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Mar 10 2021 02:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

6  
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9 KIMBERLY KLINE,

10 Appellant,

11 vs.

12 CITY OF RENO; CANNON COCHRAN  
MANAGEMENT SERVICES, "CCMSI";  
13 the STATE OF NEVADA DEPARTMENT OF  
ADMINISTRATION, HEARINGS DIVISION,  
14 an Agency of the State of Nevada; the STATE OF  
NEVADA DEPARTMENT OF ADMINISTRATION  
15 APPEALS DIVISION, an Agency of the State of  
Nevada; MICHELLE MORGANDO,, ESQ., Sr.  
16 Appeals Officer; RAJINDER NIELSEN, ESQ.,  
Appeals Officer; ATTORNEY GENERAL AARON  
17 FORD, ESQ.,

18 Respondents.  
19

Case No.: CV19-01683

Dept. No.: 4

20 **NOTICE OF APPEAL**

21 NOTICE IS HEREBY GIVEN that Appellant, KIMBERLY KLINE, in the above-entitled  
22 action, hereby appeals to the Supreme Court of the State of Nevada, the attached "Order" entered  
23 in this action on or about February 10, 2021 which affirmed the Appeals Officer's Decision and  
24 Order. The "Notice of Entry of Order" was filed on February 11, 2021.

25 **AFFIRMATION: Pursuant to NRS 239B.030**

26 The undersigned does hereby affirm that this document does not contain the social security

27 ///

28 ///

1 number of any person.

2 Respectfully submitted this 8 day of March, 2021.

3 THE LAW FIRM OF HERB SANTOS, JR.  
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5 Reno, Nevada 89501

6 By   
7 HERB SANTOS, JR., Esq.  
8 Attorney for Appellant  
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1 CERTIFICATE OF SERVICE

2 Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of THE LAW FIRM OF  
3 HERB SANTOS, JR. and that on this date, I electronically filed the foregoing document using the  
4 ECF system and that on this date I served a true and correct copy of the foregoing document via  
5 U.S. Mail to the following:

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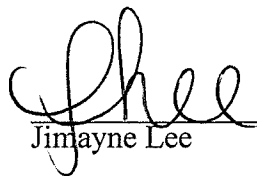
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DATED this 8 day of March, 2021.

  
Jinayne Lee

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INDEX OF EXHIBITS

Exhibit 1	Order	001-016
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**EXHIBIT 1**

**EXHIBIT 1**

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

KIMBERLY KLINE,

Petitioner,

CASE NO.: CV19-01683

vs.

DEPT. NO.: 4

CITY OF RENO; CANNON COCHRAN  
MANAGEMENT SERVICES, "CCMSI"; the  
STATE OF NEVADA DEPARTMENT OF  
ADMINISTRATION, HEARINGS DIVISION,  
an Agency of the State of Nevada; the STATE  
OF NEVADA DEPARTMENT OF  
ADMINISTRATION, APPEALS DIVISION,  
an Agency of the State of Nevada; MICHELLE  
MORGANDO, ESQ., Sr. Appeals Officer;  
RAJINDER NIELSEN, ESQ., Appeals Officer,  
ATTORNEY GENERAL AARON FORD,  
ESQ.,

Respondents.

**ORDER DENYING PETITION FOR JUDICIAL REVIEW**

On August 28, 2019, Petitioner KIMBERLY KLINE, by and through her attorney, Herb Santos, Jr., Esq. of the Law Firm of Herb Santos, Jr., filed a *Petition for Judicial Review*. On September 9, 2019, Respondent the CITY OF RENO and CANNON COCHRAN MANAGEMENT SERVICES, INC. (hereinafter "CCMSI"), by and through their attorney, Timothy E. Rowe, Esq. and Lisa Wiltshire Alstead, Esq. of McDonald Carano LLP, filed a *Statement of Intent to Participate*.

On September 18, 2019, Rajinder K. Rai-Nielsen, Esq., Appeals Officer, filed a *Certification of Transmittal*. Also, on September 18, 2019, the *Record on Appeal in Accordance with the Nevada Administrative Procedure Act (Chapter 233B of NRS)* and a *Transmittal of Record on Appeal* ("ROA") were filed.

1 On October 16, 2019, an *Order for Briefing Schedule* was entered setting forth the briefing  
2 deadlines pursuant to NRS 233B.130.

3 On October 28, 2019, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
4 CCMSI filed a *Stipulation to Extend Time to File Briefs* wherein the parties stipulated and agreed to  
5 extend the deadline to file Petitioner's opening brief to December 15, 2019, and Respondent's  
6 answering brief to January 20, 2020.

7 On November 4, 2019, an *Amended Briefing Schedule Order* was entered extending the  
8 briefing deadlines in accordance with the October 28, 2019 stipulation. On November 7, 2019,  
9 Petitioner KIMBERLY KLINE filed a *Notice of Entry of Order*.

10 On December 12, 2019, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO  
11 and CCMSI filed a second *Stipulation to Extend Time to File Briefs* wherein the parties stipulated  
12 and agreed to extend the deadline to file Petitioner's opening brief to January 14, 2020, and  
13 Respondent's answering brief to February 14, 2020.

14 On December 20, 2019, an *Order* granting stipulation to extend time periods set forth in NRS  
15 233B.133 was entered extending the briefing deadlines in accordance with the December 12, 2019  
16 second stipulation. On January 9, 2020, KIMBERLY KLINE filed *Notice of Entry of Order*.

17 On January 13, 2020, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
18 CCMSI filed a third *Stipulation to Extend Time to File Briefs* wherein the parties stipulated and agreed  
19 to extend the deadline to file Petitioner's opening brief to February 24, 2020 and Respondent's  
20 answering brief to March 24, 2020.

21 On January 16, 2020, an *Order Granting Stipulation to Extend Deadlines* was entered  
22 extending the briefing deadlines in accordance with the January 13, 2020 third stipulation. On  
23 January 21, 2020, Petitioner KIMBERLY KLINE filed a *Notice of Entry of Order*.

24 On February 24, 2020, KIMBERLY KLINE filed *Petitioner's Opening Brief*.

25 On March 20, 2020, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
26 CCMSI filed a fourth *Stipulation to Extend Briefing Deadlines* wherein the parties stipulated and  
27 agreed to extend the deadline for Respondent's answering brief to April 23, 2020 and Petitioner's  
28 reply brief to May 23, 2020.

1           On March 23, 2020, a *Second Amended Briefing Schedule Order* was entered extending the  
2       deadline for Respondent's answering brief to April 23, 2020 and Petitioner's reply brief to May 23,  
3       2020 pursuant to the parties' stipulation.

4           On April 23, 2020, the CITY OF RENO filed *Respondent's Answering Brief*. On May 22,  
5       2020, KIMBERLY KLINE filed *Petitioner's Reply Brief*. Thereafter, the parties' briefs were  
6       submitted to the Court for consideration.

7           Also, on May 22, 2020, Petitioner KIMBERLY KLINE filed a *Request for Oral Argument* on  
8       the Petition for Judicial Review. On May 27, 2020, CITY OF RENO also filed *Request for Oral*  
9       *Argument* on KIMBERLY KLINE's Petition for Judicial Review. Therefore, on June 17, 2020, the  
10      Court found that it would be an appropriate exercise of discretion by the Court to allow for oral  
11      arguments on the Petition for Judicial Review and entered *Order to Set*.

12          On June 26, 2020, the parties filed *Application for Setting*, wherein the parties agreed to a  
13      telephonic hearing to be conducted on September 2, 2020. On September 2, 2020, the parties filed a  
14      second *Application for Setting*, wherein the parties agree to vacate the September 2, 2020 hearing and  
15      reset the hearing for September 30, 2020. On October 5, 2020, the parties filed a third *Application*  
16      *for Setting*, wherein the parties agreed to reset the oral arguments on the Petition for Judicial review  
17      to November 2, 2020. On November 2, 2020, the parties filed a fourth *Application for Setting*,  
18      wherein the parties vacated the November 2, 2020 hearing, and reset it for November 19, 2020.

19          On November 19, 2020, the Court heard oral argument on KIMBERLY KLINE'S Petition  
20      for Judicial Review via simultaneous audio-visual transmission pursuant to Supreme Court Rules Part  
21      IX due to the courthouse's closure in light of the COVID-19 pandemic. At the hearing, Herb Santos,  
22      Jr., Esq. argued on behalf of Petitioner KIMBERLY KLINE, who was present for the hearing via  
23      simultaneous audio-visual transmission from Washoe County, Nevada. The opposition was argued  
24      by Lisa Alstead, Esq., on behalf of the CITY OF RENO. After the hearing, the transcript of the  
25      proceeding was submitted to the Court on December 1, 2020. Thereafter, the matter was taken under  
26      advisement by the Court.

27          KIMBERLY KLINE's Petition for Judicial Review arises from a June 25, 2015 industrial  
28      injury KLINE suffered when her work vehicle was rear-ended by another vehicle. (ROA 177-182,



1 395). The June 25, 2015 accident (subject incident) was her second motor vehicle accident within a  
2 month. (ROA 409). The first occurred on June 3, 2015 and KLINE's injuries sustained therein were  
3 nearly resolved at the time of the second incident. (Id.). On June 25, 2015, following the subject  
4 incident, KLINE went to St. Mary's and received medical treatment for back and neck pain. (ROA  
5 182-185, 409-411). KLINE was diagnosed by Dr. Richard Law with an acute lumbar radiculopathy,  
6 sprain of the lumbar spine, and acute pain in the lower back. (ROA 410).

7 On July 23, 2015, the claim was accepted for cervical strain. (ROA 453). KLINE received  
8 medical treatment from Dr. Scott Hall, M.D., in addition to chiropractic care and physical therapy.  
9 (See generally ROA 296-341). On October 28, 2015, KLINE was determined to be at maximum  
10 medical improvement ("MMI"), stable not ratable, and was released to her full duty with no  
11 restrictions. (ROA 490). On November 6, 2015, CITY OF RENO issued a notice of intent to close  
12 KLINE's claim. (ROA 295). After an appeal, the Department of Administration concluded that  
13 KLINE's industrial claim was closed prematurely. (ROA 239-240).

14 On January 13, 2016, KLINE saw Dr. Hansen for chiropractic care for her neck pain and Dr.  
15 Hansen assessed that KLINE had "cervical disc displacement, unspecified cervical region." (ROA  
16 296-298). Dr. Hansen felt that there was a high probability within a medical degree of certainty that  
17 KLINE's injuries were related to the rear-end collision she had recently sustained. (ROA 298, 306,  
18 339). Also, on January 13, 2016, KLINE underwent an MRI, which found disc degeneration with  
19 large disc protrusions at the C5-6 and C6-7 levels, resulting in complete effacement of CSF from the  
20 ventral and dorsal aspects of the cord with severe canal stenosis without cord compression or  
21 abnormal signal intensity in the cord to suggest cord edema or myelomalacia. (ROA 299, 503). On  
22 July 5, 2016, upon Dr. Hansen referral, KLINE saw Dr. Sekhon due to KLINE's ongoing complaints.  
23 (ROA 241-246).

24 On January 18, 2017, the Appeals Officer entered a Decision and Order which reversed claim  
25 closure without a PPD evaluation or rating and ordered Respondent, CITY OF RENO to rescind  
26 claim closure and provide medical treatment recommended by Dr. Sekhon. (ROA 167-176). CITY  
27 OF RENO timely appealed the decision to District Court and Petition for Judicial Review ensued.  
28 On December 11, 2017, Judge Simons issued an Order denying the Petition for Judicial Review.

1 (ROA 373-387). Therein, the Court noted that the Appeals Officer gave the opinions of Dr. Hall no  
2 weight as it pertained to the scope of the claims, and that Dr. Hall's opinions were inconsistent with  
3 the medical evidence. (ROA 384). That decision was not appealed.

4 While the Petition for Judicial Review was pending at the District Court, on June 12, 2017,  
5 KLINE had a cervical spine decompression and fusion surgery. (ROA 244, 252). On September 11,  
6 2017, KLINE was determined to have reached MMI, was ratable, and was released for full duty.  
7 (ROA 248-249). A permanent partial disability ("PPD") evaluation was performed by Dr. Russell  
8 Anderson and KLINE was found to have a 25% whole person impairment ("WPI") from the cervical  
9 spine, with 75% of the impairment apportioned as non-industrial. (ROA 250-256, 563-564). The  
10 self-insured Employer's third-party administrator ("TPA") issued a determination letter on December  
11 5, 2017, offering a 6% PPD award. (ROA 362, 568). KLINE appealed, and a second PPD evaluation  
12 was ordered and subsequently conducted by Dr. James Jempsa on May 8, 2018. (ROA 605-616).  
13 Dr. Jempsa found KLINE to have a 27% WPI with none of the impairment apportioned as non-  
14 industrial. (ROA 616-617). Because apportionment was not considered, the TPA sent a follow up  
15 request asking Dr. Jempsa to review Dr. Anderson's PPD evaluation and address apportionment.  
16 (ROA 1162). On May 18, 2018, Dr. Jempsa provided an Addendum which stated, "You will need to  
17 contact Dr. Anderson concerning his rationale for apportionment . . . the Claimant stated that she had  
18 no problems with her neck prior to her industrial injury of June 25, 2015. I have not received any  
19 medical records prior to the industrial injury . . . it is my opinion that apportionment is not necessary  
20 in this case." (ROA 1171).

21 On May 24, 2018, due to the large discrepancy between the two PPD ratings, a TPA  
22 determination letter notified KLINE that the 27% PPD award was to be held in abeyance pending a  
23 records review by Dr. Jay Betz. (ROA 1172). Dr. Betz provided his review and agreed with Dr.  
24 Anderson's findings on apportionment noting Dr. Anderson's conclusions "are well supported by the  
25 medical record, known pathologies, AMA guides, and Nevada Administrative Code." (ROA 1189).  
26 After a records review, the TPA sent a determination letter on June 13, 2018, offering KLINE a PPD  
27 award of 6% based on an apportionment of 75% of the WPI as non-industrial. (ROA 618). KLINE  
28 appealed this determination and on July 19, 2018, after a hearing, a Hearing Officer Decision was

1 entered reversing the TPA's determination. (ROA 601-603). CITY OF RENO maintained that  
2 apportionment is proper in this case and offered the uncontested 6% as a lump sum or in installments,  
3 and under NRS 616C.380, stated it will pay the remaining, contested 21% in monthly installments.  
4 CITY OF RENO, the employer, appealed and requested a stay. (ROA 007:6-7).

5 On May 1, 2019, an Appeal Hearing was conducted and on August 20, 2019, the Appeals  
6 Officer Decision and Order was filed. KIMBERLY KLINE's August 28, 2019 Petition for Judicial  
7 Review seeks reversal of the August 20, 2019 Appeals Officer Decision which addressed the appeals  
8 of three separate Hearing Officer Decisions: AO1900471-RKN, AO1902049-RKN, and  
9 AO1802418-RKN. KLINE, however, only petitions for judicial review of the issue on appeal in  
10 AO1900471-RKN, which was the Hearing Officer Decision, dated July 19, 2018, reversing the TPA's  
11 May 24, 2018 and June 13, 2018 determination letters regarding apportionment of KLINE's PPD  
12 award. (See Petition, Ex. 1, Decision of the Appeals Officer ("Decision"); ROA 001-022). KLINE  
13 argues that the Appeals Officer's August 20, 2019 Decision prejudices substantial rights of the  
14 Petitioner; was affected by error of law; was clearly erroneous in view of the reliable, probative, and  
15 substantial evidence on the whole record; and was arbitrary and capricious based upon an abuse of  
16 discretion by the Appeals Officer.

17 In this Order, this Court will determine: (1) whether the Appeals Officer's August 20, 2019  
18 Decision which reversed the Hearing Officer's Decision dated July 19, 2018, and affirming the  
19 underlying determinations, dated May 24, 2018 and June 13, 2018, was the result of reversible error  
20 of law; and (2) whether the Appeals Officer's Decision finding that the Petitioner's PPD award must  
21 be apportioned 75% as pre-existing is not supported by substantial evidence and results in an abuse  
22 of discretion.

23 "Judicial review of a final decision of an agency must be: (a) Conducted by the court without  
24 a jury; and (b) Confined to the record." *NRS 233B.135(1)*. "In cases concerning alleged irregularities  
25 in procedure before an agency that are not shown in the record, the court may receive evidence  
26 concerning the irregularities." *Id.* "The final decision of the agency shall be deemed reasonable and  
27 lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party  
28 attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3."

1 *NRS 233B.135(2)*. “The court shall not substitute its judgment for that of the agency as to the weight  
2 of evidence on a question of fact.” *NRS 233B.135(3)*. “The court may remand or affirm the final  
3 decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced  
4 because the final decision of the agency is:

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

8 *NRS 233B.135(3)*.

9 Under the standard of review for appeals, if factual findings of the agency are supported by  
10 evidence, they are conclusive and reviewing the court’s jurisdiction is confined to questions of law.  
11 *NRS 612.530(4)*; *NRS 233B.135*; Whitney v. State, Dep’t of Employment Sec., 105 Nev. 810, 812  
12 (1989), citing Nevada Employment Sec. Dep’t v. Nacheff, 104 Nev. 347, 349 (1988). On appeal, the  
13 District Court reviews questions of law, including the administrative agency’s interpretation of  
14 statutes, de novo. City of N. Las Vegas v. Warburton, 127 Nev. 682, 686 (2011). Review of an  
15 Appeals Officer’s decision is limited to determining whether there was substantial evidence in the  
16 record to support the Appeals Officer’s decision and that the findings and ultimate decisions of the  
17 Appeals Officer are not disturbed unless they were clearly erroneous or otherwise amounted to an  
18 abuse of discretion. Nevada Indus. Comm’n v. Reese, 93 Nev. 115, 125 (1977); State Indus. Ins. Sys.  
19 v. Snapp, 100 Nev. 290, 294 (1984); Stark v. State Indus. Ins. Sys., 111 Nev. 1273, 1275 (1995);  
20 State Indus. Ins. Sys. v. Hicks, 100 Nev. 567, 569 (1984), State Indus. Ins. Sys. v. Swinney, 103 Nev.  
21 17, 20 (1987); State Indus. Ins. Sys. v. Christensen, 106 Nev. 85, 88 (1990); Brown v. State Indus.  
22 Ins. Sys., 106 Nev. 878, 880 (1990); Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 331 (1993).

