

Urology Specialists

Patient Chart Note

Electronically Filed
Jan 15 2020 10:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

October 29, 2014

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 53

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

HISTORY OF PRESENT ILLNESS

PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

MEDICATIONS:

<u>Medication</u>	<u>Dose</u>
Cipro	500 Mg
Lidocaine Hcl/pf	20 Mg/ml (2 %)
Valium	10 Mg
Doxycycline Hyclate	100 Mg
Flomax	0.4 Mg
Allopurinol	

RECEIVED

NOV 19 2014

SIERRA Nevada

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B. Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 10/29/2014 Page 1 of 3 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Urology Specialists

Patient Chart Note

Simvastatin 40mg
Benazepril Hcl 20mg

ALLERGIES:

NKDA

ALLERGIES:

Allergy

No Known Allergies

Rxn

FAMILY HISTORY:

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

PHYSICAL EXAM:

VITAL SIGNS

Temp F	BP	P	Height	Wt Lb
97.00	123/80	78	5'8"	210

OFFICE LABS:

Color	Turbidity	SP-G	pH	Glu	Ket	Bili	Urobili	Ptn	Heme	Nit	LE	U-Cx
Light Yellow	Clear	1.015	5	50 mg/dL		Neg	Neg	Normal	30 mg/dL			Neg Neg
Neg	NO											

RECEIVED

NOV 19 2014

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 10/29/2014 Page 2 of 3 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Urology Specialists

Patient Chart Note

PROCEDURES:

Procedure

Generic Procedure Note

04/01/2017.../mwilliams ma

TRUS / PNBx

The procedure findings and details are as follows: The prostatic dimensions are 1.9cm H x 3.7cm W x 3.9cm L. The calculated prostatic volume is 14 cc. There is no evidence of prostatic calculi, hypoechoic regions, abnormal seminal vesicles or extraprostatic extension. There were a total of 12 cores taken in a sextant type fashion. + median lobe

Procedure Findings

Patient given Ceftriaxone 1 gram inj rt im glute. lot# 400128M EXP

David Ludlow MD

DATE: 10/29/2014 1:43 PM

Electronically signed by David Ludlow MD on 10/29/2014 01:43 PM

RECEIVED

NOV 19 2014

SIERRA NV ADMIN

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 10/29/2014 Page 3 of 3 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

F. RIGHT LATERAL BASE:
ACINI AND STROMA.

G. LEFT APEX:
ACINI AND STROMA.

H. LEFT MID:
ACINI AND STROMA.

I. LEFT BASE:
ADENOCARCINOMA, GLEASON 3+3=6; INVOLVING 5% OF 23 MM CORE.

J. LEFT LATERAL APEX:
ACINI AND STROMA

K. LEFT LATERAL MID:
ACINI AND STROMA.

L. LEFT LATERAL BASE:
ADENOCARCINOMA, GLEASON 3+3=6; INVOLVING 5% OF 19 MM CORE.

Interpreted by: MARCUS A. ERLING, M.D.

COMMENT:

A-L. Microscopic examination performed and the results incorporated into the final diagnosis. All controls stained appropriately.

The diagnostic slides were reviewed in consultation by Dr. Joel Bentz who concurs. (MAE/jap)

GROSS DESCRIPTION:

A. The specimen is received in formalin labeled with the proper patient identification and "right apex" and consists of five gray tan tissue cores that have an overall length of 19 mm. The minute fragment may not survive the processing. The specimen is entirely submitted as A.

B. The specimen is received in formalin labeled with the proper patient identification and "right mid" and consists of one gray tan tissue core measuring 23 mm in length. The specimen is entirely submitted as B.

C. The specimen is received in formalin labeled with the proper patient identification and "right base" and consists of two gray tan tissue cores that have an overall length of 18 mm. The specimen is entirely submitted as C.

D. The specimen is received in formalin labeled with the proper patient identification and "right lateral apex" and consists of two gray tan tissue cores that have an overall length of 14 mm. The specimen is entirely submitted as D.

E. The specimen is received in formalin labeled with the proper patient identification and "right lateral mid" and consists of three gray tan tissue cores that have an overall length of 11 mm. The minute fragment may not survive the processing. The specimen is entirely submitted as E.

F. The specimen is received in formalin labeled with the proper patient identification and "right lateral base" and consists of two gray tan tissue cores that have an overall length of 13 mm. The

RECEIVED

NOV 10 2014

JA000121

SIERRA NV ADMIN
16

specimen is entirely submitted as F.

G. The specimen is received in formalin labeled with the proper patient identification and "left apex" and consists of two gray tan tissue cores that have an overall length of 17 mm. The specimen is entirely submitted as G.

H. The specimen is received in formalin labeled with the proper patient identification and "left mid" and consists of three gray tan tissue cores that have an overall length of 18 mm. The minute fragment may not survive the processing. The specimen is entirely submitted as H.

I. The specimen is received in formalin labeled with the proper patient identification and "left base" and consists of two gray tan tissue cores that have an overall length of 23 mm. The specimen is entirely submitted as I.

J. The specimen is received in formalin labeled with the proper patient identification and "left lateral apex" and consists of five gray tan tissue cores that have an overall length of 19 mm. The minute fragment may not survive the processing. The specimen is entirely submitted as J.

K. The specimen is received in formalin labeled with the proper patient identification and "left lateral mid" and consists of three gray tan tissue cores that have an overall length of 22 mm. The minute fragment may not survive the processing. The specimen is entirely submitted as K.

L. The specimen is received in formalin labeled with the proper patient identification and "left lateral base" and consists of four gray tan tissue cores that have an overall length of 24 mm. The minute fragment may not survive the processing. The specimen is entirely submitted as L. (RG/vxt)

GROSS EXAMINATION/TECHNICAL COMPONENT PERFORMED AT: LMC, 3059 S. MARYLAND PARKWAY, SUITE #100, LAS VEGAS, NEVADA 89109, CLIA #29D0976712, CAP #71171001, JOEL S. BENTZ, M.D., LABORATORY DIRECTOR
FINAL INTERPRETATION PERFORMED AT: LMC, 3186 S. MARYLAND PARKWAY, LAS VEGAS, NEVADA 89109, CLIA #29D0873321, CAP #7180081, JONATHAN H. HUGHES, M.D., PH.D., LABORATORY DIRECTOR

Electronically signed by:
MARCUS A ERLING M.D.
11/03/2014

Diagnostician: MARCUS A ERLING M.D.
Pathologist
Electronically Signed 11/03/2014

RECEIVED

NOV 10 2014

SIERRA NV ADMIN 17

JA000122

Urology Specialists

Patient Chart Note

November 07, 2014

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 53

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents for follow up of his elevated PSA. This problem started approximately 3 Months ago. He denies any history of gross hematuria or hematospermia. His AUA voiding system score is in the moderate range at 14/35 - 3. Pt s/p TRUS Bx. Recovered well. Bx revealed GS 6 in 3/12 cores. Each 5% volume.

The following has been reviewed: LABS: 10/29/14 Path=ADENOCARCINOMA MEDICAL RECORDS: Old medical records were reviewed.

PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

MEDICATIONS:

<u>Medication</u>	<u>Dose</u>
Valium	10 Mg

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/07/2014 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Urology Specialists

Patient Chart Note

Doxycycline Hyclate	100 Mg
Flomax	0.4 Mg
Allopurinol	
Simvastatin	40mg
Benazepril Hcl	20mg

ALLERGIES:

NKDA

ALLERGIES:

Allergy

Rxn

No Known Allergies

SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

FAMILY HISTORY:

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

PHYSICAL EXAM:

VITAL SIGNS

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074

3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/07/2014 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000124

Urology Specialists

Patient Chart Note

Temp F	BP	P	Height	Wt Lb
	135/86	83	5'8"	208

EXAM

System	Findings / Comment
GENERAL	This is a well nourished and normally developed individual. In no acute distress.
NECK	Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly are appreciated.
LUNGS	Respiratory effort is normal without use of accessory muscles.
BACK	The spine is straight with normal ROM. There is no CVA or spinal tenderness to percussion.
ABDOMEN	Abdomen is soft and non-tender. There are no palpable masses or organomegaly. No obvious hernias are noted.
LYMPHATIC	There is no evidence of any cervical or inguinal lymphadenopathy.
NEURO-PSYCH	Patient has an appropriate affect.
SKIN-BREAST	Skin is warm and dry. No obvious rashes are noted.

OFFICE LABS:

Color	Turbidity	SP-G	pH	Glu	Ket	Bili	Urobili	Ptn	Heme	Nit	LE	U-Cx
Yellow	Clear	1.015	6	150 mg/dL		Neg	Neg	Normal			500 mg/dL	250 Neg
Neg	NO											

IMPRESSION:

DIAGNOSIS

1 Malignancy-Prostate

ASSESSMENT

Chronic condition with a severe exacerbation. Newly dx'd low grade, low volume prostate cancer on biopsy. Standard of care for this stage disease would be active surveillance per the NCCN guidelines. Pt is complicated because he needs to be cleared from cancer in order to get renal transplant. We will discuss options with tx coordinator and f/u in 2 wks. Discussed different options including active surveillance vs surgery vs radiation. It is my hope that with this stage of disease that treatment won't be necessary. The chance of this cancer causing mortality in the next 10-20 years is extremely low.

PLAN-ORDERS:

Orders:

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
 3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
 Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/07/2014 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000125

Urology Specialists

Patient Chart Note

WHEN?

2 Weeks

ORDER / PLAN

1 F/U Appt. w/ David Ludlow MD

Jason N. Zommick MD FACS

DATE: 11/07/2014 4:12 PM

Electronically signed by Jason N. Zommick MD FACS on 11/18/2014 03:07 PM

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/07/2014 Page 4 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Urology Specialists

Patient Chart Note

November 21, 2014

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 53

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents with a new diagnosis of prostate cancer. He denies any previous treatment of his prostate cancer. He denies any history of SUI or erectile dysfunction. His AUA voiding system score is in the moderate range at 14/35 - 3. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. His Karnofsky Performance Score is 100. Pt was on transplant list, but was taken off the list due to new dx of low grade, low volume prostate cancer.

PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

MEDICATIONS:

<u>Medication</u>	<u>Dose</u>
Valium	10 Mg
Doxycycline Hyclate	100 Mg

CORVEL LAS VEGAS

DEC 8 1 2014

RECEIVED

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074

3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/21/2014 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000127

Urology Specialists

Patient Chart Note

Flomax 0.4 Mg
 Allopurinol
 Simvastatin 40mg
 Benazepril Hcl 20mg

ALLERGIES:

NKDA

ALLERGIES:

Allergy

Rxn

No Known Allergies

SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

FAMILY HISTORY:

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

PHYSICAL EXAM:

VITAL SIGNS

Temp F BP P Height Wt Lb

CORVEL LAS VEGAS

DEC 31 2014

RECEIVED

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
 3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
 Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/21/2014 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Urology Specialists

Patient Chart Note

119/79 75 5' 8" 205

EXAM

<u>System</u>	<u>Findings / Comment</u>
GENERAL	This is a well nourished and normally developed individual. In no acute distress.
NECK	Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly are appreciated.
LUNGS	Respiratory effort is normal without use of accessory muscles.
BACK	The spine is straight with normal ROM. There is no CVA or spinal tenderness to percussion.
ABDOMEN	Abdomen is soft and non-tender. There are no palpable masses or organomegaly. No obvious hernias are noted.
LYMPHATIC	There is no evidence of any cervical or inguinal lymphadenopathy.
NEURO-PSYCH	Patient has an appropriate affect.
SKIN-BREAST	Skin is warm and dry. No obvious rashes are noted.

OFFICE LABS:

<u>Color</u>	<u>Turbidity</u>	<u>SP-G</u>	<u>pH</u>	<u>Glu</u>	<u>Ket</u>	<u>Bili</u>	<u>Urobili</u>	<u>Ptn</u>	<u>Heme</u>	<u>Nit</u>	<u>LE</u>	<u>U-Cx</u>
Yellow	Clear	1.005	5	Neg	Neg	Neg	Neg	500 mg/dL	Neg	Neg	Neg	NO

IMPRESSION:

DIAGNOSIS

1 Malignancy-Prostate

ASSESSMENT

Chronic condition with a severe exacerbation. Newly dx'd low gr, low volume. Pt needs treatment to get back on transplant list. Would like robotic prostatectomy. Discussed risks including bowel injury, vessel injury, SUI, and ED. I discussed all of the most common risks, benefits, goals and alternatives to the proposed treatment and all questions have been answered.

PLAN-ORDERS:

Orders:

ORDER / PLAN

1 Weight Reduction Counseling

WHEN?

Today

CORVEL LAS VEGAS

Surgery:

DEC 31 2014

RECEIVED

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074

3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/21/2014 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000129

Urology Specialists

Patient Chart Note

Surgery # 1

Laparoscopic Radical Prostatectomy

Surgery # 2

Surgery # 3

David Ludlow MD

DATE: 11/21/2014 11:58 AM

Electronically signed by David Ludlow MD on 11/21/2014 05:33 PM

CORVEL LAS VEGAS

DEC 8 1 2014

RECEIVED

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 11/21/2014 Page 4 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000130

Urology

Clinical Summary

Today's Provider: Adelbert M. Wadsworth PA-C

Today's Date: 11/21/2014 9:06 AM

Today's Location: USON Red Rock

PATIENT NAME: Brent E. Bean

DOB: 08/07/1961 AGE: 53 RACE: Caucasian ETHNICITY: Not Hispanic or Latino

PRIMARY LANGUAGE: English

REFERRING PROVIDER: Steven Norris, M. D.

PRIMARY CARE PHYSICIAN: Roehl Pena, M. D.

Dear Brent E. Bean,

As a summary of today's visit, I have listed the major diagnoses or impressions and the subsequent recommended plan of action.

CHIEF COMPLAINTS:

#1 Prostate cancer

HISTORY OF PRESENT ILLNESS:

Brent is a 53 year old male who presents with a new diagnosis of prostate cancer. He denies any previous treatment of his prostate cancer. He denies any history of SUI or erectile dysfunction. His AUA voiding system score is in the moderate range at 14/35 - 3. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. His Karnofsky Performance Score is 100. Pt was on transplant list, but was taken off the list due to new dx of low grade, low volume prostate cancer.

FINDINGS FOR TODAY:

DIAGNOSIS

1 Malignancy-Prostate

ASSESSMENT

Chronic condition with a severe exacerbation. Newly dx'd low gr, low volume. Pt needs treatment to get back on transplant list. Would like robotic prostatectomy. Discussed risks including bowel injury, vessel injury, SUI, and ED. I discussed all of the most common risks, benefits, goals and alternatives to the proposed treatment and all questions have been answered.

OFFICE PROCEDURES:

MEDICATIONS ORDERED TODAY:

ORDERS:

ORDER / PLAN

1 Weight Reduction Counseling

WHEN?

Today

Urology Specialists of Nevada

56 N. Pecos Rd., Suite B. Henderson, NV 89074 // 3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128

5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Urology

Clinical Summary

Today's Provider: Adelbert M. Wadsworth PA-C

Today's Date: 11/21/2014 9:06 AM

Today's Location: USON Red Rock

UPCOMING SURGERY / FOLLOW UP APPOINTMENT:

Surgery # 1

Surgery # 2

Surgery # 3

Laparoscopic Radical Prostatectomy

The following details were also recorded and/or reviewed and updated during your visit:

FAMILY HISTORY:

<u>Family Member</u>	<u>Age</u>	<u>Condition</u>	<u>COD</u>	<u>Comments</u>
Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
Brother	38	Healthy	NO	
Paternal Grandmother	91	Healthy	NO	
Family History of		Melanoma	NO	
Maternal Grandmother	88	Cancer	NO	
Paternal Grandfather	74	Heart Attack	NO	
Maternal Grandmother	58	Alcoholism	NO	
Father	66	Heart Disease	YES	
Sister	38	Healthy	NO	
Family History of		Colon Cancer	NO	

ALLERGIES:

NKDA

ALLERGIES:

<u>Description</u>	<u>Reaction</u>
No Known Allergies	

PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999

Urology Specialists of Nevada

56 N. Pecos Rd., Suite B, Henderson, NV 89074 " 3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128

5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 " Fax: (702) 877-3238 " www.usonv.com

Urology

Clinical Summary

Today's Provider: Adelbert M. Wadsworth PA-C

Today's Date: 11/21/2014 9:06 AM

Today's Location: USON Red Rock

Membranous Neuropathy	1996
Hypercholesterolemia	2000

PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

SMOKER STATUS:

CURRENT MEDICATION LIST:

<u>Brand Name</u>	<u>Dose</u>	<u>Sig Desc</u>
Allopurinol		take 1 tablet (100MG) by ORAL route 3 times every day
Doxycycline Hyclate	100 Mg	take 1 capsule (100MG) by oral route 2 times every day
Flomax	0.4 Mg	take 1 Capsule by Oral route every day
Lotensin	20mg	take 1 tablet (20MG) by ORAL route every day
Valium	10 Mg	take 1 tablet by oral route every day
Zocor	40mg	take 1 tablet (40MG) by ORAL route every day in the evening

VITAL SIGNS:

<u>TEMP F</u>	<u>BP</u>	<u>HR</u>	<u>HEIGHT</u>	<u>WEIGHT-Lb</u>	<u>BMI</u>
119/ 79		75	5' 8"	205	31.44

URINALYSIS:

Urology Specialists of Nevada

56 N. Pecos Rd., Suite B, Henderson, NV 89074 • 3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128

~~5701 W Charleston Blvd., Suite 201, Las Vegas, NV 89146~~

Phone: (702) 877-0814 • Fax: (702) 877-3238 • www.usonv.com

Urology Specialists

Clinical Summary

Today's Provider: Adelbert M. Wadsworth PA-C

Today's Date: 11/21/2014 9:06 AM

Today's Location: USON Red Rock

<u>Color</u>	<u>Turbidity</u>	<u>SP-G</u>	<u>pH</u>	<u>Glu</u>	<u>Ket</u>	<u>Bili</u>	<u>Urobili</u>	<u>Ptn</u>	<u>Heme</u>	<u>Nit</u>	<u>LE</u>	<u>U-Cx</u>
Yellow	Clear	1.005	5	Neg	Neg	Neg	Neg	500 mg/dL	Neg	Neg	Neg	NO

OUTSIDE LABORATORY / RADIOLOGY REVIEW:

Thank you Brent for visiting us at Urology Specialists of Nevada. We look forward to being a continued valuable partner in all of your urologic healthcare needs.

With Warm Regards,

David Ludlow MD

David Ludlow MD

Urology Specialists of Nevada

56 N. Pecos Rd., Suite B, Henderson, NV 89074 // 3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128

~~5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146~~

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

JA000134

Urology Specialists

Patient Chart Note

February 23, 2015

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 53

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents with a history of prostate cancer. There is no change in condition from last visit. He denies any previous treatment of his prostate cancer. His AUA voiding system score is in the moderate range at 14/35 -3. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. Pt on transplant list for renal failure and found to have elevated PSA and Bx revealed LGLV PCa. Plans for robotic prostatectomy for cure and to allow pt to get back on transplant list. Had recent peritoneal dialysis cath placed and returns to evaluate scars and location to make sure robotic approach still feasible.

