

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARSON TAHOE HEALTH SYSTEM
and GALLAGHER BASSETT
SERVICES, INC.,

Appellants,

v.

STEPHEN YASMER,

Respondents.

Supreme Court Case No.: 83686

Electronically Filed
Mar 14 2022 04:52 p.m.

District Court Case No.: CV21-00809
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX VOLUME I

INDEX TO APPELLANTS' APPENDIX

PLEADING, MOTION, ORDER, TRANSCRIPT, EXHIBIT	VOLUME	PAGE NUMBER
Notice of Appeal, filed October 21, 2021	II	000420- 000437
Notice of Entry of Order Granting Motion to Dismiss, filed October 14, 2021	II	000408- 000419
Notice of Stricken Document, filed June 4, 2021	I	000115
Order Granting Motion to Dismiss Petition for Judicial Review, filed September 20, 2021	II	000414- 000419
Petition for Judicial Review, filed May 3, 2021	I	000001- 000017
Petitioners' Motion for Stay Pending Appeal, filed May 3, 2021	I	000018- 000074
Petitioners' Opening Brief, filed July 13, 2021	I	000116- 000133
Petitioners' Opposition to Respondent's Motion to Dismiss Petition for Judicial Review, filed August 12, 2021	II	000376- 000386
Petitioners' Reply Brief, filed September 15, 2021	II	000396- 000407
Record on Appeal (Official), filed August 5, 2021	II	000200- 000346
Reply in Support of Stephen Yasmer's Motion to Dismiss Petition for Judicial Review, filed August 17, 2021	II	000387- 000395
Respondent's Answering Brief, filed August 9, 2021	II	000347- 000375
Respondent's Motion to Dismiss Petition for Judicial Review, filed August 2, 2021	I	000134- 000199
Respondent's Opposition to Petitioner's Motion for Stay Pending Appeal, filed May 26, 2021	I	000084- 000111

PLEADING, MOTION, ORDER, TRANSCRIPT, EXHIBIT	VOLUME	PAGE NUMBER
Respondent's Statement of Intent to Participate, filed May 10, 2021	I	000075- 000078
Stipulation to Extend Time to File Opposition to Motion for Stay, filed May 11, 2021	I	000079- 000083
Transmittal of Record on Appeal, filed June 4, 2021	I	000112- 000114

1 **\$3550**
2 JOHN P. LAVERY, ESQ.
3 Nevada Bar No. 004665
4 JEANNE P. BAWA, ESQ.
5 Nevada Bar No. 007359
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7 2300 West Sahara Avenue, Suite 900, Box 28
8 Las Vegas, Nevada 89102
9 Phone: (702) 893-3383
10 Facsimile: (702) 366-9563
11 Email: john.lavery@lewisbrisbois.com
12 Email: jeanne.bawa@lewisbrisbois.com
13 Attorneys for Petitioners
14 CARSON TAHOE HEALTH SYSTEM
15 and GALLAGHER BASSETT SERVICES, INC.

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
17 **THE STATE OF NEVADA IN AND FOR THE**
18 **COUNTY OF WASHOE**

19 CARSON TAHOE HEALTH SYSTEM and
20 GALLAGHER BASSETT SERVICES, INC.,

21 Petitioners,

Case No.

22 v.

Dept. No.

23 STEPHEN YASMER; and the
24 STATE OF NEVADA DEPARTMENT
25 OF ADMINISTRATION, HEARINGS
26 DIVISION, APPEALS OFFICE,
27 an Agency of the State of Nevada,

28 Respondents.

PETITION FOR JUDICIAL REVIEW

29 COMES NOW Petitioners, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
30 BASSETT SERVICES, INC., by and through their attorneys, JOHN P. LAVERY, ESQ., and
31 JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, in the above-
32 entitled Petition for Judicial Review and petitions this Court for judicial review of the decision of
33 the Appeals Officer, SHEILA Y. MOORE, ESQ., filed on April 15, 2021, a copy of which is
34 attached hereto as "Exhibit "1."

35 ...

1 The instant Petition for Judicial Review is filed pursuant to NRS Chapter 616C.370,
2 which mandates that judicial review shall be the sole and exclusive authorized judicial
3 proceeding in contested industrial insurance claims for compensation for injury or death and
4 pursuant to NRS 2333.130, et seq.

5 The decision of the Appeals Officer was in violation of constitutional or statutory
6 provisions, was in excess of the authority of the Appeals Officer, was based upon errors of law,
7 is arbitrary or capricious in nature, and constitutes an abuse of discretion. Petitioners, CARSON
8 TAHOE HEALTH SYSTEM and GALLAGHER BASSETT SERVICES, INC., specifically
9 request, pursuant to NRS 233B.133, that this Court receive written briefs and hear oral argument.

10 DATED this 3 day of May, 2021.

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14 By: 

15 JOHN P. LAVERY, ESQ.

16 Nevada Bar No. 004665

17 JEANNE P. BAWA, ESQ.

18 Nevada Bar No. 007359

19 2300 West Sahara Avenue, Suite 900, Box 28

20 Las Vegas, Nevada 89102

21 Phone: 702-893-3383

22 Fax: 702-366-9563

23 Attorneys for Petitioners

24 CARSON TAHOE HEALTH SYSTEM

25 and GALLAGHER BASSETT SERVICES, INC.

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

Index of Documents

Exhibit 1 Appeals Officer's Decision and Order, 2100639-SYM 1-11

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 3rd day of May, 2021, service of the attached **PETITION FOR JUDICIAL REVIEW** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Stephen Yasmer
2257 Carson River Road
Carson City, NV 89701

Todd Eikelberger, Esq.
NEVADA ATTORNEY FOR INJURED
WORKERS
1000 E. William Street, Suite 208
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM
Attn: Risk Management
1600 Medical Pkwy.
Carson City, NV 89706

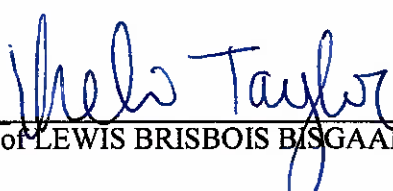
Yvette McCollum, Sr. Claims Adjuster
GALLAGHER BASSETT SERVICES,
INC.
PO Box 2934
Clinton, IA 52733

Sheila Y. Moore, Esq., Appeals Officer
NEVADA DEPT. OF ADMINISTRATION
Appeals Division, Appeals Office
1050 E. William Street, Ste. 450
Carson City, NV 89701

Michelle L. Morgando, Esq., Sr. Appeals
Officer
NEVADA DEPT. OF ADMINISTRATION
Appeals Division, Appeals Office
2200 S. Rancho Drive, Ste. 220
Las Vegas, NV 89102

Laura Freed, Director
DEPARTMENT OF ADMINISTRATION
515 E. Musser Street, Suite 300
Carson City, NV 89701

Aaron D. Ford, Nevada Attorney General
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, NV 89701


An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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

"EXHIBIT 1"

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED
APR 15 2021
DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

Hearing No.: 2100033-SD

of

Appeal No.: 2100639-SYM

STEPHEN YASMER

Stephen Yasmer was carrying a box of brochures and descended a staircase at Carson Tahoe Hospital on June 8, 2020, while in the course and scope of his employment with Carson Tahoe Health Systems. Mr. Yasmer's vision was impeded by the box and he misstepped causing him to fall and fracture his ankle. A claim for benefits was filed and denied by Gallagher Bassett Services, the third party administrator for the employer on June 23, 2020. The denial was appealed and the determination was affirmed by the Hearing Officer on August 6, 2020. Appeal was taken and forms the basis for the current matter.

DECISION AND ORDER

This appeal concerns a dispute over claim acceptance. The Appeals Officer finds that Stephen Yasmer has met the requirements under Nevada's workers' compensation scheme for claim compensability as he has proven, by a preponderance of the evidence, that his injury arose out of and in the course of his employment.

The above-entitled appeal was heard by the Appeals Officer

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

NEVADA ATTORNEY FOR INJURED WORKERS
1660 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

1 under Appeal Number 2100639-SYM. Claimant, Stephen Yasmer, was
2 present by telephone and represented by Todd Eikelberger, Esq.,
3 Deputy, Nevada Attorney for Injured Workers, who was also present
4 by telephone. Gallagher Bassett Services, the third-party
5 administrator for the employer, Carson Tahoe Health Systems, was
6 represented by John Lavery, Esq., of Lewis Brisbois Bisgaard &
7 Smith, LLP, who appeared by telephone.

8 The following were submitted, marked, and admitted into
9 evidence:

- 10 • Exhibit 1 consisting of 45 pages; and
11 • Exhibit 2 consisting of 34 pages.

12 Testimony was provided at hearing by:

- 13 • Stephen Yasmer by telephone.

14 Pursuant to Nevada's Administrative Procedures Act, Chapter
15 233B of the Nevada Revised Statutes; Nevada's Industrial Insurance
16 Act, Chapters 616A through 617, inclusive, of the Nevada Revised
17 Statutes; and related regulations, and, after careful consideration
18 of the totality of all evidence submitted and testimony provided,
19 the Appeals Officer finds and decides as follows:

20 I.

21 FINDINGS OF FACT¹

22 Stephen Yasmer, manager of rehabilitation services at Carson
23 Tahoe Health Systems (herein, "CTHS"), was injured while descending
24 stairs at Carson Tahoe Hospital (herein, "CTH"), where he
25 maintained an office, with a large box in his hands on June 8,
26 ...

27
28 ¹ Any finding of fact more appropriately considered to be a conclusion of
law, and vice versa, shall be so deemed.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7454
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-3830

1 2020.² He testified at hearing that he left the main therapy office
2 on the third floor and began descending the staircase carrying a
3 box of brochures for work.³ Although carrying the box did not
4 impair his physical ability to walk, it did impede his visual
5 field.⁴ He mis-stepped because he thought he had reached the
6 landing and fell two steps fracturing his left ankle.⁵

7 Following the incident, he taken to the emergency room in
8 CTH where it was noted that:

9 he was carrying a box [sic] supplies down to the basement
10 when he thought he was on the bottom stair and could not
11 see that there is [sic] still to [sic] more stairs
12 beneath MCV stepped forward thinking he was stepping onto
the landing and missed the bottom to [sic] stairs falling
hard on to his left ankle causing some notable
deformity.⁶

13 The diagnosis was an acute left ankle dislocation, fibular
14 fracture, and posterior malleolus fracture.⁷ A C4 form was filled
15 out on June 8, 2020, and the physician checked the box indicating
16 that he could connect the left ankle injury as job incurred.⁸

17 Yasmer was seen at Nevada Occupational Health on June 10,
18 2020, and told he would require an open reduction and internal
19 fixation of the left ankle so he was referred to Dr. Jeffrey
20 Cummings.⁹ Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,

21 ² Exhibit 1, 1 and testimony of Stephen Yasmer at hearing.

22 ³ Testimony of Stephen Yasmer at hearing.

23 ⁴ Id.

24 ⁵ Id.

25 ⁶ Exhibit 1, 8.

26 ⁷ Id. at 10.

27 ⁸ Id. at 1.

28 ⁹ Id. at 16-17.

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

1 and indicated he required a "left ankle lateral malleolus and
2 syndesmosis open reduction internal fixation."¹⁰ The procedure was
3 performed on June 15, 2020, at CTH.¹¹

4 Yasmer filed a claim for workers' compensation benefits which
5 was denied by Gallagher Bassett Services, the third-party
6 administrator (herein, "TPA") for CTHS, on June 21, 2020.¹² This
7 determination was appealed and, on August 6, 2020, the hearing
8 officer affirmed claim denial.¹³ That decision and order was
9 appealed and forms the basis for the current matter.

10 Dr. Cummings saw Yasmer again on September 2, 2020, for a
11 drainage of his wound and for hardware removal.¹⁴ Yasmer returned
12 on September 15, 2020, and it was found that the wound was healing
13 well, with no drainage, so the sutures were removed.

14 Yasmer's testimony at hearing regarding his work and mechanism
15 of injury are found to be consistent, reliable, and credible. The
16 medical reporting clearly shows Yasmer suffered a left ankle
17 fracture that required a reduction and then a draining of the wound
18 with hardware removal. Based on the foregoing, the Appeals Officer
19 finds that a preponderance of all evidence submitted supports
20 Yasmer's position that his claim should be accepted. The weight of
21 the evidence, the credible medical reporting, and the reliable
22 testimony of Yasmer establish that he suffered injury to his left

23
24 ¹⁰ Id. at 18.

25 ¹¹ Id. at 25.

26 ¹² Id. at 4.

27 ¹³ Id. at 5-6.

28 ¹⁴ Id. at 39.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 694 7525
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486 7830

1 ankle in the form of a fracture as he was walking down stairs
2 carrying a box of work brochures. Thus, his left ankle fracture is
3 found to be industrially related and compensable.

4 II.

5 CONCLUSIONS OF LAW

6 To qualify for benefits for an industrial injury, an employee
7 has the burden to demonstrate, by a preponderance of the evidence,
8 that an injury by accident arose out of and in the course of his
9 employment.¹⁵ The Nevada Supreme Court has defined a "preponderance
10 of evidence" as a standard of proof that "should lead the trier of
11 fact 'to find that the existence of the contested fact is more
12 probable than its nonexistence.'" ¹⁶ Further, in evaluating the
13 evidence of a work injury, the fact finder must consider the
14 totality of the circumstances.¹⁷

15 In establishing a claim for benefits, an injury by accident
16 must be shown. Under Nevada law, an accident is an "unexpected or
17 unforeseen event happening suddenly and violently, with or without
18 human fault, and producing at the time objective symptoms of an
19 injury."¹⁸ While "a sudden and tangible happening of a traumatic
20 nature, producing an immediate or prompt result which is
21 established by medical evidence" constitutes an injury.¹⁹

22 Applying those statutory definitions, it was unforeseen that

23 ¹⁵ NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).
24

25 ¹⁶ Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).
26

27 ¹⁷ Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,
28 1046 (1997).

¹⁸ NRS 616A.030.

¹⁹ NRS 616A.265(1).

NEVADA ATTORNEY FOR INJURED WORKERS
1090 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

1 Yasmer would miss a step and fall so the first prong of accident is
2 met. Since it caused him to suffer an ankle fracture, it was
3 capable of producing a harmful result and so happened suddenly and
4 violently. Therefore, Yasmer suffered an accident. Further, there
5 was an injury as a result of that accident since he adduced medical
6 evidence showing a sudden and tangible happening - an ankle
7 fracturing. It was traumatic in nature because it was capable of
8 producing a harmful result in Yasmer's left ankle which was later
9 diagnosed as a fracture.

10 Based on the foregoing, Yasmer has proven he suffered an
11 injury by accident. Further, he has also shown a connection of that
12 injury by accident to his work.

13 Generally, an injury arises out of employment if there is "a
14 causal connection between the injury and the employee's work," in
15 which 'the origin of the injury is related to some risk involved
16 within the scope of employment.'"²⁰ To find causation a physician
17 must establish to a "reasonable degree of medical probability that
18 the condition in question was caused by the industrial injury or
19 sufficient facts must be shown so that the trier of fact can make
20 a reasonable conclusion that the condition was caused by the
21 industrial injury."²¹

22 There are three categories of risks: employment, personal, and
23 neutral.²² Employment risks are compensable, personal risks are not
24

25 ²⁰ Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,
26 1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

27 ²¹ Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842
(1997).

28 ²² Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d
2, 5 (2010).

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 100
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 compensable, and neutral risks are compensable if they satisfy the
2 increased-risk test.²³ Personal risks are those that are
3 attributable to personal issues - not to the employment.²⁴
4 Employment risks include "obvious kinds of injur[ies] that one
5 thinks of at once as industrial injuries. All the things that can
6 go wrong around a modern factory, office, mill, mine, retail
7 establishment, transportation system, or construction project."²⁵
8 Neutral risks are those that do not fall within either the
9 employment or personal risk categories.²⁶

10 Yasmer's injury was caused by an employment risk as his left
11 ankle fracture arose out of his work duties since he was conveying
12 a benefit to his employer when he was carrying the box of work
13 brochures down stairs at the facility where he worked. Accordingly,
14 Yasmer's injury is considered to have arisen from an employment
15 risk and, as such, he has met his burden of proof in showing that
16 his injury arose out of his employment.

17 In the Supreme Court case of Rio All Suite Hotel & Casino v.
18 Phillips, 126 Nev. 346, 240 P.3d 2 (2010), it was found that an
19 injury from climbing stairs was a compensable, neutral risk because
20 the claimant in that matter was required to climb the stairs by her
21 employer. CTHS argued that Yasmer was not required to use the
22 stairs, unlike the claimant in Phillips, and therefore his injury
23 did not arise out of his employment. However, Yasmer argued that
24 the stairs were not dispositive of the issue in this matter but

25 ²³ Id. at 351-53, 240 P.3d at 5-7.

26 ²⁴ Id. at 351, 240 P.3d at 5.

27 ²⁵ 1-4 Larson's Workers' Compensation Law § 4.01.

28 ²⁶ Phillips at 351, 240 P.3d at 6.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 308
Carson City, NV 89701 (775) 694 7555
2500 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 488-2830

1 rather it was the act of carrying the box. Yasmer was required to
2 carry the box of brochures, which impeded his vision and caused him
3 to misjudge his location on the staircase, resulting in him falling
4 and fracturing his ankle. Pursuant to Phillips, carrying a box of
5 brochures from one location to another is an employment risk that
6 impedes a person's field of vision. Because of that, Yasmer fell
7 and fractured his ankle, thus, his injury arose out of his
8 employment.

9 Furthermore, the evidence establishes that Yasmer's injury
10 occurred within the course of his employment. "[W]hether the injury
11 occurs within the course of the employment refers . . . to the time
12 and place of employment, i.e. whether the injury occurs at work,
13 during working hours, and while the employee is reasonably
14 performing his or her duties."²⁷ As discussed, Yasmer's injury
15 occurred while he was at work in the hospital. It happened while he
16 was reasonably performing his job duties as he was required to
17 carry the box of brochures. Further, he was conferring a benefit on
18 his employer at the time of the injury.²⁸

19 Finally, credible and probative medical evidence, from which
20 a reasonable conclusion can be formed that Yasmer's injury occurred
21 in the course and scope of his employment, was provided by his
22 physicians.²⁹ Specifically, the emergency room doctor checked the
23 box on the C4 form indicating that he could directly connect the

24
25
26 ²⁷ Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 F.3d 1026, 1032 (2005).

27 ²⁸ See Evans v. Southwest Gas, 108 Nev. 1002, 1006, 842 F.2d 719, 721
(1992).

28 ²⁹ United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,
425, 851 F.2d 421, 425.

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

1 left ankle fracture as job incurred.³⁰ Also, Dr. Cummings noted that
2 the injury occurred at work when Yasmer missed a step while
3 carrying a box. This reporting is the most persuasive, credible
4 medical evidence and is based on facts supported by evidence.³¹
5 Thus, Yasmer, through his credible testimony and presentation of
6 probative medical reporting, and other evidence, has met his burden
7 of proof in showing that his injury by accident arose out of and in
8 the course of his employment.

9 Based on the foregoing, sufficient facts have been presented
10 to establish, by a preponderance of the evidence, that the June 8,
11 2020, fall caused an injury by accident that arose out of and in
12 the scope of employment. Thus, Yasmer has met his burden of proof
13 for his claim for industrial injury benefits to be compensable
14 under Nevada's workers' compensation scheme.

15 ORDER

16 For the above reasons, the Hearing Officer's August 6, 2020,
17 Decision and Order affirming the third party administrator's June
18 23, 2020, determination regarding claim denial is REVERSED.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27

28 ³⁰ See NRS 616C.098.

³¹ McClanahan v. Raley, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

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

1 Therefore, Gallagher Bassett Services, the third party
2 administrator for the employer, Carson Tahoe Health Systems, shall
3 accept Stephen Yasmer's claim, claim number 000706-038452-WC-01,
4 for benefits as a compensable workers' compensation claim and shall
5 provide or reimburse for all appropriate treatment and benefits
6 available under chapters 616A to 617, inclusive, of the Nevada
7 Revised Statutes.

8 IT IS SO ORDERED this 14th day of April, 2021.


9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
APPEALS OFFICER


SHEILA Y. MOORE

N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should
any party desire to appeal this final decision of the Appeals
Officer, a Petition for Judicial Review must be filed with the
District Court within thirty (30) days after service by mail of
this decision.

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS


Todd Eikelberger, Esq., Deputy
1000 East William St., #208
Carson City, Nevada 89701

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 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:

STEPHEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701

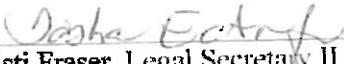
NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES, INC
PO BOX 2934
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102-4375

Dated this 15 day of April, 2021.


Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

2190
JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
JEANNE P. BAWA, ESQ.
Nevada Bar No. 007359
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W. Sahara Ave., Ste. 900, Box 28
Las Vegas, Nevada 89102
Telephone: 702-893-3383
E-mail: john.lavery@lewisbrisbois.com
E-mail: jeanne.bawa@lewisbrisbois.com
Attorneys for Petitioners
CARSON TAHOE HEALTH SYSTEM
and GALLAGHER BASSETT SERVICES, INC.

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

CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.,

Petitioners,

v.

STEPHEN YASMER; and the STATE OF
NEVADA DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
APPEALS OFFICE, an Agency of the State of
Nevada,

Respondents.

CASE NO:

DEPT. NO.:

HEARING NOT REQUESTED

PETITIONERS' MOTION FOR STAY PENDING APPEAL

COMES NOW the Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter referred to as "Petitioner Employer"), and the Third-Party Administrator, GALLAGHER BASSETT SERVICES, INC., (hereinafter referred to as "Petitioner Administrator"), by and through their attorneys, JOHN P. LAVERY, ESQ., and JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, and apply to this Court for a Stay of the decision of the Appeals Officer, SHEILA Y. MOORE, ESQ., filed on April 15, 2021.

...


...

1 This Motion is made and based upon the papers and pleadings on file herein, the attached
2 Points and Authorities and any arguments of counsel on this matter.

3 DATED this 3 day of May, 2021.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By: 
8 JOHN P. LAVERY, ESQ.
9 Nevada Bar No. 004665
10 JEANNE P. BAWA, ESQ.
11 Nevada Bar No. 007359
12 2300 West Sahara Avenue, Suite 900, Box 28
13 Las Vegas, Nevada 89102
14 Phone: 702-893-3383
15 Fax: 702-366-9563
16 Attorneys for Petitioners
17 CARSON TAHOE HEALTH SYSTEM and
18 GALLAGHER BASSETT SERVICES, INC.
19
20
21
22
23
24
25
26
27
28

I.

STATEMENT OF FACTS

Respondent, Stephen Yasmer (hereinafter referred to as "Respondent"), alleged injury to his left foot as the result of falling on some stairs on June 8, 2020. Respondent sought medical treatment the same day in the Carson Tahoe ER, where he completed an Employee's Claim for Compensation/Report of Initial Treatment (Form C-4). Respondent reported that he was carrying a box walking downstairs when he fell. (Exhibit p. 1.)

Respondent was diagnosed with a left ankle dislocation (Fibula) and posterior malleolus fracture. The ankle was reduced in the ER and was splinted. Respondent was referred to Tahoe Fracture where he was already a patient and was released to light duty work. (Exhibit pp. 1- 7.)

Respondent and his manager completed an incident report on June 10, 2020. Respondent stated that he was carrying a box of supplies down the stairs and he thought he was at the bottom of the stairs but still had 2 more steps to go and so he mis-stepped and fell. Respondent's manager indicated that he should have used the elevator instead of the stairs. (Exhibit p. 9.)

Respondent was evaluated by Dr. Jay Betz on June 10, 2020. Dr. Betz referred the Respondent to Dr. Jeffrey Cummings for surgery. (Exhibit pp. 10-14.)

Dr. Cummings evaluated the Respondent on June 12, 2020. He recommended ORIF surgery (Exhibit pp. 15-18.)

Dr. Cummings performed surgery on June 15, 2020. (Exhibit pp. 19-21.)

On June 23, 2020, Petitioner Administrator denied liability for this claim. (Exhibit p. 22.)

Respondent appealed that determination to a Hearing Officer. (Exhibit p. 30.)

The issue of claim denial was heard by a Hearing Officer on July 30, 2020. In a written Decision and Order dated August 6, 2020, the Hearing Officer affirmed claim denial. (Exhibit pp. 31-33.)

Respondent appealed that Decision and Order to an Appeals Officer.

On April 15, 2021, the Appeals Officer below issued a Decision and Order reversing Petitioner Administrator's denial of liability for Respondent's industrial insurance claim.

1 (Exhibit pp. 35-45.)

2 Petitioners filed their Petition for Judicial Review on May 3, 2021, and now file their
3 Motion for Stay Pending Appeal.

4 II.

5 **POINTS & AUTHORITIES**

6 A.

7 **JURISDICTION**

8 NRS section 233B.140(1) states, “[t]he filing of the Petition does not itself stay the
9 enforcement of the agency decision, unless expressly provided by statute. An agency may grant,
10 or the reviewing court may order, a stay upon appropriate term.”