23 The review of the District Court is confined to the record and the court is precluded from  
24 substituting its own judgment for that of the agency as to the weight of the evidence on questions of  
25 fact. Nevada Indus. Comm’n v. Williams, 91 Nev. 686, 688 (1975); State Indus. Ins. Sys. v. Swinney,  
26 103 Nev. 17, 19-20 (1987); Palmer v. Del Webb’s High Sierra, 108 Nev. 673, 686 (1992). The  
27 Court’s review is limited to a determination of whether the Appeals Officer acted arbitrarily or  
28 capriciously, and where there was substantial evidence to support the decision, the Court cannot

1 substitute its own judgment for that of the Appeals Officer. Construction Indus. Workers' Comp.  
2 Group v. Chalue, 119 Nev. 348, 352 (2003); Meridian Gold Co. V. State, 119 Nev. 630, 633 (2003);  
3 State v. Public Employees' Ret. Sys., 120 Nev. 19, 23 (2004).

4 An "agency's fact-based conclusions of law 'are entitled to deference, and will not be  
5 disturbed if they are supported by substantial evidence.'" Law Offices of Barry Levinson, P.C. v.  
6 Milko, 124 Nev. 355, 362 (2008). "Substantial evidence exists if a reasonable person could find the  
7 evidence adequate to support the agency's conclusion, and [the Court] may not reweigh the evidence  
8 or revisit an appeals officer's credibility determination." Id.; NRS 233B.135(4). "While it is true that  
9 the district court is free to decide pure legal questions without deference to an agency determination,  
10 the agency's conclusions of law, which will necessarily be closely related to the agency's view of the  
11 facts, are entitled to deference, and will not be disturbed if they are supported by substantial  
12 evidence." Jones v. Rosner, 102 Nev. 215, 217 (1986).

13 CITY OF RENO contends that the appealed issue is a mixed question of law and fact entitled  
14 to deference; a question of law as to whether the Appeals Officer correctly interpreted NRS  
15 616C.490(9) and NAC 616C.490 with respect to apportionment, and of fact, as the Appeals Officer  
16 was required to apply the facts to the law. CITY OF RENO argues that KLINE is requesting this  
17 Court substitute its opinion for that of the Appeals Officer's as to the application of the evidence to  
18 the law and contends that to do so is impermissible.

19 Petitioner, KIMBERLY KLINE argues that reversal of the Appeals Officer's August 20, 2019  
20 Decision is required because the decision is procedurally deficient and the result of reversible error.  
21 KLINE argues that the Appeals Officer committed reversible error in two areas: (1) the Appeals  
22 Officer relitigated facts which she previously decided in a prior appeal, and (2) the Appeals Officer  
23 did not correctly apply NAC 616C.490 and NRS 616C.490. KLINE also argues that the Appeals  
24 Officer's Decision is erroneous in view of the reliable, probative, and substantial evidence on the  
25 whole record and results in an abuse of discretion.

26 KLINE argues that the Appeals Officer's Decision relied on the opinions of Dr. Hall which  
27 the Appeals Officer previously determined to be not credible, inconsistent with the medical records,  
28 and were not stated within a reasonable degree of medical probability. (ROA 174:8-10). KLINE

1 argues that since the Appeals Officer gave little or no weight to the opinions of Dr. Hall, it is  
2 reasonable to conclude that any subsequent opinion by a rating physician should also be bound by  
3 those findings. KLINE argues that the Appeals Officer failed to consider her prior findings and  
4 conclusions, therefore her August 20, 2019 Decision is based on faulty information.

5 KLINE also argues that substantial evidence on the record establishes that she did not have a  
6 pre-injury impairment under the AMA Guides, 5<sup>th</sup> Edition. Specifically, KLINE notes the Appeals  
7 Officer previously found that Dr. Hansen stated that there was a high probability within a degree of  
8 medical certainty that KLINE's injuries were related to the car accident. (ROA 170:23-28). Dr.  
9 Hansen opined that the "MRI done at RDC confirms said impression with two large left paracentral  
10 disc protrusions at C5-6 and C6-7 causing severe left NFS at each level. These injuries do appear to  
11 be directly related to the recent rear-end type motor vehicle collision." (ROA 306). KLINE asserts  
12 that the Appeals Officers found that "substantial evidence supports a finding that the industrial  
13 accident aggravated the pre-existing condition and that the resulting conditions was the substantial  
14 contributing cause of the resulting condition." (ROA 174:6-8). KLINE argues that apportioning the  
15 rating by 75% when it had already been determined that the industrial injury was the substantial  
16 contributing factor for the resulting condition is inconsistent with the Appeals Officer's prior  
17 decision. Therefore, KLINE asserts that the Appeals Officer committed reversible error of law by  
18 re-litigating those facts which she previously decided in a prior appeal.

19 CITY OF RENO, however, argues that KLINE's argument ignores the fact that the question  
20 on appeal in the earlier decision was whether claim closure without a PPD rating was proper. (ROA  
21 167:18-23). CITY OF RENO asserts that Dr. Hansen's statement about KLINE's injuries being  
22 related to the car accident, and the Appeals Officer's finding that KLINE had "met her burden of  
23 proof with substantial evidence that she is not at maximum medical improvement and needs further  
24 treatment" required the claim to remain open. (ROA 174:11-12). Thus, the earlier decision, CITY  
25 OF RENO contends, makes no findings as to the propriety of apportionment, as the January 18, 2017  
26 Appeals Officer Decision contemplated a possible future PPD evaluation once KLINE had completed  
27 treatment and was determined stable. (ROA 174:18-19).

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1 CITY OF RENO asserts that in the prior decision the Appeals Officer gave more weight to  
2 Dr. Sekhon's and Dr. Hanson's medical opinions, and less weight to Dr. Hall's opinion that KLINE  
3 did not suffer a ratable impairment. CITY OF RENO argues that the Appeals Officer's decision to  
4 give Dr. Hall's opinion no weight is not binding on future rating physicians, as the prior decision pre-  
5 dated the spinal fusion surgery, and the PPD evaluations by Dr. Anderson and Dr. Jempsa, as well as  
6 Dr. Betz's records review report and expert testimony, upon which the Appeals Officer specifically  
7 relied in reaching the Decision at issue here.

8 The Appeals Officer also gave Dr. Jempsa's PPD evaluation no weight because there was a  
9 large discrepancy in Dr. Jempsa's range of motion findings which made his results questionable as  
10 "[i]t is well recognized that patients learn from prior rating experience." (ROA 017:16-17, 018:12-  
11 18, 1192). Dr. Jempsa failed to apportion because KLINE stated she had no problems with her neck  
12 prior to the industrial injury and because he had received no records prior to the industrial injury on  
13 June 25, 2015, which the Appeals Officer found was not required under NAC 616C.490. (ROA  
14 018:3-12). The Appeals Officer concluded that Dr. Jempsa's findings were also questionable  
15 because "the medical evidence depicts stenosis, spondylitis, and osteophytes which take years if not  
16 decades to form." (ROA 018:12-14).

17 The Appeals Officer based the decision upholding apportionment primarily on the medical  
18 evidence from Dr. Anderson and Dr. Betz, whom she "found to be credible and their opinions given  
19 the most weight." (ROA 007:19-20, 013:25-26, 014:1-2). Although Dr. Betz testified that Dr. Hall  
20 "was probably correct that the [Claimant] suffered a sprain/strain," and that she did eventually  
21 improve "as would be expected with a . . . sprain/strain," Dr. Betz testified that there was not "any  
22 significant relationship" between those symptoms and the degenerative disc disease findings on  
23 KLINE's MRI results. (ROA 055:11-17, 056:1-2). Dr. Betz testified that the reason it took KLINE  
24 seven months to improve from the sprain/strain was because "there was unrecognized underlying  
25 multilevel degenerative disc changes." (ROA 055:18-23).

26 While it is true that Dr. Betz's report notes that Dr. Hall's opinion supports Dr. Anderson's  
27 conclusion that KLINE's cervical spine pathologies were primarily degenerative in nature and pre-  
28 existing, the Appeals Officer Decision does not rely on Dr. Hall's opinion alone. (ROA 011).

1 Moreover, regardless of whether Dr. Betz relied on Dr. Hall's opinion, what is at issue here is  
2 KLINE's pain and additional treatment related to the pre-existing degenerative condition which began  
3 after she had recovered from the industrial sprain/strain and was released by Dr. Hall. Dr. Betz's  
4 record review report and extensive expert testimony make clear that he considered all medical  
5 reporting and imaging studies in reaching his conclusion that the medical evidence establishes that  
6 KLINE had a pre-existing condition. (ROA 011-013).

7 CITY OF RENO argues that Dr. Betz's opinion incorporating Dr. Hall's opinion and his  
8 reliance on Dr. Hall's reporting was not inconsistent with the Appeals Officer's prior decision and  
9 that the prior decision does not preclude the Appeals Officer from taking that subsequent medical  
10 history and documentation into consideration when reaching decisions. In view of all the medical  
11 evidence, much of which did not exist at the time of the prior decision relied on by KLINE, the  
12 Appeals Officer properly concluded that KLINE had a pre-existing condition mandating  
13 apportionment of impairment under NAC 616C.490. This presents a new question of law not  
14 previously addressed by the Appeals Officer and which requires a separate and distinct legal analysis  
15 and application of the medical evidence than that performed in the prior decision. Thus, CITY OF  
16 RENO argues and the Court finds that the prior decision concluding that the industrial injury  
17 aggravated a pre-existing condition under NAC 616C.175(1), makes the present decision upholding  
18 apportionment based on substantial medical evidence establishing that KLINE had a pre-existing  
19 cervical spine condition consistent with the law of the case. The Court finds the Appeals Officer  
20 Decision, dated August 20, 2019, was not the result of reversible error nor an abuse of discretion as  
21 the Appeals Officer did not re-litigate facts previously decided in a prior appeal and the Decision is  
22 supported by substantial evidence.

23 KLINE also argues that the Appeals Officer erred by not complying with the mandates of  
24 NRS 233B.125. NRS 233B.125 states:

25 "A decision or order adverse to a party in a contested case must be in writing or stated  
26 in the record. Except as provided in subsection 5 of NRS 233B.121, a final decision  
27 must include findings of fact and conclusions of law, separately stated. Findings of  
28 fact and decisions must be based upon a preponderance of the evidence. Findings of  
fact, if set forth in statutory language, must be accompanied by a concise and explicit  
statement of the underlying facts supporting the findings. If, in accordance with



1 agency regulations, a party submitted proposed findings of fact before the  
2 commencement of the hearing, the decision must include a ruling upon each proposed  
3 finding. Parties must be notified either personally or by certified mail of any decision  
or order. Upon request a copy of the decision or order must be delivered or mailed  
forthwith to each party and to the party's attorney of record.”

4 *NRS 233B.125.*

5 The Court finds the Appeals Officer decision included findings of fact and conclusions of law,  
6 separately stated. In addition, the Court finds the Appeals Officer’s findings of fact and decision are  
7 based upon a preponderance of evidence, and the Appeals Officer enumerated each of the facts  
8 underlying those findings.

9 In addition, KLINE argues that the Appeals Officer committed reversible error by not  
10 correctly apply NRS 616C.490 and NAC 616C.490. KLINE argues that NRS 616C.490 requires that  
11 there be evidence that a ratable impairment, as defined by the AMA Guides, existed on the date of  
12 the industrial injury for apportionment to occur. KLINE argues there is no prior medical records  
13 confirming that there was a ratable impairment, prior residual impairment, and proof of a residual  
14 impairment which existed on the date of the industrial injury and that Dr. Jempsa, after reviewing  
15 numerous prior records predating KLINE’s industrial injury, found apportionment was not  
16 appropriate. (ROA 617). KLINE asserts that Dr. Betz conceded that there is no documentation  
17 concerning the scope and nature of the impairment which existed before the industrial injury. (ROA  
18 087, 088, 094). Thus, KLINE contends that at the time of the industrial injury, she had a 0%  
19 impairment due to any pre-existing condition that she may have had, and therefore, the impairment  
20 may not be apportioned.

21 NRS 616C.490 states: “Except as otherwise provided in subsection 10, if there is a previous  
22 disability, . . . the percentage of disability for a subsequent injury must be determined by computing  
23 the percentage of the entire disability and deducting there from the percentage of the previous  
24 disability as it existed at the time of the subsequent injury.” *NRS 616C.490(9)* [effective through  
25 December 31, 2019]; Pub. Agency Comp. Tr. (PACT) v. Blake, 127 Nev. 863, 867 (2011) (holding  
26 calculations for prior and subsequent injuries when impairment ratings for those injuries were based  
27 on different editions of the applicable guide, be reconciled by first using the current edition of the  
28 AMA Guides to determine both the percentage of the entire disability and of the previous disability).

1 The Nevada Administrative Code provides the procedure for completing apportionment. See  
2 NAC 616C.490. The Administrative Code requires a precise apportionment to be completed “if a  
3 prior evaluation of the percentage of impairment is available and recorded for the pre-existing  
4 impairment.” NAC 616C.490(3). However, the Administrative Code specifically contemplates the  
5 situation here, where there is no prior rating evaluation of the pre-existing condition. In such a case,  
6 the Administrative Code provides in pertinent part that:

7 4. Except as otherwise provided in subsection 5, . . . if no previous rating  
8 evaluation was performed, the percentage of impairment for the previous injury or  
9 disease and the present industrial injury or occupational disease must be recalculated  
10 by using the *Guides*, as adopted by reference pursuant to NAC 616C.002. The  
11 apportionment must be determined by subtracting the percentage of impairment  
12 established for the previous injury or disease from the percentage of impairment  
13 established for the present industrial injury or occupational disease.

14 5. If precise information is not available, and the rating physician or  
15 chiropractor is unable to determine an apportionment using the *Guides* as set forth in  
16 subsection 4, an apportionment may be allowed if at least 50 percent of the total  
17 present impairment is due to a preexisting or intervening injury, disease or condition.  
18 The rating physician or chiropractor may base the apportionment upon X-rays,  
19 historical records and diagnoses made by physicians or chiropractors or records of  
20 treatment which confirm the prior impairment.  
21 NAC 616C.490(4)-(5).

22 “If there are preexisting conditions . . . the apportionment must be supported by  
23 documentation concerning the scope and the nature of the impairment which existed before the  
24 industrial injury or the onset of disease.” NAC 616C.490(6). CITY OF RENO argues that NAC  
25 616C.490 does not require that the documentation of a pre-existing condition predate the industrial  
26 injury. In Ransier v. State Industrial Insurance Systems, the Nevada Supreme Court stated that “the  
27 clause ‘which existed before the industrial injury or the onset of the disease’ refers to the impairment  
28 and not the document.” Ransier v. State Indus. Ins. Sys., 104 Nev. 742, 744 at fn. 1 (1988). Although  
the reference to this regulation is from the prior version, NAC 616.650(6), the language has remained  
the same. The Ransier Court held that the Nevada Administrative Code “does not require historical  
documentation, only ‘documentation concerning the scope and nature of the impairment,’ which can  
come, as here, from examination at the time of the second injury.” Id. (affirming apportionment was  
proper where no records or documents existed concerning claimant’s prior injury, but where both  
treating physicians found claimant’s two injuries to be distinguishable).

1 CITY OF RENO also argues that the Appeals Officer correctly interpreted NRS 616C.490  
2 and NAC 616C.490 in finding apportionment does not require that the pre-existing condition be a  
3 ratable impairment. Rather, CITY OF RENO argues that the rating physician must look for a prior  
4 impairment, shown by medical records post-dating the industrial injury. CITY OF RENO argues that  
5 KLINE incorrectly insists that apportionment for a pre-existing disease or condition requires a  
6 “ratable” impairment to have existed on the date of the industrial accident. “[W]hen the language of  
7 a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go  
8 beyond it.” Nev. Dep’t of Corr. v. York Claims Servs., Inc., 131 Nev. 199, 203 (2015). CITY OF  
9 RENO argues that the plain language of NAC 616C.490 simply requires an “impairment” with no  
10 requirement that the pre-existing condition or disease be previously rated.

11 “A rating physician or chiropractor shall always explain the underlying basis of the  
12 apportionment as specifically as possible by citing pertinent data in the health care records or other  
13 records.” *NAC 616C.490(7)*. Here, the Appeals Officer found “Dr. Betz to be a credible witness and  
14 his testimony is given great weight. Dr. Betz’s testimony was uncontroverted at [the] hearing and no  
15 opposing or contradicting expert witness testimony was provided.” (ROA 007:19-21). Based on the  
16 records from Dr. Sekhon, who performed KLINE’s spinal fusion surgery, in addition to MRI, x-ray  
17 records, and historical records and diagnoses, demonstrating the scope and nature of the impairment,  
18 Dr. Betz testified that the present impairment was at least fifty percent (50%) due to KLINE’s pre-  
19 existing impairment. (ROA 15:24-27, 16:1-10). The Appeals Officer concluded that Dr. Betz and  
20 Dr. Anderson established the underlying basis for apportionment as required by NAC 616C.490(5)-  
21 (7). (ROA 16:10-15). CITY OF RENO argues and the Court finds that KLINE’s contention that  
22 apportionment is improper due to a lack of prior documentation of the pre-existing, ratable condition  
23 is unpersuasive where the Appeals Officer found Dr. Betz has expressly identified the x-rays,  
24 historical records, and diagnoses confirming KLINE’s prior impairment as required by NAC  
25 616C.490(5).

