

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

3 LAS VEGAS METROPOLITAN  
4 POLICE DEPARTMENT and CANNON  
5 COCHRAN MANAGEMENT  
6 SERVICES, INC.

7 Appellants,

8 vs.

9 ROBERT HOLLAND,

10 Respondents,  
11

Supreme Court Case No.: 82843  
District Court Case No.: A-20-818754-J  
Electronically Filed  
May 05 2021 10:38 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

12 **MOTION FOR STAY OF DISTRICT COURT'S ORDER**  
13

14 DANIEL L. SCHWARTZ, ESQ.  
15 JOEL P. REEVES, ESQ.  
16 LEWIS BRISBOIS BISGAARD &  
17 SMITH LLP  
18 2300 W. Sahara Avenue, Suite 300, Box 28  
19 Las Vegas, Nevada 89102-4375  
20 *Attorneys for Appellants*  
21 *Las Vegas Metropolitan Police Department*  
22 *and Cannon Cochran Management*  
23 *Services, Inc*

LISA M. ANDERSON, ESQ.  
GREENMAN GOLDBERG RABY  
& MARTINEZ  
2770 S. Maryland Parkway, Suite  
100  
Las Vegas, Nv 89109  
*Attorney for Respondent*  
*Robert Holland*

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
NRAP 26.1 DISCLOSURE.....	iii
I. STATEMENT OF THE FACTS .....	1
II. LEGAL ARGUMENT.....	4
A. Reasons Given By District Court for Its Action As Required By NRAP 8(a)(2)(A)(ii).....	4
B. This Court Should Grant The Stay Because All Four Factors In NRAP 8(c) Weigh In Favor of Granting Appellants' Stay Request.....	5
1. The Object of Appellants' Petition Will Be Defeated If The Stay is Denied .....	6
2. A Stay Is Necessary to Prevent Irreparable or Serious Harm To Appellants.....	7
3. A Stay Would Not Cause Irreparable or Serious Harm To Respondents .....	7
4. Appellants Will Prevail On The Merits of This Petition.....	7
III. CONCLUSION.....	10
CERTIFICATE OF COMPLIANCE .....	11
CERTIFICATE OF MAILING .....	13

## TABLE OF AUTHORITIES

### Cases

### Page No(s).

<u>Emplrs. Ins. Co. of Nev. v. Daniels,</u> 122 Nev. 1009, 145 P.3d 1024 (2006)) .....	8
<u>Kress v. Corey,</u> 65 Nev. 1, 189 P.2d 353 (1948).....	5
<u>Ransier v. SIIS,</u> 104 Nev. 742, 766 P.2d 274 (1988).....	5

### STATUTES

NRAP 8.....	4, 5
NRS 616C.138.....	6
NRS 617.457 .....	7, 8, 9

1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons  
3 and entities as described in NRAP 26.1(a), and must be disclosed:  
4

- 5 1. The Appellant, CCMSI (CANNON COCHRAN MANAGEMENT  
6 SERVICES, INC.), states that it does not have any parent corporation, or any  
7 publicly held corporation that owns 10% or more of its stock, nor any  
8 publicly held corporation that has a direct financial interest in the outcome of  
9 the litigation. NRAP 26.1(a).  
10  
11 2. The Appellant LAS VEGAS METROPOLITAN POLICE DEPARTMENT is  
12 a governmental party and therefore exempt from the NRAP 26.1 disclosure  
13 requirements.  
14  
15 3. The undersigned counsel of record for LAS VEGAS METROPOLITAN  
16 POLICE DEPARTMENT, CANNON COCHRAN MANAGEMENT  
17 SERVICES, INC has appeared in this matter before District Court. DANIEL  
18 L. SCHWARTZ, ESQ. have also appeared for the same at the administrative  
19 proceedings before Department of Administration.  
20  
21  
22

23 ...

24 ...

25 ...

