

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No.82894

SUSAN HOPKINS
Appellant,

v.

CANNON COCHRAN MANAGEMENT SERVICES, INC. dba CCMSI; and
WASHOE COUNTY,
Respondents.

Electronically Filed
Sep 07 2021 01:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from a District Court Order
of Affirmance Denying Petition for Judicial Review
Second Judicial District Court, Washoe County
Dept. No. 15
Case No. CV20-01650

APPELLANT'S APPENDIX

VOLUME 1 of 2
PAGES 1-249

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WORKERS
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Attorneys for Respondents,
CANNON COCHRAN MANAGEMENT
SERVICES, INC.; AND WASHOE
COUNTY

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

This matter arises from an order denying Appellant's Petition for Judicial Review. The entire administrative record was filed with the District Court below on November 9, 2020.

In order to provide a clearer index, the tables below list administrative documents by the date they were filed in the administrative forum (i.e. between January 16, 2020 and September 25, 2020), instead of the date that the administrative records were filed in the district court (November 9, 2020).

All administrative records appear on the tables below with (1) a "•"; (2) the date of filing in the administrative forum; and (3) citations to the appropriate portion of the Record on Appeal (pgs. October 14, 2020-November 2, 2020, vols. 1-2) filed in district court on November 9, 2020.

Document	Date	Vol.	Pages
• Decision and Order, Hearing Officer, Hearing No. 2001962-JL	01/16/20	1	AA 1-3
• Request for Hearing Before the Appeals Officer	02/18/20	1	AA 4-12
• Order for Appointment of Nevada Attorney for Injured Workers	02/21/20	1	AA 13

• Notice of Appeal and Order to Appear	02/21/20	1	AA 14
• Order of Reset	06/01/20	1	AA 15-16
• Claimant's Hearing Statement	07/08/20	1	AA 17-19
• Claimant's Amended Hearing Statement	07/20/20	1	AA 20-22
• Erratum - Claimant's Hearing Statement	07/20/20	1	AA 23-24
• Employer's Pre-Hearing Statement	07/31/20	1	AA 25-29
• Insurer's Documentary Evidence	03/26/20	1	AA 30-79
• Claimant's First Exhibit	08/04/20	1	AA 80-84
• Appeals Officer's Decision	09/25/20	1	AA 85-92
Order for Briefing Schedule	10/20/20	1	AA 114-115
Statement of Intent to Participate	10/20/20	1	AA 116-118
Transcript of Proceedings	11/02/20	1	AA 119-153
Certification of Transmittal	11/09/20	1	AA 154-156
Transmittal of Record on Appeal	11/09/20	1	AA 157-159
Notice of Transmittal of Record of Proceedings	11/20/20	1	AA 160-199
Petitioner's Opening Brief	12/21/20	1	AA 200-229
Respondents' Answering Brief	01/20/21	1	AA 230-249
Request for Oral Argument	01/21/21	2	AA 250-251
Application for Setting	01/27/21	2	AA 252-254
Application for Setting	01/29/21	2	AA 255
Petitioner's Reply Brief	02/18/21	2	AA 256-278
Minutes of Oral Arguments	03/12/21	2	AA 279
Order After Hearing	04/06/21	2	AA 280-281
Petitioner's Objections to Propose Order	04/21/21	2	AA 282-285
Request for Submission	04/21/21	2	AA 286-300

Order of Affirmance Denying Petition for Judicial Review	04/22/21	2	AA 301-311
Notice of Entry of Order	04/23/21	2	AA 312-327
Notice of Correction to Caption of Order of Affirmance Denying Petition for Judicial Review	04/26/21	2	AA 328
Petitioner's Further Objection to Order	04/27/21	2	AA 329-331
Petitioner's Motion to Withdraw Objection	04/30/21	2	AA 332-334
Notice of Appeal	05/06/21	2	AA 335-354
Case Appeal Statement	05/10/21	2	AA 355-360
Request for Transcript of Proceedings	06/25/21	2	AA 361-363
Transcript of Proceedings Oral Arguments March 3, 2021		2	AA 361-393

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• Claimant's Amended Hearing Statement	07/20/20	1	AA 20-22
• Claimant's First Exhibit	08/04/20	1	AA 80-84
• Claimant's Hearing Statement	07/08/20	1	AA 17-19

• Decision and Order, Hearing Officer, Hearing No. 2001962-JL	01/16/20	1	AA 1-3
• Employer's Pre-Hearing Statement	07/31/20	1	AA 25-29
• Erratum - Claimant's Hearing Statement	07/20/20	1	AA 23-24
• Insurer's Documentary Evidence	03/26/20	1	AA 30-79
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Petitioner's Objections to Propose Order	04/21/21	2	AA 282-285
Petitioner's Opening Brief	12/21/20	1	AA 200-229
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Respondents' Answering Brief	01/20/21	1	AA 230-249
Statement of Intent to Participate	10/20/20	1	AA 116-118
Transmittal of Record on Appeal	11/09/20	1	AA 157-159
Transcript of Proceedings 08/06/20	11/02/20	1	AA 119-153
Transcript of Proceeding Oral Arguments 03/03/21		2	AA 361-393

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b) and NRAP 30(f), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on August **, 2021, the foregoing APPELLANT'S APPENDIX was electronically filed with the Clerk of Court for the Nevada Supreme Court by using the Nevada Supreme Court's e-filing system (Eflex). Participants in this case who are registered with Eflex as users will be served by the E-flex system as follows:

LISA WILTSHIRE ALSTEAD, ESQ.
Lwiltshire@mcdonaldcarano.com

LUCAS FOLETTA, ESQ.
Lfoletta@mcdonaldcarano.com

DATED: 9/7/21

SIGNED: Ry Wilson

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 2001962-JL
Claim Number: 19493J090454

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

BEFORE THE HEARING OFFICER

The Claimant's request for Hearing was filed on December 20, 2019, and a Hearing was scheduled for January 13, 2020. The Hearing was held on January 13, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer was represented by Sharolyn Wilson by telephone conference call. The Insurer was represented by Lidia Perez of CCMSI by telephone conference call.

ISSUE

The Claimant appealed the Insurer's determination dated December 5, 2019. The issue before the Hearing Officer is claim denial.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED**.

Pursuant to NRS 616.150, an injured employee is not entitled to receive compensation unless the employee establishes by a preponderance of the evidence that the injury arose out of and in the course of employment. For an injury to arise out of employment, the Claimant must show there is a link between the conditions of the workplace and how those conditions caused the injury and how the origin of the injury is related to the risk involved within the scope of employment. An injury at the job location is not sufficient to hold that the injury arose out of and in the course and scope of employment. See *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997); and *Mitchell v. Clark County Sch. Dist.*, 121 Nev. 179, at 182, 111 P.3d 1104 (2005). In the instant matter, the Claimant was on a break and walking outside to get some exercise, tripped, fell and fractured her toe. Having reviewed the submitted evidence and in consideration of the representations made at today's hearing, the Hearing Officer finds the evidence fails to support that the injury arose out of the Claimant's employment and conditions thereof. As such, the Hearing Officer finds the Claimant has failed to meet the burden of proof to support a compensable industrial injury.

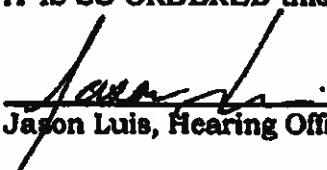
In the Matter of the Contested
Industrial Insurance Claim of:
Hearing Number:
Page Two

SUSAN HOPKINS
2001962-JL

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 16th day of January, 2020.



Jason Luis, Hearing Officer

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

SHAROLYN P WILSON
CLAIMS/RISK ANALYST
1001 E 9TH ST
RENO NV 89512

CCMSI
PO BOX 20068
RENO, NV 89515-0068

Dated this 16th day of January, 2020.



Rebekah Higginbotham
Employee of the State of Nevada

**REQUEST FOR HEARING BEFORE THE APPEALS OFFICER
NEVADA DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

RECEIVED**FEB 14 2020**

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 2001962-JJ
Claim Number: 19493J090

DEPT. OF ADMINISTRATION
HEARINGS DIVISION
CARSON CITY

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: January 16, 2020

(Please attach a copy of the Hearing Officer's Decision)

PERSON REQUESTING APPEAL: (circle one) CLAIMANT/EMPLOYER/INSURER

REASON FOR APPEAL: See attached

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

Person requesting this hearing (please print)

Address

Person requesting this hearing (signature)

City, State, Zip Code

Telephone Number

Telephone Number

Date

WILL AN INTERPRETER BE REQUIRED?
If so, what language:

YES () NO ☒

NOTICE

If the Hearing Officer Decision is appealed, CLAIMANTS are entitled to free legal representation by the Nevada Attorney for Injured Workers (NAIW). If you want NAIW to represent you, please sign below:

Susan Hopkins
Claimant's signature

775-262-8
Claimant's Telephone Number

If you are appealing the Hearing Officer's decision, file this form no later than thirty (30) days after that decision at:

NEVADA DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE
1050 E. WILLIAMS STREET SUITE 450
CARSON CITY, NV 89701
(775) 687-8420

RECEIVED
APR 17 2020

FEB 18 AM 10:54
DEPT. OF ADMINISTRATION
HEARINGS DIVISION

2002596- ELO
Jan 51-20
cl 10

Request for Hearing Contested Claim

Attachment

This letter established my request for appeal of the "Notice of Claim Denial" regarding Claim#19493J090454, for coverage of the injury I sustained on Tuesday, September 24, 2019, between 9-9:30am at the Washoe County Complex located at 1001 East 9th Street. The letter I received dated January 16, 2020, stated it was denied due to NRS 616C.150.

This NRS states "An injured employee or the dependents of the injured employee are not entitled to receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS unless the employee or the dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment."

Employees of the Washoe County Health District are encouraged to walk during their breaks and hold meetings outside while walking to increase its employee health and fitness. Employees, based on the WCEA Non Supervisory Labor Contract 2019-2022 are paid for their breaks and are in fact required to take two (paid) breaks for every eight hours worked. As a result of the encouragement by the Washoe County Health District leadership; asking employees to be more active during breaks and holding meetings outside; provides evidence that the injury occurred during the course of my employment as I was following a course of action suggested by my leadership. In fact I received an email that also outlines safe places to walk during breaks to my work email address further establishing evidence that the injury occurred out of the course of my employment.

In additions, as previously stated, there have been several incidents involving the same section of sidewalk in which other Washoe County employees have also tripped. This has obviously been established as a tripping hazard and nothing to date has been done to correct it. (Please see attached photographs of the raised section of the walkway at the Washoe County Building.

Please provide any requests for additional information regarding my appeal in order to move my request forward.

The information/evidence above establishes that I was well within the "course of my employment" when I was injured.

1 **CERTIFICATE OF MAILING**

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing **NOTICE OF APPEAL AND ORDER TO APPEAR** was duly mailed, postage
5 prepaid OR placed in the appropriate addressee runner file at the Department of Administration,
Hearings Division, 1050 E. Williams Street, Carson City, Nevada, to the following:

6 SUSAN HOPKINS
7 11660 ANTHEM DR
SPARKS, NV 89441

8 NAIW
9 1000 E WILLIAM #208
CARSON CITY NV 89701

10 WASHOE COUNTY
11 ATTN: CELESTE WALICK
12 1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

13 SHAROLYN P WILSON
14 CLAIMS/RISK ANALYST
15 1001 E 9TH ST
RENO NV 89512

16 CCMSI
17 PO BOX 20068
RENO, NV 89515-0068

18
19 Dated this 21st day of February, 2020.

20 Brandy Fuller
21 Brandy Fuller, Legal Secretary II
22 Employee of the State of Nevada
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Hopkins, Sue

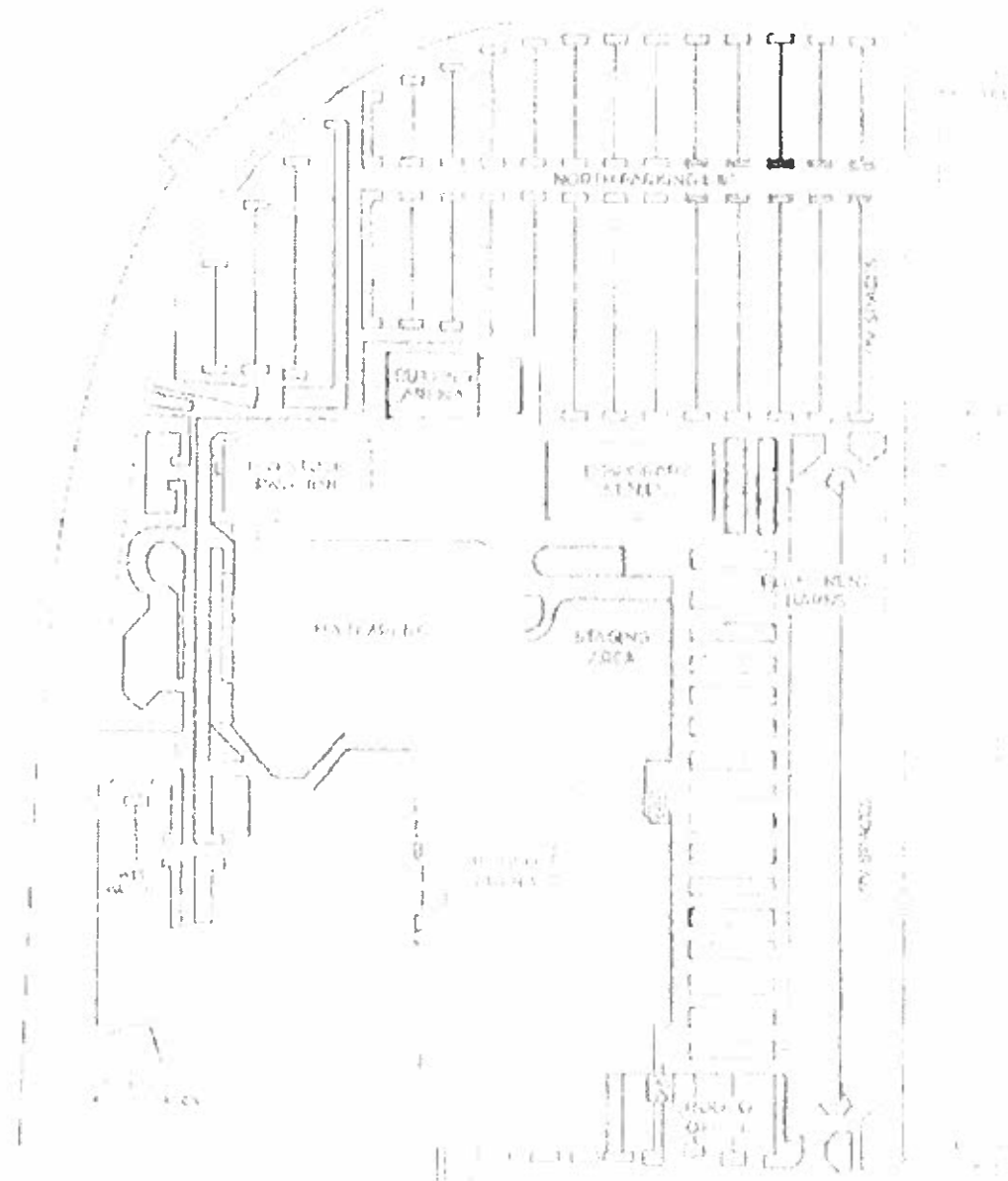
From: West Benjamin
Sent: Monday, September 23, 2019 11:05 AM
To: 9th Street Employees: Victoria L. Erickson; Julian Montoya; Jennie Shipp
Subject: Safety information for walkers at Livestock Events Center
Attachments: Walking Areas for Employees.pdf

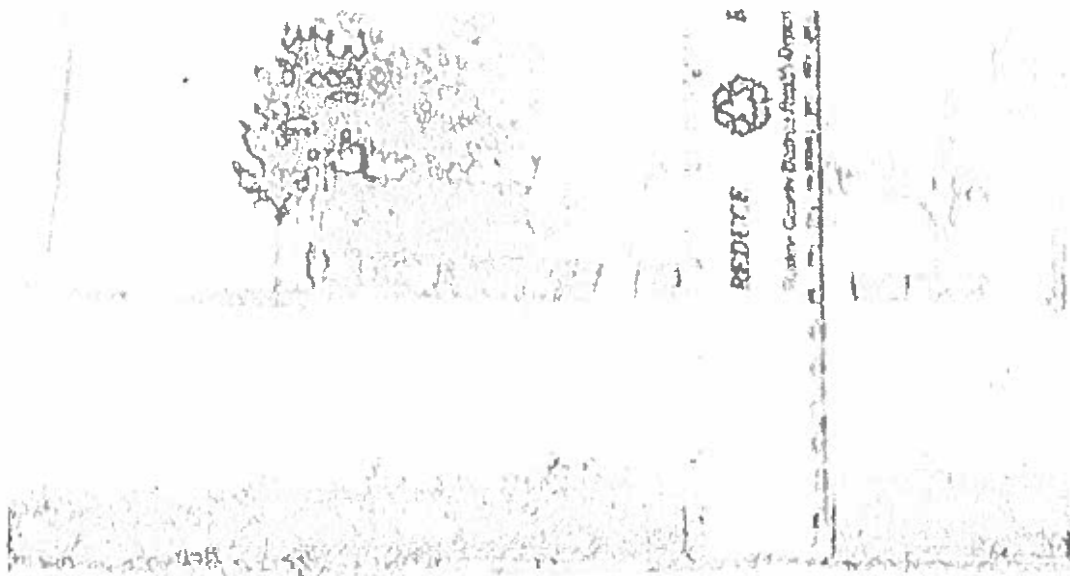
For the safety of walkers on the property during breaks, Reno Sparks Livestock Events Center staff have requested walkers avoid the construction and stall areas of the RSLEC. These areas often have RSLEC staff and others using vehicles and heavy equipment, and they are not anticipating walkers (often with earbuds/headphones on) being in the area. The attached map's red areas are to be avoided when walking at the RSLEC. Green areas are OK for walking. As always, use caution and be aware of your surroundings.

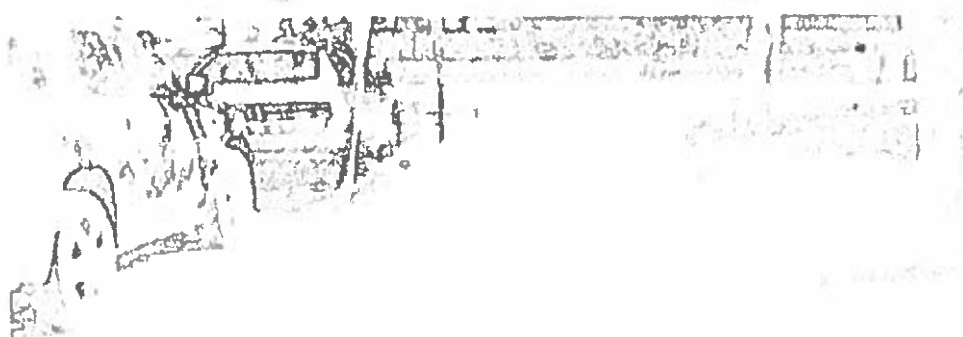
Reno-Sierravalley Livestock Events Center

RSLEC WALKING MAP

**PLEASE AVOID THE RED
AREAS FOR YOUR
SAFETY**









UNITED STATES ACCESS BOARD

Advancing Independent Living

[The Board](#)
[Guidelines & Standards](#)
[Training](#)
[Enforcement](#)
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[Home](#) > [Guidelines and Standards](#) > [Buildings & Sites](#) > [About the ADA Standards](#) > [Guide to the ADA Standards](#)

Chapter 3: Floor and Ground Surfaces

- [Firmness, Stability, and Slip Resistance](#) [§302.1]
- [Carpet](#) [§302.2]
- [Openings](#) [§302.3]
- [Changes in Level](#) [§303]
- [Common Questions](#)



This guide explains requirements in the [ADA Standards](#) for floor and ground surfaces. Specifications for floor and ground surfaces address surface characteristics, carpeting, openings, and changes in level. They apply to:

- interior and exterior accessible routes, including walking surfaces, ramps, elevators, and lifts
- stairways that are part of a means of egress
- required clearances, including clear floor space, wheelchair seating spaces, turning space, and maneuvering clearances
- accessible parking spaces, access aisles, and accessible passenger loading zones.

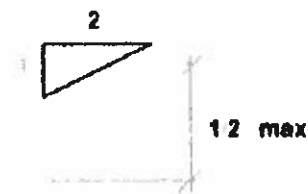
Changes in Level [§303]

Changes in level can be up to 1/4" without treatment or 1/2" if beveled with a slope no steeper than 1:2. Changes in level above a 1/2" must be treated as a ramp or curb ramp or a walkway if a slope no steeper than 1:20 can be achieved. The exception applies to a portion of accessible routes, including thresholds and carpet trim.

1/4" Max Change in Level



1/2" Max Change in Level



The Top 5 Free Ways to Increase Employee Physical Activity:

1. Encourage employees to use their breaks to go for a walk. Provide a map of 15-minute walking routes around the office and property.
2. Encourage a "Minimum Distance Policy" for email and phone. Encourage employees to email or phone a co-worker only if they're beyond easy walking distance.
3. Promote "Elevator Free Fridays" and encourage employees to take the stairs on that day. Move existing office artwork or posters into the stairwell to make the space more inviting.
4. Take stand-and-stretch breaks during all meetings. Better yet, with a small group, have "walk-and-talk" meetings instead of sitting down.
5. Promote participation in events that are already in the community like Bike to Work Week or other activities like a fundraising walk/run or competition.

There are numerous other options available. Use your imagination and remember to lead by example.

For more information on supporting physical activity at your workplace, visit the Centers for Disease Control and Prevention's Healthier Worksite Initiative (HWI).

Contact us. GetHealthy@washoecounty.us

Call at 775-328-6160 or 775-328-2454

Get Healthy IT'S ALL IN THE WAY YOU LIVE

1 **NEVADA DEPARTMENT OF ADMINISTRATION**
2 **BEFORE THE APPEALS OFFICER**

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

FILED

FEB 21 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

6 In the Matter of the Contested
7 Industrial Insurance Claim of:

Claim No: 19493J090454

Hearing No: 2001962-JL

Appeal No: 2002596-ELO

9 **SUSAN HOPKINS,**

10 Claimant.

11 **ORDER FOR APPOINTMENT OF**
12 **NEVADA ATTORNEY FOR INJURED WORKERS**

13 The Appeals Officer, having received and considered the Claimant's
14 written request for the appointment of the Nevada Attorney for Injured Workers;
15 finds the Claimant would be better served by legal representation and accordingly;
16

17 IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers
18 is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this
19 matter.

20 IT IS SO ORDERED.

21 
22 **EDWARD L OUELHE III**
23 **APPEALS OFFICER**
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BEFORE THE APPEALS OFFICER

FILED

FEB 21 2020

**DEPT. OF ADMINISTRATION
APPEALS OFFICER**

In the Matter of the Contested
Industrial Insurance Claim of:

SUSAN HOPKINS,

Claimant.

Claim No: 19493J090454

Hearing No: 2001962-JL

Appeal No: 2002596-ELO

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held by the Appeals Officer, pursuant to NRS 616 and 617 on:

DATE: Friday, May 1, 2020

TIME: 11:00 AM

PLACE: DEPT OF ADMINISTRATION, APPEALS OFFICE
1050 E. WILLIAMS STREET, SUITE 450
CARSON CITY, NV 89701

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.
3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.
4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.
5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.
6. Any party wishing to reschedule this hearing should consult with opposing counsel or parties, and immediately make such a request to the Appeals Office in writing supported by an affidavit.
7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED.



**EDWARD L OUEILHE III
APPEALS OFFICER**

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

3 1050 E. WILLIAM, SUITE 450
4 CARSON CITY, NV 89701

5
6 **FILED**
7 JUN - 1 2020
8 DEPT. OF ADMINISTRATION
9 APPEALS OFFICER

6 In the Matter of the Contested
7 Industrial Insurance Claim of:

9 SUSAN HOPKINS,

10 Claimant.

Claim No: 19493J090454

Hearing No: 2001962-JL

Appeal No: 2002596-ELO

11 **ORDER**

12 For good cause, this matter is reset for hearing on:

13 DATE: Thursday, August 6, 2020

14 TIME: 11:00 AM

15 **IT IS SO ORDERED**

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19 EDWARD L OUEILHE III
20 APPEALS OFFICER
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NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER, NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

2020 JUL -8 P 3 25

RECEIVED
AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 19493J090454

of

Hearing No.: 2001962-JL

Appeal No.: 2002596-ELO

SUSAN HOPKINS

DOH: 08/06/20 at 11:00 a.m.

CLAIMANT'S HEARING STATEMENT

DOCUMENTARY EVIDENCE

1. Claimant may rely on portions of any evidence packet submitted by the Insurer and/or Employer, subject to objection.
2. Claimant will also rely on evidence packets to be submitted herein on Ms. Hopkins' behalf.
3. Claimant reserves the right to file additional evidence.

II

STATEMENT OF THE ISSUE

1. Did the injury arise out of and in the course of Ms. Hopkins' employment?

III

POSSIBLE WITNESSES

1. Claimant may testify by telephone.
2. Any witness named or called by any other party.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 203
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
(775) 684-7555
(702) 456-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
(775) 684-7555
(702) 486-2830

1 3. Impeaching or rebuttal witnesses as necessary.

2 IV

3 STATEMENT OF FACTS

4 Ms. Hopkins was walking near her place of work when she
5 stumbled over a defect in the sidewalk, fell and fractured her
6 ankle on September 24, 2019. The exercise was during a mandatory
7 break, per union rules, and was within the "personal comfort"
8 doctrine for purposes of AOE/COE issues.

9 V

10 ESTIMATED TIME

11 Estimated hearing time: one (1) hour.

12 AFFIRMATION

13 The undersigned affirms, pursuant to NAC 616C.303, that
14 no personal identifying information appears in this Hearing
15 Statement.

16 RESPECTFULLY SUBMITTED this 7th day of July, 2020.

17 NEVADA ATTORNEY FOR INJURED WORKERS

18 *W Daniel N*

19 Clark G. Leslie, Esq., Sr. Deputy
20 Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rensselaer Drive, Suite 230
Las Vegas, NV 89102

(775) 684-7353

(702) 466-2000

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing CLAIMANT'S HEARING STATEMENT addressed to:

SUSAN HOPKINS
160 ANTHEM DR
SPARKS NV 89441

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

LISA WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY STREET 10TH FLOOR
RENO NV 89501

DATED: Jul 8, 2020

SIGNED: [Signature]

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT. OF ADMINISTRATION
HEARINGS DIVISION

2020 JUL 20 P 3 15

RECEIVED
AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 19493J090454

of

Hearing No.: 2001962-JL

Appeal No.: 2002596-ELO

SUSAN HOPKINS

DOH: 08/06/20 at 11:00 a.m.

CLAIMANT'S AMENDED HEARING STATEMENT

I

DOCUMENTARY EVIDENCE

1. Claimant may rely on portions of any evidence packet submitted by the Insurer and/or Employer, subject to objection.
2. Claimant will also rely on evidence packets to be submitted herein on Ms. Hopkins' behalf.
3. Claimant reserves the right to file additional evidence.

II

STATEMENT OF THE ISSUE

1. Did the injury arise out of and in the course of Ms. Hopkins' employment?

III

POSSIBLE WITNESSES

1. Claimant may testify by telephone.
2. Any witness named or called by any other party.
3. Impeaching or rebuttal witnesses as necessary.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rumbold Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2630

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 204
Carson City, NV 89701
2200 South Renshaw Drive, Suite 230
Las Vegas, NV 89102

(775) 684-7555

(702) 486-2830

IV

STATEMENT OF FACTS

Ms. Hopkins was walking near her place of work when she stumbled over a defect in the sidewalk, fell and fractured her right great toe, proximal phalanx on September 24, 2019. The exercise was during a mandatory break, per union rules, and was within the "personal comfort" doctrine for purposes of AOE/COE issues.

V

ESTIMATED TIME

Estimated hearing time: one (1) hour.

AFFIRMATION

The undersigned affirms, pursuant to NAC 616C.303, that no personal identifying information appears in this Hearing Statement.

RESPECTFULLY SUBMITTED this 20th day of July, 2020.

NEVADA ATTORNEY FOR INJURED WORKERS


Clark G. Leslie, Esq., Sr. Deputy
Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102

(775) 694-7555

(702) 486-2250

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing CLAIMANT'S HEARING STATEMENT addressed to:

SUSAN HOPKINS
160 ANTHEM DR
SPARKS NV 89441

and that on this date, I prepared for hand delivery, via Reno Cars n Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

LISA WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
10 WEST LIBERTY STREET 10TH FLOOR
RENO NV 89501

DATED: Jul 20, 2020

SIGNED: [Signature]

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

STATE OF NEVADA
DEPT OF ADMINISTRATION
HEARINGS DIVISION

2020 JUL 20 P 3 16

RECEIVED
AND
FILED

In the Matter of the
Industrial Insurance Claim

Claim No.: 19493J090454

of

Hearing No.: 2001962-JL

Appeal No.: 2002596-ELO

SUSAN HOPKINS

DOB: 08/06/20 at 11:00 a.m.

ERRATUM

CLAIMANT'S HEARING STATEMENT

Clark Leslie, Esq., Nevada Attorney for Injured Workers,
attorney for Susan Hopkins, Claimant, hereby corrects mistakes
contained within the Claimant's Hearing Statement filed July 8,
2020.

On page 2 at line 6, the description of the claimant's
injury was erroneous; Ms. Hopkins fractured the proximal phalanx of
her right great toe. Thus, the word "ankle" should be replaced with
"right great toe, proximal phalanx".

AFFIRMATION

The undersigned affirms, pursuant to NAC 616C.303, that
no personal identifying information appears in this Hearing
Statement.

RESPECTFULLY SUBMITTED this 20th day of July, 2020.

NEVADA ATTORNEY FOR INJURED WORKERS

Clark D. Leslie, Esq., Sr. Deputy
Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
(775) 684-7553
2200 South Rancho Drive, Suite 250
Las Vegas, NV 89102
(702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 206
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing ERRATUM CLAIMANT'S HEARING STATEMENT addressed to:

SUSAN HOPKINS
160 ANTHEM DR
SPARKS NV 89441

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

LISA WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY STREET 10 FLOOR
RENO NV 89501

DATED:

July 1, 2020

SIGNED:

[Signature]

FILED

JUL 31 2020

DEPT. OF ADMINIST
APPEALS OF-L h N

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

* * * * *

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 19493J090454

Hearing No: 2001962-JL

SUSAN HOPKINS,

Appeal No: 2002596-ELO

Claimant.

EMPLOYER'S PREHEARING STATEMENT

The Employer, WASHOE COUNTY ("Employer"), hereby submits the following
Prehearing Statement:

I.

DOCUMENTARY EVIDENCE

The Employer may rely on the documentary evidence submitted by the Insurer and any
evidence submitted by any of the parties.

II.

ISSUE STATEMENT

The issue concerns the Hearing Officer's January 16, 2020 Decision and Order
("Decision") that affirmed the December 5, 2019 determination issued by Cannon Cochran
Management Services, Inc. ("CCMSI"), the Employer's third-party administrator, that denied
the claim.

It's the Employer's position that the Claimant has not met her burden under
NRS 616C.150 in establishing a compensable industrial claim. Her injuries were incurred when
she tripped over a raised step in the sidewalk while she was on a break. She was not performing
any work for the Employer at the time of her injuries and the activity she was engaged in at the
time of her injuries was strictly voluntary.

//

//

MCDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.785.2020 • FAX 775.785.7030

1 No evidence was submitted establishing the Employer requires its employees to exercise
2 as part of their job duties or that the Claimant was performing an activity for her Employer.
3 Rather, the Claimant was injured while performing an activity of her own choosing.

4 The issue of whether the Claimant's injuries were sustained while she was in the course
5 and scope of her employment was addressed by the Hearing Officer's November 14, 2019
6 decision that remanded the Claimant to provide the insurer with documentation showing that she
7 was "...engaged in an activity that her employer recommended she engage in during her normal
8 work day." The documentation the Claimant provided to the insurer was from the Washoe
9 County's Public Website as a resource designed for "all aspects of the community," not
10 specifically for employees of Washoe County. Accordingly, the insurer denied the claim
11 pursuant to NRS 616C.150 and the court's decision in *Rio Suite Hotel & Casino vs. Gorsky.*,
12 939 P.2d 1043 (1997) which requires evidence of a causal connection between the injury and the
13 employee's work. The Claimant appealed this determination. After review of the evidence, the
14 Hearing Officer affirmed the insurer's determination to deny the claim on January 16, 2020
15 which is the issue of this appeal.

16 **III.**

17 **WITNESSES**

18 1. Lidia Perez Ms. Perez and or another representative of CCMSI may testify
19 concerning the administration of the claim;

20 2. Celeste Wallick - Ms. Wallick and/or another representative of the Employer may
21 testify concerning the Claimant's industrial claim and/or employment;

22 3. Paula Valentin Ms. Valentin and/or another representative of the Employer may
23 testify concerning the Claimant's industrial claim and/or employment;

24 4. Thomas Christensen, M.D. Dr. Christensen may testify concerning the
25 Claimant's medical condition; and

26 5. Rebuttal or impeachment witnesses as may be necessary.

27 //

28 //

IV.

ESTIMATED HEARING TIME

Approximately one (1) hour.

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 31st day of July, 2020.

MCDONALD CARANO LLP



LISA WILTSHIRE ALSTEAD, ESQ.

LUCAS FOLETTA, ESQ.

P. O. Box 2670

Reno, Nevada 89505-2670

Attorney for the Employer

WASHOE COUNTY

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP, and that on the 31st day of July, 2020, I caused a true and correct copy of the EMPLOYER'S PREHEARING STATEMENT to be served on the following parties in the manner referenced below:

<input type="checkbox"/> U.S. Mail	Appeals Officer
<input type="checkbox"/> Email Filing	Department of Administration
<input type="checkbox"/> FedEx	1050 East William St., Suite 450
<input checked="" type="checkbox"/> Hand Delivered Filing	Carson City, NV 89701
<input checked="" type="checkbox"/> U.S. Mail	Clark Leslie, Esq., deputy
<input type="checkbox"/> Email	Nevada Attorney for Injured Workers
<input type="checkbox"/> FedEx	1000 E. William Street, Suite 208
<input type="checkbox"/> Hand Delivered	Carson City, NV 89701
<input checked="" type="checkbox"/> U.S. Mail	CCMSI
<input type="checkbox"/> Email	Lidia Perez
<input type="checkbox"/> FedEx	P.O. Box 20068
<input type="checkbox"/> Hand Delivered Filing	Reno, NV 89515-0068
<input checked="" type="checkbox"/> U.S. Mail	WASHOE COUNTY
<input type="checkbox"/> Email	Attn: Celeste Wallick
<input type="checkbox"/> FedEx	Human Resources
<input type="checkbox"/> Hand Delivered Filing	1001 E. Ninth Street, Bldg. D, Suite 120
	Reno, NV 89512


An Employee of McDonald Carano LLP

4834-0324-0134, v. 1 [cw730]

Filename: Susan HOPKINS - CCMSI - Washoe Co. - AO prehearing with
position statement (AO 2002596-ELO) 4834-0324-0134 v
Directory: C: Users cdavis Documents
Template: C: DOCUME 1 rsawyer LOCALS 1 Temp TCD267.tmp Pleadin
g form with 28 lines.dot
Title:
Subject:
Author: RSAWYER
Keywords:
Comments:
Creation Date: 7 30 2020 4:20:00 PM
Change Number: 3
Last Saved On: 7 30 2020 4:27:00 PM
Last Saved By: Connie Wharton
Total Editing Time: 5 Minutes
Last Printed On: 7 31 2020 12:12:00 PM
As of Last Complete Printing
Number of Pages: 4
Number of Words: 748 (approx.)
Number of Characters: 4,269 (approx.)

FILED

MAR 26 2020

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 19493J090454

Hearing No: 2001962-JL

Appeal No: 2002596-BLO

SI SAN HOPKINS,

Claimant.

RECEIVED
AND
FILED
DEPT. OF ADMINISTRATION
APPEALS OFFICER

INSURER'S DOCUMENTARY EVIDENCE

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9/27/19	Insurer's Correspondence w enclosures.....	22
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NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE HEARING OFFICER

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding INSURER'S
DOCUMENTARY EVIDENCE filed in Nevada Department of Administration does not
number of any person.

Lisa Wiltshire Alstead

March 26, 2020

Lisa Wiltshire Alstead, Esq.
Attorneys for Insurer

Date

MCDONALD  **CARANO**
100 WEST LIBERTY STREET, 19TH FLOOR - LAS VEGAS, NEVADA 89101
PHONE 775.768.2000 • FAX 775.768.2001

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP, and that on the 26th day of March, 2020, I served true and correct copies of the preceding INSURERS DOCUMENTARY EVIDENCE via U.S. Mail and Hand Delivery on the following parties:

<input type="checkbox"/> U.S. Mail	Appeals Officer
<input type="checkbox"/> Email	Department of Administration
<input type="checkbox"/> FedEx	1050 East William St., Suite 450
<input checked="" type="checkbox"/> Hand Delivered Filing	Carson City, NV 89701

<input checked="" type="checkbox"/> U.S. Mail	NAIW
<input type="checkbox"/> Email	1000 E. William Street, Suite 208
<input type="checkbox"/> FedEx	Carson City, NV 89701
<input type="checkbox"/> Hand Delivered	
<input type="checkbox"/> Facsimile	

Carole Dorn
An Employee of McDonald Carano LLP

**STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 2001962-JL
Claim Number: 19493J090454

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

BEFORE THE HEARING OFFICER

The Claimant's request for Hearing was filed on December 20, 2019, and a Hearing was scheduled for January 13, 2020. The Hearing was held on January 13, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer was represented by Sharolyn Wilson by telephone conference call. The Insurer was represented by Lidia Perez of CCMSI by telephone conference call.

ISSUE

The Claimant appealed the Insurer's determination dated December 5, 2019. The issue before the Hearing Officer is claim denial.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED**.

Pursuant to NRS 616.150, an injured employee is not entitled to receive compensation unless the employee establishes by a preponderance of the evidence that the injury arose out of and in the course of employment. For an injury to arise out of employment, the Claimant must show there is a link between the conditions of the workplace and how those conditions caused the injury and how the origin of the injury is related to the risk involved within the scope of employment. An injury at the job location is not sufficient to hold that the injury arose out of and in the course and scope of employment. See *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997); and *Mitchell v. Clark County Sch. Dist.*, 121 Nev. 179, at 182, 111 P.3d 1104 (2005). In the instant matter, the Claimant was on a break and walking outside to get some exercise, tripped, fell and fractured her toe. Having reviewed the submitted evidence and in consideration of the representations made at today's hearing, the Hearing Officer finds the evidence fails to support that the injury arose out of the Claimant's employment and conditions thereof. As such, the Hearing Officer finds the Claimant has failed to meet the burden of proof to support a compensable industrial injury.

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FEB 24 2020

CCMSI - Reno

In the Matter of the Contested
Industrial Insurance Claim of:
Hearing Number:
Page Two

SUSAN HOPKINS
2001962-JL

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 16th day of January, 2020.



Jason Lada, Hearing Officer

RECEIVED
FEB 24 2020
CYMSI - Reno

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

SHAROLYN P WILSON
CLAIMS/RISK ANALYST
1001 E 9TH ST
RENO NV 89512

CCMSI
PO BOX 20068
RENO, NV 89515-0068

Dated this 16th day of January, 2020.



Rebekah Higginbotham
Employee of the State of Nevada

RECEIVED
FEB 24 2020
CCMSI - Reno

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF APPEAL AND ORDER TO APPEAR** was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Carson City, Nevada, to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

SHAROLYN P WILSON
CLAIMS/RISK ANALYST
1001 E 9TH ST
RENO NV 89512

CCMSI
PO BOX 20068
RENO, NV 89515-0068

Dated this 21st day of February, 2020.

Brandy Fuller
Brandy Fuller, Legal Secretary II
Employee of the State of Nevada

RECEIVED
FEB 24 2020
CCMSI - Reno



Page 2 of 7

FORM 9-1
PLANS TYPE OR PRINT

[illegible]

OUTSIDE - THREATS PAGE 1000 ON MICROFILM PAGE 2 - DIS/ALPHA PAGE 3 - EMPLOYER PAGE 4 - EMPLOYEE

AA 38

Received: 11/07/2019

Received: 09/25/2019

EMPLOYER		Place Type or Prob		Health Insurance Policy No.	
Employer's Name Washoe County Health District Office Mail Address 1801 E. 5th Street City Reno NV 89512 Phone 775-325-8410 Fax 775-325-8410 E-mail COMMUNITY ADMINISTRATION COMMUNITY		Nature of Business (Industry) Health Date Ins. ... (If different from mailing address) 08-6000138		Policy No. 9-080	
EMPLOYEE		County to self insured		Insurance	
Employee's Name 11580 Arden Dr City Sparks NV 89441 Date 02/01/1986 Age 31 Primary Language Spoken English		Social Security 02/01/1986 Date of Birth 02/01/1986 Sex <input type="checkbox"/> Male <input type="checkbox"/> Female Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		How long have you been employed by you? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how long? 8 yrs	
ACCIDENT OR DISEASE		When did the employee first become disabled?		Department in which regularly employed	
Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.		Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.		Department in which regularly employed Health - Environmental Health Services Was employee in your employ when injured or disabled? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was employee injured or disabled while performing his/her regular job? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was employee injured or disabled while performing his/her regular job? <input type="checkbox"/> Yes <input type="checkbox"/> No	
INJURY OR DISEASE		Describe the injury or disease, or object most closely connected with the accident (If applicable)		Was there any time when you were injured or disabled in this accident? (If applicable)	
See below Injured left hand, left shoulder, left hip, right foot to include large toe joint, right knee, right hand and right elbow, scrapes, bruises, abrasions and some lacerations. No other injuries or diseases reported.		Was there any time when you were injured or disabled in this accident? (If applicable) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how long? 8 days Date of Injury or Onset 02/24/19 Date of Recovery 03/03/19		Was there any time when you were injured or disabled in this accident? (If applicable) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how long? 8 days Date of Injury or Onset 02/24/19 Date of Recovery 03/03/19	
REPORTANT		LOST TIME INFO		REPORT	
Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.		Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.		Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.	
Reported by <input type="checkbox"/> Self <input type="checkbox"/> Employer <input type="checkbox"/> Other Name of Reportant 11580 Arden Dr City Sparks NV 89441 Date 02/24/19 Age 31 Primary Language Spoken English		Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.		Date of Injury or Onset 02/24/19 Time of Injury or Onset 9:00 am Address of residence of accident (Also provide date, month, year) 1801 E. 5th Street Reno, NV 89512 Address of workplace during which the accident occurred (Provide street name, city, state, zip) Washington Building on the sidewalk Nature of Injury or Occupational Disease (Describe the employee's regular work. Be specific and complete. Do not use vague terms like "slipped", "fell", "tripped", "struck", "burned", "frozen", "fainted", "etc.") Employee started work at 8am, went outside to get something and on way back into building tripped and fell over a raised edge in the middle of the sidewalk.	
For the purpose of calculation of the average weekly wage, indicate the employee's gross earnings for pay period for 13 weeks prior to the date of injury or disability. If the injured employee is compensated by all work 8 days or more, attach wage verification from employer. If the employee was employed by you for less than 13 weeks, provide gross earnings from the date of hire to the date of injury or disability.		For the purpose of calculation of the average weekly wage, indicate the employee's gross earnings for pay period for 13 weeks prior to the date of injury or disability. If the injured employee is compensated by all work 8 days or more, attach wage verification from employer. If the employee was employed by you for less than 13 weeks, provide gross earnings from the date of hire to the date of injury or disability.		For the purpose of calculation of the average weekly wage, indicate the employee's gross earnings for pay period for 13 weeks prior to the date of injury or disability. If the injured employee is compensated by all work 8 days or more, attach wage verification from employer. If the employee was employed by you for less than 13 weeks, provide gross earnings from the date of hire to the date of injury or disability.	
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For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free 1-888-333-1997 Web site: http://govconsumerhelp.com E-mail: ohc@govconsumerhelp.com		For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free 1-888-333-1997 Web site: http://govconsumerhelp.com E-mail: ohc@govconsumerhelp.com		For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free 1-888-333-1997 Web site: http://govconsumerhelp.com E-mail: ohc@govconsumerhelp.com	
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Received: 11/07/2010

Received: 09/30/2010

Print Form

Reset Form

"NOTICE OF INJURY OR OCCUPATIONAL DISEASE"
(Incident Report)
Pursuant to NRS 516C.015

Name of Employer Washoe County Health District

Name of Employee	Social Security Number	Telephone Number
Sean Hopkins		775-745-4104

Date of Accident (if applicable)	Time of Accident (if applicable)	Place where accident occurred (if applicable)
09/24/2010	5:00	Raised sidewalk going from Building B towards Building C next to the handicap spaces

What is the nature of the occupational disease?

List any body parts involved:

Right hand, left shoulder, left hip, right foot to include large toe joint, right wrist, right hand, right elbow

Briefly describe accident or circumstances of occupational disease:

(When if you are claiming an occupational disease, indicate the date of which the employee first became aware of the connection between the condition and employment)

I was walking on the sidewalk and tripped and fell over a raised edge in the middle of the sidewalk

Name of witness(es):

Unknown

Did the employee leave work because of the injury or occupational disease?
☒ Yes
☐ No

If yes, when (date and time)

1:15 pm 9/24/10

Has the employee returned to work?

☐ Yes
☒ No

If yes, when (date and time)?

Was first aid provided?

☐ Yes
☒ No

If yes, by whom?

Name and address of treating physician (if applicable or known):

Did the accident happen in the normal course of work?

☒ Yes
☐ No

Was anyone else involved?

☐ Yes
☒ No

Names of other involved:

MY EMPLOYER/INSURER MAY HAVE MADE ARRANGES TO DIRECT ME TO A HEALTH CARE PROVIDER FOR MEDICAL TREATMENT OF MY INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE. I HAVE BEEN NOTIFIED OF THESE ARRANGEMENTS.

Supervisor's Signature

Date

Signature of Injured or Disabled Employee

Date

For assistance with Workers' Compensation issues, you may contact the Office of the Governor's Consumer Health Assistance
Toll Free: 1-888-833-1397 - Web site: <http://govcha.state.nv.us> - Email: cha@govcha.state.nv.us

Employee should sign, date and retain a copy of this form.
Original to Employer, Copy to Employee

G-1 (Rev. 10/05)

Received: 11/07/2019

Received: 09/23/2019



WASHOE COUNTY RISK MANAGEMENT

1001 E. Ninth Street - Post Office Box 11130

Reno, Nevada 89520 - (775) 328-2071

Fax (775) 328-2094

Insurance

Safety

SUPERVISOR'S REPORT OF INJURY

Department: Washoe County Health District Division: EH&S Supervisor: Paula Valentin

Injured employee: Susan Hopkins Job title: Office Support Specialist

Date: 9/24/2019 Time: 9 AM Location: 1001 East 9th St North Sidewalk behind Bldg C

DESCRIBE ACCIDENT IN DETAIL: Employee took a break and was walking outside on the sidewalk. Tripped over a raised section (see photos attached)

WHY DID IT OCCUR? UNSAFE ACT OR CONDITION? Describe in detail: Employee unaware there was an elevation between sidewalk section and caught their toe causing the fall.

Conditions or equipment involved: Washoe County grounds sidewalk

Unsafe conditions needing correction: Sidewalk should be repaired.

Equipment other than employer's involved: _____

What specific physical activity was the injured worker doing? Walking

Personal factors that could have contributed to the accident:

- ☐ Improper attitude ☐ Bodily defects (eyesight, hearing, fatigue, etc.)
☐ Lack of knowledge or skill ☒ No unsafe personal factor ☐ Other

Employee training needed? Choose One If yes, describe: _____

Nature of injury: Pain of left hand, left shoulder and hip. Big toe joint on right foot broken. Impact and skin abrasions on right knee, wrist, hand and elbow.

Name of witnesses: none

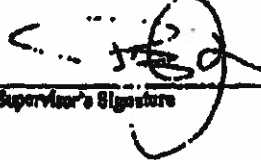
What are you doing to prevent this type of accident from occurring again? Placing a work order to repair sidewalk

Date action taken: 9/24/2019

Doubt validity or accident? No If yes, explain: _____

Received: 11/07/2019

Received: 09/26/2019


Supervisor's Signature



8/24/2019
Date Completed

**WASHOE COUNTY**

Printed: 9/25/2019 5:20:48 PM

Initial Report

Claim Number: 19493J090454 Initial Report Number: 2003867635

General Information	
Policy Holder: WASHOE COUNTY - 4930001	Department: HEALTH 2 RENO - 32
Date of Loss: 9/24/2019	Time of Loss: 09:00
Coverage Code: WC	Report Type: CLAIM

Claimant	
Name: HOPKINS, SUSAN	
Social Security Number:	Employee ID:
Physical Address:	
11660 ANTHEM DRIVE	Home Phone: 775-745-1884
SPARKS, NV 89441	Work Phone: 775-320-2638
United States	
Mailing Address:	
Work Email:	Other Email:
Date of Birth: 3/1/1968	
Marital Status: Married	Gender: Female

Client Specific Fields for WC	
SUBRO DEADLINE DATE:	
SUBRO COLLECTION STATUS:	
SUBRO CLAIM STATUS:	

Incident Information	
Cause Code: SLIP/TRIP/FALL SAME LEVEL - 497	
Loss Type: MULTIPLE INJURIES - 99	
Body Part: MULTIPLE BODY PARTS - 0090	
Date Reported: 9/25/2019	
Accident State: NV	State of Jurisdiction: NV
Accident Location: Employer	
Drivers License: Number: Issuing State:	
Accident Description: TRIP/FALL ON SIDEWALK	
Claim Summary:	

**WASHOE COUNTY**

Printed: 9/25/2019 5:20:48 PM

Initial Report

C C M S I

Claim Number: 194933090454

Initial Report Number: 2003867635

TRIPPED ON SEAM OF SIDEWALK AND FELL	
Type of Compensation:	
Initial Medical Treatment: Physician Only	Physician Name:
Hospital/Facility Name: ROC	
Hospital/Facility Address:	
Witnesses	
Group/Analysis Codes	
	HEART/LUNG/CANCER (Analysis1): N/A
	Police Academy (Analysis2): N/A
	VOLUNTEER (Analysis3): N/A
	WORK CREW (Analysis4): N/A
	SUBROGATION (Analysis5): N/A
Worker's Compensation	
Lost Time: Y	Date Last Worked: 8/24/2019
Returned to Work: N	
Returned to Light Duty Date:	Returned to Fulltime Date:
Employee Died Because of Accident: N	
Zipcode Injury Site: 89520	
Salary Continued in Lieu of Compensation: N	Full Wages Paid Day Injured: N
Employment: Full Time	Hire Date: 8/2/2016
Rate of Pay: \$23.25 Hourly	
Job Code: CLERICAL OFFICE EMPLOYEES NOC - 8810	Job Title (Carrier): OFFICE SUPT SPEC
State Specific Fields for NV	
Part of Body Injured 2:	
Part of Body Injury Side 2:	
Part of Body Injured 3:	
Part of Body Injury Side 3:	
Part of Body Injured 4:	
Part of Body Injury Side 4:	
Updates:	
Update Description:	
Suspend Payment:	
Suspended Payment Type:	

Page 2 of 3

**WASHOE COUNTY**

Printed: 9/25/2019 5:20:48 PM

Initial Report

C C M S I Claim Number: 19493J090454 - Initial Report Number: 2003867635

Finalized PPD Rating:
Dental Reversed:
Catastrophic Claim:
NRS Close Code:
Re-opened Claim:
Foreign State/Province:
Foreign Zip Code:
Death Result of Injury:
Place of Accident Address 1:
Place of Accident City:
Place of Accident State:
Place of Accident Zip:

OSHA	
OSHA Recordable: Yes	
Job Title: OFFICE SUPPORT SPECIALIST	
Where Event Occurred: SIDEWALK	
Describe Injury or Illness, Parts of Body Affected: MULTIPLE	
Case Classification: Days Away From Work	Injury or Type of Illness: Injury
Privacy Case: N	
Was the employee hospitalized overnight as an in-patient? No	
Time employee began to work? 08:00	
Time of event? 08:00	
What was the employee doing just before the incident occurred?: WALKING	
What happened?: TRIP/FALL ON SIDEWALK	
What was the injury or illness?: SLIP/TRIP/FALL SAME LEVEL, MULTIPLE BODY PARTS	
What object or substance directly harmed the employee? SEAM ON SIDEWALK	

History	
Name: CELESTE WALLICK	Created: 9/25/2019 04:38:00 PM - WALLICK, CELESTE (WASHOE1)
Title: RISK ANALYST	
Phone: 775-328-2682	RPO Submitted: N/A
	Claim Submitted: - ()

()





December 6, 2019

Notice of Claim Denial

SUSAN HOPKINS
11680 Anthem Dr
Sparks, NV 89441-6284

Re: Claim No.: 19493J090454
Employer: Washoe County
D.O.I.: 09/24/2019
Body Part/ condition: Right great toe fracture

Dear Ms. Hopkins:

Pursuant to the Hearing Officer's decision & order #2001191-SD, we have reviewed the documentation you submitted.

Please be advised Health Initiatives are encouraged by Washoe County, but are not required. Employee engagement is voluntary. The page you presented to the Hearing Officer is actually from Washoe County's Public Website and is a resource from the Washoe County Health District designed for "all aspects of the community". This information is for the general public.

Supreme Court decision *Rio Suites Hotel vs Gorsky* states that there must be a causal connection between the injury and the employee's work and that the claimant must demonstrate that the injury occurred because of a risk involved within the scope of the employment. Engaging in a voluntary activity during a personal break period is unrelated to the purpose for which the employment relationship was created. The Employer, Washoe County's encouragement to employees to participate in such voluntary activities during their personal break times is simply a suggestion. Therefore, you have not met the burden of proof that your injury occurred as a direct result of duties that arose out of or in the course of your employment. Your claim is denied pursuant to:

NRS 616C.160 requires that an employee must establish by a preponderance of evidence that an injury arose out of and in the course of employment.

DEC 27 2019

Page 2

19493J090464

If you disagree with the above determination, you do have the right to appeal by requesting a hearing before a Hearing Officer by completing the enclosed Form D-12a and sending it to the State of Nevada, Department of Administration, Hearings Division. Your appeal must be filed within seventy (70) days after the date on which the notice of this determination was mailed.

Department of Administration
Hearings Division
1060 E. William Street, Ste. 400
Carson City, NV 89701
(775) 687-8440

OR

Department of Administration
Hearings Division
2200 S. Rancho Drive, Ste. 210
Las Vegas, NV 89102
(702) 486-2625

If you have questions or wish to discuss this matter, please contact me directly at 775-324-0156.

Sincerely,


Lidia Perez
Claims Representative

cc: Washoe County
ROC
DIR/IRS

Enc: D-12 a

DEC 27 2019

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Reno Orthopaedic Clinic
555 North Arlington Ave Reno, NV 89505
(775) 786-8040

September 27, 2019
Page 1
Office Visit

SUSAN M HOPKINS
Female DOB: 08/01/1968 AGE: 51 Years Old INSURANCE:
PATIENT ID: 66769

Home: (775) 425-1042

09/24/2019 - Office Visit: Initial Office Visit - fwd w/o 9/27 hp
Provider: Kellie Kopp PA-C
Location of Care: Reno Orthopaedic Clinic

Referring Physician: Kopp PA-C, Kellie
Primary Care Physician: Burgio APN, David A
Chief Complaint: left hip pain and right toes pain

Patient indicated on intake form that this is a work related injury.

History of Present Illness:

Susan is a very pleasant 51-year-old female who presents today for evaluation of right foot great toe and left hip pain after an injury that occurred today, 9/24/2019. She states she was walking, kicked a curb with her right foot, tumbled forward, had multiple skin abrasions; however, she states her most significant pain is in her right foot great toe and left hip. She does feel like her left hip wants to give out on her. She denies any previous history of hip pain or trauma.

Patient's current BMI is 28.01. Pain on a scale of 0 to 10 based on verbal rating numeric scale: 6

Patient does not have an Advanced Care Plan.