11 Additionally, NRS 616C.375 mandates:

12 If an insurer, employer or claimant, or the representative of an insurer,
13 employer or claimant, appeals the decision of an appeals officer, that
14 decision is not stayed unless a stay is granted by the appeals officer or the
15 district court within 30 days after the date on which the decision was
rendered. (Emphasis added.)

16 In DIR v. Circus Circus, 101 Nev. 405, 411-12, 705 P.2d 645, 649 (1985), the Nevada
17 Supreme Court stated that an insurer’s proper procedure when aggrieved by a decision is to seek
18 a Stay. The Nevada Supreme Court has also recognized that a Stay should be granted where it
19 can be shown that the Appellant would suffer irreparable injury during the pendency of the
20 appeal, if the Stay is not granted. White Pine Power v. Public Service Commission, 76 Nev. 263,
21 252 P.2d 256 (1960).

22 The Nevada Supreme Court held, in Ransier v. SIIS, 104 Nev. 742, 766 P.2d 274 (1988),
23 that an insurer may not seek recoupment of benefits paid to a respondent that were later found to
24 be unwarranted on appeal. The Ransier decision has not been overruled or reversed.

25 In the instant case, an Order Granting a Stay of the Appeals Officer’s decision is
26 appropriate for the reasons set forth herein. The Appeals Officer, in rendering her decision, erred
27 as a matter of law in failing to consider the evidence given and failed to properly apply the law
28 as required by the related case law and NRS Chapters 616A to 616D, inclusive. There is

1 insufficient evidence to support her decision that Respondent has proven the existence of a
2 compensable industrial claim.

3 **B.**

4 **The Appeals Officer Erred as a Matter of Law**

5 It was Respondent, not Petitioners, who had the burden of proving his case by a
6 preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567,
7 688 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d
8 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

9 In attempting to prove his case, Respondent had the burden of going beyond speculation
10 and conjecture. That means that Respondent had to establish the work connection of his
11 injuries, the causal relationship between the work related injury and his disability, the extent of
12 his disability and all facets of the claim by a preponderance of all the evidence. To prevail, a
13 respondent had to present and prove more evidence that an amount which would make his case
14 and his opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993);
15 SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671P.2d 29
16 (1983); 3, A. Larson, The Law of Workmen's Compensation, § 80.33(a).

17 Nevada Revised Statutes 616A.010 makes it clear that:

18 A claim for compensation filed pursuant to the provisions of this chapter
19 or chapter 617 of NRS must be decided on its merits and not according to
20 the principle of common law that requires statutes governing worker's
21 compensation to be liberally construed because they are remedial in
22 nature.

23 Respondent alleges that he injured his ankle while walking down some stairs while he
24 was carrying a box. His manager states that the Respondent should have been using the elevator
25 to perform this task, as there is an elevator for employee use and the Respondent simply chose
26 not to use it. Respondent did not address the elevator versus stairs issue in his testimony, i.e., did
27 not explain why he failed to use the available elevator if he knew that he was carrying a box that
28 would impede his ability to traverse the stairs safely as he alleged. It is Respondent's burden to

1 prove that his injuries arose out of and in the course of his employment, and based on the
2 available evidence, Respondent cannot meet his burden.

3 **NRS 616A.030 “Accident” defined.** “Accident” means an
4 unexpected or unforeseen event happening suddenly and violently, with or
5 without human fault, and producing at the time objective symptoms of an
injury.

6 **NRS 616A.265 “Injury” and “personal injury” defined.**

7 1. “Injury” or “personal injury” means a sudden and tangible
8 happening of a traumatic nature, producing an immediate or prompt result
9 which is established by medical evidence, including injuries to prosthetic
10 devices. Except as otherwise provided in subsection 3, any injury
sustained by an employee while engaging in an athletic or social event
11 sponsored by his employer shall be deemed not to have arisen out of or in
the course of employment unless the employee received remuneration for
12 participation in the event.

13 Under NRS 616C.150, the Respondent has the burden of proof to show that the injury
14 arose out of and in the course of employment. Respondent must satisfy this burden by a
15 preponderance of the evidence. Further, NRS 616B.612 mandates that an employee is only
entitled to compensation if he is injured in the course and scope of his employment.

16 The Nevada Supreme Court has held that:

17 An accident or injury is said to arise out of employment
18 when there is a causal connection between the injury and the
19 employee’s work ... the injured employee must establish a link
20 between the workplace conditions and how those conditions
caused the injury ... a claimant must demonstrate that the origin of
21 the injury is related to some risk involved within the scope of
employment.

22 Rio Suite Hotel v. Gorsky, 113 Nev. 600 (1997).

23 Some courts have found a distinction between “the course of employment” and “arising
24 out of employment.” In addition to occurring while at work, the injury must result from a hazard
25 connected with the employment. See, Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996).

26 In Nevada, the Supreme Court has defined the term “arose out of,” as contained in NRS
27 616C.150, to mean that there is a causal connection between the injury and the employee’s work.
28

1 In other words, the injured party must establish a link between the workplace conditions and how
2 those conditions caused the injury. Further, the Respondent must demonstrate that the origin of
3 the injury is related to some risk involved within the scope of employment. The Respondent has
4 failed to establish a compensable claim as set forth above. Therefore, the determination to deny
5 the claim is proper.

6
7 The Court in Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104
8 (2005) held that:

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

20 The Supreme Court held that the "Nevada Industrial Insurance Act is not a mechanism
21 which makes employers absolutely liable for injuries suffered by employees who are on the job."
22 Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605, 939 P.2d 1043 (1997). The Court
23 concluded by stating, "The requirements of 'arising out of and in the course of employment'
24 make it clear that a claimant must establish more than being at work and suffering an injury in
25 order to recover."

26 The Nevada Supreme Court, in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad.
27 Opn. 34(2010), clarified Mitchell, supra, to the extent that Mitchell held that unexplained
28 accidents are never compensable:

Injuries resulting from employment-related risks are 'all the
obvious kinds of injur[ies] that one thinks of at once as industrial
injur[ies]' and are generally compensable . . . [such as] tripping on
a defect at employer's premises . . . Personal risk are those that are
'so clearly personal that, even if they take effect while the
employee is on the job, they could not possibly be attributed to the

1 employment . . . For example, 'a fall caused by [a personal
2 condition such as] a bad knee, or multiple sclerosis. [Neutral] risks
3 are those that are 'of neither distinctly employment nor distinctly
4 personal character . . . ('an unexplained fall, originating neither
5 from employment conditions nor from conditions personal to the
6 [employee]'. [Phillips'] injury occurred while traversing a
7 staircase that was free of defects, and there [was] no evidence that
8 a risk personal to [her] caused her fall. Thus, [this injury] falls
9 within the neutral -risk category . . . The act of descending a
10 staircase at work, in and of itself, does not present a greater risk
11 than that faced by the general public . . . [W]hether a fall is
12 explained or unexplained is irrelevant. The key inquiry is whether
13 the risk faced by the employee was greater than the risk faced by
14 the general public.

15 In the instant claim, Respondent was not subject to a risk unique to his employment as
16 there was no hazard on the stairs that caused him to fall, he simply mis-stepped because he
17 thought he was at the bottom of the stairs when he was not.

18 As the Appeals Officer's Decision and Order is based upon improper application of the
19 relevant law, Petitioners believe that they will prevail in their Petition for Judicial Review, and
20 on this basis, a Stay is warranted.

21 C.

22 **Petitioners are the Only Parties Who Will Suffer Any Harm**

23 In the instant case, Respondent will not suffer any harm as he has already received the
24 emergent medical care that he needed. This is not a case involving emergency medical benefits
25 or where Respondent could suffer physical harm without further medical treatment. It can be
26 fairly said that no harm will result to Respondent by the staying of the Appeals Officer's
27 Decision and Order while this case proceeds on the merits of the underlying appeal.

28 On the other hand, if this Court elects to deny the instant motion, the underlying appeal
will be largely rendered moot, thus denying Petitioners the opportunity to contest the Appeals
Officer's Decision and Order. Petitioners will be denied the opportunity to recover the benefits
ordered by the Appeals Officer's Decision. If Respondent ultimately prevails on the merits of
the underlying appeal, he will be afforded all appropriate benefits to which he may be entitled.

1 It is anticipated that Respondent will argue that Petitioners will not suffer “irreparable
2 harm” because they may have to pay retroactive temporary total disability (hereinafter referred to
3 as “TTD”) benefits. There would be no irreparable harm if Petitioners were able to recoup the
4 money that was paid if their Petition is successful. In that regard, not only are money damages
5 inadequate, money damages are not available. Ransier, supra. In Virginia Petroleum Job. Ass’n
6 v. Federal Power Com’n, 104 U.S. App. D.C. 106, 259 F.2d 921, 925 (D.C. Cir. 1958) the Court
7 found that “Mere injuries, however substantial, in terms of money, time, and energy necessarily
8 expended in the absence of a stay, are not enough [to be considered irreparable harm]. **The**
9 **possibility that adequate compensatory or other corrective relief will be available at a later**
10 **date, in the ordinary course of litigation, weighs heavily against a claim of irreparable**
11 **harm.”** (Emphasis added.) Accordingly, without a stay, Petitioners will suffer irreparable harm
12 because there is no possibility that adequate compensation or other corrective relief, except,
13 pursuant to NRS 616C.155(2), for the last thirty (30) days of payments, if there was a clerical
14 error or as the result of incorrect information being received, will be available if Petitioners
15 prevail in this litigation. Therefore, not only are money damages inadequate, money damages
16 are not available.

17 Petitioners, therefore, are the only parties that can, and will, suffer irreparable harm if the
18 instant motion is denied. Accordingly, it can be fairly said that no harm will result to
19 Respondent by the staying of the Appeals Officer’s Decision and Order while this case proceeds
20 on the merits of the underlying appeal.

21 III.

22 CONCLUSION

23 Based upon all of the above, it is the belief of Petitioners, CARSON TAHOE HEALTH
24 SYSTEM, and GALLAGHER BASSETT SERVICES, INC., that they have reason in good faith
25 to ask for a stay of the erroneous Appeals Officer decision dated April 15, 2021, particularly in
26 light of the clear error of law which has been established above.

27 ...

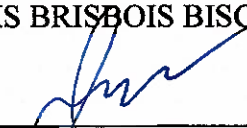
1 This is not an appeal based solely on a disagreement over the facts. Rather, we are faced
2 with an Appeals Officer's Decision which violates clear and specific statutory provisions and
3 existing case law. The Appeals Officer's improper application of the law will result in
4 irreparable harm to Petitioners if the instant stay is not granted. Respondent, on the other hand,
5 will suffer no harm if this stay is granted. This clear error of law is exactly the situation in which
6 a stay is proper.

7 WHEREFORE, Petitioners, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
8 BASSETT SERVICES, INC., respectfully request that this Court grant their Motion for Stay
9 Pending Appeal.

10 Dated this 3 day of May, 2021.

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13 By: 
14 JOHN P. LAVERY, ESQ.
15 Nevada Bar No. 004665
16 JEANNE P. BAWA, ESQ.
17 Nevada Bar No. 007359
18 2300 West Sahara Avenue, Suite 900, Box 28
19 Las Vegas, Nevada 89102
20 Phone: (702) 893-3383
21 Attorneys for Petitioners
22 CARSON TAHOE HEALTH SYSTEM and
23 GALLAGHER BASSETT SERVICES, INC.
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 3rd day of May, 2021, service of the attached **PETITIONERS' MOTION FOR STAY PENDING APPEAL** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Todd Eikelberger, Esq.
NEVADA ATTORNEY FOR INJURED WORKERS
1000 E. William Street, Suite 208
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM
Attn: Risk Management
1600 Medical Pkwy.
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster
GALLAGHER BASSETT SERVICES, INC.
PO Box 2934
Clinton, IA 52733



An Employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

CARSON TAHOE
HEALTH

EMPLOYEE'S CLAIM FOR COMPENSATION / REPORT OF INITIAL
TREATMENT FORM C-4

Post Office Box 2168
Carson City, Nevada
89702-2168
775/445-8000

PAGE 1 of 1

EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED					
First Name Stephen	M.I. Y	Last Name ASMER	Birthdate 10.18.69	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurers Use Only)
Home Address 2257 Carson River Rd		Age 50	Height	Weight	Social Security Number
City CC	State NV	Zip 89701	Telephone 721-3843		
Mailing Address same		City	State	Zip	Primary Language Spoken
INSURER	THIRD-PARTY ADMINISTRATOR		Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred		
Employer's Name/Company Name CTH				Telephone 445-8000	
Office Mail Address (Number and Street) 1600 Medical Parkway Carson City, NV 89701					
Date of Injury (if applicable) 6-8-2000	Hours Injury (if applicable) 11 am	Date Employer Notified 6-8-20	Last Day of Work After Injury or Occupational Disease 6-8-20	Supervisor to Whom Injury Reported N/A	
Address or Location of Accident (if applicable) Carson Tahoe Hospital					
What were you doing at the time of the accident? (if applicable) walking down stairs carrying a box & Fell					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) Fell					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? N/A				Witnesses to the Accident (if applicable) N/A	
Nature of Injury or Occupational Disease Fall			Part(s) of Body Injured or Affected Foot		
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 INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS NRS 616 TO 619 INCLUSIVE OR CHAPTER 617 OF NRS. I HEREBY AUTHORIZE ANY PHYSICIAN CHIROPRACTOR, SURGEON, PRACTITIONER 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 AIDS PSYCHOLOGICAL CONDITIONS ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. AUTHORIZATION A. PHOTOSTAT SHALL BE AS VALID AS THE ORIGINAL.					
Date 6/8/20	Place Carson Tahoe		Employee's Signature [Signature]		
THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT					
Place Carson Tahoe ER	Name of Facility Carson Tahoe Medical Center				
Date 6/8/2000	Diagnosis and Description of Injury or Occupational Disease L Ankle dislocation & Fracture		Is there evidence that the injured employee was under the influence of alcohol and / or another controlled substance at the time of the accident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (If yes, please explain)		
Hour 12:00	Treatment: Reduction & splinting and casting		Have you advised the patient to remain off work five days or more? <input checked="" type="checkbox"/> Yes Indicate dates: from 6/8/2000 through 6/12/2000		
X-Ray Findings: Dislocation of Fibula and posterior Malleolus Fr			<input type="checkbox"/> No If no, is the injured employee capable of: <input type="checkbox"/> full duty <input checked="" type="checkbox"/> modified duty If modified duty, specify any limitations / restrictions:		
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Do you know of any previous injury or disease contributing to the condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)					
Date	Print Doctor's Name		I certify that the employer's copy of this form was mailed to the employer on:		
Address 1600 Medical Parkway		INSURERS USE ONLY			
City Carson City, NV	State NV	Zip 89701	Provider's Tax ID Number 550502320	Telephone 775-445-8000	
Doctor's Signature [Signature]		Degree			

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR

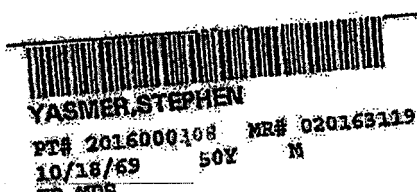
PAGE 2 - INSURER / TPA

PAGE 3 - EMPLOYER

PAGE 4 - EMPLOYEE

Patient Demographics

Form C-4 Rev. (06/28/12)



MRN:020163119
VISIT ID:2016000308
PATIENT NAME:STEPHEN YASMER
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

DATE & TIME OF SERVICE:
06/08/2020

MODE OF ARRIVAL:
POV

CHIEF COMPLAINT:
Left ankle injury

HISTORY OF PRESENT ILLNESS:

Patient is a 50-year-old male who is a physical therapist here at our facility who reports that he was carrying a box supplies down to the basement when he thought he was on the bottom stair and could not see that there is still to more stairs beneath MCV stepped forward thinking he was stepping onto the landing and missed the bottom to stairs falling hard on to his left ankle causing some notable deformity. Patient states he thinks he might have sprained his right ankle as well but does not have significant pain or concern to that area denies hitting his head denies any loss of consciousness denies any pain anywhere else. Patient reports a co-worker got a pair crutches in the came down to the ER to be checked in.

PAST MEDICAL HISTORY:
Seasonal allergies

PAST SURGICAL HISTORY:
Shoulder

CURRENT MEDICATIONS:
Reviewed current med rec in chart

ALLERGIES:
Vicodin

SOCIAL HISTORY:
Patient reports daily tobacco use with daily alcohol use as well denies any marijuana drug use

REVIEW OF SYSTEMS:
A 10-point review of systems was performed and the pertinent positives and negatives are listed in the History of Present Illness

PHYSICAL EXAM:

Vital signs:
Blood pressure is 127/87 with a heart rate of 74 respiratory rate of 18
temperature of 98.1° and O2 95% on room air
General: Pleasant nontoxic in moderate distress

MRN:020163119
VISIT ID:2016000308
PATIENT NAME:STEPHEN YASMER
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

Head: Normocephalic atraumatic
ENT: PERRLA EOMI sclerae anicteric
Neck: Supple no stridor
Lungs: Clear to auscultation bilaterally
Cardiovascular regular rate and rhythm no obvious murmurs rubs or gallops cap refill less than 2 sec symmetric radial pulses no pedal edema
Abdomen: good bowel sounds soft abdomen nontender nondistended negative Murphy's no McBurney's no peritonitis
Back: no midline tenderness to palpation or step-offs normal range of motion
Skin: intact warm dry no obvious rashes
Extremities: Patient has noticeable deformity to left ankle consistent with a possible dislocation palpable pedal pulse to left foot decreased sensation severe tenderness to palpation patient has tenderness with extension of right ankle has no bony nose tenderness to palpation bilateral malleolus no midfoot tenderness to palpation no head of 5th metatarsal tenderness to palpation
Neuro: Alert oriented to person place time and situation GCS 15 symmetric face has 5/5 strength throughout normal sensation to light touch throughout no limb ataxia
Psych: Calm and cooperative

DIAGNOSTIC STUDIES:

Left ankle x-ray shows

IMPRESSION:

Posterior dislocation of the talus.

Comminuted displaced fracture of the distal fibular diaphysis.

Electronically Signed by: Edmund Pillsbury 6/8/2020 1:06 PM

Post reduction film shows

IMPRESSION:

1. Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains.
2. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Electronically Signed by: Farres Ahmed 6/8/2020 1:36 PM

EMERGENCY ROOM COURSE (MDM):

Patient is a 50-year-old male with the above-noted complaint. Upon initial presentation patient has a very obvious notable deformity of his left ankle with decreased sensation the patient does maintain perfusion he has cap refill

MRN: 020163119
VISIT ID: 2016000308
PATIENT NAME: STEPHEN YASMER
PATIENT DOB: 10/18/1969

Emergency Room Note (MModal)

of 3 seconds with a palpable pedal pulse. I called x-ray in asked for x-rays soon as possible as well as I notified my supervising physician Dr. Calvo to trying get a reduction done as soon as possible. X-ray with results noted above do show a fibular fracture with dislocation patient was given propofol for conscious sedation please see Dr. Calvo as noted sees is me with this procedure at which point I was able to successfully reduce the dislocation and patient was placed in a Cadillac splint. Patient tolerated procedure well had no complications patient already has crutches we discussed appropriate symptomatic management at home patient was found to be PMP negative he is given prescription for Percocet as he states that Norco makes him very itchy. Patient is already established with Tahoe fracture was given referral to follow up with his orthopedic provider we discussed very strict return precautions as well as appropriate symptomatic management at home to which patient verbalized understanding and agreement plan feels comfortable going home at this time patient did present a C4 form which was filled out.

FINAL DIAGNOSIS:

Acute left ankle dislocation
Acute left fibula fracture
Acute left posterior malleolus fracture

DISPOSITION:

Home POV with a ride

This patient was seen under disaster/mass casualty incident conditions.

Voice Recognition Disclaimer:

- Voice Recognition Disclaimer This document may have been created using voice recognition software. The software does have a chance of producing errors of grammar and possibly content. I have made every reasonable attempt to find and correct any obvious errors.

Electronic Signatures:

Smith, Matthew W (PA-C) (Signed Jun-08-2020 14:20)
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 14:20 by Smith, Matthew W (PA-C)

MRN: 020163119
VISIT ID: 2016000308
PATIENT NAME: STEPHEN YASMER
PATIENT DOB: 10/18/1969

Emergency Room Note (MModal)

This is Calvo dictating a supervising physician attestation note. Please note this is a 50-year-old male who works here at the hospital who stepped off a step and had a sudden left ankle pain. After missing a step. On physical exam there is an obvious posterior dislocation of the ankle he has thready posterior tibial pulse he has subjective numbness but normal motor function of the left foot. X-ray shows a posterior ankle dislocation with associated fibular fracture. This was reduced under propofol sedation. Following this he was doing much better it could pulses and neurovascular status in the left ankle he was placed in a splint he will follow up with Orthopedics. He has remained remain nonweightbearing. Please see Matthew Smith's note for further emergency department course workup and plan. I spent 15 minutes of direct face-to-face time with this patient.

Conscious Sedation

Patient did require moderate sedation for left ankle dislocation. Risks and benefits were discussed and patient elected to proceed with the procedure. Respiratory therapy and nursing staff were present at all times. Patient received a total of 120 mg of IV propofol. This was pushed by myself. The reduction was completed by Matthew Smith please see his note for further details. During the moderate sedation there was no hypotension or hypoxia. Patient had continuous blood pressure monitoring and continuous pulse oximetry. The patient is completely neurovascularly intact post procedure. Patient tolerated the procedure very well without complications. Patient is now resting comfortably and does not appear to be in any distress. Patient is now back to baseline. Intraservice time was 13 minutes.

Voice Recognition Disclaimer:

Voice Recognition Disclaimer This document may have been created using voice recognition software. The software does have a chance of producing errors of grammar and possibly content. I have made every reasonable attempt to find and correct any obvious errors.

Electronic Signatures:

Calvo, Darryl v (Physician) (Signed Jun-08-2020 17:21)
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 17:21 by Calvo, Darryl v (Physician)

CARSON TAHOE REGIONAL HEALTHCARE
P.O. Box 2168,
Carson City, NV 89702-2168

Patient Name: STEPHEN YASMER
MRN: 020163119
Account: 2016000308

Check-In# 3594855
Order# 001DWKDZJ
Exam XR ANKLE LT MIN 3 VIEW

TYPE OF EXAM: RAD7361
DATE: 06/08/2020
INDICATION: ^Pain W/Trauma^FF

Ordering Physician: MATTHEW W SMITH
Attending Physician: MDS ER

EXAM: Left ankle radiographs, 3 views.

HISTORY: Pain W/Trauma.

COMPARISON: None available.

FINDINGS: Posterior dislocation of the talar dome is noted. There is a
comminuted fracture of the distal fibular diaphysis. No other fracture is noted.

IMPRESSION:

Posterior dislocation of the talus.

Comminuted displaced fracture of the distal fibular diaphysis.

Electronically Signed by: Edmund Pillsbury 6/8/2020 1:06 PM

Electronically Signed By: EDMUND P PILLSBURY, MD

CARSON TAHOE REGIONAL HEALTHCARE
P.O. Box 2168,
Carson City, NV 89702-2168

Patient Name: STEPHEN YASMER
MRN: 020163119
Account: 2016000308

Check-In# 3594901
Order# H1866728
Exam XR ANKLE LT 2VW

TYPE OF EXAM: RAD7621
DATE: 06/08/2020
INDICATION: ^Pain W/Trauma^FF

Ordering Physician: MATTHEW W. SMITH
Attending Physician: MDS ER

EXAM: Left ankle radiographs, 2 views.

HISTORY: Pain W/Trauma

COMPARISON: Left ankle radiographs June 8, 2020

FINDINGS: Interval reduction and splinting of the left ankle. Talus now appears appropriately positioned after reduction. Improved comminuted angulated distal fibular fracture. Posterior apex angulation persists although is improved.

Osseous fragment projects posterior to the talus and could represent an additional fracture, not significant changed.

Plantar calcaneal enthesophyte.