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

3  
4 DATED this 5 day of May, 2021.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7  
8 By: \_\_\_\_\_

9 JOEL P. REEVES, ESQ.

10 Nevada Bar No. 013231

11 2300 W. Sahara Ave., Ste. 900, Box 28

12 Las Vegas, NV 89102

13 Attorneys for the Appellants  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1                   **MOTION FOR STAY OF DISTRICT COURT ORDER**

2           COMES NOW Appellants LAS VEGAS METROPOLITAN POLICE  
3  
4 DEPARTMENT and CANNON COCHRAN MANAGEMENT SERVICES, INC  
5 (hereinafter collectively referred to as "Appellants"), by and through their  
6 attorneys of record, DANIEL L. SCHWARTZ and JOEL P. REEVES, ESQ. of  
7  
8 LEWIS BRISBOIS BISGAARD & SMITH, and hereby submits their Motion For  
9 Stay Of the District Court's Decision and Order. Appellants respectfully request  
10 that this Court stay the subject April 6, 2021 District Court Order while this Court  
11 considers and issues a ruling on Appellants' pending appeal of the same.  
12

13                   **MEMORANDUM OF POINTS AND AUTHORITIES**

14  
15                   **I.**

16                   **STATEMENT OF FACTS**

17           The Claimant, ROBERT HOLLAND, (hereinafter referred to as  
18 "Claimant"), a retired police officer, alleges that on May 26, 2019, "while washing  
19 my vehicle I began to experience chest pain that radiated into my left arm. On  
20 Monday, 5/27/2019, I experienced the same symptoms occurred [sic] as I was  
21 leaving the gym." Dr. Wattoo completed two separate C-4 forms both indicating  
22 that the Claimant had two heart attacks. The Claimant was taken off of work from  
23 May 27, 2019 to June 17, 2019. (Exhibit C pp. 48-49)  
24  
25

26           During his tenure with the Employer, the Claimant was consistently  
27

1 informed of elevated triglycerides and the need to correct the same.

2 On February 12, 2008, Claimant's examining physician ordered Claimant to  
3 correct elevated triglycerides. (Exhibit C pp. 51-57)

5 On March 9, 2009, the Claimant was ordered to correct elevated triglyceride  
6 and cholesterol levels. (Exhibit C pp. 58-65)

8 On February 22, 2010, the Claimant was ordered to correct abnormal labs  
9 including low HDL. (Exhibit C pp. 66-72)

10 On January 24, 2011, the Claimant was informed of the need to correct  
11 elevated triglycerides, which were at 159, and the Claimant was again advised to  
12 have a low fat diet. (Exhibit C pp. 73-81)

14 On April 9, 2012, the Claimant was again informed of the need to correct  
15 elevated triglycerides, which had risen to 181 since the last examination, and  
16 was advised to have a low fat diet and increased "cardio + 4 gm/day omega 2."  
17 (Exhibit C pp. 82-91)

19 Claimant retired on December 29, 2012.

21 The Claimant was hospitalized at the Summerlin Hospital Medical Center  
22 from May 29, 2019, through June 4, 2019 due to heart attack. Dr. Chaudry  
23 performed cardiac catheterization procedures on June 3, 2019. Claimant's  
24 triglycerides were noted as being 348, almost double what they were in 2012 when  
25 he was last informed to correct the same. (Exhibit C pp. 92-118; 70)

1 On July 23, 2019, a claim denial determination was issued. (Exhibit C pp.  
2 128-131) Claimant appealed. (Exhibit C p. 134)

3  
4 Following Hearing No. 2001960-JK, a Decision and Order was issued on  
5 September 17, 2019, which affirmed the denial of the claim. (Exhibit C pp. 136-  
6 137.) Claimant appealed. (Exhibit C p. 138.)  
7

8 On July 27, 2020, after receiving written briefs, the Appeals Officer  
9 affirmed claim denial given that Claimant was ordered on multiple occasions to  
10 correct his triglycerides while he was employed but let them rise to almost double  
11 what they were when he was last warned. (Exhibit C pp. 3-12) Claimant filed a  
12 Petition for Judicial Review with the Clark County District Court.  
13

14 On April 5, 2021, after receiving written briefs and hearing oral argument,  
15 the District Court reversed the Appeals Officer, finding that: (1) although Claimant  
16 was explicitly instructed to correct predisposing conditions, the instructions did not  
17 inform Claimant as to how he might correct those conditions; (2) that there was no  
18 evidence that correction was within Claimant's ability; (3) that Claimant was  
19 deemed able to continue employment despite being warned of conditions which  
20 would predispose him to heart disease; and (4) Claimant had proven a good faith  
21 attempt to correct his predisposing conditions because he was never prescribed  
22 medication for any heart condition. (Exhibit A) Notice of entry of order was filed  
23 on April 6, 2021.  
24  
25  
26  
27



