

Chronological Index

Doc No.	Description	Vol.	Bates Nos.
1	Petition for Judicial Review; filed 03/03/18	I	AA000001- AA000018
2	Notice of Intent to Participate in Petition for Judicial Review; filed 04/11/18	I	AA000019- AA000021
3	Letter transmitting Record on Appeal; transmitted 05/01/18	I	AA000022- AA000024
4	Record of Appeal; filed 05/03/18	I, II	AA000025- AA000388
5	Order for Briefing Schedule; filed 05/04/18	II	AA000389- AA000391
6	Respondents' Motion to Dismiss Petition for Judicial Review; filed 06/04/18	II	AA000392- AA000428
7	Opposition to Motion to Dismiss Petition for Judicial Review; filed 06/14/18	II	AA000429- AA000457
8	Request for Submission of Motion to Dismiss Petition for Judicial Review; filed 07/02/18	II	AA000458- AA000460
9	Petitioner's Opening Brief; filed 07/10/18	II	AA000461- AA000482
10	Order re Motion to Dismiss Petition for Judicial Review; filed 09/05/18	II	AA000483- AA000488
11	Supplemental Affidavit; filed 09/28/18	III	AA000489- AA000493

12	Respondents' Supplement in Support of Motion to Dismiss Petition for Judicial Review and Reply in Support of Motion to Dismiss; filed 10/05/18	III	AA000494-AA000536
13	Notice of Submission of Supplement in Support of Motion/Reply to Dismiss Petition for Judicial Review; and Request for Final Decision on Motion to Dismiss Petition for Judicial Review; filed 10/10/18	III	AA000537-AA000539
14	Order re Motion to Dismiss Petition for Judicial Review; filed 12/10/19	III	AA000540-AA000548
15	Respondent's Answering Brief; filed 02/07/19	III	AA000549-AA000570
16	Petitioner's Reply Brief; filed 03/06/19	III	AA000571-AA000583
17	Request for Submission; filed 03/07/19	III	AA000584-AA000585
18	Order re Petition for Judicial Review; filed 05/10/19	III	AA000586-AA000595
19	Notice of Entry of Order; filed 05/15/19	III	AA000596-AA000609
20	Notice of Appeal; filed 06/07/19	III	AA000610-AA000612
21	Respondents' Reply to Taylor's Opposition to Motion to Dismiss Petition for Judicial Review; filed 06/29/18	III	AA000613-AA000621

Alphabetical Index

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21	Respondents' Reply to Taylor's Opposition to Motion to Dismiss Petition for Judicial Review; filed 06/29/18	III	AA000613- AA000621
12	Respondents' Supplement in Support of Motion to Dismiss Petition for Judicial Review and Reply in Support of Motion to Dismiss; filed 10/05/18	III	AA000494- AA000536
11	Supplemental Affidavit; filed 09/28/18	III	AA000489- AA000493

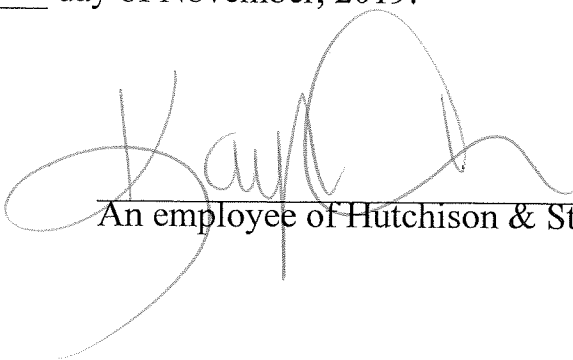
CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME III of III** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Robert Balkenbush, Esq. (1246)
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH & EISINGER
6590 S McCarran Blvd., Ste. B
Reno, NV 89509
T: 775-786-2882
F: 775-786-8004
rfb@thorndal.com

Attorney for Respondents

DATED this 9th day of November, 2019.


An employee of Hutchison & Steffen, PLLC

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Hutchison & Steffen, LLC
500 Damonte Ranch Parkway, Suite 980
3 Reno, NV 89521
Attorney for Vance Taylor
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 *****

8 VANCE TAYLOR,

9 Petitioner,

10 vs.

11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.

Case No.: CV18-00673

Dept. No.: 6

**SUPPLEMENTAL
AFFIDAVIT**

15
16 COMES NOW Petitioner, VANCE TAYLOR ("Mr. Taylor"), by and through his attorney of
17 record, Jason D. Guinasso, Esq., and Hutchison & Steffen, PLLC, having received this Court's
18 September 5, 2018, *Order Re Motion to Dismiss Petition for Judicial Review*, and hereby submits his
19 supplemental affidavit in support of his *Opposition to Motion to Dismiss Petition for Judicial Review*.

20 **AFFIDAVIT OF JASON D. GUINASSO, ESQ.**

21 STATE OF NEVADA)
) ss.
22 **COUNTY OF WASHOE**)

23 Under penalty of perjury, I, Jason D. Guinasso, Esq., hereby swear that the information
24 contained in this Affidavit is true and accurate:

25 1. My name is Jason David Guinasso.

- 1 2. I am a resident of the State of Nevada.
- 2 3. I am over 18 years of age.
- 3 4. I am a licensed attorney in Nevada.
- 4 5. I am retained as counsel for Vance Taylor, ("Mr. Taylor").
- 5 6. The Appeals Officer signed and issued her Decision and Order under Appeal No.
- 6 1701567-SYM on February 27, 2018. The Findings of Fact, Conclusions of Law and
- 7 Decision was prepared by counsel for Alternative Service Concepts, ("ASC"), Truckee
- 8 Meadows Fire Protection District, ("TMFPD"), and Public Agency Compensation Trust,
- 9 ("PACT"), Robert Balkenbush, Esq. When issued to all parties of record, the Appeals
- 10 Division did not include PACT on their Certificate of Mailing. **ROA at 008.**
- 11 7. When Mr. Taylor reported his industrial injury to his Employer, on April 19, 2016,
- 12 TMFPD completed a Form C-3. This form was filled out with all pertinent information,
- 13 including the name of the Insurer (blank) and the name of the Third-Party Administrator,
- 14 ASC. PACT was not listed anywhere on this form. **ROA at 092.**
- 15 8. Also on April 19, 2018, Mr. Taylor completed a Form C-4 at Renown South Meadows
- 16 Medial Center where he was first seen for his injuries. This form was stamped as
- 17 "Received" by the Third-Party Administrator, ASC, on April 20, 2016. PACT was not
- 18 named or copied on this worker's compensation claim initiating document. **ROA at 093.**
- 19 9. The Employer's "Notice of Injury or Occupational Disease" form, also completed on
- 20 April 19, 2018, PACT was not listed nor copied on the notice. **ROA at 098.**
- 21 10. On September 26, 2016, ASC issued their determination to terminate temporary total
- 22 disability beyond September 11, 2016. This is the determination letter that is directly at
- 23 issue under this proceeding. ASC sent copies of this letter to the Employer, TMFPD, and
- 24 to my office. However, PACT was not copied on the letter nor mentioned in the body of
- 25 the letter. **ROA at 316.**

11. The determination was appealed on September 29, 2016, therefore the Hearing Officer issued a Notice of Hearing Before the Hearing Officer on September 30, 2016. PACT was not copied or named in this pleading. **Exhibit 2 of Petitioner's Opposition to Motion to Dismiss Petition for Judicial Review.**
12. On November 23, 2016, the Decision and Order of the Hearing Officer was issued, again, PACT was not copied or named in this pleading. **ROA at 319.**
13. On December 6, 2016, pursuant to Mr. Taylor's appeal of the Hearing Officer's Decision and Order, the Appeals Officer issued her Notice of Appeal and Order to Appear under Appeal No. 1701567-SYM. PACT was not copied or named as a party in this pleading. **ROA at 322.**
14. In fact, none of the Orders issued by the Appeals Division throughout the course of this appeal included PACT as a named party on their Certificates of Service. **ROA at 322, 327, 329, 356.**
15. At no time throughout my entire representation of Mr. Taylor, beginning in August of 2016, has Mr. Balkenbush, ASC, or TMFPD ever sent me notification that PACT would be a party to this case and would therefore need to be included in any of the pleadings filed.
16. To present, I have still received no formal or informal notification that PACT is indeed an interested party, and is separate from the Third-Party Administrator, ASC, in regard to Mr. Taylor's worker's compensation claim, other than Mr. Balkenbush's *Motion to Dismiss/Reply* briefs.

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17. If PACT is indeed an indispensable party to this matter, it's "Notice" to any action is sufficed upon service of its agent, ASC. In this case, ASC is acting and making decisions on behalf of PACT, and the two parties are in fact one in the same.

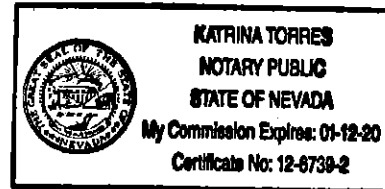
DATED: This 28 day of September, 2018


Jason D. Guinasso, Esq.

SUBSCRIBED and SWORN to before me
This 28th day of September, 2017.




NOTARY PUBLIC



AFFIRMATION

The undersigned does hereby affirm that the foregoing document filed in this matter does not contain the social security number of any person.

DATED this 28 day of September, 2018.



Jason D. Guinasso, Esq.
Attorney Vance Taylor

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the
3 within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

4 On September 20th, 2018, I served the following:

5 **SUPPLEMENTAL AFFIDAVIT**

6 on the following in said cause as indicated below:

7 VANCE TAYLOR 2919 ASPEN MEADOWS COURT 8 RENO, NV 89519 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
9 ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG, ET AL 10 6590 S MCCARRAN BLVD., SUITE B RENO, NV 89509 11 (VIA U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
12 TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 13 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
14 NEVADA DEPARTMENT OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FLOOR 15 CARSON CITY, NV 89701 (VIA U.S. MAIL)	

16
17 I declare under penalty of perjury that the foregoing is true and correct. Executed on September
18 20th, 2018, at Reno, Nevada.

19 
20 KATRINA A. TORRES

1 Robert F. Balkenbush, Esq.
Nevada Bar No. 01246
2 John D. Hooks, Esq.
Nevada Bar No. 11605
3 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
4 6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
5 Tel.: (775) 786-2882
Fax: (775) 786-8004
6 Attorneys for: Truckee Meadows Fire Protection District, and
7 Alternative Service Concepts, LLC

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 VANCE TAYLOR

11
12 Petitioner,

CASE NO.: CV18-00673

13 vs.

DEPARTMENT NO.: 6

14 TRUCKEE MEADOWS FIRE
15 PROTECTION DISTRICT;
16 ALTERNATIVE SERVICE CONCEPTS,
17 LLC, and the NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER
SHEILA MOORE

18 Respondents.
19 _____/

20 **RESPONDENTS' SUPPLEMENT IN SUPPORT OF MOTION TO DISMISS PETITION**
21 **FOR JUDICIAL REVIEW AND REPLY IN SUPPORT OF MOTION TO DISMISS**

22 COME NOW, Respondents, TRUCKEE MEADOWS FIRE PROTECTION DISTRICT
23 and ALTERNATIVE SERVICE CONCEPTS, LLC, by and through their attorney ROBERT F.
24 BALKENBUSH, ESQ., of the law firm THORNDAL, ARMSTRONG, DELK, BALKENBUSH
25 & EISINGER, and, as permitted by the September 5, 2018 order entered by this Court, hereby
26

27 ///

28 ///

1 supplement their motion to dismiss and reply in support of the motion to dismiss the Petition for
2 Judicial Review filed in this Court by Petitioner Vance Taylor on March 30, 2018.

3 DATED this 5th day of October, 2018.

4
5 THORNDAL, ARMSTRONG,
6 DELK, BALKENBUSH & EISINGER

7 By: /s/ Robert F. Balkenbush
8 ROBERT F. BALKENBUSH, ESQ.
9 State Bar No. 1246
10 6590 S. McCarran Blvd., Suite B
11 Reno, Nevada 89509
12 (775) 786-2882
13 Truckee Meadows Fire Protection District,
14 Employer, Public Agency Compensation Trust,
15 And Alternative Service Concepts, LLC

16
17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. Introduction**

19 On September 5, 2018, this Court entered an “Order re Motion to Dismiss Petition for
20 Judicial Review”. After outlining the facts and procedural history relating to the Motion to
21 Dismiss, in the “Law and Analysis” section of the Court’s Order at page 5, the Court advised the
22 parties that there remained in the Court’s mind some uncertainty about several topics. These
23 topics of uncertainty included the following:

- 24 1. What is the relationship between Alternative Services Concepts,
25 LLC (hereinafter “ASC”) and the PACT.
- 26 2. When, if ever, was Mr. Taylor put on notice that the PACT was
27 the insurer of his workers’ compensation claim.
- 28 3. Are there other documents in the record on appeal from the
Appeals Officer that identify the PACT as the insurer of Mr.
Taylor’s workers’ compensation claim.
4. At what point, if at all, did the Public Agency Compensation Trust (hereinafter
“PACT”) become a party to the contested case before the Appeals Officer and,

1 therefore, a necessary party respondent to the Petition for Judicial Review filed by
2 Mr. Taylor.

3 5. Why is ASC on the Certificate of Service and various documents
4 on the record on appeal, whereas the PACT is not.”

5 The supplemental affidavits submitted herewith provide factual information responsive to
6 the foregoing identified uncertainties and questions of the Court.

7 **II. Factual Supplement**

8 Concerning the relationship between Alternative Service Concepts, LLC (hereinafter
9 “ASC”) to the Public Agency Compensation Trust (hereinafter “PACT”), their respective
10 relevant functions, the matter of notice to Mr. Taylor that the PACT was the insurer of his
11 workers’ compensation claim, and a party to the underlying contested case, namely Appeal No.
12 1701567-SYM, and why ASC and not PACT is on relevant certificates of service, the following
13 facts are relevant.

14 ASC is a third party administrator of workers’ compensation claims in the state of
15 Nevada. *See*, NRS 616A.335; *see also*, Exhibits 1 and 2 hereto annexed (Affidavit of James
16 Michael Livermore and Affidavit of Robert Balkenbush). ASC is not now and never has been an
17 insurer of workers’ compensation claims in the state of Nevada. *See*, Exhibits 1 and 2 hereto
18 annexed (Affidavit of James Michael Livermore and Affidavit of Robert Balkenbush). The
19 Public Agency Compensation Trust (hereinafter “PACT”) is a self-insured association of Public
20 Employers of Nevada; and, therefore, is considered by law to be an insurer of workers’
21 compensation claims. *Id.*; *see also*, NRS 616A.270(2); *see generally*, NRS 616B.350 through,
22 and including NRS 616B.446. Under sequential service agreements between ASC and the PACT,
23 ASC has been the TPA of workers’ compensation claims of the PACT, and was the TPA of
24 workers’ compensation claims of the PACT with dates of injury in the years 2016 and 2017. *Id.*;
25 *see also*, NRS 616A.335; and Exhibits 1 and 2 hereto annexed (Affidavit of James Michael
26 Livermore and Affidavit of Robert Balkenbush).

1 Livermore and Affidavit of Robert Balkenbush). In the year 2016, the Truckee Meadows Fire
2 Protection District (hereinafter "TMFPD") was an employer member of the PACT. *See*, Exhibits
3 1 and 2 hereto annexed (Affidavit of James Michael Livermore and Affidavit of Robert
4 Balkenbush). In the year 2016, Mr. Vance Taylor was an employee of the TMFPD. *See*, ROA
5 016-021; ROA 232. *Id.*

6
7 As the TPA of workers' compensation claims of the PACT, ASC assumed responsibility
8 for the administration and management of the April 2016 workers' compensation claim of Mr.
9 Vance Taylor (Claim No. C143-16-09765-01), then an employee of the TMFPD. *See*, Exhibits 1
10 and 2 hereto annexed (Affidavit of James Michael Livermore and Affidavit of Robert
11 Balkenbush); *see e.g.s.* ROA 200-204, 222-224, 240 (admitted into evidence as part of Trial
12 Exhibit 3); *see also* ROA 85-91, 120 (admitted into evidence as part of Trial Exhibit 1).

13
14 In the written "Notice of Claim Acceptance" dated April 25, 2016, ASC notified Mr.
15 Taylor that his workers' compensation claim (Claim No. C143-16-09765-01) had been accepted,
16 and identified his employer as the TMFPD, the insurer of his claim as the PACT, the third party
17 administrator (TPA) of his claim as ASC, and the date of injury of his claim as April 19, 2016.
18 *See*, ROA 85-91, 120 (admitted into evidence as part of Trial Exhibit 1); and ROA 200-204, 240
19 (admitted into evidence as part of Trial Exhibit 3); *see also*, Exhibits 1 and 2 hereto annexed
20 (Affidavit of James Michael Livermore and Affidavit of Robert Balkenbush). Please note that the
21 "Notice of Claim Acceptance" admitted into evidence as part of Trial Exhibit 1 was filed by Mr.
22 Taylor. *See*, ROA 85-91, 120 (admitted into evidence as part of Trial Exhibit 1). For Mr.
23 Taylor's workers' compensation claim, there has been only one insurer and that insurer is the
24 PACT. *See*, Exhibits 1 and 2 hereto annexed (Affidavit of James Michael Livermore and
25 Affidavit of Robert Balkenbush). Similarly, for Mr. Taylor's workers' compensation claim, there
26 has been only one TPA, and that TPA is ASC. *Id.*

1 Litigation of contested cases concerning workers' compensation benefits in Nevada
2 occurs within the two-tier administrative court system within the Hearings Division of the
3 Nevada Department of Administration. *See*, Exhibits 1 and 2 hereto annexed (Affidavit of James
4 Michael Livermore and Affidavit of Robert Balkenbush). Contested case are initially conducted
5 in an informal hearing before a Hearing Officer. *Id.*; *see generally*, NRS 616C.315; NRS
6 616C.320. Appeals from adverse rulings by the Hearing Officer conducted before the Appeals
7 Officer. *See*, Exhibits 1 and 2 hereto annexed (Affidavit of James Michael Livermore and
8 Affidavit of Robert Balkenbush); *see generally*, NRS 616C.345. Appeals from adverse rulings by
9 an Appeals Officer are by means a Petition for Judicial Review. *See*, Exhibits 1 and 2 hereto
10 annexed (Affidavit of James Michael Livermore and Affidavit of Robert Balkenbush); *see*
11 *generally*, NRS 616C.370; NRS 233B.130.

14 When an insurer of workers' compensation claims in Nevada uses a TPA for the
15 administration and management of its claims, it is an established practice of both Hearing
16 Officers and Appeals Officers to serve on the TPA their respective decisions, as well as various
17 procedural orders and other notices in contested cases concerning benefits under workers'
18 compensation claims, as the TPA is responsible for compliance with the decisions and orders and
19 other notices.¹ *See*, Exhibits 1 and 2 hereto annexed (Affidavit of James Michael Livermore and
20 Affidavit of Robert Balkenbush); *see generally*, NRS 616D.120.

22 When an insurer and employer is represented by legal counsel, it is also an established
23 practice of both Hearing Officers and Appeals Officers to serve on the legal counsel for the
24

25
26 ¹ On the other hand, if an insurer of workers' compensation claims in Nevada administers or manages its claims
27 in-house, that is without using the service of the TPA, it is an established practice of both Hearing Officers and Appeals
28 Officers to serve on the insurer their respective decisions as well as various procedural orders and other notices in
contested cases concerning benefits under workers' compensation claims, as the insurer in this instance is directly
responsible for compliance with the decisions, orders and notices. *See*, Exhibits 1 and 2 hereto annexed (Affidavit of
James Michael Livermore and Affidavit of Robert Balkenbush); *see generally*, NRS 616D.120.

1 insurer and employer their respective decisions, as well as various procedural orders and other
2 notices and contested cases concerning benefits under workers' compensation claims. *See*,
3 Exhibits 1 and 2 hereto annexed (Affidavit of James Michael Livermore and Affidavit of Robert
4 Balkenbush); *see generally*, NRS 616C.310(2); NAC 616C.294; NAC 616C.297; NAC
5 616C.300(1); NAC 616C.303(3); NAC 616C.306; NAC 616C.321; and NAC 616C.324.

