

1 **NOAS**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 005125
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5 Nevada Bar No. 013231
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11 Email: daniel.schwartz@lewisbrisbois.com
12 *Attorneys for Respondents*
13 *Cannon Cochran Management Services, Inc.*
14 *and Las Vegas Metropolitan Police Department*

Electronically Filed
Jun 06 2019 01:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

12 DAVID FIGUEROA

13 Petitioner,

14 v.

15 CANNON COCHRAN MANAGEMENT
16 SERVICES, INC., LAS VEGAS
17 METROPOLITAN POLICE DEPARTMENT
18 and THE DEPARTMENT OF
19 ADMINISTRATION, APPEALS OFFICE,
20 an Agency of the State of Nevada,

21 Respondents

CASE NO: A-18-779790-J

DEPT. NO.: XVIII

22 **NOTICE OF APPEAL**

23 TO: DAVID FIGUEROA, Petitioner

24 TO: JASON D. MILLS, ESQ., Petitioner's Attorney

25 NOTICE IS HEREBY GIVEN that Respondents CANNON COCHRAN MANAGEMENT
26 SERVICES, INC. and LAS VEGAS METROPOLITAN POLICE DEPARTMENT, (hereinafter
27 referred to as "Respondents"), in the above-entitled action, hereby appeal to the Supreme Court of the
28 State of Nevada from the attached "Order" entered in this action on or about April 30, 2019 which

...

1 Reversed the Appeals Officer's Decision and Order and the "Notice of Entry of Order" filed on or
2 about April 30, 2019.

3 DATED this 30 day of May, 2019.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6

7
8 By:

DANIEL L. SCHWARTZ, ESQ.

JOEL P. REEVES, ESQ.

LEWIS BRISBOIS BISGAARD & SMITH, LLP

2300 West Sahara Avenue, Suite 300, Box 28

Las Vegas, Nevada 89102

Attorneys for Respondents

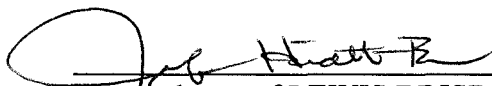
1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 30th day of
3 May, 2019, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a true
4 copy of the same for mailing, first class mail, as follows:

5 Jason Mills, Esq.
6 JASON D. MILLS & ASSOCIATES, LTD.
2200 S. Rancho, Suite 140
7 Las Vegas, NV 89102

8 LVMPD-Health Detail
400 S. Martin Luther King Blvd.
9 Suite B
Las Vegas, NV 89106

10 CCMSI
11 P.O. Box 35350
Las Vegas, NV 89133

12
13
14 

15 An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP
16
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DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF APPEAL

filed in case number: A-18-779790-J

☒ Document does not contain the Social Security number of any person.

- OR -

☐ Document contains the Social Security number of a person as required by:

☐ A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

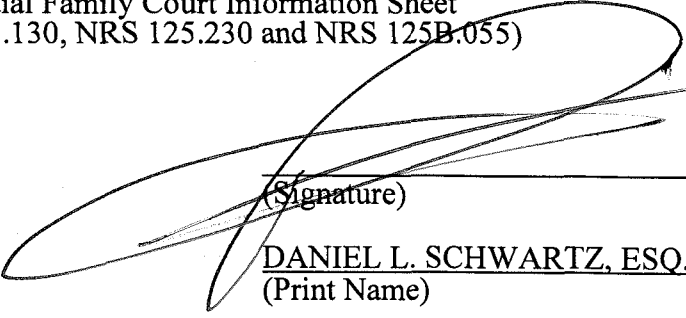
- or -

☐ For an application for a federal or state grant

- or -

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 9/30/19


(Signature)

DANIEL L. SCHWARTZ, ESQ.
(Print Name)

RESPONDENTS
(Attorney for)

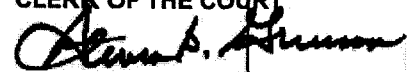
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LIST OF EXHIBITS

EXHIBIT I: Notice of Entry of Order

EXHIBIT I

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1 NOE
2 JASON D. MILLS, ESQ.
3 Nevada Bar No. 007447
4 JASON D. MILLS & ASSOCIATES, LTD.
5 2200 S. Rancho Dr., Ste 140
6 Las Vegas, NV 89102-4449
7 (702) 822-4444 – ph
8 (702) 822-4440 – fax
9 Attorney for Petitioner/Claimant
10 DAVID FIGUEROA

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 DAVID FIGUEROA,

14 Petitioner,

15 vs.

16 CANNON COCHRAN MANAGEMENT
17 SERVICES, INC., LAS VEGAS
18 METROPOLITAN POLICE
19 DEPARTMENT and THE DEPARTMENT
20 OF ADMINISTRATION, APPEALS
21 OFFICE, an Agency of the State of Nevada.

22 Respondents.

Case No: A-18-779790-J

Dept. No.: XXVII (28)

23 **NOTICE OF ENTRY OF ORDER**

24 TO: ALL INTERESTED PERSONS AND PARTIES

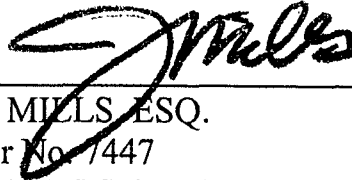
25 PLEASE TAKE NOTICE that the attached ORDER REVERSING THE

26 ///

27 ///

1 APPEALS OFFICER'S DECISION AND ORDER was entered on 4/30/2019.

2 Dated this 30th day of April, 2019.

3
4
5 

6 JASON D. MILLS ESQ.
7 Nevada Bar No. 7447
8 JASON D. MILLS & ASSOCIATES, LTD.
9 2200 S. Rancho Dr., Ste. 140
10 Las Vegas, NV 89104
11 Attorney for Petitioner/Claimant
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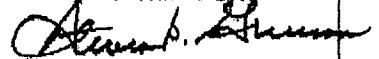
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2019, I duly deposited for mailing, first class mail, postage prepaid thereon, in the United States Mail at Las Vegas, Nevada, a true and correct copy of the above Notice of Entry of Order, in the above-entitled matter, addressed to the following:

Daniel Schwartz, Esq.
Lewis, Brisbois, et al
2300 W. Sahara Ave., Ste. 300 Box 28
Las Vegas, NV 89102-4375

Yvonne Salas
An employee of JASON D. ...

An employee of JASON D. MILLS & ASSOCIATES, LTD.



DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID FIGUEROA, Petitioner(s),

Case No.: A-18-779790-J

Department 28

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC., LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT and THE DEPARTMENT
OF ADMINISTRATION, APPEALS
OFFICE, an Agency of the State of Nevada,
Respondent(s).