1 On April 16, 2021, Appellants submitted to the District Court a Motion for  
2 Stay Pending Supreme Court Appeal and Motion for Order Shortening Time. The  
3 Motion for Order Shortening Time was granted and the Motion for Stay was filed  
4 on April 20, 2021.  
5

6 On April 23, 2021, the Motion for Stay came on for hearing before the  
7 District Court. The Court denied the stay, stating that it did not believe that  
8 Appellants would suffer irreparable harm absent a stay and that the Court did not  
9 believe that Appellants would enjoy a likelihood of success on the merits. (Minutes  
10 from April 23, 2021 Hearing, attached hereto as Exhibit B)  
11  
12

13 On April 27, 2021, Appellants filed this appeal.

14 Appellants hereby file the instant Motion for Stay.  
15

## 16 II.

### 17 LEGAL ARGUMENT

#### 18 **A. Reasons Given By District Court For Its Action, As Required By** 19 **NRAP 8(a)(2)(A)(ii)**

20 N.R.A.P. 8(a)(2)(A) states the following:

21 (A) The Motion [for Stay] shall:

22 (i) show that moving first in the district court would be  
23 impracticable; or

24 (ii) state that, a motion having been made, the district  
25 court denied the motion or failed to afford the relief  
26 requested and state any reasons given by the district court  
27 for its action.

1 Here, Appellants moved for a stay in the District Court before filing the  
2 instant Motion. The District Court denied the Motion for Stay, stating that it did  
3 not believe that Appellants would suffer irreparable harm absent a stay and that the  
4 Court did not believe that Appellants would enjoy a likelihood of success on the  
5 merits. However, Appellants will suffer irreparable harm and believe that they do  
6 have a substantial likelihood of success on the merits given the legal errors of the  
7 District Court and the fact that Appeals Officer's Decision was based on  
8 substantial evidence.  
9  
10  
11

12 **B. This Court Should Grant The Stay Because All Four Factors In**  
13 **NRAP 8(c) Weigh In Favor Of Granting Appellants' Stay Request**

14 In deciding whether to issue a stay, the following four factors are  
15 considered: 1) whether the object of the appeal or writ petition will be defeated if  
16 the stay is denied; 2) whether appellant/petitioner will suffer irreparable or serious  
17 injury if the stay is denied; 3) whether respondent/real party in interest will suffer  
18 irreparable or serious injury if the stay is granted; and 4) whether  
19 appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.  
20 N.R.A.P. 8(c); see also, Kress v. Corey, 65 Nev. 1, 189 P.2d 353 (1948). These  
21 four factors weigh in favor of granting Appellants' stay request. Appellants will  
22 address each factor in turn.  
23  
24  
25

26 ...

27 ...

1                   **1. The Object Of Appellants' Petition Will Be Defeated If The**  
2                   **Stay Is Denied**

3           Here, the object of the instant Petition for Judicial Review is the acceptance  
4 of this claim for workers' compensation benefits. Absent a stay of the Appeal  
5 Officer's Decision, Appellant Administrator is required to accept this claim,  
6 administer benefits, and could potentially be required to issue unrecoverable  
7 benefits such as a permanent partial disability award. As this case proceeds without  
8 a stay, Appellant will be required to issue benefits that it is not guaranteed to  
9 recoup even if it is successful on the merits of this Petition.  
10

11           This Court held in Ransier v. SIIS, 104 Nev. 742, 766 P.2d 274 (1988), that  
12 an insurer may not seek recoupment of benefits paid to a claimant that were later  
13 found to be unwarranted on appeal. However, it must be noted that NRS 616C.138  
14 was recently modified to allow insurers to recover amounts paid during the  
15 pendency of an appeal from a health or casualty insurer if the insurer is found to be  
16 entitled to the same. However, if there is no health or casualty insurer, Ransier  
17 applies and insurers cannot recover anything at all. Here, just as in most cases,  
18 there is nothing to indicate whether Petitioner has health or casualty insurance.  
19 Furthermore, under no circumstances could an insurer recover non-medical  
20 benefits. As such, without a stay, Appellant Administrator will be forced to pay out  
21 benefits which it cannot later recover directly from the Respondent even if  
22 Appellants are successful on the instant Petition. As such, the first factor weighs in  
23  
24  
25  
26  
27

1 favor of Appellants' request for a stay.