26 Following review of the Appeals Officer’s Decision, the Court finds the Appeals Officer did  
27 not commit any clear error of law nor arbitrary or capricious abuse of discretion. As discussed supra,  
28 the Court finds the Appeals Officer correctly applied NRS 616C.490 and NAC 616C.490. In

1 addition, the Court finds the Decision is supported by substantial evidence and the Appeals Officer's  
2 findings of fact and conclusions of law in the Decision complied with the requirements set forth in  
3 NRS 233B.125. KLINE was properly awarded 6% PPD award, which apportioned 25% WPI of the  
4 cervical spine as 75% non-industrial and 25% industrial. Therefore, the Court finds there is no basis  
5 to grant review and the Petition should be denied.

6 Based on the foregoing and good cause appearing,

7 IT IS HEREBY ORDERED that KIMBERLY KLINE's Petition for Judicial Review is  
8 DENIED and the decision of the Appeals Officer, dated August 20, 2019, is AFFIRMED.

9 DATED this 10 day of February, 2021.

10  
11 Connie J. Steinheimer  
12 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV19-01683

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of February, 2021, I filed the **ORDER DENYING PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       **Personal delivery to the following: [NONE]**

xx **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

TIMOTHY ROWE, ESQ. for CANNON COCHRAN MANAGEMENT SERVICES, CITY OF RENO

LISA ALSTEAD, ESQ. for CANNON COCHRAN MANAGEMENT SERVICES, CITY OF RENO

HERBERT SANTOS, JR., ESQ. for KIMBERLY M KLINE

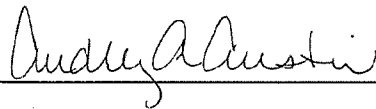
       **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

       **Placed a true copy in a sealed envelope for service via:**

           Reno/Carson Messenger Service – [NONE]

           Federal Express or other overnight delivery service [NONE]

DATED this 10 day of February, 2021.

  
\_\_\_\_\_

1 **1310**  
2 HERB SANTOS, JR., Esq.  
3 State Bar No. 4376  
4 The Law Firm of Herb Santos, Jr.  
5 225 South Arlington Avenue, Suite C  
6 Reno, Nevada 89501  
7 (775) 323-5200

8 Attorney for Appellant

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR THE COUNTY OF WASHOE**

11 KIMBERLY KLINE,

12 Appellant,

13 vs.

Case No.: CV19-01683

Dept. No.: 4

14 CITY OF RENO; CANNON COCHRAN  
15 MANAGEMENT SERVICES, "CCMSI";  
16 the STATE OF NEVADA DEPARTMENT OF  
17 ADMINISTRATION, HEARINGS DIVISION,  
18 an Agency of the State of Nevada; the STATE OF  
19 NEVADA DEPARTMENT OF ADMINISTRATION  
20 APPEALS DIVISION, an Agency of the State of  
21 Nevada; MICHELLE MORGANDO, ESQ., Sr.  
22 Appeals Officer; RAJINDER NIELSEN, ESQ.,  
23 Appeals Officer; ATTORNEY GENERAL AARON  
24 FORD, ESQ.,

25 Respondents.

26 **CASE APPEAL STATEMENT**

27 **1. Name of party filing this case appeal statement.**

28 Kimberly Kline.

**2. Identify the judge issuing the decision, judgment, or order appealed from.**

Hon. Connie Steinheimer, District Court Judge, Second Judicial District Court in and for  
Washoe County.

**3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited).**

Kimberly Kline, Appellant

City of Reno, Respondent

Cannon Cochran Management Services, "CCMSI", Respondent

The following were named parties to the action but did not participate in the petition for judicial review:

State of Nevada Department of Administration, Hearings Division, an Agency of the State of Nevada

State of Nevada Department of Administration, Appeals Division, an Agency of the State of Nevada

Michelle Morgando, Esq., Sr. Appeals Officer; Sheila Moore, Esq., Appeals Officer  
Attorney General Aaron Ford, Esq.,

**4. Identify all parties involved in this appeal.**

Kimberly Kline, Appellant

City of Reno, Respondent

Cannon Cochran Management Services, "CCMSI", Respondent

**5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent.**

Herb Santos, Jr.  
THE LAW FIRM OF HERB SANTOS, JR.  
225 South Arlington Avenue, Suite C  
Reno, Nevada 89501  
(775) 323-5200  
Attorney for Appellant, Kimberly Kline

Timothy E Rowe, Esq.  
Lisa Wiltshire Alstead, Esq.  
McDonald Carano LLP  
100 West Liberty Street, 10<sup>th</sup> Floor  
Post Office Box 2670  
Reno, Nevada 89505  
(775) 788-2000  
Attorney for Respondents, City of Reno and Cannon Cochran Management Services, "CCMSI"

**6. Indicate whether Appellant was represented by appointed or retained counsel in the district court.**

Appellant was represented by retained counsel in the District Court.



1 7. **Indicate whether Respondents were represented by appointed or retained counsel in**  
2 **the District Court.**

3 The Respondents were represented by retained counsel in the District Court.

4 8. **Indicate whether Appellant is represented by appointed or retained counsel on**  
5 **appeal.**

6 Appellant is represented by retained counsel on appeal.

7 9. **Indicate whether Respondents are represented by appointed or retained counsel on**  
8 **appeal.**

9 Respondents are represented by retained counsel on appeal.

10 10. **Indicate whether Appellant was granted leave to proceed in *forma pauperis*, and the**  
11 **date of entry of the district court order granting such leave.**

12 Appellant was not granted leave to proceed in forma pauperis.

13 11. **Indicate the date the proceedings commenced in the district court (e.g., date**  
14 **complaint, indictment, information, or petition was filed.)**

15 The Petition for Judicial Review of the Appeal's Officer Decision of August 20, 2019 was  
16 filed on August 28, 2019.

17 12. **A brief description of the action and the order being appealed from.**

18 This is a workers' compensation case. The issue was the Appellant's permanent partial  
19 disability (PPD) award.

20 The Petition arose out of a contested industrial insurance claim and is the result of a  
21 August 20, 2019 Decision and Order from Appeals Officer Rajinder K. Rai-Nielsen, Esq., which  
22 reversed a May 24, 2018 determination letter and June 13, 2018 determination letter, both  
23 pertaining to the permanent partial disability "PPD" rating. The May 24, 2018 determination letter  
24 notified the Claimant that Dr. Jempsa's PPD rating of 27% was being held in abeyance. The June  
25 13, 2018 determination letter offered the Claimant a 6% PPD award based on Dr. Betz's reporting  
26 agreeing with Dr. Anderson's reporting as to apportionment and offering a 6% PPD award. The  
27 Hearing Officer reversed these decisions and found no medial evidence to justify a 75%  
28 apportionment. The August 20, 2019 Decision and Order also affirmed and remanded a



1 September 20, 2018 determination letter offering the undisputed 6% PPD award in a lump sum or  
2 installments and 21% in monthly installments pursuant to NRS 616C.380. Lastly, the August 20,  
3 2019 Decision and Order remanded a December 5, 2017 determination letter awarding a 6% PPD  
4 award. The Hearing Officer found a medical question on apportionment and ordered a second  
5 PPD evaluation under NRS 616C.330.

6 The Appeals Officer Moore found that the claim was properly closed as of Dr. Jempa's  
7 May 8, 2018 PPD evaluation and the Claimant was properly awarded a 6% PPD award, following  
8 apportionment of the 25% PPD award by Dr. Anderson, and as affirmed by Dr. Betz, which  
9 apportioned the whole person impairment as 75% non-industrial and 25% industrial, and that the  
10 Claimant could elect to accept the 6% PPD award in a lump sum as awarded.

11 The Appellant's sought judicial review of the erroneous decision. The Appellant  
12 contended that the Decision was (a) Affected by error of law; (b) Clearly erroneous in view of the  
13 reliable, probative and substantial evidence on the whole record; and (c) Arbitrary and capricious  
14 and characterized by abuse of discretion.

15 After receiving written briefs and oral arguments, the District Court affirmed the Appeals  
16 Officer's decision and denied the Petition for Judicial Review.

17 **13. Indicate whether the case has previously been the subject of an appeal or original**  
18 **writ proceeding in the Supreme Court.**

19 This action has not been subject to a previous appeal or an original writ proceeding.

20 **14. Indicate whether the case involves child custody or visitation.**

21 This case does not involve child custody or visitation.

22 **15. If this is a civil case, indicate whether the case involves the possibility of settlement.**

23 The case does involve the possibility of settlement.

24 **AFFIRMATION: Pursuant to NRS 239B.030**

25 The undersigned does hereby certify that this document does not contain the social

26 ///

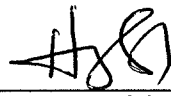
27 ///

28 ///

1 security number of any person.

2 DATED this 8 day of March, 2021.

3 THE LAW FIRM OF HERB SANTOS, JR.  
4 225 South Arlington Avenue, Suite C  
5 Reno, Nevada 89501

6 By:   
7 HERB SANTOS, JR., ESQ.  
8 Attorney for Appellant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of THE LAW FIRM OF HERB SANTOS, JR. and that on this date, I electronically filed the foregoing document using the ECF system and that on this date I served a true and correct copy of the foregoing document via U.S. Mail to the following:

KIMBERLY KLINE  
2835 BONFIRE LANE  
RENO, NV 89521

CITY OF RENO  
PO BOX 1900  
RENO, NV 89505

CCMSI  
PO BOX 20068  
RENO, NV 89515

TIMOTHY E ROWE, ESQ.  
LISA WILTSHIRE ALSTEAD, ESQ.  
MCDONALD CARANO LLP  
PO BOX 2670  
RENO, NEVADA 89505

RAJINDER K. RAI-NIELSEN, ESQ., APPEALS OFFICER  
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MICHELLE MORGANDO, ESQ., SR. APPEALS OFFICER  
NEVADA DEPARTMENT OF ADMINISTRATION  
2200 S. RANCHO DRIVE, SUITE 220  
LAS VEGAS, NV 89102

LAURA FREED, DIRECTOR  
NEVADA DEPARTMENT OF ADMINISTRATION  
515 E. MUSSER STREET, SUITE 300  
CARSON CITY, NV 89701

AARON FORD, ESQ.  
OFFICE OF THE ATTORNEY GENERAL  
100 N. CARSON STREET  
CARSON CITY, NV 89701

DATED this 8 day of March, 2021.

  
\_\_\_\_\_  
Jimayne Lee

**SECOND JUDICIAL DISTRICT COURT  
STATE OF NEVADA  
COUNTY OF WASHOE**

**Case History - CV19-01683**

**Case Description: KIMBERLY KLINE VS CITY OF RENO ETAL (D4)**

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**Case Number: CV19-01683 Case Type: OTHER JUDICIAL REVIEW/APPEAL - Initially Filed On: 8/28/2019**

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**Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - CONNIE J. STEINHEIMER - D4	Active
DEFT - DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION. - @1238242	Active
ATTY - Herbert J. Santos, Jr., Esq. - 4376	Active
ATTY - Lisa Wiltshire Alstead, Esq. - 10470	Active
ATTY - Timothy Edward Rowe, Esq. - 1000	Active
PETR - KIMBERLY M KLINE - @1255503	Active
RESP - AARON FORD - @233646	Active
RESP - MICHELLE L. MORGANDO - @444223	Active
RESP - CITY OF RENO - RENO	Active
RESP - RAJINDER K. NIELSEN, ESQ. - @1228908	Active
RESP - DEPARTMENT OF ADMINISTRATION HEARINGS DIVISION - @879705	Active
RESP - CANNON COCHRAN MANAGEMENT SERVICES - @1342189	Active

**Disposed Hearings**

- 
- |   |  |
|---|--|
| 1 | Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 10/28/2019 at 16:44:00<br>Extra Event Text: STIPULATION TO EXTEND TIME TO FILE BRIEFS<br>Event Disposition: S200 - 11/4/2019                 |
| 2 | Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 12/12/2019 at 15:18:00<br>Extra Event Text: STIPULATION TO EXTEND TIME TO FILE BRIEFS FILED 12-19-19<br>Event Disposition: S200 - 12/20/2019 |
| 3 | Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 1/13/2020 at 18:52:00<br>Extra Event Text: STIPULATION TO EXTEND TIME TO FILE BRIEFS FILED 1/13/2020<br>Event Disposition: S200 - 1/16/2020  |
| 4 | Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 5/22/2020 at 16:09:00<br>Extra Event Text: REQUEST FOR SUBMISSION OF REQUEST FOR ORAL ARGUMENT<br>Event Disposition: S200 - 6/17/2020        |
| 5 | Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 9/2/2020 at 14:30:00<br>Extra Event Text: ON PETITION FOR JUDICIAL REVIEW<br>Event Disposition: D875 - 9/1/2020                                      |
| 6 | Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 9/30/2020 at 14:00:00<br>Extra Event Text: ON PETITION FOR JUDICIAL REVIEW<br>Event Disposition: D843 - 9/29/2020                                    |
| 7 | Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 11/2/2020 at 14:00:00<br>Extra Event Text: ON PETITION FOR JUDICIAL REVIEW<br>Event Disposition: D843 - 11/2/2020                                    |

**Report Does Not Contain Sealed Cases or Confidential Information**

- 8 Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 11/19/2020 at 15:00:00  
Extra Event Text: ON PETITION FOR JUDICIAL REVIEW  
Event Disposition: D435 - 11/19/2020
- 9 Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 12/1/2020 at 15:00:00  
Extra Event Text: - PETITION FOR JUDICIAL REVIEW - ORAL ARGUMENTS HEARD 11/19/2020 AND TRANSCRIPT FILED AT WHICH TIME MATTER WAS TAKI  
Event Disposition: S200 - 2/10/2021

### Actions

- |    | <u>Filing Date</u> | <u>-</u> | <u>Docket Code &amp; Description</u>  |
|----|--------------------|----------|---|
| 1  | 8/28/2019          | -        | \$3550 - \$Pet for Judicial Review<br>Additional Text: PETITION FOR JUDICIAL REVIEW - Transaction 7454937 - Approved By: YVILORIA : 08-28-2019:13:17:11   |
| 2  | 8/28/2019          | -        | PAYRC - **Payment Receipted<br>Additional Text: A Payment of \$260.00 was made on receipt DCDC644666.   |
| 3  | 9/9/2019           | -        | \$1560 - \$Def 1st Appearance - CV<br>Additional Text: COCHRAN MANAGEMENT SERVICES, INC. - Transaction 7472891 - Approved By: YVILORIA : 09-09-2019:10:24:00  |
| 4  | 9/9/2019           | -        | 3960 - Statement Intent Participate<br>Additional Text: STATEMENT OF INTENT TO PARTICIPATE - Transaction 7472891 - Approved By: YVILORIA : 09-09-2019:10:24:00  |
| 5  | 9/9/2019           | -        | PAYRC - **Payment Receipted<br>Additional Text: A Payment of \$213.00 was made on receipt DCDC645404.   |
| 6  | 9/9/2019           | -        | NEF - Proof of Electronic Service<br>Additional Text: Transaction 7472912 - Approved By: NOREVIEW : 09-09-2019:10:24:58   |
| 7  | 9/18/2019          | -        | 1365 - Certificate of Transmittal<br>Additional Text: CERTIFICATION OF TRANSMITTAL - Transaction 7490553 - Approved By: NOREVIEW : 09-18-2019:11:29:34  |
| 8  | 9/18/2019          | -        | 3746 - Record on Appeal<br>Additional Text: RECORD ON APPEAL - ORIGINAL RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT - Transaction 7490553 - Approved By: NOREVIEW : 09-18-2019:11:29:34 |
| 9  | 9/18/2019          | -        | 4195 - Transmittal of Rec. on Appeal<br>Additional Text: TRANSMITTAL OF RECORD ON APPEAL Transaction 7490553 - Approved By: NOREVIEW : 09-18-2019:11:29:34  |
| 10 | 9/18/2019          | -        | NEF - Proof of Electronic Service<br>Additional Text: Transaction 7490563 - Approved By: NOREVIEW : 09-18-2019:11:30:45   |
| 11 | 10/16/2019         | -        | 2880 - Ord for Briefing Schedule<br>Additional Text: ORDER FOR BRIEFING SCHEDULE - Transaction 7540692 - Approved By: NOREVIEW : 10-16-2019:11:10:59  |
| 12 | 10/16/2019         | -        | NEF - Proof of Electronic Service<br>Additional Text: Transaction 7540697 - Approved By: NOREVIEW : 10-16-2019:11:14:10   |
| 13 | 10/28/2019         | -        | 4050 - Stipulation ...<br>Additional Text: STIPULATION TO EXTEND TIME TO FILE BRIEFS - Transaction 7559928 - Approved By: NOREVIEW : 10-28-2019:16:23:42  |
| 14 | 10/28/2019         | -        | NEF - Proof of Electronic Service<br>Additional Text: Transaction 7559936 - Approved By: NOREVIEW : 10-28-2019:16:24:44   |