IMPRESSION:

1. Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains.
2. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Electronically Signed by: Farres Ahmed 6/8/2020 1:36 PM

Electronically Signed By: FARRES AHMED, MD

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE C-4 FORM				Reset Form Print Form		EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE				
EMPLOYER	Employer's Name CARSON TAHOE HEALTH SYSTEM			Nature of Business (mfg., etc.) Healthcare		FEIN 88-0502318		OSHA Log # MV6549399		
	Office Mail Address 1600 MEDICAL PARKWAY			Location... If different from mailing address 1600 MEDICAL PARKWAY CARSON CITY, NV			Telephone (775) 445-8176			
	City CARSON CITY	State NV	Zip 89703	INSURER Zurich			THIRD-PARTY ADMINISTRATOR GALLAGHER BASSETT - LAS VE			
EMPLOYEE	First Name M.I. Last Name Stephen Yasmer		Social Security		Birthdate 10/18/1969		Age 50		Primary Language Spoken English	
	Home Address (Number and Street) 2257 Carson River Rd			Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed				
	City Carson City		State NV	Zip 89701	Was the employee paid for the day of injury? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		How long has this person been employed by you in Nevada? 15 Year(s) 2 Month(s)			
	In which state was employee hired? NV		Employee's occupation (job title) when hired or disabled Manager Therapy Services				Department in which regularly employed: Physical Therapy			
ACCIDENT OR DISEASE	Telephone (775) 883-4680		Is the injured employee a corporate officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		...sole proprietor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		...partner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	Date of injury (if applicable) 06/08/2020		Time of Injury (Hours;Minute AM/PM) (if applicable) 11:00AM		Date employer notified of injury or O/D 06/08/2020		Supervisor to whom injury or O/D reported Scott Mattes			
	Address or location of accident (Also provide city, county, state) (if applicable) 1600 MEDICAL PARKWAY CARSON CITY, NV 89703								Accident on employer's premises? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) Walking down stairs while carrying a box									
	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. Employee thought he was at the landing between floors but was still 2 steps up and fell									
	Employee began work at: 08:00:00									
INJURY OR DISEASE	Specify machine, tool, substance, or object most closely connected with the accident (if applicable) Stairs				Witness		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Part of body injured or affected Left Ankle		If fatal, give date of death		Witness					
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) Ankle Dislocation and Fracture				Witness					
					Did employee return to next scheduled shift after accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Will you have light duty work available, if necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	If validity of claim is doubted, state reason None				Location of Initial Treatment 1600 Medical Parkway Carson City, NV 89703					
	Treating physician/chiropractor name Dr. Daryl Calvo				Emergency Room <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
IMPORTANT LOST TIME INFO	IMPORTANT		How many days per week does employee work? 5		From 8:00 <input checked="" type="checkbox"/> am <input type="checkbox"/> pm To 4:30 <input type="checkbox"/> am <input checked="" type="checkbox"/> pm		Last day wages were earned 06/08/2020			
	Scheduled days off <input checked="" type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> T <input type="checkbox"/> F <input checked="" type="checkbox"/> S Rotating <input type="checkbox"/>				Are you paying injured or disabled employee's wages during disability? <input type="checkbox"/> Yes <input type="checkbox"/> No					
	Date employee was hired 04/04/2005		Last day of work after injury or disability 06/08/2020		Date of return to work		Number of work days lost			
	Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired?		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Do Not Know					
	For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability.									
	Pay Period ends on: <input type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THUR <input checked="" type="checkbox"/> SAT <input type="checkbox"/> MON <input type="checkbox"/> WED <input type="checkbox"/> FRI		Employee is paid: <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> BI-WKLY <input type="checkbox"/> SEMI-MONTHLY		On the date of injury or disability the employee's wage was: \$ 63.76 per <input checked="" type="checkbox"/> Hr <input type="checkbox"/> Day <input type="checkbox"/> Wk <input type="checkbox"/> Mo					
For assistance with Workers' Compensation issues, you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-533-1697 Web site: http://dhhs.nv.gov/Programs/CHA E-mail: cha@govhhs.nv.gov										
Insurer Use Only	I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I also understand that providing false information is a violation of Nevada law.				Employer's Signature and Title Terry Long RN, Manager Employee		Date 06/09/2020			
	Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3rd Party		Deemed Wage		Account No.		Class Code			
	Claims Examiners' Signature		Date		Status Clerk		Date			



CARSON TAHOE
HEALTH

NOTICE OF INJURY OR OCCUPATIONAL DISEASE
(Incident Report Form, C-1)

In the event of employee injury or illness this form must be completed by the employee and the Department Manager or Supervisor before the end of the shift in which the injury occurs.

Employee Name Stephen Turner Dept. Therapy Shift hours Varies
Physical Address 2257 Carson Park Rd, Carson City, NV 89701 Telephone 775-721-2842
Marital Status: S M Div. Wid Date of Injury 6/8/20 Time of Injury 1115 AM or PM AM
Injured: During Work Hours? Yes No SS #
On Hospital Premises? Yes No Manager/Supervisor Reported To Scott Miller Time 1145

If there were any witnesses, please list names and have them sign below.

(witness) _____ (witness) _____
Explain in detail how injury occurred (moving patient, cleaning patient room, etc.)
Go up down stairs with box of supplies. Thought I had reached the landing, but I was still 7-8 steps up. I fell.
Part of Body Injured (Left Arm, Lower Back, etc.) Left ankle
Other Pertinent Information _____

I hereby declare the above is a true and factual account of the injury that occurred.

I understand that if treatment is sought, it will be authorized by either my manager, administrative coordinator or employee health.

Employee Signature [Signature] Date 6/8/20 Time 1417

MANAGER/SUPERVISOR SECTION (please complete all areas)

This entire report form is to be submitted to Employee Health within 3 days of injury.

Date of Injury 6/8/20 Date Manager/Supervisor Notified 6/8/20 Time 1145

Was this injury reported at once? (please explain) yes

Specify object or substance which directly injured employee fall

Nature of injury (contusion, puncture, etc.) broken ankle

Employee sent to Regional Healthcare Emergency Dept. for treatment? Yes No Other _____

Did you talk to employee about HOW injury occurred? (please explain) yes

If witnessed, did you talk to each witness about what was observed? _____

How could this injury have been prevented? Take the elevator

What actions are you taking to prevent future incidents? education

Were there techniques, procedures or policies that the employee did not follow? (please indicate) no

Was there a root cause related to this injury? ie; Policy or procedure revision no

Are you assured that this injury is job related? (please explain) yes

Other pertinent information _____

Request injury to be investigated? Yes No

Manager [Signature] Date 6/10/20 Time 910 Supervisor (if applicable) _____ Date _____ Time _____

EMPLOYEE HEALTH/EMERGENCY DEPARTMENT/ADMINISTRATIVE COORDINATOR

This portion to be completed by Employee Health, Emergency Room Physician or Administrative Coordinator

Diagnosis and Description of Occupational Injury or Disease _____

Initial Treatment _____

Is further medical care by a physician indicated? _____

Was employee: Returned to work? _____ Sent home? _____ Hospitalized? _____

If yes, how long do you anticipate employee to be off work? _____

Additional Comments: _____

Evaluated/Treated By: _____ Signature _____ Date _____

TIME RECEIVED
June 11, 2020 at 2:15:27 PM

REMOTE CSID
(775) 887-5040

DURATION
102

PAGES STATUS
Received

Date 6/10/20

Nevada Occupational Health & Injury Care Center
3488 Goni Road
Suite 141

Page 2

Request for Authorization

Request To: Gallagher Bassett (NV Claims)
P.O. Box 400970
Las Vegas, NV 89140

Requested By: Betz, Jay E. MD
3488 Goni Rd.
Suite 141
Carson City, NV 89706

Telephone: (702) 789-4500
E-Mail:

Fax: (702) 789-4454

Telephone: (775) 887-5030
E-Mail:

Fax: (775) 887-5040

Supporting Notes

Subjective: Chief Complaint

Patient presents for evaluation of the left foot/ankle.

History of Present Illness

The patient is a 50 year old male, presenting for a new patient visit with the following condition(s):

Mr. Yasmer rolled his left ankle when he missed a step coming down some stairs with a box at work 2 days ago. He went to the ER where he was found have a fracture dislocation of the ankle which was reduced in the emergency room. He was placed in a posterior splint and given crutches.

Today reports he is doing pretty well. He has manageable pain. No numbness in the toes. He is using the crutches.

Past Medical History

ALLERGIES / ADVERSE REACTIONS: Vicoden

MEDICATIONS: Aleve and Oxycotone

PROBLEMS: Major or Chronic Illnesses: No known illnesses noted by patient.

OTHER PERSONAL HISTORY: Left Shoulder Rotary Cuff Repair.
Right Bicep tendon repair.
Hernia Repair.

FAMILY HISTORY: Family History: No negative family history noted by patient.

SOCIAL HISTORY: Patient currently uses alcohol. Patient is currently a smoker.

WORK HISTORY: Patient currently works full time as a(n) manual laborer , a physically demanding position.

Review of Systems

SKIN: Denies abnormal hair growth, bleeding, change in color or size of moles, easy bruising, itching, hair loss, rash, or history of skin cancer or severe sunburn.

NEUROLOGICAL: Denies blackouts, dysarthria, dizziness, double vision, fainting, headaches, loss of balance, coordination or sensation, motor weakness, paralysis, tingling, prickling, numbness or tremors.

TIME RECEIVED
June 11, 2020 at 2:15:27 PM

REMOTE CSID
(775) 887-5040

DURATION
102

ES STATUS
Received

Date 6/10/20

Nevada Occupational Health & Injury Care Center
3488 Goni Road
Suite 141

Page 3

Request for Authorization

Request To: Gallagher Bassett (NV Claims)
P.O. Box 400970
Las Vegas, NV 89140

Requested By: Betz, Jay E. MD
3488 Goni Rd.
Suite 141
Carson City, NV 89706

Telephone: (702) 789-4500
E-Mail:

Fax: (702) 789-4454

Telephone: (775) 887-5030
E-Mail:

Fax: (775) 887-5040

Supporting Notes

PSYCHIATRIC: Denies anxiety, depression, difficulty remembering things or thinking, hallucinations, insomnia, irritability, panic, suicidal thought or history of psych hospitalizations or suicide attempts.

ENDOCRINE SYSTEM: Denies cold or heat intolerance, fatigue, neck swelling, polydipsia or polyuria.

HEMATOLOGIC / LYMPHATIC: Denies easy bleeding or bruising, history of anemia, or swollen lymph nodes,.

ALLERGIC / IMMUNOLOGIC: Denies rhinitis, hay fever, itchy eyes, urticaria, angioedema, or sensitivity to foods or drugs.

GENITOURINARY: Denies blood in urine, difficulties urinating, frequency of urination, incontinence, or history of kidney stones. No discharge from penis, testicular pain, lumps in testicles or scrotum, or problems with erection or ejaculation.

GASTROINTESTINAL: Denies abdominal pain, blood in stools or black stools, change in bowel frequency or stool size, constipation, diarrhea, difficulty swallowing, food intolerance, heartburn, nausea, vomiting or need for antacids.

RESPIRATORY: Denies coughing, coughing up blood or phlegm, night sweats, shortness of breath, wheezing or history of asthma, pneumonia or tuberculosis.

CARDIOVASCULAR: Denies chest pain or pressure, edema, excessive sweating, heart racing, palpitations, shortness of breath or history of heart murmur, hypertension, rheumatic fever or valve disease.

EARS, NOSE, MOUTH & THROAT: Denies bleeding gums, earaches, ear discharge, hay fever or seasonal allergies, hearing loss, hoarseness, nasal discharge or nosebleeds, sinus problems, sore throats, tinnitus or vertigo.

EYES: Denies blurred vision, cataracts, dimness, excessive tearing, flashing lights, itching, pain, redness or history of cataracts or glaucoma.

CONSTITUTIONAL: Denies change in appetite, fatigue, fever, weakness, weight gain or weight loss.

TIME RECEIVED
June 11, 2020 at 2:15:27 PM

REMOTE CSID
(775) 887-5040

DURATION
102

YES STATUS
Received

Date 6/10/20

Nevada Occupational Health & Injury Care Center
3488 Goni Road
Suite 141

Page 4

Request for Authorization

Request To: Gallagher Bassett (NV Claims)
P.O. Box 400970
Las Vegas, NV 89140

Requested By: Betz, Jay E. MD
3488 Goni Rd.
Suite 141
Carson City, NV 89706

Telephone: (702) 789-4500
E-Mail:

Fax: (702) 789-4454

Telephone: (775) 887-5030
E-Mail:

Fax: (775) 887-5040

Supporting Notes

Objective: Examination/Procedures

Temperature: 97.9°F. Blood Pressure: 158/95. Pulse: 69. Respiration: 16. (Entered by Betz, Jay E. MD 6/10/2020 at 12:43PM).

The patient is well-nourished well-developed. He is in no distress. He has a posterior splint on the left foot ankle and using crutches.

The splint was left in place. Neurovascular status of the toes is intact.

Review ER x-ray images show reduced fracture dislocation of the ankle involving the lateral and posterior malleoli.

Imaging/Test Results

X-ray report Left Ankle 6-8-20: Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Assessment: Diagnosis

Fracture/Dislocation left ankle

Work Status

Wear splint. Non weight bearing. Use crutches to ambulate.
ST

TIME RECEIVED
June 11, 2020 at 2:15:27 PM

REMOTE CSID
(775) 887-5040

DURATION
102

ES STATUS
Received

Date 6/10/20

Nevada Occupational Health & Injury Care Center
3488 Goni Road
Suite 141

Page 5

Request for Authorization

Request To: Gallagher Bassett (NV Claims)
P.O. Box 400970
Las Vegas, NV 89140

Requested By: Betz, Jay E. MD
3488 Goni Rd.
Suite 141
Carson City, NV 89706

Telephone: (702) 789-4500
E-Mail:

Fax: (702) 789-4454

Telephone: (775) 887-5030
E-Mail:

Fax: (775) 887-5040

Supporting Notes

Plan: Orders

I recommend referral to a qualified orthopedist. Dr. Cummings is requested. (Betz, Jay E. MD, 6/10/20 at 1:10PM).

Discussion & Plan

The patient will require open reduction and internal fixation of the left ankle. We have set up an appointment for him to see Dr. Cummings, orthopedist, later this week who will assume the patient's care. Pending that he should use the crutches, avoid weight-bearing and elevate the foot when possible. He feels he can manage his pain with OTC analgesics and occasional Percocet from the ER.

A total of 40 minutes was spent in the evaluation and treatment of the patient today

TIME RECEIVED
June 11, 2020 at 2:15:27 PM

REMOTE CSID
(775) 887-5040

DURATION
102

ES STATUS
Received

Date 6/10/20

Nevada Occupational Health & Injury Care Center
3488 Goni Road
Suite 141

Page 1

Request for Authorization

Request To: Gallagher Bassett (NV Claims)
P.O. Box 400970
Las Vegas, NV 89140

Requested By: Betz, Jay E. MD
3488 Goni Rd.
Suite 141
Carson City, NV 89706

Telephone: (702) 789-4500
E-Mail:

Fax: (702) 789-4454

Telephone: (775) 887-5030
E-Mail:

Fax: (775) 887-5040

Authorization Request

Purpose: Orthopedist Referral

Comments: I recommend referral to a qualified orthopedist. Dr. Cummings is requested

Patient Information

Patient: Stephen Yasmer
2257 Carson River
Carson City, NV 89701

Employer: Carson Tahoe Health-Injury Only
1600 Medical Pkwy
Carson City, NV 89703

Telephone: (775) 721-3843

Identity: ! **Birth Date:** 10/18/69 **Age:** 50
Gender: Male **Marital:** Unknown

Telephone: (775) 445-8176 **Fax:** (775) 888-3226
Policy:

Visit Information

Visit Date: 6/10/20 **Date of Injury or Illness:** 6/08/20 **Claim Number:**
Description: Patient presents for evaluation of the left foot/ankle.

ICD-9: 000 **Left Ankle Dislocation with Fx**

Supporting Notes

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 1

Patient Charting Note

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist Visit Injury Date: 6/08/2020	Cummings, Jeffrey	

Subjective:

Chief Complaint

Stephen is here referred by Dr. Betz with regards to his left foot/ankle.

History of Present Illness

Referring Physician: Jay Betz MD

Dear Dr. Betz,

Thank you for this consultation and evaluation.

Steven is a new patient, referred over by Dr. Betz. A 50-year-old male who presents after his left ankle injury. He was coming down steps at the hospital with boxes and he twisted his ankle. He had a fracture dislocation of the ankle. Had a fibula fracture with posterior displacement of the talus. There is no sign of a posterior malleolar fracture. Seems to be all laterally. The mortise appears to be reduced as well as the syndesmosis.

However, there is a risk of syndesmosis injury as well.

Past Medical History

ALLERGIES / ADVERSE REACTIONS: Vicoden

MEDICATIONS: Aleve and Oxycotone

PROBLEMS: Major or Chronic Illnesses: No known illnesses noted by patient.

OTHER PERSONAL HISTORY: Left Shoulder Rotary Cuff Repair.

Right Bicep tendon repair.

Hernia Repair.

FAMILY HISTORY: Family History: No negative family history noted by patient.

SOCIAL HISTORY: Patient currently uses alcohol. Patient is currently a smoker.

WORK HISTORY: Patient currently works full time as a(n) manual laborer , a physically demanding position.

Review of Systems

SKIN: Denies abnormal hair growth, bleeding, change in color or size of moles, easy bruising, itching, hair loss, rash, or history of skin cancer or severe sunburn.

NEUROLOGICAL: Denies blackouts, dysarthria, dizziness, double vision, fainting, headaches, loss of balance, coordination or sensation, motor weakness, paralysis, tingling, prickling, numbness or tremors.

PSYCHIATRIC: Denies anxiety, depression, difficulty remembering things or thinking, hallucinations, insomnia, irritability, panic, suicidal thought or history of psych hospitalizations or suicide attempts.

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 2

Patient Charting Note

Stephen Yasmer, DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist- Visit Injury Date: 6/08/2020	Cummings, Jeffrey	

ENDOCRINE SYSTEM: Denies cold or heat intolerance, fatigue, neck swelling, polydipsia or polyuria.

HEMATOLOGIC / LYMPHATIC: Denies easy bleeding or bruising, history of anemia, or swollen lymph nodes,.

ALLERGIC / IMMUNOLOGIC: Denies rhinitis, hay fever, itchy eyes, urticaria, angioedema, or sensitivity to foods or drugs.

GENITOURINARY: Denies blood in urine, difficulties urinating, frequency of urination, incontinence, or history of kidney stones. No discharge from penis, testicular pain, lumps in testicles or scrotum, or problems with erection or ejaculation.

GASTROINTESTINAL: Denies abdominal pain, blood in stools or black stools, change in bowel frequency or stool size, constipation, diarrhea, difficulty swallowing, food intolerance, heartburn, nausea, vomiting or need for antacids.

RESPIRATORY: Denies coughing, coughing up blood or phlegm, night sweats, shortness of breath, wheezing or history of asthma, pneumonia or tuberculosis.

CARDIOVASCULAR: Denies chest pain or pressure, edema, excessive sweating, heart racing, palpitations, shortness of breath or history of heart murmur, hypertension, rheumatic fever or valve disease.

EARS, NOSE, MOUTH & THROAT: Denies bleeding gums, earaches, ear discharge, hay fever or seasonal allergies, hearing loss, hoarseness, nasal discharge or nosebleeds, sinus problems, sore throats, tinnitus or vertigo.

EYES: Denies blurred vision, cataracts, dimness, excessive tearing, flashing lights, itching, pain, redness or history of cataracts or glaucoma.

CONSTITUTIONAL: Denies change in appetite, fatigue, fever, weakness, weight gain or weight loss.

Objective:

Examination/Procedures

Temperature: 97.8°F. (Entered by Betz, Jay E. MD 6/12/2020 at 11:22AM).

On exam today the swelling is still present. He can flex and extend in toes. There is good cap refill. Palpable dorsalis pedis pulse. Sensation is intact. He still has swelling of the ankle.

Imaging/Test Results

X-ray report Left Ankle 6-8-20: Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Assessment:

Diagnosis

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 3

Patient Charting Note

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist- Visit Injury Date: 6/08/2020	Cummings, Jeffrey	

Fracture/Dislocation left ankle

Work Status

Wear splint. Non weight bearing. Use crutches to ambulate. Keep leg elevated.

Plan:

Orders

I recommend a STAT left ankle malleolus and syndesmosis open reduction internal fixation.

Discussion & Plan

We will plan for left ankle open reduction internal fixation of the lateral malleolus, with possible syndesmosis open reduction internal fixation as well.

He understands the risks, the benefits and alternatives to the procedure including, but not limited to, infection, bleeding, nerve and blood vessel damage, heart attack, stroke, death, persistent pain, need for surgery.

Sincerely,

Jeffrey Cummings, MD
Board Certified Orthopedic Surgeon
Board Certified Sports Medicine

Dictated using voice recognition by the provider.

*** As a result of using voice recognition, there is naturally more typographical and grammatical errors that can occur and need to be taken into consideration when reviewing these medical records.

TIME RECEIVED
June 12, 2020 at 1:17:29 PM

REMOTE CSID
(775) 887-5040

DURATION
43

SES

STATUS
Received

Date 6/12/20

Nevada Occupational Health & Injury Care Center
3488 Goni Road
Suite 141

Page 1

Request for Authorization

Request To: Gallagher Bassett (NV Claims)
P.O. Box 400970
Las Vegas, NV 89140

Requested By: Cummings, Jeffrey
3488 Goni Rd
Carson City, NV 89706

Telephone: (702) 789-4500
E-Mail:

Fax: (702) 789-4454

Telephone: (775) 887-5030
E-Mail:

Fax: (775) 887-5040

Authorization Request

Purpose: STAT Surgery With Dr. Cummings

Comments: I recommend a STAT left ankle malleolus and syndesmosis open reduction internal fixation.

CPT: 27829, 27814

ICD: S82.65XB, S93.439A

Surgery to be preformed on 06/17/20

Patient Information

Patient: Stephen Yasmer
2257 Carson River
Carson City, NV 89701

Employer: Carson Tahoe Health-Injury Only
1600 Medical Pkwy
Carson City, NV 89703

Telephone: (775) 721-3243

Identity: Birth Date: 10/18/69
Gender: Male Marital: Unknown

Age: 50

Telephone: (775) 445-8176
Policy:

Fax: (775) 888-3226

Visit Information

Visit Date: 6/12/20

Date of Injury or Illness: 6/08/20

Claim Number:

Description: Patient presents for evaluation of the left foot/ankle.

ICD-9: 000

Left Ankle Dislocation with Fx

TIME RECEIVED
July 2, 2020 at 11:39:35 AMREMOTE CSID
775-783-6191DURATION
327STATUS
Received

TAHOE FRACTURE CLINIC {SUBJECT}

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020163119 ACCT#: 2016400411

NAME: YASMER, STEPHEN

Clinician: Cummings, Jeffrey R

SURGEON: JEFFREY R CUMMINGS, MD

DATE: 06/15/2020

ANESTHESIA:

General.

ANESTHESIOLOGIST:

Spencer Mellum, DO

FIRST ASSISTANT:

Stephanie Tonn, PA-C

PREOPERATIVE DIAGNOSES:

1. Left ankle lateral malleolus fracture.
2. Left ankle syndesmosis disruption.

POSTOPERATIVE DIAGNOSES:

1. Left ankle lateral malleolus fracture.
2. Left ankle syndesmosis disruption.

PROCEDURES:

1. Left ankle open reduction, internal fixation of the lateral malleolus.
2. Left ankle open reduction, internal fixation of the syndesmosis.

INDICATION FOR OPERATION:

A 50-year-old male slipped going down the stairs at Carson Tahoe Hospital. Had an injury, a fracture dislocation of the left ankle. He understood the risks, the benefits, and alternatives to procedure.

DESCRIPTION OF PROCEDURE:

After obtaining proper consent, the patient was taken to the operating room, administered general anesthesia. Was sterilely prepped and draped in the left lower extremity. An Esmarch was used for exsanguination. The tourniquet was inflated to 250 mmHg. A longitudinal incision was made over the lateral aspect of the ankle. Dissection was done down to the lateral malleolus. The fracture site was identified. The fracture site was cleaned of soft tissue and the soft tissue was elevated off the bone. Using the Zimmer distal fibula plate and set, a lag screw was placed from anterior to posterior, holding the fracture reduced. Taking a 5-hole plate, it was secured to the distal fibula. Confirming position and alignment, the screws were filled both proximally and distally. The fracture site was then stressed to assess the syndesmosis, and this is where the noted gapping of the mortise was. It was decided at this point to use a Biomet TightRope. The TightRope was drilled through the whole level of the syndesmosis, angled anteriorly, across the fibula and tibia. The button was passed through the fibula and tibia tunnel and flipped over the medial cortex. The button was cinched, holding the syndesmosis secure and reduced. C-arm was used to confirm position, alignment, and reduction. The wounds were irrigated and closed with 3-0 Vicryl, 3-0 nylon in a running stitch. Sterile dressing applied. The patient was placed in a splint, taken to Recovery in stable condition. Needle and sponge counts correct.

TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

5 STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020163119 **ACCT#:** 2016400411
NAME: YASMER, STEPHEN

Clinician: Cummings, Jeffrey R

Jeffrey R Cummings, MD

JRC/MODL

DD: 06/15/2020 18:02:56

DT: 06/15/2020 19:39:26

396831/883146846

TIME RECEIVED
July 2, 2020 at 11:39:35 AMREMOTE CSID
775-783-6191DURATION
3275 STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}

PO Box 2168
Carson City, NV 89702-2168
775/882-1361

DIAGNOSTIC SERVICES REPORT

Check-In #	Order #	Exam	
3597443	H1888752	OPI9906	SXR ANKLE LT 2 VW 73600LT

ICD:

TYPE OF EXAM: SXR ANKLE LT 2 VW 73600LT

DATE: 06/15/2020 at 18:00

INDICATION:

FINAL

EXAM: 3 views of the left ankle

HISTORY: LEFT ANKLE LATERAL MELLEOLUS AND SYNDISMOSIS OPEN REDUCTION INTERNAL
FIXATION

COMPARISON: None available.