ORDER REVERSING THE APPEALS OFFICER'S DECISION AND ORDER

This matter was set for a hearing on April 23, 2019; however, the parties requested the hearing be continued and the Court set it for a decision in chambers on May 16, 2019. As this decision is made in chambers, the Court did not hear arguments on the matter. The Court, having reviewed and considered the briefs filed by the parties and the papers on file herein, including the record on appeal, hereby finds as follows:

FACTS & PROCEDURE

Since approximately November 5, 2006, David Figueroa ("Appellant" or "Petitioner") was employed as a traffic police officer with the Las Vegas Metropolitan Police Department ("LVMPD" or "Respondent"). LVMPD's workers' compensation administrator is Cannon Cochran Management Services, Inc. (collectively with LVMPD "Respondents"). On March 7, 2015, Appellant, riding his personal motorcycle, got into an accident shortly after leaving the Bolden Area Command where he was assigned. Prior to the crash, Appellant was a motorcycle officer, but due to an industrial accident he was

1 assigned to the re-acclimation program at Bolden Area Command. On or about March 7,
2 2015, Appellant's supervisor informed Appellant that he did not need to complete the 12-
3 6 week re-acclimation program and Appellant was being returned to his regular working
4 division and traffic duties effective his next shift or two. The reassignment to his old
5 command would require Appellant to ride and operate a police motorcycle again. On the
6 evening of March 7, 2015, Appellant was working a 2:30 p.m. to 12:30 a.m. shift at the re-
7 acclimation unit. That night Appellant's supervisor instructed Appellant to leave at
8 approximately 11:45 p.m. and to get some extra "seat time" on his motorcycle in
9 preparation for his return to motorcycle duties. Appellant left, and at approximately 12:25
10 a.m., about 2 miles from Bolden Area Command, Appellant was involved in the
11 aforementioned collision.
12

13 On March 7, 2015, the C-4 employee compensation form process was completed.
14 On April 9, 2015 Appellant's claim was denied. Appellant appealed and on July 25, 2018,
15 the Appeals Officer filed a Decision and Order affirming the insurer's claim denial.
16

17 On August 21, 2018 the Petitioner David Figueroa filed a Petition for Judicial
18 Review, contesting an Appeals Officer's July 25, 2018 Decision and Order. On November
19 16, 2018, Petitioner filed his Opening Brief. On December 17, 2018, Respondents filed
20 their Answering Brief. On January 16, 2019, Petitioner filed his Reply Brief and
21 Petitioner's Request.
22

23 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

24 This Court conducts judicial review of a final agency decision under NRS
25 233B.135, which states as follows:

- 26 1. Judicial review of a final decision of an agency must be:
 - 27 (a) Conducted by the court without a jury; and

1 (b) Confined to the record.

2 In cases concerning alleged irregularities in procedure before an
3 agency that are not shown in the record, the court may receive
4 evidence concerning the irregularities.

5 2. The final decision of the agency shall be deemed reasonable
6 and lawful until reversed or set aside in whole or in part by the
7 court. The burden of proof is on the party attacking or resisting the
8 decision to show that the final decision is invalid pursuant to
9 subsection 3.

10 3. The court shall not substitute its judgment for that of the
11 agency as to the weight of evidence on a question of fact. The court
12 may remand or affirm the final decision or set it aside in whole or in
13 part if substantial rights of the petitioner have been prejudiced
14 because the final decision of the agency is:

15 (a) In violation of constitutional or statutory provisions;

16 (b) In excess of the statutory authority of the agency;

17 (c) Made upon unlawful procedure;

18 (d) Affected by other error of law;

19 (e) Clearly erroneous in view of the reliable, probative and
20 substantial evidence on the whole record; or

21 (f) Arbitrary or capricious or characterized by abuse of
22 discretion.

23 4. As used in this section, "substantial evidence" means
24 evidence which a reasonable mind might accept as adequate to
25 support a conclusion.

26 Under NRS 616C.150(1), to receive compensation for an injury a claimant must show by a
27 preponderance of the evidence that the injury arose out of and in the course and scope of
28 his or her employment. "Nevada looks to whether the employee is in the employer's
control in order to determine whether an employee is acting within the scope of
employment when an accident occurs..." *MGM Mirage v. Cotton*, 121 Nev. 396 (2005).

1 Generally, "injuries sustained by an employee while going to his regular place of
2 work are not deemed to arise of and in the course of his employment." *Tighe v. Las Vegas*
3 *Metropolitan Police Dept.*, 110 Nev. 632, 635 (1994) (citing *Crank v. Nevada Indus.*
4 *Comm'n*, 100 Nev. 80, 675 P.2d 413 (1984). The "going and coming" rule precludes
5 compensation for most employee injuries that occur during travel to and from work. *MGM*
6 *at 396*. However, there are three exceptions to the "going and coming" rule that apply
7 here. The first exception is when "the travel to or from work confers a distinct benefit upon
8 the employer." *Tighe at 635* (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842
9 P.2d 719 (1992). The second exception is when the employer exercised significant control
10 over the employee. *Id.* The third exception is the "law enforcement exception" adopted by
11 the *Tighe* Court, which reasoned that because "police officers are generally charged with a
12 duty of law enforcement while traveling on public thoroughfares" their injuries may be
13 compensated. *Id.* at 636.

14
15
16 Here, the decision reached by the appeals officer is affected by error of law and
17 clearly erroneous in view of the reliable, probative and substantial evidence on the whole
18 record. The appeals officer significantly omitted in the Findings of Fact¹ that the Appellant
19 was still on the clock at the time of the accident. This is an undisputed fact and integral to
20 the legal error in deciding the law that applies to the case. This Court is well aware of its
21 limitations in not deciding facts, but when a crucial fact, that is not contested is omitted
22 from the Findings of Fact, the Court also needs to look to see whether the decision was also
23 arbitrary and capricious and not supported by substantial evidence.

24
25 The second fact that was also left out of the Findings of Fact is that Respondent
26 concedes the Appellant's superior requested that the Appellant get additional practice

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¹ It was briefly mentioned in the Conclusions of Law.

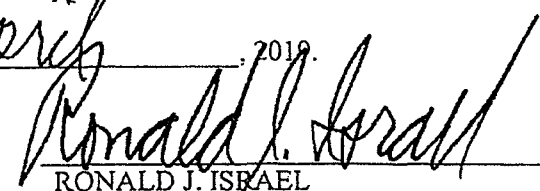
1 riding a motorcycle, as he called it "seat time." The request was supposedly the reason
2 why he was given an "early out," since he was going to return to motorcycle duty the next
3 shift.

4 The appeals officer analyzed the *Evans* and *Tighe* cases in relation to this case.
5 The appeals officer states, "The employer received no benefit from "claimant being on the
6 road..." This is an incorrect statement of fact. There is no question the Appellant was on
7 the clock at the time of the accident and, therefore, under the control of LVMPD unlike an
8 off-duty officer returning home. Unlike the officer in *Tighe* who was just "on-call" on his
9 drive home, here, it was not disputed that Appellant was still "on the clock" until 12:30
10 a.m. and carrying out the instruction to get more "seat time" on a motorcycle. Appellant
11 could have been called back to some other duty or task prior to 12:30 a.m., however
12 unlikely that may have been. LVMPD derived the benefit of Appellant obtaining additional
13 "seat time" as instructed.
14

15
16 Finally, it is further undisputed that because Appellant was on the clock at the
17 time of the accident, he was subject to all the rules and regulations of an officer and could
18 be punished or even terminated for any violations. LVMPD exercised a level of control
19 over and derived benefit from Appellant at the time of the accident. The above reasons are
20 combined with the fact that Appellant had his radio and the general duty of law
21 enforcement while traveling on public thoroughfares under *Tighe*.
22

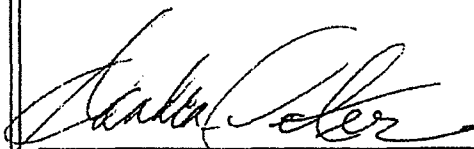
23 Therefore, COURT ORDERED, the appeals officer's decision is REVERSED.