The following has been reviewed: MEDICAL RECORDS: Old medical records were reviewed.

PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

MEDICATIONS:

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 02/23/2015 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Urology Specialists

Patient Chart Note

Medication	Dose
Valium	10 Mg
Doxycycline Hyclate	100 Mg
Flomax	0.4 Mg
Allopurinol	
Simvastatin	40mg
Benazepril Hcl	20mg

ALLERGIES:

NKDA

ALLERGIES:

Allergy

Rxn

No Known Allergies

SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

FAMILY HISTORY:

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 02/23/2015 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000136

31

Urology Specialists

Patient Chart Note

PHYSICAL EXAM:

VITAL SIGNS

Temp F	BP	P	Height	Wt Lb
	143/93	68	5' 8"	

EXAM

System

Findings / Comment

GENERAL

This is a well nourished and normally developed individual. In no acute distress.

NECK

Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly

are appreciated.

LUNGS

Respiratory effort is normal without use of accessory muscles.

BACK

The spine is straight with normal ROM. There is no CVA or spinal tenderness to

percussion.

ABDOMEN

ABDOMEN: Soft. It is non-tender to palpation. There are no palpable masses. There is no organomegaly. No hernias are appreciated. Stool guac not tested. Has peritoneal dialysis catheter on Rt abdomen. Also healing l/s incision sites.

NEURO-PSYCH

Patient has an appropriate affect.

SKIN-BREAST

Skin is warm and dry. No obvious rashes are noted.

OFFICE LABS:

Color	Turbidity	SP-G	pH	Glu	Ket	Bili	Urobili	Ptn	Heme	Nit	LE	U-Cx
Yellow	Clear	1.010	6	>1000	mg/dL	Neg	Neg	Neg	500	mg/dL	Neg	Neg Neg
NO												

IMPRESSION:

DIAGNOSIS

ASSESSMENT

1 Malignancy-Prostate

Chronic condition with a mild exacerbation. Had PD catheter placed few wks ago. Has some incisional scars and catheter in Rt abdomen. Discussed case with multiple nephrologists and they say that prostatectomy is not contraindicated. We discussed that case may be more difficult robotically due to PD cath and recent l/s surgery. Discussed that there is possibility of converting to open.

David Ludlow MD

DATE: 02/23/2015 11:54 AM

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074

3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 02/23/2015 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000137

Urology Specialists

Patient Chart Note

Electronically signed by David Ludlow MD on 02/23/2015 12:08 PM

Urology Specialists of Nevada

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074
3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146
Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

SURG Report LMC:

BEAN, BRENT E - SHM4800516

* Final Report *

Result type: SURG Report LMC:
Result date: 25 February 2015 00:00 PST
Result status: Auth (Verified)
Result title: SURG
Encounter info: SHM0000011793122, SHM Center, Inpatient, 02/24/15 - 02/27/15
Contributor system: SHM_AP_LMC

Attachments:
25 February 2015 00:00 PST - PDF

* Final Report *

SURG

Case: -
3AC2015-005596

Patient: -
BRENT BEAN

Specimen Clinical Information: -
CLINICAL HISTORY: PROSTATE MALIGNANCY
ICD-9 CODE(S):
PROCEDURE AND FINDINGS: ROBOTIC PROSTATECTOMY

Material Submitted: -
PROSTATE, RADICAL RESECTION

Diagnosis: -
PROSTATE, RADICAL PROSTATECTOMY:
-
ADENOCARCINOMA OF THE PROSTATE, NOT OTHERWISE SPECIFIED.

Gleason Score: 6 (3+3)

Tertiary Pattern: NONE

Percent of Prostate Involved by Tumor: APPROXIMATELY 10%

Perineural invasion: PRESENT

Lymphatic/vascular invasion: ABSENT

Extraprostatic extension: ABSENT

Margin status:

Apical: NEGATIVE

Bladder neck: NEGATIVE

Anterior: NEGATIVE

Printed by: Ulan, Mary-Anne
Printed on: 03/05/15 08:09 PST

Page 1 of 3
(Continued)

JA000139

SURG Report LMC:

BEAN, BRENT E ; SHM4800516

Final Report

Posterior: NEGATIVE

Right lobe lateral: NEGATIVE

Left lobe lateral: NEGATIVE

Additional Findings: HIGH GRADE PROSTATIC INTRAEPITHELIAL NEOPLASIA

Seminal vesicles:

Right: NOT INVOLVED BY TUMOR

Left: NOT INVOLVED BY TUMOR

Lymph nodes: NONE SUBMITTED

AJCC pTNM CLASSIFICATION (7th Edition)

T2c NX MX

Microscopic: -

Microscopic examination performed and the results incorporated into the final diagnosis. All controls stained appropriately. (ALC/jjm)

Gross Description: -

The specimen is received in formalin labeled with the proper patient identification and source, and consists of a 30 gram, 4.3 x 3.0 x 2.9 cm prostate that has a tan-red brown smooth to focally ragged appearing external surface. The right seminal vesicle and vas deferens measure 2.5 x 1.5 cm and 0.7 x 0.5 cm, respectively. The left seminal vesicle and vas deferens measure 2.5 x 1.5 cm and 1.5 x 0.5 cm, respectively. The right lobe is inked blue, the left lobe is inked green and the posterior aspect is inked black. The prostatic urethra is patent and the bladder/base and apical margins are removed and radially sectioned around their respective os. The remainder of the prostate is serially sectioned from apex to base. The cut surfaces are tan to tan-brown with a faint nodular appearance around the prostatic urethra. A discrete lesion is not grossly identified.

Representative sections to include the majority of the posterior aspect are submitted as follows:

A1 right apical margin;

A2 left apical margin;

A3 right bladder/base margin;

A4 left bladder/base margin;

A5-A11 right lobe apex to base;

A12-A18 left lobe apex to base;

Printed by: Ulan, Mary-Anne
Printed on: 03/05/15 08:09 PST

Page 2 of 3
(Continued)

SURG Report LMC:

BEAN, BRENT E - SHM4800516

* Final Report *

A19 right seminal vesicle and prostatic parenchyma;

A20 left seminal vesicle and prostatic parenchyma. (LB/ats)

Case Signout Location: -

LMC 657 TOWN CENTER DR, LAS VEGAS, NV 89144 CLIA #29D0932923 CAP #6822602
ANNAMARIE L. CARLEY, M.D., LABORATORY DIRECTOR

ICD9 Code: -
165

Procedure: Routine H and E

Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine E and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine E and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E
Routine H and E

Electronically Signed By: -

Carley M.D., Annamarie, Pathologist

Case Signed: -
2015-02-27

Completed Action List:

* Order by

Printed by: Ulan, Mary-Anne
Printed on: 03/05/15 08:09 PST

Page 3 of 3
(End of Report)

Urology Specialists

OF NEVADA

O: 702.877.0314 • F: 702.877.3223

WWW.US-OF-NV.COM

Patient Chart Note

June 24, 2016

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 54

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

HISTORY OF PRESENT ILLNESS

Brent is a 54 year old male who presents with a history of prostate cancer. Overall, the patient's condition has improved. He initially presented with an elevated PSA. He has undergone previous treatment of his prostate cancer with radical prostatectomy. He admits to SUI requiring no pads and erectile dysfunction associated with the current problem. His AUA voiding system score is in the moderate range at 11/35 - 5. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. S/p RARP around 2 yrs ago. PSA's still negative. Overall doing well. Still mild leakage but slowly improving. Reviewed kegels. Still has ED but currently not a big priority. Looking to get back on transplant list. From my standpoint he is cured from disease.

The following has been reviewed: LABS: 6/20/2016 , PSA= < 0.1 MEDICAL RECORDS: Old medical records were reviewed.

PAST MEDICAL HISTORY:

Diagnosis	Year
Membranous Neuropathy	1996
Hypercholesterolemia	2000
Hypertension	1999
Renal insufficiency	
Left Renal Cell Carcinoma	

PAST SURGICAL HISTORY:

Procedure	Year
Shoulder Arthroscopy	1999
Wisdom teeth	1987
Left Partial Nephrectomy	2010

NORTHWEST
3150 N. Tenaya Way
Suite 165
Las Vegas, NV 89128

CENTRAL
2010 Goldring Ave.
Suite 200
Las Vegas, NV 89106

GREEN VALLEY
58 N. Pecos Rd.
Henderson, NV 89074

Urology Specialists

OF NEVADA

O: 702.877.0314 • F: 702.877.3233
www.usonv.com

Right Total Knee Arthroplasty 2013

MEDICATIONS:

Medication	Dose
LOSARTAN POTASSIUM	100 mg
ROPINIROLE HCL	2 mg
SILDENAFIL CITRATE	20 mg

ALLERGIES:

NKDA

ALLERGIES:

Allergy	Rxn
NO KNOWN ALLERGIES	

SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

FAMILY HISTORY:

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transpl
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
1 Family History of		Melanoma	NO	
0				
1 Family History of		Colon Cancer	NO	
0				

NORTHWEST
3150 N. Tenaya Way
Suite 165
Las Vegas, NV 89128

CENTRAL
2010 Goldring Ave.
Suite 200
Las Vegas, NV 89106

GREEN VALLEY
58 N. Pecos Rd.
Henderson, NV 89074

Urology Specialists

OF NEVADA

O: 702.877.0814 • F: 702.877.3283

WWW.USONV.COM

PHYSICAL EXAM:

VITAL SIGNS

Temp F	BP	P	Height	Wt Lb
	162/91	58	5' 8"	174

EXAM

System	Findings / Comment
GENERAL	This is a well nourished and normally developed individual. In no acute distress.
NECK	Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly are appreciated.
LUNGS	Respiratory effort is normal without use of accessory muscles.
BACK	The spine is straight with normal ROM. There is no CVA or spinal tenderness to percussion.
ABDOMEN	Abdomen is soft and non-tender. There are no palpable masses or organomegaly. No obvious hernias are noted.
LYMPHATIC	There is no evidence of any cervical or inguinal lymphadenopathy.
NEURO-PSYCH	Patient has an appropriate affect.
SKIN-BREAST	Skin is warm and dry. No obvious rashes are noted.

OFFICE LABS:

Color	Turbidity	SP-G	pH	Glucose	Ket	Bili	Urobili	Ptn	Hem	Nit	LE	U-Cx
Yellow	Clear	1.005	7	50 mg/dL	Neg	Neg	Neg	500 mg/dL	50	Neg	Neg	NO

IMPRESSION:

DIAGNOSIS

1 Hx of malignant neoplasm of prostate

ASSESSMENT

Chronic condition with a mild exacerbation. S/p RARP around 2 yrs ago. PSA's still negative. Overall doing well. Still mild leakage but slowly improving. Reviewed kegels. Still has ED but currently not a big priority. Will Rx Viagra. Looking to get back on transplant list. From my standpoint he is cured from disease.

NORTHWEST
3150 N. Tenaya Way
Suite 165
Las Vegas, NV 89128

CENTRAL
2010 Goldring Ave.
Suite 200
Las Vegas, NV 89106

GREEN VALLEY
58 N. Pecos Rd.
Henderson, NV 89074

Urology Specialists

OF NEVADA

O: 702.877.0314 • F: 702.877.3283
WWW.US2NV.COM

PLAN-ORDERS:

Medications:

Medication	Dose	#	Sig
SILDENAFIL CITRATE	20 mg	90	take 1 tablet by oral route 3-5 tablets per day for ED

Orders:

#	ORDER / PLAN	WHEN?
3	Low Carbohydrate / Mediterranean Diet	Today
4	F/U Appt. w/ David Ludlow MD	PRN (As Needed)

David Ludlow MD

DATE: 06/24/2016

NORTHWEST
3150 N. Tenaya Way
Suite 165
Las Vegas, NV 89128

CENTRAL
2010 Goldring Ave.
Suite 200
Las Vegas, NV 89106

GREEN VALLEY
58 N. Pecos Rd.
Henderson, NV 89074

From: +17022524355 Page: 1/3 Date: 10/31/2016 11:02:05 AM
From: +17023642990 Page: 1/3 Date: 10/28/2016 11:20:55 AM

OCT 28 2016

GREENMAN, GOLDBERG, RABY & MARTINEZ
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

JOHN A. GREENMAN
AURORA GOLDBERG
PAUL C. RABY
GABRIEL A. MARTINEZ
LISA M. ANDERSON
THOMAS W. ASKEROTH
THADDEUS J. YUREK, III

801 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 884-1618
FACSIMILE: (702) 384-2990

October 28, 2016

Via Mail and Facsimile (702) 877-3238

DAVID LUDLOW, M.D.
56 North Pecos Road
Suite B
Henderson, Nevada 89074

RE: Claimant : Brent Bean
Claim No. : CK1000432
DOI : 11/14/09
Employer : Clark County
Our File No. : 16-432TY

Dear Dr. Ludlow:

Please be advised that this office represents Brent Bean in the above-referenced industrial injury claim. A copy of the signed medical release executed by Mr. Bean is enclosed.

On June 24, 2016, you discharged Mr. Bean from care for his industrially related prostate condition. At that time, you opined that Mr. Bean would require ongoing medications for his erectile dysfunction. You reported that the medication was "not a big priority" at that time. Please be advised the medication is now a priority. For that reason, we are sending this letter to clarify your medical opinion regarding this matter.

Therefore, this letter is being sent to ask for your medical opinion regarding Mr. Bean's need for ongoing medication related to the prostate condition. Please indicate below if you can state to a reasonable degree of medical probability that the erectile dysfunction medication is directly related to the industrially related prostate condition and subsequent surgery and should therefore be covered by Mr. Bean's workers' compensation carrier on an ongoing basis.

☒ Yes ☐ No _____ Date _____
Dr. David Ludlow

If you answer yes to this question, please provide the rationale to support your medical opinion, what medication is required, and whether/how often periodic follow-ups will be necessary to monitor and prescribe the medications;

Common side effect from prostate cancer surgery
due to disruption of the nerves associated
with erections.

Brent Bean
October 27, 2016
Page Two

Your attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.
For: Thaddeus J. Yurek, III, Esq.

TJY/rw
Enclosure

Charles E. Quaglieri, MD

330 E Liberty St, Ste 200
Reno, NV 89501-2221

Ph: 775-398-3610
Fax: 775-398-3676

PERMANENT PARTIAL DISABILITY EVALUATION

RE: BRENT BEAN
DATE: November 2, 2016
CLAIM #: 0583-WC-15-0000098
DOI: 11/07/2014
EMPLOYER: Clark County
BODY PARTS: Prostate cancer

WORKERS' COMPENSATION CARRIER: CORVEL CORPORATION

This 54-year-old man was referred for a Permanent Partial Disability Evaluation by CorVel Corporation.

The body part to be evaluated is prostate cancer.

This man is a retired firefighter. He has a complicated medical history. He has had a partial nephrectomy for cancer of the kidney. He is on peritoneal dialysis for membranous nephropathy. He also was found to have an elevated PSA in 2014. A prostatic biopsy showed adenocarcinoma of the prostate. He underwent robotically-assisted laparoscopic radical prostatectomy in February 2015. When he is considered clear of any prostatic cancer (and this takes 2 years), he will undergo a renal transplant. He already has a donor identified.

He has had a radical prostatectomy. He has urinary leakage and male stress incontinence manifested by leaking when he coughs. He uses pads for this when he leaves his home. He has no sexual function at all. He cannot obtain erections even after using Cialis. He does have sensation, however. His most recent PSAs have been 0.

MEDICAL RECORD REVIEW:

- 09/19/2014 Ultrasound. Increased renal cortical echogenicity suggestive of medical renal disease. A 1.5 cm left peripelvic renal cyst. A 6 mm nonobstructive right renal calculus suspect hepatic steatosis, hepatic cysts.
- 10/03/2014 Amanda Gould, PA. Urology consultation. Chronic renal failure doing well and no need of dialysis. Waiting for renal transplant. Elevated PSA, malignancy of the kidney and renal cysts. The patient is a 53-year-old man who presents with a complaint of malignancy of the kidney on the left side. There is no change in his

BRENT BEAN

11/02/2014

Page 2 of 5

condition. He is status post left partial nephrectomy in 2010. He is doing well. He is not on dialysis. He is waiting for a renal transplant. He also has an elevated PSA. His voiding system scores in the moderate range at 14/35. He is taking Flomax. This has helped with his emptying symptoms.

- 10/23/2014 A.M. Wodsworth, PA. Urology evaluation. Elevated PSA. He is waiting for renal transplant. Diagnosis: Chronic renal failure. His current PSA is 4.1. This was performed on 10/15/2014.
- 10/29/2014 Dr. Ludlow. Procedure note. Prostate biopsy.
- 10/29/2014 Prostate biopsy results. Adenocarcinoma Gleason 3+3=6 stage involving 5% of a 19-mm core.
- 11/18/2014 Dr. Zommick. Urology. Diagnoses: Malignancy of the prostate, newly diagnosed low grade, low volume prostate cancer on biopsy. Standard of care for this stage of disease would be active surveillance. The patient was complicated, but he needs to be cleared from cancer in order to get a renal transplant. We will discuss options with his coordinator. It is my hope that with this stage of disease that treatment will not be necessary. The chance of this cancer-causing mortality in the next 10 to 20 years is extremely low.
- 12/22/2014 C4 Form. Prostate cancer diagnosis with prostate biopsy. The patient will need prostatectomy.
- 02/21/2015 Dr. Ludlow. Urology followup. The patient needs treatment to get back on the transplant list. Would like robotic prostatectomy. Plan laparoscopic radical prostatectomy.
- 02/23/2015 Dr. Ludlow. Urology followup. Diagnosis: Malignancy of the prostate. The patient had a PD catheter placed a few weeks ago. He has some incisional scars and catheter in the right abdomen. The case has been discussed with nephrologist and they say prostatectomy is not contraindicated. We may have to do the case open due to the catheter.
- 02/24/2015 Summerlin Hospital. Discharge Summary. The patient was admitted with end stage renal disease. He is awaiting peritoneal dialysis. He is status post peritoneal dialysis catheter placement 2 weeks ago. He has a history of prostate cancer and postoperative anemia. He has a history of membranous nephropathy and hyperlipidemia. The patient underwent laparoscopic prostatectomy robotically assisted.
- 02/24/2015 Procedure Note. Robot assisted bilateral nerve sparing laparoscopic prostatectomy.