6
7 In respect to the April 2016 workers' compensation claim of Mr. Vance Taylor (Claim
8 No. C143-16-09765-01), and concerning the litigation of Appeal No. 1701567-SYM before the
9 Appeals Officer and the decision made under Appeal No. 1701567-SYM that is the subject of the
10 pending Petition for Judicial Review before this court, on or about December 8, 2016, Mr.
11 Balkenbush served by mail a Notice of Appearance on legal counsel for Mr. Vance Taylor
12 (James Guinasso, Esq.). *See*, ROA 351-353; *see also*, Exhibits 1 and 2 hereto annexed (Affidavit
13 of James Michael Livermore and Affidavit of Robert Balkenbush). This Notice of Appearance
14 expressly stated that Mr. Balkenbush was appearing as legal counsel for the insurer and employer
15 in respect of Appeal No. 1701567-SYM; and that the insurer was the Public Agency
16 Compensation Trust (PACT) and the employer was the Truckee Meadows Fire Protection
17 District (TMFPD). *See*, ROA 351-353; *see also*, Exhibits 1 and 2 hereto annexed (Affidavit of
18 James Michael Livermore and Affidavit of Robert Balkenbush).

19
20 Concerning Appeal No. 1701567-SYM, copies of all proposed documentary exhibits that
21 the insurer (PACT) and employer (TMFPD) intended to use as evidence to defend their
22 respective interests in the contested issues in Appeal No. 1701567-SYM, as well as the Pre-
23 hearing Statement of the PACT and TMFPD for this referenced appeal were served by mail on
24 legal counsel for Mr. Vance Taylor (Jason Guinasso, Esq.). *See*, ROA 200-305 (admitted as Trial
25 Exhibit 3); ROA 306-311 (admitted as Trial Exhibit 4); ROA 312-322 (admitted as Trial Exhibit
26 5); and ROA 347-350 (Pre-hearing Statement of the PACT and TMFPD); *see also*, Exhibits 1
27
28

1 and 2 hereto annexed (Affidavit of James Michael Livermore and Affidavit of Robert
2 Balkenbush).

3 In the March 2, 2017 trial transcript of Appeal No. 1701567-SYM, Appeals Officer
4 Sheila Moore, who presided over the trial of this appeal, identified as parties to the appeal the
5 Public Agency Compensation Trust (PACT) as the insurer of Mr. Taylor's workers'
6 compensation claim, the Truckee Meadows Fire Protection District (TMFPD) as the employer of
7 Mr. Taylor, and that attorney Robert Balkenbush is representing the PACT and TMFPD. *See*,
8 ROA 009-012; *see also*, Exhibits 1 and 2 hereto annexed (Affidavit of James Michael Livermore
9 and Affidavit of Robert Balkenbush).

10
11 Lastly, concerning the written decision of the Appeals Officer made under Appeal No.
12 1701567-SYM that is the subject of the pending Petition for Judicial Review before this court,
13 the decision made by the Appeals Officer was served upon ASC as the TPA for the PACT, and
14 upon attorney Robert Balkenbush as legal counsel for the PACT and TMFPD. *See*, ROA 001-
15 008; *see also*, Exhibit 1 hereto annexed (Affidavit of James Michael Livermore).

16 17 **III. Conclusion**

18 In accordance with the foregoing, the foregoing factual supplement demonstrates that the
19 PACT was the insurer of Mr. Taylor's workers' compensation claim at issue in the pending
20 Petition for Judicial Review. The factual supplement also demonstrates that ASC was the third
21 party administrator (TPA) of Mr. Taylor's workers' compensation claim at issue in the petition.
22 The factual supplement also demonstrates that the relationship between PACT and ASC is by
23 service agreement wherein ASC agreed to provide services as a TPA of workers' compensation
24 claims of the PACT, including Mr. Taylor's claim. The factual supplement also demonstrates
25 that Mr. Taylor was informed that the PACT was the insurer of his workers' compensation claim
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1 as early as April 25, 2016, and this information was conveyed by the "Notice of Claim
2 Acceptance" sent by mail to Mr. Taylor. The factual supplement further demonstrates that the
3 Appeals Officer and Mr. Taylor, as well as his legal counsel (Jason Guinasso, Esq.) were advised
4 as early as December 8, 2016 that the PACT, as the insurer of Mr. Taylor's claim, and TMFPD,
5 as the employer of Mr. Taylor, were parties to Appeal No. 1701567-SYM, and that Mr.
6 Balkenbush was representing their respective interests. In addition, through attorney Balkenbush,
7 the PACT and TMFPD served on Mr. Taylor's legal counsel (Jason Guinasso, Esq.) in January
8 2017 copies of all proposed documentary exhibits that the PACT and TMFPD intended to use as
9 evidence to defend the respective interests in the contested cases in Appeal No. 1701567-SYM.
10 These proposed documentary exhibits were ultimately admitted into evidence as Trial Exhibits 3,
11 4 and 5. In addition, the factual supplement demonstrates that Mr. Taylor and his legal counsel
12 (Jason Guinasso, Esq.) were served in January 2017 with the Pre-hearing Statement of the PACT
13 and TMFPD for Appeal No. 1701567-SYM. Hence, it is no surprise that in the March 2, 2017
14 trial transcript for Appeal No. 1701567-SYM that the presiding Appeals Officer (Sheila Moore)
15 identified as parties to this appeal the PACT as the insurer of Mr. Taylor's workers'
16 compensation claim, and the TMFPD as the employer of Mr. Taylor, and that attorney Robert
17 Balkenbush was representing the PACT and TMFPD in the proceedings. Lastly, the actual
18 decision of the Appeals Officer identifies the PACT as a party to Appeal No. 1701567-SYM, as
19 the insurer of Mr. Taylor's claim. *See*, ROA 001.

20 Respectfully, therefore, the TMFPD and ASC submit that the PACT was a party to
21 Appeal No. 1701567-SYM, that Mr. Taylor and his counsel were aware of this fact as early as
22 December 2016 and through trial exhibits and Pre-hearing Statement submitted to the Appeals
23 Officer and served on Mr. Taylor in January 2017, and, therefore, the PACT was a necessary part
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1 respondent to the Petition for Judicial Review.

2 Mr. Taylor did not name PACT as a party respondent to the Petition for Judicial Review
3 and, therefore, the Petition for Judicial Review must be dismissed pursuant to NRS 233B.130(2)
4 and *Washoe Cty v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012).

5 **AFFIRMATION PURSUANT TO NRS 239B.030**

6
7 The undersigned hereby affirms that this document does not contain the social security
8 number of any person.

9 DATED this 5th day of October, 2018.

10 THORNDAL, ARMSTRONG,
11 DELK, BALKENBUSH & EISINGER

12 By: /s/ Robert F. Balkenbush

13 ROBERT F. BALKENBUSH, ESQ.

14 State Bar No. 1246

15 6590 S. McCarran Blvd., Suite B

16 Reno, Nevada 89509

17 (775) 786-2882

18 Truckee Meadows Fire Protection District,
19 and Alternative Service Concepts, LLC
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk
3 Balkenbush & Eisinger, and that on this date I caused the foregoing **RESPONDENTS'**
4 **SUPPLEMENT IN SUPPORT OF MOTION TO DISMISS PETITION FOR JUDICIAL**
5 **REVIEW AND REPLY IN SUPPORT OF MOTION TO DISMISS** to be served as follows:
6

7 XX Placing an original or true copy thereof in a sealed, postage prepaid, envelope
8 in the United States mail at Reno, Nevada, addressed to the following:

9 Jason Guinasso, Esq.
Hutchison & Steffen, LLC
10 500 Damonte Ranch Parkway, Suite 980
Reno, NV 89521
11

12 Patrick Cates – Director
Department of Administration
13 515 E. Musser Street
Carson City, NV 89701
14

15 Adam Laxalt, Esq.
Attorney General
16 100 W. Carson Street
Carson City, NV 89701
17

18 Senior Appeals Officer Michelle Morgando
2200 S. Rancho Drive, Suite 220
19 Las Vegas, NV 89102

20 Nevada Department of Administration, Appeals Division
1050 E. William Street, Suite 450
21 Carson City, NV 89701

22 Alternative Service Concepts
23 639 Isbell Road, Suite 390
24 Reno, Nevada 89509

25 DATED this 5th day of October, 2018.

26 By: /s/ Chiai Chon
27 CHIAI CHON
28

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INDEX OF EXHIBIT(S)

Exhibit No.	Exhibit Description	No. of Pages
1	Affidavit of James Michael Livermore	6
2	Affidavit of Robert Balkenbush	25

EXHIBIT 1

EXHIBIT 1

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1 9. In year 2016, Mr. Vance Taylor was an employee of the TMFPD. *See* ROA 016-021;
2 ROA 232.

3 10. As the TPA of the workers' compensation claims of the PACT, ASC assumed
4 responsibility for administration of the April 2016 workers' compensation claim of Mr. Vance
5 Taylor (Claim No. C143-16-09765-01), then an employee of the TMFPD. *See e.g.s.*, ROA 200-
6 204, 222-224, 240 (Admitted into evidence as part of Trial Exhibit 3); *see also*, ROA 85-91,120
7 (Admitted into evidence as part of Trial Exhibit 1).

8 10. In the written "Notice of Claim Acceptance" dated April 25, 2016, ASC notified Mr.
9 Taylor that his workers' compensation claim (Claim No. C143-16-09765-01) had been accepted,
10 and identified his employer as the TMFPD, the insurer of his claim as the PACT, the third party
11 administrator (TPA) of his claim as ASC, and the date of injury of his claim as April 19, 2016.
12 *See*, ROA 85-91,120 (Admitted into evidence as part of Trial Exhibit 1); and ROA 200-204, 240
13 (Admitted into evidence as part of Trial Exhibit 3). Please note that the "Notice of Claim
14 Acceptance" admitted into evidence as part of Trial Exhibit 1 was filed by Mr. Taylor. *See*, ROA
15 85-91,120 (Admitted into evidence as part of Trial Exhibit 1). For Mr. Taylor's workers'
16 compensation claim, there has been only one insurer, and that insurer is the PACT. Similarly, for
17 Mr. Taylor's workers' compensation claim, there has been only one TPA, and that TPA is ASC.

18 11. Litigation of contested cases concerning workers' compensation benefits in Nevada
19 occurs within a two-tier administrative court system within the Hearings Division of the Nevada
20 Department of Administration. Contests are initially conducted in an informal hearing before a
21 Hearing Officer. *See generally*, NRS 616C.315; NRS 616C.320. Appeals from adverse rulings by
22 the Hearing Officer are conducted before Appeals Officers. *See generally*, NRS 616C.345.
23 Appeals from adverse rulings by an Appeals Officer are by means of a petition for judicial
24 review. *See generally*, NRS 616C.370; NRS 233B.130.

25 12. If an insurer of workers' compensation claims in Nevada uses a TPA for the
26 administration of its claims, it is an established practice of both Hearing Officers and Appeals
27 Officers to serve on the TPA their respective decisions, as well as various procedural orders and
28 other notices in contested cases concerning benefits under workers' compensation claims, as the

1 TPA is responsible for compliance with the decision and orders. *See generally*, NRS 616D.120.

2 13. On the other hand, if an insurer of workers' compensation claims in Nevada
3 administers or manages its claims in-house, that is without using the service of a TPA, it is an
4 established practice of both Hearing Officers and Appeals Officers to serve on the insurer their
5 respective decisions, as well as various procedural orders and other notices in contested cases
6 concerning benefits under workers' compensation claims, as the insurer in this circumstance is
7 directly responsible for compliance with the decision and orders. *See generally*, NRS 616D.120.

8 14. When an insurer and employer is represented by legal counsel, it is an established practice
9 of both Hearing Officers and Appeals Officers to serve on the legal counsel for the insurer and
10 employer their respective decisions, as well as various procedural orders and other notices in
11 contested cases concerning benefits under workers' compensation claims. *See generally*, NRS
12 616C.310(2); NAC 616C.294; NAC 616C.297, NAC 616C.300(1); NAC 616C.303(3); NAC
13 616C.306; NAC 616C.321; and NAC 616C.324.

14 15. In respect of the April 2016 workers' compensation claim of Mr. Vance Taylor (Claim
15 No. C143-16-09765-01), and concerning the decision of the Appeals Officer made under Appeal
16 No. 1701567-SYM that is the subject of the pending petition for judicial review before the
17 Second Judicial District Court in Case No. CV18-00673, the decision made by the Appeals
18 Officer was served upon ASC as the TPA for the PACT, and upon attorney Robert Balkenbush
19 as legal counsel for the PACT and TMFPD. *See*, ROA 001-008.

20 16. I am informed and believe that attorney Robert Balkenbush represented the PACT and
21 TMFPD before the Appeals Officer concerning Appeal No. 1701567-SYM. In this regard, on or
22 about December 8, 2016, Mr. Balkenbush served by mail a Notice of Appearance on legal
23 counsel for Mr. Vance Taylor (Jason Guinasso, Esq.). *See*, ROA 351-353. This Notice of
24 Appearance expressly stated that Mr. Balkenbush was appearing as legal counsel for the insurer
25 and employer in respect of Appeal No. 1701567-SYM; and that the insurer was the Public
26 Agency Compensation Trust (PACT) and that the employer was the Truckee Meadows Fire
27 Protection District (TMFPD). *See*, ROA 351-353.

28 17. Concerning Appeal No. 1701567-SYM, I am further informed and believe that attorney

1 Robert Balkenbush filed with the Appeals Officer and served by mail on legal counsel for Mr.
2 Vance Taylor (Jason Guinasso, Esq.) copies of all proposed documentary exhibits that the insurer
3 (PACT) and employer (TMFPD) intended to use as evidence to defend their respective interests
4 in the contested issues in Appeal No. 1701567-SYM, as well as the Pre-hearing Statement of the
5 PACT and TMFPD. *See*, ROA 200-305 (Admitted as Trial Exhibit 3); ROA 306-311 (Admitted
6 as Trial Exhibit 4); ROA 312-322 (Admitted as Trial Exhibit 5); and ROA 347-350 (Pre-hearing
7 Statement of the PACT and TMFPD).

8 18. I am further informed and believe that in the March 2, 2017 trial transcript of Appeal No.
9 1701567-SYM, Appeals Officer Sheila Moore, who presided over the trial of Appeal No.
10 1801567-SYM, identified as parties to the appeal the Public Agency Compensation Trust
11 (PACT) as the insurer of Mr. Taylor's workers' compensation claim, the Truckee Meadows Fire
12 Protection District (TMFPD) as the employer of Mr. Taylor, and that attorney Robert Balkenbush
13 was representing the PACT and TMFPD. *See*, ROA 009-012.

14 DATED THIS 5TH day of October 2018.

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JAMES MICHAEL LIVERMORE

SUBSCRIBED and SWORN To before me this
5th day of October, 2018.


NOTARY PUBLIC



1 **AFFIRMATION PURSUANT TO NRS 239B.030**

2 The undersigned hereby affirms that the preceding document filed in above-entitled court
3 does not contain the social security number of any person

4 Dated this 5th day of October, 2018.

5
6 By: 

ROBERT F. BALKENBUSH, ESQ.

State Bar No. 1246

6590 South McCarran Blvd., Suite B
Reno, NV 89509

Attorneys for: Truckee Meadows Fire
Protection District; Public Agency
Compensation Trust; and Alternative
Service Concepts, LLC

EXHIBIT 2

EXHIBIT 2

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1. I am a resident of the State of Nevada and over 18 years of age.
2. I am a licensed attorney in Nevada and have been so licensed for nearly 38 years.
3. I have represented the interests of employers and insurers of workers' of compensation claims in Nevada for approximately 27 years.

5. ASC is a registered third party administrator (hereinafter at times "TPA"), not an insurer, of workers' compensation claims in the State of Nevada.

7. ASC has served as a TPA for workers' compensation claims submitted to the Public Agency Compensation Trust (hereinafter "PACT") for well over ten (10) years. The relationship between ASC and the PACT is governed by sequential written service agreements.

9. ASC is still the TPA of workers' compensation claims of the PACT, and was the TPA of workers' compensation claims of the PACT with dates of injury in years 2016 and 2017.

AA000512

1 11. As the TPA of the workers' compensation claims of the PACT, ASC assumed
2 responsibility for administration and management of the April 2016 workers' compensation
3 claim of Mr. Vance Taylor (Claim No. C143-16-09765-01), then an employee of the TMFPD.
4 *See e.g.s.*, ROA 200-204, 222-224, 240 (Admitted into evidence as part of Trial Exhibit 3); *see*
5 *also*, ROA 85-91,120 (Admitted into evidence as part of Trial Exhibit 1).

6 12. In the written "Notice of Claim Acceptance" dated April 25, 2016, ASC notified Mr.
7 Taylor that his workers' compensation claim (Claim No. C143-16-09765-01) had been accepted,
8 and identified his employer as the TMFPD, the insurer of his claim as the PACT, the third party
9 administrator (TPA) of his claim as ASC, and the date of injury of his claim as April 19, 2016.
10 *See*, ROA 85-91,120 (Admitted into evidence as part of Trial Exhibit 1 for Appeal No. 1701567-
11 SYM); and ROA 200-204, 240 (Admitted into evidence as part of Trial Exhibit 3 for Appeal No.
12 1701567-SYM). Please note that the "Notice of Claim Acceptance" admitted into evidence as
13 part of Trial Exhibit 1 for Appeal No. 1701567-SYM was filed by Mr. Taylor. *See*, ROA 85-
14 91,120 (Admitted into evidence as part of Trial Exhibit 1 for Appeal No. 1701567-SYM). For
15 Mr. Taylor's workers' compensation claim, there has been only one insurer, and that insurer is
16 the PACT. Similarly, for Mr. Taylor's workers' compensation claim, there has been only one
17 TPA, and that TPA is ASC.

18 13. Litigation of contested cases concerning workers' compensation benefits in Nevada
19 occurs within a two-tier administrative court system within the Hearings Division of the Nevada
20 Department of Administration. Contests are initially conducted in an informal hearing before a
21 Hearing Officer. *See generally*, NRS 616C.315; NRS 616C.320. Appeals from adverse rulings by
22 the Hearing Officer are conducted before Appeals Officers. *See generally*, NRS 616C.345.
23 Appeals from adverse rulings by an Appeals Officer are by means of a petition for judicial
24 review. *See generally*, NRS 616C.370; NRS 233B.130.

25 14. When an insurer of workers' compensation claims in Nevada uses a TPA for the
26 administration of its claims, it is an established practice of both Hearing Officers and Appeals
27 Officers to serve on the TPA their respective decisions, as well as various procedural orders and
28 other notices in contested cases concerning benefits under workers' compensation claims, as the

1 TPA is responsible for compliance with the decision and orders. *See generally*, NRS 616D.120.

2 15. On the other hand, if an insurer of workers' compensation claims in Nevada
3 administers or manages its claims in-house, that is without using the service of a TPA, it is an
4 established practice of both Hearing Officers and Appeals Officers to serve on the insurer their
5 respective decisions, as well as various procedural orders and other notices in contested cases
6 concerning benefits under workers' compensation claims, as the insurer in this circumstance is
7 directly responsible for compliance with the decision and orders. *See generally*, NRS 616D.120.

8 16. When an insurer and employer is represented by legal counsel, it is an established practice
9 of both Hearing Officers and Appeals Officers to serve on the legal counsel for the insurer and
10 employer their respective decisions, as well as various procedural orders and other notices in
11 contested cases concerning benefits under workers' compensation claims. *See generally*, NRS
12 616C.310(2); NAC 616C.294; NAC 616C.297; NAC 616C.300(1); NAC 616C.303(3); NAC
13 616C.306; NAC 616C.321; and NAC 616C.324.

14 17. Consistent with paragraphs 13-16 herein above set forth, I hereafter can make the
15 following additional representations of fact.

16 18. Appeal No. 1701567-SYM emanates from an appeal by Mr. Taylor from a Hearing
17 Officer decision made under Hearing No. 1700937-SA. *See*, ROA 354-359. At the hearing of
18 Hearing No. 1700937-SA, I represented the PACT and TMFPD, and notified the Hearing Officer
19 and Mr. Taylor's legal counsel (Jason Guinasso, Esq.) of this fact. *See*, Exhibit A annexed to my
20 affidavit (proposed documentary exhibits submitted with index only to avoid unnecessary
21 submission of additional documents). Consistent with the foregoing, the Hearing Officer served
22 her decision on my office. *Id.*; *see also*, ROA 357-359. The Hearing Officer also served a copy
23 of her decision on ASC, as the TPA of Mr. Taylor's workers' compensation claim. *See*, ROA
24 357-359.

