

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

CANNON COCHRAN MANAGEMENT  
SERVICES, INC. and LAS VEGAS  
METROPOLITAN POLICE DEPARTMENT  
Appellants,

vs.  
DAVID FIGUEROA,  
Respondent

No. 78926

Electronically Filed  
Jun 28 2019 02:15 p.m.

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

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XVIII  
County Clark Judge Ronald Israel  
District Ct. Case No. A-18-779790-J

**2. Attorney filing this docketing statement:**

Attorney Daniel L. Schwartz, Esq. Telephone 702-893-3383

Firm Lewis Brisbois Bisgaard & Smith

Address 2300 W. Sahara Ave. Ste. 300  
Las Vegas, Nevada 89102

Client(s) Cannon Cochran Management Services, Inc. and Las Vegas Metropolitan Police

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Jason D. Mills, Esq Telephone (702) 383-9955

Firm Jason D. Mills & Associates, Ltd.

Address 2200 S.. Rancho Drive, Ste. 140  
Las Vegas, NV 89130

Client(s) David Figueroa

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial                | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict               | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                          | <input type="checkbox"/> Failure to state a claim                                     |
| <input type="checkbox"/> Default judgment                          | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief         | <input type="checkbox"/> Other (specify): _____                                       |
| <input type="checkbox"/> Grant/Denial of injunction                | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief        | <input type="checkbox"/> Original <input type="checkbox"/> Modification               |
| <input checked="" type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Workers' comp</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is a worker's compensation case. On March 7, 2015, the Respondent was involved in a motor vehicle accident while driving his personal motorcycle on his commute home from work. The evidence showed that Respondent's sergeant had given Respondent and a co-officer an "early out" for their shift and that Respondent's accident happened five (5) minutes before his shift technically ended. At the time of the accident, Respondent was driving his personal vehicle, wearing civilian clothes, and although he was carrying service items with him such as his department issued radio, duty weapon, handcuffs, and badge, it was undisputed that Employer did not require that Respondent have any of those items with him. Administrator denied this claim as Respondent was not performing work at the time of his accident and his injuries were not related to his employment. Respondent appealed. The Appeals Officer affirmed claim denial. Respondent filed this Petition for Judicial Review. The District Court reversed, finding that Respondent was on the clock at the time of the incident and was charged with the general duty of law enforcement.

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

Whether the subject Appeals Officer had substantial evidence to affirm claim denial.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This case deals directly with the case of Tighe v. Las Vegas Metropolitan Police Dept., 110 Nev. 632, 877 P.2d. 1032 (1994). The District Court improperly extended the decision in Tighe to encompass all police officers who are on a commute home.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(10) as it is a Petition for Judicial Review of a final decision of an administrative agency. However, the Supreme Court should retain jurisdiction to hear this direct challenge to *Tighe v. Las Vegas Metropolitan Police Dept.*, 110 Nev. 632, 877 P.2d. 1032 (1994).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Apr 30, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** Apr 30, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** May 30, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., *NRAP 4(a)* or other**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |  |
|--|--|
| <input type="checkbox"/> NRAP 3A(b)(1)         | <input type="checkbox"/> NRS 38.205              |
| <input type="checkbox"/> NRAP 3A(b)(2)         | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)         | <input type="checkbox"/> NRS 703.376             |
| <input type="checkbox"/> Other (specify) _____ |  |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is a Petition for Judicial Review of a workers' compensation Appeals Officer. Respondent filed his Petition with the District Court pursuant to NRS 233B.130. The District Court granted Respondent's Petition. As this final judgment of the District Court aggrieved Appellants, this Court has jurisdiction to hear this appeal under NRS 233B.150.

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

(a) Parties:

CANNON COCHRAN MANAGEMENT SERVICES, INC. and LAS VEGAS  
METROPOLITAN POLICE DEPARTMENT - Petitioners

DAVID FIGUEROA and THE DEPARTMENT OF ADMINISTRATION,  
HEARINGS DIVISION, APPEALS OFFICE, an Agency of the State of Nevada -  
Respondents.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The Department of Administration did not participate in the District Court  
Petition.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

CANNON COCHRAN MANAGEMENT SERVICES, INC. and LAS VEGAS  
METROPOLITAN POLICE DEPARTMENT - Petition for Judicial Review

DAVID FIGUEROA - None

THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, APPEALS  
OFFICE - None

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- e The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- e Any tolling motion(s) and order(s) resolving tolling motion(s)
- e Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- e Any other order challenged on appeal
- e Notices of entry for each attached order

