

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

REDDY ICE CORPORATION; and
GALLAGHER BASSETT SERVICES, INC.,
Appellants,
v.
FRED GILL,
Respondent

No. 82109
Electronically Filed
Dec 04 2020 11:01 a.m.
DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 24

County Clark Judge Kerry Earley

District Ct. Case No. A-19-806602-J

2. Attorney filing this docketing statement:

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

Firm Lewis Brisbois Bisgaard & Smith

Address 2300 W. Sahara Ave. Ste. 900
Las Vegas, Nevada 89102

Client(s) Reddy Ice Corporation and Gallagher Bassett Services, Inc.

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

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

Attorney James P. Kemp, Esq Telephone (702) 258-1183

Firm Kemp & Kemp

Address 7435 W. Azure Drive, Suite 110
Las Vegas, NV 89130

Client(s) Fred Gill

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

None

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

None

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

This is a workers' compensation claim for carpal tunnel syndrome. On August 31, 2018, Petitioner denied this claim for failure to give statutory notice and a lack of mechanism of injury. Claimant appealed. The Hearing Officer affirmed claim denial. The claimant appealed. On October 9, 2019, this matter came on for hearing before the Appeals Officer. The claimant declined to give testimony and no actual hearing was had at claimant counsel's request. On November 22, 2019, the Appeals Officer signed the subject order affirming claim denial noting that the C-4 form was not executed until one hundred and twenty-four (124) days the alleged date of injury. Second, there was a delay of more than seven (7) days in reporting the condition given that the industrial diagnosis was given on July 27, 2018 and was not reported until August 22, 2018. Further, no mechanism of injury was ever alleged. Claimant's new counsel appealed. On August 28, 2020, the District Court reversed and remanded the Appeals Officer's order, finding in pertinent part that the Appeals Officer committed reversible error for allowing claimant to waive his right to a hearing. After a Motion for Reconsideration was heard and denied, Appellants filed this appeal.

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

Whether the District Court properly reversed the Appeals Officer despite the fact that claimant conceded to have his hearing without testimony or argument.

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

None.

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

☐ N/A

☐ Yes

☒ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(10) as it is a Petition for Judicial Review of a final decision of an administrative agency.

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

Was it a bench or jury trial? _____

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

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Nov 2, 2020

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

17. Date written notice of entry of judgment or order was served Nov 3, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Nov 11, 2020

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

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

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

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

(a) Parties:

FRED GILL - Petitioner

NEVADA DEPARTMENT OF ADMINISTRATION, an Agency of the State of Nevada; REDDY ICE CORPORATION; and GALLAGHER BASSETT SERVICES, INC - Respondents.

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

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

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

FRED GILL - Petition for Judicial Review

REDDY ICE CORPORATION; and GALLAGHER BASSETT SERVICES, INC -
Petition for Judicial Review

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

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

GALLAGHER BASSETT SERVICES
Name of appellant

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

Dec 4, 2020
Date

/s/ Daniel L. Schwartz, Esq.
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 4th day of December, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

1. James P. Kemp, Esq.
2. Reddy Ice Corporation, Inc.
3. Gallagher Bassett Services, Inc.
4. Nevada Dept. of Administration
5. Laura Freed, Nevada Dept. of Administration
6. Aaron Ford, Esq., Attorney General
7. Ishi Kunin, Esq. - Settlement Judge

Dated this 4th day of December, 2020

Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th day of December 2020, a true and correct
3 copy of this **DOCKETING STATEMENT** completed upon all counsel of record
4 by electronically filing the document using the Nevada Supreme Court's electronic
5 filing system and via US Mail.
6

7 JAMES KEMP, ESQ.
8 KEMP & KEMP
9 7435 W. AZURE DRIVE, SUITE 110
10 LAS VEGAS, NV 89130

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

11 REDDY ICE CORPORATION
12 ATTN: LEE HATCH
13 5720 LYNDON B. JOHNSON FWY., STE.
14 200
15 DALLAS, TX 75240

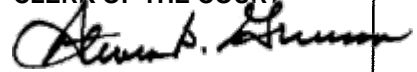
Laura Freed
Director, Department of Administration
Nevada Dept. Of Administration
515 East Musser Street, Third Floor
Carson City, Nevada 89701-4298

16 GALLAGHER BASSETT SERVICES, INC.
17 ATTN: YVETTE D. PHILLIPS
18 P.O. BOX 2934
19 CLINTON, IA 52733

Ishi Kunin, Esq.
KUNIN LAW GROUP
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 891453

20 Department of Administration
21 2200 S Rancho Dr., Ste. 220
22 Las Vegas, NV 89102
23
24
25
26
27
28

By /s/ Stephanie Jensen
an Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP



1 **NEOJ**
2 JAMES P. KEMP, ESQ.
3 Nevada Bar No. 6375
4 KEMP & KEMP
5 7435 W. Azure Drive, Suite 110
6 Las Vegas, Nevada 89130
7 (702) 258-1183
8 jp@kemp-attorneys.com

9 *Attorney for Petitioner,*
10 *Fred Gill*

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

13 * * *

14 FRED GILL,

15 Petitioner,

16 vs.

Case No.: A-19-806602-J

Dept. No. IV

17 NEVADA DEPARTMENT OF
18 ADMINISTRATION, an agency of the State
19 of Nevada; REDDY ICE CORPORATION;
20 and GALLAGHER BASSETT SERVICES,
21 INC.,

22 Respondents.

23 **NOTICE OF ENTRY OF ORDER**
24 **DENYING RESPONDENT'S MOTION**
25 **FOR RECONSIDERATION, TO ALTER**
26 **JUDGMENT, AND/OR TO AMEND**
27 **FINDINGS**

28 TO: DANIEL L. SCHWARTZ, ESQ. and JOEL REEVES, ESQ., attorneys for Respondents

PLEASE TAKE NOTICE that on the 2nd day of November 2020 an ORDER was entered
in the above-entitled matter, a copy of which is attached hereto.