Review of Systems:

General: Indicates: good general health lately Denies: fatigue or general weakness, fevers, obesity
Eyes: Denies: visual changes
ENT: Denies: decreased hearing, difficulty swallowing
Cardiovascular: Denies: chest pain/tightness, palpitations
Respiratory: Denies: difficulty breathing
Gastrointestinal: Denies: loss of appetite, heartburn, constipation, diarrhea, nausea, abdominal pain
Genitourinary: Denies: urinary urgency, incontinence, blood in urine, painful urination
Musculoskeletal: Denies: joint pain, back pain, neck pain, joint swelling, stiffness, muscle weakness
Skin: Denies: rash, lumps, ulcers
Neurologic: Denies: headaches, numbness, dizziness, seizures, loss of balance
Psychiatric: Denies: anxiety, depression
Endocrine: Denies: weight gain, weight loss, heat or cold intolerance
Hematologic: Denies: enlarged lymph nodes, abnormal bleeding, abnormal bruising
Allergic/Immunologic: Denies: seasonal allergies, persistent infections

Past Medical, Family & Social History

Past History

Patient indicates a past history of: no reported past medical history

Allergies: Patient's allergies was reviewed.

PENICILLIN (Critical)

Medications: Patient's use of prescription/over-the-counter medications was reviewed.

TRAMADOL HCL 50 MG ORAL TABLET (TRAMADOL HCL) 1-2 tabs po q4h prn pain; Route: ORAL

BIRTH CONTROL qd

METFORMIN HCL 500 MG ORAL TABLET (METFORMIN HCL) 1 po bid

Family History

Patient indicates a family history of: no known family history

Social History

Patient indicates:

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SEP 27 2019

CCMSI ~ Reno

Reno Orthopaedic Clinic
888 North Arlington Ave Reno, NV 89508
(775) 788-8040

September 27, 2019
Page 2
Office Visit

SUSAN M HOPKINS
Female DOB: 08/01/1968 AGE: 51 Years Old INSURANCE:
PATIENT ID: 89788

Home: (775) 425-1042

Never a smoker/user of nicotine
Consumes caffeine.
Does not drink alcohol

All Family, past, social and surgical history has been review by me today. A full review of systems have been obtained positives noted in the HPI, all others are noncontributory or negative.

Physical Examination

General: Well-Appearing in no acute distress

Psych: Pleasant demeanor Normal affect

Eyes: Pupils equal Pupils round

Resp: Regular rate Unlabored breathing

CV: Palpable pulses Brisk capillary refill

Neuro: Sensation intact

Skin: No lesions No rash

Musculoskeletal: Exam of right lower extremity: The patient is nontender at the ankle. She is able to dorsiflex, plantarflex, invert, and evert the ankle against resistance with no gross motor deficits. She is tender to palpation at the dorsum of the midfoot. She is also tender at the right great toe MTP joint as well as at the proximal phalanx and IP joint of her right great toe. She does have ecchymosis noted on the dorsum of her foot primarily from the right great toe MTP forward. She does have pain with EHL activation. Examination of her right hip: She does not have pain with leg roll of her hip. She does have pain with FADIR and FABER's maneuver with radiation into the groin. I do not note any gross motor deficits. No pain with straight leg raise. She did have some mild tenderness to palpation at the greater trochanter. There were no skin abrasions or ecchymosis noted.

Imaging Studies

Multiple views were taken of her right foot. She does have an intraarticular fracture at the IP joint of her right great toe proximal phalanx.

Multiple views were taken of her left hip. I do not appreciate any acute fractures or dislocations. She does have some cystic changes at the femoral head. This does appear chronic.

Impression

1. Proximal phalanx fracture of the great toe.
2. MTP joint sprain of the right great toe.
3. Right foot pain.
4. Left hip strain.

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CCMSI ~ Reno

Plan

At this point, given the fracture of her great toe as well as the midfoot and MTP sprain, we have elected to do a tall walker boot. With regard to her left hip, I do not see any acute fractures. She denied direct trauma to the hip, more likely injury consistent with a strain.

I will go ahead and have her rest for the next several days, as she does have to ambulate quite a bit at work. I will have her off the next couple days from 9/24/2019 until 9/27/2019. I would like her to rest, ice, elevate, and take antiinflammatory medications. I will give her a small prescription for tramadol for acute pain. I will have her follow up with Dr. Pete Althausen in approximately 2 weeks to repeat clinical exam, ensure routine healing of the right great toe, as well as to discuss if further imaging or intervention is needed for the left hip.

DME/Casting/Supplies:

From RDCout2

Fri 27 Sep 2019 09:13:31 AM PDT

Received: 10/01/2019
Page 6 of 7

Reno Orthopaedic Clinic
865 North Arlington Ave Reno, NV 89503
(775) 788-8040

September 27, 2019
Page 3
Office Visit

SUSAN M HOPKINS
Female DOB: 02/01/1988 AGE: 31 Years Old INSURANCE:
PATIENT ID: 68789

Home: (775) 485-1042

Per physicians Order
L4551 - Walking Boot pneumatic/vacuum - Prefab OTS

Cast Tech Comments: FITTED PT WITH A TALL BOOT
Application: fitted with

Xray Extremity: Foot
3 view
Right, Wt Bearing
Xray Extremity: Foot
1 view
Left, Wt Bearing, Comparison
Patient has been shielded during X-Ray
Xray Pelvis: Hip with Pelvis
3 view
Left

Kelle Kopp

Finalized and approved by
Kelle Kopp, PA-C
MKgha:z
MTID #: 8890197
DD: 9/24/2019 8:09 PM
DT: 9/25/2019 5:42 AM

Electronically signed by Alpha Villanueva on 09/25/2019 at 8:56 PM

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9.27.19

CCMSI ~ Reno

From R0Cont2

Fri 27 Sep 2019 09:13:31 AM PDT

Received: 10/01/2019
Page 7 of 7

Reno Orthopaedic Clinic
656 North Arlington Ave Reno, NV 89503
(775) 786-8040

September 27, 2019
Page 1
Work Status

SUSAN M HOPKINS
Female DOB: 05/01/1968 AGE: 51 Years Old INSURANCE:
PATIENT ID: 68788

Home: (775) 425-1042

09/24/2019 - Work Status: fwd wd 9/27 hp
Provider: Kellee Kopp PA-C
Location of Care: Reno Orthopaedic Clinic

Claim Number: PENDING

Diagnosis:
Strain of muscle/tendon of left hip initial encounter (ICD10-S76.012A), Nondisplaced fracture of proximal phalanx of right great toe initial encounter for closed fracture (ICD10-S62.414A)

Patient Status:
Modified duty effective: 09/30/2019.
Restrictions are Temporary
Current condition is unchanged.
Physical/Occupational Therapy N/A
Other: Pending DR REFERRAL
Not Yet at Maximum Medical Improvement
The anticipated date is subject to change based on the patient's response to treatment

Restrictions:

The patient is only restricted to the following:

Additional Notes:
PATIENT SHOULD BE OFF WORK THIS WEEK, AND MAY RETURN MONDAY 9/30/2019. PATIENT SHOULD BE LIGHT DUTY-SITTING/DESK WORK ONLY UNTIL FOLLOW UP IN 2 WEEKS TIME.
****Pending surgery/procedure/testing we will submit request once clinicals are available****

Per NRS statute your physician is required to provide physical limitations at every office visit. Any additional questions regarding your Workers Compensation disability benefits and/or modified work should be directed to workers' compensation adjuster and your employer. It is the injured worker's responsibility to inform the employer of current work status

Digitally signed by:



Kellee Kopp, PA-C September 24, 2019 3:13 PM NPI: 1328462185

RECEIVED

S. J. S. J. S. J.

CCMSI ~ Reno

Electronically signed by Heather Pace on 09/27/2019 at 9:08 AM

Received: 11/07/2019

Received: 09/30/2019



September 27, 2019

SUSAN HOPKINS,
31660 ANTHEM DRIVE
SPARKS, NV 89441

Claim No: 194931090454
Injury Date: 09/24/2019
Employer: Washoe County

Dear Ms. Hopkins,

We have recently received the accident report from your employer, concerning your injury at work. CCMSI is the third party administrator that handles the claims for your employer. Our role is to work with you to ensure that you receive appropriate medical treatment, enjoy a quick and seamless recovery, and provide prompt payment of benefits for which you are entitled.


To ensure the best possible outcome, please be sure to: 1) Follow doctor's instructions, and keep all appointments; 2) Keep your employer informed of your status; and 3) Keep in close contact with your claims adjuster on your medical and work status.

If you have not spoken to the undersigned by the time you have received this letter, and if you have lost five (5) days or more from work as a result of your injury, please call as soon as possible so that your claim can be reviewed for any additional benefits due.

Enclosed you will find the form D-95, a relative treatment history form, and "Declaration of Medical Providers" form. Please sign, date, and return the forms to this office within ten (10) days of the date of this letter. Your signature on these forms acts as a release to acquire information related to your claim. NAC 616C.079 states in part, "an injured employee must sign all medical releases necessary for the insurer to obtain appropriate information and documentation to determine the nature and amount of benefits to which he is entitled. If the injured employee fails to do so, the insurer may withhold compensation from him."

Your attention and cooperation is appreciated and we look forward to working with you.

Sincerely,


Lisa Perez | Claims Representative
Phone: 775-324-0156
Fax: 775-324-9893

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-6165 • 775-324-3301 • Fax: 775-324-9893 • www.ccmsi.com

Received: 11/07/2010

Received: 09/30/2010



**Request for Additional Medical Information
And Medical Release**
(Pursuant to NRS 616C.177 & 616C.400(4))

Injured Employee's Name: _____
Claim Number: _____ Social Security Number: _____
Injured Employee's Address: _____
Injury/Occupational Disease Name: _____ Date this Medical Policy: _____
Insurer's Name: _____ Employer: _____
Insurer's Address: _____ Employer's Address: _____

Please provide the information requested below, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to acquire information affecting your claim from other entities. This release also releases you signed on your C-1 form at the time your claim was submitted to your insurer. Failure to fully complete and return this form to your claim agent in a timely manner could affect your benefits or delay the resolution of your claim.

Prior History Information

Please check the appropriate box below and provide the information requested.

- ☐ I have no prior conditions, injuries or disabilities of which I am aware, (but might affect the disposition of the claim referenced above. (If you checked this box, no further information is needed at this point)
- ☐ I have a prior condition, injury or disability that could affect the disposition of the claim referenced above. This can include birth defects, prior surgeries, injuries, etc., whether work related or not. (If you checked this box, indicating a pre-existing condition, please explain in detail in the space below. Please attach additional sheets of paper to this form if necessary to fully explain the condition)

I certify that the above is true and correct to the best of my knowledge and that I have provided this information in order to obtain the benefits of Nevada's Workers' Compensation and Occupational Disease Act (NRS 616A to 616D), inclusive of chapter 617 of NRS. I hereby authorize any physician, chiropractor, surgeon, podiatrist, or other person, any hospital, including veterans administration or governmental hospital, any medical service organization, any insurance company, or other institution or organization to release to each other, any medical or other information, including benefits paid or payable, pertinent to this injury or disease, except information relative to diagnosis, treatment and/or counseling for auto, psychological conditions, alcohol or controlled substances, for which I may give specific authorization. A photocopy of this authorization shall be as valid as the original.

Signature _____

Date _____

PO Box 20068 • Reno, NV 89515
866-601-6169 • 775-324-3301 • Fax: 775-324-8891 • www.ccmsi.com

Received: 11/07/2019

Received: 09/30/2019



SUSAN HOPKINS

Page 2 of 4

LIST ALL PRIOR RELATIVE CLAIMS FILED FOR ACCIDENTS/INJURIES - WHETHER INDUSTRIAL OR NON-INDUSTRIAL, WHICH YOU HAVE FILED THROUGHOUT YOUR LIFETIME.

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Signature

Date

Cannon Codran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-5165 • 775-324-3301 • Fax: 775-324-5893 • www.ccmsi.com

Received: 11/07/2010

Received: 08/30/2010



SUSAN HOPKINS
Page 3 of 4

Have you ever filed a workers' compensation claim in this state or any other before?
Yes ☐ No ☐

If yes, have you ever received a settlement or buyout for the claim?
Yes ☐ No ☐

Please list the body part(s) and the amount of the settlement or buyout and the employer under whom the award was received.

Thank you for your cooperation.

(Injured Worker's Signature)

(Date)

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-801-6165 • 775-324-9301 • Fax: 775-324-9899 • www.ccmsi.com

Received: 11/07/2019

Received: 01/30/2019



SUSAN HOPKINS
Page 4 of 4

DECLARATION OF MEDICAL PROVIDERS

I, _____, have received treatment, had medication prescribed, or
Print Your Name
been evaluated by the following doctors, chiropractors, dentists or other practitioners during the last
five (5) years.

List names and addresses and phone	Dates of Treatment
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-6165 • 775-324-3301 • Fax 775-324-9893 • www.ccmul.com

Reno Orthopaedic Clinic
6070 ION DRIVE SUITE 100 SPARKS, NV 89438-1812
(775) 788-3040

September 30, 2019

Page 1

Work Status

SUSAN M HOPKINS
Female DOB: 03/01/1968 AGE: 51 Years Old INSURANCE:
PATIENT ID: 88788

Home: (775) 428-1042

09/30/2019 - Work Status: Work Status
Provider: Kelle Kopp PA-C
Location of Care: Reno Orthopaedic Clinic

Claim Number: PENDING

Diagnosis:
Pain in right foot (ICD-720.6) (ICD10-M79.671)
Patient Status:
effective: 09/30/2019.

Additional Notes:
PATIENT MAY RETURN TO WORK WITH LIMITED WALKING UNTIL FOLLOW UP APPOINTMENT
WITH SPECIALIST
Digitally signed by:



Kelle Kopp, PA-C September 30, 2019 8:43 AM NPI: 1328462185

Electronically signed by Kelsey Metzger on 09/30/2019 at 9:45 AM

**WASHOE COUNTY
HEALTH DISTRICT**
ENHANCING QUALITY OF LIFE

Date: September 30, 2019
To: Susan Hopkins
Re: Offer of Temporary Light Duty Employment Pursuant to NRS 616C.475 (8)

Dear Susan:

Your treating physician/medical facility has released you to light duty employment. The purpose of this communication is to document an offer of temporary light duty employment immediately available that is compatible with the physical limitations imposed by your treating physician or chiropractor.

Light duty may be performed with a modification of your current duties and at your current work location. Your work hours will be substantially similar to those worked at the time of your injury. Your gross wage will be equal to the gross wage you were earning at the time of your injury, or substantially similar to the gross wage you were earning at the time of your injury, should you be working in a different classification of employment. This position has the same employment benefits as the position you held at the time of your injury.

You remain subject to all of Washoe County's terms and conditions of employment and are to follow procedures and policies related to your employment as you would if you were not working a light duty assignment.

Offered by: Charlene Albee
Title: Division Director Environmental Health Services

ACKNOWLEDGEMENT BY WORKERS' COMPENSATION CLAIMANT:

I acknowledge that my employer is providing temporary light duty employment within the physical restrictions outlined by my treating physician or chiropractor.

I understand my physical restrictions and acknowledge that I will work within those restrictions, at all times.

I acknowledge that my doctor may change my physical restrictions and this may affect the ability of Washoe County to provide a temporary light duty assignment.

I acknowledge it is my responsibility to advise the employer of my restrictions following each doctor's visit and that my failure to do so could affect my workers compensation claim adversely and could result in disciplinary action.

I understand this offer of temporary light duty employment is not a guarantee of continued employment, nor does it constitute an employment contract. Assignments may be changed or terminated based on employer needs. The offer of temporary light duty employment may also be terminated when the treating physician or chiropractor determines I have reached maximal medical improvement, determines a change in work ability status, or determines I may return to unrestricted duty.

I understand that declining this offer of temporary light duty employment may affect my Workers' Compensation benefits.

Please indicate below if you are accepting or declining this offer of temporary light duty employment.

ACCEPTED X DECLINED

Signed Susan Hopkins Dated: 9-30-19

Print Name: Susan Hopkins

ENVIRONMENTAL HEALTH SERVICES
1001 East Ninth Street, Building B, Reno, Nevada 89512
EHS Office: 775-328-2434 | Fax: 775-328-6176 | washoecounty.us/health
Serving Reno, Sparks and all of Washoe County, Nevada. Washoe County is an Equal Opportunity Employer.





October 3, 2019

Notice of Claim Denial

SUSAN HOPKINS
11680 Antham Dr
Sparks, NV 89441-6284

Re: Claim No.: 19493J090454
Employer Washoe County
D.O.I.: 09/24/2019
Body Part/ condition: Right great toe / left hip

Dear Ms. Hopkins;

We are the third party administrator, handling claims on behalf of Washoe County. We are in receipt of the completed C-4 form, which indicates you were on break, walking when you tripped and fell on uneven side walk. You have not met the burden by preponderance of the evidence that the injury arose out of and in the course of your employment. Your claim is denied pursuant to.

NRS 616C.150 Compensation prohibited unless preponderance of evidence establishes that injury arose out of and in course of employment; rebuttable presumption if notice of injury is filed after termination of employment.

1. An injured employee or the dependents of the injured employee are not entitled to receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS unless the employee or the dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment.

2. For the purposes of chapters 616A to 616D, inclusive, of NRS, if the employee files a notice of an injury pursuant to NRS 616C 015 after his or her employment has been terminated for any reason, there is a rebuttable presumption that the injury did not arise out of and in the course of his or her employment.

(Added to NRS by 1993, 682) — (Substituted in revision for NRS 616.5015)

Page 2

18483J090454

If you disagree with the above determination, you do have the right to appeal by requesting a hearing before a Hearing Officer by completing the enclosed Form D-12a and sending it to the State of Nevada, Department of Administration, Hearings Division. Your appeal must be filed within seventy (70) days after the date on which the notice of this determination was mailed.

Department of Administration
Hearings Division
1080 E. William Street, Ste. 400
Carson City, NV 89701
(775) 687-8440

OR

Department of Administration
Hearings Division
2200 S. Rancho Drive, Ste. 210
Las Vegas, NV 89102
(702) 488-2525

If you have questions or wish to discuss this matter, please contact me directly at 775-324-0158.

Sincerely,


Lidia Perez

Claims Representative

cc: Washoe County
ROC
DIR/IRS
Enc: D-12 a

Received: 11/07/2019

Received: 10/08/2019



Request for Additional Medical Information And Medical Release

(Pursuant to NRS 616C.177 & 616C.494(4))

UP

Injured Employee's Name: Susan Hopkins
Claim Number: 194931090454 Social Security Number: _____
Injured Employee's Address: 11667 ROTHEN Drive Sparks, NV 89441
Injury/Onset Date: 9-24-19 Date this Notice Mailed: 9-27-19
Insurer's Name: Hometown Health Employer: WASHOE COUNTY
Insurer's Address: P.O. Box 981703 Employer's Address: 1001 E 9TH Street Bldg B
El Paso, TX 79998-1703 Reno, NV 89512

Please provide the information requested below, sign and date the form, and return it to your insurer. Your signature on this form also acts as a release to obtain information affecting your claim from other entities. This removes the release you signed on your O-4 form at the time your claim was submitted to your insurer. Failure to fully complete and return this form to your insurer again is a timely waiver of your benefits or delay the resolution of your claim.

Prior History Information

Please check the appropriate box below and provide the information requested.

- ☒ I have no prior conditions, injuries or disabilities of which I am aware, that might affect the disposition of the claim referenced above. (If you checked this box, no further information is needed at this point)
- ☐ I have a prior condition, injury or disability that could affect the disposition of the claim referenced above. This can include birth defects, prior surgeries, injuries, etc., whether work related or not. (If you checked this box, indicating a pre-existing condition, please explain in detail in the space below. Please attach additional sheets of paper to this form if necessary to fully explain the condition.)

I certify that the above is true and correct to the best of my knowledge and that I have provided this information in order to enable the insurer to properly investigate and determine the disposition of the claim referenced above. I understand that I am releasing the insurer from any further obligation to provide me with any additional information, including but not limited to, medical records, test results, or other information, that may be requested by the insurer in the future. I understand that I am releasing the insurer from any further obligation to provide me with any additional information, including but not limited to, medical records, test results, or other information, that may be requested by the insurer in the future. I understand that I am releasing the insurer from any further obligation to provide me with any additional information, including but not limited to, medical records, test results, or other information, that may be requested by the insurer in the future.

Susan Hopkins
Signature

10-5-19
Date

RECEIVED

OCT 09 2019

PO Box 20055 • Reno, NV 89515
866-601-6169 • 775-324-8301 • Fax: 775-324-8893 • www.ccmsi.com

CCMSI - Reno

Received: 11/07/2019

Received: 10/09/2019



SUSAN HOPKINS
Page 2 of 4

LIST ALL PRIOR RELATIVE CLAIMS FILED FOR ACCIDENTS/INJURIES - WHETHER INDUSTRIAL OR NON-INDUSTRIAL, WHICH YOU HAVE FILED THROUGHOUT YOUR LIFETIME.

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Claim No: _____ Date of Injury: _____

Employer: _____ Body Part(s) : _____
☐ Industrial ☐ Non-Industrial Settlement/Amount Received: \$ _____

Attending Physician's Name/Address for above-captioned injury

Susan Hopkins 10-3-19
Signature Date

RECEIVED

OCT 09 2019

CCMSI - Reno

Common Cochran Management Services, Inc.
PO Box 20069 • Reno, NV 89516
866-601-8165 • 775-324-3301 • Fax: 775-324-3338 • www.ccmcsi.com

Received: 11/07/2019

Received: 10/09/2019



SUSAN HOPKINS
Page 3 of 4

Have you ever filed a workers' compensation claim in this state or any other before?

Yes X No

If yes, have you ever received a settlement or buyout for the claim?

Yes No X

Please list the body part(s) and the amount of the settlement or buyout and the employer under whom the award was received.

Head/Neck

Thank you for your cooperation.

Susan Hopkins
(Injured Worker's Signature)

10-3-19
(Date)

RECEIVED

OCT 09 2019

Cannon Cochran Management Services, Inc.
PO Box 20068 • Reno, NV 89515
866-601-6163 • 775-824-8801 • Fax: 775-824-9399 • www.ccmssl.com

(C)MSI - Reno

Received: 10/04/2019



9-24-19

CCMST - Reno

**Request for Hearing -- Contested Claim
Attachment**

This letter is a 'Request for Appeal' of the 'Notice of Claim Denial' regarding Claim #194931090454, for coverage of my injury sustained on Tuesday, September 24, between 9-9:30am at the Washoe County complex located at 1001 East 9th Street. The letter I received dated October 3, 2019, stated it was denied due to NRS 616C.150.

I am contesting this because I was on paid time as the 'WCEA Non-Supervisory Contract 2019-2022, Article 9 - Meal Period/Rest Breaks' states. I was on break which is typically used to walk the Washoe County complex for exercise. This incident occurred on paid time, therefore should be covered. This was not my lunch hour which is not compensated for.

There have been incidents with at least three Washoe County employees that have also tripped over this same uneven sidewalk portion. Luckily their experiences did not result in injury. I can provide notarized statements if required. Washoe County is responsible for any accidents that occur on their property and is responsible to maintain walking thoroughfares.

Please respond with any additional requirements that are needed from me to move this request forward.

Susan Hor
10/10/19

RECEIVED
OCT 18 2019
CCMS Reno



Date: 10/15/2019

Claimant Name: HOPKINS, SUSAN

DOB: 9/24/2019

Claim Number: 19493000434

Provider: Reno Orthopedic Clinic

DOB: 09/24/2019

Employer: Washoe County

The attached bill(s) for service(s) is being returned for the following reasons:

- ☐ No claim has been submitted for this name, date of injury and/or body part. Payment is denied.
- ☐ Our records indicate this invoice was not submitted within ninety (90) days after treatment as required by the Nevada Medical Fee Schedule. Payment is denied unless good cause can be provided for a later billing.
- ☐ In no event may an initial billing for health care services be submitted later than twelve (12) months after the date of service, as specified by the Nevada Medical Fee Schedule. Payment is denied.
- ☐ A bill submitted for reconsideration must be received by the insurer no later than twelve (12) months after the date on which services were rendered, unless good cause is shown, pursuant to the Nevada Medical Fee Schedule. Payment is denied.
- ☐ Pursuant to NAC 616C.141 (4), medical reporting is required with bill submission for all services billed under codes 90000-00000 inclusive. Please resubmit this bill along with medical reporting.
- ☐ Within 14 days after the date of service or the date of discharge from a hospital, a provider of health care must submit a report of the services rendered, pursuant to the Nevada Medical Fee Schedule.
- ☐ Pursuant to NAC 616C.131(1)(b), an insurer cannot pay for diagnostic imaging if a satisfactory report of the imaging is not received by the insurer. Please resubmit this bill along with a report of the imaging.
- ☐ Pursuant to the Nevada Medical Fee Schedule, an insurer may require the submission of all physician's or chiropractor's medical reporting before payment of a medical bill. Please resubmit this bill with reporting.
- ☐ Our file does not reflect that these services were requested and/or authorized, pursuant to NAC 616C.129(3). Payment is denied.
- ☐ This claim was closed effective . Payment is denied.
- ☐ Pursuant to NRS 616C.090 and/or NAC 616C.129 (1), only one treating physician is allowed at any one time. Our file does not reflect that Dr. is the treating physician. Payment is denied.
- ☐ A provider of health care may not charge the patient for any treatment related to an industrial injury, pursuant to NRS 616C.135.
- ☐ Our records indicate that this bill has been paid. Please see attached or information below:
Check No. Date Issued Amount paid \$
- ☐ CCMSI is not the claims administrator for this employer. Please resubmit claim to the proper insurance carrier.
- ☐ Please provide an itemized statement: we are unable to process payments on a "Balance Forward" or "Statement" bill, pursuant to NAC 616C.215 (1).
- ☒ This claim has been denied for workers' compensation benefits. Please redirect billing to the patient and/or to their private or group health insurance carrier. Payment is denied.
- ☐ Please provide CPT codes and return bill to us, pursuant to the Nevada Medical Fee Schedule.
- ☐ Provider or provider representative's signature or stamp required on the bill, pursuant to NAC 616C.215 (1) (a). Please furnish and resubmit the bill.
- ☐ This service is being denied pursuant to NRS 616C.123 as a contract exists for prescription service exclusively through NPS as of . You will need to resubmit through NPS (National Pharmaceutical Services) at 1-800-345-1677.
- ☐ Please provide HICFA with the medical reporting so we can review for payment.
- ☐ Other:

Pursuant to NAC 616C.027, if you disagree with the above decision, you have the right to make a written request for a review by the Workers' Compensation Section at 400 West King St., Suite 400, Carson City, NV 89703. Phone: (775) 684-7270 or (702) 486-9080.

Sincerely,

CCMSI UP | R

CC File/Claimant: Susan Hopkins 11680 Anthem Dr. Sparks, NV 89441

Cannon Cochran Management Services, Inc.

PO Box 20068 • Reno, NV 89515

866-601-6165 • 775-924-3301 • Fax: 775-324-8893 • www.ccmsi.com

RECEIVED

OCT 14 2019

CCMSI - Reno

Received: 10/04/2018



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLASS COMMITTEE OF JUNE 1976

W C CONSI
PO BOX 20068
RENO, NV 89515

19493J090454

<div style="display: flex; justify-content: space-between;"> 1. MEDICARE (Medicare) <input type="checkbox"/> 2. MEDICAID (Medicaid) <input type="checkbox"/> 3. TRICARE (TRICARE) <input type="checkbox"/> 4. CHAMPVA (Champion) <input type="checkbox"/> 5. VA BENEFITS (Veterans Affairs) <input type="checkbox"/> 6. OTHER (Other) <input type="checkbox"/> </div>										<div style="display: flex; justify-content: space-between;"> 7. EMPLOYER'S I.D. NUMBER (For Program in Item 1) </div>																			
1. PATIENT'S NAME (Last Name, First Name, Middle Initial) MCNEIL, SUSAN, M										2. PATIENT'S BIRTH DATE 03 01 1968										3. INSURER'S NAME (Last Name, First Name, Middle Initial) MCNEIL, SUSAN, M									
4. PATIENT'S ADDRESS (St., Street) 12660 ANTHEM DR										5. PATIENT'S RELATIONSHIP TO INSURER Self <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>										6. INSURER'S ADDRESS (St., Street) MCNEIL, SUSAN, M									
7. CITY SPARKS										8. RESERVED FOR MUDC USE										9. CITY SPARKS									
10. ZIP CODE 89441										11. TELEPHONE (Include Area Code) 775 4251042										12. RESERVED FOR MUDC USE									
13. OTHER INSURER'S NAME (Last Name, First Name, Middle Initial) MCNEIL, SUSAN, M										14. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Past) <input type="checkbox"/> YES <input type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) NEVADA c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO										15. INSURER'S POLICY GROUP OR POLICY NUMBER MCNEIL, SUSAN, M									
16. OTHER INSURER'S POLICY OR GROUP NUMBER MCNEIL, SUSAN, M										17. RESERVED FOR MUDC USE										18. INSURER'S DATE OF BIRTH MCNEIL, SUSAN, M									
19. RESERVED FOR MUDC USE										20. OTHER CLAIM ID (Designated by MUDC)										21. INSURANCE PLAN NAME OR PROGRAM NAME MCNEIL, SUSAN, M									
22. INSURANCE PLAN NAME OR PROGRAM NAME MCNEIL, SUSAN, M										23. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, complete Items 8, 9, 10, and 11.										24. INSURER'S OR AUTHORIZED PERSON'S SIGNATURE (I certify payment of medical benefits to the undersigned physician or supplier for services described below.) MCNEIL, SUSAN, M									
25. SIGNATURE ON FILE MCNEIL, SUSAN, M										26. DATE 09 24 2019										27. SIGNED MCNEIL, SUSAN, M									
28. DATE OF CURRENT ILLNESS, INJURY, OR PREGNANCY (MM/DD/YY) 09 24 2019										29. OTHER DATE (MM/DD/YY) MCNEIL, SUSAN, M										30. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM 09 24 2019 TO 09 24 2019									
31. HAVE YOU BEEN PREVIOUSLY ILL, INJURED, OR PREGNANT? MCNEIL, SUSAN, M										32. HOSPITALIZATION DATES RELATED TO CURRENT ILLNESS, INJURY, OR PREGNANCY FROM 09 24 2019 TO 09 24 2019										33. OUTSIDE IAH <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
34. ADDITIONAL CLAIM INFORMATION (Designated by MUDC)										35. DATE OF SERVICE (MM/DD/YY) 09 24 2019										36. ORIGINAL REF. NO. MCNEIL, SUSAN, M									
37. DATE OF SERVICE (MM/DD/YY) 09 24 2019										38. ORIGINAL REF. NO. MCNEIL, SUSAN, M										39. ORIGINAL REF. NO. MCNEIL, SUSAN, M									
40. ORIGINAL REF. NO. MCNEIL, SUSAN, M										41. ORIGINAL REF. NO. MCNEIL, SUSAN, M										42. ORIGINAL REF. NO. MCNEIL, SUSAN, M									
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RUCC Instruction Manual available at: www.rucc.org

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UP

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 2001191-SD
Claim Number: 19493J090454

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

/

BEFORE THE HEARING OFFICER

The Claimant's request for Hearing was filed on October 15, 2019 and a Hearing was scheduled for November 7, 2019. The Hearing was held on November 7, 2019, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer was not present. The Insurer was represented by Lidia Perez of CCMSI by telephone conference call.

ISSUE

The Claimant appealed the Insurer's determination dated October 3, 2019. The issue before the Hearing Officer is claim denial.

DECISION AND ORDER

The determination of the Insurer is hereby **REMANDED**.

NRS 616A.030 defines "accident" as "an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury".

NRS 616A.265 defines an "injury" as "a sudden and tangible happening of a traumatic nature producing an immediate or prompt result which is established by medical evidence, including injuries to prosthetic devices".

NRS 616C.150(1) provides the injured employee has the burden of proof to show, by a preponderance of the evidence, the injury arose out of and in the course of employment.

The Hearing Officer finds that the Claimant has met the criteria under NRS 616A.030 and NRS 616A.265, however, there remains a question as to whether she has met her burden under NRS 616C.150. The Claimant submitted into evidence documentation in support of her contention that she was being paid by her employer at the time of the injury and that she was engaged in an

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NOV 15 2019
CCMSI - Reno

In the Matter of the Contested
Industrial Insurance Claim of
Hearing Number:
Page 2

SUSAN HOPKINS
2001191-SD

activity that her employer recommended she engage in during her normal work day. The insurer has not been provided with this documentation prior to the hearing. Therefore, the Hearing Officer instructs the insurer to review the documentation submitted by the Claimant and after review of the same, render a new determination, with appeal rights, regarding claim compensability.

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 14th day of November, 2019.


Spring Dykstra, Hearing Officer

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

CCMSI
PO BOX 20068
RENO, NV 89515-0068

Dated this 14th day of November, 2019.

Karen Dyer

Karen Dyer
Employee of the State of Nevada

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CCMSI - Reno



December 8, 2019

Notice of Claim Denial

SUSAN HOPKINS
11660 Anthem Dr
Sparks, NV 89441-6284

Re: Claim No.: 19493J090454
Employer: Washoe County
D.O.I.: 09/24/2019
Body Part/ condition: Right great toe fracture

Dear Ms. Hopkins;

Pursuant to the Hearing Officer's decision & order #2001191-SD, we have reviewed the documentation you submitted.

Please be advised Health initiatives are encouraged by Washoe County, but are not required. Employee engagement is voluntary. The page you presented to the Hearing Officer is actually from Washoe County's Public Website and is a resource from the Washoe County Health District designed for "all aspects of the community". This information is for the general public.

Supreme Court decision *Rio Suites Hotel vs Gorsky* states that there must be a causal connection between the injury and the employee's work and that the claimant must demonstrate that the injury occurred because of a risk involved within the scope of the employment. Engaging in a voluntary activity during a personal break period is unrelated to the purpose for which the employment relationship was created. The Employer, Washoe County's encouragement to employees to participate in such voluntary activities during their personal break times is simply a suggestion. Therefore, you have not met the burden of proof that your injury occurred as a direct result of duties that arose out of or in the course of your employment. Your claim is denied pursuant to:

NRB 618C.150 requires that an employee must establish by a preponderance of evidence that an injury arose out of and in the course of employment.

Page 2

19483J080454

If you disagree with the above determination, you do have the right to appeal by requesting a hearing before a Hearing Officer by completing the enclosed Form D-12a and sending it to the State of Nevada, Department of Administration, Hearings Division. Your appeal must be filed within seventy (70) days after the date on which the notice of this determination was mailed.

Department of Administration
Hearings Division
1050 E. William Street, Ste. 400
Carson City, NV 89701
(775) 687-8440

OR

Department of Administration
Hearings Division
2200 S. Rancho Drive, Ste. 210
Las Vegas, NV 89102
(702) 486-2625

If you have questions or wish to discuss this matter, please contact me directly at 775-324-0156.

Sincerely,


Lidia Perez
Claims Representative

cc: Washoe County
ROC
DIR/IRS

Enc: D-12 a

REQUEST FOR HEARING - CONTESTED CLAIM
(Pursuant to NAC 616C.274)

REPLY TO:

Department of Administration
Hearings Division
1050 K. William Street, Ste. 400
Carson City, NV 89701
(775) 687-8440

OR

Department of Administration
Hearings Division
2200 S. Rancho Drive, Suite 210
Las Vegas, NV 89102
(702) 486-2525

Employee Information	
Employee's Name and Address SUSAN HOPKINS 11860 Anthem Dr Sparks, NV 89441	
Employee's Telephone Number 775-745-1884	Claim No. 19483J080454 Date of Injury 09/24/2018
Insurer Information	
Insurer's Name and Address	
Insurer's Telephone Number	

Employer Information	
Employer's Name and Address WASHOE COUNTY 1101 E NINTH STREET RENO, NV 89520	
Employer's Telephone Number 775 328 2074	
Third-Party Administrator Information	
Third-Party Administrator's Name and Address CCMSI PO BOX 20068 Reno, NV 89518	
Third-Party Administrator's Telephone Number 775-324 3301	

Do Not Complete or Mail This Form Unless You Disagree With the Insurer's Determination.

☐ **PLEASE CHECK HERE IF YOUR REQUEST IS REGARDING
A CLAIM FILED PURSUANT TO NRS 617.455 OR 617.457**

**YOU MUST INCLUDE A COPY OF THE DETERMINATION LETTER OR A HEARING WILL NOT
BE SCHEDULED PURSUANT TO NRS 616C.315.**

Briefly explain the basis for this appeal:

This request for hearing is filed by, or on behalf of: ☐ Injured Employee ☐ Employer
and is dated this _____ day of _____, 20____.

Signature of Injured Employee/Employer

Injured Employee's/Employer's Rep. (Advisor)
D-12a (Rev. 10/2018)

**STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 2001962-JL
Claim Number: 19493J090454

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

BEFORE THE HEARING OFFICER

The Claimant's request for Hearing was filed on December 20, 2019, and a Hearing was scheduled for January 13, 2020. The Hearing was held on January 13, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer was represented by Sharolyn Wilson by telephone conference call. The Insurer was represented by Lidia Perez of CCMSI by telephone conference call.

ISSUE

The Claimant appealed the Insurer's determination dated December 5, 2019. The issue before the Hearing Officer is claim denial.

DECISION AND ORDER

The determination of the Insurer is hereby **AFFIRMED**.

Pursuant to NRS 616.150, an injured employee is not entitled to receive compensation unless the employee establishes by a preponderance of the evidence that the injury arose out of and in the course of employment. For an injury to arise out of employment, the Claimant must show there is a link between the conditions of the workplace and how those conditions caused the injury and how the origin of the injury is related to the risk involved within the scope of employment. An injury at the job location is not sufficient to hold that the injury arose out of and in the course and scope of employment. See *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997); and *Mitchell v. Clark County Sch. Dist.*, 121 Nev. 179, at 182, 111 P.3d 1104 (2005). In the instant matter, the Claimant was on a break and walking outside to get some exercise, tripped, fell and fractured her toe. Having reviewed the submitted evidence and in consideration of the representations made at today's hearing, the Hearing Officer finds the evidence fails to support that the injury arose out of the Claimant's employment and conditions thereof. As such, the Hearing Officer finds the Claimant has failed to meet the burden of proof to support a compensable industrial injury.

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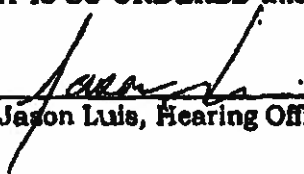
In the Matter of the Contested
Industrial Insurance Claim of:
Hearing Number:
Page Two

SUSAN HOPKINS
2001962-JL

APPEAL RIGHTS

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 16th day of January, 2020.



Jason Luis, Hearing Officer

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

SHAROLYN P WILSON
CLAIMS/RISK ANALYST
1001 E 9TH ST
RENO NV 89512

CCMSI
PO BOX 20068
RENO, NV 89515-0068

Dated this 16th day of January, 2020.



Rebekah Higginbotham
Employee of the State of Nevada

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CCMSI - Reno

1 **CERTIFICATE OF MAILING**

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing **NOTICE OF APPEAL AND ORDER TO APPEAR** was duly mailed, postage
5 prepaid OR placed in the appropriate addressee runner file at the Department of Administration,
6 Hearings Division, 1050 E. Williams Street, Carson City, Nevada, to the following:

7 SUSAN HOPKINS
8 11660 ANTHEM DR
9 SPARKS, NV 89441

10 NAIW
11 1000 E WILLIAM #208
12 CARSON CITY NV 89701

13 WASHOE COUNTY
14 ATTN: CELESTE WALLICK
15 1001 E 9TH ST, BLDG D, STE 120
16 RENO, NV 89512

17 SHAROLYN P WILSON
18 CLAIMS/RISK ANALYST
19 1001 E 9TH ST
20 RENO NV 89512

21 CCMSI
22 PO BOX 20068
23 RENO, NV 89515-0068

24 Dated this 21st day of February, 2020.

25 Brandy Fuller
26 Brandy Fuller, Legal Secretary II
27 Employee of the State of Nevada
28

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NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

AUG 04 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 19493J090454

of

Hearing No.: 2001962-JL

Appeal No.: 2002596-ELO

SUSAN HOPKINS

DOH: 08/06/2020 at 11:00 a.m.

CLAIMANT'S FIRST EXHIBIT

Page #

001	E-mail	09/23/2019
002	Overhead view of work area and property	
003	Defective sidewalk adjacent to workplace	

AFFIRMATION

Pursuant to NAC 616C.303, I affirm that no personal
information appears in this exhibit.

DATED this ____ day of August, 2020

NEVADA ATTORNEY FOR INJURED WORKERS

Clark G. Leslie, Esq., Sr. Deputy
Attorney for Claimant

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
(775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102
(702) 486-2830

ENTERED INTO

EVIDENCE AS EXHIBIT

Washoe County

To 6878411

Date 2/10/2020 4 47 20 PM

Hopkins, Sue

From: West, Benjamin
Sent: Monday, September 23, 2019 11:05 AM
To: 9th Street Employees; Victoria L. Erickson; Julian Montoya; Jennie Shipp
Subject: Safety information for walkers at Livestock Events Center
Attachments: Walking Areas for Employees.pdf

For the safety of walkers on the property during breaks, Reno Sparks Livestock Events Center staff have requested walkers avoid the construction and stall areas of the RSLEC. These areas often have RSLEC staff and others using vehicles and heavy equipment, and they are not anticipating walkers (often with earbuds/headphones on) being in the area. The attached map's red areas are to be avoided when walking at the RSLEC. Green areas are OK for walking. As always, use caution and be aware of your surroundings.

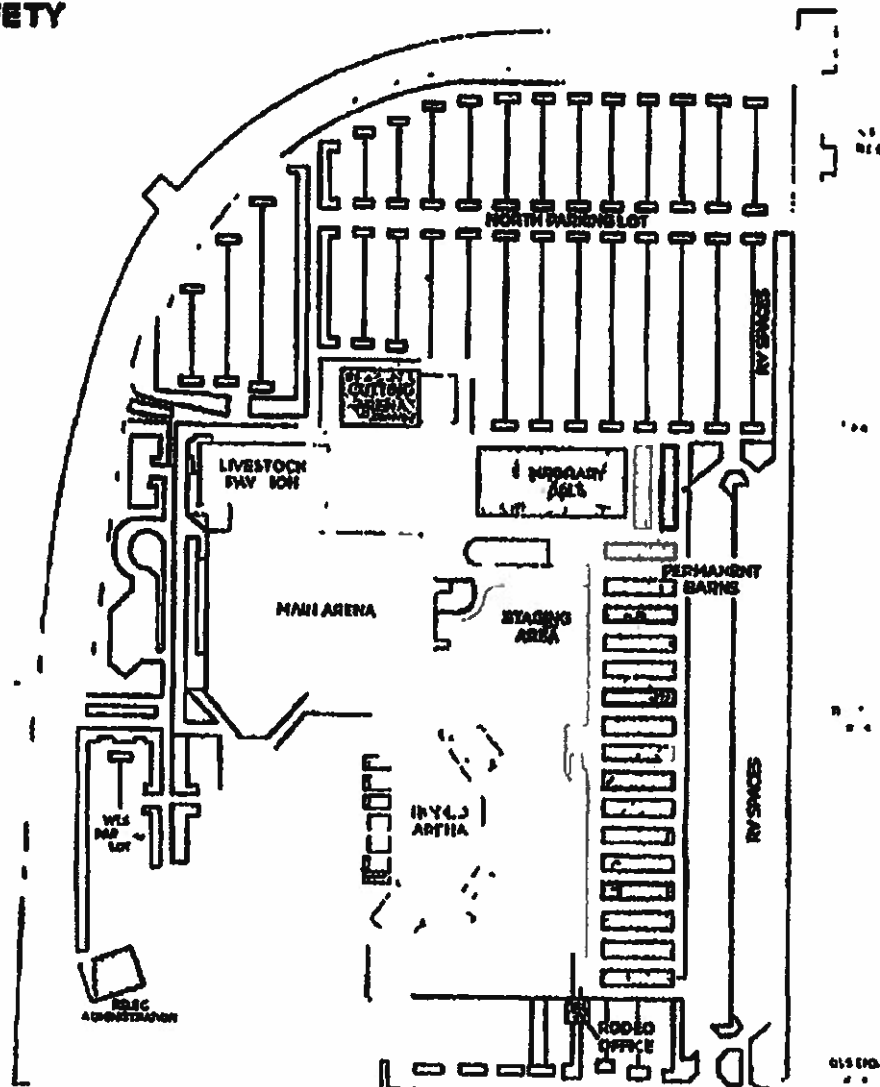
From: Washoe County

To: 6878441

Date: 2 14 20 4:47:28 PM

Sparks Livestock Events Center

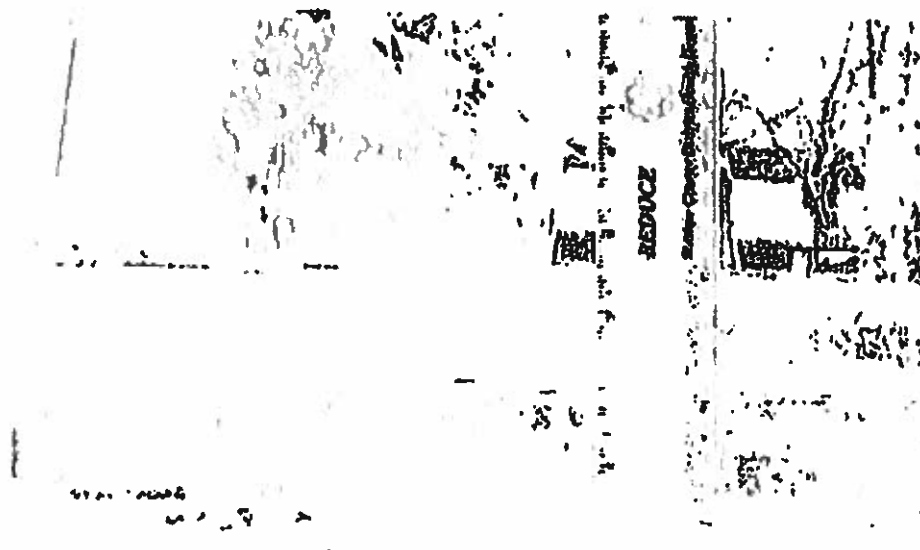
RSLEC WALKING MAP
PLEASE AVOID THE RED
AREAS FOR YOUR
SAFETY



From: Washoe County

To: 0070441

Date: 2/14/2020 4:47:28 PM



NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranscho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing CLAIMANT'S FIRST EXHIBIT addressed to:

SUSAN HOPKINS
160 ANTHEM DR
SPARKS NV 89441

LISA WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY STREET 10TH FLOOR
RENO NV 89501

DATED:

August 11, 2010

SIGNED:

[Signature]

FILED

SEP 26 2020

NEVADA DEPARTMENT OF ADMINISTRATION DEPT. OF ADMINISTRATION
APPEALS OFFICER

BEFORE THE APPEALS OFFICER

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 19493J090454

Hearing No: 2001962-JL

SUSAN HOPKINS,

Appeal No: 2002596-ELO

Claimant.

APPEALS OFFICER DECISION

An appeal hearing was conducted on August 6, 2020. The Claimant, Susan Hopkins, was represented by Clark G. Leslie, Esq. of Nevada Attorney for Injured Workers ("Claimant"). The self-insured employer Washoe County ("Employer") was represented by Lucas Foletta of the law firm McDonald Carano, LLP. The hearing was conducted pursuant to Chapters 616A through 617 and 233B of the Nevada Revised Statutes.

The issue presented in this appeal is whether the Hearing Officer's January 16, 2020 Decision and Order ("Decision") affirming the determination by Cannon Cochran Management Services, Inc. ("CCMSI") denying the claim at issue should be affirmed. The evidence presented at hearing consisted of 47 pages of exhibits identified as Insurer's Documentary Evidence, marked and entered into evidence at the time of hearing. Witness testimony was provided by the Claimant. Having reviewed the documentary evidence submitted by the parties, considered the witness testimony at the appeal hearing, and considered the arguments of counsel, the Appeals Officer makes the following findings of fact and conclusions of law. Any finding of facts if appropriate shall be construed as conclusions of law, and any conclusions of law if appropriate shall be construed as findings of fact.

///

FINDINGS OF FACT

The Claimant, Susan Hopkins, works for the Washoe County Health District. The Health District's office where the Claimant worked was and is still located at 1001 E. Ninth St. in Reno, Nevada. The Claimant is an office-support-specialist in the environmental health division. The Claimant chose to go on walks during scheduled mandatory breaks. The Health District's offices are located in a Washoe County complex that includes the Washoe County Fair Grounds and the Reno-Sparks Livestock Events Center "RSLEC"). On September 23, 2019, Claimant's employer via an e-mail warned 9th street employees who walked during breaks to avoid walking near the RSLEC due to construction and heavy equipment in the areas around the RSLEC. Although the e-mail warned walkers, there is nothing in the e-mail requiring employees to walk during their breaks. The e-mail warns "[a]s always use caution and be aware of your surroundings."

On September 24, 2019, the Claimant took her morning break. She chose to go for a walk during her morning break. The Claimant exited the back door where she worked, and she began her walk. The Claimant testified that about 50 to 75 feet from where she left her building, she tripped and fell forward on the sidewalk. The Claimant reported that her right foot hit the raised edge between sections of the concrete sidewalk causing her to fall. The Claimant testified that the raised edge was one inch in height. The raised sidewalk was in a public area of the Washoe County Health District complex. Because it was difficult to walk, the Claimant returned to her office. A couple of co-employees helped her to return to her desk.

Later that day the Claimant went to the Reno Orthopedic Clinic-Urgent Care ("ROC") in Sparks, Nevada. The Claimant was diagnosed with the non-displaced right great-toe fracture and a left hip strain. The Claimant completed a request for compensation, a C-4, at the ROC. CCMSI denied the claim on December 5, 2019, concluding that the Claimant had not met her burden to demonstrate that her injury occurred as a direct result of duties that arose out of or in the course of her employment.

CONCLUSIONS OF LAW

1 Under NRS 616C.150, in order for a workers' compensation claim to be compensable, a
2 claimant is required to "establish by a preponderance of the evidence that the employee's injury
3 arose out of and in the course of his or her employment." The Claimant argued that whether her
4 injury was compensable was a pure legal question. The Claimant argued that under the personal
5 comfort rule found in *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019)
6 her injury arose out of her employment; thus, Claimant's claim is compensable under NRS
7 616C.150. The Claimant also argues that her claim arose out of her employment under the
8 authority found in *Dixon State Industrial Insurance System*, 111 Nev. 994, 899 P.2d 571 (1995).

9 The Nevada Industrial Insurance Act ("NIIA") does not make an employer absolutely
10 liable. *Wood v. Safeway, Inc.*, 121 Nev. 724, 733 121 P.3d 1026, 1032 (2005).

11 An injury is said to arise out of one's employment when there is a causal connection
12 between the employee's injury and the nature of the work or workplace. *Rio Sulte Hotel &*
13 *Casino v. Gorsky*, 113 Nev. 600, 605, 939 P.2d 1043, 1046 (1997). In contrast, whether an
14 injury occurs within the course of the employment refers merely to the time and place of
15 employment, i.e., whether the injury occurs at work, during working hours, and while the
16 employee is reasonably performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046.

17 When the Claimant was walking during her break, she was walking for her own personal
18 enjoyment and health. Claimant was not reasonably performing her work duties when she fell,
19 and she was not in the course of her employment. Therefore, under *Gorsky*, Claimant's fall did
20 not occur within the course of her employment.

21 Under *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019), traveling
22 employees are deemed to be in the course of employment for the purposes of the NIIA. *Id.* at 6-
23 7. "Traveling employees are deemed in their employer's control, as a practical matter for the
24 duration of their trips. *Id.* at 7. The Court in *Buma* extended the personal comfort rule to
25 employees who are traveling in the course of employment continuous for the duration of a trip.

1 *Id.* at 9. *Buma* permits a traveling employee to generally tend to their reasonable recreation
2 needs during downtime without leaving the course of employment. *Id.* at 10.

3 *Buma* does not apply to the Claimant. The Claimant was not traveling on behalf of her
4 employer at the time of her trip and fall injury. Because the Claimant was not traveling, she
5 cannot be deemed under the employer's control. The Claimant does qualify under the personal
6 comfort rule recited in *Buma*. Therefore, the Claimant cannot rely upon *Buma* to satisfy the
7 course of employment requirement in NRS 616C.150.

8 The Claimant argued that Claimant's injury claim is compensable under *Dixon v. State*
9 *Industrial Insurance System*, 111 Nev. 994, 998, 899 P.2d 571, 573 (1995). *Dixon* is a
10 recreational activities case. In *Dixon*, the claimant was injured during her lunch hour while the
11 employee rode a bicycle provided by the laboratory around the parking lot at the worksite and
12 fell and suffered a fractured wrist. The employer provided the bikes and encouraged the
13 claimant to ride them. The appeals officer directed SIIS to accept the employee's claim,
14 concluding that riding the bicycle was a regular incident of employment as it was of expected
15 custom and practice at the remote location and was even encouraged by the laboratory. The
16 Court in *Dixon*, citing *Nevada Industrial Commission v. Holt*, 83 Nev. 497, 434 P.2d 423 (1967)
17 stated:

18 In *Holt* this court stated that a recreational activity could only be characterized as within
19 the course of employment if it is a regular incident of employment, or required by the
20 employer, or of benefit to the employer 'beyond the intangible value of employee health
21 and morale common to all kinds of recreation and social life.' *Id.* at 500, 434 P.2d at 424.

22 The appeals officer did make the finding required by *Holt* that under the circumstances at
23 Los Alamos, riding the bicycle was a regular incident of employment. *Id.*

24 In this case, the Claimant was not required to walk. Neither was Claimant provided with
25 equipment, such as shoes, to walk or encouraged to use equipment to walk. Nor was the
26 Claimant living at her work location as in *Dixon*. Being on a break and walking on one's
27
28

own volition is not enough under *Dixon* to establish that Claimant's injuries occurred within the course of employment.

The Claimant also argued that *Costley v. Nevada Ind. Ins. Com.*, 53 Nev. 219, 296 P. 1011 (1931) provides authority requiring that Claimant's claim be adjudged compensable. However, the issue in *Costly* is distinguishable from this case. *Costly* dealt with the question as to when an employee and employer relationship began, not whether *Costly's* injury arose out of and in the course of his employment. In addition, *Costly* was decided upon principles of common law which were overruled under the enactment of the NILA in 1993. NRS 616A.010. In addition, the law and facts in *Costly* were liberally construed in favor of the payment of compensation which is also no longer the law under the NILA.

In order for an injury to arise out of employment, "the employee must show that the origin of the injury is related to some risk involved within the scope of employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010) quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005). If the injury "is not fairly traceable to the nature of the employment or workplace environment, then the injury cannot be said to arise out of the claimant's employment." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046.

Until recently an employee might encounter three types of risks at work that were relevant to Claimant's workers' compensation. The Nevada Supreme Court in *Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588 (2018) recently announced a fourth of workplace risk, mixed risk, and clarified the three other risks the Court applies to workplace injuries. These three types of risks were clarified and restated in *Baiguen* and include: (1) employment; (2) personal; and (3) neutral risks. *Baiguen*, 426 P.3d at 590.

Employment risks arise out of the employment. *Id.* They are solely related to the employment and include obvious industrial injuries. *See Phillips*, 126 Nev. at 351, 240 P.3d at 5.; *see also* 1 Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 4.01, at 4-2 (rev. ed. 2017) (classic employment risks include "machinery breaking, objects falling,

1 explosives exploding tractor tipping, fingers getting caught in gears, excavations caving in, and
2 so on" as well as "occupational diseases"). Personal risks do not arise out of the employment.
3 *Phillips*, 126 Nev. at 351, 240 P.3d at 6. Personal risks include injuries caused by personal
4 conditions and illnesses, such as falling at work due to "a bad knee, epilepsy, or multiple
5 sclerosis." *Phillips*, 126 Nev. at 351, 240 P.3d at 5; see also *Larson* supra § 4.02, 4-2 (examples
6 of personal risks include dying a natural death the effects of disease or internal weakness and
7 death by "mortal personal enemy").

8 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a
9 fall that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351,
10 240 P.3d at 5; see also *Larson*, supra § 4.03, at 4-2 (examples of neutral risks include
11 hit by a stray bullet out of nowhere, bit by a mad dog stabbed by a lunatic running amuck," acts
12 of God and unknown causes). A neutral risk arises out of the employment if the employee was
13 subjected to a greater risk than the general public due to the employment. See *Phillips*, 126 Nev.
14 at 353, 240 P.3d at 7 (adopting the increased-risk test).

15 Claimant's walking and tripping was not an employment related risk because the
16 Claimant was walking for her own recreation and enjoyment. The Employer did not create an
17 employment related risk by permitting the Claimant to walk around a public office facility that
18 was open to the public.