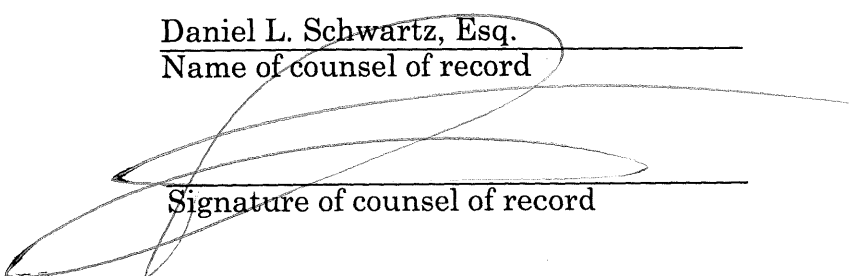
## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

LAS VEGAS METROPOLITAN POLICE  
Name of appellant

Daniel L. Schwartz, Esq.  
Name of counsel of record

Jun 28, 2019  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 28th day of June, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

1. Jason Mills, Esq.
2. LVMPD-Health Detail
3. CCMSI
4. Nevada Dept. of Administration
5. Deonne Contine, Nevada Dept. of Administration
6. Aaron Ford, Esq., Attorney General

Dated this 28th day of June, 2019

  
Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8<sup>th</sup> day of June, 2019, a true and correct copy of  
3 this **DOCKETING STATEMENT** completed upon all counsel of record by  
4 electronically filing the document using the Nevada Supreme Court's electronic  
5 filing system and via US Mail.  
6  
7

8 JASON D. MILLS & ASSOCIATES,  
9 LTD.

10 2200 S. Rancho, Suite 140  
11 Las Vegas, NV 89102

12 LVMPD-Health Detail  
13 400 S. Martin Luther King Blvd.  
14 Suite B  
15 Las Vegas, NV 89106

16 CCMSI  
17 P.O. Box 35350  
18 Las Vegas, NV 89133

19 Department of Administration  
20 2200 S Rancho Dr., Ste. 220  
21 Las Vegas, NV 89102

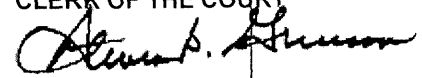
Aaron Ford, Esq.  
Nevada Attorney General  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701

Deonne Contine  
Director, Department of Administration  
Nevada Dept. Of Administration  
515 East Musser Street, Third Floor  
Carson City, Nevada 89701-4298

Paul Haire, Esq.  
Advanced Resolution Management  
6980 S. Cimarron Road, Ste. 210  
Las Vegas, NV 89113

22 By 

23 an Employee of LEWIS BRISBOIS  
24 BISGAARD & SMITH LLP  
25  
26  
27  
28



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 ///

28

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

2 Dated this 30<sup>th</sup> 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

1 **CERTIFICATE OF MAILING**

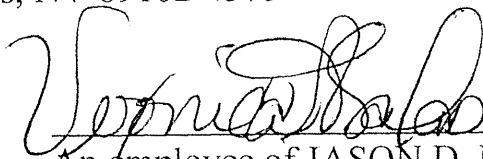
2 Pursuant to NRCP 5(b), I hereby certify that on the 30 day of April,  
3  
4 2019, I duly deposited for mailing, first class mail, postage prepaid thereon, in the  
5 United States Mail at Las Vegas, Nevada, a true and correct copy of the above  
6  
7 Notice of Entry of Order, in the above-entitled matter, addressed to the following:

8 David Figueroa  
9 6831 Hillstop Crest Ct  
10 Las Vegas, NV 89131

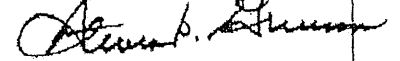
11 LVMPD – Health Detail  
12 400 S. Martin Luther King Blvd., Ste. B  
13 Las Vegas, NV 89106

14 CCMSI  
15 P.O. Box 35350  
16 Las Vegas, NV 89133

17 Daniel Schwartz, Esq.  
18 Lewis, Brisbois, et al  
19 2300 W. Sahara Ave., Ste. 300 Box 28  
20 Las Vegas, NV 89102-4375

21 

22 An employee of JASON D. MILLS & ASSOCIATES, LTD.  
23  
24  
25  
26  
27  
28



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 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  
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.

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 Fact<sup>1</sup> 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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28  

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<sup>1</sup> It was briefly mentioned in the Conclusions of Law.