2 **2. A Stay Is Necessary To Prevent Irreparable Or Serious Harm**  
3 **To Appellants**

4 Given that Administrator will be required to administer this claim and may  
5 be required to issue benefits that it cannot recover, that harm is indeed irreparable.  
6 This factor weighs in favor of granting a Stay.  
7

8 **3. A Stay Would Not Cause Irreparable Or Serious Harm To**  
9 **Respondents**

10 Here, there is no irreparable injury to Respondent. This is not a case  
11 involving something time sensitive such as emergency medical care. Indeed, it  
12 appears that Respondent has been seeking routine medical care on his own without  
13 issue. If, after this Honorable Court has decided this issue and Respondent is  
14 ultimately deemed to be entitled to benefits, he will receive them. There would be  
15 no reduction or withholding of any benefits just because a stay was granted.  
16  
17

18 **4. Appellants Will Prevail On The Merits Of This Petition**  
19

20 Put simply, the District Court committed reversible error by reweighing the  
21 evidence and by adding new requirements to claims filed under NRS 417.457. It is  
22 Appellants' position that the Appeals Officer properly weighed the evidence,  
23 properly applied the law, and was therefore entitled to deference. The District  
24 Court's decision to essentially retry this case was itself reversible error and  
25 Appellants should not be forced to comply the same while this appeal is pending.  
26  
27

1 This is a claim for workers' compensation benefits under the police  
2 officer/fire fighter heart/lung bill. Specifically, this matter is governed by NRS  
3 617.457 which provides in pertinent part as follows:  
4

5 11. Failure to correct predisposing conditions which  
6 lead to heart disease when so ordered in writing by the  
7 examining physician subsequent to a physical  
8 examination required pursuant to subsection 4 or 5  
9 excludes the employee from the benefits of this section if  
the correction is within the ability of the employee.

10 Here, Appellants do not dispute that Claimant has been diagnosed with a  
11 heart disease, that he was disabled by his heart disease, or that he has the necessary  
12 service with the Las Vegas Metropolitan Police Department. Indeed, the Appeals  
13 Officer properly concluded that Claimant has made the necessary initial showing to  
14 qualify for the conclusive presumption of claim compensability afforded by NRS  
15 617.457. However, under NRS 617.457(11), Claimants are excluded from that  
16 conclusive presumption if their annual examining physician orders them in writing  
17 to correct a condition which predisposes them to heart disease, they fail to correct  
18 the condition, and fail to prove that correction was not within their ability.  
19  
20  
21

22 This Court has addressed this topic in the case of Emplrs. Ins. Co. of Nev. v.  
23 Daniels, 122 Nev. 1009, 145 P.3d 1024 (2006), holding that "[a]n employer can  
24 defend a claim by showing that the employee failed to correct a predisposing  
25 condition, such as smoking or being overweight, after being warned to do so in  
26 writing." If the employer can make that showing, per the last clause of NRS  
27

1 617.457(11), it is then incumbent upon the Claimant to prove that correction of the  
2 predisposing condition was not within his/her ability.  
3

4 Here, between 2008 and 2012, Claimant was consistently warned about his  
5 high triglycerides and ordered to correct the same. Indeed, in 2011, Claimant was  
6 warned in writing to lower his triglycerides, which were at 159. Claimant,  
7 however, not only failed to do this, but in 2012, his triglycerides were even higher,  
8 at 181. Claimant was again notified in writing of the need to lower this figure.  
9 Then, according to the hospital records from 2019 when he filed the claim,  
10 Claimant's triglycerides were noted to be 348, almost *double* what they were in  
11 2012.  
12  
13

14 There is no evidence that Claimant took *any* steps to either correct his  
15 preexisting conditions or even attempt to improve his health. Indeed, although  
16 Claimant was assessed with high blood pressure in 2015 and he began taking  
17 medication for the same, there is no indication that Claimant has done *anything* to  
18 lower his triglycerides which he has been informed are predisposing him to heart  
19 disease.  
20  
21