- 15 10/28/2019 - 3860 - Request for Submission  
Additional Text: Transaction 7559973 - Approved By: NOREVIEW : 10-28-2019:16:29:04  
DOCUMENT TITLE: STIPULATION TO EXTEND TIME TO FILE BRIEFS  
PARTY SUBMITTING: HERBERT SANTOS JR ESQ  
DATE SUBMITTED: 10-28-19  
SUBMITTED BY: YV  
DATE RECEIVED JUDGE OFFICE:
- 16 10/28/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7559981 - Approved By: NOREVIEW : 10-28-2019:16:30:23
- 17 11/4/2019 - 2880 - Ord for Briefing Schedule  
Additional Text: AMENDED BRIEFING SCHEDULE ORDER - Transaction 7571500 - Approved By: NOREVIEW : 11-04-2019:15:29:37
- 18 11/4/2019 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 19 11/4/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7571509 - Approved By: NOREVIEW : 11-04-2019:15:30:37
- 20 11/7/2019 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 7578435 - Approved By: NOREVIEW : 11-07-2019:15:37:24
- 21 11/7/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7578440 - Approved By: NOREVIEW : 11-07-2019:15:38:28
- 22 12/12/2019 - 4047 - Stip Extension of Time ...  
Additional Text: STIPULATION TO EXTEND TIME TO FILE BRIEFS - Transaction 7635878 - Approved By: NOREVIEW : 12-12-2019:15:10:26
- 23 12/12/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7635882 - Approved By: NOREVIEW : 12-12-2019:15:11:24
- 24 12/12/2019 - 3860 - Request for Submission  
Additional Text: Transaction 7635925 - Approved By: NOREVIEW : 12-12-2019:15:19:21  
DOCUMENT TITLE: STIPULATION TO EXTEND TIME TO FILE BRIEFS FILED 12-19-19  
PARTY SUBMITTING: HERBERT SANTOS JR ESQ  
DATE SUBMITTED: 12-12-19  
SUBMITTED BY: YV  
DATE RECEIVED JUDGE OFFICE:
- 25 12/12/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7635926 - Approved By: NOREVIEW : 12-12-2019:15:20:24
- 26 12/20/2019 - 3105 - Ord Granting ...  
Additional Text: ORDER - GRANTING STIPULATION TO EXTEND TIME PERIODS SET FORTH IN NRS 233B.133 - Transaction 7650499 - Approved By: NOREVIEW : 12-20-2019:13:42:49
- 27 12/20/2019 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 28 12/20/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7650509 - Approved By: NOREVIEW : 12-20-2019:13:44:16
- 29 1/9/2020 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 7677572 - Approved By: NOREVIEW : 01-09-2020:13:48:43
- 30 1/9/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7677587 - Approved By: NOREVIEW : 01-09-2020:13:50:17

- 31 1/13/2020 - 4047 - Stip Extension of Time ...  
Additional Text: Transaction 7682627 - Approved By: NOREVIEW : 01-13-2020:14:43:11
- 32 1/13/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7682686 - Approved By: NOREVIEW : 01-13-2020:14:46:32
- 33 1/13/2020 - 3860 - Request for Submission  
Additional Text: STIPULATION TO EXTEND TIME TO FILE BRIEFS FILED 1/13/2020 - Transaction 7683408 - Approved By:  
NOREVIEW : 01-13-2020:18:52:47  
PARTY SUBMITTING: HERBERT SANTOS ESQ  
DATE SUBMITTED: 1/13/2020  
SUBMITTED BY: CS  
DATE RECEIVED JUDGE OFFICE: 1/15/2020
- 34 1/13/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7683409 - Approved By: NOREVIEW : 01-13-2020:18:53:37
- 35 1/16/2020 - 3030 - Ord Granting Extension Time  
Additional Text: ORDER GRANTING STIPULATION TO EXTEND DEADLINES - OPENING BRIEF 2/24/20, ANSWERING BRIEF  
3/24/20, REPLY 4/24/20 - Transaction 7690952 - Approved By: NOREVIEW : 01-16-2020:15:11:05
- 36 1/16/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7690957 - Approved By: NOREVIEW : 01-16-2020:15:12:11
- 37 1/16/2020 - S200 - Request for Submission Complet  
Additional Text: ORDER GRANTING EXTENSION OF DEADLINES FILED
- 38 1/21/2020 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 7696709 - Approved By: NOREVIEW : 01-21-2020:16:57:34
- 39 1/21/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7696715 - Approved By: NOREVIEW : 01-21-2020:16:58:33
- 40 2/24/2020 - 2640 - Opening Brief  
Additional Text: Petitioner's Opening Brief - Transaction 7756352 - Approved By: NOREVIEW : 02-24-2020:15:19:09
- 41 2/24/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7756376 - Approved By: NOREVIEW : 02-24-2020:15:22:17
- 42 3/20/2020 - 4050 - Stipulation ...  
Additional Text: STIPULATION TO EXTEND BRIEFING DEADLINES - Transaction 7802992 - Approved By: NOREVIEW :  
03-20-2020:19:06:22
- 43 3/20/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7802994 - Approved By: NOREVIEW : 03-20-2020:19:07:23
- 44 3/25/2020 - 2880 - Ord for Briefing Schedule  
Additional Text: SECOND AMENDED BRIEFING SCHEDULE - Transaction 7809633 - Approved By: NOREVIEW : 03-25-2020:15:48:38
- 45 3/25/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7809662 - Approved By: NOREVIEW : 03-25-2020:15:51:46
- 46 4/23/2020 - 1170 - Answering Brief  
Additional Text: Respondent's Answering Brief - Transaction 7847665 - Approved By: YVILORIA : 04-23-2020:13:01:51
- 47 4/23/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7847771 - Approved By: NOREVIEW : 04-23-2020:13:03:06

- 48 5/22/2020 - 3785 - Reply Brief  
Additional Text: Transaction 7890754 - Approved By: NOREVIEW : 05-22-2020:16:04:28
- 49 5/22/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7890759 - Approved By: NOREVIEW : 05-22-2020:16:05:27
- 50 5/22/2020 - 3870 - Request  
Additional Text: REQUEST FOR ORAL ARGUMENT - Transaction 7890770 - Approved By: CSULEZIC : 05-22-2020:16:14:51
- 51 5/22/2020 - 3860 - Request for Submission  
Additional Text: Transaction 7890778 - Approved By: NOREVIEW : 05-22-2020:16:12:51  
DOCUMENT TITLE: REQUEST FOR SUBMISSION ON REQUEST FOR ORAL ARGUMENT  
PARTY SUBMITTING: HERBERT SANTOS ESQ  
DATE SUBMITTED: 5/26/2020  
SUBMITTED BY: CS  
DATE RECEIVED JUDGE OFFICE:
- 52 5/22/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7890785 - Approved By: NOREVIEW : 05-22-2020:16:13:51
- 53 5/22/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7890791 - Approved By: NOREVIEW : 05-22-2020:16:15:49
- 54 5/27/2020 - 3870 - Request  
Additional Text: REQUEST FOR ORAL ARGUMENT - Transaction 7894891 - Approved By: SACORDAG : 05-27-2020:14:16:17
- 55 5/27/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7894902 - Approved By: NOREVIEW : 05-27-2020:14:17:12
- 56 6/17/2020 - 3347 - Ord to Set  
Additional Text: ORDER TO SET - Transaction 7930629 - Approved By: NOREVIEW : 06-17-2020:16:19:48
- 57 6/17/2020 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 58 6/17/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7930642 - Approved By: NOREVIEW : 06-17-2020:16:21:02
- 59 6/26/2020 - 1250E - Application for Setting eFile  
Additional Text: ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - SEPTEMBER 2, 2020 AT 2:30 P.M. (2 HOURS) - Transaction 7945417 - Approved By: NOREVIEW : 06-26-2020:14:20:40
- 60 6/26/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7945418 - Approved By: NOREVIEW : 06-26-2020:14:21:29
- 61 8/7/2020 - 2610 - Notice ...  
Additional Text: NOTICE OF AUDIO/VISUAL HEARING - SEPTEMBER 2, 2020 HEARING - Transaction 8008472 - Approved By: NMASON : 08-07-2020:09:52:32
- 62 8/7/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8008482 - Approved By: NOREVIEW : 08-07-2020:09:53:26
- 63 9/2/2020 - 1250E - Application for Setting eFile  
Additional Text: ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - SEPTEMBER 30, 2020 AT 2:00 P.M. (VACATES SEPTEMBER 2, 2020 HEARING) - Transaction 8049316 - Approved By: NOREVIEW : 09-02-2020:10:45:26
- 64 9/2/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8049329 - Approved By: NOREVIEW : 09-02-2020:10:46:37



- 65 10/5/2020 - 1250E - Application for Setting eFile  
Additional Text: ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - NOVEMBER 2, 2020 AT 2:00 P.M. - Transaction 8099412 - Approved By: NOREVIEW : 10-05-2020:10:28:47
- 66 10/5/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8099418 - Approved By: NOREVIEW : 10-05-2020:10:29:48
- 67 10/26/2020 - 3370 - Order ...  
Additional Text: NOTICE OF AUDIO/VISUAL HEARING - NOVEMBER 2, 2020 - Transaction 8134535 - Approved By: NOREVIEW : 10-26-2020:17:58:24
- 68 10/26/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8134538 - Approved By: NOREVIEW : 10-26-2020:17:59:46
- 69 11/2/2020 - 1250E - Application for Setting eFile  
Additional Text: ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - NOVEMBER 19, 2020 AT 3:00 P.M. - Transaction 8142089 - Approved By: NOREVIEW : 11-02-2020:11:39:57
- 70 11/2/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8142094 - Approved By: NOREVIEW : 11-02-2020:11:40:59
- 71 11/6/2020 - 3370 - Order ...  
Additional Text: NOTICE OF AUDIO/VISUAL HEARING - NOVEMBER 19, 2020 - Transaction 8151916 - Approved By: NOREVIEW : 11-06-2020:15:30:00
- 72 11/6/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8151920 - Approved By: NOREVIEW : 11-06-2020:15:30:56
- 73 12/1/2020 - 4185 - Transcript  
Additional Text: Oral Arguments - 11-19-2020 - Transaction 8183757 - Approved By: NOREVIEW : 12-01-2020:12:54:49
- 74 12/1/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8183760 - Approved By: NOREVIEW : 12-01-2020:12:55:37
- 75 2/10/2021 - 2840 - Ord Denying ...  
Additional Text: ORDER DENYING PETITION FOR JUDICIAL REVIEW - Transaction 8288432 - Approved By: NOREVIEW : 02-10-2021:09:25:40
- 76 2/10/2021 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 77 2/10/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8288440 - Approved By: NOREVIEW : 02-10-2021:09:26:53
- 78 2/10/2021 - F140 - Adj Summary Judgment  
*No additional text exists for this entry.*
- 79 2/11/2021 - 2540 - Notice of Entry of Ord  
Additional Text: Denying Petition for Judicial Review - Transaction 8292692 - Approved By: NOREVIEW : 02-11-2021:17:35:20
- 80 2/11/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8292694 - Approved By: NOREVIEW : 02-11-2021:17:36:10
- 81 3/8/2021 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: NOTICE OF APPEAL - Transaction 8330671 - Approved By: YVILORIA : 03-08-2021:14:38:10
- 82 3/8/2021 - 1310 - Case Appeal Statement  
Additional Text: Transaction 8330679 - Approved By: NOREVIEW : 03-08-2021:14:32:49

- 83 3/8/2021 - 2547 - Notice of Filing Costs/Appeal  
Additional Text: Transaction 8330696 - Approved By: NOREVIEW : 03-08-2021:14:35:07  
NOTE: WILL POST BOND PAYMENT THROUGH EFLEX INSTEAD, PER PHONE CALL WITH LAW FIRM 3/8/21
- 84 3/8/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8330689 - Approved By: NOREVIEW : 03-08-2021:14:33:49
- 85 3/8/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8330705 - Approved By: NOREVIEW : 03-08-2021:14:36:09
- 86 3/8/2021 - SAB - \*\*Supreme Court Appeal Bond  
Additional Text: Transaction 8330722 - Approved By: YVILORIA : 03-08-2021:14:44:05
- 87 3/8/2021 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$24.00 was made on receipt DCDC670602.
- 88 3/8/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8330718 - Approved By: NOREVIEW : 03-08-2021:14:39:09
- 89 3/8/2021 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$500.00 was made on receipt DCDC670604.
- 90 3/8/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8330740 - Approved By: NOREVIEW : 03-08-2021:14:45:18
- 91 3/9/2021 - MIN - \*\*\*Minutes  
Additional Text: ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - 11/19/2020 - Transaction 8331955 - Approved By: NOREVIEW : 03-09-2021:09:01:13
- 92 3/9/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8331962 - Approved By: NOREVIEW : 03-09-2021:09:02:03
- 93 3/9/2021 - 1350 - Certificate of Clerk  
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8332038 - Approved By: NOREVIEW : 03-09-2021:09:19:13
- 94 3/9/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8332042 - Approved By: NOREVIEW : 03-09-2021:09:20:02
- 95 3/9/2021 - 4113 - District Ct Deficiency Notice  
Additional Text: NOTICE OF APPEAL DEFICIENCY - SUPREME COURT FILING FEES (DUE TO PUBLIC CLOSURE OF COURTHOUSE AND APPEALS CLERK UNABLE TO RECEIVE FEE) SUPREME COURT WILL SEND A NOTICE TO PAY ONCE APPEAL IS RECEIVED - Transaction 8332060 - Approved By: NOREVIEW : 03-09-2021:09:26:00
- 96 3/9/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8332062 - Approved By: NOREVIEW : 03-09-2021:09:26:51

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

8 KIMBERLY KLINE,

9 Petitioner,

CASE NO.: CV19-01683

10 vs.

DEPT. NO.: 4

11 CITY OF RENO; CANNON COCHRAN  
12 MANAGEMENT SERVICES, "CCMSI"; the  
13 STATE OF NEVADA DEPARTMENT OF  
14 ADMINISTRATION, HEARINGS DIVISION,  
15 an Agency of the State of Nevada; the STATE  
16 OF NEVADA DEPARTMENT OF  
17 ADMINISTRATION, APPEALS DIVISION,  
18 an Agency of the State of Nevada; MICHELLE  
19 MORGANDO, ESQ., Sr. Appeals Officer;  
20 RAJINDER NIELSEN, ESQ., Appeals Officer,  
21 ATTORNEY GENERAL AARON FORD,  
22 ESQ.,

23 Respondents.

24 **ORDER DENYING PETITION FOR JUDICIAL REVIEW**

25 On August 28, 2019, Petitioner KIMBERLY KLINE, by and through her attorney, Herb  
26 Santos, Jr., Esq. of the Law Firm of Herb Santos, Jr., filed a *Petition for Judicial Review*. On  
27 September 9, 2019, Respondent the CITY OF RENO and CANNON COCHRAN MANAGEMENT  
28 SERVICES, INC. (hereinafter "CCMSI"), by and through their attorney, Timothy E. Rowe, Esq. and  
Lisa Wiltshire Alstead, Esq. of McDonald Carano LLP, filed a *Statement of Intent to Participate*.

On September 18, 2019, Rajinder K. Rai-Nielsen, Esq., Appeals Officer, filed a *Certification of Transmittal*. Also, on September 18, 2019, the *Record on Appeal in Accordance with the Nevada Administrative Procedure Act (Chapter 233B of NRS)* and a *Transmittal of Record on Appeal* ("ROA") were filed.

1           On October 16, 2019, an *Order for Briefing Schedule* was entered setting forth the briefing  
2 deadlines pursuant to NRS 233B.130.

3           On October 28, 2019, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
4 CCMSI filed a *Stipulation to Extend Time to File Briefs* wherein the parties stipulated and agreed to  
5 extend the deadline to file Petitioner's opening brief to December 15, 2019, and Respondent's  
6 answering brief to January 20, 2020.

7           On November 4, 2019, an *Amended Briefing Schedule Order* was entered extending the  
8 briefing deadlines in accordance with the October 28, 2019 stipulation. On November 7, 2019,  
9 Petitioner KIMBERLY KLINE filed a *Notice of Entry of Order*.

10          On December 12, 2019, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO  
11 and CCMSI filed a second *Stipulation to Extend Time to File Briefs* wherein the parties stipulated  
12 and agreed to extend the deadline to file Petitioner's opening brief to January 14, 2020, and  
13 Respondent's answering brief to February 14, 2020.

14          On December 20, 2019, an *Order* granting stipulation to extend time periods set forth in NRS  
15 233B.133 was entered extending the briefing deadlines in accordance with the December 12, 2019  
16 second stipulation. On January 9, 2020, KIMBERLY KLINE filed *Notice of Entry of Order*.

17          On January 13, 2020, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
18 CCMSI filed a third *Stipulation to Extend Time to File Briefs* wherein the parties stipulated and agreed  
19 to extend the deadline to file Petitioner's opening brief to February 24, 2020 and Respondent's  
20 answering brief to March 24, 2020.

21          On January 16, 2020, an *Order Granting Stipulation to Extend Deadlines* was entered  
22 extending the briefing deadlines in accordance with the January 13, 2020 third stipulation. On  
23 January 21, 2020, Petitioner KIMBERLY KLINE filed a *Notice of Entry of Order*.

24          On February 24, 2020, KIMBERLY KLINE filed *Petitioner's Opening Brief*.

25          On March 20, 2020, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
26 CCMSI filed a fourth *Stipulation to Extend Briefing Deadlines* wherein the parties stipulated and  
27 agreed to extend the deadline for Respondent's answering brief to April 23, 2020 and Petitioner's  
28 reply brief to May 23, 2020.

1 On March 23, 2020, a *Second Amended Briefing Schedule Order* was entered extending the  
2 deadline for Respondent's answering brief to April 23, 2020 and Petitioner's reply brief to May 23,  
3 2020 pursuant to the parties' stipulation.

4 On April 23, 2020, the CITY OF RENO filed *Respondent's Answering Brief*. On May 22,  
5 2020, KIMBERLY KLINE filed *Petitioner's Reply Brief*. Thereafter, the parties' briefs were  
6 submitted to the Court for consideration.

7 Also, on May 22, 2020, Petitioner KIMBERLY KLINE filed a *Request for Oral Argument* on  
8 the Petition for Judicial Review. On May 27, 2020, CITY OF RENO also filed *Request for Oral*  
9 *Argument* on KIMBERLY KLINE's Petition for Judicial Review. Therefore, on June 17, 2020, the  
10 Court found that it would be an appropriate exercise of discretion by the Court to allow for oral  
11 arguments on the Petition for Judicial Review and entered *Order to Set*.

12 On June 26, 2020, the parties filed *Application for Setting*, wherein the parties agreed to a  
13 telephonic hearing to be conducted on September 2, 2020. On September 2, 2020, the parties filed a  
14 second *Application for Setting*, wherein the parties agree to vacate the September 2, 2020 hearing and  
15 reset the hearing for September 30, 2020. On October 5, 2020, the parties filed a third *Application*  
16 *for Setting*, wherein the parties agreed to reset the oral arguments on the Petition for Judicial review  
17 to November 2, 2020. On November 2, 2020, the parties filed a fourth *Application for Setting*,  
18 wherein the parties vacated the November 2, 2020 hearing, and reset it for November 19, 2020.

