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

3 CITY OF HENDERSON, CANNON
4 COCHRAN MANAGEMENT
5 SERVICES,
6 INC. (CCMSI),

7 Appellants,

8 v.

9 JARED SPANGLER,

10 Respondent.

SUPREME COURT NO.
76295

DISTRICT COURT NO:
A-17-759871-J

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Clerk of Supreme Court

11 **APPELLANTS' REPLY BRIEF**

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....	iii
NRAP 26.1 DISCLOSURE.....	vi
I. REPLY	1
II. CONCLUSION.....	4
CERTIFICATE OF COMPLIANCE	5
CERTIFICATE OF MAILING	7

TABLE OF AUTHORITIES

Cases

Page No(s).

Mitchell v. Clark County School District,
121 Nev. 179, 111 P.3d 1104 (2005).....2

STATUTES

NRS 616C.175.....2, 3
NRS 617.4403

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1. The Appellant, CANNON COCHRAN MANAGEMENT SERVICES, INC., states that it does not have any parent corporation, or any publicly held corporation that owns 10% or more of its stock, nor any publicly held corporation that has a direct financial interest in the outcome of the litigation. NRAP 26.1(a).

3. The undersigned counsel of record for CANNON COCHRAN MANAGEMENT SERVICES, INC. and CITY OF HENDERSON has appeared in this matter before District Court. DANIEL L. SCHWARTZ, ESQ., has also appeared for the same before Department of Administration.

...

...

...

1 These representations are made in order that the judges of this court may
2 evaluate possible disqualifications or recusal.

3
4 DATED this 7 day of June, 2019.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
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I.

REPLY

In his Opening Brief, Respondent does not even attempt to defend the District Court's interpretation of the term "accident" to include the consideration that each loud noise which causes damage to the hearing as a separate accident. Indeed, the reason why Respondent does not address this is because it is not the relief that Respondent is asking for. Rather, Respondent spends his entire brief making the same arguments that he made to both the Appeals Officer and the District Court. Based on Respondent's failure to address the specific holdings of the District Court's Order, this Honorable Court should construe the same as a tacit admission that the District Court's Order is not supportable under Nevada law. As such, Appellants will rest on the arguments made in their Opening Brief regarding the errors of the District Court order.

Regarding the Appeals Officer's Order, Respondent argues the wrong standard for this Court. Respondent argues that Appellants are attempting to have this Court reweigh the evidence. On the contrary, Appellants are asking this Court to find that the Appeals Officer's Decision was supported by substantial evidence. The question before this Court is not whether the District Court order is based on substantial evidence, but whether the Appeals Officer's order was. The Appeals Officer's Order was proper. Appellants are not asking this Court to reweigh

1 anything. On the other hand, Respondent is absolutely asking this Court to reweigh
2 the facts and find that the evidence supports his claim for industrial insurance
3 benefits.
4

5 Indeed, the Appeals Officer made a factual determination that Respondent
6 had failed to prove either an occupational disease or an acute injury. As was noted
7 by the Appeals Officer, "resolving whether an injury arose out of employment is
8 examined by a totality of the circumstances." Mitchell v. Clark County School
9 District, 121 Nev. 179, 111 P.3d 1104 (2005). The Appeals Officer considered all
10 of the evidence submitted (and again there is evidence to support both sides of this
11 case) and concluded that Respondent had failed to carry his burden in proving a
12 claim under either NRS 616C or NRS 617.
13
14
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16 Despite claiming that it is Appellants who are seeking to reweigh the
17 evidence, Respondent goes on to recount his interpretation of the expert reports
18 submitted to the Appeals Officer and claims that the Appeals Officer did not
19 properly weigh the same. Respondent has addressed all expert reports in its
20 Opening Brief and will spare this Court re-argument of this same herein. However,
21 it must not be lost that this Court is simply not the venue for re-arguing the facts of
22 the case.
23
24

25 In addition to attempting to reargue the facts of this case, Respondent also
26 argues that NRS 616C.175 applies yet fails to address how it can apply without
27

1 establishing an "injury by accident." This is the problem with both Respondent's
2 argument and the District Court's conclusions. Any way that this claim is argued,
3
4 Respondent cannot overcome the fact that he cannot prove an injury by accident.
5 Indeed, Respondent explicitly admits that he is not making a claim for an injury by
6 accident. As such, it was not error for the Appeals Officer to exclude reference or
7
8 analysis of NRS 616C.175.

9 Furthermore, and perhaps most salient, the Appeals Officer explicitly
10 concluded that Respondent had failed to establish an occupational disease claim
11 under NRS 617. Although Respondent argues stridently that the medical evidence
12 supports a conclusion that satisfies NRS 617.440, the Appeals Officer found
13 otherwise and there is substantial evidence in the record to affirm the same.
14
15

16 Put simply, the Appeals Officer's Decision in this case is supported by
17 substantial evidence and all that Respondent is attempting to do is request a
18 reweighing of the facts. What's more, even if Respondent's reading of the medical
19 evidence were accepted by the Appeals Officer, the fact is that NRS 616C.175
20 does not apply to this case and Respondent cannot make out a claim under NRS
21 617 given his previously denied claim and the fact that he had been working a desk
22 job for the years prior to filing the subject claim. The Appeals Officer's decision is
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24 proper and the District Court's Order should be reversed.
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II.

CONCLUSION

Based upon the foregoing, Appellants requests that this Court reverse the District Court, affirm the Appeals Officer, and hold that this claim was properly denied.

Dated this 7 day of June, 2019.

Respectfully submitted,

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1 CERTIFICATE OF COMPLIANCE

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared
5 in a proportionally spaced typeface using Microsoft Word in Times New Roman
6 font size 14.
7

8
9 2. I further certify that this brief complies with the type-volume
10 limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief
11 exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14
12 points or more, and contains 719 words and 65 lines of text.
13

14 3. Finally, I hereby certify that I have read this appellate brief, and to the
15 best of my knowledge, information, and belief, it is not frivolous or interposed for
16 any improper purpose. I further certify that this brief complies with all applicable
17 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
18 every assertion in the brief regarding matters in the record to be supported by a
19 reference to the page and volume number, if any, of the transcript or Appendix
20 where the matter relied on is to be found.
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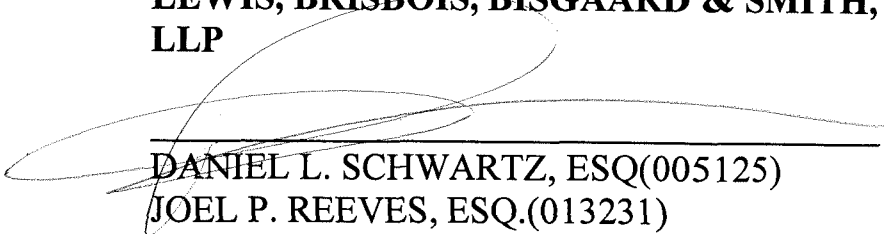
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1 4. I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 Respectfully submitted,
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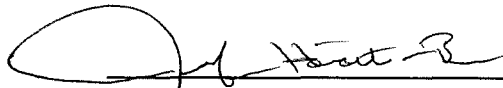
1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on
3 the 7th day of June, 2019, service of the attached **APPELLANTS' REPLY**
4 **BRIEF** was made this date by depositing a true copy of the same for mailing, first
5 class mail, and/or electronic service as follows:

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