BRENT BEAN

11/02/2014

Page 3 of 5

- 02/24/2015 Dr. Rouhani. Consult. Endstage renal disease awaiting peritoneal dialysis. He has a peritoneal dialysis catheter in. He has history of prostate cancer and is awaiting prostatectomy. A history of hypertension, hyperlipidemia and history of membranous nephropathy.
- 04/03/2015 Dr. Ludlow. Urology followup. The patient is currently cured from his urological standpoint and should be able to get back on the transplant list. He passed the voiding trial. We discussed Kegel exercises. He will take Cialis once daily for ED rehab. He is also taking Norco.
- 06/04/2015 Prostatic antigen less than 0.1 with a reference range of 0.0 to 4.0 ng/mL.
- 06/17/2015 Dr. Ludlow. Urology followup. Diagnosis: Prostate malignancy. He can be placed back on the transplant list. He has organic impotency. No improvement with Cialis. He has male stress incontinence. This is improving, but still requires one PDD. Kegel exercises were again discussed. His voiding score is in the moderate range at 11/35 - 5. He is on dialysis. He is impotent. He is on Cialis.
- 06/20/2016 PSA. Less than 0.1 with reference range of 0.024.0 ng/mL.
- 06/24/2016 Dr. Ludlow. PSA is still negative. Overall, doing well. He still has mild leakage, but slowly improving. We reviewed Kegels. He still has ED, but not a big priority. Viagra prescribed. He is trying to get back on the transplant list. From my standpoint, he is cured from the disease.

PAST MEDICAL HISTORY: is as noted above. He is currently on peritoneal dialysis for membranous nephropathy. He has had a partial nephrectomy for CA of the kidney. He has had a radical prostatectomy for prostate CA. He has hypertension and restless legs syndrome. He takes Ropinirole, Bystolic and losartan. He has no known allergies. He has had a nephrectomy, radical prostatectomy, and a total knee replacement.

FAMILY HISTORY: is noncontributory.

SOCIAL HISTORY: He is a retired firefighter. He does not smoke or drink.

HISTORY OF PREVIOUS AWARD: He has had a previous PPD award for his diagnosis of cancer of the kidney and nephrectomy.

He was accompanied today by his attorney.

BRENT BEAN

11/02/2014

Page 4 of 5

EXAMINATION: reveals an alert, oriented, and cooperative left-handed man. The patient has normal distribution of pubic hair. The testicles are descended. There are no testicular masses noted. He is checked for herniae and there are no herniae noted. Sensation in the perineum to light touch is intact.

RATING EVALUATION:

The AMA Guides to the Evaluation of Permanent Impairment, 5th edition, second printing were consulted.

The male reproductive system is discussed in Chapter 7 of the Guides.

I first reviewed Section 7.7g dealing with the prostate gland and seminal vesicles. The claimant has undergone a radical prostatectomy for cancer of the prostate. This puts him in Class 3, which allows 16-20% impairment. In example 7-38 on Page 162, the Guides awarded 16% impairment of the whole person due to the radical prostatectomy.

The claimant also has urinary incontinence, i.e. male stress incontinence. The example in the Guides did not have this complication. The Guides direct the rater to consider this and the claimant's sexual function in addition to the award for the radical prostatectomy. The claimant's male stress incontinence and dribbling are considered under section 7.8. I used table 7-4. He uses a pad intermittently (when he is away from home). He is class 1 and this allows 0-10% whole person impairment. He is allowed 10% whole person impairment for incontinence.

The Guides direct the rater to also consider and combine any impairment of sexual function with this award. This is discussed in Section 7.7a. The patient has no sexual function possible even with medication. According to Table 7.5 he is Class 3 which allows 20% impairment of the whole person.

The 16% impairment of the whole person due to the radical prostatectomy; the 10% whole person impairment due to incontinence; and, the 20% due to loss of sexual function are combined for a total of 39% impairment of the whole person.

APPORTIONMENT: There are no issues of apportionment.

BRENT BEAN

11/02/2014

Page 5 of 5

CONCLUSION: My conclusion is that there is 39% impairment of the whole person due to the diagnosis, treatment, and complications of prostate cancer of this claimant.



Charles E. Quaglieri, MD

CEQ/kc: 497/513

cc: CorVel Corporation

Attn: Leslie Ribadeneira

PO Box 61228

Las Vegas, NV 89160

GREENMAN, GOLDBERG, RABY & MARTINEZ
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

JOHN A. GREENMAN
AUBREY GOLDBERG
PAUL E. RABY
GABRIEL A. MARTINEZ
LISA M. ANDERSON
THOMAS W. ASKEROTH
THADDEUS J. YUREK, III

601 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 384-1616
FACSIMILE: (702) 384-2990

November 30, 2016

VIA U.S. MAIL & FACSIMIL: 866-728-8275

Leslie Ribadeneira, Claims Examiner
CORVEL
P.O. Box 61228
Las Vegas, Nevada 89160

RE: Claimant : Brent Bean
Claim No. : CK1000432
DOI : 11/14/09
Employer : Clark County
Our File No. : 16-432TY

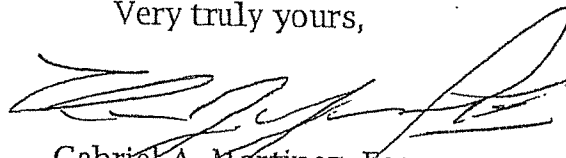
Dear Ms. Ribadeneira:

As you know, Dr. Charles Quaglieri recently evaluated Brent Bean for permanent partial disability. A copy of that report is enclosed for your convenience. As you can see, Dr. Quaglieri concluded that Mr. Bean qualified for a thirty-nine percent (39%) whole person impairment. Upon further review, it appears that Dr. Quaglieri miscalculated the impairment and the correct impairment should actually be forty percent (40%) whole person impairment.

Pursuant to the recent legislative changes, you are now able to offer thirty percent (30%) in a lump sum. Therefore, please accept this letter as a formal request to offer Mr. Bean the forty percent (40%) whole person impairment, with thirty percent (30%) being offered in a lump sum. Please notify the parties if this request will be granted.

Your attention this matter is greatly appreciated. If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.
Thaddeus J. Yurek, Esq.

TJY/rw
Enclosure

Charles E. Quaglieri, MD

330 E Liberty St, Ste 200
Reno, NV 89501-2221

Ph: 775-398-3610
Fax: 775-398-3676

PERMANENT PARTIAL DISABILITY EVALUATION

RE: BRENT BEAN
DATE: November 2, 2016
CLAIM #: 0583-WC-15-0000098
DOI: 11/07/2014
EMPLOYER: Clark County
BODY PARTS: Prostate cancer

WORKERS' COMPENSATION CARRIER: CORVEL CORPORATION

This 54-year-old man was referred for a Permanent Partial Disability Evaluation by CorVel Corporation

The body part to be evaluated is prostate cancer.

This man is a retired firefighter. He has a complicated medical history. He has had a partial nephrectomy for cancer of the kidney. He is on peritoneal dialysis for membranous nephropathy. He also was found to have an elevated PSA in 2014. A prostatic biopsy showed adenocarcinoma of the prostate. He underwent robotically-assisted laparoscopic radical prostatectomy in February 2015. When he is considered clear of any prostatic cancer (and this takes 2 years), he will undergo a renal transplant. He already has a donor identified.

He has had a radical prostatectomy. He has urinary leakage and male stress incontinence manifested by leaking when he coughs. He uses pads for this when he leaves his home. He has no sexual function at all. He cannot obtain erections even after using Cialis. He does have sensation, however. His most recent PSAs have been 0.

MEDICAL RECORD REVIEW:

- 09/19/2014 Ultrasound. Increased renal cortical echogenicity suggestive of medical renal disease. A 1.5 cm left peripelvic renal cyst. A 6 mm nonobstructive right renal calculus suspect hepatic steatosis, hepatic cysts.
- 10/03/2014 Amanda Gould, PA. Urology consultation. Chronic renal failure doing well and no need of dialysis. Waiting for renal transplant. Elevated PSA, malignancy of the kidney and renal cysts. The patient is a 53-year-old man who presents with a complaint of malignancy of the kidney on the left side. There is no change in his

BRENT BEAN
11/02/2014
Page 2 of 5

condition. He is status post left partial nephrectomy in 2010. He is doing well. He is not on dialysis. He is waiting for a renal transplant. He also has an elevated PSA. His voiding system scores in the moderate range at 14/35. He is taking Flomax. This has helped with his emptying symptoms.

- 10/23/2014 A.M. Wodsworth, PA. Urology evaluation. Elevated PSA. He is waiting for renal transplant. Diagnosis: Chronic renal failure. His current PSA is 4.1. This was performed on 10/15/2014.
- 10/29/2014 Dr. Ludlow. Procedure note. Prostate biopsy.
- 10/29/2014 Prostate biopsy results. Adenocarcinoma Gleason 3+3=6 stage involving 5% of a 19-mm core.
- 11/18/2014 Dr. Zommick. Urology. Diagnoses: Malignancy of the prostate, newly diagnosed low grade, low volume prostate cancer on biopsy. Standard of care for this stage of disease would be active surveillance. The patient was complicated, but he needs to be cleared from cancer in order to get a renal transplant. We will discuss options with his coordinator. It is my hope that with this stage of disease that treatment will not be necessary. The chance of this cancer-causing mortality in the next 10 to 20 years is extremely low.
- 12/22/2014 C4 Form. Prostate cancer diagnosis with prostate biopsy. The patient will need prostatectomy.
- 02/21/2015 Dr. Ludlow. Urology followup. The patient needs treatment to get back on the transplant list. Would like robotic prostatectomy. Plan laparoscopic radical prostatectomy.
- 02/23/2015 Dr. Ludlow. Urology followup. Diagnosis: Malignancy of the prostate. The patient had a PD catheter placed a few weeks ago. He has some incisional scars and catheter in the right abdomen. The case has been discussed with nephrologist and they say prostatectomy is not contraindicated. We may have to do the case open due to the catheter.
- 02/24/2015 Summerlin Hospital. Discharge Summary. The patient was admitted with end stage renal disease. He is awaiting peritoneal dialysis. He is status post peritoneal dialysis catheter placement 2 weeks ago. He has a history of prostate cancer and postoperative anemia. He has a history of membranous nephropathy and hyperlipidemia. The patient underwent laparoscopic prostatectomy robotically assisted.
- 02/24/2015 Procedure Note. Robot assisted bilateral nerve sparing laparoscopic prostatectomy.

BRENT BEAN
11/02/2014
Page 3 of 5

- 02/24/2015 Dr. Rouhani. Consult. Endstage renal disease awaiting peritoneal dialysis. He has a peritoneal dialysis catheter in. He has history of prostate cancer and is awaiting prostatectomy. A history of hypertension, hyperlipidemia and history of membranous nephropathy.
- 04/03/2015 Dr. Ludlow. Urology followup. The patient is currently cured from his urological standpoint and should be able to get back on the transplant list. He passed the voiding trial. We discussed Kegel exercises. He will take Cialis once daily for ED rehab. He is also taking Norco.
- 06/04/2015 Prostatic antigen less than 0.1 with a reference range of 0.0 to 4.0 ng/mL.
- 06/17/2015 Dr. Ludlow. Urology followup. Diagnosis: Prostate malignancy. He can be placed back on the transplant list. He has organic impotency. No improvement with Cialis. He has male stress incontinence. This is improving, but still requires one PDD. Kegel exercises were again discussed. His voiding score is in the moderate range at 11/35 - 5. He is on dialysis. He is impotent. He is on Cialis.
- 06/20/2016 PSA. Less than 0.1 with reference range of 0.024.0 ng/mL.
- 06/24/2016 Dr. Ludlow. PSA is still negative. Overall, doing well. He still has mild leakage, but slowly improving. We reviewed Kegels. He still has ED, but not a big priority. Viagra prescribed. He is trying to get back on the transplant list. From my standpoint, he is cured from the disease.

PAST MEDICAL HISTORY: is as noted above. He is currently on peritoneal dialysis for membranous nephropathy. He has had a partial nephrectomy for CA of the kidney. He has had a radical prostatectomy for prostate CA. He has hypertension and restless legs syndrome. He takes Kopinirole, Bystolic and losartan. He has no known allergies. He has had a nephrectomy, radical prostatectomy, and a total knee replacement.

FAMILY HISTORY: is noncontributory.

SOCIAL HISTORY: He is a retired firefighter. He does not smoke or drink.

HISTORY OF PREVIOUS AWARD: He has had a previous PPD award for his diagnosis of cancer of the kidney and nephrectomy.

He was accompanied today by his attorney.

BRENT BEAN

11/02/2014

Page 4 of 5

EXAMINATION: reveals an alert, oriented, and cooperative left-handed man. The patient has normal distribution of pubic hair. The testicles are descended. There are no testicular masses noted. He is checked for herniae and there are no herniae noted. Sensation in the perineum to light touch is intact.

RATING EVALUATION:

The AMA Guides to the Evaluation of Permanent Impairment, 5th edition, second printing were consulted.

The male reproductive system is discussed in Chapter 7 of the Guides.

I first reviewed Section 7.7g dealing with the prostate gland and seminal vesicles. The claimant has undergone a radical prostatectomy for cancer of the prostate. This puts him in Class 3, which allows 16-20% impairment. In example 7-38 on Page 162, the Guides awarded 16% impairment of the whole person due to the radical prostatectomy.

The claimant also has urinary incontinence, i.e. male stress incontinence. The example in the Guides did not have this complication. The Guides direct the rater to consider this and the claimant's sexual function in addition to the award for the radical prostatectomy. The claimant's male stress incontinence and dribbling are considered under section 7.8. I used table 7-4. He uses a pad intermittently (when he is away from home). He is class 1 and this allows 0-10% whole person impairment. He is allowed 10% whole person impairment for incontinence.

The Guides direct the rater to also consider and combine any impairment of sexual function with this award. This is discussed in Section 7.7a. The patient has no sexual function possible even with medication. According to Table 7.5 he is Class 3 which allows 20% impairment of the whole person.

The 16% impairment of the whole person due to the radical prostatectomy; the 10% whole person impairment due to incontinence; and, the 20% due to loss of sexual function are combined for a total of 39% impairment of the whole person.


APPORTIONMENT: There are no issues of apportionment.

BRENT BEAN

11/02/2014

Page 5 of 5

CONCLUSION: My conclusion is that there is 39% impairment of the whole person due to the diagnosis, treatment, and complications of prostate cancer of this claimant.


Charles E. Quaglieri, MD
CEQ/kc: 497/513

cc: CorVel Corporation
Attn: Leslie Ribadeneira
PO Box 61228
Las Vegas, NV 89160

GREENMAN, GOLDBERG, RABY & MARTINEZ
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JOHN A. GREENMAN
AUBREY GOLDBERG
PAUL E. RABY
GABRIEL A. MARTINEZ
LISA M. ANDERSON
THOMAS W. ASKEROTH
THADDEUS J. YUREK, III

601 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 384-1616
FACSIMILE: (702) 384-2990

November 30, 2016

VIA U.S. MAIL & FACSIMIL: 866-728-8275

Leslie Ribadeneira, Claims Examiner
CORVEL
P.O. Box 61228
Las Vegas, Nevada 89160

RE: Claimant : Brent Bean
Claim No. : CK1000432
DOI : 11/14/09
Employer : Clark County
Our File No. : 16-432TY

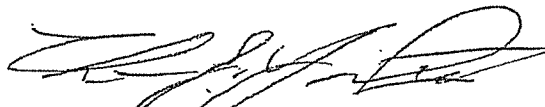
Dear Ms. Ribadeneira:

As you know, this office represents Brent Bean regarding the above-referenced industrial injury.

Mr. Bean underwent a laparoscopic prostatectomy as a result of his occupationally related prostate cancer condition. Mr. Bean's treating physician, Dr. David Ludlow, has confirmed that Mr. Bean requires ongoing medication for erectile dysfunction caused by the nerve damage that resulted from the prostate cancer surgery. Pursuant to this opinion, please accept this letter as a formal request to authorize ongoing medication following claim closure. Please notify the parties if this request will be granted.

Your attention this matter is greatly appreciated. If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.
Thaddeus J. Yurek, Esq.

TJY/rw
Enclosure

JA000159

From: 417022524055

Page: 1/3

Date: 10/31/2016 11:02:05 AM

From: +17023842999

Page: 1/3

Date: 10/28/2016 11:20:55 AM

OCT 28 2016

GREENMAN, GOLDBERG, RABY & MARTINEZ
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

801 SOUTH NINTH STREET

LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 384-1818
FACSIMILE: (702) 384-2990

JOHN A. GREENMAN
AURRAY GOLDBERG
PAUL E. RABY
GABRIEL A. MARTINEZ
LISA M. ANDERSON
THOMAS W. ASKEROTH
THADDEUS J. YUREK, III

October 28, 2016

Via Mail and Facsimile (702) 877-3238

DAVID LUDLOW, M.D.
56 North Pecos Road
Suite B
Henderson, Nevada 89074

RE: Claimant : Brent Bean
Claim No. : CK1000432
DOI : 11/14/09
Employer : Clark County
Our File No. : 16-432TY

Dear Dr. Ludlow:

Please be advised that this office represents Brent Bean in the above-referenced industrial injury claim. A copy of the signed medical release executed by Mr. Bean is enclosed.

On June 24, 2016, you discharged Mr. Bean from care for his industrially related prostate condition. At that time, you opined that Mr. Bean would require ongoing medications for his erectile dysfunction. You reported that the medication was "not a big priority" at that time. Please be advised the medication is now a priority. For that reason, we are sending this letter to clarify your medical opinion regarding this matter.

Therefore, this letter is being sent to ask for your medical opinion regarding Mr. Bean's need for ongoing medication related to the prostate condition. Please indicate below if you can state to a reasonable degree of medical probability that the erectile dysfunction medication is directly related to the industrially related prostate condition and subsequent surgery and should therefore be covered by Mr. Bean's workers' compensation carrier on an ongoing basis.

☒ Yes ☐ No _____ Date _____
Dr. David Ludlow

If you answer yes to this question, please provide the rationale to support your medical opinion, what medication is required, and whether/how often periodic follow-ups will be necessary to monitor and prescribe the medications:

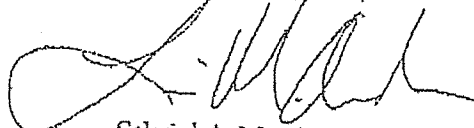
Common side effect from prostate cancer surgery
due to disruption of the nerves associated
with erection.

From: +17022524055 Page: 2/3 Date: 10/31/2016 11:02:05 AM
From: +17022524055 Page: 2/3 Date: 10/28/2016 11:20:55 AM

Brent Bean
October 27, 2016
Page Two

Your attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.
For: Thaddeus J. Yurek, III, Esq.

TJY/rw
Enclosure

16-432J

CORVEL

December 1, 2016

Brent Bean
3405 Amish Ave.
N. Las Vegas NV 89031

RE: Claim Number: 0583-WC-15-0000098
Employer: Clark County
Date of Injury: 11/07/2014

Dear Mr. Bean
CorVel Corporation is the Third Party Administrator for above listed employer.

We have received and review the Permanent Partial Disability (PPD) evaluation by Charles E. Quaglieri (enclosed).

