

IV.

JURISDICTION

1. Standard Of Review

Judicial review of a final decision of an agency is governed by NRS 233B.135.

NRS 233B.135 Judicial review: Manner of conducting; burden of; standard for review.

1. 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.

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

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

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

(a) In violation of constitutional or statutory provisions;

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

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

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

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

The standard of review is whether there is substantial evidence to support the underlying decision. The reviewing court should limit its review of administrative decisions to determine if they are based upon substantial evidence. North Las Vegas v. Public Service Comm'n., 83 Nev. 278, 291, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial

1 evidence is that quantity and quality of evidence which a reasonable man would accept as
2 adequate to support a conclusion. See, Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270
3 (1993); and Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839 (1997).

4 When reviewing administrative court decisions, the Court has held that, on factual
5 determinations, the findings and ultimate decisions of an appeals officer are not to be disturbed
6 unless they are clearly erroneous or otherwise amount to an abuse of discretion. Nevada Industrial
7 Comm'n. v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977). An administrative determination
8 regarding a question of fact will not be set aside unless it is against the manifest weight of the
9 evidence. Nevada Indus. Comm'n. v. Hildebrand, 100 Nev. 47, 51, 675 P.2d 401 (1984). A
10 decision by an appeals officer that is based upon the credibility of Respondent and other witnesses
11 is "not open to appellate review." Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 585, 854 P.2d
12 862, 867 (1993).

13 In determining whether an administrative decision is supported by substantial evidence, the
14 methodology of the District Court is also well-defined. First, for each issue appealed, the
15 pertinent rule of law is identified. Thereafter, the Record on Appeal is reviewed to determine
16 whether the agency's decision on each issue is supported by substantial factual evidence. State
17 Dep't of Motor Vehicles v. Torres, 105 Nev. 558, 560, 799 P.2d 959, 960-961 (1989).

18 If the decision of the administrative agency on the appealed issue is supported by
19 substantial factual evidence in the Record on Appeal, the District Court must affirm the decision
20 of the agency as to that issue. On the other hand, a decision by an administrative agency that lacks
21 support in the form of substantial evidence is arbitrary or capricious and, thus, an abuse of
22 discretion that warrants reversal. NRS 233B.135(3); Titanium Metals Corp. v. Clark County, 99
23 Nev. 397, 399, 663 P.2d 355, 357 (1983).

24 Substantial evidence has been defined as that quantity and quality of evidence which a
25 reasonable man could accept as adequate to support a conclusion. State Emp't Sec. Dep't v.
26 Hilton Hotels Corp., 102 Nev. 606, 608 at n.1, 729 P.2d 497 (1986). Additionally, substantial
27 evidence is not to be considered in isolation from opposing evidence, but evidence that survives
28 whatever in the record fairly detracts from its weight. Universal Camera Corp. v. NLRB, 340 U.S.

1 474, 477, 488 (1951); Container Stevedoring Co. v. Director. OWCP, 935 F.2d 1544, 1546 (9th
2 Cir. 1991). This latter point is clearly the significance of the requirement in NRS 233B.135(3)(e)
3 which states that the reviewing court consider the whole record.

4 While the Court is not required to give deference to pure legal questions determined by the
5 agency, those conclusions of the agency which are "closely related to the agency's view of the
6 facts, are entitled to deference, and will not be disturbed if they are supported by substantial
7 evidence." Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

8 V.

9 LEGAL ARGUMENT

10 A. Standard at the Appeals Officer Level.

11 It is the Petitioner, not the Respondents, who has the burden of proving his case, and that is
12 by a preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567,
13 688 P.2d 324 (1984); Holley v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323
14 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

15 In attempting to prove his case, the Petitioner has the burden of going beyond speculation
16 and conjecture. That means that the Petitioner must establish the work connection of his injuries,
17 the causal relationship between the work-related injury and his disability, the extent of his
18 disability, and all facets of the claim by a preponderance of all of the evidence. To prevail, a

19 Petitioner must present and prove more evidence than an amount which would make his case and
20 his opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v.
21 Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3,
22 A. Larson, The Law of Workmen's Compensation, § 80.33(a).

23 NRS 616A.010 makes it clear that:

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

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28 ...

1 B. The Denial of the Claim was Legal and Proper

2 Here, Petitioner argues that he has a non-occupational hearing loss that was exacerbated
3 over time by his employment. However, workers' compensation does not recognize such a claim.
4 To provide context for this analysis, there are essentially two types of claims that can be made
5 under the Nevada workers' compensation system: acute injury claims which are governed by NRS
6 616C; and occupational disease claims which are governed by NRS 617.

7 Acute injury claims arise when an employee is able to establish "by a preponderance of the
8 evidence that the employee's injury arose out of and in the course of his or her employment." NRS
9 616C.150. To sustain that burden, the employee must prove a statutory "accident" and "injury."
10 NRS 616A.030 defines an accident as "... an unexpected or unforeseen event happening suddenly
11 and violently, with or without human fault, and producing at the time objective symptoms of an
12 injury." Furthermore, NRS 616A.265 defines an injury as "... a sudden and tangible happening of
13 a traumatic nature, producing an immediate or prompt result which is established by medical
14 evidence ..."

15 Occupational disease claims on the other hand have no requirement to establish an
16 "accident" or "injury." Instead, making out a claim for an occupational disease is governed by
17 NRS 617.440 as follows:

18 NRS 617.440 Requirements for occupational disease to be
19 deemed to arise out of and in course of employment;
applicability.

20 1. An occupational disease defined in this chapter shall be
21 deemed to arise out of and in the course of the employment if:

22 (a) There is a direct causal connection between the
conditions under which the work is performed and the occupational
disease;

23 (b) It can be seen to have followed as a natural incident of
the work as a result of the exposure occasioned by the nature of the
employment;

24 (c) It can be fairly traced to the employment as the
proximate cause; and

25 (d) It does not come from a hazard to which workers would
have been equally exposed outside of the employment.

26 2. The disease must be incidental to the character of the
business and not independent of the relation of the employer and
employee.

27 3. The disease need not have been foreseen or expected, but
28 after its contraction must appear to have had its origin in a risk

connected with the employment, and to have flowed from that source as a natural consequence.

4. In cases of disability resulting from radium poisoning or exposure to radioactive properties or substances, or to roentgen rays (X rays) or ionizing radiation, the poisoning or illness resulting in disability must have been contracted in the State of Nevada.

5. The requirements set forth in this section do not apply to claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485 or 617.487.

Here, Petitioner is not alleging that he has either an acute injury claim or an occupational disease claim. Rather, Petitioner argues that he has a non-occupational disease that was made worse over time by his employment. Because an acute injury is not being alleged, the provisions of NRS 616C do not come into play. If anything, this matter would be governed exclusively by NRS 617. Therein lies the problem with Petitioner's argument.

Petitioner argues that this claim should have been analyzed under NRS 616C.175(1) which allows a Petitioner the mechanism to prove that an *acute injury* has aggravated a non-industrial condition. That statute provides in pertinent part as follows:

1. The resulting condition of an employee who:

(a) Has a preexisting condition from a cause or origin that did not arise out of or in the course of the employee's current or past employment; and

(b) Subsequently sustains an *injury by accident* arising out of and in the course of his or her employment which aggravates, precipitates or accelerates the preexisting condition, E shall be deemed to be an *injury by accident* that is compensable pursuant to the provisions of *chapters 616A to 616D, inclusive, of NRS*, unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition.

(emphasis added)

As the highlighted portions of the above statute make clear, NRS 616C.175(1) only applies to acute injuries. Chapter 617 is even explicitly carved out of the statute. It would have been very simple for the statute above to reach from chapter 616A to 617. Yet it does not. This is the main problem with Petitioner's argument; there is no mechanism which would allow a claim for a non-occupational disease which has allegedly gotten worse over time due to work conditions. Even if the medical evidence supported such a scenario, Petitioner's argument that the Appeals Officer committed legal error for failing to consider NRS 616.175 is demonstrably incorrect.

1 Without the benefit of NRS 616C.175, Petitioner concedes that he cannot prove an acute
2 injury and is left trying to prove that he has an occupational disease under NRS 617. As the
3 Appeals Officer properly found, Petitioner fails in carrying that burden.

4 To begin with, Petitioner is making a claim for hearing loss. As noted above and as
5 Petitioner concedes, Petitioner's prior claim for hearing loss was denied. Petitioner failed to
6 contest that claim denial. Based on that failure to appeal, it was conclusively proven that
7 Petitioner's hearing loss was not work related. That claim denial stands and Petitioner is barred
8 from making any new claims for the same condition. (See Reno Sparks Convention Visitors
9 Authority v. Jackson, 112 Nev. 62, 910 P.2d 267 (1996))

10 The fact that Petitioner is now arguing that the same non-occupational hearing loss is now
11 worse is of no consequence. The hearing loss is non-industrial. It does not matter how bad it gets,
12 it will always be non-industrial per the 2005 determination.

13 Indeed, NRS 617.440 requires a "direct causal connection between the conditions under
14 which the work is performed and the occupational disease." The alleged occupational disease in
15 this case is hearing loss. However, Petitioner is not alleging that his job caused his hearing loss;
16 Petitioner is alleging that his job made his non-industrial hearing loss worse. This type of situation
17 is not covered by NRS 617.440.

18 Even if Petitioner could somehow make a showing that the worsening of a non-industrial
19 condition over time could be deemed compensable Nevada industrial insurance, Petitioner would
20 not be able to carry his burden before the Appeals Officer and certainly cannot carry his burden
21 before this Court. At the Appeals Officer level, Petitioner needed to prove by a preponderance of
22 the evidence that his claimed condition was work related. The only evidence which was presented
23 to the Appeals Officer were the reports of Dr. Blake and Dr. Theobald.

24 Though Dr. Blake "checks the box" on the C-4 form that she believed Petitioner's hearing
25 loss was industrial, her reporting is flawed as it is obviously incomplete. She did not have
26 Petitioner's whole file and apparently did not know about Petitioner's actual work situation given
27 that Employer modified his position after the 2005 claim so that Petitioner would not be exposed
28 to loud noises and that he had been working a primarily desk job for the last several years.

1 As for Dr. Theobald, his reporting is inconclusive as he explains that Petitioner's hearing
2 loss could be either from his employment or from some underlying neurological condition. Put
3 simply, there was not enough evidence to prove to the Appeals Officer by a preponderance that
4 Petitioner's non-occupational hearing loss was worsened over time by his employment.

5 However, the standard at this Court on questions of fact is whether the Appeals Officer's
6 decision was afflicted by clear error. There is no clear error here. Though Respondents will
7 concede that there is support for both sides on the question of whether Petitioner's non-industrial
8 occupational disease was worsened over time by his job, that question is not for this Court to
9 decide. This Court must decide whether the Appeals Officer *could* have come to the conclusion
10 that she did. (Hilton Hotels Corp., Id.) Even if this Court would have decided this case differently,
11 as a court of appeal, this Court is simply not permitted to substitute its judgment for the
12 administrative officer that ultimately decided this case. (NRS 233B.135(3); Titanium Metals
13 Corp., Id.)

14 In conclusion, Petitioner's entire argument rests on establishing an exacerbation claim
15 under NRS 616C.175. However, that statute only applies to *acute* exacerbations of non-industrial
16 conditions. Petitioner is alleging an exacerbation over time to a non-industrial condition which is
17 simply not contemplated by NRS 616C.175 or any other statutory mechanism which Respondents
18 are aware of. Without a legal framework to establish a claim, Petitioner's arguments must fail. The

19 Appeals Officer's Decision was legally proper and supported by substantial evidence. This
20 Petition must be denied and the Appeals Officer affirmed.

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1 VI.

2 CONCLUSION

3 Based upon the foregoing, the Appeals Officer's Decision and Order was appropriate. The
4 Appeals Officer's Decision and Order was based on sound legal theories and factual conclusions
5 that are amply supported by the record.

6 Therefore, Respondents respectfully ask this Court to affirm the Appeals Officer's
7 Decision and Order and deny Petitioner's Petition for Judicial Review.

8 Dated this 9th day of April, 2018.

9 Respectfully submitted,

10 LEWIS, BRISBOIS, BISGAARD & SMITH,
11 LLP

12 DANIEL L. SCHWARTZ, ESQ.
13 2300 W. Sahara Ave. Ste. 300
14 Las Vegas, Nevada 89102
15 Attorney for Respondents
16
17
18

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate procedure.

Dated this 9 of April, 2018.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By

DANIEL L. SCHWARTZ, ESQ. (005125)
2300 W. Sahara Ave. Ste. 300
Las Vegas, Nevada 89102
Attorneys for Respondents

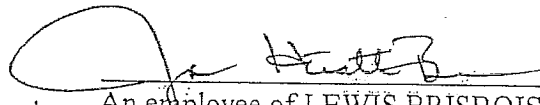
CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 9th day of April, 2018, service of the attached **RESPONDENTS' ANSWERING BRIEF** was made this date by depositing a true copy of the same for mailing, first class mail and electronic service, as follows:

Lisa Anderson, Esq.
GREENMAN, GOLDBERG, RABY & MARTINEZ
601 South Ninth Street
Las Vegas, NV 89101

City of Henderson
Attn: Sally Ihmels
P.O. Box 95050, MSC 127
Henderson, NV 89009-5050

CCMSI
Sue Riccio
P.O. Box 35350
Las Vegas, NV 89133



An employee of LEWIS BRISBOIS BISGAARD &
SMITH LLP

A-17-759871-J

DISTRICT COURT
CLARK COUNTY, NEVADA

Worker's Compensation
Appeal

COURT MINUTES

May 07, 2018

A-17-759871-J Jared Spangler, Petitioner(s)
vs.
Henderson City of, Respondent(s)

May 07, 2018 3:00 AM Petition for Judicial Review

HEARD BY: Scotti, Richard F. COURTROOM: Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- The Court notes that it has not yet received a courtesy copy of the Transmittal of the Record on Appeal filed 9/12/2018. The Court instructs Petitioner to provide a courtesy copy of the Record on Appeal to Chambers no later than Friday, May 11, 2018, before noon.

This matter is hereby CONTINUED to the May 16, 2018 Chambers Calendar.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/05/09/18

PRINT DATE: 05/09/2018

Page 1 of 1

Minutes Date: May 07, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

May 16, 2018

A-17-759871-J Jared Spangler, Petitioner(s)
vs.
Henderson City of, Respondent(s)

May 16, 2018 3:00 AM Petition for Judicial Review

HEARD BY: Scotti, Richard F.

COURTROOM:

COURT CLERK: Madalyn Kearney

JOURNAL ENTRIES

- The Court GRANTS Petitioner's Petition for Judicial Review, REVERSES the Decision and Order dated July 20, 2017, and REMANDS this matter back to the Appeals Officer for further proceedings. The Appeals Officer committed clear error of law, as explained below.

Petitioner claims that, in the course of his employment he incurred an aggravation to his pre-existing hearing loss. The Appeals Officer wrongly concluded that the injury was not compensable for several invalid reasons. First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612 which prevented Petitioner from recovering because the origin of the injury did not arise out of and in the course of employment. The Appeals officer failed to consider NRS 616.175(1) which permits compensation for certain pre-existing conditions where the origin of the injury did not arise out of and in the course of employment, but the aggravation did. Second, the Appeals Officer wrongly concluded that the aggravation of the preexisting injury did not arise by an accident, by interpreting the term accident too narrowly. The term accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which destroys those parts of the human body responsible for hearing, is a separate accident. Such destruction each occasion is sudden and violent. Further, such accidents that destroy hearing are objective at the time in that the harm done to the ear is capable of objective, as opposed to subjective, evaluation. The term accident does not require that some person discovered the objective evidence at the time of the accident, only that such objective indicia of the injury arose at the time. Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove by a preponderance of that the claim was compensable. NRS 616C.175 places the initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he

PRINT DATE: 05/17/2018

Page 1 of 2

Minutes Date: May 16, 2018

had a preexisting condition, and that the preexisting condition was aggravated by an accident in the course of an in his employment, resulting in a subsequent injury. Then the burden shifts to the insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a substantial contributing cause of the resulting condition. This matter is remanded back to the Appeals Officer to conduct a further hearing and applying the law as set forth herein. In this further hearing the Appeals Officer must re-evaluate the evidence, to determine whether Petitioner suffered accidents in the course of his employment which aggravated his preexisting conditions, and then to determine whether the insurer met its burden of proving, by a preponderance of the evidence, that the subsequent injury was not a substantial contributing cause of the Petitioners aggravation to a preexisting injury. The Court elects not to consider, at this time, Petitioner's other arguments of errors, and contention of lack of substantial evidence. The Petitioner shall prepare the proposed order, consistent herewith, adding appropriate context as appropriate, and correcting for any scrivener errors.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Daniel Schwartz, Esq. (Lewis Brisbois Bisgaard & Smith LLP) and Lisa Anderson, Esq. (Greenman, Goldberg, Raby & Martínez) / mk 5/17/18

Steven D. Grierson

1 **ORDG**

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3 Nevada Bar No. 011332

4 **LISA M. ANDERSON, ESQ.**

5 Nevada Bar No. 004907

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11 Email: landerson@ggrmlawfirm.com

12 *Attorneys for Petitioner*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **JARED SPANGLER,**

16 Petitioner

17 vs.

18 **CITY OF HENDERSON, CANNON**
19 **COCHRAN MANAGEMENT**
20 **SERVICE, INC., and THE DEPARTMENT**
21 **OF ADMINISTRATION, HEARINGS**
22 **DIVISION,**

23 Respondents.

**PLEASE NOTE
DEPARTMENT CHANGE**

CASE NO. : A-17-759871-J

DEPT. NO. : XXVIII *J*

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

24 This matter came before this Court on the Petition for Judicial Review filed by the
25 Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ.
26 of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, CITY OF
27 HENDERSON and CCMSI, were represented by JOEL P. REEVES, ESQ. of the law firm
28 LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

JUN 11 2018

1248

1 Petitioner claims that, in the course of his employment, he incurred an aggravation to his
2 pre-existing hearing loss. The Appeals Officer concluded that the injury was not compensable
3 for several invalid reasons.

4
5 First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612
6 which prevented Petitioner from recovering because the origin of the injury did not arise out of
7 and in the course of employment. The Appeals Officer failed to consider NRS 616C.175(1)
8 which permits compensation for certain pre-existing conditions where the origin of the injury
9 did not arise out of and in the course of employment, but the aggravation did.

10 NRS 616C.175(1) states:

11 1. The resulting condition of an employee who:

12 (a) Has a preexisting condition from a cause or origin that did
13 not arise out of or in the course of the employee's current or past
14 employment; and

15 (b) Subsequently sustains an injury by accident arising out of
16 and in the course of his or her employment which aggravates,
17 precipitates or accelerates the preexisting condition,
18 shall be deemed to be an injury by accident that is compensable
19 pursuant to the provisions of chapters 616A to 616D, inclusive, of
20 NRS, unless the insurer can prove by a preponderance of the
21 evidence that the subsequent injury is not a substantial
22 contributing cause of the resulting condition.

23
24 Second, the Appeals Officer wrongly concluded that the aggravation of the pre-existing
25 injury did not arise by an accident, by interpreting the term accident too narrowly. The term
26 accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly
27 and violently, with or without human fault, and producing at the time objective symptoms of an
28 injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which
destroys those parts of the human body responsible for hearing, is a separate accident. Such
destruction each occasion is sudden and violent. Further, such accidents that destroy hearing
are objective at the time in that the harm done to the ear is capable of objective, as opposed to

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

1 subjective, evaluation. The term accident does not require that some person discovered the
2 objective evidence at the time of the accident, only that such objective indicia of the injury arose
3 at the time.

4
5 NRS 616A.030 defines "accident" as:

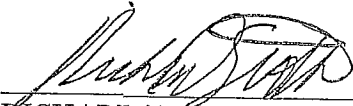
6 "Accident" means an unexpected or unforeseen event happening
7 suddenly and violently, with or without human fault, and
8 producing at the time objective symptoms of an injury.

9 Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove
10 by a preponderance of the evidence that the claim was compensable. NRS 616C.175 placed the
11 initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he had
12 a pre-existing condition, and that the pre-existing condition was aggravated by an accident in
13 the course of his employment, resulting in a subsequent injury. Then the burden shifts to the
14 insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a
15 substantial contributing cause of the resulting condition.

16
17 This matter is remanded back to the Appeals Officer to conduct a further hearing and
18 applying the law as set forth herein. In this further hearing, the Appeals Officer must reevaluate
19 the evidence, to determine whether Petitioner suffered accidents in the course of his employment
20 which aggravated his pre-existing conditions, and then to determine the course of his
21 employment which aggravated his pre-existing conditions, and then to determine whether the
22 insurer met its burden of proving by a preponderance of the evidence, that the subsequent injury
23 was not a substantial contributing cause of the Petitioners aggravation to a pre-existing injury.
24 The Court elects not to consider, at this time, Petitioner's other arguments of errors, and
25 contention of lack of substantial evidence.
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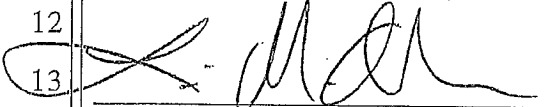
1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.

6
7
8 
9 RICHARD F. SCOTTI
DISTRICT COURT JUDGE

10 Submitted by:

11 GREENMAN, GOLDBERG, RABY & MARTINEZ

12
13 
14 LISA M. ANDERSON, ESQ.

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Attorneys for Petitioner

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10 Email: landerson@ggrmlawfirm.com
11 Email: gmartinez@ggrmlawfirm.com
12 *Attorneys for Petitioner*

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

15 JERAD SPANGLER,)
16)
17 Petitioner)
18)
19 vs.)
20)
21 CITY OF HENDERSON, CANNON)
22 COCHRAN MANAGEMENT)
23 SERVICES, INC., and THE)
24 DEPARTMENT OF ADMINISTRATION,)
25 HEARINGS DIVISION,)
26)
27 Respondents.)
28)

CASE NO. : A-17-759871-J
DEPT. NO. : II

29 **NOTICE OF ENTRY OF ORDER**

30 TO: All parties of interest.

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

32 ///

33 ///

34 ///

35 ///

36 ///

1 entered in the above-entitled matter on the 18th day of June, 2018, a copy of which is attached.

2 DATED this 19th day of June, 2018.

3 GREENMAN, GOLDBERG, RABY & MARTINEZ

4
5 By: 

6 LISA M. ANDERSON, ESQ.

7 Nevada Bar No. 4907


8 GABRIEL A. MARTINEZ, ESQ.

9 Nevada Bar No. 326

10 601 South Ninth Street

11 Las Vegas, Nevada 89101

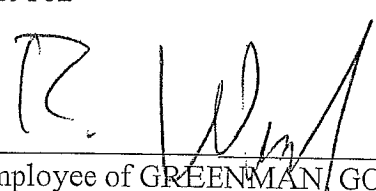
12 Attorneys for Petitioner


Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GREENMAN, GOLDBERG, RABY & MARTINEZ, and that on the 19th day of June, 2018, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and depositing a true and correct copy in a sealed envelope, postage fully prepaid, addressed as follows:

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
2300 West Sahara Avenue
Suite 300, Box 28
Las Vegas, Nevada 89102


An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

Steven D. Grierson

1 **ORDG**
2 **THADDEUS J. YUREK III, ESQ.**
3 Nevada Bar No. 011332
4 **LISA M. ANDERSON, ESQ.**
5 Nevada Bar No. 004907
6 **GREENMAN, GOLDBERG, RABY & MARTINEZ**
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8 Las Vegas, Nevada 89101
9 Phone: (702) 384-1616
10 Facsimile: (702) 384-2990
11 Email: landerson@ggrmlawfirm.com
12 *Attorneys for Petitioner*

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

15 **JARED SPANGLER,**
16 **Petitioner**

17 **vs.**

18 **CITY OF HENDERSON, CANNON**
19 **COCHRAN MANAGEMENT**
20 **SERVICE, INC., and THE DEPARTMENT**
21 **OF ADMINISTRATION, HEARINGS**
22 **DIVISION,**

23 **Respondents.**

PLEASE NOTE
DEPARTMENT CHANGE

CASE NO. : A-17-759871-J
DEPT. NO. : XXVIII

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

24 This matter came before this Court on the Petition for Judicial Review filed by the
25 Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ.
26 of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, CITY OF
27 HENDERSON and CCMSI, were represented by JOEL P. REEVES, ESQ. of the law firm
28 LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

JUN 11 2018

1255

1 Petitioner claims that, in the course of his employment, he incurred an aggravation to his
2 pre-existing hearing loss. The Appeals Officer concluded that the injury was not compensable
3 for several invalid reasons.

4
5 First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612
6 which prevented Petitioner from recovering because the origin of the injury did not arise out of
7 and in the course of employment. The Appeals Officer failed to consider NRS 616C.175(1)
8 which permits compensation for certain pre-existing conditions where the origin of the injury
9 did not arise out of and in the course of employment, but the aggravation did.

10 NRS 616C.175(1) states:

11 1. The resulting condition of an employee who:

12 (a) Has a preexisting condition from a cause or origin that did
13 not arise out of or in the course of the employee's current or past
14 employment; and

15 (b) Subsequently sustains an injury by accident arising out of
16 and in the course of his or her employment which aggravates,
17 precipitates or accelerates the preexisting condition,
18 shall be deemed to be an injury by accident that is compensable
19 pursuant to the provisions of chapters 616A to 616D, inclusive, of
20 NRS, unless the insurer can prove by a preponderance of the
21 evidence that the subsequent injury is not a substantial
22 contributing cause of the resulting condition.

23
24 Second, the Appeals Officer wrongly concluded that the aggravation of the pre-existing
25 injury did not arise by an accident, by interpreting the term accident too narrowly. The term
26 accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly
27 and violently, with or without human fault, and producing at the time objective symptoms of an
28 injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which
destroys those parts of the human body responsible for hearing, is a separate accident. Such
destruction each occasion is sudden and violent. Further, such accidents that destroy hearing
are objective at the time in that the harm done to the ear is capable of objective, as opposed to

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

1 subjective, evaluation. The term accident does not require that some person discovered the
2 objective evidence at the time of the accident, only that such objective indicia of the injury arose
3 at the time.

4
5 NRS 616A.030 defines "accident" as:


6 "Accident" means an unexpected or unforeseen event happening
7 suddenly and violently, with or without human fault, and
8 producing at the time objective symptoms of an injury.

9 Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove
10 by a preponderance of the evidence that the claim was compensable. NRS 616C.175 placed the
11 initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he had
12 a pre-existing condition, and that the pre-existing condition was aggravated by an accident in
13 the course of his employment, resulting in a subsequent injury. Then the burden shifts to the
14 insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a
15 substantial contributing cause of the resulting condition.
16

17 This matter is remanded back to the Appeals Officer to conduct a further hearing and
18 applying the law as set forth herein. In this further hearing, the Appeals Officer must reevaluate
19 the evidence, to determine whether Petitioner suffered accidents in the course of his employment
20 which aggravated his pre-existing conditions, and then to determine the course of his
21 employment which aggravated his pre-existing conditions, and then to determine whether the
22 insurer met its burden of proving by a preponderance of the evidence, that the subsequent injury
23 was not a substantial contributing cause of the Petitioners aggravation to a pre-existing injury.
24 The Court elects not to consider, at this time, Petitioner's other arguments of errors, and
25 contention of lack of substantial evidence.
26
27
28

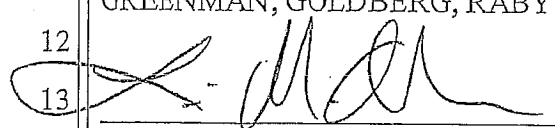
1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.

6
7 
8 RICHARD F. SCOTTI
9 DISTRICT COURT JUDGE
10 

10 Submitted by:

11 GREENMAN, GOLDBERG, RABY & MARTINEZ

12 
13 LISA M. ANDERSON, ESQ.

14 Nevada Bar No. 004907

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16 601 South Ninth Street

17 Las Vegas, Nevada 89101

18 (702) 384-1616

19 *Attorneys for Petitioner*

20 Approved as to form and content:

21 LEWIS BRISBOIS-BISGAARD & SMITH
22 

23 JOEL REEVES, ESQ.

24 Nevada Bar No. 013231

25 2300 West Sahara Avenue

26 Suite 300, Box 28

27 Las Vegas, Nevada 89102

28 *Attorneys for Respondent*

1 NOAS
DANIEL L. SCHWARTZ, ESQ.
2 Nevada Bar No. 5125
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Facsimile: (702) 366-9563
5 Email: daniel.schwartz@lewisbrisbois.com
Attorneys for Respondents,
6 *City of Henderson and Cochran*
Management Services, Inc. (CCMSI)
7
8
9

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JARED SPANGLER,

12 Petitioner,

13 v.

14 CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT SERVICES,
15 INC. (CCMSI), THE DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
16 APPEALS OFFICE,

Respondents.
17

CASE NO.: A-17-759871-J

DEPT NO.: II

18 NOTICE OF APPEAL

19 TO: JARED SPANGLER, Petitioner

20 TO: LISA M. ANDERSON, ESQ., Respondent's Attorney

21 NOTICE IS HEREBY GIVEN that Respondents, CITY OF HENDERSON and CANNON
22 COCHRAN MANAGEMENT SERVICES, INC. (CCMSI), (hereinafter referred to as
23 "Respondents"), in the above-entitled action, hereby appeal to the Supreme Court of the State of
24 Nevada from the attached "Order" entered in this action on or about June 18, 2018 which granted
25

26 ...

27 ...

1 Petitioner's Petition for Judicial Review and the "Notice of Entry of Order" filed on or about June 19,
2 2018.

3 DATED this 2 day of July, 2018.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
8 By:

DANIEL L. SCHWARTZ, ESQ.

LEWIS BRISBOIS BISGAARD & SMITH, LLP

2300 West Sahara Avenue, Suite 300, Box 28

Las Vegas, Nevada 89102

Attorneys for Respondents

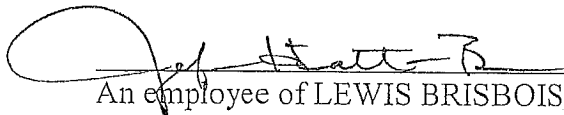
1 CERTIFICATE OF MAILING

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 2nd day of
3 July, 2018, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a true
4 copy of the same for mailing, first class mail and/or electronic service, as follows:

5 Lisa Anderson, Esq.
6 GREENMAN, GOLDBERG, RABY & MARTINEZ
7 601 South Ninth Street
8 Las Vegas, NV 89101

9 City of Henderson
10 Attn: Sally Ihmels
11 P.O. Box 95050, MSC 127
12 Henderson, NV 89009-5050

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

17 
18 An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF APPEAL

filed in case number: A-17-759871-J

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

- OR -

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

☐ A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

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

Date: 7/2/18

(Signature)

DANIEL L. SCHWARTZ, ESQ.

(Print Name)

RESPONDENTS
(Attorney for)

Steven D. Grierson

1 NEOJ
2 LISA M. ANDERSON, ESQ.
3 Nevada Bar No. 4907
4 GABRIEL A. MARTINEZ, ESQ.
5 Nevada Bar No. 326
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9 Phone: 702.384.1616 ~ Fax: 702.384.2990
10 Email: landerson@ggrmlawfirm.com
11 Email: gmartinez@ggrmlawfirm.com
12 Attorneys for Petitioner

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 JERAD SPANGLER,
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vs.

CASE NO. : A-17-759871-J
DEPT. NO. : II

15 CITY OF HENDERSON, CANNON
16 COCHRAN MANAGEMENT
17 SERVICES, INC., and THE
18 DEPARTMENT OF ADMINISTRATION,
19 HEARINGS DIVISION,
20 Respondents.

21 NOTICE OF ENTRY OF ORDER

22 TO: All parties of interest.

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

24 ///

25 ///

26 ///

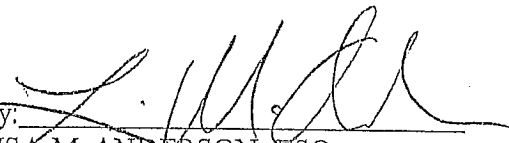
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28 ///

1 entered in the above-entitled matter on the 18th day of June, 2018, a copy of which is attached.

2 DATED this 19th day of June, 2018.

3 GREENMAN, GOLDBERG, RABY & MARTINEZ

4
5 
6 By: LISA M. ANDERSON, ESQ.

7 Nevada Bar No. 4907
8 GABRIEL A. MARTINEZ, ESQ.

9 Nevada Bar No. 326
601 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Petitioner

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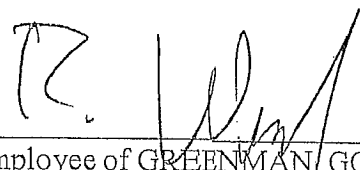
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GREENMAN, GOLDBERG, RABY & MARTINEZ, and that on the 14th day of June, 2018, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and depositing a true and correct copy in a sealed envelope, postage fully prepaid, addressed as follows:

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
2300 West Sahara Avenue
Suite 300, Box 28
Las Vegas, Nevada 89102


An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

Steven D. Grierson

ORDG
THADDEUS J. YUREK III, ESQ.
Nevada Bar No. 011332
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601 South Ninth Street
Las Vegas, Nevada 89101
Phone: (702) 384-1616
Facsimile: (702) 384-2990
Email: landerson@ggrmlawfirm.com
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

JARED SPANGLER,
Petitioner

vs.

CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT
SERVICE, INC., and THE DEPARTMENT
OF ADMINISTRATION, HEARINGS
DIVISION,

Respondents.

PLEASE NOTE
DEPARTMENT CHANGE

CASE NO. : A-17-759871-J
DEPT. NO. : XXVIII

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

This matter came before this Court on the Petition for Judicial Review filed by the Petitioner, JARED SPANGLER. Petitioner was represented by LISA M. ANDERSON, ESQ. of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, CITY OF HENDERSON and CCMCI, were represented by JOEL P. REEVES, ESQ. of the law firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

JUN 11 2018

MT

1 Petitioner claims that, in the course of his employment, he incurred an aggravation to his
2 pre-existing hearing loss. The Appeals Officer concluded that the injury was not compensable
3 for several invalid reasons.
4

5 First, the Appeals Officer wrongly held that this matter was governed by NRS 616B.612
6 which prevented Petitioner from recovering because the origin of the injury did not arise out of
7 and in the course of employment. The Appeals Officer failed to consider NRS 616C.175(1)
8 which permits compensation for certain pre-existing conditions where the origin of the injury
9 did not arise out of and in the course of employment, but the aggravation did.
10

11 NRS 616C.175(1) states:

12 1. The resulting condition of an employee who:

13 (a) Has a preexisting condition from a cause or origin that did
14 not arise out of or in the course of the employee's current or past
15 employment; and

16 (b) Subsequently sustains an injury by accident arising out of
17 and in the course of his or her employment which aggravates,
18 precipitates or accelerates the preexisting condition,
19 shall be deemed to be an injury by accident that is compensable
20 pursuant to the provisions of chapters 616A to 616D, inclusive, of
21 NRS, unless the insurer can prove by a preponderance of the
22 evidence that the subsequent injury is not a substantial
23 contributing cause of the resulting condition.
24

25 Second, the Appeals Officer wrongly concluded that the aggravation of the pre-existing
26 injury did not arise by an accident, by interpreting the term accident too narrowly. The term
27 accident is defined in NRS 616A.030 as an unexpected or unforeseen event happening suddenly
28 and violently, with or without human fault, and producing at the time objective symptoms of an
injury. The Court interprets NRS 616A.030 to mean that each incident of a loud noise, which
destroys those parts of the human body responsible for hearing, is a separate accident. Such
destruction each occasion is sudden and violent. Further, such accidents that destroy hearing
are objective at the time in that the harm done to the ear is capable of objective, as opposed to

1 subjective, evaluation. The term accident does not require that some person discovered the
2 objective evidence at the time of the accident, only that such objective indicia of the injury arose
3 at the time.

4
5 NRS 616A.030 defines "accident" as:

6 "Accident" means an unexpected or unforeseen event happening
7 suddenly and violently, with or without human fault, and
8 producing at the time objective symptoms of an injury.

9 Third, the Appeals Officer wrongly placed the entire burden on the Petitioner to prove
10 by a preponderance of the evidence that the claim was compensable. NRS 616C.175 placed the
11 initial burden on the Petitioner to demonstrate, by a preponderance of the evidence, that he had
12 a pre-existing condition, and that the pre-existing condition was aggravated by an accident in
13 the course of his employment, resulting in a subsequent injury. Then the burden shifts to the
14 insurer to prove, by a preponderance of the evidence, that the subsequent injury is not a
15 substantial contributing cause of the resulting condition.
16

17 This matter is remanded back to the Appeals Officer to conduct a further hearing and
18 applying the law as set forth herein. In this further hearing, the Appeals Officer must reevaluate
19 the evidence, to determine whether Petitioner suffered accidents in the course of his employment
20 which aggravated his pre-existing conditions, and then to determine the course of his
21 employment which aggravated his pre-existing conditions, and then to determine whether the
22 insurer met its burden of proving by a preponderance of the evidence, that the subsequent injury
23 was not a substantial contributing cause of the Petitioners aggravation to a pre-existing injury.
24 The Court elects not to consider, at this time, Petitioner's other arguments of errors, and
25 contention of lack of substantial evidence.
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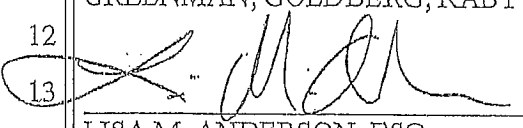
1 IT IS HEREBY ORDERED that the Petition for Judicial Review is GRANTED and the
2 Appeals Officer's Decision and Order of July 20, 2017 is REVERSED and REMANDED to the
3 Appeals Officer for further proceedings in light of the clear error of law.

4 Dated this 11th day of June, 2018.

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8 
9 RICHARD F. SCOTTI
DISTRICT COURT JUDGE
10

11 Submitted by:

12 GREENMAN, GOLDBERG, RABY & MARTINEZ

13 
14 LISA M. ANDERSON, ESQ.

15 Nevada Bar No. 004907

16 GREENMAN, GOLDBERG, RABY & MARTINEZ

17 601 South Ninth Street

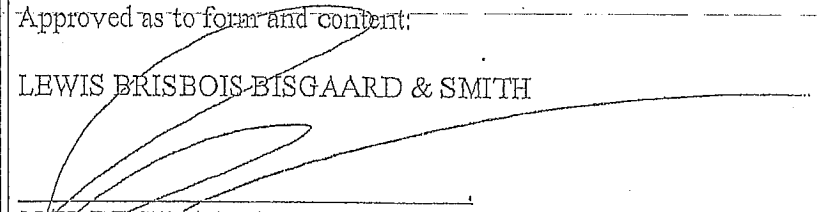
18 Las Vegas, Nevada 89101

19 (702) 384-1616

20 Attorneys for Petitioner

21 Approved as to form and content:

22 LEWIS BRISBOIS-BISGAARD & SMITH

23 
24 JOEL REEVES, ESQ.

25 Nevada Bar No. 013231

26 2300 West Sahara Avenue

27 Suite 300, Box 28

28 Las Vegas, Nevada 89102

Attorneys for Respondent

1 MOT
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 5125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
5 2300 W. Sahara Ave. Ste. 300
6 Las Vegas, Nevada 89102
7 Telephone: (702) 893-3383
8 Facsimile: (702) 366-9563
9 Email: daniel.schwartz@lewisbrisbois.com
10 Attorneys for Respondents,
11 City of Henderson and Cochran -
12 Management Services, Inc. (CCMSI)

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 JARED SPANGLER,

11
12 Petitioner,

13 v.

14 CITY OF HENDERSON, CANNON
15 COCHRAN MANAGEMENT SERVICES,
16 INC. (CCMSI), THE DEPARTMENT OF
17 ADMINISTRATION, HEARINGS DIVISION,
18 APPEALS OFFICE,

Respondents.

CASE NO.: A-17-759871-J

DEPT NO.: II

HEARING REQUIRED

DATE: 7/16/18

TIME: Chambers

19 RESPONDENTS' MOTION FOR STAY PENDING SUPREME COURT APPEAL AND
20 MOTION FOR ORDER SHORTENING TIME

21 COMES NOW the Respondents, CITY OF HENDERSON and CANNON COCHRAN
22 MANAGEMENT SERVICES, INC. (CCMSI), (hereinafter referred to as "Respondents"), by and
23 through their attorneys, DANIEL L. SCHWARTZ, ESQ., and LEWIS, BRISBOIS, BISGAARD
24 & SMITH, LLP, and move this Court for a Motion for Stay pending Supreme Court appeal and an
25 Order Shortening Time for this Motion to be heard before or shortly after the deadline for
26 obtaining a stay.

27 ...

28 ...

1 This Motion is made and based upon the papers and pleadings on file herein, and the
2 attached Points and Authorities and any arguments of counsel on this matter.

3 DATED this 3 day of July, 2018.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By: 

8 DANIEL L. SCHWARTZ, ESQ.

9 Nevada Bar No. 5125

10 2300 W. Sahara Avenue, Suite 300, Box 28

11 Las Vegas, NV 89102-4375

12 *Attorneys for the Respondents*
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1 AFFIDAVIT IN SUPPORT OF ORDER SHORTENING TIME AND TEMPORARY STAY

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, JOEL P. REEVES, ESQ., do hereby swear under penalty of perjury that the assertion of
6 this affidavit are true, that:

7 1. Affiant is an attorney authorized and duly licensed to practice law in the State of
8 Nevada and is one of the attorneys of record for Respondents.

9 2. This affidavit is made in support of an ex-parte order shortening time for this
10 Motion for Stay to be heard.

11 3. Affiant has personal knowledge of all matters set forth herein, except those matters
12 stated on information and belief, and is competent to testify thereto.

13 4. That NRAP Rule 8(a)(1) requires that Appellants move first in the District Court
14 for a Stay of the underlying Order Granting Petition for Judicial Review, filed on June 18, 2018.

15 5. The above-named Affiant has good cause to request this Court for an Order
16 Shortening time. NRS 616C.375 mandates that an Appeals Officer's Decision and Order shall not
17 be stayed unless the District Court issues an Order of Stay within thirty (30) days from the date of
18 the Decision and Order. Further, NRAP 4(a)(1) requires that the subject Order be appealed within
19 thirty (30) days from the date of the Order. Therefore, this Motion cannot be heard in the normal
20 course.

21 6. The time for appeal in this matter expires on or about July 23, 2018.

22 7. In the absence of a stay, the Respondents will be required to comply with this
23 Court's Order and a new hearing will commence before the Appeals Officer which may adversely
24 impact the Respondents and cause duplicative litigation.

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8. This Motion and request for Order Shortening Time is made in good faith and not for the purpose of undue advantage.

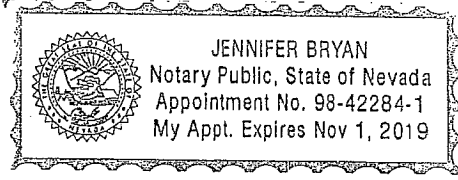
Further Affiant sayeth naught.

DATED this 3 day of July, 2018.


JOEL P. REEVES, ESQ.

SUBSCRIBED AND SWORN to before me
this 3rd day of July, 2018.


NOTARY PUBLIC in and for said
County and State




ORDER SHORTENING TIME

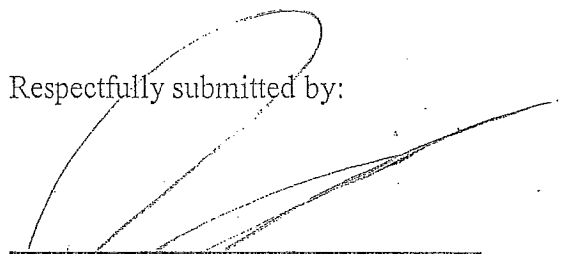
GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED that the time of hearing of the above-entitled matter
be, and the same will be heard, on the 16th day of July 2018, at
Chambers ~~S.A.M./P.M.~~ in Dept. No. II., Courtroom 3B

DATED this 16th day of July, 2018.


DISTRICT COURT JUDGE
M/H

Respectfully submitted by:



DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 5125
LEWIS BRISBOIS BISGAARD & SMITH
2300 W. Sahara Ave., Ste. 300, Box 28
Las Vegas, NV 89102
Attorneys for the Respondents

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PLEASE TAKE NOTICE that Respondents' Motion for Stay Pending Supreme Court Appeal, a copy of which is attached hereto, has been set for hearing by this Court on the _____ day of _____, 2018, in the aforementioned Department at _____ m., or as soon thereafter as counsel can be heard.

LEWIS BRISBOIS BISGAARD & SMITH LLP

~~DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 005125
2300 W. Sahara Ave. Ste. 300
Las Vegas, Nevada 89102
Tel. 702.893.3383
Attorneys for the Respondents~~

I.

STATEMENT OF THE FACTS

On February 9, 2016, the Petitioner, JARED SPANGLER (hereinafter referred to as "Petitioner"), alleges that has hearing loss and ringing in the ears which he attributes to job related exposure to loud noises. The Petitioner was seen by Dr. Blake at Anderson Audiology where hearing loss was noted. The Petitioner appears to have failed to have reveal his earlier 2005 denied hearing loss claim or that the Petitioner apparently has been working a desk job for the last 5-6 years. Further, Petitioner also failed to reveal that Employer modified his position after 2005 to avoid loud noises. (Record on Appeal p. 35)(hereinafter "ROA p. __")

The Employer's Report of Industrial Injury or Occupational Disease notes a nearly one month delay in reporting the hearing loss. (ROA p. 36)

The Employer's First Notice of Injury or Occupational Disease notes that the Petitioner alleges exposure to excessive loud noises and that he has had tinnitus for several years. (ROA p. 37)

The Petitioner has previously filed a hearing loss claim in November of 2005. On February 22, 2006, Dr. Manthei noted that the Petitioner's family had a positive history of hearing loss. He noted that MRI testing revealed that the Petitioner had revealed "a contrast enhancement of the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the brain." It was concluded that the Petitioner's symptomatology was most likely due to a nonindustrial component, and that the Petitioner's hearing loss should not be considered to be industrial in nature. A claim denial determination for the November 1, 2005, hearing loss claim was issued on March 7, 2006. (ROA pp. 38-55) Petitioner did not contest this claim denial.

Hearing testing has been performed throughout the Petitioner's employment with the City of Henderson. (ROA pp. 56-68)

As a result of hearing testing in October of 2015, on February 9, 2016, the Petitioner was seen by Dr. Blake at Anderson Audiology. A hearing loss was found which was deemed to be suggestive of loss due to noise exposure. Again, it must be noted that there is no indication that Petitioner informed Dr. Blake that he had been working a desk job for 5-6 years prior to this exam

1 and prior to that had a modified job to avoid loud noises. Furthermore, it does not appear that Dr.
2 Blake had access to Petitioner's entire file. (ROA pp. 69-72)

3 A medical release was signed by the Petitioner on February 9, 2016. (ROA p. 73)

4 On March 2, 2016, the Petitioner was seen by Dr. Theobald who noted that, prior to his
5 employment Petitioner had hearing loss in both ears, but that his left was worse than his right,
6 prior to employment with Employer. It was noted that "there is a high likelihood that there is an
7 underlying condition that may be contributing to Mr. Spangler's hearing loss in his left ear" and
8 that the Petitioner has a "possible tumor located in the area of the left cochlear nerve." Job noise
9 exposure was also a potential cause of the hearing loss. It was recommended that the Petitioner be
10 seen by a neuro-otologist to assess the potential likelihood of left sided cochlear pathology. (ROA
11 pp. 74-76)

12 On March 15, 2016, a claim denial determination was issued. However, it was noted that
13 bills related to Dr. Theobald's evaluation would be paid. (ROA p. 77)

14 On March 28, 2016, the Petitioner appealed the claim denial determination. (ROA p. 78)
15 This appeal was transferred directly to the Appeals Officer. (ROA p. 79)

16 On July 20, 2017, the Appeals Officer affirmed claim denial given that there was no
17 conclusive evidence that his hearing loss was related to his employment. (ROA pp. 3-11)
18 Petitioner filed the instant Petition seeking review of the Appeals Officer's July 20, 2017 Decision
19 and Order.

20 On June 18, 2018, this Court reversed the Appeals Officer, finding that the Appeals Officer
21 failed to consider NRS 616C.175(1), that the Appeals Officer interpreted the term "accident" too
22 narrowly, and that the Appeals Officer incorrectly placed the entire burden on Petitioner to prove
23 that the claim was compensable.

24 Respondents filed an Appeal with the Nevada Supreme Court to contest this Court's June
25 18, 2018 Decision. Respondents now seek a stay of that Decision pending the Supreme Court
26 appeal.

27 ...

28 ...

1 POINTS & AUTHORITIES

2 II.

3 JURISDICTION

4 NRAP 8(a)(1) provides this Court with authority to hear the instant Motion for Stay:

5 A party must ordinarily move first in the district court for the
6 following relief:

7 (A) a stay of the judgment or order of, or proceedings in, a
8 district court pending appeal or resolution of a petition to the
9 Supreme Court or Court of Appeals for an extraordinary
writ;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring or granting an
injunction while an appeal or original writ petition is pending

10 NRS 233B.140 further provides that:

11 1. A petitioner who applies for a stay of the final decision in a contested
12 case shall file and serve a written motion for the stay on the agency and all
13 parties of record to the proceeding at the time of filing the petition for
judicial review.

14 2. In determining whether to grant a stay, the court shall consider the same
15 factors as are considered for a preliminary injunction under Rule 65 of the
Nevada Rules of Civil Procedure.

16 3. In making a ruling, the court shall:

17 (a) Give deference to the trier of fact; and

18 (b) Consider the risk to the public, if any, of staying the
19 administrative decision.

20 The petitioner must provide security before the court may issue a stay.

21 For reference, NRCP Rule 65 provides in pertinent part as follows:

22 (a) Preliminary injunction.

23 (1) Notice. No preliminary injunction shall be issued without notice
to the adverse party.

24 (2) Consolidation of hearing with trial on merits. Before or after the
25 commencement of the hearing of an application for a preliminary
26 injunction, the court may order the trial of the action on the merits to
27 be advanced and consolidated with the hearing of the application.
28 Even when this consolidation is not ordered, any evidence received
upon an application for a preliminary injunction which would be
admissible upon the trial on the merits becomes part of the record on
the trial and need not be repeated upon the trial. This subdivision

1 (a)(2) shall be so construed and applied as to save to the parties any
2 rights they may have to trial by jury.

3 (d) Form and scope of injunction or restraining order. Every order granting
4 an injunction and every restraining order shall set forth the reasons for its
5 issuance; shall be specific in terms; shall describe in reasonable detail, and
6 not by reference to the complaint or other document, the act or acts sought
7 to be restrained; and is binding only upon the parties to the action, their
8 officers, agents, servants, employees, and attorneys, and upon those persons
9 in active concert or participation with them who receive actual notice of the
10 order by personal service or otherwise.

11 III.

12 LEGAL ARGUMENT

13 A.

14 Standard of Review

15 The standard for granting a stay was enunciated in the case of Kress v. Corey, 65 Nev. 1,
16 16-17, 189 P.2d 352, 360 (1948) as follows:

17 an order for a supersedeas or stay will only be granted on good
18 cause shown and where a proper case for exercise of the court's
19 discretion is made out. As a rule a supersedeas or stay should be
20 granted, if the court has the power to grant it, [1] whenever it
21 appears that without it the object of the appeal or writ of error may
22 be defeated, or [2] that it is reasonably necessary to protect appellant
23 or plaintiff in error from irreparable or serious injury in the case of
24 reversal, and [3] it does not appear that appellee or defendant in
25 error will sustain irreparable or disproportionate injury, in case of
26 affirmance on the other hand, as a rule, a supersedeas or stay will
27 not be granted unless it appears to be necessary to prevent
28 irreparable injury or a miscarriage of justice. (citations
removed)(numeration added)

29 A party requesting a stay must also prove a reasonable likelihood of success on the merits.
30 Success on the merits for Petitions for Judicial review of a final decision of an agency is governed
31 by NRS 233B.135 as follows:

32 **NRS 233B.135. Judicial review: Manner of conducting; burden 33 of proof; standard for review.**

34 1. Judicial review of a final decision of an agency must be: (a)
35 Conducted by the court without a jury; and (b) Confined to the
36 record. In cases concerning alleged irregularities in procedure before
37 an agency that are not shown in the record, the court may receive
38 evidence concerning the irregularities.

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

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

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

19 The standard of review is whether there is substantial evidence to support the underlying
20 decision. The reviewing court should limit its review of administrative decisions to determine if
21 they are based upon substantial evidence. North Las Vegas v. Public Service Common, 83 Nev.
22 278, 291, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial
23 evidence is that quantity and quality of evidence which a reasonable man would accept as
24 adequate to support a conclusion. See, Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270
25 (1993); and Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537, 936 P.2d 839 (1997).

26 When reviewing administrative decisions, this Court has held that, on factual
27 determinations, the findings and ultimate decisions of an agency are not to be disturbed unless
28 they are clearly erroneous or otherwise amount to an abuse of discretion. Nevada Industrial
Common v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977).

29 An administrative determination regarding a question of fact will not be set aside unless it is
30 against the manifest weight of the evidence. Nevada Indus. Common v. Hildebrand, 100 Nev. 47,
31 51, 675 P.2d 401 (1984).

B.

An Order Granting Stay is Appropriate
Until this Appeal is Heard and Decided on its Merits

The Nevada Supreme Court has consistently held that a stay is appropriate under circumstances such as those that exist in the instant case. Kress, Id. In DIR v. Circus Circus, 101 Nev. 405, 411-12, 705 P.2d 645, 649 (1985), the Nevada Supreme Court stated that an insurer's proper procedure when aggrieved by a decision is to seek a stay. The Nevada Supreme Court has also recognized that a stay should be granted where it can be shown that the Appellant would suffer irreparable injury during the pendency of the appeal, if the stay is not granted. White Pine Power v. Public Service Commission, 76 Nev. 263, 252 P.2d 256 (1960).

The Nevada Supreme Court held, in Ransier v. SIIS, 104 Nev. 742, 766 P.2d 274 (1988), that an insurer may not seek recoupment of benefits paid to a claimant that were later found to be unwarranted on appeal. However, it must be noted that NRS 616C.138 was recently modified to allow insurers to recover amounts paid during the pendency of an appeal "from a health or casualty insurer" if the insurer is found to be entitled to the same. However, if there is no health or casualty insurer, Ransier applies and insurers cannot recover anything at all. Here, just as in most cases, there is nothing to indicate whether Petitioner has health or casualty insurance. Furthermore, under no circumstances could an insurer recover any wage replacement benefits such as temporary partial disability or temporary total disability benefits.