25 19. Concerning Appeal No. 1701567-SYM, on or about December 8, 2016, my office
26 served by mail a Notice of Appearance on legal counsel for Mr. Vance Taylor (Jason Guinasso,
27 Esq.). *See*, ROA 351-353. This Notice of Appearance expressly stated that I was appearing as
28 legal counsel for the insurer and employer in respect of Appeal No. 1701567-SYM; and that the

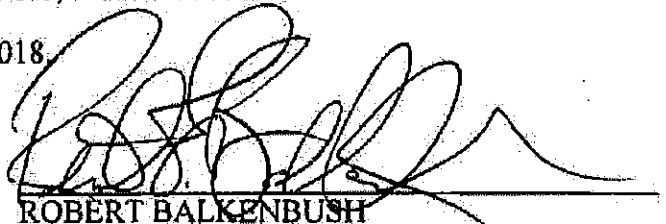
1 insurer was the Public Agency Compensation Trust (PACT) and that the employer was the
2 Truckee Meadows Fire Protection District (TMFPD). *See*, ROA 351-353.

3 20. Concerning Appeal No. 1701567-SYM, my office served by mail on legal counsel for
4 Mr. Vance Taylor (Jason Guinasso, Esq.) copies of all proposed documentary exhibits that the
5 insurer (PACT) and employer (TMFPD) intended to use as evidence to defend their respective
6 interests in the contested issues in Appeal No. 1701567-SYM, as well as the Pre-hearing
7 Statement of the PACT and TMFPD. *See*, ROA 200-305 (Admitted as Trial Exhibit 3); ROA
8 306-311 (Admitted as Trial Exhibit 4); ROA 312-322 (Admitted as Trial Exhibit 5); and ROA
9 347-350 (Pre-hearing Statement of the PACT and TMFPD).

10 21. In the March 2, 2017 trial transcript of Appeal No. 1701567-SYM, Appeals Officer
11 Sheila Moore, who presided over the trial of Appeal No. 1801567-SYM, identified as parties to
12 the appeal the Public Agency Compensation Trust (PACT) as the insurer of Mr. Taylor's
13 workers' compensation claim, the Truckee Meadows Fire Protection District (TMFPD) as the
14 employer of Mr. Taylor, and that attorney Robert Balkenbush was representing the PACT and
15 TMFPD. *See*, ROA 009-012.

16 22. In respect of the April 2016 workers' compensation claim of Mr. Vance Taylor (Claim
17 No. C143-16-09765-01), and concerning the decision of the Appeals Officer made under Appeal
18 No. 1701567-SYM that is the subject of the pending petition for judicial review before the
19 Second Judicial District Court in Case No. CV18-00673, the decision made by the Appeals
20 Officer was served upon ASC as the TPA for the PACT, and upon attorney Robert Balkenbush
21 as legal counsel for the PACT and TMFPD. *See*, ROA 001-008.

22 DATED THIS 5TH day of October 2018.

23
24 
25 ROBERT BALKENBUSH

26 SUBSCRIBED and SWORN To before me this
27 5th day of October, 2018.

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NOTARY PUBLIC

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that the preceding document filed in above-entitled court does not contain the social security number of any person.

Dated this 5th day of October, 2018.

By: 

ROBERT F. BALKENBUSH, ESQ.
State Bar No. 1246
6590 South McCarran Blvd., Suite B
Reno, NV 89509
Attorneys for: Truckee Meadows Fire
Protection District; Public Agency
Compensation Trust; and Alternative
Service Concepts, LLC

EXHIBIT A

EXHIBIT A

COPY

1 Robert F. Balkenbush, Esq.
2 State Bar No. 1246
3 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
4 6590 S. McCarran, Suite B
5 Reno, Nevada 89509
6 (775) 786-2882
7 Attorneys for: Truckee Meadows Fire Protection District, Employer and
8 Public Agency Compensation Trust, Insurer
9

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE HEARING OFFICER

10 In the Matter of the
11 Industrial Insurance Claim
12 Of
13
14 VANCE TAYLOR

Claim No. C143-16-09765-01

Hearing No. 1700937-SA

NOTICE OF APPEARANCE

18 PLEASE TAKE NOTICE, Robert F. Balkenbush, Esq., will appear as counsel for the
19 Employer, Truckee Meadows Fire Protection District, and the Insurer, Public Agency
20 Compensation Trust, in the above-referenced matter. I wish to participate by telephone. Please
21 contact me at the above-listed telephone number.

22 DATED this 4th day of October, 2016

23 By: 

24 ROBERT F. BALKENBUSH, ESQ.

25 Attorneys for: Truckee Meadows Fire Protection
26 District and Public Agency Compensation Trust
27
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and
correct copy of the foregoing document, addressed to:

Jason Guinasso, Esq.
Reese Kintz Guinasso, LLC
190 West Huffaker, Suite 402
Reno, NV 89520

DATED this 5 day of October, 2016.


NATALIE L. STEINHART

AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Hearing Officer
does not contain the social security number of any person.

DATED this 5 day of October, 2014.

By: 

1 Robert F. Balkenbush, Esq.
2 State Bar No. 1246
3 Thorndal Armstrong Delk Balkenbush & Eisinger
4 6590 S. McCarran, Suite B
5 Reno, Nevada 89509
6 T: (775) 786-2882
7 F: (775) 786-8004
8 Attorneys for: Truckee Meadows Fire Protection District, Employer and
9 Public Agency Compensation Trust, Insurer
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**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE HEARING OFFICER**

In the Matter of the
Industrial Insurance Claim
Of
VANCE TAYLOR

Claim No. C143-16-09765-01

Hearing No. 1700937-SA

**INSURER'S AND EMPLOYER'S
FIRST DOCUMENTARY EXHIBIT**

**INDEX TO INSURER'S AND EMPLOYER'S
FIRST DOCUMENTARY EXHIBIT**

<u>PAGE(S)</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	04/19/16	Form C-1
2-3	04/19/16	Supervisor's Report of Injury
4-16	04/19/16	Emergency Room Record from Renown South Meadows Medical Center
17-19	04/19/16	Form C-4 and Form D-2
20-25	04/20/16	Medical Record by Scott Hall, MD, with Specialty Health; to include, Return to Work Form
26	04/20/16	X-ray of left shoulder from Reno Diagnostic Centers
27	04/21/16	Form C-3
28-32	04/22/16	Medical Record by Scott Hall, MD, with Specialty Health; to include, Return to Work Form
33-34	04/25/16	Form D-8 with Wage Verification spreadsheet
35	04/25/16	Notice of Claim Acceptance from TPA to Claimant
36-37	04/26/16	Determination letter from TPA to Claimant regarding average monthly wage calculation; to include, Wage Calculation Form
38	04/29/16	MRI of left shoulder from Reno Diagnostic Centers
39-43	05/02/16	Medical Record by Scott Hall, MD, with Specialty Health; to include, Return to Work Form
44-45	05/10/16	Physical Therapy Evaluation by Chris Amundson, DPT, with Premier Physical Therapy & Sports Performance
46	05/13/16	Form D-6
47-50	05/17/16	Medical Record by Scott Hall, MD, with Specialty Health; to include, Return to Work Form
51-55	05/20/16	Medical Record by Hilary Malcarney, MD, with Nevada Orthopedics; to include, Physician's Progress Report (PPR)

1	56-59	06/13/16	Medical Record by Hilary Malcarney, MD, with Nevada Orthopedics; to include, PPR
2			
3	60	06/16/16	Letter from TPA to Hilary Malcarney, MD regarding three additional diagnoses
4			
5	61	06/29/16	TPA Denial of surgical authorization pending response to 06/16/16 letter
6			
7	62	06/29/16	Note from Hilary Malcarney, MD to TPA in response to 06/16/16 letter
8			
9	63-67	07/18/16	Medical Record by Hilary Malcarney, MD, with Nevada Orthopedics; to include, PPR
10			
11	68-73	07/21/16	Operative Report by Hilary Malcarney, MD
12	74-76	08/03/16	Medical Record by Hilary Malcarney, MD, with Nevada Orthopedics; to include, PPR
13			
14	77	08/09/16	Form D-6
15	78	08/10/16	PPR by Hilary Malcarney, MD, with Nevada Orthopedics
16	79	08/16/16	Letter from Claimant's Counsel to TPA advising retained by Claimant
17			
18	80	08/18/16	Letter from TPA to Claimant's Counsel with requested documents and clarification regarding work statuses
19			
20	81	08/21/16	Form D-6
21	82	09/04/16	Form D-6
22	83	09/07/16	PPR by Hilary Malcarney, MD, with Nevada Orthopedics
23	84-86	09/09/16	Offer of Temporary Light Duty Employment from Employer to Claimant
24			
25	87-89	09/09/16	Claimant's email response to Employer regarding Temporary Light Duty position
26			
27	90	09/26/16	Determination letter from TPA to Claimant discontinuing temporary total disability (TTD) after 09/11/16 due to light duty position offered
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09/26/16

Letter from TPA to Hilary Malcarney, MD regarding distal
clavicle excision

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and correct copy of the foregoing document, addressed to:

Jason Guinasso, Esq.
Reese Kintz Guinasso, LLC
190 West Huffaker, Suite 402
Reno, NV 89511

DATED this 19 day of October, 2016.

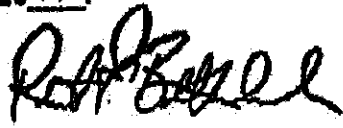

NATALIE L. STEINHARDT

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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Hearing Officer
does not contain the social security number of any person.

DATED this 19 day of October, 2016.

By: 

COPY

Robert F. Balkenbush, Esq.
State Bar No. 1246
Thorndal Armstrong Delk Balkenbush & Eisinger
6590 S. McCarran, Suite B
Reno, Nevada 89509
T: (775) 786-2882
F: (775) 786-8004
Attorneys for: Truckee Meadows Fire Protection District, Employer and
Public Agency Compensation Trust, Insurer

FILED 20 APR 23

FILED
AND
FILED

**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE HEARING OFFICER**

In the Matter of the
Industrial Insurance Claim

Claim No. CI43-16-09765-01

Of

Hearing No. 1700937-SA

VANCE TAYLOR

**INSURER'S AND EMPLOYER'S
SECOND DOCUMENTARY EXHIBIT**

**INDEX TO INSURER'S AND EMPLOYER'S
SECOND DOCUMENTARY EXHIBIT**

<u>PAGE(S)</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1-2	10/19/16	Letter from Insurer's and Employer's legal counsel to Claimant's legal counsel requesting all correspondence and documentary exhibits prior to hearing

CERTIFICATE OF MAILING

Pursuant to NRCF 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and
correct copy of the foregoing document, addressed to:

Jason Guinasso, Esq.
Reese Kintz Guinasso, LLC
190 West Huffaker, Suite 402
Reno, NV 89511

DATED this 19 day of October, 2016.


NATALIE L. STEINHART

AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Hearing Officer
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DATED this 19 day of October, 2016.

By: 

JOHN L. THORNDAL
JAMES G. ARMSTRONG
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October 19, 2016

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Reno, NV 89511

RE: *Claimant: Vance Taylor*
Employer: Truckee Meadows Fire Protection District
Insurer: Public Agency Compensation Trust
Third Party Administrator: Alternative Service Concepts
Claim No.: C143-16-09765-01
Hearing No.: 1700937-SA

Dear Mr. Guinasso,

As you are aware, our office has been retained to represent the Insurer, Public Agency Compensation Trust and the Employer, Truckee Meadows Fire Protection District, in the above-referenced matter.

Please supply our office with copies of any and all records or correspondence pertaining to Temporary Light Duty Employment from your office or from the Claimant to the Employer or any other related party. Please consider this request an ongoing request and supplement the production of all your written communications to such parties and their responses to same, until this contested case is resolved. We want to ensure that our clients have adequate time to initiate an inquiry, if necessary, regarding information and/or opinions contained in such documentation.

Attorneys also licensed to practice in
Arizona, California, Colorado, and Maryland

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AA000531

Finally, please serve our office with any and all documentary exhibits as soon as possible before the hearing scheduled to be heard on October 24, 2016. If you have any questions or concerns regarding the matter herein above discussed, please contact my office at your earliest convenience.

Thank you for your cooperation.

Very truly yours,



ROBERT F. BALKENBUSH

RFB/mab

cc: File

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AA000532

Robert F. Balkenbush, Esq.
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Attorneys for: Truckee Meadows Fire Protection District, Employer and
Public Agency Compensation Trust, Insurer

2017 10 AM 10:32

FILED

**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE HEARING OFFICER**

In the Matter of the
Industrial Insurance Claim
Of
VANCE TAYLOR

Claim No. C143-16-09765-01

Hearing No. 1700937-SA

**INSURER'S AND EMPLOYER'S
CLAIM HISTORY PACKET**

**INDEX TO INSURER'S AND EMPLOYER'S
CLAIM HISTORY PACKET**

<u>PAGE(S)</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	09/26/16	Determination letter from TPA to Claimant discontinuing temporary total disability (TTD) after 09/11/16 due to light duty position offered
2	09/29/16	Request for Hearing
3-4	09/30/16	Notice of Hearing before the Hearing Officer

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
3 Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada, a true and
4 correct copy of the foregoing document, addressed to:
5

6 Jason Guinasso, Esq.
7 Reese Kintz Guinasso, LLC
8 190 West Huffaker, Suite 402
9 Reno, NV 89511

10 DATED this 19 day of October, 2016.

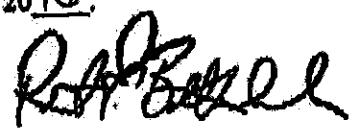
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12 NATALIE L. STEINHART
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AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Hearing Officer
does not contain the social security number of any person.

DATED this 19 day of October, 2016.

By: 

1 Robert F. Balkenbush, Esq.
2 Nevada Bar No. 01246
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4 6590 S. McCarran Blvd., Suite B
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

VANCE TAYLOR

CASE NO.: CV18-00673

Petitioner,

DEPARTMENT NO.: 6

vs.

TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT;
ALTERNATIVE SERVICE CONCEPTS,
LLC, and the NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER
SHEILA MOORE

**NOTICE OF SUBMISSION OF
SUPPLEMENT IN SUPPORT OF
MOTION/REPLY TO DISMISS
PETITION FOR JUDICIAL REVIEW;
AND REQUEST FOR FINAL DECISION
ON MOTION TO DISMISS PETITION
FOR JUDICIAL REVIEW**

Respondents.

COMENOW Respondents, TRUCKEE MEADOWS FIRE PROTECTION DISTRICT, and
ALTERNATIVE SERVICE CONCEPTS, LLC, by and through their attorney, Robert F.
Balkenbush, Esq., and hereby request submission of their Supplement in Support of Motion/Reply
to Dismiss Petition for Judicial Review; and Request For Final Decision on Motion to Dismiss
Petition for Judicial Review, regarding the Decision and Order rendered by Appeals Officer Sheila
Moore on February 28, 2018, under Appeal Number 1701567-SYM.

1 On or about March 30, 2018, Petitioners filed their Petition for Judicial Review. On June 4,
2 2018, Respondents filed their Motion to Dismiss Petition for Judicial Review. On June 14, 2018,
3 Petitioners filed their Opposition to Motion to Dismiss Petition for Judicial Review. Thereafter, on
4 June 29, 2018, Respondents' filed their Reply to Taylor's Opposition to Motion to Dismiss Petition
5 for Judicial Review.

6 By the Court's Order dated September 5, 2018, both parties were permitted to file
7 supplemental affidavits in support of the Motion/Reply. On September 28, 2018, the Petitioner filed
8 his Supplemental Affidavit. Thereafter, on October 5, 2018, the Respondents' filed a Supplement
9 in Support of Motion to Dismiss Petition for Judicial Review and Reply in Support of Motion to
10 Dismiss.

11 In accordance with the foregoing, Respondents respectfully request a final decision on
12 Motion to Dismiss Petition for Judicial Review for decision by the Court.

13 The undersigned attorney certifies that a copy of this request has been mailed to all counsel
14 of record.

15 **AFFIRMATION**
16 **Pursuant to NRS 239B.030**

17 The undersigned hereby affirms that the preceding document filed in above-entitled court
18 does not contain the social security number of any person.

19 DATED this 10th day of October, 2018.

20 THORNDAL, ARMSTRONG,
21 DELK, BALKENBUSH & EISINGER

22 By: /s/ Robert F. Balkenbush
23 ROBERT F. BALKENBUSH, ESQ.
24 State Bar No. 1246
25 6590 S. McCarran Blvd., Suite B
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27 (775) 786-2882
28 Truckee Meadows Fire Protection District,
Employer, Public Agency Compensation Trust,
And Alternative Service Concepts, LLC

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XX Placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

DATED this 10th day of October, 2018.

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1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 VANCE TAYLOR,

Case No. CV18-00673

10 Petitioner,
11

Dept. No. 6

12 vs.

13 TRUCKEE MEADOWS FIRE PROTECTION
14 DISTRICT; ALTERNATIVE SERVICE
15 CONCEPTS, LLC, PUBLIC AGENCY
16 COMPENSATION TRUST and the NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER SHEILA MOORE,

17 Respondents.
18 _____ /

19 **ORDER RE MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

20 Respondent TRUCKEE MEADOWS FIRE PROTECTION DISTRICT ("TMFPD") and
21 PUBLIC AGENCY COMPENSATION TRUST ("PACT") (collectively "Respondents") filed an
22 original *Motion to Dismiss Petition for Judicial Review* on June 4, 2018. After full briefing on
23 the matter, this Court requested supplemental affidavits from both parties to help render a
24 decision.
25

26 Now before this Court is *Respondents' Supplement in Support of Motion to Dismiss*
27 *Petition for Judicial Review and Reply in Support of Motion to Dismiss* ("Respondents'
28 *Supplement*"), filed by Respondents, by and through its counsel, Robert F. Balkenbush,

1 Esq. Petitioner VANCE TAYLOR ("Mr. Taylor"), by and through his counsel, Jason D.
2 Guinasso, Esq., filed his *Supplemental Affidavit*, as requested by the Court to supplement
3 his *Opposition to Motion to Dismiss Petition for Judicial Review* ("*Opposition*"). The matter
4 was resubmitted to the Court for decision thereafter.
5

6 **I. FACTS AND PROCEDURAL HISTORY**

7 The instant action arises out of a contested administrative appeal hearing before the
8 State of Nevada Department of Administration Hearings Division ("AHD"). Mr. Taylor
9 appealed a denial of his workers compensation claim against TMFPD. The issue before the
10 AHD was whether Mr. Taylor was entitled to temporary total disability during an eight week
11 period after he was injured and whether he subsequently refused an offer of "light duty"
12 work by his employer. See Motion, p. 3. Following the appeals hearing, AHD found Mr.
13 Taylor was not entitled to temporary total disability during that time because TMFPD's offer
14 of "light duty" work was a "valid light duty job and . . . is not considered humiliating and
15 degrading and is an essential function in the work force. See Motion, Exhibit 3.
16

17
18 Mr. Taylor then filed a *Petition for Judicial Review* ("*Petition*") arguing TMFPD's offer
19 of "light duty job" was not substantially similar to the job Mr. Taylor had pre-injury and
20 therefore TMFPD's offer failed to comply with NRS 616C.475(8). Mr. Taylor maintains he is
21 entitled to temporary disability benefits for the period of September 11, 2016 through
22 November, 2016.
23

24 Respondents' thereafter filed its *Motion* arguing this Court lacks jurisdiction because
25 Mr. Taylor failed to name the insurer, PACT, as a respondent in his *Petition* and therefore
26 failed to meet the jurisdictional requirements of NRS 233B.130(2)(a). Respondent
27 maintains NRS 233B.130 (2)(a) "is a mandatory procedural statute governing the filing of a
28

1 Petition for Judicial Review," which mandates a Petitioner to "name as respondents the
2 agency and all parties of record to the administrative proceeding." *Motion* p. 4; Citing NRS
3 233B.130 (2)(a). Respondents further argued the "Nevada Supreme Court has held that the
4 failure of a petitioner to strictly comply with . . . NRS 233B.130(2) results in a lack of subject
5 matter jurisdiction necessary for a district court to entertain the Petition for Judicial Review."
6 *Motion*, pp. 4-5; Citing Washoe County v. Otto, 128 Nev. 424, 282 P.3d 719 (2012).
7 Respondent, therefore, maintains that because PACT was identified as a party in the
8 administrative decision, Petitioner's failure to name PACT in the *Petition* requires dismissal
9 by this Court for lack of jurisdiction. See Motion, p. 6.