19 On November 19, 2020, the Court heard oral argument on KIMBERLY KLINE'S Petition  
20 for Judicial Review via simultaneous audio-visual transmission pursuant to Supreme Court Rules Part  
21 IX due to the courthouse's closure in light of the COVID-19 pandemic. At the hearing, Herb Santos,  
22 Jr., Esq. argued on behalf of Petitioner KIMBERLY KLINE, who was present for the hearing via  
23 simultaneous audio-visual transmission from Washoe County, Nevada. The opposition was argued  
24 by Lisa Alstead, Esq., on behalf of the CITY OF RENO. After the hearing, the transcript of the  
25 proceeding was submitted to the Court on December 1, 2020. Thereafter, the matter was taken under  
26 advisement by the Court.

27 KIMBERLY KLINE's Petition for Judicial Review arises from a June 25, 2015 industrial  
28 injury KLINE suffered when her work vehicle was rear-ended by another vehicle. (ROA 177-182,

1 395). The June 25, 2015 accident (subject incident) was her second motor vehicle accident within a  
2 month. (ROA 409). The first occurred on June 3, 2015 and KLINE's injuries sustained therein were  
3 nearly resolved at the time of the second incident. (Id.). On June 25, 2015, following the subject  
4 incident, KLINE went to St. Mary's and received medical treatment for back and neck pain. (ROA  
5 182-185, 409-411). KLINE was diagnosed by Dr. Richard Law with an acute lumbar radiculopathy,  
6 sprain of the lumbar spine, and acute pain in the lower back. (ROA 410).

7 On July 23, 2015, the claim was accepted for cervical strain. (ROA 453). KLINE received  
8 medical treatment from Dr. Scott Hall, M.D., in addition to chiropractic care and physical therapy.  
9 (See generally ROA 296-341). On October 28, 2015, KLINE was determined to be at maximum  
10 medical improvement ("MMI"), stable not ratable, and was released to her full duty with no  
11 restrictions. (ROA 490). On November 6, 2015, CITY OF RENO issued a notice of intent to close  
12 KLINE's claim. (ROA 295). After an appeal, the Department of Administration concluded that  
13 KLINE's industrial claim was closed prematurely. (ROA 239-240).

14 On January 13, 2016, KLINE saw Dr. Hansen for chiropractic care for her neck pain and Dr.  
15 Hansen assessed that KLINE had "cervical disc displacement, unspecified cervical region." (ROA  
16 296-298). Dr. Hansen felt that there was a high probability within a medical degree of certainty that  
17 KLINE's injuries were related to the rear-end collision she had recently sustained. (ROA 298, 306,  
18 339). Also, on January 13, 2016, KLINE underwent an MRI, which found disc degeneration with  
19 large disc protrusions at the C5-6 and C6-7 levels, resulting in complete effacement of CSF from the  
20 ventral and dorsal aspects of the cord with severe canal stenosis without cord compression or  
21 abnormal signal intensity in the cord to suggest cord edema or myelomalacia. (ROA 299, 503). On  
22 July 5, 2016, upon Dr. Hansen referral, KLINE saw Dr. Sekhon due to KLINE's ongoing complaints.  
23 (ROA 241-246).

24 On January 18, 2017, the Appeals Officer entered a Decision and Order which reversed claim  
25 closure without a PPD evaluation or rating and ordered Respondent, CITY OF RENO to rescind  
26 claim closure and provide medical treatment recommended by Dr. Sekhon. (ROA 167-176). CITY  
27 OF RENO timely appealed the decision to District Court and Petition for Judicial Review ensued.  
28 On December 11, 2017, Judge Simons issued an Order denying the Petition for Judicial Review.

1 (ROA 373-387). Therein, the Court noted that the Appeals Officer gave the opinions of Dr. Hall no  
2 weight as it pertained to the scope of the claims, and that Dr. Hall's opinions were inconsistent with  
3 the medical evidence. (ROA 384). That decision was not appealed.

4 While the Petition for Judicial Review was pending at the District Court, on June 12, 2017,  
5 KLINE had a cervical spine decompression and fusion surgery. (ROA 244, 252). On September 11,  
6 2017, KLINE was determined to have reached MMI, was ratable, and was released for full duty.  
7 (ROA 248-249). A permanent partial disability ("PPD") evaluation was performed by Dr. Russell  
8 Anderson and KLINE was found to have a 25% whole person impairment ("WPI") from the cervical  
9 spine, with 75% of the impairment apportioned as non-industrial. (ROA 250-256, 563-564). The  
10 self-insured Employer's third-party administrator ("TPA") issued a determination letter on December  
11 5, 2017, offering a 6% PPD award. (ROA 362, 568). KLINE appealed, and a second PPD evaluation  
12 was ordered and subsequently conducted by Dr. James Jempsa on May 8, 2018. (ROA 605-616).  
13 Dr. Jempsa found KLINE to have a 27% WPI with none of the impairment apportioned as non-  
14 industrial. (ROA 616-617). Because apportionment was not considered, the TPA sent a follow up  
15 request asking Dr. Jempsa to review Dr. Anderson's PPD evaluation and address apportionment.  
16 (ROA 1162). On May 18, 2018, Dr. Jempsa provided an Addendum which stated, "You will need to  
17 contact Dr. Anderson concerning his rationale for apportionment . . . the Claimant stated that she had  
18 no problems with her neck prior to her industrial injury of June 25, 2015. I have not received any  
19 medical records prior to the industrial injury . . . it is my opinion that apportionment is not necessary  
20 in this case." (ROA 1171).

21 On May 24, 2018, due to the large discrepancy between the two PPD ratings, a TPA  
22 determination letter notified KLINE that the 27% PPD award was to be held in abeyance pending a  
23 records review by Dr. Jay Betz. (ROA 1172). Dr. Betz provided his review and agreed with Dr.  
24 Anderson's findings on apportionment noting Dr. Anderson's conclusions "are well supported by the  
25 medical record, known pathologies, AMA guides, and Nevada Administrative Code." (ROA 1189).  
26 After a records review, the TPA sent a determination letter on June 13, 2018, offering KLINE a PPD  
27 award of 6% based on an apportionment of 75% of the WPI as non-industrial. (ROA 618). KLINE  
28 appealed this determination and on July 19, 2018, after a hearing, a Hearing Officer Decision was

1 entered reversing the TPA's determination. (ROA 601-603). CITY OF RENO maintained that  
2 apportionment is proper in this case and offered the uncontested 6% as a lump sum or in installments,  
3 and under NRS 616C.380, stated it will pay the remaining, contested 21% in monthly installments.  
4 CITY OF RENO, the employer, appealed and requested a stay. (ROA 007:6-7).

5 On May 1, 2019, an Appeal Hearing was conducted and on August 20, 2019, the Appeals  
6 Officer Decision and Order was filed. KIMBERLY KLINE's August 28, 2019 Petition for Judicial  
7 Review seeks reversal of the August 20, 2019 Appeals Officer Decision which addressed the appeals  
8 of three separate Hearing Officer Decisions: AO1900471-RKN, AO1902049-RKN, and  
9 AO1802418-RKN. KLINE, however, only petitions for judicial review of the issue on appeal in  
10 AO1900471-RKN, which was the Hearing Officer Decision, dated July 19, 2018, reversing the TPA's  
11 May 24, 2018 and June 13, 2018 determination letters regarding apportionment of KLINE's PPD  
12 award. (See Petition, Ex. 1, Decision of the Appeals Officer ("Decision"); ROA 001-022). KLINE  
13 argues that the Appeals Officer's August 20, 2019 Decision prejudices substantial rights of the  
14 Petitioner; was affected by error of law; was clearly erroneous in view of the reliable, probative, and  
15 substantial evidence on the whole record; and was arbitrary and capricious based upon an abuse of  
16 discretion by the Appeals Officer.

17 In this Order, this Court will determine: (1) whether the Appeals Officer's August 20, 2019  
18 Decision which reversed the Hearing Officer's Decision dated July 19, 2018, and affirming the  
19 underlying determinations, dated May 24, 2018 and June 13, 2018, was the result of reversible error  
20 of law; and (2) whether the Appeals Officer's Decision finding that the Petitioner's PPD award must  
21 be apportioned 75% as pre-existing is not supported by substantial evidence and results in an abuse  
22 of discretion.

23 "Judicial review of a final decision of an agency must be: (a) Conducted by the court without  
24 a jury; and (b) Confined to the record." *NRS 233B.135(1)*. "In cases concerning alleged irregularities  
25 in procedure before an agency that are not shown in the record, the court may receive evidence  
26 concerning the irregularities." *Id.* "The final decision of the agency shall be deemed reasonable and  
27 lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party  
28 attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3."



1 *NRS 233B.135(2)*. “The court shall not substitute its judgment for that of the agency as to the weight  
2 of evidence on a question of fact.” *NRS 233B.135(3)*. “The court may remand or affirm the final  
3 decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced  
4 because the final decision of the agency is:

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

8 *NRS 233B.135(3)*.

9 Under the standard of review for appeals, if factual findings of the agency are supported by  
10 evidence, they are conclusive and reviewing the court’s jurisdiction is confined to questions of law.  
11 *NRS 612.530(4)*; *NRS 233B.135*; Whitney v. State, Dep’t of Employment Sec., 105 Nev. 810, 812  
12 (1989), citing Nevada Employment Sec. Dep’t v. Nacheff, 104 Nev. 347, 349 (1988). On appeal, the  
13 District Court reviews questions of law, including the administrative agency’s interpretation of  
14 statutes, de novo. City of N. Las Vegas v. Warburton, 127 Nev. 682, 686 (2011). Review of an  
15 Appeals Officer's decision is limited to determining whether there was substantial evidence in the  
16 record to support the Appeals Officer's decision and that the findings and ultimate decisions of the  
17 Appeals Officer are not disturbed unless they were clearly erroneous or otherwise amounted to an  
18 abuse of discretion. Nevada Indus. Comm’n v. Reese, 93 Nev. 115, 125 (1977); State Indus. Ins. Sys.  
19 v. Snapp, 100 Nev. 290, 294 (1984); Stark v. State Indus. Ins. Sys., 111 Nev. 1273, 1275 (1995);  
20 State Indus. Ins. Sys. v. Hicks, 100 Nev. 567, 569 (1984), State Indus. Ins. Sys. v. Swinney, 103 Nev.  
21 17, 20 (1987); State Indus. Ins. Sys. v. Christensen, 106 Nev. 85, 88 (1990); Brown v. State Indus.  
22 Ins. Sys., 106 Nev. 878, 880 (1990); Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 331 (1993).

23 The review of the District Court is confined to the record and the court is precluded from  
24 substituting its own judgment for that of the agency as to the weight of the evidence on questions of  
25 fact. Nevada Indus. Comm’n v. Williams, 91 Nev. 686, 688 (1975); State Indus. Ins. Sys. v. Swinney,  
26 103 Nev. 17, 19-20 (1987); Palmer v. Del Webb’s High Sierra, 108 Nev. 673, 686 (1992). The  
27 Court’s review is limited to a determination of whether the Appeals Officer acted arbitrarily or  
28 capriciously, and where there was substantial evidence to support the decision, the Court cannot

1 substitute its own judgment for that of the Appeals Officer. Construction Indus. Workers' Comp.  
2 Group v. Chalue, 119 Nev. 348, 352 (2003); Meridian Gold Co. V. State, 119 Nev. 630, 633 (2003);  
3 State v. Public Employees' Ret. Sys., 120 Nev. 19, 23 (2004).

4 An "agency's fact-based conclusions of law 'are entitled to deference, and will not be  
5 disturbed if they are supported by substantial evidence.'" Law Offices of Barry Levinson, P.C. v.  
6 Milko, 124 Nev. 355, 362 (2008). "Substantial evidence exists if a reasonable person could find the  
7 evidence adequate to support the agency's conclusion, and [the Court] may not reweigh the evidence  
8 or revisit an appeals officer's credibility determination." Id.; NRS 233B.135(4). "While it is true that  
9 the district court is free to decide pure legal questions without deference to an agency determination,  
10 the agency's conclusions of law, which will necessarily be closely related to the agency's view of the  
11 facts, are entitled to deference, and will not be disturbed if they are supported by substantial  
12 evidence." Jones v. Rosner, 102 Nev. 215, 217 (1986).

13 CITY OF RENO contends that the appealed issue is a mixed question of law and fact entitled  
14 to deference; a question of law as to whether the Appeals Officer correctly interpreted NRS  
15 616C.490(9) and NAC 616C.490 with respect to apportionment, and of fact, as the Appeals Officer  
16 was required to apply the facts to the law. CITY OF RENO argues that KLINE is requesting this  
17 Court substitute its opinion for that of the Appeals Officer's as to the application of the evidence to  
18 the law and contends that to do so is impermissible.

19 Petitioner, KIMBERLY KLINE argues that reversal of the Appeals Officer's August 20, 2019  
20 Decision is required because the decision is procedurally deficient and the result of reversible error.  
21 KLINE argues that the Appeals Officer committed reversible error in two areas: (1) the Appeals  
22 Officer relitigated facts which she previously decided in a prior appeal, and (2) the Appeals Officer  
23 did not correctly apply NAC 616C.490 and NRS 616C.490. KLINE also argues that the Appeals  
24 Officer's Decision is erroneous in view of the reliable, probative, and substantial evidence on the  
25 whole record and results in an abuse of discretion.

26 KLINE argues that the Appeals Officer's Decision relied on the opinions of Dr. Hall which  
27 the Appeals Officer previously determined to be not credible, inconsistent with the medical records,  
28 and were not stated within a reasonable degree of medical probability. (ROA 174:8-10). KLINE

1 argues that since the Appeals Officer gave little or no weight to the opinions of Dr. Hall, it is  
2 reasonable to conclude that any subsequent opinion by a rating physician should also be bound by  
3 those findings. KLINE argues that the Appeals Officer failed to consider her prior findings and  
4 conclusions, therefore her August 20, 2019 Decision is based on faulty information.

5 KLINE also argues that substantial evidence on the record establishes that she did not have a  
6 pre-injury impairment under the AMA Guides, 5<sup>th</sup> Edition. Specifically, KLINE notes the Appeals  
7 Officer previously found that Dr. Hansen stated that there was a high probability within a degree of  
8 medical certainty that KLINE's injuries were related to the car accident. (ROA 170:23-28). Dr.  
9 Hansen opined that the "MRI done at RDC confirms said impression with two large left paracentral  
10 disc protrusions at C5-6 and C6-7 causing severe left NFS at each level. These injuries do appear to  
11 be directly related to the recent rear-end type motor vehicle collision." (ROA 306). KLINE asserts  
12 that the Appeals Officers found that "substantial evidence supports a finding that the industrial  
13 accident aggravated the pre-existing condition and that the resulting conditions was the substantial  
14 contributing cause of the resulting condition." (ROA 174:6-8). KLINE argues that apportioning the  
15 rating by 75% when it had already been determined that the industrial injury was the substantial  
16 contributing factor for the resulting condition is inconsistent with the Appeals Officer's prior  
17 decision. Therefore, KLINE asserts that the Appeals Officer committed reversible error of law by  
18 re-litigating those facts which she previously decided in a prior appeal.

19 CITY OF RENO, however, argues that KLINE's argument ignores the fact that the question  
20 on appeal in the earlier decision was whether claim closure without a PPD rating was proper. (ROA  
21 167:18-23). CITY OF RENO asserts that Dr. Hansen's statement about KLINE's injuries being  
22 related to the car accident, and the Appeals Officer's finding that KLINE had "met her burden of  
23 proof with substantial evidence that she is not at maximum medical improvement and needs further  
24 treatment" required the claim to remain open. (ROA 174:11-12). Thus, the earlier decision, CITY  
25 OF RENO contends, makes no findings as to the propriety of apportionment, as the January 18, 2017  
26 Appeals Officer Decision contemplated a possible future PPD evaluation once KLINE had completed  
27 treatment and was determined stable. (ROA 174:18-19).

28 ///

1 CITY OF RENO asserts that in the prior decision the Appeals Officer gave more weight to  
2 Dr. Sekhon's and Dr. Hanson's medical opinions, and less weight to Dr. Hall's opinion that KLINE  
3 did not suffer a ratable impairment. CITY OF RENO argues that the Appeals Officer's decision to  
4 give Dr. Hall's opinion no weight is not binding on future rating physicians, as the prior decision pre-  
5 dated the spinal fusion surgery, and the PPD evaluations by Dr. Anderson and Dr. Jempsa, as well as  
6 Dr. Betz's records review report and expert testimony, upon which the Appeals Officer specifically  
7 relied in reaching the Decision at issue here.

8 The Appeals Officer also gave Dr. Jempsa's PPD evaluation no weight because there was a  
9 large discrepancy in Dr. Jempsa's range of motion findings which made his results questionable as  
10 "[i]t is well recognized that patients learn from prior rating experience." (ROA 017:16-17, 018:12-  
11 18, 1192). Dr. Jempsa failed to apportion because KLINE stated she had no problems with her neck  
12 prior to the industrial injury and because he had received no records prior to the industrial injury on  
13 June 25, 2015, which the Appeals Officer found was not required under NAC 616C.490. (ROA  
14 018:3-12). The Appeals Officer concluded that Dr. Jempsa's findings were also questionable  
15 because "the medical evidence depicts stenosis, spondylitis, and osteophytes which take years if not  
16 decades to form." (ROA 018:12-14).