DATED THIS 3rd day of November 2020.

/s/James P. Kemp
JAMES P. KEMP, ESQ.
Nevada Bar No. 6375
KEMP & KEMP, Attorneys at Law
7435 W. Azure Drive, Suite 110
Las Vegas, Nevada 89130
(702) 258-1183
Attorney for Petitioner, Fred Gill

KEMP & KEMP
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ATTORNEYS AT LAW
7435 W. Azure Drive, Suite 110
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CERTIFICATE OF MAILING

I hereby certify that service of the NOTICE OF ENTRY OF ORDER DENYING
RESPONDENT'S MOTION FOR RECONSIDERATION, TO ALTER JUDGMENT,
AND/OR TO AMEND FINDINGS was made on the 3rd day of November 2020 by depositing
true and correct copies of same in the U.S. mail in Las Vegas, Nevada, addressed to the following
persons:

Karl Armstrong, Esq.
Appeals Officer
Department of Administration
2200 S. Rancho Dr., Ste. 220
Las Vegas, NV 89102

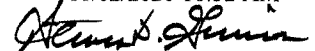
Mr. Fred Gill
344 Keating St.
Henderson, NV 89074

Daniel L. Schwartz, Esq.
Joel Reeves, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W. Sahara Ave., Suite 900 Box 28
Las Vegas, NV 89102-4375
Attorneys for Respondents

Gallagher Bassett
P.O. Box 2934
Clinton, IA 52733-2934

Service was also affected on all persons and parties registered through the court's Odyssey e-file
and serve system function when filed with the court on November 2, 2020.

/s/ James P. Kemp
An Employee of KEMP & KEMP, Attorneys at Law


 CLERK OF THE COURT

JAMES P. KEMP, ESQ.
 Nevada Bar No. 6375
 KEMP & KEMP
 7435 W. Azure Drive, Suite 110
 Las Vegas, Nevada 89130
 (702) 258-1183
 jp@kemp-attorneys.com
 Attorney for Petitioner

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

FRED GILL,

Petitioner

vs.

NEVADA DEPARTMENT OF
 ADMINISTRATION, an agency of the State of
 Nevada; REDDY ICE CORPORATION; and
 GALLAGHER BASSETT SERVICES, INC.,
 Respondents.

Case No.: A-19-806602-J

Dept. No. 4

Hearing Date: October 16, 2020

Hearing Time: In Chambers

**ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION, TO
 ALTER JUDGMENT, AND/OR TO AMEND FINDINGS**

THIS MATTER came on for before the court in chambers on October 16, 2020 on Respondents REDDY ICE CORPORATION and GALLAGHER BASSETT SERVICES, INC.'s Motion for Reconsideration, to Alter Judgment, and/or to Amend Findings.

The court has carefully considered the Record on Appeal, the papers and pleadings on file herein, the briefs filed by the parties and considered the arguments of counsel.

A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted. *Moore v. City of Las Vegas*, 9 Nev. 402, 405, 551 P.2d 244, 246 (1976).

THE COURT FINDS that Respondents have not raised any new issues of fact or law,

J.P. Kemp

From: Reeves, Joel <Joel.Reeves@lewisbrisbois.com>
Sent: Wednesday, October 28, 2020 10:04 AM
To: J.P. Kemp
Cc: Schwartz, Daniel
Subject: RE: Fred Gill A-19-806602-J Order on Reconsideration

Hey JP,

This is fine. You can e-sign for me. Thanks.



Joel P. Reeves
Attorney
Joel.Reeves@lewisbrisbois.com
T: 702.583.6006 F: 702.366.9563

2300 West Sahara Avenue
Suite 900, Box 28, Las Vegas, NV 89102 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

From: J.P. Kemp <jp@kemp-attorneys.com>
Sent: Monday, October 26, 2020 9:14 PM
To: Reeves, Joel <Joel.Reeves@lewisbrisbois.com>
Cc: Schwartz, Daniel <Daniel.Schwartz@lewisbrisbois.com>
Subject: [EXT] Fred Gill A-19-806602-J Order on Reconsideration

External Email

Counsel:

Attached is the proposed order taken from the court's minute order. Please review and if acceptable please sign where indicated an return to me or authorize me to attach your electronic signature. If you have any questions or concerns contact me as soon as possible. If I have not heard back from you before Noon on Thursday I will note that I did not receive a response and submit the order. Friday is a holiday for state court so I want to submit it before close of business on Thursday. Thanks.

If you have any questions or concerns reply to this e-mail or contact me at (702) 258-1183.

Sincerely,

J.P. Kemp, Esq.
KEMP & KEMP, Attorneys at Law

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Fred Gill, Petitioner(s)

CASE NO: A-19-806602-J

7 vs.

DEPT. NO. Department 4

8 Nevada Department of
9 Administration, Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/2/2020

15 James Kemp

jp@kemp-attorneys.com

16 Barbara Valdez

bvaldez@kemp-attorneys.com

17 Daniel Schwartz

daniel.schwartz@lewisbrisbois.com

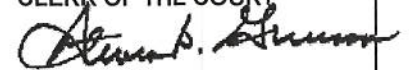
18 Joel Reeves

joel.reeves@lewisbrisbois.com

19 Stephanie Jensen

stephanie.jensen@lewisbrisbois.com

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27
28



CASE NO: A-19-806602-J
Department 24

PETN
JAMES P. KEMP, ESQ.
Nevada Bar No. 006375
KEMP & KEMP
7435 W. Azure Drive, Suite 110
Las Vegas, NV 89130
(702) 258-1183/(702) 258-6983 fax
jp@kemp-attorneys.com
Attorney for Petitioner,

DISTRICT COURT
CLARK COUNTY, NEVADA

FRED GILL,
Petitioner,

vs.