10
11 In his *Opposition*, Mr. Taylor asserts he fully complied with NRS 233B.130 (2)
12 because he properly named Respondent, Alternative Service Concepts ("ASC") as the
13 insurer and party of interest. See Opposition, p. 5. Mr. Taylor contends ASC "is and has at
14 all times been the relevant insurer in this matter." *Opposition*, p. 3. Mr. Taylor further
15 maintains that "at no time during the entire two-year course of litigation did counsel for ASC,
16 Robert Balkenbush, Esq., notify parties there was a change in insurer or that PACT would
17 be a party to the action before the Appeals Officer." *Motion*, p. 4. Mr. Taylor argues all
18 relevant documents in the action leading up to the final appeals decision identified ACS as
19 the insurer. Mr. Taylor further contends that, although PACT was mentioned in the body of
20 the February 28, 2018 Decision and Order of the Appeals Officer, the Order was not mailed
21 by the Appeals Officer to PACT as an interested party. Id. In addition, Mr. Taylor maintains
22 Respondent has "acknowledge[d] that PACT is not a separate, interested party" because
23 PACT was not included in Respondent's own service list for the *Motion*. See Opposition pp.
24 5-6.
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1 In its *Reply*, Respondents argue the record reflects PACT is a party to this action.
2 See Reply, p. 4. Respondent maintains Mr. Taylor was served with documentary exhibits
3 and pre-hearing statements prior to the administrative appeal at issue, which included
4 exhibits of "the insurer and employer . . . expressly [stating] that the undersigned as legal
5 counsel represented both the PACT and TMFPD." *Reply* pp. 4-5. Respondents further
6 point to the decision filed by the Appeals Officer in the underlying matter, which "expressly
7 states on page [one] that PACT is the insurer of Taylor's workers' compensation at issue
8 and a party to the administrative proceeding before the Appeals Officer." *Reply*, pp. 5-6.
9 Respondent again reiterates its argument that Mr. Taylor failed to satisfy the jurisdictional
10 requirements warranting dismissal of the *Petition*. See Reply, p. 7.

13 Thereafter, this Court entered its *Order* denying Respondents' *Motion*, finding it
14 unclear at what point, if at all, PACT became a respondent, what the relationship between
15 ACS and PACT is (i.e. successor or servicer), or if Mr. Taylor was put on notice of the new
16 insurer. The Court noted Mr. Taylor addressed that PACT is mentioned only once in the
17 appeals documents and ACS is otherwise named as the insurer at all relevant times. The
18 Court further held the parties could file supplemental affidavits in support of the
19 *Motion/Reply* and *Opposition* papers within twenty (20) days of the date of the Order and
20 resubmit the matter for decision.
21

23 Respondents thereafter filed *Respondents' Supplement* asserting PACT is the
24 insurer of Mr. Taylor's workers compensation claim, despite ACS being named on relevant
25 certificates of service. *Respondents' Supplement*, p. 3. Respondent argues PACT is a
26 "self-insured association of Public Employers of Nevada; and, therefore, is considered by
27 law to be an insurer of workers' compensation claims. Id.; citing NRS 616A.270(2). ACS, on
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1 the other hand, is a third-party administrator (TPA) of workers' compensation claims for
2 PACT. Id. Respondents assert that, during all relevant times, PACT was the insurer of
3 TMFPD, and ASC "assumed responsibility for the administrative management" of PACT's
4 workers compensation claims, including Mr. Taylor's. Id. p. 4.

6 Respondent maintains ACS put Mr. Taylor on notice of PACT's role as insurer in its
7 *Notice of Claim Acceptance*, dated April 25, 2016, where ACS identified TMFPD, PACT,
8 and ACS's roles respectively. Respondent further asserts ACS was served all relevant
9 decisions and procedural orders because it is "established practice" to serve the TPA as it is
10 responsible for compliance with the decisions. Id. p. 5. Respondent further contends it is
11 also established practice to serve the insurer's attorney of record, as was done here. Id.

13 Respondent argues PACT's attorney, Mr. Balkenbush, served, by mail, a Notice of
14 Appearance of legal counsel for Mr. Vance Taylor, which expressly stated Mr. Balkenbush
15 was "appearing as legal counsel for the insurer and employer in respect of Appeal No.
16 1701567-SYM; and that the insurer was . . . [PACT] and the employer was . . . [TMFPD]. Id.
17 p. 6; citing ROA 351-353. Respondent further served Mr. Vance with a pre-hearing
18 statement of PACT and TMFPD. Id.

20 Mr. Taylor filed the *Supplemental Affidavit* of attorney Jason David Guinasso stating
21 PACT was not included on the Certificate of Mailing for the Findings of Fact, Conclusions of
22 Law and the Decision prepared by Mr. Balkenbush. *Supplemental Affidavit*, p. 2. Mr. Taylor
23 further maintains the Appeals Division also did not include PACT on its Certificate of
24 Mailing. Id.

26 Additionally, Mr. Taylor asserts, when he reported his injury to TMFPD, they
27 completed a Form C-3, which left the name of the insurer blank but included ASC as the
28

1 TPA. Id. Mr. Taylor also completed Form C-4 at Renown Medical Center when treated for
2 his injuries. The form was stamped received by ASC and PACT was not named on the
3 document. PACT was also not named on TMFPA's Notice of Injury or Occupational
4 Disease form. Mr. Taylor argues this trend continued when PACT was not named or copied
5 on ASC's determination to terminate temporary total disability. Id.

7 More importantly, Mr. Taylor argues PACT was not copied or named in the Notice of
8 Hearing Before the Hearing Officer on September 30, 2016. Id. p. 3. The November 23,
9 2016, Decision and Order of the Hearing Officer did not name PACT in the pleading nor was
10 it copied. Id. PACT was again not copied or named in the Notice of Appeal and Order to
11 Appear under Appeal No. 1701567-SYM. Mr. Taylor's attorney asserts that, in fact, "[a]t no
12 time throughout my entire representation of Mr. Taylor . . . has Mr. Balkenush, ASC, or
13 TMFPD ever sent me notification that PACT would be a party to this case and would
14 therefore need to be included in any of the pleadings filed." Id. Lastly, Mr. Taylor asserts
15 ASC is acting and making decisions on behalf of PACT and the two parties are therefore
16 "one in the same." Id. p. 4.

19 **II. LAW AND ANALYSIS**

20 The Administrative Procedure Act (APA), codified in NRS Chapter 233B, confers
21 power to the district courts to conduct judicial review of final administrative agency decisions
22 to determine whether an aggrieved party is entitled to the relief sought on review. *Otto*, 128
23 Nev., Adv. Op. 40, 282 P.3d at 724-25; *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801,
24 805 (2006) (stating that petitions for judicial review create "a right of review in the district
25 court"). NRS 233B.130B requires certain procedural requirements be met to invoke a
26 district court's jurisdiction for a petition for judicial review. Of interest, NRS 233B.130(2)(a)
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1 provides that a petition for judicial review must "[n]ame as respondents the agency and all
2 **parties of record** to the administrative proceeding in order to invoke a district court's
3 jurisdiction for a petition for judicial review." (Emphasis added.) Naming all parties of record
4 is mandatory and "a district court lacks jurisdiction to consider a petition that fails to comply
5 with this requirement." Otto at 432-33.

7 In Otto, the Nevada Supreme Court determined a petitioner failed to comply with
8 NRS 233B.130(2)(a) because it did not name a party of record "in the caption, in the body of
9 the amended petition, or in an attachment." Id. at 430, 282 P.3d at 724. The Court defined
10 a party of record as "each person . . . named or admitted as a party, or properly seeking and
11 entitled as of right to be admitted as a party, in any contested case," and which was also
12 identified in the record. Id. at 433, 282 P.3d at 726. Accordingly, the Court determined
13 because the agency at issue admitted the parties could be affected by its decision and the
14 interested parties were also named in its prehearing agenda and in its post-hearing written
15 decision, they were parties of record and the failure to name them was a violation of NRS
16 233B.130(2)(a). Id.

19 In the instant *Motion* and supplemental papers, TMFPD argues this Court lacks
20 jurisdiction for judicial review because Mr. Taylor failed to name PACT as a respondent in
21 this matter. At issue, is whether PACT is a party of record pursuant to NRS 233B.035. It is
22 clear that PACT, as a claimed insurer, has an interest in the outcome of this case.
23 However, PACT must also be identified in the records of this case to be considered a party
24 of record. Of importance, the May 9, 2018, Decision and Order of the Appeals Officer
25 specifically identified ACS as the insurer. *Decision and Order of Appeals Officer*, p. 2. In
26 fact, PACT was not named in this decision at all. However, PACT was previously named as
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1 the insurer in the February 28, 2018, Decision and Order of the Appeals Officer. The factual
2 predicate here differs from Otto in some respects. For example, the omitted party was not
3 clearly stated in the record. In fact, the most recent Order of the Appeals Officer specifically
4 identified ACS, and not PACT, as the insurer. It is similar to Otto in that PACT is omitted in
5 many documents and omitted from the caption. A survey of published and unpublished
6 opinions from our Nevada Appellate Courts provide a variety of treatment of cases on
7 judicial review with regard to strict compliance. Accordingly, the Court finds PACT was
8 identified in the record, however, Mr. Vance should not be penalized by the Appeals
9 Officer's direct identification of ACS, rather than PACT, as the insurer.¹

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12 In the interests of fairness and based on these unique facts, the Court finds and
13 concludes Mr. Vance may proceed as this Court has jurisdiction.

14 Accordingly, and good cause appearing,

15 IT IS HEREBY ORDERED *Respondents' Motion to Dismiss Petition for Judicial*
16 *Review* is DENIED.

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18 Dated this 10th day of December, 2018.

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DISTRICT JUDGE

¹ Further ACS and PACT are both represented by the same attorney of record. Therefore, PACT has been on notice of the pending action.

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 10th day of December, 2018, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

ROBERT BALKENBUSH, ESQ.

JASON GUINASSO, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Huda Bore

CV18-00673

AA000548

1 Robert F. Balkenbush, Esq.
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2 Luke W. Molleck, Esq.
Nevada Bar No. 14405
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Attorneys for: Truckee Meadows Fire Protection District, Employer
6 Public Agency Compensation Trust, Insurer

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9
10 VANCE TAYLOR

11 Petitioner,

12 vs.

Case No. CV18-00673

13 TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT;
14 ALTERNATIVE SERVICE CONCEPTS,
LLC, and the NEVADA DEPARTMENT OF
15 ADMINISTRATION APPEALS OFFICER
SHEILA MOORE

Dept. No. 6

16 Respondents.
17

18 **RESPONDENT'S ANSWERING BRIEF**

19 COME NOW Respondents, TRUCKEE MEADOWS FIRE PROTECTION DISTRICT,
20 PUBLIC AGENCY COMPENSATION TRUST and ALTERNATIVE SERVICE CONCEPTS,
21 LLC, by and through their attorney, Robert F. Balkenbush, Esq., hereby submit their Answering
22 Brief to Petitioner's Opening Brief in Support of Petition for Judicial Review pursuant to NRS
23 233B.133.

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23
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25
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27
28

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii-iii

I. STATEMENT OF CASE.....1-3

II. STATEMENT OF FACTS.....3-5

III. LAW AND ARGUMENT.....5-16

 A. STANDARD OF REVIEW.....5-7

 B. GOVERNING LAW.....7-10

 C. THE APPEALS OFFICER’S DECISION WAS NOT AN ERROR OF LAW AS
 THE OFFER OF LIGHT DUTY EMPLOYMENT COMPLIED WITH ALL
 APPLICABLE STATUTORY PROVISIONS.....10-16

IV. CONCLUSION.....16

V. AFFIRMATION.....16

VI. CERTIFICATE OF COMPLIANCE.....17

VII. CERTIFICATE OF SERVICE.....18

1
2
3
4
5
6
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8
9
10
11
12
13
14
15
16
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18
19
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23
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25
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27
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TABLE OF AUTHORITIES

PAGE NOS.

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Amazon.com v. Magee, 121 Nev. 632, 636, 119 P.3d 732, 735 (2005).....9, 11, 12, 14

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(2003).....9

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State Emp. Security v. Hilton Hotels, 102 Nev. 606, 729 P.2d 497 (1986).....6

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Titanium Metals Corp. v. Clark County, 99 Nev. 397, 399, 663 P.2d 355 (1983).....5

United Exposition Service Co. v. State Indus. Ins. Sys., 109 Nev. 421, 424, 851 P.2d 423 (1993).6

Statutes:

NRS 233B.130.....3

NRS 233B.133.....

NRS 233B.135.....5

NRS 233B.135(1).....12

1	NRS 233B.135(3).....	5,6
2	NRS 239B.030.....	16
3	NRS 616C.475.....	9, 12
4	NRS 616C.475(1).....	7
5	NRS 616C.475(5)(a),(b).....	7
6	NRS 616C.475(8).....	7, 9, 10, 12,13, 14, 15,16
7	NAC 616C.583.....	9
8	NAC 616C.586.....	14
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11	<u>Rules:</u>	
12	NRAP 28(e).....	17
13	NRCP 5(b).....	18

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1 **I. STATEMENT OF THE CASE**

2 This pending petition for judicial review involves a workers' compensation claim. The
3 claimant or injured employee involved in the referenced workers' compensation claim is
4 Respondent Vance Taylor (hereinafter "Taylor"). Taylor's employer at the time of the accident
5 forming the basis of his claim was the Truckee Meadows Fire Protection District (hereinafter
6 "TMFPD"). The workers' compensation insurer of the TMFPD at the time Taylor's claim was
7 made was the Public Agency Compensation Trust (hereinafter "PACT"). The third-party
8 administrator ("TPA") of Taylor's workers' compensation claim herein at issue is Alternative
9 Service Concepts, LLC ("ASC").
10

11 By and through his petition, Taylor is asking this Court to review a decision involving his
12 workers' compensation claim, specifically, the decision rendered by Appeals Officer Sheila
13 Moore under Appeal No. 1701567-SYM. *ROA* 001-008.
14

15 Appeal No. 1701567-SYM arose from a written determination to Taylor dated September
16 26, 2016, wherein ASC informed Taylor that they were discontinuing temporary total disability
17 ("TTD") compensation effective September 11, 2016. *ROA* 198. ASC determined that Taylor
18 was not eligible for TTD compensation beyond September 11, 2012, based on TMFPD's offer of
19 light duty employment, that was consistent with the restrictions imposed by the treating
20 physician and was to begin on September 12, 2016.¹ *Id.*; *see also*, *ROA* 191, 293-294. Taylor
21 disagreed with the determination and, therefore, filed an appeal from this determination with a
22 Hearing Officer, and Hearing No. 1700397-SA was assigned to his appeal. *ROA* 002. Following
23 a hearing on Taylor's appeal, Hearing Officer Sondra Amodei, by written decision dated
24 November 23, 2016, held that TTD compensation was properly terminated. *Id.* Taylor disagreed
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¹ It is uncontested that the temporary light-duty position complied with the work restrictions imposed by Dr. Malcarney.

1 with the Hearing Officer's decision made under Hearing No. 1700937-SA and, therefore, he
2 timely appealed from that decision to an Appeals Officer and Appeal No. 1701567-SYM was
3 assigned to his appeal. *Id.*

4 On March 2, 2017, trial on Appeal No. 1701567-SYM was conducted wherein Taylor
5 and his spouse personally appeared and provided testimony concerning the appeal. *Id.* On
6 February 28, 2018, Appeals Officer Sheila Moore issued her Decision and Order on Appeal No.
7 1701567-SYM. *ROA* 001-008. Appeals Officer Moore concluded that TMFPD offered Taylor a
8 light-duty job on September 9, 2016, and that this job was a part of the employer's regular
9 business operations, essentially immediately available, compatible with the temporary physical
10 limitations for work imposed by Taylor's treating physicians, substantially similar to Taylor's
11 pre-injury position with the TMFPD in relation to the location and of the employment and hours
12 Taylor was required to work, and provided Taylor with the same gross wage he was earning
13 from the TMFPD before his work-related injury. *Id.* Furthermore, Appeals Officer Moore noted
14 that Taylor had returned to his pre-injury job in November 2016, and that he previously accepted
15 and worked the same temporary, light-duty job offered to him by the TMFPD on September 9,
16 2016, for a temporary period before undergoing a shoulder surgery related to his work-related
17 accidental injury. *Id.*

18 Based on the foregoing, Appeals Officer Moore concluded as a matter of law that Taylor
19 was not entitled to TTD compensation from September 11, 2016 to the date when returned to his
20 pre-injury job in November 2016. *Id.* Accordingly, Appeals Officer Moore affirmed both the
21 September 26, 2016 determination made by ASC and the November 23, 2016 written decision
22 rendered by Hearing Officer Sondra Amodei under Hearing No. 1700937-SA. *Id.*

23 Thereafter, Taylor filed his Petition for Judicial Review and by this petition is requesting
24 that this Court review the decision and order rendered by Appeals Officer Sheila Moore pursuant
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1 to NRS 233B.130. Taylor contends that the decision and order prejudiced his rights under the
2 Nevada Industrial Insurance Act (“NIIA”), violated statutory provisions governing the delivery
3 of TTD benefits under the NIIA, has been affected by other grievous errors of law, is clearly
4 erroneous in view of the reliable, probative, and substantial evidence on the whole record, and is
5 otherwise arbitrary, capricious or characterized by abuse of discretion. The Respondents
6 TMFPD, PACT, and ASC (hereinafter collectively “Respondents”) now submit their Answering
7 Brief to Taylor’s Opening Brief in Support of his Petition for Judicial Review.
8

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10 **II. STATEMENT OF FACTS**

11 On April 19, 2016, Taylor injured his left shoulder while conducting a HazMat training
12 exercise at work. *ROA* 222-224. During this period, Taylor was employed by TMFPD. *Id.* Taylor
13 subsequently submitted his C-4 claim form and gave notice to employer of the occupational
14 injury. *ROA* 206-208, 222-224. Taylor was seen by Leland Sullivan, M.D., at the emergency
15 room of Renown South Meadows Medical Center and diagnosed with a left shoulder strain. *ROA*
16 209-217. On April 20, 2016, Taylor was evaluated by Dr. Scott Hall of Specialty Health. *ROA*
17 225-230. Dr. Hall ordered a MRI of the left shoulder and placed Taylor on light duty. *Id.* An x-
18 ray of Taylor’s left shoulder was obtained by Reno Diagnostics which showed severe
19 glenohumeral osteoarthritis, hydroxyapatite deposition along the greater tuberosity, and no
20 visible fracture or dislocation. *ROA* 231. Taylor was again seen by Dr. Hall on April 22, 2016,
21 and again an MRI was recommended. *ROA* 233-237. By written determination dated April 25,
22 2016, ASC granted insurance coverage of Taylor’s workers’ compensation claim, but limited
23 insurance coverage to a left shoulder strain. *ROA* 240.
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26 Thereafter, Dr. Vijay Sekhon of Reno Diagnostic Center performed an MRI on the left
27 shoulder. *ROA* 243. The findings of MRI are as follows:
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1. Severe glenohumeral joint degenerative changes posteriorly with large areas of full-thickness chondromalacia, bulky osteophytes, and subchondral cysts.
2. Large tear of the posterior labrum and associated cartilage delamination.
3. Large loose body in the subcoracoid space.
4. Calcific tendinitis of the supraspinatus tendon insertion without evidence of rotator cuff tear.
5. Degenerative type tear of the superior labrum extending into the biceps anchor.

Id. Dr. Hall subsequently referred Taylor to physical therapy and placed him on light duty. *ROA* 244-247. Taylor commenced physical therapy on May 10, 2016, and continued for 2-3 times a week for 4-6 weeks. *ROA* 249-250. On May 17, 2016, Taylor was referred by Dr. Hall to an orthopedic specialist for further treatment. *ROA* 252-254.

An initial evaluation of Taylor was conducted by Hilary Malcarney, MD at Nevada Orthopedics on May 20, 2016. *ROA* 256-259. Dr. Malcarney diagnosed Taylor with osteoarthritis in the left shoulder, left shoulder strain, labral tear, and rotator cuff calcific tendinopathy of the left shoulder. *Id.* On June 13, 2016, Taylor was again seen by Dr. Malcarney. *ROA* 261-264. Dr. Malcarney subsequently recommended left shoulder arthroscopy. *Id.* Thereafter, surgery on Taylor's left shoulder was approved and scheduled for July 21, 2016. *ROA* 265-267. Dr. Malcarney noted that the surgical plan for Taylor was to proceed with left shoulder arthroscopy, SAD [sub-acromial decompression], labral debridement, chondroplasty, possible biceps tenodesis, consistent with the approved Authorization Request for Surgery. *ROA* 268-271. On July 21, 2016, surgery was performed on Taylor at Surgery Center of Reno. *ROA* 273-278.