24 DATED this 30 day of April, 2019.

25
26 
27 RONALD J. ISRAEL
28 DISTRICT JUDGE
DEPARTMENT 28

1 I hereby certify that on or about the date signed, a
2 copy of this Order was electronically served per the
3 attached Service Contacts list and/or placed in the
4 attorney's folder maintained by the Clerk of the
Court and/or transmitted via facsimile and/or
mailed, postage prepaid, by United States mail to
the proper parties as follows:

5 Jason D. Mills, Esq.
6 Via Facsimile: (702)822-4440
7 Not listed in E-Service per N.E.F.C.R.9(b); E.D.C.R. 2.02

8 
9 Sandra Jeter, Judicial Executive Assistant
10 A-18-779790-J
11 ORDER
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File Into Existing Case

Service Contacts: A-18-779790-J

Case Number	Name	Location	Description	Email	Case Type
A-18-779790-J	David Figueroa	Department 20	David Figueroa, Petitioner...		Worker's Compensation...
	▶ Party: David Figueroa - Petitioner				
	▼ Party: Cannon Cochran Management Services, Inc. - Respondent				

1

20 items per page

1 - 1 of 1 items

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Version: 2017.2.5 7059

Jennifer Hiatt-Bryan

jennifer.hiatt-bryan@lewisbnsbois.com

▶ Party: Las Vegas Metropolitan Police Department - Respondent

Jennifer Hiatt-Bryan

jennifer.hiatt-bryan@lewisbnsbois.com

Joel P. Reeves

joel.reeves@lewisbnsbois.com

Daniel L. Schwartz

daniel.schwartz@lewisbnsbois.com

▶ Party: Department of Administration, Appeals Office - Respondent

▶ Other Service Contacts

1

10 items per page

1 - 5 of 5 items

TRANSMISSION VERIFICATION REPORT

TIME : 04/30/2019 16:44
NAME : DEPT 28
FAX : 7023661407
TEL : 7026713631
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DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID FIGUEROA, Petitioner(s),

Case No.: A-18-779790-J
Department 28

vs.

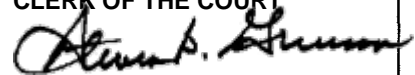
CANNON COCHRAN MANAGEMENT
SERVICES, INC., LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT and THE DEPARTMENT
OF ADMINISTRATION, APPEALS
OFFICE, an Agency of the State of Nevada,
Respondent(s).

ORDER REVERSING THE APPEALS OFFICER'S DECISION AND ORDER

This matter was set for a hearing on April 23, 2019; however, the parties requested the hearing be continued and the Court set it for a decision in chambers on May 16, 2019. As this decision is made in chambers, the Court did not hear arguments on the matter. The Court, having reviewed and considered the briefs filed by the parties and the papers on file herein, including the record on appeal, hereby finds as follows:

FACTS & PROCEDURE

Since approximately November 5, 2006, David Figueroa ("Appellant" or



1 **ASTA**
DANIEL L. SCHWARTZ, ESQ.
2 Nevada Bar No. 005125
JOEL P. REEVES, ESQ.
3 Nevada Bar No. 013231
LEWIS BRISBOIS BISGAARD & SMITH LLP
4 2300 W. Sahara Ave. Ste. 300
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5 Telephone: 702-893-3383
Facsimile: 702-366-9689
6 Email: daniel.schwartz@lewisbrisbois.com
Attorneys for Respondents
7 *Cannon Cochran Management Services, Inc.*
and Las Vegas Metropolitan Police Department

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

10 **DAVID FIGUEROA**

11 **Petitioner,**

12 **v.**

13 **CANNON COCHRAN MANAGEMENT**
SERVICES, INC., LAS VEGAS
14 **METROPOLITAN POLICE DEPARTMENT**
and THE DEPARTMENT OF
15 **ADMINISTRATION, APPEALS OFFICE,**
an Agency of the State of Nevada,

16 **Respondents.**

CASE NO: A-18-779790-J

DEPT. NO.: XVIII

17
18 **CASE APPEAL STATEMENT**

19 1. Name of party filing this case appeal statement:

20 **Cannon Cochran Management Services, Inc. and Las Vegas Metropolitan Police**
21 **Department**

22
23 2. Identify the Judge issuing the decision, judgment, or order appealed from:

24 **Hon. Ron Israel, District Court Judge**

25 3. Identify all parties to the proceedings in the district court (the use of et al. to denote
26 parties is prohibited):

27 **Cannon Cochran Management Services, Inc., Las Vegas Metropolitan Police**
28 **Department, and David Figueroa**

1 4. Identify all parties involved in this appeal (the use of et al. to denote parties is
2 prohibited):

3 **Cannon Cochran Management Services, Inc., Las Vegas Metropolitan Police**
4 **Department, and David Figueroa**

5 5. Set forth the name, law firm, address, and telephone number of all counsel on
6 appeal and identify the party or parties whom they represent:

7 **DANIEL L. SCHWARTZ, ESQ.**
8 **JOEL P. REEVES, ESQ.**
9 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
10 **2300 W. Sahara Avenue, Suite 300, Box 28**
11 **Las Vegas, Nevada 89102-4375**
Attorneys for Respondents,
Cannon Cochran Management Services, Inc.
and Las Vegas Metropolitan Police Department

12 **JASON D. MILLS, ESQ.**
13 **JASON D. MILLS & ASSOCIATES, LTD.**
14 **2200 S. Rancho, Suite 140**
15 **Las Vegas, NV 89102**
Attorney for Petitioner
David Figueroa

16 6. Indicate whether Petitioner were represented by appointed or retained counsel in
17 the district court:

18 **Petitioner was represented by retained counsel in the District Court.**

19 7. Indicate whether Respondents were represented by appointed or retained counsel in
20 the district court:

21 **Respondents were represented by retained counsel in the District Court.**

22 8. Indicate whether Petitioner is represented by appointed or retained counsel on
23 appeal:

24 **Petitioner is represented by retained counsel on appeal.**

25 9. Indicate whether Respondents are represented by appointed or retained counsel on
26 appeal:

27 **Respondents are represented by retained counsel on appeal.**

1 10. Indicate whether Petitioner was granted leave to proceed in forma pauperis, and the
2 date of entry of the district court order granting such leave:

3 **Petitioner was not granted leave to proceed in forma pauperis.**

4 11. Indicate whether Respondents were granted leave to proceed in forma pauperis, and
5 the date of entry of the district court order granting such leave:

6 **Respondents were not granted leave to proceed in forma pauperis.**

7 12. Indicate the date the proceedings commenced in the district court (e.g., date
8 complaint, indictment, information, or petition was filed):

9 **The Petition for Judicial Review of the Appeals Officer's Decision of July 25, 2018,**
10 **was filed on August 21, 2018.**

11 13. Provide a brief description of the nature of the action and result in the district court,
12 including the type of judgment or order being appealed and the relief granted by the district court:

13 **This is a worker's compensation case. On March 7, 2015, the Petitioner, DAVID**
14 **FIGUEROA (hereinafter "Petitioner") was involved in a motor vehicle accident while**
15 **driving his personal motorcycle on his commute home from work. The evidence showed that**
16 **Petitioner's sergeant had given Petitioner and a co-officer (Tyler McMeans) an "early out"**
17 **for their shift "to get some seat time" on their personal motor cycles and that Petitioner's**
18 **accident happened at 12:25 a.m., i.e. five (5) minutes before his shift technically ended at**
19 **12:30 a.m. At the time of the accident, Petitioner was driving his personal vehicle, wearing**
20 **civilian clothes, and although he was carrying service items with him such as his department**
21 **issued radio, duty weapon, handcuffs, and badge, it was undisputed that Employer LAS**
22 **VEGAS METROPOLITAN POLICE DEPARTMENT (hereinafter "Employer") did not**
23 **require that Petitioner have any of those items with him.**

1 Employer's workers' compensation Administrator CANNON COCHRAN
2 MANAGEMENT SERVICES, INC. (hereinafter "Administrator") denied this claim as
3 Petitioner was not performing work at the time of his accident, his injuries were not related
4 to his employment, and he was commuting home. Petitioner appealed and transferred this
5 matter directly to the Appeals Office.
6

7 On May 10, 2017, this matter came on for hearing before the Appeals Officer.
8 Petitioner and Employer's Director of Risk Management, Jeff Roch, gave testimony.

