

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

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

6                   Appellants,

7                   v.

8 ROBERT HOLLAND,

9                   Respondent.  
10

Supreme Court Case No.: 82843

Electronically Filed  
May 23 2022 05:42 p.m.  
Elizabeth A. Brown  
District Court Case No. A-20-818754-1  
Clerk of Supreme Court

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12                   **APPELLANTS' PETITION FOR REVIEW**

13  
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1                                    **ARGUMENT FOR REHEARING (NRAP 40(a)(2))**

2            The questions presented concern NRS 617.457(11), the exclusion to the  
3  
4 conclusive presumption found in NRS 617.457(1).<sup>1</sup> NRS 617.457(11) states in  
5 entirety:

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

11            Since the filing of this appeal, the exclusion has become a frequently  
12 litigated issue and would be an issue of first impression before this court.<sup>2</sup> What  
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14 \_\_\_\_\_  
15 <sup>1</sup> NRS 617.457(1) is the conclusive presumption that police officers (and other  
16 specified employees) who become disabled by heart disease after having been  
employed for two years or more are entitled to industrial insurance benefits.

17 <sup>2</sup> Currently pending in this court:

18            Case No. 84035, LVMPD v. Patrick Walker  
19            Case No. 84044, LVMPD v. William Ferguson \*  
20            Case No. 84117, LVMPD v. Derrick Saxon\*  
21            Case No. 84337, David Delaria v. LVMPD

22 \*These cases (and the instant matter) were all cases where the appeals officer ruled  
in favor of LMVPD on the issue, but then were reversed by the district court.

23 In addition, there are several petitions pending in district court with this issue:

24            Alfred Wofenbarger, Case No. A-21-835296-J  
25            Gregory Ziel, Case No. A-21-838813-J  
26            Jesse Reynolds, Case No. A-21-841106-J  
27            William Guesman (Estate), Case No. A-21-840421-J

1 were presumed to be issues of fact are consistently being reversed or founded upon  
2 inconsistent legal analysis.

3  
4 This court has thus far only touched on the issue in dicta in Emplrs. Ins. Co.  
5 of Nevada v. Daniels, 122 Nev. 1009, 1017, 145 P.3d 1024, 1029 (2006).  
6 Specifically, stating “[Employer] Bechtel may defend the [NRS 617.457] claim,  
7 however, by showing that [Claimant] Daniels failed to quit smoking after repeated  
8 warning to stop.” Emplrs. Ins. Co. of Nevada v. Daniels, 122 Nev. 1009, 1017, 145  
9 P.3d 1024, 1029 (2006).

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12 This leads to several issues which were raised in the court of appeal’s order  
13 of affirmance for which Appellants respectfully believe the relevant statute has  
14 been misapplied and this court should review per NRAP 40(c)(2)(B). Appellants  
15 disagree with or would like more guidance as this is an issue of first impression.  
16 Further, Respondent Claimant currently has a motion for publication pending  
17 requesting the court of appeals to publish the order of affirmance at issue.  
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20 Issues raised in this appeal include:

- 21
- 22 • Whose burden is it to establish whether a correction is within an  
employee’s ability to correct?
  - 23 • What constitutes a good faith effort by an employee at taking corrective  
24 measures?
  - 25 • What specificity is required between which corrective measures apply to  
26 which predisposing conditions?
- 27


- What constitutes substantial evidence to support failure to correct predisposing conditions?
- Is it employer's burden to establish that if claimant makes a showing that he followed corrective measures that such measures would have reduced or corrected the predisposing condition (as ordered in this case)?

Appellants argue that the order of affirmance does not provide enough guidance regarding this issue of first impression, and respectfully disagree with the court of appeal's ruling. The arguments were raised by Appellants in their Opening Brief pp. 12-15. Accordingly, Appellants petition this court for review.

DATED this 23 day of May, 2022.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

  
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1                    **NRAP 40(b)(4) CERTIFICATE OF COMPLIANCE**

2            1.    I hereby certify per NRAP 40(b)(4) that this petition for review  
3  
4 complies with the formatting requirements of NRAP 32(a)(4), the typeface  
5 requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6)  
6 because this brief has been prepared in a proportionally spaced typeface using  
7  
8 Microsoft Word in Times New Roman font size 14.

9            2.    I further certify that this petition complies with the type-volume  
10 limitations of NRAP 40(b)(3) because it is proportionally spaced, has a typeface of  
11  
12 14 points or more, and contains 3,718 words and lines of text.

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

5           DATED this 23 day of May, 2022.

6                               LEWIS BRISBOIS BISGAARD & SMITH LLP  
7


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9           By:

  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on  
3 the 23 day of May, 2022, service of the attached **APPELLANTS' PETITION**  
4 **FOR JUDICIAL REVIEW** was made this date by depositing a true copy of the  
5 same for mailing, first class mail, and/or electronic service as follows:

6  
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12 An employee of LEWIS, BRISBOIS,  
13 BISGAARD & SMITH, LLP  
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