FLUOROSCOPY TIME: 20 seconds

FINDINGS: Intraoperative fluoroscopic guidance is obtained. Multiple intraoperative fluoroscopic spot images show lateral plate screw fixation of the distal fibula in anatomic alignment, transfixing the previously seen oblique fracture through the distal fibula. Additionally, there is new syndesmotic fixation hardware. No immediate hardware competition is noted.

Flu Appt.
on 6/30/20

IMPRESSION:

1. Intraoperative fluoroscopy as above.

Electronically Signed by: Erik Maki 6/15/2020 7:26 PM

6/18/20

Electronically Signed By: MAKI, ERIK

FINAL

Page 1 of 1

Patient Name	MRN	Account #
YASMER, STEPHEN	020163119	2016400411
DOB	Age	Sex
10/18/1989	50	M
Check-In		
06/15/20 at 18:00	3597443	
Ordering Physician	Attending Physician	
CUMMINGS, JEFFREY R		
973 MICA DR SUITE 201		
CARSON CITY, NV 89705		
7757836190		
DX:		



Gallagher Bassett Services, Inc.

June 23, 2020

Steven Yasmer
2257 Carson River Road
Carson City, NV 89701

Re: Employer: Carson Tahoe
D/Injury: 6/8/20
Clam #: 000706-038452-WC-01

Dear Mr. Yasmer:

Gallagher Bassett Services, Inv. administers the workers' compensation program for the above captioned employer. **Review of the file indicates that your accident was a result of you miscalculating the steps. There was no work related accident. You are not required to take the stairs as there is an elevator for your use.**

NRS 616C.150, 1. An injured employee is not entitled to receive compensation pursuant to the provisions of chapter's 616A to 616D, inclusive, of NRS unless the employee or his dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of employment.

NRS 616A.030 "Accident" means 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 1. "Injury" or "Personal Injury" means 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. Any injury sustained by an employee while engaging in an athletic or social event sponsored by his employer shall be deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event.

If you disagree with this decision, you have a right to file an appeal by completing the attached Request for Hearing Form and mailing it, along with a copy of this letter, to the address on the form. The completed Request for Hearing must be received by the hearing division within seventy days of the date of this letter. If you do not appeal within seventy days, you lose your right to appeal.

Sincerely,

Yvette D McCollum

Yvette D McCollum

Sr. Resolution Manager

Encl: Request for Hearing Form
cc: Employer / Medical provider / file

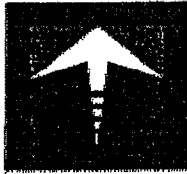
TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC {SUBJECT}



**Tahoe Fracture
& Orthopedic
Medical Clinic, Inc.**
Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705
Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 1

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health *

06/30/2020 - Office Visit: Post Op: L Ankle (W/C)

Provider: JEFFREY CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: ON HOLD DOCUMENT. Contents are preliminary

Past Medical History - reviewed

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

****Note: Patient has metal in his body.**

He does not have a hearing aid.

Surgical History - reviewed

Hernia Surgery

Arthroscopic Shoulder Surgery (left)

R Distal Bicep Repair 8/1/18

Left Ankle ORIF 6/15/20

Medications and Allergies

Patient has drug allergies.

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

ALLERGIES

VICODIN (Critical)

ORT Score: 0

Family History - reviewed

Arthritis

Heart Disease

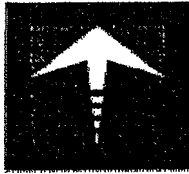
TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}



**Tahoe Fracture
& Orthopedic
Medical Clinic, Inc.**
Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 2

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health *

Social History

Patient is single, Former smoker, and lives with spouse/partner. Has 0 children. Drinks alcohol 8-14 times per week. Exercises. Education completed: post graduate. Occupation: Physical therapist. Dominant hand: right. Patient is not claustrophobic.

Review of Systems

General: Complains of sweats

Eyes: Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

Gastrointestinal: Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

Genitourinary: Patient denies urinary urgency, urinary frequency.

Musculoskeletal: Patient denies joint swelling, joint pain, muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

Skin: Complains of Excess sweating.

Neurologic: Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

Psychiatric: Patient denies anxiety, depression.

Endocrine: Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

Heme/Lymphatic: Patient denies fevers, abnormal bruising.

Allergic/Immunologic: Patient denies seasonal allergies, persistent infections.

Vital Signs:

Ht (in.): 70 Wt (lbs.): 165

Tobacco Use:

Current every day smoker

Body:

BMI: 23.76 (Normal)

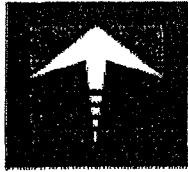
TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}



**Tahoe Fracture
& Orthopedic
Medical Clinic, Inc.**
Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 3

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health *

GENERAL EXAM

General Appearance: Stephen B Yasmer is a 50 years old male.

NoWork Status:

Patient's job description was reviewed.

Restrictions are: Temporary

Is this employee's condition permanent and stationary? No

Medications may be taken while working.

This injury is occupational.

Diagnosis: **Left ankle fracture**

Employee may return to Light Duty status.

No Lifting, No Carrying

Comments: Sedentary job required.

Follow Up

Employee should be re-evaluated for work status by a physician in 4 weeks.

DME Dispensement

Stephen B Yasmer was prescribed a prefabricated L4360B-GENESIS WALKER TALL for Displaced fracture of lateral malleolus of left fibula initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA) that required a custom fit by an individual with expertise and specialized training. The prefabricated orthosis was modified in the following manner in order to provide an individualized fit to the patient at time of delivery:

- Identification of appropriate positioning and alignment of anatomical landmarks

Pt is WC

Verbal and written instructions for the use and application of this item were given. Patient was instructed

TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}



**Tahoe Fracture
& Orthopedic
Medical Clinic, Inc.**

Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 4

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health *

that should the brace result in increased pain, decreased sensation, increased swelling, or an overall worsening of their medical condition, to please contact our office immediately.

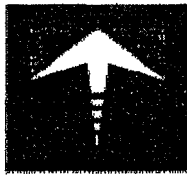
TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}



**Tahoe Fracture
& Orthopedic
Medical Clinic, Inc.**

Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 1

Physician Orders

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health *

06/30/2020 - Physician Orders: DME Order

Provider: JEFFREY CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: ON HOLD DOCUMENT. Contents are preliminary

DME Order

Patient Name: Stephen B Yasmer

Account: 211247

Physician: JEFFREY CUMMINGS MD

Request Date: 06/30/2020 11:11 AM

**Patient is in clinic

Other Info: Workers Comp

Name and Type of Brace	Side	HCPC Code
Genesis mid calf walker Left		L4360

Diagnosis:

S82.62xA. Displaced Fracture of lateral malleolus of left fibula, initial encounter of closed fracture.

PRE-CERTIFICATION/PRE-DETERMINATION

PATIENT ESTIMATE

Add-Ons: w/c

Completed by Ielmore on June 30, 2020 12:43 PM

PATIENT NOTIFICATION

BRACE ORDERED

BRACE FIT

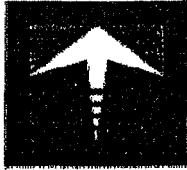
TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC {SUBJECT}



**Tahoe Fracture
& Orthopedic**
Medical Clinic, Inc.

Relieving your pain. Restoring your function. Returning your life.

Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 2

Physician Orders

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health *

TIME RECEIVED
July 2, 2020 at 11:39:35 AM

REMOTE CSID
775-783-6191

DURATION
327

S STATUS
Received

TAHOE FRACTURE CLINIC {SUBJEC}



Authorization Request

Victoria Stroud

P: (775) 392-4482

F: (775) 783-6906

workcomp@tahoe fracture.com

Date: 07/02/2020

To:

Attn:

GALLAGHER BASSETT NV

Phone:

8003700594

Fax:

775-783-6906

Patient Name: Stephen B Yasmer

DOB: 10/18/1969

Claim Number: 000706MV6549399

DOI: 06/08/2020

Body Part(s):

Employer: Carson Tahoe Regional Healthcare

Requesting Physician: CUMMINGS MD, JEFFREY R

NPI #: 1740271238

Diagnosis: Displaced fracture of lateral malleolus of left fibula - initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA)

ICD-9 Code: Displaced fracture of lateral malleolus of left fibula - initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA)

Requested Services/Testing: Genesis Mid Calf Walker- Left

CPT Code: L4360

Facility: Tahoe Fracture and Orthopedics Medical Clinic

Tax ID: _____

☐ Approved

☐ Denied

Signature: _____

Please return this fax with your signature and tracking number when approved

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender, which is privileged. The information is intended only for the use of individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the take of any action in reliance of the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of this document.

0000033

REQUEST FOR HEARING - CONTESTED CLAIM

(Pursuant to NAC 616C.274)

REPLY TO: Department of administration
Hearings Division
1050 E. William Street, Ste. 400
Carson City, NV 89701
(775) 687-5966

OR Department of Administration
Hearings Division
2200 S. Rancho Drive, Suite 410
Las Vegas, NV 89102
(702) 486-2525

2020 JUL -6 A 10:30

EMPLOYEE INFORMATION			
Employee's Name: <u>Stephen Yarnes</u>			
Address: <u>2257 Carson Rider Rd</u>			
<u>Carson City</u>			
City: <u>Las Vegas</u>	State: <u>NV</u>	Zip: <u>89701</u>	
Employee's Telephone Number: <u>775-721-3843</u>			
Claim No.: <u>000706</u> Date of Injury: <u>6/8/20</u>			
<u>038452-WC-01</u>			
INSURER INFORMATION			
Insurer's Name: «Selfinsured»«Insurance Company»			
Address: <u>1</u>			
City:	State:	Zip:	
Insurer's Telephone Number:			

Employer Information			
Employer's Name: <u>Carson Family Health</u>			
Address: <u>11000 Medical Plaza</u>			
City: <u>Carson City</u>	State: <u>NV</u>	Zip: <u>89706</u>	
Employer's Telephone Number: <u>775-445-8000</u>			
THIRD-PARTY ADMINISTRATOR (TPA) INFORMATION			
TPA's Name: <u>Gallagher Bassett Services, Inc.</u>			
Address: <u>P.O. Box 70030</u>			
City: <u>Las Vegas</u>	State: <u>NV</u>	Zip: <u>89170</u>	
TPA's Telephone Number: <u>702-789-4500</u>			

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

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:

My accident meets ALL criteria of NRS 616C.150,
616A.130, and 616A.265. I was performing specific
work duties while "on the clock" at the time of my accident.

This request for hearing is filed by, or on behalf of: ☒ The Injured Employee

☐ The Employer

and is dated

30th

day of

June

, 2020

Signature of Injured Employee/Employer

Injured Employee's/Employer's Rep. (Advisor)

THVS
7-30-20
@11:00
SD

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION

In the matter of the Contested
Industrial Insurance Claim of:

Hearing Number: 2100033-SD
Claim Number: 000706-038452-WC-01

STEVEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV. 89701

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

BEFORE THE HEARING OFFICER

The Claimant's request for Hearing was filed on July 6, 2020 and a Hearing was scheduled for July 30, 2020. The Hearing was held on July 30, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer/Insurer was represented by John Lavery, Esquire, by telephone conference call.

ISSUE

The Claimant appealed the Insurer's determination dated June 23, 2020. The issue before the Hearing Officer is claim denial.

DECISION AND ORDER

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

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. An injury on 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). In the instant matter, the Claimant has not met his burden. As such, the Hearing Officer finds the insurer's determination is proper and hereby **AFFIRMED**.

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

STEVEN YASMER
2100033-SD

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 6th day of August, 2020.



Spring Dykstra, 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:

STEVEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES INC
PO BOX 2934
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

Dated this 6th day of August, 2020.

A handwritten signature in cursive script, appearing to read "Karen Dyer", is written over a horizontal line.

Karen Dyer
Employee of the State of Nevada

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

In the matter of the Contested
Industrial Insurance Claim of:

Stephen
~~STEVEN~~ YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701

Hearing Number: 2100033-SD
Claim Number: 000706-038452-
WC-01

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: AUGUST 6, 2020

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

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

REASON FOR APPEAL: *My injury DID arise out of and in the course of employment. I was performing an essential job function when injured.*

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

Name of Attorney or Representative

Stephen Yasmer
Person requesting this hearing (please print)

Address

Person requesting this hearing (signature)

City, State, Zip Code

775-721-3843 8/28/20

Telephone Number

Telephone Number

Date

WILL AN INTERPRETER BE REQUIRED?

YES []

NO ☒

If so, what language: _____

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:

S. Yasmer
Claimant's signature

775-721-3843
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

FILED

AUG 31 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

000063

34

*2106639-SYM
mm 11-16-20
C 9:00*

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

APR 15 2021

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

of

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

STEPHEN YASMER

Stephen Yasmer was carrying a box of brochures and descended a staircase at Carson Tahoe Hospital on June 8, 2020, while in the course and scope of his employment with Carson Tahoe Health Systems. Mr. Yasmer's vision was impeded by the box and he misstepped causing him to fall and fracture his ankle. A claim for benefits was filed and denied by Gallagher Bassett Services, the third party administrator for the employer on June 23, 2020. The denial was appealed and the determination was affirmed by the Hearing Officer on August 6, 2020. Appeal was taken and forms the basis for the current matter.

DECISION AND ORDER

This appeal concerns a dispute over claim acceptance. The Appeals Officer finds that Stephen Yasmer has met the requirements under Nevada's workers' compensation scheme for claim compensability as he has proven, by a preponderance of the evidence, that his injury arose out of and in the course of his employment.

The above-entitled appeal was heard by the Appeals Officer

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

35
000064

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

1 under Appeal Number 2100639-SYM. Claimant, Stephen Yasmer, was
2 present by telephone and represented by Todd Eikelberger, Esq.,
3 Deputy, Nevada Attorney for Injured Workers, who was also present
4 by telephone. Gallagher Bassett Services, the third-party
5 administrator for the employer, Carson Tahoe Health Systems, was
6 represented by John Lavery, Esq., of Lewis Brisbois Bisgaard &
7 Smith, LLP, who appeared by telephone.

8 The following were submitted, marked, and admitted into
9 evidence:

- 10 • Exhibit 1 consisting of 45 pages; and
11 • Exhibit 2 consisting of 34 pages.

12 Testimony was provided at hearing by:

- 13 • Stephen Yasmer by telephone.

14 Pursuant to Nevada's Administrative Procedures Act, Chapter
15 233B of the Nevada Revised Statutes; Nevada's Industrial Insurance
16 Act, Chapters 616A through 617, inclusive, of the Nevada Revised
17 Statutes; and related regulations, and, after careful consideration
18 of the totality of all evidence submitted and testimony provided,
19 the Appeals Officer finds and decides as follows:

20 I.

21 **FINDINGS OF FACT¹**

22 Stephen Yasmer, manager of rehabilitation services at Carson
23 Tahoe Health Systems (herein "CTHS"), was injured while descending
24 stairs at Carson Tahoe Hospital (herein, "CTH"), where he
25 maintained an office, with a large box in his hands on June 8,
26 ...

27 _____
28 ¹ Any finding of fact more appropriately considered to be a conclusion of
law, and vice versa, shall be so deemed.

2020.² He testified at hearing that he left the main therapy office on the third floor and began descending the staircase carrying a box of brochures for work.³ Although carrying the box did not impair his physical ability to walk, it did impede his visual field.⁴ He mis-stepped because he thought he had reached the landing and fell two steps fracturing his left ankle.⁵

Following the incident, he taken to the emergency room in CTH where it was noted that:

he was carrying a box [sic] supplies down to the basement when he thought he was on the bottom stair and could not see that there is [sic] still to [sic] more stairs beneath MCV stepped forward thinking he was stepping onto the landing and missed the bottom to [sic] stairs falling hard on to his left ankle causing some notable deformity.⁶

The diagnosis was an acute left ankle dislocation, fibular fracture, and posterior malleolus fracture.⁷ A C4 form was filled out on June 8, 2020, and the physician checked the box indicating that he could connect the left ankle injury as job incurred.⁸

Yasmer was seen at Nevada Occupational Health on June 10, 2020, and told he would require an open reduction and internal fixation of the left ankle so he was referred to Dr. Jeffrey Cummings.⁹ Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,

² Exhibit 1, 1 and testimony of Stephen Yasmer at hearing.

³ Testimony of Stephen Yasmer at hearing.

⁴ Id.

⁵ Id.

⁶ Exhibit 1, 8.

⁷ Id. at 10.

⁸ Id. at 1.

⁹ Id. at 16-17.

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

1 and indicated he required a "left ankle lateral malleolus and
2 syndismosis open reduction internal fixation."¹⁰ The procedure was
3 performed on June 15, 2020, at CTH.¹¹

4 Yasmer filed a claim for workers' compensation benefits which
5 was denied by Gallagher Bassett Services, the third-party
6 administrator (herein, "TPA") for CTHS, on June 23, 2020.¹² This
7 determination was appealed and, on August 6, 2020, the hearing
8 officer affirmed claim denial.¹³ That decision and order was
9 appealed and forms the basis for the current matter.

10 Dr. Cummings saw Yasmer again on September 2, 2020, for a
11 drainage of his wound and for hardware removal.¹⁴ Yasmer returned
12 on September 15, 2020, and it was found that the wound was healing
13 well, with no drainage, so the sutures were removed.

14 Yasmer's testimony at hearing regarding his work and mechanism
15 of injury are found to be consistent, reliable, and credible. The
16 medical reporting clearly shows Yasmer suffered a left ankle
17 fracture that required a reduction and then a draining of the wound
18 with hardware removal. Based on the foregoing, the Appeals Officer
19 finds that a preponderance of all evidence submitted supports
20 Yasmer's position that his claim should be accepted. The weight of
21 the evidence, the credible medical reporting, and the reliable
22 testimony of Yasmer establish that he suffered injury to his left
23

24 ¹⁰ Id. at 18.

25 ¹¹ Id. at 25.

26 ¹² Id. at 4.

27 ¹³ Id. at 5-6.

28 ¹⁴ Id. at 39.

1 ankle in the form of a fracture as he was walking down stairs
2 carrying a box of work brochures. Thus, his left ankle fracture is
3 found to be industrially related and compensable.

4 II.

5 CONCLUSIONS OF LAW

6 To qualify for benefits for an industrial injury, an employee
7 has the burden to demonstrate, by a preponderance of the evidence,
8 that an injury by accident arose out of and in the course of his
9 employment.¹⁵ The Nevada Supreme Court has defined a "preponderance
10 of evidence" as a standard of proof that "should lead the trier of
11 fact 'to find that the existence of the contested fact is more
12 probable than its nonexistence.'"¹⁶ Further, in evaluating the
13 evidence of a work injury, the fact finder must consider the
14 totality of the circumstances.¹⁷

15 In establishing a claim for benefits, an injury by accident
16 must be shown. Under Nevada law, an accident is an "unexpected or
17 unforeseen event happening suddenly and violently, with or without
18 human fault, and producing at the time objective symptoms of an
19 injury."¹⁸ While "a sudden and tangible happening of a traumatic
20 nature, producing an immediate or prompt result which is
21 established by medical evidence" constitutes an injury.¹⁹

22 Applying those statutory definitions, it was unforeseen that
23

24 ¹⁵ NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).

25 ¹⁶ Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).

26 ¹⁷ Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,
1046 (1997).

27 ¹⁸ NRS 616A.030.

28 ¹⁹ NRS 616A.265(1).

1 Yasmer would miss a step and fall so the first prong of accident is
2 met. Since it caused him to suffer an ankle fracture, it was
3 capable of producing a harmful result and so happened suddenly and
4 violently. Therefore, Yasmer suffered an accident. Further, there
5 was an injury as a result of that accident since he adduced medical
6 evidence showing a sudden and tangible happening - an ankle
7 fracturing. It was traumatic in nature because it was capable of
8 producing a harmful result in Yasmer's left ankle which was later
9 diagnosed as a fracture.

10 Based on the foregoing, Yasmer has proven he suffered an
11 injury by accident. Further, he has also shown a connection of that
12 injury by accident to his work.

13 Generally, an injury arises out of employment if there is "a
14 causal connection between the injury and the employee's work," in
15 which "the origin of the injury is related to some risk involved
16 within the scope of employment."²⁰ To find causation a physician
17 must establish to a "reasonable degree of medical probability that
18 the condition in question was caused by the industrial injury or
19 sufficient facts must be shown so that the trier of fact can make
20 a reasonable conclusion that the condition was caused by the
21 industrial injury."²¹

22 There are three categories of risks: employment, personal, and
23 neutral.²² Employment risks are compensable, personal risks are not
24

25 ²⁰ Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,
26 1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

27 ²¹ Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842
(1997).

28 ²² Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d
2, 5 (2010).

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

1 compensable, and neutral risks are compensable if they satisfy the
2 increased-risk test.²³ Personal risks are those that are
3 attributable to personal issues - not to the employment.²⁴
4 Employment risks include "obvious kinds of injur[ies] that one
5 thinks of at once as industrial injuries. All the things that can
6 go wrong around a modern factory, office, mill, mine, retail
7 establishment, transportation system, or construction project."²⁵
8 Neutral risks are those that do not fall within either the
9 employment or personal risk categories.²⁶

10 Yasmer's injury was caused by an employment risk as his left
11 ankle fracture arose out of his work duties since he was conveying
12 a benefit to his employer when he was carrying the box of work
13 brochures down stairs at the facility where he worked. Accordingly,
14 Yasmer's injury is considered to have arisen from an employment
15 risk and, as such, he has met his burden of proof in showing that
16 his injury arose out of his employment.

17 In the Supreme Court case of Rio All Suite Hotel & Casino v.
18 Phillips, 126 Nev. 346, 240 P.3d 2 (2010), it was found that an
19 injury from climbing stairs was a compensable, neutral risk because
20 the claimant in that matter was required to climb the stairs by her
21 employer. CTHS argued that Yasmer was not required to use the
22 stairs, unlike the claimant in Phillips, and therefore his injury
23 did not arise out of his employment. However, Yasmer argued that
24 the stairs were not dispositive of the issue in this matter but

25 ²³ Id. at 351-53, 240 P.3d at 5-7.

26 ²⁴ Id. at 351, 240 P.3d at 5.

27 ²⁵ 1-4 Larson's Workers' Compensation Law § 4.01.

28 ²⁶ Phillips at 351, 240 P.3d at 6.

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

1 rather it was the act of carrying the box. Yasmer was required to
2 carry the box of brochures, which impeded his vision and caused him
3 to misjudge his location on the staircase, resulting in him falling
4 and fracturing his ankle. Pursuant to Phillips, carrying a box of
5 brochures from one location to another is an employment risk that
6 impedes a person's field of vision. Because of that, Yasmer fell
7 and fractured his ankle, thus, his injury arose out of his
8 employment.

9 Furthermore, the evidence establishes that Yasmer's injury
10 occurred within the course of his employment. "[W]hether the injury
11 occurs within the course of the employment refers . . . to the time
12 and place of employment, i.e. whether the injury occurs at work,
13 during working hours, and while the employee is reasonably
14 performing his or her duties."²⁷ As discussed, Yasmer's injury
15 occurred while he was at work in the hospital. It happened while he
16 was reasonably performing his job duties as he was required to
17 carry the box of brochures. Further, he was conferring a benefit on
18 his employer at the time of the injury.²⁸

19 Finally, credible and probative medical evidence, from which
20 a reasonable conclusion can be formed that Yasmer's injury occurred
21 in the course and scope of his employment, was provided by his
22 physicians.²⁹ Specifically, the emergency room doctor checked the
23 box on the C4 form indicating that he could directly connect the
24

25 _____
26 ²⁷ Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

27 ²⁸ See Evans v. Southwest Gas, 108 Nev. 1002, 1006, 842 P.2d 719, 721
(1992).

28 ²⁹ United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,
425, 851 P.2d 423, 425.

42

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

1 left ankle fracture as job incurred.³⁰ Also, Dr. Cummings noted that
2 the injury occurred at work when Yasmer missed a step while
3 carrying a box. This reporting is the most persuasive, credible
4 medical evidence and is based on facts supported by evidence.³¹
5 Thus, Yasmer, through his credible testimony and presentation of
6 probative medical reporting, and other evidence, has met his burden
7 of proof in showing that his injury by accident arose out of and in
8 the course of his employment.

9 Based on the foregoing, sufficient facts have been presented
10 to establish, by a preponderance of the evidence, that the June 8,
11 2020, fall caused an injury by accident that arose out of and in
12 the scope of employment. Thus, Yasmer has met his burden of proof
13 for his claim for industrial injury benefits to be compensable
14 under Nevada's workers' compensation scheme.