There appears to be a clerical error in the combining of multiple impairment rating(s) and we are seeking further clarification from the doctor. Once clarification is received a further determination will be rendered.

NAC 616C.103 (7) If the insurer disagrees in good faith with the result of the rating evaluation, the insurer shall, within the time prescribed in NRS 616C.490:

(c) Notify the injured employee of the specific reasons for the disagreement and the right of the injured employee to appeal. The notice must also set forth a detailed proposal for resolving the dispute that can be executed in 75 days, unless the insurer demonstrates good cause for why the proposed resolution will require more than 75 days.

If you disagree with this determination, you have the right to request a resolution to your dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. To do so, complete the enclosed "Request for Hearing" and submit it with a copy of this determination letter to the Department of Administration, Hearings Division, at one of the addresses listed on the form WITHIN SEVENTY (70) DAYS OF THE DATE OF THIS LETTER.

If you have any questions, please contact the undersigned at 702-455-2450.

Sincerely,



Leslie Ribadeneira
Sr. Claims Specialist

Encl.: D-12a, D-2, PPD Report

cc: File, Clark County, GGRM

CorVel Corporation
www.corvel.com

P.O. Box 61228
Las Vegas, NV 89160

888-368-4212 (800)
866-728-8275 E-Fax

Charles E. Quaglieri, MD

330 E Liberty St, Ste 200
Reno, NV 89501-2221

Ph: 775-398-3610
Fax: 775-398-3676

PERMANENT PARTIAL DISABILITY EVALUATION

RE: BRENT BEAN
DATE: November 2, 2016
CLAIM #: 0583-WC-15-0000098
DOI: 11/07/2014
EMPLOYER: Clark County
BODY PARTS: Prostate cancer

WORKERS' COMPENSATION CARRIER: CORVEL CORPORATION

This 54-year-old man was referred for a Permanent Partial Disability Evaluation by CorVel Corporation

The body part to be evaluated is prostate cancer.

This man is a retired firefighter. He has a complicated medical history. He has had a partial nephrectomy for cancer of the kidney. He is on peritoneal dialysis for membranous nephropathy. He also was found to have an elevated PSA in 2014. A prostatic biopsy showed adenocarcinoma of the prostate. He underwent robotically-assisted laparoscopic radical prostatectomy in February 2015. When he is considered clear of any prostatic cancer (and this takes 2 years), he will undergo a renal transplant. He already has a donor identified.

He has had a radical prostatectomy. He has urinary leakage and male stress incontinence manifested by leaking when he coughs. He uses pads for this when he leaves his home. He has no sexual function at all. He cannot obtain erections even after using Cialis. He does have sensation, however. His most recent PSAs have been 0.

MEDICAL RECORD REVIEW:

- 09/19/2014 Ultrasound. Increased renal cortical echogenicity suggestive of medical renal disease. A 1.5 cm left peripelvic renal cyst. A 6 mm nonobstructive right renal calculus suspect hepatic steatosis, hepatic cysts.
- 10/03/2014 Amanda Gould, PA. Urology consultation. Chronic renal failure doing well and no need of dialysis. Waiting for renal transplant. Elevated PSA, malignancy of the kidney and renal cysts. The patient is a 53-year-old man who presents with a complaint of malignancy of the kidney on the left side. There is no change in his

BRENT BEAN

11/02/2014

Page 2 of 5

condition. He is status post left partial nephrectomy in 2010. He is doing well. He is not on dialysis. He is waiting for a renal transplant. He also has an elevated PSA. His voiding system scores in the moderate range at 14/35. He is taking Flomax. This has helped with his emptying symptoms.

- 10/23/2014 A.M. Wodsworth, PA. Urology evaluation. Elevated PSA. He is waiting for renal transplant. Diagnosis: Chronic renal failure. His current PSA is 4.1. This was performed on 10/15/2014.
- 10/29/2014 Dr. Ludlow. Procedure note. Prostate biopsy.
- 10/29/2014 Prostate biopsy results. Adenocarcinoma Gleason 3+3=6 stage involving 5% of a 19-mm core.
- 11/18/2014 Dr. Zommick. Urology. Diagnoses: Malignancy of the prostate, newly diagnosed low grade, low volume prostate cancer on biopsy. Standard of care for this stage of disease would be active surveillance. The patient was complicated, but he needs to be cleared from cancer in order to get a renal transplant. We will discuss options with his coordinator. It is my hope that with this stage of disease that treatment will not be necessary. The chance of this cancer-causing mortality in the next 10 to 20 years is extremely low.
- 12/22/2014 C4 Form. Prostate cancer diagnosis with prostate biopsy. The patient will need prostatectomy.
- 02/21/2015 Dr. Ludlow. Urology followup. The patient needs treatment to get back on the transplant list. Would like robotic prostatectomy. Plan laparoscopic radical prostatectomy.
- 02/23/2015 Dr. Ludlow. Urology followup. Diagnosis: Malignancy of the prostate. The patient had a PD catheter placed a few weeks ago. He has some incisional scars and catheter in the right abdomen. The case has been discussed with nephrologist and they say prostatectomy is not contraindicated. We may have to do the case open due to the catheter.
- 02/24/2015 Summerlin Hospital. Discharge Summary. The patient was admitted with end stage renal disease. He is awaiting peritoneal dialysis. He is status post peritoneal dialysis catheter placement 2 weeks ago. He has a history of prostate cancer and postoperative anemia. He has a history of membranous nephropathy and hyperlipidemia. The patient underwent laparoscopic prostatectomy robotically assisted.
- 02/24/2015 Procedure Note. Robot assisted bilateral nerve sparing laparoscopic prostatectomy.

BRENT BEAN
11/02/2014
Page 3 of 5

- 02/24/2015 Dr. Rouhani. Consult. Endstage renal disease awaiting peritoneal dialysis. He has a peritoneal dialysis catheter in. He has history of prostate cancer and is awaiting prostatectomy. A history of hypertension, hyperlipidemia and history of membranous nephropathy.
- 04/03/2015 Dr. Ludlow. Urology followup. The patient is currently cured from his urological standpoint and should be able to get back on the transplant list. He passed the voiding trial. We discussed Kegel exercises. He will take Cialis once daily for ED rehab. He is also taking Norco.
- 06/04/2015 Prostatic antigen less than 0.1 with a reference range of 0.0 to 4.0 ng/mL.
- 06/17/2015 Dr. Ludlow. Urology followup. Diagnosis: Prostate malignancy. He can be placed back on the transplant list. He has organic impotency. No improvement with Cialis. He has male stress incontinence. This is improving, but still requires one PDD. Kegel exercises were again discussed. His voiding score is in the moderate range at 11/35 - 5. He is on dialysis. He is impotent. He is on Cialis.
- 06/20/2016 PSA. Less than 0.1 with reference range of 0.024.0 ng/mL.
- 06/24/2016 Dr. Ludlow. PSA is still negative. Overall, doing well. He still has mild leakage, but slowly improving. We reviewed Kegels. He still has ED, but not a big priority. Viagra prescribed. He is trying to get back on the transplant list. From my standpoint, he is cured from the disease.

PAST MEDICAL HISTORY: is as noted above. He is currently on peritoneal dialysis for membranous nephropathy. He has had a partial nephrectomy for CA of the kidney. He has had a radical prostatectomy for prostate CA. He has hypertension and restless legs syndrome. He takes Ropinirole, Bystolic and losartan. He has no known allergies. He has had a nephrectomy, radical prostatectomy, and a total knee replacement.

FAMILY HISTORY: is noncontributory.

SOCIAL HISTORY: He is a retired firefighter. He does not smoke or drink.

HISTORY OF PREVIOUS AWARD: He has had a previous PPD award for his diagnosis of cancer of the kidney and nephrectomy.

He was accompanied today by his attorney.

BRENT BEAN

11/02/2014

Page 4 of 5

EXAMINATION: reveals an alert, oriented, and cooperative left-handed man. The patient has normal distribution of pubic hair. The testicles are descended. There are no testicular masses noted. He is checked for herniae and there are no herniae noted. Sensation in the perineum to light touch is intact.

RATING EVALUATION:

The AMA Guides to the Evaluation of Permanent Impairment, 5th edition, second printing were consulted.

The male reproductive system is discussed in Chapter 7 of the Guides.

I first reviewed Section 7.7g dealing with the prostate gland and seminal vesicles. The claimant has undergone a radical prostatectomy for cancer of the prostate. This puts him in Class 3, which allows 16-20% impairment. In example 7-38 on Page 162, the Guides awarded 16% impairment of the whole person due to the radical prostatectomy.

The claimant also has urinary incontinence, i.e. male stress incontinence. The example in the Guides did not have this complication. The Guides direct the rater to consider this and the claimant's sexual function in addition to the award for the radical prostatectomy. The claimant's male stress incontinence and dribbling are considered under section 7.8. I used table 7-4. He uses a pad intermittently (when he is away from home). He is class 1 and this allows 0-10% whole person impairment. He is allowed 10% whole person impairment for incontinence.

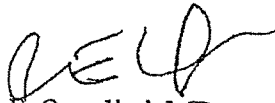
The Guides direct the rater to also consider and combine any impairment of sexual function with this award. This is discussed in Section 7.7a. The patient has no sexual function possible even with medication. According to Table 7.5 he is Class 3 which allows 20% impairment of the whole person.

The 16% impairment of the whole person due to the radical prostatectomy; the 10% whole person impairment due to incontinence; and, the 20% due to loss of sexual function are combined for a total of 39% impairment of the whole person.

APPORTIONMENT: There are no issues of apportionment.

BRENT BEAN
11/02/2014
Page 5 of 5

CONCLUSION: My conclusion is that there is 39% impairment of the whole person due to the diagnosis, treatment, and complications of prostate cancer of this claimant.



Charles E. Quaglieri, MD
CEQ/kc: 497/513

cc: CorVel Corporation
Attn: Leslie Ribadeneira
PO Box 61228
Las Vegas, NV 89160

16-437

Charles E. Quaglieri, MD

330 E Liberty St, Ste 200
Reno, NV 89501-2221

Ph: 775-398-3610
Fax: 775-398-3676

January 4, 2017

CorVel Corporation
Attn: Leslie Ribadeneira
PO Box 61228
Las Vegas, NV 89160

RE: BRENT BEAN
Claim No: 0583WC15-00000098
DOI: 11/07/2014
Employer: Clark County

CORVEL LAS VEGAS

JAN 11 2017

RECEIVED

Dear Ms. Ribadeneira,

I reviewed my PPD evaluation that I performed on November 2, 2016 in the case of Brent Bean.

You are correct. The combined total impairment is 40% whole person impairment/

I apologize for my error and by this letter amend my previous Permanent Partial Disability Evaluation performed on November 2, 2016.

Respectfully,



Charles E. Quaglieri, MD

CEQ/kc: 629

Toby Yurek

From: Toby Yurek
Sent: Monday, January 09, 2017 11:25 AM
To: 'Leslie_Ribadeneira@corvel.com'
Cc: Robert Windrem
Subject: Brent Bean


Good morning, Leslie.


I hope you had a nice weekend. I apologize for the delayed response, but I wanted to address your question regarding the appropriate wages (AMW) for calculating Mr. Bean's PPD award. Attorney General Opinion 2002-28 provides that a former firefighter's "date of separation from service in such capacity and wages earned immediately prior to such date of separation form the basis upon which disability benefits are to be calculated." This is consistent with NRS 617.453, which provides benefits for firefighters who develop employment related cancer up to 5 years following their date of retirement. I hope this helps address your concerns.

If you have any further questions, please feel free to contact me. Also, I was wondering if you received the amended PPD back from Dr. Quaglieri yet?

Have a great day...Toby

Thaddeus J. Yurek III | Attorney
T 702.384.1616 | F 702.384.2990
tyurek@ggrmlawfirm.com

Greenman, Goldberg, Raby & Martinez 
Attorneys At Law

601 S Ninth Street | Las Vegas | Nevada | 89101 | ggrmlawfirm.com 

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

~~AGO 2002-28~~ INSURANCE; RETIREMENT; CLAIMS: A former firefighter's or police officer's claim for coverage of conclusively presumed occupational heart disease belongs to the insurance carrier for the claimant's former public employer. ~~The former firefighter's or police officer's date of separation from service in such capacity and wages earned immediately prior to such date of separation form the basis upon which disability benefits are to be calculated.~~

Carson City, August 7, 2002

Susan Dunt, Risk Manager, Jim Fry, CWCP, CPL, Department of Administration, Risk Management Division, 400 West King Street, Suite 301, Carson City, Nevada 89703-4222

Dear Ms. Dunt and Mr. Fry:

You have requested an opinion from this office on two questions.

QUESTIONS

When a firefighter or police officer retires from public service, becomes employed by a private company, and is subsequently diagnosed with heart disease, does the claim for coverage belong to the previous public employer's insurance carrier or to the current employer's insurance carrier? Under these hypothetical facts, what is the date upon which wages are calculated?

ANALYSIS

A. Carrier liability for conclusively presumed heart disease

The Nevada statute that creates a conclusive presumption of occupational heart disease for firefighters and police officers is NRS 617.457, which provides in pertinent part:

1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a fireman or police officer in this state before the date of disablement are conclusively presumed

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

to have arisen out of and in the course
of the employment.

...

Initially, we note that the Nevada Supreme Court has held that the conclusive presumption of occupational heart disease set forth in NRS 617.457(1) applies to any firefighter [or police officer¹] who was once employed in such occupation on a full-time continuous, uninterrupted and salaried basis for five years or more, but who was not so employed at the time the heart disease was diagnosed, despite the intervening length of time since separation from public service as a firefighter or police officer. Specifically, in *Gallagher v. City of Las Vegas*, 114 Nev. 595, 598, 959 P.2d 519, 521 (1998), the Court addressed the following issue:

The primary issue in these appeals is whether the presumption of NRS 617.457(1) applies to a firefighter who was once employed in the occupation on a full-time continuous, uninterrupted and salaried basis for five years or more, but is no longer so employed at the time of disablement.

In *Gallagher*, the firefighters' former public employer, the City of Las Vegas, asserted that the Nevada Legislature could not have intended to apply a presumption of occupational heart disease for firefighters who retired prior to disablement due to heart disease, and pointed out that, "there would be coverage for a firefighter who is employed when he is twenty and quits when he is twenty-five, then develops heart disease when he is sixty," *Gallagher*, 114 Nev. at 599, 959 P.2d at 521. The City thus argued that NRS 617.457(1) should thus be read to require a minimum five years of full-time continuous, uninterrupted and salaried service immediately preceding the time of disablement. *Id.*

¹ Although the Court in *Gallagher* addressed claims submitted by two retired firefighters, the conclusive presumption set forth in NRS 617.457(1), and thus the *Gallagher* decision, apply equally to retired police officers.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

In *Gallagher*, the Supreme Court reviewed the history of amendments to NRS 617.457 since its enactment in 1969. The Court specifically noted the conclusive presumption adopted by amendment to the statute in 1989 and concluded that, as long as five years of full-time continuous, uninterrupted and salaried employment were served, any intervening period of time following public employment was immaterial to the conclusive presumption, and that the City's position was unreasonable.² Specifically, the Court concluded that:

Because *Gallagher* and *Sorensen* were employed in full-time continuous, uninterrupted and salaried occupations as firefighters in this state for more than five years before they were disabled, their heart diseases are conclusively presumed to have arisen out of and in the course of their employment. NRS 617.457(1). *Gallagher* and *Sorensen* are therefore entitled to occupational disease benefits as a matter of law. We need not decide whether substantial evidence supports the appeals officers' determinations that *Gallagher* did not, and that *Sorensen* did not, prove a causal connection between disease and employment.

Gallagher, 114 Nev. at 601-602, 959 P.2d at 523.

The qualifying employment referred to in NRS 617.457(1) which gives rise to this conclusive presumption of occupational heart disease is the position held by the firefighter or police officer when he initially completes five years of "full-time continuous, uninterrupted and salaried occupation" in

² We note that while NRS 617.455(5) creates a conclusive presumption of occupational lung disease for firefighters and police officers who have served five years or more, and NRS 617.457(1) creates a conclusive presumption of occupational heart disease for the same employees, the Nevada Legislature also provided for an exception to the significant liability that arises as a result of these presumptions. Specifically, NRS 617.455(6) and 617.457(6) both provide that, "Failure to correct predisposing conditions which lead to [lung or heart] disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee."

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

such position, or the position last held by the firefighter or police officer when he leaves such public service, whichever is later. Thus the conclusive presumption of occupational heart disease attaches the moment five years is completed, with the attendant liability for occupational disease attaching to the then-current employer and that employer's workers' compensation insurance carrier, or the carrier that provided insurance on behalf of the public employer at the time the firefighter or police officer discontinued such employment.

B. Date upon which disability benefits are calculated

In a typical case involving an occupational disease, benefits are calculated based upon the employee's wages earned immediately preceding the date of disability. ~~*Mirage v. State Dept. of Administration*, 110 Nev. 257, 871 P.2d 317 (1994)~~ There are no reported Nevada cases that address the calculation of wages and benefits owed to an employee for a disability that arises due to a conclusively presumed heart disease associated with a former firefighter's or police officer's previous employment, and the Court in *Gallagher* was silent on this issue.

The Nevada Legislature, however, has deemed it appropriate to presume conclusively that an occupational heart disease arose as a result of employment as a firefighter or police officer, notwithstanding the fact that such employment may have significantly predated the actual date of diagnosis and disability. As we have concluded, liability for such conclusively presumed occupational disease properly lies with the former public employer. Logically then, and although the Nevada statutes do not specifically address the question, it appears that the Legislature also intended that disability benefits for a presumed occupational heart disease would be based upon the wages earned prior to the covered employee's separation from public service as a firefighter or police officer.

Such a conclusion affords some measure of predictability for employees covered under the conclusive lung and heart disease provisions of NRS 617.455(5) and 617.457(1), as well as for their former employers and the employers' insurance carriers. To conclude otherwise would leave open the possibility that a retired firefighter or police officer who later earned a significantly higher, or lower, salary in another occupation could claim a

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

dramatically higher, or be left with a dramatically lower, disability benefit. We do not believe that the Nevada Supreme Court would endorse such an absurd result if presented with the question. See, e.g., *Moody v. Manny's Auto Repair*, 110 Nev. 320, 325, 871 P.2d 935, 938 (1994) (statutory interpretations should be in line with what reason and public policy would indicate the legislature intended, and should avoid absurd results).

CONCLUSION

A retired firefighter's or police officer's claim for coverage under NRS 617.455 or 617.457, which provide conclusive presumptions of occupational disease coverage for lung or heart diseases of firefighters or police officers, belongs to the insurance carrier under contract with the public police or fire employer at the conclusively presumed time of injury. The presumed time of injury will be either at the completion of the statutorily required minimum five years of full-time continuous, uninterrupted and salaried service, or at the time the firefighter or police officer separates from such public service in cases where separation occurs beyond the five-year minimum period. In no event does the claim belong to the insurance carrier for the current private employer of a former firefighter or police officer.