NEVADA DEPARTMENT OF
ADMINISTRATION, an agency of the State of
Nevada; REDDY ICE CORPORATION; and
GALLAGHER BASSETT SERVICES, INC.
Respondents.

Case No.:

Dept. No.:

PETITION FOR JUDICIAL REVIEW

Arbitration Exemption Claimed:
Review of Administrative Decision

COMES NOW, Petitioner, FRED GILL, by and through his attorney, James P. Kemp, Esq., and files this Petition for Judicial Review of the Administrative Decision of the Appeals Officer, KARL W. ARMSTRONG, ESQ., dated November 22, 2019, a copy of which is attached hereto and incorporated herein for all purposes by this reference.

This Petition for Judicial Review is filed pursuant to the provisions of NRS 233B.130 and is based upon the grounds listed in NRS 233B.135 (3). Substantial rights of the claimant, FRED GILL, have been prejudiced because the decision of the Appeals Officer is:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;

- 1 c. Made upon unlawful procedure;
2
3 d. Affected by other error of law;
4
5 e. Clearly erroneous in view of the reliable, probative and substantial evidence on the
6 whole record; and/or
7
8 f. Arbitrary or capricious or characterized by abuse of discretion.

9
10 It is specifically requested that the Court review written briefs and hear oral arguments.

11 DATED this 9TH day of December, 2019.

12 /s/ James P. Kemp
13 JAMES P. KEMP, ESQ
14 Nevada Bar Number: 006375
15 7435 W. Azure Drive, Suite 110
16 Las Vegas, NV 89130
17 (702) 258-1183
18 Attorney for Petitioner
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KEMP & KEMP
ATTORNEYS AT LAW
7435 W. Aztec Drive, Suite 110
LAS VEGAS, NEVADA 89130
Tel. (702) 258-1183 • Fax (702) 258-6983

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of James P. Kemp, Esq. and on December 10, 2019, I duly deposited at Las Vegas, Nevada, a true copy of the above and foregoing PETITION FOR JUDICIAL REVIEW with postage prepaid to the following:

Karl W. Armstrong, Esq., Appeals Officer
NEVADA DEPARTMENT OF ADMINISTRATION
Hearings Division, Appeals Office
2200 South Rancho Drive, Suite 220
Las Vegas, NV 89102

Aaron Ford, Esq.
Attorney General
100 N. Carson Street
Carson City, NV 89701

Fred Gill
344 Keating Street
Henderson, NV 89074

Daniel L. Schwartz, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
2300 W. Sahara Ave, Ste 300 Box 28
Las Vegas, NV 89102-4375

REDDY ICE CORPORATION
Attn.: Lee Hatch
5720 Lyndon B. Johnson Fwy, Ste 200
Dallas, TX 75240

Gallagher Bassett Services, Inc.
Attn. Yvette D. Phillips
P.O. Box 2934
Clinton, IA 52733

~~Patrick Cates~~, Director *Peter Long*
State of Nevada Dept. of Admin.
515 E. Musser Street, Suite 300
Carson City, NV 89701

DATED this 9th day of December 2019

/s/James P. Kemp
An Employee of James P. Kemp, Esq.

1 NEVADA DEPARTMENT OF ADMINISTRATION

2 BEFORE THE APPEALS OFFICER

3 In the Matter of the Contested
4 Industrial Insurance Claim

5 of

6 FRED GILL
7 344 KEATING ST.
8 HENDERSON, NV 89074,

9 Claimant.

Claim No.: 001589-006383-WC-01

Hearing Nos.: 1904239-JK
1905021-JK

Appeal Nos : 1906897-KWA
1906901-KWA

Employer:

REDDY ICE CORPORATION
5720 LYNDON B JOHNSON FWY., STE. 200
DALLAS, TX 75240

11 DECISION AND ORDER

12 The above-captioned appeals came on for hearing before Appeals Officer KARL W.
13 ARMSTRONG, ESQ, on October 9, 2019. The claimant, FRED GILL, (hereinafter referred to as
14 "claimant"), was represented by JILL A. KOLOSKE, ESQ., of NEVADA ATTORNEY FOR
15 INJURED WORKERS. The Employer, REDDY ICE CORPORATION, (hereinafter referred to as
16 "Employer"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS
17 BISGAARD & SMITH LLP.

18 On August 31, 2018, the Administrator issued a determination denying the claim.
19 Claimant appealed and in a Decision and Order dated November 1, 2018, the Hearing Officer affirmed
20 claim denial. Claimant appealed to this Court, generating Appeal No. 1906897-KWA.

21 On September 13, 2018, the Administrator denied claimant's request for benefits.
22 Claimant appealed and the parties agreed to bypass the Hearing Officer and proceed to this Court,
23 generating Appeal No. 1906901-KWA.

24 The appeals were consolidated and this hearing followed.

25 After reviewing the documentary evidence and considering the arguments presented by
26 counsel, the Appeals Officer decides as follows:

27 ///

FINDINGS OF FACT

1. Prior to the instant claim, claimant alleged a January 11, 2011 right hand claim. Claimant presented for a permanent partial disability and a zero percent impairment was found. (Exhibit 2 at 1-20)

2. The claimant, FRED GILL, alleged a date of injury of April 12, 2018, for left hand and wrist nerve damage. However, no C-4 form was executed by any medical provider until August 31, 2018, some one hundred and twenty four (124) days after the alleged date of injury. On the C-4 form, the claimant provides no description of mechanism of injury. It should also be noted that the C-4 form shows that the claimant was seen on July 27, 2018, some eighty nine (89) days after the alleged date of injury, at the Minimally Invasive Hand Institute by Dr. Jonathan Sorelle. The claimant was assessed with left DeQuervains and left carpal tunnel with diffuse hand swelling and possible infection. EMG testing was recommended and modified duty work restrictions were issued. The top half of the available C-4 form was never executed by the claimant. (Exhibit 1 at 1)

