and strength of an
15 injured employee if the injury is of a type that might have caused
16 such a loss. Except in the case of claims accepted pursuant to NRS
17 616C.180, no factors other than the degree of physical impairment
18 of the whole person may be considered in calculating the
19 entitlement to compensation for a permanent partial disability.

20 NRS 616C.490 establishes that permanent partial disability is not related to temporary
21 total disability compensation that is associated with lost wages. Instead, permanent partial
22 disability is a medical benefit directly related to the permanent loss of physical function, such
23 as loss of range of motion, loss of sensation, and loss of strength, and is intended to compensate
24 the injured worker for the physical damage caused by the occupational disease. Nothing in
25 Howard sought to eliminate compensation related to permanent partial disability because
26 permanent partial disability is not intended to compensate the injured worker for lost wages.

27 ///

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1 The Court specifically stated that the issue on appeal in Howard involved eligibility for
2 temporary total disability compensation when the injured worker was retired and not earning
3 wages at the time the claim was filed. The Court solely considered whether an injured worker
4 is entitled to temporary total disability compensation related lost time caused by the
5 occupationally related heart condition. Nevertheless, the Court reiterated that "when a retired
6 claimant becomes eligible for occupational disease benefits, the claimant is entitled to receive
7 medical benefits but may not receive any disability compensation if the claimant is not earning
8 any wages."
9

10
11 In further distinguishing Howard from the present matter, the Court outlined that:

12 Second, a retiree usually has lost no salary due to the impairment.
13 However, the claimant may lose money in the form of medical
14 expenses attributable to the work-related disability; for these
15 expenses, NRS 617.420 provides no prohibition. As we held in
16 *Gallagher*, retired claimants will still be able to claim medical
17 expenses, despite not being entitled to receive compensation
18 based on lost wages.
19 ...

20 Because Howard was retired and not earning an actual wage at the
21 time of his disability, from which a lost wage may be calculated,
22 he is not entitled to disability compensation in the form of lost
23 wages.
24 ...

25 For the forgoing reasons, we conclude that a retired firefighter's
26 entitlement to occupational disease benefits does not include
27 compensation for temporary total disability benefits when the
28 firefighter is not earning any wages. Accordingly, we affirm the
order of the district court.

In every instance, the Court in Howard specifically cited that its decision related solely
to temporary total disability compensation related to lost wages. Howard thus had no intention
of limiting compensation related to the recovery of permanent partial disability.

1 Petitioner further argued that there is no statute to support the Appeals Officer's Decision
2 and Order concerning Respondent's average monthly wage because he was retired and had no
3 wages during the eighty-four (84) days preceding his disabling occupational cancer condition.
4

5 NRS 617.453(5) contemplated this issue and applies to this matter. NRS 617.453(5)
6 states:

7 5. Disabling cancer is presumed to have developed or
8 manifested itself out of and in the course of the employment of
9 any firefighter described in this section. This rebuttable
10 presumption applies to disabling cancer diagnosed after the
11 termination of the person's employment if the diagnosis occurs
12 within a period, not to exceed 60 months, which begins with the
13 last date the employee actually worked in the qualifying capacity
14 and extends for a period calculated by multiplying 3 months by
15 the number of full years of his or her employment. This rebuttable
16 presumption must control the awarding of benefits pursuant to this
17 section unless evidence to rebut the presumption is presented.

18 NRS 617.453(5) asserts that the "awarding of benefits" is based upon "a period
19 calculated by multiplying 3 months by the number of full years of his or her employment," but
20 shall "not to exceed 60 months, which begins with the last date the employment actually worked
21 in the qualifying capacity."
22

23 In this case, Respondent was employed for over thirty (30) full years of qualifying
24 capacity from his July 20, 1981 date of hire through his July 25, 2011 date of retirement. Based
25 upon NRS 617.453(5), Respondent's thirty (30) full years of qualifying employment is then
26 multiplied by three (3) months, resulting in ninety (90) months, which exceeded the sixty (60)
27 month limit.
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1 Respondent retired on July 25, 2011. Respondent was diagnosed with prostate cancer
2 on November 7, 2014 and thereafter filed the necessary documents to perfect a claim for
3 occupational cancer disease benefits. Thus, Respondent was diagnosed with his disabling cancer
4 approximately forty (40) months after his retirement, which is within the sixty (60) months
5 requirement granted by NRS 617.453(5).
6


7 Therefore, pursuant to NRS 617.453(5), Respondent qualifies for the full "awarding of
8 benefits pursuant to this section," including the calculation of his average monthly wage for the
9 purpose of calculating his permanent partial disability award, based upon his disabling cancer
10 being diagnosed, filed and accepted for workers' compensation benefits at approximately forty
11 (40) months post-retirement. Thus, Respondent's eligibility for the "awarding of benefits" is
12 well within the sixty (60) months period that he qualifies for based upon his thirty (30) full years
13 of qualifying employment.
14