In the instant case, an order granting a Stay of this Court's decision is appropriate for the reasons set forth herein. As will be discussed in great detail below, this Court's Decision was, respectfully, issued under color of a legal error. Furthermore, the only party that will be harmed by the subject order will be the Respondents. Instead of attempting to relitigate this claim, this matter should be put to the Supreme Court to avoid any duplicate proceedings. Indeed, if the Supreme Court can resolve this matter, there is no need to send this case back down to the Appeals Officer. It would be patently unfair to force Respondents into duplicative litigation. Such litigation represents irreparable harm to Respondents.

1 This case is precisely the scenario in which a stay is appropriate. Respondents have shown
2 a substantial likelihood of prevailing on the instant appeal and Respondents will be irreparably
3 harmed if the instant motion is not granted. Accordingly, Respondents contend that they have
4 made the requisite showing for the granting of a stay of the Appeals Officer's decision until such
5 time as a hearing can be conducted on the merits of its appeal.

6 C.

7 Petitioner Will Not Be Harmed By the Granting of a Stay

8 In the instant case, Petitioner will not be harmed by the granting of this stay. There are no
9 pending emergency medical procedures which a Stay would prevent. Indeed, Petitioner's claim
10 was already denied and this Decision remands for further determination. Petitioner would not be
11 harmed at all by a stay.

12 The only potential for harm is to Respondents as the subject Order provides improper
13 instructions to the Appeals Officer regarding the burdens associates with each party and contains
14 incorrect assertions about the scope of workers' compensation in general. The only party which
15 stands to be harmed by a failure to grant a stay is Respondents. Accordingly, Respondents have
16 again made the requisite showing for the granting of a stay of this Court's decision until such time
17 as a hearing can be conducted on the merits of Respondents' appeal.

18 D.

19 Standard Regarding Merits of Underlying Appeal

20 As for the merits of the underlying appeal, it was the Petitioner, not Respondents, who had
21 the burden of proving his entitlement to any benefits under any accepted industrial insurance claim
22 by a preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567,
23 688 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d
24 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

25 In attempting to prove his case, the Petitioner has the burden of going beyond speculation
26 and conjecture. That means that the Petitioner must establish all facets of the claim by a
27 preponderance of all the evidence. To prevail, a Petitioner must present and prove more evidence
28 than an amount which would make his case and his opponent's "evenly balanced." Maxwell v.

1 SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992);
2 SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3. A. Larson, the Law of Workmen's
3 Compensation, § 80.33(a).

4 E.

5 The Subject Order Makes Several Improper Conclusions Regarding Workers'
6 Compensation

7 This case is about a claimant who has a pre-existing, non-industrial hearing loss which all
8 parties agree is not compensable. However, Petitioner is alleging that his employment, over time,
9 caused his pre-existing hearing loss to worsen. Administrator denied this claim as the state of
10 Nevada does not recognize a claim that a pre-existing non-industrial condition was worsened over
11 time by industrial causes. Further, Petitioner failed to establish that any one specific noise caused
12 his hearing loss, especially considering that he has been working a desk job for 5-6 years prior to
13 filing his claim. Without an allegation that his hearing loss was caused by a specific event, there is
14 simply no way to render Petitioner's claim compensable. The Appeals Officer recognized this
15 when she affirmed claim denial.

16 However, this Court reversed the Appeals Officer and remanded for an analysis of NRS
17 616C.175(1) with an expanded definition of "accident" to include the consideration that each loud
18 noise which causes damage to the hearing as a separate accident. However, this holding does not
19 match up with what Petitioner is asking for and does not provide Petitioner with a mechanism to
20 prove that his *cumulative* alleged hearing loss is industrial. Indeed, Petitioner has not alleged any
21 one single event that caused his hearing loss. He has alleged that over time his hearing has
22 worsened.

23 Considering this Court's instructions, even if Petitioner could create a timeline of all the
24 loud noises from the time of his hire through the time that he filed the claim (notwithstanding the
25 fact that he did attempt to file a claim in 2005, was denied, and never contested the denial), if after
26 each noise occurred a potential claim arose, Petitioner waived any right to have such claims
27 considered as industrial by not filing a claim. Per NRS 616C.015, injured employees must provide
28 written notice of an injury within seven (7) days. Per NRS 616C.020, injured employees must file

1 a claim within ninety (90) days after an accident. If written notice is not timely provided and a
2 claim is not timely filed, the injured employee is foreclosed from claiming the injury/accident
3 under industrial insurance.

4 The Nevada Supreme Court, in Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 2 P.3d
5 850 (2000), held that *mandatory* compliance with both NRS 616C.015 and NRS 616C.020 is a
6 prerequisite for a compensable industrial insurance claim. The Court specifically held:

7 After a careful review of NRS Chapter 616C, we conclude that the
8 legislature established a comprehensive statutory scheme for
9 workers' compensation claims that begins with a two-step process.
10 First, under NRS 616C.015, an injured employee must provide
11 written notice of a work related injury to the employer within
12 seven days of the injury. Second, under NRS 616C.020(1), the
13 employee must file a claim for compensation for the injury within
14 ninety days of the accident. In accordance with NRS 616C.015(1)
15 and NRS 616C.020(1), NRS 616C.025(1) expressly provides that an
16 injured employee is barred from receiving compensation if the
17 employee fails to file a notice of injury or fails to file a claim for
18 compensation. Id., at 545. (emphasis added)

19 Therefore, even if the parties were to conduct the analysis requested by the Court, every
20 time a loud noise occurred and allegedly caused a hearing loss, Petitioner conceded that such
21 alleged hearing loss was non-industrial by failing to file a claim. Appeal rights cannot be
22 regenerated. (See Reno Sparks Convention Visitors Auth. v. Jackson, 112 Nev. 62, 910 P.2d 267,
23 (1996)). In other words, Petitioner could not make out a claim for all of the cumulative hearing
24 loss which occurred prior to the most recent loud noise. He would only be able to claim the loss
25 from the singular loud noise. And again, that is not even what Petitioner is asking for. He is asking
26 for this claim to be accepted for his *cumulative* hearing loss, not the hearing loss from a specific
27 accident.

28 As pointed out in Respondents' briefing before this Court, this case simply does not fit into
the acute accident constructs of NRS 616C. It was error for this Court to remand for further
consideration of this case under NRS 616C and a stay is needed to prevent unnecessary litigation.

1 IV.

2 **CONCLUSION**

3 Based upon all of the above, it is the belief of Respondents, CITY OF HENDERSON and
4 CANNON COCHRAN MANAGEMENT SERVICES, INC. (CCMSI), that a stay of this Court's
5 Order dated June 18, 2018, is necessary to prevent irreparable harm to Respondents.

6 WHEREFORE, Respondents, CITY OF HENDERSON and CANNON COCHRAN
7 MANAGEMENT SERVICES, INC. (CCMSI), respectfully requests that this Court grant its
8 Motion For Stay Pending Supreme Court Appeal.

9 DATED this 3 day of July, 2018.

10 Respectfully submitted,

11 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

12
13 By _____

DANIEL L. SCHWARTZ, ESQ.

Nevada Bar No. 5125

2300 West Sahara Avenue, Suite 300

Las Vegas, Nevada 89102

Attorneys for the Respondents

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the
10th day of July, 2018, service of the attached RESPONDENTS' MOTION FOR STAY
PENDING SUPREME COURT APPEAL AND MOTION FOR ORDER SHORTENING
TIME was made this date by depositing a true copy of the same for mailing, first class mail, as
follows:

Lisa Anderson, Esq.
GREENMAN, GOLDBERG, RABY & MARTINEZ
601 South Ninth Street
Las Vegas, NV 89101

City of Henderson
Attn: Sally Ihmels
P.O. Box 95050, MSC 127
Henderson, NV 89009-5050

CCMSI
Sue Riccio
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Las Vegas, NV 89133


An employee of LEWIS BRISBOIS BISGAARD &
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Steven D. Grierson

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13 Attorneys for Petitioner

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 JARED SPANGLER,

17 Petitioner

18 vs.

19 CASE NO. : A-17-759871-J

20 DEPT. NO. : II

21 CITY OF HENDERSON, CANNON

22 COCHRAN MANAGEMENT SERVICE,

23 INC. (CCMSI), THE DEPARTMENT OF

24 ADMINISTRATION, HEARINGS

25 DIVISION,

26 Respondents.

27 **OPPOSITION TO MOTION FOR STAY**
28 **PENDING SUPREME COURT APPEAL**

29 COMES NOW, Petitioner, JARED SPANGLER (hereinafter "Petitioner"), by and
30 through his attorneys, LISA M. ANDERSON, ESQ, and THADDEUS J. YUREK III, ESQ., of
31 the law firm of GREENMAN, GOLDBERG, RABY & MARTINEZ, and files this Opposition
32 to Motion for Stay Pending Supreme Court Appeal filed by the CITY OF HENDERSON and

1 CCMSI (hereinafter "Respondents"), by and through its attorney of record, DANIEL L.
2 SCHWARTZ, ESQ., of the law firm of LEWIS BRISBOIS BISGAARD & SMITH.

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

5 Dated this 13th day of July, 2018.

6
7 GREENMAN, GOLDBERG, RABY & MARTINEZ

8
9
10 By 

LISA M. ANDERSON, ESQ.

Nevada Bar No. 004907

THADDEUS J. YUREK III, ESQ.

Nevada Bar No. 011332

601 South Ninth Street

Las Vegas, Nevada 89101

Attorneys for Petitioner

POINTS AND AUTHORITIES

STATEMENT OF FACTS

On or about February 9, 2016, Petitioner reported the development of occupationally related hearing loss and tinnitus that was sustained and accelerated while in the course and scope of his employment as a police officer for the City of Henderson. On that date, Petitioner reported extensive exposure to unprotected loud noises during his career as a police officer. Liability for the claim was erroneously denied. Claim denial is the subject of this appeal.

Petitioner participated in annual physicals, including hearing tests, as part of his employment as a police officer. (ROA pages 93-104) Petitioner demonstrated minor hearing deficits when he was hired as a police officer in 2003. However, Petitioner's hearing progressively worsened to a moderate to severe level by the time he filed his claim for workers' compensation benefits.

On February 9, 2016, Petitioner presented to Amanda Blake, Au.D for an audiology evaluation. At that time, Ms. Blake noted Petitioner's employment history as a police officer began in 2003, with eleven (11) years on active patrol. During Petitioner's employment as a police officer, Ms. Blake opined that Petitioner's hearing progressively worsened as a result of being "exposed to sirens, gunfire during range qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side." Ms. Blake was provided with copies of the annual hearing examinations dating back to Petitioner's 2003 hire date, and she confirmed that Petitioner sustained additional bilateral hearing loss since his hire date, left worse than right. Ms. Blake concluded that Petitioner's "standard pure tone testing revealed borderline normal hearing, 0.25-2k Hz, sloping to a moderate high frequency sensorineural hearing loss in the right ear" and a "mild sloping to severe sensorineural hearing loss in the left ear with a notch present

1 at 6k Hz.” Ms. Blake confirmed that it was her opinion that his hearing loss was “not a
2 consequence of the normal aging process for either ear and is suggestive of noise exposure.”
3 Ms. Blake completed a C-4 form and opined that Petitioner’s hearing loss was directly related
4 to his employment as a police officer. Ms. Blake recommended binaural amplification. (ROA
5 pages 105-109)
6

7 On March 1, 2016, Petitioner was evaluated by Roger Theobald, Au.D, who confirmed
8 that he reviewed the prior medical records pertaining to Petitioner’s annual hearing tests,
9 reporting from Dr. Scott Manthei in 2005, and reporting from Ms. Blake. Mr. Theobald also
10 reported that Petitioner’s job as a police officer exposed him to loud noises while on the job with
11 the Henderson Police Department. Mr. Theobald verified that Petitioner had mild to moderate
12 hearing loss in the left ear and normal to mild high frequency hearing loss in the right ear at the
13 time of his 2003 hiring. In the years following Petitioner’s 2003 hire date, Mr. Theobald opined
14 that Petitioner’s “hearing has significantly decreased bilaterally. Hearing decrease is considered
15 significant if a change of 10dB or more occur at three or more hearing thresholds.” Mr. Theobald
16 verified that there is a likelihood of a pre-existing underlying condition contributing to
17 Petitioner’s hearing loss in the left ear, “however, there is a high probability that Mr. Spangler’s
18 threshold shift may be as a result of on the job noise exposure.” Testing performed by Mr.
19 Theobald revealed “pure tone hearing threshold show a mild to moderately severe sensorineural
20 hearing loss in the right ear and a moderate to moderately severe sensorineural hearing loss in
21 the left.” Mr. Theobald recommended that Petitioner be provided with hearing aids and be
22 scheduled to see a neuro-otologist to evaluate for a left sided cochlear pathology. (ROA pages
23 110-113)
24
25
26

27 ///
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1 On March 15, 2016, the Insurer denied liability for Petitioner's claim for bilateral hearing
2 loss. (ROA pages 132) Petitioner appealed that determination to the Hearing Officer. Prior to
3 the hearing, the parties agreed to transfer the matter to the Appeals Officer.
4

5 On November 23, 2016, Petitioner sent a letter to Dr. Steven Becker asking him whether
6 Petitioner's hearing loss was work related and, if not, whether Petitioner's exposure to work
7 related noise contributed to the hearing loss and tinnitus. On December 23, 2016, Dr. Becker
8 opined that Petitioner's hearing loss was not entirely work related, however, Dr. Becker
9 confirmed that it was his opinion that Petitioner's work related noise exposure "contributed" to
10 the extent of the present hearing loss and tinnitus. Dr. Becker based his opinion on the "original
11 hearing test (performed in) 2003 revealed losses bilaterally, worse in the left and hearing has
12 steadily worsened" since that time." (ROA pages 25-29)
13

14 On July 20, 2017, the Appeals Officer affirmed Respondent's March 15, 2017 claim
15 denial determination. The Appeals Officer concluded that Petitioner failed to establish that his
16 occupational hearing loss qualified for benefits as an industrial injury or occupational disease.
17 The Appeals Officer ruled that the origin of Petitioner's hearing loss was not related to an
18 employment related risk. Respondent also argued that Claimant was assigned to a desk job
19 during his career as a police officer. (ROA pages 3-11)
20

21 It is from the Appeals Officer's Decision and Order dated July 20, 2015 that
22 Petitioner appealed. Upon reviewing the briefs submitted by the parties, the District Court
23 Granted Petitioner's Petition for Judicial Review. The District Court found that the Appeals
24 Officer erred as a matter of law when it applied NRS 616B.612 in affirming claim denial instead
25 of applying NRS 616C.175(1) which permits compensation for certain pre-existing conditions
26 where the origin of the injury did not arise out of and in the course of employment, but the
27
28

1 aggravation did. Additionally, the District Court found that the Appeals Officer “wrongly
2 concluded that the aggravation of the pre-existing injury did not arise by an accident, by
3 interpreting the term accident too narrowly.” The District Court found that “each incident of a
4 loud noise, which destroys those parts of the human body responsible for hearing, is a separate
5 accident. Such destruction each occasion is sudden and violent.” For this reason, the District
6 Court concluded that “such accidents that destroy hearing are objective at the time in that the
7 harm done to the ear is capable of objective, as opposed to subjective, evaluation. The term
8 accident does not require that some person discovered the objective evidence at the time of the
9 accident, only that such objective indicia of the injury arose at the time.” For these reason, the
10 District Court remanded the matter “back to the Appeals Officer to conduct a further hearing
11 and apply the law as set for herein.”
12
13

14 Respondent filed a Notice of Appeal to the Nevada Supreme Court on or about July 2,
15 2018 and filed a Motion for Stay on or about July 3, 2018. An “in chambers” hearing is set for
16 July 16, 2018.
17

18 LEGAL DISCUSSION

19 I. THE APPLICATION FOR STAY PENDING APPEAL IS UNWARRANTED

20 An order for stay is not a right to be exercised, but a matter of judicial discretion to be
21 used by the Court, when appropriate, upon application of a party. NRS 233B.140(3) provides
22 that in making a ruling, the Court shall give deference to the trier of fact and consider the risk to
23 the public, if any, of staying the administrative decision.
24

25 When considering an application for a stay order pending appeal, there are four factors
26 which must be addressed:
27
28

- 1) Whether the petitioner for the stay order has made a *strong* showing that it is likely to prevail on the merits of the appeal;
- 2) Whether or not the petitioner has shown it would sustain irreparable injury absent the stay order;
- 3) Whether or not the issuance of a stay order would substantially harm the other interested parties; and
- 4) Where the public interest lies.

Dollar Rent a Car of Washington v. Travelers Indem., 774 F.2d 1371, 1374 (Nev. 1975); American Horse Protection Assoc. v. Frizzel, 403 F.Supp. 1206, 1215 (Nev. 1975). In this matter, a stay is unwarranted as Respondent has failed to meet the burden of making a strong showing that it is likely to prevail on the merits or that it will sustain irreparable injury absent the stay order. Moreover, a stay is unwarranted because the issuance of a stay order will substantially harm one of the other interested parties and the public interest favors Petitioner. The administrative determination that is the subject of this appeal is tantamount to an attempt by Respondent to deny liability for the occupationally related and aggravated hearing loss.

A. RESPONDENT HAS NOT MADE A STRONG SHOWING THAT IT WILL PREVAIL ON THE MERITS.

In order to show that it will prevail on the merits, Respondent has the burden of demonstrating that the District Court's decision was factually or legally incorrect and that the District Court acted arbitrarily or capriciously. NRS 233B.135(2); Campbell v. Nevada Tax Com'n, 853 P.2d 717 (Nev. 1993). In determining the appropriateness of the District Court's decision, this Court may not substitute its judgment for that of the District Court as to the weight of the evidence. N.R.S. 233B.135; SIIS v. Campbell, 862 P.2d 1184 (Nev. 1993); Campbell v. Nev. Tax Com'n, 853 P.2d 717 (Nev. 1993). On questions of fact, this Court is limited to

determining whether *substantial evidence* exists in the record to support the District Court's decision. Desert Inn Casino & Hotel v. Moran, 106 Nev. 334, 792 P.2d 400, 401 (1990); SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987). Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as adequate to support a conclusion." State of Nevada Emplmt. Sec. Dept. v. Hilton Hotels Corp., 102 Nev. 606, 607-08, 729 P.2d 497, 498 (1986), quoting Robertson Transp. Co. v. P.S.C., 39 Wis.2d 653, 159 N.W.2d. 636, 638 (1968). In the instant case, Respondent has failed to meet its burden of demonstrating that the District Court's decision was factually or legally incorrect. Respondent has also failed to show that the District Court acted arbitrarily or capriciously.

LEGAL ARGUMENT

I. The Evidence Clearly Supports the District Court's Order Granting Petition for Judicial Review When Concluding That The Appeals Officer's July 20, 2017 Decision and Order Contained Legal Errors

In its Motion for Stay, Respondent argues that it will prevail upon the merits of the appeal because the District Court's decision "was, respectfully, issued under color of legal error..." and "represents irreparable harm to Respondents." Respondent's arguments lack merit and are a clear attempt to reweigh the evidence and reconsider the arguments previously submitted in their briefs.

It is the Petitioner's position that his employment as a police officer directly contributed to the extent of hearing loss and tinnitus present when the February 9, 2016 claim for workers' compensation was filed. Petitioner maintains that his particular profession, that of a law enforcement officer, exposes him to various noise hazards that the average citizen does not experience.

///

1 NRS 617.440 states:

2 1. An occupational disease defined in this chapter shall be
3 deemed to arise out of and in the course of the employment if:

4 (a) There is a direct causal connection between the conditions
5 under which the work is performed and the occupational disease;

6 (b) It can be seen to have followed as a natural incident of the
7 work as a result of the exposure occasioned by the nature of the
8 employment;

9 (c) It can be fairly traced to the employment as the proximate
10 cause; and

11 (d) It does not come from a hazard to which workers would
12 have been equally exposed outside of the employment.

13 2. The disease must be incidental to the character of the
14 business and not independent of the relation of the employer and
15 employee.

16 3. The disease need not have been foreseen or expected, but
17 after its contraction must appear to have had its origin in a risk
18 connected with the employment, and to have flowed from that
19 source as a natural consequence.

20 4. In cases of disability resulting from radium poisoning or
21 exposure to radioactive properties or substances, or to roentgen
22 rays (X-rays) or ionizing radiation, the poisoning or illness
23 resulting in disability must have been contracted in the State of
24 Nevada.

25 5. The requirements set forth in this section do not apply to
26 claims filed pursuant to NRS
27 617.453, 617.455, 617.457, 617.485 or 617.487.

28 [Part 26:44:1947; A 1949, 365; 1953, 297] — (NRS A 1961,
589; 1963, 874; 1967, 685; 1983, 458; 2007, 3366)

20 The medical reporting from the audiologists, who examined, tested and reviewed all
21 prior hearing studies, verifies that the extent of Petitioner's hearing loss and tinnitus is directly
22 related to occupational exposures. These exposures consist of, but are not limited to, fire arm
23 use, sirens, radio and various tactical maneuvers. Police officers are trained to be prepared to
24 be in loud, chaotic environments. Ms. Blake and Mr. Theobald note Petitioner's prior hearing
25 exposure but directly relate the ensuring severity of the hearing loss to employment related
26 exposures. Further, Dr. Becker verified that Petitioner's hearing loss did not originate with his
27 employment, but opined that the work related exposures contributed to the steady decline in
28

1 hearing capabilities. Thus the totality of the reporting establishes a "direct causal connection"
2 between the extent of Petitioner's hearing loss and tinnitus and his job as a police officer.
3 Petitioner is not placed in this type of situation outside of his employment. Since there was not
4 a singular moment when Petitioner sustained hearing damage, the reporting clearly establishes
5 that his occupational exposures contributed to Petitioner's level of hearing damage, which is a
6 natural incident of his employment and qualifies for coverage as an occupational disease. It is
7 clear that Petitioner's work conditions and work environment directly contributed to the
8 February 9, 2016 claim for occupational hearing loss.
9

10 Although Petitioner started his career as a police officer with a minor hearing deficit, it
11 was Petitioner's job in law enforcement that significantly accelerated his hearing loss and
12 produced the tinnitus. NRS 616C.175 addresses the issue of when industrial factors aggravate
13 or accelerate a pre-existing condition.
14

15 NRS 616C.175 states:
16

- 17 1. The resulting condition of an employee who:
18 (a) Has a preexisting condition from a cause or origin that did
19 not arise out of or in the course of the employee's current or past
20 employment; and
21 (b) Subsequently sustains an injury by accident arising out of
22 and in the course of his or her employment which aggravates,
23 precipitates or accelerates the preexisting condition,
24 It shall be deemed to be an injury by accident that is compensable
25 pursuant to the provisions of chapters 616A to 616D, inclusive, of
26 NRS, unless the insurer can prove by a preponderance of the
27 evidence that the subsequent injury is not a substantial
28 contributing cause of the resulting condition.

29 Respondent denied liability for Petitioner's bilateral hearing loss and tinnitus.
30 Respondent based its denial on the fact that Claimant had some hearing deficit at the time of his
31 2003 hire date. Respondent has acknowledged the hearing deficit from 2003, however, he
32 maintains that the ensuing hearing loss and tinnitus is associated with employment related noise

1 exposure. Thus it was Petitioner's occupational exposures that accelerated his future hearing
2 losses.

3 The reporting from the audiologists, Ms. Blake and Mr. Theobald, establishes that
4 Petitioner had some hearing loss at the time of his 2003 hire as a police officer. However, these
5 audiologists verified that Petitioner's hearing loss progressively worsened due to employment
6 related noise exposure.
7

8 Ms. Blake confirmed that it was her opinion that Petitioner's hearing loss was "not a
9 consequence of the normal aging process for either ear and is suggestive of noise exposure."
10 Ms. Blake noted that during his eleven (11) years on active patrol, Petitioner's hearing has
11 progressively worsened as a result of being "exposed to sirens, gunfire during range
12 qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side."
13

14 Mr. Theobald verified that there is a likelihood of a pre-existing underlying condition
15 contributing to Petitioner's hearing loss in the left ear, "however, there is a high probability that
16 Mr. Spangler's threshold shift may be as a result of on the job noise exposure." In the years
17 following Petitioner's 2003 hire date, Mr. Theobald opined that Petitioner's "hearing has
18 significantly decreased bilaterally. Hearing decrease is considered significant if a change of
19 10dB or more occur at three or more hearing thresholds."
20

21 Furthermore, Dr. Becker confirmed that, while Petitioner's job did not cause the hearing
22 loss, his job was absolutely a "contributing factor" in the loss that developed after his 2003 hire
23 date as a police officer.
24

25 NRS 616C.175 addresses the issue of when an industrial injury "aggravates, precipitates
26 or accelerates" a pre-existing condition. This statute mandates that an Insurer is responsible for
27 treatment related to a pre-existing condition if the industrial injury "aggravates, precipitates or
28

1 accelerates" the pre-existing condition. Moreover, if the Insurer denies responsibility for
2 treatment related to a pre-existing condition, this statute requires the Insurer to "prove by a
3 preponderance of the evidence that the subsequent (industrial) injury is not a substantial
4 contributing cause of the resulting condition."
5

6 In this case, Respondent has completely failed to meet its statutory obligation of proving
7 by "a preponderance of the evidence" that Petitioner's occupationally related noise exposure is
8 "not a substantial contributing cause of the resulting condition." Petitioner began experiencing
9 increased hearing loss and the development of tinnitus symptoms after his 2003 hire date as a
10 police officer. This fact was documented in Ms. Blake, Mr. Theobald and Dr. Becker's reporting.
11 Petitioner's job as a police officer regularly exposed him to extremely loud sirens, unprotected
12 sounds of gunfire, a radio piece in the left ear and a lapel radio in close proximity to this left ear.
13 It was during these activities that resulted in the acceleration of hearing loss following his 2003
14 hire date.
15

16
17 Petitioner experienced minimal hearing deficit at the time of his 2003 hire date. During
18 the subsequent years of active patrol duty, Petitioner was exposed to wide-ranging sources of
19 loud noise without protection. In fact, the reporting verified that Petitioner's increased hearing
20 loss in the left ear compared to the right ear was related to the use of the ear piece in the left ear
21 and the lapel radio on the left side. These exposures were a "contributing factor" in Petitioner's
22 accelerated hearing loss and the development of tinnitus. The current level of hearing loss has
23 been directly related to his occupation as a police officer.
24

25 Therefore, Petitioner's job as a police officer is clearly the primary contributing cause of
26 the current level of hearing loss and the development of tinnitus. The reporting from Ms. Blake,
27 Mr. Theobald and Dr. Becker confirms that Petitioner's occupation noise exposure was the
28

1 primary contributing cause of the current hearing loss and tinnitus. Although there was a pre-
2 employment finding of mild hearing loss at the time of his 2003 hiring as a police officer, the
3 subsequent deterioration of his hearing abilities and current need for hearing aids is directly
4 related to his employment as a police officer. Therefore, based upon the extensive nature of the
5 industrial noise exposures, Petitioner's worsening hearing loss and tinnitus is industrially related.
6

7 Thus, the Appeals Officer incorrectly applied the NRS 616C.150 and NRS 617.440 when
8 finding that Petitioner's hearing loss condition did not qualify for benefits as an industrial injury
9 or occupational disease. Petitioner's hearing loss absolutely qualifies for benefits under NRS
10 616C.440. Moreover, the available reporting demonstrates that Claimant's mild pre-existing
11 hearing loss at the time of his hire as a police officer was aggravated and accelerated by the
12 ensuing years of occupational noise exposures.
13

14 **B. RESPONDENT WILL NOT SUFFER IRREPARABLE HARM.**

15 Respondent has the burden of demonstrating that it will suffer irreparable harm if the
16 stay order is not issued. Dollar Rent a Car of Washington v. Travelers Indem., 774 F.2d at 1374;
17 American Horse Protection Assoc. v. Frizzel, 403 F.Supp. at 1215. Respondent argues in its
18 Motion that if the stay is not granted, it will be irreparably harmed because of the payment of
19 benefits. This argument, however, is without merit since there are no Nevada Supreme Court
20 cases that indicate irreparable harm results from the sole payment of money. To the contrary,
21 the Nevada Supreme Court, in DIIR v. Circus Circus Enterprises, held that:
22
23

24 ...the object of workers' (sic) compensation social legislation is to
25 provide the disabled worker with benefits during the period of his
26 disability so that the worker and his dependents may survive the
27 catastrophe which the temporary cessation of necessary income
28 occasions.

1 101 Nev. 405, 408, 705 P.2d 645, 648 (1985). The court also indicated that "...it is clearly the
2 injured worker and not the employer who is more likely to be irreparably harmed when
3 immediate payment of benefits is contrasted with delayed payment pending the outcome of the
4 hearing on the merits." Id. (Emphasis added). Respondent is the party more likely to be harmed
5 by the issuance of a stay since liability for the February 9, 2016 claim would continue to be
6 denied and the payment of appropriate benefits withheld.

8 **C. THE ISSUANCE OF A STAY ORDER WILL SUBSTANTIALLY HARM AN**
9 **INTERESTED PARTY.**

10 In determining whether or not to issue a stay, the Court must consider whether the
11 issuance of a stay order will substantially harm an interested party. Dollar Rent a Car of
12 Washington v. Travelers Indem., 774 F.2d at 1374; American Horse Protection Assoc. v. Frizzel,
13 403 F.Supp. at 1215. In this matter, the issuance of a stay is unwarranted because it would
14 substantially harm Petitioner, an interested party, by further delaying the payment of industrial
15 injury benefits for a legitimate and compensable occupationally related hearing loss. Moreover,
16 the continued delay of benefits is contrary to the policy expressed by the Nevada Supreme Court
17 in DIIR v. Circus Circus Enterprises, *supra*.

18 **D. THE PUBLIC INTEREST FAVORS PETITIONER IN THE INSTANT CASE.**

19 In determining whether to issue a stay, the Court must consider where the public interest
20 lies. Dollar Rent a Car of Washington v. Travelers Indem., 774 F.2d at 1374; American Horse
21 Protection Assoc. v. Frizzel, 403 F.Supp. at 1215. A stay in this matter is unwarranted since
22 there is no public interest which will be sacrificed by the Court's refusal to grant the stay.

23 The issue in this case involves Respondent denying a legitimate occupationally related
24 hearing loss condition that clearly developed and was aggravated from a non-industrial source,
25 as specifically considered under NRS 616C.175(1). Clearly, the evidence confirms that
26
27
28

1 Respondent's current hearing loss was aggravated and exacerbated by occupational factors and
2 hazards related to his occupation as a police officer. Respondent has made no allegation that
3 such action will force it into liquidation, necessitate the termination of employees, or result in
4 any similar outcome that might affect the public interest.
5

6 **CONCLUSION**

7 Respondent's Motion for Stay must be denied since it has not made a strong showing
8 that it is likely to prevail on the merits of the appeal or that it will suffer irreparable harm.
9 Moreover, Petitioner's interest will be adversely affected by the issuance of a stay order and the
10 public interest will be unaffected either way. Based on the foregoing, Claimant hereby
11 respectfully requests that the District Court's Order Granting Petition for Judicial Review remain
12 in force as entered, and that Respondent's Motion for Stay be denied.
13

14 Dated this 13th day of July, 2018.

15 GREENMAN, GOLDBERG, RABY & MARTINEZ
16

17
18 By: 

19 LISA M. ANDERSON, ESQ.

20 Nevada Bar No. 004907

21 THADDEUS J. YUREK III, ESQ.

22 Nevada Bar No. 011332

23 GREENMAN, GOLDBERG, RABY & MARTINEZ

24 601 South Ninth Street

25 Las Vegas, Nevada 89101

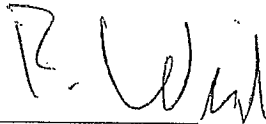
26 (702) 384-1616
27
28

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of July, 2018, I deposited a true and correct copy of the PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR STAY PENDING SUPREME COURT APPEAL in the U.S. Mails, postage fully prepaid, enclosed in envelopes addressed as follows:

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
2300 West Sahara Avenue
Suite 300, Box 28
Las Vegas, Nevada 89102
Attorney for Respondents

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



An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Greenman Goldberg Raby Martinez /
ACCIDENT INJURY ATTORNEYS

ORDER
DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 5125
JOEL P. REEVES, ESQ.
Nevada Bar No. 13231
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W. Sahara Ave. Ste. 300
Las Vegas, Nevada 89102
Telephone: (702) 893-3383
Facsimile: (702) 366-9563
Email: daniel.schwartz@lewisbrisbois.com
*Attorneys for Respondents,
City of Henderson and Cochran
Management Services, Inc. (CCMSI)*

DISTRICT COURT
CLARK COUNTY, NEVADA

JARED SPANGLER,

Petitioner,

 γ

CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT SERVICES,
INC. (CCMSI), THE DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
APPEALS OFFICE,

Respondents.

CASE NO.: A-17-759871-J

DEPT NO.: II

ORDER GRANTING MOTION FOR STAY

After careful review and consideration of Petitioners' Motion for Stay, Respondent's Opposition, the oral argument of the parties, and good cause appearing:

///

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///

///

///

///

AUG 10 2018

1 The Court GRANTS Respondents motion for stay pending appeal. The object of the
2 appeal is to prevent duplication of effort and resources that would result if the remanded
3 proceedings were to continue before the Appeals Officer. Respondent would incur some
4 irreparable harm if the stay were denied because the Respondent would be required to pay
5 benefits to Petitioner with no statutory mechanism to recover such benefits if Petitioner were to
6 prevail on appeal. Petitioner has not supported any claim of irreparable harm through some
7 further delay in the payment of benefits because Petitioner has not identified any upcoming
8 treatment that would not be covered by insurance, or otherwise outside of Petitioner's ability to
9 pay pending appeal. Finally, although the Court does not believe that there exists a "likelihood"
10 of success on appeal, the Court does recognize that there is indeed a "possibility" of success on
11 appeal, as this Court's decision required an interpretation of the term "accident" as used in MRS
12 616C.175(1), which interpretation has not been the subject of any clear precedent.

13 IT IS HEREBY ORDERED that Petitioner's Motion for Stay of this Court's June 18,
14 2018 Decision and Order is GRANTED.

15 DATED this 16th day of August, 2018.

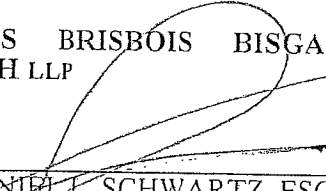
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18 
DISTRICT COURT JUDGE
RICHARD F. SCOTTI
19 by

20 Submitted by:

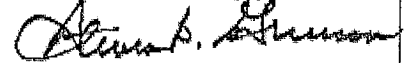
21 LEWIS BRISBOIS BISGAARD &
22 SMITH LLP

Approved as to form and content:

GREENMAN, GOLDBERG, RABY &
MARTINEZ.

23 By: 
24 DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 005125
25 JOEL P. REEVES, ESQ.
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26 2300 W. Sahara Ave. Ste. 300
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Attorneys for Petitioner



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2 DANIEL L. SCHWARTZ, ESQ.
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11 Email: daniel.schwartz@lewisbrisbois.com
12 *Attorneys for Respondents,*
13 *City of Henderson and Cochran*
14 *Management Services, Inc. (CCMSI)*

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

12 JARED SPANGLER,

13 Petitioner,

14 v.

CASE NO.: A-17-759871-J

DEPT NO.: II

15 CITY OF HENDERSON, CANNON
16 COCHRAN MANAGEMENT SERVICES,
17 INC. (CCMSI), THE DEPARTMENT OF
18 ADMINISTRATION, HEARINGS DIVISION,
19 APPEALS OFFICE,

20 Respondents.

20 **NOTICE OF ENTRY OF ORDER**

21 YOU, AND EACH OF YOU, please take notice that an **ORDER**
22 **GRANTING MOTION FOR STAY** was entered on August 20, 2018 and is

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24 ///

25 ///

26 ///

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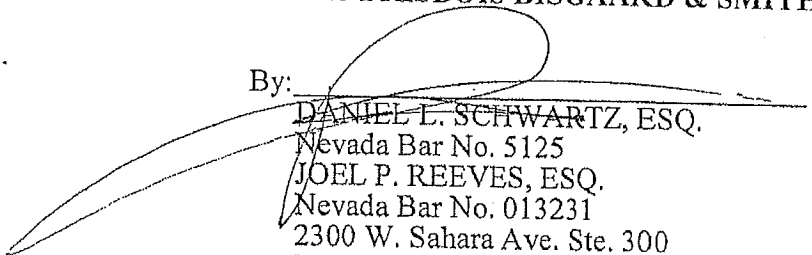
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1 attached hereto and made a part hereof.

2 DATED this 2 day of August, 2018.

3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4 By:

5  DANIEL L. SCHWARTZ, ESQ.

6 Nevada Bar No. 5125

7 JOEL P. REEVES, ESQ.

8 Nevada Bar No. 013231

9 2300 W. Sahara Ave. Ste. 300

10 Las Vegas, Nevada 89102.

11 Attorneys for Respondents

12 ///

13 ///

14 ///

15 ///

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1 CERTIFICATE OF SERVICE

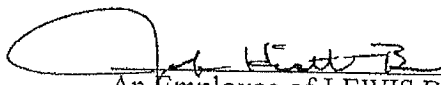
2 Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard &
3 Smith LLP and that I did cause a true copy of **NOTICE OF ENTRY OF ORDER** to be placed
4 in the United States Mail, with first class postage prepaid to:

5 Lisa Anderson, Esq.
6 GREENMAN, GOLDBERG, RABY & MARTINEZ
7 601 South Ninth Street
8 Las Vegas, NV 89101

9 City of Henderson
10 Attn: Sally Ihmels
11 P.O. Box 95050, MSC 127
12 Henderson, NV 89009-5050

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

17 DATED this 21st day of August, 2018.

18 
19 An Employee of LEWIS BRISBOIS
20 BISGAARD & SMITH LLP
21
22
23
24
25
26
27
28

Steven D. Grierson

1 **ORDR**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 5125
4 JOEL P. REEVES, ESQ.
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11 Email: daniel.schwartz@lewisbrisbois.com
12 *Attorneys for Respondents,*
13 *City of Henderson and Cochran*
14 *Management Services, Inc. (CCMSI)*

DISTRICT COURT
CLARK COUNTY, NEVADA

JARED SPANGLER,

Petitioner,

v.

CASE NO.: A-17-759871-J

DEPT NO.: II

CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT SERVICES,
INC. (CCMSI), THE DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
APPEALS OFFICE,

Respondents.

ORDER GRANTING MOTION FOR STAY

After careful review and consideration of Petitioners' Motion for Stay,
Respondent's Opposition, the oral argument of the parties, and good cause appearing:

///

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///

///

///


AUG 10 2018

4816-7244-7343 / 26990-1176

1 The Court GRANTS Respondents motion for stay pending appeal. The object of the
2 appeal is to prevent duplication of effort and resources that would result if the remanded
3 proceedings were to continue before the Appeals Officer. Respondent would incur some
4 irreparable harm if the stay were denied because the Respondent would be required to pay
5 benefits to Petitioner with no statutory mechanism to recover such benefits if Petitioner were to
6 prevail on appeal. Petitioner has not supported any claim of irreparable harm through some
7 further delay in the payment of benefits because Petitioner has not identified any upcoming
8 treatment that would not be covered by insurance, or otherwise outside of Petitioner's ability to
9 pay pending appeal. Finally, although the Court does not believe that there exists a "likelihood"
10 of success on appeal, the Court does recognize that there is indeed a "possibility" of success on
11 appeal, as this Court's decision required an interpretation of the term "accident" as used in MRS
12 616C.175(1), which interpretation has not been the subject of any clear precedent.

13 IT IS HEREBY ORDERED that Petitioner's Motion for Stay of this Court's June 18,
14 2018 Decision and Order is GRANTED.

15 DATED this 16th day of August, 2018.

16
17
18 
DISTRICT COURT JUDGE
RICHARD F. SCOTTI
19 By

20 Submitted by:

21 LEWIS BRISBOIS BISGAARD &
22 SMITH LLP

Approved as to form and content:

GREENMAN, GOLDBERG, RABY &
MARTINEZ

23 By:

24 DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 005125
25 JOEL P. REEVES, ESQ.
Nevada Bar No. 013231
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Las Vegas, Nevada 89102
Attorneys for Respondents

By: unable to obtain signature
LISA ANDERSON, ESQ.
Nevada Bar No. 004907
601 South Ninth Street
Las Vegas, NV 89101
Attorneys for Petitioner

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 CITY OF HENDERSON; and
3 CANNON COCHRAN
4 MANAGEMENT SERVICES, INC.,

CASE NO.: 76295

5 Appellant,

6 vs.

7 JARED SPANGLER

8 Respondents.
9

10
11 **RESPONDENT'S APPENDIX VOLUME II**

12
13 DANIEL L. SCHWARTZ, ESQ.
14 JOEL P. REEVES, ESQ,
15 LEWIS BRISBOIS BISGAARD
16 & SMITH
17 2300 West Sahara Avenue
18 Suite 300, Box 28
19 Las Vegas, Nevada 89102
20 *Attorney for Appellants*
21 CITY OF HENDERSON and
22 CANNON COCHRAN
23 MANGEMENT SERVICES, INC.

24 LISA M. ANDERSON, ESQ.
25 GREENMAN GOLDBERG
26 RABY & MARTINEZ
27 601 South Ninth Street
28 Las Vegas, Nevada 89101
 Attorney for Respondent
 JARED SPANGLER

APPELLANT'S APPENDIX

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE</u>
Appeals Officer's Record on Appeal	I	1-148
Appellant's Answering Brief	II	192-208
Appellant's Initial Appearance Fee Disclosure	II	163-165
Appellant's Motion for Stay Pending Supreme Court		
Appeal and Motion for Order Shortening Time	II	270-287
Appellant's Notice of Appeal	II	259-269
Appellant's Notice of Intent to Participate	II	160-162
Appellant's Notice of Entry of Order	II	306-310
Court Minutes	II	245
Court Minutes	II	246-247
Order Granting Petition for Judicial Review	II	248-251
Order Granting Motion for Stay	II	304-305
Order Scheduling Hearing and Briefing Schedule	II	190-191
Respondent's Affidavits of Service	II	168-171
Respondent's Certificate of Mailing	II	166-167
Respondent's Letter to Department II	II	209-244
Respondent's Notice of Entry of Order	II	252-258
Respondent's Opening Brief	II	172-189
Respondent's Opposition to Motion for Stay Pending		
Supreme Court Appeal	II	288-303
Respondent's Petition for Judicial Review	II	149-159

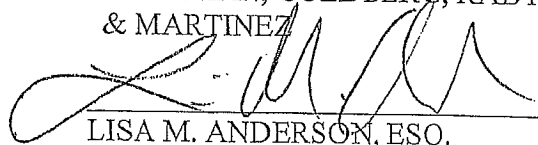
Case Number: A-17-759871-J

- 1 (a) In violation of constitutional or statutory provisions;
2 (b) In excess of the statutory authority of the agency;
3 (c) Made upon unlawful procedure;
4 (d) Affected by other error of law;
5 (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the
6 whole record; or
7
8 (f) Arbitrary or capricious or characterized by abuse of discretion.

9 WHEREFORE, Petitioner prays that this Court allow briefs to be filed, oral argument
10 be heard, and following a review of the record, that this Court enters its Order reversing the
11 above decision of the Appeals Officer.
12

13 DATED this 14th day of August, 2017.

14 GREENMAN, GOLDBERG, RABY
15 & MARTINEZ

16 

17 LISA M. ANDERSON, ESQ.

18 Nevada Bar #4907

19 601 South Ninth Street

20 Las Vegas, NV 89101

21 Attorneys for Petitioner
22
23
24
25
26
27
28

FILED

JUL 20 2017

APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Matter of the Contested
 Industrial Insurance Claim

of

JARED SPANGLER
 3550 TUNDRA SWAN ST.
 LAS VEGAS, NV 89122,

Claimant.

Claim No.: 16C52G555847

Hearing No.: 1523393-MT

Appeal No.: 1524756-GB

Employer:

CITY OF HENDERSON
 ATTN: SALLY IHMELS
 P.O. BOX 95050 MSC 127
 HENDERSON, NV 89009-5050

DECISION AND ORDER

The above-captioned appeal came on for hearing before Appeals Officer GEORGANNE W. BRADLEY, ESQ. The claimant, JARED SPANGLER (hereinafter referred to as "claimant"), was represented by his counsel, LISA M. ANDERSON, ESQ., of GREENMAN GOLDBERG RABY & MARTINEZ. The Employer, CITY OF HENDERSON (hereinafter referred to as "Employer"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP.

On March 15, 2016, the claimant was informed that his industrial insurance claim was denied. Claimant appealed that determination and the parties agreed to bypass the Hearing Officer and proceed before this Court, generating the instant hearing.

After considering the documentary evidence and the argument of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. On February 9, 2016, the claimant, JARED SPANGLER, alleges that has hearing loss and ringing in the ears which he attributes to job related exposure to loud noises. The claimant was seen by Dr. Blake at Anderson Audiology where hearing loss was noted. The claimant

1 appears to have failed to have revealed his earlier 2005 denied hearing loss claim or that the claimant
2 apparently has been working a desk job for the last 5-6 years. (Exhibit A at 1)

3 2. The Employer's Report of Industrial Injury or Occupational Disease notes a
4 nearly one month delay in reporting the hearing loss. (Exhibit A at 2)

5 3. The Employer's First Notice of Injury or Occupational Disease notes that the
6 claimant alleges exposure to excessive loud noises and that he has had tinnitus for several years.
7 (Exhibit A at 3)

8 4. The claimant has previously filed a hearing loss claim in November of 2005.
9 On February 22, 2006, Dr. Manthei noted that the claimant's family had a positive history of hearing
10 loss. He noted that MRI testing revealed that the claimant had revealed "a contrast enhancement of
11 the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the
12 brain." It was concluded that the claimant's symptomatology was most likely due to a nonindustrial
13 component, and that the claimant's hearing loss should not be considered to be industrial in nature. A
14 claim denial determination for the November 1, 2005, hearing loss claim was issued on March 7,
15 2006. (Exhibit A at 4-21)

16 5. Hearing testing has been performed throughout the claimant's employment with
17 the City of Henderson. (Exhibit A at 22-34)

18 6. As a result of hearing testing in October of 2015, the claimant was seen by Dr.
19 Blake at Anderson Audiology. A hearing loss was found which was found to be suggestive loss due
20 to noise exposure. (Exhibit A at 35-38)

21 7. A medical release was signed by the claimant on February 9, 2016. (Exhibit A
22 at 39)

23 8. On March 2, 2016, the claimant was seen by Dr. Theobald. The claimant
24 complained of difficulty in hearing conversational speech, particularly women and children's voices,
25 especially in the presence of background noise. It was noted that the claimant has a "possible tumor
26 located in the area of the left cochlear nerve." It was recommended that the claimant be seen by a
27 neuro-otologist to assess the potential likelihood of left sided cochlear pathology. (Exhibit A at 40-
28 43)

9. On March 15, 2016, a claim denial determination was issued. However, it was noted that bills related to Dr. Theobold's evaluation would be paid. (Exhibit A at 44)

10. On March 28, 2016, the claimant appealed the claim denial determination. (Exhibit A at 45) This appeal was transferred directly to the Appeals Officer. (Exhibit A at 46)

11. Claimant provided fifty-one (51) pages of evidence which was reviewed and duly considered. (Exhibits 1-2)

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

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

CONCLUSIONS OF LAW

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

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

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

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

1 4. Claimant was unable to meet his burden of proof in this case. He was unable to
2 demonstrate that his hearing loss is a compensable industrial injury.

3 5. Under NRS 616C.150 and NRS 617.358, the claimant has the burden of proof
4 to show that the injury arose out of and in the course of employment. The claimant must satisfy this
5 burden by a preponderance of the evidence. Further, NRS 616B.612 mandates that an employee is
6 only entitled to compensation if he is injured in the course and scope of his employment.

7 6. The Nevada Supreme Court has held that:

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

12 Rio Suite Hotel v. Gorsky, 113 Nev. 600 (1997).

13 7. Some courts have found a distinction between "the course of employment" and
14 "arising out of employment." In addition to occurring while at work, the injury must result from a
15 hazard connect with the employment. See, Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996).

16 8. In Nevada, the Supreme Court has defined the term "arose out of," as contained
17 in NRS 616C.150, to mean that there is a causal connection between the injury and the employee's
18 work. In other words, the injured party must establish a link between the workplace conditions and
19 how those conditions caused the injury. Further, the claimant must demonstrate that the origin of the
20 injury is related to some risk involved within the scope of employment. The claimant has failed to
21 meet his burden in this regard, especially given the prior 2006 claim denial and the intervening
22 primarily desk job assignment of the claimant.

23 9. NRS 616A.030 defines an accident as "... an unexpected or unforeseen event
24 happening suddenly and violently, with or without human fault, and producing at the time objective
25 symptoms of an injury." As explained above, there is no known acute trauma or specific mechanism
26 of injury, therefore, no statutory accident has been established.

10. Furthermore, NRS 616A.265 defines an injury as "... a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result which is established by medical evidence ..." Here, there is no statutory injury for the reasons set forth above.

11. The Nevada Supreme Court has held that:

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

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

12. This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev. 532, 936 P.2d 839 (1997) case, which held that "mere speculation and belief does not rise to the level of reasonable medical certainty." Given the lack of any fully informed medical opinion making an industrial causal connection to a reasonable degree of medical probability, claim denial was legal and proper.

13. Further, the Nevada Supreme Court held in Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005):

An accident or injury is said to arise out of employment when there is a causal connection between the injury and the employee's work. In other words, the injured party must establish a link between the workplace conditions and how those conditions caused the injury. Further, a claimant must demonstrate that the origin of the injury is related to some risk involved within the scope of employment. However, if an accident is not fairly traceable to the nature of employment or the workplace environment, then the injury cannot be said to arise out of the claimant's employment. Finally, resolving whether an injury arose out of employment is examined by a totality of the circumstances.

14. The Court in Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605 939 P2d. 1043 (1997) held that the "Nevada Industrial Insurance Act is not a mechanism which makes employers absolutely liable for injuries suffered by employees who are on the job." The Court concluded by stating, "The requirements of 'arising out of and in the course of employment' make it clear that a claimant must establish more than being at work and suffering an injury in order to recover."

1 15. The Court in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad. Opn. 34
2 (2010) clarified Mitchell. It indicated that:

3 “The appeals officer found that Phillips’ case was ‘distinguishable’
4 from Mitchell because Phillips’ injury did not result from an
5 ‘unexplained fall.’ Without elaborating, the appeals officer also stated
6 that ‘[t]he Mitchell [c]ourt mentions the inherent dangerousness of
7 stairways.’ . . . [The Court in Rio further discussed Mitchell: “The
8 employee argued that because she did not have a health affliction that
9 caused her to fall and ‘because staircases are inherently dangerous,’ her
10 injury “arose out of her employment.” . . . The appeals officer
11 determined that the employee’s fall did not arise out of her
12 employment, and the district court denied her petition for judicial
13 review.”. . . [Our finding in Mitchell was that] “[T]he employee must
14 show that ‘the origin of the injury is related to some risk involved
15 within the scope of employment . . . thus, because the [Mitchell]
16 employee could not explain how the conditions of her employment
17 caused her to fall . . . we determined that the appeals officer correctly
18 concluded that she failed to demonstrate the requisite ‘causal
19 connection.

20 16. The claimant has failed to establish that the origin of his injury, is related to
21 some risk in the course of employment, given the claimant’s past denied hearing loss claim and
22 subsequent apparent assignment to a desk job, and given the lack of any acute trauma or specific
23 mechanism of injury.

24 17. Furthermore, the claimant has not met the requirements of NRS 617.440 to
25 establish a compensable occupational disease. That statute states:

26 NRS 617.440 Requirements for occupational disease to be deemed
27 to arise out of and in course of employment; applicability.

28 1. An occupational disease defined in this chapter shall be
deemed to arise out of and in the course of the employment if:

(a) There is a direct causal connection between the conditions
under which the work is performed and the occupational disease;

(b) It can be seen to have followed as a natural incident of the
work as a result of the exposure occasioned by the nature of the
employment;

(c) It can be fairly traced to the employment as the proximate
cause; and

(d) It does not come from a hazard to which workers would
have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the
business and not independent of the relation of the employer and
employee.

1 3. The disease need not have been foreseen or expected,
2 but after its contraction must appear to have had its origin in a risk
3 connected with the employment, and to have flowed from that source
4 as a natural consequence.

5 4. In cases of disability resulting from radium poisoning or
6 exposure to radioactive properties or substances, or to roentgen rays (X
7 rays) or ionizing radiation, the poisoning or illness resulting in
8 disability must have been contracted in the State of Nevada.

9 5. The requirements set forth in this section do not apply to
10 claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485 or
11 617.487.

12 18. Therefore, since the claimant has failed to establish both an injury by accident
13 or an occupational disease, the Appeals Officer finds that claimant has failed to establish a
14 compensable industrial claim and same was properly denied.

15 DECISION AND ORDER

16 The claimant, JARED SPANGLER, has failed to establish a compensable industrial
17 injury claim.

18 IT IS HEREBY ORDERED that the March 15, 2016 determination denying the claim
19 is AFFIRMED.

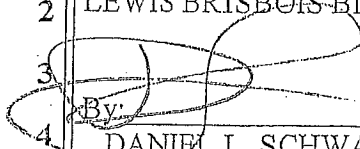
20 IT IS SO ORDERED.

21 DATED this 20th day of July, 2017.

22 Georganne W. Bradley
23 GEORGANNE W. BRADLEY, ESQ.
24 APPEALS OFFICER

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

1 Submitted by:
2 LEWIS BRISBOIS-BISGAARD & SMITH LLP

3 
4 By: DANIEL L. SCHWARTZ, ESQ.
5 Nevada Bar No. 005125
6 2300 W. Sahara Avenue, Ste. 300, Box 28
7 Las Vegas, Nevada 89102
8 Attorney for the Employer
9
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1 CERTIFICATE OF MAILING

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

7 JARED SPANGLER
8 3550 TUNDRA SWAN ST.
9 LAS VEGAS, NV 89122

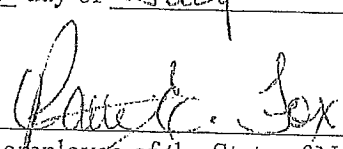
10 LISA ANDERSON, ESQ.
11 GREENMAN GOLDBERG RABY & MARTINEZ
12 601 S. 9TH ST.
13 LAS VEGAS, NV 89101

14 CITY OF HENDERSON
15 ATTN: SALLY IHMELS
16 P.O. BOX 95050 MSC 127
17 HENDERSON, NV 89009-5050

18 CCMSI
19 SUE RICCIO
20 P.O. BOX 35350
21 LAS VEGAS, NV 89133

22 Daniel L. Schwartz, Esq.
23 Lewis Brisbois Bisgaard & Smith LLP
24 2300 West Sahara Avenue, Suite 300, Box 28
25 Las Vegas, NV 89102

26 DATED this 20th day of July, 2017.

27 
28 An employee of the State of Nevada

RECEIVED
8/21/17

1 NOIP
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 5125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
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10 Attorneys for Respondents,
11 City of Henderson and Cochran
12 Management Services, Inc. (CCMSI)
13

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 JARED SPANGLER,

17 Petitioner,

CASE NO.: A-17-759871-j

DEPT NO.: XVIII

18 v.