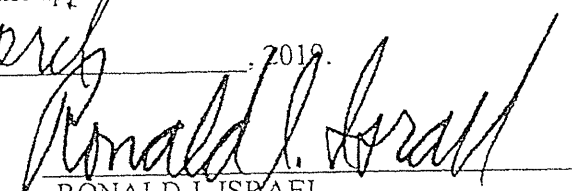
1 riding a motorcycle, as he called it "seat time." The request was supposedly the reason  
2 why he was given an "early out," since he was going to return to motorcycle duty the next  
3 shift.

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.

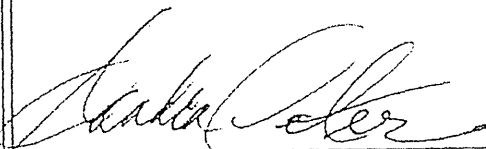
25  
26   
27 RONALD J. ISRAEL  
28 DISTRICT JUDGE  
DEPARTMENT 28

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	David Figueroa	Department 20	David Figueroa, Petitioner		Workers 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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▶ Other Service Contacts

1

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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.

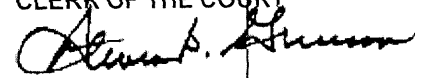
CANNON COCHRAN MANAGEMENT  
SERVICES, INC., LAS VEGAS  
METROPOLITAN POLICE  
DEPARTMENT and THE DEPARTMENT  
OF ADMINISTRATION, APPEALS  
OFFICE, an Agency of the State of Nevada,  
Respondent(s).

**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



PETN  
JASON D. MILLS, ESQ.  
Nevada Bar No.: 7447  
JASON D. MILLS & ASSOCIATES, LTD.  
2200 S. Rancho Dr., Ste 140  
Las Vegas, NV 89102  
(702) 822-4444  
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Attorney for Petitioner,  
DAVID FIGUEROA

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DAVID FIGUEROA,	)	
	)	
Petitioner,	)	Case No.: A-18-779790-J
	)	Department 18
vs.	)	Dept. No.:
	)	
CANNON COCHRAN MANAGEMENT	)	
SERVICES, INC., LAS VEGAS	)	
METROPOLITAN POLICE	)	
DEPARTMENT	)	
and THE DEPARTMENT OF	)	
ADMINISTRATION, APPEALS OFFICE,	)	
an Agency of the State of Nevada,	)	
	)	
Respondents.	)	

**PETITION FOR JUDICIAL REVIEW**


Comes now, the Petitioner, DAVID FIGUEROA, ("Petitioner"), by and through his attorney, JASON D. MILLS, ESQ., from the law office of JASON D. MILLS & ASSOCIATES, LTD., in the above-entitled Petition for Judicial Review and petitions this Court for judicial review of the Appeals Officer's, MICHELLE L. MORGANDO, ESQ., Decision and Order filed on July 25, 2018, a copy of which is attached hereto as Exhibit A.

1 The interested parties as Respondents to this Petition are the Third-Party Administrator,  
2 CANNON COCHRAN MANAGEMENT SERVICES, INC., the Employer LAS VEGAS  
3 METROPOLITAN POLICE DEPARTMENT and an Agency of the State of Nevada, THE  
4 DEPARTMENT OF ADMINISTRATION, APPEALS OFFICE.

5  
6 The instant Petition for Judicial Review is filed pursuant to the NRS 616C.370 which  
7 mandates that judicial review shall be the sole and exclusive authorized judicial proceeding in  
8 contested industrial insurance claims for compensation for injury or death and pursuant to NRS  
9 233B.130, et seq.

10  
11 The decision of the Appeals Officer was in violation of constitutional and/or statutory  
12 and/or regulatory provisions of Nevada law, was in excess of the authority granted to the  
13 Appeals Officer, was based upon errors of law and fact, was arbitrary or capricious in nature, and  
14 constitutes an abuse of discretion. The Petitioner, DAVID FIGUEROA, specifically requests,  
15 pursuant to NRS 233B.133, that this Court receive written briefs and hear oral argument.

16  
17 Dated this 21st day of August, 2018.

18  
19   
20 JASON D. MILLS, ESQ.  
21 Nevada Bar No.: 7447  
22 JASON D. MILLS & ASSOCIATES, LTD.  
23 2200 S. Rancho Dr., Ste 140  
24 Las Vegas, NV 89102  
25 Attorney for Petitioner  
26 DAVID FIGUEROA  
27  
28

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5 (b), I hereby certify that, on the 21<sup>st</sup> day of August, 2018, service of the PETITION FOR JUDICIAL REVIEW was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:

David Figueroa  
6831 Hillstop Crest Ct.  
Las Vegas, NV 89131

LVMPD-Heath Detail  
400 S. Martin Luther King Blvd, Ste B  
Las Vegas, NV 89106

CCMSI  
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Division of Industrial Relations  
Division Headquarters  
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100 N. Carson Street  
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An Employee of Jason D. Mills & Associates, Ltd.