On August 3, 2016, Taylor was seen by Dr. Malcarney for his follow up appointment at which point his sutures were removed from the surgery site and he was referred to physical therapy. *ROA* 279-283. On August 15, 2016, Taylor was released back to work on a restricted light duty. *ROA* 191. On September 9, 2016, TMFPD sent a letter to Taylor with an offer of light duty employment. *ROA* 293-294. The offer of light duty provided, in part, as follows:

1 You will be assigned to the administrative office and your scheduled hours will be
2 Monday through Friday 8am to 5pm with an hour lunch. To align the schedule
3 change with the beginning of the FLSA cycle, you will report to the
administrative offices on Monday, September 12, 2016 at 8am.

4 *Id.* Taylor subsequently rejected the offer of light duty employment. ROA 295-297. Accordingly,
5 on September 26, 2016, ASC sent a letter to Taylor informed him that based on his refusal to
6 accept the light duty offer his TTD benefits would be terminated and would not be paid beyond
7 September 11, 2016. ROA 299.

9 **III. LAW AND ARGUMENT**

10 **A. STANDARD OF REVIEW**

11 The parameters of judicial review are established by statute. *See* NRS 233B.135. Judicial
12 review of final decision of an agency must be conducted by the Court without a jury and
13 confined to the record. *Id.* The burden of proof is on the party attacking the decision to show that
14 the final decision is invalid. *Id.* A reviewing Court may remand or affirm the final decision or set
15 it aside in whole or in part only if substantial rights of the petitioner have been prejudiced
16 because the final decision of the agency is:
17

- 18 (a) In violation of constitutional or statutory provisions;
- 19 (b) In excess of the statutory authority of the agency;
- 20 (c) Made upon unlawful procedure;
- 21 (d) Affected by other error of law;
- 22 (e) Clearly erroneous in view of the reliable, probative and substantial evidence
on the whole record; or
- 23 (f) Arbitrary or capricious or characterized by abuse of discretion.

24 NRS 233B.135(3). For the purposes of this section, substantial evidence “means evidence which
25 a reasonable mind might accept as adequate to support a conclusion.” *Id.*

26 Application of the substantial evidence standard by the Nevada Supreme Court
27 consistently involves two steps. First, the Court must identify the law which governs the
28 contested issues. *See Titanium Metals Corp. v. Clark County*, 99 Nev. 397, 399, 663 P.2d 355

1 (1983); *United Exposition Service Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424, 851 P.2d 423
2 (1993); *Horne v. State Indus. Sys.*, 113 Nev. 532, 936 P.2d 839 (1997); *State Emp. Sec. Div. v.*
3 *Reliable Health Care Servs.*, 115 Nev. 253, 983 P.2d 414 (1999); *Langman v. Nev. Admr's, Inc.*,
4 114 Nev. 203, 955 P.2d 188 (1998); *Gubber v. Independence Mining Co.*, 112 Nev. 190, 192,
5 911 P.2d 1191 (1996); *Installation & Dismantle v. State Indus. Ins. Sys.*, 110 Nev. 930, 879 P.2d
6 58 (1994).

8 Second, the Court reviews the record on appeal and determines whether the record
9 contains both that quantity and quality of factual evidence which a reasonable man could accept
10 as adequate proof of what the governing law requires. *Id.* If the record on appeal does not
11 contain both that quantity and quality of factual evidence which a reasonable man could accept
12 as adequate proof of what the governing law requires, then the decision of administrative agency
13 (the Appeals Officer in this case) is clearly erroneous in view of the reliable, probative and
14 substantial evidence on the whole record, or arbitrary, capricious or characterized by abuse of
15 discretion, and must be set aside.² NRS 233B.135(3).

18 Finally, in determining whether an alleged legal error by the Appeals Officer compels
19 reversal, the Court must review claims of prejudice concerning the alleged error as it relates to
20 whether the error substantially affected the rights of the appellant or petitioner. *See* NRS
21 233.135(3); *see generally, El Cortez Hotel, Inc. v. Coburn*, 87 Nev. 209, 213, 484 P.2d 1089,
22 1091 (1971). A legal error substantially affects the rights of the appellant or petitioner when the
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26 ² Quite often in Nevada cases, the substantial evidence standard is reference merely by the definition of substantial
27 evidence, namely evidence that a reasonable mind might accept as adequate to support a conclusion. *See e.g., Tighe*
28 *v. Las Vegas Metropolitan Police Dept.*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994)(*citing State Emp. Security*
v. Hilton Hotels, 102 Nev. 606, 729 P.2d 497 (1986)). In other words, these references leave the law completely out
of the standard. Leaving the law out of the standard erroneously makes the reviewing court the sole arbiter of the
standard, thereby allowing the court to conclude: "seems reasonable to me, affirmed." The law is, and must be,
central aspect of the substantial evidence standard to avoid arbitrary applications of the standard.

1 appellant or petitioner demonstrates that, but for the error, a difference result “might reasonably
2 have been expected.” *Id.*

3 Furthermore, while statutory construction is generally a question of law reviewed *de*
4 *novo*, great deference should be given to the agency's interpretation when it is within the
5 language of the statute. *Collins Disc. Liquors & Vending v. State*, 106 Nev. 766, 768, 802 P.2d 4,
6 5 (1990). This rationale is “premised on the fact that the agency, and not the judicial system, is
7 given the job of creating regulations that serve to carry out legislative policy.” *Id.* at 768. Thus
8 courts should not substitute their own construction of a statutory provision for a reasonable
9 interpretation made by an agency. *Id.*

12 **B. GOVERNING LAW**

13 Pursuant to NRS 616C.475(1), “every employee in the employ of an employer, within the
14 provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out
15 of and in the course of employment, or his or her dependents, is entitled to receive for the period
16 of temporary total disability [“(TTD)”], 66 2/3 percent of the average monthly wage.” However,
17 the payment of TTD benefits must cease when a physician determines that the employee is
18 physically capable of any gainful employment or the employer offers the employee light-duty
19 employment or employment that is modified pursuant to the limitations or restrictions imposed
20 by the physician. *See* NRS 616C.475(5)(a),(b). NRS 616C.475(8) sets forth the requirements for
21 an offer of light-duty employment. Specifically, the light-duty offer of employment must be
22 confirmed in writing within ten-days of the initial offer. NRS 616C.475(8). Additionally, the
23 offer of temporary, light duty employment made by an employer must specify a position that:
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26 (a) Is substantially similar to the employee's position at the time of his or her
27 injury in relation to the location of the employment and the hours the employee is
28 required to work;

(b) Provides a gross wage that is:

1 (1) If the position is in the same classification of employment, equal to the
2 gross wage the employee was earning at the time of his or her injury; or

3 (2) If the position is not in the same classification of employment,
4 substantially similar to the gross wage the employee was earning at the
5 time of his or her injury; and

6 (c) Has the same employment benefits as the position of the employee at the time
7 of his or her injury.

8 *Id.* Furthermore, the Nevada Administrative Code sets forth requirements regarding an
9 acceptable offer of temporary, light-duty employment as follows:

10 1. An offer of employment at light duty to an injured employee by his or her
11 employer must:

12 (a) Be in writing;

13 (b) Be mailed to both the insurer and the injured employee; and

14 (c) Include:

15 (1) The net wage to be paid the injured employee;

16 (2) The hours which the injured employee will be expected to
17 work;

18 (3) A reasonable description of the physical requirements of the
19 employment;

20 (4) A reasonable description of the duties the injured employee
21 will be expected to perform;

22 (5) A description of any fringe benefits of the employment; and

23 (6) The geographical location of the employment.

24 2. If the insurer finds that the actual requirements of the employment at light duty
25 materially differ from the offer of employment and the employer fails to take
26 corrective action, the insurer may provide vocational rehabilitation services.

27 3. The injured employee must be allowed a reasonable time, not to exceed 7 days
28 after the date the offer of the employment at light duty is made, within which to
accept or reject the offer.

4. If the employment at light duty offered to the injured employee is expected to
be of limited duration, the employer shall disclose that fact to the injured
employee in the offer of employment and state the expected duration.

5. An employer must not offer temporary or permanent employment at light duty
which he or she does not then expect to be available to the injured employee as
offered.

1 6. An employer does not have to comply with the requirements in subsections 1
2 to 5, inclusive, if the employer offers the injured employee temporary
employment at light duty which is:

- 3 (a) Immediately available;
4 (b) Compatible with the physical limitations of the injured employee as
established by the treating physician or chiropractor; and
5 (c) Substantially similar in terms of the location and the working hours to
the position that the injured employee held at the time of the injury.

6 7. Temporary employment at light duty offered pursuant to subsection 6 must
7 cease within 30 days after the injured employee's physical restrictions are
8 determined to be permanent. Any subsequent offers of employment at light duty
9 by the employer must comply with the requirements of subsections 1 to 5,
inclusive.

10 NAC 616C.583.

11 The Nevada Supreme Court has made it clear: “[w]hen NRS 616C.475 is read in its
12 entirety, an employer who provides a temporarily totally disabled employee with a post-injury
13 job that is similar in hours, location and gross pay to the job the employee held pre-injury, and
14 who gives adequate consideration to the employee's post-injury limitations, can cease paying the
15 employee temporary total disability benefits in the amount of 66 2/3 percent of the employee's
16 pre-injury wage.” *Amazon.com v. Magee*, 121 Nev. 632, 636, 119 P.3d 732, 735 (2005). Put
17 simply, the statutory provisions governing an offer of light-duty merely require that the light-
18 duty position be “substantially similar” to the employee’s pre-injury position, specifically, (1)
19 location, (2) gross pay, and (3) hours. *Id.*

22 Although the term “substantially similar” is not defined under NRS 616C.475(8), nor has
23 been expressly interpreted by the Nevada Supreme Court, courts will generally look to the plain
24 meaning of the statutory scheme in cases involving workers’ compensation law. *See*
25 *Construction Indus. Workers’ Comp. Group v. Chalue*, 119 Nev. 348, 352, 74 P.3d 595, 597
26 (2003). Moreover, statutes must be construed so as to avoid absurd results and, further, must be
27 construed in order to give meaning to all of the parts and language found therein. *See General*
28

1 *Motors v. Jackson*, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995). Accordingly, in applying the
2 plain meaning of NRS 616C.475(8), an offer of light-duty employment need only require that the
3 light-duty job or position be similar to the employee's pre-injury position in terms of pay,
4 location, and hours.

5
6 **C. THE APPEALS OFFICER'S DECISION WAS NOT AN ERROR OF LAW AS THE OFFER**
7 **OF LIGHT DUTY EMPLOYMENT COMPLIED WITH ALL APPLICABLE STATUTORY**
8 **PROVISIONS.**

9 In the present matter, the Appeals Officer's correctly concluded that the light-duty offer
10 of employment complied with all applicable statutory provisions and, therefore, ASC's
11 termination of TTD benefits was proper. As noted above, TMFPD sent a letter to Taylor with an
12 offer of light duty employment on September 9, 2016. *ROA* 293-294. The offer of light duty
13 provided, in part, as follows:

14 You will be assigned to the administrative office and your scheduled hours will be
15 Monday through Friday 8am to 5pm with an hour lunch. To align the schedule
16 change with the beginning of the FLSA cycle, you will report to the
17 administrative offices on Monday, September 12, 2016 at 8am.

18 Notably, the September 9, 2016 offer of light-duty employment was the same light-duty
19 employment that Taylor had previously accepted and worked prior to his shoulder surgery. *ROA*
20 021-023.

21 In his Opening Brief, Taylor contends that the offer of light-duty employment failed to
22 comply with NRS 616C.475(8) or is otherwise unreasonable on several grounds. First, Taylor
23 contends that the light duty job offer does not comply with NRS 616C.475(8) or is otherwise
24 unreasonable because it dramatically changed Mr. Taylor's work schedule. See Opening Brief, p
25 12. Specifically, Taylor contends that the forty hour, 8:00am-5:00pm Monday-Friday
26 administrative schedule was not substantially similar to his 48/96 schedule that he worked prior
27 to his injury. *Id.* As a result, Taylor contends that the schedule, as modified, imposed a hardship
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1 on him and his family by causing them to incur increased day care expenditures for childcare,
2 increased fuel and maintenance costs for daily commutes, and increased stress on the family due
3 to the modified schedule. *Id.* Taylor's argument fails for several reasons.

4 As noted above, Nevada law requires that the offer of light-duty employment need only
5 be "similar in hours" to the pre-injury position. *See Magee*, 121 Nev. at 636. In his pre-injury
6 position, Taylor was working a 48/96 rotation, which is a 48 hour (2-day) work shift, followed
7 by 96 hours (4 days) off work. *ROA* 42-44. Under that schedule, Taylor testified that the 48-hour
8 work shift required him to work, sleep, and reside at the station for the entirety of the shift. *Id.* In
9 contrast, the temporary, light-duty employment required him to work a normal 8:00 a.m. to 5:00
10 p.m. administrative schedule that provided the same wages at a lower minimum hour
11 requirement. While the administrative schedule did require Taylor to work a different schedule,
12 the hour requirement was lower than the 48 hour threshold of his previous schedule.
13 Furthermore, while Taylor contends that the temporary, light-duty position caused him and
14 family to incur additional expenses related to daycare for his two children, Staci Taylor, Vance
15 Taylor's wife, testified that the 11 year old was in public school at the 6th grade level and that the
16 five year old was in pre-school approximately full time. Moreover, Taylor did not offer or seek
17 admittance into evidence any financial records that demonstrated or established the alleged
18 financial hardship. Accordingly, Taylor has not shown that the schedule of the temporary, light-
19 duty job caused significant financial hardship on him or his family.

20 Additionally, Taylor contends that he was not afforded the same employment benefits
21 under the temporary, light-duty position, specifically FLSA overtime pay and access to Holiday
22 Comp Time. However, it must be noted that in the Decision and Order, Appeals Officer Sheila
23 Moore concluded that Taylor did not offer into evidence any contractual documentation that
24 established any differences in the benefits available under the two positions. Moreover, Taylor

1 fails to cite to anything in the record that would support such contention.³ Lastly, the
2 Nevada Supreme Court has made clear: “[w]hen read in conjunction with the other sections of
3 NRS 616C.475, NRS 616C.475(8) merely allows an employer to make productive use of an
4 injured employee in lieu of paying that employee 66 2/3 percent of the employee's gross pay
5 while the employee remains temporarily totally disabled. This use is accomplished by offering a
6 properly classified, temporarily totally disabled employee a position similar in location, pay and
7 position to the job held pre-injury.” *Magee*, 121 Nev. at 637-38. Accordingly, the temporary
8 light-duty position need not meet or exceed all the specifics of the pre-injury position, just so
9 long as it is similar in location, pay and hours.
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12 Additionally, Taylor’s average month wage under his claim was \$5,426.25, the state
13 maximum allowed for the date of his work-related injury. *ROA* 238-242. Further, under his
14 claim, Taylor’s daily compensation and TTD rate were the maximum allowed by Nevada law for
15 his date of injury, respectively \$118.84 and \$1,663.76. *Id.* Conversely, his hourly rate as a fire
16 captain was \$67.00 per hour. *Id.* Pursuant to the temporary, light-duty job offered to Taylor by
17 TMFPD, Taylor was to be paid his pre-injury monthly wage of \$10,115.39. *Id.*
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19 Next, Taylor contends that offer of light-duty employment failed to comply with NRS
20 616C.475(8) or is otherwise unreasonable because the location of the temporary employment
21 was six (6) miles away from where his pre-injury position was located. Opening Brief, p. 12.
22 Taylor’s arguments are meritless as the change in location was relatively minor and, furthermore,
23 the location of the temporary, light-duty position was actually closer to Taylor’s residence, than
24 the location of his pre-injury position. The Nevada Supreme Court case, *EG&G Special Projects*
25 *v. Corselli*, 102 Nev. 116, 118, 715 P.2d 1326, 1327 (1986), is instructive on this issue. In
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28 ³ NRS 233B.135(1) unequivocally states that judicial review of a final decision of an agency must be:
(a) Conducted by the court without a jury; and (b) **Confined to the record.**

1 *Corselli*, the Nevada Supreme Court concluded that a temporary, light-duty position was not
2 substantially similar to the employee's pre-injury position based primarily on the change of
3 location for his employment. *Id.* Prior to his injury, the employee, who resided in Riverside,
4 California, made arrangements with his employer to commute by air at government expense to
5 his place of employment, the Nevada Test Site, where he worked three days on, four days off.
6 102 Nev. at 117. Following an injury, his employer made available to him a position as a security
7 officer in Las Vegas, Nevada, even though he had worked as a firefighter at the Nevada Test Site
8 and had lived continuously in Riverside, California for twenty-five years. *Id.* The Nevada
9 Supreme Court concluded that "[a]n offer of employment cannot be considered legitimate if the
10 location of the job imposes an unreasonable burden on the worker." *Id.* at 119. "The requirement
11 of reasonableness is especially applicable to the location of the job offer." *Id.*

14 Here, the burden placed on Taylor is relatively minor and nearly non-existent. While
15 Taylor focuses on the change between the two sites of employment, it must be noted that the
16 location of the temporary, light-duty position, which is located in downtown Reno, is actually
17 closer to Taylor's residence in South Reno.⁴ *See* ROA 092-094. Furthermore, in comparison to
18 *Corselli*, the difference in location is relatively minor and does not place a burden on Taylor to a
19 degree that the temporary, light-duty position was not "substantially similar" to the pre-injury
20 employment. The temporary, light-duty employment offered in *Corselli* required the claimant to
21 be in Las Vegas for at least five days a week, without the flight accommodations that he
22 previously enjoyed, whereas here, the change of location was a mere six miles. This clearly
23 satisfies the "substantially similar" standard.

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⁴ The pre-injury location of employment was at 110 Quartz Lance, Reno, Nevada 89433, which is located in Sun Valley.

1 Next, Taylor contends that the temporary, light duty position dramatically and effectively
2 demotes Taylor from a Captain to an officer secretary, which he alleges is humiliating and
3 unlawful. Accordingly, Taylor contends that the employment offer does not comply with NRS
4 616C.475(8). Notably, while the Nevada Supreme Court has made clear that the post-injury
5 position must be similar in “position to the job held pre-injury,” Nevada law does not require that
6 an employee personally approve his post-injury job duties. *Magee*, 121 at 637-638. Furthermore,
7 nothing in Nevada’s jurisprudence suggests that an employee’s dislike for his post-injury job is
8 sufficient to contest an employer’s compliance with NRS 616C.475(8). *Id.* Lastly, the legislature
9 has made clear under NAC 616C.586 that temporary employment at light-duty offered by an
10 employer which is part of the employer’s regular business operation is deemed by law not to be
11 demeaning or degrading or to subject the employee to ridicule or embarrassment. *See* NAC
12 616C.586. While Taylor may subjectively believe that the temporary, light duty position is
13 beneath him, his refusal to accept the position was not justified. The position is one that is
14 routinely offered to injured employees and complied with all his physical restrictions imposed by
15 his treating physician. *ROA* 191, 293-294.

19 Furthermore, to the extent that Taylor is suggesting that placement in the light duty
20 position effectively equates to retaliatory or constructive discharge under *Dillard Dep’t Stores,*
21 *Inc. v. Beckwith*, 115 Nev. 372, 374, 989 P.2d 882, 883, (1999), such argument is misplaced and
22 meritless. The court in *Beckwith* determined that a tortious discharge occurs when: (1) the
23 employee's resignation was induced by action and conditions that are violative of public policy;
24 (2) a reasonable person in the employee's position at the time of resignation would have also
25 resigned because of the aggravated and intolerable employment actions and conditions; (3) the
26 employer had actual or constructive knowledge of the intolerable actions and conditions and
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1 their impact on the employee; and (4) the situation could have been remedied. 115 Nev. at 377.

2 The facts of *Beckwith* are inapposite to the case at hand.

3 In *Beckwith*, the employer acknowledged that they permanently demoted the plaintiff to
4 entry-level position because of her workers' compensation claim, the employer requested the
5 plaintiff return to work against the treating physician's orders, there was open speculation
6 between the plaintiff's co-workers about the demotion, and the employer ignored the plaintiff's
7 complaints about her harmful work environment. *Id.* at 378. That is not the facts of this case. At
8 no point did TMFPD indicate that this was a permanent "demotion." Rather, it was
9 communicated to him that this was a "temporary light duty employment immediately available
10 that is compatible with the physical limitations imposed by your treating physician or
11 chiropractor." *ROA* 293-294. There is absolutely no evidence that this position was imposed on
12 Taylor in retaliation for him filing a workers' compensation claim. Rather, and again, this light
13 duty position complied with the physical restrictions imposed on him by his treating physician.
14 *ROA* 191, 293-294. Lastly, at no point did TMPFD require Taylor to return to work against his
15 treating physician's orders. Accordingly, the evidence does not support a cognizable constructive
16 discharge claim. Furthermore, the Appeals Officer has no jurisdiction over such claims.