22 As was found by the Appeals Officer, it is undisputed that in the years  
23 before his retirement, Claimant was ordered to correct his triglycerides and was  
24 explicitly informed that failure to correct the same would exclude him from  
25 benefits under NRS 617.457. It is also undisputed that Claimant's triglycerides  
26  
27

1 were almost two times more when he filed this claim and there is no evidence that  
2 Claimant took any steps to correct the same. The Appeals Officer's decision was  
3 proper and supported by substantial evidence.  
4

5 **III.**

6 **CONCLUSION**

7  
8 Based upon all of the above, it is the belief of Appellants, LAS VEGAS  
9 METROPOLITAN POLICE DEPARTMENT and CANNON COCHRAN  
10 MANAGEMENT SERVICES, INC., that a stay of the District Court's decision,  
11 dated April 5, 2021, is necessary to prevent irreparable harm to Appellants.  
12

13 WHEREFORE, Appellants, LAS VEGAS METROPOLITAN POLICE  
14 DEPARTMENT and CANNON COCHRAN MANAGEMENT SERVICES, INC.,  
15 respectfully requests that this Court grant its Motion For Stay.  
16

17 Dated this 5 day of May, 2021.

18 Respectfully submitted,

19  
20 **LEWIS, BRISBOIS, BISGAARD & SMITH, LLP**

21  
22   
23 **DANIEL L. SCHWARTZ, ESQ.**

24 Nevada Bar No. 005125

25 **JOEL P. REEVES, ESQ.**

26 Nevada Bar No. 013231

27 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

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

Las Vegas, Nevada 89102-4375

Attorneys for Petitioner

1	2	3	4	5	6	7	8	9	0	1	2	3	4	5	6	7	8	9	0	1	2	3	4	5	6	7
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---


2. I further certify that this brief complies with the type-volume limitations of NRAP 27(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and is ten (10) pages in length.

Figure 1. Schematic representation of the experimental design. The first part of the experiment consisted of a familiarization phase (10 trials) and a test phase (10 trials). The second part of the experiment consisted of a familiarization phase (10 trials) and a test phase (10 trials). The third part of the experiment consisted of a familiarization phase (10 trials) and a test phase (10 trials). The fourth part of the experiment consisted of a familiarization phase (10 trials) and a test phase (10 trials).



1 sanctions in the event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.  
3

4 Respectfully submitted,  
5 **LEWIS, BRISBOIS, BISGAARD & SMITH,**  
6 **LLP**

7   
8 DANIEL L. SCHWARTZ, ESQ.(005125)  
9 JOEL P. REEVES, ESQ.(013231)  
10 LEWIS BRISBOIS BISGAARD & SMITH  
11 LLP  
12 2300 W. Sahara Avenue, Suite 900, Box 28  
13 Las Vegas, Nevada 89102-4375  
14 Attorneys for Appellants  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

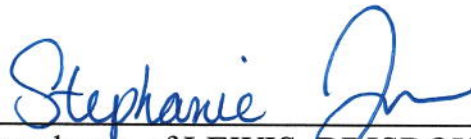
1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on  
3 the 5<sup>th</sup> day of May, 2021, service of the attached **MOTION FOR STAY OF**  
4 **APPEAL OFFICER'S DECISION AND ORDER** was made this date by  
5 depositing a true copy of the same for mailing, first class mail, and/or electronic  
6 service as follows:

7 LISA M. ANDERSON  
8 GREENMAN, GOLDBERG, RABY & MARTINEZ  
9 2770 S MARYLAND PKWY SUITE 100  
LAS VEGAS, NV 89109

10 LVMPD- HEALTH DETAIL  
11 ATTN: BERNADINE WELSH  
12 400 S. MARTIN LUTHER KING BLVD. BUILDING B  
LAS VEGAS, NV 89106

13 CCMSI  
14 ATTN: STEPHANIE MACY  
15 P.O. BOX 35350  
16 LAS VEGAS, NV 89133

17  
18 

19 An employee of LEWIS, BRISBOIS,  
20 BISGAARD & SMITH, LLP  
21  
22  
23  
24  
25  
26  
27

# EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Heather L. Smith*  
CLERK OF THE COURT

**ORDG**  
LISA M. ANDERSON, ESQ.  
Nevada Bar No. 004907  
GREENMAN GOLDBERG RABY & MARTINEZ  
2770 South Maryland Parkway  
Suite 100  
Las Vegas, Nevada 89109  
Phone: (702) 384-1616  
Facsimile: (702) 384-2990  
Email: landerson@ggrmlawfirm.com  
*Attorneys for Petitioner*

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT HOLLAND,

Petitioner

vs.