A

NEVADA DEPARTMENT OF ADMINISTRATION

FILED

JUL 25 2018

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested  
Industrial Insurance Claim

Claim No.: 15D34E72969

Hearing No.: 1510632-TH

Appeal No.: 1511793-MM

Employer:

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT  
400B S MARTIN LUTHER KING #435  
LAS VEGAS, NV 89106

DAVID FIGUEROA  
6831 HILLSTOP CREST CT.  
LAS VEGAS, NV 89131,

Claimant.

DECISION AND ORDER

The above-captioned appeal came on for hearing before Appeals Officer MICHELLE L. MORGANDO, ESQ. The claimant, DAVID FIGUEROA (hereinafter referred to as "claimant"), was represented by JASON D. MILLS, ESQ. The Employer, LAS VEGAS METROPOLITAN POLICE DEPARTMENT (hereinafter referred to as "Employer"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP.

On April 9, 2018, claimant was informed that his industrial insurance claim was denied. Claimant appealed that determination and the parties agreed to bypass the Hearing Officer and proceed before this Court. This hearing followed.

After carefully reviewing the evidence, hearing the testimony of the witness, and considering the arguments of counsel, the Appeals Officer finds and decides as follows:

**FINDINGS OF FACT**

1  
2           1.       The claimant has multiple prior industrial claims. Upon information and belief,  
3 the first of these claims has a date of injury of August 27, 2010.

4           2.       The claimant had another industrial injury which occurred on March 15, 2011,  
5 when he was involved in a motor vehicle accident (hereinafter referred to as "MVA") at Las Vegas  
6 Blvd. and I-95 intersection where he incurred head, neck and back injuries. (Exhibit A at 1.)

7           3.       Dr. Quaglieri performed a permanent partial disability (hereinafter referred to as  
8 "PPD") evaluation for that injury on September 6, 2012 and determined that the claimant had an  
9 eleven percent (11%) whole person impairment. Based upon this impairment rating, the claimant was  
10 notified on September 28, 2012 that his claim was being closed with an eleven percent (11%) PPD  
11 award. (Exhibit A at 2-3.)

12           4.       The claimant filed another Form C-4 for his elbows, knees and arm. The  
13 alleged injuries occurred from a motorcycle accident the claimant was involved in on September 21,  
14 2011. Dr. Quaglieri performed a PPD evaluation addendum for the injury on March 5, 2013. (Exhibit  
15 A at 4-9.)

16           5.       The claimant filed another Form C-4 for his back on December 17, 2012. The  
17 claimant listed the date of injury as March 15, 2011 and was diagnosed with low back pain. (Exhibit  
18 A at 10.)

19           6.       The Employer completed a Form C-3 on December 18, 2012 and indicated that  
20 the claimant had stated that he was bending over to pick up a flashlight and felt pain in his lower back.  
21 (Exhibit A at 11.)

22           7.       In the instant matter, on March 7, 2015, according to the Form C-4 form, the  
23 claimant was "driving" and was in an "MVA." (Exhibit A at 12.)

24           8.       The Employer completed its Form C-3 upon receiving the Form C-4. (Exhibit  
25 A at 13.)

26           9.       An Injury Report was also completed on March 7, 2015. This report indicated  
27 the claimant was not in the normal course of his work or duties as a police officer at the time of the  
28 incident. (Exhibit A at 14.)

10. The claimant was notified on April 9, 2015, that his claim was being denied.  
(Exhibit A at 15-16.)

11. The claimant appealed the determination letter of April 9, 2015, regarding claim denial, to the Hearing Officer. (Exhibit A at 17.) This appeal was transferred directly to the Appeals Office. (Exhibit A at 18.)

12. This matter came on for hearing before the Appeals Officer on May 10, 2017. Claimant and Employer's Director of Risk Management, Jeff Roch (hereinafter "Mr. Roch"), gave testimony. Salient facts from this testimony will be discussed below. (Exhibit B at 151-226.)

13. Claimant provided eighty-one (81) pages of evidence which was reviewed and duly considered. (Exhibit 1.)

14. These Findings of Fact are based upon substantial evidence within the record.

15. Any Finding of Fact more appropriately deemed a Conclusion of Law shall be so deemed, and vice versa.

## CONCLUSIONS OF LAW

1. It is the claimant, not the Employer, who has the burden of proving his case, and that is by a preponderance of all the evidence. State Indus. Ins. Sys. v. Hicks, 100 Nev. 567, 688 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's Comp. Div., 798 P.2d 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

2. In attempting to prove his case, the claimant has the burden of going beyond speculation and conjecture. That means that the claimant must establish the work connection of his injuries, the causal relationship between the work-related injury and his disability, the extent of his disability, and all facets of the claim by a preponderance of all of the evidence. To prevail, a claimant must present and prove more evidence than an amount which would make his case and his opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The Law of Workmen's Compensation, §80.33(a).