3. The Employer's Report of Industrial Injury or Occupational Disease notes that an August 22, 2018 date of injury that was reported on August 22, 2018. Validity of the claim was doubted. (Exhibit 1 at 2)

4. On August 29, 2018, the adjuster noted, "Spoke to claimant and he stated he last worked on 8/13/18. He states his hand became swollen a couple months back and he thought he had been bitten by an insect. He sought treatment and testing was completed, diagnosing him with left hand carpal tunnel. He was scheduled to have surgery at the end of July by Dr. Jonathan Sorelle, however Aetna, cancelled the surgery advising him his surgery was work related." (Exhibit 1 at 3)

5. The claimant's job description as a delivery driver has been provided. (Exhibit 1 at 4-5)

6. A work release was completed by Dr. Sorelle on August 13, 2018, giving light duty work restrictions from August 13-21, 2018. It was noted that the claimant was scheduled to undergo surgery on August 21, 2018. (Exhibit 1 at 6)

7. On August 31, 2018, a claim denial determination was issued. (Exhibit 1 at 7-8)

1 disability, and all facets of the claim by a preponderance of all of the evidence. To prevail, a claimant
2 must present and prove more evidence than an amount which would make his case and his opponent's
3 "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss, 108 Nev.
4 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The Law of
5 Workmen's Compensation, § 80.33(a).

6 3. NRS 616A.010(2) makes it clear that:

7 A claim for compensation filed pursuant to the provisions of chapters
8 616A to 616D, inclusive, or chapter 617 of NRS must be decided on
9 its merit and not according to the principle of common law that
10 requires statutes governing worker's compensation to be liberally
11 construed because they are remedial in nature.

12 4. Based upon the present information, the evidence supports the Employer's
13 position that the claimant has failed to meet his burden of establishing a compensable claim, arising
14 out of and in the course and scope of his employment.

15 5. As noted above, no C-4 form was fully executed by the claimant. The C-4 form
16 executed by the Dr. Sorelle was not completed until August 31, 2018, which is one hundred and
17 twenty four days after the stated date of injury of April 29, 2018. Further, the claimant never stated
18 or described any mechanism of injury. In addition, there is a delay of more than seven days in
19 reporting the alleged industrial injury or occupational disease. CTS/DeQuervains appears to have been
20 assessed on July 27, 2018. Therefore, based upon the above facts, the determination to deny the claim
21 is proper.

22 6. Given the facts of the case, the determination to deny this claim was proper
23 under NRS 617.342 and NRS 617.344 due to the claimant's failure to timely report the alleged injury
24 to the Employer. Those statutes state:

25 NRS 617.342 Notice of occupational disease: Requirements;
26 availability of form; retention.

27 1. An employee or, in the event of the employee's death, one
28 of the dependents of the employee, shall provide written notice of an
occupational disease for which compensation is payable under this
chapter to the employer of the employee as soon as practicable, but
within 7 days after the employee or dependent has knowledge of the
disability and its relationship to the employee's employment.

2. The notice required by subsection 1 must:

(a) Be on a form prescribed by the Administrator. The form must allow the employee or the dependent of the employee to describe briefly the circumstances which caused the disease or death.

(b) Be signed by the employee or by a person on behalf of the employee, or in the event of the employee's death, by one of the dependents of the employee or by a person acting on behalf of the dependent.

(c) Include an explanation of the procedure for filing a claim for compensation.

(d) Be prepared in duplicate so that the employee or the dependent of the employee and the employer can retain a copy of the notice.

3. Upon receipt of the notice required by subsection 1, the employer, the employee's supervisor or the agent of the employer who was in charge of the type of work performed by the employee shall sign the notice. The signature of the employer, the supervisor or the employer's agent is an acknowledgment of the receipt of the notice and shall not be deemed to be a waiver of any of the employer's defenses or rights.

4. An employer shall maintain a sufficient supply of the forms required to file the notice required by subsection 1 for use by his or her employees.

5. An employer shall retain any notice provided pursuant to subsection 1 for 3 years after the date of the receipt of the notice. An employer insured by a private carrier shall not file a notice of injury with the private carrier.

NRS 617.344 Claim for compensation: Requirements for diseased employee, dependent or representative to file claim; form.

1. Except as otherwise provided in subsection 2, an employee who has incurred an occupational disease, or a person acting on behalf of the employee, shall file a claim for compensation with the insurer within 90 days after the employee has knowledge of the disability and its relationship to his or her employment.

2. In the event of the death of the employee resulting from the occupational disease, a dependent of the employee, or a person acting on his or her behalf, shall file a claim for compensation with the insurer within 1 year after the death of the employee.

3. The claim for compensation must be filed on a form prescribed by the Administrator.

7. Further, even if the claimant reported the incident and the claim timely he still could not establish a compensable claim as there is no specific mechanism of injury or acute trauma alleged and the claimant has not met the requirements for a compensable occupational disease under NRS 617.440. It is unclear what mechanism of injury is or if there is some sort of industrial repetitive

1 motion being alleged. There is simply no established industrial hazard or risk upon which to base this
2 claim. Therefore, claim denial is legal and proper.

3 8. Under NRS 616C.150(1), the claimant has the burden of proof to show that the
4 injury arose out of and in the course and scope of his employment. The claimant must satisfy this
5 burden by a preponderance of the factual and medical evidence. Further, NRS 616B.612 mandates
6 that an employee is only entitled to compensation if he is injured in the course and scope of his
7 employment. In this case, given the facts set forth above, the claimant does not have the proper
8 medical evidence to establish a compensable industrial injury claim.