9 On July 25, 2018, after hearing testimony and receiving written closing arguments
10 from both parties, the Appeals Officer affirmed claim denial, finding that Petitioner had not
11 satisfied his burden to prove that he was injured within the course and scope of his
12 employment.
13

14 Petitioner filed this Petition for Judicial Review, contesting the Appeals Officer's July
15 25, 2018 Decision and Order.

16 After receiving written briefs and without holding oral argument, the District Co
17 reversed the Appeals Officer, finding that Petitioner was within the course and scope of his
18 employment because he was still on the clock and providing a benefit to Employer by virtue
19 of him still being on the clock.
20

21 Respondents appealed to this Honorable Court as simply being on the clock and
22 sustaining an injury is not enough to establish a compensable claim for workers'
23 compensation benefits.

24 14. Indicate whether the case has previously been the subject of an appeal to or original
25 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of
26 the prior proceeding:

27 No.
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15. Indicate whether this appeal involves child custody or visitation:

No.

16. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

No.

DATED this 30 day of May, 2019.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

DANIEL L. SCHWARTZ, ESQ.

JOEL P. REEVES, ESQ.

LEWIS BRISBOIS BISGAARD & SMITH, LLP

2300 West Sahara Avenue, Suite 300, Box 28

Las Vegas, Nevada 89102

Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

CASE APPEAL STATEMENT

filed in case number: A-18-779790-J :

☒ Document does not contain the Social Security number of any person.

- OR -

☐ Document contains the Social Security number of a person as required by:

☐ A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 5/30/19

(Signature)

DANIEL L. SCHWARTZ, ESQ.
(Print Name)

RESPONDENTS
(Attorney for)

CASE SUMMARY**CASE NO. A-18-779790-J**

David Figueroa, Petitioner(s)
vs.
Cannon Cochran Management Services, Inc., Respondent
(s)

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Location: **Department 28**
 Judicial Officer: **Israel, Ronald J.**
 Filed on: **08/21/2018**
 Case Number History:
 Cross-Reference Case Number: **A779790**

CASE INFORMATION**Statistical Closures**

04/30/2019 Summary Judgment

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

Case Status: **04/30/2019 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-18-779790-J
 Court Department 28
 Date Assigned 11/26/2018
 Judicial Officer Israel, Ronald J.

PARTY INFORMATION**Petitioner****Figueroa, David***Lead Attorneys*

Mills, Jason D.
Retained
 7028224444(W)

Respondent**Cannon Cochran Management Services, Inc.**

Schwartz, Daniel L
Retained
 702-893-3383(W)

Department of Administration, Appeals Office**Las Vegas Metropolitan Police Department**

Schwartz, Daniel L
Retained
 702-893-3383(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

08/21/2018



Petition for Judicial Review
 Filed by: Petitioner Figueroa, David
Petition for Judicial Review

08/28/2018



Notice of Intent to Participate
 Filed By: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department
Notice of Intent to Participate

08/28/2018



Peremptory Challenge
 Filed by: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department
Peremptory challenge of Judge

08/30/2018



Initial Appearance Fee Disclosure

CASE SUMMARY

CASE NO. A-18-779790-J

Filed By: Respondent Las Vegas Metropolitan Police Department
Peremptory Challenge Filing Fee Disclosure

10/01/2018



Notice

Filed By: Petitioner Figueroa, David
Notice of Request to Transmit the Record on Appeal

10/08/2018



Transmittal of Record on Appeal

Party: Respondent Department of Administration, Appeals Office
Transmittal of Record on Appeal

10/08/2018



Affidavit

Filed By: Respondent Department of Administration, Appeals Office
Affidavit & Certification

10/08/2018



Certification of Transmittal

Party: Respondent Department of Administration, Appeals Office
Certification of Transmittal

11/16/2018



Petitioners Opening Brief

Filed by: Petitioner Figueroa, David
Petitioner's Opening Brief In Support of Petition for Judicial Review

11/26/2018



Notice of Department Reassignment

Notice of Department Reassignment

12/17/2018



Brief

Filed By: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department
Respondents' Answering Brief

01/16/2019



Reply Points and Authorities

Filed by: Petitioner Figueroa, David
Petitioner's Reply Brief in Support of Petition for Judicial Review

01/16/2019



Request

Filed by: Petitioner Figueroa, David
Petitioner's Request for Hearing Pursuant to NRS 233B.133(4)

02/19/2019



Request

Filed by: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department
Request for Hearing on Petitioner's Petition for Judicial Review

04/30/2019



Order

Order Reversing The Appeals Officer's Decision And Order

04/30/2019



Order to Statistically Close Case

Civil Order To Statistically Close Case

04/30/2019









Notice of Entry of Order

Filed By: Petitioner Figueroa, David
Notice of Entry of Order

CASE SUMMARY

CASE NO. A-18-779790-J

05/15/2019	 Motion Filed By: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department <i>Respondents' Motion to Alter Judgment, to Amend Findings, and For Oral Argument; or in the Alternative Motion for Stay Pending Supreme Court Appeal and Motion for Order Shortening Time</i>
05/22/2019	 Opposition to Motion Filed By: Petitioner Figueroa, David <i>Petitioner's Opposition to Respondent's Motion to Alter Judgment or In the Alternative to Stay Pending Appeal</i>
05/30/2019	 Notice of Appeal Filed By: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department <i>Notice of Appeal</i>
05/30/2019	 Case Appeal Statement Filed By: Respondent Cannon Cochran Management Services, Inc.; Respondent Las Vegas Metropolitan Police Department <i>Case Appeal Statement</i>
04/30/2019	DISPOSITIONS Appeal Reversed (Judicial Officer: Israel, Ronald J.) Debtors: Cannon Cochran Management Services, Inc. (Respondent), Las Vegas Metropolitan Police Department (Respondent), Department of Administration, Appeals Office (Respondent) Creditors: David Figueroa (Petitioner) Judgment: 04/30/2019, Docketed: 05/01/2019
03/26/2019	HEARINGS  Petition for Judicial Review (9:00 AM) (Judicial Officer: Israel, Ronald J.) 03/26/2019, 04/23/2019 <i>Request for Hearing on Petitioner's Petition for Judicial Review</i> Matter Continued; Request for Hearing on Petitioner's Petition for Judicial Review Hearing Set; Request for Hearing on Petitioner's Petition for Judicial Review Journal Entry Details: <i>No parties appeared. Court noted the Law Clerk received e-mail from counsel requesting to continue this matter. Court noted the Court had already reviewed all the papers and pleadings and therefore, there will be no oral arguments. COURT ORDERED, Request for hearing, GRANTED in chambers and Decision of Petition for Judicial Review SET in chambers for decision. 05/16/19 (CHAMBERS) DECISION RE: PETITION FOR JUDICIAL REVIEW</i> CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Daniel Schwartz, Esq. (Lewis, Brisbois, B & S) and Jason Mills, Esq. kt 04/23/19.; Matter Continued; Request for Hearing on Petitioner's Petition for Judicial Review Hearing Set; Request for Hearing on Petitioner's Petition for Judicial Review Journal Entry Details: <i>Conference at the bench. COURT ORDERED, Matter CONTINUED. 04/23/19 9:00 AM REQUEST FOR HEARING ON PETITIONER'S PETITION FOR JUDICIAL REVIEW;</i>
05/16/2019	CANCELED Decision (3:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated</i> <i>Decision re: Petitioner's Petition for Judicial Review</i>
05/23/2019	 Motion (3:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Respondents' Motion to Alter Judgment, to Amend Findings, and For Oral Argument; or in the Alternative Motion for Stay Pending Supreme Court Appeal and Motion for Order Shortening Time</i>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-779790-J