19 CITY OF HENDERSON, CANNON
20 COCHRAN MANAGEMENT SERVICES,
21 INC. (CCMSI), THE DEPARTMENT OF
22 ADMINISTRATION, HEARINGS DIVISION,
23 APPEALS OFFICE,

24 Respondents.
25

26 NOTICE OF INTENT TO PARTICIPATE

27 TO: JARED SPANGLER, Petitioner,

28 TO: LISA M. ANDERSON, ESQ., Counsel for Petitioner.

A COPY OF THE Petition for Judicial Review was received by Respondents, CITY OF
HENDERSON ("CITY OF HENDERSON") and CANNON COCHRAN MANAGEMENT
SERVICES, INC., ("CCMSI") by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS
BISGAARD & SMITH LLP, on or about August 17, 2017 and, pursuant to NRS 233B.130(3),
please take notice that CITY OF HENDERSON and CCMSI, are Respondents in this matter

///
///
///

///

1 and intend to participate in the Petition for Judicial Review filed by the Petitioner, JARED
2 SPANGLER.

3 DATED this 18 day of August, 2017.

4
5 Respectfully submitted,

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By: 

9 DANIEL L. SCHWARTZ, ESQ.
10 Nevada Bar No. 005125
11 2300 W. Sahara Ave., Ste. 300, Box 28
12 Las Vegas, Nevada 89102
13 *Attorneys for Respondents,*
14 *City of Henderson and Cochran*
15 *Management Services, Inc. (CCMSI)*

16 ///

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 16th day of August, 2017, I did cause a true copy of the NOTICE OF INTENT TO PARTICIPATE to be placed in the United States Mail, with first class postage prepaid to:

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Jared Spangler
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City of Henderson
Attn: Sally Ihmels
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Henderson, NV 89009-5050

CCMSI
Sue Riccio
P.O. Box 35350
Las Vegas, NV 89133


An Employee of LEWIS BRISBOIS BISGAARD & SMITH, LLP

163

1 CITY OF HENDERSON \$ 0.00
2 AIG \$223.00
3 Total remitted \$223.00

4 DATED this 28 day of August, 2017.

5 Respectfully submitted,

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

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8 By: 

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Las Vegas, Nevada 89102
*Attorneys for Respondents,
City of Henderson and Cochran
Management Services, Inc. (CCMSI)*

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1 CERTIFICATE OF SERVICE

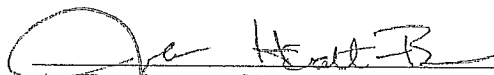
2 Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard &
3 Smith LLP and that on this 18 day of August, 2017, I did cause a true copy of the INITIAL
4 APPEARANCE FEE DISCLOSURE to be placed in the United States Mail, with first class
5 postage prepaid to:

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13 City of Henderson
14 Attn: Sally Ihmels
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16 Henderson, NV 89009-5050

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An Employee of LEWIS BRISBOIS BISGAARD & SMITH, LLP

Steven D. Grierson

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3 Nevada Bar No. 4907
4 GREENMAN GOLDBERG RABY & MARTINEZ
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6 Las Vegas, NV 89101
7 Phone: 702.384.1616 ~ Fax: 702.384.2990
8 *Attorneys for Petitioner*

DISTRICT COURT
CLARK COUNTY, NEVADA

JARED SPANGLER,

Petitioner,

vs.

)CASE NO.: A-17-759871-J

)DEPT. NO.: 18- 11

CITY OF HENDERSON, CANNON
COCHRAN MANAGEMENT SERVICES,
INC. (CCMSI), THE DEPARTMENT OF
ADMINISTRATION, HEARINGS
DIVISION,

Respondents.

CERTIFICATE OF MAILING

I hereby certify that on the 15 day of August, 2017, I deposited into the U.S. Mails, postage prepaid, a copy of the foregoing **PETITION FOR JUDICIAL REVIEW**, addressed as follows:

Department of Administration
Appeals Office
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Las Vegas, NV 89102

Daniel L. Schwartz, Esq.
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& Smith, LLP
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Las Vegas, NV 89102-4375

///

///


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1 City of Henderson
2 Attn: Sally Ihmels
3 P.O. Box 95050, MSC 127
4 Henderson, NV 89009-5050

5 Jared Spangler
6 3550 Tundra Swan St.
7 Las Vegas, NV 89122

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Sue Riccio
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An Employee of Greenman, Goldberg,
Raby & Martinez

Electronically Filed
9/8/2017 4:17 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 AOS
2 LISA M. ANDERSON, ESQ.
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7 Phone: 702.384.1616 ~ Fax: 702.384.2990
8 Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

8 JARED SPANGLER,)
9)
10 Petitioner,)
11 vs.) CASE NO.: A-17-759871-J
12) DEPT. NO.: II
13 CITY OF HENDERSON, CANNON)
14 COCHRAN MANAGEMENT SERVICES,)
15 INC. (CCMSI), THE DEPARTMENT OF)
16 ADMINISTRATION, HEARINGS)
17 DIVISION,)
18 Respondents.)

AFFIDAVITS OF SERVICE

Please see attached.

DATED this 8th day of September, 2017.

GREENMAN, GOLDBERG, RABY
& MARTINEZ

By: *[Signature]*

LISA M. ANDERSON, ESQ.
Nevada Bar No. 4907
601 South Ninth Street
Las Vegas, NV 89101
Attorneys for Petitioner

///

Greenman Goldberg Raby Martinez & Associates
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of September, 2017, I deposited into the U.S. Mails, postage prepaid, a copy of the foregoing **AFFIDAVITS OF SERVICE**, addressed as follows:

Department of Administration
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An Employee of Greenman, Goldberg,
Raby & Martinez

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

DECLARATION OF SERVICE

Robert Deale, declares and says: That at all times herein Declarant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceedings in which this Declaration is made. That Declarant received 1 copy(ies) of the PETITION FOR JUDICIAL REVIEW in Case No. A-17-759871-J on the 19th day of August, 2017 and served the same at 2:45 PM on the 22nd day of August, 2017 by:

(Declarant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant _____ at _____
2. serve the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at _____

(Use paragraph 3 for serve upon agent, completing A or B)

3. serving the defendant OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA by personally delivering and leaving a copy at The Office of Attorney General of the State of Nevada, 100 N. Carson Street, Carson City, NV 89701
 - a. With Taylor Mussleman as Legal Secretary, an agent lawfully designated by statute to accept service of process;
 - b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

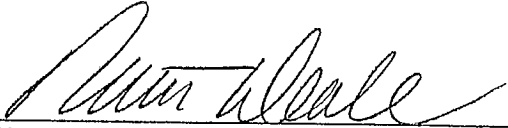
4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

_____ ordinary mail
_____ certified mail, return receipt requested
_____ registered mail, return receipt requested

addressed to the defendant _____ at the defendant's last known address which is _____

Per NRS 53.045: I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 25, 2017.


Signature of Process Server, Robert Deale

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

DECLARATION OF SERVICE

Robert Deale, declares and says: That at all times herein Declarant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceedings in which this Declaration is made. That Declarant received 1 copy(ies) of the PETITION FOR JUDICIAL REVIEW in Case No. A-17-759871-J on the 19th day of August, 2017 and served the same at 2:57 PM on the 22nd day of August, 2017 by:

(Declarant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant _____ at _____
2. serve the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at _____

(Use paragraph 3 for serve upon agent, completing A or B)

3. serving the defendant NEVADA DEPARTMENT OF ADMINISTRATION by personally delivering and leaving a copy at The Office of The Department of Administration, 209 E. Musser St, Room 304, Carson City, NV 89701
 - a. With Sara Brewer as AA@, an agent lawfully designated by statute to accept service of process;
 - b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.
4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

_____ ordinary mail
_____ certified mail, return receipt requested
_____ registered mail, return receipt requested

addressed to the defendant _____ at the defendant's last known address which is _____

Per NRS 53.045: I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 25, 2017.



Signature of Process Server, Robert Deale

Steven D. Grierson

1 **BREF**

2 THADDEUS J. YUREK III, ESQ.

3 Nevada Bar No. 011332

4 LISA M. ANDERSON, ESQ.

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10 Attorneys for Petitioner

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12 landerson@ggrmlawfirm.com

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JERED SPANGLER,

16 Petitioner,

17 vs.

18 CITY OF HENDERSON, CANNON

19 COCHRAN MANAGEMENT SERVICES,

20 INC., THE DEPARTMENT OF

21 ADMINISTRATION, HEARINGS

22 DIVISION,

23 Respondents.

CASE NO. : A-17-759871-J

DEPT. NO. : XXVIII

24 **PETITIONER'S OPENING BRIEF**

25 THADDEUS J. YUREK, ESQ.

26 Nevada Bar No: 011332

27 LISA M. ANDERSON, ESQ.

28 Nevada Bar No: 004907

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Attorney for Respondents

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	1
STATUTES AND REGULATIONS.....	2
STATEMENT OF THE ISSUES.....	1
STATEMENT OF CASE.....	1
STATEMENT OF THE FACTS.....	2
ARGUMENT.....	5
A. THE APPROPRIATE STANDARD FOR JUDICIAL REVIEW IN CONTESTED WORKERS' COMPENSATION CLAIMS.....	5
B. THE APPEALS OFFICER'S DECISION DATED JULY 20, 2017 IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND CONTAINS LEGAL ERROR.....	7
CONCLUSION.....	13
CERTIFICATE OF COMPLIANCE.....	14
CERTIFICATE OF MAILING.....	15

TABLE OF AUTHORITIES

CASES

PAGE

<i>SIIS v. Hicks</i> , 100 Nev. 567, 688 P.2d 324 (1984).....	6
<i>SIIS v. Thomas</i> , 101 Nev. 293, 701 P.2d 1012 (1985).....	6, 13
<i>SIIS v. Swinney</i> , 103 Nev. 17, 731 P.2d 359 (1987).....	6
<i>SIIS v. Christensen</i> , 106 Nev. 85, 787 P.2d 408 (1990).....	6
<i>Brocas v. Mirage Hotel & Casino</i> , 109 Nev. 579, 583, 854 P.2d 862, 865 (1993).....	6
<i>State Employment Sec. Dep't v. Hilton Hotels</i> , 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986).....	6
<i>Barrick Goldstrike Mine v. Peterson</i> , 116 Nev. 541, 547, 2 P.3d 850, 854 (2000).....	6
<i>Law Offices of Barry Levinson v. Milko</i> , 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008).....	6
<i>SIIS v. Khweiss</i> , 108 Nev. at 126, 825 P.2d at 220 (1992).....	6
<i>Dep't of Motor Vehicles v. Lovett</i> , 110 Nev. 473, 476, 874 P.2d 1274, 1249 (1994).....	6

STATUTES AND REGULATIONS

NRS 233B.135.....	5
NRS 617.440.....	7, 12
NRS 616.175.....	9, 11
NRS 616C.150.....	12
NRAP 28(e).....	14

I

STATEMENT OF ISSUE

The issue raised by Petitioner is whether substantial evidence supports the Appeals Officer's Decision and Order dated July 20, 2017 affirming Respondents' determination denying liability for Petitioner's February 9, 2016 industrial injury claim.

II

STATEMENT OF CASE

This is the petition of JERED SPANGLER (hereinafter "Petitioner") of the Decision and Order of the Appeals Officer below, wherein the Appeals Officer affirmed the determination of the Employer, City of Henderson, and its workers' compensation administrator, CCMSI, (hereinafter and collectively "Respondent") denying liability for Petitioner's February 9, 2016 claim for workers' compensation benefits related to occupationally hearing loss.

The prior history in the instant appeal is summarized as follows:

On July 20, 2017, the Appeals Officer, by and through her Decision and Order, affirmed Respondent's March 15, 2016 determination denying liability for Petitioner's February 9, 2016 industrial injury claim. Petitioner filed an appeal, arguing that the Appeals Officer improperly ruled in Respondent's favor, alleging that the Appeals Officer's Decision and Order lack substantial evidence, and that the Appeals Officer committed legal error.

Petitioner filed the instant appeal on August 14, 2017. The Record on Appeal was filed on September 12, 2017.

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III

STATEMENT OF FACTS

On or about February 9, 2016, Petitioner reported the development of occupationally related hearing loss and tinnitus that was sustained and accelerated while in the course and scope of his employment as a police officer for the City of Henderson. On that date, Petitioner reported extensive exposure to unprotected loud noises during his career as a police officer. Liability for the claim was erroneously denied. Claim denial is the subject of this appeal.

Petitioner participated in annual physicals, including hearing tests, as part of his employment as a police officer. (ROA pages 93-104) Petitioner demonstrated minor hearing deficits when he was hired as a police officer in 2003. However, Petitioner's hearing progressively worsened to a moderate to severe level by the time he filed his claim for workers' compensation benefits.

On February 9, 2016, Petitioner presented to Amanda Blake, Au.D for an audiology evaluation. At that time, Ms. Blake noted Petitioner's employment history as a police officer began in 2003, with eleven (11) years on active patrol. During Petitioner's employment as a police officer, Ms. Blake opined that Petitioner's hearing progressively worsened as a result of being "exposed to sirens, gunfire during range qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side." Ms. Blake was provided with copies of the annual hearing examinations dating back to Petitioner's 2003 hire date, and she confirmed that Petitioner sustained additional bilateral hearing loss since his hire date, left worse than right. Ms. Blake concluded that Petitioner's "standard pure tone testing revealed borderline normal hearing, 0.25-2k Hz, sloping to a moderate high frequency sensorineural hearing loss in the right ear" and a "mild sloping to severe sensorineural hearing loss in the left ear with a notch present

1 at 6k Hz.” Ms. Blake confirmed that it was her opinion that his hearing loss was “not a
2 consequence of the normal aging process for either ear and is suggestive of noise exposure.”
3 Ms. Blake completed a C-4 form and opined that Petitioner’s hearing loss was directly related
4 to his employment as a police officer. Ms. Blake recommended binaural amplification. (ROA
5 pages 105-109)
6

7 On March 1, 2016, Petitioner was evaluated by Roger Theobald, Au.D, who confirmed
8 that he reviewed the prior medical records pertaining to Petitioner’s annual hearing tests,
9 reporting from Dr. Scott Manthei in 2005, and reporting from Ms. Blake. Mr. Theobald also
10 reported that Petitioner’s job as a police officer exposed him to loud noises while on the job with
11 the Henderson Police Department. Mr. Theobald verified that Petitioner had mild to moderate
12 hearing loss in the left ear and normal to mild high frequency hearing loss in the right ear at the
13 time of his 2003 hiring. In the years following Petitioner’s 2003 hire date, Mr. Theobald opined
14 that Petitioner’s “hearing has significantly decreased bilaterally. Hearing decrease is considered
15 significant if a change of 10dB or more occur at three or more hearing thresholds.” Mr. Theobald
16 verified that there is a likelihood of a pre-existing underlying condition contributing to
17 Petitioner’s hearing loss in the left ear, “however, there is a high probability that Mr. Spangler’s
18 threshold shift may be as a result of on the job noise exposure.” Testing performed by Mr.
19 Theobald revealed “pure tone hearing threshold show a mild to moderately severe sensorineural
20 hearing loss in the right ear and a moderate to moderately severe sensorineural hearing loss in
21 the left.” Mr. Theobald recommended that Petitioner be provided with hearing aids and be
22 scheduled to see a neuro-otologist to evaluate for a left sided cochlear pathology. (ROA pages
23 110-113)
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1 On March 15, 2016, the Insurer denied liability for Petitioner's claim for bilateral hearing
2 loss. (ROA pages 132) Petitioner appealed that determination to the Hearing Officer. Prior to
3 the hearing, the parties agreed to transfer the matter to the Appeals Officer.
4

5 On November 23, 2016, Petitioner sent a letter to Dr. Steven Becker asking him whether
6 Petitioner's hearing loss was work related and, if not, whether Petitioner's exposure to work
7 related noise contributed to the hearing loss and tinnitus. On December 23, 2016, Dr. Becker
8 opined that Petitioner's hearing loss was not entirely work related, however, Dr. Becker
9 confirmed that it was his opinion that Petitioner's work related noise exposure "contributed" to
10 the extent of the present hearing loss and tinnitus. Dr. Becker based his opinion on the "original
11 hearing test (performed in) 2003 revealed losses bilaterally, worse in the left and hearing has
12 steadily worsened" since that time." (ROA pages 25-29)
13

14 On July 20, 2017, the Appeals Officer affirmed Respondent's March 15, 2017 claim
15 denial determination. The Appeals Officer concluded that Petitioner failed to establish that his
16 occupational hearing loss qualified for benefits as an industrial injury or occupational disease.
17 The Appeals Officer ruled that the origin of Petitioner's hearing loss was not related to an
18 employment related risk. Respondent also argued that Claimant was assigned to a desk job
19 during his career as a police officer. (ROA pages 3-11)
20

21 It is from the Appeals Officer's Decision and Order dated July 20, 2015 that Petitioner
22 now appeals.
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IV

LEGAL ARGUMENT

A. The Appropriate Standard for Judicial Review in Contested Workers' Compensation Claims

In contested workers compensation claims, judicial review first requires an identification of whether the issue to be resolved is a factual or legal issue. While questions of law may be reviewed de novo by this Court, a more deferential standard must be employed when reviewing the factual findings of an administrative adjudicator.

NRS 233B.135, which governs judicial review of a final decision of an administrative agency, provides, in pertinent part, the following:

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

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

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

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1 Relating to the standard of review of administrative decisions, our Supreme Court has
2 consistently held that the factual findings made by administrative adjudicators may not be
3 disturbed on appeal unless they lack the support of substantial evidence. SIIS v. Hicks, 100 Nev.
4 567, 688 P.2d 324 (1984); SIIS v. Thomas, 101 Nev. 293, 701 P.2d 1012 (1985); SIIS v.
5 Swinney, 103 Nev. 17, 731 P.2d 359 (1987); SIIS v. Christensen, 106 Nev. 85, 787 P.2d 408
6 (1990).

7
8 Thus, “the central inquiry is whether substantial evidence in the record supports the
9 agency decision.” Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 583, 854 P.2d 862, 865
10 (1993). Substantial evidence is “that quantity and quality of evidence which a reasonable
11 [person] could accept as adequate to support a conclusion.” State Employment Sec. Dep’t v.
12 Hilton Hotels, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986). Therefore, if the agency’s
13 decision lacks substantial evidentiary support, the decision is unsustainable as being arbitrary
14 and capricious. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547, 2 P.3d 850, 854 (2000).
15 The Court must defer to an agency’s findings of fact only as long as they are supported by
16 substantial evidence. Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378,
17 383-84 (2008).

18
19 On the other hand, purely legal questions may be determined by the District Court
20 without deference to an agency determination, upon de novo review. SIIS v. Khweiss, 108 Nev.
21 at 126, 825 P.2d at 220 (1992). Furthermore, the construction of a statute is a question of law,
22 subject to de novo review. See State, Dep’t of Motor Vehicles v. Lovett, 110 Nev. 473, 476,
23 874 P.2d 1274, 1249 (1994).

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1 The matter at issue in this appeal clearly involves a factual issue regarding whether
2 Petitioner has met his burden in establishing compensability for the extent of hearing loss
3 detected at the time of the filing of the February 9, 2016 workers' compensation claim.

4
5 B. The Appeals Officer's Decision And Order Dated July 20, 2017 is Not
6 Supported by Substantial Evidence and Contains Legal Error

7 It is the Petitioner's position that his employment as a police officer directly contributed
8 to the extent of hearing loss and tinnitus present when the February 9, 2016 claim for workers'
9 compensation was filed. Petitioner maintains that his particular profession, that of a law
10 enforcement officer, exposes him to various noise hazards that the average citizen does not
11 experience.

12 NRS 617.440 states:

13 1. An occupational disease defined in this chapter shall be
14 deemed to arise out of and in the course of the employment if:

15 (a) There is a direct causal connection between the conditions
16 under which the work is performed and the occupational disease;

17 (b) It can be seen to have followed as a natural incident of the
18 work as a result of the exposure occasioned by the nature of the
19 employment;

20 (c) It can be fairly traced to the employment as the proximate
21 cause; and

22 (d) It does not come from a hazard to which workers would
23 have been equally exposed outside of the employment.

24 2. The disease must be incidental to the character of the
25 business and not independent of the relation of the employer and
26 employee.

27 3. The disease need not have been foreseen or expected, but
28 after its contraction must appear to have had its origin in a risk
connected with the employment, and to have flowed from that
source as a natural consequence.

4. In cases of disability resulting from radium poisoning or
exposure to radioactive properties or substances, or to roentgen
rays (X-rays) or ionizing radiation, the poisoning or illness
resulting in disability must have been contracted in the State of
Nevada.

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

5. The requirements set forth in this section do not apply to
claims filed pursuant to NRS
617.453, 617.455, 617.457, 617.485 or 617.487.

[Part 26:44:1947; A 1949, 365; 1953, 297] — (NRS A 1961,
589; 1963, 874; 1967, 685; 1983, 458; 2007, 3366)

The medical reporting from the audiologists, who examined, tested and reviewed all
prior hearing studies, verifies that the extent of Petitioner's hearing loss and tinnitus is directly
related to occupational exposures. These exposures consist of, but are not limited to, fire arm
use, sirens, radio and various tactical maneuvers. Police officers are trained to be prepared to
be in loud, chaotic environments. Ms. Blake and Mr. Theobald note Petitioner's prior hearing
exposure but directly relate the ensuring severity of the hearing loss to employment related
exposures. Further, Dr. Becker verified that Petitioner's hearing loss did not originate with his
employment, but opined that the work related exposures contributed to the steady decline in
hearing capabilities. Thus the totality of the reporting establishes a "direct causal connection"
between the extent of Petitioner's hearing loss and tinnitus and his job as a police officer.
Petitioner is not placed in this type of situation outside of his employment. Since there was not
a singular moment when Petitioner sustained hearing damage, the reporting clearly establishes
that his occupational exposures contributed to Petitioner's level of hearing damage, which is a
natural incident of his employment and qualifies for coverage as an occupational disease. It is
clear that ^{Petitioner's} ~~Mr. Davis~~ work conditions and work environment directly contributed to the February
9, 2016 claim for occupational hearing loss.

///

///

///

///

1 Although Petitioner started his career as a police officer with a minor hearing deficit, it
2 was Petitioner's job in law enforcement that significantly accelerated his hearing loss and
3 produced the tinnitus. NRS 616C.175 addresses the issue of when industrial factors aggravate
4 or accelerate a pre-existing condition.

5
6 NRS 616C.175 states:

- 7 1. The resulting condition of an employee who:
8 (a) Has a preexisting condition from a cause or origin that did
9 not arise out of or in the course of the employee's current or past
10 employment; and
11 (b) Subsequently sustains an injury by accident arising out of
12 and in the course of his or her employment which aggravates,
13 precipitates or accelerates the preexisting condition,
14 It shall be deemed to be an injury by accident that is compensable
15 pursuant to the provisions of chapters 616A to 616D, inclusive, of
16 NRS, unless the insurer can prove by a preponderance of the
17 evidence that the subsequent injury is not a substantial
18 contributing cause of the resulting condition.
19 2. The resulting condition of an employee who:
20 (a) Sustains an injury by accident arising out of and in the
21 course of his or her employment; and
22 (b) Subsequently aggravates, precipitates or accelerates the
23 injury in a manner that does not arise out of and in the course of
24 his or her employment,
25 It shall be deemed to be an injury by accident that is compensable
26 pursuant to the provisions of chapters 616A to 616D, inclusive, of
27 NRS, unless the insurer can prove by a preponderance of the
28 evidence that the injury described in paragraph (a) is not a
substantial contributing cause of the resulting condition.

(Added to NRS by 1993, 663; A 1995, 2147; 1999, 1777)

22 ///

23 ///

24 ///

25 ///

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27 ///

1 Respondent denied liability for Petitioner's bilateral hearing loss and tinnitus.
2 Respondent based its denial on the fact that Claimant had some hearing deficit at the time of his
3 2003 hire date. Respondent has acknowledged the hearing deficit from 2003, however, he
4 maintains that the ensuing hearing loss and tinnitus is associated with employment related noise
5 exposure. Thus it was Petitioner's occupational exposures that accelerated his future hearing
6 losses.
7

8 The reporting from the audiologists, Ms. Blake and Mr. Theobald, establishes that
9 Petitioner had some hearing loss at the time of his 2003 hire as a police officer. However, these
10 audiologists verified that Petitioner's hearing loss progressively worsened due to employment
11 related noise exposure.
12

13 Ms. Blake confirmed that it was her opinion that Petitioner's hearing loss was "not a
14 consequence of the normal aging process for either ear and is suggestive of noise exposure."
15 Ms. Blake noted that during his eleven (11) years on active patrol, Petitioner's hearing has
16 progressively worsened as a result of being "exposed to sirens, gunfire during range
17 qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side."
18

19 Mr. Theobald verified that there is a likelihood of a pre-existing underlying condition
20 contributing to Petitioner's hearing loss in the left ear, "however, there is a high probability that
21 Mr. Spangler's threshold shift may be as a result of on the job noise exposure." In the years
22 following Petitioner's 2003 hire date, Mr. Theobald opined that Petitioner's "hearing has
23 significantly decreased bilaterally. Hearing decrease is considered significant if a change of
24 10dB or more occur at three or more hearing thresholds."
25

26 ///

27 ///

1 Furthermore, Dr. Becker confirmed that, while Pétitioner's job did not cause the hearing
2 loss, his job was absolutely a "contributing factor" in the loss that developed after his 2003 hire
3 date as a police officer.

4
5 NRS 616C.175 addresses the issue of when an industrial injury "aggravates, precipitates
6 or accelerates" a pre-existing condition. This statute mandates that an Insurer is responsible for
7 treatment related to a pre-existing condition if the industrial injury "aggravates, precipitates or
8 accelerates" the pre-existing condition. Moreover, if the Insurer denies responsibility for
9 treatment related to a pre-existing condition, this statute requires the Insurer to "prove by a
10 preponderance of the evidence that the subsequent (industrial) injury is not a substantial
11 contributing cause of the resulting condition."

12
13 In this case, Respondent has completely failed to meet its statutory obligation of proving
14 by "a preponderance of the evidence" that Petitioner's occupationally related noise exposure is
15 "not a substantial contributing cause of the resulting condition." Petitioner began experiencing
16 increased hearing loss and the development of tinnitus symptoms after his 2003 hire date as a
17 police officer. This fact was documented in Ms. Blake, Mr. Theobald and Dr. Becker's reporting.
18 Petitioner's job as a police officer regularly exposed him to extremely loud sirens, unprotected
19 sounds of gunfire, a radio piece in the left ear and a lapel radio in close proximity to this left ear.
20 It was during these activities that resulted in the acceleration of hearing loss following his 2003
21 hire date.

22
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28 ///

1 Petitioner experienced minimal hearing deficit at the time of his 2003 hire date. During
2 the subsequent years of active patrol duty, Petitioner was exposed to wide-ranging sources of
3 loud noise without protection. In fact, the reporting verified that Petitioner's increased hearing
4 loss in the left ear compared to the right ear was related to the use of the ear piece in the left ear
5 and the lapel radio on the left side. These exposures were a "contributing factor" in Petitioner's
6 accelerated hearing loss and the development of tinnitus. The current level of hearing loss has
7 been directly related to his occupation as a police officer.
8

9 Therefore, Petitioner's job as a police officer is clearly the primary contributing cause of
10 the current level of hearing loss and the development of tinnitus. The reporting from Ms. Blake,
11 Mr. Theobald and Dr. Becker confirms that Petitioner's occupation noise exposure was the
12 primary contributing cause of the current hearing loss and tinnitus. Although there was a pre-
13 employment finding of mild hearing loss at the time of his 2003 hiring as a police officer, the
14 subsequent deterioration of his hearing abilities and current need for hearing aids is directly
15 related to his employment as a police officer. Therefore, based upon the extensive nature of the
16 industrial noise exposures, Petitioner's worsening hearing loss and tinnitus is industrially related.
17

18 Thus, the Appeals Officer incorrectly applied the NRS 616C.150 and NRS 617.440 when
19 finding that Petitioner's hearing loss condition did not qualify for benefits as an industrial injury
20 or occupational disease. Petitioner's hearing loss absolutely qualifies for benefits under NRS
21 616C.440. Moreover, the available reporting demonstrates that Claimant's mild pre-existing
22 hearing loss at the time of his hire as a police officer was aggravated and accelerated by the
23 ensuring years of occupational noise exposures.
24

25
26 ///

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28 ///

1 Based upon the totality of the evidence, this Court should reverse the Appeals Officer's
2 July 20, 2017 Decision and Order, as the decision of the administrative agency on questions of
3 fact if the decision is supported by substantial evidence in the record. SIIS v. Thomas, 101 Nev.
4 293, 701 P.2d 1012 (1985). Therefore, the Appeals Officer's decision, is not supported by the
5 evidence, and should be reversed on appeal.
6

7 Y

8 CONCLUSION

9 Since the Appeals Officer's Decision and Order lacks substantial evidentiary support and
10 contains legal error as outlined above, Petitioner respectfully requests entry of this Honorable
11 Court's order REVERSING the Appeals Officer Decision and Order as outlined above. This
12 matter should be returned to Respondent for the acceptance of the February 9, 2016 claim for
13 occupational hearing loss.
14

15 DATED this 20th day of October, 2017.

16 GREENMAN, GOLDBERG, RABY & MARTINEZ

17
18
19
20 By: 

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1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that I have read this Petitioner's Opening Brief, and to the best of my
3 knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I
4 further certify that this reply brief complies with all applicable Nevada Rules of Appellate
5 Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding
6 matters in the record to be supported by appropriate references to the record on appeal.
7

8 I understand that I may be subject to sanctions in the event that the accompanying brief
9 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.
10

11 DATED this 20th day of October, 2017.

12 GREENMAN, GOLDBERG, RABY & MARTINEZ

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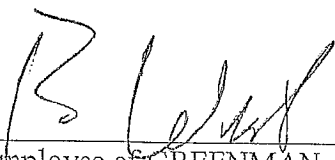
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CERTIFICATE OF MAILING

I hereby certify that on the 20th day of October, 2017, I deposited a true and correct copy of the OPENING BRIEF in the U.S. Mails, postage fully prepaid, enclosed in envelopes addressed as follows:

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An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

1 ORDR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 JARED SPANGLER,

7 Appellant,

8 vs.

9 CITY OF HENDERSON, et al.,

10 Respondents.

Case No.: A-17-759871-J
Dept. No.: II

Date: May 7, 2018
Time: Chambers

ORDER SCHEDULING HEARING
AND BRIEFING SCHEDULE

11
12 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

13 PLEASE TAKE NOTICE that the undersigned will bring a hearing on appeal on the
14 7th day of May, 2018 in Chambers, or as soon thereafter as counsel/parties can be heard.

15 Parties shall file briefs in accordance with the deadlines established in JRCF 75 as
16 follows:

17 Appellant's Opening Brief: Filed 10/20/18

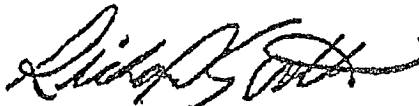
18 Respondent's Brief: April 9, 2018

19 Appellant's Reply: April 24, 2018

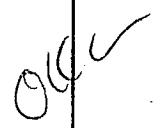
20 Appellant to provide courtesy copies of all pleadings to Department II, 200 Lewis
21 Avenue, 11th Floor, no later than May 4, 2018.

22 IT IS SO ORDERED.

23 Dated this 7th day of March, 2018.

24 

25 RICHARD F. SCOTTI
26 DISTRICT COURT JUDGE



Sheenman

CERTIFICATE OF SERVICE

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

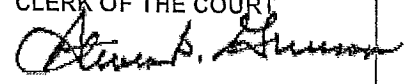
Thaddeus J. Yurek, III, Esq.
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/s/ Melody Howard

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Judicial Executive Assistant

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8 DISTRICT COURT
9
10 CLARK COUNTY, NEVADA

11 JARED SPANGLER,
12
13 Petitioner,
14
15 v.
16 CITY OF HENDERSON, CANNON
17 COCHRAN MANAGEMENT SERVICES,
18 INC. (CCMSI), THE DEPARTMENT OF
19 ADMINISTRATION, HEARINGS DIVISION,
20 APPEALS OFFICE,
21 Respondents.

CASE NO.: A-17-759871-J
DEPT NO.: II

17 RESPONDENTS' ANSWERING BRIEF

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26990-1176

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. STATEMENT OF THE CASE.....	1
II. STATEMENT OF THE ISSUES	1
III. STATEMENT OF THE FACTS	2
IV. JURISDICTION	4
1. Standard of Review	4
V. LEGAL ARGUMENT.....	6
A. Standard at the Appeals Officer Level	6
B. The Denial of the Claim was Legal and Proper	7
VI. CONCLUSION.....	11
CERTIFICATE OF COMPLIANCE	12
CERTIFICATE OF MAILING	13

TABLE OF AUTHORITIES

	<u>Cases</u>	<u>Page No(s).</u>
3	<u>Brocas v. Mirage Hotel & Casino,</u>	
4	109 Nev. 579, 585, 854 P.2d 862, 867 (1993).....	5
5	<u>Container Stevedoring Co. v. Director, OWCP,</u>	
6	935 F.2d 1544, 1546 (9 th Cir. 1991)	6
7	<u>Hagler v. Micron Technology, Inc.,</u>	
8	118 Idaho 596, 798 P.2d 55 (1990)	6
9	<u>Holly v. State ex rel. Wyoming Worker's Compensation Div.,</u>	
10	798 P.2d 323 (1990).....	6
11	<u>Horne v. SIIS,</u>	
12	113 Nev. 532, 537, 936 P.2d 839 (1997).....	5
13	<u>Jones v. Rosner,</u>	
14	102 Nev. 215, 217, 719 P.2d 805, 806 (1986).....	6
15	<u>Maxwell v. SIIS,</u>	
16	109 Nev. 327, 849 P.2d 267 (1993).....	5, 6
17	<u>McCracken v. Fancy,</u>	
18	8 Nev. 30, 639 P.2d 552 (1982).....	4
19	<u>Nevada Indus. Comm'n. v. Hildebrand,</u>	
20	100 Nev. 47, 51, 675 P.2d 401 (1984).....	5
21	<u>Nevada Industrial Comm'n. v. Reese,</u>	
22	3 Nev. 115, 560 P.2d 1352 (1977).....	5
23	<u>North Las Vegas v. Public Service Comm'n.,</u>	
24	3 Nev. 278, 291, 429 P.2d 66 (1967).....	4
25	<u>Reno Sparks Convention Visitors Authority v. Jackson,</u>	
26	112 Nev. 62, 910 P.2d 267 (1996).....	9
27	<u>SIIS v. Khweiss,</u>	
28	108 Nev. 123, 825 P.2d 218 (1992).....	6
	<u>SIIS v. Kelly,</u>	
	99 Nev. 774, 671 P.2d 29 (1983).....	6

1	<u>State Dept of Motor Vehicles v. Torres,</u>	
2	105 Nev. 558, 560, 799 P.2d 959, 960-961 (1989).....	5
3	<u>State Emp't Sec. Dep't v. Hilton Hotels Corp.,</u>	
4	102 Nev. 606, 608 at n.1, 729 P.2d 497 (1986).....	5, 10
5	<u>State Industrial Insurance System v. Hicks,</u>	
6	100 Nev. 567, 688 P.2d 324 (1984).....	6
7	<u>Titanium Metals Corp. v. Clark County,</u>	
8	9 Nev. 397, 399, 663 P.2d 355, 357 (1983).....	5, 10
9	<u>Universal Camera Corp. v. NLRB,</u>	
10	340 U.S. 474, 477, 488 (1951).....	5-6

STATUTES

11	NRS 233B.125	1
12	NRS 233B.135	1, 4, 5, 6, 10
13	NRS 616A.010	6
14	NRS 616A.030	7
15	NRS 616A.265	7
16	NRS 616C.150	7
17	NRS 616C.175	8, 9, 10
18	NRS 617.440	7, 9

OTHER

22	A. Larson, <u>The Law of Workmen's Compensation</u> , § 80.33(a).....	6
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1 I.

2 STATEMENT OF THE CASE

3 This is a worker's compensation case. Prior to the subject claim, in 2005, Petitioner
4 JARED SPANGLER (hereinafter "Petitioner") filed a claim for workers' compensation benefits
5 alleging that he had a hearing loss that was job incurred. This claim was denied as there was
6 evidence that Petitioner had hearing loss prior to his employment. Petitioner did not contest this
7 denial.

8 In the instant claim, on February 9, 2016, Petitioner filed a second claim alleging that his
9 non-industrial hearing loss was made worse over time by his employment. This claim was denied.
10 Petitioner appealed.

11 On July 20, 2017, the Appeals Officer affirmed claim denial given that there was no
12 conclusive evidence that his hearing loss was related to his employment. Petitioner filed the
13 instant Petition for Judicial Review contesting this July 20, 2017 Decision.

14 Petitioner argues to this Court that the aggravation over time of his non-industrial
15 condition should be compensable. However, as will be explained below, the Nevada workers'
16 compensation system does not allow for such a claim. The Appeals Officer's Decision was proper.

17 II.

18 STATEMENT OF THE ISSUES

19 1. Whether substantial rights of Petitioner have been prejudiced as set forth in NRS
20 233B.135(3) because the Appeals Officer's Decision and Order filed on July 20, 2017 was:

- 21 (a) in violation of constitutional or statutory provisions;
22 (b) in excess of statutory authority of the agency;
23 (c) made upon unlawful procedure;
24 (d) affected by other error of law;
25 (e) clearly erroneous in view of the reliable, probative and substantial evidence
26 on the whole record; or
27 (f) arbitrary or capricious or characterized by abuse of discretion; and
28

2. Whether the Appeals Officer's Decision and Order was based upon substantial evidence as required by NRS 233B.125.

III.

STATEMENT OF FACTS

On February 9, 2016, the Petitioner, JARED SPANGLER (hereinafter referred to as "Petitioner"), alleges that has hearing loss and ringing in the ears which he attributes to job related exposure to loud noises. The Petitioner was seen by Dr. Blake at Anderson Audiology where hearing loss was noted. The Petitioner appears to have failed to have reveal his earlier 2005 denied hearing loss claim or that the Petitioner apparently has been working a desk job for the last 5-6 years. Further, Petitioner also failed to reveal that Employer modified his position after 2005 to avoid loud noises. (Record on Appeal p. 35)(hereinafter "ROA p. __")

The Employer's Report of Industrial Injury or Occupational Disease notes a nearly one month delay in reporting the hearing loss. (ROA p. 36)

The Employer's First Notice of Injury or Occupational Disease notes that the Petitioner alleges exposure to excessive loud noises and that he has had tinnitus for several years. (ROA p. 37)

The Petitioner has previously filed a hearing loss claim in November of 2005. On February 22, 2006, Dr. Manthei noted that the Petitioner's family had a positive history of hearing loss. He noted that MRI testing revealed that the Petitioner had revealed "a contrast enhancement of the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the brain." It was concluded that the Petitioner's symptomatology was most likely due to a nonindustrial component, and that the Petitioner's hearing loss should not be considered to be industrial in nature. A claim denial determination for the November 1, 2005, hearing loss claim was issued on March 7, 2006. (ROA pp. 38-55) Petitioner did not contest this claim denial.

Hearing testing has been performed throughout the Petitioner's employment with the City of Henderson. (ROA pp. 56-68)

...

...

1 As a result of hearing testing in October of 2015, on February 9, 2016, the Petitioner was
2 seen by Dr. Blake at Anderson Audiology. A hearing loss was found which was deemed to be
3 suggestive of loss due to noise exposure. Again, it must be noted that there is no indication that
4 Petitioner informed Dr. Blake that he had been working a desk job for 5-6 years prior to this exam
5 and prior to that had a modified job to avoid loud noises. Furthermore, it does not appear that Dr.
6 Blake had access to Petitioner's entire file. (ROA pp. 69-72)

7 A medical release was signed by the Petitioner on February 9, 2016. (ROA p. 73)

8 On March 2, 2016, the Petitioner was seen by Dr. Theobald who noted that, prior to his
9 employment Petitioner had hearing loss in both ears, but that his left was worse than his right,
10 prior to employment with Employer. It was noted that "there is a high likelihood that there is an
11 underlying condition that may be contributing to Mr. Spangler's hearing loss in his left ear" and
12 that the Petitioner has a "possible tumor located in the area of the left cochlear nerve." Job noise
13 exposure was also a potential cause of the hearing loss. It was recommended that the Petitioner be
14 seen by a neuro-otologist to assess the potential likelihood of left sided cochlear pathology. (ROA
15 pp. 74-76)

16 On March 15, 2016, a claim denial determination was issued. However, it was noted that
17 bills related to Dr. Theobald's evaluation would be paid. (ROA p. 77)

18 On March 28, 2016, the Petitioner appealed the claim denial determination. (ROA p. 78)
19 This appeal was transferred directly to the Appeals Officer. (ROA p. 79)

20 On July 20, 2017, the Appeals Officer affirmed claim denial given that there was no
21 conclusive evidence that his hearing loss was related to his employment. (ROA pp. 3-11)

22 Petitioner filed the instant Petition seeking review of the Appeals Officer's July 20, 2017
23 Decision and Order.

24 ...

25 ...

26 ...

27

28

IV.

JURISDICTION

1. Standard Of Review

Judicial review of a final decision of an agency is governed by NRS 233B.135.

NRS 233B.135 Judicial review: Manner of conducting; burden of; standard for review.

1. 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.

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

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

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

(a) In violation of constitutional or statutory provisions;

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

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

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

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

The standard of review is whether there is substantial evidence to support the underlying decision. The reviewing court should limit its review of administrative decisions to determine if they are based upon substantial evidence. North Las Vegas v. Public Service Comm'n., 83 Nev. 278, 291, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial

1 evidence is that quantity and quality of evidence which a reasonable man would accept as
2 adequate to support a conclusion. See, Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270
3 (1993); and Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839 (1997).

4 When reviewing administrative court decisions, the Court has held that, on factual
5 determinations, the findings and ultimate decisions of an appeals officer are not to be disturbed
6 unless they are clearly erroneous or otherwise amount to an abuse of discretion. Nevada Industrial
7 Comm'n. v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977). An administrative determination
8 regarding a question of fact will not be set aside unless it is against the manifest weight of the
9 evidence. Nevada Indus. Comm'n. v. Hildebrand, 100 Nev. 47, 51, 675 P.2d 401 (1984). A
10 decision by an appeals officer that is based upon the credibility of Respondent and other witnesses
11 is "not open to appellate review." Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 585, 854 P.2d
12 862, 867 (1993).

13 In determining whether an administrative decision is supported by substantial evidence, the
14 methodology of the District Court is also well-defined. First, for each issue appealed, the
15 pertinent rule of law is identified. Thereafter, the Record on Appeal is reviewed to determine
16 whether the agency's decision on each issue is supported by substantial factual evidence. State
17 Dep't of Motor Vehicles v. Torres, 105 Nev. 558, 560, 799 P.2d 959, 960-961 (1989).

18 If the decision of the administrative agency on the appealed issue is supported by
19 substantial factual evidence in the Record on Appeal, the District Court must affirm the decision
20 of the agency as to that issue. On the other hand, a decision by an administrative agency that lacks
21 support in the form of substantial evidence is arbitrary or capricious and, thus, an abuse of
22 discretion that warrants reversal. NRS 233B.135(3); Titanium Metals Corp. v. Clark County, 99
23 Nev. 397, 399, 663 P.2d 355, 357 (1983).

24 Substantial evidence has been defined as that quantity and quality of evidence which a
25 reasonable man could accept as adequate to support a conclusion. State Emp't Sec. Dep't v.
26 Hilton Hotels Corp., 102 Nev. 606, 608 at n.1, 729 P.2d 497 (1986). Additionally, substantial
27 evidence is not to be considered in isolation from opposing evidence, but evidence that survives
28 whatever in the record fairly detracts from its weight. Universal Camera Corp. v. NLRB, 340 U.S.

1 474, 477, 488 (1951); Container Stevedoring Co. v. Director, OWCP, 935 F.2d 1544, 1546 (9th
2 Cir. 1991). This latter point is clearly the significance of the requirement in NRS 233B.135(3)(e)
3 which states that the reviewing court consider the whole record.

4 While the Court is not required to give deference to pure legal questions determined by the
5 agency, those conclusions of the agency which are "closely related to the agency's view of the
6 facts, are entitled to deference, and will not be disturbed if they are supported by substantial
7 evidence." Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

8 V.

9 LEGAL ARGUMENT

10 A. Standard at the Appeals Officer Level.

11 It is the Petitioner, not the Respondents, who has the burden of proving his case, and that is
12 by a preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567,
13 688 P.2d 324 (1984); Holley v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323
14 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

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

23 NRS 616A.010 makes it clear that:

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

27 ...

28 ...

1 B. The Denial of the Claim was Legal and Proper

2 Here, Petitioner argues that he has a non-occupational hearing loss that was exacerbated
3 over time by his employment. However, workers' compensation does not recognize such a claim.
4 To provide context for this analysis, there are essentially two types of claims that can be made
5 under the Nevada workers' compensation system: acute injury claims which are governed by NRS
6 616C; and occupational disease claims which are governed by NRS 617.

7 Acute injury claims arise when an employee is able to establish "by a preponderance of the
8 evidence that the employee's injury arose out of and in the course of his or her employment." NRS
9 616C.150. To sustain that burden, the employee must prove a statutory "accident" and "injury."
10 NRS 616A.030 defines an accident as "... an unexpected or unforeseen event happening suddenly
11 and violently, with or without human fault, and producing at the time objective symptoms of an
12 injury." Furthermore, NRS 616A.265 defines an injury as "... a sudden and tangible happening of
13 a traumatic nature, producing an immediate or prompt result which is established by medical
14 evidence ..."

15 Occupational disease claims on the other hand have no requirement to establish an
16 "accident" or "injury." Instead, making out a claim for an occupational disease is governed by
17 NRS 617.440 as follows:

18 ~~NRS 617.440—Requirements for occupational disease to be~~
19 ~~deemed to arise out of and in course of employment;~~
20 ~~applicability.~~

21 1. An occupational disease defined in this chapter shall be
22 deemed to arise out of and in the course of the employment if:

23 (a) There is a direct causal connection between the
24 conditions under which the work is performed and the occupational
25 disease;

26 (b) It can be seen to have followed as a natural incident of
27 the work as a result of the exposure occasioned by the nature of the
28 employment;

 (c) It can be fairly traced to the employment as the
 proximate cause; and

 (d) It does not come from a hazard to which workers would
 have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the
business and not independent of the relation of the employer and
employee.

3. The disease need not have been foreseen or expected, but
after its contraction must appear to have had its origin in a risk

connected with the employment, and to have flowed from that source as a natural consequence.

4. In cases of disability resulting from radium poisoning or exposure to radioactive properties or substances, or to roentgen rays (X rays) or ionizing radiation, the poisoning or illness resulting in disability must have been contracted in the State of Nevada.

5. The requirements set forth in this section do not apply to claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485 or 617.487.

Here, Petitioner is not alleging that he has either an acute injury claim or an occupational disease claim. Rather, Petitioner argues that he has a non-occupational disease that was made worse over time by his employment. Because an acute injury is not being alleged, the provisions of NRS 616C do not come into play. If anything, this matter would be governed exclusively by NRS 617. Therein lies the problem with Petitioner's argument.

Petitioner argues that this claim should have been analyzed under NRS 616C.175(1) which allows a Petitioner the mechanism to prove that an *acute injury* has aggravated a non-industrial condition. That statute provides in pertinent part as follows:

1. The resulting condition of an employee who:

(a) Has a preexisting condition from a cause or origin that did not arise out of or in the course of the employee's current or past employment; and

(b) Subsequently sustains an *injury by accident* arising out of and in the course of his or her employment which aggravates, precipitates or accelerates the preexisting condition,
It shall be deemed to be an *injury by accident* that is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition.

(emphasis added)

As the highlighted portions of the above statute make clear, NRS 616C.175(1) only applies to acute injuries. Chapter 617 is even explicitly carved out of the statute. It would have been very simple for the statute above to reach from chapter 616A to 617. Yet it does not. This is the main problem with Petitioner's argument; there is no mechanism which would allow a claim for a non-occupational disease which has allegedly gotten worse over time due to work conditions. Even if the medical evidence supported such a scenario, Petitioner's argument that the Appeals Officer committed legal error for failing to consider NRS 616.175 is demonstrably incorrect.

1 Without the benefit of NRS 616C.175, Petitioner concedes that he cannot prove an acute
2 injury and is left trying to prove that he has an occupational disease under NRS 617. As the
3 Appeals Officer properly found, Petitioner fails in carrying that burden.

4 To begin with, Petitioner is making a claim for hearing loss. As noted above and as
5 Petitioner concedes, Petitioner's prior claim for hearing loss was denied. Petitioner failed to
6 contest that claim denial. Based on that failure to appeal, it was conclusively proven that
7 Petitioner's hearing loss was not work related. That claim denial stands and Petitioner is barred
8 from making any new claims for the same condition. (See Reno Sparks Convention Visitors
9 Authority v. Jackson, 112 Nev. 62, 910 P.2d 267 (1996))

10 The fact that Petitioner is now arguing that the same non-occupational hearing loss is now
11 worse is of no consequence. The hearing loss is non-industrial. It does not matter how bad it gets,
12 it will always be non-industrial per the 2005 determination.

13 Indeed, NRS 617.440 requires a "direct causal connection between the conditions under
14 which the work is performed and the occupational disease." The alleged occupational disease in
15 this case is hearing loss. However, Petitioner is not alleging that his job caused his hearing loss;
16 Petitioner is alleging that his job made his non-industrial hearing loss worse. This type of situation
17 is not covered by NRS 617.440.

18 Even if Petitioner could somehow make a showing that the worsening of a non-industrial
19 condition over time could be deemed compensable Nevada industrial insurance, Petitioner would
20 not be able to carry his burden before the Appeals Officer and certainly cannot carry his burden
21 before this Court. At the Appeals Officer level, Petitioner needed to prove by a preponderance of
22 the evidence that his claimed condition was work related. The only evidence which was presented
23 to the Appeals Officer were the reports of Dr. Blake and Dr. Theobald.

24 Though Dr. Blake "checks the box" on the C-4 form that she believed Petitioner's hearing
25 loss was industrial, her reporting is flawed as it is obviously incomplete. She did not have
26 Petitioner's whole file and apparently did not know about Petitioner's actual work situation given
27 that Employer modified his position after the 2005 claim so that Petitioner would not be exposed
28 to loud noises and that he had been working a primarily desk job for the last several years.

1 As for Dr. Theobold, his reporting is inconclusive as he explains that Petitioner's hearing
2 loss could be either from his employment or from some underlying neurological condition. Put
3 simply, there was not enough evidence to prove to the Appeals Officer by a preponderance that
4 Petitioner's non-occupational hearing loss was worsened over time by his employment.

5 However, the standard at this Court on questions of fact is whether the Appeals Officer's
6 decision was afflicted by clear error. There is no clear error here. Though Respondents will
7 concede that there is support for both sides on the question of whether Petitioner's non-industrial
8 occupational disease was worsened over time by his job, that question is not for this Court to
9 decide. This Court must decide whether the Appeals Officer *could* have come to the conclusion
10 that she did. (Hilton Hotels Corp., Id.) Even if this Court would have decided this case differently,
11 as a court of appeal, this Court is simply not permitted to substitute its judgment for the
12 administrative officer that ultimately decided this case. (NRS 233B.135(3); Titanium Metals
13 Corp., Id.)

14 In conclusion, Petitioner's entire argument rests on establishing an exacerbation claim
15 under NRS 616C.175. However, that statute only applies to *acute* exacerbations of non-industrial
16 conditions. Petitioner is alleging an exacerbation over time to a non-industrial condition which is
17 simply not contemplated by NRS 616C.175 or any other statutory mechanism which Respondents
18 are aware of. Without a legal framework to establish a claim, Petitioner's arguments must fail. The
19 Appeals Officer's Decision was legally proper and supported by substantial evidence. This
20 Petition must be denied and the Appeals Officer affirmed.

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1 VI.

2 CONCLUSION

3 Based upon the foregoing, the Appeals Officer's Decision and Order was appropriate. The
4 Appeals Officer's Decision and Order was based on sound legal theories and factual conclusions
5 that are amply supported by the record.

6 Therefore, Respondents respectfully ask this Court to affirm the Appeals Officer's
7 Decision and Order and deny Petitioner's Petition for Judicial Review.

8 Dated this 9 day of April, 2018.

9 Respectfully submitted,

10 **LEWIS, BRISBOIS, BISGAARD & SMITH,**
11 **LLP**

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate procedure.

Dated this 9 of April, 2018.

Respectfully submitted,

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By

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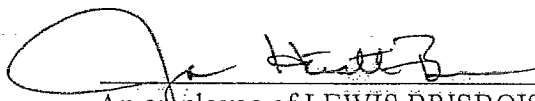
CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 9th day of April, 2018, service of the attached **RESPONDENTS' ANSWERING BRIEF** was made this date by depositing a true copy of the same for mailing, first class mail and electronic service, as follows:

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April 26, 2018

The Honorable Richard F. Scott
Department II
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
11th Floor
Las Vegas, Nevada 89155

Re: Jared Spangler v. City of Henderson, et al.
Case No.: A-17-759871-J

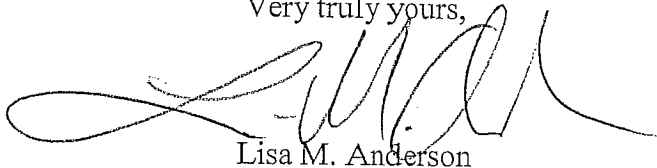
Dear Honorable Richard F. Scott:

Pursuant to your Order Scheduling Hearing and Briefing Schedule, enclosed please find a copy of the Petitioner's Opening Brief and Respondent's Answering Brief.