17 Taylor's final contention is that TMPFD's light-duty offer replaced his supervisor from
18 the supervising Battalion Chief to an appointed office secretary. As a result, Taylor alleges that
19 this breaks the established chain of command, is extremely confusing and restrictive, and adds to
20 the humiliating feeling that he is being punished because he sustained a work-related injury and
21 filed a workers' compensation claim. Notably, Taylor cites no authority to support his position.
22 Again, Nevada law only requires that the position be "substantially similar" in "location, pay,
23 and hours" to job held pre-injury. NRS 616C.475(8). While Taylor may feel that the position is
24 beneath him, NRS 616C.475(8) does not require that the offer of light-duty employment be

1 specifically to his liking. Accordingly, his refusal to accept the position was not justified as the
2 offer clearly complied with NRS 616C.475(8).

3 **IV. CONCLUSION**

4 The temporary, light duty position that was offer to Taylor by TMFPD on September 9,
5 2016, was part of the employer's regular business operations, essentially immediately available,
6 and compatible with the restriction imposed by his treating physician. Furthermore, the position
7 was substantially similar to Taylor's pre-injury position in relation to the location of the
8 employment, the hours he was required to work, and the wages that he was earning prior to
9 injury. Accordingly, based on the foregoing, the Respondents respectfully request that this Court
10 affirm Appeals Officer Sheila Moore's Decision and Order on Appeal No. 1701567.
11

12 **AFFIRMATION PURSUANT TO NRS 239B.030**

13 The undersigned hereby affirms that this document does not contain the social security
14 number of any person.

15 DATED this 7th day of February, 2019.

16
17 THORNDAL, ARMSTRONG,
18 DELK, BALKENBUSH & EISINGER

19
20 By: /s/ Robert F. Balkenbush
21 ROBERT F. BALKENBUSH, ESQ.
22 State Bar No. 1246
23 LUKE W. MOLLECK, ESQ.
24 State Bar No. 14405
25 6590 S. McCarran Blvd., Suite B
26 Reno, Nevada 89509
27 (775) 786-2882
28 Truckee Meadows Fire Protection District,
Employer, Public Agency Compensation Trust,
And Alternative Service Concepts, LLC

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Dated this 7th day of February, 2019.

By: /s/ Robert F. Balkenbush
 ROBERT F. BALKENBUSH, ESQ.
 State Bar No. 1246
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By: /s/ Natalie L. Steinhardt
NATALIE L. STEINHARDT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VANCE TAYLOR,

Petitioner,

vs.

Case No.: CV18-00673

Dept. No.: 6

TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT,
ALTERNATIVE SERVICE
CONCEPTS and the NEVADA
DEPARTMENT OF
ADMINISTRATION APPEALS
OFFICER SHEILA MOORE

Respondents.

PETITION FOR JUDICIAL REVIEW

PETITIONER'S REPLY BRIEF

**ATTORNEY FOR THE
PETITIONER:**

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RESPONDENTS:**

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Attorney for Truckee Meadows FPD,
Alternative Service Concepts

1 Respondent, Truckee Meadows Fire Protection District (“TMFPD”) has stated that
2 it “does not mean to be demeaning” to Captain Vance Taylor (“Capt. Taylor” or “Taylor”),
3 however offering him a secretary’s job which is acquiescent to a separate and disparate
4 logistical operation and supervisory structure is, in fact, demeaning. *See generally* ROA
5 **at 043**. More importantly, it is a violation of the law and should not have been tolerated
6 by the Appeals Officer.

7 Capt. Taylor, a Fire Suppression Captain with 25 years’ experience, sustained a
8 work-related injury while directly engaged in intensive training designed to be both
9 mentally and physically exerting. Capt. Taylor and his crew were simulating a hazardous
10 material crisis to test their readiness and to assess the strength of their tactical responses.
11 This was Capt. Taylor’s position – he was a boots-on-the-ground leader who worked side-
12 by-side with the fire crews, actively directing and coordinating daily deployment of
13 TMFPD’s officers. *See generally* ROA **at 018**.

14 This is contrasted by the light-duty secretarial job offered to Capt. Taylor as
15 temporary duty which: removed him from the established chain of command and had no
16 similar duties to that of a Captain; subjected Capt. Taylor to a drastically altered schedule
17 and locale – which was disruptive and would place a financial strain on his family; and
18 was perceived as retaliatory for filing a workers compensation claim. This light-duty
19 position was insulting and the Appeals Officer was wrong to have held that it was a valid
20 light duty job, satisfactory under NRS 616C.475(8). Furthermore, the Appeals Officer
21

1 was also wrong to accordingly deny Capt. Taylor his TTD benefits from September 11,
2 2016 to November 2016.

3 Under the law, TMFPD was required to comply with three relevant requirements in
4 providing Capt. Taylor with a light-duty job:

5
6 1. **NRS 616C.475(8)** – an employer is required, when offering temporary, light-
7 duty employment, to: specify (among other things) that the offered position “is
8 **substantially similar** to the employee’s position at the time of his or her injury
9 in relation to the location of the employment and the hours the employee is
10 required to work.” (emphasis added); provide a gross wage that is: (1) If the
11 position is in the same classification of employment, equal to the gross wage the
12 employee was earning at the time of his or her injury; or (2) If the position is not
13 in the same classification of employment, substantially similar to the gross wage
14 the employee was earning at the time of his or her injury; and have the same
15 employment benefits as the position of the employee at the time of his or her
16 injury.

17 2. **NAC 616C.583** – Offer of Employment: Light Duty

- 18 1. An offer of employment at light duty to an injured employee by his or her
19 employer must: (a) Be in writing; (b) Be mailed to both the insurer and
20 the injured employee; and (c) Include: (1) The net wage to be paid the
21 injured employee; (2) The hours which the injured employee will be
expected to work; (3) A reasonable description of the physical
requirements of the employment; (4) A reasonable description of the
duties the injured employee will be expected to perform; (5) A description
of any fringe benefits of the employment; and (6) The geographical
location of the employment
2. If the insurer finds that the actual requirements of the employment at light
duty materially differ from the offer of employment and the employer fails
to take corrective action, the insurer may provide vocational rehabilitation
services.
3. The injured employee must be allowed a reasonable time, not to exceed 7
days after the date the offer of the employment at light duty is made,
within which to accept or reject the offer.
4. If the employment at light duty offered to the injured employee is
expected to be of limited duration, the employer shall disclose that fact to
the injured employee in the offer of employment and state the expected
duration.

- 1 5. An employer must not offer temporary or permanent employment at light
2 duty which he or she does not then expect to be available to the injured
3 employee as offered.
- 4 6. An employer does not have to comply with the requirements in
5 subsections 1 to 5, inclusive, if the employer offers the injured employee
6 temporary employment at light duty which is: (a) Immediately available;
7 (b) Compatible with the physical limitations of the injured employee as
8 established by the treating physician or chiropractor; and (c) Substantially
9 similar in terms of the location and the working hours to the position that
10 the injured employee held at the time of the injury.
- 11 7. Temporary employment at light duty offered pursuant to subsection 6
12 must cease within 30 days after the injured employee's physical
13 restrictions are determined to be permanent. Any subsequent offers of
14 employment at light duty by the employer must comply with the
15 requirements of subsections 1 to 5, inclusive.

16 3. **Nevada Supreme Court Precedent** (*EG & G Special Projects, Inc. v. Corse*,
17 102 Nev. 116, 715 P.2d 1326 (1986)) – an offer of light duty work must not
18 impose an unreasonable burden on the injured worker.

19 Here the Appeals Officer stepped away from the clear statutory and legal
20 requirements, and inappropriately supplanted her own judgment in three clear ways: (1)
21 the light duty job offer dramatically changed Capt. Taylor's work schedule and associated
pay scale; (2) this light duty job offer changed the location of Capt. Taylor's employment,
and (3) this light duty job offer changed Capt. Taylor's job duties dramatically and
effectively demoted Capt. Taylor from a Captain to an office secretary. Additionally,
TMFPD's light-duty job offer replaced Capt. Taylor's normal supervising Battalion Chief
with an appointed office secretary, which in turn, broke the normal chain of command
established by the fire department.

22 ///

23 ///

1 **A. The Fundamental Shift from a Fire Crew to Office Staff Work Schedule and**
2 **Decrease the of Hours Offered Proves TMFPD's Light-Duty Job was Not**
3 **Substantially Similar to Capt. Taylor's Work Pre-Injury Work Schedule.**

4 Capt. Taylor is an emergency responder, who when working is on call, ready to
5 instantaneously react should the need arise. When working he is at the fire station ensuring
6 that all gear and equipment is prepared, in good repair, and ready to deploy. TMFPD has
7 attempted to marginalize the fact that Capt. Taylor, and his colleagues, work for two days
8 straight (48 hours) by asking Capt. Taylor if, while on duty, he sleeps "like normal people,
9 sometimes you sleep for 6-8 hours." **ROA at 044.** However TMFPD has ignored that
10 fact, that even during non-emergency periods during a shift, Capt. Taylor and his crews
11 are not only expected to be actively "working" for at least 12-hours but even if there is
12 down-time, they are still never able to really relax due to the on-call nature of the position.

13 The light duty job offer¹ fundamentally changed Capt. Taylor's work schedule from
14 a 48/96 schedule (two days on, four days off) and pay scale, which includes FLSA pay, to
15 a forty hour scale administrative schedule from 8:00 am to 5:00 pm Monday thru Friday
16 with no FLSA pay and no ability to accrue Holiday Comp Time. **ROA at 101.**

17 Capt. Taylor agrees that *Amazon v. Magee*, 121 Nev. 632,636, 119 P.3d 732, 735
18 (2005) requires light-duty employment be similar in hours to the pre-injury position.
19 However TMFPD's reliance on *Magee* to attempt to justify its actions fails because not

20 _____
21 ¹ September 9, 2016 TMFPD Letter to Capt. Taylor – "“You will be assigned to the administrative office
and your scheduled hours will be Monday through Friday 8am to 5pm with an hour lunch. To align the
schedule change with the beginning of the FLSA cycle, you will report to the administrative offices on
Monday September 12, 2016 at 8am.”"

only was Capt. Taylor's weekly schedule changed from that of an emergency responder to an office administrator, but also decreased the number of hours he was working each week. Accordingly there is nothing "similar" about TMFPD's light-duty offer.

For example, the chart below highlights the differences between Capt. Taylor's "Kelly Schedule" and the light-duty schedule:

	Normal Work Schedule (Capt. Level) – 6 day cycle	Light-Duty Work Schedule
Monday	24 Hours: 12:00am – 11:59pm	8 Hours: 8:00am – 5:00pm lunch)
Tuesday	24 Hours: 12:00am – 11:59pm	8 Hours: 8:00am – 5:00pm lunch)
Wednesday	OFF	8 Hours: 8:00am – 5:00pm lunch)
Thursday	OFF	8 Hours: 8:00am – 5:00pm lunch)
Friday	OFF	8 Hours: 8:00am – 5:00pm lunch)
Saturday	OFF	OFF
Sunday	<i>Begin New Cycle</i>	OFF

Clearly, there is nothing similar about these two schedules. Any argument to the contrary is disingenuous. The most glaring difference is the number of days during the week when Capt. Taylor would be required to report to an office. Because the shift-change was not substantially similar, Capt. Taylor's family was seriously affected.

TMFPD claims there are no documents to show hardship on the Taylor' family and even reminds the Court that the parties are confined to the record. Obviously, TMFPD has forgotten that both Capt. Taylor and his spouse testified under oath as to the strain of

1 the modified schedule. As stated in the Record on Appeal, Mrs. Taylor testified that the
2 change “impacted us both financially and emotionally.” **ROA at 054.** Capt. Taylor and
3 his wife testified that they were required to hire childcare to accommodate his schedule
4 because he was no longer able to assist in the 96 hour off period. As Mrs. Taylor travels
5 a lot (which directly determines her income) Capt. Taylor’s schedule is of paramount
6 importance to allow Mrs. Taylor to schedule out her travel. **ROA at 055.** And though
7 Capt. Taylor’s kids are school for part of the day, Mrs. Taylor testified that their oldest
8 child is on a unique schedule and has two months off in the summer, three weeks off in
9 April, and is out of school all of October. **ROA at 056. (emphasis added).**
10 Furthermore, even when school is in session, the school hours are 9:00am to 3:00pm –
11 starting 1 hour after Capt. Taylor is to report to the office and ending 2 hours before his
12 shift concludes. This awkward time necessitates daily childcare in order to ensure the kids
13 are able to get home safely and receive proper care.

14 There has been no reason or basis to ignore the testimony of the Taylors and
15 TMPFD has not offered any conflicting evidence or has provided the Court any reason to
16 ignore the testimony of a long-term civil servant and his spouse.

17 Generally any person who has experienced a need to call the fire department
18 appreciates that the officers are on call at the station 24/7. This is the nature of emergency
19 services, even young children appreciate the lightening response associated with lights
20 and sirens of bright red fire trucks whizzing through city streets. Consequently, as the
21 light-duty job’s schedule is not substantially similar to Capt. Taylor’s pre-injury schedule,

1 it is violation of the statute, and this alone justifies overturning the Appeals Officer's
2 decision.

3 **B. Compared to Capt. Taylor's Normal Work Location, Fire Station 15, There is**
4 **a Significant Difference in Distance and Function of the Location of the Office**
5 **Building for the Light-Duty Job.**

6 The light duty job offer changes the location of Capt. Taylor's employment from
7 Fire Station 15 at 110 Quartz Lane, Reno, Nevada 89433 on the Northern part of Reno to
8 a downtown location six miles away at 1001 East Ninth Street, Building D, Reno, Nevada
9 89512.

10 Furthermore, not only is there a distance issue, but also a proximity and function
11 issue to address. As Capt. Taylor testified, his duties "are to supervise my crew. To
12 respond with my crew to all incidents within the District, including structure fires, vehicle
13 fires, wildlife fires, EMS incidents. Avalanche, search and rescue, water rescue. It's an all
14 risk department. So, if you can think of it, we do it. I'm [a] Incident Commander." **ROA**
15 **at 018.** Capt. Taylor would also supervise the maintenance and readiness of all equipment
16 at Fire Station 15. **Id.** As a Fire Suppression Captain, Capt. Taylor's entire world revolved
17 around the ability of his crews to respond to emergencies. This is why he worked out of
18 Fire Station 15 and not an administrative building. The light-duty offer changed Capt.
19 Taylor's workplace from a fire station to an office complex removed from Fire Station 15.
20 Interestingly this office was not specific to the Fire Department and also shared space with
21 the Washoe County WIC Office, Washoe County Assessor's Office, Washoe County
Recorder's Office, Washoe County Clerk, Washoe County Building & Safety Office,

1 Washoe County Social Services Department, and even shared a parking lot with the
2 Washoe County Public Library. There is nothing substantially similar about these two
3 locations.

4 Moreover, there were alternatives to the office position offered that would have kept
5 Capt. Taylor on-site – at Fire Station 15 – in a modified role that would easily conform to
6 the statute.

7 The Record on Appeal establishes that Capt. Taylor could have remained at Fire
8 Station 15 in a logistics capacity wherein he could be assigned to his normal supervisor
9 (the battalion chief), and could be assigned various non-physical logistic duties including:
10 mechanical assistance, assisting the logistics chief in disseminating supplies and
11 equipment, assigned to the Fire Prevention Chief doing business inspections, complete
12 30-foot clearance inspections, complete fire hydrant inspection/maintenance. **ROA at**
13 **047-48.** All of these jobs could easily be done with limited physical exertion.

14 Accordingly, it is clear that based on the nature of his position, it was a mistake to
15 for Capt. Taylor's light duty job to be so far removed from Fire Station 15 and therefore
16 the Appeals Officer's decision should be overturned.

17 **C. The Light Duty Job is Unreasonable because the Duties were Dramatically**
18 **Different; Effectively Demoted Capt. Taylor; and was Removed from the**
Chain of Command.

19 As previously stated, Capt. Taylor is a Engine Incident Commander, who once
20 arriving on a scene, takes command until he is relieved. **ROA at 018.** Capt. Taylor's job
21 is extremely strenuous. "It's—we go from 0-100 miles an hour... throwing around a lot

1 of gear. Very heavy gear. And, if we're doing a structure fire, vehicle accident, any type
2 of fire or accident, we're throwing around heavy gear, our—just our gear alone that we
3 carry which is our air bottles and our turnouts will exceed over 100 pounds, once we have
4 them on. So, we're not only carrying our gear but we're carrying all the other gear that we
5 need to mitigate the incident.” **ROA at 019.**

6 Capt. Taylor was expected to go from commanding his fire crews to an office desk
7 thus changing his job duties dramatically and effectively demoting Capt. Taylor from a
8 Captain to an office secretary, which is both frustrating and unlawful. As Capt. Taylor
9 was been trained and worked as a fire fighter his entire career, it is bizarre that this was
10 the light-duty job given to him especially when there were reasonable alternatives that
11 more conformed to his experience. It’s even more baffling that the Fire Chief was aware
12 of these alternatives and Capt. Taylor was still assigned to an office with which he had no
13 prior exposure. **ROA at 047.** This position placed him outside of his chain of command,
14 replacing his Battalion Chief with an appointed office secretary, which is confusing and
15 restrictive for both Capt. Taylor and his Battalion Chief. By allowing the Employer and
16 TPA to provide this type of light duty, the Appeals Officer has erroneously allowed them
17 to essentially punish Ms. Taylor for sustaining a work-related injury and filing a workers’
18 compensation claim related thereto. Moreover, this break in the chain of command adds
19 to the humiliating feeling that he is being punished because he sustained a work-related
20 injury and filed a workers’ compensation claim.

21 In accordance with the foregoing, TMFPD’s light duty job offer did not provide for

1 a light duty job that was “substantially similar” to the job Capt. Taylor had pre-injury with
2 regard to both the shift he was required to work and the location of his employment.
3 Moreover, the light duty job offer was unreasonable and otherwise degrading to Capt.
4 Taylor, who is a 25-year veteran of the Fire Service, and a Captain for the TMFPD.

5 **II. CONCLUSION**

6 For all of the foregoing reasons, the Petitioner respectfully requests that this Court
7 grant his Petition for Judicial Review and reverse the February 28, 2018, Findings of Fact
8 and Conclusions of Law of the Appeals Officer. Petitioner further requests that the
9 District Court render an order finding:

10 (1) the Appeals Officer erred as a matter of law by concluding that Capt. Taylor is
11 not entitled to temporary total disability (“TTD”) benefits for the period of September 11,
12 2016 through his return to his pre-injury job in November 2016, as stated in ASC’s
13 September 26, 2016, determination letter;

14 (2) The Appeals Officer erred as a matter of law when she concluded that the light
15 duty job offered to Capt. Taylor by his employer was a valid light duty job offer under
16 Nevada law; and

17 (3) The light duty job offered to Capt. Taylor by the employer is invalid as a matter
18 of law because it failed to satisfy the requirements of NRS 616C.475(8) and NAC
19 616C.583

20 ///

21 ///

AFFIRMATION

The undersigned does hereby affirm that the foregoing document filed in this matter does not contain the social security number of any person.

Dated this 10th day of March, 2019.



Jason D. Guinasso, Esq.
Attorney for Vance Taylor

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On March 10, 2019, I served the following:

VANCE TAYLOR'S

REPLY BRIEF

on the following in said cause as indicated below:

VANCE TAYLOR 2919 ASPEN MEADOWS CT RENO, NV 89519 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG 6590 S MCCARRAN BLVD., #B RENO, NV 89509 (VIA E-FLEX & U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
NEVADA DEPT. OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FL CARSON CITY, NV 89701 (VIA U.S. MAIL)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 10, 2019, at Reno, Nevada.


KATRINA A. TORRES

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Hutchison & Steffen, PLLC
500 Damonte Ranch Parkway, Suite 980
3 Reno, NV 89521
Attorney for Vance Taylor
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7 *****

8 VANCE TAYLOR,

9 Petitioner,

10 vs.

11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS, and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.
15

Case No.: CV18-00673

Dept. No.: 6

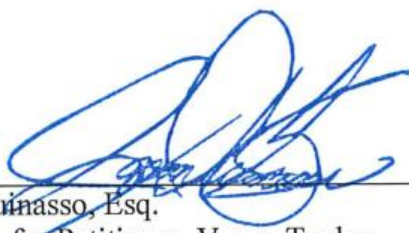
**REQUEST FOR
SUBMISSION**

16 COMES NOW Petitioner, VANCE TAYLOR, by and through his attorney, JASON D.
17 GUINASSO, ESQ., and hereby requests *Petitioner's Opening Brief* (filed on July 10, 2018),
18 *Respondent's Answering Brief* (filed on February 7, 2019), and *Petitioner's Reply Brief* (filed on March
19 6, 2019) be submitted to the Court for decision.