19 The Claimant did not argue neutral risk and the increased risk test should be applied to
20 satisfy whether her injury arose out of her employment. Even so, the Claimant chose to walk on
21 sidewalks outside of public building where the public walks. It cannot be sustained that the
22 Claimant was exposed to the raised edge in the concrete more than the general public using the
23 same sidewalk. Because the Claimant has not provided evidence of an employment related risk
24 or a neutral risk that subjected her to a greater risk than the general public due her employment,
25 the Claimant failed to prove her injury arose out of her employment.

26 The weight of the evidence and legal authority support legal conclusion that the Claimant

1 failed to satisfy NRS 616C.150(1), and she did not suffer a compensable industrial injury on
2 September 24, 2019.

3 **DECISION**

4 The Hearing Officer decision dated January 16, 2020 is hereby **AFFIRMED**.

5 DATED this 24th of September 2020

6 
7 **APPEALS OFFICER**

8
9 Submitted by:
10 **LUCAS POLETTA**
11 **MCDONALD CARANO LLP**
12 **100 West Liberty St., 10th Floor**
Reno, Nevada 89501

13 **Notice:** Pursuant to NRS 233B.130 should any party desire to appeal this final decision of the
14 Appeals Officer, a Petition for Judicial Review must be filed with the district court within thirty
15 (30) days after service by mail of this Decision.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER** was deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

SHAROLYN P WILSON
CLAIMS/RISK ANALYST
1001 E 9TH ST
RENO NV 89512

CCMSI
PO BOX 20068
RENO, NV 89515-0068

LISA M WILTSHIRE ALSTEAD ESQ
100 W LIBERTY ST 10TH FLOOR
RENO NV 89505

Dated this 25th day of September, 2020.

Brandy Fuller
Brandy Fuller, Legal Secretary II
Employee of the State of Nevada

1 2610
Evan Beavers, Esq. (NV Bar #3399)
2 Clark G. Leslie, Esq. (NV Bar #10124)
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
(775) 684-7555; (775) 684-7575
4 cleslie@naim.nv.gov
Attorney for Petitioner, Susan Hopkins
5

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

9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

CASE NO. CV20-01650

12 CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
13 COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,
14

DEPT. NO. 15

15 Respondents.
16

17 NOTICE OF PETITION FOR JUDICIAL REVIEW

18 TO: Edward L. Oueilhe
Appeals Officer
19 Department of Administration
1050 East William, Suite 450
20 Carson City, Nevada 89701

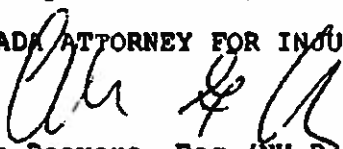
21 YOU ARE HEREBY GIVEN NOTICE that on the 14th day of
22 October, 2020, a Petition for Judicial Review was filed in the
23 Second Judicial District Court of the State of Nevada, in and for
24 Washoe County. A copy is attached. Said petition seeks judicial
25 review of your Appeals Officer Decision rendered on the 25th day
26 of October, 2020. Please prepare, within thirty (30) days from
27 . . .
28 . . .

Marissa, Attorney for Second District
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 466-2830

1 service hereof, the entire record or a certified copy of the
2 entire record for transmittal to the court.

3 DATED this 16th day of October, 2020.

4 NEVADA ATTORNEY FOR INJURED WORKERS

5 
6 Evan Beavers, Esq. (NV Bar #3399)
7 Clark G. Leslie, Esq. (NV Bar #10124)
8 1000 East William, Suite 208
9 Carson City, Nevada 89701

10 Attorneys for Petitioner,
11 Susan Hopkins
12
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NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 775 684-1111
2200 South Rancho Drive, Suite 100
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding Notice of Petition for Judicial Review, pertaining to
Nevada Department of Administration Hearings Division Appeal
Number 1903025-ELO, Second Judicial District Court Case Number
CV20-01650:

 X Does not contain the Social Security Number of any
person.

-OR-

 Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-OR-

B. For the administration of a public program or
for an application for a Federal or State
grant.


Clark G. Leslie, Esq., Sr. Deputy
Nevada Attorney for Injured Workers
Attorney for Petitioner

10/16/20
Date

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 206
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing NOTICE OF PETITION FOR JUDICIAL REVIEW addressed to:

SUSAN HOPKINS
11660 ANTHEM DRIVE
SPARKS NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO NV 89512

CCMSI
PO BOX 20068
RENO NV 89515-0068

and that on this date, I prepared for hand-delivery a true copy of the within NOTICE OF PETITION FOR JUDICIAL REVIEW to the following party at the address below:

EDWARD L. OUEILHE
APPEALS OFFICER
DEPARTMENT OF ADMINISTRATION
1050 EAST WILLIAM STREET SUITE 450
CARSON CITY NV 89701

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true copy of the within NOTICE OF PETITION FOR JUDICIAL REVIEW to the following party at the address below:

LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY ST, 10TH FLOOR
RENO NV 89501

. . .

. . .

Nevada Attorney for Inmate Welfare
1800 East William Street, Suite 208
Carson City, NV 89701 (775) 694-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 and that on this date, I prepared for hand delivery, a true copy of
2 the within NOTICE OF PETITION FOR JUDICIAL REVIEW by hand delivery
3 to the following parties via State Mail Room to the addresses
4 below:

5 AARON D FORD ESQ
6 NEVADA ATTORNEY GENERAL
7 100 N CARSON ST
8 CARSON CITY NV 89701

9 LAURA FREED
10 DIRECTOR DEPT OF ADMINISTRATION
11 515 E MUSSER ST RM 300
12 CARSON CITY NV 89701

13

14

DATED:

10/16/20

15

16

SIGNED:

AWilson

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ATTACHMENT

ATTACHMENT

1 3550
2 Evan Beavers, Esq. (NV Bar 3399)
3 Clark G. Leslie, Esq. (NV Bar 10124)
4 1000 East William Street, Suite 208
5 Carson City, Nevada 89701
6 (775) 684-7555; (775) 684-7575
7 cleslie@nailw.nv.gov
8 Attorney for Petitioner, Susan Hopkins

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

SUSAN HOPKINS,

Petitioner,

vs.

CASE NO.

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

DEPT. NO.

Respondents.

PETITION FOR JUDICIAL REVIEW

SUSAN HOPKINS, Petitioner, by and through her attorney,
Clark G. Leslie, Esq., Sr. Deputy, Nevada Attorney for Injured
Workers, and pursuant to NRS 233B.130, hereby files this Petition
for Judicial Review of the Appeals Officer Decision of Appeals
Officer Edward L. Ouelhe, filed September 25, 2020, a copy of
which is attached hereto as Exhibit 1.

This petition is filed with the district court on the
grounds that Petitioner is aggrieved by the decision of the
appeals officer.

...

...

Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7335
2200 South Washoe Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 120
Las Vegas, NV 89102 (702) 496-2830

1 The decision of the appeals officer was an abuse of
2 discretion, clearly erroneous and in error as a matter of law.

3 WHEREFORE, Petitioner prays as follows:

4 1. The court grant judicial review of the decision of
5 the appeals officer issued September 25, 2020.


6 2. The court vacate and set aside the September 25,
7 2020, decision of the appeals officer and award Petitioner
8 HOPKINS the benefits to which SUSAN HOPKINS is entitled.

9 3. For such other and further relief as the court
10 deems just.

11 4. Pursuant to NRS 233B.133(4), a hearing is requested
12 in this matter.

13 DATED this 14th day of October, 2020.

14 NEVADA ATTORNEY FOR INJURED WORKERS

15 
16 Evan Beavers, Esq. (NV Bar #3399)
17 Clark G. Leslie, Esq. (NV Bar #10124)
18 1000 East William, Suite 208
19 Carson City, Nevada 89701

20 Attorneys for Petitioner,
21 Susan Hopkins
22
23
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Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7955
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding Petition for Judicial Review, filed in regard to Nevada
Department of Administration Hearings Division Appeal Number
2002596-ELO (Second Judicial District Court Case Number pending):

 X Does not contain the Social Security Number of any
person.

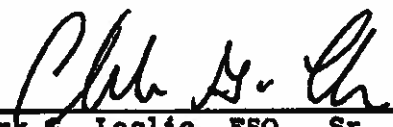
-OR-

 Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or
for an application for a Federal or State
grant.


Clark G. Leslie, ESQ., Sr. Deputy
Nevada Attorney for Injured Workers
Attorney for Petitioner

10/14/20
Date

Nevada Messenger for Thomas Whinnans
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 694-7556
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2930

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing PETITION FOR JUDICIAL REVIEW addressed to:

SUSAN HOPKINS
11660 ANTHEM DRIVE
SPARKS NV 89441

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO NV 89512

CCMSI
PO BOX 20068
RENO NV 89515-0068

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true copy of the within PETITION FOR JUDICIAL REVIEW to the following party at the address below:

LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY ST, 10TH FLOOR
RENO NV 89501

. . .

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Nevada Attorney for Thomas Wiggins
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 694-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

1 and that on this date, I prepared for hand delivery, a true copy
2 of the within PETITION FOR JUDICIAL REVIEW by hand delivery to
3 the following parties via State Mail Room to the addresses below:

4 AARON D FORD ESQ
NEVADA ATTORNEY GENERAL
5 100 N CARSON ST
CARSON CITY NV 89701

6 LAURA FREED
7 DIRECTOR DEPT OF ADMINISTRATION
515 E MUSSER ST RM 300
8 CARSON CITY NV 89701

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DATED: 10/14/20

SIGNED: A. Wiggins

Rebecca A. Brown
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 130
Las Vegas, NV 89102 (702) 486-2830

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INDEX OF EXHIBITS

EXHIBIT No.	DESCRIPTION	No. PAGES W/COVER
Exhibit 1	Appeals Officer Decision (9/25/20)	9

EXHIBIT 1

EXHIBIT 1

NRW

FILED

SEP 25 2020

NEVADA DEPARTMENT OF ADMINISTRATION

**DEPT. OF ADMINISTRATION
APPEALS OFFICER**

BEFORE THE APPEALS OFFICER

* * * * *

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 19493J090454

Hearing No: 2001962-JL

SUSAN HOPKINS,

Appeal No: 2002596-ELO

Claimant.

APPEALS OFFICER DECISION

An appeal hearing was conducted on August 6, 2020. The Claimant, Susan Hopkins, was represented by Clark G. Leslie, Esq. of Nevada Attorney for Injured Workers ("Claimant"). The self-insured employer Washoe County ("Employer") was represented by Lucas Poletta of the law firm McDonald Carano, LLP. The hearing was conducted pursuant to Chapters 616A through 617 and 233B of the Nevada Revised Statutes.

The issue presented in this appeal is whether the Hearing Officer's January 16, 2020 Decision and Order ("Decision") affirming the determination by Cannon Cochran Management Services, Inc. ("CCMSI") denying the claim at issue should be affirmed. The evidence presented at hearing consisted of 47 pages of exhibits identified as Insurer's Documentary Evidence, marked and entered into evidence at the time of hearing. Witness testimony was provided by the Claimant. Having reviewed the documentary evidence submitted by the parties, considered the witness testimony at the appeal hearing, and considered the arguments of counsel, the Appeals Officer makes the following findings of fact and conclusions of law. Any finding of facts if appropriate shall be construed as conclusions of law, and any conclusions of law if appropriate shall be construed as findings of fact.

///

FINDINGS OF FACT

The Claimant, Susan Hopkins, works for the Washoe County Health District. The Health District's office where the Claimant worked was and is still located at 1001 E. Ninth St. in Reno, Nevada. The Claimant is an office-support-specialist in the environmental health division. The Claimant chose to go on walks during scheduled mandatory breaks. The Health District's offices are located in a Washoe County complex that includes the Washoe County Fair Grounds and the Reno-Sparks Livestock Events Center "RSLEC"). On September 23, 2019, Claimant's employer via an e-mail warned 9th street employees who walked during breaks to avoid walking near the RSLEC due to construction and heavy equipment in the areas around the RSLEC. Although the e-mail warned walkers, there is nothing in the e-mail requiring employees to walk during their breaks. The e-mail warns "[a]s always use caution and be aware of your surroundings."

On September 24, 2019, the Claimant took her morning break. She chose to go for a walk during her morning break. The Claimant exited the back door where she worked, and she began her walk. The Claimant testified that about 50 to 75 feet from where she left her building, she tripped and fell forward on the sidewalk. The Claimant reported that her right foot hit the raised edge between sections of the concrete sidewalk causing her to fall. The Claimant testified that the raised edge was one inch in height. The raised sidewalk was in a public area of the Washoe County Health District complex. Because it was difficult to walk, the Claimant returned to her office. A couple of co-employees helped her to return to her desk.

Later that day the Claimant went to the Reno Orthopedic Clinic-Urgent Care ("ROC") in Sparks, Nevada. The Claimant was diagnosed with the non-displaced right great-toe fracture and a left hip strain. The Claimant completed a request for compensation, a C-4, at the ROC. OCMSI denied the claim on December 5, 2019, concluding that the Claimant had not met her burden to demonstrate that her injury occurred as a direct result of duties that arose out of or in the course of her employment.

CONCLUSIONS OF LAW

Under NRS 616C.150, in order for a workers' compensation claim to be compensable, a claimant is required to "establish by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment." The Claimant argued that whether her injury was compensable was a pure legal question. The Claimant argued that under the personal comfort rule found in *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019) her injury arose out of her employment; thus, Claimant's claim is compensable under NRS 616C.150. The Claimant also argues that her claim arose out of her employment under the authority found in *Dixon State Industrial Insurance System*, 111 Nev. 994, 899 P.2d 571 (1995).

The Nevada Industrial Insurance Act ("NIIA") does not make an employer absolutely liable. *Wood v. Safeway, Inc.*, 121 Nev. 724, 733 121 P.3d 1026, 1032 (2005).

An injury is said to arise out of one's employment when there is a causal connection between the employee's injury and the nature of the work or workplace. *Rio State Hotel & Casino v. Gorsky*, 113 Nev. 600, 605, 939 P.2d 1043, 1046 (1997). In contrast, whether an injury occurs within the course of the employment refers merely to the time and place of employment, i.e., whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046.

When the Claimant was walking during her break, she was walking for her own personal enjoyment and health. Claimant was not reasonably performing her work duties when she fell, and she was not in the course of her employment. Therefore, under *Gorsky*, Claimant's fall did not occur within the course of her employment.

Under *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019), traveling employees are deemed to be in the course of employment for the purposes of the NIIA. *Id.* at 6-7. "Traveling employees are deemed in their employer's control, as a practical matter for the duration of their trips. *Id.* at 7. The Court in *Buma* extended the personal comfort rule to employees who are traveling in the course of employment continuous for the duration of a trip.

1 *Id.* at 9. *Buna* permits a traveling employee to generally tend to their reasonable recreation
2 needs during downtime without leaving the course of employment. *Id.* at 10.

3 *Buna* does not apply to the Claimant. The Claimant was not traveling on behalf of her
4 employer at the time of her trip and fall injury. Because the Claimant was not traveling, she
5 cannot be deemed under the employer's control. The Claimant does qualify under the personal
6 comfort rule recited in *Buna*. Therefore, the Claimant cannot rely upon *Buna* to satisfy the
7 course of employment requirement in NRS 616C.150.

8 The Claimant argued that Claimant's injury claim is compensable under *Dixon v. State*
9 *Industrial Insurance System*, 111 Nev. 994, 998, 899 P.2d 571, 573 (1995). *Dixon* is a
10 recreational activities case. In *Dixon*, the claimant was injured during her lunch hour while the
11 employee rode a bicycle provided by the laboratory around the parking lot at the worksite and
12 fell and suffered a fractured wrist. The employer provided the bikes and encouraged the
13 claimant to ride them. The appeals officer directed SIIS to accept the employee's claim,
14 concluding that riding the bicycle was a regular incident of employment as it was of expected
15 custom and practice at the remote location and was even encouraged by the laboratory. The
16 Court in *Dixon*, citing *Nevada Industrial Commission v. Holt*, 83 Nev. 497, 434 P.2d 423 (1967)
17 stated: :

18 In *Holt* this court stated that a recreational activity could only be characterized as within
19 the course of employment if it is a regular incident of employment, or required by the
20 employer, or of benefit to the employer 'beyond the intangible value of employee health
21 and morale common to all kinds of recreation and social life.' *Id.* at 500, 434 P.2d at 424.

22 The appeals officer did make the finding required by *Holt* that under the circumstances at
23 Los Alamos, riding the bicycle was a regular incident of employment. *Id.*

24 In this case, the Claimant was not required to walk. Neither was Claimant provided with
25 equipment, such as shoes, to walk or encouraged to use equipment to walk. Nor was the
26 Claimant living at her work location as in *Dixon*. Being on a break and walking on one's
27 own

own volition is not enough under *Dixon* to establish that Claimant's injuries occurred within the course of employment.

The Claimant also argued that *Costley v. Nevada Ind. Ins. Com.*, 53 Nev. 219, 296 P. 1011 (1931) provides authority requiring that Claimant's claim be adjudged compensable. However, the issue in *Costly* is distinguishable from this case. *Costly* dealt with the question as to when an employee and employer relationship began, not whether Costly's injury arose out of and in the course of his employment. In addition, *Costly* was decided upon principles of commonlaw which were overruled under the enactment of the NIIA in 1993. NRS 616A.010. In addition, the law and facts in *Costly* were liberally construed in favor of the payment of compensation which is also no longer the law under the NIIA.

In order for an injury to arise out of employment, "the employee must show that the origin of the injury is related to some risk involved within the scope of employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010) quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005). If the injury "is not fairly traceable to the nature of the employment or workplace environment, then the injury cannot be said to arise out of the claimant's employment." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046.

Until recently an employee might encounter three types of risks at work that were relevant to Claimant's workers' compensation. The Nevada Supreme Court in *Balguen v. Harrah's Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588 (2018) recently announced a fourth of workplace risk, mixed risk, and clarified the three other risks the Court applies to workplace injuries. These three types of risks were clarified and restated in *Balguen* and include: (1) employment; (2) personal; and (3) neutral risks. *Balguen*, 426 P.3d at 590.

Employment risks arise out of the employment. *Id.* They are solely related to the employment and include obvious industrial injuries. See *Phillips*, 126 Nev. at 351, 240 P.3d at 5; see also 1 Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 4.01, at 4-2 (rev. ed. 2017) (classic employment risks include "machinery breaking, objects falling,

1 explosives exploding tractor tipping, fingers getting caught in gears, excavations caving in, and
2 so on" as well as "occupational diseases"). Personal risks do not arise out of the employment.
3 *Phillips*, 126 Nev. at 351, 240 P.3d at 6. Personal risks include injuries caused by personal
4 conditions and illnesses, such as falling at work due to "a bad knee, epilepsy, or multiple
5 sclerosis." *Phillips*, 126 Nev. at 351, 240 P.3d at 5; see also *Larson* supra § 4.02, 4-2 (examples
6 of personal risks include dying a natural death the effects of disease or internal weakness and
7 death by "mortal personal enemy").

8 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a
9 fall that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351,
10 240 P.3d at 5; see also *Larson*, supra § 4.03, at 4-2 (examples of neutral risks include
11 hit by a stray bullet out of nowhere, bit by a mad dog stabbed by a lunatic running amuck," acts
12 of God and unknown causes). A neutral risk arises out of the employment if the employee was
13 subjected to a greater risk than the general public due to the employment. See *Phillips*, 126 Nev.
14 at 353, 240 P.3d at 7 (adopting the increased-risk test).

15 Claimant's walking and tripping was not an employment related risk because the
16 Claimant was walking for her own recreation and enjoyment. The Employer did not create an
17 employment related risk by permitting the Claimant to walk around a public office facility that
18 was open to the public.

19 The Claimant did not argue neutral risk and the increased risk test should be applied to
20 satisfy whether her injury arose out of her employment. Even so, the Claimant chose to walk on
21 sidewalks outside of public building where the public walks. It cannot be sustained that the
22 Claimant was exposed to the raised edge in the concrete more than the general public using the
23 same sidewalk. Because the Claimant has not provided evidence of an employment related risk
24 or a neutral risk that subjected her to a greater risk than the general public due her employment,
25 the Claimant failed to prove her injury arose out of her employment.

26 The weight of the evidence and legal authority support legal conclusion that the Claimant
27
28

1 failed to satisfy NRS 616C.150(1), and she did not suffer a compensable industrial injury on
2 September 24, 2019.

3 **DECISION**

4 The Hearing Officer decision dated January 16, 2020 is hereby **AFFIRMED**.

5 DATED this 24th of September, 2020

6 
7
8 **APPEALS OFFICER**

9
10 Submitted by:
11 **LUCAS FOLETTA**
12 **MCDONALD CARANO LLP**
13 **100 West Liberty St., 10th Floor**
14 **Reno, Nevada 89501**

15 **Notice:** Pursuant to NRS 233B.130 should any party desire to appeal this final decision of the
16 Appeals Officer, a Petition for Judicial Review must be filed with the district court within thirty
17 (30) days after service by mail of this Decision.
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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER** was deposited into the State of Nevada Interdepartmental mail system, OR with the State of Nevada mail system for mailing via United States Postal Service, OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

SUSAN HOPKINS
11660 ANTHEM DR
SPARKS, NV 89441

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

WASHOE COUNTY
ATTN: CELESTE WALLICK
1001 E 9TH ST, BLDG D, STE 120
RENO, NV 89512

SHAROLYN P WILSON
CLAIMS/RISK ANALYST
1001 E 9TH ST
RENO NV 89512

CCMSI
PO BOX 20068
RENO, NV 89514-0068

LISA M WILTSHIRE ALSTEAD ESQ
100 W LIBERTY ST 10TH FLOOR
RENO NV 89505

Dated this 25th day of September, 2020.

Brandy Fuller
Brandy Fuller, Legal Secretary II
Employee of the State of Nevada

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

SUSAN HOPKINS,

Petitioner,

Case No. CV20-01650

vs.

Dept. No. 15

CANNON COCHRAN MANAGEMENT SERVICES,
INC. dba CCMSI; WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

Respondent(s).

ORDER FOR BRIEFING SCHEDULE

On October 14, 2020, Petitioners filed a Petition for Judicial Review of the Decision of Appeals Officer Edward L. Ouelhe, filed September 25, 2020.

Petitioner must serve the petition upon the Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and the administrative head of the named agency and every party within 45 days after the initial filing. NRS 233B.130(5).

The agency and any party desiring to participate in the judicial review must file and serve a statement of intent to participate within 20 days after receiving service of the Petition for Judicial Review. NRS 233B.130(3).

Within 45 days Petitioner shall file an original or certified copy of the transcript of the evidence resulting in the final decision of the agency. NRS 233B.131(1)(a). The agency

1 that rendered the decision shall file the original or a certified copy of the remainder of the
2 record of the proceeding, within 30 days after service of the Petition for Judicial Review,
3 and shall give written notice of the transmittal. NRS 233B.131(1)(b). "The record may be
4 shortened by stipulation of the parties to the proceeding." Id.

5 Petitioner must file and serve an opening brief (memorandum of points and
6 authorities) within 40 days after the agency has given written notice that the record has
7 been filed with the court. NRS 233B.133(1). Petitioner's failure to file an opening brief
8 within the time limitation shall be deemed an admission the appeal was not well founded
9 and shall constitute adequate cause for dismissal of this action.

10 Respondent shall file and serve an answering brief (memorandum of points and
11 authorities) within 30 days after service of Petitioner's opening brief. NRS 233B.133(2).

12 Petitioner may file and serve a reply brief (memorandum of points and authorities)
13 within 30 days after service of Respondent's answering brief. NRS 233B.133(3). Petitioner
14 will file a request for submission once the appeal is fully briefed to bring the matter to this
15 Court's attention.

16 Any party may request a hearing within 7 days after expiration of the time within
17 which Petitioner is required to file a reply brief. NRS 233B.133(4).

18 **IT IS SO ORDERED.**

19 Dated: October 20, 2020.

20
21 

22 David A. Hardy
23 District Court Judge
24
25
26
27
28

1 3960
2 Lucas M. Foletta
3 Nevada Bar No. 12154
4 Lisa Wiltshire Alstead
5 Nevada Bar No. 10470
6 McDONALD CARANO LLP
7 100 West Liberty Street, 10th Floor
8 Reno, Nevada 89505
9 Telephone: (775) 788-2000

10 *Attorneys for Respondents*
11 *Washoe County and Cannon Cochran*
12 *Management Services, Inc.*

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

14 **IN AND FOR THE COUNTY OF WASHOE**

15 SUSAN HOPKINS,

16 Petitioner,

17 vs.

Case No: CV20-01650

18 WASHOE COUNTY, CANNON COCHRAN
19 MANAGEMENT SERVICES, INC. dba
20 CCMSI; WASHOE COUNTY; and APPEALS
21 OFFICE of the DEPARTMENT OF
22 ADMINISTRATION,

Dept. No: 15

23 Respondents.

24 **STATEMENT OF INTENT TO PARTICIPATE**

25 COMES NOW, pursuant to NRS 233B.130(3), Respondents WASHOE COUNTY
26 ("WASHOE") and CANNON COCHRAN MANAGEMENT SERVICES, INC. ("CCMSI")¹,
27 hereby notify the parties of their intent to participate in the above-entitled Petition for Judicial
28 Review filed by Petitioner on October 14, 2020.

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///

29 _____
30 ¹ WASHOE COUNTY is a self-insured employer. CCMSI, Washoe County's third-party
31 administrator, was not a party to the Appeals Officer hearing and is not a real party in interest. This
32 statement of intent to participate identifies CCMSI out of an abundance of caution; however,
33 CCMSI hereby objects and reserves its right to challenge Petitioner improperly naming it as a
34 respondent in this matter.

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

AFFIRMATION
(Pursuant to NRS 239B.030)

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

DATED this 19th day of October, 2020.

MCDONALD CARANO LLP

By: _____

Lucas M. Foletta, Esq.
Nevada Bar No. 12154
Lisa Wiltshire Alstead, Esq.
Nevada Bar No. 10470
100 W. Liberty St., 10th Floor
P.O. Box 2670
Reno, Nevada 89505-2670
Attorneys for Respondents
**WASHOE COUNTY AND CANNON COCHRAN
MANAGEMENT SERVICES, INC.**

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano, LLP and that on the 19th day of October, 2020, a true and correct copy of the foregoing **STATEMENT OF INTENT TO PARTICIPATE** was electronically filed with the Clerk of the Court by using CM/ECF, served on parties on the electronic service list for this case, and I caused a true and correct copy to be deposited with the U.S. Postal Service at Reno, Nevada addressed to the parties as follows:

Clark G. Leslie, Esq.
Evan Beavers, Esq.
Nevada Attorney for Injured Workers
1000 E. William St., Suite 208
Carson City, NV 89701
Attorney for Susan Hopkins

Nevada Department of Administration
Appeals Division
1050 E. William St., Suite 450
Carson City, NV 89701

Aaron Ford
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701

Laura Freed
Director Department of Administration
515 E. Musser St., Rm. 300
Carson City, NV 89701

An Employee of McDonald Carano LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

FILED

NOV - 8 2020

**DEPT. OF ADMINISTRATION
APPEALS OFFICER**

In the Matter of the:
Contested Industrial of
Insurance Claim,

Of

SUSAN HOPKINS,

Claimant

Claim No: 19493J090454

Hearing No: 2001962-JL

Appeal No: 2002596-ELO

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE
EDWARD L. OUEILHE, APPEALS OFFICER**

**AUGUST 6, 2020
11:07 AM**

**2200 SOUTH RANCHO DRIVE, SUITE 220
LAS VEGAS, NEVADA 89102**

Ordered by:

Transcribed By: Wendy Letner, Precise Transcripts

A P P E A R A N C E S

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On behalf of the Claimant:

Clark G. Leslie, Esq.

994 Hidden Brook Ct.

Minden, NV 89423-5185

On behalf of the Insurer:

Lucas Foletta, Esq.

100 West Liberty Street, Tenth Floor

Reno, NV 89501

1

I N D E X

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EXAMINATIONDIRECTCROSSREDIRECTRECROSS

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Clark G. Leslie

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Lucas Foletta

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E X H I B I T S

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EVIDENCEIDENTIFIEDENTERED

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Exhibit Number 1

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Exhibit Number 2

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P R O C E E D I N G S

1
2 APPEALS OFFICER: Good day, gentlemen. Today
3 is August 6th, 2020. It is now 11:07 a.m. We are on the
4 record. I am appeals officer, Edward Oueilhe. This is
5 the date and time for the hearing in the matter of the
6 Contested Industrial Insurance Claim of Susan Hopkins,
7 appeal hearing number 2002596-ELO. Mr. Clark Leslie is
8 present representing the claimant, Susan Hopkins, by
9 telephone, and the claimant, Susan Hopkins, will be
10 testifying by telephone during, during witness testimony.
11 Appearing on behalf of the Employer, Washoe County, is
12 Lucas--Mr. Lucas Foletta. Mr. Foletta, is there anybody
13 present in your office or at your location with you?

14 LUCAS FOLETTA: No, there is not.

15 APPEALS OFFICER: Okay. And then I--as it was
16 indicated off the record, there will not be an employer
17 representative participating by phone today. Is that
18 correct?

19 LUCAS FOLETTA: Correct, Your Honor.

20 APPEALS OFFICER: Okay. This particular appeal
21 hearing arises as follows. On December 20th, 2019, the
22 claimant, Susan Hopkins, filed a request for hearing with the
23 hearing's division of CCMSI December 5th, 2019, claim denial
24 determination. The appeal at the hearing's level was
25 designated as hearing officer number 2001962-JL. A hearing

1 was held on January 13th, 2020. That was January 13th, 2020.
2 On January 16th, 2020, hearing officer Lewis entered a
3 decision and order affirming the claim denial. On February
4 18th, 2020, the claimant filed a request for hearing of
5 hearing officer Lewis' January 16th, 2020, decision and order.
6 That appeal is designated as appeal number 2002596-ELO which
7 we are here on today. Mr. Leslie, are you and your client
8 ready to proceed with the hearing today?

9 CLARK G. LESLIE: Yes, Your Honor, we are.

10 APPEALS OFFICER: And likewise, Mr. Foletta, are
11 you and your client ready to proceed with the hearing today?

12 LUCAS FOLETTA: Yes, Your Honor.

13 APPEALS OFFICER: Okay. I have a total of two
14 exhibit packets, the first being from the--from the claimant
15 which was filed on August 4th, 2020. It's identified as
16 Claimant's First--First Exhibit numbered pages one through
17 three. Are there any, any objections to Claimant's First
18 Exhibit numbered pages one through three?

19 LUCAS FOLETTA: No, Your Honor.

20 APPEALS OFFICER: Claimant's First Exhibit
21 numbered pages one through three is marked into ex-admitted as
22 Exhibit Number 1. In addition to that, on March 26th, 2020,
23 the employer filed a packet of documents with the appeals
24 office identified as Insurer's Documented Evidence numbered

1 pages one through 47. Are there any objections to Insurer's
2 Documented Evidence numbered pages one through 47?

3 CLARK G. LESLIE: No, Your Honor.

4 APPEALS OFFICER: Insurer's Documented Evidence
5 numbered pages one through 47 is marked and admitted as
6 Exhibit Number 2. Mr. Leslie, are there any other evidence
7 packets or documents that the claimant has--wishes to be
8 submitted into evidence today?

9 CLARK G. LESLIE: No, Your Honor

10 APPEALS OFFICER: Mr. Foletta, are there any
11 other--other evidence packets or documents that the
12 employer wishes to have submitted into evidence today?

13 LUCAS FOLETTA: No, Your Honor.

14 APPEALS OFFICER: Okay. And as far as proposed
15 witnesses today, we have the Claimant, Susan Hopkins. Is
16 that correct?

17 CLARK G. LESLIE: Yes.

18 APPEALS OFFICER: And is there anybody going to
19 be testifying on behalf of the employer, Mr. Foletta?

20 LUCAS FOLETTA: No.

21 APPEALS OFFICER: All right. Let's go ahead
22 and begin with opening statements. Mr. Leslie, as soon as
23 you're ready.

24 CLARK G. LESLIE: Thank you, Your Honor. Very
25 briefly, the evidence will show that a work-related injury

1 did occur on September the 24th that arose out of and in
2 the course of employment. There's very little dispute
3 about the injury itself, but the real question here is one
4 of a pure legal fact, a pure legal question, I believe. We
5 will establish that the case of Dixon vs. SIIS which can be
6 found at 111 Nevada 994, 1995, case, held that Nevada still
7 honors the personal comfort doctrine. And in the Dixon
8 case it was established that you can be engaged in activity
9 that is of a personal comfort nature and still fall within
10 the confines of the Worker's Compensation Act. Your Honor,
11 it--the evidence will show that on September the 24th of
12 2019 Miss Hopkins was taking a mandatory required break.
13 This was pursuant to her contract with Washoe County. She
14 had been about 50 feet to 75 feet from work when she
15 tripped over a documented defect in the sidewalk. Now she
16 had altered her route from where she usually walked during
17 this break period at the behest and the warning of her
18 employer, and we will do reference to the overhead diagram
19 of the plaintiff's exhibit--or, excuse me, applicant's
20 Exhibit 1, uh, which shows an overhead of the convention
21 area and other surrounding buildings. And the evidence
22 will show that the day before she was injured, the
23 employees were warned about construction going on at that
24 convention area and so she altered her route. Now, the
25 important thing about those facts is that the employer was

1 aware, acquiesced, and was involved in this mandatory break
2 process with its employees. My client went to the doctor.
3 It was determined she had fractured her right toe and she
4 also sustained an injury to her left hip. Now again, I
5 don't think there's much at issue here medically. She has
6 out-of-pocket expenses and saw some physicians and we can
7 talk about that. But finally, Your Honor, and then I will
8 conclude, only eight months ago, Justice Pickering issued a
9 decision in Buma, B as in boy, U-M-A, versus Providence
10 Corporate Development and it's at 553 Pacific Third, 904, a
11 December 12, 2019, case. And in that case, in terms of
12 determining course of employment issues and dis--
13 determining whether or not the motivated activity is or is
14 not within or without the employment arrangement, it was
15 held that under the personal comfort rule you will be
16 within your course of employment unless, number one, the
17 departure is so substantial that an intent to abandon the
18 job temporarily may be inferred, or number two, the
19 personal comfort is so unusual or unreasonable as to not
20 deem the act incidental to employment. Your Honor, the
21 evidence will show that she clearly didn't intend to
22 abandon her job, that she was only 50 feet away from her
23 work and she was engaging in an activity that her employer
24 encouraged and acquiesced in. And, of course, simply
25 taking a walk during a period of mandatory break cannot,

1 under the law, be deemed unusual or unreasonable. That
2 concludes our comments, Your Honor. Thank you.

3 APPEALS OFFICER: Mr. Foletta?

4 LUCAS FOLETTA: Thank you, Your Honor. We
5 intend to show that the hearing office appropriately
6 concluded that the evidence in this case before him [ph]
7 does support that the injury issue arose [unintelligible]
8 thereof, and we will show how neither Buma nor Dixon
9 applicable to the [unintelligible] case. Thank you.

10 APPEALS OFFICER: Thank you, gentleman. Just a
11 moment. All right. Let's go ahead and begin with witness
12 testimony. I'm gonna go ahead and get Mr.--Miss Hopkins on
13 the phone--the--so she may testify. Mr. Leslie, do you
14 have a phone number for her?

15 CLARK G. LESLIE: Yes, sir. I do. It's 775-
16 745-1964.

17 APPEALS OFFICER: All right. I'm gonna put
18 you both on hold. If--and get Miss Hopkins on the--on the
19 phone. And if something happens that the call gets
20 dropped, please do call back in.

21 CLARK G. LESLIE: Yes, sir.

22 APPEALS OFFICER: All right. It'll be just a
23 moment, gentlemen. [dials, rings]

24 SUSAN HOPKINS: Hello?

25 APPEALS OFFICER: Is this Susan Hopkins?

1 SUSAN HOPKINS: Yes, it is.

2 APPEALS OFFICER: Miss Hopkins, this is Appeals
3 Officer, Edward Oueilhe. We are actually on the record.
4 Your hearing has begun. You're attorney and the employee's
5 attorney have been already engaged in opening arguments.
6 We're--we're at the witness testimony portion of the
7 hearing and you're--you're attorney's indicated that you're
8 going to be testifying today. I am going to be
9 [unintelligible] back in into a three--into, actually, a
10 four-person conference call. If something happens that the
11 call gets dropped with you, I will call you back.

12 SUSAN HOPKINS: Okay, perfect. Thank you.

13 APPEALS OFFICER: Just a moment. All right.
14 I'm--we're all--I think we're all, all four of us are back.
15 Mr. Leslie, are you still there?

16 CLARK G. LESLIE: Yes, Your Honor

17 APPEALS OFFICER: And Miss Fal--Mr. Foletta,
18 are you there?

19 LUCAS FOLETTA: I am, Your Honor.

20 APPEALS OFFICER: Okay. And Miss Hopkins, you
21 are there? Is that correct?

22 SUSAN HOPKINS: Yes, yeah. Thank you.

23 APPEALS OFFICER: And you can hear me?

24 SUSAN HOPKINS: Yes, I can. Thank you.

1 APPEALS OFFICER: Okay. And you understand we
2 are on the record? We are--we've begun your hearing.
3 You understand that, correct?

4 SUSAN HOPKINS: Correct.

5 APPEALS OFFICER: Okay. Mr. Leslie has
6 indicated that he's called you as a witness today to
7 testify on your behalf. Before we begin with your witness
8 testimony I have a couple things I have to do. I need to
9 swear you in and I have some instructions for you. So,
10 let's start with swearing you in. Would you please raise
11 your right hand? Do you affirm or swear that the testimony
12 you're about to give is the truth, the whole truth, and
13 nothing but the truth?

14 SUSAN HOPKINS: Yes.

15 APPEALS OFFICER: You can put your right hand
16 down. I want you to know an audio recording of this
17 hearing's being--being made digitally today, so if a
18 transcript needs to be made in the future it can be. I
19 would ask you to please listen to the questions that you'll
20 be asked by the attorneys before you respond. Please give
21 an answer to the questions. If you do not hear the
22 question or do not understand the question, please ask the
23 attorney to restate the question. If some time during this
24 process you're unable to--we lose--we're unable to hear
25 everybody on the--on this four-party conference call,

1 please speak up and say so. If one of the attorneys makes
2 an objection during your testimony and you hear that
3 objection being made, please wait until I have ruled upon
4 that objection. I also will want you know if an objection
5 is made and you begin to answer, I will interrupt you and
6 rule upon that objection. Do you understand these
7 instructions?

8 SUSAN HOPKINS: Yes, I do.

9 APPEALS OFFICER: Okay. And would you please
10 state and spell your whole name for the record, please?

11 SUSAN HOPKINS: Susan Marie Hopkins, S-U-S-A-
12 N M-A-R-I-E H-O-P-K-I-N-S.

13 APPEALS OFFICER: All right. Thank you, Miss
14 Hopkins. Counsel, your witness.

15 CLARK G. LESLIE: Thank you, Your Honor. Miss
16 Hopkins, we--you've just stated your name so that we can go
17 beyond that. But in September of 2019 were you employed?

18 SUSAN HOPKINS: Yes, I was.

19 CLARK G. LESLIE: Who was your employer?

20 SUSAN HOPKINS: Washoe County Health
21 District.

22 CLARK G. LESLIE: And roughly, can you describe
23 for us on or where your place of work was located? The
24 address and things around it and do so forth?

1 SUSAN HOPKINS: We are at 1001 East 9th
2 Street, Building B as in boy. It is on--off of
3 [unintelligible] Avenue. Our building is off of
4 [unintelligible] Avenue and it's in between the Reno
5 Livestock Event Center and 9th Street.

6 CLARK G. LESLIE: Did--and just briefly, would
7 you describe for us what your job and job duties were with
8 Washoe County?

9 SUSAN HOPKINS: I am an office support
10 specialist with Washoe County and I work in environmental
11 health dealing with plans.

12 CLARK G. LESLIE: In the month of September,
13 did you take break time during your work hours?

14 SUSAN HOPKINS: I did. We--

15 CLARK G. LESLIE: Hold on. Hold on. Was there
16 a policy in place involving employees and Washoe County as
17 the employer in terms of mandatory break times?

18 SUSAN HOPKINS: Yes. We have a contract
19 through the Washoe County Employee's Association. We have
20 two paid 15-minutes breaks for every eight hours worked
21 that we just take, and--excuse me--in that eight-hour
22 timeframe.

23 CLARK G. LESLIE: All right. Now, as a matter
24 of custom, where did you usually--or how did you enjoy
25 yourself during these 15-minute breaks?

1 SUSAN HOPKINS: I would go walk and when I
2 would walk I would walk around the Reno Sparks Livestock
3 Event Center.

4 CLARK G. LESLIE: Stop there. Now, was there
5 something going on with the Reno Livestock Center that
6 prompted a warning from your employer?

7 SUSAN HOPKINS: Yes. Our security
8 administrator, Ben West, he sent out an e-mail the day
9 prior stating that for the safety of walkers during our
10 breaks that we are to avoid areas at the Reno Livestock
11 Event Center due to construction and heavy equipment.

12 CLARK G. LESLIE: All right. Now, we have
13 provided the judge with three documents, the overhead
14 picture of the livestock area, a picture that shows the
15 sidewalk, but the first page is a memorandum from Benjamin
16 West dated September the 23rd, and I asked you to have this
17 in front of you. Do you have that in front of you?

18 SUSAN HOPKINS: Yes.

19 CLARK G. LESLIE: Is that the warning that you
20 are referencing--that you just referenced in your
21 testimony?

22 SUSAN HOPKINS: Yes.

23 APPEALS OFFICER: All right. Now,
24 unfortunately, we don't have color, but we are talking
25 about red areas and green areas so that Judge Oueilhe can

1 better understand what we're talking about here. Put--if,
2 if I can ask you, please, Miss Hopkins, put the diagram
3 overhead in front of you. So, do you have that in front of
4 you?

5 SUSAN HOPKINS: Yes.

6 CLARK G. LESLIE: All right. Now, as best you
7 can, and let's not get too detailed, can you explain the
8 Judge Oueilhe where the red zones were marked by Mr. West?

9 SUSAN HOPKINS: The red zones are marked
10 around the rodeo arena, the main arena, and the livestock
11 pavilion.

12 CLARK G. LESLIE: Okay. Now, the green areas,
13 am I correct, they're not really depicted here on this
14 overhead?

15 SUSAN HOPKINS: They're on the outside of
16 those areas.

17 CLARK G. LESLIE: All right. Does this diagram
18 show exactly where you fell?

19 SUSAN HOPKINS: No, it does not.

20 CLARK G. LESLIE: All right. Now, let's talk
21 about the particular day in question. Were you at work on
22 September the 24th, 2019?

23 SUSAN HOPKINS: Yes.

24 CLARK G. LESLIE: Did you take a mandatory 15-
25 minute break on that day?

1 SUSAN HOPKINS: Yes.

2 CLARK G. LESLIE: And would you tell Judge

3 Oueilhe, please, what happened--which break was this, the

4 first or the second?

5 SUSAN HOPKINS: It was the first.

6 CLARK G. LESLIE: All right. So, this was in

7 the morning?

8 SUSAN HOPKINS: Yes.

9 CLARK G. LESLIE: Okay. What kind of shoes

10 were you wearing?

11 SUSAN HOPKINS: Tennis shoes.

12 CLARK G. LESLIE: Okay. So, when you took your

13 morning break on September the 24th, did something happen?

14 SUSAN HOPKINS: Yes.

15 CLARK G. LESLIE: Would you please describe for

16 Judge Oueilhe what happened to you while you were talking

17 on September the 24th.

18 SUSAN HOPKINS: I was walking and I tripped

19 over a sidewalk that was raised and fell.

20 CLARK G. LESLIE: I'll ask you to look at page

21 three of the documents we submitted to the judge. Can you

22 tell me what best fits in terms of the ruler and everything

23 else?

1 SUSAN HOPKINS: So, the ruler shows how
2 raised that the sidewalk was, approximately about an inch
3 raised.

4 CLARK G. LESLIE: All right. Where in relation
5 to your--the place that you worked was it that you tripped?

6 SUSAN HOPKINS: It was approximately 50 to 75
7 feet outside the back door of our building. I walked out
8 the back door and it was, like I said, approximately 50 to
9 75 feet outside that door.

10 CLARK G. LESLIE: Okay. Had anyone ever told
11 you not to work there--not to walk there?

12 SUSAN HOPKINS: No.

13 CLARK G. LESLIE: Okay. When you tripped what
14 happened to your body? Did it hit the ground completely?
15 Or describe what happened.

16 SUSAN HOPKINS: When I tripped I actually
17 kind of moved forward and landed on the ground on my body--
18 with my body.

19 CLARK G. LESLIE: Which foot tripped on the
20 raised sidewalk?

21 SUSAN HOPKINS: My right toe and my right
22 foot is what hit that section.

23 CLARK G. LESLIE: Okay.

24 SUSAN HOPKINS: And then I moved forward.

1 CLARK G. LESLIE: All right. Then did you
2 return to work after you--well, let me strike that. Were
3 you able to get up and move from the place where you fell?
4 SUSAN HOPKINS: Yes.
5 CLARK G. LESLIE: With difficulty?
6 SUSAN HOPKINS: Yes.
7 CLARK G. LESLIE: When you got to work was
8 anyone able--oh, let me strike that. Where did you go once
9 you picked yourself up and started moving?
10 SUSAN HOPKINS: I walked back to my office.
11 CLARK G. LESLIE: Okay. Was anyone there to
12 help you when you first walked in?
13 SUSAN HOPKINS: Yes.
14 CLARK G. LESLIE: Who helped you and what did
15 you do after that?
16 SUSAN HOPKINS: It was a couple of employees
17 helped me to my desk [ph].
18 CLARK G. LESLIE: Okay. Did you seek medical
19 care on that day?
20 SUSAN HOPKINS: I did.
21 CLARK G. LESLIE: Would you please tell the
22 judge where you went and what was provided to you?
23 SUSAN HOPKINS: I went to the Reno Orthopedic
24 Urgent Care off of Ion Drive in Sparks, Nevada.

1 CLARK G. LESLIE: And what did they do for you
2 and what did they tell you?

3 SUSAN HOPKINS: They took x-rays of my--they
4 took x-rays and they informed me that I had a nondisplaced
5 fracture of my right toe.

6 CLARK G. LESLIE: Did you also have complaints
7 or concerns about any other part of your body?

8 SUSAN HOPKINS: I--my hip--my left hip was
9 hurting and it kept giving out and they also took x-rays of
10 that and informed that I had a strain of muscle and tendon
11 of the left hip.

12 CLARK G. LESLIE: Following the treatment and
13 discussions you had with medical care providers on
14 September the 24th, have you had to seek or have you
15 obtained other medical care since that date?

16 SUSAN HOPKINS: Yes. I had two follow-up
17 appointments with Reno Orthopedics off of North Arlington
18 Avenue. I had a follow-up with an x-ray and then I had
19 another follow-up after that where--on a--on a later date.
20 So, one of the dates was 11/14 and I have another date, I
21 believe, October 10.

22 CLARK G. LESLIE: All right. Thank you. Have
23 you had to pay out of pocket for any of the care or
24 treatment you've received?

25 SUSAN HOPKINS: Yes.

1 CLARK G. LESLIE: Can you describe at least
2 approximately how much you are out of pocket for the
3 expenses that you believe you've incurred because of this
4 work injury?

5 SUSAN HOPKINS: Out of pocket would be 150
6 dollars.

7 CLARK G. LESLIE: All right. Thank you. Now,
8 do you anticipate having any further care or treatment of
9 any significance or are you pretty much through?

10 SUSAN HOPKINS: I believe I'm pretty much
11 through.

12 CLARK G. LESLIE: Did you miss any time from
13 work?

14 SUSAN HOPKINS: I did when I left that day.
15 I believe--I can't remember if I came back the next day or
16 not.

17 CLARK G. LESLIE: A week--

18 SUSAN HOPKINS: I think I was--I believe I
19 was off for three days.

20 CLARK G. LESLIE: All right. And then finally,
21 do you anticipate any significant treatment for the future?

22 SUSAN HOPKINS: No.

23 CLARK G. LESLIE: Your Honor, that concludes my
24 questions of Miss Hopkins at this time. I reserve the

1 privilege of being able to ask further questions upon your
2 agreement, Your Honor.

3 APPEALS OFFICER: All right. Okay. Mr.
4 Foletta, cross-examination.

5 LUCAS FOLETTA: Your Honor, I don't have any
6 questions for the witness.

7 APPEALS OFFICER: Okay. All right. Mr.
8 Leslie, do you have any additional questions?

9 CLARK G. LESLIE: No.

10 APPEALS OFFICER: Okay, and you've already
11 indicated you're, you're not calling any, any other
12 witnesses. Is that correct?

13 CLARK G. LESLIE: That is correct, sir

14 APPEALS OFFICER: So, that's your case in
15 chief?

16 CLARK G. LESLIE: It is, sir. We rest.

17 APPEALS OFFICER: Oh, you rest. Okay. And
18 then the employer's already indicated they won't be calling
19 any witnesses. Is that correct?

20 LUCAS FOLETTA: Yes, sir.

21 APPEALS OFFICER: Miss Hopkins, you can remain
22 on the line--on, on this conference hearing call if you
23 wish. I'm going to ask that you mute your phone.
24 Otherwise, you could hang up. It's up to you.

1 SUSAN HOPKINS: Okay. I will stay on and
2 just mute my phone.

3 APPEALS OFFICER: All right. Thank you, ma'am.
4 Okay. Let's go ahead and begin with closing arguments.
5 Mr. Leslie, as soon as you are ready.

6 CLARK G. LESLIE: Thank you, Your Honor. I
7 believe we achieved what we had set out for and that was
8 establish that we fall within the confines of the personal
9 comfort doctrine. Actually, one case I did not mentioned
10 to you this all arose back in 1931. There's a case called
11 Costley versus Nevada Industrial Insurance Commission at 53
12 Nevada 219, and in that case, a miner's injury was deemed
13 to be arising out of the employment when he was erecting a
14 tent on the employer's premises the day before he was
15 beginning work. The tent was for his personal comfort and
16 they held that being injured while providing that for
17 himself so that he could do work would be within the
18 arising out of employment requirement. Also, at Larson's
19 [ph] in section 21.08, it's very clear from this treatise
20 that incidental inc--activities for personal comfort are
21 compensable unless they are unreasonable or they or of an
22 extraordinary duration or distance from work. And we
23 mentioned in, in the Buma case, the December 2019 decision
24 by Justice Pickering, that there were two things that had
25 to be established in order for the personal comfort

1 doctrine to apply to a claim. First, that the departure
2 was not so substantial that an intent to abandon would be
3 inferred, and second, that the, the activity was not
4 unusual and unreasonable. Here we have Miss Hopkins who
5 was engaged in a mandatory contractual break of 15 minutes.
6 The evidence, undisputed, stated that the day before she
7 was warned by a supervisor to not engage in any exercise or
8 personal comfort activities at the Reno Livestock Center
9 and her employer even went so far as to provide her with a
10 diagram marked in green and red as to where one could or
11 could not go. Miss Hopkins, on September the 24th, took
12 her mandatory break in the morning. Without any disputed
13 testimony, we heard that she said she left the building.
14 She was wearing sensible shoes. She was beginning her walk
15 and within 50 feet of where she worked she came upon this
16 defective sidewalk, struck her foot, fell, and ultimately
17 it was learned she fractured her foot. Well, the question
18 is, was the act of taking that walk a departure so
19 substantial that we could infer that she was leaving the
20 job? Or did that work, that activity, could it be defined
21 as so unusual or unreasonable that it could not be deemed
22 incidental to the employment? Well, again, taking a walk
23 during a mandatory break is about as benign and normal and
24 usual and anticipated as any activity could be. We have
25 established the predicate elements for the comfort

1 doctrine. We have shown that she was not intending to
2 abandon the job and she was not engaged in a weird type of
3 activity. So, starting from 1931 until as recent as eight
4 months ago, personal comfort doctrine has been a part of
5 Nevada law and I can't think of a case that would more
6 squarely fit within the four corners of that doctrine than
7 the activities of Miss Hopkins. That concludes our closing
8 statement, Your Honor.

9 APPEALS OFFICER: All right. Mr. Foletta.

10 LUCAS FOLETTA: Thank you, Your Honor. The--
11 I think I'll just start with the--where, where she left--
12 where we left off with [unintelligible] of that. Nothing
13 in Nevada case law makes the personal comfort doctrine
14 applicable in this instance. And [interposing]

15 APPEALS OFFICER: Mr., Mr. Foletta,
16 [interposing] I'm gonna stop--Mr. Foletta? I'm gonna stop
17 you because [interposing] I, I, I don't know if you need to
18 get nearer, nearer your speaker or something but you're
19 very low volume and I'm straining to hear--I'm straining to
20 hear you. So, my fear is, is that this will not be
21 recorded, so please get closer and please maybe raise your
22 volume a little bit.

23 LUCAS FOLETTA: Understood. Is that--is that
24 better, Your Honor?

1 APPEALS OFFICER: Much better. Whatever you
2 did it worked. Go ahead.

3 LUCAS FOLETTA: Sure. [Interposing]

4 APPEALS OFFICER: And I'm, [interposing] I'm
5 gonna ask you to begin, start over, please, so we make sure
6 we have everything.

7 LUCAS FOLETTA: I will. I will. The
8 personal comfort doctrine is not applicable in this case,
9 and the--Mr. Leslie's argument essentially boils down to
10 any injury that an employee incurs while on a mandatory
11 break is compensable, notwithstanding the fact that that
12 injury is not related in any way to the--to the employee's
13 work. But it--it's the fact that the employee is on the
14 break which is the nexus between the employee, the injury,
15 and the employee's work which, in Mr. Leslie's argument
16 makes it compensable under Nevada law. But that's not the
17 case. The personal comfort doctrine arises out of travel
18 cases. There's no case where that doctrine has been
19 applied in the instance of an employee who sustained an
20 injury engaging in a personal activity during a work break.
21 They, they only have been applied in cases where the
22 employee has been traveling for work purposes. And in
23 those cases, the Nevada Supreme Court has made it clear
24 that the fact that the employee is traveling on account of
25 work is sufficient, in some cases, to establish a nexus

1 between the employee being [unintelligible] the work such
2 that the injury would be compensable within, within certain
3 confines that the Supreme Court sets forth. The, the Buma
4 case--the [unintelligible] in the Buma case said
5 specifically the majority rule that traveling employees are
6 in the course of employment continuously [ph] during their
7 business trips except during [unintelligible] departures on
8 personal errands is the majority rule. [Unintelligible]
9 such an employee's injury arising out of travel or work-
10 related risk including those associated [unintelligible]
11 personal need and navigating hazards necessary incidental
12 to the travel or work are usually compensable unless an
13 exception applies. In this case, the employee was not
14 traveling. The employee was simply at work in a normal
15 course and left to engage in a personal activity during the
16 break. The, the [unintelligible] because even if it were
17 arguable to apply, I don't believe that this case meets
18 that standard. In the [unintelligible] to determine
19 whether a traveling employee left the course of employment
20 by distinctly departing on a personal errand which includes
21 focuses [ph] on whether the employee was, a) attending
22 reasonably to the needs of the personal comfort or
23 encountering hazards necessarily incidental to the travel
24 or work or alternatively pursuing strictly personal
25 amusement ventures. In this case, the claimant was on a

1 work-related break. She was not mandated in any way by the
2 employer to, to walk in the area she walked in or to walk
3 at all. It was her personal choice to do that and she
4 exercised it. So, under the personal comfort doctrine, it--
5 -this injury is not compensable. The, the injury is--
6 although Mr. Leslie didn't really make these points, I want
7 to point on that he, under Gorsey [ph] the accident or
8 injury is said to arise out of employment when there's a
9 positive connection between the injury and the employee's
10 work. Gorsey further said a claimant must then
11 [unintelligible] that the origin of the injury is related
12 to some work involved within the scope of employment.
13 However, if an accident is not fairly traceable to the
14 nature of employment or the workplace environment, then the
15 injury cannot be said to arise out of the claimant's
16 [unintelligible] employment. On the document we have here,
17 there is no--there is nothing about this injury that
18 related to a risk within the scope of the talk [ph] of
19 employment. It was--it was a risk that manifested itself
20 to the extent that she chose to walk on her own during the
21 break. And the fact is [unintelligible] that the hearing
22 officer sided and found that this case fell within
23 [unintelligible] conditions of that case controls [ph]
24 here. The case really more is a coming and going case if
25 you want to think about it that way. And, of course,

1 [unintelligible] coming or going will preclude compensation
2 from the employee's injuries that occurred while away from
3 the workplace. That's [unintelligible]. The, the case is
4 not--is also not analogous to the extent--extent is not a
5 personal comfort doctrine case in my reviewing of it.
6 It's, it's a recreational activity case, and then--and as
7 you probably know, Dixon also sided with Holt which is a
8 kind of a--not really a companion but a related case. The,
9 the Holt court said recreational activity could only be
10 characterized within the course of employment if it is a
11 regular incident of employment or required by the employer
12 or a benefit to the employer, importantly beyond the
13 intangible value of the employee's health and morale common
14 to all kinds of recreation [unintelligible]. This is, of
15 course [unintelligible] that effect and, and that, I think,
16 language is relevant here in this case but really having
17 the, the claimant exercise her [unintelligible] to engage
18 in recreational activity outside of her workplace. And
19 that, that actually did not--was not mandated by her
20 employer, was not--was not an incident of employment in
21 any, any way and, and there's no evidence that it benefited
22 her employer in any way beyond the [unintelligible] the
23 value of the employee's health. The case really is more--
24 to the extent that any case, you know, it--[unintelligible]
25 to either Dixon or Holt is relevant or, or has facts

1 similar here or holding that relates to this. This is more
2 a Holt case than Dixon. You know, Dixon, the employee,
3 made [unintelligible] testify out and, and not--the, the
4 employee [unintelligible] was mandated by the employee, by
5 the employer, you know. A bike was given to the employee
6 by the employer and the [unintelligible] of the employee to
7 ride the bike during breaks or in off time to recreate, in
8 part because of the [unintelligible] nature of, of where
9 the employee was living and doing their work. And so,
10 Dixon was--you know, it is not a personal comfort case in
11 my view but it's closer to a personal comfort type
12 analysis. Whereas with Holt the, the employee chose to
13 live at its place of work, left the place of work to engage
14 in recreational activity, and became injured. And in Holt
15 the injury was deemed non-compensable. This is more of a
16 Holt scenario although there's an even pretty critical
17 distinguishing factor even there which is that this
18 employee didn't live near, near the worksite. I have not
19 read this case that Mr. Leslie [unintelligible] Costley,
20 but it seems to me that if, if the situation in Costley
21 that a miner going to live at the work site and setting up
22 a tent and then becoming injured, you know, that is more of
23 a Dixon type scenario. And, of course, here the claimant
24 wasn't living on the, the worksite at all. She just went
25 there for work every day and, and during the break chose

1 to--chose to leave and was injured with no relationship to
2 her employment at all other than the fact that she was on a
3 break and that is not enough under Nevada law to make the
4 claim compensable. Thank you, Your Honor.