15 ORDER

16 For the above reasons, the Hearing Officer's August 6, 2020,
17 Decision and Order affirming the third party administrator's June
18 23, 2020, determination regarding claim denial is **REVERSED**.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

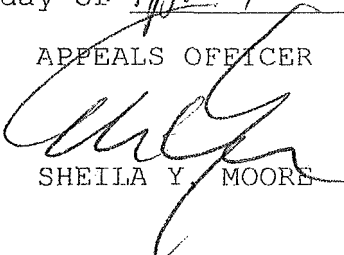
27 _____
28 ³⁰ See NRS 616C.098.

³¹ McClanahan v. Raleys, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

1 Therefore, Gallagher Bassett Services, the third party
2 administrator for the employer, Carson Tahoe Health Systems, shall
3 accept Stephen Yasmer's claim, claim number 000706-038452-WC-01,
4 for benefits as a compensable workers' compensation claim and shall
5 provide or reimburse for all appropriate treatment and benefits
6 available under chapters 616A to 617, inclusive, of the Nevada
7 Revised Statutes.

8 IT IS SO ORDERED this 14th day of April, 2021.


9 APPEALS OFFICER

10 
11 SHEILA Y. MOORE

12 N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should
13 any party desire to appeal this final decision of the Appeals
14 Officer, a Petition for Judicial Review must be filed with the
15 District Court within thirty (30) days after service by mail of
16 this decision.

17 Submitted by:

18 NEVADA ATTORNEY FOR INJURED WORKERS

19 
20 Todd Eikelberger, Esq., Deputy
21 1000 East William St., #208
22 Carson City, Nevada 89701

23 NEVADA ATTORNEY FOR INJURED WORKERS
24 1000 East William Street, Suite 208
25 Carson City, NV 89701 (775) 684-7555
26 2200 South Rancho Drive, Suite 230
27 Las Vegas, NV 89102 (702) 486-2830
28

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** 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:

STEPHEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701


NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES, INC
PO BOX 2934
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102-4375

Dated this 15 day of April, 2021.



Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

1 **3960**
Evan Beavers Esq. (NV Bar 3399)
2 ebeavers@naiw.nv.gov
Todd Eikelberger, Esq. (NV Bar 9393)
3 teikelberger@naiw.nv.gov
1000 East William Street, Suite 208
4 Carson City, Nevada 89701
(775) 684-7555; (775) 684-7575
5 Attorney for Respondent, Stephen Yasmer

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 CARSON TAHOE HEALTH SYSTEM and
11 GALLAGHER BASSETT SERVICES, INC.

12 Petitioner,

CASE NO. CV21-00809

13 vs.

DEPT. NO. 8

14 STEPHEN YASMER; and APPEALS
15 OFFICE of the DEPARTMENT OF
ADMINISTRATION,

16 Respondents.
17 _____/

18 **STATEMENT OF INTENT TO PARTICIPATE**

19 COMES NOW Respondent, Stephen Yasmer, by and through
20 his attorney, Todd Eikelberger, Esq., Deputy, Nevada Attorney for
21 Injured Workers, and hereby submits this Statement of Intent to
22 Participate in the review process regarding the Petition for
23 Judicial Review filed by Petitioner on May 3, 2021. This
24 Statement of Intent to Participate is made pursuant to and based
25 upon NRS 233B.130(3).

26 . . .

27 . . .

28 . . .

Respondent Stephen Yasmer, does not, by filing this statement of intent, waive any argument regarding jurisdiction or any other defense available.

DATED this 17th day of May, 2021.

NEVADA ATTORNEY FOR INJURED WORKERS



Evan Beavers, Esq. (NV Bar #3399)
Todd Eikelberger, Esq. (NV Bar #9393)
1000 East William Street, Suite 208
Carson City, Nevada 89701

Attorneys for Respondent

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
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Statement of Intent to Participate, filed in regard to Nevada Department of Administration Hearings Division Appeal Number 2100639-SYM (Second Judicial District Court Case Number CV21-00809):

 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.



Todd Eikelberger, Esq, Deputy
Nevada Attorney for Injured Workers
Attorney for Respondent, Stephen Yasmer

5/10/2021
Date

000077

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 **STATEMENT OF INTENT TO PARTICIPATE** 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)

JOHN P LAVERY ESQ (John.Lavery@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

JEANNE P BAWA ESQ (Jeanne.Bawa@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

DATED: 5-10-2021

SIGNED: ALEX ANDRACA

1 **4047**

2 Evan Beavers Esq. (NV Bar 3399)
3 ebeavers@naiw.nv.gov
4 Todd Eikelberger, Esq. (NV Bar 9393)
5 teikelberger@naiw.nv.gov
6 1000 East William Street, Suite 208
7 Carson City, Nevada 89701
8 (775) 684-7555; (775) 684-7575
9 Attorney for Respondent, Stephen Yasmer

10
11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR THE COUNTY OF WASHOE
15

16 CARSON TAHOE HEALTH SYSTEM and
17 GALLAGHER BASSETT SERVICES, INC.

18
19
20 Petitioners,

CASE NO. CV21-00809

21 vs.

DEPT. NO. 8

22 STEPHEN YASMER; and APPEALS
23 OFFICE of the DEPARTMENT OF
24 ADMINISTRATION,
25

26 Respondents.
27
28

**STIPULATION TO EXTEND TIME TO FILE OPPOSITION TO MOTION FOR STAY
AND TEMPORARILY STAY DECISION AND ORDER PENDING A RULING ON THE
MOTION**

29 COME NOW Respondent, Stephen Yasmer, by and through his
30 attorney, Todd Eikelberger, Esq., Deputy, Nevada Attorney for
31 Injured Workers, and Petitioners, Carson Tahoe Health System and
32 Gallagher Bassett Services, Inc., by and through their attorney,
33 Jeanne Bawa, Esq., of Lewis Brisbois Bisgaard & Smith, LLP,
34 stipulate that Respondent may have up to and including May 27,
35 2021, to file his opposition to the Petitioner's Motion for Stay.
36 This extension of time is not presented for any improper purpose,
37 such as to cause unnecessary delay or needless increase in the cost
38

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

000079

1 of litigation. The above-named parties hereby certify that there
2 has been no previous requests for an extension of time filed with
3 this Court.

4 Further, the parties stipulate the April 15, 2021,
5 Decision and Order of the Appeals Officer in Appeal No. 2100538-
6 SYM, which is at issue in this matter, may be temporarily stayed
7 until such time as a ruling on Petitioners' Motion for Stay Pending
8 Appeal issues.

9 DATED this 11th day of May, 2021.

10 Nevada Attorney for Injured Workers

11 
12 Todd Eikelberger, Esq., Deputy
13 1000 East William Street, Suite 208
Carson City, Nevada 89701

14 Attorney for Respondent,
15 Stephen Yasmer

16 DATED this 11 day of May, 2021.

17 Lewis Brisbois Bisgaard & Smith, LLP

18 
19 Jeanne Bawa, Esq.
20 2300 West Sahara Avenue, Suite 900 Box 28
21 Las Vegas, Nevada 89102

22 Attorney for Petitioners,
23 Carson Tahoe Health System
24 Gallagher Bassett Services, Inc.
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding STIPULATION TO EXTEND TIME TO FILE OPPOSITION TO MOTION FOR STAY AND TEMPORARILY STAY DECISION AND ORDER PENDING A RULING ON THE MOTION, filed in regard to Nevada Department of Administration Hearings Division Appeal Number 2100639-SYM (Second Judicial District Court Case Number CV21-00809):

 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.



Todd Eikelberger, Esq, Deputy
Nevada Attorney for Injured Workers
Attorney for Respondent, Stephen Yasmer

5/11/2021

Date

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

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 **STIPULATION TO EXTEND TIME TO FILE OPPOSITION TO MOTION
FOR STAY AND TEMPORARILY STAY DECISION AND ORDER PENDING A RULING
ON THE MOTION** 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)

JOHN P LAVERY ESQ (John.Lavery@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

JEANNE P BAWA ESQ (Jeanne.Bawa@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

DATED: MAY 11, 2021

SIGNED: ALEX ANDRACA

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

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	Order Extending Time to File Opposition to Motion for Stay and Temporarily Staying Decision and Order Pending a Ruling on the Motion	2

1 **2645**
Evan Beavers Esq. (NV Bar 3399)
2 ebeavers@naiw.nv.gov
Todd Eikelberger, Esq. (NV Bar 9393)
3 teikelberger@naiw.nv.gov
1000 East William Street, Suite 208
4 Carson City, Nevada 89701
(775) 684-7555; (775) 684-7575
5 Attorney for Respondent, Stephen Yasmer

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 CARSON TAHOE HEALTH SYSTEM and
11 GALLAGHER BASSETT SERVICES, INC.

12 Petitioner,

CASE NO. CV21-00809

13 vs.

DEPT. NO. 8

14 STEPHEN YASMER; and APPEALS
15 OFFICE of the DEPARTMENT OF
ADMINISTRATION,

16 Respondents.
17 _____/

18 OPPOSITION TO PETITIONER'S MOTION FOR STAY PENDING APPEAL

19 COMES NOW Respondent, Stephen Yasmer, by and through his
20 attorney, Todd Eikelberger, Esq., Deputy, Nevada Attorney for
21 Injured Workers, and herein sets forth his Opposition to
22 Petitioner's Motion for Stay Pending Appeal.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

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

1 This Opposition is made pursuant to, and based upon, NRS
2 233B.130, NRS 233B.135, NRS 233B.140, NRS 616C.345, as well as the
3 papers and pleadings on file herein, the April 15, 2021, Decision
4 and Order by the Appeals Officer (attached hereto as Exhibit 3),
5 the attached exhibits, and the following Memorandum of Points and
6 Authorities.

7 RESPECTFULLY SUBMITTED this 26th day of May, 2021.

8 NEVADA ATTORNEY FOR INJURED WORKERS

9 

10 Todd Eikelberger, Esq., Deputy
11 Nevada Bar No. 9393
12 1000 East William Street, Suite 208
13 Carson City, Nevada 89701

14 Attorney for Respondent,
15 Stephen Yasmer
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF STEPHEN YASMER'S**
3 **OPPOSITION TO PETITIONERS' MOTION FOR STAY PENDING APPEAL**

4 The underlying issue in this case involves a dispute over
5 acceptance of a workers' compensation claim. Petitioners, Carson
6 Tahoe Health System and Gallagher Bassett Services, Inc., filed a
7 motion to stay the Appeals Officer's April 15, 2021, Decision and
8 Order, which held that claim denial was not appropriate. However,
9 the motion must be denied because the object of the appeal will
10 not be defeated in the absence of a stay; Petitioner will not
11 suffer irreparable harm in the absence of a stay, but Respondent,
12 Stephen Yasmer may if the stay is granted; and, there is no showing
13 Petitioner will prevail on the merits as it fails to prove the
14 Appeals Officer abused his discretion because the decision was not
15 arbitrary, capricious, erroneous or affected by an error of law.

16 **I.**
17 **ISSUE PRESENTED**

18 Whether Carson Tahoe Health System and Gallagher Bassett
19 Services, Inc., have met the required standards to stay the April
20 15, 2021, Decision and Order. Stephen Yasmer contends that the
21 statutory requirements for a stay to be granted in this matter have
22 not been met and that, based on the facts presented, the Appeals
23 Officer properly found his workers' compensation claim for his left
24 ankle compensable.

25 **II.**
26 **STATEMENT OF THE FACTS**

27 Stephen Yasmer, manager of rehabilitation services at Carson
28 Tahoe Health System (herein "CTHS"), was injured while descending
stairs at Carson Tahoe Hospital (herein, "CTH"), where he

1 maintained an office, with a large box in his hands on June 8,
2 2020.¹ He testified at hearing that he left the main therapy office
3 on the third floor and began descending the staircase carrying a
4 box of brochures for work.² Although carrying the box did not
5 impair his physical ability to walk, it did impede his visual
6 field.³ He mis-stepped because he thought he had reached the
7 landing and fell two steps fracturing his left ankle.⁴

8 Following the incident, he was taken to the emergency room
9 in CTH where it was noted that:

10 he was carrying a box [sic] supplies down to the basement
11 when he thought he was on the bottom stair and could not
12 see that there is [sic] still to [sic] more stairs
13 beneath MCV stepped forward thinking he was stepping onto
the landing and missed the bottom to [sic] stairs falling
hard on to his left ankle causing some notable
deformity.⁵

14 The diagnosis was an acute left ankle dislocation, fibular
15 fracture, and posterior malleolus fracture.⁶ A C4 form was filled
16 out on June 8, 2020, and the physician checked the box indicating
17 that he could connect the left ankle injury as job incurred.⁷ The
18 employer filled out the manager/supervisor section on Yasmer's
19 Notice of Injury form on June 10, 2020, and, in response to the
20 question "[h]ow could this injury have been prevented," answered
21 ...

22 ¹ Exhibit 1, 1 and testimony of Stephen Yasmer at hearing.

23 ² Testimony of Stephen Yasmer at hearing.

24 ³ Id.

25 ⁴ Id.

26 ⁵ Exhibit 1, 8.

27 ⁶ Id. at 10.

28 ⁷ Id. at 1.

1 "take the elevator."⁸

2 Yasmer was seen at Nevada Occupational Health on June 10,
3 2020, and told he would require an open reduction and internal
4 fixation of the left ankle so he was referred to Dr. Jeffrey
5 Cummings.⁹ Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,
6 and indicated he required a "left ankle lateral melleolus and
7 syndismosis open reduction internal fixation."¹⁰ The procedure was
8 performed on June 15, 2020, at CTH.¹¹

9 Yasmer filed a claim for workers' compensation benefits which
10 was denied by Gallagher Bassett Services, Inc., the third-party
11 administrator (herein, "TPA") for CTHS, on June 23, 2020.¹² This
12 determination was appealed and, on August 6, 2020, the hearing
13 officer affirmed claim denial.¹³ That decision and order was
14 appealed and forms the basis for the current matter.

15 Dr. Cummings saw Yasmer again on September 2, 2020, for a
16 drainage of his wound and for hardware removal.¹⁴ Yasmer returned
17 on September 15, 2020, and it was found that the wound was healing
18 well, with no drainage, so the sutures were removed.

19 The Appeals Officer found Yasmer's testimony at hearing
20 regarding his work and mechanism of injury to be consistent,

21 ⁸ Id. at 3.

22 ⁹ Id. at 16-17.

23 ¹⁰ Id. at 18.

24 ¹¹ Id. at 25.

25 ¹² Id. at 4.

26 ¹³ Id. at 5-6.

27 ¹⁴ Id. at 39.

1 reliable, and credible.¹⁵ It was also found that "[t]he medical
2 reporting clearly showed Yasmer suffered a left ankle fracture that
3 required a reduction and then a draining of the wound with hardware
4 removal" and "that a preponderance of all evidence submitted
5 supports Yasmer's position that his claim should be accepted."¹⁶
6 Finally, it was found that Yasmer established "he suffered injury
7 to his left ankle in the form of a fracture as he was walking down
8 stairs carrying a box of work brochures" so "his left ankle
9 fracture is found to be industrially related and compensable."¹⁷

10 Ultimately, the Appeals Officer held that:

11 sufficient facts have been presented to establish, by a
12 preponderance of the evidence, that the June 8, 2020,
13 fall caused an injury by accident that arose out of and
14 in the scope of employment. Thus, Yasmer has met his
burden of proof for his claim for industrial injury
benefits to be compensable under Nevada's workers'
compensation scheme.¹⁸

15 And ordered that:

16 Gallagher Bassett Services, the third party administrator
17 for the employer, Carson Tahoe Health Systems, shall
18 accept Stephen Yasmer's claim, claim number
000706-038452-WC-01, for benefits as a compensable
19 workers' compensation claim and shall provide or
reimburse for all appropriate treatment and benefits
available under chapters 616A to 617, inclusive, of the
Nevada Revised Statutes.¹⁹

20
21 ...

22 ...
23

24 ¹⁵ Exhibit 3, 4.

25 ¹⁶ Id.

26 ¹⁷ Id. at 4-5

27 ¹⁸ Id. at 9.

28 ¹⁹ Id. at 10

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

III.
ARGUMENT

Carson Tahoe Health System and Gallagher Bassett's motion fails to meet Nevada's requirements for obtaining a stay. When all legally-required factors for a stay are considered, the motion must be denied.

A. LEGAL REQUIREMENTS TO STAY A DECISION.

The ordering of a stay is an extraordinary remedy a court has authority to grant. "In determining whether to grant a stay, the court shall consider the same factors for a preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure."²⁰

Rule 65 of the Nevada Rules of Civil Procedure requires a court to set forth specific reasons for granting an injunction (or stay) and give reasonable detail about the acts sought to be restrained. It also requires the party applying for the injunction to give a bond, which was not provided in this matter.²¹

Under case law and Rule 8(c) of the Nevada Rules of Appellate Procedure, the Court is directed to consider four factors when determining whether to issue a stay. These factors include whether Carson Tahoe Health System and Gallagher Bassett Services, Inc., have a substantial likelihood of prevailing on the merits; the threat of serious or irreparable harm to them if the stay is denied; the threat of serious or irreparable harm to Yasmer if the stay is denied (which is balanced against the threat suffered by CTHS and Gallagher Bassett); and, whether the object of the appeal

²⁰ NRS 233B.140(2)

²¹ NRCP 65(c)

1 will be defeated in the absence of a stay.²² Also, by law, a court
2 must give deference to the Appeals Officer's findings of fact and
3 conclusions of law and determine the risk to public interest.²³

4 Likelihood of success on the merits is an important factor in
5 deciding to grant a stay and CTHS and Gallagher Bassett have a very
6 low chance of prevailing on the merits in this matter. This motion
7 should be denied because the evidence clearly establishes that
8 Yasmer suffered an injury by accident in the course and scope of
9 his employment. Thus, the Appeals Officer was correct in finding
10 his claim compensable under Nevada Law.

11 Weighing the potential harm each party will suffer if the stay
12 is, or is not, granted and consideration of the public interest are
13 also important considerations. CTHS and Gallagher Bassett only
14 assert monetary harm, which would never be weighed in the context
15 of irreparable harm under Nevada's standards as it has been held
16 that monetary harm to an employer or insurer is never considered
17 irreparable harm.²⁴ Further, pursuant to NRS 616C.138(4), they can
18 be reimbursed by Yasmer's health insurer if the decision is
19 reversed. However, Yasmer's welfare is suffering irreparable harm
20 because he may additional treatment for his industrial condition
21 and has bills to pay. Thus, the harm to CTHS and Gallagher Bassett,
22 if the Motion for Stay is denied, is far outweighed by the harm to

23
24 ²² NRAP 8(c). See generally, NRCP 65; Fritz Hansen A/S v. Eighth Judicial
25 Dist. Court, 116 Nev. 650, 6 P.3d 982 (2000); Kress v. Corey, 65 Nev. 1,
26 189 P.2d 352 (1948); Virginia Petroleum Jobbers Asso. v. Federal Power
27 Com., 259 F.2d 921 (D.C. Cir. 1958); 8 Larson Larson's Workers'
28 Compensation Law, § 130.08[4] (2003); and, American Horse Protection Asso.
v. Frizzell, 403 F.Supp. 1206 (9th Cir. 1975).

²³ NRS 233B.140(3).

²⁴ Hansen, 116 Nev. at 658, 6 P.3d at 987, citing Virginia Petroleum, 259
F.2d at 925.

1 Yasmer if the Decision and Order is stayed. Also, as will be shown,
2 consideration of the public interest weighs heavily in favor of
3 denial because of the harm Yasmer is suffering, and will continue
4 to suffer, if a stay is granted.

5 Finally, even without an order staying the Appeals Officer's
6 Decision & Order, CTHS and Gallagher Bassett can proceed with their
7 appeal to prevent paying future benefits and get reimbursed so the
8 object of the appeal will not be defeated.

9
10 **B. YASMER WILL PREVAIL ON THE MERITS, SO THE MOTION FOR STAY
MUST BE DENIED.**

11 **1. The appropriate standard of review is deference to the**
12 **Appeals Officer's findings of fact and conclusions of**
law.

13 The purpose of Nevada's workers' compensation scheme is to
14 provide benefits - not deny compensation.²⁵ Further, it must not be
15 interpreted to favor the rights of employers or insurers over those
16 of injured workers.²⁶ In Nevada, the standard for judicial review
17 of a final decision of an administrative law judge is confined to
18 the record,²⁷ and the burden of proof is on the party attacking or
19 resisting the decision to show the final decision is invalid.²⁸

20 A court's role in reviewing the present matter is to consider
21 the evidence presented at hearing and determine whether the April
22 15, 2021, Decision and Order is invalid or clearly erroneous based
23 on the record as a whole, affected by error of law, made in

24 _____
25 ²⁵ State Indus. Ins. Sys. v. Weaver, 103 Nev. 196, 200, 734 P.2d 740
(1987); NRS 616A.010.

26 ²⁶ NRS 616A.010(4).

27 ²⁷ NRS 233B.135(1).

28 ²⁸ NRS 233B.135(2).

1 violation of a statutory provision, arbitrary, capricious, or
2 characterized by an abuse of discretion.²⁹ An agency's decision must
3 be affirmed if supported by substantial evidence³⁰ which "a
4 reasonable mind might accept as adequate to support a conclusion."³¹
5 Further, a reviewing court cannot "re-weigh the evidence or revisit
6 an appeals officer's credibility determination."³²

7 When reviewing the decision of an administrative agency, the
8 reviewing court is limited to the record below and may not
9 substitute its judgment for that of the appeals officer as to
10 questions of fact.³³ Therefore, CTHS and Gallagher Bassett are not
11 allowed to re-argue the findings of fact if they are supported by
12 substantial evidence.

13 Where an appeals officer has decided pure issues of law, it is
14 appropriate for the reviewing court to make an independent
15 judgment, rather than use a more deferential standard of review.³⁴
16 Statutory interpretation and construction are considered issues of
17 law.³⁵ However, deference is still given to an appeals officer's
18 conclusions of law that are closely related to factual
19 determinations and they should not be disturbed if supported by
20 ...

21 ²⁹ NRS 233B.135(3)(a-f).

22 ³⁰ NRS 233B.135(3)(e).

23 ³¹ NRS 233B.135(4).

24 ³² Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 362, 184
25 P.3d. 378, 384 (2008).

26 ³³ NRS 233B.135(3).

27 ³⁴ Elizondo v. Hood Mach., Inc., 129 Nev. 780, 784-85, 312 P.3d 479, 482
28 (2013).

³⁵ Id. at 784, 312 P.3d at 482.

substantial evidence.³⁶

In this matter, CTHS and Gallagher Bassett have failed to meet their burden to show that the underlying Decision and Order was rendered arbitrarily or capriciously, was affected by error of law or violated a statute, or that the appeals officer abused her discretion. They make several assertions of how the Appeals Officer's Decision is not to their liking, but the assertions are just attempts to force the Court to impermissibly re-weigh the evidence presented in this matter.

2. The Appeals Officer's findings of fact are based on substantial evidence and support the conclusions of law, so the Decision and Order was not arbitrary or capricious and did not constitute an abuse of discretion; thus, the Motion for Stay must be denied.

All findings of fact in the April 15, 2021, Decision and Order are substantiated by evidence admitted at hearing. The Appeals Officer has the authority to choose to give weight to medical evidence and testimony as deemed appropriate.³⁷ Any other conclusions than those listed in the Decision would require a re-weighing of the evidence.

The finder of fact is authorized to determine the weight given to evidence presented at hearing so long as there was substantial evidence on the record to justify the finding - an appellate court is not. The Appeals Officer had substantial evidence on the record to support the findings of fact in this matter so CTHS and Gallagher Bassett cannot prevail on the merits, and their motion must be dismissed.

³⁶ Clark County. Sch. Dist. v. Bundley, 122 Nev. 1440, 1445, 148 P.3d 750, 754 (2006).

³⁷ McClanahan v. Raley's, 117 Nev. 921, 34 P.3d 573 (2001).

1 The law was properly applied to the facts by the Appeals
2 Officer in reaching the holding. Based on the totality of evidence
3 submitted, it was correctly found that Yasmer is entitled to
4 compensation for his ankle fracture and claim denial was not
5 appropriate.

6 To qualify for benefits for an industrial injury, an employee
7 has the burden to demonstrate, by a preponderance of the evidence,
8 that an injury by accident arose out of and in the course of his
9 employment.³⁸ The Nevada Supreme Court has defined a "preponderance
10 of evidence" as a standard of proof that "should lead the trier of
11 fact 'to find that the existence of the contested fact is more
12 probable than its nonexistence.'"³⁹ Further, in evaluating the
13 evidence of a work injury, the fact finder must consider the
14 totality of the circumstances.⁴⁰

15 In finding Yasmer's injury was compensable under Nevada's
16 workers' compensation scheme, the Appeals Officer properly analyzed
17 the statutory definitions of accident and injury and applied those
18 definitions to the facts to find an injury by accident had
19 occurred. This assessment was not challenged by CTHS and Gallagher
20 Bassett.

21 Next, the Appeals Officer correctly found that the injury by
22 accident arose out of Yasmer's work. Generally, an injury arises
23 out of employment if there is "'a causal connection between the
24 injury and the employee's work,' in which 'the origin of the injury

25 ³⁸ NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).