9 9. NRS 616A.030 defines an accident as "... an unexpected or unforeseen event
10 happening suddenly and violently, with or without human fault, and producing at the time objective
11 symptoms of an injury." Additionally, NRS 616A.265 defines an injury as "... a sudden and tangible
12 happening of a traumatic nature, producing an immediate or prompt result which is established by
13 medical evidence" In this case, given the facts set forth above, especially the lack of any acute
14 trauma or specific mechanism of injury, there is no statutory accident or injury.

15 10. Here, the Nevada Supreme Court has held that:

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

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

20 11. This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev.
21 532, 936 P.2d 839 (1997) case, which held that "mere speculation and belief does not rise to the level
22 of reasonable medical certainty." Claim denial is proper given the facts set forth above.

23 12. Furthermore, the Court has held that:

24 An accident or injury is said to arise out of employment when there is
25 a causal connection between the injury and the employee's work ...
26 the injured party must establish a link between the 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.

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

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

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

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

17 15. The Court in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. 346, 240 P.3d
18 2 (2010) clarified Mitchell. It indicated that:

19 "The appeals officer found that Phillips' case was 'distinguishable'
20 from Mitchell because Phillips' injury did not result from an
21 'unexplained fall.' Without elaborating, the appeals officer also
22 stated that '[t]he Mitchell [c]ourt mentions the inherent
23 dangerousness of stairways.' . . . [The Court in Rio further discussed
24 Mitchell: "The employee argued that because she did not have a
25 health affliction that caused her to fall and 'because staircases are
26 inherently dangerous,' her injury "arose out of her employment." . . .
27 The appeals officer determined that the employee's fall did not arise
28 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.'

1 16. There is no showing that there is any origin of injury related to some hazard or
2 risk within the expected course and scope of employment, given the lack of any specified mechanism
3 of injury, including any alleged repetitive motion injury.

1 17. Finally, the claimant failed to meet the requirements for a compensable
2 occupational disease under NRS 617.440. That provision states:

3 NRS 617.440 Requirements for occupational disease to be deemed
4 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 occupational
9 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 would
16 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 source
23 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 rays
26 (X-rays) or ionizing radiation, the poisoning or illness resulting in
27 disability must have been contracted in the State of Nevada.

28 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.

18. Claimant does not have the requisite medical reporting to establish a
compensable occupational disease. Therefore, the claim also fails in this regard. This decision is
based upon the timing of the claim for compensation being filed, the lack of a mechanism of injury /
occupational disease and the lack of causal medical reporting. It is not based upon the claimant's
credibility.

///

///

///

///

1 DECISION AND ORDER

2 The claimant, FRED GILL, has failed to meet his burden of establishing a compensable
3 workers' compensation claim.

4 IT IS HEREBY ORDERED that the Hearing Officer's Decision and Order dated
5 November 1, 2018, which affirmed the August 31, 2018 claim denial determination, is AFFIRMED.

6 IT IS ALSO HEREBY ORDERED that the August 31, 2018 determination denying the
7 claim is AFFIRMED.

8 IT IS ALSO HEREBY ORDERED that the September 13, 2018 determination denying
9 claimant's request for benefits is AFFIRMED.

10 IT IS SO ORDERED.

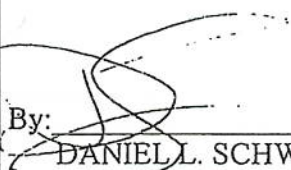
11 DATED, this 18 day of November, 2019.

12 
13 KARL W. ARMSTRONG, ESQ.
14 APPEALS OFFICER

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

18 Submitted by,

19 LEWIS BRISBOIS BISGAARD & SMITH LLP

20 
21 By: DANIEL L. SCHWARTZ, ESQ.
22 Nevada Bar No. 005125
23 2300 W. Sahara Ave., Ste. 300, Box 28
24 Las Vegas, NV 89102
25 Tel.: 702.893.3383
26 Fax: 702.366.9563
27 Attorneys for the Employer,
28 REDDY ICE CORPORATION

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:

FRED GILL
344 KEATING ST.
HENDERSON, NV 89074

JILL A. KOLOSKE, ESQ.
NEVADA ATTORNEY FOR INJURED WORKERS
2200 S. RANCHO DR., STE. 230
LAS VEGAS, NV 89102

REDDY ICE CORPORATION
ATTN.: LEE HATCH
5720 LYNDON B JOHNSON FWY., STE. 200
DALLAS, TX 75240

GALLAGHER BASSETT SERVICES, INC.
ATTN.: YVETTE D. PHILLIPS
P.O. BOX 2934
CLINTON, IA 52733

DANIEL L. SCHWARTZ, ESQ.
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W. SAHARA AVE., STE. 300, BOX 28
LAS VEGAS, NV 89102

DATED this 22nd day of November, 2019.




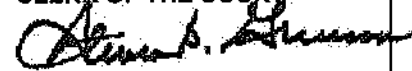
An employee of the STATE OF NEVADA

RECEIVED

NOV 22 2019

NEVADA ATTORNEY
FOR INJURED WORKERS
LAS VEGAS





1 **NEOJ**
2 JAMES P. KEMP, ESQ.
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5 7435 W. Azure Drive, Suite 110
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7 (702) 258-1183
8 jp@kemp-attorneys.com

9 *Attorney for Petitioner,*
10 *Fred Gill*

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

13 ***

14 FRED GILL,

15 Petitioner,

16 vs.