Please be advised that after reviewing Respondent's Answering Brief, Petitioner stands by its arguments outlined in its Opening Brief and will not be submitting a Reply Brief in these proceedings. For that reason; please accept this matter as being submitted and ready for your ruling at the Court's convenience.

Your attention to this matter is greatly appreciated. If you have any questions, please contact me.

Very truly yours,



Lisa M. Anderson

LMA/rw

Enclosure

cc: Daniel L. Schwartz, Esq.

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DISTRICT COURT

CLARK COUNTY, NEVADA

11 JERED SPANGLER,

12 Petitioner,

13 vs.

14 CITY OF HENDERSON, CANNON
15 COCHRAN MANAGEMENT SERVICES,
16 INC., THE DEPARTMENT OF
17 ADMINISTRATION, HEARINGS
18 DIVISION,

19 Respondents.

CASE NO. : A-17-759871-J
DEPT. NO. : XXVIII

PETITIONER'S OPENING BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	1
STATUTES AND REGULATIONS.....	2
STATEMENT OF THE ISSUES.....	1
STATEMENT OF CASE.....	1
STATEMENT OF THE FACTS.....	2
ARGUMENT.....	5
A. THE APPROPRIATE STANDARD FOR JUDICIAL REVIEW IN CONTESTED WORKERS' COMPENSATION CLAIMS.....	5
B. THE APPEALS OFFICER'S DECISION DATED JULY 20, 2017 IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND CONTAINS LEGAL ERROR.....	7
CONCLUSION.....	13
CERTIFICATE OF COMPLIANCE.....	14
CERTIFICATE OF MAILING.....	15

TABLE OF AUTHORITIES

CASES

PAGE

<i>SIIS v. Hicks</i> , 100 Nev. 567, 688 P.2d 324 (1984).....	6
<i>SIIS v. Thomas</i> , 101 Nev. 293, 701 P.2d 1012 (1985).....	6, 13
<i>SIIS v. Swinney</i> , 103 Nev. 17, 731 P.2d 359 (1987).....	6
<i>SIIS v. Christensen</i> , 106 Nev. 85, 787 P.2d 408 (1990).....	6
<i>Brocas v. Mirage Hotel & Casino</i> , 109 Nev. 579, 583, 854 P.2d 862, 865 (1993).....	6
<i>State Employment Sec. Dep't v. Hilton Hotels</i> , 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986).....	6
<i>Barrick Goldstrike Mine v. Peterson</i> , 116 Nev. 541, 547, 2 P.3d 850, 854 (2000).....	6
<i>Law Offices of Barry Levinson v. Milko</i> , 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008).....	6
<i>SIIS v. Khweiss</i> , 108 Nev. at 126, 825 P.2d at 220 (1992).....	6
<i>Dep't of Motor Vehicles v. Lovett</i> , 110 Nev. 473, 476, 874 P.2d 1274, 1249 (1994).....	6

STATUTES AND REGULATIONS

NRS 233B.135.....	5
NRS 617.440.....	7, 12
NRS 616.175.....	9, 11
NRS 616C.150.....	12
NRAP 28(e).....	14

I

STATEMENT OF ISSUE

The issue raised by Petitioner is whether substantial evidence supports the Appeals Officer's Decision and Order dated July 20, 2017 affirming Respondents' determination denying liability for Petitioner's February 9, 2016 industrial injury claim.

II

STATEMENT OF CASE

This is the petition of JERED SPANGLER (hereinafter "Petitioner") of the Decision and Order of the Appeals Officer below, wherein the Appeals Officer affirmed the determination of the Employer, City of Henderson, and its workers' compensation administrator, CCMSI, (hereinafter and collectively "Respondent") denying liability for Petitioner's February 9, 2016 claim for workers' compensation benefits related to occupationally hearing loss.

The prior history in the instant appeal is summarized as follows:

On July 20, 2017, the Appeals Officer, by and through her Decision and Order, affirmed Respondent's March 15, 2016 determination denying liability for Petitioner's February 9, 2016 industrial injury claim. Petitioner filed an appeal, arguing that the Appeals Officer improperly ruled in Respondent's favor, alleging that the Appeals Officer's Decision and Order lack substantial evidence, and that the Appeals Officer committed legal error.

Petitioner filed the instant appeal on August 14, 2017. The Record on Appeal was filed on September 12, 2017.

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III

STATEMENT OF FACTS

On or about February 9, 2016, Petitioner reported the development of occupationally related hearing loss and tinnitus that was sustained and accelerated while in the course and scope of his employment as a police officer for the City of Henderson. On that date, Petitioner reported extensive exposure to unprotected loud noises during his career as a police officer. Liability for the claim was erroneously denied. Claim denial is the subject of this appeal.

Petitioner participated in annual physicals, including hearing tests, as part of his employment as a police officer. (ROA pages 93-104) Petitioner demonstrated minor hearing deficits when he was hired as a police officer in 2003. However, Petitioner's hearing progressively worsened to a moderate to severe level by the time he filed his claim for workers' compensation benefits.

On February 9, 2016, Petitioner presented to Amanda Blake, Au.D for an audiology evaluation. At that time, Ms. Blake noted Petitioner's employment history as a police officer began in 2003, with eleven (11) years on active patrol. During Petitioner's employment as a police officer, Ms. Blake opined that Petitioner's hearing progressively worsened as a result of being "exposed to sirens, gunfire during range qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side." Ms. Blake was provided with copies of the annual hearing examinations dating back to Petitioner's 2003 hire date, and she confirmed that Petitioner sustained additional bilateral hearing loss since his hire date, left worse than right. Ms. Blake concluded that Petitioner's "standard pure tone testing revealed borderline normal hearing, 0.25-2k Hz, sloping to a moderate high frequency sensorineural hearing loss in the right ear" and a "mild sloping to severe sensorineural hearing loss in the left ear with a notch present

1 at 6k Hz." Ms. Blake confirmed that it was her opinion that his hearing loss was "not a
2 consequence of the normal aging process for either ear and is suggestive of noise exposure."
3 Ms. Blake completed a C-4 form and opined that Petitioner's hearing loss was directly related
4 to his employment as a police officer. Ms. Blake recommended binaural amplification. (ROA
5 pages 105-109)
6

7 On March 1, 2016, Petitioner was evaluated by Roger Theobald, Au.D, who confirmed
8 that he reviewed the prior medical records pertaining to Petitioner's annual hearing tests,
9 reporting from Dr. Scott Manthei in 2005, and reporting from Ms. Blake. Mr. Theobald also
10 reported that Petitioner's job as a police officer exposed him to loud noises while on the job with
11 the Henderson Police Department. Mr. Theobald verified that Petitioner had mild to moderate
12 hearing loss in the left ear and normal to mild high frequency hearing loss in the right ear at the
13 time of his 2003 hiring. In the years following Petitioner's 2003 hire date, Mr. Theobald opined
14 that Petitioner's "hearing has significantly decreased bilaterally. Hearing decrease is considered
15 significant if a change of 10dB or more occur at three or more hearing thresholds." Mr. Theobald
16 verified that there is a likelihood of a pre-existing underlying condition contributing to
17 Petitioner's hearing loss in the left ear, "however, there is a high probability that Mr. Spangler's
18 threshold shift may be as a result of on the job noise exposure." Testing performed by Mr.
19 Theobald revealed "pure tone hearing threshold show a mild to moderately severe sensorineural
20 hearing loss in the right ear and a moderate to moderately severe sensorineural hearing loss in
21 the left." Mr. Theobald recommended that Petitioner be provided with hearing aids and be
22 scheduled to see a neuro-otologist to evaluate for a left sided cochlear pathology. (ROA pages
23 110-113)
24
25
26
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28 ///

1 On March 15, 2016, the Insurer denied liability for Petitioner's claim for bilateral hearing
2 loss. (ROA pages 132) Petitioner appealed that determination to the Hearing Officer. Prior to
3 the hearing, the parties agreed to transfer the matter to the Appeals Officer.
4

5 On November 23, 2016, Petitioner sent a letter to Dr. Steven Becker asking him whether
6 Petitioner's hearing loss was work related and, if not, whether Petitioner's exposure to work
7 related noise contributed to the hearing loss and tinnitus. On December 23, 2016, Dr. Becker
8 opined that Petitioner's hearing loss was not entirely work related, however, Dr. Becker
9 confirmed that it was his opinion that Petitioner's work related noise exposure "contributed" to
10 the extent of the present hearing loss and tinnitus. Dr. Becker based his opinion on the "original
11 hearing test (performed in) 2003 revealed losses bilaterally, worse in the left and hearing has
12 steadily worsened" since that time." (ROA pages 25-29)
13

14 On July 20, 2017, the Appeals Officer affirmed Respondent's March 15, 2017 claim
15 denial determination. The Appeals Officer concluded that Petitioner failed to establish that his
16 occupational hearing loss qualified for benefits as an industrial injury or occupational disease.
17 The Appeals Officer ruled that the origin of Petitioner's hearing loss was not related to an
18 employment related risk. Respondent also argued that Claimant was assigned to a desk job
19 during his career as a police officer. (ROA pages 3-11)
20

21 It is from the Appeals Officer's Decision and Order dated July 20, 2015 that Petitioner
22 now appeals.
23

24 ///

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27 ///

28 ///

Greenman Goldberg Raby Martinez, P.A.
ACCIDENT INJURY ATTORNEYS

IV

LEGAL ARGUMENT

A. The Appropriate Standard for Judicial Review in Contested Workers' Compensation Claims

In contested workers compensation claims, judicial review first requires an identification of whether the issue to be resolved is a factual or legal issue. While questions of law may be reviewed de novo by this Court, a more deferential standard must be employed when reviewing the factual findings of an administrative adjudicator.

NRS 233B.135, which governs judicial review of a final decision of an administrative agency, provides, in pertinent part, the following:

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

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

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

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1 Relating to the standard of review of administrative decisions, our Supreme Court has
2 consistently held that the factual findings made by administrative adjudicators may not be
3 disturbed on appeal unless they lack the support of substantial evidence. SIIS v. Hicks, 100 Nev.
4 567, 688 P.2d 324 (1984); SIIS v. Thomas, 101 Nev. 293, 701 P.2d 1012 (1985); SIIS v.
5 Swinney, 103 Nev. 17, 731 P.2d 359 (1987); SIIS v. Christensen, 106 Nev. 85, 787 P.2d 408
6 (1990).

7
8 Thus, "the central inquiry is whether substantial evidence in the record supports the
9 agency decision." Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 583, 854 P.2d 862, 865
10 (1993). Substantial evidence is "that quantity and quality of evidence which a reasonable
11 [person] could accept as adequate to support a conclusion." State Employment Sec. Dep't v.
12 Hilton Hotels, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986). Therefore, if the agency's
13 decision lacks substantial evidentiary support, the decision is unsustainable as being arbitrary
14 and capricious. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547, 2 P.3d 850, 854 (2000).
15 The Court must defer to an agency's findings of fact only as long as they are supported by
16 substantial evidence. Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378,
17 383-84 (2008).

18
19
20 On the other hand, purely legal questions may be determined by the District Court
21 without deference to an agency determination, upon de novo review. SIIS v. Khweiss, 108 Nev.
22 at 126, 825 P.2d at 220 (1992). Furthermore, the construction of a statute is a question of law,
23 subject to de novo review. See State, Dep't of Motor Vehicles v. Lovett, 110 Nev. 473, 476,
24 874 P.2d 1274, 1249 (1994).

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1 The matter at issue in this appeal clearly involves a factual issue regarding whether
2 Petitioner has met his burden in establishing compensability for the extent of hearing loss
3 detected at the time of the filing of the February 9, 2016 workers' compensation claim.

4
5 B. The Appeals Officer's Decision And Order Dated July 20, 2017 is Not
6 Supported by Substantial Evidence and Contains Legal Error

7 It is the Petitioner's position that his employment as a police officer directly contributed
8 to the extent of hearing loss and tinnitus present when the February 9, 2016 claim for workers'
9 compensation was filed. Petitioner maintains that his particular profession, that of a law
10 enforcement officer, exposes him to various noise hazards that the average citizen does not
11 experience.

12 NRS 617.440 states:

13
14 1. An occupational disease defined in this chapter shall be
15 deemed to arise out of and in the course of the employment if:

16 (a) There is a direct causal connection between the conditions
17 under which the work is performed and the occupational disease;

18 (b) It can be seen to have followed as a natural incident of the
19 work as a result of the exposure occasioned by the nature of the
20 employment;

21 (c) It can be fairly traced to the employment as the proximate
22 cause; and

23 (d) It does not come from a hazard to which workers would
24 have been equally exposed outside of the employment.

25 2. The disease must be incidental to the character of the
26 business and not independent of the relation of the employer and
27 employee.

28 3. The disease need not have been foreseen or expected, but
after its contraction must appear to have had its origin in a risk
connected with the employment, and to have flowed from that
source as a natural consequence.

4. In cases of disability resulting from radium poisoning or
exposure to radioactive properties or substances, or to roentgen
rays (X-rays) or ionizing radiation, the poisoning or illness
resulting in disability must have been contracted in the State of
Nevada.

1 5. The requirements set forth in this section do not apply to
2 claims filed pursuant to NRS
3 617.453, 617.455, 617.457, 617.485 or 617.487.

4 [Part 26:44:1947; A 1949, 365; 1953, 297] — (NRS A 1961,
5 589; 1963, 874; 1967. 685; 1983. 458; 2007. 3366)

6 The medical reporting from the audiologists, who examined, tested and reviewed all
7 prior hearing studies, verifies that the extent of Petitioner's hearing loss and tinnitus is directly
8 related to occupational exposures. These exposures consist of, but are not limited to, fire arm
9 use, sirens, radio and various tactical maneuvers. Police officers are trained to be prepared to
10 be in loud, chaotic environments. Ms. Blake and Mr. Theobald note Petitioner's prior hearing
11 exposure but directly relate the ensuring severity of the hearing loss to employment related
12 exposures. Further, Dr. Becker verified that Petitioner's hearing loss did not originate with his
13 employment, but opined that the work related exposures contributed to the steady decline in
14 hearing capabilities. Thus the totality of the reporting establishes a "direct causal connection"
15 between the extent of Petitioner's hearing loss and tinnitus and his job as a police officer.
16 Petitioner is not placed in this type of situation outside of his employment. Since there was not
17 a singular moment when Petitioner sustained hearing damage, the reporting clearly establishes
18 that his occupational exposures contributed to Petitioner's level of hearing damage, which is a
19 natural incident of his employment and qualifies for coverage as an occupational disease. It is
20 clear that ^{Petitioner's} ~~Mr. Davis's~~ work conditions and work environment directly contributed to the February
21 9, 2016 claim for occupational hearing loss.

22 ///

23 ///

24 ///

25 ///

26 ///

1 Although Petitioner started his career as a police officer with a minor hearing deficit, it
2 was Petitioner's job in law enforcement that significantly accelerated his hearing loss and
3 produced the tinnitus. NRS 616C.175 addresses the issue of when industrial factors aggravate
4 or accelerate a pre-existing condition.
5

6 NRS 616C.175 states:

7 1. The resulting condition of an employee who:

8 (a) Has a preexisting condition from a cause or origin that did
9 not arise out of or in the course of the employee's current or past
10 employment; and

11 (b) Subsequently sustains an injury by accident arising out of
12 and in the course of his or her employment which aggravates,
13 precipitates or accelerates the preexisting condition,
14 È shall be deemed to be an injury by accident that is compensable
15 pursuant to the provisions of chapters 616A to 616D, inclusive, of
16 NRS, unless the insurer can prove by a preponderance of the
17 evidence that the subsequent injury is not a substantial
18 contributing cause of the resulting condition.

19 2. The resulting condition of an employee who:

20 (a) Sustains an injury by accident arising out of and in the
21 course of his or her employment; and

22 (b) Subsequently aggravates, precipitates or accelerates the
23 injury in a manner that does not arise out of and in the course of
24 his or her employment,
25 È shall be deemed to be an injury by accident that is compensable
26 pursuant to the provisions of chapters 616A to 616D, inclusive, of
27 NRS, unless the insurer can prove by a preponderance of the
28 evidence that the injury described in paragraph (a) is not a
substantial contributing cause of the resulting condition.

(Added to NRS by 1993, 663; A 1995, 2147; 1999, 1777)

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 Respondent denied liability for Petitioner's bilateral hearing loss and tinnitus.
2 Respondent based its denial on the fact that Claimant had some hearing deficit at the time of his
3 2003 hire date. Respondent has acknowledged the hearing deficit from 2003, however, he
4 maintains that the ensuing hearing loss and tinnitus is associated with employment related noise
5 exposure. Thus it was Petitioner's occupational exposures that accelerated his future hearing
6 losses.
7

8 The reporting from the audiologists, Ms. Blake and Mr. Theobald, establishes that
9 Petitioner had some hearing loss at the time of his 2003 hire as a police officer. However, these
10 audiologists verified that Petitioner's hearing loss progressively worsened due to employment
11 related noise exposure.
12

13 Ms. Blake confirmed that it was her opinion that Petitioner's hearing loss was "not a
14 consequence of the normal aging process for either ear and is suggestive of noise exposure."
15 Ms. Blake noted that during his eleven (11) years on active patrol, Petitioner's hearing has
16 progressively worsened as a result of being "exposed to sirens, gunfire during range
17 qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side."
18

19 Mr. Theobald verified that there is a likelihood of a pre-existing underlying condition
20 contributing to Petitioner's hearing loss in the left ear, "however, there is a high probability that
21 Mr. Spangler's threshold shift may be as a result of on the job noise exposure." In the years
22 following Petitioner's 2003 hire date, Mr. Theobald opined that Petitioner's "hearing has
23 significantly decreased bilaterally. Hearing decrease is considered significant if a change of
24 10dB or more occur at three or more hearing thresholds."
25

26 ///

27 ///

1 Furthermore, Dr. Becker confirmed that, while Petitioner's job did not cause the hearing
2 loss, his job was absolutely a "contributing factor" in the loss that developed after his 2003 hire
3 date as a police officer.
4

5 NRS 616C.175 addresses the issue of when an industrial injury "aggravates, precipitates
6 or accelerates" a pre-existing condition. This statute mandates that an Insurer is responsible for
7 treatment related to a pre-existing condition if the industrial injury "aggravates, precipitates or
8 accelerates" the pre-existing condition. Moreover, if the Insurer denies responsibility for
9 treatment related to a pre-existing condition, this statute requires the Insurer to "prove by a
10 preponderance of the evidence that the subsequent (industrial) injury is not a substantial
11 contributing cause of the resulting condition."
12

13 In this case, Respondent has completely failed to meet its statutory obligation of proving
14 by "a preponderance of the evidence" that Petitioner's occupationally related noise exposure is
15 "not a substantial contributing cause of the resulting condition." Petitioner began experiencing
16 increased hearing loss and the development of tinnitus symptoms after his 2003 hire date as a
17 police officer. This fact was documented in Ms. Blake, Mr. Theobald and Dr. Becker's reporting.
18
19 Petitioner's job as a police officer regularly exposed him to extremely loud sirens, unprotected
20 sounds of gunfire, a radio piece in the left ear and a lapel radio in close proximity to this left ear.
21
22 It was during these activities that resulted in the acceleration of hearing loss following his 2003
23 hire date.
24

25 ///

26 ///

27 ///

28 ///

1 Petitioner experienced minimal hearing deficit at the time of his 2003 hire date. During
2 the subsequent years of active patrol duty, Petitioner was exposed to wide-ranging sources of
3 loud noise without protection. In fact, the reporting verified that Petitioner's increased hearing
4 loss in the left ear compared to the right ear was related to the use of the ear piece in the left ear
5 and the lapel radio on the left side. These exposures were a "contributing factor" in Petitioner's
6 accelerated hearing loss and the development of tinnitus. The current level of hearing loss has
7 been directly related to his occupation as a police officer.
8

9 Therefore, Petitioner's job as a police officer is clearly the primary contributing cause of
10 the current level of hearing loss and the development of tinnitus. The reporting from Ms. Blake,
11 Mr. Theobald and Dr. Becker confirms that Petitioner's occupation noise exposure was the
12 primary contributing cause of the current hearing loss and tinnitus. Although there was a pre-
13 employment finding of mild hearing loss at the time of his 2003 hiring as a police officer, the
14 subsequent deterioration of his hearing abilities and current need for hearing aids is directly
15 related to his employment as a police officer. Therefore, based upon the extensive nature of the
16 industrial noise exposures, Petitioner's worsening hearing loss and tinnitus is industrially related.
17
18

19 Thus, the Appeals Officer incorrectly applied the NRS 616C.150 and NRS 617.440 when
20 finding that Petitioner's hearing loss condition did not qualify for benefits as an industrial injury
21 or occupational disease. Petitioner's hearing loss absolutely qualifies for benefits under NRS
22 616C.440. Moreover, the available reporting demonstrates that Claimant's mild pre-existing
23 hearing loss at the time of his hire as a police officer was aggravated and accelerated by the
24 ensuing years of occupational noise exposures.
25

26 ///

27 ///

1 Based upon the totality of the evidence, this Court should reverse the Appeals Officer's
2 July 20, 2017 Decision and Order, as the decision of the administrative agency on questions of
3 fact if the decision is supported by substantial evidence in the record. SIIS v. Thomas, 101 Nev.
4 293, 701 P.2d 1012 (1985). Therefore, the Appeals Officer's decision, is not supported by the
5 evidence, and should be reversed on appeal.
6

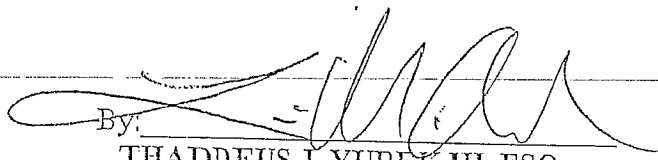
7 Y

8 CONCLUSION

9 Since the Appeals Officer's Decision and Order lacks substantial evidentiary support and
10 contains legal error as outlined above, Petitioner respectfully requests entry of this Honorable
11 Court's order REVERSING the Appeals Officer Decision and Order as outlined above. This
12 matter should be returned to Respondent for the acceptance of the February 9, 2016 claim for
13 occupational hearing loss.
14

15 DATED this 20th day of October, 2017.

16 GREENMAN, GOLDBERG, RABY & MARTINEZ
17

18
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24 601 South Ninth Street

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26 Attorneys for Petitioner
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1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that I have read this Petitioner's Opening Brief, and to the best of my
3 knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I
4 further certify that this reply brief complies with all applicable Nevada Rules of Appellate
5 Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding
6 matters in the record to be supported by appropriate references to the record on appeal.
7

8 I understand that I may be subject to sanctions in the event that the accompanying brief
9 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.
10

11 DATED this 20th day of October, 2017.

12 GREENMAN, GOLDBERG, RABY & MARTINEZ

13
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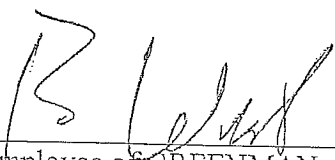
20 Las Vegas, Nevada 89101


21 *Attorneys for Petitioner*
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28

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of October, 2017, I deposited a true and correct copy of the OPENING BRIEF in the U.S. Mails, postage fully prepaid, enclosed in envelopes addressed as follows:

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2300 West Sahara Avenue
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An Employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

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11 City of Henderson and Cochran
12 Management Services, Inc. (CCMSI)
13

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 JARED SPANGLER,

17 Petitioner,

18 v.

CASE NO.: A-17-759871-J

DEPT NO.: II

19 CITY OF HENDERSON, CANNON
20 COCHRAN MANAGEMENT SERVICES,
21 INC. (CCMSI), THE DEPARTMENT OF
22 ADMINISTRATION, HEARINGS DIVISION,
23 APPEALS OFFICE,
24 Respondents.

25 RESPONDENTS' ANSWERING BRIEF

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Jared Spangler

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. STATEMENT OF THE CASE.....	1
II. STATEMENT OF THE ISSUES	1
III. STATEMENT OF THE FACTS	2
IV. JURISDICTION	4
1. Standard of Review	4
V. LEGAL ARGUMENT.....	6
A. Standard at the Appeals Officer Level	6
B. The Denial of the Claim was Legal and Proper	7
VI. CONCLUSION.....	11
CERTIFICATE OF COMPLIANCE	12
CERTIFICATE OF MAILING	13

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page No(s).</u>
<u>Brocas v. Mirage Hotel & Casino,</u> 109 Nev. 579, 585, 854 P.2d 862, 867 (1993).....	5
<u>Container Stevedoring Co. v. Director, OWCP,</u> 935 F.2d 1544, 1546 (9 th Cir. 1991)	6
<u>Hagler v. Micron Technology, Inc.,</u> 118 Idaho 596, 798 P.2d 55 (1990)	6
<u>Holly v. State ex rel. Wyoming Worker's Compensation Div.,</u> 798 P.2d 323 (1990).....	6
<u>Horne v. SIIS,</u> 113 Nev. 532, 537, 936 P.2d 839 (1997).....	5
<u>Jones v. Rosner,</u> 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).....	6
<u>Maxwell v. SIIS,</u> 109 Nev. 327, 849 P.2d 267 (1993).....	5, 6
<u>McCracken v. Fancy,</u> 8 Nev. 30, 639 P.2d 552 (1982).....	4
<u>Nevada Indus. Comm'n. v. Hildebrand,</u> 100 Nev. 47, 51, 675 P.2d 401 (1984).....	5
<u>Nevada Industrial Comm'n. v. Reese,</u> 3 Nev. 115, 560 P.2d 1352 (1977).....	5
<u>North Las Vegas v. Public Service Comm'n.,</u> 3 Nev. 278, 291, 429 P.2d 66 (1967).....	4
<u>Reno Sparks Convention Visitors Authority v. Jackson,</u> 112 Nev. 62, 910 P.2d 267 (1996).....	9
<u>SIIS v. Khweiss,</u> 108 Nev. 123, 825 P.2d 218 (1992).....	6
<u>SIIS v. Kelly,</u> 99 Nev. 774, 671 P.2d 29 (1983).....	6

1	<u>State Dept of Motor Vehicles v. Torres,</u>	
2	105 Nev. 558, 560, 799 P.2d 959, 960-961 (1989).....	5
3	<u>State Emp't Sec. Dep't v. Hilton Hotels Corp.,</u>	
4	102 Nev. 606, 608 at n.1, 729 P.2d 497 (1986).....	5, 10
5	<u>State Industrial Insurance System v. Hicks,</u>	
6	100 Nev. 567, 688 P.2d 324 (1984).....	6
7	<u>Titanium Metals Corp. v. Clark County,</u>	
8	9 Nev. 397, 399, 663 P.2d 355, 357 (1983).....	5, 10
9	<u>Universal Camera Corp. v. NLRB,</u>	
10	340 U.S. 474, 477, 488 (1951).....	5-6
11	<u>STATUTES</u>	
12	NRS 233B.125	1
13	NRS 233B.135	1, 4, 5, 6, 10
14	NRS 616A.010	6
15	NRS 616A.030	7
16	NRS 616A.265	7
17	NRS 616C.150	7
18	NRS 616C.175	8, 9, 10
19	NRS 617.440	7, 9
20		
21	<u>OTHER</u>	
22	A. Larson, <u>The Law of Workmen's Compensation</u> , § 80.33(a).....	6
23		
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I.

STATEMENT OF THE CASE

This is a worker's compensation case. Prior to the subject claim, in 2005, Petitioner JARED SPANGLER (hereinafter "Petitioner") filed a claim for workers' compensation benefits alleging that he had a hearing loss that was job incurred. This claim was denied as there was evidence that Petitioner had hearing loss prior to his employment. Petitioner did not contest this denial.

In the instant claim, on February 9, 2016, Petitioner filed a second claim alleging that his non-industrial hearing loss was made worse over time by his employment. This claim was denied. Petitioner appealed.

On July 20, 2017, the Appeals Officer affirmed claim denial given that there was no conclusive evidence that his hearing loss was related to his employment. Petitioner filed the instant Petition for Judicial Review contesting this July 20, 2017 Decision.

Petitioner argues to this Court that the aggravation over time of his non-industrial condition should be compensable. However, as will be explained below, the Nevada workers' compensation system does not allow for such a claim. The Appeals Officer's Decision was proper.

II.

STATEMENT OF THE ISSUES

1. Whether substantial rights of Petitioner have been prejudiced as set forth in NRS 233B.135(3) because the Appeals Officer's Decision and Order filed on July 20, 2017 was:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion; and

2. Whether the Appeals Officer's Decision and Order was based upon substantial evidence as required by NRS 233B.125.

III.

STATEMENT OF FACTS

On February 9, 2016, the Petitioner, JARED SPANGLER (hereinafter referred to as "Petitioner"), alleges that has hearing loss and ringing in the ears which he attributes to job related exposure to loud noises. The Petitioner was seen by Dr. Blake at Anderson Audiology where hearing loss was noted. The Petitioner appears to have failed to have reveal his earlier 2005 denied hearing loss claim or that the Petitioner apparently has been working a desk job for the last 5-6 years. Further, Petitioner also failed to reveal that Employer modified his position after 2005 to avoid loud noises. (Record on Appeal p. 35)(hereinafter "ROA p. ___")

The Employer's Report of Industrial Injury or Occupational Disease notes a nearly one month delay in reporting the hearing loss. (ROA p. 36)

The Employer's First Notice of Injury or Occupational Disease notes that the Petitioner alleges exposure to excessive loud noises and that he has had tinnitus for several years. (ROA p. 37)

The Petitioner has previously filed a hearing loss claim in November of 2005. On February 22, 2006, Dr. Manthei noted that the Petitioner's family had a positive history of hearing

loss. He noted that MRI testing revealed that the Petitioner had revealed "a contrast enhancement of the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the brain." It was concluded that the Petitioner's symptomatology was most likely due to a nonindustrial component, and that the Petitioner's hearing loss should not be considered to be industrial in nature. A claim denial determination for the November 1, 2005, hearing loss claim was issued on March 7, 2006. (ROA pp. 38-55) Petitioner did not contest this claim denial.

Hearing testing has been performed throughout the Petitioner's employment with the City of Henderson. (ROA pp. 56-68)

...

...

1 As a result of hearing testing in October of 2015, on February 9, 2016, the Petitioner was
2 seen by Dr. Blake at Anderson Audiology. A hearing loss was found which was deemed to be
3 suggestive of loss due to noise exposure. Again, it must be noted that there is no indication that
4 Petitioner informed Dr. Blake that he had been working a desk job for 5-6 years prior to this exam
5 and prior to that had a modified job to avoid loud noises. Furthermore, it does not appear that Dr.
6 Blake had access to Petitioner's entire file. (ROA pp. 69-72)

7 A medical release was signed by the Petitioner on February 9, 2016. (ROA p. 73)

8 On March 2, 2016, the Petitioner was seen by Dr. Theobald who noted that, prior to his
9 employment Petitioner had hearing loss in both ears, but that his left was worse than his right,
10 prior to employment with Employer. It was noted that "there is a high likelihood that there is an
11 underlying condition that may be contributing to Mr. Spangler's hearing loss in his left ear" and
12 that the Petitioner has a "possible tumor located in the area of the left cochlear nerve." Job noise
13 exposure was also a potential cause of the hearing loss. It was recommended that the Petitioner be
14 seen by a neuro-otologist to assess the potential likelihood of left sided cochlear pathology. (ROA
15 pp. 74-76)

16 On March 15, 2016, a claim denial determination was issued. However, it was noted that
17 bills related to Dr. Theobald's evaluation would be paid. (ROA p. 77)

18 On March 28, 2016, the Petitioner appealed the claim denial determination. (ROA p. 78)

19 This appeal was transferred directly to the Appeals Officer. (ROA p. 79)

20 On July 20, 2017, the Appeals Officer affirmed claim denial given that there was no
21 conclusive evidence that his hearing loss was related to his employment. (ROA pp. 3-11)

22 Petitioner filed the instant Petition seeking review of the Appeals Officer's July 20, 2017
23 Decision and Order.

24 ...

25 ...

26 ...

27 ...

28 ...

Today's results show type A tympanograms bilaterally, with Otoacoustic emissions being absent bilaterally. Pure tone hearing thresholds show a mild to moderately severe sensorineural hearing loss in the right ear and a moderate to moderately severe sensorineural hearing loss in the left.

It is my opinion that Mr. Spangler should be fit with hearing aids in order to minimize his struggles with communication. I recommend due to the diverse environments that Mr. Spangler is in daily, that he obtain the highest level of hearing aid technology currently available.

I am also recommending that Mr. Spangler schedule an appointment with a Neuro-Otologist who can evaluate the potential likelihood of a left sided cochlear pathology.

Thank you for this opportunity to participate in Mr. Spangler's hearing health care needs. If you have any questions or comments regarding the test results or recommendations, please feel free to contact our office at (702)896-0031.

Sincerely,


Roger Theobald Au.D.
Doctor of Audiology

HEARING & BALANCE
DOCTORS OF NEVADA

2461 W. Horizon Ridge Pkwy #134
Henderson, NV 89052. PH#702-896-0031

Roger Theobald, Au.D.

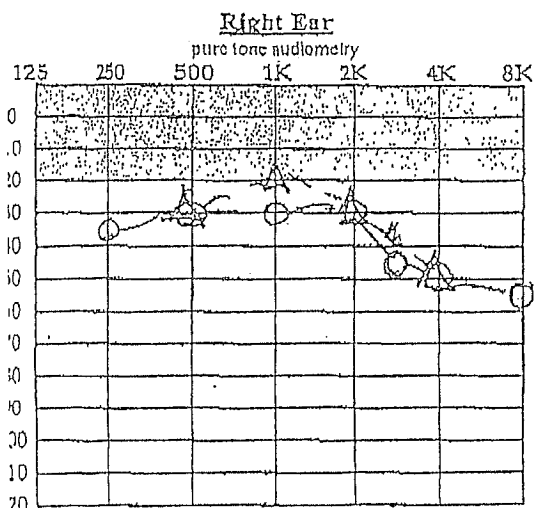
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Patient Age: 36









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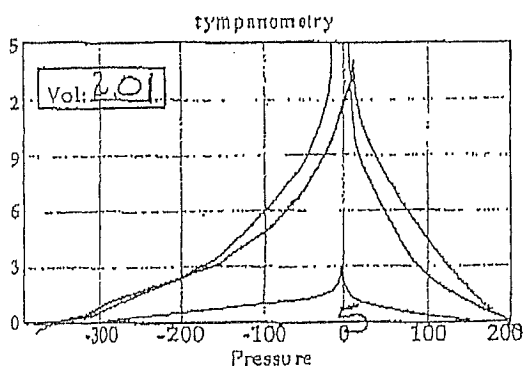
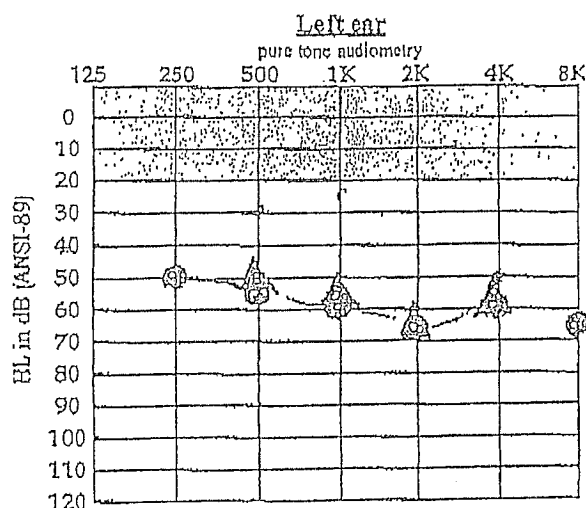
Examiner:

Date: 3/1/16

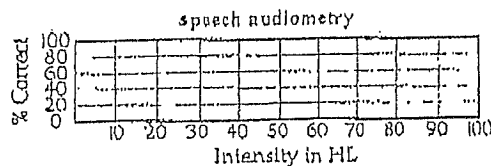
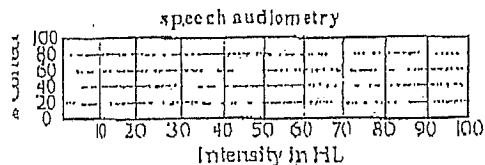
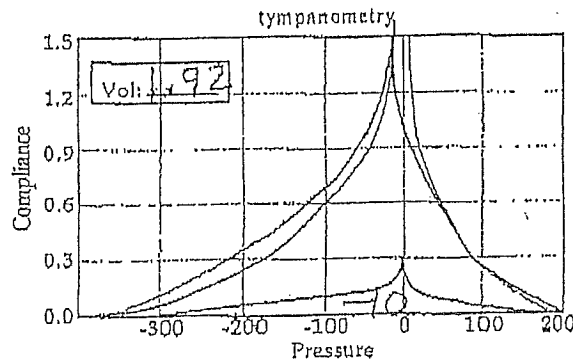


Audiogram

Symbol Key	
Unmarked	Marked
AC	
BC	
SAL	
NO RESPONSE	
<u>Speech</u>	
<u>Audiometry</u>	
PH	
SSI	
<u>Acoustic</u>	
<u>Reflexes</u>	
Crossed	
Uncrossed	



Ad		As
	PTA	
35	SRT	65
	MCL	85
	UCL	
100	WDS	80
65	@dB	95
Au	WDS	
Au	@dB	

[illegible]**INTEMENTS/RECOMMENDATIONS:**



ZODIAC 901 S/N 150483
Headset S/N 282184
Cal. Date: Jun- 9-2015
Program Version 4.00

Nevada Hearing & Balance Center

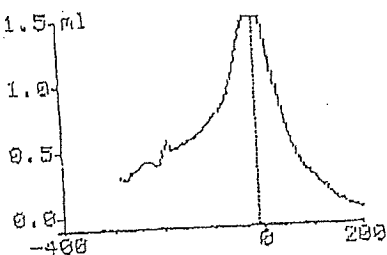
Ref: Jared Spumler
Patient: Robert H. Spumler AND.
Patient Number: 0

Date: Mar- 1-2016

Time: 02:29PM

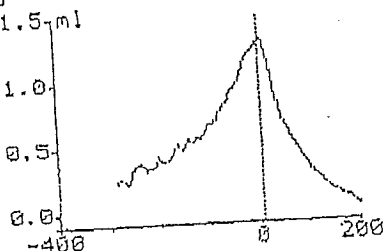
Temp: Sweep Left

ECV: 1.92 ml
MEP: -10 daP
SC: 1.74 ml
Grad: 0.46
TW: 113 daP
Speed: 400 dP/s
Dir: Nes



Temp: Sweep Right

ECV: 2.01 ml
MEP: 5 daP
SC: 1.34 ml
Grad: 0.36
TW: 157 daP
Speed: 400 dP/s
Dir: Nes





March 15, 2016

Jared Spangler
3550 Tundra Swan
Las Vegas, NV 89122

RE: Claim Number : 16C52G555847
Date of Injury : 01/14/2016
Insurer : City of Henderson

Dear Mr. Spangler:

CCMSI is in receipt of your claim filed for the above date of injury. After a thorough review of all the information submitted, it cannot be determined whether or not an actual noise exposure occurred. Based on the information provided, it is the decision of CCMSI to deny your claim. This denial is also based on the fact that the information supplied does not clearly establish that your disability arose in the course and scope of your employment, as specified in Nevada Revised Statute 616C.150 or 617.440. Additionally, this claim does not qualify for coverage under Chapter 617 of the Nevada Revised Statutes.

Please be aware that, although your claim is being denied, the bills related to your appointment with Dr. Theobald only will be covered as a courtesy.

If you disagree with this decision, you may appeal by completing and submitting the attached "Request for Hearing" form to the Department of Administration, Hearings Division within seventy (70) days of the date of this letter.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

Susan Riccio
Claims Representative

enc: NRS 616C.150, 617.440
"Request for Hearing" form

cc: City of Henderson,
File

Nevada Department of Administration Hearings Division
2200 S. Rancho Dr. #210
Las Vegas, NV 89102
(702) 486-2525

REQUEST FOR HEARING

CLAIMANT INFORMATION

Claimant:	Jared Spangler
Address:	3550 Tundra Swan
	Las Vegas, NV 89122
Telephone:	

EMPLOYER INFORMATION

Claim number:	16C52G555847
Employer:	City of Henderson
Address:	240 Water Street
	Henderson, NV 89015
Telephone:	

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER INSURER

I WISH TO APPEAL THE DETERMINATION DATED: March 15, 2016

**YOU MUST ATTACH A COPY OF THE DETERMINATION LETTER
PER NRS 616C.315 2(a)(b)**

BRIEFLY EXPLAIN REASON FOR APPEAL: Disagree with Insurer's March 15, 2016 letter denying claim.

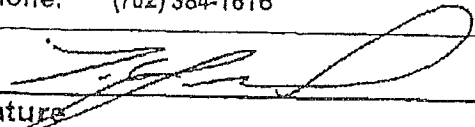
If you are represented by an attorney or other agent, please print the name and address below.

ATTORNEY/REPRESENTATIVE:

Name:	Thaddeus J. Yurek III, Esq.
Address:	601 S. Ninth St.
	Las Vegas, NV 89101
Telephone:	(702) 384-1616

INSURANCE COMPANY:

Name:	CCMSI
Address:	P.O. Box 35350
	Las Vegas, NV 89133-5350
Telephone:	(866) 889-4755

Signature 

Date March 28, 2016

SCHEDULED ON
APR 01 2016

A COPY OF THE DETERMINATION LETTER MUST BE SUBMITTED:

NRS 616C.315 Request for hearing; forms for request to be provided by Insurer; appeals; expeditious and informal hearing required; direct submission to Appeals Officer.

2. Except as otherwise provided in NRS 616C.305, a person who is aggrieved by:
- (a) A written determination of an Insurer; or
 - (b) The failure of an Insurer to respond within 30 days to a written request mailed to the Insurer by the person who is aggrieved, may appeal from the determination or failure to respond by filing a request for a hearing before a Hearing Officer.

15 23393-MT

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION

2016-2 MAY 10 34

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 1523393-MTE
Claim Number: 15C52655847
FILED

JARED SPANGLER
3550 TUNDRA SWAN ST
LAS VEGAS, NV 89122

ATTN ROBERT OSIP
CITY OF HENDERSON
240 S WATER ST MSC 122
HENDERSON, NV 89015-7227

ORDER TRANSFERRING HEARING TO APPEALS OFFICE

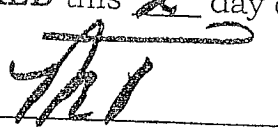
The Claimant's Request for Hearing was filed on March 28, 2016 and scheduled for May 11, 2016. The requesting party appealed the Insurer's determination dated March 15, 2016. The hearing was scheduled for May 11, 2016.

The parties have filed a stipulation to waive a hearing at the Hearing Officer level and to proceed directly to the Appeals Officer level.

NRS 616C.315(7) provides that the parties to a contested claim may, if the Claimant is represented by counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer.

Therefore, good cause appearing, the Hearing Officer proceeding shall be and is hereby transferred to the Appeals Officer for further proceedings.

IT IS SO ORDERED this 2nd day of May, 2016.


Megan Trenkler
Hearing Officer

NOTICE: If any party objects to this transfer to the Appeals Office, an objection thereto must be filed with the Appeals Office at 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, within 15 days of this order.

SCHEDULED ON

MAY 09 2016

6/2/16
1524756 - GR

1 NEVADA DEPARTMENT OF ADMINISTRATION

2 BEFORE THE APPEALS OFFICER

3 In the Matter of the Contested
4 Industrial Insurance Claim

5 of

6 JARED SPANGLER
7 3550 TUNDRA SWAN ST.
8 LAS VEGAS, NV 89122,

9 Claimant.

Claim No.: 16C52G555847

Hearing No.: 1523393-MT

Appeal No. : 1524756-GB

Employer:
CITY OF HENDERSON
ATTN: ROBERT OSIP
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

DOH: 06/20/16 AT 1:00 P.M.

10 EMPLOYER'S APPEAL MEMORANDUM

11 COMES NOW the Employer, CITY OF HENDERSON (hereinafter referred to as
12 "Employer"), by and through its attorneys, DANIEL L. SCHWARTZ, ESQ., and LEWIS
13 BRISBOIS BISGAARD & SMITH LLP, and submits its Appeal Memorandum for the hearing on
14 the instant matter currently set to be heard on Monday, June 20, 2016, at 1:00 p.m. In support of
15 its position, the Employer states as follows:

16 1. That there is no medical, legal or factual basis upon which to warrant an
17 entitlement to any benefits for the claimant due to his failure to meet his burden in establishing
18 that he sustained an injury arising out of and in the course and scope of his employment.

19 2. That there is no medical, legal or factual basis upon which to warrant an
20 entitlement to any benefits for the claimant as the claimant failed to meet his burden of proof that
21 the claim denial determination was improper.

22 3. That there is no medical, legal or factual basis upon which to warrant an
23 entitlement to any benefits for the claimant given his prior 2005/2006 hearing loss claim, which
24 was denied, and the intervening desk job assignment of the claimant.

25 WHEREFORE, the Employer, CITY OF HENDERSON, respectfully requests
26 that the Appeals Officer provide the following relief:

1 1. That the Appeals Officer affirm the claim denial determination dated
2 March 15, 2016.

3 DATED this 13 day of June, 2016.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By: 
7 DANIEL L. SCHWARTZ, ESQ.
8 Nevada Bar No. 5125
9 2300 W. Sahara Ave., Ste. 300, Box 28
10 Las Vegas, NV 89102
11 (702) 893-3383
12 Fax: (702) 366-9689
13 Attorneys for Employer

14 **DOCUMENTS TO BE INTRODUCED AT HEARING**

15 The Employer shall rely upon its Index of Documents, consisting of forty-six (46)
16 pages, filed separately herein. Further, the Employer shall rely upon any documents produced by
17 the claimant, subject to objection.

18 **STATEMENT OF THE ISSUES**

19 The following issue is before the Appeals Officer for review:

20 1. Whether the claimant has demonstrated through credible evidence that he
21 sustained an industrial injury that arose out of and in the course and scope of her employment.

22 **WITNESSES**

23 The Employer may call the following witnesses at the time of hearing:

24 1. Proper representatives of the Employer;

25 Further, the Employer does reserve the right to call the claimant himself, together
26 with any treating or examining physicians of the claimant, for rebuttal and other purposes at the
27 time of hearing.

28 **TIME ESTIMATED FOR HEARING**

 It is estimated that the time for hearing of the Employer case as respondent will be
 one (1) hour or less.

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1 On March 2, 2016, the claimant was seen by Dr. Theobald. The claimant
2 complained of difficulty in hearing conversational speech, particularly women and children's
3 voices, especially in the presence of background noise. It was noted that the claimant has a
4 "possible tumor located in the area of the left cochlear nerve." It was recommended that the
5 claimant be seen by a neuro-otologist to assess the potential likelihood of left sided cochlear
6 pathology. (Exhibit pp. 40-43)

7 On March 15, 2016, a claim denial determination was issued. However, it was
8 noted that bills related to Dr. Theobald's evaluation would be paid. (Exhibit p. 44)

9 On March 28, 2016, the claimant appealed the claim denial determination.
10 (Exhibit p. 45) This appeal was transferred directly to the Appeals Officer. (Exhibit p. 46)

11 This appeal ensues.

12 ARGUMENT

13 A.

14 The Claimant Bears the Burden

15 It is the claimant, not the Employer, who has the burden of proving his case, and
16 that is by a preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100
17 Nev. 567, 688 P.2d 324 (1984); Holley v. State ex rel. Wyoming Worker's Compensation Div.,
18 798 P.2d 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

19 In attempting to prove his case, the claimant has the burden of going beyond
20 speculation and conjecture. That means that the claimant must establish the work connection of
21 his injuries, the causal relationship between the work-related injury and his disability, the extent
22 of his disability, and all facets of the claim by a preponderance of all of the evidence. To prevail,
23 a claimant must present and prove more evidence than an amount which would make his case
24 and his opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993);
25 SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29
26 (1983); 3, A. Larson, The Law of Workmen's Compensation, § 80.33(a).

27 NRS 616A.010(2) makes it clear that:
28

1 A claim for compensation filed pursuant to the provisions of
2 chapters 616A to 616D, inclusive, or chapter 617 of NRS must be
3 decided on its merit and not according to the principle of common
law that requires statutes governing worker's compensation to be
liberally construed because they are remedial in nature.

4 Based upon the present information, the evidence supports the Employer's
5 position that the claimant has failed to meet his burden of establishing that he has a compensable
6 claim.

7 **B.**

8 **The Denial of the Claim was Legal and Proper**

9 As set forth above, the claimant had filed a hearing loss claim in late 2005, which
10 was denied in early 2006. Further, it is believed that the claimant has been working a desk job
11 for the last 5-6 years. These facts were not accounted for in the C-4 form and the evidence
12 further establishes that the claimant has not met his burden of establishing a compensable claim.
13 Therefore, claim is legal and proper in relation to this claim.

14 Under NRS 616C.150 and NRS 617.358, the claimant has the burden of proof to
15 show that the injury arose out of and in the course of employment. The claimant must satisfy
16 this burden by a preponderance of the evidence. Further, NRS 616B.612 mandates that an
17 employee is only entitled to compensation if he is injured in the course and scope of his
18 employment.

19 The Nevada Supreme Court has held that:

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

24 Rio Suite Hotel v. Gorsky, 113 Nev. 600 (1997).

25 Some courts have found a distinction between "the course of employment" and
26 "arising out of employment." In addition to occurring while at work, the injury must result from
27 a hazard connect with the employment. See, Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa
28 1996).

1 In Nevada, the Supreme Court has defined the term “arose out of,” as contained in
2 NRS 616C.150, to mean that there is a causal connection between the injury and the employee’s
3 work. In other words, the injured party must establish a link between the workplace conditions
4 and how those conditions caused the injury. Further, the claimant must demonstrate that the
5 origin of the injury is related to some risk involved within the scope of employment. The
6 claimant has failed to meet his burden in this regard, especially given the prior 2006 claim denial
7 and the intervening primarily desk job assignment of the claimant.

8 NRS 616A.030 defines an accident as “. . . an unexpected or unforeseen event
9 happening suddenly and violently, with or without human fault, and producing at the time
10 objective symptoms of an injury.” (Emphasis added.)

11 In this case, as explained above, there is no known acute trauma or specific
12 mechanism of injury, therefore, no statutory accident has been established.

13 Furthermore, NRS 616A.265 defines an injury as “. . . a sudden and tangible
14 happening of a traumatic nature, producing an immediate or prompt result which is **established**
15 **by medical evidence . . .**” (Emphasis added.) In this case, there is no statutory injury for the
16 reasons set forth above.

17 The Nevada Supreme Court has held that:

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

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

23 This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev. 532,
24 936 P.2d 839 (1997) case, which held that “mere speculation and belief does not rise to the level
25 of reasonable medical certainty.” Given the lack of any fully informed medical opinion making
26 an industrial causal connection to a reasonable degree of medical probability, claim denial is
27 legal and proper.

28 Further, the Nevada Supreme Court held in Mitchell v. Clark County School
District, 121 Nev. 179, 111 P.3d 1104 (2005):

1 An accident or injury is said to arise out of employment when there
2 is a causal connection between the injury and the employee's
3 work. In other words, the injured party must establish a link
4 between the workplace conditions and how those conditions
5 caused the injury. Further, a claimant must demonstrate that the
6 origin of the injury is related to some risk involved within the
scope of employment. However, if an accident is not fairly
traceable to the nature of employment or the workplace
environment, then the injury cannot be said to arise out of the
claimant's employment. Finally, resolving whether an injury arose
out of employment is examined by a totality of the circumstances.

7 The Court in Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605 939 P2d.
8 1043 (1997) held that the "Nevada Industrial Insurance Act is not a mechanism which makes
9 employers absolutely liable for injuries suffered by employees who are on the job." The Court
10 concluded by stating, "The requirements of 'arising out of and in the course of employment'
11 make it clear that a claimant must establish more than being at work and suffering an injury in
12 order to recover."

13 The Court in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad. Opn. 34
14 (2010) clarified Mitchell. It indicated that:

15 "The appeals officer found that Phillips' case was 'distinguishable'
16 from Mitchell because Phillips' injury did not result from an
17 'unexplained fall.' Without elaborating, the appeals officer also
18 stated that '[t]he Mitchell [c]ourt mentions the inherent
19 dangerousness of stairways.' . . . [The Court in Rio further
20 discussed Mitchell: "The employee argued that because she did
21 not have a health affliction that caused her to fall and 'because
22 staircases are inherently dangerous,' her injury "arose out of her
23 employment." . . . The appeals officer determined that the
24 employee's fall did not arise out of her employment, and the
district court denied her petition for judicial review." . . . [Our
finding in Mitchell was that] "[T]he employee must show that 'the
origin of the injury is related to some risk involved within the
scope of employment . . . thus, because the [Mitchell] employee
could not explain how the conditions of her employment caused
her to fall . . . we determined that the appeals officer correctly
concluded that she failed to demonstrate the requisite 'causal
connection.

25 The claimant has failed to establish that the origin of his injury, is related to some
26 risk in the course of employment, given the claimant's past denied hearing loss claim and
27 subsequent apparent assignment to a desk job, and given the lack of any acute trauma or specific
28 mechanism of injury.

1 Furthermore, the claimant has not met the requirements of NRS 617.440 to
2 establish a compensable occupational disease. That statute states:

3 NRS 617.440 Requirements for occupational disease to be
4 deemed to arise out of and in course of employment; applicability.

5 1. An occupational disease defined in this chapter shall be
6 deemed to arise out of and in the course of the employment if:

7 (a) There is a direct causal connection between the
8 conditions under which the work is performed and the
9 occupational disease;

10 (b) It can be seen to have followed as a natural incident of
11 the work as a result of the exposure occasioned by the nature of the
12 employment;

13 (c) It can be fairly traced to the employment as the
14 proximate cause; and

15 (d) It does not come from a hazard to which workers
16 would have been equally exposed outside of the employment.

17 2. The disease must be incidental to the character of the
18 business and not independent of the relation of the employer and
19 employee.

20 3. The disease need not have been foreseen or expected, but
21 after its contraction must appear to have had its origin in a risk
22 connected with the employment, and to have flowed from that
23 source as a natural consequence.

24 4. In cases of disability resulting from radium poisoning or
25 exposure to radioactive properties or substances, or to roentgen
26 rays (X rays) or ionizing radiation, the poisoning or illness
27 resulting in disability must have been contracted in the State of
28 Nevada.

5. The requirements set forth in this section do not apply to
claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485
or 617.487.