///

///

1           3.     NRS 616A.010 makes it clear that:

2           A claim for compensation filed pursuant to the provisions of this  
3           chapter or chapter 617 of NRS must be decided on its merits and not  
4           according to the principle of common law that requires statutes  
            governing worker's compensation to be liberally construed because  
            they are remedial in nature.

5           4.     Under NRS 616C.150(1), the claimant has the burden of proof to show that the  
6           injury arose out of and in the course and scope of his employment. The claimant must satisfy this  
7           burden by a preponderance of the evidence. Further, NRS 616B.612 mandates that an employee is  
8           only entitled to compensation if he is injured in the course and scope of his employment. Here, the  
9           claimant was not in the course and scope of his employment when the alleged injury occurred while  
10          claimant was on his commute home while driving his personal motorcycle.

11          5.     NRS 616A.030 defines an accident as "... an unexpected or unforeseen event  
12          happening suddenly and violently, with or without human fault, and producing at the time objective  
13          symptoms of an injury." Furthermore, NRS 616A.265 defines an injury as "... a sudden and tangible  
14          happening of a traumatic nature, producing an immediate or prompt result which is established by  
15          medical evidence ..."

16          6.     The Nevada Supreme Court has held that:

17          An award of compensation cannot be based solely upon possibilities  
18          and speculative testimony. A testifying physician must state to a  
19          degree of reasonable medical probability that the condition in question  
            was caused by the industrial injury...

20          United Exposition Services Co. v. SIIS, 109 Nev. 421, 851 P.2d 423 (1993).

21          7.     This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev.  
22          532, 936 P.2d 839 (1997) case, which held that "mere speculation and belief does not rise to the level  
23          of reasonable medical certainty."

24          8.     Further, the Court has held that:

25          An accident or injury is said to arise out of employment when there is a  
26          causal connection between the injury and the employee's work ... the  
27          injured party must establish a link between the workplace conditions  
28          and how those conditions caused the injury ... a claimant must  
            demonstrate that the origin of the injury is related to some risk  
            involved within the scope of employment.

1 Rio Suite Hotel v. Gorsky, 113 Nev. 600, 939 P.2d 1043(1997).

2 9. The same Court further stated that the "Nevada Industrial Insurance Act is not a  
3 mechanism which makes Employers absolutely liable for injuries suffered by employees who are on  
4 the job." (Id.).

5 10. Here, the claimant has not established that his injury arose out of and in the  
6 course and scope of his employment. The accident in question occurred while claimant was on his  
7 commute home while driving his personal motor cycle. (Transcript pp. 20:25-21:1) Claimant was  
8 wearing civilian clothes and although he was carrying service items such as his department issued  
9 radio, duty weapon, handcuffs, and badge (Transcript p. 20:20-24), Employer did not require that  
10 claimant have any of those items with him. Mr. Roch testified that claimant could have those items on  
11 his person if he wanted, but he was not required to have them. (Transcript pp. 54:9-55:10) Further,  
12 claimant testified that it was merely his own personal habit to take those items with him. (Transcript  
13 pp. 32:6-33:16)("My radio I have an option to leave it in my locker if so be.")

14 10. At the time of the incident, claimant was not performing his job as a police  
15 officer, was on his commute home, and was driving his own personal vehicle. Based on these facts  
16 alone this claim is not compensable. There is no "causal connection between the injury and the  
17 employee's work." Gorsky, Id. Indeed, this is a going and coming rule scenario.

18 Nevada looks to whether the employee is in the employer's control in  
19 order to determine whether an employee is acting within the scope of  
20 employment when an accident occurs outside of the actual period of  
21 employment or off the employer's premises. Thus, we have embraced a  
22 'going and coming' rule, precluding compensation for most employee  
23 injuries that occur during travel to or from work. This rule frees  
24 employers from liability for the dangers employees encounter in daily  
25 life.

26 MGM Mirage v. Cotton, 121 Nev. 396 (2005).

27 11. The going and coming rule provides that employers are not liable for injuries  
28 sustained by employees while commuting to and from work. Tighe v. Las Vegas Metropolitan Police  
Dept., 110 Nev. 632, 877 P.2d. 1032 (1994). However, there are exceptions to the rule recognized in

1 Nevada. In Evans v. Southwest Gas Corp., 108 Nev. 1002, 842 P.2d 719 (1992), the Nevada Supreme  
2 Court held that an employee may still be within the course and scope of his employment when the  
3 travel to or from work confers a distinct benefit upon the employer or the employer exercised  
4 significant control over the employee.