17 The Appeals Officer based the decision upholding apportionment primarily on the medical  
18 evidence from Dr. Anderson and Dr. Betz, whom she "found to be credible and their opinions given  
19 the most weight." (ROA 007:19-20, 013:25-26, 014:1-2). Although Dr. Betz testified that Dr. Hall  
20 "was probably correct that the [Claimant] suffered a sprain/strain," and that she did eventually  
21 improve "as would be expected with a . . . sprain/strain," Dr. Betz testified that there was not "any  
22 significant relationship" between those symptoms and the degenerative disc disease findings on  
23 KLINE's MRI results. (ROA 055:11-17, 056:1-2). Dr. Betz testified that the reason it took KLINE  
24 seven months to improve from the sprain/strain was because "there was unrecognized underlying  
25 multilevel degenerative disc changes." (ROA 055:18-23).

26 While it is true that Dr. Betz's report notes that Dr. Hall's opinion supports Dr. Anderson's  
27 conclusion that KLINE's cervical spine pathologies were primarily degenerative in nature and pre-  
28 existing, the Appeals Officer Decision does not rely on Dr. Hall's opinion alone. (ROA 011).

1 Moreover, regardless of whether Dr. Betz relied on Dr. Hall's opinion, what is at issue here is  
2 KLINE's pain and additional treatment related to the pre-existing degenerative condition which began  
3 after she had recovered from the industrial sprain/strain and was released by Dr. Hall. Dr. Betz's  
4 record review report and extensive expert testimony make clear that he considered all medical  
5 reporting and imaging studies in reaching his conclusion that the medical evidence establishes that  
6 KLINE had a pre-existing condition. (ROA 011-013).

7 CITY OF RENO argues that Dr. Betz's opinion incorporating Dr. Hall's opinion and his  
8 reliance on Dr. Hall's reporting was not inconsistent with the Appeals Officer's prior decision and  
9 that the prior decision does not preclude the Appeals Officer from taking that subsequent medical  
10 history and documentation into consideration when reaching decisions. In view of all the medical  
11 evidence, much of which did not exist at the time of the prior decision relied on by KLINE, the  
12 Appeals Officer properly concluded that KLINE had a pre-existing condition mandating  
13 apportionment of impairment under NAC 616C.490. This presents a new question of law not  
14 previously addressed by the Appeals Officer and which requires a separate and distinct legal analysis  
15 and application of the medical evidence than that performed in the prior decision. Thus, CITY OF  
16 RENO argues and the Court finds that the prior decision concluding that the industrial injury  
17 aggravated a pre-existing condition under NAC 616C.175(1), makes the present decision upholding  
18 apportionment based on substantial medical evidence establishing that KLINE had a pre-existing  
19 cervical spine condition consistent with the law of the case. The Court finds the Appeals Officer  
20 Decision, dated August 20, 2019, was not the result of reversible error nor an abuse of discretion as  
21 the Appeals Officer did not re-litigate facts previously decided in a prior appeal and the Decision is  
22 supported by substantial evidence.

23 KLINE also argues that the Appeals Officer erred by not complying with the mandates of  
24 NRS 233B.125. NRS 233B.125 states:

25 "A decision or order adverse to a party in a contested case must be in writing or stated  
26 in the record. Except as provided in subsection 5 of NRS 233B.121, a final decision  
27 must include findings of fact and conclusions of law, separately stated. Findings of  
28 fact and decisions must be based upon a preponderance of the evidence. Findings of  
fact, if set forth in statutory language, must be accompanied by a concise and explicit  
statement of the underlying facts supporting the findings. If, in accordance with

1 agency regulations, a party submitted proposed findings of fact before the  
2 commencement of the hearing, the decision must include a ruling upon each proposed  
3 finding. Parties must be notified either personally or by certified mail of any decision  
4 or order. Upon request a copy of the decision or order must be delivered or mailed  
5 forthwith to each party and to the party's attorney of record.”

6 *NRS 233B.125.*

7 The Court finds the Appeals Officer decision included findings of fact and conclusions of law,  
8 separately stated. In addition, the Court finds the Appeals Officer’s findings of fact and decision are  
9 based upon a preponderance of evidence, and the Appeals Officer enumerated each of the facts  
10 underlying those findings.

11 In addition, KLINE argues that the Appeals Officer committed reversible error by not  
12 correctly apply NRS 616C.490 and NAC 616C.490. KLINE argues that NRS 616C.490 requires that  
13 there be evidence that a ratable impairment, as defined by the AMA Guides, existed on the date of  
14 the industrial injury for apportionment to occur. KLINE argues there is no prior medical records  
15 confirming that there was a ratable impairment, prior residual impairment, and proof of a residual  
16 impairment which existed on the date of the industrial injury and that Dr. Jempsa, after reviewing  
17 numerous prior records predating KLINE’s industrial injury, found apportionment was not  
18 appropriate. (ROA 617). KLINE asserts that Dr. Betz conceded that there is no documentation  
19 concerning the scope and nature of the impairment which existed before the industrial injury. (ROA  
20 087, 088, 094). Thus, KLINE contends that at the time of the industrial injury, she had a 0%  
21 impairment due to any pre-existing condition that she may have had, and therefore, the impairment  
22 may not be apportioned.

23 NRS 616C.490 states: “Except as otherwise provided in subsection 10, if there is a previous  
24 disability, . . . the percentage of disability for a subsequent injury must be determined by computing  
25 the percentage of the entire disability and deducting there from the percentage of the previous  
26 disability as it existed at the time of the subsequent injury.” *NRS 616C.490(9)* [effective through  
27 December 31, 2019]; *Pub. Agency Comp. Tr. (PACT) v. Blake*, 127 Nev. 863, 867 (2011) (holding  
28 calculations for prior and subsequent injuries when impairment ratings for those injuries were based  
on different editions of the applicable guide, be reconciled by first using the current edition of the  
AMA Guides to determine both the percentage of the entire disability and of the previous disability).

1           The Nevada Administrative Code provides the procedure for completing apportionment. *See*  
2   *NAC 616C.490*. The Administrative Code requires a precise apportionment to be completed “if a  
3   prior evaluation of the percentage of impairment is available and recorded for the pre-existing  
4   impairment.” *NAC 616C.490(3)*. However, the Administrative Code specifically contemplates the  
5   situation here, where there is no prior rating evaluation of the pre-existing condition. In such a case,  
6   the Administrative Code provides in pertinent part that:

7                     4. Except as otherwise provided in subsection 5, . . . if no previous rating  
8                     evaluation was performed, the percentage of impairment for the previous injury or  
9                     disease and the present industrial injury or occupational disease must be recalculated  
10                    by using the *Guides*, as adopted by reference pursuant to *NAC 616C.002*. The  
11                    apportionment must be determined by subtracting the percentage of impairment  
12                    established for the previous injury or disease from the percentage of impairment  
13                    established for the present industrial injury or occupational disease.

14                   5. If precise information is not available, and the rating physician or  
15                    chiropractor is unable to determine an apportionment using the *Guides* as set forth in  
16                    subsection 4, an apportionment may be allowed if at least 50 percent of the total  
17                    present impairment is due to a preexisting or intervening injury, disease or condition.  
18                    The rating physician or chiropractor may base the apportionment upon X-rays,  
19                    historical records and diagnoses made by physicians or chiropractors or records of  
20                    treatment which confirm the prior impairment.  
21                    *NAC 616C.490(4)-(5)*.

22           “If there are preexisting conditions . . . the apportionment must be supported by  
23   documentation concerning the scope and the nature of the impairment which existed before the  
24   industrial injury or the onset of disease.” *NAC 616C.490(6)*. CITY OF RENO argues that *NAC*  
25   616C.490 does not require that the documentation of a pre-existing condition predate the industrial  
26   injury. In *Ransier v. State Industrial Insurance Systems*, the Nevada Supreme Court stated that “the  
27   clause ‘which existed before the industrial injury or the onset of the disease’ refers to the impairment  
28   and not the document.” *Ransier v. State Indus. Ins. Sys.*, 104 Nev. 742, 744 at fn. 1 (1988). Although  
the reference to this regulation is from the prior version, *NAC 616.650(6)*, the language has remained  
the same. The *Ransier* Court held that the Nevada Administrative Code “does not require historical  
documentation, only ‘documentation concerning the scope and nature of the impairment,’ which can  
come, as here, from examination at the time of the second injury.” *Id.* (affirming apportionment was  
proper where no records or documents existed concerning claimant’s prior injury, but where both  
treating physicians found claimant’s two injuries to be distinguishable).

1 CITY OF RENO also argues that the Appeals Officer correctly interpreted NRS 616C.490  
2 and NAC 616C.490 in finding apportionment does not require that the pre-existing condition be a  
3 ratable impairment. Rather, CITY OF RENO argues that the rating physician must look for a prior  
4 impairment, shown by medical records post-dating the industrial injury. CITY OF RENO argues that  
5 KLINE incorrectly insists that apportionment for a pre-existing disease or condition requires a  
6 “ratable” impairment to have existed on the date of the industrial accident. “[W]hen the language of  
7 a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go  
8 beyond it.” Nev. Dep’t of Corr. v. York Claims Servs., Inc., 131 Nev. 199, 203 (2015). CITY OF  
9 RENO argues that the plain language of NAC 616C.490 simply requires an “impairment” with no  
10 requirement that the pre-existing condition or disease be previously rated.

11 “A rating physician or chiropractor shall always explain the underlying basis of the  
12 apportionment as specifically as possible by citing pertinent data in the health care records or other  
13 records.” *NAC 616C.490(7)*. Here, the Appeals Officer found “Dr. Betz to be a credible witness and  
14 his testimony is given great weight. Dr. Betz’s testimony was uncontroverted at [the] hearing and no  
15 opposing or contradicting expert witness testimony was provided.” (ROA 007:19-21). Based on the  
16 records from Dr. Sekhon, who performed KLINE’s spinal fusion surgery, in addition to MRI, x-ray  
17 records, and historical records and diagnoses, demonstrating the scope and nature of the impairment,  
18 Dr. Betz testified that the present impairment was at least fifty percent (50%) due to KLINE’s pre-  
19 existing impairment. (ROA 15:24-27, 16:1-10). The Appeals Officer concluded that Dr. Betz and  
20 Dr. Anderson established the underlying basis for apportionment as required by NAC 616C.490(5)-  
21 (7). (ROA 16:10-15). CITY OF RENO argues and the Court finds that KLINE’s contention that  
22 apportionment is improper due to a lack of prior documentation of the pre-existing, ratable condition  
23 is unpersuasive where the Appeals Officer found Dr. Betz has expressly identified the x-rays,  
24 historical records, and diagnoses confirming KLINE’s prior impairment as required by NAC  
25 616C.490(5).

26 Following review of the Appeals Officer’s Decision, the Court finds the Appeals Officer did  
27 not commit any clear error of law nor arbitrary or capricious abuse of discretion. As discussed supra,  
28 the Court finds the Appeals Officer correctly applied NRS 616C.490 and NAC 616C.490. In



1 addition, the Court finds the Decision is supported by substantial evidence and the Appeals Officer's  
2 findings of fact and conclusions of law in the Decision complied with the requirements set forth in  
3 NRS 233B.125. KLINE was properly awarded 6% PPD award, which apportioned 25% WPI of the  
4 cervical spine as 75% non-industrial and 25% industrial. Therefore, the Court finds there is no basis  
5 to grant review and the Petition should be denied.

6 Based on the foregoing and good cause appearing,

7 IT IS HEREBY ORDERED that KIMBERLY KLINE's Petition for Judicial Review is  
8 DENIED and the decision of the Appeals Officer, dated August 20, 2019, is AFFIRMED.

9 DATED this 10 day of February, 2021.

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12 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV19-01683

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of February, 2021, I filed the **ORDER DENYING PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       **Personal delivery to the following: [NONE]**

  xx   **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

TIMOTHY ROWE, ESQ. for CANNON COCHRAN MANAGEMENT SERVICES, CITY OF RENO

LISA ALSTEAD, ESQ. for CANNON COCHRAN MANAGEMENT SERVICES, CITY OF RENO

HERBERT SANTOS, JR., ESQ. for KIMBERLY M KLINE

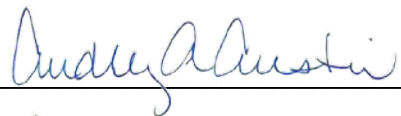
       **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

       **Placed a true copy in a sealed envelope for service via:**

           Reno/Carson Messenger Service – [NONE]

           Federal Express or other overnight delivery service [NONE]

DATED this 10 day of February, 2021.

  
\_\_\_\_\_

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lalstead@mcdonaldcarano.com

*Attorneys for Respondents*  
CITY OF RENO AND CANNON  
COCHRAN MANAGEMENT SERVICES, INC.

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

**IN AND FOR THE COUNTY OF WASHOE**

\* \* \* \* \*

KIMBERLY KLINE,

Petitioner,

vs.

CITY OF RENO; CANNON COCHRAN  
MANAGEMENT SERVICES, "CCMSI"; the  
STATE OF NEVADA DEPARTMENT OF  
ADMINISTRATION, HEARINGS  
DIVISION, an Agency of the State of Nevada;  
the STATE OF NEVADA DEPARTMENT  
OF ADMINISTRATION, APPEALS  
DIVISION, an Agency of the State of Nevada;  
MICHELLE MORGANDO, ESQ., Sr.  
Appeals Officer; RAJINDER NIELSEN,  
ESQ., Appeals Officer, ATTORNEY  
GENERAL AARON FORD, ESQ.,

Respondents.

Case No.: CV19-01683

Dept. No.: 4

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on February 10, 2021, the above-entitled Court entered its  
Order Denying Petition for Judicial Review. A true and correct copy of the Order is attached hereto  
as **Exhibit 1**.

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**AFFIRMATION**

The undersigned does hereby affirm that the preceding does not contain the social security number of any person.

DATED this 11<sup>th</sup> day of February, 2021.

McDONALD CARANO, LLP

By: /s/ Lisa Wiltshire Alstead  
Lisa Wiltshire Alstead, Esq. (NSBN 10470)  
100 W. Liberty Street, Tenth Floor  
Reno, NV 89501  
*Attorneys for Respondents*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO  
3 LLP, and that on the 11<sup>th</sup> day of February, 2021, I served the within **NOTICE OF ENTRY OF**  
4 **ORDER DENYING PETITION FOR JUDICIAL REVIEW** upon all parties registered for  
5 electronic service through filing with the Clerk of the Court by using the Court's CM/ECF system.  
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7  
8 /s/ Angela Shoults  
An Employee of McDonald Carano LLP  
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**INDEX OF EXHIBITS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>
1.	Order Denying Petition for Judicial Review	17

4840-5854-3836, v. 1

# EXHIBIT 1

# EXHIBIT 1

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

8 KIMBERLY KLINE,

9 Petitioner,

CASE NO.: CV19-01683

10 vs.

DEPT. NO.: 4

11 CITY OF RENO; CANNON COCHRAN  
12 MANAGEMENT SERVICES, "CCMSI"; the  
13 STATE OF NEVADA DEPARTMENT OF  
14 ADMINISTRATION, HEARINGS DIVISION,  
15 an Agency of the State of Nevada; the STATE  
16 OF NEVADA DEPARTMENT OF  
17 ADMINISTRATION, APPEALS DIVISION,  
18 an Agency of the State of Nevada; MICHELLE  
19 MORGANDO, ESQ., Sr. Appeals Officer;  
20 RAJINDER NIELSEN, ESQ., Appeals Officer,  
21 ATTORNEY GENERAL AARON FORD,  
22 ESQ.,

23 Respondents.

24 **ORDER DENYING PETITION FOR JUDICIAL REVIEW**

25 On August 28, 2019, Petitioner KIMBERLY KLINE, by and through her attorney, Herb  
26 Santos, Jr., Esq. of the Law Firm of Herb Santos, Jr., filed a *Petition for Judicial Review*. On  
27 September 9, 2019, Respondent the CITY OF RENO and CANNON COCHRAN MANAGEMENT  
28 SERVICES, INC. (hereinafter "CCMSI"), by and through their attorney, Timothy E. Rowe, Esq. and  
Lisa Wiltshire Alstead, Esq. of McDonald Carano LLP, filed a *Statement of Intent to Participate*.

On September 18, 2019, Rajinder K. Rai-Nielsen, Esq., Appeals Officer, filed a *Certification of Transmittal*. Also, on September 18, 2019, the *Record on Appeal in Accordance with the Nevada Administrative Procedure Act (Chapter 233B of NRS)* and a *Transmittal of Record on Appeal* ("ROA") were filed.



1           On October 16, 2019, an *Order for Briefing Schedule* was entered setting forth the briefing  
2 deadlines pursuant to NRS 233B.130.

3           On October 28, 2019, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
4 CCMSI filed a *Stipulation to Extend Time to File Briefs* wherein the parties stipulated and agreed to  
5 extend the deadline to file Petitioner's opening brief to December 15, 2019, and Respondent's  
6 answering brief to January 20, 2020.

7           On November 4, 2019, an *Amended Briefing Schedule Order* was entered extending the  
8 briefing deadlines in accordance with the October 28, 2019 stipulation. On November 7, 2019,  
9 Petitioner KIMBERLY KLINE filed a *Notice of Entry of Order*.

10          On December 12, 2019, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO  
11 and CCMSI filed a second *Stipulation to Extend Time to File Briefs* wherein the parties stipulated  
12 and agreed to extend the deadline to file Petitioner's opening brief to January 14, 2020, and  
13 Respondent's answering brief to February 14, 2020.

14          On December 20, 2019, an *Order* granting stipulation to extend time periods set forth in NRS  
15 233B.133 was entered extending the briefing deadlines in accordance with the December 12, 2019  
16 second stipulation. On January 9, 2020, KIMBERLY KLINE filed *Notice of Entry of Order*.

17          On January 13, 2020, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
18 CCMSI filed a third *Stipulation to Extend Time to File Briefs* wherein the parties stipulated and agreed  
19 to extend the deadline to file Petitioner's opening brief to February 24, 2020 and Respondent's  
20 answering brief to March 24, 2020.

21          On January 16, 2020, an *Order Granting Stipulation to Extend Deadlines* was entered  
22 extending the briefing deadlines in accordance with the January 13, 2020 third stipulation. On  
23 January 21, 2020, Petitioner KIMBERLY KLINE filed a *Notice of Entry of Order*.