The former firefighter's or police officer's date of separation from service in such capacity and wages earned immediately prior to such date of separation form the basis upon which disability benefits are to be calculated.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: THOMAS M. PATTON
First Assistant Attorney General

GEORGE G. CAMPBELL
Deputy Attorney General

Page 317

871 P.2d 317
110 Nev. 257
The MIRAGE CASINO-HOTEL D/B/A
The Mirage, Appellant,
v.
NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS
OFFICER; and
Carole Long, Respondents.
No. 24258.
Supreme Court of Nevada.
March 30, 1994.

Page 318

William B. Werner and Salvatore A.
Basile, Las Vegas, for appellant.

Nancyann Leeder, Nevada Atty. for
Injured Workers, and Robert L. Hempen,
Deputy, Carson City, for respondents.

OPINION

PER CURIAM:

This appeal involves a dispute as to the date an employee becomes entitled to worker's compensation benefits in the event of an occupational disease, as well as the proper period from which to calculate the employee's average monthly wage for purposes of such benefits. We hold that the employee becomes eligible for benefits when the employee is no longer able to continue working due to the occupational disease. Therefore, the proper twelve-week period from which to calculate the average monthly wage is the period immediately preceding the employee's date of disability.

The facts of this case are not in dispute. Respondent Carole Long ("Long") began working for appellant The Mirage Casino-Hotel ("Mirage") as a poker dealer in November 1989. In January 1990, Long began experiencing pain in her right hand.

She consulted her doctor and was prescribed medication. Four months later, Long's physician informed her that her condition was related to her work. Thereafter, Long accepted Mirage's offer of another position that did not require dealing poker.

In June 1991, Long returned to her previous job as a poker dealer but was assigned to a different shift. Shortly after she resumed working as a dealer, she began to experience pain in both arms and wrists. In November 1991, Long filled out an employee accident report. On the report she was required to give an "injury date" which she gave as November 15, 1991. Long continued to work, and in January 1992, she returned to her original shift as a dealer (7 p.m. to 3 a.m.).

On April 21, 1992, Long's physician excused her from work due to the worsening of her condition which, by this time, had been diagnosed as carpal tunnel syndrome. Thereafter, Mirage commenced paying Long temporary total disability benefits amounting to two-thirds of her average monthly wage (including tips) over the period immediately preceding her reported "injury date," November 15, 1991.

Long requested recalculation of her benefits, claiming that the proper period from which to calculate payments was the period preceding April 21, 1992, the date she ceased working due to her disability. She had reported no tips on her pay sheets during the earlier period from September 1, 1991, to November 10, 1991. However, she had reported tips in the amount of \$4,200 during the period immediately preceding the date she stopped working.

The hearing officer remanded the case for review and recalculation. After Mirage declined to recalculate Long's benefits, Long appealed to the appeals officer. The appeals officer held that when the accident and the disability do not occur simultaneously, the wage at the time of disability should be used

fastcase

to calculate benefits. Therefore, Long's benefits should have been calculated from the period prior to April 21, 1992, the date she stopped working. The district court affirmed the appeals officer's decision. Mirage appeals.

The issue before this court is a question of law as to the proper period from which to calculate disability benefits in the event of an occupational disease. In reviewing an agency decision, this court is free to address purely legal questions without deference to the agency's decision. Town of

Page 319

Eureka v. State Engineer, 108 Nev. 163, 826 P.2d 948 (1992).

NRS Chapter 616 governs industrial insurance, while NRS Chapter 617 governs occupational diseases. Mirage contends that NRS Chapter 617 contains no modification of the method of calculating the amount of disability benefits to which an employee is entitled under NRS Chapter 616. Therefore, Mirage maintains that the calculation is necessarily controlled by NRS Chapter 616. Specifically, Mirage argues that benefits must be calculated in accordance with NRS 616.027 which defines "average monthly wage" as the wage received on the date of the accident or injury, and NAC 616.678 which provides that such wage is calculated by averaging the employee's wages for the preceding twelve-week period. Thus, Long's average monthly wage should be calculated from the twelve weeks preceding November 15, 1991, the date she gave as her "injury date."

We disagree. We note that although NRS Chapter 617 does not contain a precise method for the calculation of disability benefits for occupational diseases, its provisions provide sufficient guidance for determining the date of eligibility for such benefits.

Initially, we look to NRS 617.060 which defines disablement for purposes of occupational diseases as "the event of becoming physically incapacitated by reason of an occupational disease arising out of and in the course of employment...." Under this statute, Long did not become disabled until she was no longer able to work on April 21, 1992. The fact that she gave an earlier date as her "injury date" is irrelevant since she was not "injured" on the earlier date, but rather suffered from an occupational disease.

As to benefits, NRS 617.420 requires that in order to become eligible for disability benefits, the employee must be incapacitated by the occupational disease for at least five cumulative days within a twenty-day period earning full wage. This statute also provides that in such cases, compensation in terms of average monthly wage must be computed from the date of disability. Only after the employee becomes disabled does it become necessary to look to NRS Chapter 616 for the method of calculating the employee's average monthly wage.

In the instant case, Long continued to work until April 21, 1992. Therefore, she was neither disabled nor eligible for benefits in accordance with NRS 617.420 until she ceased working for at least five cumulative days during a twenty-day period. Hence, Long's wage could be calculated only after she was disabled; i.e., unable to continue working. Indeed, it would be illogical to calculate her average monthly wage from the period preceding her "injury date" of November 15, 1991, which was five months prior to the date her condition forced her to stop working. Such a method of calculation would be contrary to NRS 617.420.

Finally, we note that Mirage claims that the driving force behind this litigation is Long's desire to have her average monthly wage calculated from a period during which she reported substantial tip income. Long did not report tip income during the period

preceding her "injury date." Mirage's speculation as to Long's motives is irrelevant to this appeal. The issue before this court is the proper method of calculating Long's average monthly wage, not her motivation in pursuing greater benefits.

In conclusion, we hold that the district court did not err in denying Mirage's petition for judicial review. The appeals officer correctly determined that Long became eligible for benefits on April 21, 1992, the date she ceased working due to her occupational disease. Therefore, her average monthly wage should be calculated from the period immediately preceding her date of disability.

Accordingly, we affirm the decision of the district court.

1 We do not address the definition of "cumulative days" as would apply to employees whose working hours are gradually decreased due to an occupational disease. Nor do we address the computation of the average monthly wage in such situations.

CORVEL

January 24, 2017

Brent Bean
3405 Amish Ave.
N. Las Vegas NV 89031

RE: Claim Number: 0583-WC-15-0000098
Employer: Clark County
Date of Injury: 11/07/2014

Dear Mr. Bean

CorVel Corporation is the Third Party Administrator for above listed employer.

We have received and review the Permanent Partial Disability (PPD) evaluation addendum by Charles E. Quaglieri (enclosed).

Upon review of NRS 617.453(4) (a), it is our determination to decline offering of the PPD award as you filed the claim for Occupational Disease after retirement, thus making you not entitled to receive any compensation for that disease other than medical benefits.

NRS 617.453 Cancer as occupational disease of firefighters.

(4) Compensation awarded to the employee or his or her dependents for disabling cancer pursuant to this section must include: (a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract

If you disagree with this determination, you have the right to request a resolution to your dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. To do so, complete the enclosed "Request for Hearing" and submit it with a copy of this determination letter to the Department of Administration, Hearings Division, at one of the addresses listed on the form **WITHIN SEVENTY (70) DAYS OF THE DATE OF THIS LETTER.**

If you have any questions, please contact the undersigned at 702-455-2450.

Sincerely,



Leslie Ribadeneira
Sr. Claims Specialist

Encl.: D-12a, PPD Evaluation Addendum

cc: File, Clark County, GGRM

CorVel Corporation
www.corvel.com

P.O. Box 61228
Las Vegas, NV 89160

888-368-4212 (800)
866-728-8275 E-Fax

JA000178

Charles E. Quaglieri, MD

330 E Liberty St, Ste 200
Reno, NV 89501-2221

Ph: 775-398-3610
Fax: 775-398-3676

January 4, 2017

CorVel Corporation
Attn: Leslie Ribadeneira
PO Box 61228
Las Vegas, NV 89160

RE: BRENT BEAN
Claim No: 0583WC15-00000098
DOI: 11/07/2014
Employer: Clark County

CORVEL LAS VEGAS

JAN 11 2017

RECEIVED

Dear Ms. Ribadeneira,

I reviewed my PPD evaluation that I performed on November 2, 2016 in the case of Brent Bean.

You are correct. The combined total impairment is 40% whole person impairment/

I apologize for my error and by this letter amend my previous Permanent Partial Disability Evaluation performed on November 2, 2016.

Respectfully,



Charles E. Quaglieri, MD

CEQ/kc: 629

STATE OF NEVADA
DEPT. OF ADMINISTRATION
BEFORE THE APPEALS OFFICER WORKING DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

BRENT BEAN

Claimant

) Appeal No: 1710715-GBP 20 PM 3:21

) Claim No.: 0583WC150000698

RECEIVED
AND
FILED

CLAIMANT'S BRIEF

COMES NOW, Claimant BRENT BEAN (hereinafter "Claimant"), by and through his attorneys, THADDEUS J. YUREK, III, ESQ., and LISA M. ANDERSON, ESQ., of the law firm of GREENMAN, GOLDBERG, RABY & MARTINEZ, and submits the following brief in support of his position at the hearing in this matter:

LEGAL ARGUMENT

1. CLAIMANT CONTENDS THAT, FOR THE PURPOSE OF CALCULATING PERMANENT PARTIAL DISABILITY, HIS AVERAGE MONTHLY WAGE MUST BE CALCULATED USING THE WAGES FROM THE DATE OF HIS RETIREMENT.

The crux of the issue to be determined in this brief is whether Howard v. City of Las Vegas, 120 P.3d 410 (2005) controls the methodology for wage calculation for the purpose of calculating permanent partial disability.

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

1 Howard is clearly distinguishable from the case at hand because CLAIMANT IS NOT
2 SEEKING TEMPORARY TOTAL DISABILITY FOR LOST WAGES. Under Howard, the
3 Court differentiated between workers' compensation benefits related to medical benefits and
4 those benefits associated with disability compensation in the form of lost wages caused by the
5 occupational disease. While the Court made it clear that it intended for the injured worker to be
6 precluded from obtaining temporary total disability compensation if the claim for disability was
7 filed AFTER retirement, the Court further made it clear that it did not intend for the decision to
8 affect medical benefits in any way.

9
10 The Court intended for the injured worker to remain entitled to all medical benefits
11 associated with the physical injury, which includes permanent partial disability caused by
12 permanent physical disfiguration. Permanent partial disability is a medical benefit intended to
13 compensate the injured worker for permanent physical damage caused by the industrial injury
14 or occupational disease and NOT a form of disability compensation associated with lost wages.
15 In this case, Claimant's prostate was removed due to a compensable occupationally related
16 cancer. Claimant was found to have sustained forty percent (40%) whole person impairment
17 related to his occupational disease. Permanent partial disability is a medical benefit directly
18 related to the removal of the prostate and its residual effects. Thus, permanent partial disability
19 is in no way intended to replace lost wages, as was held in Howard.

20
21
22 NRS 616C.490(5) states in part:

23
24 5. Unless the regulations adopted pursuant to NRS
25 616C.110 provide otherwise, a rating evaluation must include an
26 evaluation of the loss of motion, sensation and strength of an
27 injured employee if the injury is of a type that might have
28 caused such a loss. Except in the case of claims accepted pursuant
to NRS 616C.180, no factors other than the degree of physical
impairment of the whole person may be considered in

1 calculating the entitlement to compensation for a permanent
2 partial disability.

3 NRS 616C.490 establishes that permanent partial disability is NOT associated with
4 temporary total disability compensation associated with lost wages. Instead, permanent partial
5 disability is a medical benefit directly related to the permanent loss of physical function, such
6 as loss of range of motion, loss of sensation, and loss of strength, and is intended to compensate
7 the injured worker for the physical damage caused by the occupational disease. Nothing in
8 Howard sought to eliminate compensation related to permanent partial disability because
9 permanent partial disability is NOT intended to compensate the injured worker for lost wages.
10

11 The Court specifically stated that the issue on appeal in Howard involved eligibility for
12 temporary total disability compensation when the injured worker was retired and not earning
13 wages at the time the claim was filed. The Court solely considered whether an injured worker
14 is entitled to temporary total disability compensation related lost time caused by the
15 occupationally related heart condition. Nevertheless, the Court reiterated that "when a retired
16 claimant becomes eligible for occupational disease benefits, the claimant is entitled to receive
17 medical benefits but may not receive any disability compensation if the claimant is not earning
18 any wages."
19
20

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

22 Second, a retiree usually has lost no salary due to the impairment.
23 However, the claimant may lose money in the form of medical
24 expenses attributable to the work-related disability; for these
25 expenses, NRS 617.420 provides no prohibition. As we held in
26 *Gallagher*, retired claimants will still be able to claim medical
27 expenses, despite not being entitled to receive compensation
28 based on lost wages.

1 Because Howard was retired and not earning an actual wage at the
2 time of his disability, from which a lost wage may be calculated,
3 he is not entitled to disability compensation in the form of lost
4 wages.

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

10 In every instance, the Court specifically cited that its decision related solely to temporary
11 total disability compensation related to lost wages. Since Howard had no intention of limiting
12 compensation related to the recovery of permanent partial disability, we must look to the
13 Attorney General's opinion on how to calculate a permanent partial disability award when the
14 injured worker is retired at the time claim was filed.

15 On August 7, 2002, the Attorney General issued an official opinion regarding this exact
16 issue. In its opinion, the Attorney General concluded that a "firefighter's or police officer's date
17 of separation from service in such capacity and wages earned immediately prior to such date of
18 separation form the basis upon which disability benefits are to be calculated." The Attorney
19 General determined that this calculation method would prevent "an absurd result" of using "a
20 significantly higher, or lower, salary in another (post-retirement) occupation" when calculating
21 disability benefits. SEE CLAIMANT'S PAGES 63-67.

22 In this case, there is no dispute that Claimant qualifies for forty percent (40%) whole
23 person related to his occupationally related and accepted prostate cancer condition. However,
24 the Insurer is of the position that Claimant has a zero dollar (\$0) wage base for the purpose of
25 calculating the value of the permanent partial disability because he was retired at the time of the
26 claim. Although Claimant is not seeking temporary total disability related to lost wages, he is
27
28

1 seeking compensation for the medical portion of his case due to a permanent disability sustained
2 when his prostate was removed due to occupationally related cancer.

3 Claimant maintains that a common sense approach must be adopted in order to avoid the
4 "absurd result" identified by the Attorney General. Assigning a zero dollar (\$0) value for the
5 purpose of calculating a monetary award for the forty percent (40%) permanent partial disability
6 is patently unfair and leads to the "absurd result" that is the foundation of this appeal. As noted
7 above, permanent partial disability is a medical benefit that is intended to compensate the injured
8 worker for the permanent physical damage and disfiguration caused by the occupational disease.
9 Ignoring the Attorney General opinion would absolutely result in the "absurd result" that the
10 Attorney General sought to avoid.
11

12 Pursuant to the Attorney General's opinion, Claimant's wages, for the purpose of
13 calculating his permanent partial disability award, should be his July 24, 2011 or July 25, 2011
14 retirement date. Utilizing the last wage Claimant actually earned prior to his retirement avoids
15 the "absurd" resulted contemplated by the Attorney General. The Insurer must therefore be
16 ordered to calculate Claimant's wages based upon his earnings at the time of retirement. The
17 Insurer must then be ordered to calculate the permanent partial disability award and offer it to
18 Claimant.
19


20 Based upon the foregoing, Claimant has establishes that Howard is clearly
21 distinguishable from the current appeal, as the present matter does not involve the recovery of
22 temporary total disability compensation related to lost wages. Howard does not control the
23 methodology for calculating Claimant's average monthly wage for the purpose placing a
24 monetary value on the calculation of Claimant's forty percent (40%) permanent partial disability.
25 Since Howard does not impact this issue, we must defer to the Attorney General's opinion that
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

recommended wages from the date of his retirement be utilized for the purpose of calculating
the permanent partial disability award.

Dated this 20th day of September, 2017.

GREENMAN, GOLDBERG,
RABY & MARTINEZ

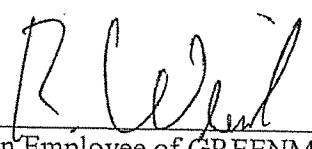
By 
LISA M. ANDERSON, ESQ.
Nevada Bar No. 004907
601 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Claimant

Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF SERVICE

I do hereby certify that on the 20th day of September, 2017, I caused a true and correct copy of the foregoing, CLAIMANT'S BRIEF to be duly mailed, postage prepaid, hand delivered OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, to the following:

Dalton L. Hooks, Jr., Esq.
ALVERSON TAYLOR MORTENSEN & SANDERS
6605 Grand Montecito Parkway
Suite 200
Las Vegas, Nevada 89149


An Employee of GREENMAN, GOLDBERG,
RABY & MARTINEZ

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
6605 GRAND MONTECITO PKWY STE 200
LAS VEGAS, NV 89149
(702) 384-7000

DALTON L. HOOKS, JR., ESQ., Nevada Bar #8121
JOHN A. CLEMENT, ESQ., Nevada Bar #8030
ALVERSON, TAYLOR, MORTENSEN & SANDERS
6605 Grand Montecito Pkwy., Ste. 200
Las Vegas, NV 89149
(702) 384-7000
Attorneys for the Self-Insured Employer Clark County
And TPA, CorVel

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
RECEIVED
OCT 30 PM 3:42
AND
FILED

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE

In the Matter of the Contested
Insurance Claim
of

APPEAL NO.: 1710715-GB
HEARING NO.: 1708666-SE
CLAIM NO.: 0583-WC-15-0000098

Employer:

BRENT BEAN
3405 AMISH AVE.
N. LAS VEGAS, NV 89031

CLARK COUNTY RISK MGMT
500 S GRAND CENTRAL PKWY 5TH FL
LAS VEGAS NV 89106

**SELF INSURED EMPLOYER AND THIRD PARTY ADMINISTRATOR'S
ANSWERING BRIEF**

COMES NOW the Self-Insured Employer, CLARK COUNTY ("SIE"), and the Third-
Party Administrator, CORVEL ("TPA") by and through its attorney, DALTON L. HOOKS, JR.,
ESQ., and submits its Answering Brief concerning the instant matter.

**I.
ISSUE PRESENTED**

**Whether A Retiree, Earning No Wage, Is Entitled To A Permanent Partial
Disability Award In Light Of Existing Case Law And Statutory Authority.**

**II.
RELEVANT FACTS**

The Claimant, BRENT BEAN, retired from the CLARK COUNT FIRE DEPT.
("CCFD") effective 07/25/11. See SIE's Production of Related Documents at pg. 4. According to
the C-4, on or about 11/07/14 the Claimant was diagnosed with prostate cancer, and thereafter

1 completed his claim on 12/22/14. *See id* at pg. 1. Effective 01/13/15, the SIE issued its
2 determination accepting the claim for prostate cancer. *See id* at pg. 37.