17 NEVADA DEPARTMENT OF
18 ADMINISTRATION, an agency of the State
19 of Nevada; REDDY ICE CORPORATION;
20 and GALLAGHER BASSETT SERVICES,
21 INC.,

22 Respondents.

Case No.: A-19-806602-J

Dept. No. IV

NOTICE OF ENTRY OF ORDER
GRANTING IN PART PETITION FOR
JUDICIAL REVIEW AND REMANDING
FOR FURTHER PROCEEDINGS

23 TO: DANIEL L. SCHWARTZ, ESQ. and JOEL REEVES, ESQ., attorneys for Respondents

24 PLEASE TAKE NOTICE that on the 28th day of August, 2020 an ORDER was entered in
25 the above-entitled matter, a copy of which is attached hereto.

26 DATED THIS 7th day of September, 2020.

27 /s/James P. Kemp

28 JAMES P. KEMP, ESQ.
Nevada Bar No. 6375
KEMP & KEMP, Attorneys at Law
7435 W. Azure Drive, Suite 110
Las Vegas, Nevada 89130
(702) 258-1183
Attorney for Petitioner, Fred Gill

KEMP & KEMP
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7435 W. Azure Drive, Suite 110
LAS VEGAS, NEVADA 89130
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CERTIFICATE OF MAILING

I hereby certify that service of the NOTICE OF ENTRY OF ORDER GRANTING IN PART PETITION FOR JUDICIAL REVIEW AND REMANDING FOR FURTHER PROCEEDINGS was made on the 8th day of September 2020 by depositing true and correct copies of same in the U.S. mail in Las Vegas, Nevada, addressed to the following persons:

Karl Armstrong, Esq.
Appeals Officer
Department of Administration
2200 S. Rancho Dr., Ste. 220
Las Vegas, NV 89102

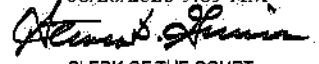
Mr. Fred Gill
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Daniel L. Schwartz, Esq.
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Attorneys for Respondents

Gallagher Bassett
P.O. Box 2934
Clinton, IA 52733-2934

Service was also affected on all persons and parties registered through the court's Odyssey e-file and serve system function when filed with the court on September 7, 2020.

/s/ James P. Kemp
An Employee of KEMP & KEMP, Attorneys at Law


 CLERK OF THE COURT

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 Attorney for Petitioner

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

FRED GILL,

Petitioner

vs.

NEVADA DEPARTMENT OF
 ADMINISTRATION, an agency of the State of
 Nevada; REDDY ICE CORPORATION; and
 GALLAGHER BASSETT SERVICES, INC.,
 Respondents.

Case No.: A-19-806602-J

Dept. No. 24

Hearing Date: July 23, 2020

Hearing Time: 9:00 a.m.

**ORDER GRANTING IN PART PETITION FOR JUDICIAL REVIEW AND
 REMANDING FOR FURTHER PROCEEDINGS**

THIS MATTER came on for hearing before the court on July 23, 2020 at 9:00 a.m. on the Petitioner's Petition for Judicial Review of a Nevada Department of Administration workers' compensation Appeals Officer decision. The Petitioner was represented by JAMES P. KEMP, ESQ., Respondents REDDY ICE CORPORATION and GALLAGHER BASSETT SERVICES, INC. were represented by JOEL P. REEVES, ESQ. No other person, party, or agency filed a timely Notice of Intent to Participate pursuant to NRS 233B.130(3).

The court has carefully considered the Record on Appeal, the papers and pleadings on file herein, the briefs filed by the parties and considered the arguments of counsel. The crucial issues in this appeal are as follows:

- 1) Whether this matter is an Occupation Disease workers' compensation claim governed by NRS Chapter 617, the Nevada Occupational Disease Act, rather than an Injury Claim governed solely by NRS Chapters 616A-616D of the Nevada Industrial Insurance Act;

- 1 2) Whether the Appeals Officer's Decision and Order rests on a legal error or an abuse of
2 discretion with respect to its finding that there was no evidence to support medical
3 causation of an occupational disease claim despite Dr. Sorrelle having checked the "yes"
4 box on the C-4 form to the question, "From information given by the employee,
5 together with medical evidence, can you directly connect this injury or occupational
6 disease as job incurred?" and the lack of any contradictory medical evidence and in light
7 of the provisions of NRS 616C.098;
8
- 9 3) Whether the Appeals Officer's Decision and Order rests on a legal error or an abuse of
10 discretion with respect to its finding that Petitioner failed to timely file his workers'
11 compensation claim by the C-4 form dated August 21, 2018, in compliance with NRS
12 617.344 when the C-4 form was filed less than 90 days after Dr. Leo Germin confirmed
13 the diagnosis of carpal tunnel syndrome on June 7, 2018 through nerve studies
14 performed that date;
15
- 16 4) Whether the Appeals Officer's Decision and Order rests on a legal error or an abuse of
17 discretion with respect to its finding that Petitioner failed to timely give written notice of
18 his occupational disease to his employer as required by NRS 617.342(1) where the
19 evidence provided shows that Petitioner did provide written notice, albeit not on a C-1
20 form because no C-1 form appears to have been provided by the employer as required
21 by implication of NRS 616.342(4)'s requirement that employers keep a sufficient supply
22 of blank C-1 forms on hand, and the Appeals Officer appears to have failed to consider
23 whether or not the failure to file a C-1 notice of occupational disease in strict accordance
24 with NRS 617.342 should be excused under the provisions of NRS 617.346(2).
25

26 For the reasons set forth herein the court finds that the Appeals Officer committed legal
27 error or abused his discretion on issues 1), 2), and 3) above and the court will GRANT the Petition
28

1 for Judicial Review on those three issues pursuant to NRS 233B.135. The court finds that
2 substantial rights of the Petitioner have been prejudiced by legal error, clear error on the evidence
3 and facts, unlawful procedure in failing to appropriately consider NRS 617.346(2), and arbitrary or
4 capricious or characterized by an abuse of discretion.