21 CONCLUSION

22 Based upon the foregoing points and authorities, it is clear that the claimant has
23 failed to meet his burden of establishing an entitlement to an accepted workers' compensation
24 claim.

25 WHEREFORE, the Employer, CITY OF HENDERSON, requests that the
26 Appeals Officer provide the following relief:

27 ...

28 ...

1 1. That the Appeals Officer affirm the claim denial determination dated
2 March 15, 2016.

3 Dated this 13 date of June, 2016.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
8 By: 
9 DANIEL L. SCHWARTZ, ESQ.

10 Nevada Bar No. 005125

11 2300 W. Sahara Ave., Ste. 300, Box 28

12 Las Vegas, NV 89102-4375

13 Tel.: 702.893.3383

14 Fax: 702.366.9563

15 Attorneys for the Employer,

16 CITY OF HENDERSON


CERTIFICATE OF MAILING

I hereby certify that, on the 14th day of June, 2016, I served a true and correct copy of the above and foregoing **EMPLOYER'S APPEAL MEMORANDUM** by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope addressed to the following:

THADDEUS J. YUREK, III, ESQ.
601 S. 9TH ST.
LAS VEGAS, NV 89101

CITY OF HENDERSON
ATTN: ROBERT OSIP
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

CCMSI
P.O. BOX 35350
LAS VEGAS, NV 89133



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim

Claim No.: 15C52G555847

JARED SPANGLER,

Appeal No.: 1524756-GB

Claimant.

CLAIMANT'S EVIDENCE PACKAGE

COMES NOW the Claimant and submits the following evidence package attached hereto, collectively marked as Exhibit "1" as follows:

<u>DOCUMENT</u>	<u>PAGE NO.</u>
1. City of Henderson Hearing Examinations	001-012
2. C-4	013
3. Dr. Amanda Blake, Au. D.'s records	014-017
4. Dr. Roger Theobald, Au.D.'s records	018-021
5. Dr. John Elmore, Au.D., M.B.A.'s records	022-025
6. City of Henderson Hearing Examinations	026-039
7. CCMSI's claim denial letter dated March 15, 2016	040
8. Notice of Appeal and Order to Appear (1524756-GB)	041-042
9. Order Transferring Hearing to Appeals Office (1523393-MT)	043-046

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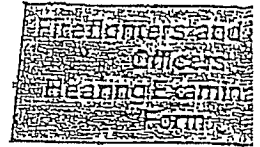
STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
2016 JUN 13 PM 4:34
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AND
FILED

Cremm (supra) by Attorney
ACCIDENT INJURY ATTORNEYS



City of Henderson

240 Water Street
Henderson, Nevada 89015



Name (Last, First, Middle) SPANGLER, JARED, FLOYD	Sex M	Date of Examination 7/29/03
Address 4130 ARTIST CT.	Age 24	Date of Birth 7/2/79
Organization/Employer H.P.D.	Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000
25	20	10	15	20	20	30

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000
30	35	30	30	40	50	50

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

Recommendations

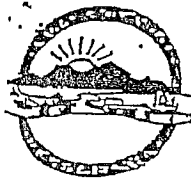
<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Remarks

Audiometer GRASON-STADLER	Serial Number	Calibration Date 4-22-02 2003
Tester's Name Cynthia Kiricpatrick	Tester's Title P.H.C	Tester's Signature <i>[Signature]</i>
		Test Date and Time 8.8.03

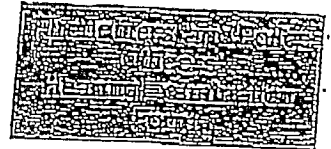
Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature <i>[Signature]</i>	Date
	Received 02/16/16



City of Henderson

240 Water Street
Henderson, Nevada 89015



Name (Last, First, Middle) SPANGLER, JARED F.	Sex M	Date of Examination 7/6/05
Address 3550 TUNDRA SWAY ST.	Age 26	Date of Birth 7/2/79
Organization/Employer CITY OF HENDERSON	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz) Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz) Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal
Appearance

Excessive Wax
or Debris

Abnormal
Appearance

Recommend

<input checked="" type="checkbox"/>	Medical
<input type="checkbox"/>	Retest
<input type="checkbox"/>	Compl Audioc

Calibration Date 04/07/05
Calibration Due Date 04/07/06
Test :071 Date 07/14/05 Time 06:54
SS# 000000000 Job ID: 1

Patient **Spangler, Jared**

Frequency	Left	Right
1000 Validity		
500 Hz	40	15
1000 Hz	45	20
2000 Hz	45	15
3000 Hz	50	05
4000 Hz	55	10
6000 Hz	55	20
8000 Hz	65	45

RECEIVED

NOV 7 - 2005

Examiner _____ Nevada CompFirst-LV

Audiometer	Serial N
Tester's Name Cynthia Kuby	Title
Tester's Signature	Test Date and Time

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature [Signature]	Date 7/14/05
--	------------------------



City of Henderson
240 Water Street - PO Box 95050
Henderson, NV 89009-5050

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.	Sex m	Date of Examination 8/4/08
Address 3590 TUMARA SWAN ST	Age 29	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

Calibration Date 11/19/07 by:msr
Calibration Due Date 11/18/08
Est:189 Date 08/04/08 Time 08:41
3# 0000000000 Job ID:AA#E

Patient: **Jared Spangler**

Frequency	Left	Right
000 Validity		25
500 Hz	35	25
1000 Hz	45	20
2000 Hz	45	15
3000 Hz	55	30
4000 Hz	55	40
5000 Hz	70	60
6000 Hz	60	50

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RECOMMENDATIONS

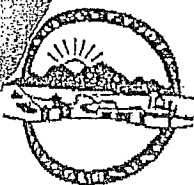
<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Examiner: _____

Audiometer	Serial Number	Calibration Date
Tester's Name John Keith Chip Carroll	Tester's Signature [Signature]	Test Date and Time 8-4-08

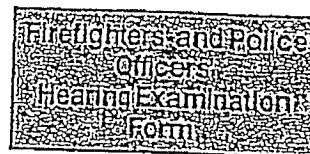
Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature [Signature]	Date 8/18/08
--	------------------------



City of Henderson

240 Water Street
Henderson, Nevada 89015



Name (Last, First, Middle) SPANGLER, JARED E.		Sex m	Date of Examination 8/17/06
Address 3550 TUNDRA SWAN		Age 27	Date of Birth 7/2/79
Organization/Employer CITY OF HENDERSON		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Calibration Date 04/05/07
Calibration Due Date 04/05/07
Test :025 Date 08/17/06 Time 07:21
SS# 000000000 Job ID:AA=2

Patient Jared Spangler

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

Recd

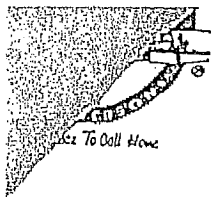
Frequency	Left	Right
1000 Validity		20
500 Hz	45	25
1000 Hz	50	20
2000 Hz	55	10
3000 Hz	60	25
4000 Hz	55	35
5000 Hz	70	50
6000 Hz	70	45

Examiner

Audiometer		Serial Number	Calibration Date
Tester's Name Kirkpatrick	Title Phup Coal	Tester's Signature 	Test Date and Time 8.17.06

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature 	Date 8/24/06
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City of Henderson
240 Water Street - P.O. Box 95050
Henderson, NV 89009-5050

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.	Sex M	Date of Examination 8/13/07
Address 3556 TUNNIA SWAN ST, LV, NV, 89122	Age 28	Date of Birth 7/2/79
Personal Physician's Name DR. KILPATRICK	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

Remarks

?
Calibration Date 04/05/06 by: m s r
Calibration Due Date 04/05/07
Test : 193 Date 08/13/07 Time 07:00
000000000 Job ID: Aa=5
Patient Jared Spangler

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

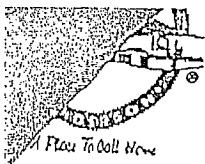
Frequency	Left	Right
1000 Validity		25
500 Hz	40	25
1000 Hz	50	25
2000 Hz	55	15
3000 Hz	65	30
4000 Hz	60	30
6000 Hz	80	55
8000 Hz	70	55

Examiner _____

Tester's Name <u>[Signature]</u>	Title <u>Physician</u>	Tester's Signature <u>[Signature]</u>	Test Date and Time <u>08/13/07</u>
-------------------------------------	---------------------------	--	---------------------------------------

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature <u>[Signature]</u>	Date <u>8/13/07</u>
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City of Henderson
240 Water Street P.O. Box 95050
Henderson, NV 89009-5050

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.		Sex M	Date of Examination
Address 3550 TUNDRA SWAY, LV, NV, 89122		Age 30	Date of Birth 7/2/79
Personal Physician's Name		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

500	1

Subject Information:

SSN
Status
In Program
Language

Active
Yes
English

8000

Average of 2K, 3K,
and 4K Results:

Av

Most Recent Test:

Date: 7/24/2009 Time: 9:22:51

	Left	Right
500	45	25
1K	50	20
2K	50	15
3K	65	30
4K	55	40
6K	60	50
8K	55	50

Otososcopic Examination

Right	Left

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Examiner
Model:
Serial:
Cal.

Next
25654
5/7/2009
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected) Possible	No	No
Rec Shift	No	No
5, 1, 2, 3K Avg:	52	22
2, 3, 4K Avg:	56	28
AAO - 1979:		60%

Audiometer		Serial Number
Tester's Name John L. G...	Title Phys. C...	Tester's Sign

Examiner	Date
Subject	Date

Please sign one copy of this form and submit it to

Employee's Signature

[Signature]

Date

7/24/09

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) Spangler, Jared		Sex m	Date of Examination 7.29.13
Address 3550 Tundra Swan Las Vegas, NV 89122		Age 34	Date of Birth 7.2.79
Personal Physician's Name N/A		Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

500	10

Most Recent Test:

Date: 7/24/2013 Time: 7:08.44

	Left	Right
500	40	35
1K	50	25
2K	55	20
3K	65	40
4K	60	45
6K	65	80
8K	60	65

Average of 2K, 3K,
and 4K Results:

Avi

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Examiner:
Model:
Serial:
Cal:
Next
25654
4/12/2013
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	52	30
2,3,4K Avg:	60	35
AAO - 1979:		13%

Examiner _____ Date _____

Subject _____ Date _____

Audiometer		Serial Number	
Tester's Name		Title	
Tester's Signature		Test Date and Time	

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED		Sex M	Date of Examination 7/22/10
Address 3550 TUNDRA SWAN ST.		Age 31	Date of Birth 7/2/79
Personal Physician's Name		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz) Right Ear						
0	1000	2000	3000	4000	6000	8000

Frequency		
500	1000	2000

Subject Information	
SSN	
Status	Active
In Program	Yes
Language	English

Average of 2K, 3K, and 4K Results:

Average of 500 and 1000 Hz

Recent Test		L
Time	Date	
12:08:20	7/22/10	46
5	3	45
25	15	50
30	40	60
60	75	75
50	65	65

Otoscope Examination

Right	Left	
✓	✓	Normal Appearance
		Excessive Wax or Debris
		Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Examiner	Next
Model	25654
Serial	4 6-2010
	4 6-2010

Baseline	
No. 1	

Current Analysis		Right
L	R	
2500	2500	
No	No	
No	No	
1.2 K Avg	50	25
55	28	

Tester	Serial Number
Signature	
Title	Tester's Signature

Please sign one copy of this form and submit it to your employer

Employer's Signature	Received
	02/16/16

Signature	Date

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED F.		Sex M	Date of Examination 8/17/11
Address 3550 TUNDRA SWAN ST.		Age 32	Date of Birth 7/2/79
Personal Physician's Name		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
100	1000	2000	3000	4000	6000	8000

500	1000

8/11/2011
CITY OF HENDERSON

Subject Information:
 SSN: _____
 Status: _____ Active
 In Program: _____ Yes
 Language: _____ English

8000

Average of 2K, 3K,
and 4K Results:

Ave

Most Recent Test:
 Date: 8/11/2011 Time: 9:08:33

	Left	Right
500	40	25
1K	50	25
2K	50	15
3K	60	30
4K	60	40
6K	65	55
8K	55	55

Otoscopic Examination

Right	Left

Normal Appearance
 Excessive Wax or Debris
 Abnormal Appearance

RECOMMENDATIONS

- ☐ Medical Referral
- ☐ Retest Recommended
- ☐ Complete Audiogram

Examiner:
 Model: _____ Next
 Serial: _____ 25654
 Cal: _____ 4/19/2011
 ANSI S3.6-1989

Baseline:
 No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	50	23
2,3,4K Avg:	56	28
AAO - 1979:		6%

meter		Serial Number
Tester's Name [Signature]	Title Police	Tester's Signature [Signature]

Please sign one copy of this form and submit it to you

Examiner: _____ Date _____
 Subject: _____ Date _____

Subject Test

**Firemen And
Police Officer's
Hearing
Examination Form**

First, Middle) SPANGLER, JARED		Sex M	Date of Examination 8/6/12
Address 3550 TUNNA SWAN ST.		Age 33	Date of Birth 7/2/79
Personal Physician's Name		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz): Right Ear						
500	1000	2000	3000	4000	6000	8000
25	20	10	30	40	65	65

Frequency in Hertz (Hz): Left Ear						
500	1000	2000	3000	4000	6000	8000
45	50	55	65	60	65	75

Average of 2K, 3K,
and 4K Results:

58.3

Average of 2K, 3K,
and 4K Results:

26.6

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

RECOMMENDATIONS

- ☐ Medical Referral
- ☐ Retest Recommended
- ☐ Complete Audiogram

Remarks

747 n75 serial# 3390

Calibration Date 02/23/12 by: audmed
 Calibration Due Date 02/22/13
 Test :000 Date 08/13/12 Time 14:10
 SS# 000000000 Job ID: >920

Patient **423513**

Frequency	Left	Right
1000 Validity		
500 Hz	45	20
1000 Hz	50	20
2000 Hz	55	10
3000 Hz	65	30
4000 Hz	60	40
6000 Hz	65	65
8000 Hz	75	65

Examiner _____

Audiometer AMBCO		Serial Number	Calibration Date 8/13/12
Tester's Name R. J. Moreau	Title MA	Tester's Signature <i>[Signature]</i>	Test Date and Time 8/13/12

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature

[Signature]

Received
02/16/16

Date

8/6/12

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (last, first, middle) Spangler, Jared		Sex M	Date of Examination 8.7.14
Address 3550 Tundra Swan Las Vegas, NV 89122		Age 35	Date of Birth 7.2.79
Personal Physician's Name		Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency	
500	1000

Most Recent Test:		
Date: 7/31/2014	Time: 7:29:39	
	Left	Right
500	50	30
1K	55	30
2K	65	25
3K	65	45
4K	65	50
6K	80	65
8K	75	55

Average of 2K, 3K, and 4K Results:

Average and

Otoscopic Examination

Right	Left
/	/

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

*"Has continued
Audiology Care."*
RECOMMENDATIONS
*has continue
away card*

- ☐ Medical Referral
- ☐ Retest Recommended
- ☐ Complete Audiogram

Baseline:		
No Baseline		
Current Analysis:		
	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	58	32
2,3,4K Avg:	65	40
AAO - 1979:	17%	

Examiner	Date
Subject	Date

Tester's Name		Serial Number	Calibration Date
Title		Tester's Signature	Test Date and Time

Please sign one copy of this form and submit it to your employer or organization.

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) Spangler, Jared, F		Sex M	Date of Examination 8.13.15
Address 3550 Tundra Shan St Las Vegas, NV 89122		Age 36	Date of Birth 7.2.79
Personal Physician's Name		Occupation PO	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

500	1

Language: English	
Most Recent Test: Date: 8/11/2015 Time: 8:36:24	
Left	Right
500	30
1K	25
2K	20
3K	45
4K	45
6K	60
8K	50

Average of 2K, 3K,
and 4K Results:

A1

Otososcopic Examination

Right	Left
✓	✓

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Baseline:
No Baseline

Current Analysis:

Left	Right
OSHA STS	
(Age Corrected): No	No
Possible	
Rec Shift	No
.5,1,2,3K Avg:	56
2,3,4K Avg:	63
AAO - 1979:	14%

Examiner _____ Date _____

Subject _____ Date _____

Audiometer		Serial Numl	
Tester's Name		Title	
Tester's Signature		Test Date and Time	

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature

Date

8.13.15

EMPLOYEE'S FORM FOR COMPENSATION/REPORT OF INJURY/TREATMENT
FORM C-4

PLEASE TYPE OR PRINT

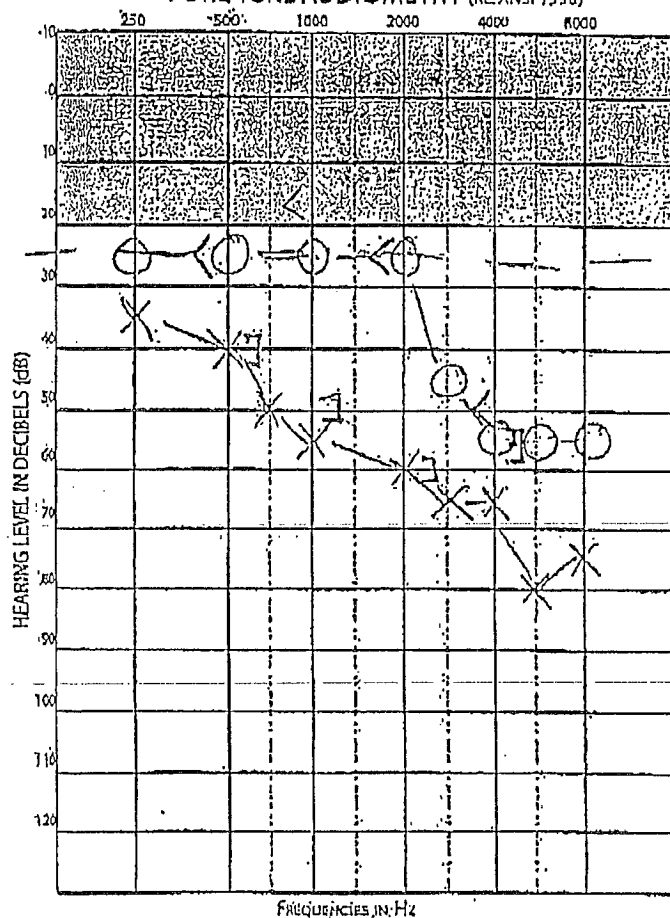
EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED

First Name JARED	M.I. F.	Last Name SPANGLER	Birthdate 7/2/79	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurer's Use Only)
Home Address 3550 TUNDRA SWAN ST	Age 36	Height 600	Weight 210	Social Security Number	
City LV	State NV	Zip 89122	Telephone 702-461-1780	Primary Language Spoken ENGLISH	
Mailing Address S/A	City S/A	State	Zip	Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred POLICE OFFICER	
INSURER LOOMIS	THIRD-PARTY ADMINISTRATOR		Telephone 702-267-5000		
Employer's Name/Company Name CITY OF HENDERSON					
Office Mail Address (Number and Street) 223 LEAD ST, HENDO., NV, 89015					
Date of Injury (if applicable) N/A	Hours Injury (if applicable) am pm	Date Employer Notified 1/16	Last Day of Work After Injury or Occupational Disease N/A	Supervisor to Whom Injury Reported SGT. JASON KUZIK	
Address or Location of Accident (if applicable) HENDERSON					
What were you doing at the time of the accident? (if applicable) JOB RELATED ACTIVITIES					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) EXPOSURE TO LOW NOISES					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? AFTER BEING HIRED				Witnesses to the Accident (if applicable) N/A	
Nature of Injury or Occupational Disease HEARING & RINGING IN EARS		Part(s) of Body Injured or Affected EARS			
I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS (NRS 616A TO 616D, INCLUSIVE OR CHAPTER 617 OF NRS). I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGEON, PRACTITIONER, OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING BENEFITS PAID OR PAYABLE, PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR AIDS, PSYCHOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.					
Date 2/9/16	Place	Employee's Signature <i>[Signature]</i>			
THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT					
Place Anderson Audiology - Henderson location	Name of Facility				
Date 2/5/16	Diagnosis and Description of Injury or Occupational Disease Right: borderline normal, 0.25-2K Hz, sloping to moderate high frequency sensorineural hearing loss Left: mild sloping to severe sensorineural hearing loss with notch present at 6K Hz		Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (If yes, please explain)		
Hour 11:00 am	Treatment: Binaural amplification upon medical clearance, annual hearing evaluations, and use of hearing protection in noise		Have you advised the patient to remain off work five days or more? <input type="checkbox"/> Yes Indicate dates: from _____ to _____ <input checked="" type="checkbox"/> No If no, is the injured employee capable of: <input checked="" type="checkbox"/> full duty <input type="checkbox"/> modified duty If modified duty, specify any limitations/restrictions: _____		
X-Ray Findings: N/A		From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>based on testing conducted at another facility and testing conducted by me 2/5/16</i>			
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Medical clearance for amplification</i>		Do you know of any previous injury or disease contributing to this condition or occupational disease? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Explain if yes) Patient noted some noise exposure from work as a mechanic for 2 years during high school.			
Date 2/9/16	Print Doctor's Name Amanda Blake		I certify that the employer's copy of this form was mailed to the employer on:		
Address 3120 S. Rainbow Blvd., #202			INSURER'S USE ONLY		
City Las Vegas	State NV	Zip 89146	Provider's Tax I.D. Number 26-2948435	Telephone 702-233-4327	
Doctor's Signature <i>[Signature]</i>			Degree A.U.D.		

AUDIOGRAM

AudigyCertified

PURE TONE AUDIOMETRY (RE: ANSI 1996)

Practice: Anderson Audiology Location: HendersonName: Shared Spangler Date of Birth: 7/2/79

Referred By: _____

Test Interval: _____ Date of Test: 2/5/14

Key:

LEFT	STIMULUS	RIGHT
X	Air	O
□	Air - MASK	△
□	Bone	△
□	Bone - MASK	△
□	No Response	△
L	UCL	R
S	SOUND FIELD - S	
V	VIBRO-TACTILE - VT	
T	TINNITUS - T	

TEST TYPE

STANDARD CAE	<input checked="" type="checkbox"/>
PLAY	<input type="checkbox"/>
CORVA	<input type="checkbox"/>
UOA	<input type="checkbox"/>

TRANSDUCER

INSERT	<input type="checkbox"/>
CIRCUAURAL	<input checked="" type="checkbox"/>
SOUND FIELD	<input type="checkbox"/>

RELIABILITY

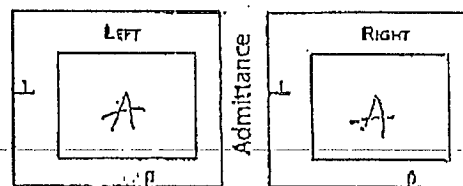
EXCELLENT	<input type="checkbox"/>
GOOD	<input checked="" type="checkbox"/>
FAIR	<input type="checkbox"/>
POOR	<input type="checkbox"/>

BOOTH

#1	<input type="checkbox"/>
#2	<input type="checkbox"/>
#3	<input type="checkbox"/>
#4	<input type="checkbox"/>

TYMPANOMETRY (226 Hz)

EAR	LEFT	RIGHT
EAR CANAL VOLUME cm ³	1.14	1.34
TYMP PEAK PRESSURE (DAPA)	-15	10
STATIC ADMITTANCE (MMH2O)	1.22	0.93
TYMP WIDTH (DAPA)	78	92



CONTRA	5k Hz	1k Hz	2k Hz	4k Hz	IPSI	5k Hz	1k Hz	2k Hz	4k Hz
Right (AD) (phone ear)					AD (probe ear)				
Left (AS) (phone ear)					AS (probe ear)				

MIDDLE EAR ANALYZER

SPEECH AUDIOMETRY

	PTA	SRT/SAT	Speech Recognition	Speech Recognition	MCL	UCL
Right (AD) Masking	25	30	100% 65	% 65	65	100
Left (AS) Masking	52	65	72% 90	% 90	90	105
MLW	CD/10pc	W-22	WIPI	PBK	SPECIAL:	SPECIAL:

TINNITUS EVALUATION

RIGHT	PT/NB	kHz	dBHL
LEFT	PT/NB	kHz	dBHL
BINAURAL	PT/NB	kHz	dBHL

HYPERACUSIS: YES / NO

CATEGORY: 0 1 2 3 4

History, Impressions, Recommendations: It reported he has already had an MRI to look at the left ear.Rx: Binaural amplification, use of hearing protection to noise, annual audiometric testing to monitor hearing

OTOACOUSTIC EMISSIONS (OAEs)

EMISSION TYPE USED	TEST TYPE PERFORMED
Transient	OAE Complete
<input checked="" type="checkbox"/> Distortion Product	<input checked="" type="checkbox"/> OAE Screen

OAE Results:

Right Ear Present: 1.5-3k Hz Absent: 4-10k Hz

Left Ear Absent: 1.5-6k Hz

OAE Unit

HEARING INSTRUMENT INFORMATION

RIGHT INSTRUMENT: _____

LEFT INSTRUMENT: _____

Otoscopy: semi-occluded AD, AS - clear

cerumen removed from AD prior to

air testing without incident

Audiologist: Esther Blakely, PhD

Assistant: _____

Audiometer: _____

Las Vegas Office
3120 S Rainbow Blvd
Ste 202
Las Vegas, NV 89146
p: 702.233.4327
f: 702.233.8837

Henderson Office
2642 W Horizon Ridge
Ste A11
Henderson, NV 89052
p: 702.933.9102
f: 702.933.9106

Allante/Centennial Office
6475 N Decatur Blvd
Ste 125
Las Vegas, NV 89131
p: 702.933.9103
f: 702.933.9104

Sun City/Summerlin Office
9430 W Lake Mead Blvd
Ste 11
Las Vegas, NV 89134
p: 702.527.6066
f: 702.527.6068

AudigyCertified™

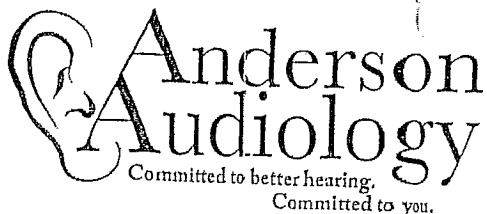
February 9, 2016

RE: **Jared Spangler**
DOB: 07/02/1979

To Whom It May Concern:

I had the pleasure of seeing the above mentioned patient at our office on February 5, 2016, for an audiologic evaluation. Mr. Spangler reported he has been working with the police department since 2003 and has noticed that his hearing has become progressively worse and now has cricket/locust sounds bilaterally, which sometime change in intensity. Mr. Spangler's last hearing test was in October 2015 as part of routine physical testing, conducted by Precision Hearing Conservation in association with the City of Henderson, the results of which, along with every test since the baseline, were provided to me by Mr. Spangler. These tests were used for OSHA comparisons regarding standard threshold shifts. Mr. Spangler reported that he was on active patrol for approximately 11 years, where he was exposed to sirens, gunfire during range qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side. As a result of documented changes in Mr. Spangler's hearing in the left ear, he was sent for an MRI in 2006/7 to see if there was a "kink" in a canal that was inhibiting the sound transmission, the results of which were negative. Mr. Spangler denied any otorrhea, otalgia, or vertigo, but did report some previous noise exposure when he worked as a mechanic for two years in high school. He also reported a positive family history of hearing loss with his identical twin brother, who also works for the police department. Mr. Spangler reported he has great difficulty understanding others in noisy situations and women's and children's voices, which negatively impacts his communication with his family.

Please find enclosed a copy of the testing results. Otoscopy revealed a semi-occluded right ear and a clear left external auditory canal. The cerumen in the right ear was removed without incident prior to all testing. Tympanometry revealed normal, Type A, tracings bilaterally, suggesting normal middle ear function and tympanic membrane movement. Distortion product otoacoustic emissions in the right ear were present 1.5-3k Hz and absent 4-6k Hz, and for the left ear were absent 1.5-6k Hz. Standard pure tone testing revealed borderline normal hearing, 0.25-2k Hz, sloping to a moderate high frequency sensorineural hearing loss in the right ear, and a mild sloping to severe sensorineural hearing loss in the left ear with a notch present at 6k Hz. Word recognition scores in quiet were 100% and 72% for the right and left ears, respectively, at a normal presentation level in the right ear, but an elevated level in the left ear.



Las Vegas Office
3120 S Rainbow Blvd
Ste 202
Las Vegas, NV 89146
p: 702.233.4327
f: 702.233.8837

Henderson Office
2642 W Horizon Ridge
Ste A11
Henderson, NV 89052
p: 702.933.9102
f: 702.933.9106

Allante/Centennial Office
6475 N Decatur Blvd
Ste 125
Las Vegas, NV 89131
p: 702.933.9103
f: 702.933.9104

Sun City/Summerlin Office
9430 W Lake Mead Blvd
Ste 11
Las Vegas, NV 89134
p: 702.527.6066
f: 702.527.6068

Audigy Certified™

Utilizing the OSHA guidelines which define an STS, in either ear, as a change of 10 dB or more in the average thresholds at 2000 Hz, 3000 Hz, and 4000 Hz, the results are as follows:

Left Ear: a 30 dB difference, OSHA STS: Yes
Right Ear: a 26.7 dB difference, OSHA STS: Yes

Comparison is based on the audiometric data provided by Mr. Spangler from the City of Henderson baseline test conducted on 8/8/2003. An age factor was not utilized in the above comparison. Using the age correction comparison thresholds for a 36-year-old male to the baseline age of 24-years-old, the results are as follows:

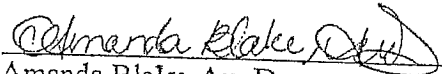
Left Ear: a 26 dB difference, OSHA STS: Yes
Right Ear: a 22.7 dB difference, OSHA STS: Yes

Based on these results, Mr. Spangler's hearing loss does not prevent him from going back to work. The configuration of Mr. Spangler's hearing loss is not a consequence of the normal aging process for either ear and is suggestive of noise exposure.

The aforementioned results were discussed with Mr. Spangler, including that he is a candidate for binaural amplification and he expressed understanding. In conclusion, I would recommend binaural amplification upon medical clearance, continuation of annual hearing evaluations or sooner if changes in hearing or tinnitus are noted, and the use of hearing protection in noise.

I thank you for the opportunity to participate in the hearing health care of this patient. Please do not hesitate to contact me with any questions.

Sincerely,


Amanda Blake, Au. D.



Human Resources Department/Risk Management Division

Workers' Compensation Accident/Injury Treatment Report (T-1)

EMPLOYEE TO COMPLETE

Employee's Name: Jared Spangler Employee Number: 016712
Date of Injury: 8/25/03-Current Date of Current Visit: 2/5/16
Is this a scheduled work day? ☐ Yes ☒ No CURRENT WORK STATUS: ☒ Full Duty ☐ Modified Duty ☐ Off Work

PHYSICIAN'S FINDINGS (to be completed by Treating Physician Only)

Diagnosis ICD9 Code (No Narrative): H83.3X3

• Released to Full-Duty on 2/5/16 with use of hearing protection as needed

• Released to Modified-Duty on / / with the following restrictions (check all applicable):

☐ No ☐ Banding ☐ Pushing ☐ Pulling ☐ No Fire Suppression, Rescue or Paramedic Activities (firefighters)
☐ No Repetitive Motion to Injured Part: ☐ No Combat Situations
Body Part ☐ Medication May be used while Working
☐ No Reaching/Working above Shoulder ☐ No Operating a Motor Vehicle or Machinery
☐ No Climbing: Ladders Stairs Sleep Terrain ☐ Other: Eye Patch Keep Injury Clean Must Wear Splint/Sling
☐ No Lifting over: 5 lbs. 10 lbs. 20 lbs. 35 lbs. 50 lbs. # lbs.

Comments/Other:

Employee's restrictions are: ☐ Temporary ☐ Permanent

• Employee is OFF WORK (TTD) from / / to / /
(These dates should not start before this treatment date or extend past next appointment date.)

Discharged? ☐ Yes ☒ No ^{Hearing loss is life-long} Medically Stable? ☐ Yes ☒ No ^{due to evidence of hearing from baseline} Rateable? ☐ Yes ☐ No ☒ TBD

Condition: ☐ Same ☐ Improved ☒ Worsened - when compared to baseline dated 8/8/03

Request Referral? ☒ Yes ☐ No Referral For/To: ENT to rule out retrocochlear pathology due to

Objective Findings/Treatment/Prognosis: Sensorineural hearing loss bilaterally, worse in the left ear, with evidence of damage from noise exposure bilaterally. Recommended treatment is the use of bilateral amplification.

REHABILITATION (Physical Therapist / Occupational Therapist)

NOTE FOR PT APPOINTMENTS: Therapist may complete and sign only the portions below.

Job Description Provided: ☐ Yes ☐ No Employee Is: ☐ Improving ☐ Maintaining ☐ Regressing ☐ PT/OT Complete

SIGNATURES (Provider, Employee, Supervisor)

TIME IN: 11:00 a TIME OUT: 12:00 p NEXT APPOINTMENT: Date TBD Time

Dr. Amanda Blake Physician or Clinician Signature Date 2/5/16

Dr. Amanda Blake Physician or Clinician Print Name Phone (702) 933-9102

2642 W. Horizon Ridge Pkwy, Ste. All Address City/State/ZIP Henderson, NV 89052

[Signature] Employee Signature [Signature] Supervisor Signature

RECEIVED

FEB 8 2016

ORIGINAL: HR-Risk Management Division, MSC 137 (Fax: 702-267-1902)

PLEASE RETAIN A COPY: Department Employee Physician

City of Henderson
Risk Management Division

110

Roger Theobald, Au.D.

Patient Name: Jared Spangler
Patient Age: 36 Referred by: CCMST
Examiner: Dr. Theobald Date: 3/1/16

[illegible]



ZODIAC 901 S/N 130403
Headset S/N 282184
Cal. Date: Jun- 9-2015
Program Version 4.08

Nevada Hearings & Balance Center

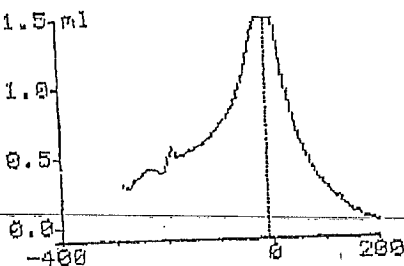
~~Exam:~~ Jared Spunkles
~~Patient:~~ Robert Wheeler AND.
Patient Number: 0

Date: Mar- 1-2016

Time: 02:29PM

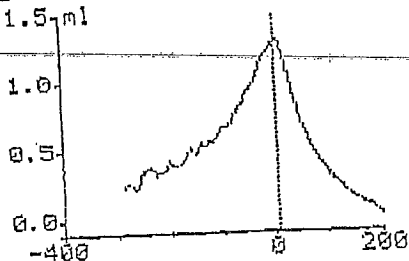
Temp: Sweep Left

ECV: 1.92 ml 1.5 ml
MEP: -10 daP
SC: 1.74 ml 1.0
Grad: 0.46
TW: 113 daP
Speed: 400 dP/S
Dir: Nes



Temp: Sweep Right

ECV: 2.01 ml 1.5 ml
MEP: 5 daP
SC: 1.34 ml 1.0
Grad: 0.36
TW: 157 daP
Speed: 400 dP/S
Dir: Nes



HEARING & BALANCE

DOCTORS OF NEVADA

March 2, 2016

RE: Jared Spangler
Claim Number: 16C52G555847

To Whom It May Concern:

The above mentioned patient has a history of bilateral sensorineural hearing loss and tinnitus that are reported to have begun after being exposed to loud noises while on the job with the Henderson City Police Department. Mr. Spangler's main concern is that he has difficulty hearing conversational speech particularly if in the presence of background noise. He reports being frustrated due to not hearing his wife and children and having to have them repeat themselves often. Mr. Spangler also reported having tinnitus which interferes with his ability to relax in quiet environments.

Medical records that were provided for review by CCMSI which included Mr. Spangler's annual hearing evaluations from the time that he was a new hire with the police dept in 2003 with the most recent in 2015. Also included were records from a medical evaluation by Dr. Scott Manthei, D.O. ENT in 2005. In February 2016 Mr. Spangler was evaluated by Amanda Blake, Au.D. with Anderson Audiology which records were also provided.

After reviewing the provided medical records it is apparent that Mr. Spangler did have a mild to moderate hearing loss in his left ear and normal to mild high frequency hearing loss in his right ear prior to his employment with the Henderson City Police dept. However, in the thirteen years that Mr. Spangler has been employed as a police officer, his hearing has significantly decreased bilaterally. Hearing decrease is considered significant if a change of 10dB or more occur at three or more hearing thresholds.

By way of medical records review there is a high likelihood that there is an underlying condition that may be contributing to Mr. Spangler's hearing loss in his left ear. Dr. Manthei identified a possible tumor located in the area of the left cochlear nerve. However, there is a high probability that Mr. Spangler's threshold shift may be as a result of on the job noise exposure.

An Independent audiology evaluation in February 2016 was also provided and reviewed. Amanda Blake, Au.D. an audiologist with Anderson Audiology also reviewed the above mentioned medical records of which I agree with her review with the exception of the MRI findings which she reported as negative. The MRI reports states that there is a possible lesion and that the recommendation of the radiologist is to re-image using a higher resolution MRI in order to confirm results.

Today's results show type A tympanograms bilaterally, with Otoacoustic emissions being absent bilaterally. Pure tone hearing thresholds show a mild to moderately severe sensorineural hearing loss in the right ear and a moderate to moderately severe sensorineural hearing loss in the left.

It is my opinion that Mr. Spangler should be fit with hearing aids in order to minimize his struggles with communication. I recommend due to the diverse environments that Mr. Spangler is in daily, that he obtain the highest level of hearing aid technology currently available.

I am also recommending that Mr. Spangler schedule an appointment with a Neuro-Otologist who can evaluate the potential likelihood of a left sided cochlear pathology.

Thank you for this opportunity to participate in Mr. Spangler's hearing health care needs. If you have any questions or comments regarding the test results or recommendations, please feel free to contact our office at (702)896-0031.

Sincerely,


Roger Theobald Au.D.
Doctor of Audiology



Name: Spangler, Jared

SSN:

EID: xxxxx

DOB: 2 Jul 1979 (36 yrs)

Date: 10 Dec 2015

After Jared Spangler was assigned to work in potentially hazardous noise, City of Henderson obtained a baseline audiogram on 18 August 2008. As required, a hearing test was administered on 1 October 2015 to observe any changes in hearing sensitivity.

According to federal noise regulatory guidelines, the audiometer utilized for this hearing test was calibrated within the past year. An audiometric case history revealed routine exposures to high intensity noise. An otoscopic examination was administered.

Hearing Test Results

Left Ear: The speech frequency average, 500 to 3000 Hz, indicates a severe degree of hearing loss.
The high frequency average, 4000 to 8000 Hz, indicates a severe degree of hearing loss.

Right Ear: The speech frequency average, 500 to 3000 Hz, indicates a mild degree of hearing loss.
The high frequency average, 4000 to 8000 Hz, indicates a severe degree of hearing loss.

Audiometric Analysis

Left Ear: There has been a significant decrease in hearing sensitivity (Standard Threshold Shift).

Right Ear: There has been a significant decrease in hearing sensitivity (Standard Threshold Shift).

Recommendations

1. If this employee continues to be exposed to hazardous levels of noise, a required annual hearing test should be administered to monitor possible changes in hearing sensitivity.
2. Hearing protection devices (earplugs and/or muffs) should be refit and instructions provided on their proper use.
3. As a minimum, during mandatory annual training the required topics outlined in the appropriate federal noise standard should be discussed and updated each year.
4. When required, the routine and proper use of hearing protection devices should be enforced. Inspections for compliance should be scheduled and findings documented.
5. Within 30 days from the last hearing test, a follow-up hearing test should be administered. If necessary, earwax should be removed. The employee should be noise-free for no less than 14 hrs prior to the test. Until retested, the most current test should be utilized as the revised baseline and, if required, recorded with the appropriate federal agency.
6. Hearing test results indicate this employee should be referred to an audiologist for an advanced hearing examination.
7. Hearing test results indicate this employee should be referred to an ear, nose and throat physician (otolaryngologist) for a medical examination.

Dr. John Elmore

John Elmore, Au.D, M.B.A.
Board Certified Audiologist

Spangler, Jared
Employee

Date

(800) 357-5759

13071 Adobe Walls Drive • Helotes, Texas, 78023-5112 • (210) 695-4707 • Fax (210) 695-4705

E-mail: info@precision-hearing.com • Web site: www.precision-hearing.com

City of Henderson, Henderson, NV (10 December 2015)

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City of Henderson

Name: Jared Spangler
Sex: Male

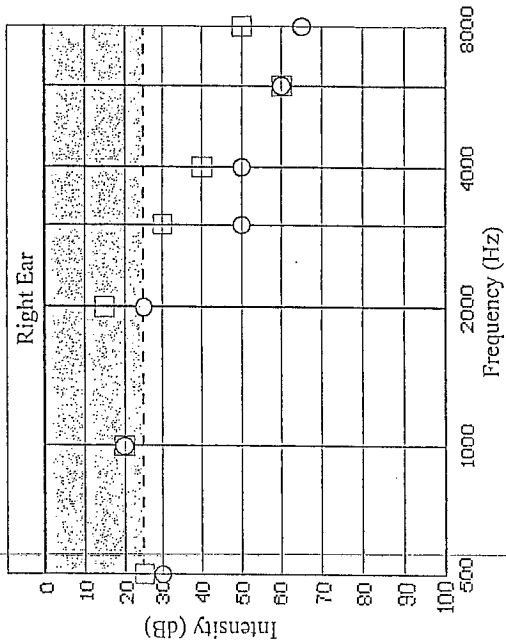
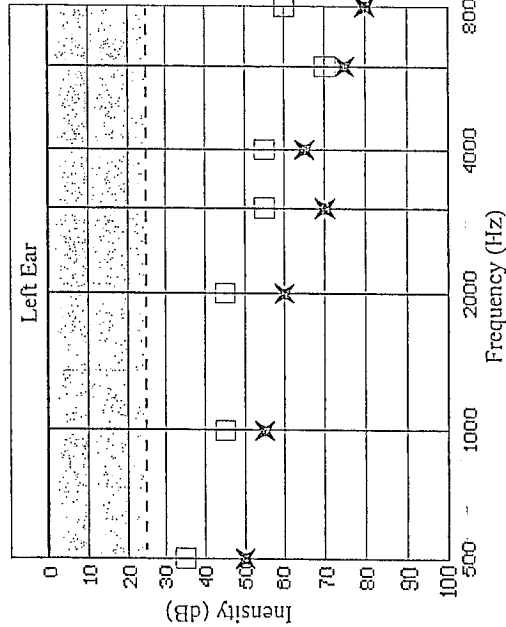
Noise Standard: OSHA
Age Adjustment: Yes

EID: xxxxxx
SSN:

Birth Date: 2 Jul 1979
Age: 36 yrs

Date: 10 Dec 2015
Language: English

Left Ear		Right Ear	
500	1K	500	1K
2K	3K	2K	3K
4K	6K	4K	6K
8K		8K	
Left Avg 2-3-4K		Right Avg 2-3-4K	
STS		STS	
Left Ear Results 2-3-4K		Right Ear Results 2-3-4K	



Key
x Left o Right □ Baseline
Normal Hearing = 0-25 dB

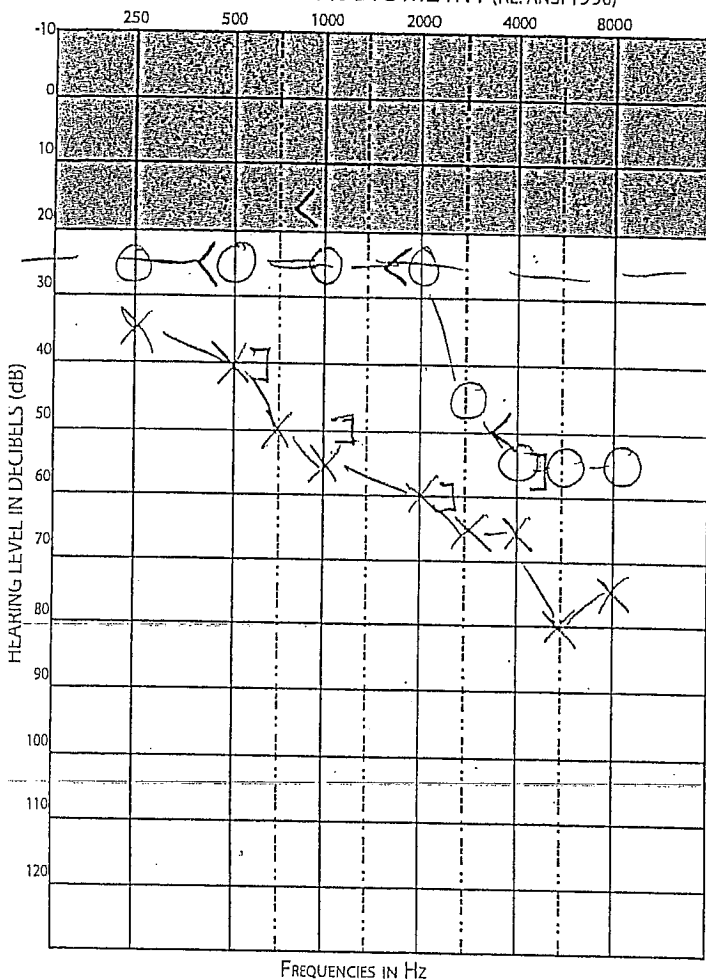
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AUDIOGRAM

AudigyCertified

PURE TONE AUDIOMETRY (RE: ANSI 1996)



Practice: Anderson Audiology Location: Henderson

Name: Shared Spangler Date of Birth: 7/2/79

Referred By: _____

Test Interval: _____ Date of Test: 2/5/16

KEY:

LEFT	STIMULUS	RIGHT
X	AIR	O
□	AIR - MASK	△
>	BONE	<
J	BONE - MASK	C
∇	NO RESPONSE	∇
L	UCL	R
SOUND FIELD - S		
VIBRO-TACTILE - VT		
TINNITUS - (T)		

TEST TYPE

STANDARD CAE	<input checked="" type="checkbox"/>
PLAY	<input type="checkbox"/>
CORVA	<input type="checkbox"/>
BOA	<input type="checkbox"/>

TRANSDUCER

INSERT	<input type="checkbox"/>
CIRCUMAURAL	<input type="checkbox"/>
SOUND FIELD	<input type="checkbox"/>

RELIABILITY

EXCELLENT	<input type="checkbox"/>
GOOD	<input type="checkbox"/>
FAIR	<input type="checkbox"/>
POOR	<input type="checkbox"/>

BOOTH

#1	<input type="checkbox"/>
#2	<input type="checkbox"/>
#3	<input type="checkbox"/>
#4	<input type="checkbox"/>

TYMPANOMETRY (226 Hz)

EAR	LEFT	RIGHT
EAR CANAL VOLUME CM ³	1.14	1.34
TYMP PEAK PRESSURE (DAPa)	-15	10
STATIC ADMITTANCE (MMH ₂ O)	1.22	0.93
TYMP WIDTH (DAPa)	78	92

CaptionCall
Life is Calling

PT's COPY

Pressure

k Hz	2k Hz	4k Hz
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SPEECH AUDIOMETRY

	PTA	SRT/ SAT	Speech Recognition	Speech Recognition	MCL	UCL
RIGHT (AD)	25	30	100% 65	%	65	100
Masking						
LEFT (AS)	52	65	72% 90	%	90	105
Masking						
MLV	CD/tape	W-22	WIPI	PBK	SPECIAL:	SPECIAL:
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

TINNITUS EVALUATION

RIGHT	PT / NB	_____ kHz	_____ dBHL
LEFT	PT / NB	_____ kHz	_____ dBHL
BINAURAL	PT / NB	_____ kHz	_____ dBHL

HYPERACUSIS: YES / NO

CATEGORY: 0 1 2 3 4

History, Impressions, Recommendations: PT reported he has already had an MRI to look at the left ear.

Rx: Binaural amplification, use of hearing protection in noise, annual audiometric testing to monitor hearing

OTOLITH STIMULATIONS (OAEs)

EMISSION TYPE USED	TEST TYPE PERFORMED
Transient	OAE Complete
<input checked="" type="checkbox"/> Distortion Product	<input checked="" type="checkbox"/> OAE Screen

OAE Results:

Right Ear Present 1.5-3k Hz Absent 4-6k Hz
Left Ear Absent 1.5-6k Hz

OAE Unit

HEARING INSTRUMENT INFORMATION

RIGHT INSTRUMENT: _____

LEFT INSTRUMENT: _____

OTOSCOPY: semi-occluded AD AS clear
cerumen removed from AD prior to
all testing without incident



City of Henderson

Name: Jared Spangler
Sex: Male

Noise Standard: OSHA
Age Adjustment: Yes

EID: xxxxxx
SSN:

Birth Date: 2 Jul 1979
Age: 36 yrs

Date: 10 Dec 2015
Language: English

Date	Left		Left Ear								Right Ear				Left Avg		Right Avg		Left Ear Results		Right Ear Results	
	500	Right	500	1K	2K	3K	4K	6K	8K	500	1K	2K	3K	4K	6K	8K	2-3-4K	STS	2-3-4K	STS		
10-01-2015	A	A	50	55	60	70	65	75	80	30	20	25	50	50	60	65	41	10.6	STS	STS		
08-11-2015	A	A	45	55	60	65	65	70	65	30	25	20	45	45	60	50	36	9.0	No Change	Better		
07-31-2014	A	A	50	55	65	65	65	80	75	30	30	25	45	50	65	55	40	11.3	STS	Decrease		
07-24-2013	A	A	40	50	55	65	60	65	60	35	25	20	40	45	80	65	35	6.3	No Change	Decrease		
08-06-2012	A	A	45	50	55	65	60	65	75	25	20	10	30	40	65	65	26	7.0	Decrease	No Change		
08-11-2011	A	A	40	50	50	60	60	65	55	25	25	15	30	40	55	55	28	3.6	No Change	No Change		
07-22-2010	A	A	45	45	50	60	55	75	65	30	25	15	30	40	60	50	28	2.6	No Change	No Change		
07-24-2009	A	A	45	50	50	65	55	60	55	25	20	15	30	40	50	50	28	4.6	Decrease	No Change		
08-18-2008	BA	BA	35	45	45	55	55	70	60	25	20	15	30	40	60	50	28	17.0	12.0	STS		
08-13-2007	A	A	40	50	55	65	60	80	70	25	25	15	30	30	55	55	25	25.3	8.6	No Change		
08-24-2006	A	A	45	50	55	60	55	70	70	25	20	10	25	35	50	45	23	22.3	7.3	Decrease		
07-14-2005	A	A	40	45	45	50	55	55	65	20	15	5	10	20	45	40	11	16.0	-4.0	No Change		
07-29-2004	A	A	30	40	40	40	60	70	55	20	20	10	15	5	55	40	10	13.0	-5.3	Much Better		
08-08-2003	B	B	30	35	30	30	40	50	50	25	20	10	15	20	20	30	15	Baseline	Baseline	Baseline		

Key

A - Annual
B - Baseline
R - Recordable
T - Retest
E - Exit

Audiometric Analysis

Standard Threshold Shift - Without Age Correction: 13.4 - Yes - 10-1-2015
Standard Threshold Shift - With Age Correction: 10.6 - Yes - 10-1-2015
Possible OSHA Recordable Hearing Loss: 27.6 - Yes - 10-1-2015

Left Ear
Right Ear

13.3 - Yes - 10-1-2015
10.6 - Yes - 10-1-2015
22.6 - Yes - 10-1-2015

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Email: info@precision-hearing.com - Web site: www.precision-hearing.com



City of Henderson COPY

240 Water Street
Henderson, Nevada 89015

Firefighters and Police
Officers
Hearing Examination
Form

Name (Last, First, Middle) SPANGLER, JARED, FLOYD	Sex M	Date of Examination 7/29/03
Address 4130 ARTIST CT.	Age 24	Date of Birth 7/2/79
Organization/Employer H.P.O.	Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000
25	20	10	15	20	20	30

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000
30	35	30	30	40	50	50

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Right	Left	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Normal Appearance
<input type="checkbox"/>	<input type="checkbox"/>	Excessive Wax or Debris
<input type="checkbox"/>	<input type="checkbox"/>	Abnormal Appearance

Recommendations

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Remarks

Audiometer GRASON-STADLER	Serial Number 5236	Calibration Date 4-22-02 2003
Tester's Name Cynthia Kirkpatrick	Title O.H.C	Tester's Signature <i>Cynthia Kirkpatrick</i>
		Test Date and Time 8.8.03

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature <i>[Signature]</i>	Date 8.8.03
--	-----------------------



City of Henderson

240 Water Street

Henderson, Nevada 89015

COPY

Firefighters and Police
Officers
Hearing Examination
Form

Name (Last, First, Middle) SPANGLER, JARED FLOYD	Sex M	Date of Examination 7/22/04
Address 4130 ARTIST CT, LV, NV, 89115	Age 25	Date of Birth 7/2/79
Organization/Employer H PD	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Calibration Date 04/14/04
Calibration Due Date 04/14/05
Test : 057 Date 07/29/04 Time 07:58
SS# 0000000000 Job ID: 00000000

Average of 2K, 3K,
and 4K Results:

Patient: **Spangler, Jared**

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Normal Appearance	
Excessive Wax or Debris	
Abnormal Appearance	

Recommendation

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Frequency	Left	Right
1000 Hz Validity		15
500 Hz	30	20
1000 Hz	40	20
2000 Hz	40	10
3000 Hz	40	15
4000 Hz	60	05
5000 Hz	70	55
6000 Hz	55	40

Audiometer	Serial Number	Calibration Date
Tester's Name Karadottir DHC	Tester's Signature [Signature]	Test Date and Time

Please sign one copy of this form as acknowledgement of receipt from your employer.