3 The Claimant underwent a prostatectomy on 02/25/15. *See id* at pp. 9-21. After
4 appropriate follow-up, on 06/24/16, Dr. Ludlow released the Claimant as MMI. *See id* at pp. 24.
5 Thereafter, the Claimant obtained an evaluation with a rating physician off the DIR rotating list.
6 *See id* at pg. 26. Following an evaluation on 11/02/16 with Dr. Charles E. Quaglieri, the
7 Claimant was found to have a 40% whole person impairment as a result of his prostate cancer.
8 *See id* at pp. 27-32. The Claimant, via counsel, requested the SIE offer a 40% permanent partial
9 disability award as recommended by Dr. Quaglieri. *See id* at pg. 36.

10 The current controversy involves the SIE's 01/24/17 determination which declined to
11 offer the permanent partial disability award. As specified in that letter, the SIE indicated that
12 because the claim was made after retirement, and pursuant to NRS 617.453(4)(a), the Claimant
13 was not entitled to receive any monetary compensation for his occupational disease, other than
14 payment of medical benefits. *See id* at pg. 39.

15
16
17 III.
18 LEGAL ARGUMENT

19 A. Supreme Court Case Law Precludes The Claimant From Receiving Disability
20 Benefits Following Retirement, Therefore The SIE's Determination Declining To
21 Offer The PPD Award Was Proper.

22 The issue of payment of disability benefits in the case of an occupational disease claimed
23 post-retirement, has been addressed by the Nevada Supreme Court in *Howard v. City of Las*
24 *Vegas*, 121 Nev. 691, 120 P.3d 410 (2005). Therein, the Court concludes that "a retired Nevada
25 claimant, is effectively denied disability benefits because his weekly wage calculation amounts
26 to zero." *See id*. Although the Claimant seeks to distinguish this decision as applied to the issue
27 of permanent partial disability benefits, the *Howard* case remains controlling.
28

1 In *Howard*, Oscar Howard was a retired firefighter who attempted to assert a claim for
2 disability benefits resulting from a claim for heart disease. The Nevada Supreme Court
3 concluded that when a retired claimant becomes eligible for occupational disease benefits, the
4 claimant is entitled to receive medical benefits but may not receive any disability compensation
5 if the claimant is not earning any wages at the time of his/her application. *Howard v. City of Las*
6 *Vegas*, 120 P.3d 410, 411.

7
8 **1. The Claimant's Argument That Permanent Partial Disability Amounts to A
Medical Benefit is Unsupportable.**

9 Consistent with NRS 617.453, payment of medical treatment expenses is proper when the
10 Claimant has been impacted by a disabling cancer. That statute states in pertinent part:
11

12 **NRS 617.453 Cancer as occupational disease of firefighters.**

13 ...
14 4. Compensation awarded to the employee or his or her dependents for
disabling cancer pursuant to this section must include:

15 (a) Full reimbursement for related expenses incurred for **medical treatments**,
surgery and hospitalization in accordance with the schedule of fees and charges
16 established pursuant to NRS 616C.260 or, if the insurer has contracted with an
organization for managed care or with providers of health care pursuant to NRS
17 616B.527, the amount that is allowed for the treatment or other services under
that contract; and

18 (b) The compensation provided in chapters 616A to 616D, inclusive, of NRS
for the disability or death.

19 See NRS 617.453(4) (2015). The SIE does not contest its responsibility for payment of the
20 expenses incurred for treatment of the Claimant's prostate cancer, and in fact has already done
21 so.

22 The Claimant acknowledges that in *Howard*, the Court found that an award of temporary
23 total disability benefits was precluded for retired firefighters. In attempting to distinguish the
24 *Howard* case, the Claimant argues that the Court did not curtail an entitlement to medical
25 benefits, which he asserts, includes a permanent partial disability award for permanent physical
26 disfiguration. See Claimant's Brief at pg. 2. This logical leap is unsupportable for a variety of
27
28

1 reasons.

2 The American Medical Association's *Guides to the Evaluation of Permanent*
3 *Impairment*, Fifth Edition, which has been adopted under NRS 616C.110, defines disability as
4 an alteration of the individual's capacity to meet *personal, social or occupational demands* or
5 statutory or regulatory requirements because of an impairment. Nowhere in the Nevada
6 Industrial Insurance Act is a Claimant's permanent partial disability defined as a medical
7 benefit. Clearly medical benefit contemplates medical treatments, surgery, hospitalization,
8 physical therapy and prescriptions, not disability awards. The Claimant's argument is a non
9 sequitur.
10

11 The Claimant additionally cites to NRS 490(5) for the fact that permanent partial
12 disability is separate from temporary total disability, however this provision merely addresses the
13 methodology of a permanent partial disability evaluation, and does nothing to bolster the
14 argument that a rating evaluation, or a permanent partial disability award, amounts to a medical
15 benefit.
16

17 **2. As A Retiree, the Claimant Has No Wages For Calculation Of Disability**
18 **Benefits. As Is The Case With TTD Benefits, There Is No PPD Award Which**
19 **The Claimant Is Entitled To.**

20 Within NRS 617, under the section addressing compensation for disability and death,
21 NRS 617.430 provides:

22 **NRS 617.430 Eligibility; limitations.**

23 1. Every employee who is disabled or dies because of an occupational disease,
24 as defined in this chapter, arising out of and in the course of employment in the
25 State of Nevada, or the dependents, as that term is defined in chapters
26 616A to 616D, inclusive, of NRS, of an employee whose death is caused by an
27 occupational disease, are entitled to the compensation provided by those chapters
28 for temporary disability, permanent disability or death, as the facts may warrant

26 See NRS 617.430 (2015). This entitlement must be specifically addressed in light of the
27 Claimant's status as a retiree.
28

1 While the issue in *Howard* was the denial of Temporary Total Disability Benefits, the
2 logic applied in reaching that conclusion is applicable to the instant issue. The *Howard* Court
3 began its analysis with NRS 617.420 which states:

4 No compensation may be paid under this chapter for disability which does not
5 incapacitate the employee for at least 5 cumulative days within a 20-day period
6 from earning full wages, but if the incapacity extends for 5 or more days within a
7 20-day period, the compensation must then be computed from the date of
disability. The limitations in this section do not apply to medical benefits, which
must be paid from the date of application for payment of medical benefits.

8 See NRS 617.420 (2015). The Court held that when a retired claimant becomes eligible for
9 occupational disease benefits, the claimant is entitled to receive medical benefits but may not
10 receive any disability compensation if the claimant is not earning any wages. See *Howard*, 120
11 P.3d at 412. The Court's rationale for this ruling is based on two reasons. First, retirement
12 benefits are not included in NRS 617.050's definition of "compensation," and no other provision
13 suggests that retirement benefits should be included within the meaning of wages.¹ Second, a
14 retiree has usually lost no salary or wages due to the impairment. *Id.*

15 Additional support for this analysis, and the Court's ruling, can be gleaned from NRS
16 616C.390(6) which denies temporary total disability or vocational rehabilitation benefits where a
17 claimant has retired. As the Court reasoned in *Howard*, there should be no award for disability
18 benefits where there are no "wages" lost. In fact, a retired claimant maintains his exact same
19 income, unaffected by his occupational injury or disease. In the instance of a permanent partial
20 disability award, going back to the AMA Guides definition, there is no disability to occupational
21 demands where there is no occupational income lost.

22 The *Howard* Court also comments that the date of disability for Mr. Howard was the date
23 of his heart attack, and the date immediately preceding the occupational disease is the date from
24

25
26
27
28 ¹ See NAC 616C.423 (describing items included in average monthly wage but omitting retirement benefits.)

1 which disability benefits are properly calculated. *See Howard*, 120 P.3d at 412. *See also Mirage*
2 *v. State, Dept. of Administration*, 871 P.2d 317, 319. In other words, disability benefits trigger at
3 the time of disablement. This has been addressed in NRS 617.060 as well as NRS 617.420 (cited
4 previously above). NRS 617.060 provides:

5 **617.060 “Disablement” and “total disablement” defined.**

6 “Disablement” and “total disablement” are used interchangeably in this
7 chapter and mean the event of becoming physically incapacitated by reason of
8 an occupational disease arising out of and in the course of employment as
9 defined in this chapter *from engaging, for remuneration or profit, in any*
10 *occupation for which he or she is or becomes reasonably fitted by education,*
11 *training or experience.*

12 *See* NRS 617.060 (2015) (emphasis added). The Nevada Supreme Court has considered the issue
13 of disablement as it relates to occupational diseases and held:

14 [I]n order to become eligible for disability benefits, the employee must be
15 incapacitated by the occupational disease for a least five cumulative days
16 within a twenty-day period *earning full wage*.

17 *See Mirage v. State Dept. of Admin.*, 110 Nev. 257, 260, 871 P.2d 317 (1994); *see also Manwill*
18 *v. Clark County*, 123 Nev. 238, 244 (2007); *Employers Ins. Co. of Nevada v. Daniels*, 122 Nev.
19 1009, 1014 (2006). Moreover, the Court has stated:

20 An employee is not entitled to compensation from the mere contraction of an
21 occupational disease. Instead, compensation ... flows from a disablement
22 resulting from such a disease.

23 *See Daniels*, 122 Nev. at 1027 (internal quotations omitted). Thus, in looking at the standards of
24 disablement, they are focused on the fact that there must be a loss of ability in earning a wage
25 from an occupation. The Court has indicated in *Mirage v. State Dept. of Admin.*, that for
26 occupational disease cases compensation in terms of average monthly wage must be computed
27 from the date of disability. Only after the employee becomes disabled does it become necessary
28 to look at NRS Chapter 616 for the method of calculating the employee’s average monthly wage.
See Mirage, 871 P.2d 317, 319.

1 As in the *Howard* case, the Claimant Mr. Bean, as a retiree, is properly denied an award
2 for permanent partial disability, as he has no wages on which to calculate a disability award. His
3 income consists of retirement benefits from the fire department, and retirement income is not
4 considered "compensation." Nor is there evidence of his alternate employment. Accordingly, Mr.
5 Bean was not earning an actual wage as contemplated under NAC 616C.423, from which any
6 disability benefit could be calculated. Even if the 40% permanent partial disability award were
7 proper, the net result is a \$0 award.
8

9 **3. The Attorney General's 2002 Opinion Does Not Represent Binding Authority,
10 And Has Been Superseded By Howard v. City of Las Vegas.**

11 While the Claimant wants this Appeals Officer to rely on an August 7, 2002 Attorney
12 General Opinion² to refute the SIE's denial of a permanent partial disability award, their reliance
13 upon this opinion is flawed. First, the Opinion presumes that a retired police officer or fireman
14 is earning a higher or lower "salary" following retirement. It in fact presumes some form of
15 subsequent employment by the retiree. This is not our facts in this case, as there is no evidence
16 that Mr. Bean is earning a "salary" or wage as contemplated under the NIIA.
17

18 Second, the AG Opinion speculates that the Legislature intended that disability benefits
19 for an occupational disease would be based upon wages earned prior to the covered employee's
20 separation from public service as a firefighter or police officer. The AG Opinion acknowledges
21 that, at the time, the Nevada Supreme Court had not been presented with the issue of calculating
22 a disability benefit where a claimant earned significantly lower or higher wages following
23 retirement. The AG Opinion offers a speculative opinion as to what the Nevada Supreme Court
24 would do. However, we now know what the Supreme Court would do. The *Howard* case was
25

26 ² No specific guidance is found in Nevada case law. However, in looking at other 9th Circuit
27 Decisions, a formal opinion of the Attorney General represents the carefully considered
28 judgment as to what the law requires in the circumstances presented, but "*has no legal binding
effect on the requesting officer.*" Univ. of Utah v. Shurtleff, 252 F. Supp. 2d 1264, 1271 (D.
Utah 2003).

1 decided three years after the AG Opinion, and it represents the only mandatory authority for the
2 Court to follow on the issue at hand. The Court in *Howard* unequivocally states that the period
3 immediately preceding the occupational disease is the date from which we must calculate
4 disability benefits. See *Howard*, 120 P.3d at 412, citing *Mirage v. State Dept. of Administration*.
5 In reaching this conclusion, the Court in *Howard* looked at case law from multiple jurisdictions,
6 and appropriately noted that “a retired New Hampshire claimant, like a retired Nevada claimant,
7 is effectively denied disability benefits because his weekly wage calculation amounts to zero.”
8

9 *Id.*

10 Following this mandatory authority of the *Howard* case and applying the relevant statutes
11 and regulations, the Claimant’s average monthly wage, as calculated pursuant to NAC
12 616C.435, amounts to \$0, thereby the permanent partial disability award is also \$0. While the
13 Claimant seeks to argue that this yields an “absurd result”, the fact remains that the Nevada
14 Supreme Court has opined that the period for calculating average monthly wage for disability
15 purposes is based upon the date of disability. The Legislature has made no special provisions for
16 firefighters or police officers as to the date of calculation. Here the Claimant’s earliest period of
17 disability was the date of diagnosis on 11/07/14. See SIE’s Production of Related Documents at
18 pg.1, 5. At that time, the Claimant was retired and earning no wage. As stated above, the idea of
19 disability is tied to earning capacity. In this case, though the Claimant has contracted an
20 occupational disease, he has not been disabled from earning a wage, and therefore just as he is
21 precluded from earning temporary total disability, he is similarly precluded from any entitlement
22 to permanent partial disability. To assert that the *Howard* Court never intended this result fails
23 to properly consider the logic and opinion expressed in the case itself.
24
25
26 ...
27 ...
28

IV.
CONCLUSION

The Claimant's request to be awarded an amount based upon his rating evaluation with Dr. Quaglieri is properly denied. The *Howard* case, as discussed herein has made it plain that, when a claim is made by a retiree, that claimant is entitled to medical benefits on an accepted claim, but is not otherwise entitled to compensation for disability as they were not earning wages prior to the onset of the claim, and due to this, their Average Monthly Wage calculation is effectively zero.

The Claimant's attempt to suggest that this was not addressed by the *Howard* Court or that the application of the proper legal standards results in an absurd result is unsupportable, as it the assertion that a permanent partial disability award amounts to a medical benefit. The very nature of a permanent partial disability award contemplates the award of a benefit based upon a loss of future earning potential. The actuarial tables used in calculating the value of the award are further proof of this. The fact that the Claimant has no wage recognized by the NIAA, justifies that no earning potential is lost, regardless of his percentage of impairment. Recognizing the logic of this, the result is not "absurd" but is proper under the interpretive statutes and case law, and in view of the foregoing, the SIE's determination dated 01/24/17, should be affirmed and the Claimant be given no benefits under his application.

Dated this 3rd day of October, 2017.

Respectfully submitted,

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

By: 

DALTON L. HOOKS, JR., ESQ.
6605 Grand Montecito Pkwy., Ste. 200
Las Vegas, NV 89149
Attorney for Self-Insured Employer Clark County
and TPA, CorVel

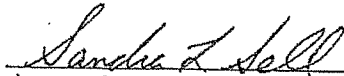
ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
702.364.7000

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing SELF INSURED EMPLOYER AND THIRD PARTY ADMINISTRATOR'S ANSWERING BRIEF was duly served on the following as indicated:

<input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Personal Delivery	Brent Bean c/o Lisa Anderson, Esq. Greenman, Goldberg, Raby & Martinez 601 South Ninth Street Las Vegas, NV 89101
<input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Personal Delivery	Lisa Anderson, Esq. Greenman, Goldberg, Raby & Martinez 601 South Ninth Street Las Vegas, NV 89101
<input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Personal Delivery	Kimberly Buchanan/Jennifer Gaither Clark County Risk Management 500 S. Grand Central Parkway 5 th Floor Las Vegas NV 89106
<input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Personal Delivery	Leslie Ribadeneira CorVel Corporation PO Box 61228 Las Vegas, NV 89160

Dated this 30th day of October, 2017


An employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

1 BEFORE THE APPEALS OFFICER

2 In the matter of the Contested) Appeal No: 1710715-GB
3 Industrial Insurance Claim of:)
4 BRENT BEAN) Claim No.: 0583WC150000098
5)
6 Claimant)

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
RECEIVED
AND
FILED
DEC 11 PM 4:41

7 CLAIMANT'S REPLY BRIEF

8 COMES NOW, Claimant BRENT BEAN (hereinafter "Claimant"), by and through his
9 attorneys, THADDEUS J. YUREK, III, ESQ., and LISA M. ANDERSON, ESQ., of the law
10 firm of GREENMAN, GOLDBERG, RABY & MARTINEZ, and submits the following brief
11 in support of his position at the hearing in this matter.
12

13 LEGAL ARGUMENT

14 1. CLAIMANT DISTINGUISHES THE DIFFERENCE BETWEEN SEEKING
15 TEMPORARY TOTAL DISABILITY BENEFITS FROM PERMANENT
16 PARTIAL DISABILITY BENEFITS WHEN A CLAIM FOR OCCUPATIONAL
17 CANCER IS FILED AFTER RETIREMENT.