5 As to issue 4) above, the court finds that the record was not sufficiently developed as to
6 whether Petitioner complied with the substance of NRS 617.342 and/or if he provided sufficient
7 evidence to require that he be excused from compliance with NRS 617.342 under the provisions of
8 NRS 617.346(2). The court will, therefore, remand this matter for further proceedings and a new
9 hearing at which the Appeals Officer will take evidence on whether or not the Petitioner gave
10 sufficient written notice to his employer and, if not, whether or not the failure is excused under the
11 provisions of NRS 617.346(2). The Appeals Officer will issue a new Decision and Order and, if he
12 finds in favor of Petitioner on these issues, order that the claim be accepted for all appropriate
13 workers' compensation benefits.
14

15 NRS 233B.135 (3) states as follows:
16

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

- 21 (a) In violation of constitutional or statutory provisions;
22 (b) In excess of the 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
26 evidence on the whole record; or
27 (f) Arbitrary or capricious or characterized by abuse of discretion.

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

The court does not substitute its own judgment for that of the agency on questions of fact.
NRS 233B.135(3). This court's role in reviewing an administrative decision is to "review the
evidence presented to the agency in order to determine whether the agency's decision was arbitrary

1 or capricious and was thus an abuse of the agency's discretion." Langman v. Nevada
2 Administrators, Inc., 114 Nev. 203, 207, 955 P.2d 188 (1998). If substantial evidence does not exist
3 to support the Appeals Officer's findings of fact, then his decision should be reversed. Bullock v.
4 Pinnacle Risk Mgmt., 113 Nev. 1385, 1388, 951 P.2d. 1036 (1997). Substantial evidence is "that
5 quantity and quality of evidence which a reasonable [person] could accept as adequate to support a
6 conclusion." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267, 270 (1993) (internal quotation marks and
7 citations omitted). Where the findings of the Appeals Officer are against the manifest weight of the
8 evidence, the findings should be set aside. Id.

10 Independent review, rather than a deferential approach, is appropriate where the issue is a
11 question of law, such as the construction of a statute or regulation. Langman v. Nevada
12 Administrators, Inc., 114 Nev. 203, 207, 955 P.2d 188 (1998). Accordingly, questions of law are
13 reviewed *de novo*. Bullock v. Pinnacle Risk Mgmt., 113 Nev. 1385, 1388, 951 P.2d. 1036 (1997). If
14 the agency's decision is clearly erroneous, it should be reversed. Id.; State, Emp. Sec. v. Reliable
15 Health Care, 115 Nev. 253, 257 (1999).

17 As to Issue 1), in this case the Appeals Officer erred as a matter of law in not conclusively
18 determining that Petitioner's carpal tunnel syndrome and DeQuervain's tendonitis conditions were
19 repetitive use occupational diseases making the claim a claim for an occupational disease under NRS
20 Chapter 617. This is important because it determines which statutes govern claim filing time limits
21 which in this case is under NRS 617.342 and NRS 617.344. Repetitive motions engaged in over
22 time in employment that cause conditions like carpal tunnel syndrome or other degenerative
23 conditions are properly considered as occupational diseases under NRS Chapter 617. See Desert
24 Inn Casino & Hotel v. Moran, 106 Nev. 334, 336-337, 792 P.2d 400 (1990) (masseuse who suffered
25 aggravation of degenerative joint condition in hands by repetitive motions performed at work had
26 compensable occupational disease). Here the Petitioner was found by his doctor to suffer from
27

1 carpal tunnel syndrome and DeQuervain's tendonitis by virtue of his long history of repetitive
2 motions in delivering ice and moving the ice around in the machines. This is an occupational
3 disease claim under NRS Chapter 617 and the Appeals Officer's seeming to find that it was an injury
4 by accident claim under NRS Chapter 616C was legal error or clearly erroneous under the facts of
5 the case. Any finding that states or implies that this was an injury by accident case instead of an
6 occupational disease case is REVERSED on judicial review.
7

8 As to Issue 2), the Appeals Officer committed clear error of law or an abuse of discretion in
9 finding that Petitioner did not meet his burden of establishing medical causation of his occupational
10 disease. All of the elements of a valid occupational disease claim under NRS 617.440 were present
11 and established in this case. This is evidenced by the *prima facie* evidence of a compensable
12 occupational disease set forth in the C-4 form which is the claim form to file the workers'
13 compensation claim. In the August 21, 2018 C-4 form Dr. Sorrelle checked the "yes" box to the
14 question, "From information given by the employee, together with medical evidence, can you
15 directly connect this injury or occupational disease as job incurred?" This is the equivalent of stating
16 that the occupational diseases diagnosed on the form are, to a reasonable degree of medical
17 probability, caused by the Petitioner's work for the employer under the provisions of NRS
18 616C.098. Accordingly, the Petitioner made out his case of industrial medical causation and all of
19 the other requirements under NRS 617.440. The court has searched the Record on Appeal and
20 found no medical evidence to contradict the findings of Dr. Sorrelle. Accordingly, the Appeals
21 Officer's decision, to the extent that it finds no evidence to support medical causation of the carpal
22 tunnel syndrome and DeQuervain's tendonitis is not supported by substantial evidence on the
23 record taken as a whole and therefore rests on an abuse of discretion and must be reversed on
24 judicial review.
25
26