5           12. In Evans, the employee was provided a hand held radio and a radio in his van.  
6  
7 The employee was allowed to take the van home in order to respond to emergencies. He would be  
8 notified of those emergencies via the radio or the hand held radio. The employee was required to take  
9 the van home to respond to emergencies.

10           13. A second case which is of particular import to the current matter is Tighe. In  
11 that case, the claimant, an undercover narcotics officer, was commuting home and was involved in a  
12 traffic accident. At the time of the accident, the officer was driving an unmarked undercover vehicle  
13 provided by the police department. The vehicle in question was equipped with a radio and the officer  
14 was carrying a beeper provided by the police department as he was "on call." The claimant's claim  
15 was denied under the going and coming rule. The Appeals Officer reversed and then the District Court  
16 reversed the Appeals Officer. The claimant appealed to the Supreme Court. The Supreme Court found  
17 the claim compensable and noted that two exceptions to the going and coming rule applied to this  
18 case.  
19

20           14. The first exception is satisfied "when the travel to or from work confers a  
21 distinct benefit upon the employer." Id., 110 Nev. at 635, 877 P.2d at 1035 (citing Evans). The Court  
22 found it dispositive that the officer was driving a vehicle provided by the employer, was "on call" as  
23 evidenced by the beeper and radio, and that the employer benefited from having an officer out driving  
24 an undercover vehicle. Therefore the Court concluded that the officer in Tighe was providing a  
25 "distinct benefit" to the employer.  
26  
27  
28

1           15.     Second, the Tighe Court adopted the “law enforcement exception.” The Court  
2 reasoned that “police officers are generally charged with a duty of law enforcement while traveling on  
3 public thoroughfares” and therefore injuries sustained on the commute “may be compensated.”  
4 (Id.)(citing Hanstein v. City of Ft. Lauderdale, 569 So. 2d 493, 494 (Fla. Dist. Ct. App. 1990).  
5

6           16.     However, the Court made it clear that the law enforcement exception “is not  
7 sufficiently broad and all-inclusive to justify the conclusion that all law enforcement officers are  
8 *always* excluded from the general rule that injuries sustained while traveling to or from work do not  
9 arise out of and in the course of employment.”(Emphasis in original)(Id.) The Court specifically  
10 concluded that Tighe satisfied the law enforcement exception because “Tighe was on call and driving  
11 a police vehicle equipped with a police radio, and he was prepared to respond to any public  
12 emergency he may have encountered.”  
13

14           17.     The instant case is distinguishable from Tighe. To begin with, claimant was  
15 operating his own personal vehicle at the time of the incident while wearing civilian clothes. Claimant  
16 would have been indistinguishable from any other civilian motorcycle rider. The Employer received  
17 no benefit by claimant simply being on the road, unlike Tighe. Further, although he had a radio with  
18 him, he was not required to have it and only carried it out of his own personal habit. Therefore, the  
19 two things which the Tighe court found dispositive (i.e. an employer provided vehicle and a  
20 mandatory form of radio from the employer) are not present in this case. Claimant even testified that  
21 he is *never* required to use his personal motorcycle while he is on duty (Transcript p. 41:19-22) and  
22 only carries his radio out of personal habit. At the time of the accident, claimant was not providing  
23 any distinct benefit to his employer and was simply driving home just as any non-law enforcement  
24 employee would.  
25  
26  
27  
28

1           18.     On March 7, 2015, claimant was employed as a traffic Police Officer by  
2 LVMPD. The claimant was assigned to the Bolden Area Command in a re-acclimation program due to  
3 injuries he suffered as a result of a prior industrial injury. The claimant was scheduled to work from  
4 2:30p.m. to 12:30a.m. On that date, claimant was informed by his supervisor that the re-acclimation  
5 program was ending and that the claimant would be returned to his previous area command and  
6 resume his motorcycle traffic duties.  
7

8           19.     At approximately 11:45p.m. on May 7<sup>th</sup>, the claimant was given an "early out"  
9 by his sergeant. The claimant testified that this sergeant told him to leave early to get some "seat time"  
10 on the claimant's motorcycle. After changing his clothes, the claimant left on his personal motorcycle  
11 and was involved in an accident about two miles from the area command at approximately 12:25a.m.  
12 The claimant was still on the clock at the time of the accident.