LAS VEGAS METROPOLLITAN POLICE  
DEPARTMENT, CCMSI, and THE  
DEPARTMENT OF ADMINISTRATION,  
HEARINGS DIVISION,

Respondents.

CASE NO. : A-20-818754-J  
DEPT. NO. : XXI

**ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

This matter came before this Court on the Petition for Judicial Review filed by the Petitioner, ROBERT HOLLAND. Petitioner was represented by LISA M. ANDERSON, ESQ. of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CCMSI, were represented by DANIAL L. SCHWARTZ, ESQ. and JOEL P. REEVES, ESQ. of the law firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented. After reviewing the record and considering the briefs, this matter is decided as follows:

1 This matter came before this Court on March 10, 2021 for hearing on the July 29, 2020  
2 Petition for Judicial Review. The Court has re-reviewed the December 29, 2020 Petitioner's  
3 Opening Brief, the February 1, 2021 Respondent's Answering Brief, and the March 2, 2021  
4 Petitioner's Reply Brief, and the entirety of the record, including the November 20, 2020<sup>0</sup>  
5 Transmittal of Record on Appeal, which contains the Record on Appeal, and hereby FINDS that  
6 pursuant to NRS 233B.135, the Appeals Officer's July 27, 2020 Decision and Order is not  
7 supported by substantial evidence in the Record on Appeal.  
8

9 Here, the parties agree that, pursuant to NRS 617.457(1), Petitioner meets the two (2)  
10 qualifications for the conclusive presumption that Petitioner's related heart condition has arisen  
11 out of and in the course of the employment: (1) Petitioner has related heart disease; and (2)  
12 Petitioner is a retired twenty-five (24)<sup>5</sup> year veteran of Las Vegas Metropolitan Police  
13 Department. However, the parties are in disagreement of whether or not pursuant to NRS  
14 617.457(11), Petitioner failed to correct predisposing conditions after ordered to do so in writing,  
15 and that the correction was within the ability of Petitioner, such that Petitioner would no longer  
16 be entitled to the NRS 617.457(1) conclusive presumption.  
17

18 Although the Appeals Officer's July 27, 2020 Decision and Order recite Petitioner's  
19 related medical history and that Petitioner did not correct the predisposing conditions of which  
20 he was warned, i.e. cholesterol, triglycerides, LDL, all of which contribute to heart disease, the  
21 Decision and Order does so summarily.  
22

23 First, the Court FINDS that the medical records did contain written instructions to  
24 Petitioner to correct predisposing conditions. However, the Court notes that these written  
25 instructions were much too general in nature to effect change to Petitioner's cholesterol,  
26 triglycerides, LDL Levels, and not at all specific and pointed. Rather, specific and pointed  
27  
28

1 advice would have included recommendations that Petitioner adopt a given regimented  
2 diet plan and/or given regimented exercise routine, both programs of which would have  
3 laid out diet specific instructions as to what Petitioner could and could not eat, and specific  
4 exercise instructions as to what exercises Petitioner needed to complete, frequency,  
5 duration, etc.  
6

7       Second, with regard to the NRS 617.457(11) requirement that correction of the  
8 predisposed conditions be within Petitioner's ability, the Court FINDS that Petitioner's  
9 medical records do not contain sufficient documentation that correcting the predisposing  
10 conditions was within Petitioner's ability as contemplated by NRS 617.457(11).  
11 Specifically, the physician's recommendations of diet change and exercise programs, i.e.  
12 low fat diet, cardio, and 4 mg/day omega 2, etc., coupled with recurring testing of  
13 cholesterol, triglycerides, LDL, which primarily yielded unchanging results, is an  
14 insufficient basis to support the NRS 617.457(11) requirement that correcting Petitioner's  
15 predisposed conditions: cholesterol, triglycerides, LDL, was within the ability of the  
16 employee to control.  
17  
18