27 As to Issue 3), the Appeals Officer's Decision and Order rests on a legal error or an abuse of
28

1 discretion with respect to its finding that Petitioner failed to timely file his workers' compensation
2 claim. The C-4 form dated August 21, 2018 was filed in compliance with the time limits set forth in
3 NRS 617.344 when the C-4 form was filed less than 90 days after Dr. Leo Germin confirmed the
4 diagnosis of carpal tunnel syndrome on June 7, 2018 through nerve studies performed that date.
5 NRS 617.344 requires that a claim be filed within 90 days of the date on which the Petitioner knew
6 of the causal connection between his work and his occupational disease. Until Dr. Germin
7 confirmed the diagnosis by the nerve studies on June 7, 2018 there was no way for the Petitioner to
8 know about the diagnosis and its relation to his work. Petitioner contends that he did not actually
9 find out about this connection until he saw Dr. Sorrelle on June 27, 2018; however, it is irrelevant to
10 the NRS 617.344 claim filing time limit issue because the period between June 7, 2018 and August
11 21, 2018 when the claim was filed is less than 90 days. As a matter of law the claim was timely filed.
12 The argument that there was a "date of injury" on April 29, 2018 is immaterial because this is an
13 occupational disease claim where there is no "date of injury" to trigger the claim filing 90-day clock.
14 Because of this clear legal error the Appeals Officer's findings that the claim was not timely filed
15 must be set aside and reversed on judicial review under NRS 233B.135(3).
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18 As to Issue 4), the court finds that the record was not sufficiently or adequately developed
19 and that the Appeals Officer did not adequately consider whether or not the Petitioner actually
20 provided sufficient written notice under NRS 617.342, OR if any delay or failure to provide written
21 notice (typically done with a C-1 form) to the Employer should be excused for one of the reasons
22 set forth in NRS 617.346(2). There is no evidence in the Record on Appeal that refutes the
23 Petitioner's evidence that he reported the occupational disease on June 27, 2018 and that the
24 Employer had him write down the details on a blank sheet of paper that he then turned into the
25 Employer's management personnel. The evidence points to the Employer failing to provide a C-1
26 form for the Petitioner to fill out which appears to be a possible violation of the Employer's legal
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1 duties under NRS 617.342(4) and (5). These matters must be fleshed out in further proceedings
2 before the Appeals Officer. The Appeals Officer did not conduct a hearing into these matters and
3 the court finds this to be an unlawful procedure under NRS 233B.135(3)(c). Accordingly, pursuant
4 to the authority granted the court by NRS 233B.135(3), the court orders this matter remanded to the
5 Appeals Officer for a new hearing solely on the issues of whether or not the Petitioner did in fact
6 provide adequate written notice within seven (7) days of his learning of the connection between his
7 occupational diseases of carpal tunnel syndrome and DeQuervain's tendonitis and his job duties for
8 the Employer, and/or if any failure to comply with NRS 617.342 should be excused under the
9 provisions of NRS 617.346(2). The Appeals Officer shall take new evidence and entertain further
10 arguments of the parties and render a new Decision and Order solely on these issues being
11 remanded as this is the only obstacle potentially standing in the way of the Petitioner's claim being
12 accepted for all appropriate workers' compensation benefits. The new Decision and Order of the
13 Appeals Officer, if it finds the issues in Petitioner's favor, must order that the claim be accepted in
14 light of this court's reversal of the all the other issues in this judicial review matter in favor of the
15 Petitioner. The court notes that it also finds good cause to order this remand for the taking of
16 additional evidence and a new decision by the Appeals Officer under NRS 233B.131(2) and (3).

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19 Based on the legal error and the abuse of discretion, the Appeals Officer's Decision and
20 Order should be REVERSED IN PART and REMANDED for further proceedings before the
21 Appeals Officer and a new Decision and Order as set forth herein.

22 Therefore, with good cause appearing,

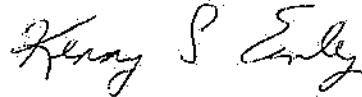
23
24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that pursuant to NRS
25 233B.135(3)(a)(c)(d)(e) and (f) the Petitioner's Petition for Judicial Review should be and hereby is
26 GRANTED IN PART and REMANDED. This workers' compensation claim is an occupational
27 disease claim under NRS Chapter 617; the C-4 form provides *prima facie* evidence of medical
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1 causation that is unrefuted by any other evidence in the Record on Appeal; and the claim was timely
2 filed within 90 days of the date on which the Petitioner learned of the connection between his
3 occupational diseases and his job duties under NRS 617.344. The decisions of the Insurer and the
4 Appeals Officer are REVERSED and set aside with respect to Issues 1), 2), and 3) set forth herein.
5 With respect to Issue 4), timely written notification to the Employer under NRS 617.342, the court
6 finds that there was unlawful procedure and a lack of sufficient or adequate development of the
7 record to determine if the Petitioner adequately complied with NRS 617.342 by writing down the
8 notice on a blank piece of paper and giving it to the Employer rather than on a C-1 form; and/or if
9 the facts of this case provide reason to excuse any lack of compliance with NRS 617.342 for any of
10 the reasons designated under NRS 617.346(2). This matter is remanded for a new hearing before
11 the Appeals Officer solely addressing the notice requirements of NRS 617.342 and the excuse
12 provisions of NRS 617.346(2) as set forth in this Order. The Appeals Officer shall render a new
13 Decision and Order addressing these issues and if the matters are decided in Petitioner's favor, the
14 Appeals Officer shall order that the Petitioner's claim be accepted and that Petitioner be provided all
15 appropriate workers' compensation benefits.
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17
18 IT IS SO ORDERED

19 DATED _____

Dated this 28th day of August, 2020



21 DISTRICT COURT JUDGE
22 499 822 A7D0 280C
23 Kerry Earley
24 District Court Judge

22 Respectfully Submitted by:

23 /s/ James P. Kemp

24 JAMES P. KEMP, ESQ.
25 Attorney for Petitioner

26 Approved as to Form and Content:

27 Declined to sign/disagrees

28 JOEL P. REEVES, ESQ.
Attorney for Petitioner

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Fred Gill, Petitioner(s)

CASE NO: A-19-806602-J

7 vs.

DEPT. NO. Department 4

8 Nevada Department of
9 Administration, Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/28/2020

15 James Kemp

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16 Barbara Valdez

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