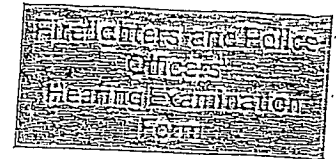
Employee's Signature [Signature]	Date 7-22-04
--	------------------------



City of Henderson

240 Water Street
Henderson, Nevada 89015

COPY



Name (Last, First, Middle) SPANGLER, JARED F.		Sex M	Date of Examination 7/6/05
Address 3550 TUMRA SWAN ST.		Age 24	Date of Birth 7/2/79
Organization/Employer CITY OF HENDERSON		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K, and 4K Results:

Average of 2K, 3K, and 4K Results:

Otoscopic Examination

Right	Left	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Normal Appearance
<input type="checkbox"/>	<input type="checkbox"/>	Excessive Wax or Debris
<input type="checkbox"/>	<input type="checkbox"/>	Abnormal Appearance

Recommendations

<input checked="" type="checkbox"/>	Medical
<input type="checkbox"/>	Retest
<input type="checkbox"/>	Recommend
<input type="checkbox"/>	Complete Audiogram

Calibration Date 04/07/05
Calibration Due Date 04/07/06
Test : 071 Date 07/14/05 Time 06:54
SS#: 0000000000 Job ID: 1e=6

Patient **Spangler, Jared**

Frequency	Left	Right
1000 Validity		15
500 Hz	40	20
1000 Hz	45	15
2000 Hz	45	05
3000 Hz	50	10
4000 Hz	55	20
6000 Hz	55	45
8000 Hz	65	40

Audiometer		Serial No.	
Tester's Name A. Theakley	Title	Tester's Signature	Test Date and Time

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature [Signature]	Date 7/14/05
--	------------------------



City of Henderson

240 Water Street
Henderson, Nevada 89015

COPY

Firefighters and Police
Officers
Hearing Examination
Form

Name (Last, First, Middle) <u>SPANGLER, JARED F.</u>		Sex <u>M</u>	Date of Examination <u>8/17/06</u>
Address <u>3550 TUNDRA SWAN</u>		Age <u>27</u>	Date of Birth <u>7/2/79</u>
Organization/Employer <u>CITY OF HENDERSON</u>		Occupation <u>POLICE OFFICER</u>	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Calibration Date 07/05/06 161
Calibration Due Date 04/05/07
Test 1025 Date 08/17/06 Time 07:21
SS# 0000000003 Job ID: AA-2

Patient: Jared Spangler

Otoscope Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal
Appearance

Excessive Wax
or Debris

Abnormal
Appearance

Recd

Frequency	Left	Right
1000 Validity		20
500 Hz	45	25
000 Hz	50	20
000 Hz	55	10
300 Hz	60	25
100 Hz	55	35
100 Hz	70	50
00 Hz	70	45

Examiner:

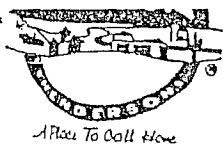
Rt 5
Lt 20/20
Both 20/20
Color WNL

PV
790
790

Audiometer		Serial Number	Calibration Date
Tester's Name <u>Kirkpatrick</u>	Title <u>Phup Cool</u>	Tester's Signature <u>[Signature]</u>	Test Date and Time <u>8-17-06</u>

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature <u>[Signature]</u>	Date <u>8/24/06</u>
--	------------------------



City of Henderson
240 Water Street, Box 95050
Henderson, NV 89009-5050

COPY

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.	Sex m	Date of Examination 8/13/07
Address 3556 TUNARA SWAN ST, LV, NV, 89123	Age 28	Date of Birth 7/2/79
Personal Physician's Name DR. KILPATRICK	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscope Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

Remarks

?
Calibration Date 04/05/06 by: m s v
Calibration Due Date 04/05/07
Test :193 Date 08/13/07 Time 07:00
000000000 Job ID:Aa=E
Patient Jared Spangler

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Frequency	Left	Right
1000 Validity		25
500 Hz	40	25
1000 Hz	50	25
2000 Hz	55	15
3000 Hz	65	30
4000 Hz	60	30
6000 Hz	80	55
8000 Hz	70	55

Examiner _____

Audiometer	Tester's Name <u>Chris Boer</u>	Title <u>Physician</u>	Tester's Signature <u>[Signature]</u>	Test Date and Time <u>08/13/07</u>
------------	------------------------------------	---------------------------	--	---------------------------------------

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature <u>[Signature]</u>	Date <u>8/13/07</u>
--	------------------------



City of Henderson
240 Water Street, Box 95050
Henderson, NV 89009-5050

COPY

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.	Sex m	Date of Examination 8/4/08
Address 3550 TUNPRA SWAN ST	Age 29	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otososcopic Examination

Right	Left

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

Calibration Date 11/19/07 by:msv
Calibration Due Date 11/18/08
Test # 189 Date 08/04/08 Time 08:41
Job ID: Aa=2

Patient **Jared Spangler**

Frequency	Left	Right
000 Validity		25
500 Hz	35	25
1000 Hz	45	20
2000 Hz	45	15
3000 Hz	55	30
4000 Hz	55	40
5000 Hz	70	60
6000 Hz	60	50

POSTED
IPA

RECOMMENDATIONS

☐ Medical Referral

☐ Retest Recommended

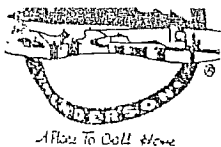
☐ Complete Audiogram

Examiner

Audiometer	Serial Number	Calibration Date
Tester's Name Keith K. [Signature]	Tester's Signature [Signature]	Test Date and Time 8-4-08

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature [Signature]	Date 8/18/08
--	------------------------



City of Henderson
240 Water St. P.O. Box 95050
Henderson, NV 89009-5050

COPY

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED F.		Sex M	Date of Examination
Address 3550 TUNDRA SWAN, LV, NV, 89122		Age 30	Date of Birth 7/2/79
Personal Physician's Name		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

500	1

Subject Information:

SSN: _____
Status: _____ Active
In Program: _____ Yes
Language: _____ English

8000

Most Recent Test:

Date: **7-24-2009** Time: **9:22:51**

Av

	Left	Right
500	45	25
1K	50	20
2K	50	15
3K	65	30
4K	55	40
6K	60	50
8K	55	50

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

RECOMMENDATIONS

☐
☐
☐

Medical Referral

Retest Recommended

Complete Audiogram

Baseline:

No Baseline

Current Analysis:

	Left	Right
HEA STS		
(Age Corrected)	No	No
Possible		
Rec Shift	No	No
512,3K Avg.	52	22
2,3,4K Avg.	56	28
AAO - 1979		6%

Audiometer		Serial Number
Tester's Name Cyrtt	Title Phys Con	Tester's Sign

Examiner	Date
Subject	Date

Please sign one copy of this form and submit it to

Employee's Signature

Date

7/24/09

COPY

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED	Sex M	Date of Examination 7/22/10
Address 3550 TUNDRA SWAN ST.	Age 31	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz) Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency		
500	1000	2000

Subject Information	
SN	
State	
City	
Recent Test	

Average of 2K, 3K,
and 4K Results:

Average of
and 4K

Otoscope Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

RECOMMENDATIONS

- ☐ Medical Referral
- ☐ Retest Recommended
- ☐ Complete Audiogram

45	15
50	20
60	30
55	40
75	50
60	60
Examined	Next
M. L.	25654
	4.6.2010
	0.06-1989

Baseline	
No. 1	
Current Analysis	
Left	Right
No	No
No	No
50	25
55	28

Audiometer	Serial Number
Tester's Name [Signature]	Title Phys. Ca.
	Tester's Signature [Signature]

Please sign one copy of this form and submit it to your employer

Employee's Signature
[Signature]

Date
7/22/10

COPY

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED F.	Sex M	Date of Examination 8/17/11
Address 3550 TUNDRA SWAN ST.	Age 32	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

based 8/11/2011
CITY OF HENDERSON

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

500	1000

Subject Information:
SSN
Status: Active
In Program: Yes
Language: English

8000

Average of 2K, 3K,
and 4K Results:

Ave

Most Recent Test:
Date: 8/11/2011 Time: 9:08:33

	Left	Right
500	40	25
1K	50	25
2K	50	15
3K	60	30
4K	60	40
6K	65	55
8K	55	55

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

- ☐ Medical Referral
☐ Retest Recommended
☐ Complete Audiogram

Examiner:
Model: Next
Serial: 25654
Cal: 4/19/2011
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:
Left Right

OSHA STS
(Age Corrected): No No
Possible
Rec Shift No No
.5,1,2,3K Avg: 50 23
2,3,4K Avg: 56 28
AAO - 1979: 6%

Audiometer	Serial Number
Tester's Name <i>[Signature]</i>	Tester's Signature <i>[Signature]</i>
Title <i>[Signature]</i>	

Please sign one copy of this form and submit it to you

Employee's Signature <i>[Signature]</i>
--

Examiner <i>[Signature]</i>	Date
Subject	Date

Subject Test <i>[Signature]</i>

COPY

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED	Sex M	Date of Examination 8/6/12
Address 3550 TUNRA SWAN ST.	Age 33	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000
25	20	10	30	40	45	65

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000
45	50	55	65	60	65	75

Average of 2K, 3K,
and 4K Results:

58.3

Average of 2K, 3K,
and 4K Results:

26.4

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Remarks

Calibration Date 02/23/12 by:audmed
Calibration Due Date 02/22/13
Test :000 Date 08/13/12 Time 14:10
SS# 000000000 Job ID:920
Patient **423513**
Frequency Left Right
1000 Validity 20
500 Hz 45 25
1000 Hz 50 20
2000 Hz 55 10
3000 Hz 65 30
4000 Hz 60 40
6000 Hz 65 65
8000 Hz 75 65
Examiner _____

Audiometer AMBCO	Serial Number 6390	Calibration Date 8/15/12
Tester's Name Alex Moreno	Title MA	Tester's Signature Alex M
		Test Date and Time 8/13/12

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature 	Date 8/6/12 128
---	---------------------------

COPY

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) Spangler, Jared		Sex M	Date of Examination 7-29-13
Address 3550 Tundra Swan Las Vegas, NV 89122		Age 34	Date of Birth 7-2-79
Personal Physician's Name N/A		Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

F	
500	10

Most Recent Test:

Date: 7/24/2013 Time: 7:08:44

	Left	Right
500	40	35
1K	50	25
2K	55	20
3K	65	40
4K	60	45
6K	65	80
8K	60	65

8000

Average of 2K, 3K,
and 4K Results:

Avg

Otoscope Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Examiner:

Model:

Serial:

Cal:

Next

25654

4/12/2013

ANSI S3.6-1989

Baseline:

No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	52	30
2,3,4K Avg:	60	35
AAO - 1979:		13%

Examiner

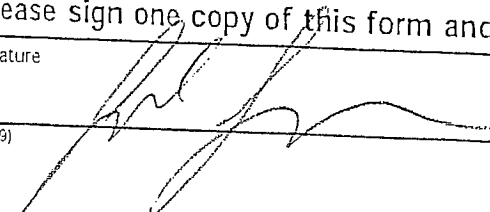
Date

Subject

Date

Audiometer		Serial Number	
Tester's Name	Title	Tester's Signature	Test Date and Time

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature	Date
	7-29-13 129

COPY

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) Spangler, Jared		Sex M	Date of Examination 8.7.14
Address 3550 Tundra Swann Las Vegas, NV 89122		Age 35	Date of Birth 7.2.79
Personal Physician's Name		Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency	
500	1000

Most Recent Test:

Date: 7/31/2014 Time: 7:29:39

	Left	Right
500	50	30
1K	55	30
2K	65	25
3K	65	45
4K	65	50
6K	80	65
8K	75	55

Average of 2K, 3K,
and 4K Results:

Average
and

Otoscope Examination

Right	Left
/	/

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

*"Has continued
Audiology Care."*
RECOMMENDATIONS
has continue

Examiner:

Model: Next
Serial: 25654
Cal: 4/9/2014
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	58	32
2,3,4K Avg:	65	40
AAO - 1979:		17%

Examiner Date

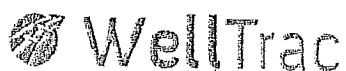
Subject Date

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Audiometer		Serial Number	Calibration Date
Tester's Name	Title	Tester's Signature	Test Date and Time

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature	Date
<i>[Signature]</i>	8.7.14



CITY OF HENDERSON HEARING CONSERVATION PROGRAM
2015
RETEST

Date: 10-1-2015

Name: Spangler, Jared F.

Base Line Year 2003 Results *
(* If first visit N/A)

2015 ReTest Results

	Right Ear	Left Ear	Right Ear	Left Ear
KHZ 2	<u>10</u>	<u>30</u>	<u>25</u>	<u>60</u>
KHZ 3	<u>15</u>	<u>30</u>	<u>50</u>	<u>70</u>
KHZ 4	<u>20</u>	<u>40</u>	<u>50</u>	<u>65</u>
AVERAGE	<u>15</u>	<u>33.3</u>	<u>41.6</u>	<u>65</u>
(Add KHZ 2, 3 and 4 - divide the total by 3)				

Employee's Name: Spangler, Jared F.

Social Security # or Employee ID #: 16712

Type of Test	<input type="checkbox"/> Baseline	<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Retest	<input type="checkbox"/> Exit	<input type="checkbox"/> OSHA	<input type="checkbox"/> MSHA	<input type="checkbox"/> FRA	<input type="checkbox"/> Other
--------------	-----------------------------------	---------------------------------	--	-------------------------------	-------------------------------	-------------------------------	------------------------------	--------------------------------

Employee's Noise Exposure Level	dB(A)	Audiometer Serial #	010303000488
---------------------------------	-------	---------------------	--------------

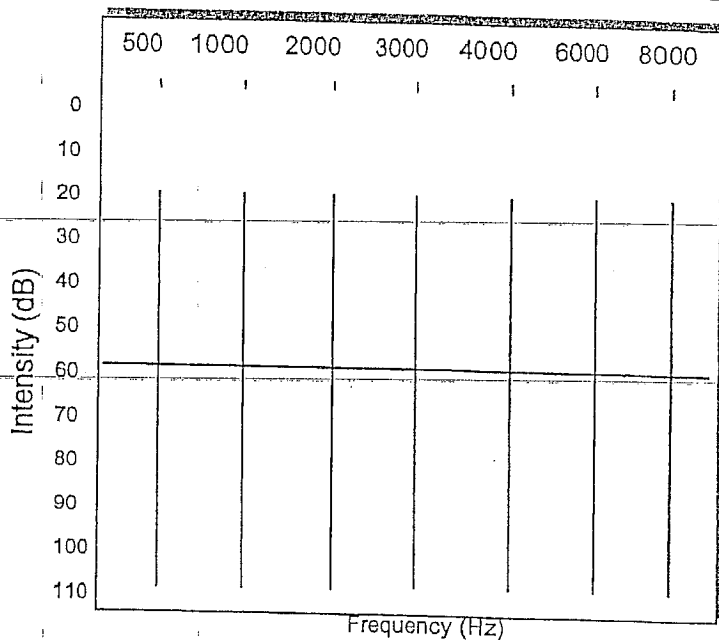
Audiometer Calibration (month/day/year)	01/22/2015	Baseline Right (month/day/year)	2003
---	------------	---------------------------------	------

Today's Date (month/day/year)	10-1-2015	Test Environment Certification (month/day/year)	01/22/2015	Baseline Left (month/day/year)	2003
-------------------------------	-----------	---	------------	--------------------------------	------

	.5K	1K	2K	3K	4K	6K	8K
Right	30	20	25	50	50	60	65
Left	50	55	60	70	65	75	80

Key		
Right	Red	O
Left	Blue	X

Comments _____



► I have been counseled about my hearing test results. Signature [Signature] Date 10/1/15

Staple Microprocessor Results Here	Test Results			Staple Microprocessor Results Here
	Hz	Left	Right	
	500	50a	30a	
	1000	55a	20m	
	2000	60a	25a	
	3000	70a	50a	
	4000	65a	50a	
	6000	75a	60a	
	8000	80a	65a	

Examiner's First Name	Examiner's Last Name	CAOHC Certification #
Debbi	Baburn	

► Examiner's Signature [Signature] Date 10-1-2015



March 15, 2016

Jared Spangler
3550 Tundra Swan
Las Vegas, NV 89122

RE: Claim Number : 16C52G555847
Date of Injury : 01/14/2016
Insurer : City of Henderson

Dear Mr. Spangler:

CCMSI is in receipt of your claim filed for the above date of injury. After a thorough review of all the information submitted, it cannot be determined whether or not an actual noise exposure occurred. Based on the information provided, it is the decision of CCMSI to deny your claim. This denial is also based on the fact that the information supplied does not clearly establish that your disability arose in the course and scope of your employment, as specified in Nevada Revised Statute 616C.150 or 617.440. Additionally, this claim does not qualify for coverage under Chapter 617 of the Nevada Revised Statutes.

Please be aware that, although your claim is being denied, the bills related to your appointment with Dr. Theobald only will be covered as a courtesy.

If you disagree with this decision, you may appeal by completing and submitting the attached "Request for Hearing" form to the Department of Administration, Hearings Division within seventy (70) days of the date of this letter.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

Susan Riccio
Claims Representative

enc: NRS 616C.150, 617.440
"Request for Hearing" form

cc: City of Henderson,
File

FILED

MAY 10 2016

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

JARED SPANGLER,

Claimant.

Claim No: 15C52G555847

Appeal No: 1524756-GB

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held on a **STACKED CALENDAR** by the Appeals Officer, pursuant to NRS 616 and 617 on:

DATE: JUNE 20, 2016,
TIME: 1:00PM STACKED
PLACE: DEPT OF ADMINISTRATION, HEARINGS DIVISION
2200 SOUTH RANCHO DRIVE, SUITE 220
LAS VEGAS NV 89102

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.

3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.

4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.

5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.

6. In the event that all parties to this action agree to have the matter RE-SCHEDULED AND SET FOR A DATE AND TIME CERTAIN, you are hereby required to submit AT LEAST TWO (2) DAYS prior to the scheduled Hearing date a written request, submitted by letter, facsimile or by email, to the Appeals Office advising the Appeals Office that all parties to the action have agreed to remove the action from the Stacked Calendar. A continuance of the hearing date also may be obtained pursuant to NAC 616C.318. The matter will otherwise proceed as scheduled on the STACKED CALENDAR ON A TIME AVAILABLE BASIS.

7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED this 10th day of May, 2016.

Georganne W. Bradley

GEORGANNE W BRADLEY, ESQ.
APPEALS OFFICER

[Signature]

CERTIFICATE OF MAILING

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

JARED SPANGLER
3550 TUNDRA SWAN ST
LAS VEGAS NV 89122-3501

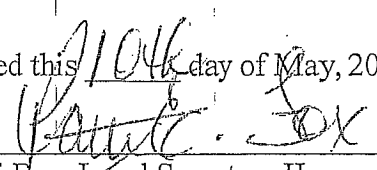
THADDEUS J YUREK III ESQ
GREEMAN GOLDBERG RABY & MARTINEZ
601 S 9TH ST
LAS VEGAS NV 89101

CITY OF HENDERSON
ATTN ROBERT OSIP
240 S WATER ST MSC 122
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CCMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 10th day of May, 2016.



Patti Fox, Legal Secretary II
Employee of the State of Nevada

**STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION

FILED -2 AM 10:34

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 1523393-1
Claim Number: 15C52G55847
FILED

JARED SPANGLER
3550 TUNDRA SWAN ST
LAS VEGAS, NV 89122

ATTN ROBERT OSIP
CITY OF HENDERSON
240 S WATER ST MSC 122
HENDERSON, NV 89015-7227

ORDER TRANSFERRING HEARING TO APPEALS OFFICE

The Claimant's Request for Hearing was filed on March 28, 2016 and scheduled for May 11, 2016. The requesting party appealed the Insurer's determination dated March 15, 2016. The hearing was scheduled for May 11, 2016.

The parties have filed a stipulation to waive a hearing at the Hearing Officer level and to proceed directly to the Appeals Officer level.

NRS 616C.315(7) provides that the parties to a contested claim may, if the Claimant is represented by counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer.

Therefore, good cause appearing, the Hearing Officer proceeding shall be and is hereby transferred to the Appeals Officer for further proceedings.

IT IS SO ORDERED this 2nd day of May, 2016.


Megan Trenkler
Hearing Officer

NOTICE: If any party objects to this transfer to the Appeals Office, an objection thereto must be filed with the Appeals Office at 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, within 15 days of this order.

SCHEDULED ON

MAY 09 2016

6/20/16
1524756 - GR

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing ORDER TRANSFERRING HEARING TO APPEALS OFFICE was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #210, Las Vegas, Nevada, to the following:

JARED SPANGLER
3550 TUNDRA SWAN **ST**
LAS VEGAS NV 89122

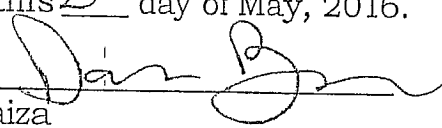
THADDEUS J YUREK III ESQ
GREEMAN GOLDBERG RABY & MARTINEZ
601 S 9TH ST
LAS VEGAS NV 89101

ATTN ROBERT OSIP
CITY OF HENDERSON
240 S WATER ST MSC 122
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CCMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 2nd day of May, 2016.



Dan Baiza
Employee of the State of Nevada

REQUEST FOR HEARING

CLAIMANT INFORMATION

Claimant:	Jared Spangler
Address:	3550 Tundra Swan
	Las Vegas, NV 89122
Telephone:	

EMPLOYER INFORMATION

Claim number:	16C52G555847
Employer:	City of Henderson
Address:	240 Water Street
	Henderson, NV 89015
Telephone:	

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER INSURER

I WISH TO APPEAL THE DETERMINATION DATED: March 15, 2016

**YOU MUST ATTACH A COPY OF THE DETERMINATION LETTER
PER NRS 616C.315 2(a)(b)**

BRIEFLY EXPLAIN REASON FOR APPEAL: Disagree with Insurer's March 15, 2016 letter denying claim.

If you are represented by an attorney or other agent, please print the name and address below.

ATTORNEY/REPRESENTATIVE:

Name:	Thaddeus J. Yurek III, Esq.
Address:	601 S. Ninth St.
	Las Vegas, NV 89101
Telephone:	(702) 384-1616

INSURANCE COMPANY:

Name:	CCMSI
Address:	P.O. Box 35350
	Las Vegas, NV 89133-5350
Telephone:	(866) 889-4755

Signature

March 28, 2016
Date

SCHEDULED ON

APR 01 2016

A COPY OF THE DETERMINATION LETTER MUST BE SUBMITTED:

NRS 616C.315 Request for hearing; forms for request to be provided by Insurer; appeals; expeditious and informal hearing required; direct submission to Appeals Officer.

2. Except as otherwise provided in NRS 616C.305, a person who is aggrieved by:

- (a) A written determination of an Insurer; or
- (b) The failure of an Insurer to respond within 30 days to a written request mailed to the Insurer by the person who is aggrieved, may appeal from the determination or failure to respond by filing a request for a hearing before a Hearing Officer.

1523393-117



March 15, 2016

Jared Spangler
3550 Tundra Swan
Las Vegas, NV 89122

RE: Claim Number : 16C52G555847
Date of Injury : 01/14/2016
Insurer : City of Henderson

Dear Mr. Spangler:

CCMSI is in receipt of your claim filed for the above date of injury. After a thorough review of all the information submitted, it cannot be determined whether or not an actual noise exposure occurred. Based on the information provided, it is the decision of CCMSI to deny your claim. This denial is also based on the fact that the information supplied does not clearly establish that your disability arose in the course and scope of your employment, as specified in Nevada Revised Statute 616C.150 or 617.440. Additionally, this claim does not qualify for coverage under Chapter 617 of the Nevada Revised Statutes.

Please be aware that, although your claim is being denied, the bills related to your appointment with Dr. Theobald only will be covered as a courtesy.

If you disagree with this decision, you may appeal by completing and submitting the attached "Request for Hearing" form to the Department of Administration, Hearings Division within seventy (70) days of the date of this letter.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

Susan Riccio
Claims Representative

enc: NRS 616C.150, 617.440
"Request for Hearing" form

cc: City of Henderson,
File

FILED

MAY 10 2016

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

JARED SPANGLER,

Claimant.

Claim No: 15C52G555847

Appeal No: 1524756-GB

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held on a **STACKED CALENDAR** by the Appeals Officer, pursuant to NRS 616 and 617 on:

DATE: JUNE 20, 2016,

TIME: 1:00PM STACKED

PLACE: DEPT OF ADMINISTRATION, HEARINGS DIVISION
2200 SOUTH RANCHO DRIVE, SUITE 220
LAS VEGAS NV 89102

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.

3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.

4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.

5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.

6. In the event that all parties to this action agree to have the matter RE-SCHEDULED AND SET FOR A DATE AND TIME CERTAIN, you are hereby required to submit AT LEAST TWO (2) DAYS prior to the scheduled Hearing date a written request, submitted by letter, facsimile or by email, to the Appeals Office advising the Appeals Office that all parties to the action have agreed to remove the action from the Stacked Calendar. A continuance of the hearing date also may be obtained pursuant to NAC 616C.318. The matter will otherwise proceed as scheduled on the STACKED CALENDAR ON A TIME AVAILABLE BASIS.

7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED this 10th day of May, 2016.

Georganne W. Bradley
GEORGANNE W BRADLEY, ESQ.
APPEALS OFFICER

CERTIFICATE OF MAILING

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

JARED SPANGLER
3550 TUNDRA SWAN ST
LAS VEGAS NV 89122-3501

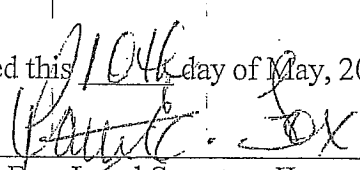
THADDEUS J YUREK III ESQ
GREEMAN GOLDBERG RABY & MARTINEZ
601 S 9TH ST
LAS VEGAS NV 89101

CITY OF HENDERSON
ATTN ROBERT OSIP
240 S WATER ST MSC 122
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CCMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 11th day of May, 2016.



Patti Fox, Legal Secretary II
Employee of the State of Nevada

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION

MAY -2 AM 10:34

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 1523393
Claim Number: 15C52055847

FILED

JARED SPANGLER
3550 TUNDRA SWAN ST
LAS VEGAS, NV 89122

ATTN ROBERT OSIP
CITY OF HENDERSON
240 S WATER ST MSC 122
HENDERSON, NV 89015-7227

ORDER TRANSFERRING HEARING TO APPEALS OFFICE

The Claimant's Request for Hearing was filed on March 28, 2016 and scheduled for May 11, 2016. The requesting party appealed the Insurer's determination dated March 15, 2016. The hearing was scheduled for May 11, 2016.

The parties have filed a stipulation to waive a hearing at the Hearing Officer level and to proceed directly to the Appeals Officer level.

NRS 616C.315(7) provides that the parties to a contested claim may, if the Claimant is represented by counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer.

Therefore, good cause appearing, the Hearing Officer proceeding shall be and is hereby transferred to the Appeals Officer for further proceedings.

IT IS SO ORDERED this 2nd day of May, 2016.


Megan Trenkler
Hearing Officer

NOTICE: If any party objects to this transfer to the Appeals Office, an objection thereto must be filed with the Appeals Office at 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, within 15 days of this order.

SCHEDULED ON

MAY 09 2016

620116
1524756 - GR

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing ORDER TRANSFERRING HEARING TO APPEALS OFFICE was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #210, Las Vegas, Nevada, to the following:

JARED SPANGLER
3550 TUNDRA SWAN **ST**
LAS VEGAS NV 89122

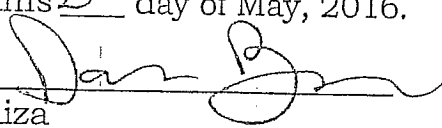
THADDEUS J YUREK III ESQ
GREEMAN GOLDBERG RABY & MARTINEZ
601 S 9TH ST
LAS VEGAS NV 89101

ATTN ROBERT OSIP
CITY OF HENDERSON
240 S WATER ST MSC 122
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CCMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 2nd day of May, 2016.



Dan Baiza
Employee of the State of Nevada

REQUEST FOR HEARING

CLAIMANT INFORMATION

Claimant:	Jared Spangler
Address:	3550 Tundra Swan
	Las Vegas, NV 89122
Telephone:	

EMPLOYER INFORMATION

Claim number:	16C52G555847
Employer:	City of Henderson
Address:	240 Water Street
	Henderson, NV 89015
Telephone:	

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER INSURER

I WISH TO APPEAL THE DETERMINATION DATED: March 15, 2016

**YOU MUST ATTACH A COPY OF THE DETERMINATION LETTER
PER NRS 616C.315 2(a)(b)**

BRIEFLY EXPLAIN REASON FOR APPEAL: Disagree with Insurer's March 15, 2016 letter denying claim.

If you are represented by an attorney or other agent, please print the name and address below.

ATTORNEY/REPRESENTATIVE:

Name:	Thaddeus J. Yurek III, Esq.
Address:	601 S. Ninth St.
	Las Vegas, NV 89101
Telephone:	(702) 384-1616

INSURANCE COMPANY:

Name:	CCMSI
Address:	P.O. Box 35350
	Las Vegas, NV 89133-5350
Telephone:	(866) 889-4755

Signature

Date

March 28, 2016

SCHEDULED ON
APR 01 2016

A COPY OF THE DETERMINATION LETTER MUST BE SUBMITTED:

NRS 616C.315 Request for hearing; forms for request to be provided by Insurer; appeals; expeditious and informal hearing required; direct submission to Appeals Officer.

2. Except as otherwise provided in NRS 616C.305, a person who is aggrieved by:

- (a) A written determination of an Insurer; or
- (b) The failure of an Insurer to respond within 30 days to a written request mailed to the Insurer by the person who is aggrieved, may appeal from the determination or failure to respond by filing a request for a hearing before a Hearing Officer.

15 23393-117



March 15, 2016

Jared Spangler
3550 Tundra Swan
Las Vegas, NV 89122

RE: Claim Number : 16C52G555847
Date of Injury : 01/14/2016
Insurer : City of Henderson

Dear Mr. Spangler:

CCMSI is in receipt of your claim filed for the above date of injury. After a thorough review of all the information submitted, it cannot be determined whether or not an actual noise exposure occurred. Based on the information provided, it is the decision of CCMSI to deny your claim. This denial is also based on the fact that the information supplied does not clearly establish that your disability arose in the course and scope of your employment, as specified in Nevada Revised Statute 616C.150 or 617.440. Additionally, this claim does not qualify for coverage under Chapter 617 of the Nevada Revised Statutes.

Please be aware that, although your claim is being denied, the bills related to your appointment with Dr. Theobald only will be covered as a courtesy.

If you disagree with this decision, you may appeal by completing and submitting the attached "Request for Hearing" form to the Department of Administration, Hearings Division within seventy (70) days of the date of this letter.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

Susan Riccio
Claims Representative

enc: NRS 616C.150, 617.440
"Request for Hearing" form

cc: City of Henderson,
File

1 APPEALS OFFICE
2 2200 S. Rancho Drive Suite 220
3 Las Vegas NV 89102
4 (702) 486-2527

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JARED SPANGLER,

8 Petitioner,

9 vs.

10 CITY OF HENDERSON, CANNON COCHRAN
11 MANAGEMENT SERVICES, INC. (CCMSI),
12 THE DEPARTMENT OF ADMINISTRATION,
13 HEARINGS DIVISION,


14 Respondents.

) Case No.: A759871
) Dept. No.: XVIII
) ROA No.: 1802603-GB
) Appeal No.: 1524756-GB

15 AFFIDAVIT & CERTIFICATION

16 This is to certify that the documents for the aforementioned Record on Appeal have
17 been reviewed by the Department of Administration, Hearings Division, and to the best of my
18 knowledge, all personal identifying information has been redacted, and that the enclosed
19 Record on Appeal is a certified copy of the original on file with this agency.

20 DATED this 12th day of SEPTEMBER, 2017.

21 
22 Lisa Schiller, Legal Secretary II
23 An Employee of the Hearings Division
24
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28

1 CRTF
2 APPEALS OFFICE
3 2200 S. Rancho Drive Suite 220
4 Las Vegas NV 89102
5 (702) 486-2527

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 JARED SPANGLER,

9 Petitioner,

10 vs.

11 CITY OF HENDERSON, CANNON COCHRAN
12 MANAGEMENT SERVICES, INC. (CCMSI),
13 THE DEPARTMENT OF ADMINISTRATION,
14 HEARINGS DIVISION,


15 Respondents.

Case No.: A759871
Dept. No.: XVIII
ROA No.: 1802603-GB
Appeal No.: 1524756-GB

16 CERTIFICATION OF TRANSMITTAL

17 I certify that the hereto attached Transcript, and attached papers are all papers and
18 exhibits relating to the above-captioned action filed with the Appeals Officer.

19 Dated this 12th day of SEPTEMBER, 2017.

20 
21 Lisa Schiller, Legal Secretary II
22 An Employee of the Hearings Division
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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing was filed with the Clerk of the Court using the Court's Wiznet, an electronic filing system. Parties that are registered with Wiznet will be served electronically. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, postage prepaid to the following:

JARED SPANGLER
3350 TUNDRA SWAN ST
LAS VEGAS NV 89122

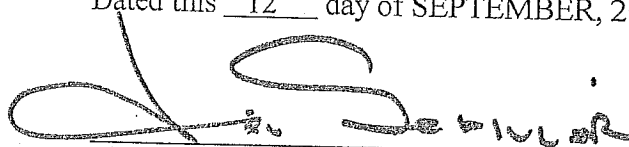
LISA M ANDERSON ESQ
GREENMAN GOLDBERG RABY & MARTINEZ
601 S NINTH ST
LAS VEGAS NV 89101

CITY OF HENDERSON
ATTN SALLY IHMELS
240 S WATER ST MSC 122
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CGMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 12th day of SEPTEMBER, 2017.



Lisa Schiller, Legal Secretary II
An Employee of the Hearings Division

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 CITY OF HENDERSON; and
3 CANNON COCHRAN
4 MANAGEMENT SERVICES, INC.,

5 Appellant,

6 vs.

7 JARED SPANGLER
8

9 Respondents.

CASE NO.: 76295

Electronically Filed
Apr 23 2019 10:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

10
11 **RESPONDENT'S APPENDIX VOLUME I**

12
13 DANIEL L. SCHWARTZ, ESQ.
14 JOEL P. REEVES, ESQ,
15 LEWIS BRISBOIS BISGAARD
16 & SMITH
17 2300 West Sahara Avenue
18 Suite 300, Box 28
19 Las Vegas, Nevada 89102
20 *Attorney for Appellants*
21 CITY OF HENDERSON and
22 CANNON COCHRAN
23 MANGEMENT SERVICES, INC.

LISA M. ANDERSON, ESQ.
GREENMAN GOLDBERG
RABY & MARTINEZ
601 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Respondent
JARED SPANGLER

APPELLANT'S APPENDIX


<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE</u>
Appeals Officer's Record on Appeal	I	1-148
Appellant's Answering Brief	II	192-208
Appellant's Initial Appearance Fee Disclosure	II	163-165
Appellant's Motion for Stay Pending Supreme Court		
Appeal and Motion for Order Shortening Time	II	270-287
Appellant's Notice of Appeal	II	259-269
Appellant's Notice of Intent to Participate	II	160-162
Appellant's Notice of Entry of Order	II	306-310
Court Minutes	II	245
Court Minutes	II	246-247
Order Granting Petition for Judicial Review	II	248-251
Order Granting Motion for Stay	II	304-305
Order Scheduling Hearing and Briefing Schedule	II	190-191
Respondent's Affidavits of Service	II	168-171
Respondent's Certificate of Mailing	II	166-167
Respondent's Letter to Department II	II	209-244
Respondent's Notice of Entry of Order	II	252-258
Respondent's Opening Brief	II	172-189
Respondent's Opposition to Motion for Stay Pending		
Supreme Court Appeal	II	288-303
Respondent's Petition for Judicial Review	II	149-159

14-2677}

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) Case No.: A759871
) Dept. No.: XVIII
) ROA No.: 1802603-GB
) Appeal No.: 1524756-GB

day of SEPTEMBER, 2017.



Lisa Schiller, Legal Secretary II
An Employee of the Hearings Division

1 ✓
X

1 ROA
2 APPEALS OFFICE
3 2200 S. Rancho Drive Suite 220
4 Las Vegas NV 89102
5 (702) 486-2527

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 JARED SPANGLER,
9
10 Petitioner,
11
12 vs.
13
14 CITY OF HENDERSON, CANNON COCHRAN
15 MANAGEMENT SERVICES, INC. (CCMSI),
16 THE DEPARTMENT OF ADMINISTRATION,
17 HEARINGS DIVISION,
18
19 Respondents.
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) Case No.: A759871
) Dept. No.: XVIII
) ROA No.: 1802603-GB
) Appeal No.: 1524756-GB

RECORD ON APPEAL IN ACCORDANCE WITH THE
NEVADA ADMINISTRATIVE PROCEDURE ACT

JARED SPANGLER
3350 TUNDRA SWAN ST
LAS VEGAS NV 89122

LISA M ANDERSON ESQ
GREENMAN GOLDBERG RABY MARTINEZ
601 S NINTH ST
LAS VEGAS NV 89101

CITY OF HENDERSON
ATTN SALLY IHMELS
240 S WATER ST MSC 122
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD SMITH
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CCMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

INDEX

ROA NUMBER: 1802603-GB
Appeal No.: 1524756-GB

DESCRIPTION

DOC NO

PAGE NUMBERS

TRANSMITTAL OF RECORD ON APPEAL	001	00001
RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT	002	00002
DECISION AND ORDER OF APPEALS OFFICER BRADLEY FILED JULY 20, 2017	003	00003 – 00011
CORRESPONDENCE (DECISION LETTER) FROM DANIEL SCHWARTZ, ESQ TO APPEALS OFFICER BRADLEY FILED JUNE 21, 2017	004	00012
CLAIMANT'S APPEAL MEMORANDUM FILED APRIL 20, 2017	005	00013 – 00020
NOTICE OF RESETTING FILED FEBRUARY 22, 2017	006	00021 – 00022
CLAIMANT'S SUPPLEMENTAL EVIDENCE PACKAGE (MARKED CLAIMANT'S EXHIBIT 2) FILED DECEMEBER 29, 2016	007	00023 – 00029
ORDER SETTING HEARING READINESS STATUS REPORT FILED OCTOBER 13, 2016	008	00030 – 00031
EMPLOYER'S INDEX OF DOCUMENTS (MARKED EMPLOYER'S EXHIBIT A) FILED JUNE 15, 2016	009	00032 – 00080
EMPLOYER'S APPEAL MEMORANDUM FILED JUNE 15, 2016	010	00081 – 00090
CLAIMANT'S EVIDENCE PACKAGE (MARKED CLAIMANT'S EXHIBIT 1) FILED JUNE 13, 2016	011	00091 – 00138
NOTICE OF APPEAL AND ORDER TO APPEAR FILED MAY 10, 2016	012	00139 - 00146
AFFIDAVIT AND CERTIFICATION	013	00147
CERTIFICATION OF TRANSMITTAL	014	00148 – 00149

FILED

JUL 20 2017

APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim

of

JARED SPANGLER
3550 TUNDRA SWAN ST.
LAS VEGAS, NV 89122,

Claimant.

Claim No.: 16C52G555847

Hearing No.: 1523393-MT

Appeal No.: 1524756-GB

Employer:

CITY OF HENDERSON
ATTN: SALLY IHMELS
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

DECISION AND ORDER

The above-captioned appeal came on for hearing before Appeals Officer GEORGANNE W. BRADLEY, ESQ. The claimant, JARED SPANGLER (hereinafter referred to as "claimant"), was represented by his counsel, LISA M. ANDERSON, ESQ., of GREENMAN GOLDBERG RABY & MARTINEZ. The Employer, CITY OF HENDERSON (hereinafter referred to as "Employer"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP.

On March 15, 2016, the claimant was informed that his industrial insurance claim was denied. Claimant appealed that determination and the parties agreed to bypass the Hearing Officer and proceed before this Court, generating the instant hearing.

After considering the documentary evidence and the argument of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. On February 9, 2016, the claimant, JARED SPANGLER, alleges that has hearing loss and ringing in the ears which he attributes to job related exposure to loud noises. The claimant was seen by Dr. Blake at Anderson Audiology where hearing loss was noted. The claimant

1 appears to have failed to have revealed his earlier 2005 denied hearing loss claim or that the claimant
2 apparently has been working a desk job for the last 5-6 years. (Exhibit A at 1)

3 2. The Employer's Report of Industrial Injury or Occupational Disease notes a
4 nearly one month delay in reporting the hearing loss. (Exhibit A at 2)

5 3. The Employer's First Notice of Injury or Occupational Disease notes that the
6 claimant alleges exposure to excessive loud noises and that he has had tinnitus for several years.
7 (Exhibit A at 3)

8 4. The claimant has previously filed a hearing loss claim in November of 2005.
9 On February 22, 2006, Dr. Manthei noted that the claimant's family had a positive history of hearing
10 loss. He noted that MRI testing revealed that the claimant had revealed "a contrast enhancement of
11 the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the
12 brain." It was concluded that the claimant's symptomatology was most likely due to a nonindustrial
13 component, and that the claimant's hearing loss should not be considered to be industrial in nature. A
14 claim denial determination for the November 1, 2005, hearing loss claim was issued on March 7,
15 2006. (Exhibit A at 4-21)

16 5. Hearing testing has been performed throughout the claimant's employment with
17 the City of Henderson. (Exhibit A at 22-34)

18 6. As a result of hearing testing in October of 2015, the claimant was seen by Dr.
19 Blake at Anderson Audiology. A hearing loss was found which was found to be suggestive loss due
20 to noise exposure. (Exhibit A at 35-38)

21 7. A medical release was signed by the claimant on February 9, 2016. (Exhibit A
22 at 39)

23 8. On March 2, 2016, the claimant was seen by Dr. Theobald. The claimant
24 complained of difficulty in hearing conversational speech, particularly women and children's voices,
25 especially in the presence of background noise. It was noted that the claimant has a "possible tumor
26 located in the area of the left cochlear nerve." It was recommended that the claimant be seen by a
27 neuro-otologist to assess the potential likelihood of left sided cochlear pathology. (Exhibit A at 40-
28 43)

9. On March 15, 2016, a claim denial determination was issued. However, it was noted that bills related to Dr. Theobold's evaluation would be paid. (Exhibit A at 44)

10. On March 28, 2016, the claimant appealed the claim denial determination. (Exhibit A at 45) This appeal was transferred directly to the Appeals Officer. (Exhibit A at 46)

11. Claimant provided fifty-one (51) pages of evidence which was reviewed and duly considered. (Exhibits 1-2)

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

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

CONCLUSIONS OF LAW

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

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

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

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

1 4. Claimant was unable to meet his burden of proof in this case. He was unable to
2 demonstrate that his hearing loss is a compensable industrial injury.

3 5. Under NRS 616C.150 and NRS 617.358, the claimant has the burden of proof
4 to show that the injury arose out of and in the course of employment. The claimant must satisfy this
5 burden by a preponderance of the evidence. Further, NRS 616B.612 mandates that an employee is
6 only entitled to compensation if he is injured in the course and scope of his employment.

7 6. The Nevada Supreme Court has held that:

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

12 Rio Suite Hotel v. Gorsky, 113 Nev. 600 (1997).

13 7. Some courts have found a distinction between "the course of employment" and
14 "arising out of employment." In addition to occurring while at work, the injury must result from a
15 hazard connect with the employment. See, Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996).

16 8. In Nevada, the Supreme Court has defined the term "arose out of," as contained
17 in NRS 616C.150, to mean that there is a causal connection between the injury and the employee's
18 work. In other words, the injured party must establish a link between the workplace conditions and
19 how those conditions caused the injury. Further, the claimant must demonstrate that the origin of the
20 injury is related to some risk involved within the scope of employment. The claimant has failed to
21 meet his burden in this regard, especially given the prior 2006 claim denial and the intervening
22 primarily desk job assignment of the claimant.

23 9. NRS 616A.030 defines an accident as "... an unexpected or unforeseen event
24 happening suddenly and violently, with or without human fault, and producing at the time objective
25 symptoms of an injury." As explained above, there is no known acute trauma or specific mechanism
26 of injury, therefore, no statutory accident has been established.

1 10. Furthermore, NRS 616A.265 defines an injury as "... a sudden and tangible
2 happening of a traumatic nature, producing an immediate or prompt result which is established by
3 medical evidence ..." Here, there is no statutory injury for the reasons set forth above.

4 11. The Nevada Supreme Court has held that:

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

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

9 12. This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev.
10 532, 936 P.2d 839 (1997) case, which held that "mere speculation and belief does not rise to the level
11 of reasonable medical certainty." Given the lack of any fully informed medical opinion making an
12 industrial causal connection to a reasonable degree of medical probability, claim denial was legal and
13 proper.

14 13. Further, the Nevada Supreme Court held in Mitchell v. Clark County School
15 District, 121 Nev. 179, 111 P.3d 1104 (2005):

16 An accident or injury is said to arise out of employment when there is a
17 causal connection between the injury and the employee's work. In
18 other words, the injured party must establish a link between the
19 workplace conditions and how those conditions caused the injury.
20 Further, a claimant must demonstrate that the origin of the injury is
21 related to some risk involved within the scope of employment.
22 However, if an accident is not fairly traceable to the nature of
employment or the workplace environment, then the injury cannot be
said to arise out of the claimant's employment. Finally, resolving
whether an injury arose out of employment is examined by a totality of
the circumstances.

23 14. The Court in Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605 939 P2d.
24 1043 (1997) held that the "Nevada Industrial Insurance Act is not a mechanism which makes
25 employers absolutely liable for injuries suffered by employees who are on the job." The Court
26 concluded by stating, "The requirements of 'arising out of and in the course of employment' make it
27 clear that a claimant must establish more than being at work and suffering an injury in order to
28 recover."

1 15. The Court in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad. Opn. 34
2 (2010) clarified Mitchell. It indicated that:

3 “The appeals officer found that Phillips’ case was ‘distinguishable’
4 from Mitchell because Phillips’ injury did not result from an
5 ‘unexplained fall.’ Without elaborating, the appeals officer also stated
6 that ‘[t]he Mitchell [c]ourt mentions the inherent dangerousness of
7 stairways.’ . . . [The Court in Rio further discussed Mitchell: “The
8 employee argued that because she did not have a health affliction that
9 caused her to fall and ‘because staircases are inherently dangerous,’ her
10 injury “arose out of her employment.” . . . The appeals officer
11 determined that the employee’s fall did not arise out of her
12 employment, and the district court denied her petition for judicial
13 review.”. . . [Our finding in Mitchell was that] “[T]he employee must
14 show that ‘the origin of the injury is related to some risk involved
15 within the scope of employment . . . thus, because the [Mitchell]
16 employee could not explain how the conditions of her employment
17 caused her to fall . . . we determined that the appeals officer correctly
18 concluded that she failed to demonstrate the requisite ‘causal
19 connection.”

20 16. The claimant has failed to establish that the origin of his injury, is related to
21 some risk in the course of employment, given the claimant’s past denied hearing loss claim and
22 subsequent apparent assignment to a desk job, and given the lack of any acute trauma or specific
23 mechanism of injury.

24 17. Furthermore, the claimant has not met the requirements of NRS 617.440 to
25 establish a compensable occupational disease. That statute states:

26 NRS 617.440 Requirements for occupational disease to be deemed
27 to arise out of and in course of employment; applicability.

28 1. An occupational disease defined in this chapter shall be
deemed to arise out of and in the course of the employment if:

(a) There is a direct causal connection between the conditions
under which the work is performed and the occupational disease;

(b) It can be seen to have followed as a natural incident of the
work as a result of the exposure occasioned by the nature of the
employment;

(c) It can be fairly traced to the employment as the proximate
cause; and

(d) It does not come from a hazard to which workers would
have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the
business and not independent of the relation of the employer and
employee.

1 3. The disease need not have been foreseen or expected,
2 but after its contraction must appear to have had its origin in a risk
3 connected with the employment, and to have flowed from that source
4 as a natural consequence.

5 4. In cases of disability resulting from radium poisoning or
6 exposure to radioactive properties or substances, or to roentgen rays (X
7 rays) or ionizing radiation, the poisoning or illness resulting in
8 disability must have been contracted in the State of Nevada.

9 5. The requirements set forth in this section do not apply to
10 claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485 or
11 617.487.

12 18. Therefore, since the claimant has failed to establish both an injury by accident
13 or an occupational disease, the Appeals Officer finds that claimant has failed to establish a
14 compensable industrial claim and same was properly denied.

15 DECISION AND ORDER

16 The claimant, JARED SPANGLER, has failed to establish a compensable industrial
17 injury claim.

18 IT IS HEREBY ORDERED that the March 15, 2016 determination denying the claim
19 is AFFIRMED.


20 IT IS SO ORDERED.

21 DATED this 20th day of July, 2017.

22 Georganne W. Bradley
23 GEORGANNE W. BRADLEY, ESQ.
24 APPEALS OFFICER

25 NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final decision of
26 the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
27 thirty (30) days after service by mail of this decision.
28

1 Submitted by:
2 LEWIS BRISBOIS-BISGAARD & SMITH LLP

3 
4 By: DANIEL L. SCHWARTZ, ESQ.
5 Nevada Bar No. 005125
6 2300 W. Sahara Avenue, Ste. 300, Box 28
7 Las Vegas, Nevada 89102
8 Attorney for the Employer
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CERTIFICATE OF MAILING

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

JARED SPANGLER
3550 TUNDRA SWAN ST.
LAS VEGAS, NV 89122

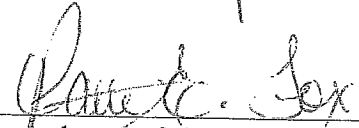
LISA ANDERSON, ESQ.
GREENMAN GOLDBERG RABY & MARTINEZ
601 S. 9TH ST.
LAS VEGAS, NV 89101

CITY OF HENDERSON
ATTN: SALLY IHMELS
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

CCMSI
SUE RICCIO
P.O. BOX 35350
LAS VEGAS, NV 89133

Daniel L. Schwartz, Esq.
Lewis Brisbois Bisgaard & Smith LLP
2300 West Sahara Avenue, Suite 300, Box 28
Las Vegas, NV 89102

DATED this 20th day of July, 2017.


An employee of the State of Nevada



Daniel L. Schwartz
2300 W. Sahara Avenue, Suite 300, Box 28
Las Vegas, Nevada 89102
Daniel.Schwartz@lewisbrisbois.com
Direct: 702.583.6001

June 21, 2017

File No.: 26990-1176

Georganne Bradley, Esq., Appeals Officer
NEVADA DEPT. OF ADMINISTRATION
Appeals Division, Appeals Office
2200 South Rancho Drive., Suite 220
Las Vegas, NV 89702

RE: Claimant : Jared Spangler
Employer : City of Henderson
Claim No. : 16C52G555847
Appeal No. : 1524756-GB

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS DIVISION
JUL 1 2017
JUL 1 2017
JUL 1 2017

Dear Appeals Officer Bradley:

Attached for your review is the proposed Decision and Order in the above-referenced matter. In the event that further modifications to the document become necessary, I will amend the Decision and Order at your direction.

Please withhold signing this Decision and Order for a period of five (5) days to allow the Claimant's counsel the opportunity to review the proposed Decision and Order.

Thank you for your time and attention in this matter. If you have any questions or concerns related hereto, please feel free to contact me directly.

Very truly yours,

A handwritten signature in black ink, appearing to be 'D. Schwartz', written over a circular stamp or seal.

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP

DLS:jhb

Enclosure

cc: Lisa M. Anderson, Esq. (Via Electronic Mail)

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

JARED SPANGLER,
Claimant.

Claim No. : 15C52G555844
Appeal No. : 1524756-GB

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION
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CLAIMANT'S APPEAL MEMORANDUM

COMES NOW Claimant, JARED SPANGLER, by and through his attorneys GABRIEL A. MARTINEZ, ESQ. and LISA M. ANDERSON, ESQ. of the law firm, GREENMAN, GOLDBERG, RABY & MARTINEZ, and submits his memorandum for the hearing on the instant matter. In support of his position, Claimant states as follows:

ISSUE

Whether the Insurer's March 15, 2016 claim denial determination was proper.

STATEMENT OF THE CASE

On or about February 9, 2016, Claimant, JARED SPANGLER, reported the development of occupationally related hearing loss and tinnitus that was sustained and accelerated while in the course and scope of his employment as a police officer for the City of Henderson. On that date, Claimant reported extensive exposure to unprotected loud noises during his career as a police officer. Liability for the claim was erroneously denied. Claim denial is the subject of this appeal.

STATEMENT OF THE FACTS

Claimant participated in annual physicals, including hearing tests, as part of his employment as a police officer. **SEE CLAIMANT'S PAGES 1-12.** Claimant demonstrated

1 minor hearing deficits when he was hired as a police officer in 2003. However, Claimant's
2 hearing progressively worsened to a moderate to severe level by the time he filed the claim.

3 On February 9, 2016, Claimant presented to Amanda Blake, Au.D for an audiology
4 evaluation. At that time, Ms. Blake noted Claimant's employment history as a police officer
5 began in 2003, with eleven (11) years on active patrol. During this time, **Ms. Blake opined that**
6 **Claimant's hearing has progressively worsened as a result of being "exposed to sirens,**
7 **gunfire during range qualifications, and a radio piece in his left ear, and then a lapel**
8 **microphone on his left side."** Ms. Blake was provided with copies of the annual hearing
9 examinations dating back to Claimant's 2003 hire date, and she confirmed that Claimant
10 sustained **ADDITIONAL BILATERAL HEARING LOSS SINCE HIS HIRE DATE,**
11 **LEFT WORSE THAN RIGHT.** Ms. Blake concluded that Claimant's "standard pure tone
12 testing revealed borderline normal hearing, 0.25-2k Hz. sloping to a moderate high frequency
13 sensorineural hearing loss in the right ear" and a "mild sloping to severe sensorineural hearing
14 loss in the left ear with a notch present at 6k Hz." Ms. Blake confirmed that it was her opinion
15 that his hearing loss was "not a consequence of the normal aging process for either ear and
16 is suggestive of noise exposure." Ms. Blake completed a C-4 form and opined that Claimant's
17 hearing loss was **DIRECTLY RELATED** to his employment as a police office. Ms. Blake
18 recommended binaural amplification. **SEE CLAIMANT'S PAGES 13-17.**

19 On March 1, 2016, Claimant was evaluated by Roger Theobald, Au.D, who confirmed
20 that he reviewed the prior medical records pertaining to Claimant's annual hearing tests,
21 reporting from Dr. Scott Manthei in 2005, and reporting from Ms. Blake. **Mr. Theobald also**
22 **reported that Claimant's job as a police officer exposed him to loud noises while on the job**
23 **with the Henderson Police Department.** Mr. Theobald verified that Claimant had mild to
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1 moderate hearing loss in the left ear and normal to mild high frequency hearing loss in the right
2 ear at the time of his 2003 hiring. In the years following Claimant's 2003 hire date, Mr.
3 Theobald opined that Claimant's "hearing has significantly decreased bilaterally. Hearing
4 decrease is considered significant if a change of 10dB or more occur at three or more
5 hearing thresholds." Mr. Theobald verified that there is a likelihood of a pre-existing
6 underlying condition contributing to Claimant's hearing loss in the left ear, "however, there is
7 a high probability that Mr. Spangler's threshold shift may be as a result of on the job noise
8 exposure." Testing performed by Mr. Theobald revealed "pure tone hearing threshold show a
9 mild to moderately severe sensorineural hearing loss in the right ear and a moderate to
10 moderately severe sensorineural hearing loss in the left." Mr. Theobald recommended that
11 Claimant be provided with hearing aids and be scheduled to see a neuro-otologist to evaluate for
12 a left sided cochlear pathology. SEE CLAIMANT'S PAGES 18-21.