13           20.     Though Mr. Roch was not present for this alleged conversation between  
14 claimant and his sergeant, Mr. Roch questioned the same, stating that "I don't know why you would  
15 mix personal with work, but seat time on a personal bike is a whole lot different than seat time on a  
16 Metro bike." (Transcript pp. 60:23-61:1)  
17

18           21.     Furthermore, it should also be noted that claimant's co-worker, Tyler  
19 McMeans, was working the exact same shift as claimant, had been released at the exact same time,  
20 was also driving his personal motorcycle, and was traveling close enough to claimant at the time of  
21 the incident to both witness the incident and speak with the driver who caused the accident.  
22 (Transcript pp. 39:13-41:7) This draws claimant's testimony into question. Mr. McMeans was not  
23 released early from his shift because claimant was ordered to "get some seat time."  
24

25           22.     Employer does not doubt that claimant's sergeant said something to the effect  
26 that claimant should "get some seat time" referring to claimant riding his personal motorcycle on the  
27 day in question. There is no evidence to the contrary. However, in no way was claimant's commute  
28

1 from work on the day in question any different than his commute on any other day. Nor is there any  
2 evidence that claimant's sergeant explicitly required him to "get some seat time" as a condition of his  
3 employment.

4           23. It was claimant's choice to have a personal motorcycle to commute to and from  
5 work. Claimant could have chosen to drive a sedan, a van, a truck, or literally any other type of  
6 vehicle that he wanted for his commute. The fact that claimant drives an employer provided  
7 motorcycle for work and also drives a different personal motorcycle for his commute is irrelevant to  
8 this case. Claimant's choice to drive his personal motorcycle to and from work does not confer any  
9 benefit upon Employer and does not extend the workplace to his commute where he is subject to "the  
10 dangers employees encounter in daily life." Cotton, Id.

11           24. It must also be noted that the fact that this accident happened while claimant  
12 was still technically "on the clock" does not somehow render this claim compensable. Indeed, it is a  
13 mainstay of the Nevada workers' compensation law that a claimant must establish more than the fact  
14 that they are getting paid at the time of an injury to make out a compensable claim: "an injured  
15 employee is not entitled to receive workers' compensation 'unless the employee . . . establishes by a  
16 preponderance of the evidence that the employee's injury arose out of and in the course of his  
17 employment.'" Mitchell v. Clark Cty. Sch. Dist., 121 Nev. 179, 181, 111 P.3d 1104, 1105  
18 (2005)(citing NRS 616C.150(1))

19           25. Just as with the claimant in Mitchell, the fact that claimant was "on the clock,"  
20 by itself, does not render this claim compensable. Claimant must establish a workplace connection to  
21 his injury. Here, as established above, there is no work place connection. Claimant was on his  
22 personal motorcycle in civilian clothes while commuting home and happened to be involved in a  
23 traffic accident. Claimant's employment did not contribute to his accident in any way.

1                   26.     Claimant testified that it was only his personal belief that he should intervene  
2 and he could not cite to any rule, regulation, or policy which mandated that he take police action while  
3 he was not then currently within the course and scope of his duties as an officer. (Transcript pp. 14:10-  
4 19).

5                   27.     Mr. Roch confirmed the same:

6                   Q:     Is there -- as the director of risk management is there something  
7 in policies or procedures for Las Vegas Metropolitan Police  
8 Department that an officer off duty -- we'll start there -- must assist if  
they see something happening?

9                   A:     There's not a "must." The policy doesn't call for "must." It  
10 actually gives guidance. There is no mandatory carrying of a  
11 weapon off duty. However, if in the event something happened in  
12 front of you, the expectation is that you would be a good witness.  
13 You would call it in, and your obligation would stop at calling it in.

14                   It becomes a personal preference whether you wish to involve  
15 yourself in that, in which case you would identify yourself and take  
16 police action, but it really is dictated by the threat or the situation that's  
17 presented.

18                   Q:     But what is required is that you be a good witness and that  
19 you call whatever's going on in?

20                   A:     Yes.

21                   Q:     And this is 24/7; correct? I mean, this is not during those 15  
22 minutes or 20 minutes when you're let go early. This is as an officer  
23 this is a requirement?

24                   A:     Correct.

25                   (Transcript pp. 55:13-56:12)

26                   28.     Mr. Roch, in his twenty years of service, has never heard of someone getting  
27 called back after an "early out" (Transcript p. 53:12-53:8), the sheer logistics of claimant getting  
28 called back are impossible. Claimant himself testified that he was ten minutes away from the  
operations center when his accident occurred and he only had five minutes left before his shift  
technically ended. Even if Employer had called claimant a minute before the accident happened and  
requested claimant to come back and finish his shift, it would be physically impossible for him to  
make it back in time.