Denied; Respondents' Motion to Alter Judgment, to Amend Findings, and For Oral Argument; or in the Alternative Motion for Stay Pending Supreme Court Appeal and Motion for Order Shortening Time

Journal Entry Details:

After reviewing the Motion and Opposition, the Order, the briefs, the record on appeal, and the other documents on file, the Court finds as follows: Respondents' Motion to Alter Judgment, to Amend Findings, and for Oral Argument; Or in the Alternative Motion for Stay Pending Supreme Court Appeal and Motion for Order Shortening Time is DENIED. First, the Court does not find oral arguments are warranted for this Motion. Second, a stay is not appropriate because Respondent has not demonstrated a reasonable likelihood of success on the merits for the reasons stated below. This Court's decision was not a manifest error of law or fact, nor did it misapprehend the Appeals Officer's Decision and law governing this case. Respondents reliance on the boilerplate "catch-all" phrase that "[a]ny Finding of Fact more appropriately deemed a Conclusion of Law shall be so deemed, and vice versa." is misplaced. The Appeals Officer's failure to include in the Findings of Fact that Appellant was told to leave early and "get some seat time" indicates the Appeals Officer did not find it as a material fact, regardless of the Appeals Officer's analysis in the Conclusions of Law. Additionally, this Court's decision stated the fact that Petitioner was on the clock was just one of several factors that supported the conclusion that Petitioner's injuries arose out of and in the course of his employment. In addition to being on the clock, this Court's Order noted that at the time of the injury Petitioner was carrying out a supervisor's instruction to "get more seat time," that act conferred a benefit to Petitioner's employer, and "the above reasons are combined with the fact that Appellant had his radio and the general duty of law enforcement while traveling on public thorough fares under Tighe." This Court clearly considered multiple factors and understood that Tighe did not hold that law enforcement officers are always excluded from the travel-to-or-from rule. Likewise, this Court considered multiple factors beyond just petitioner being on the clock. Based on the foregoing, the arguments raised in the briefs, and the documents on file Respondents' Motion is DENIED. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. Counsel for Petitioner to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21. Said order then must be filed in accordance with EDCR 7.24. CLERK'S NOTE: A copy of this minute order was e-served to counsel. kt 05/28/19.;

DATE

FINANCIAL INFORMATION

Respondent Cannon Cochran Management Services, Inc.

Total Charges

697.00

Total Payments and Credits

697.00

Balance Due as of 6/3/2019

0.00

Respondent Cannon Cochran Management Services, Inc.

Appeal Bond Balance as of 6/3/2019

500.00

DISTRICT COURT CIVIL COVER SHEET

A-18-779790-J

County, Nevada

Department 18

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
David Figueroa	Cannon Cochran Management Services, Inc.,
6831 Hillstop Crest Ct.	Las Vegas Metropolitan Police Department
Las Vegas, NV 89131	The Dept. of Administration, Appeals Office
Attorney (name/address/phone):	Attorney (name/address/phone):
Jason D. Mills, Esq.	Daniel L. Schwartz, Esq.
2200 S. Rancho Dr., Ste 140	Lewis Brisbois Bisgaard & Smith LLP
Las Vegas, NV 89102	2300 W. Sahara Ave, Ste 300, Box 28
	Las Vegas, NV 89102

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

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input checked="" type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

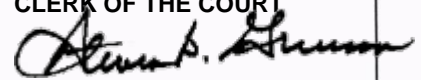
Business Court filings should be filed using the Business Court civil coversheet.

August 21, 2018

Date

Signature of initiating party or representative

See other side for family-related case filings.



**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAVID FIGUEROA, Petitioner(s),

Case No.: A-18-779790-J

Department 28

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC., LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT and THE DEPARTMENT
OF ADMINISTRATION, APPEALS
OFFICE, an Agency of the State of Nevada,
Respondent(s).

ORDER REVERSING THE APPEALS OFFICER'S DECISION AND ORDER

This matter was set for a hearing on April 23, 2019; however, the parties requested the hearing be continued and the Court set it for a decision in chambers on May 16, 2019. As this decision is made in chambers, the Court did not hear arguments on the matter. The Court, having reviewed and considered the briefs filed by the parties and the papers on file herein, including the record on appeal, hereby finds as follows:

FACTS & PROCEDURE

Since approximately November 5, 2006, David Figueroa ("Appellant" or "Petitioner") was employed as a traffic police officer with the Las Vegas Metropolitan Police Department ("LVMPD" or "Respondent"). LVMPD's workers' compensation administrator is Cannon Cochran Management Services, Inc. (collectively with LVMPD "Respondents"). On March 7, 2015, Appellant, riding his personal motorcycle, got into an accident shortly after leaving the Bolden Area Command where he was assigned. Prior to the crash, Appellant was a motorcycle officer, but due to an industrial accident he was

1 assigned to the re-acclimation program at Bolden Area Command. On or about March 7,
2 2015, Appellant's supervisor informed Appellant that he did not need to complete the 12-
3 16 week re-acclimation program and Appellant was being returned to his regular working
4 division and traffic duties effective his next shift or two. The reassignment to his old
5 command would require Appellant to ride and operate a police motorcycle again. On the
6 evening of March 7, 2015, Appellant was working a 2:30 p.m. to 12:30 a.m. shift at the re-
7 acclimation unit. That night Appellant's supervisor instructed Appellant to leave at
8 approximately 11:45 p.m. and to get some extra "seat time" on his motorcycle in
9 preparation for his return to motorcycle duties. Appellant left, and at approximately 12:25
10 a.m., about 2 miles from Bolden Area Command, Appellant was involved in the
11
12 aforementioned collision.

13
14 On March 7, 2015, the C-4 employee compensation form process was completed.
15 On April 9, 2015 Appellant's claim was denied. Appellant appealed and on July 25, 2018,
16 the Appeals Officer filed a Decision and Order affirming the insurer's claim denial.

17 On August 21, 2018 the Petitioner David Figueroa filed a Petition for Judicial
18 Review, contesting an Appeals Officer's July 25, 2018 Decision and Order. On November
19 16, 2018, Petitioner filed his Opening Brief. On December 17, 2018, Respondents filed
20 their Answering Brief. On January 16, 2019, Petitioner filed his Reply Brief and
21 Petitioner's Request.
22

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**

24 This Court conducts judicial review of a final agency decision under NRS
25 233B.135, which states as follows:

26 1. Judicial review of a final decision of an agency must be:

27 (a) Conducted by the court without a jury; and
28

1 (b) Confined to the record.

2 In cases concerning alleged irregularities in procedure before an
3 agency that are not shown in the record, the court may receive
4 evidence concerning the irregularities.

5 2. The final decision of the agency shall be deemed reasonable
6 and lawful until reversed or set aside in whole or in part by the
7 court. The burden of proof is on the party attacking or resisting the
8 decision to show that the final decision is invalid pursuant to
9 subsection 3.

10 3. The court shall not substitute its judgment for that of the
11 agency as to the weight of evidence on a question of fact. The court
12 may remand or affirm the final decision or set it aside in whole or in
13 part if substantial rights of the petitioner have been prejudiced
14 because the final decision of the agency is:

15 (a) In violation of constitutional or statutory provisions;

16 (b) In excess of the statutory authority of the agency;

17 (c) Made upon unlawful procedure;

18 (d) Affected by other error of law;

19 (e) Clearly erroneous in view of the reliable, probative and
20 substantial evidence on the whole record; or

21 (f) Arbitrary or capricious or characterized by abuse of
22 discretion.