24          On February 24, 2020, KIMBERLY KLINE filed *Petitioner's Opening Brief*.

25          On March 20, 2020, Petitioner KIMBERLY KLINE and Respondent CITY OF RENO and  
26 CCMSI filed a fourth *Stipulation to Extend Briefing Deadlines* wherein the parties stipulated and  
27 agreed to extend the deadline for Respondent's answering brief to April 23, 2020 and Petitioner's  
28 reply brief to May 23, 2020.

1 On March 23, 2020, a *Second Amended Briefing Schedule Order* was entered extending the  
2 deadline for Respondent's answering brief to April 23, 2020 and Petitioner's reply brief to May 23,  
3 2020 pursuant to the parties' stipulation.

4 On April 23, 2020, the CITY OF RENO filed *Respondent's Answering Brief*. On May 22,  
5 2020, KIMBERLY KLINE filed *Petitioner's Reply Brief*. Thereafter, the parties' briefs were  
6 submitted to the Court for consideration.

7 Also, on May 22, 2020, Petitioner KIMBERLY KLINE filed a *Request for Oral Argument* on  
8 the Petition for Judicial Review. On May 27, 2020, CITY OF RENO also filed *Request for Oral*  
9 *Argument* on KIMBERLY KLINE's Petition for Judicial Review. Therefore, on June 17, 2020, the  
10 Court found that it would be an appropriate exercise of discretion by the Court to allow for oral  
11 arguments on the Petition for Judicial Review and entered *Order to Set*.

12 On June 26, 2020, the parties filed *Application for Setting*, wherein the parties agreed to a  
13 telephonic hearing to be conducted on September 2, 2020. On September 2, 2020, the parties filed a  
14 second *Application for Setting*, wherein the parties agree to vacate the September 2, 2020 hearing and  
15 reset the hearing for September 30, 2020. On October 5, 2020, the parties filed a third *Application*  
16 *for Setting*, wherein the parties agreed to reset the oral arguments on the Petition for Judicial review  
17 to November 2, 2020. On November 2, 2020, the parties filed a fourth *Application for Setting*,  
18 wherein the parties vacated the November 2, 2020 hearing, and reset it for November 19, 2020.

19 On November 19, 2020, the Court heard oral argument on KIMBERLY KLINE'S Petition  
20 for Judicial Review via simultaneous audio-visual transmission pursuant to Supreme Court Rules Part  
21 IX due to the courthouse's closure in light of the COVID-19 pandemic. At the hearing, Herb Santos,  
22 Jr., Esq. argued on behalf of Petitioner KIMBERLY KLINE, who was present for the hearing via  
23 simultaneous audio-visual transmission from Washoe County, Nevada. The opposition was argued  
24 by Lisa Alstead, Esq., on behalf of the CITY OF RENO. After the hearing, the transcript of the  
25 proceeding was submitted to the Court on December 1, 2020. Thereafter, the matter was taken under  
26 advisement by the Court.

27 KIMBERLY KLINE's Petition for Judicial Review arises from a June 25, 2015 industrial  
28 injury KLINE suffered when her work vehicle was rear-ended by another vehicle. (ROA 177-182,

1 395). The June 25, 2015 accident (subject incident) was her second motor vehicle accident within a  
2 month. (ROA 409). The first occurred on June 3, 2015 and KLINE's injuries sustained therein were  
3 nearly resolved at the time of the second incident. (Id.). On June 25, 2015, following the subject  
4 incident, KLINE went to St. Mary's and received medical treatment for back and neck pain. (ROA  
5 182-185, 409-411). KLINE was diagnosed by Dr. Richard Law with an acute lumbar radiculopathy,  
6 sprain of the lumbar spine, and acute pain in the lower back. (ROA 410).

7 On July 23, 2015, the claim was accepted for cervical strain. (ROA 453). KLINE received  
8 medical treatment from Dr. Scott Hall, M.D., in addition to chiropractic care and physical therapy.  
9 (See generally ROA 296-341). On October 28, 2015, KLINE was determined to be at maximum  
10 medical improvement ("MMI"), stable not ratable, and was released to her full duty with no  
11 restrictions. (ROA 490). On November 6, 2015, CITY OF RENO issued a notice of intent to close  
12 KLINE's claim. (ROA 295). After an appeal, the Department of Administration concluded that  
13 KLINE's industrial claim was closed prematurely. (ROA 239-240).

14 On January 13, 2016, KLINE saw Dr. Hansen for chiropractic care for her neck pain and Dr.  
15 Hansen assessed that KLINE had "cervical disc displacement, unspecified cervical region." (ROA  
16 296-298). Dr. Hansen felt that there was a high probability within a medical degree of certainty that  
17 KLINE's injuries were related to the rear-end collision she had recently sustained. (ROA 298, 306,  
18 339). Also, on January 13, 2016, KLINE underwent an MRI, which found disc degeneration with  
19 large disc protrusions at the C5-6 and C6-7 levels, resulting in complete effacement of CSF from the  
20 ventral and dorsal aspects of the cord with severe canal stenosis without cord compression or  
21 abnormal signal intensity in the cord to suggest cord edema or myelomalacia. (ROA 299, 503). On  
22 July 5, 2016, upon Dr. Hansen referral, KLINE saw Dr. Sekhon due to KLINE's ongoing complaints.  
23 (ROA 241-246).

24 On January 18, 2017, the Appeals Officer entered a Decision and Order which reversed claim  
25 closure without a PPD evaluation or rating and ordered Respondent, CITY OF RENO to rescind  
26 claim closure and provide medical treatment recommended by Dr. Sekhon. (ROA 167-176). CITY  
27 OF RENO timely appealed the decision to District Court and Petition for Judicial Review ensued.  
28 On December 11, 2017, Judge Simons issued an Order denying the Petition for Judicial Review.

1 (ROA 373-387). Therein, the Court noted that the Appeals Officer gave the opinions of Dr. Hall no  
2 weight as it pertained to the scope of the claims, and that Dr. Hall's opinions were inconsistent with  
3 the medical evidence. (ROA 384). That decision was not appealed.

4 While the Petition for Judicial Review was pending at the District Court, on June 12, 2017,  
5 KLINE had a cervical spine decompression and fusion surgery. (ROA 244, 252). On September 11,  
6 2017, KLINE was determined to have reached MMI, was ratable, and was released for full duty.  
7 (ROA 248-249). A permanent partial disability ("PPD") evaluation was performed by Dr. Russell  
8 Anderson and KLINE was found to have a 25% whole person impairment ("WPI") from the cervical  
9 spine, with 75% of the impairment apportioned as non-industrial. (ROA 250-256, 563-564). The  
10 self-insured Employer's third-party administrator ("TPA") issued a determination letter on December  
11 5, 2017, offering a 6% PPD award. (ROA 362, 568). KLINE appealed, and a second PPD evaluation  
12 was ordered and subsequently conducted by Dr. James Jempsa on May 8, 2018. (ROA 605-616).  
13 Dr. Jempsa found KLINE to have a 27% WPI with none of the impairment apportioned as non-  
14 industrial. (ROA 616-617). Because apportionment was not considered, the TPA sent a follow up  
15 request asking Dr. Jempsa to review Dr. Anderson's PPD evaluation and address apportionment.  
16 (ROA 1162). On May 18, 2018, Dr. Jempsa provided an Addendum which stated, "You will need to  
17 contact Dr. Anderson concerning his rationale for apportionment . . . the Claimant stated that she had  
18 no problems with her neck prior to her industrial injury of June 25, 2015. I have not received any  
19 medical records prior to the industrial injury . . . it is my opinion that apportionment is not necessary  
20 in this case." (ROA 1171).

21 On May 24, 2018, due to the large discrepancy between the two PPD ratings, a TPA  
22 determination letter notified KLINE that the 27% PPD award was to be held in abeyance pending a  
23 records review by Dr. Jay Betz. (ROA 1172). Dr. Betz provided his review and agreed with Dr.  
24 Anderson's findings on apportionment noting Dr. Anderson's conclusions "are well supported by the  
25 medical record, known pathologies, AMA guides, and Nevada Administrative Code." (ROA 1189).  
26 After a records review, the TPA sent a determination letter on June 13, 2018, offering KLINE a PPD  
27 award of 6% based on an apportionment of 75% of the WPI as non-industrial. (ROA 618). KLINE  
28 appealed this determination and on July 19, 2018, after a hearing, a Hearing Officer Decision was

1 entered reversing the TPA's determination. (ROA 601-603). CITY OF RENO maintained that  
2 apportionment is proper in this case and offered the uncontested 6% as a lump sum or in installments,  
3 and under NRS 616C.380, stated it will pay the remaining, contested 21% in monthly installments.  
4 CITY OF RENO, the employer, appealed and requested a stay. (ROA 007:6-7).

5 On May 1, 2019, an Appeal Hearing was conducted and on August 20, 2019, the Appeals  
6 Officer Decision and Order was filed. KIMBERLY KLINE's August 28, 2019 Petition for Judicial  
7 Review seeks reversal of the August 20, 2019 Appeals Officer Decision which addressed the appeals  
8 of three separate Hearing Officer Decisions: AO1900471-RKN, AO1902049-RKN, and  
9 AO1802418-RKN. KLINE, however, only petitions for judicial review of the issue on appeal in  
10 AO1900471-RKN, which was the Hearing Officer Decision, dated July 19, 2018, reversing the TPA's  
11 May 24, 2018 and June 13, 2018 determination letters regarding apportionment of KLINE's PPD  
12 award. (See Petition, Ex. 1, Decision of the Appeals Officer ("Decision"); ROA 001-022). KLINE  
13 argues that the Appeals Officer's August 20, 2019 Decision prejudices substantial rights of the  
14 Petitioner; was affected by error of law; was clearly erroneous in view of the reliable, probative, and  
15 substantial evidence on the whole record; and was arbitrary and capricious based upon an abuse of  
16 discretion by the Appeals Officer.

17 In this Order, this Court will determine: (1) whether the Appeals Officer's August 20, 2019  
18 Decision which reversed the Hearing Officer's Decision dated July 19, 2018, and affirming the  
19 underlying determinations, dated May 24, 2018 and June 13, 2018, was the result of reversible error  
20 of law; and (2) whether the Appeals Officer's Decision finding that the Petitioner's PPD award must  
21 be apportioned 75% as pre-existing is not supported by substantial evidence and results in an abuse  
22 of discretion.

23 "Judicial review of a final decision of an agency must be: (a) Conducted by the court without  
24 a jury; and (b) Confined to the record." *NRS 233B.135(1)*. "In cases concerning alleged irregularities  
25 in procedure before an agency that are not shown in the record, the court may receive evidence  
26 concerning the irregularities." *Id.* "The final decision of the agency shall be deemed reasonable and  
27 lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party  
28 attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3."

1 *NRS 233B.135(2)*. “The court shall not substitute its judgment for that of the agency as to the weight  
2 of evidence on a question of fact.” *NRS 233B.135(3)*. “The court may remand or affirm the final  
3 decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced  
4 because the final decision of the agency is:

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

8 *NRS 233B.135(3)*.

9 Under the standard of review for appeals, if factual findings of the agency are supported by  
10 evidence, they are conclusive and reviewing the court’s jurisdiction is confined to questions of law.  
11 *NRS 612.530(4)*; *NRS 233B.135*; Whitney v. State, Dep’t of Employment Sec., 105 Nev. 810, 812  
12 (1989), citing Nevada Employment Sec. Dep’t v. Nacheff, 104 Nev. 347, 349 (1988). On appeal, the  
13 District Court reviews questions of law, including the administrative agency’s interpretation of  
14 statutes, de novo. City of N. Las Vegas v. Warburton, 127 Nev. 682, 686 (2011). Review of an  
15 Appeals Officer's decision is limited to determining whether there was substantial evidence in the  
16 record to support the Appeals Officer's decision and that the findings and ultimate decisions of the  
17 Appeals Officer are not disturbed unless they were clearly erroneous or otherwise amounted to an  
18 abuse of discretion. Nevada Indus. Comm’n v. Reese, 93 Nev. 115, 125 (1977); State Indus. Ins. Sys.  
19 v. Snapp, 100 Nev. 290, 294 (1984); Stark v. State Indus. Ins. Sys., 111 Nev. 1273, 1275 (1995);  
20 State Indus. Ins. Sys. v. Hicks, 100 Nev. 567, 569 (1984), State Indus. Ins. Sys. v. Swinney, 103 Nev.  
21 17, 20 (1987); State Indus. Ins. Sys. v. Christensen, 106 Nev. 85, 88 (1990); Brown v. State Indus.  
22 Ins. Sys., 106 Nev. 878, 880 (1990); Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 331 (1993).

23 The review of the District Court is confined to the record and the court is precluded from  
24 substituting its own judgment for that of the agency as to the weight of the evidence on questions of  
25 fact. Nevada Indus. Comm’n v. Williams, 91 Nev. 686, 688 (1975); State Indus. Ins. Sys. v. Swinney,  
26 103 Nev. 17, 19-20 (1987); Palmer v. Del Webb’s High Sierra, 108 Nev. 673, 686 (1992). The  
27 Court’s review is limited to a determination of whether the Appeals Officer acted arbitrarily or  
28 capriciously, and where there was substantial evidence to support the decision, the Court cannot

1 substitute its own judgment for that of the Appeals Officer. Construction Indus. Workers' Comp.  
2 Group v. Chalue, 119 Nev. 348, 352 (2003); Meridian Gold Co. V. State, 119 Nev. 630, 633 (2003);  
3 State v. Public Employees' Ret. Sys., 120 Nev. 19, 23 (2004).

4 An "agency's fact-based conclusions of law 'are entitled to deference, and will not be  
5 disturbed if they are supported by substantial evidence.'" Law Offices of Barry Levinson, P.C. v.  
6 Milko, 124 Nev. 355, 362 (2008). "Substantial evidence exists if a reasonable person could find the  
7 evidence adequate to support the agency's conclusion, and [the Court] may not reweigh the evidence  
8 or revisit an appeals officer's credibility determination." Id.; NRS 233B.135(4). "While it is true that  
9 the district court is free to decide pure legal questions without deference to an agency determination,  
10 the agency's conclusions of law, which will necessarily be closely related to the agency's view of the  
11 facts, are entitled to deference, and will not be disturbed if they are supported by substantial  
12 evidence." Jones v. Rosner, 102 Nev. 215, 217 (1986).

13 CITY OF RENO contends that the appealed issue is a mixed question of law and fact entitled  
14 to deference; a question of law as to whether the Appeals Officer correctly interpreted NRS  
15 616C.490(9) and NAC 616C.490 with respect to apportionment, and of fact, as the Appeals Officer  
16 was required to apply the facts to the law. CITY OF RENO argues that KLINE is requesting this  
17 Court substitute its opinion for that of the Appeals Officer's as to the application of the evidence to  
18 the law and contends that to do so is impermissible.

19 Petitioner, KIMBERLY KLINE argues that reversal of the Appeals Officer's August 20, 2019  
20 Decision is required because the decision is procedurally deficient and the result of reversible error.  
21 KLINE argues that the Appeals Officer committed reversible error in two areas: (1) the Appeals  
22 Officer relitigated facts which she previously decided in a prior appeal, and (2) the Appeals Officer  
23 did not correctly apply NAC 616C.490 and NRS 616C.490. KLINE also argues that the Appeals  
24 Officer's Decision is erroneous in view of the reliable, probative, and substantial evidence on the  
25 whole record and results in an abuse of discretion.

26 KLINE argues that the Appeals Officer's Decision relied on the opinions of Dr. Hall which  
27 the Appeals Officer previously determined to be not credible, inconsistent with the medical records,  
28 and were not stated within a reasonable degree of medical probability. (ROA 174:8-10). KLINE

1 argues that since the Appeals Officer gave little or no weight to the opinions of Dr. Hall, it is  
2 reasonable to conclude that any subsequent opinion by a rating physician should also be bound by  
3 those findings. KLINE argues that the Appeals Officer failed to consider her prior findings and  
4 conclusions, therefore her August 20, 2019 Decision is based on faulty information.

5 KLINE also argues that substantial evidence on the record establishes that she did not have a  
6 pre-injury impairment under the AMA Guides, 5<sup>th</sup> Edition. Specifically, KLINE notes the Appeals  
7 Officer previously found that Dr. Hansen stated that there was a high probability within a degree of  
8 medical certainty that KLINE's injuries were related to the car accident. (ROA 170:23-28). Dr.  
9 Hansen opined that the "MRI done at RDC confirms said impression with two large left paracentral  
10 disc protrusions at C5-6 and C6-7 causing severe left NFS at each level. These injuries do appear to  
11 be directly related to the recent rear-end type motor vehicle collision." (ROA 306). KLINE asserts  
12 that the Appeals Officers found that "substantial evidence supports a finding that the industrial  
13 accident aggravated the pre-existing condition and that the resulting conditions was the substantial  
14 contributing cause of the resulting condition." (ROA 174:6-8). KLINE argues that apportioning the  
15 rating by 75% when it had already been determined that the industrial injury was the substantial  
16 contributing factor for the resulting condition is inconsistent with the Appeals Officer's prior  
17 decision. Therefore, KLINE asserts that the Appeals Officer committed reversible error of law by  
18 re-litigating those facts which she previously decided in a prior appeal.

19 CITY OF RENO, however, argues that KLINE's argument ignores the fact that the question  
20 on appeal in the earlier decision was whether claim closure without a PPD rating was proper. (ROA  
21 167:18-23). CITY OF RENO asserts that Dr. Hansen's statement about KLINE's injuries being  
22 related to the car accident, and the Appeals Officer's finding that KLINE had "met her burden of  
23 proof with substantial evidence that she is not at maximum medical improvement and needs further  
24 treatment" required the claim to remain open. (ROA 174:11-12). Thus, the earlier decision, CITY  
25 OF RENO contends, makes no findings as to the propriety of apportionment, as the January 18, 2017  
26 Appeals Officer Decision contemplated a possible future PPD evaluation once KLINE had completed  
27 treatment and was determined stable. (ROA 174:18-19).