13 On March 15, 2016, the Insurer denied liability for Claimant's claim for bilateral hearing
14 loss. SEE CLAIMANT'S PAGE 40. Claimant appealed that determination to the Hearing
15 Officer. Prior to the hearing, the parties agreed to transfer the matter to the Appeals Officer.

16 On November 23, 2016, Claimant sent a letter to Dr. Steven Becker asking him whether
17 Claimant's hearing loss was work related and, if not, whether Claimant's exposure to work
18 related noise contributed to the hearing loss and tinnitus. On December 23, 2016, Dr. Becker
19 opined that Claimant's hearing loss was not work related, however, Dr. Becker confirmed that
20 it was his opinion that Claimant's work related noise exposure "contributed" to the hearing loss
21 and tinnitus. Dr. Becker based his opinion on the "original hearing test (performed in) 2003
22 revealed losses bilaterally, worse in the left and hearing has steadily worsened" since that
23 time." SEE CLAIMANT'S PAGES 47-51.

ARGUMENT

NRS 616C.175 Employment-related aggravation of preexisting condition which is not employment related; aggravation of employment-related injury by incident which is not employment related.

1. The resulting condition of an employee who:

(a) Has a preexisting condition from a cause or origin that did not arise out of or in the course of the employee's current or past employment; and

(b) Subsequently sustains an injury by accident arising out of and in the course of his or her employment which aggravates, precipitates or accelerates the preexisting condition,

È shall be deemed to be an injury by accident that is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition.

2. The resulting condition of an employee who:

(a) Sustains an injury by accident arising out of and in the course of his or her employment; and

(b) Subsequently aggravates, precipitates or accelerates the injury in a manner that does not arise out of and in the course of his or her employment,

È shall be deemed to be an injury by accident that is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the injury described in paragraph (a) is not a substantial contributing cause of the resulting condition.

(Added to NRS by 1993, 663; A 1995, 2147; 1999, 1777)

The Insurer has denied liability for Claimant's bilateral hearing loss and tinnitus. The Insurer based its denial on the fact that Claimant had some hearing deficit at the time of his 2003 hire date. Claimant has acknowledged the hearing deficit from 2003, however, he maintains that subsequent hearing loss and tinnitus associated with employment related noise exposure accelerated his future hearing losses.

The reporting from the audiologists that evaluated Claimant, Ms. Blake and Mr. Theobald, establishes that Claimant had some hearing loss at the time of his 2003 hire as a police

1 officer. However, these audiologists verified that Claimant's hearing loss progressively
2 worsened due to employment related noise exposure.

3 Ms. Blake confirmed that it was her opinion that Claimant's hearing loss was "not
4 a consequence of the normal aging process for either ear and is suggestive of noise
5 exposure." Ms. Black noted that during his eleven (11) years on active patrol, Claimant's
6 hearing has progressively worsened as a result of being "exposed to sirens, gunfire during
7 range qualifications, and a radio piece in his left ear, and then a lapel microphone on his
8 left side."
9

10 Mr. Theobald verified that there is a likelihood of a pre-existing underlying condition
11 contributing to Claimant's hearing loss in the left ear, "however, there is a high probability
12 that Mr. Spangler's threshold shift may be as a result of on the job noise exposure." In the
13 years following Claimant's 2003 hire date, Mr. Theobald opined that Claimant's "hearing
14 has significantly decreased bilaterally. Hearing decrease is considered significant if a
15 change of 10dB or more occur at three or more hearing thresholds."
16

17 Furthermore, Dr. Becker confirmed that, while Claimant's job did not cause the hearing
18 loss, his job was absolutely a "contributing factor" in the loss that developed after his 2003 hire
19 date as a police officer.
20

21 NRS 616C.175 addresses the issue of when an industrial injury "aggravates, precipitates
22 or accelerates" a pre-existing condition. This statute mandates that an Insurer is responsible for
23 treatment related to a pre-existing condition **IF** the industrial injury "aggravates, precipitates or
24 accelerates" the pre-existing condition. Moreover, if the Insurer denies responsibility for
25 treatment related to a pre-existing condition, this statute requires the **Insurer** to "prove by a
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1 preponderance of the evidence that the subsequent (industrial) injury is not a substantial
2 contributing cause of the resulting condition.”

3 In this case, the Insurer has completely failed to meet its statutory obligation of proving
4 by “a preponderance of the evidence” that Claimant’s occupationally related noise exposure is
5 “not a substantial contributing cause of the resulting condition.” Claimant began experiencing
6 **INCREASED** hearing loss and the development of tinnitus symptoms **AFTER** his 2003 hire
7 date as a police officer. This fact was documented in Ms. Blake, Mr. Theobald and Dr. Becker’s
8 reporting. Claimant’s job as a police officer regularly exposed him to extremely loud sirens,
9 unprotected sounds of gunfire, a radio piece in the left ear and a lapel radio in close proximity
10 to this left ear. It was during these activities that resulted in the acceleration of hearing loss
11 following his 2003 hire date.
12

13
14 Claimant experienced minimal hearing deficit at the time of his 2003 hire date. During
15 the subsequent years of active patrol duty, Claimant was exposed to wide-ranging sources of
16 loud noise without protection. In fact, the reporting verified that Claimant’s increased hearing
17 loss in the left ear compared to the right ear was related to the use of the ear piece in the left ear
18 and the lapel radio on the left side. These exposures were a “contributing factor” in Claimant’s
19 accelerated hearing loss and the development of tinnitus. The current level of hearing loss has
20 been directly related to his occupation as a police officer.
21

22
23 Therefore, Claimant’s job as a police officer is clearly the primary contributing cause
24 of the current level of hearing loss and the development of tinnitus. The reporting from Ms.
25 Blake, Mr. Theobald and Dr. Becker confirms that Claimant’s occupation noise exposure was
26 the **PRIMARY CONTRIBUTING CAUSE** of the current hearing loss and tinnitus. Although
27 there was a pre-employment finding of mild hearing loss at the time of his 2003 hiring as a
28

1 police officer, the subsequent deterioration of his hearing abilities and current need for hearing
2 aids is directly related to his employment as a police officer. Therefore, based upon the extensive
3 nature of the industrial noise exposures, Claimant's worsening hearing loss and tinnitus is
4 industrially related.
5

6 CONCLUSION

7 The Insurer has failed to meet its burden of proof under NRS 6161C.175, and, therefore,
8 their determination denying further spinal treatment must be REVERSED by the Appeals
9 Officer. The Insurer must be ORDERED to accept liability of the industrially accelerated
10 hearing loss and development of tinnitus as a compensable industrial injury.
11

12 WITNESSES

13 The Claimant may testify. Claimant reserves the right to call additional witnesses, as
14 necessary, and to cross-examine all Insurer/Employer witnesses.
15

16 Respectfully submitted, and DATED this 19th day of April, 2017.

17 GREENMAN, GOLDBERG, RABY & MARTINEZ

18
19
20 By: 

LISA M. ANDERSON, ESQ.

Nevada Bar No. 004907

601 South Ninth Street

Las Vegas, Nevada 89101

Attorney for Claimant
21
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CERTIFICATE OF SERVICE

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

Daniel L. Schwartz, Esq.
LEWIS BRISBOISE BISGAARD & SMITH
2300 West Sahara Avenue
Suite 300, Box 28
Las Vegas, Nevada 89102-4375


An employee of GREENMAN, GOLDBERG, RABY & MARTINEZ

Greenman Goldberg Raby Martinez & Smith
ATTORNEYS AT LAW
ACCIDENT INJURY ATTORNEYS

FILED
FEB 22 2017
APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 15C52G555847

JARED SPANGLER,

Appeal No: 1524756-GB

Claimant.

NOTICE OF RESETTING

TO ALL PARTIES-IN-INTEREST:

PLEASE TAKE NOTICE that the above-captioned matter will now be heard in front of
the Appeals Officer for a HEARING on:

DATE: April 26, 2017

TIME: 4:00PM

PLACE: DEPARTMENT OF ADMINISTRATION
2200 SOUTH RANCHO DRIVE #220
LAS VEGAS, NV 89102

PLEASE TAKE FURTHER NOTICE that previously scheduled hearing dates in this
matter, if any, are hereby vacated and reset to the above referenced date and time.

###

CONTINUANCE OF THIS SCHEDULED HEARING DATE SHALL ONLY BE
CONSIDERED ON WRITTEN APPLICATION SUPPORTED BY AFFIDAVITS.

###

IT IS SO ORDERED this 22nd day of February, 2017.

Georganne W. Bradley

GEORGANNE W BRADLEY, ESQ.
APPEALS OFFICER

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STATE OF NEVADA
DEPT OF ADMINISTRATION
RECORDS DIVISION

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RECEIVED
FILED

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim

Claim No.: 15C52G555847

JARED SPANGLER,

Appeal No.: 1524756-GB

Claimant.

CLAIMANT'S SUPPLEMENTAL EVIDENCE PACKAGE

COMES NOW the Claimant and submits the following evidence package attached
hereto, collectively marked as Exhibit "2" as follows:

DOCUMENT

PAGE NO.

1. Letter to Dr. Steven Becker dated November 23, 2016 047-051

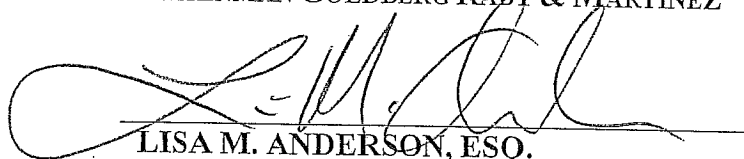
AFFIRMATION PURSUANT TO NRS 293B.030

The Undersigned does hereby affirm that the attached exhibits do not contain the
personal information of any person.

Dated this 29th day of December, 2016.

Respectfully submitted,

GREENMAN GOLDBERG RABY & MARTINEZ



LISA M. ANDERSON, ESQ.

Nevada Bar No. 4907

601 South Ninth Street

Las Vegas, NV 89101

Phone: 702.384.1616 ~ Fax: 702.384.2990

Attorney for Claimant

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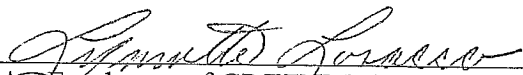
OK

Greenman Goldberg Raby Martinez
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF MAILING

I do hereby certify that on the 27 day of December, 2016, I caused a true and correct copy of the foregoing **CLAIMANT'S SUPPLEMENTAL EVIDENCE PACKAGE** to be duly mailed, postage prepaid, hand delivered **OR** placed in the appropriate addressee runner file at the Department of Administration, hearings Division, 2200 S. Rancho Dr., Suite 210, Las Vegas, NV to the following:

Daniel L. Schwartz, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
2300 W. Sahara Ave., Ste. 300, Box 28
Las Vegas, NV 89102-4375


An Employee of GREENMAN, GOLDBERG
RABY & MARTINEZ

TRANSACTION REPORT

NOV/23/2016/WED 01:39 PM

BROADCAST

#	DATE	START T.	RECEIVER	CHN. TIME	PAGE	TYPE/NOTE	FILE
001	NOV/23	01:35PM	7023831822	0100:45	4	MEMORY OK	SG3 8002
002		01:37PM	7029334861	0100:49	4	MEMORY OK	SG3 8002
003		01:38PM	7023669563	0101:42	4	MEMORY OK	Q3 8002
TOTAL				0103:16	12		

GREENMAN, GOLDBERG, RABY & MARTINEZ

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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LISA M. ANDERSON
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THADDEUS J. YUREK, III

801 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101-7012

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

November 23, 2016

Via Facsimile & US Mail (702) 382-1822

Steven Becker, MD
700 Shadow Lane #235
Las Vegas, NV 89106

Re: Our Client : Jared Spangler
Date of Incident : 1/14/16
Date of Birth : 7/2/79
Our File Number : 16-207TX

Dear Dr. Becker:

As you may be aware, this law firm represents Mr. Spangler regarding hearing loss and tinnitus which he alleges he incurred over the course of his career as a City of Henderson Police Officer. Mr. Spangler has been employed as a Police Officer since 2003 he has been exposed to excessive loud noises such as sirens, gunfire during range qualification and radio traffic by way of wearing an ear piece in his left ear.

After his annual physical in 2015, there was indication of hearing loss and Mr. Spangler was referred to Dr. Blake of Anderson Audiology who noted that his hearing loss was most likely attributed to exposure to loud noises. Additionally, Mr. Spangler was evaluated by Dr. Roger Theobald who indicated that there is a high probability Mr. Spangler's loss of hearing may be as a result of on the job noise exposure.

On March 15, 2016, CCMSE issued a claim denial for bilateral hearing loss citing that Mr. Spangler's hearing loss was non-industrial and pre-existing in nature. However, pursuant to NRS 617.440, an occupational disease shall be deemed to arise out of and in the course of employment if there is a direct casual connection between the conditions under which the work is performed. Additionally, NRS 617.366 as well as NRS 616C.175 states that employment related aggravation of pre-existing condition which is not employment related but is subsequently aggravated, precipitated or accelerated by the occupational disease in a manner that does arise out of and in the course of employment shall be deemed an occupational disease that is compensable. I have enclosed a copy of these statutes for your review and reference.

GREENMAN, GOLDBERG, RABY & MARTINEZ
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

801 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 384-1818
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JOHN A. GREENMAN
AUBREY GOLDBERG
PAUL E. RABY
GABRIEL A. MARTINEZ
LISA M. ANDERSON
THOMAS W. ARKINOTH
THADDEUS J. YUREK, III

November 23, 2016

Via Facsimile & US Mail (702) 382-1822

Steven Becker, MD
700 Shadow Lane #235
Las Vegas, NV 89106

Re:	Our Client	:	Jared Spangler
	Date of Incident	:	1/14/16
	Date of Birth	:	7/2/79
	Our File Number	:	16-207TY

Dear Dr. Becker:

As you may be aware, this law firm represents Mr. Spangler regarding hearing loss and tinnitus which he alleges he incurred over the course of his career as a City of Henderson Police Officer. Mr. Spangler has been employed as a Police Officer since 2003 he has been exposed to excessive loud noises such as sirens, gunfire during range qualification and radio traffic by way of wearing an ear piece in his left ear.

After his annual physical in 2015, there was indication of hearing loss and Mr. Spangler was referred to Dr. Blake of Anderson Audiology who noted that his hearing loss was most likely attributed to exposure to loud noises. Additionally, Mr. Spangler was evaluated by Dr. Roger Theobald who indicated that there is a high probability Mr. Spangler's loss of hearing may be as a result of on the job noise exposure.

On March 13, 2016, COMSI issued a claim denial for bilateral hearing loss citing that Mr. Spangler's hearing loss was non-industrial and pre-existing in nature. However, pursuant to NRS 617.440, an occupational disease shall be deemed to arise out of and in the course of employment if there is a direct casual connection between the conditions under which the work is performed. Additionally, NRS 617.366 as well as NRS 616C.175 states that employment related aggravation of pre-existing condition which is not employment related but is subsequently aggravated, precipitated or accelerated by the occupational disease in a manner that does arise out of and in the course of employment shall be deemed an occupational disease that is compensable. I have enclosed a copy of these statutes for your review and reference.

GREENMAN, GOLDBERG, RABY & MARTINEZ

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

801 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101-7012

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

Therefore, at this time, we are respectfully requesting that you review the attached statutes and provide your medical opinion on the following questions:

1. With respect to Mr. Spangler's bilateral hearing loss and tinnitus, to a reasonable degree of medical probability, is his hearing loss work related?

Yes: _____ No: ☒

Please explain: _____

2. If Mr. Spangler's bilateral hearing loss and tinnitus is not originated by his working conditions, is the work exposure a contributory factor pursuant to the Statutes outlined in this letter?

Yes: ☒ No: _____

Please explain: _____

Original Hearing Test 2003
revealed losses bilaterally, worse in the left ear.
Hearing has steadily worsened.

Signed: _____

Steven Becker, MD

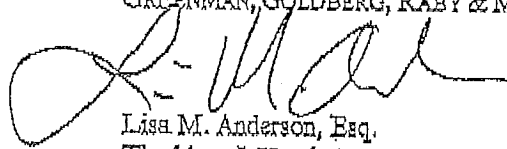
Date: _____

12/23/16

Your time and attention to this matter is greatly appreciated. Please do not hesitate to contact me directly should you have any questions concerning this matter.

Yours Very Truly,

GREENMAN, GOLDBERG, RABY & MARTINEZ



Lisa M. Anderson, Esq.

Thaddeus J. Yurak, III, Esq.

Gabriel A. Martinez, Esq.

Cc: CCMST / D. Schwartz, Esq. / J. Spangler / File
Encl: NRS 617.440; NRS 617.366 and NRS 616C.175

NRS 617.440 Requirements for occupational disease to be deemed to arise out of and in course of employment; applicability.

1. An occupational disease defined in this chapter shall be deemed to arise out of and in the course of the employment if:

(a) There is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(b) It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(c) It can be fairly traced to the employment as the proximate cause; and

(d) It does not come from a hazard to which workers would have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the business and not independent of the relation of the employer and employee.

3. The disease need not have been foreseen or expected, but after its contraction must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence.

4. In cases of disability resulting from radium poisoning or exposure to radioactive properties or substances, or to roentgen rays (X-rays) or ionizing radiation, the poisoning or illness resulting in disability must have been contracted in the State of Nevada.

5. The requirements set forth in this section do not apply to claims filed pursuant to NRS 617.453, 617.455, 617.457, 617.485 or 617.487.

[Part 26:44:1947; A 1949, 365; 1953, 297] — (NRS A 1961, 589; 1963, 874; 1967, 685; 1983, 458; 2007, 3366)

NRS 617.366 Employment-related aggravation of preexisting condition which is not employment related; aggravation of employment-related occupational disease by incident which is not employment related.

1. The resulting condition of an employee who:

(a) Has a preexisting condition from a cause or origin that did not arise out of and in the course of the employee's current or past employment; and

(b) Subsequently contracts an occupational disease which aggravates, precipitates or accelerates the preexisting condition,

→ shall be deemed to be an occupational disease that is compensable pursuant to the provisions of chapters 616A to 617, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the occupational disease is not a substantial contributing cause of the resulting condition.

2. The resulting condition of an employee who:

(a) Contracts an occupational disease; and

(b) Subsequently aggravates, precipitates or accelerates the occupational disease in a manner that does not arise out of and in the course of his or her employment,

→ shall be deemed to be an occupational disease that is compensable pursuant to the provisions of chapters 616A to 617, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the occupational disease is not a substantial contributing cause of the resulting condition.

(Added to NRS by 1993, 762; A 1995, 2162; 1999, 1804)

NRS 616C.175 Employment-related aggravation of preexisting condition which is not employment related; aggravation of employment-related injury by incident which is not employment related.

1. The resulting condition of an employee who:

(a) Has a preexisting condition from a cause or origin that did not arise out of or in the course of the employee's current or past employment; and

(b) Subsequently sustains an injury by accident arising out of and in the course of his or her employment which aggravates, precipitates or accelerates the preexisting condition,

⇒ shall be deemed to be an injury by accident that is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition.

2. The resulting condition of an employee who:

(a) Sustains an injury by accident arising out of and in the course of his or her employment; and

(b) Subsequently aggravates, precipitates or accelerates the injury in a manner that does not arise out of and in the course of his or her employment,

⇒ shall be deemed to be an injury by accident that is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the injury described in paragraph (a) is not a substantial contributing cause of the resulting condition.

(Added to NRS by 1993, 663; A 1995, 2147; 1999, 1777)

FILED

OCT 13 2016

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Industrial
Insurance Claim of:

SPANGLER, JARED

Claimant.

Claim No: 15C52G555847

Appeal No: 1524756-GB

ORDER SETTING HEARING READINESS STATUS REPORT

This matter is set for a **HEARING READINESS STATUS REPORT** on

November 15, 2016

On the date listed above, each and every attorney/party representative involved in this case shall submit a written report regarding the current status of the Appeal. Please provide the case status to the Appeals Officer in writing or to Patti Fox via e-mail at pfox@admin.nv.gov.

IT IS SO ORDERED this 13th day of October, 2016.

Georganne W. Bradley
Georganne W Bradley, Esq.
APPEALS OFFICER

CERTIFICATE OF MAILING

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

JARED SPANGLER
3550 TUNDRA SWAN ST
LAS VEGAS NV 89122-3501

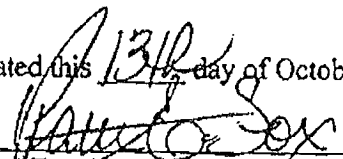
LISA M ANDERSON ESQ
GREENMAN GOLDBERG RABY & MARTINEZ
601 S NINTH ST
LAS VEGAS NV 89101

CITY OF HENDERSON
ATTN SALLY IHMELS
240 S WATER ST MSC 127
HENDERSON NV 89015-7227

DANIEL SCHWARTZ ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

CCMSI
JULIE VACCA CLAIMS SUPERVISOR
P O BOX 35350
LAS VEGAS NV 89133-5350

Dated this 13th day of October, 2016.


Patricia Fox, Legal Secretary II
Employee of the State of Nevada

1 NEVADA DEPARTMENT OF ADMINISTRATION

2 BEFORE THE APPEALS OFFICER

3
4 In the Matter of the Contested
Industrial Insurance Claim

5 of

6 JARED SPANGLER
7 3550 TUNDRA SWAN ST.
8 LAS VEGAS, NV 89122,
Claimant.

Claim No.: 16C52G555847

Hearing Nos.: 1523393-MT

Appeal Nos.: 1524756-GB

Employer:
CITY OF HENDERSON
ATTN: ROBERT OSIP
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

DOH: 06/20/16 AT 1:00 P.M.

11
12 EMPLOYER'S INDEX OF DOCUMENTS

13 COMES NOW the Employer, CITY OF HENDERSON (hereinafter referred to as
14 "Employer"), by and through its attorneys, DANIEL L. SCHWARTZ, ESQ. and LEWIS
15 BRISBOIS BISGAARD & SMITH, and submits the attached Index of Documents relating to the
16 above-referenced matter.

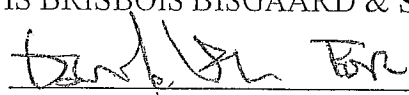
17 AFFIRMATION PURSUANT TO NRS 239B.030

18 The undersigned does hereby affirm that the attached exhibits do not contain the
19 personal information of any person.

20 DATED this 14 day of June, 2016.

21 Respectfully submitted,

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By: 
24 DANIEL L. SCHWARTZ, ESQ.

25 Nevada Bar No. 5125
26 2300 W. Sahara Avenue, Ste. 300, Box 28
27 Las Vegas, NV 89102
28 Phone: (702) 893-3383
Fax: (702) 366-9563
Attorneys for Employer

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CERTIFICATE OF MAILING

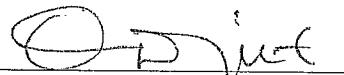
Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of the foregoing **EMPLOYER'S INDEX OF DOCUMENTS** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:

THADDEUS J. YUREK, III, ESQ.
601 S. 9TH ST.
LAS VEGAS, NV 89101

CITY OF HENDERSON
ATTN: ROBERT OSIP
P.O. BOX 95050 MSC 127
HENDERSON, NV 89009-5050

CCMSI
P.O. BOX 35350
LAS VEGAS, NV 89133

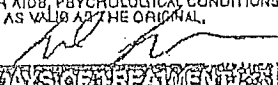
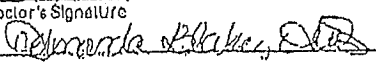
DATED this 14th day of June, 2016.


An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT

FORM C-4

PLEASE TYPE OR PRINT

EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT							
First Name JARED	M.I. F.	Last Name SPANGLER	Birthdate 7/2/79	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurer's Use Only)		
Home Address 3550 TUNDRA SWAN ST			Age 36	Height 6'00"	Weight 210	Social Security Number	
City LV	State NV	Zip 89022	Telephone 702-461-1780		Primary Language Spoken ENGLISH		
Mailing Address S/A		City S/A	State S/A	Zip S/A	Primary Language Spoken ENGLISH		
INSURER LOOMIS		THIRD-PARTY ADMINISTRATOR		Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred POLICE OFFICER		Telephone 702-207-5000	
Employer's Name/Company Name CITY OF HENDERSON					Telephone 702-207-5000		
Office Mail Address (Number and Street) 223 LEAS ST, HENDON, NV, 89015							
Date of Injury (if applicable) N/A	Hours Injury (if applicable) am pm	Date Employer Notified 1/16	Last Day of Work After Injury or Occupational Disease N/A		Supervisor to Whom Injury Reported SGT. JASON KUZIK		
Address or Location of Accident (if applicable) HENDERSON							
What were you doing at the time of the accident? (if applicable) JOB RELATED ACTIVITIES							
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) EXPOSURE TO LOUD NOISES							
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? AFTER BEING HIRED						Witnesses to the Accident (if applicable) N/A	
Nature of Injury or Occupational Disease HEARING, RINGING IN EARS			Part(s) of Body Injured or Affected EARS				
I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS (NRS 618A TO 618D, INCLUSIVE OR CHAPTER 617 OF NRS). I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGEON, PRACTITIONER, OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING BENEFITS PAID OR PAYABLE, PERTAINING TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR ADD, PSYCHOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.							
Date 2/9/16	Place Anderson Audiologu - Henderson location	Employee's Signature 					
THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 7 WORKING DAYS OF TREATMENT							
Place Anderson Audiologu - Henderson location	Name of Facility						
Date 2/5/16	Diagnosis and Description of Injury or Occupational Disease Right: baseline normal, 0.25-2 kHz sloping to moderate high frequency sensorineural hearing loss. Left: mild sloping to severe sensorineural hearing loss with noise present at 1 kHz.			Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (If yes, please explain)			
Hour 11:00 am	Treatment: Binaural amplification upon medical clearance, annual hearing evaluations, and use of hearing protection in noise			Have you advised the patient to remain off work five days or more? <input type="checkbox"/> Yes Indicate dates: from _____ to _____ <input checked="" type="checkbox"/> No If no, is the injured employee capable of: <input checked="" type="checkbox"/> full duty <input type="checkbox"/> modified duty If modified duty, specify any limitations/restrictions: _____			
X-Ray Findings: N/A				From information given by the employee, together with medical evidence, can you directly connect the injury or occupational disease as job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Based on baseline conductive or another hearing and hearing excluded by medical			
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Baseline hearing or other condition				Do you know of any previous injury or disease contributing to this condition or occupational disease? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Explain if yes)			
Patient noted some noise exposure from work as a mechanic for 2 years during high school.							
Date 2/9/16	Print Doctor's Name Amanda Blake			I certify that the employer's copy of this form was mailed to the employer on:			
Address 3120 S. Rainbow Blvd, #202				INSURER'S USE ONLY			
City Las Vegas	State NV	Zip 89146	Provider's Tax I.D. Number 26-2948435	Telephone 702-233-4327		RECEIVED	
Doctor's Signature 				Degree A.D.			

FEB 11 2016

(Form C-4 (Rev. 10/07))

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE C-3 FORM			Please Type or Print		EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE	
EMPLOYER	Employer's Name CITY OF HENDERSON		Nature of Business (mfg., etc.) Municipality		FEIN 886000720	OSHA Log # G555847
	Office Mail Address 240 WATER STREET MSC 127		Location . . . If different from mailing address			Telephone 702-267-1922
	City HENDERSON	State NV	Zip 89015	INSURER City of Henderson		THIRD-PARTY ADMINISTRATOR CCMSI, Inc.
EMPLOYEE	First Name Jared	M.I. F	Last Name Spangler	Social Security	Birthdate 07/02/1979	Age 36
	Home Address (Number and Street) 3550 Tundra Swan			Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	Primary Language Spoken English
	City Las Vegas	State NV	Zip 89122	Was the employee paid for the day of injury? (If applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		How long has this person been employed by you in Nevada? 08/25/2003
	In which state was employee hired? Nevada		Employee's occupation (job title) when hired or disabled Police Officer		Department in which regularly employed: 2100 POLICE	
	Telephone 702-461-1780	Is the injured employee a corporate officer? . . . sole proprietor? . . . partner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
ACCIDENT OR DISEASE	Date of injury (if applicable) 01/14/2016	Time of injury (Hours; Minute AM/PM) (if applicable) unknown	Date employer notified of injury or O/D 02/05/2016		Supervisor to whom injury or O/D reported Kuzik	
	Address or location of accident (Also provide city, county, state) (if applicable) Henderson Clark Nevada				Accident on employer's premises? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) Hearing loss due to job related activities					
	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. I have been exposed to numerous excessive loud noises in many different environments and work capacities. This has been an ongoing issue for several years and I documented previous incidents. I first experienced tinnitus several years ago while on					
INJURY OR DISEASE	Specify machine, tool, substance, or object most closely connected with the accident (if applicable) unknown			Witness n/a	Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Part of body injured or affected Both EAR(S)		If fatal, give date of death n/a	Witness		
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) Hearing Loss or Impairment			Witness		
				Did employee return to next scheduled shift after accident? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Will you have light duty work available if necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	If validity of claim is doubted, state reason ?			Location of Initial Treatment Anderson Audiology, 3120 S Rainbow Blvd #202, Las Vega		
	Treating physician/chiropractor name Blake			Emergency Room <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	How many days per week does employee work? 4	From 06:00 To 16:00		Last day wages were earned 2/5/16		
IMPORTANT: LOST TIME INFO	Scheduled days off <input checked="" type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> T <input checked="" type="checkbox"/> F <input checked="" type="checkbox"/> S Rotating <input type="checkbox"/>	Are you paying injured or disabled employee's wages during disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
	Date employee was hired 08/25/2003	Last day of work after injury or disability 02/05/2016	Date of return to work 02/06/2016	Number of work days lost 0		
	Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If not, for how many hours a week was the employee hired? n/a		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Do not know			
	For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability.					
	Pay period ends on: <input checked="" type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THUR <input type="checkbox"/> SAT <input type="checkbox"/> MON <input type="checkbox"/> WED <input type="checkbox"/> FRI	Employee is paid: <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> BI-WKLY <input type="checkbox"/> SEMI-MONTHLY	On the date of injury or disability the employee's wage was: \$ 46.58 per <input checked="" type="checkbox"/> Hr <input type="checkbox"/> Day <input type="checkbox"/> Wk <input type="checkbox"/> Mo			
For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: http://govcha.state.nv.us E-mail cha@govcha.state.nv.us						
★	I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I also understand that providing false information is a violation of Nevada law.				Employer's Signature and Title <i>Maya L. W. W.</i>	Date 2-11-16
	Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3 rd Party	Deemed Wage	Account No. 16C52G555847	Class Code		
	Claims Examiner's Signature	Date	Status Clerk	Date		

FIRST AID ☐ BBP ☐ W/C ☐HENDERSON
Human Resources

First Notice of Injury or Occupational Disease

SSN# <input type="text"/>	Employee # <input type="text" value="016712"/>	Date of accident/injury <input type="text" value="01/14/2016"/> Time <input type="text" value="a.m."/>
Name of employee <input type="text" value="Jared Spangler"/>		Did injury occur on employer premises? YES <input checked="" type="radio"/> NO <input type="radio"/>
Police Department <input type="text" value="Police Officer"/>	Job title <input type="text" value="Various"/>	Accident/Injury location - address <input type="text" value="This has been on going for years"/>
Department <input type="text" value="Jason Kuzik"/>	Supervisor to whom reported <input type="text" value="S/A"/>	Date/Time reported: (Explain if not reported immediately) <input type="text"/>
Supervisor on duty at time of accident/injury <input type="text"/>		Witness(es) Name <input type="text"/>
Employee on overtime? YES <input type="radio"/> NO <input checked="" type="radio"/>	No. of days worked per week <input type="text"/>	Scheduled days off: (Not # of days) <input type="text"/> Reg. Working Hours <input type="text"/>

Describe accident/injury in detail beginning with what you were doing when it occurred.*
 I have been exposed to numerous excessive loud noises, in many different environments and work capacities. This has been an on going issue for several years and I documented previous incidents. I was told by Kelci Murphy (he called me on 1/13/2016) that Tyson Hollis wanted a C-1 completed for noise exposure. I first experienced Tinnitus several years ago (while on the job) and it has increasingly gotten worse.

Equipment, tools furniture, etc., connected with accident/injury

Unsafe conditions or practice involved

What can be done to prevent recurrence?

Did the accident happen in the normal course of work? YES ☒ NO ☐

Was anyone else involved? YES ☐ NO ☒ Names

BODY PART INJURY (be specific)	NATURE OF INJURY	ACTION TAKEN
<input type="checkbox"/> 01 Face (explain)	<input type="checkbox"/> 01 Wounds (cuts)	<input type="checkbox"/> Hospitalized
<input type="checkbox"/> 02 Toe or foot	<input type="checkbox"/> 02 Hemla	<input type="checkbox"/> Emergency hospital care
<input type="checkbox"/> R <input type="checkbox"/> L	<input type="checkbox"/> 03 Fracture	<input type="checkbox"/> First Aid Provided by Whom: <input type="text"/>
<input type="checkbox"/> 03 Internal organs (not lungs)	<input type="checkbox"/> 04 Dermatitis	<input type="checkbox"/> Doctor's care
<input type="checkbox"/> 04 Fingers	<input type="checkbox"/> 05 Strain	<input type="checkbox"/> Time loss
<input type="checkbox"/> 05 Hands R <input type="checkbox"/> L	<input type="checkbox"/> 06 Sprain	<input type="checkbox"/> Same day time loss Time left work: <input type="text"/>
<input type="checkbox"/> 06 Arms R <input type="checkbox"/> L	<input type="checkbox"/> 07 Contusion (bruise)	<input checked="" type="checkbox"/> No time loss
<input type="checkbox"/> 07 Trunk	<input type="checkbox"/> 08 Burns	<input checked="" type="checkbox"/> Employee returned work? YES <input checked="" type="radio"/> NO <input type="radio"/>
<input type="checkbox"/> 08 Lungs	<input type="checkbox"/> 09 Foreign body	Date <input type="text" value="1/14/16"/>
<input checked="" type="checkbox"/> Other Ears	<input type="checkbox"/> 10 Infection	Time <input type="text"/>
	<input type="checkbox"/> 11 Dislocation	
	<input type="checkbox"/> 12 Chemical Exposure (Also see MSDS)	
	<input type="checkbox"/> 13 Infectious Exposure (explain)	
	<input checked="" type="checkbox"/> 14 Other Exposure to loud noise	

Treating Physician Name Hospital

Physician's Address Doctor's Instructions Physician's Phone

Any person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or any other person, shall be guilty of a felony. (M.R.S. 616:875)

Supervisor's Investigation Employee's signature Date

Supervisor's signature Date

Safety Rep's comments Safety Rep's signature Date

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JAN 20 2016

City of Henderson
Risk Management Division

Reset Form

EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT
FORM C-4

PLEASE TYPE OR PRINT

ORIGINAL

EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED					
First Name JARED	M.I. E	Last Name SPANGLER	Birthdate 7/2/79	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurer's Use Only)
Home Address 5550 TUNDRA SWAN			Age 26	Height 6'00"	Weight 230
City LV	State NV	Zip 89102	Telephone 413-0002		
Physical Address S/A		City NV	State NV	Zip 7	Primary Language Spoken ENGLISH
INSURER WPA		THIRD-PARTY ADMINISTRATOR		Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred	
Employer's Name/Company Name CITY OF HENDERSON				Telephone 267-5000	
Office Mail Address (Number and Street) 223 LEAD ST. HENDERSON NV 89015					
Date of Injury (if applicable)	Hours Injury (if applicable)	Date Employer Notified	Last Day of Work After Injury or Occupational Disease		Supervisor to Whom Injury Reported
Address or Location of Accident (if applicable) N/A					
What were you doing at the time of the accident? (if applicable) N/A					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) OVER TIME I HEAR RINGING. SPECIFICALLY AFTER BURGLARY ALARM CALLS SOMETIMES UP TO DAYS LATER, OCCASIONAL RINGING OCCURS. NOT A SPECIAL INCIDENT.					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? AFTER THE 1ST YEAR ON THE JOB.				Witnesses to the Accident (if applicable) N/A	
Nature of Injury or Occupational Disease HEARING			Part(s) of Body Injured or Affected EAR		
CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS (NRS 618A TO 618D, INCLUSIVE OR CHAPTER 617 OF NRS). I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, URLOGICAL PRACTITIONER, OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING BENEFITS PAID OR PAYABLE PERTAINING TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR AIDS, PSYCHOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.					
Date 11/1/05 Place FMCH Employee's Signature [Signature]					
THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 30 WORKING DAYS OF TREATMENT					
Name of Facility FMCH					
Date 11/1/05	Diagnosis and Description of Injury or Occupational Disease hearing loss		Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (if yes, please explain)		
Treatment: referral to ENT, Audiologist			Have you advised the patient to remain off work five days or more? <input type="checkbox"/> Yes Indicate dates: from _____ to _____ <input checked="" type="checkbox"/> No If no, is the injured employee capable of: <input type="checkbox"/> full duty <input type="checkbox"/> modified duty		
Ray Findings:		If modified duty, specify any limitations/restrictions: _____			
Can information given by this employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		RECEIVED			
Additional medical care by a physician indicated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NOV 14 2005			
Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)					
Print Doctor's Name Dr. E. Patrick		I certify that the employer's copy of this form was mailed to the employer on: Nevada Comp First-LV			
Address 5W. Lake Mead Dr.		INSURER'S USE ONLY			
City HENDERSON NV	State NV	Zip 89015	Provider's Tax I.D. Number 880322143	Telephone (702) 566-5500	HD0500158
Doctor's Signature [Signature]		Degree M.D.			

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE C-3 FORM				PLEASE TYPE OR PRINT		EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE		
EMPLOYER	Employer's Name City of Henderson			Nature of Business (mfg., etc.) Municipality		FEIN: 88600072 OSHA Log # W-200501156		
	Office Mail Address 240 Water Street, City Henderson, NV 89015 State Zip			Location... If different from mailing address 240 Water Street, Henderson, NV 89015		Telephone 702-267-1921		
	First Name M.I. Last Name JARED F SPANGLER			Social Security		Birthdate 07 02 1979 Age 26 Primary Language Spoken ENGLISH		
EMPLOYEE	Home Address (Number and Street) 3550 TUNDRA SWAN, City LAS VEGAS, NV 89122 State Zip			Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		Was the employee paid for the day of injury? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
	In which state was employee hired? NV			Employee's occupation (job title) when hired or disabled POLICE OFFICER		Department in which regularly employed: Police-East Command-1001-2112		
	Telephone 7024130002			Is the injured employee a corporate officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No ...sole proprietor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No ...partner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
DATE OF INJURY	Date of Injury (if applicable) 11 01 2005		Time of Injury (Hours, Minute AM/PM) (if applicable)		Date employer notified of injury or O/D 11 01 2005		Supervisor to whom injury or O/D reported DOREEN WELTER	
	Address or location of accident (Also provide city, county, state) (if applicable) POLICE CALL, HENDERSON, NV						Accident on employer's premises? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) RESPONDING TO ALARM CALLS							
DISEASE	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. EMPLOYEE INDICATES SINCE JUNE 2004, AFTER RESPONDING TO BURGLARY/ROBBERY ALARM CALLS AND GOING INSIDE WITH THE ALARM ON, AFTER EXITING HE HAS RINGING IN HIS EARS.							
	Specific machine, tool, substance, or object most closely connected with the accident. (if applicable) ALARMS				Witness		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Part of body injured or affected 013-EAR (S)		If fatal, give date of death		Witness NONE			
DISEASE	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) HEARING LOSS/RINGING IN BOTH EARS				Witness			
	Did employee return to next scheduled shift after accident? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Will you have light duty work available if necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	If validity of claim is doubted, state reason REQUEST: MEDICAL INVESTIGATION				Location of initial treatment FREMONT MEDICAL CENTER			
DISEASE	Treating physician/chiropractor name FREMONT MEDICAL CENTER - BYRON KILPATRICK				Emergency Room <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	IMPORTANT: How many days per week does employee work? 4 From 10:00 PM To 8:00 AM Last day wages were earned 11/1/2005							
	Scheduled days off: S M T W T F S Rotating X X X X X X X				Are you paying injured or disabled employee's wages during disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
LOSS	Date employee was hired 08 25 2003		Last day of work after injury or disability 11 01 2005		Date of return to work		Number of work days lost 0	
	Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired?		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown			
	For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability. In addition, if the employee was absent from work during the period for which payroll information is requested for any of the reasons listed below, please provide date(s) absent and, from the following list, indicate, by numeral, the reason(s) for the absence(s). Gross earnings must not include wages earned after the date of injury or disability. 1. Certified illness or disability. 2. Institutionalized in hospital or other institution. 3. Enrolled as a full-time student, not employment days when attending classes. 4. In military service other than that training duty conducted on weekends. 5. Absent because of an officially sanctioned strike. 6. Approved FMLA absence.							
INFORMATION	Pay period: <input checked="" type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THUR <input type="checkbox"/> SAT <input type="checkbox"/> MON <input type="checkbox"/> WED <input type="checkbox"/> FRI		Employee is paid: <input checked="" type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> BI-WEEKLY <input type="checkbox"/> SEMI-MONTHLY		On the date of injury or disability the employee's wage was: 26.00 per Hour			
	I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I also understand that providing false information is a violation of Nevada law.				Employer's Signature and Title Doreen Welter, #/K Analyst II		Date 11 7 05	
	Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3rd Party		Deemed Wage		Account No.		Class Code 000269	
SIGNATURE	Claims Examiner's Signature		Date		Status Clerk		Date	

207-1805

FIRST AID ☐ BBP ☐ W/C ☐

HENDERSON

Human Resources

First Notice of Injury or Occupational Disease

 2-18
 25.99

SSN# _____ Employee # 016712

Name of employee JARED SPANGLER

Department PO Job title POLICE OFFICER

Supervisor to whom reported NONE / MY SGT. NOW IS B. BROOKS

Supervisor on duty at time of accident/injury UNK

Employee on overtime? YES ☐ NO ☒

No. of days worked per week? 4 DAYS

Date of accident/injury UNK. Time _____ a.m./p.m.

Did injury occur on employer premises? YES ☒ NO ☐

Accident/injury location - address UNK.

Date/Time reported: (Explain if not reported immediately) 11/1/05 / RINGING IS GETTING MORE FREQUENT

Witness(es) Name _____

Scheduled days off: _____ Reg. Working Hours _____

Describe accident/injury in detail beginning with what you were doing when it occurred.*

I HAVE NOTICED SINCE 6/04 AFTER RESPONDING TO BURGLARY/ROBBERY ALARM CALLS AND GOING INSIDE WITH THE ALARM ON, WHEN I EXIT, I HAVE A RINGING IN MY EARS.

Equipment, tools furniture, etc., connected with accident/injury EARPIECE

Unsafe conditions or practice involved NO HEARING PROTECTION

What can be done to prevent recurrence? ISSUE PROTECTORS ON BURGLARY CALLS

Did the accident happen in the normal course of work? YES ☒ NO ☐

Was anyone else involved? YES ☒ NO ☐ Names ANY OFFICER THAT HAS BEEN ON 400 CALL W/MET

BODY PART INJURY (be specific)

- | | |
|---|---|
| <input type="checkbox"/> 01 Face (explain) | <input type="checkbox"/> 09 Back Lower Middle Upper |
| <input type="checkbox"/> 02 Toe or foot R L | <input type="checkbox"/> 10 Eyes R L |
| <input type="checkbox"/> 03 Internal organs (not lungs) | <input type="checkbox"/> 11 Legs R L |
| <input type="checkbox"/> 04 Fingers | <input type="checkbox"/> 12 Knee R L |
| <input type="checkbox"/> 05 Hands R L | <input type="checkbox"/> 13 Ankles R L |
| <input type="checkbox"/> 06 Arms R L | <input type="checkbox"/> 14 Shoulders R L |
| <input type="checkbox"/> 07 Trunk | <input type="checkbox"/> 15 Head |
| <input type="checkbox"/> 08 Lungs | <input type="checkbox"/> 16 Neck |
| <input checked="" type="checkbox"/> Other <u>EARS</u> | <input type="checkbox"/> 17 Groin |

NATURE OF INJURY

- | |
|---|
| <input type="checkbox"/> 01 Wounds (cuts) |
| <input type="checkbox"/> 02 Hernia |
| <input type="checkbox"/> 03 Fracture |
| <input type="checkbox"/> 04 Dermatitis |
| <input type="checkbox"/> 05 Strain |
| <input type="checkbox"/> 06 Sprain |
| <input type="checkbox"/> 07 Contusion (bruise) |
| <input type="checkbox"/> 08 Burns |
| <input type="checkbox"/> 09 Foreign body |
| <input type="checkbox"/> 10 Infection |
| <input type="checkbox"/> 11 Dislocation |
| <input type="checkbox"/> 12 Chemical Exposure (attach MSDS) |
| <input type="checkbox"/> 13 Infectious Exposure (explain) |
| <input checked="" type="checkbox"/> 14 Other <u>RINGING</u> |

ACTION TAKEN

- | |
|--|
| <input type="checkbox"/> Hospitalized |
| <input type="checkbox"/> Emergency hospital care |
| <input type="checkbox"/> First Aid Provided by whom: _____ |
| <input type="checkbox"/> Doctor's care |
| <input type="checkbox"/> Time loss |
| <input type="checkbox"/> Same day time loss |
| <input type="checkbox"/> Time left work |
| <input checked="" type="checkbox"/> No time loss |
| Employee returned to work? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> |
| Date/Time: <u>11/4/05</u> |

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DR. KILPATRICK
 Treating Physician Name

Hospital

Physician's Address

Doctor's Instructions

Physician's Phone #

Any person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment under the provisions of this chapter, other for himself or any other person, shall be guilty of a felony. (N.R.S. 61B.675)

UNAVOIDABLE

[Signature]

11/4/05

FREMONT MEDICAL CENTER
595 W. Lake Mead Pkwy
Henderson, NV 89015

November 1, 2005

PatientID: 2W833484

Patient Name: JARED L SPANGLER

Date of Birth: 07/02/1979

Date of Service: 11/01/2005

TIME: 08:34 am

PATIENT'S AGE: 26 yrs, 3 mths, 4 wks, 2 days

CHIEF COMPLAINT: COH WC C/O RINGING IN EARS - AFTER BURGLARY ALARMS; no other injury or known exposure;; uses routine protection at range; concerned over increasing hearing loss

WORKMAN'S COMP INJURY: Yes

VITAL SIGNS:

VS-HEIGHT: 6ft0in

VS-WEIGHT: 205lbs

VS-BLOOD PRESSURE: 118/68 Left Arm Sitting

VS-RESPIRATION: 18

H 11/05 00158

ALLERGIES:

ROOM NUMBER: 17

CLINICAL STAFF MEMBER: C.KIRKPATRICK.WELLNESSCOORD

PAST MEDICAL HISTORY:

Not pertinent.

REVIEW OF SYSTEMS:

Patient denies all symptoms in all systems except as noted.

PHYSICAL EXAM:

GENERAL APPEARANCE: Well developed, well nourished individual in no acute distress.

EYES:

CONJUNCTIVAE AND LIDS: Conjunctivae and lids appear normal.

PUPILS: Pupils equal and normally reactive to light and accommodation.

EARS, NOSE, MOUTH AND THROAT:

EXTERNAL/EARS AND NOSE: Overall appearance normal with no scars, lesions or masses.

EARS: Tympanic membranes shiny without retraction. Canals unremarkable. Hearing grossly normal.

NOSE (AND SINUS): No abnormality of the nose or sinuses is noted.

ORAL: Inspection of gums, lips, palate, and teeth normal. No scars, lesions, or masses. Oral mucosa unremarkable with non-inflamed posterior pharynx.

ASSESSMENT/PLAN:

389-HEARING LOSS ,tinnitus

TREATMENT/RECOMMENDATION: precautions discussed;ent,audiology referrals made through coh

RETURN VISIT: Patient is to return on a prn basis.

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Nevada CompFirst-LV

Page 1 of 2

FREMONT MEDICAL CENTER
595 W. Lake Mead Pkwy
Henderson, NV 89015

November 1, 2005

PatientID: 2W833484

Patient Name: JARED L SPANGLER

Date of Birth: 07/02/1979

Date of Service: 11/01/2005

Electronically Signed by: Byron Kilpatrick, MD on Tuesday, November 01, 2005

HD05 00158

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Patient's Name: SPANGLER, JARED

Date: 12-13-05 Physician: SEM



History:

o/c 26 y M c/o Ringing in ears usually after hearing high frequency sounds. Also c/o poss. hearing loss mostly in AS - high pitch tone
1st noted after exposure closed laundry alarm
Presents - Heavy present 2 1/2 yrs. Allergic Dr. line - w/ally - bar on profile
PMH -
PSH (+) wisdom + Father Heavy & elderly @ 60m
MEDS - Allergies NKDA

Surgeon

Last History: E. N. T. Headache

Otorrhea Pain Hearing (+) Tinnitus (+) Vertigo
Rhinitis Post-Nasal Drip Epistaxis Trauma
Obstruction all Sinusitis Colds
Sore Throats Peritonsillar Abscess Hoarseness
Cervical Glands Snoring when awake (light) NV radi
Measles S.F. Diph. Rheum P.N. Infl. (+) Asthma Hay Fever (+)
Alcohol Tobacco Drugs Caffeine BOCA IM Allergy W/U
TBC. Cancer Diabetes (+) NOM Asthma Hay Fever

ears: Canals



Drums R. L.

4100500138



Mastoids

nose: Septum

Deviated concha LF post

Turbinates +3
Obstruction present
Discharge
Sinus Tenderness



oropharynx

teeth

Teeth gal



Tongue

Parotid

Submax

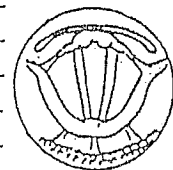
throat: Uvula

Tonsils +2 long fil



Pillars

Pharynx big w/ucor



larynx

cervical Glands

normal

day

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gnosis

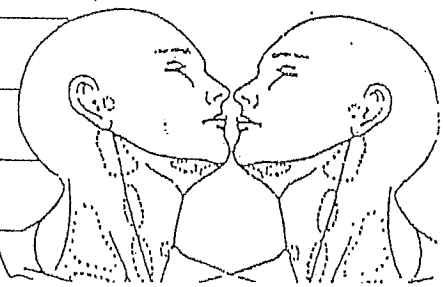
Asymptomatic

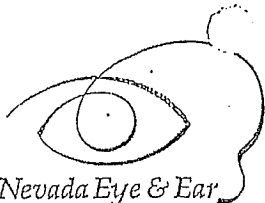
atment

Heavy present
No present

MBI

Don't do it





Nevada Eye & Ear
Scott E. Manthel, D.O.
John R. Alway, D.O.
Ryan E. Mitchell, D.O.

Ear, Nose & Throat
Facial Plastic - Cosmetic Surgery
Adult & Pediatric Allergy

2598 Windmill Parkway, Henderson, NV 89074 (702) 896-6043
351 N. Buffalo Drive, Suite B, Las Vegas, NV 89145 (702) 255-6665
999 Adams, Suite 104, Boulder City, NV 89005 (702) 896-6043
860 Seven Hills Dr., Henderson, NV 89052 (702) 456-4000

Name: Jared Spangler
Age: 26 Date: 12-13-05

RIGHT	SYMBOLS	LEFT	
AC:UNMASKED	O	AC:UNMASKED	X
MASKED	Δ	MASKED	□
BC:UNMASKED	<	BC:UNMASKED	>
MASKED	[MASKED]
LOUDNESS DISCOMFORT LEVEL		°	
ACOUSTIC REFLEX THRESHOLD		R	

TESTED BY: Roger Theobald, M.S., CCC-A ☒

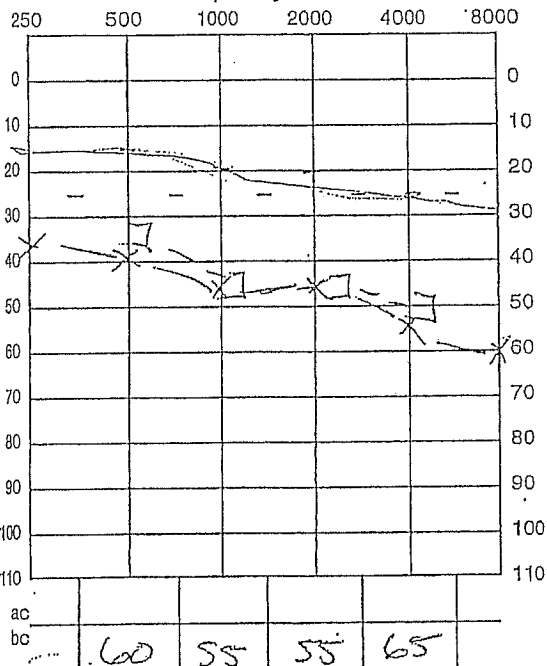
Lisa M. Kurak, M.A., CCC-A ☐

RELIABILITY: Excellent ☒ Good ☐ Fair ☐ Poor ☐

AUDIOMETRIC EVALUATION

+100500158

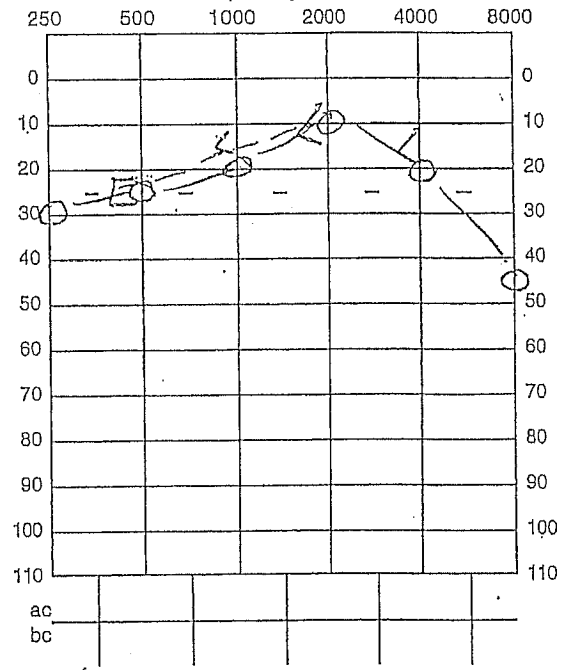
LEFT EAR
Frequency in Hz



SRT 30 dB Speech Discrimination:
AC Ave 100 dB 100 % @ 60 dB HL
MCL UCL

Freq	250	500	1000	2000	4000	
SISI%	%	%	%	%	%	
MTDT						
REFLEX						

RIGHT EAR
Frequency in Hz



SRT 10 dB Speech Discrimination:
AC Ave 100 dB 100 % @ 40 dB HL
MCL UCL

Freq	250	500	1000	2000	4000	
SISI%	%	%	%	%	%	
MTDT						
REFLEX						

COMMENTS: Nevada CompFirst-LV

Request for Additional Medical Information And Release Form

(Pursuant to NRS 616C.490(3))

HD05-00158

Injured Employee's Name: JARED SPANGLERClaim Number: HO 0500158

Social Security Number: _____

Injured Employee's Address: 3550 TUNDRA SWAN ST. , LV, NV, 89122Injury/Occupational Disease Date: UNKNOWN EXACTDate this Notice Printed: 12/6/05Insurer's Name: LOCUMISEmployer: CITY OF HENDERSONInsurer's Address: P.O. BOX 13873Employer's Address: 223 LEAD ST., HEND, NV, 89015READING, PA, 19612-3873

Please provide the information requested below, sign and date the form, and return it to your Insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This renews the release you signed on your C-4 form at the time your claim was submitted to your Insurer. Failure to fully complete and return this form to your claims agent in a timely manner could affect your benefits or delay the resolution of your claim.