15 The Court has review the Decision and Order filed by the Appeals Officer on April 19,
16 2018. In paragraph 16, the Appeals Officer found, "[t]hat the evidence supports Claimant's
17 entitlement to partial disability compensation benefits on the grounds that neither Howard nor
18 applicable statute disqualifies claimants from those benefits." In addition, Respondent relied on
19 NRS 617.453(5) which permits the "awarding of benefits" and creates a rebuttable presumption
20 for disabling cancer diagnosed after termination of employment, within a period not to exceed
21 sixty (60) months after the last date of employment. Thus, the award of benefits based on the
22 period calculated by multiplying three months by the number of full years of employment is
23 under Nevada Law and specifically for firefighters who suffer from cancer as an occupational
24 disease.
25
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1 In light of the foregoing, the Petition for Judicial Review is hereby DENIED.

2 Dated this 1 day of March, 2019.

3
4
5 
6 TIMOTHY C. WILLIAMS
7 DISTRICT COURT JUDGE *CT*

8 Submitted by:

9 GREENMAN, GOLDBERG, RABY & MARTINEZ

10 
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17 *Attorney for Respondent*

18 Approved as to form ~~and content~~:

19 HOOKS MENG & CLEMENT

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22 Nevada Bar No. 008121

23 JOHN A. CLEMENT, ESQ.

24 Nevada Bar No. 008030

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26 Suite C-23

27 Las Vegas, Nevada 89102

28 *Attorney for Petitioner*

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CLARK COUNTY,

Appellant,

vs.

BRENT BEAN,

Respondent.

No. 78443

Electronically Filed
Apr 18 2019 08:20 a.m.

Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

AMENDED

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 XVI
County Clark Judge Timothy C. Williams
District Ct. Case No. A-18-773957-J

2. Attorney filing this docketing statement:

Attorney Dalton L. Hooks, Jr., Esq. Telephone (702) 766-4672
Firm HOOKS MENG & CLEMENT
Address 2820 W Charleston Blvd., Ste. C-23
Las Vegas, NV 89102

Client(s) Clark County

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) 384-1616
Firm GREENMAN, GOLDBERG, RABY & MARTINEZ
Address 601 South Ninth Street
Las Vegas, NV 89101

Client(s) Brent Bean

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 workers' compensation case. Respondent is a retired firefighter. Respondent developed cancer and the Appellant provided medical benefits in accordance with NRS 617.453(5). At the conclusion of medical treatment Respondent underwent a permanent partial disability examination (PPD). The Appellant declined to offer the PPD award. On July 19, 2018, the Appeals Officer reversed the determination of the Appellant and held, the Respondent's retirement did not bar compensation or a disability award. Appellant filed a Petition for Judicial Review in the District Court. The Petition for Judicial Review was denied on March 4, 2019. Appellant filed Notice of Appeal to the Nevada Supreme Court on March 22, 2019. A Motion for Stay Pending Review to the Nevada Supreme Court was filed, heard, and denied. The final order denying the Motion for Stay is pending.

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

A permanent partial disability (PPD) award is not a medical benefit, it is compensation. Respondent was not earning any wages during retirement and using the prescribed method results in a calculation of zero. The deviation used by the Appeals Officer was impermissible and amounted to an error of law.

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:

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.

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 March 3, 2019

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 March 4, 2019

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 March 22, 2019

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 checked="" type="checkbox"/> Other (specify) <u>NRS 233B.140</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order: Appellant filed a Petition for Judicial Review of the Decision and Order from a workers' compensation Appeals Officer. Appellant filed its Petition for Judicial Review with the District Court pursuant to NRS 233B.130. The District Court denied Appellant's Petition for Judicial Review. The denial is the final judgment of the District Court. In accordance with NRS 233B.140, Appellant filed a Motion for Stay Pending Appeal to the Nevada Supreme Court. The Motion for Stay was also denied. Under NRS 233B.150, this Court has jurisdiction to hear this appeal.

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

(a) Parties:

CLARK COUNTY

BRENT BEAN, and THE DEPARTMENT OF ADMINISTRATION, HEARINGS
DIVISION

(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, HEARINGS DIVISION did not participate in the District Court matter.

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.

CLARK COUNTY- Petition for Judicial Review

BRENT BEAN- None

THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION- 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:

- e The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- e Any tolling motion(s) and order(s) resolving tolling motion(s)
- e 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
- e Any other order challenged on appeal
- e 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.

CLARK COUNTY


Name of appellant

DALTON L. HOOKS, JR., ESQ.

Name of counsel of record

April 17th 2019

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 17th day of April, 2019, 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 M. Anderson, Esq.

Dated this 17th day of April, 2019


Signature