26 ³⁹ Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).

27 ⁴⁰ Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,
28 1046 (1997).

1 is related to some risk involved within the scope of employment.'"⁴¹
2 To find causation a physician must establish to a "reasonable
3 degree of medical probability that the condition in question was
4 caused by the industrial injury or sufficient facts must be shown
5 so that the trier of fact can make a reasonable conclusion that the
6 condition was caused by the industrial injury."⁴²

7 There are three categories of risks: employment, personal, and
8 neutral.⁴³ Employment risks are compensable, personal risks are not
9 compensable, and neutral risks are compensable if they satisfy the
10 increased-risk test.⁴⁴ Personal risks are those that are
11 attributable to personal issues - not to the employment.⁴⁵
12 Employment risks include "obvious kinds of injur[ies] that one
13 thinks of at once as industrial injuries. All the things that can
14 go wrong around a modern factory, office, mill, mine, retail
15 establishment, transportation system, or construction project."⁴⁶
16 Neutral risks are those that do not fall within either the
17 employment or personal risk categories.⁴⁷

18 The Appeals Officer correctly concluded that Yasmer proved his
19 injury was caused by an employment risk. A preponderance of the

20 ⁴¹ Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,
21 1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

22 ⁴² Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842
23 (1997).

24 ⁴³ Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d
25 2, 5 (2010).

26 ⁴⁴ Id. at 351-53, 240 P.3d at 5-7.

27 ⁴⁵ Id. at 351, 240 P.3d at 5.

28 ⁴⁶ 1-4 Larson's Workers' Compensation Law § 4.01.

⁴⁷ Phillips at 351, 240 P.3d at 6.

1 evidence showed that the left ankle was fractured while performing
2 work duties since Yasmer was conveying a benefit to his employer as
3 he was carrying a box of work brochures down stairs at the facility
4 where he worked to take them from his office to a satellite
5 facility.⁴⁸ Further, it was found that carrying a box of brochures
6 from one location to another was an employment risk that impeded a
7 person's field of vision. Because of that, Yasmer fell and
8 fractured his ankle. Accordingly, Yasmer's injury was caused by an
9 employment risk and the Appeals Officer's determination that he met
10 his burden of proof in proving that his injury arose out of his
11 employment was proper and based on substantial evidence.

12 Also, there was sufficient medical reporting on the record
13 from which a reasonable conclusion could be formed that Yasmer's
14 injury caused his industrial condition.⁴⁹ Specifically, the
15 emergency room doctor checked the box on the C4 form indicating he
16 could directly connect the left ankle fracture as job incurred.⁵⁰
17 Also, Dr. Cummings noted that the injury occurred at work when
18 Yasmer missed a step while carrying a box. The Appeals Officer
19 found this reporting to be the most persuasive, credible medical
20 evidence, as was his prerogative, and was therefore correct in
21 determining Yasmer's left ankle condition was caused by the
22 ...
23

24 ⁴⁸ See Evans v. Southwest Gas, 108 Nev. 1002, 1006-1007, 842 P.2d 719, 721
25 (1992) (analyzing whether an employee conferred a benefit upon an employer
26 or furthered the business interests of an employer to determine whether
the employee was acting within the scope of employment when injured).

27 ⁴⁹ United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,
425, 851 P.2d 423, 425.

28 ⁵⁰ See NRS 616C.098.

1 industrial injury.⁵¹

2 Finally, the evidence on the record established that Yasmer's
3 injury occurred within the course of his employment. "[W]hether the
4 injury occurs within the course of the employment refers . . . to
5 the time and place of employment, i.e. whether the injury occurs at
6 work, during working hours, and while the employee is reasonably
7 performing his or her duties."⁵² As Yasmer's injury occurred when
8 he was at work in the hospital while reasonably performing his job
9 duties - he was required to carry the box of brochures and was
10 conferring a benefit on his employer at the time of the injury - it
11 was proper to find that, based on the evidence presented, his
12 injury by accident occurred within the course of his employment.

13 The Appeals Officer's decision was proper. There were
14 sufficient facts proven to find that the ankle injury was caused by
15 an industrial injury while Yasmer was performing work for his
16 employer. Therefore, the Appeals Officer's conclusion that Yasmer's
17 injury arose out of and in the course of his employment and is
18 compensable under Nevada's workers' compensation scheme is
19 supported by substantial evidence on the record and cannot be
20 reversed.

21 **3. CTHS and Gallagher Bassett have not shown they will**
22 **prevail on the merits.**

23 In order to have their Motion for Stay granted, CTHS and
24 Gallagher Bassett must show they will prevail on the merits at
25 hearing and to do so, they have the burden to show the appeals
26

27 ⁵¹ McClanahan v. Raleys, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

28 ⁵² Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

1 officer decision is invalid. CTHS and Gallagher Bassett fail to
2 make this showing. While they assert in their motion that the
3 Appeals Officer erred as a matter of law, they not shown the
4 commission of any such error, nor have they shown that the April
5 15, 2021, Decision and Order was not supported by substantial
6 evidence on the record. As there was no misapplication of the law
7 and the findings of fact are supported by substantial evidence,
8 CTHS and Gallagher Bassett can not prove they are likely to prevail
9 on the merits and their motion should be denied.

10 Two arguments are advanced for reversal of the April 15, 2021,
11 Decision and Order. One appears to challenge whether Yasmer's
12 injury arose out of his employment and the other appears to
13 challenge whether he was the in course of his employment when he
14 suffered the accident. These arguments would only suffice to allow
15 CTHS and Gallagher Bassett success on the merits if they are able
16 to convince a court to re-weigh the evidence which is not proper
17 under Nevada Law and does not constitute grounds for a reversal of
18 an administrative law judge's decision and order.

19 CTHS and Gallagher Bassett argue that Yasmer's injury did not
20 arise out of his employment because the injury must come from a
21 "risk unique to his employment."⁵³ It is then argued that since
22 "there was no hazard on the stairs that caused him to fall, he
23 simply mis-stepped because he thought he was at the bottom of the
24 stairs when he was not."⁵⁴ First, none of the authority cited
25 indicates that a risk must be unique to Yasmer's employment, simply
26

27 ⁵³ Pet'rs' Mot. Stay, 6:23-8:10.

28 ⁵⁴ Id. at 8:11-12.

1 that it is a risk of employment. Second, there is no analysis as to
2 whether an accident caused by a mis-step versus a hazard on the
3 floor would impact whether the injury arose out of employment.
4 Third, the argument ignores the Appeals Officer's conclusion that
5 Yasmer mis-stepped because his vision was impeded by the box of work
6 brochures he was carrying to transport for his job which
7 constituted a compensable employment risk. Fourth, there is no
8 argument that the Appeals Officer's conclusion was legally
9 incorrect or lacking in substantial evidence. It is simply a
10 request to have the evidence re-weighed or re-evaluated in a
11 fashion more advantageous to CTHS and Gallagher Bassett.

12 It is also argued that Yasmer was not in the course of his
13 employment because he was walking down stairs rather than taking an
14 elevator.⁵⁵ In making this argument, CTHS and Gallagher Bassett
15 write that Yasmer's "manager states that the Respondent should have
16 been using the elevator to perform this task."⁵⁶ However, this both
17 mis-states and mis-characterizes the evidence. Yasmer's manager was
18 asked how the injury could have been prevented and stated that
19 Yasmer could have used the elevator. He never stated that Yasmer
20 was prohibited from using the stairs, nor did he say that Yasmer
21 should not have been using the stairs. He merely says the accident
22 would have been avoided had an elevator been used. Further, there
23 is no evidence on the record there was a policy that Yasmer use an
24 elevator, nor evidence of any prohibition against using the stairs.

25 CTHS and Gallagher Bassett also argue that there is an
26

27 ⁵⁵ Id. at 5:21-6:2.

28 ⁵⁶ Id. at 5:22-23

1 elevator for employee use, but "Respondent simply chose not to use
2 it"⁵⁷ and he never addressed why he "failed to use the available
3 elevator if he knew that he was carrying a box that would impede
4 his ability to traverse the stairs safely as he alleged."⁵⁸ This
5 mis-characterizes Yasmer's testimony as her never said he knew his
6 ability to see was impeded when he started walking down the stairs,
7 just that it was when he mis-stepped. Further, there is no argument
8 or analysis as to how Appeals Officer was wrong in finding Yasmer
9 was in the course of his employment despite not taking the
10 elevator. Additionally, there is no analysis as to how a failure to
11 use the elevator removed Yasmer from the course of his work or
12 caused his injury to be non-compensable.

13 There was no misapplication of the law and the findings of
14 fact in the decision are supported by substantial evidence on the
15 record. CTHS and Gallagher Bassett are simply seeking an
16 impermissible re-weighting of the facts. They have not shown the
17 April 15, 2021, Decision and Order was invalid, nor have they
18 proven they are likely to prevail on the merits so the Motion for
19 Stay should be denied.

20 Yasmer has met his burden under Nevada law for his claim to be
21 accepted. CTHS and Gallagher Bassett do nothing more than ask for
22 a re-weighting of the evidence in this matter hoping for a favorable
23 outcome. However, the Appeals Officer made factual determinations,
24 based on the medical reporting, other evidence, and testimony, that
25 Yasmer's claim is compensable. Therefore, CTHS and Gallagher
26

27 ⁵⁷ Id. at 5:23-24.

28 ⁵⁸ Id. at 5:26-27.

1 Bassett will not prevail on the merits and denial of their Motion
2 for Stay is justified.

3 All of CTHS and Gallagher Bassett's arguments rely on a re-
4 weighing of evidence and questions of fact already determined by
5 the Appeals Officer based on the evidence presented in the matter.
6 CTHS and Gallagher Bassett have failed to show anything that would
7 justify a reversal of the Appeals Officer's Decision and Order and,
8 in the absence of the ability to obtain new factual findings,
9 cannot show they are likely to prevail on the merits. CTHS and
10 Gallagher Bassett were unable to produce viable arguments for
11 reversal because the Appeals Officer's Decision and Order is
12 supported by substantial evidence on the record.

13 In sum, the Decision and Order reflects a sound and legal
14 application of the law to the facts, and the decision is supported
15 by substantial evidence as well as grounds and reasons. CTHS and
16 Gallagher Bassett are simply unhappy with the outcome and are
17 impermissibly attempting to coax the Court into re-weighing the
18 evidence in its favor. The Appeals Officer did not commit abuse of
19 discretion and the April 15, 2021, Decision and Order was not
20 arbitrary, capricious, or lacking substantial evidence; thus, the
21 Motion for Stay should be denied.

22 Once it's determined that petitioners have no reasonable
23 likelihood of success on the merits, it is not necessary to
24 determine whether they will sustain irreparable harm - the motion
25 should simply be denied.⁵⁹
26

27 ⁵⁹ Boulder Oaks Cmty. Ass'n v. B&J Andrews Enters., LLC, 125 Nev. 397, 403
28 n.6, 215 P.3d 27, 31 n.6 (2009).

1 C. WEIGHING THE POTENTIAL HARMS AND CONSIDERATION OF THE PUBLIC'S
2 INTEREST MANDATE DENIAL OF THE MOTION FOR STAY.

3 The next factor to consider in reviewing the Motion for Stay
4 is whether the parties will be irreparably harmed if the stay is,
5 or is not, granted and then balancing those harms against each
6 other. Closely related is the issue of the public's interest. CTHS
7 and Gallagher Bassett only argue they will suffer monetary harm,
8 whereas Yasmer may need additional treatment and has bills to pay
9 with no income. Therefore, Yasmer's harm is far greater, and public
10 interest is on his side as well.

11 CTHS and Gallagher Bassett claim they will be irreparably
12 harmed if the decision is not stayed but fail to actually enunciate
13 an irreparable harm under Nevada law. They assert harm because they
14 will have to pay benefits. However, this is only monetary harm,
15 which is never weighed in the context of irreparable harm.⁶⁰

16 The Nevada Supreme Court has adopted the standard that
17 monetary injury can never be enough to show irreparable harm.⁶¹
18 "The key word in this consideration is irreparable. Mere injuries,
19 however substantial, in terms of money, time and energy necessarily
20 expended in the absence of a stay, are not enough."⁶² Further, delay
21 and expenses of litigation do not constitute irreparable harm.⁶³
22 If merely having to incur monetary expense during appellate
23 litigation alone were a basis to obtain a stay, stays would

24
25 ⁶⁰ Hansen, 116 Nev. at 658, 6 P.3d at 987, citing Virginia Petroleum, 259
F.2d at 925.

26 ⁶¹ Id.

27 ⁶² Virginia Petroleum, at 925 (emphasis in original).

28 ⁶³ Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004).

1 necessarily be automatic in any workers' compensation appeal, as
2 what is invariably at issue in such appeals is the delivery of
3 benefits. Finally, CTHS and Gallagher Bassett can seek
4 reimbursement from Yasmer's health insurance if the decision is
5 reversed.⁶⁴

6 Yasmer will be harmed if a stay is granted because he may need
7 additional treatment. Further, he has his bills from the treatment
8 rendered while the issue of claim acceptance has been litigated.

9 The rule that an employer or insurer "cannot recoup funds
10 properly paid to claimant pending an appeal, which are later found
11 to be unwarranted after the appeal,"⁶⁵ from a claimant suggests that

12
13 ⁶⁴ NRS 616C.138(4) provides that "If:

14 (a) A hearing officer, appeals officer or district court
15 issues an order or otherwise renders a decision requiring an
16 insurer, organization for managed care, third-party
17 administrator or employer to pay for treatment or other
18 services provided to an injured employee;

19 (b) The insurer, organization for managed care, third-party
20 administrator or employer appeals the order or decision, but
21 is unable to obtain a stay of the order or decision;

22 (c) Payment for the treatment or other services provided to
23 the injured employee is made by the insurer, organization for
24 managed care, third-party administrator or employer during the
25 period between the date of the issuance of the order or
26 decision and the date of the final resolution of the appeal;
27 and

28 (d) The appeal is subsequently resolved in favor of the
insurer, organization for managed care, third-party
administrator or employer,

the insurer, organization for managed care, third-party
administrator or employer may recover from any health or
casualty insurer of the injured employee an amount calculated
pursuant to subsection 5. Any recovery from a health or
casualty insurer pursuant to this subsection is subject to the
exclusions and limitations of the policy of health or casualty
insurance covering the injured employee that relate to the
diseases set forth in NRS 617.453, 617.455 and 617.457."

⁶⁵ Ransier v. State Indus. Ins. Sys., 104 Nev. 742 at 747, 766 P.2d 274 at 277 (1988).

1 possible irreparable monetary harm to that entity does not outweigh
2 potential harm to the injured worker except in cases where the
3 payments will directly result in some other substantial and
4 irreparable injury beyond mere pecuniary loss. By precluding
5 recoupment of even "unwarranted" payments, the Supreme Court has
6 evinced a desire to protect the health and welfare of injured
7 workers over the protection of insurers/employers from paying
8 benefits that, ultimately, they are not found to owe.

9 Also, while a workers' compensation insurer cannot recoup
10 monies paid for treatment from an injured worker, as stated above,
11 it can request reimbursement from the injured worker's health
12 insurance if the stay is denied, but it is ultimately successful in
13 its petition for review.

14 Overall, public interest is on the side of the injured worker.
15 Nevada's workers' compensation scheme is an injured workers'
16 exclusive remedy, because the common law ability to litigate an
17 industrial injury has been eliminated.⁶⁶ An injured worker "gives
18 up his or her right to a tort remedy against an employer in
19 exchange for the protections of the worker's [sic] compensation
20 system."⁶⁷ This makes workers' compensation benefits the only remedy
21 for the work place injury. Nevada's policy of disallowing
22 recoupment of benefits found unwarranted following an appeal shows
23 that public interest favors injured workers as it avoids placing
24 them "in the untenable position of using benefits paid to [them] at
25 the risk of having to repay them at a point when [their] family

26 ⁶⁶ Pershing Quicksilver Co. v. Thiers, 62 Nev. 382, 152 P.2d 432 (1944).

27 ⁶⁷ Department of Induss Relations v. Circus Circus Enters., 101 Nev. 405,
28 411, 705 P.2d 645, 648-9 (1985).

resources [are] even more greatly stressed."⁶⁸

Further, when a stay is granted in favor of an insurer/ employer during appellate litigation, "workers and their families are denied the benefits which were intended under the initial philosophy of worker's [sic] compensation to sustain them through this period of disability. The appellate process hamstring the delivery of immediate benefits and contributes to the very social ill which worker's [sic] compensation acts sought to remedy."⁶⁹

The irreparable harm Yasmer will suffer if the Decision and Order is stayed and the public interest involved weigh heavily in favor of denial of the stay.

3. The Object of the Appeal Will Not Be Defeated If the Motion for Stay Is Denied.

In examining the motion, it must be determined whether the object of the appeal will be defeated in the absence of a stay. Even if benefits are provided, it will not be defeated, because CTHS and Gallagher Bassett may continue to pursue the appeal of the underlying order. Moreover, during the pending appeal, CTHS and Gallagher Bassett will administer the benefits Adamson is receiving.

CTHS and Gallagher Bassett control the benefits provided to Yasmer during the appeal, not the Court or Yasmer. They can proceed with the appeal because, if this court were to reverse the Appeals Officer's Decision and Order (which, from a legal and factual standpoint, would appear highly unlikely), they would be able to

⁶⁸ Ransier at 747, 766 P.2d at 277.

⁶⁹ McAvoy v. H. B. Sherman Co., 401 Mich. 419, 258 N.W.2d 414 (Mich. 1977).

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

1 stop providing such benefits and could recoup repayment.⁷⁰ There is
2 no reason to believe, nor any evidence to indicate, the object of
3 the appeal will be destroyed during this pending appeal.

4
5 **IV.**
CONCLUSION

6 A stay is an extraordinary remedy that should only be granted
7 when a petitioner demonstrates it will likely prevail on the
8 merits. CTHS and Gallagher Bassett have not as they are merely
9 requesting an impermissible re-weighing of the evidence. All they
10 have done is show they are unhappy with the Decision and Order and
11 would like to have the facts of the case re-examined.

12 Yasmer will suffer serious harm if the Motion for Stay is
13 granted because he may need additional treatment and has bills to
14 pay. CTHS and Gallagher Bassett have not shown they will face the
15 same in the absence of a stay. Instead, they have shown they may
16 lose a small amount of money - which does not constitute
17 irreparable harm. Further, staying the Decision and Order will not
18 serve the public interest. Finally, there has been no showing that
19 the object of the appeal will be defeated without the issuance of
20 a stay order.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 _____
28 ⁷⁰ NRS 616C.138.

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

1 It is CTHS and Gallagher Bassett's burden to show that the
2 final agency decision is invalid - they have not. CTHS and
3 Gallagher Bassett have not made a sufficient showing to support
4 their Motion for Stay. Therefore, Yasmer respectfully requests that
5 this Court deny the Motion for Stay Pending Appeal.

6 NEVADA ATTORNEY FOR INJURED WORKERS

7 

8 Todd Eikelberger, Esq., Deputy
9 Nevada Bar No. 9393
10 1000 East William Street, Suite 208
Carson City, Nevada 89701

11 Attorney for Respondent
12 Stephen Yasmer
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
OPPOSITION TO PETITIONER'S MOTION FOR STAY PENDING APPEAL filed in
District Court Case Number: CV21-00809

 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 with:

- OR -

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


Signature

5/26/2021
Date

Todd Eikelberger, Esq., Deputy
Nevada Attorney for Injured Workers

Attorney for Respondent,
Stephen Yasmer

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

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 **OPPOSITION TO PETITIONER'S MOTION FOR STAY PENDING
APPEAL** 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)

JOHN P LAVERY ESQ (John.Lavery@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

JEANNE P BAWA ESQ (Jeanne.Bawa@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

DATED: MAY 26, 2021

SIGNED: ALEX ANDRACA

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

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Number of Pages</u>
1	Claimant's First Exhibit	48
2	Carson Tahoe Health System's and Gallagher Bassett Services, Inc.'s Index of Documents	38
3	Appeals Officer's Decision and Order Dated April 15, 2021	11
4	Proposed Order Denying Petitioner's Motion for Stay	14

1 CASE NO. CV21-00809

2 DEPT NO. 8

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 CARSON TAHOE HEALTH SYSTEM and
10 GALLAGHER BASSETT SERVICES, INC.,

11 Petitioner,

12 vs.

13 STEPHEN YASMER; and the STATE OF
14 NEVADA DEPARTMENT OF ADMINISTRATION,
15 HEARINGS DIVISION, APPEALS OFFICE,
16 an Agency of the State of Nevada,

17 Respondents.

18 TRANSMITTAL OF RECORD ON APPEAL

19 TO: The Clerk of the Second Judicial District Court

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

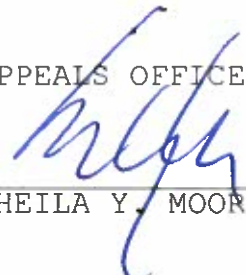
24 1. The entire record herein, including each and
25 every pleading, document, affidavit, order, decision, and
26 exhibit now on file with the Office of the Appeals Officer
27 under the Nevada Industrial Insurance Act, 1050 East William
28 Street, Suite 450, Carson City, Nevada, in the above-entitled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

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

2. Transcript of proceedings.

3. This transmittal.

APPEALS OFFICER


SHEILA Y. MOORE

1 CASE NO. CV21-00809

2 DEPT NO. 8

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 CARSON TAHOE HEALTH SYSTEM and
10 GALLAGHER BASSETT SERVICES, INC.,

11 Petitioner,

12

vs.

13

14 STEPHEN YASMER; and the STATE OF
NEVADA DEPARTMENT OF ADMINISTRATION,
HEARINGS DIVISION, APPEALS OFFICE,
an Agency of the State of Nevada,

15

Respondents.

16

17

AFFIRMATION
Pursuant to NRS 239B.030

18

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

21

1. Transmittal of Record on Appeal

22

23

APPEALS OFFICER

24


SHEILA Y. MOORE

25

26

27

Code: 2610

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

CARSON TAHOE HEALTH SYSTEM ET AL,

Petitioner,

vs.

STEPHEN YASMER ET AL,

Respondents.

Case No. CV21-00809

Dept. No. 8

NOTICE OF STRICKEN DOCUMENT

The Clerk of the Court hereby strikes the RECORD ON APPEAL CONTINUATION
filed by Shiela Moore on June 4, 2021 from the case for the following reason(s):

- ☒ Document does not have a District Court case number
- ☒ Document does not have an Affirmation
- ☒ Unsigned paper filed document

The Clerk of the Court does hereby place the stricken document at a security level of public ☐ or
sealed ☒. ***The Court cannot consider the stricken document. If the filing party wants the
document to be considered, it may be re-filed with the noted corrections and resubmitted.***

Dated: June 4, 2021

ALICIA LERUD, Interim
Clerk of the Court
By: /s/YViloria
Deputy Clerk

PTOB
JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W. Sahara Ave. Ste. 900
Las Vegas, Nevada 89102
Telephone: 702-893-3383
Facsimile: 702-366-9563
Email: john.lavery@lewisbrisbois.com
Email: michael.friend@lewisbrisbois.com
Attorneys for Petitioners
CARSON TAHOE HEALTH SYSTEM
and GALLAGHER BASSETT SERVICES, INC.

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

CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.,

Petitioners,

v.

STEPHEN YASMER; and the STATE OF
NEVADA DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION,
APPEALS OFFICE, an Agency of the State of
Nevada,

Respondents.

CASE NO: CV21-00809

DEPT. NO.: 8

PETITIONERS' OPENING BRIEF

JOHN P. LAVERY, ESQ.
L. MICHAEL FRIEND, ESQ.
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W. Sahara Avenue, Suite 900, Box 28
Las Vegas, Nevada 89102-4375
Attorneys for Petitioners
CARSON TAHOE HEALTH SYSTEM
and GALLAGHER BASSETT SERVICES, INC.

TODD EIKELBERGER, ESQ.
NEVADA ATTORNEY FOR INJURED
WORKERS
1000 E. William Street, Suite 208
Carson City, NV 89701
Attorney for Respondent
Stephen Yasmer

1 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
2 **THE STATE OF NEVADA IN AND FOR THE**
3 **COUNTY OF WASHOE**

4 CARSON TAHOE HEALTH SYSTEM and
5 GALLAGHER BASSETT SERVICES, INC.,

6 Petitioners,

7 v.