20 **AFFIRMATION**

21 The undersigned does hereby affirm that the foregoing document filed in this matter does not
22 contain the social security number of any person.

23 DATED this 7th day of March, 2019.

24 
25 Jason Guinasso, Esq.
Attorney for Petitioner, Vance Taylor

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the
3 within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

4 On March 7, 2019, I served the following:

5 **REQUEST FOR SUBMISSION**

6 on the following in said cause as indicated below:

7 ROBERT BALKENBUSH, ESQ.
8 THORNDAL ARMSTRONG, ET AL
9 6590 S MCCARRAN BLVD., SUITE B
RENO, NV 89509
(VIA E-FLEX ONLY)

10 I declare under penalty of perjury that the foregoing is true and correct. Executed on March
11 7, 2019, at Reno, Nevada.

12 
13 _____
14 KATRINA A. TORRES
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1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 VANCE TAYLOR,

Case No. CV18-00673

10 Petitioner,

Dept. No. 6

11 vs.
12

13 TRUCKEE MEADOWS FIRE PROTECTION
14 DISTRICT; ALTERNATIVE SERVICE
15 CONCEPTS, LLC, PUBLIC AGENCY
16 COMPENSATION TRUST and the NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER SHEILA MOORE,

17 Respondents.
18 _____ /

19 **ORDER RE PETITION FOR JUDICIAL REVIEW**

20 Before this Court is a *Petition for Judicial Review* ("*Petition*") filed by Petitioner
21 VANCE TAYLOR ("Mr. Taylor") by and through his attorney of record, Jason D. Guinasso,
22 Esq. On May 3, 2018, Mr. Taylor filed the *Record on Appeal* ("ROA") in accordance with the
23 Nevada Administrative Procedure Act. On July 10, 2018, Mr. Taylor filed *Petitioner's*
24 *Opening Brief* ("*Brief*")

25
26 On February 7, 2019, Respondent TRUCKEE MEADOWS FIRE PROTECTION
27 DISTRICT ("TMFPD") and PUBLIC AGENCY COMPENSATION TRUST ("PACT")
28 (collectively "Respondents") filed *Respondents' Answering Brief* ("*Answer*"), by and through

1 their attorney of record, Robert F. Balkenbush, Esq.

2 Mr. Taylor filed *Petitioner's Reply Brief* ("Reply"). No request for hearing was made
3 and the matter was submitted for decision.

4
5 **I. FACTS AND PROCEDURAL HISTORY**

6 The instant action arises out of a contested worker's compensation claim before the
7 State of Nevada Department of Administration Hearings Division ("AHD") and is the result of
8 a February 28, 2018 *Decision and Order* ("*Decision*"). The issue before the AHD was
9 whether Mr. Taylor rightfully refused his employer's offer of temporary "light-duty" work for a
10 one-month period after he was deemed temporarily totally disabled.

11
12 The following Findings of Fact and Conclusions of Law were made by the Appeals
13 Officer in the *Decision*.

14 **A. Appeals Officer's Findings of Fact**

15 In April 2016, Mr. Taylor¹ was 46 years old and employed as a Fire Captain for
16 TMFPD. *Decision*, p. 3. Taylor had been employed with TMFPD since January 1997.
17 *Decision*, p. 3. On April 19, 2016, during a training exercise, Taylor suffered an injury to his
18 left shoulder. *Decision*, p. 3.

19
20 On July 21, 2016, Mr. Taylor underwent shoulder surgery. *Decision*, p. 3. On
21 September 7, 2016, Mr. Taylor was examined by Dr. Malcarney and released to work with
22 light-duty restrictions, including not lifting over five pounds and not reaching above his
23 shoulder for one-month. *Decision*, p. 3.

24
25 On September 9, 2016, TMFPD offered Taylor temporary, light-duty employment.
26 *Decision*, p. 3. The assignment offered was in the administrative offices of TMFPD working
27 Monday through Friday, 8:00 a.m. to 5:00 p.m. with an hour lunch. *Decision*, p. 4. The
28

¹ Mr. Taylor was identified as "Taylor" in the Appeals Officer's *Decision*.

1 position was immediately available, compatible with the temporary physical limitations for
2 work imposed by Dr. Malcarney, and substantially similar to Mr. Taylor's pre-injury position
3 in relation to location, hours, and the same wage he earned prior to injury. *Decision*, p. 4.

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5 On September 9, 2016, Mr. Taylor informed TMFPD he would not accept the offer
6 because the work assignment was not substantially similar to Mr. Taylor's position as Fire
7 Captain², including differences in work hours, benefits, supervisors, and job duties.
8 *Decision*, p. 4. Specifically, prior to his injury, Mr. Taylor worked 48 hour shifts, followed by
9 96 hours off. *Decision*, p. 4. Mr. Taylor claimed hardship based on childcare. However, Mr.
10 Taylor did not provide records demonstrating financial hardship or difference in benefits.
11 *Decision*, p. 4. Moreover, Mr. Taylor's temporary position was located six miles from his
12 prior work location and he previously accepted the same temporary, light-duty job offered to
13 him. *Decision*, p. 4. Mr. Taylor was paid he pre-injury gross average monthly wage.
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15 *Decision*, p. 5.

16 17 **B. Appeals Officer's Conclusions of Law**

18 On February 28, 2018, the AHD entered its *Decision* finding Mr. Taylor was not
19 entitled to temporary total disability during that time because TMFPD's offer of light-duty
20 work was a valid light duty job, is not considered humiliating and degrading, and is an
21 essential function in the work force pursuant to NRS 616C.475(8), NAC 616C.586(2).
22
23 *Decision*, generally.

24 Mr. Taylor appealed a denial of his workers compensation claim against TMFPD.

25 **C. Petitioner's Argument on Appeal**

26 Mr. Taylor filed his *Petition* arguing TMFPD's offer of light-duty job was not
27 substantially similar to the job Mr. Taylor had pre-injury; and, therefore, TMFPD's offer failed
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² Mr. Taylor is referenced as both a Captain and Battalion Chief.

1 to comply with NRS 616C.475(8) and NAC 616A.400. Mr. Taylor maintains he is entitled to
2 temporary disability benefits for the period of September 11, 2016 through November, 2016.

3 *Petition*, generally.

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5 Specifically, Mr. Taylor argues in EG & G Special Projects, Inc. v. Corselli, the
6 Nevada Supreme Court held an offer of light duty work must not impose an unreasonable
7 burden on the injured worker. *Brief*, p. 10; citing EG & G Special Projects, Inc. v. Corselli,
8 102 Nev. 116, 715 P.2d 1326 (1986). Mr. Taylor asserts in Corselli, the Court found a light-
9 duty job offer which substantially changed the hours, days, and location of work was
10 unreasonable. *Brief*, pp. 10-11; citing *Id.* Mr. Taylor argues because the offered light duty
11 employment significantly changed his hours, FLSA pay, and precludes his ability to "bank
12 Holiday Comp Time" it was not reasonable. *Brief*, p. 11.

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14 Moreover, Mr. Taylor argues the employment location was six-miles from his pre-
15 injury employment location. *Brief*, p. 12. Lastly, the light duty job offer changed Mr. Taylor's
16 duties from a Captain to an "office secretary" which is "humiliating and unlawful." *Brief*, p.
17 12; citing Dillard's Dept. Stores, Inc v. Beckwith, 115 Nev. 372, 989 P.2d 882 (1999). Mr.
18 Taylor argues it is humiliating and degrading for a person who "regularly works as a fire
19 fighter" to take a position as an "office secretary." *Brief*, p. 12. Mr. Taylor also argues
20 appointing a Battalion Chief to an office secretary position breaks the chain of command.
21
22 *Brief*, p. 13.

23 24 **D. Respondent's Argument**

25 In its *Answer*, Respondents argue the light-duty job offered to Mr. Taylor was
26 adequately similar in hours, pay, and location. First, Respondents argue hours for a light-
27 duty position need only be "similar." *Answer*, p. 11. Respondents argue that, although the
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1 temporary light-duty position required him to work 8:00 a.m. to 5:00 p.m. instead of his
2 normal 48-hour shift followed by 96 hours off, the schedule provided the same wages at a
3 lower minimum hour requirement. *Answer*, p. 11. Moreover, Mr. Taylor offered no evidence
4 the changed scheduled resulted in financial hardship or that his benefits changed. *Answer*,
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7 Additionally, Respondents assert Mr. Taylor was to be paid his pre-injury monthly
8 wage and a temporary employment location six-miles from his pre-injury position is not a
9 substantial change in location and was actually closer to Mr. Taylor's residence. *Answer*, p.
10 14.
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12 Respondents further contend, although a post-injury position must be similar to the
13 job held pre-injury, the post-injury job does not need personal approval by the employee.
14 *Answer*, p. 12. Importantly, Respondents contend Section 616C.586 of the Nevada
15 Administrative Code provides light-duty temporary employment is not demeaning or
16 degrading where the job is part of the employer's regular business operation. *Answer*, p.
17 14.
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19 II. LAW AND ANALYSIS

20 A court may set aside a final decision of an agency if the decision is arbitrary,
21 capricious, in violation of statute, characterized by abuse of discretion or affected by error of
22 law. NRS 233B.135(3); Ranieri v. Catholic Community Services, 111 Nev. 1057, 1061, 901
23 P.2d 158, 161 (1995). Generally, the reviewing court may not substitute its judgment for
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1 281, 429 P.2d 66, 68 (1967) ("We should not pass upon the credibility of witnesses or weigh
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4 supported by "substantial evidence" are unsustainable and must be reversed. See State
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8 underlying facts supporting the findings.'" Dickinson, 124 Nev. at 469, 186 P.3d at 884
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12 In addition, NRS 233B.125 requires a final decision include "findings of fact and
13 conclusions of law, separately stated. Findings of fact and decision must be based upon a
14 preponderance of the evidence." NRS 233B.125.

15 Thus, when reviewing factual issues, the reviewing court must determine whether
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17 Scolari's Food & Drug, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009). "Substantial evidence is
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24 The Court reviews the Appeals Officer's legal conclusions *de novo*. Vredenburg v.
25 Sedgwick CMS, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008).

26 Section 616C.475(1) of the Nevada Revised Statutes, provides, in pertinent part,
27 every employee who is injured by accident arising out of and in the course of employment is
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entitled to receive temporary total disability. NRS 616C.475(1). Additionally, Section 616C.475(8) of the Nevada Revised Statutes provides,

If the certification of disability specifies that the physical limitations or restrictions are temporary, the employer . . . may offer temporary, light-duty employment to the employee. If the employer makes such an offer, the employer shall confirm the offer in writing within 10 days after making the offer. . . . Any offer of temporary, light-duty employment made by the employer must specify a position that:

(a) Is substantially similar to the employee's position at the time of his or her injury in relation to the location of the employment and the hours the employee is required to work;

(b) Provides a gross wage that is:

(1) If the position is in the same classification of employment, equal to the gross wage the employee was earning at the time of his or her injury; or

(2) If the position is not in the same classification of employment, substantially similar to the gross wage the employee was earning at the time of his or her injury; and

(c) Has the same employment benefits as the position of the employee at the time of his or her injury.

NRS Section 616C.475(8). When NRS 616C.475 is read in its entirety, "an employer who provides a temporarily totally disabled employee with a post-injury job that is similar in hours, location and gross pay to the job the employee held pre-injury, and who gives adequate consideration to the employee's post-injury limitations, can cease paying the employee temporary total disability benefits in the amount of $66\frac{2}{3}$ percent of the employee's pre-injury wage." Amazon.com v. Magee, 121 Nev. 632, 636, 119 P.3d 732, 735 (2005).

First, Mr. Taylor argues the location of his proposed administrative position "six-miles" from his pre-injury job location and the change in his scheduled hours is unreasonable and burdensome. An offer of temporary employment cannot be considered

1 legitimate if the location of the job imposes an unreasonable burden on the worker. EG & G
2 Special Projects, Inc. v. Corselli, 102 Nev. 116, 119 715 P.2d 1326, 1328 (1986). In Corselli
3 the Nevada Supreme Court found a light-duty job offer to work as a security guard in Las
4 Vegas five-days a week was unreasonable where the employee resided in Riverside,
5 California and had worked for the past twenty-five years at a Nevada test site with shifts of
6 three days on and four days off. Id.

8 Unlike in Corselli, Mr. Taylor is not required to cross state-lines five days a week.
9 Although his shifts have changed, the combination of the location of his new job and lesser
10 required hours required per week result in a reasonable request. This is buttressed by the
11 fact that Mr. Taylor's offered post-injury job location is actually closer to his home. The
12 Court additionally notes that Mr. Taylor previously accepted this position.

14 Moreover, Mr. Taylor was offered the same salary as his pre-injury position for less
15 minimum hours worked. Although Mr. Taylor argues the change in schedule required he
16 pay additional childcare, there is no evidence Mr. Taylor suffered financial hardship as a
17 result of obtaining additional childcare in the record.

19 Mr. Taylor further asserts the light-duty position providing administrative support to
20 TMFPD was not substantially similar to his position as a Battalion Chief. The Court notes
21 that Mr. Taylor was not demoted during the one-month period he was on light-duty. Instead,
22 his job tasks changed. Mr. Taylor argues it is humiliating to be a "secretary;" however, the
23 Court finds this unpersuasive.

25 First, many talented people are proud to hold administrative positions. The Court
26 does not find anything inherently humiliating or degrading about being a "secretary." More
27 importantly, Section 616C.586(2)(a) of the Nevada Administrative Code provides,
28

1 "temporary employment at light duty offered by the employer which is a part of the
2 employer's regular business operations shall not be deemed to be demeaning or degrading
3 or to subject the employee to ridicule or embarrassment." NAC 616C.586. Here, Mr. Taylor
4 was offered light-duty employment which was part of TMFPD's regular business operations.
5 Accordingly, the Court finds there is nothing demeaning or degrading about the offered
6 position.
7

8 **III. CONCLUSION**

9 Mr. Taylor was offered a light-duty administrative position, for a period of one-month,
10 which was located six-miles from his previous job site, and offered the same pre-injury
11 monthly salary. Although Mr. Taylor's hours changed, the change was not significant in light
12 of the location and salary pursuant to the Nevada Supreme Court's ruling in Corselli.
13 Moreover, the position was part of his employer's regular business operations. In
14 accordance with Section 616C.586(2(a) of the Nevada Administrative Code, Section
15 616C.475(8) of the Nevada Revised Statutes, and applicable law as cited, this Court
16 concludes Mr. Taylor's *Petition* shall be denied.
17

18 Accordingly, and good cause appearing,
19

20 IT IS HEREBY ORDERED Petitioner's *Petition for Judicial Review* is DENIED.
21

22 Dated this 16th day of May, 2019.
23

24 
DISTRICT JUDGE
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 10th day of May, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

JASON GUINASSO, ESQ.

LUCAS MOLLECK, ESQ.

ROBERT BALKENBUSH, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows

Handwritten Signature

CV18-00673

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Hutchison & Steffen, PLLC
500 Damonte Ranch Parkway, Suite 980
3 Reno, NV 89521
Attorney for Vance Taylor
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 *****

8 VANCE TAYLOR,

9 Petitioner,

10 vs.

11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS, and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.
15

Case No.: CV18-00673

Dept. No.: 6


NOTICE OF ENTRY OF ORDER

16 PLEASE TAKE NOTICE that, *Petitioner's Opening Brief* (filed on July 10, 2018),
17 *Respondent's Answering Brief* (filed on February 7, 2019), and *Petitioner's Reply Brief* (filed on March
18 6, 2019) have been submitted to the Court for decision. On May 10, 2019, the *Order Re Petition for*
19 *Judicial Review* was entered, a copy of the Order is attached hereto.

20 **AFFIRMATION**

21 The undersigned does hereby affirm that the foregoing document filed in this matter does not
22 contain the social security number of any person.

23 DATED this 15th day of May, 2019.

24 
25 Jason Guinasso, Esq.
Attorney for Petitioner, Vance Taylor

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On May 15, 2019, I served the following:

NOTICE OF ENTRY OF ORDER

on the following in said cause as indicated below:

VANCE TAYLOR 2919 ASPEN MEADOWS CT RENO, NV 89519 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG 6590 S MCCARRAN BLVD., #B RENO, NV 89509 (VIA E-FLEX & U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
NEVADA DEPT. OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FL CARSON CITY, NV 89701 (VIA U.S. MAIL)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 15, 2019, at Reno, Nevada.



KATRINA A. TORRES

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LIST OF EXHIBITS
CASE NO. CV18-00673
NOTICE OF ENTRY OF ORDER

EXHIBIT #	DOCUMENT TITLE	# OF PAGES
Exhibit 1	Order dated May 10, 2019	10

EXHIBIT 1

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1 CODE NO. 3370
2
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13 TRUCKEE MEADOWS FIRE PROTECTION
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16 COMPENSATION TRUST and the NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICER SHEILA MOORE,

17 Respondents.
18 _____ /

19 ORDER RE PETITION FOR JUDICIAL REVIEW

20 Before this Court is a *Petition for Judicial Review* ("*Petition*") filed by Petitioner
21 VANCE TAYLOR ("Mr. Taylor") by and through his attorney of record, Jason D. Guinasso,
22 Esq. On May 3, 2018, Mr. Taylor filed the *Record on Appeal* ("ROA") in accordance with the
23 Nevada Administrative Procedure Act. On July 10, 2018, Mr. Taylor filed *Petitioner's*
24 *Opening Brief* ("*Brief*")

25
26 On February 7, 2019, Respondent TRUCKEE MEADOWS FIRE PROTECTION
27 DISTRICT ("TMFPD") and PUBLIC AGENCY COMPENSATION TRUST ("PACT")
28 (collectively "Respondents") filed *Respondents' Answering Brief* ("*Answer*"), by and through

1 their attorney of record, Robert F. Balkenbush, Esq.

2 Mr. Taylor filed *Petitioner's Reply Brief* ("Reply"). No request for hearing was made
3 and the matter was submitted for decision.

4 **I. FACTS AND PROCEDURAL HISTORY**

5 The instant action arises out of a contested worker's compensation claim before the
6 State of Nevada Department of Administration Hearings Division ("AHD") and is the result of
7 a February 28, 2018 *Decision and Order* ("*Decision*"). The issue before the AHD was
8 whether Mr. Taylor rightfully refused his employer's offer of temporary "light-duty" work for a
9 one-month period after he was deemed temporarily totally disabled.
10

11 The following Findings of Fact and Conclusions of Law were made by the Appeals
12 Officer in the *Decision*.

13 **A. Appeals Officer's Findings of Fact**

14 In April 2016, Mr. Taylor¹ was 46 years old and employed as a Fire Captain for
15 TMFPD. *Decision*, p. 3. Taylor had been employed with TMFPD since January 1997.
16 *Decision*, p. 3. On April 19, 2016, during a training exercise, Taylor suffered an injury to his
17 left shoulder. *Decision*, p. 3.

18 On July 21, 2016, Mr. Taylor underwent shoulder surgery. *Decision*, p. 3. On
19 September 7, 2016, Mr. Taylor was examined by Dr. Malcarney and released to work with
20 light-duty restrictions, including not lifting over five pounds and not reaching above his
21 shoulder for one-month. *Decision*, p. 3.

22 On September 9, 2016, TMFPD offered Taylor temporary, light-duty employment.
23 *Decision*, p. 3. The assignment offered was in the administrative offices of TMFPD working
24 Monday through Friday, 8:00 a.m. to 5:00 p.m. with an hour lunch. *Decision*, p. 4. The

25 ¹ Mr. Taylor was identified as "Taylor" in the Appeals Officer's *Decision*.

1 position was immediately available, compatible with the temporary physical limitations for
2 work imposed by Dr. Malcarney, and substantially similar to Mr. Taylor's pre-injury position
3 in relation to location, hours, and the same wage he earned prior to injury. *Decision*, p. 4.