5 APPEALS OFFICER: All right. Mr. Leslie, you
6 get the last word.

7 CLARK G. LESLIE: Thank you, sir. The first
8 comment I would like to address is when my honorable
9 opponent said that the personal comfort doctrine is limited
10 to travel. That cannot be more untrue if--than I if I
11 stood on a mountaintop and yelled that's not true. One
12 needs to look no further than the Dixon case itself where
13 the employee had been assigned to the particular laboratory
14 and then they had a bicycle there and they gave that
15 individual a bicycle to ride in the parking lot and that
16 employee became injured. That employee was not traveling.
17 The employee in the Costley case was not traveling. He had
18 already done his traveling and he was setting up his tent
19 for his personal comfort when he became injured. So, no,
20 this doctrine is not limited to travel and I would
21 challenge anyone to find a particular case or doc--or
22 treatise that says otherwise and that's equally true with
23 Larson. You will not find in Larson where that venerable
24 source says personal comfort doctrine is limited to the
25 travel cases. Anyway, we then heard an argument that,

1 well, any injury that occurs on a break, according--you
2 know, my, my opponent says Mr. Leslie is saying that if any
3 injury occurs on a break that the employer knows about then
4 it's a Workers' Compensation Claim. I didn't say that and
5 I'm not asserting that and that's not what happened here.
6 In here we have a specific instance where an employee must,
7 must take a break. That means that the employer is aware
8 for 15 minutes that employee's going to be in--you know,
9 engaged in who knows what type of activity, but they were
10 aware that many employees took the time to walk around the
11 Reno Livestock Center. And being a good employer, it
12 warned its employees that because of the construction going
13 on there they may wish to walk elsewhere. Those facts
14 alone pretty much neutralize every argument that was posed
15 by Mr. Foletta because we are talking about arising out of
16 in the course of employment. Now, there's another argument
17 posed that says that the risk was not accepted by the
18 employer and then the ancillary argument to that is this
19 does not provide a benefit to the employer. And again, two
20 things couldn't be more incorrect within the factual
21 context of this case. The employer did become aware that
22 there were risks involved with some of its employees
23 entertaining and exercising during the mandatory break, and
24 it took upon itself the responsibility of issuing a written
25 warning about where to walk and not walk to its employees.

1 That is not only an acknowledgement but an acceptance of
2 the certain risk because they are trying to avoid the place
3 that they thought was the most dangerous for their
4 employees and that was the Reno Livestock Center. And
5 secondly, you've heard this argument before, Your Honor.
6 You've--you know, you're a scholar. You've done the
7 reading. You know what the background is behind some of
8 these statutes. The thought behind mandatory breaks is that
9 it does provide a benefit to the employer. The employee
10 wants to come to work more if he or she knows they're gonna
11 get break. They get refreshed by the break. They, they
12 come back more bright-eyed and with more energy, so it's
13 long been recognized that giving employees breaks does
14 provide a benefit to the employer. Now, Mr. Foletta
15 correctly pointed out the Holt decision was mentioned in
16 Dixon. He didn't mention that Dixon overruled Holt. But
17 again, the important things to discern from Dixon and from
18 Costley and from Buma, is that there is a two-element
19 process to go through. Was the departure so substantial
20 that a temporary job termination may be inferred or was the
21 activity so unusual as to not be incidental to the
22 employment? That can happen to a fixed-base employee just
23 as much as an employee that travels. And the attempt to
24 shoehorn this case into travel cases is not what this case
25 is about and I would remind my esteemed colleague that's

1 not what the hearing officer went upon. This hearing
2 officer went upon the usual evaluation under Rio and under
3 Gorsey and, you know, basically it was this arising out of
4 and in the course of employment, nothing to do with travel
5 or anything else. But we take all of the facts and I'm,
6 I'm wrapping up here, Judge. When we take all of the
7 facts, number one, I am not alleging that all employment
8 activity known by the employer would constitute a Workers'
9 Compensation claim if an injury occurs. It has to fall
10 within the confines of Buma. Secondly, I challenge anyone
11 to find authority in Nevada that says that the personal
12 comfort doctrine is limited to traveling cases. That just
13 isn't true. The fact that it happens on travel cases maybe
14 more than most doesn't mean you can draw the conclusion
15 that only travel cases invoke the personal comfort
16 doctrine. This has nothing to do with coming and going and
17 that analysis doesn't apply here. Dixon does apply as does
18 Buma, and there is a benefit to the employer. And in
19 these instances, every court has held that there is arising
20 out of the employment when all of the fact that Miss
21 Hopkins was faced with and presents to this court have
22 occurred. Finally, we can discern from Mr. Foletta's
23 approach to this case that this is going to be a pure law
24 question. I, I think I agree with that. This is gonna
25 come down to how Your Honor interprets these cases and

1 whether you believe that she falls within or without either
2 of the personal doctrine--personal comfort doctrine or just
3 your understanding, Your Honor, of what arising out of and
4 in the course of employment means. When you look at all of
5 the connections between this injury and Miss Hopkins, her
6 employer, the contract, and where this injury occurred, how
7 it occurred, when it occurred, it is compelled that compels
8 the conclusion that this arose out of and in the course of
9 employment. And with that, I'll submit.

10 APPEALS OFFICER: All right. Thank you, Mr.
11 Leslie. That concludes the hearing. I'll note that it's
12 now 11:51 and we are off the record.
13 [end of record]

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CERTIFICATE OF TRANSCRIPT

I, Wendy Letner, as the Official Transcriber, hereby
Certify that the attached proceedings before the Judge,

In the Matter of the:		
Contested Industrial of:		Claim No: 19493J090454
Insurance Claim,		
		Hearing No: 2001962-JL
Of		
		Appeal No: 1917885-GB
SUSAN HOPKINS		
Claimant		

were held as herein appears and that this is the original transcript thereof and that the statements that appear in this transcript were transcribed by me to the best of my ability.

I further certify that this transcript is a true, complete and accurate record of the proceeding that took place in this matter on August 6, 2020 in Las Vegas, Nevada.

Wendy Letner
Precise Transcripts
October 30, 2020

1 CASE NO. CV20-01650

2 DEPT NO. 15

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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 * * * * *

9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

12 WASHOE COUNTY, CANNON COCHRAN
13 MANAGEMENT SERVICES, INC. dba
14 CCMSA; WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

15 Respondents.

16 _____/

17 CERTIFICATION OF TRANSMITTAL

18 I, EDWARD L. OUEILHE, III, Appeals Officer under the
19 Department of Administration, Hearing-Appeals Division, for the
20 State of Nevada, do hereby certify that the hereto attached
21 copy of the record contains and is a full, true, and correct
22 record of all entries made in my docket, as more particularly
23 set forth in the Index, relating to that certain cause
24 heretofore pending before me as such Appeals Officer, and that

25 . . .

26 . . .

27 . . .

28 . . .

1 the annexed and attached papers are all the process and other
2 papers and exhibits relating to the above-entitled action filed
3 with me.
4

5 APPEALS OFFICER

6 
7 EDWARD L. OUEILHE, III
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APPEALS OFFICE
1050 E. WILLIAM # 30
CARSON CITY NV 89 10

1 CASE NO. CV20-01650

2 DEPT NO. 15

3

4

5

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

8

* * * * *

9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

12 WASHOE COUNTY, CANNON COCHRAN
13 MANAGEMENT SERVICES, INC. dba
14 CCMSA; WASHOE COUNTY; and APPEALS
15 OFFICE of the DEPARTMENT OF
16 ADMINISTRATION,

17 Respondents.

18

19 **AFFIRMATION**
20 Pursuant to NRS 239B.030

21

22 The undersigned does hereby affirm that the following
23 document DOES NOT contain the social security number of any
24 person:

25

26 1. Certification of Transmittal

27

28 APPEALS OFFICER


EDWARD L. OUEILHE, III

29

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1 CASE NO. CV20-01650

2 DEPT NO. 15

3

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5

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

7 IN AND FOR THE COUNTY OF WASHOE

8 * * * * *

9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

12 WASHOE COUNTY, CANNON COCHRAN
13 MANAGEMENT SERVICES, INC. dba
14 CCMSA; WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

15 Respondents.

16
17 TRANSMITTAL OF RECORD ON APPEAL

18 TO: The Clerk of the Second Judicial District Court

19 Pursuant to NRS 233B.140, the transmittal of the
20 entire record on appeal in accordance with the Nevada
21 Administrative Procedure Act (Chapter 233B of NRS) is hereby
made as follows:

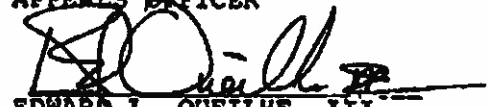
22 1. The entire record herein, including each and
23 every pleading, document, affidavit, order, decision, and
24 exhibit now on file with the Office of the Appeals Officer
25 under the Nevada Industrial Insurance Act, 1050 East William
26 Street, Suite 450, Carson City, Nevada, in the above-entitled
27 action.

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- 2. Transcript of proceedings.
- 1. This transmittal.

APPEALS OFFICER


EDWARD L. OUELHE, III

APPEALS OFFICE
1050 E. WILLIAM ST
CARSON CITY NV 89101

1 CASE NO. CV20-01650

2 DEPT NO. 15

3

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5

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

7 IN AND FOR THE COUNTY OF WASHOE

8 * * * * *

9 SUSAN HOPKINS,

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11 vs.

12 WASHOE COUNTY, CANNON COCHRAN
13 MANAGEMENT SERVICES, INC. dba
14 CCMSA, WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

15 Respondents.

16

AFFIRMATION
Pursuant to NRS 239B.030

17

18 The undersigned does hereby affirm that the following
19 document **DOES NOT** contain the social security number of any
person:

19

20 1. Transmittal of Record on Appeal

21

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27

APPEALS OFFICER



EDWARD L. OUELHE, III

APPEALS OFFICE
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4 cleslie@naiw.nv.gov
Attorney for Petitioner, Susan Hopkins
5
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 SUSAN HOPKINS,

11 Petitioner,

12 vs.

CASE NO. CV20-01650

13 CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
14 COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,
15

DEPT. NO. 15

16 Respondents.
17

18 NOTICE OF TRANSMITTAL OF RECORD OF PROCEEDINGS

19 In accordance with NRS 233B.131(1)(a), attached is a
20 certified copy of the Transcript of Proceedings before the
21 Honorable Edward L. Oueilhe, Appeals Officer, on August 6, 2020.
22
23
24
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28

Nevada Attorney for Incoming Records
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

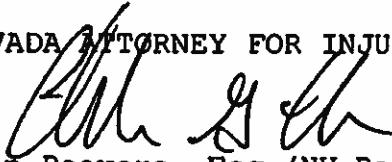
NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION

The undersigned affirms, pursuant to NAC 616C.303, that
no personal identifying information appears in this document.

DATED this 20th day of November, 2020.

NEVADA ATTORNEY FOR INJURED WORKERS



Evan Beavers, Esq. (NV Bar #3399)
Clark G. Leslie, Esq. (NV Bar #10124)
1000 East William, Suite 208
Carson City, Nevada 89701

Attorneys for Petitioner,
Susan Hopkins

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NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

DOCUMENT 1

DOCUMENT 1

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the:
Contested Industrial of
Insurance Claim,

Of

SUSAN HOPKINS,

Claimant

Claim No: 19493J090454

Hearing No: 2001962-JL

Appeal No: 2002596-ELO

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE
EDWARD L. OUEILHE, APPEALS OFFICER**

**AUGUST 6, 2020
11:07 AM**

**2200 SOUTH RANCHO DRIVE, SUITE 220
LAS VEGAS, NEVADA 89102**

Ordered by:

Transcribed By: Wendy Letner, Precise Transcripts

A P P E A R A N C E S

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3 On behalf of the Claimant:

4 Clark G. Leslie, Esq.

5 994 Hidden Brook Ct.

6 Minden, NV 89423-5185

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9 On behalf of the Insurer:

10 Lucas Foletta, Esq.

11 100 West Liberty Street, Tenth Floor

12 Reno, NV 89501

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I N D E X

<u>EXAMINATION</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Clark G. Leslie	11		29	
Lucas Foletta	23			

E X H I B I T S

<u>EVIDENCE</u>	<u>IDENTIFIED</u>	<u>ENTERED</u>
Exhibit Number 1	4	4
Exhibit Number 2	4	5

P R O C E E D I N G S

1
2 APPEALS OFFICER: Good day, gentlemen. Today
3 is August 6th, 2020. It is now 11:07 a.m. We are on the
4 record. I am appeals officer, Edward Oueilhe. This is
5 the date and time for the hearing in the matter of the
6 Contested Industrial Insurance Claim of Susan Hopkins,
7 appeal hearing number 2002596-ELO. Mr. Clark Leslie is
8 present representing the claimant, Susan Hopkins, by
9 telephone, and the claimant, Susan Hopkins, will be
10 testifying by telephone during, during witness testimony.
11 Appearing on behalf of the Employer, Washoe County, is
12 Lucas--Mr. Lucas Foletta. Mr. Foletta, is there anybody
13 present in your office or at your location with you?

14 LUCAS FOLETTA: No, there is not.

15 APPEALS OFFICER: Okay. And then I--as it was
16 indicated off the record, there will not be an employer
17 representative participating by phone today. Is that
18 correct?

19 LUCAS FOLETTA: Correct, Your Honor.

20 APPEALS OFFICER: Okay. This particular appeal
21 hearing arises as follows. On December 20th, 2019, the
22 claimant, Susan Hopkins, filed a request for hearing with the
23 hearing's division of CCMSI December 5th, 2019, claim denial
24 determination. The appeal at the hearing's level was
25 designated as hearing officer number 2001962-JL. A hearing

1 was held on January 13th, 2020. That was January 13th, 2020.
2 On January 16th, 2020, hearing officer Lewis entered a
3 decision and order affirming the claim denial. On February
4 18th, 2020, the claimant filed a request for hearing of
5 hearing officer Lewis' January 16th, 2020, decision and order.
6 That appeal is designated as appeal number 2002596-ELO which
7 we are here on today. Mr. Leslie, are you and your client
8 ready to proceed with the hearing today?

9 CLARK G. LESLIE: Yes, Your Honor, we are.

10 APPEALS OFFICER: And likewise, Mr. Foletta, are
11 you and your client ready to proceed with the hearing today?

12 LUCAS FOLETTA: Yes, Your Honor.

13 APPEALS OFFICER: Okay. I have a total of two
14 exhibit packets, the first being from the--from the claimant
15 which was filed on August 4th, 2020. It's identified as
16 Claimant's First--First Exhibit numbered pages one through
17 three. Are there any, any objections to Claimant's First
18 Exhibit numbered pages one through three?

19 LUCAS FOLETTA: No, Your Honor.

20 APPEALS OFFICER: Claimant's First Exhibit
21 numbered pages one through three is marked into ex-admitted as
22 Exhibit Number 1. In addition to that, on March 26th, 2020,
23 the employer filed a packet of documents with the appeals
24 office identified as Insurer's Documented Evidence numbered

1 pages one through 47. Are there any objections to Insurer's
2 Documented Evidence numbered pages one through 47?

3 CLARK G. LESLIE: No, Your Honor.

4 APPEALS OFFICER: Insurer's Documented Evidence
5 numbered pages one through 47 is marked and admitted as
6 Exhibit Number 2. Mr. Leslie, are there any other evidence
7 packets or documents that the claimant has--wishes to be
8 submitted into evidence today?

9 CLARK G. LESLIE: No, Your Honor

10 APPEALS OFFICER: Mr. Foletta, are there any
11 other--other evidence packets or documents that the
12 employer wishes to have submitted into evidence today?

13 LUCAS FOLETTA: No, Your Honor.

14 APPEALS OFFICER: Okay. And as far as proposed
15 witnesses today, we have the Claimant, Susan Hopkins. Is
16 that correct?

17 CLARK G. LESLIE: Yes.

18 APPEALS OFFICER: And is there anybody going to
19 be testifying on behalf of the employer, Mr. Foletta?

20 LUCAS FOLETTA: No.

21 APPEALS OFFICER: All right. Let's go ahead
22 and begin with opening statements. Mr. Leslie, as soon as
23 you're ready.

24 CLARK G. LESLIE: Thank you, Your Honor. Very
25 briefly, the evidence will show that a work-related injury

1 did occur on September the 24th that arose out of and in
2 the course of employment. There's very little dispute
3 about the injury itself, but the real question here is one
4 of a pure legal fact, a pure legal question, I believe. We
5 will establish that the case of Dixon vs. SIIS which can be
6 found at 111 Nevada 994, 1995, case, held that Nevada still
7 honors the personal comfort doctrine. And in the Dixon
8 case it was established that you can be engaged in activity
9 that is of a personal comfort nature and still fall within
10 the confines of the Worker's Compensation Act. Your Honor,
11 it--the evidence will show that on September the 24th of
12 2019 Miss Hopkins was taking a mandatory required break.
13 This was pursuant to her contract with Washoe County. She
14 had been about 50 feet to 75 feet from work when she
15 tripped over a documented defect in the sidewalk. Now she
16 had altered her route from where she usually walked during
17 this break period at the behest and the warning of her
18 employer, and we will do reference to the overhead diagram
19 of the plaintiff's exhibit--or, excuse me, applicant's
20 Exhibit 1, uh, which shows an overhead of the convention
21 area and other surrounding buildings. And the evidence
22 will show that the day before she was injured, the
23 employees were warned about construction going on at that
24 convention area and so she altered her route. Now, the
25 important thing about those facts is that the employer was

1 aware, acquiesced, and was involved in this mandatory break
2 process with its employees. My client went to the doctor.
3 It was determined she had fractured her right toe and she
4 also sustained an injury to her left hip. Now again, I
5 don't think there's much at issue here medically. She has
6 out-of-pocket expenses and saw some physicians and we can
7 talk about that. But finally, Your Honor, and then I will
8 conclude, only eight months ago, Justice Pickering issued a
9 decision in Buma, B as in boy, U-M-A, versus Providence
10 Corporate Development and it's at 553 Pacific Third, 904, a
11 December 12, 2019, case. And in that case, in terms of
12 determining course of employment issues and dis--
13 determining whether or not the motivated activity is or is
14 not within or without the employment arrangement, it was
15 held that under the personal comfort rule you will be
16 within your course of employment unless, number one, the
17 departure is so substantial that an intent to abandon the
18 job temporarily may be inferred, or number two, the
19 personal comfort is so unusual or unreasonable as to not
20 deem the act incidental to employment. Your Honor, the
21 evidence will show that she clearly didn't intend to
22 abandon her job, that she was only 50 feet away from her
23 work and she was engaging in an activity that her employer
24 encouraged and acquiesced in. And, of course, simply
25 taking a walk during a period of mandatory break cannot,

1 under the law, be deemed unusual or unreasonable. That
2 concludes our comments, Your Honor. Thank you.

3 APPEALS OFFICER: Mr. Foletta?

4 LUCAS FOLETTA: Thank you, Your Honor. We
5 intend to show that the hearing office appropriately
6 concluded that the evidence in this case before him [ph]
7 does support that the injury issue arose [unintelligible]
8 thereof, and we will show how neither Buma nor Dixon
9 applicable to the [unintelligible] case. Thank you.

10 APPEALS OFFICER: Thank you, gentleman. Just a
11 moment. All right. Let's go ahead and begin with witness
12 testimony. I'm gonna go ahead and get Mr.--Miss Hopkins on
13 the phone--the--so she may testify. Mr. Leslie, do you
14 have a phone number for her?

15 CLARK G. LESLIE: Yes, sir. I do. It's 775-
16 745-1964.

17 APPEALS OFFICER: All right. I'm gonna put
18 you both on hold. If--and get Miss Hopkins on the--on the
19 phone. And if something happens that the call gets
20 dropped, please do call back in.

21 CLARK G. LESLIE: Yes, sir.

22 APPEALS OFFICER: All right. It'll be just a
23 moment, gentlemen. [dials, rings]

24 SUSAN HOPKINS: Hello?

25 APPEALS OFFICER: Is this Susan Hopkins?

1 SUSAN HOPKINS: Yes, it is.

2 APPEALS OFFICER: Miss Hopkins, this is Appeals
3 Officer, Edward Oueilhe. We are actually on the record.
4 Your hearing has begun. You're attorney and the employee's
5 attorney have been already engaged in opening arguments.
6 We're--we're at the witness testimony portion of the
7 hearing and you're--you're attorney's indicated that you're
8 going to be testifying today. I am going to be
9 [unintelligible] back in into a three--into, actually, a
10 four-person conference call. If something happens that the
11 call gets dropped with you, I will call you back.

12 SUSAN HOPKINS: Okay, perfect. Thank you.

13 APPEALS OFFICER: Just a moment. All right.
14 I'm--we're all--I think we're all, all four of us are back.
15 Mr. Leslie, are you still there?

16 CLARK G. LESLIE: Yes, Your Honor

17 APPEALS OFFICER: And Miss Fal--Mr. Foletta,
18 are you there?

19 LUCAS FOLETTA: I am, Your Honor.

20 APPEALS OFFICER: Okay. And Miss Hopkins, you
21 are there? Is that correct?

22 SUSAN HOPKINS: Yes, yeah. Thank you.

23 APPEALS OFFICER: And you can hear me?

24 SUSAN HOPKINS: Yes, I can. Thank you.

1 APPEALS OFFICER: Okay. And you understand we
2 are on the record? We are--we've begun your hearing.
3 You understand that, correct?

4 SUSAN HOPKINS: Correct.

5 APPEALS OFFICER: Okay. Mr. Leslie has
6 indicated that he's called you as a witness today to
7 testify on your behalf. Before we begin with your witness
8 testimony I have a couple things I have to do. I need to
9 swear you in and I have some instructions for you. So,
10 let's start with swearing you in. Would you please raise
11 your right hand? Do you affirm or swear that the testimony
12 you're about to give is the truth, the whole truth, and
13 nothing but the truth?

14 SUSAN HOPKINS: Yes.

15 APPEALS OFFICER: You can put your right hand
16 down. I want you to know an audio recording of this
17 hearing's being--being made digitally today, so if a
18 transcript needs to be made in the future it can be. I
19 would ask you to please listen to the questions that you'll
20 be asked by the attorneys before you respond. Please give
21 an answer to the questions. If you do not hear the
22 question or do not understand the question, please ask the
23 attorney to restate the question. If some time during this
24 process you're unable to--we lose--we're unable to hear
25 everybody on the--on this four-party conference call,

1 please speak up and say so. If one of the attorneys makes
2 an objection during your testimony and you hear that
3 objection being made, please wait until I have ruled upon
4 that objection. I also will want you know if an objection
5 is made and you begin to answer, I will interrupt you and
6 rule upon that objection. Do you understand these
7 instructions?

8 SUSAN HOPKINS: Yes, I do.

9 APPEALS OFFICER: Okay. And would you please
10 state and spell your whole name for the record, please?

11 SUSAN HOPKINS: Susan Marie Hopkins, S-U-S-A-
12 N M-A-R-I-E H-O-P-K-I-N-S.

13 APPEALS OFFICER: All right. Thank you, Miss
14 Hopkins. Counsel, your witness.

15 CLARK G. LESLIE: Thank you, Your Honor. Miss
16 Hopkins, we--you've just stated your name so that we can go
17 beyond that. But in September of 2019 were you employed?

18 SUSAN HOPKINS: Yes, I was.

19 CLARK G. LESLIE: Who was your employer?

20 SUSAN HOPKINS: Washoe County Health
21 District.

22 CLARK G. LESLIE: And roughly, can you describe
23 for us on or where your place of work was located? The
24 address and things around it and do so forth?

1 SUSAN HOPKINS: We are at 1001 East 9th
2 Street, Building B as in boy. It is on--off of
3 [unintelligible] Avenue. Our building is off of
4 [unintelligible] Avenue and it's in between the Reno
5 Livestock Event Center and 9th Street.

6 CLARK G. LESLIE: Did--and just briefly, would
7 you describe for us what your job and job duties were with
8 Washoe County?

9 SUSAN HOPKINS: I am an office support
10 specialist with Washoe County and I work in environmental
11 health dealing with plans.

12 CLARK G. LESLIE: In the month of September,
13 did you take break time during your work hours?

14 SUSAN HOPKINS: I did. We--

15 CLARK G. LESLIE: Hold on. Hold on. Was there
16 a policy in place involving employees and Washoe County as
17 the employer in terms of mandatory break times?

18 SUSAN HOPKINS: Yes. We have a contract
19 through the Washoe County Employee's Association. We have
20 two paid 15-minutes breaks for every eight hours worked
21 that we just take, and--excuse me--in that eight-hour
22 timeframe.

23 CLARK G. LESLIE: All right. Now, as a matter
24 of custom, where did you usually--or how did you enjoy
25 yourself during these 15-minute breaks?

1 SUSAN HOPKINS: I would go walk and when I
2 would walk I would walk around the Reno Sparks Livestock
3 Event Center.

4 CLARK G. LESLIE: Stop there. Now, was there
5 something going on with the Reno Livestock Center that
6 prompted a warning from your employer?

7 SUSAN HOPKINS: Yes. Our security
8 administrator, Ben West, he sent out an e-mail the day
9 prior stating that for the safety of walkers during our
10 breaks that we are to avoid areas at the Reno Livestock
11 Event Center due to construction and heavy equipment.

12 CLARK G. LESLIE: All right. Now, we have
13 provided the judge with three documents, the overhead
14 picture of the livestock area, a picture that shows the
15 sidewalk, but the first page is a memorandum from Benjamin
16 West dated September the 23rd, and I asked you to have this
17 in front of you. Do you have that in front of you?

18 SUSAN HOPKINS: Yes.

19 CLARK G. LESLIE: Is that the warning that you
20 are referencing--that you just referenced in your
21 testimony?

22 SUSAN HOPKINS: Yes.

23 APPEALS OFFICER: All right. Now,
24 unfortunately, we don't have color, but we are talking
25 about red areas and green areas so that Judge Oueilhe can

1 better understand what we're talking about here. Put--if,
2 if I can ask you, please, Miss Hopkins, put the diagram
3 overhead in front of you. So, do you have that in front of
4 you?

5 SUSAN HOPKINS: Yes.

6 CLARK G. LESLIE: All right. Now, as best you
7 can, and let's not get too detailed, can you explain the
8 Judge Oueilhe where the red zones were marked by Mr. West?

9 SUSAN HOPKINS: The red zones are marked
10 around the rodeo arena, the main arena, and the livestock
11 pavilion.

12 CLARK G. LESLIE: Okay. Now, the green areas,
13 am I correct, they're not really depicted here on this
14 overhead?

15 SUSAN HOPKINS: They're on the outside of
16 those areas.

17 CLARK G. LESLIE: All right. Does this diagram
18 show exactly where you fell?

19 SUSAN HOPKINS: No, it does not.

20 CLARK G. LESLIE: All right. Now, let's talk
21 about the particular day in question. Were you at work on
22 September the 24th, 2019?

23 SUSAN HOPKINS: Yes.

24 CLARK G. LESLIE: Did you take a mandatory 15-
25 minute break on that day?

1 SUSAN HOPKINS: Yes.

2 CLARK G. LESLIE: And would you tell Judge
3 Oueilhe, please, what happened--which break was this, the
4 first or the second?

5 SUSAN HOPKINS: It was the first.

6 CLARK G. LESLIE: All right. So, this was in
7 the morning?

8 SUSAN HOPKINS: Yes.

9 CLARK G. LESLIE: Okay. What kind of shoes
10 were you wearing?

11 SUSAN HOPKINS: Tennis shoes.

12 CLARK G. LESLIE: Okay. So, when you took your
13 morning break on September the 24th, did something happen?

14 SUSAN HOPKINS: Yes.

15 CLARK G. LESLIE: Would you please describe for
16 Judge Oueilhe what happened to you while you were talking
17 on September the 24th.

18 SUSAN HOPKINS: I was walking and I tripped
19 over a sidewalk that was raised and fell.

20 CLARK G. LESLIE: I'll ask you to look at page
21 three of the documents we submitted to the judge. Can you
22 tell me what best fits in terms of the ruler and everything
23 else?

1 SUSAN HOPKINS: So, the ruler shows how
2 raised that the sidewalk was, approximately about an inch
3 raised.

4 CLARK G. LESLIE: All right. Where in relation
5 to your--the place that you worked was it that you tripped?

6 SUSAN HOPKINS: It was approximately 50 to 75
7 feet outside the back door of our building. I walked out
8 the back door and it was, like I said, approximately 50 to
9 75 feet outside that door.

10 CLARK G. LESLIE: Okay. Had anyone ever told
11 you not to work there--not to walk there?

12 SUSAN HOPKINS: No.

13 CLARK G. LESLIE: Okay. When you tripped what
14 happened to your body? Did it hit the ground completely?
15 Or describe what happened.

16 SUSAN HOPKINS: When I tripped I actually
17 kind of moved forward and landed on the ground on my body--
18 with my body.

19 CLARK G. LESLIE: Which foot tripped on the
20 raised sidewalk?

21 SUSAN HOPKINS: My right toe and my right
22 foot is what hit that section.

23 CLARK G. LESLIE: Okay.

24 SUSAN HOPKINS: And then I moved forward.

1 CLARK G. LESLIE: All right. Then did you
2 return to work after you--well, let me strike that. Were
3 you able to get up and move from the place where you fell?

4 SUSAN HOPKINS: Yes.

5 CLARK G. LESLIE: With difficulty?

6 SUSAN HOPKINS: Yes.

7 CLARK G. LESLIE: When you got to work was
8 anyone able--oh, let me strike that. Where did you go once
9 you picked yourself up and started moving?

10 SUSAN HOPKINS: I walked back to my office.

11 CLARK G. LESLIE: Okay. Was anyone there to
12 help you when you first walked in?

13 SUSAN HOPKINS: Yes.

14 CLARK G. LESLIE: Who helped you and what did
15 you do after that?

16 SUSAN HOPKINS: It was a couple of employees
17 helped me to my desk [ph].

18 CLARK G. LESLIE: Okay. Did you seek medical
19 care on that day?

20 SUSAN HOPKINS: I did.

21 CLARK G. LESLIE: Would you please tell the
22 judge where you went and what was provided to you?

23 SUSAN HOPKINS: I went to the Reno Orthopedic
24 Urgent Care off of Ion Drive in Sparks, Nevada.

1 CLARK G. LESLIE: And what did they do for you
2 and what did they tell you?

3 SUSAN HOPKINS: They took x-rays of my--they
4 took x-rays and they informed me that I had a nondisplaced
5 fracture of my right toe.

6 CLARK G. LESLIE: Did you also have complaints
7 or concerns about any other part of your body?

8 SUSAN HOPKINS: I--my hip--my left hip was
9 hurting and it kept giving out and they also took x-rays of
10 that and informed that I had a strain of muscle and tendon
11 of the left hip.

12 CLARK G. LESLIE: Following the treatment and
13 discussions you had with medical care providers on
14 September the 24th, have you had to seek or have you
15 obtained other medical care since that date?

16 SUSAN HOPKINS: Yes. I had two follow-up
17 appointments with Reno Orthopedics off of North Arlington
18 Avenue. I had a follow-up with an x-ray and then I had
19 another follow-up after that where--on a--on a later date.
20 So, one of the dates was 11/14 and I have another date, I
21 believe, October 10.

22 CLARK G. LESLIE: All right. Thank you. Have
23 you had to pay out of pocket for any of the care or
24 treatment you've received?

25 SUSAN HOPKINS: Yes.

1 CLARK G. LESLIE: Can you describe at least
2 approximately how much you are out of pocket for the
3 expenses that you believe you've incurred because of this
4 work injury?

5 SUSAN HOPKINS: Out of pocket would be 150
6 dollars.

7 CLARK G. LESLIE: All right. Thank you. Now,
8 do you anticipate having any further care or treatment of
9 any significance or are you pretty much through?

10 SUSAN HOPKINS: I believe I'm pretty much
11 through.

12 CLARK G. LESLIE: Did you miss any time from
13 work?

14 SUSAN HOPKINS: I did when I left that day.
15 I believe--I can't remember if I came back the next day or
16 not.

17 CLARK G. LESLIE: A week--

18 SUSAN HOPKINS: I think I was--I believe I
19 was off for three days.

20 CLARK G. LESLIE: All right. And then finally,
21 do you anticipate any significant treatment for the future?

22 SUSAN HOPKINS: No.

23 CLARK G. LESLIE: Your Honor, that concludes my
24 questions of Miss Hopkins at this time. I reserve the

1 privilege of being able to ask further questions upon your
2 agreement, Your Honor.

3 APPEALS OFFICER: All right. Okay. Mr.
4 Foletta, cross-examination.

5 LUCAS FOLETTA: Your Honor, I don't have any
6 questions for the witness.

7 APPEALS OFFICER: Okay. All right. Mr.
8 Leslie, do you have any additional questions?

9 CLARK G. LESLIE: No.

10 APPEALS OFFICER: Okay, and you've already
11 indicated you're, you're not calling any, any other
12 witnesses. Is that correct?

13 CLARK G. LESLIE: That is correct, sir.

14 APPEALS OFFICER: So, that's your case in
15 chief?

16 CLARK G. LESLIE: It is, sir. We rest.

17 APPEALS OFFICER: Oh, you rest. Okay. And
18 then the employer's already indicated they won't be calling
19 any witnesses. Is that correct?

20 LUCAS FOLETTA: Yes, sir.

21 APPEALS OFFICER: Miss Hopkins, you can remain
22 on the line--on, on this conference hearing call if you
23 wish. I'm going to ask that you mute your phone.
24 Otherwise, you could hang up. It's up to you.

1 SUSAN HOPKINS: Okay. I will stay on and
2 just mute my phone.

3 APPEALS OFFICER: All right. Thank you, ma'am.
4 Okay. Let's go ahead and begin with closing arguments.
5 Mr. Leslie, as soon as you are ready.

6 CLARK G. LESLIE: Thank you, Your Honor. I
7 believe we achieved what we had set out for and that was
8 establish that we fall within the confines of the personal
9 comfort doctrine. Actually, one case I did not mentioned
10 to you this all arose back in 1931. There's a case called
11 Costley versus Nevada Industrial Insurance Commission at 53
12 Nevada 219, and in that case, a miner's injury was deemed
13 to be arising out of the employment when he was erecting a
14 tent on the employer's premises the day before he was
15 beginning work. The tent was for his personal comfort and
16 they held that being injured while providing that for
17 himself so that he could do work would be within the
18 arising out of employment requirement. Also, at Larson's
19 [ph] in section 21.08, it's very clear from this treatise
20 that incidental inc--activities for personal comfort are
21 compensable unless they are unreasonable or they or of an
22 extraordinary duration or distance from work. And we
23 mentioned in, in the Buma case, the December 2019 decision
24 by Justice Pickering, that there were two things that had
25 to be established in order for the personal comfort

1 doctrine to apply to a claim. First, that the departure
2 was not so substantial that an intent to abandon would be
3 inferred, and second, that the, the activity was not
4 unusual and unreasonable. Here we have Miss Hopkins who
5 was engaged in a mandatory contractual break of 15 minutes.
6 The evidence, undisputed, stated that the day before she
7 was warned by a supervisor to not engage in any exercise or
8 personal comfort activities at the Reno Livestock Center
9 and her employer even went so far as to provide her with a
10 diagram marked in green and red as to where one could or
11 could not go. Miss Hopkins, on September the 24th, took
12 her mandatory break in the morning. Without any disputed
13 testimony, we heard that she said she left the building.
14 She was wearing sensible shoes. She was beginning her walk
15 and within 50 feet of where she worked she came upon this
16 defective sidewalk, struck her foot, fell, and ultimately
17 it was learned she fractured her foot. Well, the question
18 is, was the act of taking that walk a departure so
19 substantial that we could infer that she was leaving the
20 job? Or did that work, that activity, could it be defined
21 as so unusual or unreasonable that it could not be deemed
22 incidental to the employment? Well, again, taking a walk
23 during a mandatory break is about as benign and normal and
24 usual and anticipated as any activity could be. We have
25 established the predicate elements for the comfort

1 doctrine. We have shown that she was not intending to
2 abandon the job and she was not engaged in a weird type of
3 activity. So, starting from 1931 until as recent as eight
4 months ago, personal comfort doctrine has been a part of
5 Nevada law and I can't think of a case that would more
6 squarely fit within the four corners of that doctrine than
7 the activities of Miss Hopkins. That concludes our closing
8 statement, Your Honor.

9 APPEALS OFFICER: All right. Mr. Foletta.

10 LUCAS FOLETTA: Thank you, Your Honor. The--
11 I think I'll just start with the--where, where she left--
12 where we left off with [unintelligible] of that. Nothing
13 in Nevada case law makes the personal comfort doctrine
14 applicable in this instance. And [interposing]

15 APPEALS OFFICER: Mr., Mr. Foletta,
16 [interposing] I'm gonna stop--Mr. Foletta? I'm gonna stop
17 you because [interposing] I, I, I don't know if you need to
18 get nearer, nearer your speaker or something but you're
19 very low volume and I'm straining to he--I'm straining to
20 hear you. So, my fear is, is that this will not be
21 recorded, so please get closer and please maybe raise your
22 volume a little bit.

23 LUCAS FOLETTA: Understood. Is that--is that
24 better, Your Honor?

1 APPEALS OFFICER: Much better. Whatever you
2 did it worked. Go ahead.

3 LUCAS FOLETTA: Sure. [Interposing]

4 APPEALS OFFICER: And I'm, [interposing] I'm
5 gonna ask you to begin, start over, please, so we make sure
6 we have everything.

7 LUCAS FOLETTA: I will. I will. The
8 personal comfort doctrine is not applicable in this case,
9 and the--Mr. Leslie's argument essentially boils down to
10 any injury that an employee incurs while on a mandatory
11 break is compensable, notwithstanding the fact that that
12 injury is not related in any way to the--to the employee's
13 work. But it--it's the fact that the employee is on the
14 break which is the nexus between the employee, the injury,
15 and the employee's work which, in Mr. Leslie's argument
16 makes it compensable under Nevada law. But that's not the
17 case. The personal comfort doctrine arises out of travel
18 cases. There's no case where that doctrine has been
19 applied in the instance of an employee who sustained an
20 injury engaging in a personal activity during a work break.
21 They, they only have been applied in cases where the
22 employee has been traveling for work purposes. And in
23 those cases, the Nevada Supreme Court has made it clear
24 that the fact that the employee is traveling on account of
25 work is sufficient, in some cases, to establish a nexus

1 between the employee being [unintelligible] the work such
2 that the injury would be compensable within, within certain
3 confines that the Supreme Court sets forth. The, the Buma
4 case--the [unintelligible] in the Buma case said
5 specifically the majority rule that traveling employees are
6 in the course of employment continuously [ph] during their
7 business trips except during [unintelligible] departures on
8 personal errands is the majority rule. [Unintelligible]
9 such an employee's injury arising out of travel or work-
10 related risk including those associated [unintelligible]
11 personal need and navigating hazards necessary incidental
12 to the travel or work are usually compensable unless an
13 exception applies. In this case, the employee was not
14 traveling. The employee was simply at work in a normal
15 course and left to engage in a personal activity during the
16 break. The, the [unintelligible] because even if it were
17 arguable to apply, I don't believe that this case meets
18 that standard. In the [unintelligible] to determine
19 whether a traveling employee left the course of employment
20 by distinctly departing on a personal errand which includes
21 focuses [ph] on whether the employee was, a) attending
22 reasonably to the needs of the personal comfort or
23 encountering hazards necessarily incidental to the travel
24 or work or alternatively pursuing strictly personal
25 amusement ventures. In this case, the claimant was on a

1 work-related break. She was not mandated in any way by the
2 employer to, to walk in the area she walked in or to walk
3 at all. It was her personal choice to do that and she
4 exercised it. So, under the personal comfort doctrine, it-
5 -this injury is not compensable. The, the injury is--
6 although Mr. Leslie didn't really make these points, I want
7 to point on that he, under Gorsey [ph] the accident or
8 injury is said to arise out of employment when there's a
9 positive connection between the injury and the employee's
10 work. Gorsey further said a claimant must then
11 [unintelligible] that the origin of the injury is related
12 to some work involved within the scope of employment.
13 However, if an accident is not fairly traceable to the
14 nature of employment or the workplace environment, then the
15 injury cannot be said to arise out of the claimant's
16 [unintelligible] employment. On the document we have here,
17 there is no--there is nothing about this injury that
18 related to a risk within the scope of the talk [ph] of
19 employment. It was--it was a risk that manifested itself
20 to the extent that she chose to walk on her own during the
21 break. And the fact is [unintelligible] that the hearing
22 officer sided and found that this case fell within
23 [unintelligible] conditions of that case controls [ph]
24 here. The case really more is a coming and going case if
25 you want to think about it that way. And, of course,

1 [unintelligible] coming or going will preclude compensation
2 from the employee's injuries that occurred while away from
3 the workplace. That's [unintelligible]. The, the case is
4 not--is also not analogous to the extent--extent is not a
5 personal comfort doctrine case in my reviewing of it.
6 It's, it's a recreational activity case, and then--and as
7 you probably know, Dixon also sided with Holt which is a
8 kind of a--not really a companion but a related case. The,
9 the Holt court said recreational activity could only be
10 characterized within the course of employment if it is a
11 regular incident of employment or required by the employer
12 or a benefit to the employer, importantly beyond the
13 intangible value of the employee's health and morale common
14 to all kinds of recreation [unintelligible]. This is, of
15 course [unintelligible] that effect and, and that, I think,
16 language is relevant here in this case but really having
17 the, the claimant exercise her [unintelligible] to engage
18 in recreational activity outside of her workplace. And
19 that, that actually did not--was not mandated by her
20 employer, was not--was not an incident of employment in
21 any, any way and, and there's no evidence that it benefited
22 her employer in any way beyond the [unintelligible] the
23 value of the employee's health. The case really is more--
24 to the extent that any case, you know, it--[unintelligible]
25 to either Dixon or Holt is relevant or, or has facts

1 similar here or holding that relates to this. This is more
2 a Holt case than Dixon. You know, Dixon, the employee,
3 made [unintelligible] testify out and, and not--the, the
4 employee [unintelligible] was mandated by the employee, by
5 the employer, you know. A bike was given to the employee
6 by the employer and the [unintelligible] of the employee to
7 ride the bike during breaks or in off time to recreate, in
8 part because of the [unintelligible] nature of, of where
9 the employee was living and doing their work. And so,
10 Dixon was--you know, it is not a personal comfort case in
11 my view but it's closer to a personal comfort type
12 analysis. Whereas with Holt the, the employee chose to
13 live at its place of work, left the place of work to engage
14 in recreational activity, and became injured. And in Holt
15 the injury was deemed non-compensable. This is more of a
16 Holt scenario although there's an even pretty critical
17 distinguishing factor even there which is that this
18 employee didn't live near, near the worksite. I have not
19 read this case that Mr. Leslie [unintelligible] Costley,
20 but it seems to me that if, if the situation in Costley
21 that a miner going to live at the work site and setting up
22 a tent and then becoming injured, you know, that is more of
23 a Dixon type scenario. And, of course, here the claimant
24 wasn't living on the, the worksite at all. She just went
25 there for work every day and, and during the break chose

1 to--chose to leave and was injured with no relationship to
2 her employment at all other than the fact that she was on a
3 break and that is not enough under Nevada law to make the
4 claim compensable. Thank you, Your Honor.

5 APPEALS OFFICER: All right. Mr. Leslie, you
6 get the last word.

7 CLARK G. LESLIE: Thank you, sir. The first
8 comment I would like to address is when my honorable
9 opponent said that the personal comfort doctrine is limited
10 to travel. That cannot be more untrue if--than I if I
11 stood on a mountaintop and yelled that's not true. One
12 needs to look no further than the Dixon case itself where
13 the employee had been assigned to the particular laboratory
14 and then they had a bicycle there and they gave that
15 individual a bicycle to ride in the parking lot and that
16 employee became injured. That employee was not traveling.
17 The employee in the Costley case was not traveling. He had
18 already done his traveling and he was setting up his tent
19 for his personal comfort when he became injured. So, no,
20 this doctrine is not limited to travel and I would
21 challenge anyone to find a particular case or doc--or
22 treatise that says otherwise and that's equally true with
23 Larson. You will not find in Larson where that venerable
24 source says personal comfort doctrine is limited to the
25 travel cases. Anyway, we then heard an argument that,

1 well, any injury that occurs on a break, according--you
2 know, my, my opponent says Mr. Leslie is saying that if any
3 injury occurs on a break that the employer knows about then
4 it's a Workers' Compensation Claim. I didn't say that and
5 I'm not asserting that and that's not what happened here.
6 In here we have a specific instance where an employee must,
7 must take a break. That means that the employer is aware
8 for 15 minutes that employee's going to be in--you know,
9 engaged in who knows what type of activity, but they were
10 aware that many employees took the time to walk around the
11 Reno Livestock Center. And being a good employer, it
12 warned its employees that because of the construction going
13 on there they may wish to walk elsewhere. Those facts
14 alone pretty much neutralize every argument that was posed
15 by Mr. Foletta because we are talking about arising out of
16 in the course of employment. Now, there's another argument
17 posed that says that the risk was not accepted by the
18 employer and then the ancillary argument to that is this
19 does not provide a benefit to the employer. And again, two
20 things couldn't be more incorrect within the factual
21 context of this case. The employer did become aware that
22 there were risks involved with some of its employees
23 entertaining and exercising during the mandatory break, and
24 it took upon itself the responsibility of issuing a written
25 warning about where to walk and not walk to its employees.

1 That is not only an acknowledgement but an acceptance of
2 the certain risk because they are trying to avoid the place
3 that they thought was the most dangerous for their
4 employees and that was the Reno Livestock Center. And
5 secondly, you've heard this argument before, Your Honor.
6 You've--you know, you're a scholar. You've done the
7 reading. You know what the background is behind some of
8 these statutes. The thought behind mandatory breaks is that
9 it does provide a benefit to the employer. The employee
10 wants to come to work more if he or she knows they're gonna
11 get break. They get refreshed by the break. They, they
12 come back more bright-eyed and with more energy, so it's
13 long been recognized that giving employees breaks does
14 provide a benefit to the employer. Now, Mr. Foletta
15 correctly pointed out the Holt decision was mentioned in
16 Dixon. He didn't mention that Dixon overruled Holt. But
17 again, the important things to discern from Dixon and from
18 Costley and from Buma, is that there is a two-element
19 process to go through. Was the departure so substantial
20 that a temporary job termination may be inferred or was the
21 activity so unusual as to not be incidental to the
22 employment? That can happen to a fixed-base employee just
23 as much as an employee that travels. And the attempt to
24 shoehorn this case into travel cases is not what this case
25 is about and I would remind my esteemed colleague that's

1 not what the hearing officer went upon. This hearing
2 officer went upon the usual evaluation under Rio and under
3 Gorsey and, you know, basically it was this arising out of
4 and in the course of employment, nothing to do with travel
5 or anything else. But we take all of the facts and I'm,
6 I'm wrapping up here, Judge. When we take all of the
7 facts, number one, I am not alleging that all employment
8 activity known by the employer would constitute a Workers'
9 Compensation claim if an injury occurs. It has to fall
10 within the confines of Buma. Secondly, I challenge anyone
11 to find authority in Nevada that says that the personal
12 comfort doctrine is limited to traveling cases. That just
13 isn't true. The fact that it happens on travel cases maybe
14 more than most doesn't mean you can draw the conclusion
15 that only travel cases invoke the personal comfort
16 doctrine. This has nothing to do with coming and going and
17 that analysis doesn't apply here. Dixon does apply as does
18 Buma, and there is a benefit to the employer. And in
19 these instances, every court has held that there is arising
20 out of the employment when all of the fact that Miss
21 Hopkins was faced with and presents to this court have
22 occurred. Finally, we can discern from Mr. Foletta's
23 approach to this case that this is going to be a pure law
24 question. I, I think I agree with that. This is gonna
25 come down to how Your Honor interprets these cases and

1 whether you believe that she falls within or without either
2 of the personal doctrine--personal comfort doctrine or just
3 your understanding, Your Honor, of what arising out of and
4 in the course of employment means. When you look at all of
5 the connections between this injury and Miss Hopkins, her
6 employer, the contract, and where this injury occurred, how
7 it occurred, when it occurred, it is compelled that compels
8 the conclusion that this arose out of and in the course of
9 employment. And with that, I'll submit.

10 APPEALS OFFICER: All right. Thank you, Mr.
11 Leslie. That concludes the hearing. I'll note that it's
12 now 11:51 and we are off the record.
13 [end of record]

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CERTIFICATE OF TRANSCRIPT

I, Wendy Letner, as the Official Transcriber, hereby
Certify that the attached proceedings before the Judge,

In the Matter of the:	Claim No: 19493J090454
Contested Industrial of:	Hearing No: 2001962-JL
Insurance Claim,	Appeal No: 1917885-GB
Of	
SUSAN HOPKINS	
Claimant	

were held as herein appears and that this is the original transcript thereof and that the statements that appear in this transcript were transcribed by me to the best of my ability.

I further certify that this transcript is a true, complete and accurate record of the proceeding that took place in this matter on August 6, 2020 in Las Vegas, Nevada.

Wendy Letner

Wendy Letner
Precise Transcripts
October 30, 2020

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing NOTICE OF TRANSMITTAL OF RECORD OF PROCEEDINGS was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

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

SUSAN HOPKINS,

Petitioner,

vs.

CASE NO. CV20-01650

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

DEPT. NO. 15

Respondents.

PETITIONER'S OPENING BRIEF

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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SUSAN HOPKINS,

Petitioner,

CASE NO. CV20-01650

vs.

DEPT. NO. 15

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

Respondents.

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

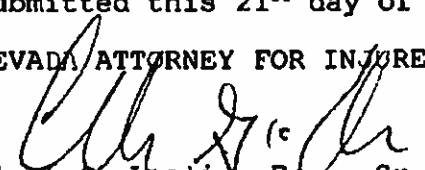
Petitioner's parent corporations: None.

Firms having appeared: Nevada Attorney for Injured Workers.

Petitioner's pseudonyms: None.

Submitted this 21st day of December, 2020.

NEVADA ATTORNEY FOR INJURED WORKERS


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1 I. JURISDICTIONAL STATEMENT

2 A. Basis for District Court Jurisdiction

3 This appeal is brought before this Court because NRS
4 233B.130(2)(b) provides that appeals from administrative decisions
5 must be appealed to the district court, in this instance the Second
6 Judicial District Court, because the Petitioner resides within
7 Washoe County.

8 B. Relevant filing dates

9 A final decision in the matter now being appealed was
10 filed September 25, 2020. Thereafter, Claimant/Appellant filed a
11 Petition for Judicial Review on October 16, 2020.

12 C. Final Order

13 The appeals officer's Decision and Order of September 25,
14 2020 was a final judgment and this Decision disposed of all issues
15 brought before the Appeals Officer in the underlying workers'
16 compensation claim.

17 II. STATEMENT OF THE ISSUES

18 1. Did the appeals officer err and violate NRS
19 233B.135(d)(e) and (f) and NRS 616C.150 in ruling that the
20 Petitioner failed to establish by a preponderance of evidence that
21 she was injured in the course and scope of her employment?

22 2. Was it error for the appeals officer to conclude
23 that, "[Petitioner] has not provided evidence of an employment
24 related risk or neutral risk that subjected her to a greater risk
25 than the general public due to her employment, [and therefore] the
26 Claimant failed to prove her injury arose out of her employment"?

27 3. Was it error for the appeals officer to categorize
28 the activity that injured the Petitioner as "recreational?"

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1 **III. STATEMENT OF THE CASE**

2 A workers' compensation claim was initiated on September
3 23, 2019 when a C-4 Form was filed by the treating medical
4 facility, Reno Orthopedic Clinic - Urgent Care. (ROA 57).

5 A hearing before a hearing officer was conducted on
6 January 13, 2020 on the issue of the insurer's determination
7 (CCMSI) of "claim denial." (ROA 125). The hearing officer
8 "Affirmed" CCMSI's determination to deny the claim. The Decision
9 and Order stated, in part: "the Hearing Officer finds the evidence
10 fails to support that the injury arose out of the Claimant's
11 employment and conditions thereof." *Id.*

12 A timely "Request for Hearing" was filed by Ms. Hopkins.
13 (ROA 116). A hearing was thereafter conducted on August 6, 2020
14 before the Hon. Edward Oueilhe, appeals officer. (ROA 1). On
15 September 25, 2020 the appeals officer issued and filed the
16 "Appeals Officer Decision" setting forth the Findings of Fact and
17 Conclusions of Law (ROA 1, et seq.).

18 Ms. Hopkins filed her timely Petition for Judicial Review
19 on October 16, 2020.

20 **IV. STATEMENT OF FACTS**

21 The Claimant in this workers' compensation claim is Susan
22 Hopkins who was employed by the Washoe County Health District
23 ("Washoe") on the date of her injury, September 23, 2019. Ms.
24 Hopkins provided 'office-support' services for her employer. (ROA
25 2).

26 Ms. Hopkins' union had secured for its employees two
27 mandatory break periods. (ROA 1, 21). Ms. Hopkins availed herself
28 of this accommodation by walking in an area adjacent to where she

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1 worked for Washoe. (ROA 22). The areas near Ms. Hopkins' office
2 offered several places where a brief walk could be accomplished.
3 (ROA 22, 46, 120 [best reproduction]).

4 Of significance (see *infra*), no evidence was presented by
5 Washoe that would have prevented it from denying outside access to
6 employees while they engaged in their break time. Washoe did not
7 prevent employees from walking any place they chose but did
8 "encourage" certain places to walk and places to avoid.

9 One such walking area, the Reno-Sparks Livestock Events
10 Center ("RSLEC"), was undergoing construction; the construction
11 activities were such that Ms. Hopkins' employer warned its
12 employees of the possible dangers posed by the construction in an
13 e-mail dated September 23, 2019 - the day before Ms. Hopkins was
14 injured. (ROA 45).