23 4. As used in this section, "substantial evidence" means
24 evidence which a reasonable mind might accept as adequate to
25 support a conclusion.

26 Under NRS 616C.150(1), to receive compensation for an injury a claimant must show by a
27 preponderance of the evidence that the injury arose out of and in the course and scope of
28 his or her employment. "Nevada looks to whether the employee is in the employer's
control in order to determine whether an employee is acting within the scope of
employment when an accident occurs..." *MGM Mirage v. Cotton*, 121 Nev. 396 (2005).

1 Generally, "injuries sustained by an employee while going to his regular place of
2 work are not deemed to arise of and in the course of his employment." *Tighe v. Las Vegas*
3 *Metropolitan Police Dept.*, 110 Nev. 632, 635 (1994) (citing *Crank v. Nevada Indus.*
4 *Comm'n*, 100 Nev. 80, 675 P.2d 413 (1984). The "going and coming" rule precludes
5 compensation for most employee injuries that occur during travel to and from work. *MGM*
6 *at 396*. However, there are three exceptions to the "going and coming" rule that apply
7 here. The first exception is when "the travel to or from work confers a distinct benefit upon
8 the employer." *Tighe at 635* (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842
9 P.2d 719 (1992). The second exception is when the employer exercised significant control
10 over the employee. *Id.* The third exception is the "law enforcement exception" adopted by
11 the *Tighe* Court, which reasoned that because "police officers are generally charged with a
12 duty of law enforcement while traveling on public thoroughfares" their injuries may be
13 compensated. *Id. at 636*.

16 Here, the decision reached by the appeals officer is affected by error of law and
17 clearly erroneous in view of the reliable, probative and substantial evidence on the whole
18 record. The appeals officer significantly omitted in the Findings of Fact¹ that the Appellant
19 was still on the clock at the time of the accident. This is an undisputed fact and integral to
20 the legal error in deciding the law that applies to the case. This Court is well aware of its
21 limitations in not deciding facts, but when a crucial fact, that is not contested is omitted
22 from the Findings of Fact, the Court also needs to look to see whether the decision was also
23 arbitrary and capricious and not supported by substantial evidence.

25 The second fact that was also left out of the Findings of Fact is that Respondent
26 concedes the Appellant's superior requested that the Appellant get additional practice

27 ¹ It was briefly mentioned in the Conclusions of Law.


1 riding a motorcycle, as he called it "seat time." The request was supposedly the reason
2 why he was given an "early out," since he was going to return to motorcycle duty the next
3 shift.

4 The appeals officer analyzed the *Evans* and *Tighe* cases in relation to this case.
5 The appeals officer states, "The employer received no benefit from "claimant being on the
6 road..." This is an incorrect statement of fact. There is no question the Appellant was on
7 the clock at the time of the accident and, therefore, under the control of LVMPD unlike an
8 off-duty officer returning home. Unlike the officer in *Tighe* who was just "on-call" on his
9 drive home, here, it was not disputed that Appellant was still "on the clock" until 12:30
10 a.m. and carrying out the instruction to get more "seat time" on a motorcycle. Appellant
11 could have been called back to some other duty or task prior to 12:30 a.m., however
12 unlikely that may have been. LVMPD derived the benefit of Appellant obtaining additional
13 "seat time" as instructed.
14
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16 Finally, it is further undisputed that because Appellant was on the clock at the
17 time of the accident, he was subject to all the rules and regulations of an officer and could
18 be punished or even terminated for any violations. LVMPD exercised a level of control
19 over and derived benefit from Appellant at the time of the accident. The above reasons are
20 combined with the fact that Appellant had his radio and the general duty of law
21 enforcement while traveling on public thoroughfares under *Tighe*.
22

23 Therefore, COURT ORDERED, the appeals officer's decision is REVERSED.

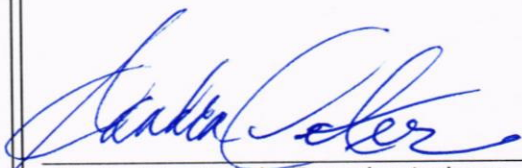
24 DATED this 30 day of April, 2019.

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27 RONALD J. ISRAEL
28 DISTRICT JUDGE
DEPARTMENT 28

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I hereby certify that on or about the date signed, a copy of this Order was electronically served per the attached Service Contacts list and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Jason D. Mills, Esq.
Via Facsimile: (702)822-4440
Not listed in E-Service per *N.E.F.C.R.9(b); E.D.C.R. 2.02*



Sandra Jeter, Judicial Executive Assistant
A-18-779790-J
ORDER

File Into Existing Case

Case Number	Name	Location	Description	Email	Case Type
A-18-779790-J	Department 20	David Figueroa, Petitione...	Worker's Compensation...		
1	▶ Party: David Figueroa - Petitioner				
	20	items per page			1 - 1 of 1 items
	▼ Party: Cannon Cochran Management Services, Inc. - Respondent				
	Jennifer Hiatt-Bryan		jennifer.hiatt-bryan@lewisbrisbois.com		
© 2019 Tyler Technologies Version: 2017.2.5.7059	▼ Party: Las Vegas Metropolitan Police Department - Respondent				
	Jennifer Hiatt-Bryan		jennifer.hiatt-bryan@lewisbrisbois.com		
	Joel P. Reeves		joel.reeves@lewisbrisbois.com		
	Daniel L. Schwartz		daniel.schwartz@lewisbrisbois.com		
	▶ Party: Department of Administration, Appeals Office - Respondent				
	▶ Other Service Contacts				
	1	10	items per page		1 - 5 of 5 items

TRANSMISSION VERIFICATION REPORT

TIME : 04/30/2019 16:44
NAME : DEPT 28
FAX : 7023661407
TEL : 7026713631
SER.# : U63314C8J569809

DATE, TIME
FAX NO./NAME
DURATION
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAVID FIGUEROA, Petitioner(s),

Case No.: A-18-779790-J
Department 28

vs.

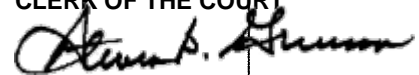
CANNON COCHRAN MANAGEMENT
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DEPARTMENT and THE DEPARTMENT
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OFFICE, an Agency of the State of Nevada,
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ORDER REVERSING THE APPEALS OFFICER'S DECISION AND ORDER

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FACTS & PROCEDURE

Since approximately November 5, 2006, David Figueroa ("Appellant" or



1 **NOE**
2 JASON D. MILLS, ESQ.
3 Nevada Bar No. 007447
4 JASON D. MILLS & ASSOCIATES, LTD.
5 2200 S. Rancho Dr., Ste 140
6 Las Vegas, NV 89102-4449
7 (702) 822-4444 – ph
8 (702) 822-4440 – fax
9 Attorney for Petitioner/Claimant
10 DAVID FIGUEROA

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 DAVID FIGUEROA,

14 Petitioner,

15 vs.

16 CANNON COCHRAN MANAGEMENT
17 SERVICES, INC., LAS VEGAS
18 METROPOLITAN POLICE
19 DEPARTMENT and THE DEPARTMENT
20 OF ADMINISTRATION, APPEALS
21 OFFICE, an Agency of the State of Nevada.