8 STEPHEN YASMER; and the STATE OF
9 NEVADA DEPARTMENT OF
10 ADMINISTRATION, HEARINGS DIVISION,
11 APPEALS OFFICE, an Agency of the State of
12 Nevada,

13 Respondents.

CASE NO: CV21-00809

DEPT. NO.: 8

14 **NRAP 26.1 DISCLOSURE**

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

- 17 1. The Respondent, CARSON TAHOE HEALTH SYSTEM, states that it does
18 not have any parent corporation, or any publicly held corporation that owns
19 10% or more of its stock, nor any publicly held corporation that has a direct
20 financial interest in the outcome of the litigation. NRAP 26.1(a).
21
22 2. The Respondent, GALLAGHER BASSETT SERVICES, INC., states that it
23 does not have any parent corporation, or any publicly held corporation that
24 owns 10% or more of its stock, nor any publicly held corporation that has a
25 direct financial interest in the outcome of the litigation.
26
27 3. The undersigned counsel states that the following attorneys have appeared or
28


1 are expected to appear in this court, including the district court and
2 administrative agency:

- 3
- 4 • JOHN P. LAVERY, ESQ. of LEWIS BRISBOIS BISGAARD & SMITH
5 LLP, Attorney or Record for Respondents;
 - 6 • JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD &
7 SMITH LLP; Attorney or Record for Respondents; and,
 - 8 • L. MICHAEL FRIEND, ESQ., of LEWIS BRISBOIS BISGAARD &
9 SMITH LLP, Attorney or Record for Respondents;

10 These representations are made in order that the judges of this court may
11
12 evaluate possible disqualifications or recusal.

13 DATED this 13th day of July 2021.

14 LEWIS BRISBOIS BISGAARD & SMITH LLP

15
16
17 By: 
18 JOHN P. LAVERY, ESQ.
19 Nevada Bar No. 004665
20 L. MICHAEL FRIEND, ESQ.
21 Nevada Bar No. 011131
22 2300 West Sahara Avenue, Suite 900, Box 28
23 Las Vegas, NV 89102
24 Phone: (702) 893-3383
25 Facsimile: (702) 366-9563
26 Attorneys for Petitioners
27 CARSON TAHOE HEALTH SYSTEM
28 and GALLAGHER BASSETT SERVICES, INC.

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

TABLE OF CONTENTS

I. NRAP 26.1 DISCLOSURE i-ii

II. TABLE OF CONTENTS iii

III. TABLE OF AUTHORITIES iv-v

IV. JURISDICTIONAL STATEMENT vi

V. STATEMENT OF THE ISSUES..... vi

VI. STATEMENT OF THE CASE2

VII. STATEMENT OF THE FACTS 2-3

VIII. SUMMARY OF THE ARGUMENT 3-4

IX. ARGUMENT..... 4-8

 A. Standard of Review 4-5

 B. Respondent Failed to Prove the Existence
 of a Compensable Industrial Insurance Claim 5-8

X. CONCLUSION.....8

XI. CERTIFICATE OF COMPLIANCE..... 9-10

XII. CERTIFICATE OF MAILING11

XIII. AFFIRMATION12

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page No(s).</u>
<i>Grupo Famsa, S.A. de C.V. v. Eighth Judicial Dist. Court</i> , 132 Nev. Adv. Op. 29, 371 P.3d 1048, 1050 (2016)	4
<i>Hermann v. Varco-Pruden Buildings</i> , 106 Nev. 564, 796 P.2d 590 (1990)	4
<i>Horne v. State Indus. Ins. Sys.</i> , 113 Nev. 532, 537, 936 P.2d 839 (1997)	4
<i>Jones v. Rosner</i> , 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)	5
<i>Maxwell v. SIIS</i> , 109 Nev. 327, 331, 849 P.2d 267, 270 (1993)	4, 5
<i>McCracken v. Fancy</i> , 98 Nev. 30, 639 P.2d 552 (1982)	4
<i>Mitchell v. Clark County School District</i> , 121 Nev. 179, 111 P.3d 1104 (2005)	6
<i>Nassiri v. Chiropractic Physicians' Bd. of Nev.</i> , 130 Nev. 245, 327 P.3d 487(2014)	4, 5
<i>North Las Vegas v. Public Service Common</i> , 83 Nev. 278, 429 P.2d 66 (1967)	4
<i>Rio Suite Hotel & Casino v. Gorsky</i> , 113 Nev. 600, 939 P.2d 1043 (1997)	6
<i>Rio All Suite Hotel & Casino v. Phillips</i> , 126 Nev. 346, 350, 240 P.3d 2, 5 (2010)	4, 6
<i>State Industrial Insurance System v. Christensen</i> , 106 Nev. 85, 787 P.2d 408 (1990)	5
<i>State Industrial Insurance System v. Hicks</i> , 100 Nev. 567, 688 P.2d 324 (1984)	5
<i>State Industrial Insurance System v. Kelly</i> , 99 Nev. 774, 671 P.2d 29 (1983)	5-6
<i>State Industrial Insurance System v. Khweiss</i> , 108 Nev. 123, 825 P.2d 218 (1992)	5

1 **Nevada Revised Statutes**

2 NRS 233B.1302, 4

3 NRS 616A.0104, 6

4 NRS 616C.1505

5

6 **Others**

7

A. Larson, The Law of Workmen’s Compensation, § 80.33(a)6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

IV.

JURISDICTIONAL STATEMENT

The District Court has jurisdiction over the instant Petition for Judicial Review per NRS 233B.130. The petition stems from an Appeals Officer’s Decision and Order rendered on April 15, 2021, in a workers’ compensation claim with the Department of Administration, Hearings Division. The Petitioners timely filed their Petition for Judicial Review on May 3, 2021.

V.

STATEMENT OF THE ISSUES

1. Did the Appeals Officer err as a matter of law when she found that Respondent had established that she suffered a compensable industrial injury arising out of and in the course of her employment?

2. Is there substantial evidence to support the Appeals Officer’s decision?

...
...
...
...
...
...
...
...
...
...
...
...
...

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

VI.

STATEMENT OF THE CASE

On June 23, 2020, Petitioner Administrator denied liability for this claim. (ROA p. 114.)

Respondent timely appealed that determination to a Hearing Officer. (ROA p. 122.)

The issue of claim denial was heard by a Hearing Officer on July 30, 2020. In a written Decision and Order dated August 6, 2020, the Hearing Officer affirmed claim denial. (ROA pp. Exhibit pp. 123-125.)

Respondent timely appealed that Decision and Order to an Appeals Officer. (ROA p. 126.)

On April 15, 2021, the Appeals Officer below issued a Decision and Order reversing Petitioner Administrator’s denial of liability for Respondent’s industrial insurance claim. (ROA pp. 1-11.)

Petitioners filed a Petition for Judicial Review and a Motion for Stay on May 3, 2021.

The Record on Appeal was submitted on June 4, 2021.

Petitioners, through Counsel, now submit their Opening Brief.

VII.

STATEMENT OF THE FACTS

Respondent, Stephen Yasmer (hereinafter referred to as “Respondent”), alleged injury to his left foot as the result of falling on some stairs on June 8, 2020. Respondent and his manager completed an incident report on June 10, 2020. Respondent stated that he was carrying a box of supplies down the stairs and he thought he was at the bottom of the stairs but still had 2 more steps to go and so he mis-stepped and fell. Respondent’s manager indicated that he should have used the elevator instead of the stairs. (ROA p. 101.) Respondent acknowledged he could have taken the elevator, but it was his personal preference to take the stairs. (ROA p. 24.) The stairways are open to the general public. (ROA p. 26.)

Respondent sought medical treatment the day of the incident at the Carson Tahoe ER, where he completed an Employee’s Claim for Compensation/Report of Initial Treatment (Form C-4). Respondent reported that he was carrying a box walking downstairs when he fell. (ROA p. 93.)

Respondent was diagnosed with a left ankle dislocation (Fibula) and posterior malleolus fracture. The ankle was reduced in the ER and was splinted. Respondent was referred to Tahoe Fracture where he was already a patient and was released to light duty work. (ROA pp. 94-99.)

Respondent was evaluated by Dr. Jay Betz on June 10, 2020. Dr. Betz referred the Respondent to Dr. Jeffrey Cummings for surgery. (Exhibit pp. 102-106.)

Dr. Cummings evaluated the Respondent on June 12, 2020. He recommended ORIF surgery. (ROA pp. 107-110.)

Dr. Cummings performed surgery on June 15, 2020. (ROA pp. 111-113.)

On June 23, 2020, Petitioner Administrator denied liability for this claim. (ROA p. 114.)

Respondent timely appealed that determination to a Hearing Officer. (ROA p. 122.)

The issue of claim denial was heard by a Hearing Officer on July 30, 2020. In a written Decision and Order dated August 6, 2020, the Hearing Officer affirmed claim denial. (ROA pp. Exhibit pp. 123-125.)

Respondent timely appealed that Decision and Order to an Appeals Officer. (ROA p. 126.)

On April 15, 2021, the Appeals Officer below issued a Decision and Order reversing Petitioner Administrator's denial of liability for Respondent's industrial insurance claim. (ROA pp. 1-11.)

Petitioners timely filed their Petition for Judicial Review to this Court.

VIII.

SUMMARY OF THE ARGUMENT

This case concerns the denial of liability for an industrial insurance claim involving an employee falling on a staircase while at work. The Appeals Officer determined the subject fall was due to an employment-related risk, as Respondent was walking down the stairs as part of his job duties. When the facts are viewed in conjunction with the law, however, it is clear that the risk to Respondent was not employment-related, nor was it a personal risk. Therefore, the legal analysis should have been for a neutral-risk, i.e., whether the risk faced by Respondent was greater than that faced by the general public. Rio All Suite Hotel and Casino v. Phillips, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010). Because the Appeals Officer used the wrong legal standard and there is not

1 substantial evidence to support her decision, Petitioners respectfully request that their Petition for
2 Judicial Review be granted.

3
4 **IX.**

5 **ARGUMENT**

6 **A.**

7 **Standard of Review**

8 This court has jurisdiction to review the final judgment of the administrative court below
9 per NRS 233B.130. Judicial review of a final decision of an agency is governed by NRS
10 233B.135. A court may set aside, in whole or in part, a final decision of an administrative agency
11 where substantive rights of the petitioners have been prejudiced because the final decision is in
12 violation of constitutional or statutory provisions; affected by other error of law; clearly erroneous
13 in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary,
14 capricious or characterized by abuse of discretion.

15 Questions of law, including the interpretation of statutes and constitutional provisions, are
16 subject to de novo review. Nassiri v. Chiropractic Physicians' Bd. of Nev., 130 Nev. 245, 327
17 P.3d 487, 489(2014) (*statutory interpretation*); Grupo Famsa, S.A. de C.V. v. Eighth Judicial Dist.
18 Court, 132 Nev. Adv. Op. 29, 371 P.3d 1048, 1050 (2016) (*constitutionality*).

19 In regard to review of factual determinations, this Court reviews an appeals officer's
20 factual findings for substantial evidence. North Las Vegas v. Public Service Comm'n., 83 Nev.
21 278, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial
22 evidence is that quantity and quality of evidence which a reasonable man would accept as
23 adequate to support a conclusion. Nassiri, 327 P3d at 471; Maxwell v. SIIS, 109 Nev. 327, 331,
24 849 P.2d 267, 270 (1993); Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537, 936 P.2d 839
25 (1997).

26 Factual findings are clearly erroneous when there is no evidence or testimony in the record
27 for their support. Hermann v. Varco-Pruden Buildings, 106 Nev. 564, 566-67, 796 P.2d 590, 592
28 (1990). Agency rulings also lack substantial evidentiary support whenever they are based on

implicit findings not found in the record. State Indus. Sys. v. Christensen, 106 Nev. 85, 87, 787 P.2d 408, 409 (1990). An agency ruling without substantial evidentiary support is arbitrary and capricious and, therefore, unsustainable. Id. at 88, 787 P.2d at 410. Although administrative proceedings need not strictly follow the rules of evidence, the fact-finder is charged with making a decision based on evidence of a type and amount that will ensure a fair and impartial hearing. Nassiri, 130 Nev. 245, 327 P.3d at 490.

The issues in this appeal are ones of fact and law. Although it is anticipated that Respondent's counsel will argue that these are questions of fact, and that the Appeals Officer had the right to weigh the evidence, the Appeals Officer's Decision and Order was clearly erroneous in view of the reliable, probative and substantial evidence in the record. While the Court is not required to give deference to pure legal questions determined by the agency, those conclusions of the agency which are "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).

B.

Respondent Failed to Prove the Existence
of a Compensable Industrial Insurance Claim

Respondent has not met his burden of proving by a preponderance of the evidence that his claim is compensable. It is Respondent, not Petitioners, who had the burden of proving his case by a preponderance of the evidence. NRS 616C.150; State Industrial Insurance System v. Hicks, 100 Nev. 567, 688 P.2d 324 (1984). Respondent did not meet his burden.

In attempting to prove his case, Respondent had the burden of going beyond speculation and conjecture, thus requiring that Respondent establish all facets of his claim by a preponderance of all the evidence. To prevail, Respondent must present and prove more evidence than an amount which would make his case and his opponent's "evenly balanced." Maxwell 109 Nev. At 331, 849 P.2d at 270; SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774,

1 671 P.2d 29 (1983); A. Larson, The Law of Workmen's Compensation, § 80.33(a). Moreover,
2 Nevada law makes it clear that statutes governing workers' compensation are to be decided on the
3 merits and not liberally construed. NRS 616A.010.

4 An accident or injury arises out of employment only when there is a causal connection
5 between the injury and the employee's work. Therefore, the injured party must establish a link
6 between the workplace conditions and how those conditions caused the injury. Further, a claimant
7 must demonstrate that the origin of the injury is related to some risk involved within the scope of
8 employment. However, if an accident is not fairly traceable to the nature of the claimant's
9 employment or the workplace environment, then the injury does not arise out of the claimant's
10 employment. Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043 (1997);
11 Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005).
12

13 The Nevada Supreme Court further advised that the "Nevada Industrial Insurance Act is
14 not a mechanism which makes employers absolutely liable for injuries suffered by employees who
15 are on the job." Rather, the Court concluded, "The requirements of 'arising out of and in the
16 course of employment' make it clear that a claimant must establish more than being at work and
17 suffering an injury in order to recover." Gorsky, 113 Nev. At 605.
18

19 The Nevada Supreme Court, in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad.
20 346(2010), clarified Mitchell, supra, to the extent that Mitchell held that unexplained accidents are
21 never compensable.

22 Injuries resulting from employment-related risks are 'all the obvious
23 kinds of injur[ies] that one thinks of at once as industrial injur[ies]' and are
24 generally compensable . . . [such as] tripping on a defect at employer's
25 premises . . . Personal risk are those that are 'so clearly personal that, even
26 if they take effect while the employee is on the job, they could not possibly
27 be attributed to the employment . . . For example, 'a fall caused by [a
28 personal condition such as] a bad knee, or multiple sclerosis. [Neutral]
risks are those that are 'of neither distinctly employment nor distinctly
personal character . . . ('an unexplained fall, originating neither from
employment conditions nor from conditions personal to the [employee]'.
[Phillips'] injury occurred while traversing a staircase that was free of
defects, and there [was] no evidence that a risk personal to [her] caused her

1 fall. Thus, [this injury] falls within the neutral -risk category . . . The act of
2 descending a staircase at work, in and of itself, does not present a greater
3 risk than that faced by the general public . . . [W]hether a fall is explained or
4 unexplained is irrelevant. The key inquiry is whether the risk faced by the
5 employee was greater than the risk faced by the general public.

6 In the instant matter, Respondent alleges that he injured his ankle while walking down
7 some stairs while he was carrying a box. His manager states that the Respondent should have been
8 using the elevator to perform this task, as there is an elevator for employee use and the Respondent
9 simply chose not to use it. (ROA p. 101.) Respondent admitted he had the option to take the
10 elevator or the stairs, but he made the personal choice to use the stairs while carrying a box that
11 impeded his view. (ROA p. 24.)

12 The Appeals Officer erroneously deemed Respondent's risk to be an employment-related
13 risk, as the fall arose during his work duties while he was conveying a benefit to this employer.
14 The facts are clear that the Respondent's fall was not caused by a defect on the stairs nor was it
15 from conditions personal to him. Rather, Claimant misjudged the steps while carrying a box that
16 impeded his view. Therefore, whether the fall was explained or unexplained is irrelevant, the key
17 inquiry is whether the risk faced by Respondent was greater than the risk faced by the general
18 public.
19

20 The Appeals Officer erred as a matter of law by applying the standard for an employment-
21 related risk. In view of the reliable, probative and substantial evidence in the record, this case
22 should have been evaluated as a neutral risk. That would require an analysis of whether the risk
23 faced by the Respondent was greater than the risk faced by the general public. The facts simply do
24 not support that conclusion. The general public was able to use the stairs where Respondent fell
25 (ROA p. 26); therefore, there is not sufficient evidence to support that he faced a greater risk than
26 the public—in fact, he faced the same risk. Moreover, Respondent had the option of using the
27 elevator, which would have circumvented this entire situation.
28

1 It is Respondent's burden to prove that his injuries arose out of and in the course of his
2 employment, and based on the available evidence, Respondent cannot meet his burden.

3 X.

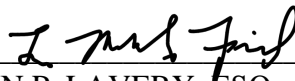
4 **CONCLUSION**

5 For all of the aforementioned reasons, Petitioners move this reviewing court to grant the
6 instant petition, and order the claim to remain denied for failure to timely file the claim for
7 compensation and for failure to establish a compensable injury. Wherefore, Petitioners pray that
8 this Court grant their Petition for Judicial Review and reverse the Appeals Officer's Order dated
9 April 15, 2021.

10 DATED this 13th day of July, 2021.

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14 By  _____
15 JOHN P. LAVERY, ESQ.
16 Nevada Bar No. 004665
17 L. MICHAEL FRIEND, ESQ.
18 Nevada Bar No. 011131
19 2300 West Sahara Avenue, Suite 900, Box 28
20 Las Vegas, NV 89102
21 Phone: (702) 893-3383
22 Facsimile: (702) 366-9563
23 Attorneys for Petitioners
24 EMPLOYNET and
25 GALLAGHER BASSETT SERVICES, INC.
26
27
28

CERTIFICATE OF COMPLIANCE

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 with a one inch margin in a proportionally spaced typeface using Microsoft WORD software in 12 point Times New Roman font.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the document type volume limitation does not exceed 7,000 words. Per WORD's word count utility, this document, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), contains 3,829 words.

3. I further 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 28(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 relied on is to be found. 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.

...

...

...

...

...

...


...

1 4. Lastly, this Brief does not contain a social security number.

2 DATED this 13th day of July, 2021.

3 Respectfully submitted,

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By 
7 JOHN P. LAVERY, ESQ.
8 Nevada Bar No. 004665
9 L. MICHAEL FRIEND, ESQ.
10 Nevada Bar No. 011131
11 2300 West Sahara Avenue, Suite 900, Box 28
12 Las Vegas, NV 89102
13 Phone: (702) 893-3383
14 Facsimile: (702) 366-9563
15 Attorneys for Petitioners
16 CARSON TAHOE HEALTH SYSTEM
17 and GALLAGHER BASSETT SERVICES, INC.
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 13th day of
3 July, 2021, service of the attached **PETITIONERS' OPENING BRIEF** was made this date by
4 depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed
5 follows:
6

7 Todd Eikelberger, Esq.
8 NEVADA ATTORNEY FOR INJURED WORKERS
9 1000 E. William Street, Suite 208
10 Carson City, NV 89701

11 CARSON TAHOE HEALTH SYSTEM
12 Attn: Risk Management
13 1600 Medical Pkwy.
14 Carson City, NV 89706

15 Yvette McCollum, Sr. Claims Adjuster
16 GALLAGHER BASSETT SERVICES, INC.
17 PO Box 2934
18 Clinton, IA 52733

19 

20 An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP
21
22
23
24
25
26
27
28

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

AFFIRMATION

The undersigned does hereby affirm that the preceding document Petitioner's Opening

☒ Document does not contain the Social Security number of any person.

- OR -

☐ Document contains the Social Security number of a person as required by:

A specific state or federal law, to wit:

- or -

- ☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 13th, 2021

L. M. J. J.
(Signature)

L. MICHAEL FRIEND, ESQ.
(Print Name)

PETITIONERS
(Attorney for)

1 **2300**

Evan Beavers Esq. (NV Bar 3399)
2 ebeavers@naiw.nv.gov
Todd Eikelberger, Esq. (NV Bar 9393)
3 teikelberger@naiw.nv.gov
1000 East William Street, Suite 208
4 Carson City, Nevada 89701
(775) 684-7555; (775) 684-7575
5 Attorney for Respondent, Stephen Yasmer

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 CARSON TAHOE HEALTH SYSTEM and
11 GALLAGHER BASSETT SERVICES, INC.

12 Petitioner,

CASE NO. CV21-00809

13 vs.

DEPT. NO. 8

14 STEPHEN YASMER; and the STATE OF
15 NEVADA DEPARTMENT OF
ADMINISTRATION, HEARINGS
16 DIVISION, APPEALS OFFICE, an
Agency of the State of Nevada,

17 Respondents.
18 _____/

19
20 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

21 Respondent, Stephen Yasmer, by and through his attorney, Todd
22 Eikelberger, Esq., Deputy, Nevada Attorney for Injured Workers,
23 hereby moves this Court for an order dismissing the Petition for
24 Judicial Review filed by Carson Tahoe Health System and Gallagher
25 Bassett Services, Inc., on May 3, 2021, in the Second Judicial
26 District Court of the State of Nevada.

27 ...

28 ...

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

1 This motion is made and based upon NRS 233B.130, SJDCR 12, the
2 attached exhibits, the papers and pleadings on file, and the
3 attached Memorandum of Points and Authorities.

4 DATED this 2 day of August, 2021.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

7 Evan Beavers, Esq. (NV Bar #3399)
8 Todd Eikelberger, Esq. (NV Bar #9393)
1000 East William Street, Suite 208
Carson City, Nevada 89701

9
10 Attorneys for Respondent
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF STEPHEN YASMER'S MOTION TO DISMISS**
3 **PETITION FOR JUDICIAL REVIEW**

4 The underlying issue in this matter involves a dispute over
5 acceptance of a workers' compensation claim. Petitioners, Carson
6 Tahoe Health System (herein "CTHS") and Gallagher Bassett Services,
7 Inc., (herein "GBS") filed a Petition for Judicial Review in
8 Nevada's Second Judicial District on May 3, 2021. However, none of
9 the aggrieved parties reside in Washoe County and the agency
10 proceeding occurred in Carson City so, under the Nevada
11 Administrative Procedure Act (herein "APA"), the petition was not
12 filed in the proper district court. Filing requirements in the
13 statute authorizing judicial review under the APA are mandatory
14 jurisdictional requirements. Therefore, as the petition was
15 improperly filed, this court lacks jurisdiction to conduct judicial
16 review and the matter must be dismissed.

17 **I.**
18 **ISSUE PRESENTED**

19 Whether the Second Judicial District Court lacks jurisdiction
20 to entertain Gallagher Bassett Services, Inc., and Carson Tahoe
21 Health System's Petition for Judicial Review as it was not filed in
22 the proper district court required by the Nevada Administrative
23 Procedure Act. Stephen Yasmer contends that the court lacks
24 jurisdiction to consider the matter requiring dismissal of the
25 petition.

26 **II.**
27 **STATEMENT OF THE FACTS**

28 CTHS and GBS filed a Petition for Judicial Review on or around
May 3, 2021, requesting the court review an April 15, 2021,

1 Decision and Order issued by a Nevada Department of Administration
2 appeals Officer.¹ The petition was filed in the Second Judicial
3 District Court - the district court for Washoe County.²

4 The underlying issue in this matter involves a dispute over
5 acceptance of a workers' compensation claim. On June 8, 2020,
6 Yasmer, manager of rehabilitation services for Petitioner CTHS,
7 fractured his ankle when he fell down stairs at Carson Tahoe
8 Hospital in Carson City.³ He filed a claim for workers'
9 compensation benefits, but it was denied by Petitioner GBS, the
10 third-party administrator for the employer, on June 23, 2020.⁴
11 Yasmer appealed the denial and the matter was heard in front of
12 Appeals Officer Sheila Moore in Carson City, Nevada, on November
13 16, 2020.⁵

14 The C4 form, which is the claim for compensation, indicates
15 that Stephen Yasmer resides in Carson City, the same place the
16 injury occurred.⁶ The C3 form, the employer's report of industrial
17 injury, lists the address for CTHS as Carson City, Nevada.⁷ The
18 certificate of service attached to the appeals officer's decision
19 and order, as well as the one attached to the petition for judicial
20 review, lists a Carson City address for Petitioner CTHS and an Iowa

21
22 ¹ Exhibit 1.

23 ² Exhibit 2.

24 ³ Exhibit 3.

25 ⁴ Exhibit 4.

26 ⁵ Exhibit 5.

27 ⁶ Exhibit 3.

28 ⁷ Exhibit 6.

1 address for Petitioner GBS.⁸

2 A review of the Nevada Secretary of State website reveals that
3 Gallagher Bassett Services, Inc., is a foreign corporation from
4 Delaware doing business in Nevada with a registered agent residing
5 in Carson City, Nevada.⁹ Carson Tahoe Health Systems is a domestic
6 corporation with a registered agent also residing in Carson City.¹⁰

7 The petition filed in the Second Judicial District Court
8 pertains to an injury that occurred outside Washoe County, an
9 agency proceeding that occurred in Carson City, and parties that
10 reside outside Washoe County. There is no relationship between
11 Washoe County and the petition filed at all. Therefore, pursuant to
12 NRS 233B.130(2)(b), the Second Judicial District Court does not
13 have jurisdiction to consider the petition and it must be
14 dismissed.