15 Washoe sent an e-mail to all its employees that outlined,
16 in red ink, the areas to be avoided by employees who were walkers
17 during break time. In addition, this e-mail then mapped in a green
18 color an area where an employee on a break could walk safely. (ROA
19 120).¹

20 The absence of coloring in the exhibit requires this
21 explanation: The areas marked in red extended from the bottom of
22 the chart extending north to the left of the Main Arena and
23 Livestock Pavilion up and over to the east to the Cutting Arena and
24

25 ¹ The copy of the exhibit that is part of the record does
26 not show the red or green colors that were mapped by Ms. Hopkins'
27 employer. However, the colors were not an issue at the hearing as
28 all parties and the appeals officer had copies that showed the
colors of red and green to indicate areas that should be avoided
and those that should be used for walking during a work break.

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1 Temporary Stalls then south and to the east of the Permanent Barns
2 to the Rodeo Office where there were locked gates. See Testimony of
3 Hopkins, ROA at 23.

4 Ms. Hopkins noted that the diagram had red zones around
5 "the rodeo arena, the main arena, and the livestock pavilion." *Id.*
6 Also, the testimony was that the diagram did not indicate the place
7 where the injury occurred. The injury occurred "approximately 50 to
8 75 feet outside the back door of our building." That building is
9 located south of the RSLEC Administration building shown on the
10 map.

11 The green areas deemed safe to walk included the areas
12 outside of the areas marked in red and the sidewalk that is located
13 at the bottom of the map near the "RSLEC Administration" building
14 that runs east to west. However, in an abundance of caution, Ms.
15 Hopkins avoided the RSLEC entirely and walked on a sidewalk just to
16 the south of the RSLEC approximately 50 to 75 feet. (ROA 25).

17 Specifically, on September 23, 2019 Ms. Hopkins began her
18 morning break time by engaging in her usual walk. (ROA 3). In
19 accordance with her employer's warning and suggestion, Ms. Hopkins
20 began her walk by avoiding the areas in red and, instead, walked on
21 a sidewalk adjacent to the RSLEC Administration Office outside of
22 the "red" zone. (ROA 120).

23 In the course of walking on her mandatory break Ms.
24 Hopkins tripped over a defect in the sidewalk (1 inch rise in
25 cracked asphalt, see ROA 3, 121). After struggling back to the
26 workplace, Ms. Hopkins obtained assistance to seek treatment for
27 her injury. (ROA 26-27). Ms. Hopkins sustained a non-displaced
28 ...

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1 right great toe fracture and left hip strain. (ROA 3, 27, 57, 69-
2 71).

3 On the date of the injury the treating medical facility,
4 Reno Orthopedic Clinic - Urgent Care, generated a "C-4 Form" that,
5 *inter alia*, forms the foundation for a workers' compensation claim.
6 (ROA 57).

7 V. SUMMARY OF THE ARGUMENT

8 It was reversible error to ignore the control and
9 influence Washoe had on the events leading up to Ms. Hopkins'
10 injury. It was arbitrary for the appeals officer to ignore facts
11 that demonstrated the presence of an employment risk and that
12 Washoe exerted an element of control over its employees during
13 their break time. And, specifically, it was reversible error to
14 find there was no liability "because the Claimant was walking for
15 her own recreation and enjoyment."

16 Characterizing Ms. Hopkins' act of walking during her
17 mandatory break time as "recreation and enjoyment" is an erroneous
18 conclusion in view of the break time being a contractually mandated
19 event that the employer must provide to Ms. Hopkins in the course
20 of her employment with Washoe. This error is of such a fundamental
21 nature as to constitute grounds for reversal by itself.

22 In addition, this conclusion by the appeals officer
23 ignores the degree to which Washoe had insinuated itself into the
24 break time enjoyed by Ms. Hopkins and other employees.

25 The Decision and Order rendered this appeal one that
26 evaluates "risk." See ROA 6. The 'personal comfort' rule and 'going
27 and coming' doctrine are subsumed by the decision of the appeals
28 officer that expressly frames the issue in terms of employment and

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1 neutral risks faced by Ms. Hopkins when compared with the general
2 public.

3 The situation that Ms. Hopkins faced on September 24,
4 2019 was an employment risk when she went for her morning walk. The
5 activity was conducted in her capacity as an employee while under
6 the control of the employer.

7 The court in *Phillips* counsels: "employment-related risks
8 are 'all the obvious kinds of injur[ies] that one thinks of at once
9 as industrial injur[ies]' and are generally compensable. (Citation
10 omitted). Slips and falls that are due to employment risks 'include
11 tripping on a defect at employer's premises or *falling on uneven or*
12 *slippery ground at the work site* (emphasis added)." See *Rio All*
13 *Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 351, 240 P.3d 2
14 (2010).

15 By influence and encouragement, Washoe limited the areas
16 where Ms. Hopkins would walk during her break. The facts supporting
17 this conclusion were both unchallenged and not considered by the
18 appeals officer. This was clear error in the context of an
19 employer's risk and the question of whether an injury 'arose out
20 of' the employment.

21 The Decision and Order erroneously fails to find the fact
22 that Ms. Hopkins was "on the clock" when she was injured to be of
23 any significance thus missing entirely the importance of how her
24 employment status at the time of her injury demonstrates employer
25 control over the break time.

26 The appeals officer failed to perform the necessary
27 analysis that *Phillips* required, for example, a determination of
28 whether, in view of Ms. Hopkins being expressly advised by her

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1 employer of where to walk and what places were to be avoided, she
2 faced an employment risk because she was being influenced by Washoe
3 as to places where she could walk safely and places to avoid due to
4 danger at and near the RSLEC.

5 The risk faced by Ms. Hopkins on September 24, 2019 arose
6 from her job with Washoe; Ms. Hopkins faced an employment risk
7 every time she took her break that was mandated by her employer
8 where Washoe acted to direct where its employees should walk. The
9 actions of Washoe put Ms. Hopkins in harms' way by directly
10 influencing the path of her walk. The failure of the appeals
11 officer to factor in the control that the employer had of Ms.
12 Hopkins' mandatory break was clear error.

13 Washoe argues that Ms. Hopkins was only required to take
14 a break, not to do so by walking.

15 However, this view is blind to the fact that Washoe knew
16 that Ms. Hopkins and other employees walked during their break
17 time. Washoe was aware of one potential area of risk and warned
18 people to avoid the RSLEC. Washoe did not discourage walking nor
19 did it limit break times to specified areas, thus, Washoe had
20 control over the break time process.

21 It was clear error to not rule upon or even consider the
22 control element of Washoe's involvement in Ms. Hopkins' break time.
23 As the case law below counsels, an employment risk that arises out
24 of the employment relationship is compensable when the risk is
25 attributable to the injured worker's job and workplace.

26 By not barring walking as an activity to be enjoyed by
27 employees during their break time (or to not specify specific
28 places to walk during a break) Washoe elected to accept an

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1 employment risk as to the environment where walking was conducted
2 by its employees. Washoe even took steps to warn of potential
3 danger yet it now argues it has no involvement with Ms. Hopkins'
4 injury.

5 The Decision and Order expressly raises the question of
6 whether an employment risk existed at the time and place of Ms.
7 Hopkins' injury. The facts that established the existence of
8 employment risks that were faced by Ms. Hopkins when she walked
9 near her workplace were never applied in the manner statutes and
10 case law required - this failure to apply the evidence in
11 accordance with the law violates NRS 233B.135.

12 Here, the entirety of the evidence determined that Ms.
13 Hopkins was engaged in a work activity when she was injured - a
14 contractually-mandated break. She faced an employment risk when she
15 sustained her injury on a public street on September 24, 2019. This
16 is not akin to an employee injured during a lunch break or while
17 engaged in an after-work exercise session. Rather, the injury at
18 issue occurred while Ms. Hopkins was "on the clock" and doing an
19 activity her employer was contractually required to provide.

20 **VI. ARGUMENT**

21 **A. Standard of Review**

22 The court "reviews an administrative body's decision for
23 clear error or an arbitrary abuse of discretion." *Constr. Indus.*
24 *Workers' Comp. Group v. Chalue*, 119 Nev. 348, 74 P.3d 595, 597
25 (2003). Purely legal questions are reviewed de novo but a decision
26 based on fact-based conclusions will not be disturbed if the
27 conclusions are supported by substantial evidence. *Grover C. Dils*
28 *Med. Ctr. v. Menditto*, 121 Nev. 278, 112 P.3d 1093 (2005).

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1 Our courts review the appeals officer's view of the facts
2 deferentially, NRS 233B.135(3), but decide questions of law
3 independently. *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138
4 P.3d 507, 510 (2006). Questions of law include questions of
5 statutory interpretation. *Id.*

6 An appeals officer's decisions and orders are not
7 reversible unless the Petitioner demonstrates that the decision
8 is clearly erroneous in view of the reliable, probative and
9 substantial evidence, or, that the decision was arbitrary,
10 capricious or characterized by abuse of discretion. See NRS
11 233B.135 (d) (f).

12 A decision that lacks support in the form of substantial
13 evidence is arbitrary and capricious and, thus, an abuse of
14 discretion warranting reversal. NRS 233B.135(3); *Cannon Cochran*
15 *Mgmt. Servs. v. Figueroa*, 468 P.3d 827, 829, 136 Nev. Adv. Rep. 51,
16 (July 30, 2020).

17 Here, Ms. Hopkins presented uncontested evidence that was
18 sufficient for a reasonable mind to conclude that she was entitled
19 to benefits in accordance with the NIIA. The uncontested testimony
20 under oath established that she was mandated by her employer to
21 take breaks while at work and during work hours - unlike lunch time
22 breaks.

23 This injury arose out of and in the course of Ms.
24 Hopkins' employment. The authorities below establish that it was
25 error to ignore the involvement of the employer in relation to the
26 break time activities of Ms. Hopkins. This key element, when
27 properly applied, acts to support liability. Because Washoe's
28 control over the break time was essentially ignored by the appeals

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1 officer a clear error occurred that warrants reversal or a remand
2 on the issue of employer's control.

3 **B. 'Arose out of' and 'in the course of' employment**

4 **1. 'In the course of' employment.**

5 Here, the analysis of whether an injury arose out of and
6 in the course of employment is a two-pronged analysis. Determining
7 if the injury came about 'in the course of' the employment is a
8 simple determination of the time and place of the injury, i.e., did
9 the injury occur during work hours, at the work place, or while the
10 employee is performing work duties. See *Wood v. Safeway*, 121 Nev.
11 724, 121 P.3d 1026(2005).

12 In this claim, Ms. Hopkins was clearly 'in the course' of
13 her employment when exercising her mandatory break time by walking
14 in an area deemed safe by her employer who knew of, acquiesced and
15 even assisted its employees in their daily walking. The site of the
16 injury was a sidewalk adjacent to the workplace and was not an area
17 deemed a risk or dangerous by Washoe. See ROA 21-26.

18 **2. 'Arising out of' employment**

19 Determining this factor of liability requires a risk
20 analysis. Our appellate courts have established three types or
21 categories of risk: employment risk; personal risk; and, neutral
22 or mixed risk. See generally *Baiguen v. Harrah's Las Vegas LLC*,
23 426 P.3d 586, 591, 134 Nev. Adv. Rep. 71 (2018):

24 *Employment risk: a risk of harm is an "employment risk"*
25 *if it is one that is clearly linked to the job - "machinery*
26 *breaking, objects falling, explosives exploding, tractors tipping,*
27 *fingers getting caught in gears, excavations caving in, and so on";*
28 *Id. at 590-591.*

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1 *Personal risk*: a risk of injury that is personal or
2 individual to the worker - "personal conditions and illnesses, such
3 as falling at work due to 'a bad knee, epilepsy, or multiple
4 sclerosis.'" *id.*

5 *Neutral or Mixed risk*: risks that are "neither an
6 employment risk nor a personal one, such as a fall that is not
7 attributable to premise defects or a personal condition." *id.*
8 Larson describes a "neutral" risk as a worker in the middle of a
9 factory yard may be struck by lightening or struck by a stray
10 bullet out of nowhere; a "mixed" risk example from Larson's
11 treatises would be "a person with a weak heart who dies because of
12 strain occasioned by the employment."

13 Relative to 'arising out of' employment, several
14 doctrines have been articulated to allow for liability if certain
15 facts are present. These doctrines are grounded in a risk analysis
16 that assists in determining whether the act leading to an injury
17 was causally related to work. This inquiry is pertinent to the
18 issue *sub judice*.

19 Two of these doctrines, the 'personal comfort' rule and
20 the 'going and coming' rule were voiced throughout the hearing by
21 both parties and, later, the appeals officer in the Decision and
22 Order. However, the appeals officer has framed the issue as one of
23 whether there is, *inter alia*, an employment risk that affords
24 liability in favor of Ms. Hopkins.

25 Nonetheless, these doctrines offer concepts voiced by our
26 judiciary that are instructive and applicable to Ms. Hopkins'

27
28 ² Larson, *Larson's Workers' Compensation Law*, §§3.03D, 4.03.

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1 claim. The concepts expressed in the 'personal comfort' and 'going
2 and coming' rules have applicability in the determination that an
3 error occurred when the appeals officer mischaracterizes the
4 activity at issue as one of "recreation and enjoyment."

5 The facts demonstrate that Washoe was contractually
6 required to provide Ms. Hopkins and others a break from work
7 duties. This fact means that Ms. Hopkins is still engaged in
8 employment activities when taking her break.

9 This evidence was erroneously applied to the claim and
10 improperly interpreted. Characterizing Ms. Hopkins' walking
11 activity as "recreation" casts an incorrect light over the
12 activity that arose from a contractual mandate for a break time.
13 Ms. Hopkins' activity when she was injured was not akin to a volley
14 ball game during lunch; it was, instead, a contractually compelled
15 activity that was acknowledged and acquiesced by Washoe.

16 The failure to weigh the impact of this acknowledgment
17 and acquiescence of the employer in the Decision and Order is clear
18 error and an arbitrariness as to the application of relevant
19 evidence.

20 Washoe never successfully demonstrated why a "traveling"
21 employee like Buma, see *infra*, could engage in recreational
22 activities on a non-work day and obtain benefits while an employee
23 such as Ms. Hopkins, also away from the physical workplace but
24 injured on a work day, is not afforded a similar consideration as
25 to personal comfort when, in the latter instance, the activity away
26

27 See ROA 6: "Claimant was walking for her own recreation
28 and enjoyment.")

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1 from work is both contractually required and known to the employer
2 as occurring.

3 (a) 'Personal comfort' rule

4 The personal comfort rule was recognized by our Supreme
5 Court in *Buma v. Providence Corp.* Dev. 453 P.3d 904, 135 Nev. Adv.
6 Rep. 60 (Dec. 12, 2019). In that matter the injured employee worked
7 from his home in Reno and routinely traveled on out-of-state
8 business. Mr. Buma's work included going to an oil and gas
9 conference in Houston, Texas where he would stay with a
10 friend/affiliate of the employer as he had previously.

11 Prior to giving a presentation on Monday morning at 8:30
12 a.m., Mr. Buma and his friend, with whom he was staying, went on an
13 ATV ride around the property on Sunday, the day prior to the
14 presentation. While engaged in this recreational activity Mr. Buma
15 rolled the ATV and died at the scene. *Id.* at 906-907.

16 A workers' compensation claim was filed and denied at the
17 hearing officer, appeals officer and district court levels. The
18 appeals officer analyzed the claim by utilizing the 'going and
19 coming' rule. *Id.* at 907.

20 NRS 616B.612(3) created a "traveling employee" rule and,
21 upon proper application of the statute, the Supreme Court found the
22 basis to conclude that the injury occurred while Mr. Buma was in
23 the course of his employment. The facts were likened to the
24 traveling employee who is injured while taking a walk around hotel
25 grounds when away from home or the home office. *Id.* at 908.

26 Buma provided guidance in several areas relevant to the
27 issues raised by Ms. Hopkins' appeal. The court in *Buma* stated that
28 its purpose for the opinion was to "define a principle which will

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1 tell us where the line is to be drawn" as to when an employee that
2 is traveling will be within the ambit of his or her employment.

3 Buma concluded that, "traveling employees are deemed in
4 their employers' control, as a practical matter, for the duration
5 of their trips. Several courts have hence simplified the
6 traveling-employee inquiry ...to a question of general
7 reasonableness. (Citation omitted)." *Id.* at 908.

8 On a smaller but no less relevant scale, walking upon a
9 defective sidewalk while engaged in a mandatory work break is a
10 form of being away from the physical work place but still under the
11 control of the employer. The off-site walking by Ms. Hopkins was
12 somewhat similar to a traveling employee. This similarity allows
13 for recognizing the concept of "control" by the employer over the
14 employee during a period when the employee is not present at the
15 physical address of the employee.

16 The court in *Buma* then stated that "This court has
17 recognized that employees on special errands/missions may deviate
18 from the course of their employment (citations omitted)." *Id.*

19 Also, the *Buma* court was compelled to find that:

20 [A] traveling employee is in the course of
21 employment continuously for the duration of
22 the trip, excepting the employee's distinct
23 departures on personal errands. To determine
24 whether a traveling employee left the course
25 of employment by distinctly departing on a
26 personal errand, the inquiry focuses on
27 whether the employee was (a) tending
28 reasonably to the needs of personal comfort,
or encountering hazards necessarily
incidental to the travel or work; or,
alternatively, (b) pursuing . . . strictly
personal amusement ventures. (Citation
omitted). The focus is on the nature of the
activity and the activity's purpose,

...

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1 considered in the context of the work and the
2 trip, rather than the [travel] status of the
employee (emphasis added).

3 *Buma*, at 909, internal punctuation omitted for clarity.

4 Ms. Hopkins was as encouraged by her employer to stop
5 work and leave the office itself as was the employee in *Buma* who
6 elected to attend a gas conference in Houston and then chose to
7 ride an ATV on a non-work day. The logic of *Buma* extends to Ms.
8 Hopkins' claim in relation to focusing on the nature of the
9 activity and control over the employee by the employer when the
10 employee is physically absent from the workplace.

11 This court also expounded on the scope of the 'personal
12 comfort' doctrine when it stated:

13 [U]nder the personal comfort rule, an
14 employee remains in the course of employment
15 during personal comfort activities unless the
16 departure from the employee's work-related
17 duties "is so substantial that an intent to
18 abandon the job temporarily may be inferred
19 or the method chosen" to minister to one's
20 personal comfort "is so unusual and
21 unreasonable that the act cannot be
22 considered incidental to the course of
23 employment." *Ball Foster*, 177 P.3d at 700.
24 Generally, "[t]he personal comfort doctrine
25 applies to such acts as eating, resting,
26 drinking, going to the bathroom, smoking, and
27 seeking fresh air, coolness, or warmth." *Id.*
28 The class "of activities covered by the
personal comfort doctrine depends on the
particular circumstances of employment"

23 *Buma* at 909-910.

24 Once more, the language of the court is instructive as to
25 work activities that are not deemed a deviation from work when an
26 employee seeks to minister to his or her personal comfort. These
27 activities are within the employer-employee context in several
28 situations including that of the traveling employee, the going and

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1 coming employee (see *infra*) and an employee who is engaged in an
2 activity known to and acquiesced by the employer while under the
3 aegis of the employer.

4 In the context of the Decision and Order it is apparent
5 that these concepts of control of an employee by the employer and
6 an extension of that control when the employee is physically absent
7 from the workplace was not ruled upon or even considered by the
8 appeals officer. This error was of a nature to affect the outcome
9 of the decision and is therefore reversible.

10 (b) 'Going and coming' rule.

11 The most recent iteration of the 'going and coming' rule
12 is set forth in *Cannon Cochran Mgmt. Servs. V. Figueroa*, 468 P.3d
13 827, 829, 136 Nev. Adv. Rep. 51, (July 30, 2020):

14 This court has recognized a general rule,
15 known as the "'going and coming' rule,
16 [which] preclud[ed] compensation for most
17 employee injuries that occur during travel to
18 or from work." *MGM Mirage v. Cotton*, 121 Nev.
19 396, 399, 116 P.3d 56, 58 (2005). However,
20 the going-and-coming rule has exceptions.
21 *Tighe*, 110 Nev. at 635-36, 877 P.2d at 1035.
22 One exception, known as the distinct-benefit
23 exception, provides that an employee may
24 still be in the course of employment when
25 going or coming if the employee's travel
26 "confers a distinct benefit upon the
27 employer." *Id.* at 635, 877 P.2d at 1035.

28 The record reflects the presence of a benefit to the
employer. For example, the employer provided a document to Ms.
Hopkins and other employees that was entitled *The Top 5 Free Ways*
to Increase Employee Physical Activity. See ROA 124. This
document's header shows a date that it was downloaded (2/14/20) and
that it was "From: Washoe County."

...

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1 This notice expressly advises the employer to encourage
2 walks and to "Provide a map of 15-minute walking routes around the
3 office and property." *Id.* The employee is prompted to seek further
4 information from the Centers for Disease Control and Prevention's
5 Healthier Worksite Initiative (HWI). These programs are designed to
6 reduce time lost from work due to illness/disease and to promote
7 work efficiency - all to the benefit of the employer.

8 The benefit incurred upon Washoe by the contractually
9 mandated break times was not referenced by the appeals officer.

10 In *MGM Mirage v. Cotton*, 121 Nev. 396, 116 P.3d 56 (2005)
11 the court offered further illustration of the going and coming rule
12 in this decision involving an employee who was injured while
13 walking through her employer's parking lot 10 minutes before her
14 scheduled shift. She tripped over a curb in the employer's parking
15 lot and sustained a fracture to her ankle.

16 Unlike Ms. Hopkins, the claimant in *Cotton* was injured
17 "prior to the claimant being on the clock." *Id.* at 398, see e.g.
18 Ms. Hopkins' testimony at ROA 96: "This incident occurred on paid
19 time...this was not my lunch hour which is not compensated for."

20 But, similar to Ms. Hopkins, the injury to Ms. Cotton
21 occurred on the sidewalk and curb as it led to the entrance of the
22 MGM building. Ms. Hopkins was on a city sidewalk immediately
23 adjacent to her workplace when she injured herself.

24 In ruling in favor of the injured worker in *Cotton* the
25 Supreme Court noted:

26 When an employee has use of the employer's
27 premises, for example, for parking, the
28 employee must necessarily have a reasonable
margin of time and space in going and coming
between her automobile and work. (Citation

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1 omitted) Under a parking lot or
2 premises-related exception to the going and
3 coming rule, injuries sustained on the
4 employer's premises while the employee is
5 proceeding to or from work, within a
reasonable time, are sufficiently connected
with the employment to have occurred "in the
course of employment. (Citations omitted)"

6 Cotton, 121 Nev. at 400.

7 Here we have a similar but beguiling wrinkle in the
8 facts. Ms. Hopkins was on a defective city street when injured. She
9 was intending to walk in a manner that would take her away from
10 work and then return her to the door of her workplace. She was in
11 an area that was known and acceptable to the employer. This
12 activity was engaged directly because Ms. Hopkins' employer is
13 required to provide her with a break time.

14 These facts "are sufficiently connected with the
15 employment" to have arisen in the course of employment. The
16 Decision and Order, and therefore the decision to deny benefits to
17 Ms. Hopkins, is in error and should be reversed because the
18 totality of the circumstances evidenced a sufficient connection
19 with Ms. Hopkins' employment as to allow for liability. These
20 factors demonstrating a "sufficient connection" to Ms. Hopkins'
21 employment with Washoe when she was in the act of taking her break
22 are patently absent in the Decision and Order.

23 3. The holding in *Gorsky* and *Phillips*

24 One decision cited to by Washoe as a rationale for
25 denying Ms. Hopkins' claim is the decision in *Rio Suite Hotel &*
26 *Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997). See ROA 92.

27 ...

28 ...

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1 In Gorsky, the claimant was a poker dealer. While en
2 route to "clock out" from his work duties he fell in a hallway and
3 injured his knees and back. The claim was denied by the insurer. No
4 defect or third party led to the injury but it was offered that Mr.
5 Gorsky's preexisting multiple sclerosis caused his fall. Also, Mr.
6 Gorsky could not recall his condition at the time he fell and
7 others testified that they had seen him fall on previous occasions
8 for no apparent reason.

9 This decision bears no resemblance to Ms. Hopkins' claim.
10 Here, the cause of the fall was a defective sidewalk and Ms.
11 Hopkins was in a zone of danger or risk because her employer was
12 required to provide her with time away from her work and she was
13 encouraged to walk in the area where the injury occurred. Unlike
14 Gorsky, who likely fell due to having multiple sclerosis, Ms.
15 Hopkins fell while on a break and purportedly walking in an area of
16 safety per the advice of Washoe.

17 However, in another fall and injury claim again involving
18 employer Rio Suite Hotel, a claim was filed and found to be within
19 the parameters of the Nevada Industrial Insurance Act. See
20 *Phillips, supra*. In *Phillips* the injury was deemed compensable
21 under facts similar to but also specifically different as to the
22 risk analysis, see *supra*.

23 In *Phillips*, as in *Gorsky*, the employee was a poker and
24 blackjack dealer. Ms. Phillips was in the course of taking her
25 first break (also mandatory by union rules) by walking down stairs
26 that led to the employees' break room. While using the stairs Ms.
27 Phillips fell and fractured her ankle. Her claim for workers'
28 compensation benefits was denied at the hearing level but granted

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1 upon appeal to the appeals officer. The district court affirmed the
2 decision of the appeals officer.

3 The court emphasized that "We take this opportunity to
4 clarify that determining the type of risk faced by the employee is
5 an important first step in analyzing whether the employee's injury
6 arose out of her employment." *Phillips, supra*, at 350.

7 Critical to *Phillips* were several determinations made as
8 to risk. First, the facts determined that Ms. Phillips was required
9 to use a specific staircase not accessible by the public for her
10 rest periods. She fell and sustained an injury while on the
11 staircase.

12 The risk analysis established that the claimant in
13 Phillips was exposed to a risk far greater than that faced by the
14 public in the casino where the injury occurred. That determination
15 is no less true in this claim where Ms. Hopkins was essentially
16 'funneled' or 'conveyed' to the area where she was hurt by the
17 directives of her employer.

18 The question of whether mandated rest periods that put an
19 injured worker in an area of risk gives rise to an employment risk
20 was not properly analyzed or decided. The requirement that Washoe
21 provide two mandatory break periods and the employer's knowledge
22 that there were areas of risk adjacent to the workplace where
23 employees were known to walk is a key factor favoring
24 compensability. This fact erroneously does not appear in the
25 Decision and Order.

26 ...
27 ...
28 ...

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1 But it is the overall presentation of the facts and law
2 that compel a reversal or remand of this claim. A proper risk
3 analysis never occurred. The effort to try and fit this claim into
4 one category or another is not the proper approach to this claim.
5 It was error for the risk analysis to be applied when key facts are
6 ignored, when a mandated activity is carelessly labeled as
7 "recreational," and, for the finding that the claim did not arise
8 out of the course of employment.

9 **VII. CONCLUSION**

10 The facts in this claim suggested the use of the
11 'personal comfort' doctrine but also had elements of the 'going and
12 coming' rule to support compensability. However, Ms. Hopkins was
13 not a 'traveling' employee nor was there a specified errand or
14 special work mission that was engaged in by the claimant at the
15 time of the injury.

16 A risk analysis was compelled by law; the appeals officer
17 erroneously did not provide a risk analysis that correctly and
18 properly considered the relevant evidence as to the employer's
19 control and the mandatory nature of the break time.

20 The facts support recovery for workers' compensation
21 benefits because when the proper risk analysis is utilized it
22 becomes apparent that the injury arose out of and in the course of
23 Ms. Hopkins' employment.

24 Ms. Hopkins faced an employment risk that led directly to
25 the work injury she suffered on September 24, 2019. She was "on the
26 clock" when she sustained her injury and the facts of how and where
27 she was injured compel recovery of NIIA benefits.

28 ...

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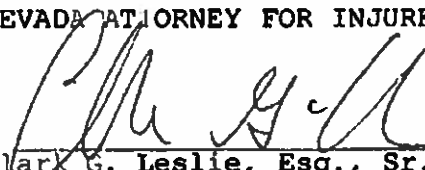
1 The appeals officer erred because the activity of Ms.
2 Hopkins when she was not injured cannot be dismissed as
3 "recreational" when the totality of the facts and evidence is
4 considered. The appeals officer ignored critical facts and evidence
5 demonstrating a causal link between the injury and Ms. Hopkins'
6 work.

7 The employer's control, the mandatory nature of the break
8 time and the influence of the employer over the events that led to
9 the injury were improperly ignored. The finding of the activity at
10 issue as being "recreational" is clear error requiring reversal or
11 remand to correct the denial of benefits.

12 DATED this 21 day of December, 2020.

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CERTIFICATE OF COMPLIANCE

(NRAP 28.2)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

____ This brief has been prepared in a proportionally spaced typeface using [state name and version of word processing program] in font [state font size and name of type style] or

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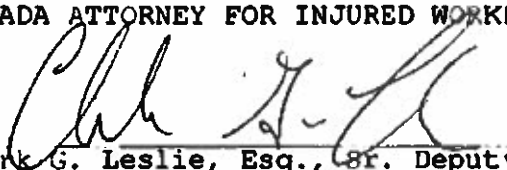
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 23(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter

1 relied on is to be found. I understand that I may be subject to
2 sanctions in the event that the accompanying brief is not in
3 conformity with the requirements of the Nevada Rules of Appellate
4 Procedure.

5 Respectfully Submitted this 21st day of December, 2020.

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12
13 AFFIRMATION

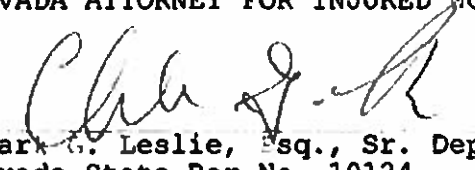
14 Pursuant to NRS 239B.030:

15 The undersigned does hereby affirm that the preceding
16 Petitioner's Opening Brief filed in the Second Judicial District
17 Court of the State of Nevada does not contain Personal Information
18 as defined by NRS 603A.040.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing PETITIONER'S OPENING BRIEF was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

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

12 **IN AND FOR THE COUNTY OF WASHOE**

13 SUSAN HOPKINS,

14 Petitioner,

15 vs.

Case No: CV20-01650

16 CANNON COCHRAN MANAGEMENT
17 SERVICES, INC. dba CCMSI; WASHOE
18 COUNTY; and APPEALS OFFICE of the
19 DEPARTMENT OF ADMINISTRATION,

Dept. No: 15

20 Respondents.

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DISCLOSURE STATEMENT

Pursuant to NRS 233B.133(5), NRAP 28, and NRAP 26.1, the undersigned counsel of record certify that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

With respect to the self-insured employer Washoe County ("Employer"), no disclosure is necessary as it is a governmental party.

With respect to Cannon Cochran Management Services, Inc. ("CCMSI"), it has no parent companies and no party owns 10% or more in stock in the company.

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

Dated this 20th day of January, 2021.

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1	The Appeals Officer applied this fact to the four types of risks employees might encounter at	
2	work under both <i>Rio All Suites Hotel & Casino v. Phillips</i> , 126 Nev. 346, 230 P.3d 2 (2010)	
3	and <i>Baiguen v. Harrah's Las Vegas, LLC</i> , 134 Nev. Adv. Rep. 71,	
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ISSUE STATEMENT

Petitioner Susan Hopkins ("Claimant") petitions for judicial review of the decision in AO2002596-ELO. At issue in AO2002596-ELO was the Hearing Officer's January 16, 2020 decision ("HO Decision") affirming the December 5, 2019 determination issued by the self-insured Employer's third party administrator, Cannon Cochran Management Services, Inc. ("CCMSI"), denying the workers' compensation claim at issue. The December 5, 2019 determination letter issued by CCMSI notified Claimant that her claim was denied pursuant to NRS 616C.150. NRS 616C.150 requires that an employee establish by preponderance of evidence that an injury arose out of and in the course of employment. On September 25, 2020, the Appeals Officer issued a decision affirming the HO Decision and affirming the underlying determination ("Decision"). The issue here is whether the Appeals Officer erred by finding that Claimant had not met her burden under NRS 616C.150(1) to demonstrate that her injury occurred as a direct result of the duties that arose out of and in the course of her employment and therefore did not suffer a compensable industrial injury.

STATEMENT OF THE CASE

This matter involves a workers' compensation claim filed by Claimant for an injury that occurred on September 24, 2019, at which time she was hurt while walking during a break from her employment with Respondent Washoe County Health District "County"). Claimant appealed this determination. On January 16, 2020, after a hearing, the Hearing Officer affirmed CCMSI's determination. Claimant appealed. An appeal hearing was conducted on August 6, 2020 where Claimant provided witness testimony and evidence admitted as Exhibits 1 and 2. The Appeals Officer affirmed the Hearing Officer's decision thereby affirming CCMSI's determination denying the workers' compensation claim. Claimant now seeks judicial review of the Appeals Officer's order contending that the Appeals Officer misapplied the facts to the law and erroneously concluded that Claimant's injury was not compensable.

///

///

STATEMENT OF FACTS

I. BACKGROUND FACTS

A. Claimant's Injury

Claimant works as an office support specialist for the Washoe County Health District in the environmental health services division. (ROA 21.) The Health District offices are located adjacent to the Washoe County Fairgrounds and the Reno-Sparks Livestock Events Center ("RSLEC"). (ROA 46.) Claimant often chose to walk at the RSLEC during her breaks. (ROA 21-22.) On September 23, 2019, the County warned 9th Street employees, including Claimant, who walked during breaks to avoid the area of the RSLEC due to construction and heavy equipment in and around the area. (ROA 45-46.) The email did not require employees to walk during their breaks and warned "[a]s always use caution and be aware of your surroundings." (ROA 45.)

On September 24, 2019, Claimant took her morning break from work. (ROA 21, 23-24.) She chose to go for a walk during her break. (ROA 24.) She exited the back door of her workplace and, approximately 50 to 75 feet outside the door, she tripped over a raised sidewalk and fell. (ROA 24-25.) Claimant then returned to her office and to her desk with the assistance of her co-workers. (ROA 26.)

On the day of her injury, Claimant treated at Reno Orthopedic Clinic and completed a Form C-4 claim for workers' compensation and report of initial treatment. (ROA 57-58.) Her supervisor completed notice of injury and report of injury forms. (ROA 59-61.) On September 27, 2019, Claimant returned for follow-up at Reno Orthopedic Clinic and was diagnosed with left hip strain and a non-displaced fracture of the right great toe. (ROA 69-72.) On October 3, 2019, CCMSI issued a determination letter denying the workers' compensation claim on the basis that Claimant did not meet her burden to establish that the injury arose out of and in the course of her employment. (ROA 80.)

II. PROCEDURAL HISTORY

Claimant appealed CCMSI's October 3, 2019 determination to the Hearings Division of the Department of Administration, and on November 14, 2019 the Hearing Officer entered a Decision

1 and Order remanding the determination and instructing the insurer to review new documentation
2 submitted by Claimant and issue a new determination regarding claim compensability. (ROA 38-
3 39.) Pursuant to the Hearing Officer Decision, CCMSI reviewed the documentation and issued a
4 new determination letter on December 5, 2019, denying the claim under NRS 616C.150 for failure
5 to establish that the injury arose out of and in the course of employment. (ROA 92-93.)

6 Claimant appealed CCMSI's December 5, 2019 determination letter, and a hearing was
7 conducted before a Hearings Officer on January 13, 2020. (ROA 95.) The Hearing Officer issued
8 a Decision and Order affirming the determinations and finding "the evidence fails to support that
9 the injury arose out of the Claimant's employment and the conditions thereof." (ROA 95.)

10 An appeal hearing was held on August 6, 2020. (ROA 9-43.) Claimant provided witness
11 testimony at the appeal hearing and Exhibits 1 and 2 were admitted into evidence. (ROA 18-29,
12 44-98.) On September 25, 2020, the Appeals Officer issued a Decision finding no causal
13 connection between Claimant's injury and the nature of her work or workplace. (ROA 3.) The
14 Appeals Officer found Claimant's "walking and tripping was not an employment related risk
15 because the Claimant was walking for her own recreation and enjoyment. The Employer did not
16 create an employment related risk by permitting the Claimant to walk around a public office facility
17 that was open to the public." (ROA 6.) The Appeals Officer concluded that "[t]he weight of the
18 evidence and legal authority support legal conclusion that the Claimant failed to satisfy NRS
19 616C.150(1), and she did not suffer a compensable industrial injury on September 24, 2019."
20 (ROA 7.) On October 14, 2020, Claimant filed the instant petition for judicial review seeking
21 review by this Court of the September 25, 2020 Appeals Officer Decision.

22 ARGUMENT SUMMARY

23 At a threshold matter, Claimant mischaracterizes the Appeals Officer Decision claiming that
24 Appeals Officer ignored facts demonstrating the Employer's control over its employees during
25 breaks. (Opening Br. at 5.) The Decision includes a factual finding that Claimant walked during
26 "scheduled *mandatory* breaks" and further found that the Employer had warned employees via
27 email to avoid walking in certain areas due to construction and heavy equipment. (ROA 2)

1 (emphasis added). Claimant further contends that, because her break time was contractually
2 mandated, the Appeals Officer erroneously concluded that she was walking for “recreation and
3 enjoyment” and therefore it was error to find that Claimant’s injury was not compensable under
4 NRS 616C.150(1). (Opening Br. at 5.) These factual findings and fact-based conclusions of law
5 cannot be disturbed on appeal and must be given deference. Claimant requests that this Court
6 substitute its opinion for that of the Appeals Officer as to the application of the evidence to the law.
7 This is impermissible when a mixed question of law and fact is at issue. *See* NRS 233B.135(3)
8 (“The court shall not substitute its judgment for that of the agency as to the weight of evidence on a
9 question of fact.”).

10 Claimant also asserts that the Appeals Officer failed to analyze whether Claimant faced an
11 employment risk because she was influenced by the Employer as to where she could walk safely.
12 This is wrong. The Appeals Officer applied this fact to the four types of risks employees might
13 encounter at work under both *Rio All Suites Hotel & Casino v. Phillips*, 126 Nev. 346, 230 P.3d 2
14 (2010) and *Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 436 P.3d 586 (2018), and
15 concluded that Claimant had not provided evidence demonstrating that her injury was an
16 employment related risk or a neutral risk that subjected her to a greater risk than the general public
17 due to her employment.

18 The substantial evidence fully supports the Appeals Officer’s application of the facts to the
19 law. Although the Employer was contractually mandated to provide Claimant with scheduled
20 breaks and warned employees as to where they could walk safely, the Appeals Officer correctly
21 applied the relevant statutes and case law to conclude that the Employer did not create an
22 employment related risk by permitting the Claimant to walk around a public office facility that was
23 open to the public. (ROA 6.)

24 Finally, the Appeals Officer correctly applied NRS 616C.150(1) in finding that Claimant
25 had not shown by preponderance of the evidence that her injury arose out of and in the course of
26 her employment. So, Claimant incorrectly insists that the Appeals Officer violated NRS
27 233B.135(3)(d)(e) and (f). Her contention that the Appeals Officer erred by failing to consider the
28

facts evincing the Employer's control over the Claimant during mandatory break periods and that she was "on the clock" is refuted by the plain language of the Decision. Thus, Claimant cannot satisfy NRS 233B.135 Subsections (d), (e), and (f) which require a showing that the Appeals Officer Decision is "[a]ffected by other error of law," is "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record," or is "[a]rbitrary or capricious or characterized by abuse of discretion." NRS 233B.135(3). With the Appeals Officer Decision supported by the substantial evidence and the law, there is no basis to grant review and the Petition for Judicial Review should be denied.

ARGUMENT

I. STANDARD OF REVIEW

A court may set aside a final decision of an agency if the decision is clearly erroneous in view of the substantial evidence, arbitrary, capricious, in violation of statute, characterized by an abuse of discretion or affected by error of law. NRS 233B.135(3); *Ranieri v. Catholic Community Services*, 111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995). In reviewing a mixed question of law and fact, an appellate court gives deference to the lower court's findings of fact but independently reviews whether those facts satisfy the applicable legal standard. *See Hernandez v. State*, 124 Nev. 639, 647, 188 P.3d 1126, 1132 (2008) (abrogated on other grounds by *State v. Eighth Jud. Dist. Ct.*, 134 Nev. 104, 412 P.3d 18 (2018)). An "agency's fact-based conclusions of law 'are entitled to deference, and will not be disturbed if they are supported by substantial evidence.'" *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 78, 383-84 (2008) (internal citation omitted). "*Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion, and [the court] may not reweigh the evidence or revisit an appeals officer's credibility determination.*" *Id.* at 362, 184 P.3d at 384 (emphasis added). While a "district court is free to decide purely legal questions without deference to an agency determination, *the agency's conclusions of law, which will necessarily be closely related to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are supported by substantial evidence.*" *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (internal citation

omitted) (emphasis added).

II. THE APPEALS OFFICER CORRECTLY CONCLUDED THAT CLAIMANT'S INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF HER EMPLOYMENT

Under the Nevada Industrial Insurance Act ("NIIA"):

An injured employee or the dependents of the injured employee are *not entitled* to receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS *unless the employee or the dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment.*

NRS 616C.150(1). As the Appeals Officer observed in the Decision, the NIIA does not make an employer absolutely liable. (ROA 3) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005)).

The Appeals Officer properly applied *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997)¹ to determine whether the Claimant's injury "arose out of" and "in the course of" her employment. The Nevada Supreme Court has held that an injury arises out of one's employment when there is a causal connection between the employee's injury and the nature of the work or workplace. *Gorsky*, 113 Nev. at 605, 939 P.2d at 1046. In contrast, whether an injury occurs within the course of the employment refers merely to the time and place of employment, *i.e.*, whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. Both of these factors must be satisfied in order for an injury to be compensable under the NIIA. *See MGM Mirage v. Cotton*, 121 Nev. 396, 400, 116 P.3d 56, 58 (2005) (explaining "that the inquiry is two-fold").

A. The Appeals Officer properly applied the facts to the law in finding that Claimant's injury did not "Arise Out of" her employment.

In order for an injury to "arise out of" employment under NRS 616C.150(1), "the employee must show that the origin of the injury is related to some risk involved within the scope of employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d. 2, 5 (2010)

¹ Claimant also argues that *Gorsky* is inapposite because the claimant's fall in *Gorsky* was caused by preexisting multiple sclerosis. However, the Appeals Officer did not compare the facts of *Gorsky* to the facts in this case. Rather, he applied the Nevada Supreme Court's holding *Gorsky* which set forth the facts to consider in determining when an injury "arises out of" and is "in the course of" employment.

1 (quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005)). To
2 “arise out of the claimant’s employment” the injury must be “fairly traceable to the nature of the
3 employment or workplace environment.” *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. The Appeals
4 Officer properly applied these holdings to consider whether Claimant’s injury “arose of out” her
5 employment. (ROA 5.)

6 The Appeals Officer considered the four types of workplace risk relevant to workers’
7 compensation under Nevada law: (1) employment risk, (2) personal risk, (3) neutral risk, and (4)
8 mixed risk. See *Baiguen v. Harrah’s Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588
9 (2018). Employment risks arise out of the employment. *Id.* at 590. They are solely related to the
10 employment and include obvious industrial injuries. See *Phillips*, 126 Nev. at 351, 240 P.3d at 5;
11 see also 1 Arthur Larson and Lex K. Larson, *Larson’s Workers’ Compensation Law* § 4.01, at 4-2
12 (rev. ed. 2017) (classic employment risks include “machinery breaking, objects falling, explosives
13 exploding tractor tipping, fingers getting caught in gears, excavations caving in, and so on” as well
14 as “occupational diseases”). Personal risks do not arise out of the employment. *Phillips*, 126 Nev.
15 at 351, 240 P.3d at 6. Personal risks include injuries caused by personal conditions and illnesses,
16 such as falling at work due to “a bad knee, epilepsy, or multiple sclerosis.” *Phillips*, 126 Nev. at
17 351, 240 P.3d at 5; see also Larson supra § 4.02, 4-2 (examples of personal risks include dying a
18 natural death the effects of disease or internal weakness and death by “mortal personal enemy”).

19 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a fall
20 that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351, 240
21 P.3d at 5; see also Larson, supra § 4.03, at 4-2 (examples of neutral risks include
22 hit by a stray bullet out of nowhere, bit by a mad dog stabbed by a lunatic running amuck,” acts of
23 God and unknown causes). A neutral risk arises out of the employment if the employee was
24 subjected to a greater risk than the general public due to the employment. See *Phillips*, 126 Nev. at
25 353, 240 P.3d at 7 (adopting the increased-risk test).

26 In *Phillips*, the claimant fell and broke her ankle on the stairs to the employee break room.
27 *Id.* The claimant was required to use that staircase by her employer and the staircase was not
28

1 accessible to the general public. *Id.* at 354. Thus, the Nevada Supreme Court applied the neutral
2 risk analysis to the claimant's injury and found that it arose out of her employment and was
3 therefore compensable because "the frequency with which she was required to use the stairs
4 subjected her to a significantly greater risk of injury than the risk faced by the general public." *Id.*

5 Here, Claimant contends that, like the claimant in *Phillips*, she was "essentially 'funneled'
6 or 'conveyed'" to the sidewalk where she tripped and fell. (Opening Br. at 20.) This comparison is
7 not apt. The sidewalk where the Claimant was injured was accessible to the public, and the
8 Employer did not require the Claimant to walk on that sidewalk for her mandatory break period.
9 Thus, *Phillips* is distinguishable, and the Appeals Officer did not err by finding that the Claimant
10 was not exposed to a neutral risk that subjected her to an increased risk of injury as compared with
11 the general public.

12 Rather, the Appeals Officer properly found that the Employer did not create an employment
13 risk by permitting the Claimant to walk around an office complex in an area that was open to the
14 public. (ROA 6.) At the time of her injury, the Claimant was walking for her own recreation and
15 enjoyment outside of her workplace. (ROA 21-22.) While the Employer was aware that its
16 employees walked during break periods and warned of unsafe locations for walking, it neither
17 required the Claimant to walk during her break, nor did it require her to walk in the area where she
18 was injured. (ROA 22, 45.) Thus, the Appeals Officer's conclusion that the Claimant failed to
19 prove by preponderance of evidence that her injury "arose out of" her employment is supported by
20 the substantial evidence.

21 **B. The Appeals Officer properly applied the facts to the law in finding that Claimant was**
22 **not "In the Course of Employment" when she was injured.**

23 While Claimant contends she was in the course of her employment when walking during
24 her mandatory break time, in an area deemed safe by the Employer who was aware that employees
25 walked during breaks, the Appeals Officer concluded that "when the Claimant was walking during
26 her break, she was walking for her own personal enjoyment and health." (ROA 3.). The Appeals
27 Officer found that, under *Gorsky*, the Claimant was not reasonably performing her work duties and
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1 therefore she was not in the course of her employment when the injury occurred. *Id.* This is
2 supported by the substantial evidence which shows that Claimant chose to walk during her breaks
3 and the Employer did not require Claimant to walk during breaks. (ROA 24, 45.) Contrary to
4 Claimant's assertion, the Appeals Officer *did* consider the fact that Claimant was on a mandatory
5 break when she was injured, and also the fact that the Employer had sent an email showing that it
6 was aware some employees chose to walk during their breaks and warning them that some areas
7 near the workplace were unsafe for walking due to construction and the presence of heavy
8 equipment. These facts are not inconsistent with the Appeals Officer's finding that Claimant was
9 not reasonably performing her work duties when she was injured. Thus, a reasonable person could
10 conclude that, under Nevada law, the Claimant was not in the course of her employment when the
11 injury occurred.

12 **C. The Appeals Officer properly concluded that the personal comfort doctrine does not**
13 **apply here.**

14 Claimant further argues that the personal comfort doctrine for traveling employees
15 recognized by the Nevada Supreme Court in *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep.
16 60 (Dec. 12, 2019), applies to this case because walking while on a mandatory break is a form of
17 being away from the physical workplace but still under the control of the Employer. (Opening Br.
18 at 14.) This reading of *Buma* was properly rejected by the Appeals Officer.

19 In *Buma*, the Nevada Supreme Court adopted the personal comfort rule, which extends
20 coverage under workers' compensation law, for a *traveling employee* "because of the risks
21 associated with travel away from home." *Buma*, 135 Nev. Adv. Op. 60, 453 P.3d at 909 (citing
22 *Ball-Foster Glass Container Co. v. Giovanelli*, 163 Wash.2d 133, 177 P.3d 692, 701 (Wash.
23 2008)). "Under the personal comfort rule, an employee remains in the course of employment
24 during personal comfort activities unless the departure from the employee's work-related duties 'is
25 so substantial that an intent to abandon the job temporarily may be inferred . . .'" *Id.* at 909
26 (quoting *Ball-Foster*, 177 P.3d at 700). Thus, *Buma* permits a *traveling employee* to tend to
27 reasonable recreation needs during downtime without leaving the course of employment.

1 The Appeals Officer properly concluded that *Buma* does not apply to the Claimant. The
2 Claimant was not traveling on behalf of the Employer at the time of her trip and fall injury. The
3 Claimant cannot be deemed under the employer's control for purposes of qualifying for the
4 personal comfort doctrine because she was not traveling. Therefore, the Appeals Officer correctly
5 found the Claimant cannot rely upon *Buma* to satisfy the course of employment requirement in
6 NRS 616C.150. Claimant offers no case law --indeed there is none—to support her position that
7 the same personal comfort doctrine under *Buma* applies to employer control of a non-traveling
8 employee. To the contrary, Claimant appears to admit that the case does not apply on its face,
9 conceding that “Ms. Hopkins was not a ‘traveling’ employee” like in *Buma*. (See Opening Br. at
10 21.) As such, Claimant requests that this Court make new law and apply the personal comfort
11 doctrine to a non-traveling employee. The facts and the law do not support deviating from the
12 Nevada Supreme Court's precedent on this issue, and the Court should reject Claimant's request
13 that it do so.

14 **D. The employer benefit exception to the “Going and Coming” Rule does not apply here.**

15 Claimant contends that her injury falls under an exception to the “‘going and coming’ rule”
16 which “precludes compensation for most employee injuries that occur during travel to or from
17 work,” because walking during her break conferred a benefit on the Employer. *MGM Mirage*, 121
18 Nev. at 399, 116 P.3d at 58. Claimant makes this request notwithstanding the fact that Claimant
19 concedes that Claimant was not on “a specified errand or special work mission” that would trigger
20 the benefits of the rule. (See Opening Br. at 21.)

21 In support of her position, Claimant cites a document provided to County employees which
22 advised employers to provide a map of walking routes around the office and prompted employees
23 to seek information from the Centers for Disease Control and Prevention's Healthier Worksite
24 Initiative programs designed to benefit the employer by reducing time lost from work due to illness
25 or disease. (See Opening Br. at 17, citing ROA 124.) This document, however, is from Washoe
26 County's public website and is a resource from the Washoe County Health District to provide
27 information to the general public. (ROA at 92.) While County employees are encouraged to
28

1 participate in voluntary activities such as walking during their break times, they are not required by
2 the County to do so. *Id.*

3 Perhaps more importantly, the going and coming case law Claimant cites does not support
4 the use of the doctrine on the facts presented. The employer benefit exception described in *MGM*
5 *Mirage v. Cotton* does not extend to a benefit as far removed as reducing time lost from work due
6 to disease. *Nevada Indus. Commission v. Holt*, 83 Nev. 497, 500, 434 P.2d 423 (1967)
7 (“[R]ecreational activity should not be deemed within the course of employment unless a regular
8 incident of employment, or required by the employer, or of direct benefit to the employer *beyond*
9 *the intangible value of employee health and morale common to all kinds of recreation and social*
10 *life.*” (emphasis added)). Rather, the Nevada Supreme Court has applied this exception to cases of
11 “distinct” benefit, such as an on-call employee driving his employer’s vehicle home for purposes of
12 furthering the employer’s business. See *Tighe v. Las Vegas Metro. Police Dep’t*, 110 Nev. 632,
13 635, 877 P.2d 1032 (Nev. 1994) (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842 P.2d
14 719 (1992), *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 n.6
15 (2001)).

16 In *Tighe*, the employee was an on-call undercover police officer who suffered injuries in an
17 automobile accident while driving home in his employer’s vehicle. *Id.* The court found that the
18 employer benefitted from having one of its undercover officers driving an undercover vehicle and
19 therefore the employee was subject to his employer’s control at the time of his accident. *Id.* at 636.
20 Similarly, the claimant in *Evans* was an on-call service technician driving home in his employer’s
21 van and was found to be within the course of his employment because he was furthering his
22 employer’s business in taking the van home. See *Evans*, 108 Nev. at 1006, 842 P.2d at 721-22.
23 Here, while there may have been an incidental benefit to the Employer in Claimant maintaining her
24 health by walking on her break, there was no “distinct” benefit. She was not on call. The Employer
25 did not require her to go for a walk. Therefore, she was not “in the course of” her employment
26 under the employer benefit exception to the “going and coming” rule.

27 Finally, even if the Claimant was “in the course of” her employment at the time of her
28

injury, which the County maintains she was not, the injury did not “arise out of” her employment, as set forth *supra*. Both factors of the two-part inquiry must be satisfied for an injury to be compensable under NRS 616C.150(1). Because Claimant cannot satisfy both factors, she has failed to demonstrate that the Appeals Officer’s conclusions of law were in error, arbitrary and capricious, or unsupported by the substantial evidence. Like in the case of the personal comfort doctrine, Claimant asks the Court to establish new law to support her claim because application of the going and coming rule on its face does not apply. The Court must reject Claimant’s request to do so.

III. THE APPEALS OFFICER’S CONCLUSION THAT THE CLAIMANT HAS NOT SHOWN BY PREPONDERANCE OF THE EVIDENCE THAT HER INJURY AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT UNDER NRS 616C.150(1) IS SUPPORTED BY THE SUBSTANTIAL EVIDENCE.

Contrary to Claimant’s assertions, the Appeals Officer Decision is supported by substantial evidence and may not be disturbed on appeal. *See Law Offices of Barry Levinson, P.C.* 124 Nev. at 362, 184 P.3d at 384. “Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency’s conclusion.” *Id.* The Appeals Officer Decision clearly applies the relevant legal authority and carefully weighs all the evidence in concluding that Claimant failed to satisfy NRS 616C.150(1).

Rather than ignoring, as Claimant would have it, the facts that suggest the Employer had control over the Claimant at the time of her injury, the Appeals Officer considered those facts in arriving at the conclusion that the injury did not “arise out of” and “in the course of” her employment. The Appeals Officer weighed the fact that Claimant was on a contractually mandated break at the time of her injury, that the Employer was aware of employees walking during break periods, and that the Employer had sent an email to Claimant warning of unsafe areas for walking. (ROA 2, 4-6.) These facts do not undermine the substantial evidence tending to show that the Claimant was not required to walk during her break, was not performing work duties, was walking for her own recreation and enjoyment, and was walking in an area of her choice not mandated by the Employer at the time of her injury. A reasonable person could find this evidence sufficient to support the Appeals Officer’s conclusion that that the Claimant has not met her burden under

1 NRS616C.150(1) to establish that her injury occurred as a direct result of the duties that arose out
2 of and in the course of her employment and therefore did not suffer a compensable industrial injury.
3 Accordingly, the Appeals Officer Decision is not "[a]ffected by other error of law," is not "[c]learly
4 erroneous in view of the reliable, probative and substantial evidence on the whole record," and is
5 not "[a]rbitrary or capricious or characterized by abuse of discretion." NRS 233B.135(3). Thus, no
6 grounds exist for granting Claimant's Petition for Judicial Review.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Claimant has failed to demonstrate that any of the findings of
9 fact or conclusions of law she challenges are in error or unsupported by the substantial evidence.
10 Claimant's Petition for Judicial Review must therefore be denied.

11 **AFFIRMATION**

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

14 DATED this 20th day of January, 2021.

15 **McDONALD CARANO LLP**

16
17 *By: /s/ Lucas M. Foletta*

18 Lucas M. Foletta, Esq.
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20 P.O. Box 2670
21 Reno, Nevada 89505-2670
22 *Attorneys for Respondents Washoe*
23 *County and CCMSI*
24
25
26
27
28

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **RESPONDENTS' ANSWERING BRIEF** and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 20th day of January, 2021.

McDONALD CARANO LLP

By: /s/Lucas M. Foletta

Lucas M. Foletta, Esq.
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, Nevada 89505-2670
*Attorneys for Respondents Washoe
County and CCMSI*

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano, LLP and that on the 20th day of January, 2021, a true and correct copy of the foregoing **RESPONDENTS' ANSWERING BRIEF** was electronically filed with the Clerk of the Court by using CM/ECF, served on parties on the electronic service list for this case, and I caused a true and correct copy to be deposited with the U.S. Postal Service at Reno, Nevada addressed to the parties as follows:

Nevada Department of Administration
Appeals Division
1050 E. William Street, Suite 450
Carson City, NV 89701

/s/Carole Davis
An Employee of McDonald Carano LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No.82894

SUSAN HOPKINS
Appellant,

v.