18 The Employer/Administrator disputes Claimant's argument that permanent partial
19 disability is not a medical benefit. Claimant is not attempting to distinguish medical benefits
20 from disability benefits because it is simply a fact that these two (2) benefits are different.
21 Claimant is NOT asking for wage replacement benefits. Instead, Claimant is requesting that his
22 entitlement for compensation due to the medical incident that happened to him and the ensuing
23 permanent physical condition that resulted in the removal of his prostate.
24

25 The Employer/Administrator argues that medical benefits are intended to mean medical
26 treatment, surgery, hospitalization, physical therapy and prescriptions but not disability awards
27 related to the permanent physical damage caused by the occupational disease. They cite the
28 American Medical Association's *Guides to the Evaluation of Permanent Impairment* that

1 defines disability as "an alteration of the individual's capacity to meet personal, social or
2 occupational demands or statutory or regulatory requirements because of an impairment." In
3 this instance, the Employer/Administrator fails to consider what personal and social demands
4 were contemplated under this standard. Clearly the functionality of the body is certainly
5 personal and social. It is undeniable that Claimant's is altered as a result of this incident. The
6 removal of his prostate and the resulting permanent residual effects is an "alteration" of
7 Claimant's individual capacity to meet his personal, social and/or occupational demands.
8

9
10 It was then argued that Howard v. City of Las Vegas, 120 P.3d 410 (2005) analyzed NRS
11 617.420 and cited in part that "[T]he limitations in this section do not apply to medical benefits,
12 which must be paid from the date of application for payment of medical benefits." This is
13 where Claimant argues that NRS 617.455 contemplates that it will be difficult to pinpoint a date
14 of injury/exposure. So, Claimant's employment is conclusively presumed to be the cause of the
15 disease. Thus, the date of application is the date he last worked for these purposes.
16

17 The Employer/Administrator further argued that Howard precludes the payment of
18 permanent partial disability compensation if Claimant is not earning any wages when a claim
19 for benefits is filed. While this is true for temporary total disability compensation, the
20 Employer/Administrator cannot say that Claimant has lost no use or function of his body for his
21 non work related activities. Claimant is left disabled, both as to work and as to life in general.
22 The workers' compensation system contemplates these losses and provides separately that
23 Claimant is entitled to permanent partial disability for his physical damage. In this case,
24 Claimant had his prostate removed as a result of cancer and has suffered permanent residual
25 dysfunction.
26
27
28

1 NRS 617.455 is clearly meant to compensate this Claimant over his lifetime for any lung
2 or heart disease he suffers after fulfilling his initial length of employment obligation. The intent
3 is that Claimant be as fully compensated as possible during and after his service. The
4 Employer/Insurer diminishes this intent by excluding the portion of benefits designed to
5 compensate for permanent damage. NRS 617.455 is designed to compensate for exposure while
6 employed and extends coverage after employment.
7

8 Despite what the Employer/Administrator would like for this Court to believe, Howard
9 simply addressed the issue of entitlement to temporary total disability compensation for lost
10 wages when a claimant was retired and not earning wages at the time the claim was filed.
11 Howard was never intended to be applied to issues involving permanent partial disability as that
12 issue does not involve disability compensation related to lost wages. As such, there is no
13 available case law to adequately and fairly compensate Claimant for the permanent physical
14 damage caused by the removal of his prostate and the resulting dysfunction.
15
16

17 In contrast, the Attorney Generals' 2002 opinion clearly addressed the identical issue
18 presented in this case. Specifically, the Attorney General concluded that a "firefighter's or
19 police officer's date of separation from service in such capacity and wages earned immediately
20 prior to such date of separation form the basis upon which disability benefits are to be
21 calculated." The Attorney General determined that this calculation method would prevent "an
22 absurd result" of using "a significantly higher, or lower, salary in another (post-retirement)
23 occupation" when calculating disability benefits. If the Employer/Administrator's position is
24 allowed to stand, then this case will effectively result in the "absurd" outcomes in the Attorney
25 General sought to prevent.
26
27
28

1 In conclusion, Claimant's wages at the time of his retirement must be utilize in the
2 calculation of his permanent partial disability. Arguing that Claimant qualifies for forty percent
3 (40%) whole person impairment for his occupationally related cancer condition and then
4 attempting to apply a standard intended solely for the payment of temporary total disability
5 compensation related to lost wages is clearly inappropriate and insulting to the Claimant, who
6 has suffered significant permanent impairment, and would result in an absurd outcome that goes
7 against the clear intentions of the Nevada legislature. For that reason, the
8 Employer/Administrator must be ordered to calculate Claimant's permanent partial disability
9 award using the wages from the date of his retirement.
10
11

12 Dated this 11th day of December, 2017.

13 GREENMAN, GOLDBERG,
14 RABY & MARTINEZ

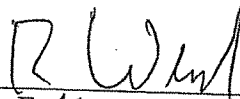
15
16 By 
17

18 LISA M. ANDERSON, ESQ.
19 Nevada Bar No. 004907
20 601 South Ninth Street
21 Las Vegas, Nevada 89101
22 Attorneys for Claimant
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I do hereby certify that on the 11th day of December, 2017, I caused a true and correct copy of the foregoing, CLAIMANT'S REPLY BRIEF to be duly mailed, postage prepaid, hand delivered OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, Appeals Office, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, to the following:

Dalton L. Hooks, Jr., Esq.
ALVERSON TAYLOR MORTENSEN & SANDERS
6605 Grand Montecito Parkway
Suite 200
Las Vegas, Nevada 89149


An Employee of GREENMAN, GOLDBERG,
RABY & MARTINEZ

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

26RM

1400432
FILED

APR 19 2018

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No. : 0583WC150000098

BRENT BEAN

Appeal No. : 1710715-GB

Claimant.

DECISION AND ORDER

Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

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:

OK
97

FINDINGS OF FACT

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

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

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

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

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

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

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.

27 ///

28 ///

BWB

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} ~~status~~ 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

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

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

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

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

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.
20
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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.

Georganne W. Bradley
Georganne 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.

CERTIFICATE OF MAILING

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

BRENT BEAN
3405 AMISH AVENUE
NORTH LAS VEGAS, NEVADA 89031

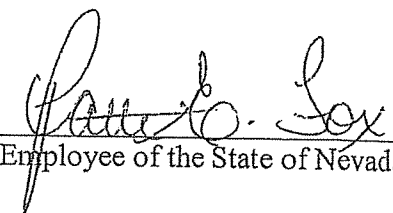
LISA M. ANDERSON, ESQ.
GREENMAN GOLDBERG RABY & MARTINES
601 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101

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

SANDRA SWICKARD
CLARK COUNTY RISK MANAGEMENT
500 SOUTH GRAND CENTRAL PARKWAY
SUITE 200
LAS VEGAS, NEVADA 89106

CORVEL
P.O. BOX 61228
LAS VEGAS, NEVADA 89160

DATED this 19th day of April, 2018.


Employee of the State of Nevada

Steven D. Grierson

RPLY
DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121
JOHN A. CLEMENT, ESQ., Nevada Bar No. 8030
HOOKS MENG SCHAAN & CLEMENT
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, Nevada 89102
Telephone No. (702) 766-4672
Facsimile No. (702) 919-4672
Attorneys for Petitioner
CLARK COUNTY

DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY, Self-Insured Employer,
Petitioners,

CASE NO: A-18-773957-J
DEPT NO: 16

vs.

BRENT BEAN; STATE OF NEVADA,
NEVADA DEPARTMENT OF
ADMINISTRATIONS APPEAL OFFICE,
Respondents.

REPLY IN SUPPORT OF PETITIONER'S MOTION FOR STAY

COMES NOW, Petitioner, Self-Insured Employer, CLARK COUNTY ("Petitioner/SIE") [COUNTY], by and through its attorney, DALTON L. HOOKS, JR., ESQ., of HOOKS MENG SCHAAN & CLEMENT, and respectfully submits its Reply in Support of its Motion for a Stay of execution of the Appeals Officer's Decision and Order, dated 04/19/18, pending resolution of the Petitioner's Petition for Judicial Review filed under separate cover.

...

...

...

...

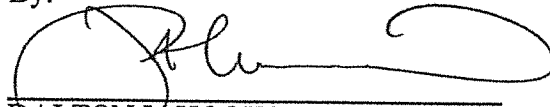
1 This Reply is made and based upon the attached memorandum of points and authorities,
2 the exhibits attached hereto and any oral arguments permitted on this matter.

3 Dated this 22nd day of May, 2018.

4 Respectfully submitted,

5 HOOKS MENG SCHAAN & CLEMENT

6 By:

7 

8 DALTON L. HOOKS, JR., ESQ.

9 JOHN A. CLEMENT, ESQ.

10 2820 W. Charleston Blvd., Ste. C-23

11 Las Vegas, NV 89102

12 Attorneys for Self-Insured Employer

13 CLARK COUNTY

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT

In his Opposition, the Respondent/Claimant mistakenly argues that a permanent partial disability ("PPD") award is not a disability benefit and therefore *Howard v. City of Las Vegas* does not govern this case. However, as set forth in the Petitioner/SIE's Motion for Stay and reiterated below, *Howard* is certainly the only binding authority that governs this case as PPD awards are clearly disability benefits. Moreover, the calculation of such awards is based entirely on a claimant's average monthly wage ("AMW"), which in this case was \$0.00 because the Respondent/Claimant was not earning income as contemplated by the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") at the time of his disability.

Further, despite the Respondent/Claimant's arguments regarding the applicability of the Attorney General's 2002 opinion, *Howard* was decided three (3) years later and effectively overruled any weight given to the instant matter. Additionally, the advisory opinion of the former attorney general is actually based on a different hypothetical where the retired claimant was working and earning a wage at the time of disablement. Thus, regardless of any weight the 2002 opinion may be given, it is distinguishable from the case at hand. In light of the foregoing the Appeals Officer's Decision and Order was erroneous and the SIE/Petitioner's Motion for Stay Pending its Petition for Judicial Review should be GRANTED.

...

...

...

...

II.

STATEMENT OF RELEVANT FACTS

Effective 07/25/11, the Respondent, BRENT BEAN ("Respondent/Claimant"), retired from CLARK COUNTY FIRE DEPT. *See* exhibits attached to Petitioner/SIE's Motion for Stay at pg. 10. More than three (3) years later, on or about 11/07/14, the Respondent/Claimant was diagnosed with prostate cancer. *See id.* at pg. 9. At the time of his diagnosis, the Respondent/Claimant was not earning a wage, but was collecting retirement benefits. *See id.* at pp. 10, 12. Thereafter, on 12/22/14, the Respondent/Claimant alleged an occupational disease following his retirement from CLARK COUNTY FIRE DEPT. *See* exhibits attached hereto at pg. 9.

On 01/13/15, this claim was accepted by the Petitioner/SIE and all necessary medical treatment was subsequently provided. *See id.* at pp. 13-33, 45. Ultimately, the Respondent/Claimant presented to Dr. Charles Quaglieri for a permanent partial disability ("PPD") evaluation and was found to have a forty (40%) percent whole person impairment. *See id.* at pg. 40. Importantly, because the Respondent/Claimant was not earning a wage at the time of his disablement, on 01/24/17, the Petitioner/SIE was as a matter of law unable to offer the Respondent/Claimant a cash PPD award. *See id.* at pg. 47. Litigation regarding the Petitioner/SIE's determination ensued, which led to the Appeals Officer's erroneous 04/19/18 Decision and Order. *See id.* at pp. 1-8.

...

...

...

...

...

III.

LEGAL ARGUMENTS

A. **Permanent Partial Disability Benefits Are In Fact Disability Benefits Based on Average Monthly Wage.**

As anticipated by the Petitioner/SIE, the Respondent/Claimant has argued that permanent partial disability ("PPD") benefits are merely "medical benefits" as opposed to compensation for disability, which was expressly precluded by the Nevada Supreme Court in *Howard v. City of Las Vegas*. See Respondent/Claimant's Opposition at pg. 11; see also *Howard v. City of Las Vegas*, 120 P.3d 410, 121 Nev. 691 (2005). In fact, the Respondent/Claimant has specifically alleged that PPD awards are "not a form of disability compensation associated with lost wages" and therefore PPD benefits are "in no way intended to replace lost wages." See *id.* However, as set forth in the Petitioner/SIE's Motion for Stay, a medical benefit as contemplated by the Nevada Industrial Insurance Act ("NIIA") includes medical treatments, surgery, hospitalization, physical therapy and prescriptions, but certainly not disability awards such as a PPD award. See Petitioner/SIE's Motion for Stay at pg. 13.

Additionally, while the Claimant later agrees that medical benefits are different than disability benefits, he argues that he is still entitled to a cash PPD award based on some fabricated third form of benefits, which is not contemplated by the NIIA. See Respondent/Claimant's Opposition at pp. 14-15. Namely, the Claimant makes clear that he is requesting a cash PPD award "due to the medical incident that happened to him." See *id.* at pg. 15. However, as discussed in detail below, any award for compensation, including a PPD award, must be based on the Claimant's average monthly wage ("AMW"), which was \$0.00 at the time of his disability. See exhibits attached hereto at pp. 1-3.

...

1 Importantly, in determining whether the Respondent/Claimant is entitled to a cash PPD
2 award, we must again look to the Nevada Supreme Court's holding in *Howard v. City of Las*
3 *Vegas*, which held that a retired firefighter was not entitled to disability benefits because he was
4 not earning wages at the time that his disability began. *See id.*; *see also Howard*, 120 P.3d 410.
5 Notably, while TTD benefits were specifically at issue in *Howard*, the Court's decision was
6 more accurately viewed a clarification of how and when a claimant's average monthly wage
7 ("AMW") should be calculated.

8 Specifically, in considering whether a claimant was entitled to TTD benefits after
9 retirement, the *Howard* Court concluded that payment of medical treatment was warranted, but
10 expressly opined that the Claimant could not receive any disability benefits "**because of the**
11 **Legislature's method for calculating average monthly wage.**" *See Howard*, 120 P.3d at 411
12 (emphasis added). Likewise, the Court similarly concluded on a broader scale:

13 [W]hen a retired claimant becomes eligible for occupational disease benefits,
14 the claimant is entitled to receive medical benefits but may not receive *any*
 disability compensation if the claimant is not earning any wages.

15 *See id.* (emphasis added). Further, in concluding that a claimant cannot receive any disability
16 benefits if he is not earning wages, the Court reaffirmed its prior holding in *Mirage v. State Dept.*
17 *of Administration* and explained:

18 The employee's average monthly wage for purposes of calculating
19 occupational disease benefits is based on the applicable employment period
 preceding the **date of the disablement.**

20 *See id.* (citing *Mirage v. State. Dept. of Administration*, 871 P.2d 317, 10 Nev. 257 (1994))
21 (emphasis added).

22 Here, the Respondent/Claimant was diagnosed with cancer more than three (3) years after
23 his retirement. *See* exhibits attached to Petitioner/SIE's Motion for Stay at pg. 9. At that time,
24 the Respondent/Claimant was not earning a wage, but was collecting retirement benefits.

1 Accordingly, pursuant to *Howard, Mirage*, and NAC 616C.423 the Respondent/Claimant does
2 not have any income which could be used to calculate an AMW and as a result had an AMW of
3 \$0.00 at the time of his disablement. Thus, while the Respondent/Claimant has been found to
4 have a 40% whole person impairment, any PPD award will be \$0.00 because the same is based
5 entirely on his AMW calculation.

6 Further, the purpose of a PPD award is an attempt to place the recipient in the same
7 position that he would have been had no disability occurred. In other words, a PPD award
8 compensates a claimant, at least in large part, for loss of future earning capacity. In this case, the
9 Respondent/Claimant was retired, collecting retirement benefits, and not earning a wage when he
10 became disabled. Accordingly, any disablement in this case will not affect his income, as the
11 income in question is not dependent upon his wholeness as a worker or other factors. Likewise
12 and or even greater importance, any disability will not prevent him from continuing to receive
13 retirement benefits.

14 Notably, the Respondent/Claimant has continually sought to convince the Court that a
15 PPD award is not a disability benefit. However, such an argument is clearly erroneous as PPD
16 awards, like TTD benefits, are entirely based upon wages. To illustrate the wage-based nature of
17 a PPD award, it is worth reviewing the applicable statutes and regulations concerning the
18 calculation of a claimant's AMW.¹ Namely, NAC 616C.420, NAC 616C.423, and NAC
19 616C.432 are applicable to the instant matter.

20 ...

21 ...

22 ...

23 ¹ NRS 617.453(4)(b) provides that retired firefighters who develop disabling cancer may receive "[t]he
24 compensation provided in chapters 616A to 616D." See NRS 617.453(4)(b) (2015). Accordingly, the
aforementioned chapters and corresponding regulations are used to calculate a claimant's AMW when an
occupational disease, such as cancer, is at issue.

1 NAC 616C.420 defines "average monthly wage" as:

2 [T]he total gross value of all money, goods and services received by an
3 injured employee from his employment to compensate him for his time or
4 services and is used as the base for calculating the rate of compensation for
the injured employee.

5 See NAC 616C.420 (2015). Further, NAC 616C.423, lists the items to be included in the AMW
6 as follows:

- 7 1. Money, goods and services which are paid within the period used to
calculate the average monthly wage include, but are not limited to:
- 8 (a) Wages;
 - 9 (b) Commissions which are prorated over the period used to calculate
the average monthly wage;
 - 10 (c) Incentive pay;
 - 11 (d) Payment for sick leave;
 - 12 (e) Bonuses which are prorated over the period used to calculate the
average monthly wage;
 - 13 (f) Termination pay;
 - 14 (g) Tips which are collected and disbursed by the employer which are
not paid at the discretion of the customer;
 - 15 (h) Tips reported by the employee pursuant to NRS 616B.227;

16 ...

- 17 (i) Allowance for tools or for the rental of hand and power tools not
normally provided by the employee;
- 18 (j) Salary;
- 19 (k) Payment for piecework;
- 20 (l) Payment for vacation;
- 21 (m) Payment for holidays;
- 22 (n) Payment for overtime;
- 23 (o) Payment for travel when it is paid to compensate the employee for
the time spent in travel; and
- 24 (p) The reasonable market value of either board or room, or both. At
least \$150 per month will be allowed for board and room, \$5 per day
or \$1.50 per meal for board, and \$50 per month for a room.

25 See NAC 616C.423 (2015).

26 ...

27 ...

28 ...

1 Additionally, the method for calculating the AMW is specified thusly;

2 The average monthly wage will be calculated by multiplying the average daily
3 wage of an employee during a period of earnings by 30.44. The following
4 formulas will be used to compute an average daily wage and an average
5 monthly wage:

6 1. Gross earnings divided by days in period of earnings = average daily wage.

7 2. Average daily wage x 30.44 = average monthly wage.

8 See NAC 616C.432 (2015). Interestingly, retirement benefits are not included in the AMW
9 calculation and the *Howard* court expressly excluded the same. See *Howard*, 120 P.3d at 411.

10 Finally, NAC 616C.441 provides the same method for calculating an AMW as set forth in
11 *Howard* and *Mirage*. It states:

12 1. The earnings of an injured employee on the date on which an accident
13 occurs or **the date on which an injured employee is no longer able to work
14 as a result of contracting an occupational disease will be used to calculate
15 the average monthly wage.**

16 See NAC 616C.441 (2015) (emphasis added).

17 Additionally, the Division of Industrial Relations ("DIR") has created form D-5 to assist
18 in the calculation of a claimant's AMW. See exhibits attached hereto at pg. 1. Similarly, DIR
19 has set forth the requirements for calculating PPD awards in form D-9b. See *id.* at pg. 3.
20 Importantly, it cannot be disputed that an employer, insurer, or third-party administrator must
21 look to the claimant's AMW in order to calculate a PPD award. See *id.* Accordingly, PPD
22 awards are absolutely based on AMW.

23 ...

24 ...

...

...

1 As is the case here, where an AMW is \$0.00, the formula used to calculate a PPD award
2 would likewise result in an award of \$0.00. *See id.* Thus, given that the Respondent/Claimant
3 was not earning income which could be used in an AMW calculation at the time of his
4 disablement, any PPD award in this case would properly be \$0.00. For that precise reason, the
5 Nevada Supreme Court concluded in *Howard* that disability benefits are not due when a claimant
6 is not earning any wages.² *See Howard*, 120 P.3d at 411.