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1 CITY OF RENO asserts that in the prior decision the Appeals Officer gave more weight to  
2 Dr. Sekhon's and Dr. Hanson's medical opinions, and less weight to Dr. Hall's opinion that KLINE  
3 did not suffer a ratable impairment. CITY OF RENO argues that the Appeals Officer's decision to  
4 give Dr. Hall's opinion no weight is not binding on future rating physicians, as the prior decision pre-  
5 dated the spinal fusion surgery, and the PPD evaluations by Dr. Anderson and Dr. Jempsa, as well as  
6 Dr. Betz's records review report and expert testimony, upon which the Appeals Officer specifically  
7 relied in reaching the Decision at issue here.

8 The Appeals Officer also gave Dr. Jempsa's PPD evaluation no weight because there was a  
9 large discrepancy in Dr. Jempsa's range of motion findings which made his results questionable as  
10 "[i]t is well recognized that patients learn from prior rating experience." (ROA 017:16-17, 018:12-  
11 18, 1192). Dr. Jempsa failed to apportion because KLINE stated she had no problems with her neck  
12 prior to the industrial injury and because he had received no records prior to the industrial injury on  
13 June 25, 2015, which the Appeals Officer found was not required under NAC 616C.490. (ROA  
14 018:3-12). The Appeals Officer concluded that Dr. Jempsa's findings were also questionable  
15 because "the medical evidence depicts stenosis, spondylitis, and osteophytes which take years if not  
16 decades to form." (ROA 018:12-14).

17 The Appeals Officer based the decision upholding apportionment primarily on the medical  
18 evidence from Dr. Anderson and Dr. Betz, whom she "found to be credible and their opinions given  
19 the most weight." (ROA 007:19-20, 013:25-26, 014:1-2). Although Dr. Betz testified that Dr. Hall  
20 "was probably correct that the [Claimant] suffered a sprain/strain," and that she did eventually  
21 improve "as would be expected with a . . . sprain/strain," Dr. Betz testified that there was not "any  
22 significant relationship" between those symptoms and the degenerative disc disease findings on  
23 KLINE's MRI results. (ROA 055:11-17, 056:1-2). Dr. Betz testified that the reason it took KLINE  
24 seven months to improve from the sprain/strain was because "there was unrecognized underlying  
25 multilevel degenerative disc changes." (ROA 055:18-23).

26 While it is true that Dr. Betz's report notes that Dr. Hall's opinion supports Dr. Anderson's  
27 conclusion that KLINE's cervical spine pathologies were primarily degenerative in nature and pre-  
28 existing, the Appeals Officer Decision does not rely on Dr. Hall's opinion alone. (ROA 011).

1 Moreover, regardless of whether Dr. Betz relied on Dr. Hall's opinion, what is at issue here is  
2 KLINE's pain and additional treatment related to the pre-existing degenerative condition which began  
3 after she had recovered from the industrial sprain/strain and was released by Dr. Hall. Dr. Betz's  
4 record review report and extensive expert testimony make clear that he considered all medical  
5 reporting and imaging studies in reaching his conclusion that the medical evidence establishes that  
6 KLINE had a pre-existing condition. (ROA 011-013).

7 CITY OF RENO argues that Dr. Betz's opinion incorporating Dr. Hall's opinion and his  
8 reliance on Dr. Hall's reporting was not inconsistent with the Appeals Officer's prior decision and  
9 that the prior decision does not preclude the Appeals Officer from taking that subsequent medical  
10 history and documentation into consideration when reaching decisions. In view of all the medical  
11 evidence, much of which did not exist at the time of the prior decision relied on by KLINE, the  
12 Appeals Officer properly concluded that KLINE had a pre-existing condition mandating  
13 apportionment of impairment under NAC 616C.490. This presents a new question of law not  
14 previously addressed by the Appeals Officer and which requires a separate and distinct legal analysis  
15 and application of the medical evidence than that performed in the prior decision. Thus, CITY OF  
16 RENO argues and the Court finds that the prior decision concluding that the industrial injury  
17 aggravated a pre-existing condition under NAC 616C.175(1), makes the present decision upholding  
18 apportionment based on substantial medical evidence establishing that KLINE had a pre-existing  
19 cervical spine condition consistent with the law of the case. The Court finds the Appeals Officer  
20 Decision, dated August 20, 2019, was not the result of reversible error nor an abuse of discretion as  
21 the Appeals Officer did not re-litigate facts previously decided in a prior appeal and the Decision is  
22 supported by substantial evidence.

23 KLINE also argues that the Appeals Officer erred by not complying with the mandates of  
24 NRS 233B.125. NRS 233B.125 states:

25 "A decision or order adverse to a party in a contested case must be in writing or stated  
26 in the record. Except as provided in subsection 5 of NRS 233B.121, a final decision  
27 must include findings of fact and conclusions of law, separately stated. Findings of  
28 fact and decisions must be based upon a preponderance of the evidence. Findings of  
fact, if set forth in statutory language, must be accompanied by a concise and explicit  
statement of the underlying facts supporting the findings. If, in accordance with

1 agency regulations, a party submitted proposed findings of fact before the  
2 commencement of the hearing, the decision must include a ruling upon each proposed  
3 finding. Parties must be notified either personally or by certified mail of any decision  
4 or order. Upon request a copy of the decision or order must be delivered or mailed  
5 forthwith to each party and to the party's attorney of record.”

6 *NRS 233B.125.*

7 The Court finds the Appeals Officer decision included findings of fact and conclusions of law,  
8 separately stated. In addition, the Court finds the Appeals Officer’s findings of fact and decision are  
9 based upon a preponderance of evidence, and the Appeals Officer enumerated each of the facts  
10 underlying those findings.

11 In addition, KLINE argues that the Appeals Officer committed reversible error by not  
12 correctly apply NRS 616C.490 and NAC 616C.490. KLINE argues that NRS 616C.490 requires that  
13 there be evidence that a ratable impairment, as defined by the AMA Guides, existed on the date of  
14 the industrial injury for apportionment to occur. KLINE argues there is no prior medical records  
15 confirming that there was a ratable impairment, prior residual impairment, and proof of a residual  
16 impairment which existed on the date of the industrial injury and that Dr. Jempsa, after reviewing  
17 numerous prior records predating KLINE’s industrial injury, found apportionment was not  
18 appropriate. (ROA 617). KLINE asserts that Dr. Betz conceded that there is no documentation  
19 concerning the scope and nature of the impairment which existed before the industrial injury. (ROA  
20 087, 088, 094). Thus, KLINE contends that at the time of the industrial injury, she had a 0%  
21 impairment due to any pre-existing condition that she may have had, and therefore, the impairment  
22 may not be apportioned.

23 NRS 616C.490 states: “Except as otherwise provided in subsection 10, if there is a previous  
24 disability, . . . the percentage of disability for a subsequent injury must be determined by computing  
25 the percentage of the entire disability and deducting there from the percentage of the previous  
26 disability as it existed at the time of the subsequent injury.” *NRS 616C.490(9)* [effective through  
27 December 31, 2019]; *Pub. Agency Comp. Tr. (PACT) v. Blake*, 127 Nev. 863, 867 (2011) (holding  
28 calculations for prior and subsequent injuries when impairment ratings for those injuries were based  
on different editions of the applicable guide, be reconciled by first using the current edition of the  
AMA Guides to determine both the percentage of the entire disability and of the previous disability).

1 The Nevada Administrative Code provides the procedure for completing apportionment. *See*  
2 *NAC 616C.490*. The Administrative Code requires a precise apportionment to be completed “if a  
3 prior evaluation of the percentage of impairment is available and recorded for the pre-existing  
4 impairment.” *NAC 616C.490(3)*. However, the Administrative Code specifically contemplates the  
5 situation here, where there is no prior rating evaluation of the pre-existing condition. In such a case,  
6 the Administrative Code provides in pertinent part that:

7 4. Except as otherwise provided in subsection 5, . . . if no previous rating  
8 evaluation was performed, the percentage of impairment for the previous injury or  
9 disease and the present industrial injury or occupational disease must be recalculated  
10 by using the *Guides*, as adopted by reference pursuant to *NAC 616C.002*. The  
11 apportionment must be determined by subtracting the percentage of impairment  
12 established for the previous injury or disease from the percentage of impairment  
13 established for the present industrial injury or occupational disease.

14 5. If precise information is not available, and the rating physician or  
15 chiropractor is unable to determine an apportionment using the *Guides* as set forth in  
16 subsection 4, an apportionment may be allowed if at least 50 percent of the total  
17 present impairment is due to a preexisting or intervening injury, disease or condition.  
18 The rating physician or chiropractor may base the apportionment upon X-rays,  
19 historical records and diagnoses made by physicians or chiropractors or records of  
20 treatment which confirm the prior impairment.  
21 *NAC 616C.490(4)-(5)*.

22 “If there are preexisting conditions . . . the apportionment must be supported by  
23 documentation concerning the scope and the nature of the impairment which existed before the  
24 industrial injury or the onset of disease.” *NAC 616C.490(6)*. CITY OF RENO argues that *NAC*  
25 *616C.490* does not require that the documentation of a pre-existing condition predate the industrial  
26 injury. In *Ransier v. State Industrial Insurance Systems*, the Nevada Supreme Court stated that “the  
27 clause ‘which existed before the industrial injury or the onset of the disease’ refers to the impairment  
28 and not the document.” *Ransier v. State Indus. Ins. Sys.*, 104 Nev. 742, 744 at fn. 1 (1988). Although  
the reference to this regulation is from the prior version, *NAC 616.650(6)*, the language has remained  
the same. The *Ransier* Court held that the Nevada Administrative Code “does not require historical  
documentation, only ‘documentation concerning the scope and nature of the impairment,’ which can  
come, as here, from examination at the time of the second injury.” *Id.* (affirming apportionment was  
proper where no records or documents existed concerning claimant’s prior injury, but where both  
treating physicians found claimant’s two injuries to be distinguishable).

1 CITY OF RENO also argues that the Appeals Officer correctly interpreted NRS 616C.490  
2 and NAC 616C.490 in finding apportionment does not require that the pre-existing condition be a  
3 ratable impairment. Rather, CITY OF RENO argues that the rating physician must look for a prior  
4 impairment, shown by medical records post-dating the industrial injury. CITY OF RENO argues that  
5 KLINE incorrectly insists that apportionment for a pre-existing disease or condition requires a  
6 “ratable” impairment to have existed on the date of the industrial accident. “[W]hen the language of  
7 a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go  
8 beyond it.” Nev. Dep’t of Corr. v. York Claims Servs., Inc., 131 Nev. 199, 203 (2015). CITY OF  
9 RENO argues that the plain language of NAC 616C.490 simply requires an “impairment” with no  
10 requirement that the pre-existing condition or disease be previously rated.

11 “A rating physician or chiropractor shall always explain the underlying basis of the  
12 apportionment as specifically as possible by citing pertinent data in the health care records or other  
13 records.” *NAC 616C.490(7)*. Here, the Appeals Officer found “Dr. Betz to be a credible witness and  
14 his testimony is given great weight. Dr. Betz’s testimony was uncontroverted at [the] hearing and no  
15 opposing or contradicting expert witness testimony was provided.” (ROA 007:19-21). Based on the  
16 records from Dr. Sekhon, who performed KLINE’s spinal fusion surgery, in addition to MRI, x-ray  
17 records, and historical records and diagnoses, demonstrating the scope and nature of the impairment,  
18 Dr. Betz testified that the present impairment was at least fifty percent (50%) due to KLINE’s pre-  
19 existing impairment. (ROA 15:24-27, 16:1-10). The Appeals Officer concluded that Dr. Betz and  
20 Dr. Anderson established the underlying basis for apportionment as required by NAC 616C.490(5)-  
21 (7). (ROA 16:10-15). CITY OF RENO argues and the Court finds that KLINE’s contention that  
22 apportionment is improper due to a lack of prior documentation of the pre-existing, ratable condition  
23 is unpersuasive where the Appeals Officer found Dr. Betz has expressly identified the x-rays,  
24 historical records, and diagnoses confirming KLINE’s prior impairment as required by NAC  
25 616C.490(5).

26 Following review of the Appeals Officer’s Decision, the Court finds the Appeals Officer did  
27 not commit any clear error of law nor arbitrary or capricious abuse of discretion. As discussed supra,  
28 the Court finds the Appeals Officer correctly applied NRS 616C.490 and NAC 616C.490. In

1 addition, the Court finds the Decision is supported by substantial evidence and the Appeals Officer's  
2 findings of fact and conclusions of law in the Decision complied with the requirements set forth in  
3 NRS 233B.125. KLINE was properly awarded 6% PPD award, which apportioned 25% WPI of the  
4 cervical spine as 75% non-industrial and 25% industrial. Therefore, the Court finds there is no basis  
5 to grant review and the Petition should be denied.

6 Based on the foregoing and good cause appearing,

7 IT IS HEREBY ORDERED that KIMBERLY KLINE's Petition for Judicial Review is  
8 DENIED and the decision of the Appeals Officer, dated August 20, 2019, is AFFIRMED.

9 DATED this 10 day of February, 2021.

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12 DISTRICT JUDGE  
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I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of February, 2021, I filed the **ORDER DENYING PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court.

**\_\_\_\_\_Personal delivery to the following: [NONE]**

TIMOTHY ROWE, ESQ. for CANNON COCHRAN MANAGEMENT SERVICES, CITY OF RENO

LISA ALSTEAD, ESQ. for CANNON COCHRAN MANAGEMENT SERVICES, CITY OF RENO

HERBERT SANTOS, JR., ESQ. for KIMBERLY M KLINE

           **Placed a true copy in a sealed envelope for service via:**

\_\_\_\_\_ Reno/Carson Messenger Service – [NONE]

\_\_\_\_\_ Federal Express or other overnight delivery service **[NONE]**

DATED this 10 day of February, 2021.

Audrey Austin

CASE NO. CV19-01683      **TITLE: KIMBERLY KLINE VS. CITY OF RENO and  
CANNON COCHRAN MANAGEMENT SERVICES**

**DATE, JUDGE  
OFFICERS OF**

**COURT PRESENT**

**APPEARANCES-HEARING**

**CONT'D TO**

11/19/2020

**ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW**

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

J. Schonlau

(Reporter)

Petitioner, Kimberly Kline, appearing from Washoe County, Nevada, being represented by Herbert Santos, Jr., Esq., appearing from Washoe County, Nevada. Lisa Alstead, Esq., appearing from Washoe County Nevada, represented the Respondents, City of Reno and Cannon Cochran Management Services.

This hearing was held remotely because of the closure of the courthouse at 75 Court Street in Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared via simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada which was the site of the court session. Counsel acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules- Part 9 relating to simultaneous audiovisual transmissions and all counsel stated they had no objection to going forward in this manner.

Petition for Judicial Review by Petitioner's counsel; presented argument; objection and argument by Respondent counsel; reply argument by Petitioner's counsel.

**COURT** will take Petition for Judicial Review under advisement once the transcript of these proceedings has been filed with the Court.  
Court recessed.

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Code 1350

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

**KIMBERLY KLINE,**

**Case No. CV19-01683**

**Petitioner,**

**Dept. No. 4**

**vs.**

**CITY OF RENO; CANON COCHRAN MANAGEMENT SERVICES, "CCMST"; the STATE OF NEVADA DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, an Agency of the State of Nevada; the STATE OF NEVADA DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, an Agency of the State of Nevada; MICHELLE MORGANDO, ESQ., Sr. Appeals Officer; RAJINDER NIELSEN, ESQ., Appeals Officer; ATTORNEY GENERAL AARON FORD, ESQ.,**

**Respondents.**

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**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 9th day of March, 2021, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 9th day of March, 2021.

Jacqueline Bryant  
Clerk of the Court  
By /s/YViloria  
YViloria  
Deputy Clerk

Code 4132

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

**KIMBERLY KLINE,**

**Case No. CV19-01683**

**Petitioner,**

**Dept. No. 4**

**vs.**

**CITY OF RENO; CANON COCHRAN MANAGEMENT  
SERVICES, "CCMST"; the STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION, HEARINGS  
DIVISION, an Agency of the State of Nevada; the STATE  
OF NEVADA DEPARTMENT OF ADMINISTRATION,  
APPEALS DIVISION, an Agency of the State of Nevada;  
MICHELLE MORGANDO, ESQ., Sr. Appeals Officer;  
RAJINDER NIELSEN, ESQ., Appeals Officer;  
ATTORNEY GENERAL AARON FORD, ESQ.,**

**Respondents.**

**NOTICE OF APPEAL DEFICIENCY**

TO: Clerk of the Court, Nevada Supreme Court,  
and All Parties or their Respective Counsel of Record:

On March 8<sup>th</sup>, 2021, Attorney Herbert Santos Jr, Esq for Kimberly Kline, filed a Notice of Appeal with the Court. Attorney Santos Jr, Esq. was unable to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee due to the public closure of the Second Judicial District Court Administrative Order 2020-05(E).

Pursuant to NRAP 3(a)(3), on March 9<sup>th</sup>, 2021, the Notice of Appeal will be filed with the Nevada Supreme Court. By copy of this notice. Attorney Santos Jr, Esq. was notified of the deficiency. *(A notice to pay will be issued once the Notice of Appeal is filed in by the Nevada Supreme Court.)*

Dated this 9th day of March, 2021.

Jacqueline Bryant  
Clerk of the Court  
By: /s/YViloria  
YViloria  
Deputy Clerk

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CERTIFICATE OF SERVICE

CASE NO. CV19-01683

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 9th day of March, 2021, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

LISA ALSTEAD, ESQ. for CITY OF RENO, CANNON COCHRAN MANAGEMENT SERVICES

HERBERT SANTOS, JR., ESQ. for KIMBERLY M KLINE

/s/YViloria  
YViloria  
Deputy Clerk