CANNON COCHRAN MANAGEMENT SERVICES, INC. dba CCMSI; and
WASHOE COUNTY,
Respondents.

Appeal from a District Court Order
of Affirmance Denying Petition for Judicial Review
Second Judicial District Court, Washoe County
Dept. No. 15
Case No. CV20-01650

APPELLANT'S APPENDIX

VOLUME 2 of 2
PAGES 250-393

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SERVICES, INC.; AND WASHOE
COUNTY

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

This matter arises from an order denying Appellant's Petition for Judicial Review. The entire administrative record was filed with the District Court below on November 9, 2020.

In order to provide a clearer index, the tables below list administrative documents by the date they were filed in the administrative forum (i.e. between January 16, 2020 and September 25, 2020), instead of the date that the administrative records were filed in the district court (November 9, 2020).

All administrative records appear on the tables below with (1) a "•"; (2) the date of filing in the administrative forum; and (3) citations to the appropriate portion of the Record on Appeal (pgs. October 14, 2020-November 2, 2020, vols. 1-2) filed in district court on November 9, 2020.

Document	Date	Vol.	Pages
• Decision and Order, Hearing Officer, Hearing No. 2001962-JL	01/16/20	1	AA 1-3
• Request for Hearing Before the Appeals Officer	02/18/20	1	AA 4-12
• Order for Appointment of Nevada Attorney for Injured Workers	02/21/20	1	AA 13

• Notice of Appeal and Order to Appear	02/21/20	1	AA 14
• Order of Reset	06/01/20	1	AA 15-16
• Claimant's Hearing Statement	07/08/20	1	AA 17-19
• Claimant's Amended Hearing Statement	07/20/20	1	AA 20-22
• Erratum - Claimant's Hearing Statement	07/20/20	1	AA 23-24
• Employer's Pre-Hearing Statement	07/31/20	1	AA 25-29
• Insurer's Documentary Evidence	03/26/20	1	AA 30-79
• Claimant's First Exhibit	08/04/20	1	AA 80-84
• Appeals Officer's Decision	09/25/20	1	AA 85-92
Order for Briefing Schedule	10/20/20	1	AA 114-115
Statement of Intent to Participate	10/20/20	1	AA 116-118
Transcript of Proceedings	11/02/20	1	AA 119-153
Certification of Transmittal	11/09/20	1	AA 154-156
Transmittal of Record on Appeal	11/09/20	1	AA 157-159
Notice of Transmittal of Record of Proceedings	11/20/20	1	AA 160-199
Petitioner's Opening Brief	12/21/20	1	AA 200-229
Respondents' Answering Brief	01/20/21	1	AA 230-249
Request for Oral Argument	01/21/21	2	AA 250-251
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Order of Affirmance Denying Petition for Judicial Review	04/22/21	2	AA 301-311
Notice of Entry of Order	04/23/21	2	AA 312-327
Notice of Correction to Caption of Order of Affirmance Denying Petition for Judicial Review	04/26/21	2	AA 328
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Petitioner's Motion to Withdraw Objection	04/30/21	2	AA 332-334
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Document	Date	Vol.	Pages
• Appeals Officer's Decision	09/25/20	1	AA 85-92
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Application for Setting	01/29/21	2	AA 255
• Case Appeal Statement	05/10/21	2	AA 355-360
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• Claimant's First Exhibit	08/04/20	1	AA 80-84
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• Erratum - Claimant's Hearing Statement	07/20/20	1	AA 23-24
• Insurer's Documentary Evidence	03/26/20	1	AA 30-79
Minutes of Oral Arguments	03/12/21	2	AA 279
Notice of Appeal	05/06/21	2	AA 335-354
• Notice of Appeal and Order to Appear	02/21/20	1	AA 14
Notice of Correction to Caption of Order of Affirmance Denying Petition for Judicial Review	04/26/21	2	AA 328
Notice of Entry of Order	04/23/21	2	AA 312-327
Notice of Transmittal of Record of Proceedings	11/20/20	1	AA 160-199
Order After Hearing	04/06/21	2	AA 280-281
• Order for Appointment of Nevada Attorney for Injured Workers	02/21/20	1	AA 13
Order for Briefing Schedule	10/20/20	1	AA 114-115
Order of Affirmance Denying Petition for Judicial Review	04/22/21	2	AA 301-311
• Order of Reset	06/01/20	1	AA 15-16
Petitioner's Further Objection to Order	04/27/21	2	AA 329-331
Petitioner's Motion to Withdraw Objection	04/30/21	2	AA 332-334
Petitioner's Objections to Propose Order	04/21/21	2	AA 282-285
Petitioner's Opening Brief	12/21/20	1	AA 200-229
Petitioner's Reply Brief	02/18/21	2	AA 256-278
• Request for Hearing Before the Appeals Officer	02/18/20	1	AA 4-12

Request for Oral Argument	01/21/21	2	AA 250-251
Request for Submission	04/21/21	2	AA 286-300
Request for Transcript of Proceedings	06/25/21	2	AA 361-363
Respondents' Answering Brief	01/20/21	1	AA 230-249
Statement of Intent to Participate	10/20/20	1	AA 116-118
Transmittal of Record on Appeal	11/09/20	1	AA 157-159
Transcript of Proceedings 08/06/20	11/02/20	1	AA 119-153
Transcript of Proceeding Oral Arguments 03/03/21		2	AA 361-393

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b) and NRAP 30(f), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on September 7, 2021, the foregoing APPELLANT'S APPENDIX was electronically filed with the Clerk of Court for the Nevada Supreme Court by using the Nevada Supreme Court's e-filing system (Eflex). Participants in this case who are registered with Eflex as users will be served by the E-flex system as follows:

LISA WILTSHIRE ALSTEAD, ESQ.
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LUCAS FOLETTA, ESQ.
Lfoletta@mcdonaldcarano.com

DATED: 9/7/21

SIGNED: R. Wilson

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2 Lucas M. Foletta
3 Nevada Bar No. 12154
4 Lisa Wiltshire Alstead
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7 100 West Liberty Street, 10th Floor
8 Reno, Nevada 89505
9 Telephone: (775) 788-2000
10 *Attorneys for Respondents*
11 *Washoe County and Cannon Cochran*
12 *Management Services, Inc.*

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

14 **IN AND FOR THE COUNTY OF WASHOE**

15 SUSAN HOPKINS,

16 Petitioner,

17 vs.

Case No: CV20-01650

18 WASHOE COUNTY, CANNON COCHRAN
19 MANAGEMENT SERVICES, INC. dba
20 CCMSE; WASHOE COUNTY; and APPEALS
21 OFFICE of the DEPARTMENT OF
22 ADMINISTRATION,

Dept. No. 15

23 Respondents.

24 **REQUEST FOR ORAL ARGUMENT**

25 Pursuant to NRS 233B.133(4), Respondent hereby requests oral argument on the above-
26 entitled Petition for Judicial Review. Respondent respectfully requests an Order directing the
27 parties to set a hearing date for oral argument.

28 **AFFIRMATION**

(Pursuant to NRS 239B.030)

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

DATED this 21st day of January, 2021.

McDONALD CARANO LLP

By: /s/ Lucas M. Foletta
Lucas M. Foletta, Esq.
Attorneys for Respondent
WASHOE COUNTY

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano, LLP and that on the 21st day of January, 2021, a true and correct copy of the foregoing **REQUEST FOR ORAL ARGUMENT** was electronically filed with the Clerk of the Court by using CM/ECF, served on parties on the electronic service list for this case, and I caused a true and correct copy to be deposited with the U.S. Postal Service at Reno, Nevada addressed to the parties as follows:

Clark Leslie, Esq.
Nevada Attorney for Injured Workers.
1000 E. William St., Suite 208
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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

9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

CASE NO. CV20-01650

12 CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
13 COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,
14

DEPT. NO. 15

Respondent(s).
15 _____/

16

17 APPLICATION FOR SETTING

18 TYPE OF ACTION: Workers' Compensation

19 MATTER TO BE HEARD: Oral argument regarding Petition for Judicial
Review
20 January 29, 2021 at 11:00 a.m.

21 Date of Application: January 27, 2021

22 Made by: Petitioner/Claimant

23 COUNSEL FOR PLAINTIFF: Clark G. Leslie, Esq. for Petitioner

24 COUNSEL FOR DEFENDANT: Lucas Foletta, Esq. for Respondent

25 No jury

26 Estimated time: ½ hour

27 . . .

28 . . .

NEVADA ATTORNEY FOR INJURED WORKERS
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2200 South Ranch Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION

Pursuant to NRS 239B.030:


The undersigned does hereby affirm that the preceding Application for Setting filed in the Second Judicial District Court of the State of Nevada does not contain Personal Information as defined by NRS 603A.040.

DATED this 27th day of January, 2021.

NEVADA ATTORNEY FOR INJURED WORKERS

By:

 CLARK G. LESLIE, Esq. (NV Bar #10124)

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775-684-7555

Attorneys for Petitioner, SUSAN HOPKINS

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Las Vegas, NV 89102 (702) 496-2830

CERTIFICATE OF SERVICE

Pursuant to NRCF 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing APPLICATION FOR SETTING was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

LUCAS FOLETTA ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY ST, 10TH FLOOR
RENO NV 89501

DATED:

1/27/21

SIGNED:

Lucas Foletta

CODE 1250

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

Susan Hopkins

Plaintiff,

vs.

Case No. CV20-01650

Cannon Cochran Management

Defendant.

Dept. No. 15

APPLICATION FOR SETTING

TYPE OF ACTION: Petition for Judicial Review - Workers Compensation

MATTER TO BE HEARD: Oral Argument regarding Petition for Judicial Review

Date of Application : January 29, 2021 Made by: Respondents

Plaintiff or Defendant

COUNSEL FOR PLAINTIFF: Clark G. Leslie, Esq., Nevada Attorney for Injured Workers

COUNSEL FOR DEFENDANT: Lucas M. Foletta, Esq., McDonald Carano LLP

Instructions: Check the appropriate box. Indicate who is requesting the jury. Estimated No. Of Jurors:

☐ Jury Demanded by (Name): _____

☒ No Jury Demanded by (Name): _____

Estimated Duration of Trial: Oral Arguments: 2 hours

Clark G. Leslie, Esq.

Lucas M. Foletta, Esq.

via telephone

via telephone

Attorney(s) for Plaintiff

Attorney(s) for Defendant

OA

10:00

3rd

March

21

Motion - No.

Setting at

on the

day of

20

Trial - No.

Setting at

on the

day of

20

1 3785
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8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE
10

11 SUSAN HOPKINS,

12 Petitioner,
13

14 vs.

CASE NO. CV20-01650

15 CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
16 DEPARTMENT OF ADMINISTRATION,
17

DEPT. NO. 15

18 Respondents.
19
20

21 PETITIONER'S REPLY BRIEF
22
23
24
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26
27
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1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE
3

4 SUSAN HOPKINS,

5
6 Petitioner,

7 vs. CASE NO. CV20-01650

8 CANNON COCHRAN MANAGEMENT DEPT. NO. 15
9 SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

10 Respondents.
11 _____/

12
13 NRAP 26.1 DISCLOSURE

14 The undersigned counsel of record certifies that the
15 following are persons and entities as described in NRAP 26.1(a) and
16 must be disclosed. These representations are made in order that the
17 judges of this court may evaluate possible disqualifications or
18 recusal.

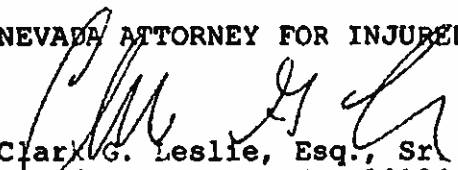
19 Petitioner's parent corporations: None.

20 Firms having appeared: Nevada Attorney for Injured Workers.

21 Petitioner's pseudonyms: None.

22 Submitted this 18th day of February, 2021.

23 NEVADA ATTORNEY FOR INJURED WORKERS

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1 **I. SUMMARY OF ARGUMENT**

2 Respondent CCMSI urges dismissal of this appeal for
3 five reasons, none of which survive the light of reason and legal
4 support:

5 1. Ms. Hopkins mischaracterizes the appeals officer's
6 Decision and Order when she argues that the appeals officer
7 ignored important facts;

8 2. It was not error for the appeals officer to conclude
9 that Ms. Hopkins was engaged in a recreational activity when she
10 was injured;

11 3. Ms. Hopkins is asking this court to substitute its
12 opinion for that of the appeals officer;

13 4. Ms. Hopkins incorrectly argues that the appeals
14 officer failed to properly analyze whether she faced an
15 employment risk at the time of the injury; and

16 5. The appeals officer correctly applied NRS
17 616C.150(1) to the claim brought by Ms. Hopkins and the issues
18 she presented, i.e., Ms. Hopkins arguably did not show by a
19 preponderance of evidence that her injury arose out of and in the
20 course of her employment.

21 The Argument presented by Ms. Hopkins below directly
22 refutes each supposition made by CCMSI that it argues is
23 sufficient to uphold the Decision and Order. Furthermore, when
24 all the evidence is reviewed it is plain to see and conclude that
25 very substantial and significant errors arose.

26 When arguing the absence of factoring in important
27 facts by the appeals officer, Ms. Hopkins directs this court to
28 case law that denies a matter has been properly analyzed and

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1 assessed just because it is mentioned in a Decision and Order. An
2 appeals officer does not properly analyze a fact or finding by
3 simply noting its existence in the Decision and Order.

4 Case law has determined that merely referencing a fact
5 or finding but then ignoring where and how that fact or finding
6 is or is not a relevant, probative factor in the overall decision
7 is insufficient. To do so abdicates one of the most important
8 jobs of a trier of fact - analyzing all relevant facts within the
9 scheme of laws that define how each fact does or does not fit
10 into the particular legal situation now before the court.

11 Here, the Decision and Order is silent as to *why* the
12 fact that she was 'on the clock' and was engaged in a break
13 activity known to her employer was not sufficient to establish
14 that her injury 'arose out of' her employment. Simply
15 acknowledging the fact, then moving on without appropriate
16 analysis, is a violation of NRS 233B.135.

17 The Argument below supports the following conclusions:

18 1. The appeals officer did not properly analyze and
19 interpret important facts about Ms. Hopkins' status at the time
20 she was injured and this was reversible error;

21 2. Given Ms. Hopkins' employment status at the time she
22 was injured she could not legally be deemed to be engaged in a
23 'recreational' activity at the time she was injured and the
24 Decision and Order never mentions why this is not a dispositive
25 finding that warrants reversal;

26 3. This court can act when there is no substantial
27 evidence to support a finding or conclusion of an administrative
28 judicial officer; in this instance, there is no substantial

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1 evidence to support the conclusion that Ms. Hopkins was engaged
2 in a recreational activity at the time she was injured because
3 this conclusion ignores her 'on the clock' status when she was
4 injured;

5 4. The injury to Ms. Hopkins arose from an 'employment
6 risk' because the employer was required to allow its employees
7 compensated break times and, further, the employer knew that many
8 of its employees took walks in the area of the employer's office
9 when these breaks were taken and the employer even warned of
10 places to avoid thus funneling its employees to specific areas;
11 no analysis by or from the appeals officer explains or even
12 references why these facts do not compel a decision to award NIIA
13 benefits to Ms. Hopkins; and

14 5. Ms. Hopkins demonstrated by a preponderance of
15 evidence that she was engaged in an aspect of her employment when
16 she was injured; conversely, CCMSI failed to fulfill its duty to
17 show by a preponderance of evidence that its defense (this was a
18 'neutral risk') is supported by sufficient, or any, evidence to
19 allow for a conclusion that Ms. Hopkins faced a neutral risk at
20 the time of her injury.

21 **II. ARGUMENT**

22 **A. Statutory law allows for reversal or remand of a**
23 **conclusion that is not supported by substantial, or**
24 **any, evidence.**

25 NRS 233B.135(3) provides in pertinent part:

26 "The court shall not substitute its judgment for that
27 of the agency as to the weight of evidence on a question of fact.
28 The court may remand or affirm the final decision or set it aside
in whole or in part if substantial rights of the petitioner have

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1 been prejudiced..." The statute then lists six bases upon which
2 "prejudice" to the petitioner will allow for appellate relief.

3 In this appeal, subdivisions (b) ["in excess of
4 statutory authority of the agency"], (d) ["affected by other error
5 of law"], (e) ["clearly erroneous..."] and (f) ["arbitrary or
6 capricious or characterized by abuse of discretion"] all apply to
7 the erroneous conclusion that Ms. Hopkins' activity at the time
8 she was injured was 'recreational.'

9 The standard of proof in administrative matters remains
10 the preponderance of evidence standard. *Nassiri v. Chiropractic*
11 *Physicians' Bd. of Nev.*, 130 Nev. 245, 327 P.3d 487, 130 Nev.
12 *Adv. Rep. 27*, 2014 Nev. LEXIS 29 (Nev. 2014). In reviewing
13 asserted reversible errors the limit on substituting judgment for
14 that of agencies is tempered by the statutory protections that
15 allow for review if the decision is clearly erroneous or
16 arbitrary when the substantial evidence on the whole record is
17 considered. See e.g. *State ex rel. Department of Prisons v.*
18 *Jackson*, 111 Nev. 770, 895 P.2d 1296, 111 Nev. *Adv. Rep. 75*, 1995
19 *Nev. LEXIS 69* (Nev. 1995), overruled in part, *O'Keefe v. State*
20 *DMV*, 133 Nev. 1057, 431 P.3d 350, 134 Nev. *Adv. Rep. 92*, 2018
21 *Nev. LEXIS 108* (Nev. 2018).

22 Also, before considering the state of the evidence
23 before the appeals court and this reviewing court, it bears
24 recalling that the appeals court has the power to remand matters
25 to the appeals officer for further fact-finding. *General Motors*
26 *v. Jackson*, 111 Nev. 1026, 900 P.2d 345, 111 Nev. *Adv. Rep. 111*,
27 1995 Nev. LEXIS 108 (Nev. 1995).
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1 The conclusion of the appeals officer to deem Ms.
2 Hopkins' walk that led to her injury as 'recreation' is wholly
3 unsupported by the record. There was no evidence offered by CCMSI
4 to establish that the act of walking in a place identified as
5 safe by her employer as an activity that would not be work
6 related when the undisputed fact conclusively established that
7 the activity was contractually mandated.

8 When an employee is on a mandatory, paid break and is
9 walking where her employer recommended and was avoiding another
10 area her employer warned her to avoid and, while on this work-
11 related break time Ms. Hopkins falls and injures herself - then,
12 the NIIA is written to include such a claim as work related.

13 To rule otherwise was erroneous and reversible error
14 when CCMSI offered no evidence to contradict the status of the
15 employer-employee relationship at the time of the injury. At the
16 very least, a remand should be granted to allow the appeals
17 officer to reconsider the evidence relative to the nature of Ms.
18 Hopkins' status at the time she fell and was injured.

19 The notion of an employee exercising in some fashion
20 while remaining 'within the course of their employment' is not a
21 novel idea in workers' compensation law. In 'going and coming'
22 cases, the employee is deemed within the scope of his or her
23 employment continuously during the trip except when there is a
24 distinct departure on a personal errand. See e.g. *Buma v.*
25 *Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60, 453 P.3d 904, 908
26 (2019).

27 In discussing the 'going and coming' rule, the court in
28 *Buma* also addressed the argument of CCMSI that Ms. Hopkins was

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1 not required to walk during her break time. In discussing the
2 extent of 'arising out of' the employment element for NIIA
3 liability to attach, the court noted:

4 A [traveling] employee may indeed have a
5 choice" of where to stay, but "that is not
6 the point." 2 Larson's, supra, § 25.02, at
7 25-2. "The point is that there is no choice
8 but to live [somewhere while] away from
9 home." Id. For that reason, a traveling
10 employee is entitled to expanded coverage for
11 travel-related injuries.

12 *Buma*, 453 P.3d at 908.

13 This is not a 'going and coming' claim or appeal. But
14 the logic of the holding in *Buma* does apply - Ms. Hopkins had to
15 go or do something during her contractually mandated break times.
16 So long as Ms. Hopkins did not radically depart from the
17 rationale behind the break time for which she was compensated
18 (and she did not), her election to walk was no different than the
19 choice made of where a traveling employee might stay when away
20 from home for his or her employment.

21 **B. Ms. Hopkins was not engaged in a "recreational"**
22 **activity when she sustained her injury.**

23 The characterization of Ms. Hopkins' activity at the
24 time she was injured was deemed to be "recreational" (see ROA
25 3:17-19).¹ This ignores the compulsory nature of the "break time"
26 and fails to account for the undisputed fact that Ms. Hopkins was
27 ...

28 ¹ "When the Claimant was walking during her break, she was
walking for her own personal enjoyment and health. Claimant was
not reasonably performing her work duties when she fell, and she
was not in the course of her employment." ROA 3:17-19.

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1 being paid when she tripped due to a defective sidewalk and
2 suffered an injury leading to medical bills in excess of \$50,000.

3 When the substantial evidence is viewed in the proper
4 light ("substantial evidence" has been defined as that which "a
5 reasonable mind might accept as adequate to support a
6 conclusion." *Richardson v. Perales*, 402 U.S. 389 (1971)) it is
7 apparent that the injury is one that arises from an 'employer
8 based' risk, rather than a 'neutral risk' as argued by CCMSI in
9 its Responding Brief.

10 The distinction of being injured at the exact moment
11 when the injured worker is also receiving wages and engaging in a
12 paid break time acknowledged by the employer has not been ruled
13 upon in Nevada. No Nevada case has directly ruled on the question
14 of whether injuries that occur while engaged on a paid break time
15 arise out of the employee's work. Neither Petitioner or
16 Respondent have cited to any Nevada law directly on point.

17 However, other jurisdictions have favorably concluded
18 that liability exists in the circumstance of an injury occurring
19 while on a paid break.

20 The matter of *Royall v. Industrial Comm'n*, 106 Ariz.
21 346, 476 P.2d 156 (1970) is illustrative. In *Royall*, the employee
22 was working as a telephone operator. During her shift she took a
23 30-minute lunch break that was compensated by her employer.

24 The claimant took the break because she wished to make
25 a *personal* telephone call. As she walked toward the telephone to
26 make the call, the claimant tripped over the legs of a person
27 sitting on a couch, fell to the floor and suffered an injury.

28 ...

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1 In concluding that the injury arose out of the
2 employment the Arizona Supreme Court focused on the facts that
3 the claimant was on a paid lunch break when she tripped while
4 intending to make a private telephone call. Royall, 106 Ariz. at
5 351. The court summarized by finding that

6 [T]he source of injury was sufficiently
7 associated with the employment as to
8 constitute a risk to which the claimant was
9 subjected to in the course of her employment
10 and to which she would not have been
11 subjected had she not been so employed. We
12 therefore hold that the accident was one
13 arising out of claimant's employment."

14 Id.

15 No such analysis exists in this matter. The appeals
16 officer did not make a determination as to the significance of
17 the facts that had Ms. Hopkins not been at her employment on the
18 day of the injury she would not have taken a break, walked where
19 directed by her employer and, then, become injured due to a
20 defective sidewalk. Why these facts were not dispositive, or not
21 determinative to any degree, is left to the imagination when
22 reviewing the Decision and Order. This is error.

23 **C. Ms. Hopkins' injury arose out of her employment
24 because she was exposed to an employment-based risk.**

25 As argued previously, to demonstrate that an injury
26 arose out of employment, an injured employee must establish the
27 causal connection between workplace conditions and how those
28 conditions caused the injury, based on the totality of the
29 circumstances. Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600,
30 604, 939 P.2d 1043, 1046 (1997).

31 ...

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1 Obvious industrial injuries such as slips, falls, and
2 trips due to conditions caused by the employer, as well as
3 injuries caused by employment-related risks are generally
4 compensable. See *Rio All Suite Hotel & Casino v. Phillips*, 126
5 Nev. 346, 240 P.3d 2, 5 (2010). Personal risks, such as falls
6 caused by bad knees or epilepsy, are pre-existing conditions that
7 cannot be attributed to employment, and are therefore not
8 compensable. *Id.*

9 Neutral risks, which are risks that cannot be
10 identified as distinctly employment risks or distinctly personal
11 risks. The fall and injury sustained by Ms. Hopkins was not the
12 result of a 'neutral risk' in the context of the facts on record.

13 The argument that CCMSI wishes this court to focus upon
14 and use to deny this appeal is the "fact" that Ms. Hopkins did
15 not have to walk during her contractually mandated break times.
16 See RAB, 12:23-25.

17 CCMSI also asserts, without appropriately acknowledging
18 the significance of the employment status at the time Ms. Hopkins
19 was engaged in her break time, that the appeals officer correctly
20 and adequately noted the break time as being one that was
21 required by her employment agreement when issuing the Decision
22 and Order.

23 Simply noting one of several disparate facts in a
24 Decision and Order without analysis, context or proper reference
25 is not coterminous with the conclusion that the appeals officer
26 duly "considered those facts..." *Id.* at 12:18.

27 CCMSI has confused the "qualification of evidence" as
28 sufficient when, in the final analysis, the focus should be upon

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1 whether the evidence offered satisfies the standard of proof
2 ("preponderance of evidence") to support the failure to conclude
3 that the injury to Ms. Hopkins arose out of her employment. See,
4 e.g. *Nassiri v. Chiropractic Physicians' Bd. of Nev.*, 130 Nev.
5 245, 251, 327 P.3d 487 (2014).

6 Where was the evidence to show, for example, that the
7 employer received no benefit from its employees having this break
8 time thereby undercutting an 'arose out of' the employment
9 argument? The record is replete with evidence that Ms. Hopkins'
10 employer was expressly aware of its employees engaging in walking
11 during the break times. Yet, the Decision and Order is devoid of
12 explaining how and why this undisputed fact that demonstrated
13 knowledge and control over the break activity does not compel a
14 conclusion that the injury arose out of her employment.

15 The failure by the appeals officer to establish a basis
16 for not sufficiently factoring in the required break time as one
17 where Ms. Hopkins would remain 'on the clock' and was therefore
18 in the course and scope of her employment was a matter considered
19 by the court in *Asphalt Prods. Corp. V. All Star Ready Mix*, 111
20 Nev. 799, 898 P.2d 699 (1995).

21 In *Asphalt* the district court had found that \$10,400.00
22 per month to be the reasonable rental value of a tractor. The
23 court in *Asphalt* expressly found that the district court had
24 "ignored the evidence of the reasonable value" when it arrived at
25 this conclusion. *Id.* at 802. The court went further and noted
26 that the district court had apparently used the lease payment as
27 the reasonable value of the tractor's rental value.
28 ...

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1 In supporting the reversal of the district court's
2 conclusions, the court in Asphalt held: "Although the district
3 judge here included the \$10,400.00 rental rate in his conclusions
4 of law, he provided no rationale for going against substantial
5 evidence that the rental value should have been higher than the
6 amount he awarded." Id. at 803.

7 So too with this appeal, the appeals officer offers no
8 rationale to not find Ms. Hopkins' injury as not arising out of
9 her employment. The single most relevant fact of being paid while
10 on her break is tossed aside without explanation or analytic
11 thinking in the Decision and Order.

12 This is reversible error under NRS 233B.135. This
13 compels, at the very least, a remand for the employment status of
14 Ms. Hopkins at the precise moment of her injury to be properly
15 adjudicated.

16 III. CONCLUSION

17 Appellate review of administrative law matters is not
18 as restrictive as suggested by CCMSI. It is correct that the
19 standard of review is deference to the appeals officer and the
20 agency but this deference is limited to findings and conclusions
21 supported by substantial evidence.

22 In this claim the appeals officer overlooked or
23 mischaracterizes the importance of the activity that led to the
24 subject injury as 'recreation' when, in fact and by law, the
25 activity was nothing less than a work activity for which she was
26 being paid wages. CCMSI offered no evidence, substantial or
27 otherwise, to support the conclusion that Ms. Hopkins was engaged
28 in a 'recreational' activity when she fell while 'on the clock.'

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1 Reversal of the decision is warranted if it is
2 determined, as it should be, that as a matter of law Ms. Hopkins
3 sustained an injury 'arising out of' her employment. But, at the
4 very least, a remand should be ordered to allow for the
5 consideration of the law as it applies to these facts to
6 reformulate the Decision and Order to reflect her true employment
7 status at the time of her injury.

8 DATED this 18th day of February, 2021.

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CERTIFICATE OF COMPLIANCE

(NRAP 28.2)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

____ This brief has been prepared in a proportionally spaced typeface using [state name and version of word processing program] in font [state font size and name of type style] or

X This brief has been prepared in a monospaced typeface using Word Perfect X3 with 10.5 characters per inch in Courier New Font size 12.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

____ Proportionately spaced, has a typeface of 14 points or more and contains ____ words; or

____ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

X Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 23(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter

1 relied on is to be found. I understand that I may be subject to
2 sanctions in the event that the accompanying brief is not in
3 conformity with the requirements of the Nevada Rules of Appellate
4 Procedure.

5 Respectfully Submitted this 18th day of February, 2021.

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AFFIRMATION

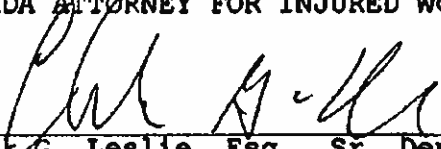
Pursuant to NRS 239B.030:

The undersigned does hereby affirm that the preceding
Petitioner's Opening Brief filed in the First Judicial District
Court of the State of Nevada does not contain Personal Information
as defined by NRS 603A.040.

DATED this 18th day of February, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing PETITIONER'S REPLY BRIEF was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

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

SUSAN HOPKINS,

CASE NO. CV20-01650

Petitioner,

DEPT. NO. 15

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

Respondents.

REQUEST FOR SUBMISSION

Petitioner Susan Hopkins' Petition for Judicial Review is
now fully briefed. Petitioner's Opening Brief was filed December
21, 2020; Respondents' Answering Brief was filed January 20, 2021;
and Petitioner's Reply Brief was filed February 18, 2021.

On January 21, 2021, Respondents requested oral argument
on the Petition, under NRS 233B.133(4).

...

...

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1 Therefore, Petitioner respectfully submits this matter
2 should be deemed submitted for decision.

3 DATED this 19th day of February, 2021.

4 NEVADA ATTORNEY FOR INJURED WORKERS

5
6 Clark G. Leslie, Esq., Sr. Deputy
Nevada Bar No. 10124
7 1000 East William Street, Suite 208
Carson City, Nevada 89701
8 Attorneys for Petitioner
9

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030, the undersigned affirms that
12 the preceding Request for Submission, pertaining to Case No. CV20-
13 01650, filed in the Second Judicial District Court of the State of
14 Nevada does not contain Personal Information as defined by NRS
15 603A.040.

16 DATED this 19th day of February, 2021.

17 NEVADA ATTORNEY FOR INJURED WORKERS

18
19 By:

20 Clark G. Leslie, Esq. (NV Bar #10124)
Attorneys for Petitioner
21
22
23
24
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing REQUEST FOR SUBMISSION was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user:

LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 WEST LIBERTY ST, 10TH FLOOR
RENO NV 89501

DATED: _____

2/19/21

SIGNED: _____

B. Wilson

CASE NO. CV20-01650 **SUSAN HOPKINS VS. CANNON COCHRAN MGMT ETAL**

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

3/3/2021
HONORABLE
DAVID A.
HARDY
DEPT. NO. 15
M. Merkouris
(Clerk)
L. Urmston
(Reporter)
Zoom
Webinar

ORAL ARGUMENTS

10:41 a.m. – Court convened via Zoom.

Clark Leslie, Esq., was present on behalf of Petitioner Susan Hopkins.

Lucas Foletta, Esq., was present on behalf of Respondents Washoe County, Cannon Cochran Management Services, Inc., and Appeals Office of the Department of Administration.

Pursuant to the national and local COVID-19 emergency response that caused temporary closure of the courthouse located at 75 Court Street in Reno, Washoe County, Nevada, this hearing was conducted remotely. This Court and all participants appeared electronically via Zoom Webinar. This Court was physically located in Washoe County, Nevada.

COURT reviewed the procedural history of the case, noting that he was inclined to vacate this hearing after reviewing the briefs and moving papers, however he decided he would like to hear from counsel on the issue.

Counsel Leslie presented argument in support of the Petition for Judicial Review, filed October 14, 2020.

Counsel Foletta responded; and he further argued in opposition of the Petition for Judicial Review.

Counsel Clark replied; and he further argued in support of the Petition for Judicial Review.

COURT thanked counsel for their excellent legal work and briefs on this issue.

COURT ORDERED: Matter taken under advisement; a transcript of this hearing shall be filed.

11:20 a.m. – Court adjourned.

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

SUSAN HOPKINS,

Petitioner,

Case No. CV20-01650

Dept. No. 15

vs.

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE COUNTY;
and APPEALS OFFICE of the DEPARTMENT OF
ADMINISTRATION,

Respondent(s).

ORDER AFTER HEARING

This Court has re-read the moving papers, record, and transcript of the arguments. It renews its final comments regarding the well-written moving papers and counsels' professionalism. The appeal is predicated upon a good-faith argument relating to Ms. Hopkins' compensation during contractual breaks. The question presented may implicate policy issues beyond the instant dispute. But as the parties conceded, there is no direct law compelling relief. The analytical framework of existing industrial insurance law

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1 compels affirmance of the Appeals Officers Decision. Mr. Foletta shall submit a proposed
2 order consistent with his moving papers and arguments.

3 **IT IS SO ORDERED.**

4 Dated: April 6, 2021.

5 
6 David A. Hardy
7 District Court Judge
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8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE
10

11 SUSAN HOPKINS,

12 Petitioner,

13 vs.

CASE NO. CV20-01650

14 CANNON COCHRAN MANAGEMENT
15 SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
16 DEPARTMENT OF ADMINISTRATION,

DEPT. NO. 15

17 Respondents.
18 _____/

19 PETITIONER'S OBJECTIONS TO PROPOSE ORDER

20 Petitioner, Susan Hopkins, objects to the proposed
21 order as follows:

22 1. The Order should state that, "At all times relevant,
23 including the time and place where the subject injury occurred,
24 Petitioner was engaged in 'paid time' such that she was being
25 paid her employment wages at the time she tripped on a defective
26 sidewalk."
27 ...
28 ...

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1 2. In fairness, the Order should reflect the arguments
2 and legal support argued by Petitioner's counsel, to wit:

3 a. Ms. Hopkins argued that she was injured as a
4 result of an employment risk, not a 'neutral' or 'mixed risk';

5 b. The 'going-and-coming' rule and the 'traveling
6 employee' rule were closely akin to the subject injury and
7 reflect an intent by our legislature to provide workers'
8 compensation benefits for injuries such as those suffered by Ms.
9 Hopkins;

10 c. The *Buma* decision reflects an expansive view by
11 our Nevada Supreme Court as to injuries "arising from"
12 employment-related activities, even those occurring away from the
13 workplace or during times when "work" is not being performed by
14 the injured employee.

15 3. The Order should reflect that it was the position of
16 the injured worker that the combination of being paid while
17 engaged in her break period and case law as to 'going and coming'
18 and 'traveling employee' liability supported granting the appeal
19 as these facts and case holdings constituted substantial evidence
20 of liability under the circumstances of the injury to Ms.
21 Hopkins.

22 ...

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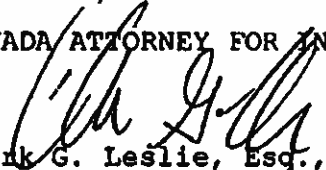
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1 4. Ms. Hopkins focused on the conclusion of the appeals
2 officer that at the time of her injury she was engaged in a
3 'recreational' activity. This conclusion, deemed reversible error
4 by Ms. Hopkins, should be reflected in the Order as a conclusion
5 that was focused upon in the briefs and at oral argument.
6

7 Respectfully Submitted,

8 DATED this 21st day of April, 2021.

9 NEVADA ATTORNEY FOR INJURED WORKERS

10
11 
12 Clark G. Leslie, Esq., Sr. Deputy
13 Nevada Bar No. 10124
14 1000 East William Street, Suite 208
15 Carson City, Nevada 89701
16 Attorneys for Petitioner, Susan Hopkins
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing PETITIONER'S OBJECTION TO PROPOSED ORDER was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

LUCAS FOLETTA, ESQ
MCDONALD CARANO WILSON LLP
100 W LIBERTY ST 10TH FLOOR
RENO NV 89501

DATED: APRIL 21, 2021

SIGNED: ALEX ANDRACA

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1 CODE: 3860
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5 Reno, NV 89501
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7 foletta@mcdonaldcarano.com

8 Attorneys for Respondents
9 Washoe County and Cannon Cochran
10 Management Services Inc.

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

13 SUSAN HOPKINS,

CASE NO.: CV20-01650

14 Plaintiff,

DEPI NO.: 15

15 v.

16 CITY OF RENO, CANNON COCHRAN
17 MANAGEMENT SERVICES, INC. dba
18 CCMSI; WASHOE COUNTY; and
19 APPEALS OFFICE of the DEPARTMENT
20 OF ADMINISTRATION,

21 Defendants.

22 **REQUEST FOR SUBMISSION**

23 Respondents Washoe County and Cannon Cochran Management Services, Inc., by and
24 through its undersigned counsel of record, hereby requests submission to the Court of its
25 Proposed Order Denying Petition for Judicial Review, attached hereto as Exhibit 1.

26 *The undersigned does hereby affirm that the foregoing document, along with any*
27 *attached exhibits, do not contain the social security number of any person.*

28 DATED this 21st day of April, 2021.

MCDONALD CARANO LLP

By: /s/Lucas M. Foletta
100 W. Liberty Street, Tenth Floor
Reno, NV 89501
(775) 788-2000
Attorneys for Respondents
Washoe County and Cannon Cochran
Management Services, Inc.

MCDONALD CARANO
DO NOT WRITE IN THESE SPACES - RENO, NEVADA 89501
APR 21 2021

McDONALD CARANO

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano, LLP and that on the 21st day of April, 2021, a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** was electronically filed with the Clerk of the Court by using CM/ECF, served on parties on the electronic service list for this case, and I caused a true and correct copy to be deposited with the U.S. Postal Service at Reno, Nevada addressed to the parties as follows:

Clark Leslie, Esq.
Nevada Attorney for Injured Workers.
1000 E. William St., Suite 208
Carson City, NV 89701

s/Carole Davis
An Employee of McDonald Carano LLP

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INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	[Proposed] Order Denying Petition for Judicial Review	11

FILED
Electronically
CV20-01650
2021-04-21 04:58:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8407009

EXHIBIT 1

1 2700
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8 *Attorney for Respondents*
9 *Washoe County and Cannon Cochran*
10 *Management Services, Inc*

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

13 **SUSAN HOPKINS,**

14 **Petitioner,**

15 **vs.**

Case No: CV20-01650

16 **CITY OF RENO, CANNON COCHRAN**
17 **MANAGEMENT SERVICES, INC. dba**
18 **CCMSI; WASHOE COUNTY; and APPEALS**
19 **OFFICE of the DEPARTMENT OF**
20 **ADMINISTRATION,**

Dept. No: 15

21 **Respondents.**

22 **[PROPOSED] ORDER DENYING PETITION FOR JUDICIAL REVIEW**

23 Presently before the Court is a Petition for Judicial Review ("Petition") filed by Petitioner
24 Susan Hopkins ("Hopkins" or "Petitioner") on October 14, 2020, seeking reversal of an Appeals
25 Officer Decision. The Petition arises out of a contested industrial insurance claim. Petitioner filed
26 her Opening Brief on December 21, 2020. Respondents Washoe County ("County" or
27 "Employer") and its third-party administrator Cannon Cochran Management Services, Inc.
28 ("CCMSI," and together with the County, "Respondents") filed their Answering Brief on January
1, 2021. Petitioner filed her Reply Brief on February 18, 2021. The Court heard oral argument on
March 3, 2021.

Upon careful review of the record, written briefs, and oral argument, the Court finds good
cause to deny the Petition, and affirms the Appeals Officer Decision filed on September 25, 2020
with the Nevada Department of Administration Appeals Office regarding the denial of Petitioner's
workers' compensation claim.

1
2 **APPLICABLE FACTS**

3 Petitioner works as an office support specialist for the Washoe County Health District in the
4 environmental health services division. (ROA 21.) The Health District offices are located adjacent
5 to the Washoe County Fairgrounds and the Reno-Sparks Livestock Events Center ("RSLEC")
6 (ROA 46.) Petitioner often chose to walk at the RSLEC during her breaks. (ROA 21-22.) On
7 September 23, 2019, Employer warned 9th Street employees, including Petitioner, who walked
8 during breaks to avoid the area of the RSLEC due to construction and heavy equipment in and
9 around the area. (ROA 45-46.) The email did not require employees to walk during their breaks
10 and warned "[a]s always use caution and be aware of your surroundings." (ROA 45.)

11 On September 24, 2019, Petitioner took her morning break from work. (ROA 21, 23-24.)
12 Petitioner's break was paid. (ROA at 21.) She chose to go for a walk during her break. (ROA 24)
13 She exited the back door of her workplace and, approximately 50 to 75 feet outside the door, she
14 tripped over a raised sidewalk and fell. (ROA 24-25.) Petitioner then returned to her office and to
15 her desk with the assistance of her co-workers. (ROA 26.)

16 On the day of her injury, Petitioner treated at Reno Orthopedic Clinic and completed a Form
17 C-4 claim for workers' compensation and report of initial treatment. (ROA 57-58.) Her supervisor
18 completed notice of injury and report of injury forms. (ROA 59-61.) On September 27, 2019,
19 Petitioner returned for follow-up at Reno Orthopedic Clinic and was diagnosed with left hip strain
20 and a non-displaced fracture of the right great toe. (ROA 69-72.) On October 3, 2019, CCMSI
21 issued a determination letter denying the workers' compensation claim on the basis that Petitioner
22 did not meet her burden to establish that the injury arose out of and in the course of her
23 employment. (ROA 80.)

24 Petitioner appealed CCMSI's October 3, 2019 determination to the Hearings Division of the
25 Department of Administration, and on November 14, 2019 the Hearing Officer entered a Decision
26 and Order remanding the determination and instructing the insurer to review new documentation
27 submitted by Petitioner and issue a new determination regarding claim compensability. (ROA 38-
28 39.) Pursuant to the Hearing Officer Decision, CCMSI reviewed the documentation and issued a

1 new determination letter on December 5, 2019, denying the claim under NRS 616C.150 for failure
2 to establish that the injury arose out of and in the course of employment. (ROA 92-93.)

3 Petitioner appealed CCMSI's December 5, 2019 determination letter, and a hearing was
4 conducted before a Hearings Officer on January 13, 2020. (ROA 95.) The Hearing Officer issued
5 a Decision and Order affirming the determinations and finding "the evidence fails to support that
6 the injury arose out of the Claimant's employment and the conditions thereof." (ROA 95.)

7 An appeal hearing was held on August 6, 2020. (ROA 9-43.) Petitioner provided witness
8 testimony at the appeal hearing and Exhibits 1 and 2 were admitted into evidence. (ROA 18-19,
9 44-98.) On September 25, 2020, the Appeals Officer issued a Decision finding no causal
10 connection between Claimant's injury and the nature of her work or workplace. (ROA 3.) The
11 Appeals Officer found Claimant's "walking and tripping was not an employment related risk
12 because the Petitioner was walking for her own recreation and enjoyment. The Employer did not
13 create an employment related risk by permitting the Petitioner to walk around a public office
14 facility that was open to the public." (ROA 6.) The Appeals Officer concluded that "[t]he weight
15 of the evidence and legal authority support legal conclusion that the Petitioner failed to satisfy NRS
16 616C.150(1), and she did not suffer a compensable industrial injury on September 24, 2019."
17 (ROA 7.) On October 14, 2020, Petitioner filed the instant petition for judicial review seeking
18 review by this Court of the September 25, 2020 Appeals Officer Decision.

19 STANDARD OF REVIEW

20 A court may set aside a final decision of an agency if the decision is clearly erroneous in
21 view of the substantial evidence, arbitrary, capricious, in violation of statute, characterized by an
22 abuse of discretion or affected by error of law. NRS 233B.135(3); *Ranieri v. Catholic Community*
23 *Services*, 111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995). In reviewing a mixed question of law
24 and fact, an appellate court gives deference to the lower court's findings of fact but independently
25 reviews whether those facts satisfy the applicable legal standard. *See Hernandez v. State*, 124 Nev.
26 639, 647, 188 P.3d 1126, 1132 (2008) (abrogated on other grounds by *State v. Eighth Jud. Dist. Ct.*,
27 134 Nev. 104, 412 P.3d 18 (2018)). An "agency's fact-based conclusions of law are entitled to
28 deference, and will not be disturbed if they are supported by substantial evidence." *Law Offices of*

1 *Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 78, 383-84 (2008) (internal citation
2 omitted). "Substantial evidence exists if a reasonable person could find the evidence adequate to
3 support the agency's conclusion, and [the court] may not reweigh the evidence or revisit an appeals
4 officer's credibility determination." *Id.* at 362, 184 P.3d at 384. While a "district court is free to
5 decide purely legal questions without deference to an agency determination, the agency's
6 conclusions of law, which will necessarily be closely related to the agency's view of the facts, are
7 entitled to deference, and will not be disturbed if they are supported by substantial evidence."
8 *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (internal citation omitted).

9 DISCUSSION

10 **A. The Appeals Officer correctly concluded that Petitioner's injury did not arise**
11 **out of and in the course of her employment.**

12 Under the Nevada Industrial Insurance Act ("NIIA"):

13 An injured employee or the dependents of the injured employee are not entitled to
14 receive compensation pursuant to the provisions of chapters 616A to 616D,
15 inclusive, of NRS unless the employee or the dependents establish by a
preponderance of the evidence that the employee's injury arose out of and in the
course of his or her employment.

16 NRS 616C.150(1). As the Appeals Officer observed in the Decision, the NIIA does not make an
17 employer absolutely liable. (ROA 3) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d
18 1026, 1032 (2005)).

19 The Appeals Officer properly applied *Rio Sulte Hotel & Casino v. Gorsky*, 113 Nev. 600,
20 939 P.2d 1043 (1997) to determine whether Petitioner's injury "arose out of" and "in the course of"
21 her employment. The Nevada Supreme Court has held that an injury arises out of one's
22 employment when there is a causal connection between the employee's injury and the nature of the
23 work or workplace. *Gorsky*, 113 Nev. at 605, 939 P.2d at 1046. In contrast, whether an injury
24 occurs within the course of the employment refers merely to the time and place of employment, i.e.,
25 whether the injury occurs at work, during working hours, and while the employee is reasonably
26 performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. Both of these factors
27 must be satisfied in order for an injury to be compensable under the NIIA. See *MGM Mirage v.*
28 *Cotton*, 121 Nev. 396, 400, 116 P.3d 56, 58 (2005) (explaining "that the inquiry is two-fold").

1 **i. The Appeals Officer properly applied the facts to the law in finding that**
2 **Petitioner's injury did not "Arise Out of" her employment.**

3 In order for an injury to "arise out of" employment under NRS 616C.150(1), "the employee
4 must show that the origin of the injury is related to some risk involved within the scope of
5 employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010)
6 (quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005)). To
7 "arise out of the claimant's employment" the injury must be "fairly traceable to the nature of the
8 employment or workplace environment." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. The Appeals
9 Officer properly applied these holdings to consider whether Petitioner's injury "arose out of" her
10 employment. (ROA 5.)

11 The Appeals Officer considered the four types of workplace risk relevant to workers'
12 compensation under Nevada law: (1) employment risk, (2) personal risk, (3) neutral risk, and (4)
13 mixed risk. See *Bauguen v. Harrah's Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588
14 (2018). Employment risks arise out of the employment. *Id.* at 590. They are solely related to the
15 employment and include obvious industrial injuries. See *Phillips*, 126 Nev. at 351, 240 P.3d at 5;
16 see also 1 Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 4.01, at 4-
17 (rev. ed. 2017) (classic employment risks include "machinery breaking, objects falling, explosives
18 exploding, tractor tipping, fingers getting caught in gears, excavations caving in, and so on" as well
19 as "occupational diseases"). Personal risks do not arise out of the employment. *Phillips*, 126 Nev.
20 at 351, 240 P.3d at 6. Personal risks include injuries caused by personal conditions and illnesses
21 such as falling at work due to "a bad knee, epilepsy, or multiple sclerosis." *Phillips*, 126 Nev. at
22 351, 240 P.3d at 5; see also Larson *supra* § 4.02, 4-2 (examples of personal risks include dying a
23 natural death, the effects of disease or internal weakness and death by "mortal personal enemy").

24 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a fall
25 that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351, 240
26 P.3d at 5; see also Larson, *supra* § 4.03, at 4-2 (examples of neutral risks include
27 hit by a stray bullet out of nowhere, bit by a mad dog, stabbed by a lunatic running amuck, acts of
28 God and unknown causes). A neutral risk arises out of the employment if the employee was

1 subjected to a greater risk than the general public due to the employment. *See Phillips*, 126 Nev. at
2 353, 240 P.3d at 7 (adopting the increased-risk test).

3 In *Phillips*, the claimant fell and broke her ankle on the stairs to the employee break room.
4 *Id.* The claimant was required to use that staircase by her employer and the staircase was not
5 accessible to the general public. *Id.* at 354. Thus, the Nevada Supreme Court applied the neutral
6 risk analysis to the claimant's injury and found that it arose out of her employment and was
7 therefore compensable because "the frequency with which she was required to use the stairs
8 subjected her to a significantly greater risk of injury than the risk faced by the general public." *Id.*

9 Here, Petitioner contends that, like the claimant in *Phillips*, she was "essentially 'funneled'
10 or 'conveyed'" to the sidewalk where she tripped and fell. (Opening Br. at 20.) This comparison is
11 not apt. The sidewalk where Petitioner was injured was accessible to the public, and the Employer
12 did not require Petitioner to walk on that sidewalk for her mandatory break period. Thus, *Phillips* is
13 distinguishable, and the Appeals Officer did not err by finding that Petitioner was not exposed to the
14 neutral risk that subjected her to an increased risk of injury as compared with the general public.

15 Rather, the Appeals Officer properly found that the Employer did not create an employment
16 risk by permitting Petitioner to walk around an office complex in an area that was open to the
17 public. (ROA 6.) At the time of her injury, Petitioner was walking for her own recreation and
18 enjoyment outside of her workplace. (ROA 21-22.) While the Employer was aware that its
19 employees walked during break periods and warned of unsafe locations for walking, it neither
20 required Petitioner to walk during her break, nor did it require her to walk in the area where she
21 was injured. (ROA 22, 45.) Thus, the Appeals Officer's conclusion that Petitioner failed to prove
22 by preponderance of evidence that her injury "arose out of" her employment is supported by
23 substantial evidence.

24 **ii. The Appeals Officer properly applied the facts to the law in finding that**
25 **Petitioner was not "In the Course of Employment" when she was injured.**

26 While Petitioner contends she was in the course of her employment when walking during
27 her mandatory break time, in an area deemed safe by the Employer who was aware that employees
28 walked during breaks, the Appeals Officer concluded that "when the Petitioner was walking during

1 her break, she was walking for her own personal enjoyment and health.” (ROA 3.). The Appeals
2 Officer found that, under *Gorsky*, Petitioner was not reasonably performing her work duties and
3 therefore she was not in the course of her employment when the injury occurred. *Id* This is
4 supported by the substantial evidence which shows that Petitioner chose to walk during her breaks
5 and the Employer did not require her to walk during breaks. (ROA 24, 45.) Contrary to
6 Petitioner’s assertion, the Appeals Officer did consider the fact that Petitioner was on a mandatory
7 break when she was injured, and also the fact that the Employer had sent an email showing that it
8 was aware some employees chose to walk during their breaks and warning them that some areas
9 near the workplace were unsafe for walking due to construction and the presence of heavy
10 equipment. These facts are not inconsistent with the Appeals Officer’s finding that Petitioner was
11 not reasonably performing her work duties when she was injured. Thus, a reasonable person could
12 conclude that, under Nevada law, Petitioner was not in the course of her employment when the
13 injury occurred.

14 **iii. The Appeals Officer properly concluded that the personal comfort doctrine**
15 **does not apply here.**

16 Petitioner argues that the personal comfort doctrine for traveling employees recognized
17 *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019), applies to this case
18 because walking while on a mandatory break is a form of being away from the physical workplace
19 but still under the control of the Employer. (Opening Br. at 14.) This reading of *Buma* was
20 properly rejected by the Appeals Officer

21 In *Buma*, the Nevada Supreme Court adopted the personal comfort rule, which extends
22 coverage under workers’ compensation law, for a traveling employee “because of the risk
23 associated with travel away from home.” *Buma*, 135 Nev. Adv. Op. 60, 453 P.3d at 909 (citing
24 *Ball Foster Glass Container Co. v. Giovanelli*, 163 Wash.2d 133, 177 P.3d 692, 701 (Wash.
25 2008)). “Under the personal comfort rule, an employee remains in the course of employment
26 during personal comfort activities unless the departure from the employee’s work-related duties is
27 so substantial that an intent to abandon the job temporarily may be inferred” *Id.* at 909
28

1 (quoting *Ball-Foster*, 177 P.3d at 700). Thus, *Buma* permits a traveling employee to tend to
2 reasonable recreation needs during downtime without leaving the course of employment.

3 The Appeals Officer properly concluded that *Buma* does not apply to the instant case.
4 Petitioner was not traveling on behalf of the Employer at the time of her trip and fall injury.
5 Petitioner cannot be deemed under the employer's control for purposes of qualifying for the
6 personal comfort doctrine because she was not traveling. Therefore, the Appeals Officer correctly
7 found the Petitioner cannot rely upon *Buma* to satisfy the course of employment requirement in
8 NRS 616C.150.

9 iv. The employer benefit exception to the "Going and Coming" Rule does not apply
10 here.

11 Petitioner contends that her injury falls under an exception to the "going and coming" rule,
12 which "precludes compensation for most employee injuries that occur during travel to or from
13 work," because walking during her break conferred a benefit on the Employer. *MGM Mirage*, 121
14 Nev. at 399, 116 P.3d at 58. In support of her position, Petitioner cites a document provided to
15 County employees which advised employers to provide a map of walking routes around the office
16 and prompted employees to seek information from the Centers for Disease Control and
17 Prevention's Healthier Works Initiative programs designed to benefit the employer by reducing
18 time lost from work due to illness or disease. (See Opening Br. at 17, citing ROA 171.) This
19 document, however, is from Washoe County's public website and is a resource from the Washoe
20 County Health District to provide information to the general public. (ROA at 92.) While County
21 employees are encouraged to participate in voluntary activities such as walking during their break
22 times, they are not required by the County to do so. *Id.*

23 Perhaps more importantly, the going and coming case law Petitioner cites does not support
24 the use of the doctrine on the facts presented. The employer benefit exception described in *MGM*
25 *Mirage v. Cotton* does not extend to a benefit as far removed as reducing time lost from work due
26 to disease. *Nevada Indus. Commission v. Holt*, 83 Nev. 497, 500, 134 P.2d 423 (1967)
27 ("[R]ecreational activity should not be deemed within the course of employment unless a regular
28 incident of employment, or required by the employer, or of direct benefit to the employer beyond

1 the intangible value of employee health and morale common to all kinds of recreation and social
2 life.”). Rather, the Nevada Supreme Court has applied this exception to cases of “distinct” benefit,
3 such as an on-call employee driving his employer’s vehicle home for purposes of furthering the
4 employer’s business. See *Tighe v. Las Vegas Metro Police Dep’t*, 110 Nev. 632, 635, 877 P.2d
5 1032 (Nev. 1994) (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842 P.2d 719 (1992),
6 *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 n.6 (2001)).

7 In *Tighe*, the employee was an on call undercover police officer who suffered injuries in an
8 automobile accident while driving home in his employer’s vehicle. *Id.* The court found that the
9 employer benefitted from having one of its undercover officers driving an undercover vehicle and
10 therefore the employee was subject to his employer’s control at the time of his accident. *Id.* at 636.
11 Similarly, the Petitioner in *Evans* was an on-call service technician driving home in his employer’s
12 van and was found to be within the course of his employment because he was furthering his
13 employer’s business in taking the van home. See *Evans*, 108 Nev. at 1006, 842 P.2d at 721-22.
14 Here, while there may have been an incidental benefit to the Employer in Petitioner maintaining her
15 health by walking on her break, there was no “distinct” benefit. She was not on call. The Employer
16 did not require her to go for a walk. Therefore, she was not “in the course of” her employment
17 under the employer benefit exception to the “going and coming” rule. Even if the Petitioner was
18 “in the course of” her employment at the time of her injury, the injury did not “arise out of” her
19 employment, as set forth here. Both factors of the two-part inquiry must be satisfied for an injury
20 to be compensable under NRS 616C.150(1). The Appeals Officer’s decision in this regard is
21 therefore supported by substantial evidence and was not the product of legal error.