7 **B. The Attorney General's 2002 Opinion is Not Binding Authority and, Regardless, the**
8 **Same Opinion is Not Analogous to the Instant Matter Before the Court.**

9 Along with the failed and misleading argument that a PPD award is either a medical
10 benefit or some fabricated, nonexistent third type of benefit, the Respondent/Claimant also relies
11 on his mistaken belief that the Attorney General's 2002 opinion has some bearing on this case.
12 *See* Respondent/Claimant's Opposition at pp. 13-14, 17-18. However, as set forth in the
13 Petitioner/SIE's Motion for Stay, not only do Attorney General opinions have zero binding effect
14 on this Court, the Nevada Supreme Court made clear through *Howard* in 2005 that any reliance
15 on the 2002 opinion would be erroneous. *See* Petitioner/SIE's Motion for Stay at pp. 16-18.

16 Additionally, even if, *arguendo*, this Court chooses to give any weight to the advisory
17 opinion of a former attorney general, the Respondent/Claimant mistakenly alleges that the
18 opinion "addressed the identical issue presented in this case." *See* Respondent/Claimant's
19 Opposition at pg. 17. This is simply not true. As indicated in the Petitioner/SIE's Motion for
20 Stay, the 2002 opinion presumes some form of subsequent employment by the retiree. *See*

21
22 ² The second reason for denying disability benefits in *Howard* was that "a retiree usually has not lost salary due to
23 the impairment." *See Howard*, 120 P.3d at 412. Here, the Respondent/Claimant was retired and not earning wages
24 at the time of disablement. While a retired claimant is generally unable to obtain TTD benefits because there is not
past wages lost, this exact same logic applies to PPD awards, which compensate a claimant for loss of future earning
potential. Namely, as set forth above, because the Respondent/Claimant was retired and not earning a wage at the
time of disablement, a PPD award compensating him for loss of future earning potential is unwarranted. Further, the
Respondent/Claimant is collecting retirement benefits, which remain unaffected by any disability.

1 Petitioner/SIE's Motion for Stay at pg. 16. In fact, in issuing its 2002 opinion, the Attorney
2 General's Office indicated that it was answering two (2) specific questions:

3 When a firefighter or police officer retires from public service, *becomes*
4 *employed by a private company*, and is subsequently diagnosed with heart
5 disease, does the claim for coverage belong to the previous public employer's
6 insurance carrier or to the current employer's insurance carrier? **Under these**
7 **hypothetical facts**, what is the date upon which wages are calculated?

8 See exhibits attached to Respondent/Claimant's Opposition at pg. 65 (emphasis added).

9 Accordingly, this opinion was based on the presumption that a claimant was in fact earning
10 wages at the time of disability. Here, however, it is undisputed that the Respondent/Claimant
11 was not earning a wage when he was diagnosed with an occupational disease. Accordingly,
12 given that the Attorney General's 2002 missive was an advisory opinion based on an inapt
13 hypothetical, the former attorney general's analysis is not applicable to the case at hand.
14 Moreover, the fact that the Respondent/Claimant was not earning income, which could be used
15 to calculate AMW, at the time of disablement is analogous to the situation in *Howard*, where the
16 Nevada Supreme Court made clear that disability benefits are not due when a claimant is not
17 earning wages. See *Howard*, 120 P.3d 410.

18 **C. The Appeals Officer's Concern Regarding NRS 617.453 is Misplaced.**

19 Additionally, it is important to note that the Appeals Officer's concern regarding NRS
20 617.453 is unwarranted. Specifically, the Appeals Officer held:

21 To conclude that the Claimant's PPD award must be calculated based on his
22 wages on the date of disability (i.e., zero) would, from a practical perspective,
23 render subsection (5) of NRS 617.453 meaningless. By its very terms,
24 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.

See exhibits attached to Petitioner/SIE's Motion for Stay at pg. 7.

...

1 Looking to the source, NRS 617.453 provides in relevant part:

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

12 See NRS 617.453(5) (2015). Certainly, NRS 617.453 provides that retired firefighters are
13 entitled to workers' compensation benefits. However, such benefits do not automatically include
14 any and all benefits.

15 As made clear in NRS 617.430, employees who suffer occupational diseases as a result of
16 their employment "are entitled to the compensation provided by [chapters 616A to 616D,
17 inclusive, of NRS] for temporary disability, permanent disability or death, *as the facts may*
18 *warrant.*" See NRS 617.430 (2015) (emphasis added). Accordingly, while NRS 617.453(5)
19 provides a rebuttable presumption that the Respondent/Claimant's prostate cancer arose out of
20 the course and scope of his employment, he is only entitled to the benefits "as the facts may
21 warrant."

22 Here, Respondent/Claimant was entitled to all necessary medical treatment relating to his
23 occupational disease, which he received without issue. However, given that the
24 Respondent/Claimant was not earning a wage at the time of disablement, his AMW is effectively
\$0.00 and he is therefore not entitled to disability benefits, such as a PPD award.

The Appeals Officer believes that such an outcome will render NRS 617.453(5)
meaningless; however, the Appeals Officer completely ignored the fact that people can retire
from the fire department and still have a different job. In fact, this was precisely the hypothetical

1 situation in the Attorney General's 2002 opinion. Thus, NRS 617.453 remains in full effect
2 regardless of the ultimate outcome of this case and the Appeals Officer's concern is unwarranted.

3 Moreover, in ordering the Petitioner/SIE to offer the Respondent/Claimant a PPD award
4 based upon wages from 2011, three (3) years before he became disabled, the Appeals Officer has
5 overstepped her role as a judicial officer and created a new method for calculating wages. This
6 legislative action by the Appeals Officer was certainly erroneous and contrary to the governing
7 case law, statutes, and code that show the Respondent/Claimant's AMW must be calculated
8 based upon wages he was earning, if any, at the time of disablement.

9 Finally, a similar sentiment to the Appeals Officer's misplaced concerns regarding
10 617.453 is present throughout the Respondent/Claimant's Opposition as he calls for action, such
11 as "a common sense approach...in order to avoid the 'absurd result' identified by the Attorney
12 General." See Respondent/Claimant's Opposition at pg. 13. Importantly, a common sense
13 approach must also be consistent with controlling law. As set forth above, the method for
14 calculating wages which has been created by the Appeals Officer is judicial fiat and contrary to
15 Nevada case law and statutes. Moreover, "common sense" in this case actually leads to the
16 conclusion that the Respondent/Claimant was retired and not earning a wage at the time of his
17 disability. While he was entitled to medical benefits, i.e. treatment, he had no income which can
18 construed as wages and therefore is not entitled to a disability award. Further, "common sense"
19 leads to the conclusion that a permanent partial disability ("PPD") award is not only a disability
20 benefit, but as the evidence shows, completely dependent upon the average monthly wage.

21 In light of the foregoing, the Respondent/Claimant is not entitled to a PPD award and the
22 Appeals Officer's 04/19/18 Decision and Order was clearly erroneous and should therefore be
23 REVERSED. As such, the Petitioner/SIE's Motion for Stay Pending its Petition for Judicial
24 Review should be GRANTED.

IV.

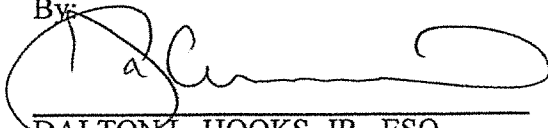
CONCLUSION

The Respondent/Claimant was not earning a wage at the time of disablement. Therefore, the Respondent/Claimant's reliance upon the Attorney General's 2002 opinion is misplaced as *Howard* overruled any precedential value of the opinion and, regardless, the same was based on a distinguishable set of hypothetical facts. Moreover, pursuant to *Howard v. City of Las Vegas*, the Respondent/Claimant is not entitled to a cash permanent partial disability award because his average monthly wage at the time of disablement was \$0.00. Accordingly, the Respondent/Claimant's Opposition fails as it is merely based on the same erroneous reasoning found in the Appeals Officer's Decision and Order, dated 04/19/18. As such, the Petitioner/SIE is likely to prevail on the merits of its Petition for Judicial Review and denial of this Motion for Stay would cause the Petitioner/SIE, CLARK COUNTY, irreparable harm. For these reasons, the instant Motion for Stay should be granted pending resolution of CLARK COUNTY's Petition for Judicial Review.

Wherefore, Petitioner/SIE, CLARK COUNTY, respectfully requests that this honorable Court provide the following relief:

1. That this Court enter a Stay of the Appeals Officer's Decision and Order dated 04/19/18 pending resolution of the issue on Judicial Review.

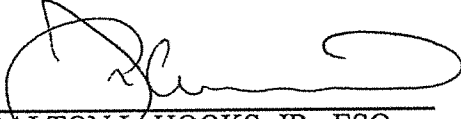
Dated this 22nd day of May, 2018.

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 Petitioner
CLARK COUNTY

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in District Court Case No. does not contain the social security number of any person.



DALTON L. HOOKS, JR., ESQ.
JOHN A. CLEMENT, ESQ.
HOOKS MENG SCHAAN & CLEMENT
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, Nevada 89102
Attorneys for Petitioner
CLARK COUNTY

5-22-18

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 ____ day of May, 2018, I am serving the foregoing REPLY IN SUPPORT OF PETITIONER'S MOTION FOR STAY 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.
LAS VEGAS, NV 89101
ATTORNEY FOR RESPONDENT: BRENT BEAN

MR. BRENT BEAN
C/O LISA M. ANDERSON, ESQ.
GREENMAN GOLDBERG RABY & MARTINEZ
601 S. NINTH ST.
LAS VEGAS, NV 89101

APPEALS OFFICER GEORGANNE W. BRADLEY
DEPARTMENT OF ADMINISTRATION
2200 SOUTH RANCHO DRIVE, SUITE 220,
LAS VEGAS, NV 89102

KIMBERLY BUCHANAN/LESLIE RIBADENEIRA
CLARK COUNTY RISK MANAGEMENT
500 S. GRAND CENTRAL PARKWAY 5TH FLOOR
LAS VEGAS NV 89106

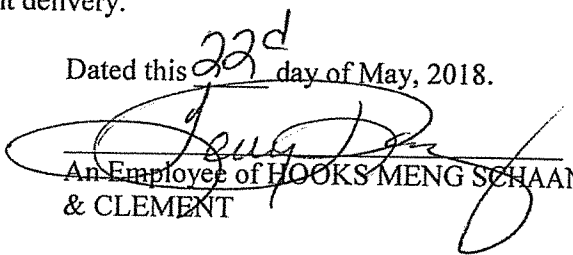
PATRICK CATES, DIRECTOR, STATE OF
NEVADA,
DEPARTMENT OF ADMINISTRATION
5151 E. MUSSER ST.
CARSON CITY, NV 89701

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.
- ☐ Federal Express or other overnight delivery.

Dated this 22^d day of May, 2018.


An Employee of HOOKS MENG SCHAAN
& CLEMENT

Steven D. Grierson

ORDR

DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121
JOHN A. CLEMENT, ESQ., Nevada Bar No. 8030
HOOKS MENG SCHAAAN & CLEMENT
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, Nevada 89102
Telephone No. (702) 766-4672
Facsimile No. (702) 919-4672
Attorneys for Petitioner
CLARK COUNTY

DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY, Self-Insured Employer,
Petitioners,

CASE NO: A-18-773957-J
DEPT NO: 16

vs.

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

Respondents.

STIPULATION AND ORDER FOR TEMPORARY STAY

It is hereby stipulated by and between Petitioner, CLARK COUNTY, by and through its counsel of record DALTON L. HOOKS, JR., ESQ., of the law firm of HOOKS MENG SCHAAAN & CLEMENT., and Respondent, BRENT BEAN, by and through his counsel of record LISA M. ANDERSON, ESQ., of the law firm GREENMAN, GOLDBERG, RABY & MARTINEZ as to the following:

- 1) That the subject of the pending Petition for Judicial Review is the Decision and Order by Appeals Officer Georganne Bradley dated April 19, 2018 regarding Appeal 1710715-GB.
- 2) That a hearing was timely scheduled regarding the Petitioner's Motion for Stay on May 17, 2018, and was at the request of the Court, continued to May 24, 2018 to allow further consideration of the briefs submitted by the parties.

MAY 22 2018

1 3) In light of the extenuating circumstances the parties hereby stipulate to a Temporary Stay
2 of the Appeals Officer's Decision and Order effective May 17, 2018, until this Court
3 renders further Orders regarding the Petitioner's pending Motion for Stay.
4

5 Dated: May 22, 2018

6
7 GREENMAN, GOLDBERG, RABY &
8 MARTINEZ

9 By: 

10 LISA M. ANDERSON, ESQ.
11 601 S. Ninth Street
12 Las Vegas, NV 89101
13 Attorney for Respondent

Dated: 05/22/18

HOOKS MENG SCHAAN & CLEMENT

By: 

DALTON L. HOOKS, JR. ESQ.
2820 W. Charleston Blvd, Suite C-23
Las Vegas NV 89102
Attorneys for Petitioner

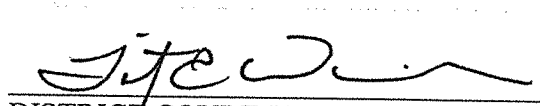

13 **ORDER**

14 IT IS HEREBY ORDERED that, consistent with the forgoing stipulation by the parties, the
15 Appeal Officer's April 19, 2018 Decision and Order on Appeal 1710715-GB is Temporarily Stayed
16 effective May 17, 2018, pending further Order of this Court
17

18
19 DATED this 23rd of May, 2018.

20
21 Submitted by: 

22
23 DALTON L. HOOKS, JR. ESQ.
24 HOOKS MENG SCHAAN & CLEMENT
25 2820 W. Charleston Blvd, Suite C-23
26 Las Vegas, NV 89102
27 Attorneys for Petitioner
28


DISTRICT COURT JUDGE 

4442.0011
CLARK COUNTY
JC

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

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

DISTRICT COURT
CLARK COUNTY, NEVADA

14 CLARK COUNTY,)
15)
16 Petitioner)
17)
18 vs.) CASE NO. : A-18-773957-J
19) DEPT. NO. : XVI
20 BRENT BEAN and THE DEPARTMENT)
21 OF ADMINISTRATION, HEARINGS)
22 DIVISION,)
23)
24 Respondents.)
25)

**SUPPLEMENT TO RESPONDENT'S OPPOSITION TO PETITIONER'S
MOTION FOR STAY PENDING PETITION FOR JUDICIAL REVIEW**

26 COMES NOW, Respondent, BRENT BEAN (hereinafter "Respondent"), by and
27 through his attorneys, LISA M. ANDERSON, ESQ. and THADDEUS J. YUREK III, ESQ., of
28 the law firm of GREENMAN, GOLDBERG, RABY & MARTINEZ, and files this Supplement
to Respondent's Opposition to Motion for Stay Pending Petition for Judicial review filed by the
self-insured employer, CLARK COUNTY (hereinafter "Respondent"), by and through its

RECEIVED
JUN 01 2018

1 attorney of record, DALTON L. HOOKS, JR. ESQ., of the law firm of HOOKS MENG
2 SCHAAN & CLEMENT.

3
4 This Supplement to Opposition is made and based upon the Points and Authorities
5 attached hereto as well as all other pleadings and papers on file in this action.

6 Dated this 25th day of May, 2018.

7 GREENMAN, GOLDBERG,
8 RABY & MARTINEZ

9
10
11 By 

12 LISA M. ANDERSON, ESQ.
13 Nevada Bar No. 004907
14 THADDEUS J. YUREK III, ESQ.
15 Nevada Bar No. 011332
16 601 South Ninth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Claimant
19
20
21
22
23
24
25
26
27
28

POINTS AND AUTHORITIES

Oral arguments were heard on May 24, 2018 concerning Petitioner's Motion for Stay Pending Petition for Judicial Review. The parties presented their arguments for this Court's consideration. Respondent hereby submits for the Court's consideration the following statute and argument. Petitioner argued that there was no statute to support the Appeals Officer's Decision and Order concerning Respondent's average monthly wage because he was retired and had no wages during the eighty-four (84) days preceding his disabling occupational cancer condition.

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

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

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

///

///

///

1 In this case, Respondent was employed for over thirty (30) full years of qualifying
2 capacity from his July 20, 1981 date of hire through his July 25, 2011 date of retirement. Based
3 upon NRS 617.453(5), Respondent's thirty (30) full years of qualifying employment is then
4 multiplied by three (3) months, resulting in ninety (90) months, which far exceeds the sixty (60)
5 month limit.
6

7 Respondent retired on July 25, 2011. Respondent was diagnosed with prostate cancer
8 on November 7, 2014 and thereafter filed the necessary documents to perfect a claim for
9 occupational cancer disease benefits. Thus, Respondent was diagnosed with his disabling cancer
10 approximately forty (40) months after his retirement, which is clearly within the sixty (60)
11 months requirement granted by NRS 617.453(5).
12

13 Therefore, pursuant to NRS 617.453(5), Respondent qualifies for the full "awarding of
14 benefits pursuant to this section," including the calculation of his average monthly wage for the
15 purpose of calculating his permanent partial disability award, based upon his disabling cancer
16 being diagnosed, filed and accepted for workers' compensation benefits at approximately forty
17 (40) months post retirement. Clearly Respondent's eligibility for the "awarding of benefits" is
18 well within the sixty (60) months period that he qualifies for based upon his thirty (30) full years
19 of qualifying employment.
20
21


22 CONCLUSION

23 In accordance with NRS 617.453(5), Respondent has demonstrated that his average
24 monthly wage for the purpose of calculating his permanent partial disability award must be
25 based upon the wages he was earning at the time of his retirement. These facts clearly support
26 the Appeals Officer's April 19, 2018 Decision and Order that is the subject of these proceeding.
27 As such, Petitioner's Motion for Stay Pending Petition for Judicial Review must be denied as
28

1 they have failed to demonstrate a strong showing that it is likely to prevail on the merits of the
2 appeal or that it will suffer irreparable harm.

3 Dated this 25th day of May, 2018.

5 GREENMAN, GOLDBERG, RABY & MARTINEZ

6
7 By: 
8 LISA M. ANDERSON, ESQ.

9 Nevada Bar No. 004907

10 THADDEUS J. YUREK III, ESQ.

11 Nevada Bar No. 011332

12 **GREENMAN, GOLDBERG, RABY & MARTINEZ**

13 601 South Ninth Street

14 Las Vegas, Nevada 89101

15 (702) 384-1616
16
17
18
19
20
21
22
23
24
25
26
27
28

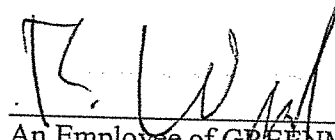
Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of May, 2018, I deposited a true and correct copy of the SUPPLEMENT TO RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION FOR STAY AND MOTION FOR ORDER SHORTENING TIME, OR, IN THE ALTERNATIVE, MOTION FOR TEMPORARY STAY in the U.S. Mails, postage fully prepaid, enclosed in envelopes addressed as follows:

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

Georganne W. Bradley, Esq.
Appeals Officer
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION
2200 South Rancho Drive
Suite 220
Las Vegas, Nevada 89102



An Employee of GREENMAN, GOLDBERG,
RABY & MARTINEZ