19       Third, for the relevant period 2008 to 2012, the reviewing physicians that conducted  
20 Petitioner's annual physical examination concluded: 2008 - In conclusion with all the  
21 information that has been provided to me, it appears you are in good health and remain  
22 acceptable for employment; and for 2009 2012 - In conclusion with all the information that has  
23 been provided to me, it appears that the employee is in good health and remains acceptable for  
24 employment.  
25

26 ///

27 ///

1 The physician's minimal recommendations of a low fat diet, cardio, and 4 mg/day  
2 omega 2, combined with a finding that Petitioner was in good health suggest to this Court  
3 that Petitioner exercised good faith in adhering to the physician's recommendations.  
4 Additionally, there was no indication in the Record to the contrary. This, in fact, resulted  
5 in Petitioner receiving consecutive bills of good health from 2008 to 2012.  
6

7 Lastly, the physicians did not prescribe any cholesterol, triglycerides, or LDL medication  
8 to further control Petitioner's cholesterol, triglycerides, LDL levels. This illustrates to this Court  
9 that Petitioner, in good faith, was doing what he was supposed to be doing, and despite following  
10 his physician's recommendations, Petitioner's inability to alter his cholesterol, triglycerides, or  
11 LDL levels suggests that Petitioner may have been incapable of correcting his predisposing  
12 conditions through diet and exercise alone. This negates the NRS 617.457(11) requirement that  
13 correction of the predisposed conditions be within Petitioner's ability.  
14

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Greenman Goldberg Raby Martinez  
ACCIDENT INJURY ATTORNEYS

Therefore, this Court FINDS that the Appeals Officer's July 27, 2020 Decision and Order is not supported by substantial evidence and necessarily GRANTS Petitioner, Robert Holland's, Petition for Judicial Review.


Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 5th day of April, 2021

  
TARA CLARK NEWBERRY  
DISTRICT COURT JUDGE  
238 42F 3A34 07EE  
Tara Clark Newberry  
District Court Judge

Submitted by:


GREENMAN GOLDBERG RABY & MARTINEZ

  
LISA M. ANDERSON, ESQ.  
Nevada Bar No. 004907

GREENMAN GOLDBERG RABY & MARTINEZ  
2770 South Maryland Parkway  
Suite 100  
Las Vegas, Nevada 89109  
*Attorneys for Petitioner*

Approved as to form and content:

LEWIS BRISBOIS BISGAARD & SMITH

  
DANIEL L. SCHWARTZ, ESQ.  
Nevada Bar No. 005125

JOEL REEVES, ESQ.  
Nevada Bar No. 013231  
2300 West Sahara Avenue  
Suite 900, Box 28  
Las Vegas, Nevada 89102  
*Attorneys for Respondents*



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Robert Holland, Petitioner(s) CASE NO: A-20-818754-J  
7 vs. DEPT. NO. Department 21  
8 Las Vegas Metropolitan Police  
9 Department, Respondent(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 4/5/2021

15 Daniel Schwartz daniel.schwartz@lewisbrisbois.com  
16 Joel Reeves joel.reeves@lewisbrisbois.com  
17 robert windrem rwindrem@ggrmlawfirm.com  
18 lisa anderson landerson@ggrmlawfirm.com  
19 Alejandra Garcia agarcia@ggrmlawfirm.com  
20 Stephanie Jensen stephanie.jensen@lewisbrisbois.com  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Worker's Compensation  
Appeal**

**COURT MINUTES**

**April 23, 2021**

---

A-20-818754-J      Robert Holland, Petitioner(s)  
vs.  
Las Vegas Metropolitan Police Department, Respondent(s)

---

**April 23, 2021      11:00 AM      Motion**

**HEARD BY:** Clark Newberry, Tara      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Kathryn Hansen-McDowell

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:**      Anderson, Lisa M      Attorney  
Reeves, Joel      Attorney

**JOURNAL ENTRIES**

- Court noted it reviewed the Motion and the Opposition. Colloquy regarding whether the Respondent was seeking a reconsideration of the Court's decision granting the petition for judicial review and a stay. Mr. Reeves stated they had not specifically filed a motion for reconsideration but for a stay. Following arguments by counsel regarding the a stay pending an appeal; COURT stated its FINDINGS and ORDERED, Respondent's Motion for a Stay DENIED. Ms. Anderson to prepare the order, run it by opposing counsel and submit it to the Court.