22 **B. The Appeals Officer’s conclusion that Petitioner did not show by a preponderance**
23 **of the evidence that her injury arose out of and in the course of her employment under**
24 **NRS 616C.150(1) is supported by substantial evidence.**

25 The Appeals Officer Decision is supported by substantial evidence and may not be
26 disturbed on appeal. See *Law Offices of Barry Levinson, P.C.* 124 Nev. at 362, 184 P.3d at 384.
27 “Substantial evidence exists if a reasonable person could find the evidence adequate to support the
28 agency’s conclusion.” *Id.* The Appeals Officer Decision applies the relevant legal authority and

1 carefully weighs all the evidence in concluding that Petitioner failed to satisfy NRS 616C.150(1).

2 The Appeals Officer did not ignore the facts that suggest the Employer had control over the
3 Petitioner at the time of her injury, as argued by Petitioner. Instead, the Appeals Officer considered
4 those facts in arriving at the conclusion that the injury did not "arise out of" and "in the course of"
5 her employment. The Appeals Officer weighed the fact that Petitioner was on a contractually
6 mandated break at the time of her injury, that the Employer was aware of employees walking
7 during break periods, and that the Employer had sent an email to Petitioner warning of unsafe areas
8 for walking. (ROA 2, 4-6.) These facts do not undermine the substantial evidence tending to show
9 that Petitioner was not required to walk during her break, was not performing work duties, was
10 walking for her own recreation and enjoyment, and was walking in an area of her choice not
11 mandated by the Employer at the time of her injury.

12 A reasonable person could find this evidence sufficient to support the Appeals Officer's
13 conclusion that that Petitioner has not met her burden under NRS 616C.150(1) to establish that her
14 injury occurred as a direct result of the duties that arose out of and in the course of her employment
15 and therefore did not suffer a compensable industrial injury. Accordingly, the Appeals Officer's
16 Decision is not "[a]ffected by other error of law," is not "[c]learly erroneous in view of the reliable,
17 probative and substantial evidence on the whole record," and is not "[a]rbitrary or capricious or
18 characterized by abuse of discretion." NRS 233B.135(3). Thus, no grounds exist for granting
19 Claimant's Petition for Judicial Review

20 DECISION

21 As articulated above, the Appeals Officer's Decision was supported by substantial
22 evidence and was not clearly erroneous. Furthermore, the Appeals Officer's Decision was not
23 an abuse of discretion nor was it based on an error of law.

24 Accordingly, and good cause appearing:

25 IT IS HEREBY ORDERED that Petitioner's Petition for Judicial Review is DENIED.

26 The Appeals Officer's findings of facts and conclusions of law are hereby affirmed.

27 IT IS SO ORDERED.

28 DATED this day of , 2021.

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DAVID A. HARDY
District Judge

Respectfully submitted by:
McDONALD CARANO LLP

s Lucas Foletta
Lucas Foletta
Attorney for Respondents

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10 *Management Services, Inc.*

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

12 **IN AND FOR THE COUNTY OF WASHOE**

13 SUSAN HOPKINS,

14 Petitioner,

15 vs.

Case No: CV20-01650

16 CITY OF RENO, CANNON COCHRAN
17 MANAGEMENT SERVICES, INC. dba
18 CCMSI; WASHOE COUNTY; and APPEALS
19 OFFICE of the DEPARTMENT OF
20 ADMINISTRATION,

Dept. No: 15

21 Respondents.

22 **ORDER OF AFFIRMANCE DENYING PETITION FOR JUDICIAL REVIEW**

23 Presently before the Court is a Petition for Judicial Review ("Petition") filed by Petitioner
24 Susan Hopkins ("Hopkins" or "Petitioner") on October 14, 2020, seeking reversal of an Appeals
25 Officer Decision. The Petition arises out of a contested industrial insurance claim. Petitioner filed
26 her Opening Brief on December 21, 2020. Respondents Washoe County ("County" or
27 "Employer") and its third-party administrator Cannon Cochran Management Services, Inc.
28 ("CCMSI," and together with the County, "Respondents") filed their Answering Brief on January
1, 2020. Petitioner filed her Reply Brief on February 18, 2021. The Court heard oral argument on
March 3, 2021.

Upon careful review of the record, written briefs, and oral argument, the Court finds good
cause to deny the Petition, and affirms the Appeals Officer Decision filed on September 25, 2020
with the Nevada Department of Administration Appeals Office regarding the denial of Petitioner's
workers' compensation claim.

1
2 **APPLICABLE FACTS**

3 Petitioner works as an office support specialist for the Washoe County Health District in the
4 environmental health services division. (ROA 21.) The Health District offices are located adjacent
5 to the Washoe County Fairgrounds and the Reno-Sparks Livestock Events Center ("RSLEC").
6 (ROA 46.) Petitioner often chose to walk at the RSLEC during her breaks. (ROA 21-22.) On
7 September 23, 2019, Employer warned 9th Street employees, including Petitioner, who walked
8 during breaks to avoid the area of the RSLEC due to construction and heavy equipment in and
9 around the area. (ROA 45-46.) The email did not require employees to walk during their breaks
10 and warned "[a]s always use caution and be aware of your surroundings." (ROA 45.)

11 On September 24, 2019, Petitioner took her morning break from work. (ROA 21, 23-24.)
12 Petitioner's break was paid. (ROA at 21.) She chose to go for a walk during her break. (ROA 24.)
13 She exited the back door of her workplace and, approximately 50 to 75 feet outside the door, she
14 tripped over a raised sidewalk and fell. (ROA 24-25.) Petitioner then returned to her office and to
15 her desk with the assistance of her co-workers. (ROA 26.)

16 On the day of her injury, Petitioner treated at Reno Orthopedic Clinic and completed a Form
17 C-4 claim for workers' compensation and report of initial treatment. (ROA 57-58.) Her supervisor
18 completed notice of injury and report of injury forms. (ROA 59-61.) On September 27, 2019,
19 Petitioner returned for follow-up at Reno Orthopedic Clinic and was diagnosed with left hip strain
20 and a non-displaced fracture of the right great toe. (ROA 69-72.) On October 3, 2019, CCMSI
21 issued a determination letter denying the workers' compensation claim on the basis that Petitioner
22 did not meet her burden to establish that the injury arose out of and in the course of her
23 employment. (ROA 80.)

24 Petitioner appealed CCMSI's October 3, 2019 determination to the Hearings Division of the
25 Department of Administration, and on November 14, 2019 the Hearing Officer entered a Decision
26 and Order remanding the determination and instructing the insurer to review new documentation
27 submitted by Petitioner and issue a new determination regarding claim compensability. (ROA 38-
28 39.) Pursuant to the Hearing Officer Decision, CCMSI reviewed the documentation and issued a

1 new determination letter on December 5, 2019, denying the claim under NRS 616C.150 for failure
2 to establish that the injury arose out of and in the course of employment. (ROA 92-93.)

3 Petitioner appealed CCMSI's December 5, 2019 determination letter, and a hearing was
4 conducted before a Hearings Officer on January 13, 2020. (ROA 95.) The Hearing Officer issued
5 a Decision and Order affirming the determinations and finding "the evidence fails to support that
6 the injury arose out of the Claimant's employment and the conditions thereof." (ROA 95.)

7 An appeal hearing was held on August 6, 2020. (ROA 9-43.) Petitioner provided witness
8 testimony at the appeal hearing and Exhibits 1 and 2 were admitted into evidence. (ROA 18-29,
9 44-98.) On September 25, 2020, the Appeals Officer issued a Decision finding no causal
10 connection between Claimant's injury and the nature of her work or workplace. (ROA 3.) The
11 Appeals Officer found Claimant's "walking and tripping was not an employment related risk
12 because the Petitioner was walking for her own recreation and enjoyment. The Employer did not
13 create an employment related risk by permitting the Petitioner to walk around a public office
14 facility that was open to the public." (ROA 6.) The Appeals Officer concluded that "[t]he weight
15 of the evidence and legal authority support legal conclusion that the Petitioner failed to satisfy NRS
16 616C.150(1), and she did not suffer a compensable industrial injury on September 24, 2019."
17 (ROA 7.) On October 14, 2020, Petitioner filed the instant petition for judicial review seeking
18 review by this Court of the September 25, 2020 Appeals Officer Decision.

19 STANDARD OF REVIEW

20 A court may set aside a final decision of an agency if the decision is clearly erroneous in
21 view of the substantial evidence, arbitrary, capricious, in violation of statute, characterized by an
22 abuse of discretion or affected by error of law. NRS 233B.135(3); *Ranieri v. Catholic Community*
23 *Services*, 111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995). In reviewing a mixed question of law
24 and fact, an appellate court gives deference to the lower court's findings of fact but independently
25 reviews whether those facts satisfy the applicable legal standard. *See Hernandez v. State*, 124 Nev.
26 639, 647, 188 P.3d 1126, 1132 (2008) (abrogated on other grounds by *State v. Eighth Jud. Dist. Ct.*,
27 134 Nev. 104, 412 P.3d 18 (2018)). An "agency's fact-based conclusions of law 'are entitled to
28 deference, and will not be disturbed if they are supported by substantial evidence.'" *Law Offices of*

1 *Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 78, 383-84 (2008) (internal citation
2 omitted). "Substantial evidence exists if a reasonable person could find the evidence adequate to
3 support the agency's conclusion, and [the court] may not reweigh the evidence or revisit an appeals
4 officer's credibility determination." *Id.* at 362, 184 P.3d at 384. While a "district court is free to
5 decide purely legal questions without deference to an agency determination, the agency's
6 conclusions of law, which will necessarily be closely related to the agency's view of the facts, are
7 entitled to deference, and will not be disturbed if they are supported by substantial evidence."
8 *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (internal citation omitted).

9 DISCUSSION

10 **A. The Appeals Officer correctly concluded that Petitioner's injury did not arise** 11 **out of and in the course of her employment.**

12 Under the Nevada Industrial Insurance Act ("NIIA"):

13 An injured employee or the dependents of the injured employee are not entitled to
14 receive compensation pursuant to the provisions of chapters 616A to 616D,
15 inclusive, of NRS unless the employee or the dependents establish by a
preponderance of the evidence that the employee's injury arose out of and in the
course of his or her employment.

16 NRS 616C.150(1). As the Appeals Officer observed in the Decision, the NIIA does not make an
17 employer absolutely liable. (ROA 3) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d
18 1026, 1032 (2005)).

19 The Appeals Officer properly applied *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600,
20 939 P.2d 1043 (1997) to determine whether Petitioner's injury "arose out of" and "in the course of"
21 her employment. The Nevada Supreme Court has held that an injury arises out of one's
22 employment when there is a causal connection between the employee's injury and the nature of the
23 work or workplace. *Gorsky*, 113 Nev. at 605, 939 P.2d at 1046. In contrast, whether an injury
24 occurs within the course of the employment refers merely to the time and place of employment, *i.e.*,
25 whether the injury occurs at work, during working hours, and while the employee is reasonably
26 performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. Both of these factors
27 must be satisfied in order for an injury to be compensable under the NIIA. See *MGM Mirage v.*
28 *Cotton*, 121 Nev. 396, 400, 116 P.3d 56, 58 (2005) (explaining "that the inquiry is two-fold").

1 **i. The Appeals Officer properly applied the facts to the law in finding that**
2 **Petitioner's injury did not "Arise Out of" her employment.**

3 In order for an injury to "arise out of" employment under NRS 616C.150(1), "the employee
4 must show that the origin of the injury is related to some risk involved within the scope of
5 employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010)
6 (quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005)). To
7 "arise out of the claimant's employment" the injury must be "fairly traceable to the nature of the
8 employment or workplace environment." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. The Appeals
9 Officer properly applied these holdings to consider whether Petitioner's injury "arose of out" her
10 employment. (ROA 5.)

11 The Appeals Officer considered the four types of workplace risk relevant to workers'
12 compensation under Nevada law: (1) employment risk, (2) personal risk, (3) neutral risk, and (4)
13 mixed risk. *See Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588
14 (2018). Employment risks arise out of the employment. *Id.* at 590. They are solely related to the
15 employment and include obvious industrial injuries. *See Phillips*, 126 Nev. at 351, 240 P.3d at 5;
16 *see also* 1 Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 4.01, at 4-2
17 (rev. ed. 2017) (classic employment risks include "machinery breaking, objects falling, explosives
18 exploding tractor tipping, fingers getting caught in gears, excavations caving in, and so on" as well
19 as "occupational diseases"). Personal risks do not arise out of the employment. *Phillips*, 126 Nev.
20 at 351, 240 P.3d at 6. Personal risks include injuries caused by personal conditions and illnesses,
21 such as falling at work due to "a bad knee, epilepsy, or multiple sclerosis." *Phillips*, 126 Nev. at
22 351, 240 P.3d at 5; *see also* Larson *supra* § 4.02, 4-2 (examples of personal risks include dying a
23 natural death the effects of disease or internal weakness and death by "mortal personal enemy").

24 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a fall
25 that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351, 240
26 P.3d at 5; *see also* Larson, *supra* § 4.03, at 4-2 (examples of neutral risks include
27 hit by a stray bullet out of nowhere, bit by a mad dog stabbed by a lunatic running amuck," acts of
28 God and unknown causes). A neutral risk arises out of the employment if the employee was

1 subjected to a greater risk than the general public due to the employment. *See Phillips*, 126 Nev. at
2 353, 240 P.3d at 7 (adopting the increased-risk test).

3 In *Phillips*, the claimant fell and broke her ankle on the stairs to the employee break room.
4 *Id.* The claimant was required to use that staircase by her employer and the staircase was not
5 accessible to the general public. *Id.* at 354. Thus, the Nevada Supreme Court applied the neutral
6 risk analysis to the claimant's injury and found that it arose out of her employment and was
7 therefore compensable because "the frequency with which she was required to use the stairs
8 subjected her to a significantly greater risk of injury than the risk faced by the general public." *Id.*

9 Here, Petitioner contends that, like the claimant in *Phillips*, she was "essentially 'funneled'
10 or 'conveyed'" to the sidewalk where she tripped and fell. (Opening Br. at 20.) This comparison is
11 not apt. The sidewalk where Petitioner was injured was accessible to the public, and the Employer
12 did not require Petitioner to walk on that sidewalk for her mandatory break period. Thus, *Phillips* is
13 distinguishable, and the Appeals Officer did not err by finding that Petitioner was not exposed to a
14 neutral risk that subjected her to an increased risk of injury as compared with the general public.

15 Rather, the Appeals Officer properly found that the Employer did not create an employment
16 risk by permitting Petitioner to walk around an office complex in an area that was open to the
17 public. (ROA 6.) At the time of her injury, Petitioner was walking for her own recreation and
18 enjoyment outside of her workplace. (ROA 21-22.) While the Employer was aware that its
19 employees walked during break periods and warned of unsafe locations for walking, it neither
20 required Petitioner to walk during her break, nor did it require her to walk in the area where she
21 was injured. (ROA 22, 45.) Thus, the Appeals Officer's conclusion that Petitioner failed to prove
22 by preponderance of evidence that her injury "arose out of" her employment is supported by the
23 substantial evidence.

24 **ii. The Appeals Officer properly applied the facts to the law in finding that**
25 **Petitioner was not "In the Course of Employment" when she was injured.**

26 While Petitioner contends she was in the course of her employment when walking during
27 her mandatory break time, in an area deemed safe by the Employer who was aware that employees
28 walked during breaks, the Appeals Officer concluded that "when the Petitioner was walking during

1 her break, she was walking for her own personal enjoyment and health.” (ROA 3.). The Appeals
2 Officer found that, under *Gorsky*, Petitioner was not reasonably performing her work duties and
3 therefore she was not in the course of her employment when the injury occurred. *Id.* This is
4 supported by the substantial evidence which shows that Petitioner chose to walk during her breaks
5 and the Employer did not require her to walk during breaks. (ROA 24, 45.) Contrary to
6 Petitioner’s assertion, the Appeals Officer did consider the fact that Petitioner was on a mandatory
7 break when she was injured, and also the fact that the Employer had sent an email showing that it
8 was aware some employees chose to walk during their breaks and warning them that some areas
9 near the workplace were unsafe for walking due to construction and the presence of heavy
10 equipment. These facts are not inconsistent with the Appeals Officer’s finding that Petitioner was
11 not reasonably performing her work duties when she was injured. Thus, a reasonable person could
12 conclude that, under Nevada law, Petitioner was not in the course of her employment when the
13 injury occurred.

14 **iii. The Appeals Officer properly concluded that the personal comfort doctrine**
15 **does not apply here.**

16 Petitioner argues that the personal comfort doctrine for traveling employees recognized in
17 *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019), applies to this case
18 because walking while on a mandatory break is a form of being away from the physical workplace
19 but still under the control of the Employer. (Opening Br. at 14.) This reading of *Buma* was
20 properly rejected by the Appeals Officer.

21 In *Buma*, the Nevada Supreme Court adopted the personal comfort rule, which extends
22 coverage under workers’ compensation law, for a traveling employee “because of the risks
23 associated with travel away from home.” *Buma*, 135 Nev. Adv. Op. 60, 453 P.3d at 909 (citing
24 *Ball-Foster Glass Container Co. v. Giovanelli*, 163 Wash.2d 133, 177 P.3d 692, 701 (Wash.
25 2008)). “Under the personal comfort rule, an employee remains in the course of employment
26 during personal comfort activities unless the departure from the employee’s work-related duties ‘is
27 so substantial that an intent to abandon the job temporarily may be inferred’” *Id.* at 909
28

1 (quoting *Ball-Foster*, 177 P.3d at 700). Thus, *Buma* permits a traveling employee to tend to
2 reasonable recreation needs during downtime without leaving the course of employment.

3 The Appeals Officer properly concluded that *Buma* does not apply to the instant case.
4 Petitioner was not traveling on behalf of the Employer at the time of her trip and fall injury.
5 Petitioner cannot be deemed under the employer's control for purposes of qualifying for the
6 personal comfort doctrine because she was not traveling. Therefore, the Appeals Officer correctly
7 found the Petitioner cannot rely upon *Buma* to satisfy the course of employment requirement in
8 NRS 616C.150.

9 **iv. The employer benefit exception to the "Going and Coming" Rule does not apply**
10 **here.**

11 Petitioner contends that her injury falls under an exception to the "'going and coming' rule"
12 which "precludes compensation for most employee injuries that occur during travel to or from
13 work," because walking during her break conferred a benefit on the Employer. *MGM Mirage*, 121
14 Nev. at 399, 116 P.3d at 58. In support of her position, Petitioner cites a document provided to
15 County employees which advised employers to provide a map of walking routes around the office
16 and prompted employees to seek information from the Centers for Disease Control and
17 Prevention's Healthier Worksite Initiative programs designed to benefit the employer by reducing
18 time lost from work due to illness or disease. (See Opening Br. at 17, citing ROA 124.) This
19 document, however, is from Washoe County's public website and is a resource from the Washoe
20 County Health District to provide information to the general public. (ROA at 92.) While County
21 employees are encouraged to participate in voluntary activities such as walking during their break
22 times, they are not required by the County to do so. *Id.*

23 Perhaps more importantly, the going and coming case law Petitioner cites does not support
24 the use of the doctrine on the facts presented. The employer benefit exception described in *MGM*
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27 ("[R]ecreational activity should not be deemed within the course of employment unless a regular
28 incident of employment, or required by the employer, or of direct benefit to the employer beyond

1 the intangible value of employee health and morale common to all kinds of recreation and social
2 life.”). Rather, the Nevada Supreme Court has applied this exception to cases of “distinct” benefit,
3 such as an on-call employee driving his employer’s vehicle home for purposes of furthering the
4 employer’s business. See *Tighe v. Las Vegas Metro. Police Dep’t*, 110 Nev. 632, 635, 877 P.2d
5 1032 (Nev. 1994) (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842 P.2d 719 (1992),
6 *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 n.6 (2001)).

7 In *Tighe*, the employee was an on-call undercover police officer who suffered injuries in an
8 automobile accident while driving home in his employer’s vehicle. *Id.* The court found that the
9 employer benefitted from having one of its undercover officers driving an undercover vehicle and
10 therefore the employee was subject to his employer’s control at the time of his accident. *Id.* at 636.
11 Similarly, the Petitioner in *Evans* was an on-call service technician driving home in his employer’s
12 van and was found to be within the course of his employment because he was furthering his
13 employer’s business in taking the van home. See *Evans*, 108 Nev. at 1006, 842 P.2d at 721-22.
14 Here, while there may have been an incidental benefit to the Employer in Petitioner maintaining her
15 health by walking on her break, there was no “distinct” benefit. She was not on call. The Employer
16 did not require her to go for a walk. Therefore, she was not “in the course of” her employment
17 under the employer benefit exception to the “going and coming” rule. Even if the Petitioner was
18 “in the course of” her employment at the time of her injury, the injury did not “arise out of” her
19 employment, as set forth here. Both factors of the two-part inquiry must be satisfied for an injury
20 to be compensable under NRS 616C.150(1). The Appeals Officer’s decision in this regard is
21 therefore supported by substantial evidence and was not the product of legal error.

22 **B. The Appeals Officer’s conclusion that Petitioner did not show by a preponderance**
23 **of the evidence that her injury arose out of and in the course of her employment under**
24 **NRS 616C.150(1) is supported by substantial evidence.**

25 The Appeals Officer Decision is supported by substantial evidence and may not be
26 disturbed on appeal. See *Law Offices of Barry Levinson, P.C.* 124 Nev. at 362, 184 P.3d at 384.
27 “Substantial evidence exists if a reasonable person could find the evidence adequate to support the
28 agency’s conclusion.” *Id.* The Appeals Officer Decision applies the relevant legal authority and

1 carefully weighs all the evidence in concluding that Petitioner failed to satisfy NRS 616C.150(1).

2 The Appeals Officer did not ignore the facts that suggest the Employer had control over the
3 Petitioner at the time of her injury, as argued by Petitioner. Instead, the Appeals Officer considered
4 those facts in arriving at the conclusion that the injury did not "arise out of" and "in the course of"
5 her employment. The Appeals Officer weighed the fact that Petitioner was on a contractually
6 mandated break at the time of her injury, that the Employer was aware of employees walking
7 during break periods, and that the Employer had sent an email to Petitioner warning of unsafe areas
8 for walking. (ROA 2, 4-6.) These facts do not undermine the substantial evidence tending to show
9 that Petitioner was not required to walk during her break, was not performing work duties, was
10 walking for her own recreation and enjoyment, and was walking in an area of her choice not
11 mandated by the Employer at the time of her injury.

12 A reasonable person could find this evidence sufficient to support the Appeals Officer's
13 conclusion that that Petitioner has not met her burden under NRS616C.150(1) to establish that her
14 injury occurred as a direct result of the duties that arose out of and in the course of her employment
15 and therefore did not suffer a compensable industrial injury. Accordingly, the Appeals Officer
16 Decision is not "[a]ffected by other error of law," is not "[c]learly erroneous in view of the reliable,
17 probative and substantial evidence on the whole record," and is not "[a]rbitrary or capricious or
18 characterized by abuse of discretion." NRS 233B.135(3). Thus, no grounds exist for granting
19 Claimant's Petition for Judicial Review.

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1 **DECISION**

2 As articulated above, the Appeals Officer's Decision was supported by substantial
3 evidence and was not clearly erroneous. Furthermore, the Appeals Officer's Decision was not
4 an abuse of discretion nor was it based on an error of law.

5 Accordingly, and good cause appearing:

6 IT IS HEREBY ORDERED that Petitioner's Petition for Judicial Review is DENIED.
7 The Appeals Officer's findings of facts and conclusions of law are hereby affirmed.

8 IT IS SO ORDERED.

9 DATED this 22nd day of April, 2021.

10 
11 DAVID A. HARDY
12 District Judge

13 This Court noted the objections to the
14 proposed order and concludes they are
15 unnecessary because the arguments are
16 preserved for further review.
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1 **CODE: 2540**
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12 *Management Services, Inc.*

13
14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
15
16 IN AND FOR THE COUNTY OF WASHOE

17 ***

18 SUSAN HOPKINS,

19 Petitioner,

20 vs.

21 CANNON COCHRAN MANAGEMENT
22 SERVICES, INC. dba CCMSI; WASHOE
23 COUNTY; and APPEALS OFFICE of the
24 DEPARTMENT OF ADMINISTRATION;

25 Respondents,

Case No.: CV20-01650

Dept. No.: 15

26 **NOTICE OF ENTRY OF ORDER**

27 PLEASE TAKE NOTICE that on April 22, 2021, the above-entitled Court entered its
28 Order of Affirmance Denying Petition for Judicial Review. A true and correct copy of the
Order is attached hereto.

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Affirmation

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: April 23, 2021.

MCDONALD CARANO LLP

By: /s/ Lucas M. Foletta
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Management Services, Inc.*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on April 23, 2021, I certify that I electronically filed the foregoing with the Clerk of the Court which served the following parties electronically:

Clark G. Leslie, Esq.
Nevada Attorney for Injured Workers
1000 E. William St., Ste. 208
Carson City, NV 89701

s. Carole Davis
An Employee of McDonald Carano LLP

MCDONALD  **CARANO**
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INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	Order of Affirmance Denying Petition for Judicial Review	11

4837-3968-4566 v 1

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Clerk of the Court
Transaction # 8409966

EXHIBIT 1

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Management Services, Inc.

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

9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

Case No: CV20-01650

12 CITY OF RENO, CANNON COCHRAN
MANAGEMENT SERVICES, INC. dba
13 CCMSI; WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

Dept. No: 15

14 Respondents.
15

16 **ORDER OF AFFIRMANCE DENYING PETITION FOR JUDICIAL REVIEW**

17 Presently before the Court is a Petition for Judicial Review ("Petition") filed by Petitioner
18 Susan Hopkins ("Hopkins" or "Petitioner") on October 14, 2020, seeking reversal of an Appeals
19 Officer Decision. The Petition arises out of a contested industrial insurance claim. Petitioner filed
20 her Opening Brief on December 21, 2020. Respondents Washoe County ("County" or
21 "Employer") and its third-party administrator Cannon Cochran Management Services, Inc.
22 ("CCMSI," and together with the County, "Respondents") filed their Answering Brief on January
23 1, 2020. Petitioner filed her Reply Brief on February 18, 2021. The Court heard oral argument on
24 March 3, 2021.

25 Upon careful review of the record, written briefs, and oral argument, the Court finds good
26 cause to deny the Petition, and affirms the Appeals Officer Decision filed on September 25, 2020
27 with the Nevada Department of Administration Appeals Office regarding the denial of Petitioner's
28 workers' compensation claim.

1
2 **APPLICABLE FACTS**

3 Petitioner works as an office support specialist for the Washoe County Health District in the
4 environmental health services division. (ROA 21.) The Health District offices are located adjacent
5 to the Washoe County Fairgrounds and the Reno-Sparks Livestock Events Center ("RSLEC").
6 (ROA 46.) Petitioner often chose to walk at the RSLEC during her breaks. (ROA 21-22.) On
7 September 23, 2019, Employer warned 9th Street employees, including Petitioner, who walked
8 during breaks to avoid the area of the RSLEC due to construction and heavy equipment in and
9 around the area. (ROA 45-46.) The email did not require employees to walk during their breaks
10 and warned "[a]s always use caution and be aware of your surroundings." (ROA 45.)

11 On September 24, 2019, Petitioner took her morning break from work. (ROA 21, 23-24.)
12 Petitioner's break was paid. (ROA at 21.) She chose to go for a walk during her break. (ROA 24.)
13 She exited the back door of her workplace and, approximately 50 to 75 feet outside the door, she
14 tripped over a raised sidewalk and fell. (ROA 24-25.) Petitioner then returned to her office and to
15 her desk with the assistance of her co-workers. (ROA 26.)

16 On the day of her injury, Petitioner treated at Reno Orthopedic Clinic and completed a Form
17 C-4 claim for workers' compensation and report of initial treatment. (ROA 57-58.) Her supervisor
18 completed notice of injury and report of injury forms. (ROA 59-61.) On September 27, 2019,
19 Petitioner returned for follow-up at Reno Orthopedic Clinic and was diagnosed with left hip strain
20 and a non-displaced fracture of the right great toe. (ROA 69-72.) On October 3, 2019, CCMSI
21 issued a determination letter denying the workers' compensation claim on the basis that Petitioner
22 did not meet her burden to establish that the injury arose out of and in the course of her
23 employment. (ROA 80.)

24 Petitioner appealed CCMSI's October 3, 2019 determination to the Hearings Division of the
25 Department of Administration, and on November 14, 2019 the Hearing Officer entered a Decision
26 and Order remanding the determination and instructing the insurer to review new documentation
27 submitted by Petitioner and issue a new determination regarding claim compensability. (ROA 38-
28 39.) Pursuant to the Hearing Officer Decision, CCMSI reviewed the documentation and issued a

1 new determination letter on December 5, 2019, denying the claim under NRS 616C.150 for failure
2 to establish that the injury arose out of and in the course of employment. (ROA 92-93.)

3 Petitioner appealed CCMSI's December 5, 2019 determination letter, and a hearing was
4 conducted before a Hearings Officer on January 13, 2020. (ROA 95.) The Hearing Officer issued
5 a Decision and Order affirming the determinations and finding "the evidence fails to support that
6 the injury arose out of the Claimant's employment and the conditions thereof." (ROA 95.)

7 An appeal hearing was held on August 6, 2020. (ROA 9-43.) Petitioner provided witness
8 testimony at the appeal hearing and Exhibits 1 and 2 were admitted into evidence. (ROA 18-29,
9 44-98.) On September 25, 2020, the Appeals Officer issued a Decision finding no causal
10 connection between Claimant's injury and the nature of her work or workplace. (ROA 3.) The
11 Appeals Officer found Claimant's "walking and tripping was not an employment related risk
12 because the Petitioner was walking for her own recreation and enjoyment. The Employer did not
13 create an employment related risk by permitting the Petitioner to walk around a public office
14 facility that was open to the public." (ROA 6.) The Appeals Officer concluded that "[t]he weight
15 of the evidence and legal authority support legal conclusion that the Petitioner failed to satisfy NRS
16 616C.150(1), and she did not suffer a compensable industrial injury on September 24, 2019."
17 (ROA 7.) On October 14, 2020, Petitioner filed the instant petition for judicial review seeking
18 review by this Court of the September 25, 2020 Appeals Officer Decision.

19 STANDARD OF REVIEW

20 A court may set aside a final decision of an agency if the decision is clearly erroneous in
21 view of the substantial evidence, arbitrary, capricious, in violation of statute, characterized by an
22 abuse of discretion or affected by error of law. NRS 233B.135(3); *Ranieri v. Catholic Community*
23 *Services*, 111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995). In reviewing a mixed question of law
24 and fact, an appellate court gives deference to the lower court's findings of fact but independently
25 reviews whether those facts satisfy the applicable legal standard. *See Hernandez v. State*, 124 Nev.
26 639, 647, 188 P.3d 1126, 1132 (2008) (abrogated on other grounds by *State v. Eighth Jud. Dist. Ct.*,
27 134 Nev. 104, 412 P.3d 18 (2018)). An "agency's fact-based conclusions of law 'are entitled to
28 deference, and will not be disturbed if they are supported by substantial evidence.'" *Law Offices of*

1 *Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 78, 383-84 (2008) (internal citation
2 omitted). "Substantial evidence exists if a reasonable person could find the evidence adequate to
3 support the agency's conclusion, and [the court] may not reweigh the evidence or revisit an appeals
4 officer's credibility determination." *Id.* at 362, 184 P.3d at 384. While a "district court is free to
5 decide purely legal questions without deference to an agency determination, the agency's
6 conclusions of law, which will necessarily be closely related to the agency's view of the facts, are
7 entitled to deference, and will not be disturbed if they are supported by substantial evidence."
8 *Jones v Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (internal citation omitted).

9 DISCUSSION

10 **A. The Appeals Officer correctly concluded that Petitioner's injury did not arise**
11 **out of and in the course of her employment.**

12 Under the Nevada Industrial Insurance Act ("NIIA"):

13 An injured employee or the dependents of the injured employee are not entitled to
14 receive compensation pursuant to the provisions of chapters 616A to 616D,
15 inclusive, of NRS unless the employee or the dependents establish by a
preponderance of the evidence that the employee's injury arose out of and in the
course of his or her employment.

16 NRS 616C.150(1). As the Appeals Officer observed in the Decision, the NIIA does not make an
17 employer absolutely liable. (ROA 3) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d
18 1026, 1032 (2005)).

19 The Appeals Officer properly applied *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600,
20 939 P.2d 1043 (1997) to determine whether Petitioner's injury "arose out of" and "in the course of"
21 her employment. The Nevada Supreme Court has held that an injury arises out of one's
22 employment when there is a causal connection between the employee's injury and the nature of the
23 work or workplace. *Gorsky*, 113 Nev. at 605, 939 P.2d at 1046. In contrast, whether an injury
24 occurs within the course of the employment refers merely to the time and place of employment, *i.e.*,
25 whether the injury occurs at work, during working hours, and while the employee is reasonably
26 performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. Both of these factors
27 must be satisfied in order for an injury to be compensable under the NIIA. See *MGM Mirage v.*
28 *Cotton*, 121 Nev. 396, 400, 116 P.3d 56, 58 (2005) (explaining "that the inquiry is two-fold").

1 **i. The Appeals Officer properly applied the facts to the law in finding that**
2 **Petitioner's injury did not "Arise Out of" her employment.**

3 In order for an injury to "arise out of" employment under NRS 616C.150(1), "the employee
4 must show that the origin of the injury is related to some risk involved within the scope of
5 employment." *Rio All Sutte Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010)
6 (quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005)). To
7 "arise out of the claimant's employment" the injury must be "fairly traceable to the nature of the
8 employment or workplace environment." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. The Appeals
9 Officer properly applied these holdings to consider whether Petitioner's injury "arose of out" her
10 employment. (ROA 5.)

11 The Appeals Officer considered the four types of workplace risk relevant to workers'
12 compensation under Nevada law: (1) employment risk, (2) personal risk, (3) neutral risk, and (4)
13 mixed risk. *See Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588
14 (2018). Employment risks arise out of the employment. *Id.* at 590. They are solely related to the
15 employment and include obvious industrial injuries. *See Phillips*, 126 Nev. at 351, 240 P.3d at 5;
16 *see also* 1 Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 4.01, at 4-2
17 (rev. ed. 2017) (classic employment risks include "machinery breaking, objects falling, explosives
18 exploding tractor tipping, fingers getting caught in gears, excavations caving in, and so on" as well
19 as "occupational diseases"). Personal risks do not arise out of the employment. *Phillips*, 126 Nev.
20 at 351, 240 P.3d at 6. Personal risks include injuries caused by personal conditions and illnesses,
21 such as falling at work due to "a bad knee, epilepsy, or multiple sclerosis." *Phillips*, 126 Nev. at
22 351, 240 P.3d at 5; *see also* Larson *supra* § 4.02, 4-2 (examples of personal risks include dying a
23 natural death the effects of disease or internal weakness and death by "mortal personal enemy").

24 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a fall
25 that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351, 240
26 P.3d at 5; *see also* Larson, *supra* § 4.03, at 4-2 (examples of neutral risks include
27 hit by a stray bullet out of nowhere, bit by a mad dog stabbed by a lunatic running amuck," acts of
28 God and unknown causes). A neutral risk arises out of the employment if the employee was

1 subjected to a greater risk than the general public due to the employment. *See Phillips*, 126 Nev. at
2 353, 240 P.3d at 7 (adopting the increased-risk test).

3 In *Phillips*, the claimant fell and broke her ankle on the stairs to the employee break room.
4 *Id.* The claimant was required to use that staircase by her employer and the staircase was not
5 accessible to the general public. *Id.* at 354. Thus, the Nevada Supreme Court applied the neutral
6 risk analysis to the claimant's injury and found that it arose out of her employment and was
7 therefore compensable because "the frequency with which she was required to use the stairs
8 subjected her to a significantly greater risk of injury than the risk faced by the general public." *Id.*

9 Here, Petitioner contends that, like the claimant in *Phillips*, she was "essentially 'funneled'
10 or 'conveyed'" to the sidewalk where she tripped and fell. (Opening Br. at 20.) This comparison is
11 not apt. The sidewalk where Petitioner was injured was accessible to the public, and the Employer
12 did not require Petitioner to walk on that sidewalk for her mandatory break period. Thus, *Phillips* is
13 distinguishable, and the Appeals Officer did not err by finding that Petitioner was not exposed to a
14 neutral risk that subjected her to an increased risk of injury as compared with the general public.

15 Rather, the Appeals Officer properly found that the Employer did not create an employment
16 risk by permitting Petitioner to walk around an office complex in an area that was open to the
17 public. (ROA 6.) At the time of her injury, Petitioner was walking for her own recreation and
18 enjoyment outside of her workplace. (ROA 21-22.) While the Employer was aware that its
19 employees walked during break periods and warned of unsafe locations for walking, it neither
20 required Petitioner to walk during her break, nor did it require her to walk in the area where she
21 was injured. (ROA 22, 45.) Thus, the Appeals Officer's conclusion that Petitioner failed to prove
22 by preponderance of evidence that her injury "arose out of" her employment is supported by the
23 substantial evidence.

24 **ii. The Appeals Officer properly applied the facts to the law in finding that**
25 **Petitioner was not "In the Course of Employment" when she was injured.**

26 While Petitioner contends she was in the course of her employment when walking during
27 her mandatory break time, in an area deemed safe by the Employer who was aware that employees
28 walked during breaks, the Appeals Officer concluded that "when the Petitioner was walking during

1 her break, she was walking for her own personal enjoyment and health.” (ROA 3.). The Appeals
2 Officer found that, under *Gorsky*, Petitioner was not reasonably performing her work duties and
3 therefore she was not in the course of her employment when the injury occurred. *Id.* This is
4 supported by the substantial evidence which shows that Petitioner chose to walk during her breaks
5 and the Employer did not require her to walk during breaks. (ROA 24, 45.) Contrary to
6 Petitioner’s assertion, the Appeals Officer did consider the fact that Petitioner was on a mandatory
7 break when she was injured, and also the fact that the Employer had sent an email showing that it
8 was aware some employees chose to walk during their breaks and warning them that some areas
9 near the workplace were unsafe for walking due to construction and the presence of heavy
10 equipment. These facts are not inconsistent with the Appeals Officer’s finding that Petitioner was
11 not reasonably performing her work duties when she was injured. Thus, a reasonable person could
12 conclude that, under Nevada law, Petitioner was not in the course of her employment when the
13 injury occurred.

14 **iii. The Appeals Officer properly concluded that the personal comfort doctrine**
15 **does not apply here.**

16 Petitioner argues that the personal comfort doctrine for traveling employees recognized in
17 *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019), applies to this case
18 because walking while on a mandatory break is a form of being away from the physical workplace
19 but still under the control of the Employer. (Opening Br. at 14.) This reading of *Buma* was
20 properly rejected by the Appeals Officer.

21 In *Buma*, the Nevada Supreme Court adopted the personal comfort rule, which extends
22 coverage under workers’ compensation law, for a traveling employee “because of the risks
23 associated with travel away from home.” *Buma*, 135 Nev. Adv. Op. 60, 453 P.3d at 909 (citing
24 *Ball-Foster Glass Container Co. v. Giovanelli*, 163 Wash.2d 133, 177 P.3d 692, 701 (Wash.
25 2008)). “Under the personal comfort rule, an employee remains in the course of employment
26 during personal comfort activities unless the departure from the employee’s work-related duties ‘is
27 so substantial that an intent to abandon the job temporarily may be inferred’” *Id.* at 909
28

1 (quoting *Ball Foster*, 177 P.3d at 700). Thus, *Buma* permits a traveling employee to tend to
2 reasonable recreation needs during downtime without leaving the course of employment.

3 The Appeals Officer properly concluded that *Buma* does not apply to the instant case.
4 Petitioner was not traveling on behalf of the Employer at the time of her trip and fall injury.
5 Petitioner cannot be deemed under the employer's control for purposes of qualifying for the
6 personal comfort doctrine because she was not traveling. Therefore, the Appeals Officer correctly
7 found the Petitioner cannot rely upon *Buma* to satisfy the course of employment requirement in
8 NRS 616C.150.

9 **iv. The employer benefit exception to the "Going and Coming" Rule does not apply**
10 **here.**

11 Petitioner contends that her injury falls under an exception to the "'going and coming' rule"
12 which "precludes compensation for most employee injuries that occur during travel to or from
13 work," because walking during her break conferred a benefit on the Employer. *MGM Mirage*, 121
14 Nev. at 399, 116 P.3d at 58. In support of her position, Petitioner cites a document provided to
15 County employees which advised employers to provide a map of walking routes around the office
16 and prompted employees to seek information from the Centers for Disease Control and
17 Prevention's Healthier Worksite Initiative programs designed to benefit the employer by reducing
18 time lost from work due to illness or disease. (See Opening Br. at 17, citing ROA 124.) This
19 document, however, is from Washoe County's public website and is a resource from the Washoe
20 County Health District to provide information to the general public. (ROA at 92.) While County
21 employees are encouraged to participate in voluntary activities such as walking during their break
22 times, they are not required by the County to do so. *Id.*

23 Perhaps more importantly, the going and coming case law Petitioner cites does not support
24 the use of the doctrine on the facts presented. The employer benefit exception described in *MGM*
25 *Mirage v. Cotton* does not extend to a benefit as far removed as reducing time lost from work due
26 to disease. *Nevada Indus. Commission v. Holt*, 83 Nev. 497, 500, 434 P.2d 423 (1967)
27 ("[R]ecreational activity should not be deemed within the course of employment unless a regular
28 incident of employment, or required by the employer, or of direct benefit to the employer beyond

1 the intangible value of employee health and morale common to all kinds of recreation and social
2 life.”). Rather, the Nevada Supreme Court has applied this exception to cases of “distinct” benefit,
3 such as an on-call employee driving his employer’s vehicle home for purposes of furthering the
4 employer’s business. See *Tighe v. Las Vegas Metro. Police Dep’t*, 110 Nev. 632, 635, 877 P.2d
5 1032 (Nev. 1994) (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842 P.2d 719 (1992),
6 *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 n.6 (2001)).

7 In *Tighe*, the employee was an on-call undercover police officer who suffered injuries in an
8 automobile accident while driving home in his employer’s vehicle. *Id.* The court found that the
9 employer benefitted from having one of its undercover officers driving an undercover vehicle and
10 therefore the employee was subject to his employer’s control at the time of his accident. *Id.* at 636.
11 Similarly, the Petitioner in *Evans* was an on-call service technician driving home in his employer’s
12 van and was found to be within the course of his employment because he was furthering his
13 employer’s business in taking the van home. See *Evans*, 108 Nev. at 1006, 842 P.2d at 721-22.
14 Here, while there may have been an incidental benefit to the Employer in Petitioner maintaining her
15 health by walking on her break, there was no “distinct” benefit. She was not on call. The Employer
16 did not require her to go for a walk. Therefore, she was not “in the course of” her employment
17 under the employer benefit exception to the “going and coming” rule. Even if the Petitioner was
18 “in the course of” her employment at the time of her injury, the injury did not “arise out of” her
19 employment, as set forth here. Both factors of the two-part inquiry must be satisfied for an injury
20 to be compensable under NRS 616C.150(1). The Appeals Officer’s decision in this regard is
21 therefore supported by substantial evidence and was not the product of legal error.

22 **B. The Appeals Officer’s conclusion that Petitioner did not show by a preponderance**
23 **of the evidence that her injury arose out of and in the course of her employment under**
24 **NRS 616C.150(1) is supported by substantial evidence.**

25 The Appeals Officer Decision is supported by substantial evidence and may not be
26 disturbed on appeal. See *Law Offices of Barry Levinson, P.C.* 124 Nev. at 362, 184 P.3d at 384.
27 “Substantial evidence exists if a reasonable person could find the evidence adequate to support the
28 agency’s conclusion.” *Id.* The Appeals Officer Decision applies the relevant legal authority and

1 carefully weighs all the evidence in concluding that Petitioner failed to satisfy NRS 616C.150(1).

2 The Appeals Officer did not ignore the facts that suggest the Employer had control over the
3 Petitioner at the time of her injury, as argued by Petitioner. Instead, the Appeals Officer considered
4 those facts in arriving at the conclusion that the injury did not "arise out of" and "in the course of"
5 her employment. The Appeals Officer weighed the fact that Petitioner was on a contractually
6 mandated break at the time of her injury, that the Employer was aware of employees walking
7 during break periods, and that the Employer had sent an email to Petitioner warning of unsafe areas
8 for walking. (ROA 2, 4-6.) These facts do not undermine the substantial evidence tending to show
9 that Petitioner was not required to walk during her break, was not performing work duties, was
10 walking for her own recreation and enjoyment, and was walking in an area of her choice not
11 mandated by the Employer at the time of her injury.

12 A reasonable person could find this evidence sufficient to support the Appeals Officer's
13 conclusion that that Petitioner has not met her burden under NRS616C.150(1) to establish that her
14 injury occurred as a direct result of the duties that arose out of and in the course of her employment
15 and therefore did not suffer a compensable industrial injury. Accordingly, the Appeals Officer
16 Decision is not "[a]ffected by other error of law," is not "[c]learly erroneous in view of the reliable,
17 probative and substantial evidence on the whole record," and is not "[a]rbitrary or capricious or
18 characterized by abuse of discretion." NRS 233B.135(3). Thus, no grounds exist for granting
19 Claimant's Petition for Judicial Review.

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1 **DECISION**

2 As articulated above, the Appeals Officer's Decision was supported by substantial
3 evidence and was not clearly erroneous. Furthermore, the Appeals Officer's Decision was not
4 an abuse of discretion nor was it based on an error of law.

5 Accordingly, and good cause appearing:

6 IT IS HEREBY ORDERED that Petitioner's Petition for Judicial Review is DENIED.

7 The Appeals Officer's findings of facts and conclusions of law are hereby affirmed.

8 IT IS SO ORDERED.

9 DATED this 22nd day of April, 2021.

10 
11 DAVID A. HARDY
12 District Judge

13 This Court noted the objections to the
14 proposed order and concludes they are
15 unnecessary because the arguments are
16 preserved for further review.
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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

SUSAN HOPKINS,

Petitioner,
vs.

Case No: CV20-01650

CANNON COCHRAN
MANAGEMENT SERVICES, INC. dba
CCMSI; WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

Dept. No: 15

Respondents.

**NOTICE OF CORRECTION TO CAPTION OF ORDER OF AFFIRMANCE DENYING
PETITION FOR JUDICIAL REVIEW**

The caption on the Order of Affirmance Denying Petition for Judicial Review entered on April 22, 2021 contained an error. Line 11 of the caption erroneously included CITY OF RENO. CITY OF RENO is deemed stricken from the caption as a named defendant.

IT IS SO ORDERED.

Dated this 25th day of April, 2021



David A. Hardy
District Court Judge

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

SUSAN HOPKINS,

Petitioner,

vs.

CASE NO. CV20-01650

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

DEPT. NO. 15

Respondents.

PETITIONER'S FURTHER OBJECTIONS TO ORDER

Petitioner, Susan Hopkins, further objects to the order
as follows:

1. On April 22, 2012 the court indicated in handwritten
comments that: "The Court noted the objections to the proposed
order and concludes they are unnecessary because the arguments
are preserved for further review."

2. The current iteration of the Order does not include
this language.

...

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2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 3. Petitioner Susan Hopkins believes this language
2 should be included in the final order.

3 Petitioner respectfully requests that the final order
4 include the above-cited language so that the order accurately
5 reflects the entirety of the Court's order.


6 **AFFIRMATION**

7 Pursuant to NRS 239B.030, the undersigned affirms that
8 the preceding Petitioner's Further Objections to Order,
9 pertaining to Case No. CV20-01650, filed in the Second Judicial
10 District Court of the State of Nevada does not contain Personal
11 Information as defined by NRS 603A.040.

12 Respectfully submitted,

13 DATED this 27th day of April, 2021.

14 NEVADA ATTORNEY FOR INJURED WORKERS

15 
16 Clark G. Leslie, Esq., Sr. Deputy
Nevada Bar No. 10124
17 1000 East William Street, Suite 208
Carson City, Nevada 89701
18 Attorneys for Petitioner, Susan Hopkins
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Nevada Attorney for Injured Workers
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2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing **PETITIONER'S FURTHER OBJECTION TO ORDER** was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

LUCAS FOLETTA, ESQ
MCDONALD CARANO WILSON LLP
100 W LIBERTY ST 10TH FLOOR
RENO NV 89501

DATED: 4-27-2021

SIGNED: ALEX ANDRAGA

1 2490
2 Evan Beavers, Esq. (NV Bar #3399)
3 Clark G. Leslie, Esq. (NV Bar #10124)
4 1000 East William Street, Suite 208
5 Carson City, Nevada 89701
6 (775) 684-7555; (775) 684-7575
7 cleslie@naiw.nv.gov
8 Attorney for Petitioner, Susan Hopkins
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SUSAN HOPKINS,

Petitioner,

vs.

CASE NO. CV20-01650

CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

DEPT. NO. 15

Respondents.

PETITIONER'S MOTION TO WITHDRAW OBJECTION

SHONA ALEXANDER FOR JUDICIAL SERVICES
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2630

1 Petitioner's, Susan Hopkins, by and through her
2 attorney, Clark G. Leslie, Esq., Sr. Deputy, Nevada Attorney for
3 Injured Workers, and hereby withdraws "Petitioner's Further
4 Objections to Order" filed on April 27, 2021.

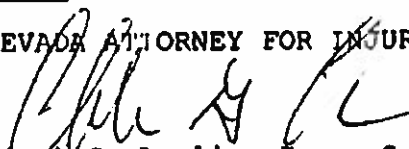
5 **AFFIRMATION**

6 Pursuant to NRS 239B.030, the undersigned affirms that
7 the preceding Petitioner's Motion to Withdraw Objection,
8 pertaining to Case No. CV20-01650, filed in the Second Judicial
9 District Court of the State of Nevada does not contain Personal
10 Information as defined by NRS 603A.040.

11 Respectfully submitted,

12 DATED this 29th day of April, 2021.

13 NEVADA ATTORNEY FOR INJURED WORKERS

14 
15 Clark G. Leslie, Esq., Sr. Deputy
16 Nevada Bar No. 10124
17 1000 East William Street, Suite 208
18 Carson City, Nevada 89701
19 Attorneys for Petitioner, Susan Hopkins

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NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing PETITIONER'S MOTION TO WITHDRAW OBJECTION was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s):

LUCAS FOLETTA ESQ
LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO WILSON LLP
100 W LIBERTY ST 10TH FLOOR
RENO NV 89501

DATED: 4/30/21

SIGNED: B. Wilson

1 2515
Evan Beavers, Esq. (NV Bar #3399)
2 Clark G. Leslie, Esq., Sr. Deputy (NV Bar #10124)
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
(775) 684-7555; (775) 684-7575
4 cleslie@naiw.nv.gov
Attorney for Petitioner, Susan Hopkins
5

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

7 IN AND FOR THE COUNTY OF WASHOE

8
9 SUSAN HOPKINS,

10 Petitioner,

11 vs.

CASE NO. CV20-01650

12 CANNON COCHRAN MANAGEMENT
SERVICES, INC. dba CCMSI; WASHOE
13 COUNTY; and APPEALS OFFICE of the
DEPARTMENT OF ADMINISTRATION,

DEPT. NO. 15

14 Respondents.
15 _____/

16
17 NOTICE OF APPEAL

18 Notice is hereby given that Susan Hopkins, Petitioner
19 above named, by and through her attorney, Clark G. Leslie, Esq.,
20 Sr. Deputy, Nevada Attorney for Injured Workers, hereby appeals
21 to the Supreme Court of Nevada from the Order Affirming Appeals
22 Officer's Decision and Order entered in this action on the 22nd
23 day of April, 2021, wherein the subsequent Notice of Entry of
24 Order was filed on the 23rd day of April, 2021, which is attached
25 hereto as Exhibit 1.

26 . . .

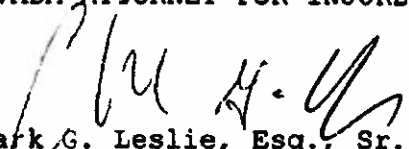
27 . . .

28 . . .

1 The Nevada Attorney for Injured Workers is a state
2 agency exempt from fees and therefore is filing no cost bond.

3 DATED this 5th day of May, 2021.

4 NEVADA ATTORNEY FOR INJURED WORKERS

5
6 
7 Clark G. Leslie, Esq., Sr. Deputy
8 Nevada Bar No. 10124
9 1000 E. William Street, Suite 208
10 Carson City, Nevada 89701
11 (775) 684-7555

12 Attorneys for Petitioner, Susan Hopkins
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

NOTICE OF APPEAL filed in Case Number: CV20-01650

X Does not contain the Social Security Number of any person.

-OR-

Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.

Clark G. Leslie
Signature

5/5/21
Date

Clark G. Leslie, Esq., Sr. Deputy
Nevada Attorney for Injured Workers
Attorney for Appellant, Susan Hopkins

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing **NOTICE OF APPEAL** was electronically submitted to the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user:

LUCAS FOLETTA ESQ
LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO LLP
100 W LIBERTY ST 10TH FLOOR
RENO NV 89501

and that on this date, I deposited for mailing at Carson City, Nevada a true and correct copy of the attached document addressed to:

SUSAN HOPKINS
11660 ANTHEM DRIVE
SPARKS NV 89441

and that on this date, I prepared for hand-delivery a true and correct copy of the attached document addressed to:

APPEALS OFFICE
DEPARTMENT OF ADMINISTRATION
1050 EAST WILLIAM STREET, SUITE 450
CARSON CITY NV 89701

DATED: _____ 5/6/21

SIGNED: _____ *R. Wilson*

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INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	Notice of Entry of Order	15

FILED
Electronically
CV20-01850
2021-05-06 01:16:00 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8431549 : yvloria

EXHIBIT 1

EXHIBIT 1

1 **CODE: 2540**
2 Lucas M. Foletta, Esq. (#12154)
3 Lisa Wiltshire Alstead, Esq. (#10470)
4 Mc DONALD CARANO LLP
5 100 West Liberty Street, 10th Floor
6 Reno, NV 89501
7 (775) 788-2000
8 lfoletta@mcdonaldcarano.com
9 lwiltshire@mcdonaldcarano.com

10 *Attorneys for Respondents*
11 *Washoe County and Cannon Cochran*
12 *Management Services, Inc.*

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

14 **IN AND FOR THE COUNTY OF WASHOE**

15 ***

16 **SUSAN HOPKINS,**

17 **Petitioner,**

Case No.: CV20-01650

18 **vs.**

Dept. No.: 15

19 **CANNON COCHRAN MANAGEMENT**
20 **SERVICES, INC. dba CCMSI; WASHOE**
21 **COUNTY; and APPEALS OFFICE of the**
22 **DEPARTMENT OF ADMINISTRATION;**

23 **Respondents,**

24 **NOTICE OF ENTRY OF ORDER**

25 **PLEASE TAKE NOTICE** that on April 22, 2021, the above-entitled Court entered its
26 **Order of Affirmance Denying Petition for Judicial Review.** A true and correct copy of the
27 **Order is attached hereto.**

28 //

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//

McDONALD CARANO
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

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Affirmation

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: April 23, 2021.

MCDONALD CARANO LLP

By: s Lucas M. Foletta
Lucas M. Foletta, Esq. (NSBN 12154)
Lisa Wiltshire Alstead, Esq. (NSBN 10470)
100 West Liberty Street, 10th Floor
Reno, NV 89501

*Attorneys for Respondents
Washoe County and Cannon Cochran
Management Services, Inc.*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on April 23, 2021, I certify that I electronically filed the foregoing with the Clerk of the Court which served the following parties electronically:

Clark G. Leslie, Esq.
Nevada Attorney for Injured Workers
1000 E. William St., Ste. 208
Carson City, NV 89701

s. Carole Davis
An Employee of McDonald Carano LLP

1 2700
2 Lucas Foletta
3 Nevada Bar No. 12154
4 McDONALD CARANO LLP
5 100 West Liberty Street, 10th Floor
6 Reno, Nevada 89505
7 Telephone: (775) 788-2000

8 *Attorney for Respondents*
9 *Washoe County and Cannon Cochran*
10 *Management Services, Inc.*

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

13 SUSAN HOPKINS,

14 Petitioner,

15 vs.