4 On September 9, 2016, Mr. Taylor informed TMFPD he would not accept the offer
5 because the work assignment was not substantially similar to Mr. Taylor's position as Fire
6 Captain², including differences in work hours, benefits, supervisors, and job duties.
7 *Decision*, p. 4. Specifically, prior to his injury, Mr. Taylor worked 48 hour shifts, followed by
8 96 hours off. *Decision*, p. 4. Mr. Taylor claimed hardship based on childcare. However, Mr.
9 Taylor did not provide records demonstrating financial hardship or difference in benefits.
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12 him. *Decision*, p. 4. Mr. Taylor was paid he pre-injury gross average monthly wage.
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14 **B. Appeals Officer's Conclusions of Law**

15 On February 28, 2018, the AHD entered its *Decision* finding Mr. Taylor was not
16 entitled to temporary total disability during that time because TMFPD's offer of light-duty
17 work was a valid light duty job, is not considered humiliating and degrading, and is an
18 essential function in the work force pursuant to NRS 616C.475(8), NAC 616C.586(2).
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22 Mr. Taylor filed his *Petition* arguing TMFPD's offer of light-duty job was not
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18 (c) Has the same employment benefits as the position of the employee at the
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12 Court additionally notes that Mr. Taylor previously accepted this position.

14 Moreover, Mr. Taylor was offered the same salary as his pre-injury position for less
15 minimum hours worked. Although Mr. Taylor argues the change in schedule required he
16 pay additional childcare, there is no evidence Mr. Taylor suffered financial hardship as a
17 result of obtaining additional childcare in the record.

19 Mr. Taylor further asserts the light-duty position providing administrative support to
20 TMFPD was not substantially similar to his position as a Battalion Chief. The Court notes
21 that Mr. Taylor was not demoted during the one-month period he was on light-duty. Instead,
22 his job tasks changed. Mr. Taylor argues it is humiliating to be a "secretary," however, the
23 Court finds this unpersuasive.

25 First, many talented people are proud to hold administrative positions. The Court
26 does not find anything inherently humiliating or degrading about being a "secretary." More
27 importantly, Section 616C.586(2)(a) of the Nevada Administrative Code provides,
28

1 "temporary employment at light duty offered by the employer which is a part of the
2 employer's regular business operations shall not be deemed to be demeaning or degrading
3 or to subject the employee to ridicule or embarrassment." NAC 616C.586. Here, Mr. Taylor
4 was offered light-duty employment which was part of TMFPD's regular business operations.
5 Accordingly, the Court finds there is nothing demeaning or degrading about the offered
6 position.
7

8 III. CONCLUSION

9 Mr. Taylor was offered a light-duty administrative position, for a period of one-month,
10 which was located six-miles from his previous job site, and offered the same pre-injury
11 monthly salary. Although Mr. Taylor's hours changed, the change was not significant in light
12 of the location and salary pursuant to the Nevada Supreme Court's ruling in Corselli.
13 Moreover, the position was part of his employer's regular business operations. In
14 accordance with Section 616C.586(2(a) of the Nevada Administrative Code, Section
15 616C.475(8) of the Nevada Revised Statutes, and applicable law as cited, this Court
16 concludes Mr. Taylor's *Petition* shall be denied.
17

18 Accordingly, and good cause appearing,
19

20 IT IS HEREBY ORDERED Petitioner's *Petition for Judicial Review* is DENIED.
21

22 Dated this 16th day of May, 2019.
23

24 
DISTRICT JUDGE
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 1st day of May, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

JASON GUINASSO, ESQ.

LUCAS MOLLECK, ESQ.

ROBERT BALKENBUSH, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows

Hua For

CV18-00673

1 Jason D. Guinasso, Esq.
Nevada Bar No. 8478
2 Hutchison & Steffen, PLLC
500 Damonte Ranch Parkway, Suite 980
3 Reno, NV 89521
Attorney for Vance Taylor
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7 *****

8 VANCE TAYLOR,

9 Petitioner,

10 vs.

11 TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT, ALTERNATIVE SERVICE
12 CONCEPTS, and the NEVADA
DEPARTMENT OF ADMINISTRATION
13 APPEALS OFFICER SHEILA MOORE,

14 Respondents.
15

Case No.: CV18-00673

Dept. No.: 6

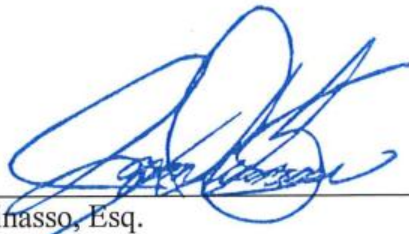
NOTICE OF APPEAL

16 **NOTICE IS HEREBY GIVEN THAT:** VANCE TAYLOR, Petitioner above named, by and
17 through his attorney of record JASON D. GUINASSO, ESQ. hereby appeals to the SUPREME
18 COURT OF NEVADA the final judgment from the Order Denying Petition for Judicial Review, filed
19 in this action on May 10, 2019, attached hereto and incorporated herein as **Exhibit "1"**.

20 **AFFIRMATION**

21 The undersigned does hereby affirm that the foregoing document filed in this matter does not
22 contain the social security number of any person.

23 DATED this 7th day of June, 2019.

24 
25 Jason Guinasso, Esq.
Attorney for Petitioner, Vance Taylor

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On June 7th, 2019, I served the following:

NOTICE OF APPEAL

on the following in said cause as indicated below:

VANCE TAYLOR 1009 TIMBER RIDGE ROAD LAKE ALMANOR, CA 96137 (VIA U.S. MAIL)	ALTERNATIVE SERVICE CONCEPTS 639 ISBELL ROAD, #390 RENO, NV 89509 (VIA U.S. MAIL)
ROBERT BALKENBUSH, ESQ. THORNDAL ARMSTRONG 6590 S MCCARRAN BLVD., #B RENO, NV 89509 (VIA E-FLEX & U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)
TRUCKEE MEADOWS FPD PO BOX 11130 RENO, NV 89511 (VIA U.S. MAIL)	ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)
NEVADA DEPT. OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 RD FL CARSON CITY, NV 89701 (VIA U.S. MAIL)	

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7th, 2019, at Reno, Nevada.



KATRINA A. TORRES

**LIST OF EXHIBITS
CASE NO. CV18-00673
NOTICE OF APPEAL**

EXHIBIT #	DOCUMENT TITLE	# OF PAGES
Exhibit 1	Order dated May 10, 2019	10

1 Robert F. Balkenbush, Esq.
2 Nevada Bar No. 01246
3 John D. Hooks, Esq.
4 Nevada Bar No. 11605
5 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6 6590 S. McCarran Blvd., Suite B
7 Reno, Nevada 89509
8 Tel.: (775) 786-2882
9 Fax.: (775) 786-8004
10 Attorneys for: Truckee Meadows Fire Protection District, Employer
11 Public Agency Compensation Trust, Insurer
12

13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

14 IN AND FOR THE COUNTY OF WASHOE

15 VANCE TAYLOR

16 Petitioner,

CASE NO.: CV18-00673

17 vs.

DEPARTMENT NO.: 6

18 TRUCKEE MEADOWS FIRE
19 PROTECTION DISTRICT;
20 ALTERNATIVE SERVICE CONCEPTS,
21 LLC, PUBLIC AGENCY COMPENSATION
22 TRUST and the NEVADA DEPARTMENT
23 OF ADMINISTRATION APPEALS
24 OFFICER SHEILA MOORE

25 Respondents.
26 _____/

27 **RESPONDENTS' REPLY TO TAYLOR'S OPPOSITION TO MOTION TO DISMISS**
28 **PETITION FOR JUDICIAL REVIEW**

29 COME NOW, Respondents, TRUCKEE MEADOWS FIRE PROTECTION DISTRICT and
30 ALTERNATIVE SERVICE CONCEPTS, LLC, and PUBLIC AGENCY COMPENSATION
31 TRUST, by and through their attorney ROBERT F. BALKENBUSH, ESQ., of the law firm
32 THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, and hereby submit this reply
33 to Taylor's brief submitted in opposition to Respondents' motion to dismiss Taylor's petition for

1 judicial review.

2 This reply is supported by all papers and pleadings on file herein, and the following points
3 and authorities.

4 DATED this 29th day of June, 2018.

6 THORNDAL, ARMSTRONG,
7 DELK, BALKENBUSH & EISINGER

8 By: /s/ Robert F. Balkenbush

9 ROBERT F. BALKENBUSH, ESQ.

10 State Bar No. 1246

11 6590 S. McCarran Blvd., Suite B

12 Reno, Nevada 89509

13 (775) 786-2882

14 Truckee Meadows Fire Protection District,
15 Employer, Public Agency Compensation Trust,
16 And Alternative Service Concepts, LLC

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 The employer of Taylor at issue in the administrative proceeding conducted before Appeals
20 Officer Sheila Moore was the Truckee Meadows Fire Protection District (hereinafter the "TMFPD").
21 *See, ROA 1, ROA 1-8.* The insurer of Taylor's workers' compensation claim at issue in the
22 administrative proceeding conducted before Appeals Officer Sheila Moore was the Public Agency
23 Compensation Trust (hereinafter "PACT"). *ROA 1.* The third party administrator (TPA) of Taylor's
24 workers' compensation claim at issue in the administrative proceeding conducted before Appeals
25 Officer Sheila Moore was Alternative Service Concepts, LLC (hereinafter "ASC"), is. *Id.* Sheila
26 Moore is the Appeals Officer at the Nevada Department of Administration who presided over the
27 trial of the underlying contested case (Appeal No. 1701567-SYM), and who rendered the decision
28 that is the subject of Taylor's petition for judicial review. *ROA 7, ROA 1-8.* Finally, Vance Taylor

1 (hereinafter the "Taylor") was claimant or injured employee in the administrative proceeding
2 conducted before Appeals Officer Sheila Moore. *ROA 1*. Taylor is also the Petitioner in the case
3 at bar, which seeks review, by means of a petition for judicial review, of the decision made by
4 Appeals Officer Sheila Moore concerning the contested case known as Appeal No. 1701567-SYM.
5 *See, Taylor Petition for Judicial Review.*

6 In the underlying contested case (Appeal No. 1701567-SYM), the legal question presented
7 was whether Taylor was entitled to monetary compensation known as temporary total disability
8 (TTD) from September 11, 2016, to the date when he returned to his pre-injury employment in
9 November 2016, a period encompassing approximately eight weeks. *See ROA 1-8.*

11 After a hearing before Appeals Officer Moore, the Appeals Officer issued a February 28,
12 2018, decision finding that Taylor was not entitled to temporary total disability (TTD) from
13 September 11, 2016 to the date when he returned to his pre-injury employment in November 2016.
14 *See ROA 1-8.*

16 On March 30, 2018, Taylor filed a Petition for Judicial Review of the decision made under
17 Appeal Number 1701567-SYM. *See Exhibit 2 to Motion to Dismiss filed by Respondents.* Taylor,
18 however, failed to name as a respondent to his Petition for Judicial Review a party of record to the
19 administrative proceeding conducted before Appeals Officer Sheila Moore, namely the insurer of
20 his workers' compensation claim at issue in the administrative proceeding, namely the Public
21 Agency Compensation Trust (PACT). As a consequence, Taylor failed to fulfill or satisfy the
22 mandatory and jurisdictional requirements of NRS 233B.130(2)(a) as confirmed in *Washoe County*
23 *v. Otto*, 128 Nev. 424, 431-35, 282 P.3d 719, 724-27 (2012). The consequence of this failure is that
24 Taylor failed to invoke this Court's jurisdiction and, therefore, the Petition for Judicial Review must
25 be dismissed with prejudice, as this failure cannot now be remedied by filing an amended petition,
26 because the 30-day filing requirement has already lapsed or expired. *See NRS 233B.130(2)(a)(d);*
27
28

1 *Washoe County v. Otto*, 128 Nev. at 431-35, 282 P.3d at 724-27.

2 **II. REPLY**

3 While Taylor make several arguments in his opposition brief, not one permits him to avoid
4 dismissal of his petition for judicial review.

5
6 In his Opposition Brief, Taylor references proceedings conducted before an administrative
7 Hearing Officer. *See, Taylor Opposition Brief at p.3, lines 18-24; p.4, lines 1-3*. The decision on
8 appeal before this court, however, is a decision made by an Appeals Officer, not a Hearing Officer.
9 *See, Taylor Petition for Judicial Review; see also, ROA 1-8*. In this regard, in the body of the
10 Appeals Officer decision that is the subject of Taylor's petition for judicial review before this court,
11 the parties to the administrative proceeding are expressly identified as follows: The claimant is
12 Vance Taylor; the employer is Truckee Meadows Fire Protection District (TMFPD); the insurer is
13 Public Agency Compensation Trust (PACT); the third party administrator of Taylor's year 2016
14 workers' compensation claim at issue in the Appeals Officer's decision is Alternative Service
15 Concepts, LLC (ASC). *See, ROA 1, lines 15-22*.

16
17
18 In his Opposition Brief, Taylor also asserts that the undersigned as legal counsel for the
19 insurer, namely PACT, at no time during the Appeals Officer litigation notice Taylor that PACT was
20 a party to the action. *See, Taylor Opposition Brief p.3, lines 17-18; p.4, lines 7-9*. This factual
21 assertion by Taylor is contradicted by the record. In this regard, before the hearing was conducted
22 before Appeals Officer Sheila Moore, the parties served each other with documentary exhibits and
23 pre-hearing statements. On this point, for the underlying Appeals Officer case, on January 4, 2017,
24 the undersigned as legal counsel for the PACT served legal counsel for Taylor with the first
25 documentary exhibit of the insurer and employer, which was admitted into evidence as Exhibit 3.
26 *ROA 200-305; see also index to ROA filed with this Court on May 3, 2018, by the Appeals Officer*.

1 On page 1 of this documentary exhibit, it expressly states that the undersigned as legal counsel
2 represented both the PACT and TMFPD. *ROA 200*. Again, for the underlying Appeals Officer case,
3 on January 4, 2017, the undersigned as legal counsel for the PACT served on legal counsel for
4 Taylor a copy of the second documentary exhibit of the insurer and employer. *ROA 306-311*. This
5 exhibit was admitted as Exhibit 4 at the hearing of the contested case before Appeals Officer Sheila
6 Moore. *Id.* On page 1 of this documentary exhibit, it expressly states that the undersigned as legal
7 counsel represented the PACT as well as the TMFPD. *ROA at 307*. Also on January 4, 2017, and for
8 the underlying Appeals Officer case, the undersigned as legal counsel for the PACT served on legal
9 counsel for Taylor a copy of the claim history packet of the insurer and employer for the contested
10 case conducted before Appeals Officer Sheila Moore. *ROA 312-322*. On page 1 of this documentary
11 exhibit, legal counsel for the PACT expressly states that the undersigned as legal counsel represented
12 both the PACT and the TMFPD in the contested case before Appeals Officer Sheila Moore. *ROA*
13 *312*. Also on January 4, 2017, the undersigned as legal counsel for the PACT served on legal counsel
14 for Taylor a copy of a pre-hearing statement of the insurer and employer for the contested case
15 pending before Appeals Officer Sheila Moore. *ROA 347-350*. On page 1 and page 2 of this pre-
16 hearing statement, it is expressly states that the undersigned as legal counsel represented both the
17 PACT and the TMFPD in the contested case pending before Appeals Officer Sheila Moore. *ROA*
18 *347-348*. On December 8, 2016, legal counsel for the PACT served on legal counsel for Taylor a
19 copy of a notice of appearance, again expressly stating that the undersigned as legal counsel
20 represented the PACT and TMFPD in the case before Appeals Officer Sheila Moore. *ROA 351-353*.
21 Lastly, and again, the actual decision filed by the Appeals Officer, which is the decision on appeal
22 to this court through Taylor's petition for judicial review, expressly states on page 1 of the decision
23 that the PACT is the insurer of Taylor's workers' compensation at issue and a party to the
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1 administrative proceeding before the Appeals Officer. *ROA 1*.

2 In his Opposition Brief, Taylor also contends that service of the Petition for Judicial Review
3 satisfies the naming requirement under NRS 233B.130(2). *See, Taylor Opposition Brief at p.5 lines*
4 *1-7, 20-22*. Respectfully, Taylor is misinformed. Under NRS 233B.130(2), and Nevada Supreme
5 Court precedent, service of the Petition for Judicial Review is a separate subject matter jurisdiction
6 requirement from the subject matter jurisdiction requirement of naming all parties to the
7 administrative proceeding. *See, NRS 233B.130(2); Heat Frost Insulators & Allied Workers Local*
8 *16 v. Labor Comm'r of Nev.*, 134 Nev. Adv.Op.1, 400 P.3d 156 (Jan. 4, 2018) (construing "service
9 requirement" of NRS 233B.130(2)©); *Washoe County v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012)
10 (construing "naming requirement" in NRS 233B.130(2)(a)).
11

12
13 In his Opposition Brief, Taylor also contends that the underlying statutory purpose of the
14 naming requirement in NRS 233B.130(2)(a) was satisfied by Taylor's substantial compliance with
15 the provision. *See, Taylor Opposition Brief at p.4, lines 20-23*.¹ Again, however, beginning in the
16 year 2012 with the *Otto* decision, the "naming requirement" in NRS 233B.130(2)(a) became a matter
17 of "strict compliance", not "substantial compliance". *Washoe County v. Otto*, 128 Nev. at 431-35,
18 282 P.3d at 724-27. In addition, failure to strictly comply cannot be cured by Taylor through
19 amendment to the petition, because the 30-day appeal period in NRS 233B.130(2) has expired.
20 *Washoe County v. Otto*, 128 Nev. at 431-35, 282 P.3d at 724-27. The decision made by the Appeals
21 Officer was filed and served on the parties by mail on February 28, 2018 and, therefore, the 30-day
22 appeal period expired on or about Monday, April 2, 2018. *See, ROA 1-8; see also, NRS*
23 *233B.130(2)(d); NRCP 6(a)(e)*.
24
25

26
27 ¹ In his Opposition Brief, Taylor references the "naming requirement" as simply a "notice provision". *See,*
28 *Taylor Opposition Brief at p.4, lines 20-23*.

1 Lastly, in his Opposition Brief, Taylor asserts that the *Otto* decision does not apply to the case
2 at bar. Unfortunately, Taylor cites no legal authority for this proposition, but simply proffers
3 argument. Respectfully, Respondents disagree, and here assert that the *Otto* decision applies to all
4 cases, including the case at bar, since the date of its issuance in the year 2012.
5

6 **III. CONCLUSION**

7 In the present case, PACT was a party to the underlying administrative proceeding before the
8 Appeals Officer, and was identified as such in the resulting and appealed decision. While Taylor
9 timely filed with this Court his Petition for Judicial Review of the decision made under Appeal
10 Number 1701567-SYM, Taylor failed to name PACT as a Respondent in the Petition for Judicial
11 Review and, therefore, failed to meet the mandatory and jurisdictional requirements of NRS
12 233B.130(2)(a) as confirmed in *Washoe County v. Otto*, 128 Nev. 424, 431-35, 282 P.3d 719, 724-27
13 (2012). Because Taylor failed to invoke this Court's jurisdiction, his Petition for Judicial Review
14 must be dismissed. Furthermore, the 30-day filing period promulgated in NRS 233B.130(2)(d) has
15 now elapsed and Taylor cannot now correct or otherwise amend his petition to effect strict
16 compliance with the the mandatory and jurisdictional requirements of NRS 233B.130(2)(a)(d). *Id.*
17
18

19 DATED this 29th day of June, 2018.

20 THORNDAL, ARMSTRONG,
21 DELK, BALKENBUSH & EISINGER

22 By: /s/ Robert F. Balkenbush
23 ROBERT F. BALKENBUSH, ESQ.
24 State Bar No. 1246
25 6590 S. McCarran Blvd., Suite B
26 Reno, Nevada 89509
27 (775) 786-2882
28 Truckee Meadows Fire Protection District,
 Employer, Public Agency Compensation Trust,
 And Alternative Service Concepts, LLC

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that this document does not contain the social security
number of any person.

DATED this 29th day of June, 2018.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: /s/ Robert F. Balkenbush
ROBERT F. BALKENBUSH, ESQ.
State Bar No. 1246
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
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Truckee Meadows Fire Protection District,
Employer, Public Agency Compensation Trust,
And Alternative Service Concepts, LLC

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk
3 Balkenbush & Eisinger, and that on this date I caused the foregoing **RESPONDENTS' REPLY**
4 **TO TAYLOR'S OPPOSITION TO MOTION TO DISMISS PETITION FOR JUDICIAL**
5 **REVIEW** to be served on all parties to this action by:

6 XX Placing an original or true copy thereof in a sealed, postage prepaid, envelope
7 in the United States mail at Reno, Nevada.

8 Fully addressed as follows:

9 Jason Guinasso, Esq.
10 Hutchison & Steffen, LLC
11 500 Damonte Ranch Parkway, Suite 980
12 Reno, NV 89521

13 DATED this 29th day of June, 2018.

14 By: /s/ Natalie L. Steinhardt
15 NATALIE L. STEINHARDT
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