Prior History Information

Please check the appropriate box below and provide the information requested.



I have no prior conditions, injuries or disabilities of which I am aware, that might affect the disposition of the claim referenced above. (If you checked this box, no further information is needed at this point) SLIGHTLY NOTICEABLE HEARING LOSS BEFORE EXPOSURE DATE.



I have a prior condition, injury or disability that could affect the disposition of the claim referenced above. This can include birth defects, prior surgeries, injuries, etc., whether work related or not. (If you checked this box, indicating a pre-existing condition, please explain in detail in the space below. Please attach additional sheets of paper to this form if necessary to fully explain the condition)

I hereby certify that the above is true and correct to the best of my knowledge and that I have provided the information in order to obtain the benefit of Nevada's workers' compensation and occupational diseases acts (NRS 616A to 616D, inclusive) or chapter 617 of NRS, and I authorize any physician, chiropractor, surgeon, practitioner, or other person, any hospital, including veterans' administration or governmental hospital, any medical service organization, any insurance company, or other institution or organization to release to each other any medical or other information, including benefits paid or payable, pertinent to this injury or disease, except information relative to diagnosis, treatment and/or counseling to aids, psychological conditions, alcohol or controlled substances, for which I must give specific authorization. A photocopy of this authorization shall be as valid as the original. (Signature) _____ (Date) _____

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Nevada Comm First LI VI

Nevada
COMP FIRSTJared Spangler
HDO500158

December 6, 2005

HDO5-~~00~~158

LIST ALL PRIOR RELATIVE CLAIMS FILED FOR ACCIDENTS/INJURIES -- WHETHER INDUSTRIAL OR NON-INDUSTRIAL, WHICH YOU HAVE FILED THROUGHOUT YOUR LIFETIME.

Claim No: UNKNOWN Date of Injury: 97-98
Employer: ADAM'S DRIVESHAFT Body Part(s): THUMB
☒ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ NONE
UNKNOWN
Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part(s): _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____
Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part(s): _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____
Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____
Employer: _____ Body Part(s): _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____
Attending Physician's Name/Address for above-captioned injury

Signature [Signature]Date 12/14/05RECEIVED
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Nevada CompFirst-LV

5-2005 01:25P FROM:

Nevada
COMP FIRST

Jared Spangler
HD0500158

December 6, 2005

HD05-00158

Have you ever filed a workers' compensation claim in this state or any other before?
Yes ☒ No ☐

If yes, have you ever received a settlement or buyout for the claim?
Yes ☐ No ☒

Please list the body part(s) and the amount of the settlement or buyout and the employer under whom the award was received.

MY THUMB (BROKEN BONE) NO SETTLEMENT - ONLY X-RAY PAID FOR

Thank you for your cooperation.

(Injured Worker's Signature)

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**PARKWAY
IMAGING CENTER**

100 N. Green Valley Parkway • Suite 130
Henderson, Nevada 89074
(702) 990-7419 • Fax (702) 990-7418

**MOUNTAIN
DIAGNOSTICS**

800 Shadow Lane
Las Vegas, Nevada 89106
(702) 366-9700 • Fax (702) 366-0013

Patient: SPANGLER, JARED
DOB: 07/02/1979 X-ray No. 5219679
Date of Exam: 12/21/2005

Referred By: SCOTT R MANTHEI, DO
2598 WINDMILL PKWY
HENDERSON, NV 89014

CRANIAL MRI, WITH/WITHOUT IV CONTRAST, WITH ATTENTION TO THE TEMPORAL BONES

HISTORY:

Left-sided hearing loss.

TECHNIQUE:

Using the 0.3 Tesla open-sided scanner, axial FSE T2, and high-resolution T1-weighted and coronal scans were performed through the temporal bones, both before and following IV contrast. An additional FLAIR sequence was performed through the entire head in the axial planes.

FINDINGS:

1. On the axial post contrast, high-resolution sequence through the temporal bones, there is a 1 x 2 mm focus of apparent contrast enhancement in the lateral dorsal aspect of the left internal auditory canal. This is not confirmed on the coronal sequence and on the T2 weighted axial sequence, this area appears of higher signal than the adjacent neural structures. This could, therefore, be a tiny hemangioma and the finding is equivocal considering its very small size and visualization after contrast in only a single plane.
2. However, considering history of left-sided hearing loss, repeat imaging on a high field MRI scanner might be considered to allow higher resolution evaluation of this area.
3. There is a 1.5 cm retention cyst or polyp in the right maxillary antrum, consistent with mild chronic sinusitis there.
4. There is some asymmetry in appearance of the mastoids, with far less pneumatization in the right mastoid process than the left suggesting mastoiditis during early childhood. Some minimal T2 hyperintensity is seen in the mastoid processes, slightly more on the right than the left suggesting minimal current mastoiditis.
5. The remainder of the temporal bones, central skull base and cranium are unremarkable, otherwise.

IMPRESSION:

1. Tiny equivocal focus of contrast enhancement in the left internal auditory canal. Consider reimaging on high field MRI to allow higher resolution evaluation of the area, since this could potentially represent a tiny vestibular schwannoma or hemangioma.
2. Evidence of childhood mastoiditis on the right side causing under development of the mastoid; also, evidence of minimal current mastoiditis.
3. Mild chronic right maxillary sinusitis.

40050058

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DEC 30 2005

Nevada CompFirst-LV

Dictated by: Robert E. C. Henry, Jr., M.D.

RH/dw

D: 12/21/2005 10:26:34(PT) T: 12/21/2005 16:01:38(PT) Doc ID: 1257174/Chart Job ID: 1204473/Accession #: 4477266

Page 1 of 2

~~Mountain Diagnostics Parkway Imaging Center~~

Please be advised that if a signature is not affixed to this document via manual or electronic document authentication, the information contained herein should be considered preliminary in nature, still subject to change, and should not be relied upon.

Document authenticated by Robert E. C. Henry, Jr., M.D., on 12/21/2005 18:05:31 PT

41DEC50 0188

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DEC 30 2005

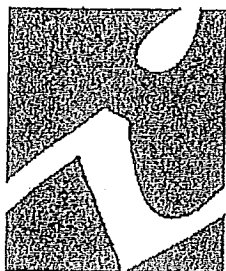
Nevada CompFirst-LV

SPANGLER, JARED

CRANIAL MRI, WITH/WITHOUT IV CONTRAST, WITH ATTENTION TO THE TEMPORAL BONES

Page 2 of 2

~~THIS DOCUMENT IS UNCLASSIFIED~~



IMMCO Diagnostics, Inc.
60 Pineview Drive
Buffalo, NY 14228
USA

Toll Free: (800) 537-8378
Phone: (716) 691-0091
Fax: (716) 691-0466

www.immcoiagnostics.com

Laboratory Report

Accession Number: 05-19141
Date of Specimen: 12/27/05
Date Received: 12/29/2005
Date of Report: 1/4/2006

Address: Quest Diagnostics Lab
Lab Services
4230 Burnham Avenue
Las Vegas, NV 89119

Name of Patient: Spangler, Jared
Patient ID:
Date of Birth: 7/2/1979
Sex: M
Race: not provided

01177070

Serology Results:

Result:

Unit:

Anti-68 kD (hsp-70) Antibodies*

Negative

* This test was developed and its performance characteristics determined by IMMCO. It has not been cleared or approved by the U.S. Food and Drug Administration.

Serology Comments:

Antibodies to Inner ear antigen (68kD) occur in approximately 70% of patients with autoimmune hearing loss. The antibody tests to this 68kD antigen parallel with disease activity. In addition, a majority of patients positive for antibodies to 68kD are responsive to corticosteroid treatment. (Hirose et.al. The Laryngoscope 109: 1769-1999).

410500158



01177070

Vijay Kumar, Ph.D., F.A.C.B.
ABMM and ABMLI Diplomate

RECEIVED

JAN 19 2006

Nevada CompFirst-LV

OTO Immune

TEST REQUEST FORM

division of IMCC Diagnostics, Inc.
contact us at www.otimmune.com

Tel. No. (716) 691-0091
Toll Free (800) 537-1557
Fax No. (716) 691-0466

1 PATIENT INFORMATION

Last Name Spangler First Name Jared
Social Security Number: _____
Sex ☒ M ☐ F Post Office Box 01177070
Date of Birth 07/02/79 Specimen Date 12/27/05
Street _____
City _____ State _____ ZIP _____
Telephone (____) _____

2 DOCTOR INFORMATION

Last Name _____ First Name _____
PIN _____ on _____
Street _____
City _____ LAB SERVICES, ZIP _____
Telephone _____ NV 89119
Mail _____

3 BILLING INFORMATION

Send Bill to: ☐ Patient ☐ Insurance ☐ Doctor ☐ Lab
Attention: Provide complete insurance information or send photocopy of patient's insurance card. Failure to do so will result in direct patient billing.
Medicare No. if applicable _____
Name/address of Insurance _____
Street _____
City _____ State _____ ZIP _____
Telephone (____) _____ Fax (____) _____
Insurance ID# and Suffix _____
Group# _____
CD-9 Code _____
If Insurance, bill patient directly

REQUEST ADDITIONAL MATERIALS

Selected boxes below to request additional kits or literature

- ☐ Serum Specimen Collection Kits
- ☐ Genetic Testing Specimen Collection Kits
- ☐ B2 transferrin Specimen Collection Kits
- ☐ Hearing Loss Test Reference Manual
- ☐ Hearing Loss Patient Brochure

4 SPECIMEN

For anti-68 kD (hsp-70) antibody and allergy tests, collect 5-10 ml of blood in red top or serum separator tube. If possible, separate serum from clot and place serum in orange provided. Do not puncture top of orange tube. If separation materials are not available, the blood can be sent in the tube used for collection. For genetic testing, send in purple top tubes. For B2 transferrin, send in purple top tubes. For all other tests, send in red top tubes. For all tests, send in 2 lav. tubes if required.



5 TEST

Code Description

I: Autoimmune Hearing Loss

370 ☐ Sensorineural Hearing Loss Profile
includes all tests in the group below

- 340 ☒ Anti-68kD (hsp-70) antibodies by Western blot
- 001 ☒ ANA titer and pattern on HEp-2 & Mouse kidney
- 003 ☐ ANCA - anti-neutrophil cytoplasmic antibodies
- 008 ☐ Anti-Phospholipid/Cardiolipin (APL) antibody level; IgG, IgM, IgA
- 011 ☐ Rheumatoid Factor (RF) level; IgM, IgA & IgG
- 014 ☐ Circulating Immune Complexes (CIC) level
- 015 ☐ Anti-Collagen Type II antibody level

II: Allergy HDO600158

- 461 ☐ Food Screen
 - 480 ☐ Milk Allergy Analyte (cow's milk IgE)
- Inquire about other allergy tests

III: Genetics: Non-Syndromic Hearing Loss

- 345 ☐ Connexin 26 (Cx26)
- 346 ☐ Mitochondrial A1555G mutation

IV: CSF Otorrhea/Rhinorrhea

- 341 ☐ B2 transferrin (perilymph) inner ear fluid and serum
be sent in separate tubes (label tubes accordingly)

6 SHIP TO OTOIMMUNE DIAGNOSTICS

Pack Specimen Collection Kit using the following procedure

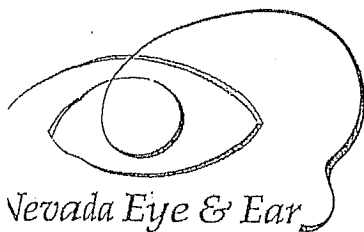
Place tube(s) into styrofoam case, positioning absorbent paper above and below tube(s). Slip styrofoam case into sealable plastic bag and insert, together with completed Test Request Form, shipping box. Tape end flaps and ship via one of the carriers by US Postal Service: The first class prepaid mailing kit can be dropped into any US Postal Service mail box.

Overnight Courier Service: Please follow instructions contained in the Specimen Collection Kit and send to:

RECEIVED

OTOIMMUNE Diagnostics
60 Pineview Drive

IAN 1 9 2006



Nevada Eye & Ear

OPHTHALMOLOGY

Eye Physicians & Surgeons

Scott E. Manthei, D.O., F.O.C.C.O.
Medical Director Ophthalmology

Douglas C. Lorenz, D.O., F.O.C.C.O.
Ophthalmic Plastic Surgery
Refractive Cataract Surgery

Thomas E. Kelly, M.D.
Comprehensive Ophthalmology
Refractive Cataract Surgery

Ian Hatcher, Jr., D.O., F.O.C.C.O.
Comprehensive Ophthalmology

Edward N. Straub, D.O., F.O.C.C.O.
SIK & PRK Refractive Surgery
Intraocular Lens Implantation

Margaret S. Lanard, M.D.
Comprehensive Ophthalmology

OTOLOGY

Ear, Nose & Throat Surgeons

Scott E. Manthei, D.O., F.O.C.C.O.
Medical Director Otolaryngology
Hearing & Sinus

John R. Alway, D.O., F.O.C.C.O.
Comprehensive Otolaryngology
Hearing & Sinus

John E. Mitchell, D.O.
Facial Plastic & Cosmetic Surgery
Facelift & Body Sculpting

2598 Windmill Parkway
Henderson, Nevada 89074

860 Seven Hills Drive
Henderson, Nevada 89052

151 North Buffalo Drive, Suite B
Las Vegas, Nevada 89145

999 Adams, Suite 104
Boulder City, Nevada 89005

Phone
(702) 896-6043

Fax
(702) 896-9591

Toll Free
(888) 425-2745

January 17, 2006

Jared Spangler

#HDC5-0058

Dear Jared:

This letter is to follow-up your visit of 12/13/05 to my clinic. As you know, we found an abnormal hearing test involving the left ear.

Your follow-up MRI did show a small area of concern involving the nerve to the left ear. This requires further attention and I have suggested a referral to a neuro-otologist to best address this.

The remainder of your laboratory evaluations were entirely within normal range.

Please make yourself available for neuro-otology to address this abnormality which very well may represent a tumor, and should not be ignored. Consequences not only could be to persistent ringing of the ear and increasing hearing loss, but potentially serious affects on the brain and balance.

If I can be of any further assistance in your care, please do not hesitate to call.

Sincerely,

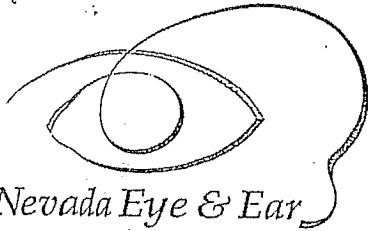
Scott E. Manthei, D.O.
SEM:jnb

cc: Nevada Comp First

RECEIVED

FEB 07 2006

Nevada CompFirst-LV



Nevada Eye & Ear

OPHTHALMOLOGY

Eye Physicians & Surgeons

Ludy R. Manthei, D.O., F.O.C.O.O.
Medical Director Ophthalmology

Jouglas C. Lorenz, D.O., F.O.C.O.O.
Ophthalmic Plastic Surgery
Refractive Cataract Surgery

Thomas F. Kelly, M.D.
Comprehensive Ophthalmology
Refractive Cataract Surgery

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OTOLOGY

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Facial Plastic & Cosmetic Surgery
Facial & Body Sculpting

2598 Windmill Parkway
Henderson, Nevada 89074

860 Seven Hills Drive
Henderson, Nevada 89052

51 North Buffalo Drive, Suite B
Las Vegas, Nevada 89145

999 Adams, Suite 104
Boulder City, Nevada 89005

Phone
(702) 896-6043

Fax
(702) 896-9591

Toll Free
(888) 425-2745

February 22, 2006

Lezlie Wooten
Nevada Comp First
2310 Paseo del Prado, Suite A120
Las Vegas, NV 89102

RE: SPANGLER, JARED
CLAIM #: HD05-00158
DOI: 11/01/05
INSURER: CITY OF HENDERSON

Dear Ms. Wooten:

This letter is in reference to correspondence dated 01/11/06. The patient was complaining of ringing of the ears after a high frequency exposure (high frequency alarm in an enclosed building). He does have non-industrial exposure utilizing pistols, however, states hearing protection with this over the last two and one-half years. He has worked as a mechanic in a drive line with heavy welding, again with hearing protection for three and one-half years. There is a positive family history of hearing loss, noise induced.

Physical exam was unremarkable. Audiometric testing, however, showed low frequency to normal to high frequency sensorineural hearing loss in the right ear with preserved discrimination. The left ear showed moderate to severe sensorineural hearing loss with normal impedance testing.

Due to the asymmetrical nature, MRI was necessary to discern whether this was due to an extrinsic mass versus noise induced industrial exposure. Laboratory evaluation was necessary to make sure this was not metabolic versus noise induced industrial.

Investigative findings reveal a contrast enhancement of the left internal auditory canal suggesting extrinsic compression from a neoplastic process of the brain.

Although the patient's symptoms could be consistent with a noise induced traumatic hearing loss, there appears to be a non-industrial component that requires immediate attention and is most likely causing this patient's symptomatology. The audiometric findings and laboratory testing is most consistent with this being due to a non-industrial etiology, and at this time should not be considered work related.

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MAR 06 2006

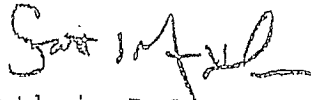
Nevada CompFirst IV

SPANGLER, JARED
PAGE TWO

If I can be of any further assistance in this patient's prognosis, physical findings or care, please do not hesitate to call.

ADDENDUM: We have tried to contact the patient several times to notify him of the markedly abnormal hearing result and that further follow-up is necessary to address this potentially serious medical condition that can further jeopardize his hearing, balance and even general health.

Sincerely,



Scott E. Manthei, D.O.
SEM:mb

Dictated but not edited

Hd 05-00188

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MAR 06 2006

Nevada CompFirst-LV



March 7, 2006

Mr. Jared Spangler
3550 Tundra Swan
Las Vegas, NV 89122

Re: Claim Number: HD05-00158
Date of Injury : 11/01/2005
Insurer : City of Henderson

Dear Mr. Spangler:

Nevada CompFirst is in receipt of Dr. Manthei's report dated February 22, 2006, and has therefore completed the medical investigation surrounding the above-referenced claim. Dr. Manthei indicates that although your "symptoms could be consistent with a noise induced traumatic hearing loss, there appears to be a non-industrial component that requires immediate attention and is most likely causing," your symptoms. He goes on to state that at the present time your symptoms "should not be considered work related."

After a thorough review of your file and Dr. Manthei's report, it is the decision of Nevada CompFirst to deny your claim as you do not qualify for coverage under NRS 617.440 at this time. If, after you have received treatment for your non-industrial condition, you still feel you have industrial hearing loss/tinnitus, you can file a new C-4 form for consideration.


Please be aware that although your claim is being denied, Nevada CompFirst will pay for all bills related to your claim with dates of service prior to the date of this letter.

Pursuant to our phone conversation, you will find enclosed a copy of the medical records contained within your file.

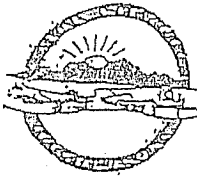
If you disagree with this decision, you may appeal by completing and submitting the attached "Request for Hearing" form to the Department of Administration, Hearings Division within seventy (70) days of the date of this letter.

If you have any questions regarding this matter, please contact this office.

Sincerely,


Leslie Wooten
Account Executive

cc: City of Henderson
Dr. Scott Manthei
File



City of Henderson

240 Water Street
Henderson, Nevada 89015

Henderson and
City of
Henderson
Hearing Center
Form

Name (Last, First, Middle) SPANGLER, JARED, FLOYD	Sex M	Date of Examination 7/25/03
Address 4130 ARTIST CT.	Age 24	Date of Birth 7/2/79
Organization/Employer H.P.O.	Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz) - Right Ear						
500	1000	2000	3000	4000	6000	8000
25	20	10	15	20	20	30

Frequency in Hertz (Hz) - Left Ear						
500	1000	2000	3000	4000	6000	8000
30	35	30	30	40	50	50

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

Recommendations

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Remarks

Audiometer GRASON-STADLER	Serial Number 5236	Calibration Date 4-22-02
Tester's Name Cynthia Kirkpatrick	Tester's Title D.H.C.	Tester's Signature <i>[Signature]</i>
		Test Date and Time 8.8.03

Please sign one copy of this form as acknowledgement of receipt from your employer.

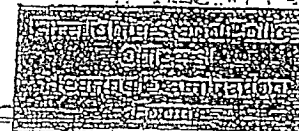
Employee's Signature <i>[Signature]</i>	Received 02/16/16	Date 8.8.03
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City of Henderson

240 Water Street

Henderson, Nevada 89015



Name (Last, First, Middle) SPANGLER, JARED FLOYD	Sex M	Date of Examination 7/22/04
Address 4130 ARTIST CT, LV, NV, 89115	Age 25	Date of Birth 7/2/79
Organization/Employer H PD	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear					
500	1000	2000	3000	4000	6000

Frequency in Hertz (Hz), Left Ear					
500	1000	2000	3000	4000	6000

Average of 2K, 3K,
and 4K Results:

pnn

Calibration Date 04/14/04
Calibration Due Date 04/14/05
Test :057 Date 07/29/04 Time 07:58
SS# 0000000000 Job ID: 22=

Pati

Spangler Jared

Otoscope Examination Record

Right	Left	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Normal Appearance
<input type="checkbox"/>	<input type="checkbox"/>	Excessive Wax or Debris
<input type="checkbox"/>	<input type="checkbox"/>	Abnormal Appearance

	Left	Right
1000 Hz	30	20
2000 Hz	40	20
3000 Hz	40	10
4000 Hz	40	15
500 Hz	60	05
100 Hz	70	55
100 Hz	55	40

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NOV 7 - 2005

Nevada CompFirst-LV

Audiometer	Serial Number	Calibration Date
Tester's Name <i>Karadottir DHC</i>	Tester's Signature <i>[Signature]</i>	Test Date and Time

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature <i>[Signature]</i>	Date 7-22-04
--	------------------------



City of Henderson

240 Water Street
Henderson, Nevada 89015



Name (Last, First, Middle) SPANGLER, JARED F.	Sex Male	Date of Examination 7/6/05
Address 3550 TUNDRA SWAY ST.	Age 24	Date of Birth 7/2/79
Organization/Employer CITY OF HENDERSON	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz) - Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz) - Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Recommend

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal
Appearance

Excessive Wax
or Debris

Abnormal
Appearance

<input checked="" type="checkbox"/>	Medice
<input type="checkbox"/>	Retest
<input type="checkbox"/>	Recor
<input type="checkbox"/>	Compli
<input type="checkbox"/>	Audioc

Amidon 1
Calibration Date 04/07/05 15K ut
Calibration Due Date 04/07/06
Test :071 Date 07/14/05 Time 06:54
SS# 000000000 Job ID: 16-6

Patient Spangler, Jared

Frequency	Left	Right
1000 Validity		
500 Hz	40	15
1000 Hz	45	20
2000 Hz	45	15
3000 Hz	50	05
4000 Hz	55	10
6000 Hz	55	20
8000 Hz	65	45

RECEIVED

NOV 7 - 2005

Examiner

Nevada CompFirst-LV

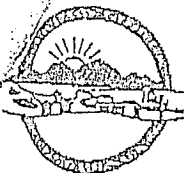
Audiometer	Serial N
Tester's Name <u>Cynthia K. [Signature]</u>	Title
Tester's Signature	Test Date and Time

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature

Date

7/14/05



City of Henderson

240 Water Street
Henderson, Nevada 89015



Name (Last, First, Middle) SPANGLER, JARED F.	Sex m	Date of Examination 8/17/06
Address 3550 TUNDRA SWAN	Age 27	Date of Birth 7/2/79
Organization/Employer CITY OF HENDERSON	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz) Right Ear						
500	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz) Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

151
Calibration Date 04/05/07
Calibration Due Date 04/05/07
Test :025 Date 08/17/06 Time 07:21
SSN 000000000 Job ID:AA=2

Patient Jared Spangler

Otososcopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal
Appearance

Excessive Wax
or Debris

Abnormal
Appearance

Recd

Frequency	Left	Right
1000 Validity		20
500 Hz	45	25
1000 Hz	50	20
2000 Hz	55	10
3000 Hz	60	25
4000 Hz	55	35
5000 Hz	70	50
6000 Hz	70	45

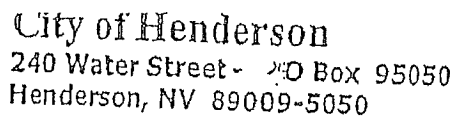
Examiner _____

20/20
20/20
20/20
Color WNL
PV
790
790

Audiometer		Serial Number	Calibration Date
Tester's Name Kirkpatrick	Title Phup Coal	Tester's Signature 	Test Date and Time 8-17-06

Please sign one copy of this form as acknowledgement of receipt from your employer.

Employee's Signature 	Date 8/24/06
--------------------------	------------------------



Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.		Sex m	Date of Examination 8/13/07
Address 3556 TURNER SWAN ST, LV, NV, 89122		Age 28	Date of Birth 7/2/79
Personal Physician's Name DR. KILPATRICK		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz): Right Ear						
00	1000	2000	3000	4000	6000	8000

Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Remarks

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

2.

Calculation date 04/05/06 by: m s r

Calibration Due Date 04/05/07

Test :193 Date 08/13/07 Time 07:00

0000000000 Job ID: 66755

at ient.

Frequency	Left	Right
1000 Validity		25
500 Hz	40	25
1000 Hz	50	25
2000 Hz	55	15
3000 Hz	65	30
4000 Hz	60	30
5000 Hz	80	55
8000 Hz	70	55

Examiner _____

RECOMMENDATIONS

	Medical Referral
	Retest Recommended
	Complete Audiogram.

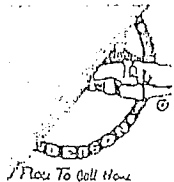
Tester's Name <i>John Doe</i>		Title <i>John Doe</i>		Tester's Signature <i>[Signature]</i>		Test Date and Time <i>08/3/07</i>	
----------------------------------	--	--------------------------	--	--	--	--------------------------------------	--

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature  0.5 (rev. 1/99)	Date 8/13/07
--	-----------------

0.5 (rev 1/199)

Received



City of Henderson
240 Water Street • PO Box 95050
Henderson, NV 89009-5050

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.	Sex m	Date of Examination 8/4/08
Address 3590 TUMARA SWAN ST	Age 29	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear							Frequency in Hertz (Hz), Left Ear						
500	1000	2000	3000	4000	6000	8000	500	1000	2000	3000	4000	6000	8000

Average of 2K, 3K,
and 4K Results:

Average of 2K, 3K,
and 4K Results:

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

Calibration Date 11/19/07 by:msr
Calibration Due Date 11/18/08
Test :189 Date 08/04/08 Time 08:41
3# 0000000000 Job ID:Aa=5

patient

Jared Spangler

frequency	Left	Right
000 Validity		25
500 Hz	35	25
1000 Hz	45	20
2000 Hz	45	15
3000 Hz	55	30
4000 Hz	55	40
5000 Hz	70	60
6000 Hz	60	50

POSTED
IPA

RECOMMENDATIONS

- ☐ Medical Referral
☐ Retest Recommended
☐ Complete Audiogram

Examiner _____

Audiometer	Serial Number	Calibration Date
Tester's Name John B. Smith	Tester's Signature [Signature]	Test Date and Time 8-4-08

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature [Signature]	Date 8/18/08
--	------------------------



City of Henderson
240 Water Street P.O. Box 95050
Henderson, NV 89009-5050

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) SPANGLER, JARED F.	Sex M	Date of Examination
Address 3550 TUNDRA SWAN, LV, NV, 89122	Age 30	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
500	1000	2000	3000	4000	6000	8000

500	1

Subject Information:

SSN
Status
In Program
Language
Active
Yes
English

8000

Average of 2K, 3K,
and 4K Results:

Av

Most Recent Test:

Date: 7-24-2009 Time: 9:22:51

	Left	Right
500	45	25
1K	50	20
2K	50	15
3K	65	30
4K	55	40
6K	60	50
8K	55	50

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Examiner
Model: Next
Serial: 25654
Cal: 5 7/2009
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:

	Left	Right
JSHA SLS		
Age Corrected:	No	No
Possible		
Rec Shift	No	No
5,1,2,3K Avg:	52	22
2,3,4K Avg:	56	28
AAO - 1979:		60%

Audiometer	Serial Number
Tester's Name [Signature]	Tester's Sign [Signature]
Title Phys Con	

Please sign one copy of this form and submit it to

Employee's Signature

[Signature]

Date

7/24/09

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) SPANGLER, JARED F.		Sex M	Date of Examination 8/17/11
Address 650 TUNDRA SWAN ST.		Age 32	Date of Birth 7/2/79
Personal Physician's Name		Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz) Right Ear						
0	1000	2000	3000	4000	6000	8000

500	1000

Average of 2K, 3K,
and 4K Results:

Ave.

Jared 8/11/2011
CITY OF HENDERSON

Subject Information:
SSN
Status: Active
In Program: Yes
Language: English

8000

Most Recent Test:
Date: 8/11/2011 Time: 9:08:33

	Left	Right
500	40	25
1K	50	25
2K	50	15
3K	60	30
4K	60	40
6K	65	55
8K	55	55

Examiner:
Model: Next
Serial: 25654
Cal: 4/19/2011
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:
Left Right

OSHA STS
(Age Corrected): No No
Possible
Rec Shift No No
.5,1,2,3K Avg: 50 23
2,3,4K Avg: 56 28
AAO - 1979: 6%

Otoscope Examination

Right	Left

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

- ☐ Medical Referral
- ☐ Retest Recommended
- ☐ Complete Audiogram

Tester's Name		Serial Number
Tester's Signature		Tester's Signature

Please sign one copy of this form and submit it to you

Tester's Signature

Examiner's Signature Date
Subject's Signature Date

Subject Test

Firemen And
Police Officer's
Hearing
Examination Form

First, Middle) SPANGLER, JARED	Sex M	Date of Examination 8/6/12
Address 3590 TUNNA SWAN ST.	Age 33	Date of Birth 7/2/79
Personal Physician's Name	Occupation POLICE OFFICER	

Audiometric Results

Frequency in Hertz (Hz): Right Ear						
500	1000	2000	3000	4000	6000	8000
25	20	10	30	40	45	65

Frequency in Hertz (Hz): Left Ear						
500	1000	2000	3000	4000	6000	8000
45	50	55	65	60	65	75

Average of 2K, 3K,
and 4K Results:

58.3

Average of 2K, 3K,
and 4K Results:

26.4

Otoscopic Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

- ☐ Medical Referral
☐ Retest Recommended
☐ Complete Audiogram

Remarks
Serial# 3390

Calibration Date 02/23/12 by: audmed
Calibration Due Date 02/22/13
Test :000 Date 08/13/12 Time 14:10
SS# 000000000 Job ID: >920

Patient **423513**

Frequency	Left	Right
1000 Validity		20
500 Hz	45	25
1000 Hz	50	20
2000 Hz	55	10
3000 Hz	65	30
4000 Hz	60	40
6000 Hz	65	65
8000 Hz	75	65

Examiner

Audiometer AMBCO	Serial Number 6390	Calibration Date 8/15/12
Tester's Name Ally Moreau	Title MA	Tester's Signature Ally Moreau
		Test Date and Time 8/13/12

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature

[Signature]

Received
02/16/16

Date

8/6/12

Firemen And
Police Officer's
Hearing
Examination Form

Name (Last, First, Middle) Spangler, Jared	Sex M	Date of Examination 7.29.13
Address 3550 Tundra Swam Las Vegas, NV 89122	Age 34	Date of Birth 7.2.79
Personal Physician's Name N/A	Occupation P.O.	

Audiometric Results.

Frequency in Hertz (Hz) - Right Ear						
500	1000	2000	3000	4000	6000	8000

F	
500	10

Most Recent Test:

Date: 7/24/2013 Time: 7:08:44

	Left	Right
500	40	35
1K	50	25
2K	55	20
3K	65	40
4K	60	45
6K	65	80
8K	60	65

Average of 2K, 3K,
and 4K Results:

Avi

Otoscope Examination

Right	Left
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Normal Appearance

Excessive Wax or Debris

Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Baseline:
No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	52	30
2,3,4K Avg:	60	35
AAO - 1979:	13%	

Examiner _____ Date _____

Subject _____ Date _____

Audiometer	Serial Number
Tester's Name	Title
Tester's Signature	Test Date and Time

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature	Date
	7.29.13

**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) Spangler, Jared		Sex M	Date of Examination 8.7.14
Address 3550 Tundra Swan Las Vegas, NV 89122		Age 35	Date of Birth 7.2.79
Personal Physician's Name		Occupation P.O.	

Audiometric Results

Frequency in Hertz (Hz), Right Ear						
100	1000	2000	3000	4000	6000	8000

Frequency	
500	1000

Most Recent Test:
Date: 7/31/2014 Time: 7:29:39

	Left	Right
500	50	30
1K	55	30
2K	65	25
3K	65	45
4K	65	50
6K	80	65
8K	75	55

Average of 2K, 3K,
and 4K Results:

Average
and

Otososcopic Examination

Right	Left
/	/

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

*"Has continued
Audiology Care."*
RECOMMENDATIONS
has continue

Medical Referral *audiology care*
Retest Recommended
Complete Audiogram

Examiner:
Model: Next
Serial: 25654
Cal: 4/9/2014
ANSI S3.6-1989

Baseline:
No Baseline

Current Analysis:

	Left	Right
--	------	-------

OSHA STS
(Age Corrected): No No
Possible
Rec Shift No No
.5,1,2,3K Avg: 58 32
2,3,4K Avg: 65 40
AAO - 1979: 17%

Examiner Date
Subject Date

Tester's Name		Serial Number	Calibration Date
Title		Tester's Signature	Test Date and Time

Please sign one copy of this form and submit it to your employer or organization.

Tester's Signature	Received 02/16/16	Date 8.7.14
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**Firemen And
Police Officer's
Hearing
Examination Form**

Name (Last, First, Middle) Spangler, Jared, F		Sex M	Date of Examination 8.13.15
Address 3550 Tundra Shan St Las Vegas, NV 89122		Age 36	Date of Birth 7.2.79
Personal Physician's Name		Occupation PO	

Audiometric Results

Frequency in Herz (Hz) - Right Ear						
500	1000	2000	3000	4000	6000	8000

500	1

Language: English		8000
Most Recent Test:		
Date: 8/11/2015	Time: 8:36:24	

Average of 2K, 3K,
and 4K Results:

A1

	Left	Right
500	45	30
1K	55	25
2K	60	20
3K	65	45
4K	65	45
6K	70	60
8K	65	50

Otoscopic Examination

Right	Left
✓	✓

Normal Appearance
Excessive Wax or Debris
Abnormal Appearance

RECOMMENDATIONS

<input type="checkbox"/>	Medical Referral
<input type="checkbox"/>	Retest Recommended
<input type="checkbox"/>	Complete Audiogram

Baseline:
No Baseline

Current Analysis:

	Left	Right
OSHA STS		
(Age Corrected):	No	No
Possible		
Rec Shift	No	No
.5,1,2,3K Avg:	56	30
2,3,4K Avg:	63	36
AAO - 1979:	14%	

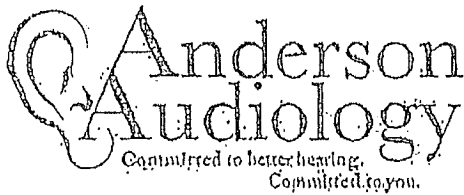
Examiner Date

Subject Date

Audiometer		Serial Num	Subject: Test
Tester's Name	Title	Tester's Signature	Test Date and Time

Please sign one copy of this form and submit it to your employer or organization.

Employee's Signature	Date
----------------------	------



Las Vegas Office
3120 S Rainbow Blvd
Ste 202
Las Vegas, NV 89146
p: 702.233.4327
f: 702.233.8837

Henderson Office
2642 W Horizon Rd, Ste A11
Henderson, NV 89052
p: 702.933.9102
f: 702.933.9108

Allante/Contermin Office
6475 N Decatur Blvd
Ste 125
Las Vegas, NV 89131
p: 702.933.9103
f: 702.933.9104

San City/Summerlin Office
9430 W Lake Mead Blvd
Ste 11
Las Vegas, NV 89134
p: 702.527.6066
f: 702.527.6088

AudigyCertified™

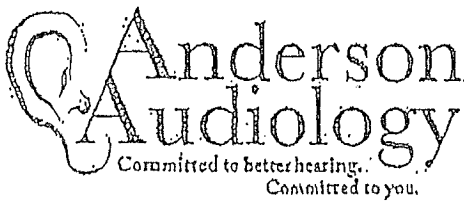
February 9, 2016

RE: Jared Spangler
DOB: 07/02/1979

To Whom It May Concern:

I had the pleasure of seeing the above mentioned patient at our office on February 5, 2016, for an audiologic evaluation. Mr. Spangler reported he has been working with the police department since 2003 and has noticed that his hearing has become progressively worse and now has cricket/locust sounds bilaterally, which sometime change in intensity. Mr. Spangler's last hearing test was in October 2015 as part of routine physical testing, conducted by Precision Hearing Conservation in association with the City of Henderson, the results of which, along with every test since the baseline, were provided to me by Mr. Spangler. These tests were used for OSHA comparisons regarding standard threshold shifts. Mr. Spangler reported that he was on active patrol for approximately 11 years, where he was exposed to sirens, gunfire during range qualifications, and a radio piece in his left ear, and then a lapel microphone on his left side. As a result of documented changes in Mr. Spangler's hearing in the left ear, he was sent for an MRI in 2006/7 to see if there was a "kink" in a canal that was inhibiting the sound transmission, the results of which were negative. Mr. Spangler denied any otorrhea, otalgia, or vertigo, but did report some previous noise exposure when he worked as a mechanic for two years in high school. He also reported a positive family history of hearing loss with his identical twin brother, who also works for the police department. Mr. Spangler reported he has great difficulty understanding others in noisy situations and women's and children's voices, which negatively impacts his communication with his family.

Please find enclosed a copy of the testing results. Otoscopy revealed a semi-occluded right ear and a clear left external auditory canal. The cerumen in the right ear was removed without incident prior to all testing. Tympanometry revealed normal, Type A, tracings bilaterally, suggesting normal middle ear function and tympanic membrane movement. Distortion product otoacoustic emissions in the right ear were present 1.5-3k Hz and absent 4-6k Hz, and for the left ear were absent 1.5-6k Hz. Standard pure tone testing revealed borderline normal hearing, 0.25-2k Hz, sloping to a moderate high frequency sensorineural hearing loss in the right ear, and a mild sloping to severe sensorineural hearing loss in the left ear with a notch present at 6k Hz. Word recognition scores in quiet were 100% and 72% for the right and left ears, respectively, at a normal presentation level in the right ear, but an elevated level in the left ear.



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Las Vegas, NV 89146

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f: 702.233.8837

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Ste A11
Henderson, NV 89052

p: 702.933.9102
f: 702.933.9106

Allante/Centennial Office
8475 N Decatur Blvd
Ste 125
Las Vegas, NV 89131

p: 702.933.9103
f: 702.933.9104

Sun City/Summerlin Office
9430 W Lake Mead Blvd
Ste 11
Las Vegas, NV 89134

p: 702.527.6060
f: 702.527.6069

Audigy Certified

Utilizing the OSHA guidelines which define an STS, in either ear, as a change of 10 dB or more in the average thresholds at 2000 Hz, 3000 Hz, and 4000 Hz, the results are as follows:

Left Ear: a 30 dB difference, OSHA STS: Yes
Right Ear: a 26.7 dB difference, OSHA STS: Yes

Comparison is based on the audiometric data provided by Mr. Spangler from the City of Henderson baseline test conducted on 8/8/2003. An age factor was not utilized in the above comparison. Using the age correction comparison thresholds for a 36-year-old male to the baseline age of 24-years-old, the results are as follows:

Left Ear: a 26 dB difference, OSHA STS: Yes
Right Ear: a 22.7 dB difference, OSHA STS: Yes

Based on these results, Mr. Spangler's hearing loss does not prevent him from going back to work. The configuration of Mr. Spangler's hearing loss is not a consequence of the normal aging process for either ear and is suggestive of noise exposure.

The aforementioned results were discussed with Mr. Spangler, including that he is a candidate for binaural amplification and he expressed understanding. In conclusion, I would recommend binaural amplification upon medical clearance, continuation of annual hearing evaluations or sooner if changes in hearing or tinnitus are noted, and the use of hearing protection in noise.

I thank you for the opportunity to participate in the hearing health care of this patient. Please do not hesitate to contact me with any questions.

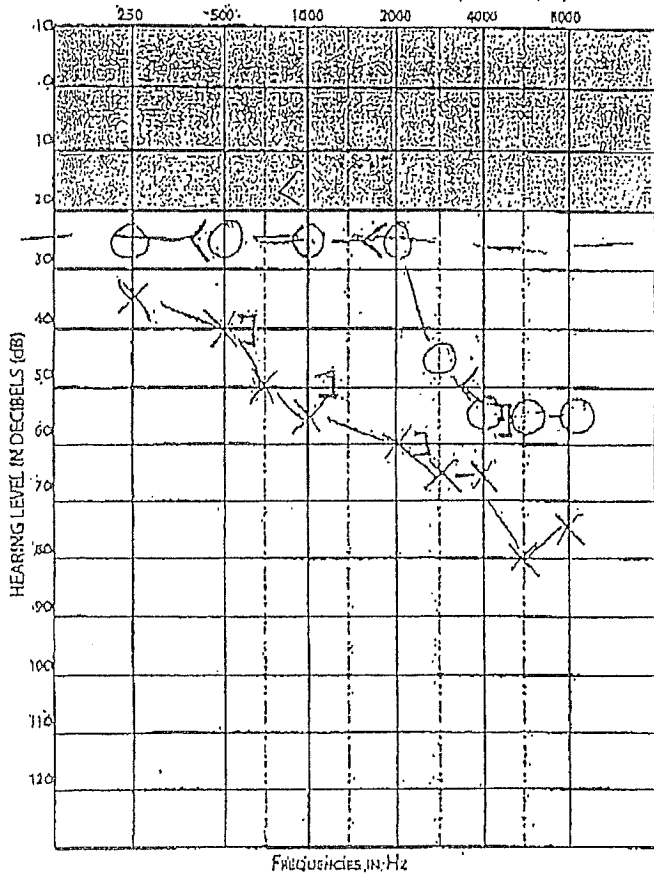
Sincerely,

Amanda Blake, Au. D.

AUDIOGRAM

AudigyCertified

PURETONE AUDIOMETRY (RE: ANSI 1996)

Practice: Anderson Audiology Location: HendersonName: Corey Spangler Date of Birth: 7/2/79

Referred By: _____

Test Interval: _____ Date of Test: 2/5/16

KEY:

LEFT	SMALL	RIGHT
X	Air	O
□	Air - Mask	Δ
>	Down	<
J	Bone - Mask	E
∇	No Response	Λ
L	UCL	R
SOUND FIELD - S		
VIBRO-TACTILE - VT		
TINNITUS - T		

TEST TYPE
STANDARD CAE
PLAY
CORVA
BOA

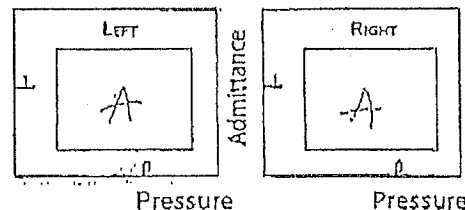
TRANSDUCER
INSERT
CIRCUMAURAL
SOUND FIELD

RELIABILITY
EXCELLENT
GOOD
FAIR
POOR

BOOTH
#1
#2
#3
#4

TYMPANOMETRY (226 Hz)

EAR	LEFT	RIGHT
EAR CANAL VOLUME cm ³	1.14	1.34
TYMP PEAK PRESSURE (DAPA)	-15	10
STATIC ADMITTANCE (MMH2O)	1.22	0.93
TYMP WIDTH (DAPA)	78	92



	CONTRA	5kHz	1kHz	2kHz	4kHz	PSI	5kHz	1kHz	2kHz	4kHz
RIGHT (AD)						AD				
LEFT (AS)						AS				

MIDDLE EAR ANALYZER

SPEECH AUDIOMETRY

	PTA	SRT/ SAT	Speech Recognition	Speech Recognition	MCL	UCL
RIGHT (AD)	25	30	100%	65	65	100
Masking						
LEFT (AS)	52	65	72%	90	90	105
Masking						
MIX	CD/10pc	W-22	WIPI	PBK	SPECIAL:	SPECIAL:

TINNITUS EVALUATION

RIGHT	PT / NB	_____ kHz	_____ dBHL
LEFT	PT / NB	_____ kHz	_____ dBHL
BINAURAL	PT / NB	_____ kHz	_____ dBHL

HYPERACUSIS: YES / NO

CATEGORY: 0 1 2 3 4

History, Impressions, Recommendations: It reported he has already had an MRI to look at the left ear.Rx: Binaural amplification, use of hearing protection to noise, annual audiometric testing to monitor hearing

OTOACOUSTIC EMISSIONS (OAEs)

EMISSION TYPE USED	TEST TYPE PERFORMED
Transient	OAE Complete
Distortion Product	OAE Screen

OAE Results:

Right Ear Present: 1.5-3k Hz Absent: 4-6k Hz
Left Ear Absent: 1.5-6k Hz

OAE Unit

HEARING INSTRUMENT INFORMATION

RIGHT INSTRUMENT:

LEFT INSTRUMENT:

Otoscopy: semi-occluded AD AS clear cerumen removed from AD prior to all testing without incidentAudiologist: Edmund K. Blalock, AuD

Assistant:

Audiometer:



Human Resources Department/Risk Management Division

Workers' Compensation Accident/Injury Treatment Report (T-1)

EMPLOYEE TO COMPLETE

Employee's Name: Jared Spangler Employee Number: 016712
 Date of Injury: 8/25/03 - Current Date of Current Visit: 2/5/16
 Is this a scheduled work day? ☐ Yes ☒ No CURRENT WORK STATUS: ☒ Full Duty ☐ Modified Duty ☐ Off Work

PHYSICIAN'S FINDINGS (to be completed by Treating Physician Only)

Diagnosis ICD9 Code (No Narrative): H83.3X3

• Released to Full-Duty on 2/5/16 with use of hearing protection as needed

• Released to Modified-Duty on / / with the following restrictions (check all applicable):

- ☐ No Bending Pushing Pulling ☐ No Fire Suppression, Rescue or Paramedic Activities (firefighters)
☐ No Repetitive Motion to Injured Part: ☐ No Combat Situations
 Body Part ☐ Medication May be used while Working
☐ No Reaching/Working above Shoulder ☐ No Operating a Motor Vehicle or Machinery
☐ No Climbing: Ladders Stairs Steep Terrain ☐ Other: Eye Patch Keep Injury Clean Must Wear Splint/Sling
☐ No Lifting over: 5 lbs. 10 lbs. 20 lbs. 35 lbs. 50 lbs. # lbs.

Comments/Other:

Employee's restrictions are: ☐ Temporary ☐ Permanent

• Employee is OFF WORK (TTD) from / / to / /
 (These dates should not start before this treatment date or extend past next appointment date.)

Discharged? ☐ Yes ☒ No ^{Hearing loss is life-long} Medically Stable? ☐ Yes ☒ No ^{due to evidence of no change in hearing from baseline} Ratable? ☐ Yes ☐ No ☒ TBD

Condition: ☐ Same ☐ Improved ☒ Worsened - when compared to baseline dated 8/8/03

Request Referral? ☒ Yes ☐ No Referral For/To: ENT to rule out retrocochlear pathology due to significant change in hearing in the left ear

Objective Findings/Treatment/Prognosis: Sensorineural hearing loss bilaterally, worse in the left ear, with evidence of damage from noise exposure bilaterally. Recommended treatment is the use of bilateral amplification.

REHABILITATION (Physical Therapist/Occupational Therapist)

NOTE FOR PT APPOINTMENTS: Therapist may complete and sign only the portions below.

Job Description Provided: ☐ Yes ☐ No Employee is: ☐ Improving ☐ Maintaining ☐ Regressing ☐ PT/OT Complete

SIGNATURES (Provider, Employee, Supervisor)

TIME IN: 11:00 a TIME OUT: 12:00 p NEXT APPOINTMENT: Date TBD Time

Dr. Amanda Blake Physician or Clinician Signature Date 2/5/16

Dr. Amanda Blake Physician or Clinician Print Name Phone (702) 933-9102

21642 W. Horizon Ridge Pkwy, Ste. A11 Address City/State/ZIP Henderson, NV 89052

[Signature] Employee Signature [Signature] Supervisor Signature

RECEIVED

FEB 8 2016

ORIGINAL: HR-Risk Management Division, MSC 137 (Fax: 702-267-1902)

PLEASE RETAIN A COPY: Department Employee Physician

City of Henderson
Risk Management Division

Request for Additional Medical Information And Medical Release

(Pursuant to NRS 616C.177 & 616C.490(4))

Injured Employee's Name: Jared Spangler

Claim Number: _____ Social Security Number: _____

Injured Employee's Address: 3550 Tundra Swan Street, Las Vegas, NV, 89122

Injury/Occupational Disease Date: Numerous Date this Notice Printed: 2/9/2016

Insurer's Name: CITY OF HENDERSON Employer: CITY OF HENDERSON

Insurer's Address: C/O CCMSI Employer's Address: 240 WATER STREET

P.O. BOX 35350, LAS VEGAS, NV 89133 HENDERSON, NV 89016

Please provide the information requested below, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This renews the release you signed on your C-4 form at the time your claim was submitted to your insurer. Failure to fully complete and return this form to your claims agent in a timely manner could affect your benefits or delay the resolution of your claim.

Prior History Information

Please check the appropriate box below and provide the information requested.

☐ I have no prior conditions, injuries or disabilities of which I am aware, that might affect the disposition of the claim referenced above. (If you checked this box, no further information is needed at this point)

☒ I have a prior condition, injury or disability that could affect the disposition of the claim referenced above. This can include birth defects, prior surgeries, injuries, etc., whether work related or not. (If you checked this box, indicating a pre-existing condition, please explain in detail in the space below. Please attach additional sheets of paper to this form if necessary to fully explain the condition)

I HAVE DOCUMENTED PREVIOUS EXPOSURES
RELATED TO MY EARS/HEARING, THIS HAS RESULTED
IN RINGING & HEARING LOSS OVER THE COURSE OF (2) YEARS W/THE
CITY

I certify that the above is true and correct to the best of my knowledge and that I have provided this information in order to obtain the benefits of Nevada's Industrial Insurance and Occupational Diseases Acts (NRS 616A to 616D, inclusive or chapter 617 of NRS). I hereby authorize any physician, chiropractor, surgeon, practitioner, or other person, any hospital, including veterans administration or governmental hospital, any medical service organization, any insurance company, or other institution or organization to release to each other, any medical or other information, including benefits paid or payable pertinent to this injury or disease, except information relative to diagnosis, treatment and/or counseling for aids, psychological conditions, alcohol or controlled substances, for which I must give specific authorization. A photostat of this authorization shall be as valid as the original.

Signature

Date

D-36 (Rev. 12-03)

HEARING & BALANCE

DOCTORS OF NEVADA

March 2, 2016

RE: Jared Spangler
Claim Number: 16C52G555847

To Whom It May Concern:

The above mentioned patient has a history of bilateral sensorineural hearing loss and tinnitus that are reported to have begun after being exposed to loud noises while on the job with the Henderson City Police Department. Mr. Spangler's main concern is that he has difficulty hearing conversational speech particularly if in the presence of background noise. He reports being frustrated due to not hearing his wife and children and having to have them repeat themselves often. Mr. Spangler also reported having tinnitus which interferes with his ability to relax in quiet environments.

Medical records that were provided for review by CCMSI which included Mr. Spangler's annual hearing evaluations from the time that he was a new hire with the police dept in 2003 with the most recent in 2015. Also included were records from a medical evaluation by Dr. Scott Manthel, D.O. ENT in 2005. In February 2016 Mr. Spangler was evaluated by Amanda Blake, Au.D. with Anderson Audiology which records were also provided.

After reviewing the provided medical records it is apparent that Mr. Spangler did have a mild to moderate hearing loss in his left ear and normal to mild high frequency hearing loss in his right ear prior to his employment with the Henderson City Police dept. However, in the thirteen years that Mr. Spangler has been employed as a police officer, his hearing has significantly decreased bilaterally. Hearing decrease is considered significant if a change of 10dB or more occur at three or more hearing thresholds.

By way of medical records review there is a high likelihood that there is an underlying condition that may be contributing to Mr. Spangler's hearing loss in his left ear. Dr. Manthel identified a possible tumor located in the area of the left cochlear nerve. However, there is a high probability that Mr. Spangler's threshold shift may be as a result of on the job noise exposure.

An independent audiology evaluation in February 2016 was also provided and reviewed. Amanda Blake, Au.D. an audiologist with Anderson Audiology also reviewed the above mentioned medical records of which I agree with her review with the exception of the MRI findings which she reported as negative. The MRI reports states that there is a possible lesion and that the recommendation of the radiologist is to re-image using a higher resolution MRI in order to confirm results.