Case No: CV20-01650

16 CITY OF RENO, CANNON COCHRAN
17 MANAGEMENT SERVICES, INC. dba
18 CCMSI; WASHOE COUNTY; and APPEALS
19 OFFICE of the DEPARTMENT OF
20 ADMINISTRATION,

Dept. No: 15

21 Respondents.

22 **ORDER OF AFFIRMANCE DENYING PETITION FOR JUDICIAL REVIEW**

23 Presently before the Court is a Petition for Judicial Review ("Petition") filed by Petitioner
24 Susan Hopkins ("Hopkins" or "Petitioner") on October 14, 2020, seeking reversal of an Appeals
25 Officer Decision. The Petition arises out of a contested industrial insurance claim. Petitioner filed
26 her Opening Brief on December 21, 2020. Respondents Washoe County ("County" or
27 "Employer") and its third-party administrator Cannon Cochran Management Services, Inc.
28 ("CCMSI," and together with the County, "Respondents") filed their Answering Brief on January
1, 2020. Petitioner filed her Reply Brief on February 18, 2021. The Court heard oral argument on
March 3, 2021.

Upon careful review of the record, written briefs, and oral argument, the Court finds good
cause to deny the Petition, and affirms the Appeals Officer Decision filed on September 25, 2020
with the Nevada Department of Administration Appeals Office regarding the denial of Petitioner's
workers' compensation claim.

1
2 **APPLICABLE FACTS**

3 Petitioner works as an office support specialist for the Washoe County Health District in the
4 environmental health services division. (ROA 21.) The Health District offices are located adjacent
5 to the Washoe County Fairgrounds and the Reno-Sparks Livestock Events Center ("RSLEC").
6 (ROA 46.) Petitioner often chose to walk at the RSLEC during her breaks. (ROA 21-22.) On
7 September 23, 2019, Employer warned 9th Street employees, including Petitioner, who walked
8 during breaks to avoid the area of the RSLEC due to construction and heavy equipment in and
9 around the area. (ROA 45-46.) The email did not require employees to walk during their breaks
10 and warned "[a]s always use caution and be aware of your surroundings." (ROA 45.)

11 On September 24, 2019, Petitioner took her morning break from work. (ROA 21, 23-24.)
12 Petitioner's break was paid. (ROA at 21.) She chose to go for a walk during her break. (ROA 24.)
13 She exited the back door of her workplace and, approximately 50 to 75 feet outside the door, she
14 tripped over a raised sidewalk and fell. (ROA 24-25.) Petitioner then returned to her office and to
15 her desk with the assistance of her co-workers. (ROA 26.)

16 On the day of her injury, Petitioner treated at Reno Orthopedic Clinic and completed a Form
17 C-4 claim for workers' compensation and report of initial treatment. (ROA 57-58.) Her supervisor
18 completed notice of injury and report of injury forms. (ROA 59-61.) On September 27, 2019,
19 Petitioner returned for follow-up at Reno Orthopedic Clinic and was diagnosed with left hip strain
20 and a non-displaced fracture of the right great toe. (ROA 69-72.) On October 3, 2019, CCMSI
21 issued a determination letter denying the workers' compensation claim on the basis that Petitioner
22 did not meet her burden to establish that the injury arose out of and in the course of her
23 employment. (ROA 80.)

24 Petitioner appealed CCMSI's October 3, 2019 determination to the Hearings Division of the
25 Department of Administration, and on November 14, 2019 the Hearing Officer entered a Decision
26 and Order remanding the determination and instructing the insurer to review new documentation
27 submitted by Petitioner and issue a new determination regarding claim compensability. (ROA 38-
28 39.) Pursuant to the Hearing Officer Decision, CCMSI reviewed the documentation and issued a

1 new determination letter on December 5, 2019, denying the claim under NRS 616C.150 for failure
2 to establish that the injury arose out of and in the course of employment. (ROA 92-93.)

3 Petitioner appealed CCMSI's December 5, 2019 determination letter, and a hearing was
4 conducted before a Hearings Officer on January 13, 2020. (ROA 95.) The Hearing Officer issued
5 a Decision and Order affirming the determinations and finding "the evidence fails to support that
6 the injury arose out of the Claimant's employment and the conditions thereof." (ROA 95.)

7 An appeal hearing was held on August 6, 2020. (ROA 9-43.) Petitioner provided witness
8 testimony at the appeal hearing and Exhibits 1 and 2 were admitted into evidence. (ROA 18-29,
9 44-98.) On September 25, 2020, the Appeals Officer issued a Decision finding no causal
10 connection between Claimant's injury and the nature of her work or workplace. (ROA 3.) The
11 Appeals Officer found Claimant's "walking and tripping was not an employment related risk
12 because the Petitioner was walking for her own recreation and enjoyment. The Employer did not
13 create an employment related risk by permitting the Petitioner to walk around a public office
14 facility that was open to the public." (ROA 6.) The Appeals Officer concluded that "[t]he weight
15 of the evidence and legal authority support legal conclusion that the Petitioner failed to satisfy NRS
16 616C.150(1), and she did not suffer a compensable industrial injury on September 24, 2019."
17 (ROA 7.) On October 14, 2020, Petitioner filed the instant petition for judicial review seeking
18 review by this Court of the September 25, 2020 Appeals Officer Decision.

19 STANDARD OF REVIEW

20 A court may set aside a final decision of an agency if the decision is clearly erroneous in
21 view of the substantial evidence, arbitrary, capricious, in violation of statute, characterized by an
22 abuse of discretion or affected by error of law. NRS 233B.135(3); *Ranieri v. Catholic Community*
23 *Services*, 111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995). In reviewing a mixed question of law
24 and fact, an appellate court gives deference to the lower court's findings of fact but independently
25 reviews whether those facts satisfy the applicable legal standard. *See Hernandez v. State*, 124 Nev.
26 639, 647, 188 P.3d 1126, 1132 (2008) (abrogated on other grounds by *State v. Eighth Jud. Dist. Ct.*,
27 134 Nev. 104, 412 P.3d 18 (2018)). An "agency's fact-based conclusions of law 'are entitled to
28 deference, and will not be disturbed if they are supported by substantial evidence.'" *Law Offices of*

1 *Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 78, 383-84 (2008) (internal citation
2 omitted). "Substantial evidence exists if a reasonable person could find the evidence adequate to
3 support the agency's conclusion, and [the court] may not reweigh the evidence or revisit an appeals
4 officer's credibility determination." *Id.* at 362, 184 P.3d at 384. While a "district court is free to
5 decide purely legal questions without deference to an agency determination, the agency's
6 conclusions of law, which will necessarily be closely related to the agency's view of the facts, are
7 entitled to deference, and will not be disturbed if they are supported by substantial evidence."
8 *Jones v Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (internal citation omitted).

9 DISCUSSION

10 **A. The Appeals Officer correctly concluded that Petitioner's injury did not arise**
11 **out of and in the course of her employment.**

12 Under the Nevada Industrial Insurance Act ("NIIA"):

13 An injured employee or the dependents of the injured employee are not entitled to
14 receive compensation pursuant to the provisions of chapters 616A to 616D,
15 inclusive, of NRS unless the employee or the dependents establish by a
preponderance of the evidence that the employee's injury arose out of and in the
course of his or her employment.

16 NRS 616C.150(1). As the Appeals Officer observed in the Decision, the NIIA does not make an
17 employer absolutely liable. (ROA 3) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d
18 1026, 1032 (2005)).

19 The Appeals Officer properly applied *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600,
20 939 P.2d 1043 (1997) to determine whether Petitioner's injury "arose out of" and "in the course of"
21 her employment. The Nevada Supreme Court has held that an injury arises out of one's
22 employment when there is a causal connection between the employee's injury and the nature of the
23 work or workplace. *Gorsky*, 113 Nev. at 605, 939 P.2d at 1046. In contrast, whether an injury
24 occurs within the course of the employment refers merely to the time and place of employment, *i.e.*,
25 whether the injury occurs at work, during working hours, and while the employee is reasonably
26 performing his or her duties. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. Both of these factors
27 must be satisfied in order for an injury to be compensable under the NIIA. See *MGM Mirage v.*
28 *Cotton*, 121 Nev. 396, 400, 116 P.3d 56, 58 (2005) (explaining "that the inquiry is two-fold").

1 **I. The Appeals Officer properly applied the facts to the law in finding that**
2 **Petitioner's injury did not "Arise Out of" her employment.**

3 In order for an injury to "arise out of" employment under NRS 616C.150(1), "the employee
4 must show that the origin of the injury is related to some risk involved within the scope of
5 employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d. 2, 5 (2010)
6 (quoting *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005)). To
7 "arise out of the claimant's employment" the injury must be "fairly traceable to the nature of the
8 employment or workplace environment." *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. The Appeals
9 Officer properly applied these holdings to consider whether Petitioner's injury "arose of out" her
10 employment. (ROA 5.)

11 The Appeals Officer considered the four types of workplace risk relevant to workers'
12 compensation under Nevada law: (1) employment risk, (2) personal risk, (3) neutral risk, and (4)
13 mixed risk. *See Baiguen v Harrah s Las Vegas, LLC*, 134 Nev. Adv. Rep. 71, 426 P.3d 586, 588
14 (2018). Employment risks arise out of the employment. *Id.* at 590. They are solely related to the
15 employment and include obvious industrial injuries. *See Phillips*, 126 Nev. at 351, 240 P.3d at 5;
16 see also 1 Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 4.01, at 4-2
17 (rev. ed. 2017) (classic employment risks include "machinery breaking, objects falling, explosives
18 exploding tractor tipping, fingers getting caught in gears, excavations caving in, and so on" as well
19 as "occupational diseases"). Personal risks do not arise out of the employment. *Phillips*, 126 Nev.
20 at 351, 240 P.3d at 6. Personal risks include injuries caused by personal conditions and illnesses,
21 such as falling at work due to "a bad knee, epilepsy, or multiple sclerosis." *Phillips*, 126 Nev. at
22 351, 240 P.3d at 5; see also Larson supra § 4.02, 4-2 (examples of personal risks include dying a
23 natural death the effects of disease or internal weakness and death by "mortal personal enemy").

24 A neutral risk is a risk that is neither an employment risk nor a personal one, such as a fall
25 that is not attributable to premise defects or a personal condition. *Phillips*, 126 Nev. at 351, 240
26 P.3d at 5; see also Larson, supra § 4.03, at 4-2 (examples of neutral risks include
27 hit by a stray bullet out of nowhere, bit by a mad dog stabbed by a lunatic running amuck," acts of
28 God and unknown causes). A neutral risk arises out of the employment if the employee was

1 subjected to a greater risk than the general public due to the employment. *See Phillips*, 126 Nev. at
2 353, 240 P.3d at 7 (adopting the increased-risk test).

3 In *Phillips*, the claimant fell and broke her ankle on the stairs to the employee break room.
4 *Id.* The claimant was required to use that staircase by her employer and the staircase was not
5 accessible to the general public. *Id.* at 354. Thus, the Nevada Supreme Court applied the neutral
6 risk analysis to the claimant's injury and found that it arose out of her employment and was
7 therefore compensable because "the frequency with which she was required to use the stairs
8 subjected her to a significantly greater risk of injury than the risk faced by the general public." *Id.*

9 Here, Petitioner contends that, like the claimant in *Phillips*, she was "essentially 'funneled'
10 or 'conveyed'" to the sidewalk where she tripped and fell. (Opening Br. at 20.) This comparison is
11 not apt. The sidewalk where Petitioner was injured was accessible to the public, and the Employer
12 did not require Petitioner to walk on that sidewalk for her mandatory break period. Thus, *Phillips* is
13 distinguishable, and the Appeals Officer did not err by finding that Petitioner was not exposed to a
14 neutral risk that subjected her to an increased risk of injury as compared with the general public.

15 Rather, the Appeals Officer properly found that the Employer did not create an employment
16 risk by permitting Petitioner to walk around an office complex in an area that was open to the
17 public. (ROA 6.) At the time of her injury, Petitioner was walking for her own recreation and
18 enjoyment outside of her workplace. (ROA 21-22.) While the Employer was aware that its
19 employees walked during break periods and warned of unsafe locations for walking, it neither
20 required Petitioner to walk during her break, nor did it require her to walk in the area where she
21 was injured. (ROA 22, 45.) Thus, the Appeals Officer's conclusion that Petitioner failed to prove
22 by preponderance of evidence that her injury "arose out of" her employment is supported by the
23 substantial evidence.

24 **ii. The Appeals Officer properly applied the facts to the law in finding that**
25 **Petitioner was not "In the Course of Employment" when she was injured.**

26 While Petitioner contends she was in the course of her employment when walking during
27 her mandatory break time, in an area deemed safe by the Employer who was aware that employees
28 walked during breaks, the Appeals Officer concluded that "when the Petitioner was walking during

1 her break, she was walking for her own personal enjoyment and health." (ROA 3.). The Appeals
2 Officer found that, under *Gorsky*, Petitioner was not reasonably performing her work duties and
3 therefore she was not in the course of her employment when the injury occurred. *Id.* This is
4 supported by the substantial evidence which shows that Petitioner chose to walk during her breaks
5 and the Employer did not require her to walk during breaks. (ROA 24, 45.) Contrary to
6 Petitioner's assertion, the Appeals Officer did consider the fact that Petitioner was on a mandatory
7 break when she was injured, and also the fact that the Employer had sent an email showing that it
8 was aware some employees chose to walk during their breaks and warning them that some areas
9 near the workplace were unsafe for walking due to construction and the presence of heavy
10 equipment. These facts are not inconsistent with the Appeals Officer's finding that Petitioner was
11 not reasonably performing her work duties when she was injured. Thus, a reasonable person could
12 conclude that, under Nevada law, Petitioner was not in the course of her employment when the
13 injury occurred.

14 **III. The Appeals Officer properly concluded that the personal comfort doctrine**
15 **does not apply here.**

16 Petitioner argues that the personal comfort doctrine for traveling employees recognized in
17 *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Rep. 60 (Dec. 12, 2019), applies to this case
18 because walking while on a mandatory break is a form of being away from the physical workplace
19 but still under the control of the Employer. (Opening Br. at 14.) This reading of *Buma* was
20 properly rejected by the Appeals Officer.

21 In *Buma*, the Nevada Supreme Court adopted the personal comfort rule, which extends
22 coverage under workers' compensation law, for a traveling employee "because of the risks
23 associated with travel away from home." *Buma*, 135 Nev. Adv. Op. 60, 453 P.3d at 909 (citing
24 *Ball-Foster Glass Container Co. v. Giovanelli*, 163 Wash.2d 133, 177 P.3d 692, 701 (Wash.
25 2008)). "Under the personal comfort rule, an employee remains in the course of employment
26 during personal comfort activities unless the departure from the employee's work-related duties 'is
27 so substantial that an intent to abandon the job temporarily may be inferred . . .'" *Id.* at 909
28

1 (quoting *Ball Foster*, 177 P.3d at 700). Thus, *Buma* permits a traveling employee to tend to
2 reasonable recreation needs during downtime without leaving the course of employment.

3 The Appeals Officer properly concluded that *Buma* does not apply to the instant case.
4 Petitioner was not traveling on behalf of the Employer at the time of her trip and fall injury.
5 Petitioner cannot be deemed under the employer's control for purposes of qualifying for the
6 personal comfort doctrine because she was not traveling. Therefore, the Appeals Officer correctly
7 found the Petitioner cannot rely upon *Buma* to satisfy the course of employment requirement in
8 NRS 616C.150.

9 iv. The employer benefit exception to the "Going and Coming" Rule does not apply
10 here.

11 Petitioner contends that her injury falls under an exception to the "'going and coming' rule"
12 which "precludes compensation for most employee injuries that occur during travel to or from
13 work," because walking during her break conferred a benefit on the Employer. *MGM Mirage*, 121
14 Nev. at 399, 116 P.3d at 58. In support of her position, Petitioner cites a document provided to
15 County employees which advised employers to provide a map of walking routes around the office
16 and prompted employees to seek information from the Centers for Disease Control and
17 Prevention's Healthier Worksite Initiative programs designed to benefit the employer by reducing
18 time lost from work due to illness or disease. (*See* Opening Br. at 17, *citing* ROA 124.) This
19 document, however, is from Washoe County's public website and is a resource from the Washoe
20 County Health District to provide information to the general public. (ROA at 92.) While County
21 employees are encouraged to participate in voluntary activities such as walking during their break
22 times, they are not required by the County to do so. *Id.*

23 Perhaps more importantly, the going and coming case law Petitioner cites does not support
24 the use of the doctrine on the facts presented. The employer benefit exception described in *MGM*
25 *Mirage v. Cotton* does not extend to a benefit as far removed as reducing time lost from work due
26 to disease. *Nevada Indus. Commission v. Holt*, 83 Nev. 497, 500, 434 P.2d 423 (1967)
27 ("[R]ecreational activity should not be deemed within the course of employment unless a regular
28 incident of employment, or required by the employer, or of direct benefit to the employer beyond

1 the intangible value of employee health and morale common to all kinds of recreation and social
2 life.”). Rather, the Nevada Supreme Court has applied this exception to cases of “distinct” benefit,
3 such as an on-call employee driving his employer’s vehicle home for purposes of furthering the
4 employer’s business. *See Tighe v. Las Vegas Metro. Police Dep’t*, 110 Nev. 632, 635, 877 P.2d
5 1032 (Nev. 1994) (citing *Evans v. Southwest Gas Corp.*, 108 Nev. 1002, 842 P.2d 719 (1992),
6 *overruled on other grounds by GES, Inc. v. Corblit*, 117 Nev. 265, 21 P.3d 11 n.6 (2001)).

7 In *Tighe*, the employee was an on-call undercover police officer who suffered injuries in an
8 automobile accident while driving home in his employer’s vehicle. *Id.* The court found that the
9 employer benefitted from having one of its undercover officers driving an undercover vehicle and
10 therefore the employee was subject to his employer’s control at the time of his accident. *Id.* at 636.
11 Similarly, the Petitioner in *Evans* was an on-call service technician driving home in his employer’s
12 van and was found to be within the course of his employment because he was furthering his
13 employer’s business in taking the van home. *See Evans*, 108 Nev. at 1006, 842 P.2d at 721-22.
14 Here, while there may have been an incidental benefit to the Employer in Petitioner maintaining her
15 health by walking on her break, there was no “distinct” benefit. She was not on call. The Employer
16 did not require her to go for a walk. Therefore, she was not “in the course of” her employment
17 under the employer benefit exception to the “going and coming” rule. Even if the Petitioner was
18 “in the course of” her employment at the time of her injury, the injury did not “arise out of” her
19 employment, as set forth here. Both factors of the two-part inquiry must be satisfied for an injury
20 to be compensable under NRS 616C.150(1). The Appeals Officer’s decision in this regard is
21 therefore supported by substantial evidence and was not the product of legal error.

22 **B. The Appeals Officer’s conclusion that Petitioner did not show by a preponderance**
23 **of the evidence that her injury arose out of and in the course of her employment under**
24 **NRS 616C.150(1) is supported by substantial evidence.**

25 The Appeals Officer Decision is supported by substantial evidence and may not be
26 disturbed on appeal. *See Law Offices of Barry Levinson, P.C.* 124 Nev. at 362, 184 P.3d at 384.
27 “Substantial evidence exists if a reasonable person could find the evidence adequate to support the
28 agency’s conclusion.” *Id.* The Appeals Officer Decision applies the relevant legal authority and

1 carefully weighs all the evidence in concluding that Petitioner failed to satisfy NRS 616C.150(1).

2 The Appeals Officer did not ignore the facts that suggest the Employer had control over the
3 Petitioner at the time of her injury, as argued by Petitioner. Instead, the Appeals Officer considered
4 those facts in arriving at the conclusion that the injury did not "arise out of" and "in the course of"
5 her employment. The Appeals Officer weighed the fact that Petitioner was on a contractually
6 mandated break at the time of her injury, that the Employer was aware of employees walking
7 during break periods, and that the Employer had sent an email to Petitioner warning of unsafe areas
8 for walking. (ROA 2, 4-6.) These facts do not undermine the substantial evidence tending to show
9 that Petitioner was not required to walk during her break, was not performing work duties, was
10 walking for her own recreation and enjoyment, and was walking in an area of her choice not
11 mandated by the Employer at the time of her injury.

12 A reasonable person could find this evidence sufficient to support the Appeals Officer's
13 conclusion that that Petitioner has not met her burden under NRS616C.150(1) to establish that her
14 injury occurred as a direct result of the duties that arose out of and in the course of her employment
15 and therefore did not suffer a compensable industrial injury. Accordingly, the Appeals Officer
16 Decision is not "[a]ffected by other error of law," is not "[c]learly erroneous in view of the reliable,
17 probative and substantial evidence on the whole record," and is not "[a]rbitrary or capricious or
18 characterized by abuse of discretion." NRS 233B.135(3). Thus, no grounds exist for granting
19 Claimant's Petition for Judicial Review.

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1 **DECISION**

2 As articulated above, the Appeals Officer's Decision was supported by substantial
3 evidence and was not clearly erroneous. Furthermore, the Appeals Officer's Decision was not
4 an abuse of discretion nor was it based on an error of law.

5 Accordingly, and good cause appearing:

6 IT IS HEREBY ORDERED that Petitioner's Petition for Judicial Review is DENIED.

7 The Appeals Officer's findings of facts and conclusions of law are hereby affirmed.

8 IT IS SO ORDERED.

9 DATED this 22nd day of April, 2021.

10 
11 DAVID A. HARDY
12 District Judge

13 This Court noted the objections to the
14 proposed order and concludes they are
15 unnecessary because the arguments are
16 preserved for further review.

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10 Attorneys for Petitioner

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE
14
15 SUSAN HOPKINS

16
17 Petitioner,

18 vs.

CASE NO. CV20-01650

19 CANNON COCHRAN MANAGEMENT
20 SERVICES, INC. dba CCMSI; WASHOE
21 COUNTY; and APPEALS OFFICE of the
22 DEPARTMENT OF ADMINISTRATION,

DEPT. NO. 15

23 Respondents.

24 _____/

25 CASE APPEAL STATEMENT

26 Petitioner/Appellant Susan Hopkins ("Ms. Hopkins"),
27 through her counsel - Evan Beavers, Esq. and Clark G. Leslie,
28 Esq. from the office of the Nevada Attorney for Injured Workers
files this Case Appeal Statement:

1. Name of appellant filing this case appeal
statement:

Susan Hopkins

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

The Honorable David A. Hardy

. . . .

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
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Las Vegas, NV 89102 (702) 486-2830

Nevada Attorney for Injured Workers
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Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
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1 3. Identify each appellant and the name and address of
2 counsel for each appellant:

3 Appellant Susan Hopkins
4 Nevada Attorney for Injured Workers
5 Evan Beavers, Esq. (NV Bar 3399)
6 Clark G. Leslie, Esq. (NV Bar 10124)
7 1000 East William Street, Suite 208
8 Carson City, Nevada 89701

7 4. Identify each respondent and the name and address
8 of counsel for each respondent:

9 Respondent Cannon Cochran Management Services, Inc.
10 d/b/a CCMSI
11 Appellate counsel unknown.

12 Counsel for administrative and District Court
13 proceedings:

14 McDonald Carano Wilson, LLP
15 Lisa M. Wiltshire Alstead, Esq.
16 100 West Liberty Street, 10th Floor
17 Reno, Nevada 89501

18 Respondent Washoe County
19 Appellate counsel unknown.

20 Counsel for administrative and District Court
21 proceedings:

22 McDonald Carano Wilson, LLP
23 Lisa M. Wiltshire Alstead, Esq.
24 100 West Liberty Street, 10th Floor
25 Reno, Nevada 89501

26 Respondent Nevada Department of Administration,
27 Hearings Division
28 Did not appear, through counsel or otherwise, in
District Court proceedings (Case No. CV20-01650)

5. Indicate whether any attorney identified above in
response to question 3 or 4 is not licensed to practice law in
Nevada:

All attorneys identified in items 3 & 4 above are
licensed to practice law in Nevada.

. . .
. . .

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- 1 6. Indicate whether appellant was represented by
2 appointed or retained counsel in the district court:
3 Yes, Petitioner/Appellant was represented by appointed
4 counsel in the District Court.
5 7. Indicate whether appellant is represented by
6 appointed or retained counsel on appeal:
7 Yes, Petitioner/Appellant is represented by appointed
8 counsel on appeal.
9 8. Indicate whether appellant was granted leave to
10 proceed in forma pauperis, and the date of entry of the district
11 court order granting such leave:
12 No, Petitioner/Appellant did not proceed in forma
13 pauperis. However, the Nevada Attorney for Injured
14 Workers is a state agency exempt from fees, and
15 therefore, did not file a cost bond and did not pay a
16 filing fee.
17 9. Indicate the date the proceedings commenced in the
18 district court:
19 District Court proceedings commenced on October 14,
20 2020 when Petitioner/Appellant filed the Petition for
21 Judicial Review.
22 10. Provide a brief description of the nature of the
23 action and result in the district court, including the type of
24 judgment or order being appealed and the relief granted by the
25 district court:
26 The district court issued an "Order of Affirmance
27 Denying Petition for Judicial Review" following an appeal of an
28 appeals officer's Decision and Order dated April 22, 2021 that
denied workers' compensation benefits to the Appellant.
. . .
. . .
. . .

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1 11. Indicate whether the case has previously been the
2 subject of an appeal to or original writ proceeding in the
3 Supreme Court:

4 No.

5 12: Indicate whether this appeal involves child
6 custody or visitation:

7 No.

8 13. If this is a civil case, indicate whether this
9 appeal involves the possibility of settlement:

10 Yes.

11 DATED this 10th day of May, 2021.

12 NEVADA ATTORNEY FOR INJURED WORKERS

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19 Attorneys for the Petitioner

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

CASE APPEAL STATEMENT filed in Case Number: CV20-01650

X Does not contain the Social Security Number of any person.

-OR-

Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.

Signature

Date

Clark G. Leslie, Esq., Sr. Deputy
Nevada Attorney for Injured Workers
Attorney for Appellant, Susan Hopkins

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CERTIFICATE OF SERVICE

Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5,
I certify that I am an employee of the State of Nevada, Nevada
Attorney for Injured Workers, and that on this date, the
foregoing **CASE APPEAL STATEMENT** was electronically submitted to
the clerk of the Court for the Second Judicial District by using
the eFlex system, resulting in electronic service to the
following user(s)

LUCAS FOLETTA ESQ
LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO LLP
100 W LIBERTY ST 10TH FLOOR
RENO NV 89501

DATED: 5/10/21

SIGNED: B. Wilson

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

9 **SUSAN HOPKINS,**
10 **Petitioner,**

11 **vs.**

CASE NO. CV20-01650

12 **CANNON COCHRAN MANAGEMENT**
13 **SERVICES, INC. dba CCMSI; WASHOE**
14 **COUNTY; and APPEALS OFFICE of the**
15 **DEPARTMENT OF ADMINISTRATION,**

DEPT. NO. 15

16 **Respondents.**
17 _____/

18 **REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

19 **TO: LORI URMSTON, CCR #51**

20 **Petitioner SUSAN HOPKINS requests preparation of a**
21 **transcript of the proceedings before the district court as**
22 **follows:**

23 **Judge or officer hearing the proceeding:**

24 **Hon. David A. Hardy.**

25 **Date or dates of proceeding:**

26 **March 3, 2021.**

27 **Portions of the transcript requested:**

28 **Entire/complete transcript of oral arguments.**

29 **. . . .**

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1 Number of copies requested:

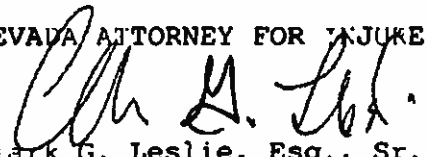
2 Two (2).

3 AFFIRMATION

4 Pursuant to NRS 239B.030, the undersigned affirms that
5 the preceding Request for Transcript of Proceedings pertaining to
6 Case No. CV20-01650 filed in the Second Judicial District does
7 not contain personal information as defined by NRS 603A.040.

8 DATED this 25th day of June, 2021.

9 NEVADA ATTORNEY FOR INJURED WORKERS



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15 Attorneys for Petitioner, Susan Hopkins
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CERTIFICATE OF SERVICE

Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5,
I certify that I am an employee of the State of Nevada, Nevada
Attorney for Injured Workers, and that on June 25, 2021, the
foregoing Request for Transcript of Proceedings was
electronically submitted to the clerk of the Court for the Second
Judicial District by using the eFlex system, resulting in
electronic service to the following user(s):

LUCAS M FOLETTA ESQ
LISA M WILTSHIRE ALSTEAD ESQ
MCDONALD CARANO LLP
Attorneys for Respondents CCSI
& Washoe County

and that on this date I deposited for mailing at Carson City,
Nevada, a true and correct copy of the within and foregoing
Request for Transcript of Proceedings addressed to:

LORI URMSTON, CCR #51
SUNSHINE LITIGATION
151 COUNTRY ESTATES CIR
RENO NV 89511

DATED:

6-25-2021

SIGNED:

ALEX ANDRACA

1 CODE: 4185
LORI URMSTON, CCR #51
2 Litigation Services
151 Country Estates Circle
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5
6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8 HONORABLE DAVID A. HARDY, DISTRICT JUDGE
9

10 SUSAN HOPKINS,

11 Petitioner,

Case No. CV20-01650

12 vs.

Dept. No. 15

13 CANNON COCHRAN MANAGEMENT
SERVICES, INC., dba CCMSI;
14 WASHOE COUNTY; and APPEALS
OFFICE of the DEPARTMENT OF
15 ADMINISTRATION,

16 Respondents.
-----/

17
18 TRANSCRIPT OF PROCEEDINGS

19 ORAL ARGUMENTS

20 Wednesday, March 3, 2021

21 Reno, Nevada
22
23

24 Reported by:

LORI URMSTON, CCR #51

1 APPEARANCES:

2 FOR THE PETITIONER:

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1 RENO, NEVADA; WEDNESDAY, MARCH 3, 2021; 10:40 A.M.

2 --o0o--

3 THE COURT: Good morning. This is CV20-01650. It
4 is captioned as Susan Hopkins versus Cannon Cochran
5 Management Services and others. Mr. Leslie appears for
6 Ms. Hopkins, the petitioner. Mr. Lucas Foletta appears
7 for respondents, Washoe County and Cannon Cochran.

8 I thought about vacating the arguments after
9 reading the moving papers, the briefs, and then I
10 didn't, because I have experience, I would say some
11 significant experience, in administrative appeals and
12 the Administrative Procedures Act, but I don't have
13 deep experience with work-related injuries. I mean,
14 I've been floating over SIIS and workers' comp for a
15 couple of decades. I've certainly read my share, 50 or
16 more cases over those years, but the cases that were
17 cited are all contemporary in our modern time and
18 there's kind of an analytical framework to these cases
19 in that there are different elements and then
20 sub-concepts within elements. And when I reread the
21 briefs, I thought I would like to hear from counsel. I
22 hope it is not a waste of your time or inefficient.

23 I'm actually intrigued by respondents' very strong
24 assertion about my limited deferential role.

1 Conceptually we all know my role is limited and
2 deferential, but there seems to be a disagreement as
3 to -- as to the existence of facts, the appeals
4 officer's analysis or recitation of facts, whether I'm
5 being invited to substitute my own judgment and so
6 forth.

7 And so in addition to the analytical framework of
8 this workers' compensation question, I invite you to
9 travel quickly over my standard of review. I have read
10 the cases you've cited. I have several questions here,
11 but I think I'll await your arguments just choosing to
12 emphasize what you think your strongest points are with
13 the understanding that I've read your briefs.

14 So, Mr. Leslie, you shall begin.

15 MR. LESLIE: Thank you, Your Honor. And good
16 morning.

17 THE COURT: Good morning.

18 MR. LESLIE: I'm Mr. Leslie, and it's my privilege
19 to represent the petitioner in this matter, Susan
20 Hopkins.

21 Last night, Judge, I was taking a walk and I looked
22 up at the sky and I looked at the stars and I
23 remembered my sister-in-law who is a vision therapist
24 telling me that you can't see all the stars when you

1 focus on one, you have to move your head a little bit.
2 The rods in your eye pick up some of the light and the
3 cones pick up other. And I thought that was a perfect
4 description for this appeal in that it -- there is
5 liability here, but you have to take a slightly
6 different angle in order to see it.

7 Your Honor, what I had intended to establish this
8 morning, and I intend to do so, and I will also, of
9 course, address your concerns about whether there would
10 be deference or not, but I wanted to establish to your
11 satisfaction that, number one, this is an employment
12 risk and, number two, it is an employment risk because
13 as you saw this in my brief she was on the clock.

14 Just as there is liability and just as there are
15 stars you need to look at from a slightly different
16 angle, that's what we have here. Your Honor, you
17 may -- it seems like you were almost looking at my
18 outline of things to talk about, because I did want to
19 discuss the finer points of workers' compensation and
20 some of the things that you alluded to. And I'm glad
21 that you have a background.

22 But this case has liability aspects that are very
23 similar to other concepts in workers' compensation. We
24 have a "going and coming rule," for example. You can't

1 receive benefits from the NIIA if you're going to work
2 or you're coming home, but there are exceptions to
3 that. And the rule is defined by the exceptions. If
4 you're on a special errand, if you're engaged in other
5 activities that are very work related, then even if
6 you're going to or coming from work you have liability.

7 If my boss said to me, for example, "Clark, could
8 you drop this off at the post office on your way home,"
9 if I went directly from work to the post office and in
10 the course of that was injured, well, I would have a
11 workers' compensation claim. But if I departed to have
12 a quick beer with a friend before I went to the post
13 office, during that departure period if I was injured I
14 would not have a workers' compensation claim.

15 There is the parking lot rule. You're coming to
16 work, but you're not quite at work yet, you're not
17 checked in, but if you're injured in the parking lot
18 you'll probably make a recovery. Similar to, but
19 exactly once again like this case, it's a slight angle
20 off, we have traveling employee cases where if you're
21 traveling on behalf of your employer and you're walking
22 around the hotel one night and you're injured, you're
23 considered injured arising out of and in the course of
24 your employment.

1 We even have a recent case where an individual was
2 in Texas to go to a conference and he hooked up with a
3 client and on a Sunday they were riding ATVs, it
4 flipped over, he died. That was considered
5 compensable.

6 Here, Your Honor, what we have is an employee who
7 was granted in a contractual obligation from her
8 employer where she would continue to be on the clock
9 even if she was taking a 20-minute break, two of which
10 she was guaranteed in the course of her job. Here we
11 know that the employer was aware of the activities of
12 its employees during these break times because it even
13 sent out a warning to not go to certain places if you
14 are going to walk. That's what happened here.

15 So it's a little bit like a going and coming, it's
16 a little bit like a traveling employee, but it's not
17 quite either. But the defining factor here is that she
18 was working at the time that she was taking her break
19 in the sense that that was part of her employment
20 contract. Whether she sat at her desk or she took a
21 brief walk, that was part of the job.

22 It would be -- the situation would be much
23 different, and yet it would be the same in some ways,
24 if she decided to take her break by sitting in a chair,

1 leaning back, taking a 20-minute power nap, falling
2 over because the chair was defective or she wasn't
3 watching what she was doing, falls and injures herself.
4 That would be compensable. But here because she was
5 70 feet away from the front door of her employer and
6 because her activity was characterized as recreational,
7 then it was determined that this incident did not arise
8 out of the employment.

9 Your Honor, I would harken back to your memories of
10 workers' compensation over the 20 years you mentioned.
11 You know that there are two primary concepts that have
12 to be established for liability. You have to show that
13 it was in the course of employment. And that's
14 basically time and place, were you at the job during
15 your work time and so forth. And then there's arising
16 out of. And that's the nexus or connection between the
17 actual job itself and then the injury.

18 This case is different from an employee who during
19 their unpaid work time at lunch goes out and has a
20 quick pickup basketball game with some friends and gets
21 injured. That is not work related. But here we have
22 an instance where that 20-minute period when she was
23 contractually guaranteed her break time, that was part
24 of work just as much it would be sitting at her desk or

1 doing something that her employer asked her to do.

2 We have the additional fact here that the employer
3 was aware of the fact that its employees frequently
4 took walks. And it even took the extra step of warning
5 them about some problems at the convention center.

6 And as an aside, some day if anyone ever asks me
7 what is meant by the phrase "no good deed goes
8 unpunished," I will point -- or cite this instance.
9 This was a good employer. It cared about its
10 employees. It saw that there was a concern and a worry
11 and a danger, so it warned its employees to stay away
12 from certain places. That involvement, plus the fact
13 that she was on the clock at the time that she was
14 injured, makes this a compensable case.

15 Now, my esteemed opponent, Mr. Foletta, says, well,
16 she didn't have to walk during that break time. And
17 that's certainly true. But it really is no different
18 than the case that we cited to you from Arizona where
19 the woman was on her paid break, she was in the break
20 room, she was going to go make a phone call to a
21 friend, she tripped, she fell, she got injured. The
22 Arizona Supreme Court found that that was compensable.
23 And we had to go outside of Nevada, because there is no
24 case directly on point.

1 I do want to compliment Mr. Foletta. He's a fine
2 attorney. He wrote a very good brief. And he
3 articulates and argues that this is a neutral risk.
4 His brief is factual. It is accurate. It is
5 scholarly. And I'm going to keep his brief for the
6 explanation of neutral risk, because it's an excellent
7 presentation.

8 But you can't get around the facts on the record in
9 this case, Your Honor. And the fact and the law and
10 the record indicate that this was not a neutral risk.
11 Why? Because she was still under the employ of her
12 employer.

13 Now, just like the "going and coming rule," just
14 like the traveling employee rule, if there was any
15 evidence that she had departed, for example, she was
16 going to run to the drug store or she was going to see
17 a friend in a coffee shop, rather than just exercise as
18 she was known to do, and many other employees as well,
19 then that would be a departure and she would not be
20 entitled. But she was doing nothing more than walking
21 at a place that her employer said it's going to be
22 safe, and that's when she was injured.

23 So it doesn't really fly that she had options,
24 because regardless of where she exercised the option to

1 enjoy her 20-minute break, that was a work activity,
2 Your Honor.

3 Now, let me, if I may, conclude my argument at this
4 point by addressing what you have stated, Your Honor.
5 Administrative law does present a lot of challenges to
6 an appealing party. I can't deny that. Great
7 deference is given to many of the decisions that are
8 made by an appeals officers. Again, I can argue that,
9 but I wouldn't win.

10 But we focus on the fact that the decision and
11 order characterizes my client's conduct at the time
12 that she was injured as a recreational activity. That
13 is inaccurate in the sense that she was engaged in an
14 activity that she was contractually guaranteed by her
15 employer and she was doing exactly what was
16 contemplated by the employer when she engaged in her
17 20-minute break time. That distinguished this claim
18 from any other citation that my opponent has brought to
19 the Court's attention.

20 Why is that significant? Because there is no
21 evidence in the record to support that conclusion that
22 this was a solely recreational act. When the appeals
23 officer determined that this was not a work activity,
24 that it was a recreational activity, there was no

1 substantial evidence to support that conclusion. That
2 goes beyond the deference that we give to these
3 decisions and it does give Your Honor and this court
4 the power and the authority to make a ruling that
5 hopefully will rectify the error that occurred.

6 So there is deference, but like everything in the
7 law, when the mistake is egregious, when it's clear
8 error or when there, for example, is no substantial
9 evidence to support it, then 233B.135 says that this
10 Court has jurisdiction to render appellate relief. So
11 in that regard we presented it as an appealable issue.

12 One final note, Your Honor. To rule otherwise
13 would be to deny an entire class of otherwise qualified
14 injured workers from obtaining the benefits that they
15 have been statutory promised under the law. Every
16 employee who is on the clock when he or she has a break
17 time will not have the comfort of knowing that if
18 there's an injury that they'll be covered by workers'
19 compensation. Instead, if this decision is allowed to
20 remain, I don't know how many people are going to be
21 harmed because there will be a finding of no liability.
22 This case is a poster child in many ways for the type
23 of claim that the defense bar would like to have
24 decided.

1 We here at NAIW don't have the budget to take up
2 every case that we lose and we would like to see done,
3 but when we have a case that presents a wide range of
4 interests that would affect many of our clients down
5 the road, then we do decide to take an appeal. We
6 don't do it lightly and we don't do it often.

7 Here we are urging this Court to note the error
8 that was made, note that 233B.135 does grant this Court
9 jurisdiction to alleviate and to rectify a terrible
10 wrong that will occur not to just Ms. Hopkins but also
11 to many other classes of similar employees who have
12 every right to expect protection under the NIIA, but
13 this ruling might very well preclude that.

14 That concludes my comments at this time, Your
15 Honor.

16 THE COURT: Thank you.

17 MR. LESLIE: Thank you.

18 THE COURT: Mr. Foletta.

19 MR. FOLETTA: Thank you, Your Honor.

20 Not surprisingly I have a different view than
21 Mr. Leslie. And I think it's actually -- my view is
22 that Mr. Leslie has articulated the exact opposite of
23 what the impact of this decision will be.
24 Fundamentally what Ms. Hopkins via Mr. Leslie is

1 arguing is that activity that's undertaken by an
2 employee on a mandatory or contractually agreed-upon
3 break is any injury that occurs during that period of
4 time is per se compensable. And there is -- there is
5 simply no case law in our state to support that.

6 And as a consequence, we have to walk through, as
7 the appeals officer did, the fundamental workers'
8 compensation compensability analysis that Mr. Leslie
9 articulated. And that is determining whether the
10 injury arose out of and in the course of employment.
11 And appropriately the appeals officer concluded that
12 was not the case here.

13 But before, you know, walking through that, I think
14 what I would just go back and say is that what
15 Mr. Leslie is asking you to do is establish new law in
16 the state of Nevada which would not -- it wouldn't
17 remedy a wrong here. It would in fact open up a whole
18 host of claims that have never before been compensable.

19 I mean, as we all know, there are any number of
20 thousands upon thousands of hourly workers in our state
21 who take, you know, contractually secured breaks or
22 lawfully entitled breaks at their employment. And this
23 would mean every single employee who walks to their car
24 at a break or walks around the block and trips and

1 falls and breaks an ankle or breaks a toe, that that
2 injury would be compensable. And that's simply not the
3 case.

4 If it was the case, I think we would have seen
5 cases before now where the compensability of such
6 injuries had been established by the courts, but they
7 haven't.

8 Now, the fundamental reason they haven't is because
9 the going and coming doctrine, which is somewhat of a
10 misnomer, states that essentially when you're away from
11 work your claim -- injuries sustained away from the
12 workplace is not compensable unless there's a distinct
13 benefit associated with whatever you're doing away from
14 work for your employer.

15 THE COURT: I understand the "going and coming
16 rule," but when you're away from work you're not on the
17 clock. And that's the one -- that's the one unusual
18 fact of this case. I don't know --

19 Ms. Clerk, start muting people, if you would,
20 please. I'm getting some feedback, a fairly
21 significant crackle and echo. It's almost as if I hear
22 a woman's voice right now.

23 I didn't interrupt Mr. Leslie, and I kind of feel
24 bad interrupting you, because I -- but I need you to

1 confront the one fact that exists.

2 MR. FOLETTA: Okay.

3 THE COURT: She was on the clock.

4 MR. FOLETTA: She was on the clock, but everyone
5 who takes a break is on the clock. And if they depart
6 from their place of employment and drive two miles and
7 get out of their car and fall in a pothole, that
8 doesn't -- that's not a compensable injury.

9 THE COURT: Hold on. Somebody is calling in now.
10 I'm hearing buzzes.

11 We think it's you, Mr. Foletta. Everybody else is
12 muted.

13 MR. FOLETTA: Okay. My phone -- let's see. Let me
14 silence that. I don't hear any voices.

15 THE COURT: I hope I don't convey that I'm grouchy.
16 I'm not generally grouchy with COVID like the rest of
17 us. It just makes our work difficult. But I really
18 have to be able to hear.

19 I didn't interrupt Mr. Leslie. I could have. This
20 whole category of a traveling employee is difficult to
21 reconcile with a lunchtime employee who is not on the
22 clock. He's essentially made a concession regarding --

23 I'm just getting feedback.

24 So if you'll answer my question I'll be quiet again

1 and, that is, she was on the clock. Now, I know that
2 she didn't have to walk. I might even disagree with
3 the argument that she was funneled into a certain
4 location for her walk, but it's not like she was
5 driving home, going to or coming from. So go ahead,
6 please.

7 MR. FOLETTA: So what Gorsky said, which is a case
8 cited, I believe, by both Mr. Leslie and us, is that in
9 order for an injury to arise out of employment, the
10 employee must be reasonably performing his or her
11 duties. And so there are many -- there are workplace
12 incidents where workers are injured while they're
13 literally at work working but are not compensable,
14 because, for example, the risk associated with that
15 injury is personal.

16 For example, this is -- this is Gorsky who had
17 epilepsy and falls at work. Okay, he's working, he's
18 there, and whether he's on the clock is not the
19 dispositive factor in determining compensability,
20 because one has to be -- there's two parts to the test.
21 One has to be reasonably performing their duties and
22 they have to be -- the injury has to occur as a result
23 of an employment risk that is a risk inherent in
24 employment, or it has to be a neutral risk, the risk of

1 which is heightened because of the nature of the
2 employment.

3 And so -- and that's why I say that the fundamental
4 analysis is what you have to walk through here to
5 determine the outcome of the case. And so if you walk
6 through that analysis and you ask, well, was this
7 person reasonably performing his or her duties, the
8 answer is clearly no. She was walking on a break.
9 That's not performing her duties as an employee of the
10 health district.

11 And then if you ask, well, what type of risk was
12 this, was this an employment risk, that is, a risk, you
13 know, inherent in the nature of the employment, that's
14 clearly not the case, because she tripped over a
15 portion of the sidewalk that was raised or, you know,
16 sort of out of -- you know, it was broken or busted or
17 however you want to characterize it. And so that's not
18 a risk that's inherent in the nature of her employment.

19 THE COURT: I understand what you're saying. I'm
20 having a hard time understanding how an ATV ride on
21 Sunday is performing services for the employer. I
22 understand that there is a traveling employee category
23 that concededly doesn't exist here. How does an
24 employee who rides an ATV on Sunday fall in the

1 employer's work so that the conduct is related in some
2 way as you're asserting?

3 MR. FOLETTA: In a case of a traveling employee the
4 idea is that the employee is picking up their life at
5 the request of the employer and taking it somewhere
6 else. And so what the cases with the Nevada Supreme
7 Court have said is that attending to one's personal
8 comfort while you're a traveling employee does not take
9 you out of the course and scope of your employment
10 because you pick yourself up and all of your needs that
11 otherwise would be personal to you and not -- you know,
12 have no relationship to the workplace, but you've
13 transferred them because your employer has asked you to
14 go to another place.

15 And so the courts have extended compensability in
16 those instances because of the nature of the request of
17 the employer to take your life somewhere else for a
18 week. Now, I have to say I don't particularly agree
19 with the idea that that ATV ride incident should have
20 been compensable. That seems to me to have gone too
21 far afield of the personal comfort doctrine, but
22 nonetheless, you know, it is compensable.

23 THE COURT: So the personal comfort rule is
24 narrowly confined to the traveling employee?

1 MR. FOLETTA: Yes.

2 THE COURT: And has no spillover into the other
3 categories or concepts?

4 MR. FOLETTA: Correct. And the reason that -- the
5 reason -- I think the reason that it doesn't -- or that
6 is doesn't is evident by the fact that we have a
7 personal comfort rule in the first place. The personal
8 comfort rule extends liability for traveling employees
9 which implicitly means that it imposes liability for
10 instances that wouldn't -- which would not otherwise be
11 compensable because the person was not traveling.

12 And so if you extend the personal comfort doctrine
13 to non-traveling employees, sort of the exception that
14 is the personal comfort doctrine now swallows the rule
15 which is that recreational activity or activity
16 unrelated to the workplace that results in an injury is
17 not compensable.

18 And what I would point you to is kind of one of the
19 boundaries here that's important to keep in mind is the
20 Holt case which we cite in which the Nevada Supreme
21 Court said, quote, "Recreational activities should not
22 be deemed within the course and scope of employment
23 unless a regular incident of employment, or required by
24 the employer, or of direct benefit to the employer

1 beyond the intangible value of employee health and
2 morale common to all kinds of recreational and social
3 life."

4 That is the court -- so there's another category of
5 cases. There is going and coming, there is traveling
6 employee, and then there are these recreational cases.
7 And we have these cases where these people live on
8 their work site. And the question in some of those
9 cases is, okay, if you live there and then you
10 undertake recreational activity and you get injured,
11 how do you analyze that. And then you get a series of
12 somewhat interesting fact patterns.

13 But what the court is saying -- the rule in Holt is
14 that, look, there are going to be certain instances
15 where recreational activity is undertaken in and around
16 the workplace, but what is not compensable are those
17 activities that have nothing more than intangible value
18 to the employer.

19 And so the court is clearly trying to ensure in all
20 of these cases that there's a sufficient nexus between
21 the employee-employer relationship before establishing
22 compensability. And in this case the claimant is
23 asking to go much further than the Nevada Supreme Court
24 has ever gone.

1 As far as we've gone are some recreational cases
2 where the employer has provided all the means of
3 undertaking the recreation and where the employee is
4 literally living at the job site, so where they give
5 them a bicycle and they ride it and they fall. That's
6 not what happened here.

7 They've extended it to traveling employees who go
8 for a job and during a break perhaps trip, fall, break
9 their ankle. They've extended it with the exception to
10 the "going and coming rule" by saying, okay, if there's
11 distinct benefit to the employer you can get
12 compensability.

13 But as Mr. Leslie I think concedes, you can't apply
14 any of those tests to this case and determine
15 compensability. It has to be a new -- this would be
16 new law. And there's just nothing justifying it,
17 because when you walk through the core analysis it
18 doesn't work.

19 With that I think I would like to address the
20 standard of review. The standard of review is -- I
21 mean, there's a couple points as you're already aware.
22 For one, on questions of law certainly you have de nova
23 review. You can determine that the appeals officer
24 made a legal error in the sense that he misunderstood

1 or misstated the appropriate legal principle, but in
2 that case that is not the case here. And I don't even
3 think Mr. Leslie is arguing that.

4 As to evidentiary matters, the issue is whether the
5 decision is based on substantial evidence. If there is
6 substantial evidence to support the factual findings
7 that the hearing officer made and he correctly stated
8 the law in applying the law to those findings, then
9 the result must be affirmed.

10 Now, here, as we say in our brief, our view is that
11 there clearly was substantial evidence. And if you
12 read through the appeals officer's order I think it's
13 hard to argue that there wasn't. As I understand
14 Mr. Leslie's argument, he is saying essentially that
15 the hearing officer or the appeals officer incorrectly
16 determined or that there was no substantial evidence to
17 support the idea that the claimant in this case
18 undertook recreational activity.

19 I just -- I fundamentally disagree with that. And
20 we provide record cites in our brief relating to the
21 portion of the decision where the hearing officer
22 addresses the nature of the activity. But I would also
23 say that while that is a factual finding, it is
24 somewhat derivative of the legal frameworks that we

1 have. In other words, I don't think there is any
2 question that the claimant here was walking in a
3 recreational way in the sense that she was taking a
4 walk on her break. That's recreational activity.

5 The question is whether the law requires a
6 characterization of it as something else for purposes
7 of claimed compensability. And the hearing officer
8 correctly walked through all the various tests and
9 concluded that it was not the case. And he also
10 specifically referenced, you know, the map that was
11 given to the claimant and the nature of the break being
12 mandatory or contractually obligated.

13 And so all the fundamental facts that Mr. Leslie is
14 arguing here were specifically addressed by the appeals
15 officer. Mr. Leslie may not agree with the
16 characterization of those things, but the hearing
17 officer not only assessed them but there certainly was
18 substantial evidence to support the conclusions that he
19 reached.

20 So with that, Your Honor, I'll take any questions
21 or turn it back over to Mr. Leslie.

22 THE COURT: Thank you.

23 One thing that I really liked about your brief,
24 Mr. Leslie, is that your reply was actually a reply as

1 opposed to a cut-and-paste cumulative argument. So I
2 trust that your rebuttal arguments, if any, will be
3 directly responsive to what was argued by Mr. Foletta.

4 MR. LESLIE: Am I okay? Can you hear me?

5 THE COURT: Yes.

6 MR. LESLIE: Okay. Everything that Mr. Foletta has
7 brought up brings us to the question of what were the
8 employees at this business supposed to do during their
9 contractually promised and mandated break. They didn't
10 provide a little cocoon where they were to sit for 20
11 minutes. They didn't provide a special break room
12 where they were to go for 20 minutes. And unlike some
13 of the cases we have, the employer didn't say that you
14 can't leave the building during the period of time that
15 you're engaged in your break.

16 And in the Phillips case that was exactly the case
17 where the casino required its employees to use its
18 break room during their break times and they couldn't
19 leave the casino. They could have done that, but they
20 didn't.

21 The benefit that is referenced by Mr. Foletta that
22 that is necessary for this activity to be deemed
23 arising out of employment does exist here. The benefit
24 to the employer is that it complies with a contract

1 that it executed that promised its employees a break
2 time. This is not a situation where there was a
3 departure.

4 So when Mr. Foletta tries to open up the dam and he
5 says that this is going to open up all kinds of
6 liability, no, it is going to be a decision that is
7 consistent with the law, because as you pointed out
8 from the very beginning, Your Honor, the overriding
9 differential fact in this claim is that she was on the
10 clock.

11 And so when you ask the question what are you
12 supposed to do during your break, she was doing exactly
13 what was contemplated by her employer. How do we know
14 that? Because the employer sent out a warning to all
15 of the people that it knew walked where they should and
16 where they shouldn't go.

17 Also in terms of the nexus and that the judge
18 found -- the appeals officer found that this was a
19 recreational type of an activity, that's in the eye of
20 the beholder. Again, I come back to my original point,
21 what were the employees supposed to do during this
22 20-minute --

23 THE COURT: But if it's in the eye of the beholder,
24 which it may be, and you and I might disagree with that

1 factual characterization, do I have the authority to
2 disagree and say it was not recreational?

3 MR. LESLIE: Yes, you do, Your Honor. We cite you
4 to several cases, but a decision that lacks substantial
5 evidence, for example, is subject to appellate review.
6 That's the Cannon Cochran case that we cite to you. We
7 can have our courts review decisions that are made.
8 And to that we cite you to the Star Insurance case and
9 so forth.

10 It is not just in the eye of the beholder, Your
11 Honor, because as you pointed out, we have a record and
12 we have undisputed facts that show that she was
13 contractually promised the 20-minute period. The
14 employer knew that many of its employees took walks.
15 The employer actively engaged into suggesting to the
16 employees where to walk and whatnot.

17 Those facts take this out of the usual situation
18 where there is an injury that occurs that's not
19 immediately on the job site. You have the power to
20 correct that mistake, because contrary to what my
21 esteemed opponent says, there were no facts to support
22 that this was a recreational activity. Also, this was
23 a benefit to the employer because it allowed the
24 employer to abide by the terms of the contract.

1 With that, Your Honor, if you have any questions I
2 would be happy to answer them.

3 THE COURT: Well, I want to comment on something
4 else that Mr. Leslie said. Mr. Leslie was gracious in
5 the way he described Mr. Foletta's brief. I have a
6 note here to compliment both attorneys about their
7 written work. I wish every lawyer could be a judge for
8 a short period of time just to see the wide range of
9 professional services that are reflected in lawyering.

10 I sometimes read briefs and moving papers where I
11 wonder where the law is and where -- I'm saying this to
12 be absurd and illustrate, not to be literal or mean,
13 but I wonder when Jerry Springer is going to come on to
14 the show, because it's just this -- it's just this
15 diversion away from the narrow, limited role of the
16 court.

17 And I just thought the tone of your briefs were
18 really good and I thought your research and your
19 writing style was really good. I wish that every one
20 of my cases had these written papers. And then your
21 oral arguments today certainly follow the standard you
22 set. So I have to pick a winner and loser in these
23 types of cases. It is what it is. But you've both
24 embodied the professionalism that is so important in

1 our work and in this department, so thank you.

2 I'll have a transcript of this proceeding,
3 Ms. Reporter.

4 I don't always order that, but I'm going to. I
5 would like to reflect a little more. My sense is that
6 Mr. Leslie acknowledges the challenge of the appeal and
7 my sense is that it's not as clear as Mr. Foletta
8 suggests. I really want to be true to my role as set
9 forth in the procedures act and not substitute my
10 judgment, but I want to reengage in this analytical
11 framework. So I'll have a transcript.

12 That's my signal, counsel, that the decision is not
13 coming tomorrow.

14 MR. LESLIE: Thank you, Your Honor.

15 THE COURT: All right. Thanks, everybody. Court
16 will be in recess.

17 (The proceedings were concluded at 11:19 a.m.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 11th day of
20 March, 2021.

21
22 LORI URMSTON, CCR #51

23 -----
24 LORI URMSTON, CCR #51