22 Respondents.

Case No: **A-18-779790-J**

Dept. No.: **XXVII (28)**

23 **NOTICE OF ENTRY OF ORDER**

24 TO: ALL INTERESTED PERSONS AND PARTIES

25 PLEASE TAKE NOTICE that the attached ORDER REVERSING THE

26 ///

27 ///

1 APPEALS OFFICER'S DECISION AND ORDER was entered on 4/30/2019.

2 Dated this 30th day of April, 2019.

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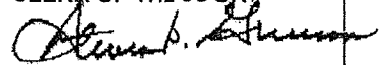
6 JASON D. MILLS, ESQ.
7 Nevada Bar No. 7447
8 JASON D. MILLS & ASSOCIATES, LTD.
9 2200 S. Rancho Dr., Ste. 140
10 Las Vegas, NV 89104
11 Attorney for Petitioner/Claimant
12
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Daniel Schwartz, Esq.
Lewis, Brisbois, et al
2300 W. Sahara Ave., Ste. 300 Box 28
Las Vegas, NV 89102-4375

Vernia Salas
Employee of IASOLD

An employee of JASON D. MILLS & ASSOCIATES, LTD.



DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID FIGUEROA, Petitioner(s),

Case No.: A-18-779790-J
Department 28

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC., LAS VEGAS
METROPOLITAN POLICE
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FACTS & PROCEDURE

Since approximately November 5, 2006, David Figueroa ("Appellant" or "Petitioner") was employed as a traffic police officer with the Las Vegas Metropolitan Police Department ("LVMPD" or "Respondent"). LVMPD's workers' compensation administrator is Cannon Cochran Management Services, Inc. (collectively with LVMPD "Respondents"). On March 7, 2015, Appellant, riding his personal motorcycle, got into an accident shortly after leaving the Bolden Area Command where he was assigned. Prior to the crash, Appellant was a motorcycle officer, but due to an industrial accident he was

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10 a.m., about 2 miles from Bolden Area Command, Appellant was involved in the
11 aforementioned collision.
12

13 On March 7, 2015, the C-4 employee compensation form process was completed.
14 On April 9, 2015 Appellant's claim was denied. Appellant appealed and on July 25, 2018,
15 the Appeals Officer filed a Decision and Order affirming the insurer's claim denial.
16

17 On August 21, 2018 the Petitioner David Figueroa filed a Petition for Judicial
18 Review, contesting an Appeals Officer's July 25, 2018 Decision and Order. On November
19 16, 2018, Petitioner filed his Opening Brief. On December 17, 2018, Respondents filed
20 their Answering Brief. On January 16, 2019, Petitioner filed his Reply Brief and
21 Petitioner's Request.
22

23 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

24 This Court conducts judicial review of a final agency decision under NRS
25 233B.135, which states as follows:

- 26 1. Judicial review of a final decision of an agency must be:
 - 27 (a) Conducted by the court without a jury; and

1 (b) Confined to the record.

2 In cases concerning alleged irregularities in procedure before an
3 agency that are not shown in the record, the court may receive
4 evidence concerning the irregularities.

5 2. The final decision of the agency shall be deemed reasonable
6 and lawful until reversed or set aside in whole or in part by the
7 court. The burden of proof is on the party attacking or resisting the
8 decision to show that the final decision is invalid pursuant to
9 subsection 3.

10 3. The court shall not substitute its judgment for that of the
11 agency as to the weight of evidence on a question of fact. The court
12 may remand or affirm the final decision or set it aside in whole or in
13 part if substantial rights of the petitioner have been prejudiced
14 because the final decision of the agency is:

15 (a) In violation of constitutional or statutory provisions;

16 (b) In excess of the statutory authority of the agency;

17 (c) Made upon unlawful procedure;

18 (d) Affected by other error of law;

19 (e) Clearly erroneous in view of the reliable, probative and
20 substantial evidence on the whole record; or

21 (f) Arbitrary or capricious or characterized by abuse of
22 discretion.

23 4. As used in this section, "substantial evidence" means
24 evidence which a reasonable mind might accept as adequate to
25 support a conclusion.

26 Under NRS 616C.150(1), to receive compensation for an injury a claimant must show by a
27 preponderance of the evidence that the injury arose out of and in the course and scope of
28 his or her employment. "Nevada looks to whether the employee is in the employer's
control in order to determine whether an employee is acting within the scope of
employment when an accident occurs..." *MGM Mirage v. Cotton*, 121 Nev. 396 (2005).

1 Generally, "injuries sustained by an employee while going to his regular place of
2 work are not deemed to arise of and in the course of his employment." *Tighe v. Las Vegas*
3 *Metropolitan Police Dept.*, 110 Nev. 632, 635 (1994) (citing *Crank v. Nevada Indus.*
4 *Comm'n*, 100 Nev. 80, 675 P.2d 413 (1984). The "going and coming" rule precludes
5 compensation for most employee injuries that occur during travel to and from work. *MGM*
6 *at* 396. However, there are three exceptions to the "going and coming" rule that apply
7 here. The first exception is when "the travel to or from work confers a distinct benefit upon
8 the employer." *Tighe at* 635 (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842
9 P.2d 719 (1992). The second exception is when the employer exercised significant control
10 over the employee. *Id.* The third exception is the "law enforcement exception" adopted by
11 the *Tighe* Court, which reasoned that because "police officers are generally charged with a
12 duty of law enforcement while traveling on public thoroughfares" their injuries may be
13 compensated. *Id.* at 636.

16 Here, the decision reached by the appeals officer is affected by error of law and
17 clearly erroneous in view of the reliable, probative and substantial evidence on the whole
18 record. The appeals officer significantly omitted in the Findings of Fact¹ that the Appellant
19 was still on the clock at the time of the accident. This is an undisputed fact and integral to
20 the legal error in deciding the law that applies to the case. This Court is well aware of its
21 limitations in not deciding facts, but when a crucial fact, that is not contested is omitted
22 from the Findings of Fact, the Court also needs to look to see whether the decision was also
23 arbitrary and capricious and not supported by substantial evidence.

25 The second fact that was also left out of the Findings of Fact is that Respondent
26 concedes the Appellant's superior requested that the Appellant get additional practice

27 ¹ It was briefly mentioned in the Conclusions of Law.

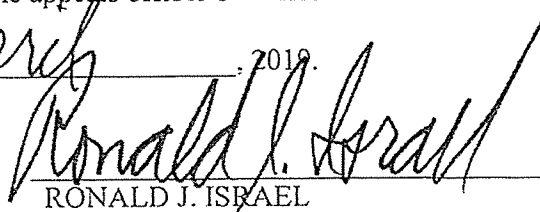
1 riding a motorcycle, as he called it "seat time." The request was supposedly the reason
2 why he was given an "early out," since he was going to return to motorcycle duty the next
3 shift.