1           29. Further, Mr. Roch testified that the only time claimant would be called in to  
2 work when he is off the clock is during a catastrophic scenario whenever the entire force is put on  
3 what he referred to as an "A, B, and C roster activation" whereby the officers would rotate on twelve  
4 hour shifts until the situation stabilized. (Transcript at pp. 56-58) Furthermore, Mr. Roch was entirely  
5 unaware of any other scenario which would allow claimant's supervising officer to simply "call him  
6 in" during claimant's scheduled time off. (Id.)  
7

8           30. In summation, it is true that claimant's subject accident/injury occurred while  
9 claimant was still technically on the clock. However, simply being on the clock is not enough to  
10 render a claim compensable; there must be a workplace connection to the accident/injury. Claimant  
11 was simply commuting home on his personal motorcycle just as he would on any other day and just as  
12 any non-law enforcement employee would. He was not being paid for his commute time nor was he  
13 performing any employment related tasks at the time. There is no workplace connection and claimant  
14 was not conferring any benefit on his employer at the time of the incident. The claimant left in civilian  
15 clothes on his personal motorcycle. The claimant was not instructed to take a LVMPD motorcycle or  
16 to go get some "seat time" at a designated employer-owned location. There is no evidence that the  
17 claimant's commute when he left on May 7<sup>th</sup> was any different than any other time he left work to go  
18 home. One of claimant's co-workers Tyler McMeans, also was given an early out and left on his own  
19 personal motorcycle at the same time as the claimant.  
20  
21

22           31. Further, there is no "police" connection to claimant's accident/injury. Unlike  
23 the officer in Tighe, claimant was driving his own personal vehicle and had been released from service  
24 for the day. Though he was still technically "on the clock" at the time of the incident, it would have  
25 been impossible for claimant to be called back in prior to his shift's conclusion and the only reason  
26 claimant would be called in while he is off-duty is for a catastrophe such as a terrorist attack. Finally,  
27 the fact that he had his radio on him at the time of the incident is inconsequential as claimant made the  
28

1 personal choice to carry it with him and was in no way required to have it while he was off duty.  
2 Claimant does not satisfy the law enforcement exception to the going and coming rule.

3 **DECISION AND ORDER**

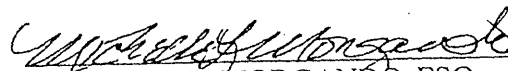
4 The claimant, DAVID FIGUEROA, has failed to establish a compensable industrial  
5 claim.

6 IT IS HEREBY ORDERED that Administrator's April 9, 2015 determination to deny  
7 the claim is AFFIRMED.

8 IT IS SO ORDERED.

9 DATED this 25th day of July, 2018.

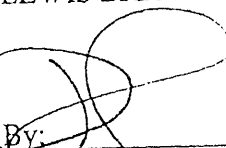
10 APPEALS OFFICER

11   
12 MICHELLE L. MORGANDO, ESQ.

13 **NOTICE:** Pursuant to NRS 616C.370, should any party desire to appeal this final decision of  
14 the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within  
15 thirty (30) days after service of this Order.

16 Submitted by:

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18   
19 By: \_\_\_\_\_  
20 DANIEL L. SCHWARTZ, ESQ.  
21 Nevada Bar No. 5125  
22 2300 W. Sahara Avenue, Ste. 300, Box 28  
23 Las Vegas, NV 89102  
24 Attorneys for Employer  
25  
26  
27  
28

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the  
5 appropriate addressee runner file at the Department of Administration, Hearings Division, 2200  
6 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

7 DAVID FIGUEROA  
8 6831 HILLSTOP CREST CT  
9 LAS VEGAS NV 89131

10 JASON MILLS ESQ  
11 JASON D MILLS & ASSOCIATES LTD  
12 2200 S RANCHO DR STE 140  
13 LAS VEGAS NV 89102

14 LVMPD - HEALTH DETAIL  
15 ABIGAIL BUCKLER - HEALTH MGR  
16 400 S MARTIN L KING BLVD STE B  
17 LAS VEGAS NV 89106

18 DANIEL SCHWARTZ ESQ  
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22 CCMSI  
23 C/O JULIE VACCA  
24 P O BOX 35350  
25 LAS VEGAS NV 89133-5350

26 Dated this 25<sup>th</sup> day of July, 2018.

27 Zoe McGough  
28 Zoe McGough, Legal Secretary  
Employee of the State of Nevada