4 The appeals officer analyzed the *Evans* and *Tighe* cases in relation to this case.
5 The appeals officer states, "The employer received no benefit from "claimant being on the
6 road..." This is an incorrect statement of fact. There is no question the Appellant was on
7 the clock at the time of the accident and, therefore, under the control of LVMPD unlike an
8 off-duty officer returning home. Unlike the officer in *Tighe* who was just "on-call" on his
9 drive home, here, it was not disputed that Appellant was still "on the clock" until 12:30
10 a.m. and carrying out the instruction to get more "seat time" on a motorcycle. Appellant
11 could have been called back to some other duty or task prior to 12:30 a.m., however
12 unlikely that may have been. LVMPD derived the benefit of Appellant obtaining additional
13 "seat time" as instructed.
14

15
16 Finally, it is further undisputed that because Appellant was on the clock at the
17 time of the accident, he was subject to all the rules and regulations of an officer and could
18 be punished or even terminated for any violations. LVMPD exercised a level of control
19 over and derived benefit from Appellant at the time of the accident. The above reasons are
20 combined with the fact that Appellant had his radio and the general duty of law
21 enforcement while traveling on public thoroughfares under *Tighe*.
22

23 Therefore, COURT ORDERED, the appeals officer's decision is REVERSED.

24 DATED this 30 day of April, 2019.

25
26 
27 RONALD J. ISRAEL
28 DISTRICT JUDGE
DEPARTMENT 28

1 I hereby certify that on or about the date signed, a
2 copy of this Order was electronically served per the
3 attached Service Contacts list and/or placed in the
4 attorney's folder maintained by the Clerk of the
Court and/or transmitted via facsimile and/or
mailed, postage prepaid, by United States mail to
the proper parties as follows:

5 Jason D. Mills, Esq.

Via Facsimile: (702)822-4440

6 Not listed in E-Service per *N.E.F.C.R.9(b)*; *E.D.C.R. 2.02*

7
8 

9 Sandra Jeter, Judicial Executive Assistant

A-18-779790-J

10 ORDER

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File Into Existing Case

Service Contacts: A-18-779790-J

Case Number	Name	Location	Description	Email	Case Type
A-18-779790-J	Department 20		David Figueroa, Petitione...		Worker's Compensation...

▶ Party: David Figueroa - Petitioner

1

20 items per page

1 - 1 of 1 items

▼ Party: Cannon Cochran Management Services, Inc. - Respondent

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Jennifer Hiatt-Bryan

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Party: Las Vegas Metropolitan Police Department - Respondent

Jennifer Hiatt-Bryan

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Joel P. Reeves

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Daniel L. Schwartz

daniel.schwartz@lewisbrnsbois.com

▶ Party: Department of Administration, Appeals Office - Respondent

▶ Other Service Contacts

1

10 items per page

1 - 5 of 5 items

TRANSMISSION VERIFICATION REPORT

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DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID FIGUEROA, Petitioner(s),

Case No.: A-18-779790-J
Department 28

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC., LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT and THE DEPARTMENT
OF ADMINISTRATION, APPEALS
OFFICE, an Agency of the State of Nevada,
Respondent(s).

ORDER REVERSING THE APPEALS OFFICER'S DECISION AND ORDER

This matter was set for a hearing on April 23, 2019; however, the parties requested the hearing be continued and the Court set it for a decision in chambers on May 16, 2019. As this decision is made in chambers, the Court did not hear arguments on the matter. The Court, having reviewed and considered the briefs filed by the parties and the papers on file herein, including the record on appeal, hereby finds as follows:

FACTS & PROCEDURE

Since approximately November 5, 2006, David Figueroa ("Appellant" or

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

March 26, 2019

A-18-779790-J	David Figueroa, Petitioner(s) vs. Cannon Cochran Management Services, Inc., Respondent(s)
---------------	-------------------------------------------------------------------------------------------------

March 26, 2019	9:00 AM	Petition for Judicial Review	Request for Hearing on Petitioner's Petition for Judicial Review
----------------	---------	------------------------------	---------------------------------------------------------------------------

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Mills, Jason D.	Attorney
	Schwartz, Daniel L	Attorney

JOURNAL ENTRIES

- Conference at the bench. COURT ORDERED, Matter CONTINUED.

04/23/19 9:00 AM REQUEST FOR HEARING ON PETITIONER'S PETITION FOR JUDICIAL REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

April 23, 2019

A-18-779790-J	David Figueroa, Petitioner(s) vs. Cannon Cochran Management Services, Inc., Respondent(s)
---------------	-------------------------------------------------------------------------------------------------

April 23, 2019	9:00 AM	Petition for Judicial Review	Request for Hearing on Petitioner's Petition for Judicial Review
-----------------------	----------------	-------------------------------------	-------------------------------------------------------------------------------------

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No parties appeared. Court noted the Law Clerk received e-mail from counsel requesting to continue this matter. Court noted the Court had already reviewed all the papers and pleadings and therefore, there will be no oral arguments. COURT ORDERED, Request for hearing, GRANTED in chambers and Decision of Petition for Judicial Review SET in chambers for decision.

05/16/19 (CHAMBERS) DECISION RE: PETITION FOR JUDICIAL REVIEW

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Daniel Schwartz, Esq. (Lewis, Brisbois, B & S) and Jason Mills, Esq. kt 04/23/19.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

May 23, 2019

A-18-779790-J	David Figueroa, Petitioner(s) vs. Cannon Cochran Management Services, Inc., Respondent(s)
---------------	-------------------------------------------------------------------------------------------------

May 23, 2019	3:00 AM	Motion	Respondents' Motion to Alter Judgment, to Amend Findings, and For Oral Argument; or in the Alternative Motion for Stay Pending Supreme Court Appeal and Motion for Order Shortening Time
---------------------	----------------	---------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- After reviewing the Motion and Opposition, the Order, the briefs, the record on appeal, and the other documents on file, the Court finds as follows:

Respondents' Motion to Alter Judgment, to Amend Findings, and for Oral Argument; Or in the Alternative Motion for Stay Pending Supreme Court Appeal and Motion for Order Shortening Time is DENIED.

First, the Court does not find oral arguments are warranted for this Motion. Second, a stay is not appropriate because Respondent has not demonstrated a reasonable likelihood of success on the merits for the reasons stated below.

This Court's decision was not a manifest error of law or fact, nor did it misapprehend the Appeals

Officer's Decision and law governing this case.

Respondents reliance on the boilerplate "catch-all" phrase that "[a]ny Finding of Fact more appropriately deemed a Conclusion of Law shall be so deemed, and vice versa." is misplaced. The Appeals Officer's failure to include in the Findings of Fact that Appellant was told to leave early and "get some seat time" indicates the Appeals Officer did not find it as a material fact, regardless of the Appeals Officer's analysis in the Conclusions of Law. Additionally, this Court's decision stated the fact that Petitioner was on the clock was just one of several factors that supported the conclusion that Petitioner's injuries arose out of and in the course of his employment. In addition to being on the clock, this Court's Order noted that at the time of the injury Petitioner was carrying out a supervisor's instruction to "get more seat time," that act conferred a benefit to Petitioner's employer, and "the above reasons are combined with the fact that Appellant had his radio and the general duty of law enforcement while traveling on public thorough fares under Tighe." This Court clearly considered multiple factors and understood that Tighe did not hold that law enforcement officers are always excluded from the travel-to-or-from rule. Likewise, this Court considered multiple factors beyond just petitioner being on the clock.

Based on the foregoing, the arguments raised in the briefs, and the documents on file Respondents' Motion is DENIED.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

Counsel for Petitioner to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21. Said order then must be filed in accordance with EDCR 7.24.

CLERK'S NOTE: A copy of this minute order was e-served to counsel. kt 05/28/19.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER REVERSING THE APPEALS OFFICER'S
DECISION AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

DAVID FIGUEROA,

Petitioner(s),

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC.; LAS VEGAS
METROPOLITAN POLICE DEPARTMENT;
THE DEPARTMENT OF ADMINISTRATION,
APPEALS OFFICE, an Agency of the State of
Nevada,

Respondent(s),

Case No: A-18-779790-J

Dept No: XXVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 3 day of June 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

Vendor No.: 43839 Clerk of The Nevada Supreme Court

Check No.: 13947

Invoice Date	Invoice No.	Description	Disb. Code	Voucher No.	Account No./ File No.	Amount
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LAS VEGAS, NEVADA 89118
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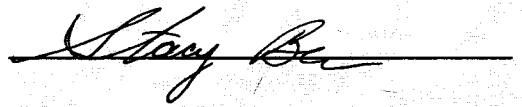
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A-18-779790-J



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