15 **III.**
16 **ARGUMENT**

17 **A. The Court Lacks Jurisdiction to Consider CTHS and Gallagher**
18 **Bassett's Petition for Judicial Review**

19 In order to challenge a final decision and order issued by a
20 Nevada Department of Administration appeals officer, a party must
21 file a petition for judicial review.¹¹ Chapter 233B of the Nevada
22 Revised Statutes contains the Administrative Procedure Act and,
23 more specifically, the requirements for judicial review of a final
24 decision in an administrative proceeding are found in NRS 233B.130.

25 ⁸ Exhibits 1 & 2.

26 ⁹ Exhibit 7.

27 ¹⁰ Exhibit 8.

28 ¹¹ NRS 616C.370.

1 Further, "the provisions of ... chapter [233B] are the exclusive
2 means of judicial review of, or judicial action concerning, a final
3 decision in a contested case involving an agency to which this
4 chapter applies."¹² ¹³

5 "When a party seeks judicial review of an administrative
6 decision [in Nevada], strict compliance with the statutory
7 requirements for such review is a precondition to jurisdiction by
8 the court of judicial review."¹⁴ Further, "filing requirements are
9 mandatory and jurisdictional."¹⁵

10 NRS 233B.130(2) contains the requirements for judicial review
11 petitions. Subsection (a) of that section of the statute details
12 the parties to be named, (c) lists additional people to be served,
13 and (d) requires the petition to be filed with 30 days after
14 service of the final agency decision. However, subsection (b)
15 mandates the court in which to file and specifically requires that
16 petitions for judicial review be "instituted by filing a petition
17 in the district court in and for Carson City, in and for the county
18 in which the aggrieved party resides or in and for the county where
19 the agency proceeding occurred." Applying the residency requirement
20 of subsection (b), the May 3, 2021, Petition for Judicial Review

21 ¹² NRS 233B.130(6).

22 ¹³ NRS 233B.020 contains the legislative intent behind the APA and notes it
23 was created to establish the "minimum procedural requirements for the ...
24 adjudication procedure of all agencies of the Executive Department of the
25 State Government." Thus, the act applies to adjudication procedures of appeals
26 officers in the Department of Administration.

27 ¹⁴ Kame v. Employment Security Dep't, 105 Nev. 22, 25, 769 P.2d 66, 68, (1989)
28 citing Teepe v. Review Board of Indiana Emp. Sec. Div., 136 Ind.App. 331, 200
N.E. 2d 538, 539, (1964), (dealing with the time period for filing a
petition).

¹⁵ Civil Service Com'n for City of Reno v. Second Judicial District Court ex
rel. County of Washoe, 118 Nev. 186, 189-190, 42 P. 3d 268, 271, (2002).

1 was required to be filed in the district court for Carson City,
2 Nevada.

3 The language of NRS 233B.130(2)(b) is clear and provides three
4 potential jurisdictions where a petition can be filed - the
5 district where the proceeding took place, the district where a
6 petitioner resides, or Carson City. Thus, under Nevada law, one of
7 those three locations must be selected when filing a petition.
8 However, the immediate petition was not filed in compliance with
9 NRS 233B.130(2)(b).

10 Based on the certificates of service of the documents attached
11 hereto as exhibits one and two, the claim forms attached as
12 exhibits three and six, and the print outs from the Nevada
13 Secretary of State attached as exhibits seven and eight, neither
14 Petitioner resides in Washoe County. CTHS resides in Carson City,
15 and GBS does not reside in the State of Nevada as it is a foreign
16 corporation and, as such, cannot reside in any county of the
17 state.¹⁶ Further, the agency proceeding being appealed did not occur
18 in Washoe County, and, not even the injury at issue occurred in
19 Washoe County. Thus, the Second Judicial District Court does not
20 have jurisdiction to hear the May 3, 2021, Petition for Judicial
21 Review and it must be dismissed.

22 The Nevada Supreme Court has held that failure of a petitioner
23 to strictly comply with the requirements of 233B.130(2) results in
24 a lack of jurisdiction for a district court to consider a petition
25 for judicial review.¹⁷ Further, "only those decisions falling within
26

27 ¹⁶ Liberty Mut. v. Thomasson, 130 Nev. 28, 34, 317 P.3d 831, 836 (2014).

28 ¹⁷ Washoe County v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726 (2012).

1 the APA's terms and challenged according to the APA's procedures
2 invoke the district court's jurisdiction."¹⁸

3 When a petitioner seeks "to invoke a district court's
4 jurisdiction to consider a petition for judicial review, the
5 petitioner must strictly comply with the APA's procedural
6 requirements" contained in NRS 233B.130(2).¹⁹ In short, the Nevada
7 Supreme Court has interpreted NRS 233B.130(2) to be a strict
8 compliance statute, not a substantial compliance statute.²⁰

9 The word "must" precedes paragraphs (a)-(c) of NRS 233B.130(2)
10 and "imposes a mandatory requirement."²¹ Thus, "NRS 233B.130(2) (b)
11 is mandatory and jurisdictional."²² Failure to follow its
12 requirements deprives a court of jurisdiction and requires the
13 petition to be dismissed.

14 Under Nevada law, "[a] district court is empowered to render
15 a judgment either for or against a person or entity only if it has
16 jurisdiction over the parties and the subject matter."²³
17 Furthermore, if the 30 day filing period contained in NRS
18 233B.130(2)(d) has elapsed, a petitioner cannot correct or
19 otherwise amend its lack of compliance with NRS 233B.130(2)(b) as

20
21 ¹⁸ Id. at 431, 282 P.3d 719, 725 (citing Private Inv. Licensing Bd. v.
22 Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1019 (1982)).

23 ¹⁹ Id. at 432, 282 P.3d at 725.

24 ²⁰ See Leven v. Frey, 123 Nev. 399, 406-407, 168 P.3d 712, 717 (2007) (stating
25 that the Nevada Supreme Court determines whether a statute requires strict or
26 substantial compliance).

27 ²¹ Thomasson, 130 Nev. at 31, 317 P.3d at 834.

28 ²² Id. at 32, 317 P.3d at 835.

²³ C.H.A. Venture v. G.C. Wallace Consulting Engineers, 106 Nev. 381, 383, 794
P.2d 707, 709, (1990) citing Young v. Nevada Tile Company, 103 Nev. 436, 442,
744 P.2d 902, 905, (1987).

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

1 is the case in the present matter.²⁴ "Noncompliance with the
2 requirements is grounds for dismissal of the appeal."²⁵


3 Based on the foregoing, the Second Judicial District Court
4 does not have jurisdiction to consider this matter and the Petition
5 for Judicial Review must be dismissed.

6
7 **IV.**
CONCLUSION

8 The Petitioners have not complied with the filing requirements
9 of NRS 233B.130(2)(b) and, therefore, the Second Judicial District
10 Court does not have jurisdiction to hear the petition so it must be
11 dismissed.

12 DATED this 2 day of August, 2021.

13 NEVADA ATTORNEY FOR INJURED WORKERS

14 
15 Evan Beavers, Esq. (NV Bar #3399)
16 Todd Eikelberger, Esq. (NV Bar #9393)
17 1000 East William Street, Suite 208
18 Carson City, Nevada 89701
19 Attorneys for Respondent,
20 Stephen Yasmer

21
22
23
24
25
26 ²⁴ Liberty Mutual v. Thomasson, 130 Nev. Adv. Rep. 4, 317 P.3d 831, 836
(2014).

27 ²⁵ Kame, 105 Nev. at 25, 769 P.2d at 68 (citing Teepe v. Review Board of
28 Indiana Emp. Sec. Div., 200 N.E.2d 538, 539 (Ind.App. 1964)).

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
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW, filed in regard to
Nevada Department of Administration Hearings Division Appeal Number
2100639-SYM (Second Judicial District Court Case Number CV21-
00809):

 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.



Todd Eikelberger, Esq, Deputy
Nevada Attorney for Injured Workers
Attorney for Respondent, Stephen Yasmer

8/2/2021

Date

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 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** 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)

JOHN P LAVERY ESQ (John.Lavery@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

JEANNE P BAWA ESQ (Jeanne.Bawa@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

DATED: AUGUST 2, 2021

SIGNED: ALEX ANDRACA

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

INDEX OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
1	May 3, 2021, Petition for Judicial Review.
2	April 15, 3021, Decision of Appeals Officer.
3	June 8, 2020, C-4 form.
4	June 23, 2020, Claim denial letter from Gallagher Bassett Services, Inc.
5	Cover page of Transcript of Proceedings from November 16, 2020.
6	August 9, 2020, C-4 form.
7	Gallagher Bassett Services, Inc.'s Entity Information from Nevada Secretary of State's website.
8	Casrson Tahoe Health System's Entity Information from Nevada Secretary of State's website.
9	Proposed Order Grating Motion to Dismiss Petition for Judicial Review

EXHIBIT 1

EXHIBIT 1

MAW

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED

APR 15 2021

DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

of

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

STEPHEN YASMER

Stephen Yasmer was carrying a box of brochures and descended a staircase at Carson Tahoe Hospital on June 8, 2020, while in the course and scope of his employment with Carson Tahoe Health Systems. Mr. Yasmer's vision was impeded by the box and he misstepped causing him to fall and fracture his ankle. A claim for benefits was filed and denied by Gallagher Bassett Services, the third party administrator for the employer on June 23, 2020. The denial was appealed and the determination was affirmed by the Hearing Officer on August 6, 2020. Appeal was taken and forms the basis for the current matter.

DECISION AND ORDER

This appeal concerns a dispute over claim acceptance. The Appeals Officer finds that Stephen Yasmer has met the requirements under Nevada's workers' compensation scheme for claim compensability as he has proven, by a preponderance of the evidence, that his injury arose out of and in the course of his employment.

The above-entitled appeal was heard by the Appeals Officer

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

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2210 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486 2830

1 under Appeal Number 2100639-SYM. Claimant, Stephen Yasmer, was
2 present by telephone and represented by Todd Eikelberger, Esq.,
3 Deputy, Nevada Attorney for Injured Workers, who was also present
4 by telephone. Gallagher Bassett Services, the third-party
5 administrator for the employer, Carson Tahoe Health Systems, was
6 represented by John Lavery, Esq., of Lewis Brisbois Bisgaard &
7 Smith, LLP, who appeared by telephone.

8 The following were submitted, marked, and admitted into
9 evidence:

- 10 • Exhibit 1 consisting of 45 pages; and
- 11 • Exhibit 2 consisting of 34 pages.

12 Testimony was provided at hearing by:

- 13 • Stephen Yasmer by telephone.

14 Pursuant to Nevada's Administrative Procedures Act, Chapter
15 233B of the Nevada Revised Statutes; Nevada's Industrial Insurance
16 Act, Chapters 616A through 617, inclusive, of the Nevada Revised
17 Statutes; and related regulations, and, after careful consideration
18 of the totality of all evidence submitted and testimony provided,
19 the Appeals Officer finds and decides as follows:

20 I.

21 **FINDINGS OF FACT¹**

22 Stephen Yasmer, manager of rehabilitation services at Carson
23 Tahoe Health Systems (herein "CTHS"), was injured while descending
24 stairs at Carson Tahoe Hospital (herein, "CTH"), where he
25 maintained an office, with a large box in his hands on June 8,
26 ...

27 _____
28 ¹ Any finding of fact more appropriately considered to be a conclusion of
law, and vice versa, shall be so deemed.

1 2020.² He testified at hearing that he left the main therapy office
2 on the third floor and began descending the staircase carrying a
3 box of brochures for work.³ Although carrying the box did not
4 impair his physical ability to walk, it did impede his visual
5 field.⁴ He mis-stepped because he thought he had reached the
6 landing and fell two steps fracturing his left ankle.⁵

7 Following the incident, he taken to the emergency room in
8 CTH where it was noted that:

9 he was carrying a box [sic] supplies down to the basement
10 when he thought he was on the bottom stair and could not
11 see that there is [sic] still to [sic] more stairs
12 beneath MCV stepped forward thinking he was stepping onto
the landing and missed the bottom to [sic] stairs falling
hard on to his left ankle causing some notable
deformity.⁶

13 The diagnosis was an acute left ankle dislocation, fibular
14 fracture, and posterior malleolus fracture. A C4 form was filled
15 out on June 8, 2020, and the physician checked the box indicating
16 that he could connect the left ankle injury as job incurred.⁷

17 Yasmer was seen at Nevada Occupational Health on June 10,
18 2020, and told he would require an open reduction and internal
19 fixation of the left ankle so he was referred to Dr. Jeffrey
20 Cummings.⁹ Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,

21 ² Exhibit 1, 1 and testimony of Stephen Yasmer at hearing.

22 ³ Testimony of Stephen Yasmer at hearing.

23 ⁴ Id.

24 ⁵ Id.

25 ⁶ Exhibit 1, 8.

26 ⁷ Id. at 10.

27 ⁸ Id. at 1.

28 ⁹ Id. at 16-17.

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

1 and indicated he required a "left ankle lateral malleolus and
2 syndismosis open reduction internal fixation."¹⁰ The procedure was
3 performed on June 15, 2020, at CTH.

4 Yasmer filed a claim for workers' compensation benefits which
5 was denied by Gallagher Bassett Services, the third-party
6 administrator (herein, "TPA") for CTHS, on June 23, 2020.¹¹ This
7 determination was appealed and, on August 6, 2020, the hearing
8 officer affirmed claim denial.¹² That decision and order was
9 appealed and forms the basis for the current matter.

10 Dr. Cummings saw Yasmer again on September 2, 2020, for a
11 drainage of his wound and for hardware removal.¹³ Yasmer returned
12 on September 15, 2020, and it was found that the wound was healing
13 well, with no drainage, so the sutures were removed.

14 Yasmer's testimony at hearing regarding his work and mechanism
15 of injury are found to be consistent, reliable, and credible. The
16 medical reporting clearly shows Yasmer suffered a left ankle
17 fracture that required a reduction and then a draining of the wound
18 with hardware removal. Based on the foregoing, the Appeals Officer
19 finds that a preponderance of all evidence submitted supports
20 Yasmer's position that his claim should be accepted. The weight of
21 the evidence, the credible medical reporting, and the reliable
22 testimony of Yasmer establish that he suffered injury to his left
23

24 ¹⁰ Id. at 18.

25 ¹¹ Id. at 25.

26 ¹² Id. at 4.

27 ¹³ Id. at 5-6.

28 ¹⁴ Id. at 39.

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

1 ankle in the form of a fracture as he was walking down stairs
2 carrying a box of work brochures. Thus, his left ankle fracture is
3 found to be industrially related and compensable.

4 II.

5 CONCLUSIONS OF LAW

6 To qualify for benefits for an industrial injury, an employee
7 has the burden to demonstrate, by a preponderance of the evidence,
8 that an injury by accident arose out of and in the course of his
9 employment.¹⁵ The Nevada Supreme Court has defined a "preponderance
10 of evidence" as a standard of proof that "should lead the trier of
11 fact 'to find that the existence of the contested fact is more
12 probable than its nonexistence.'" Further, in evaluating the
13 evidence of a work injury, the fact finder must consider the
14 totality of the circumstances.

15 In establishing a claim for benefits, an injury by accident
16 must be shown. Under Nevada law, an accident is an "unexpected or
17 unforeseen event happening suddenly and violently, with or without
18 human fault, and producing at the time objective symptoms of an
19 injury."¹⁶ While "a sudden and tangible happening of a traumatic
20 nature, producing an immediate or prompt result which is
21 established by medical evidence" constitutes an injury.

22 Applying those statutory definitions, it was unforeseen that
23

24 ¹⁵ NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).

25 ¹⁶ Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).

26 ¹⁷ Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,
1046 (1997).

27 ¹⁸ NRS 616A.030.

28 ¹⁹ NRS 616A.265(1).

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

1 Yasmer would miss a step and fall so the first prong of accident is
2 met. Since it caused him to suffer an ankle fracture, it was
3 capable of producing a harmful result and so happened suddenly and
4 violently. Therefore, Yasmer suffered an accident. Further, there
5 was an injury as a result of that accident since he adduced medical
6 evidence showing a sudden and tangible happening - an ankle
7 fracturing. It was traumatic in nature because it was capable of
8 producing a harmful result in Yasmer's left ankle which was later
9 diagnosed as a fracture.

10 Based on the foregoing, Yasmer has proven he suffered an
11 injury by accident. Further, he has also shown a connection of that
12 injury by accident to his work.

13 Generally, an injury arises out of employment if there is "a
14 causal connection between the injury and the employee's work," in
15 which 'the origin of the injury is related to some risk involved
16 within the scope of employment.'" To find causation a physician
17 must establish to a "reasonable degree of medical probability that
18 the condition in question was caused by the industrial injury or
19 sufficient facts must be shown so that the trier of fact can make
20 a reasonable conclusion that the condition was caused by the
21 industrial injury."²¹

22 There are three categories of risks: employment, personal, and
23 neutral.²² Employment risks are compensable, personal risks are not
24

25 ²⁰ Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,
26 1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

27 ²¹ Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842
(1997).

28 ²² Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d
2, 5 (2010).

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

1 compensable, and neutral risks are compensable if they satisfy the
2 increased-risk test.²³ Personal risks are those that are
3 attributable to personal issues - not to the employment.²⁴
4 Employment risks include "obvious kinds of injur[ies] that one
5 thinks of at once as industrial injuries. All the things that can
6 go wrong around a modern factory, office, mill, mine, retail
7 establishment, transportation system, or construction project."²⁵
8 Neutral risks are those that do not fall within either the
9 employment or personal risk categories.²⁶

10 Yasmer's injury was caused by an employment risk as his left
11 ankle fracture arose out of his work duties since he was conveying
12 a benefit to his employer when he was carrying the box of work
13 brochures down stairs at the facility where he worked. Accordingly,
14 Yasmer's injury is considered to have arisen from an employment
15 risk and, as such, he has met his burden of proof in showing that
16 his injury arose out of his employment.

17 In the Supreme Court case of Rio All Suite Hotel & Casino v.
18 Phillips, 126 Nev. 346, 240 P.3d 2 (2010), it was found that an
19 injury from climbing stairs was a compensable, neutral risk because
20 the claimant in that matter was required to climb the stairs by her
21 employer. CTHS argued that Yasmer was not required to use the
22 stairs, unlike the claimant in Phillips, and therefore his injury
23 did not arise out of his employment. However, Yasmer argued that
24 the stairs were not dispositive of the issue in this matter but

25 ²³ Id. at 351-53, 240 P.3d at 5-7.

26 ²⁴ Id. at 351, 240 P.3d at 5.

27 ²⁵ 1-4 Larson's Workers' Compensation Law § 4.01.

28 ²⁶ Phillips at 351, 240 P.3d at 6.

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

1 rather it was the act of carrying the box. Yasmer was required to
2 carry the box of brochures, which impeded his vision and caused him
3 to misjudge his location on the staircase, resulting in him falling
4 and fracturing his ankle. Pursuant to Phillips, carrying a box of
5 brochures from one location to another is an employment risk that
6 impedes a person's field of vision. Because of that, Yasmer fell
7 and fractured his ankle, thus, his injury arose out of his
8 employment.

9 Furthermore, the evidence establishes that Yasmer's injury
10 occurred within the course of his employment. "[W]hether the injury
11 occurs within the course of the employment refers . . . to the time
12 and place of employment, i.e. whether the injury occurs at work,
13 during working hours, and while the employee is reasonably
14 performing his or her duties." As discussed, Yasmer's injury
15 occurred while he was at work in the hospital. It happened while he
16 was reasonably performing his job duties as he was required to
17 carry the box of brochures. Further, he was conferring a benefit on
18 his employer at the time of the injury.⁸

19 Finally, credible and probative medical evidence, from which
20 a reasonable conclusion can be formed that Yasmer's injury occurred
21 in the course and scope of his employment, was provided by his
22 physicians.⁹ Specifically, the emergency room doctor checked the
23 box on the C4 form indicating that he could directly connect the
24

25
26 ²⁷ Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

27 ²⁸ See Evans v. Southwest Gas, 108 Nev. 1002, 1006, 842 P.2d 719, 721
(1992).

28 ²⁹ United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,
425, 851 P.2d 423, 425.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 200
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

1 left ankle fracture as job incurred.³⁰ Also, Dr. Cummings noted that
2 the injury occurred at work when Yasmer missed a step while
3 carrying a box. This reporting is the most persuasive, credible
4 medical evidence and is based on facts supported by evidence.³¹
5 Thus, Yasmer, through his credible testimony and presentation of
6 probative medical reporting, and other evidence, has met his burden
7 of proof in showing that his injury by accident arose out of and in
8 the course of his employment.

9 Based on the foregoing, sufficient facts have been presented
10 to establish, by a preponderance of the evidence, that the June 8,
11 2020, fall caused an injury by accident that arose out of and in
12 the scope of employment. Thus, Yasmer has met his burden of proof
13 for his claim for industrial injury benefits to be compensable
14 under Nevada's workers' compensation scheme.

15 ORDER

16 For the above reasons, the Hearing Officer's August 6, 2020,
17 Decision and Order affirming the third party administrator's June
18 23, 2020, determination regarding claim denial is **REVERSED**.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27

28 ³⁰ See NRS 616C.098.

³¹ McClanahan v. Raleys, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 775, 681-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 Therefore, Gallagher Bassett Services, the third party
2 administrator for the employer, Carson Tahoe Health Systems, shall
3 accept Stephen Yasmer's claim, claim number 000706-038452-WC-01,
4 for benefits as a compensable workers' compensation claim and shall
5 provide or reimburse for all appropriate treatment and benefits
6 available under chapters 616A to 617, inclusive, of the Nevada
7 Revised Statutes.

8 IT IS SO ORDERED this 14th day of April, 2021.

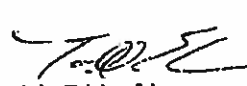
9 APPEALS OFFICER

10 
11 SHEILA Y. MOORE

12 N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should
13 any party desire to appeal this final decision of the Appeals
14 Officer, a Petition for Judicial Review must be filed with the
15 District Court within thirty (30) days after service by mail of
16 this decision.

17 Submitted by:

18 NEVADA ATTORNEY FOR INJURED WORKERS

19 
20 Todd Eikelberger, Esq., Deputy
21 1000 East William St., #208
22 Carson City, Nevada 89701

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** 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:

STEPHEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES, INC
PO BOX 2934
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102-4375

Dated this 15 day of April, 2021.



Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

EXHIBIT 2

EXHIBIT 2

1 **\$3550**

2 **JOHN P. LAVERY, ESQ.**

3 Nevada Bar No. 004665

4 **JEANNE P. BAWA, ESQ.**

5 Nevada Bar No. 007359

6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

7 2300 West Sahara Avenue, Suite 900, Box 28

8 Las Vegas, Nevada 89102

9 Phone: (702) 893-3383

10 Facsimile: (702) 366-9563

11 Email: john.lavery@lewisbrisbois.com

12 Email: jeanne.bawa@lewisbrisbois.com

13 Attorneys for Petitioners

14 **CARSON TAHOE HEALTH SYSTEM**

15 and **GALLAGHER BASSETT SERVICES, INC.**

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
17 **THE STATE OF NEVADA IN AND FOR THE**
18 **COUNTY OF WASHOE**

19 **CARSON TAHOE HEALTH SYSTEM and**
20 **GALLAGHER BASSETT SERVICES, INC.,**

21 Petitioners,

22 v.

Case No.

Dept. No.

23 **STEPHEN YASMER; and the**
24 **STATE OF NEVADA DEPARTMENT**
25 **OF ADMINISTRATION, HEARINGS**
26 **DIVISION, APPEALS OFFICE,**
27 **an Agency of the State of Nevada,**

28 Respondents.

PETITION FOR JUDICIAL REVIEW

29 COMES NOW Petitioners, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
30 BASSETT SERVICES, INC., by and through their attorneys, JOHN P. LAVERY, ESQ., and
31 JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, in the above-
32 entitled Petition for Judicial Review and petitions this Court for judicial review of the decision of
33 the Appeals Officer, SHEILA Y. MOORE, ESQ., filed on April 15, 2021, a copy of which is
34 attached hereto as "Exhibit "1."

35 ...


1 The instant Petition for Judicial Review is filed pursuant to NRS Chapter 616C.370,
2 which mandates that judicial review shall be the sole and exclusive authorized judicial
3 proceeding in contested industrial insurance claims for compensation for injury or death and
4 pursuant to NRS 2333.130, et seq.

5 The decision of the Appeals Officer was in violation of constitutional or statutory
6 provisions, was in excess of the authority of the Appeals Officer, was based upon errors of law,
7 is arbitrary or capricious in nature, and constitutes an abuse of discretion. Petitioners, CARSON
8 TAHOE HEALTH SYSTEM and GALLAGHER BASSETT SERVICES, INC., specifically
9 request, pursuant to NRS 233B.133, that this Court receive written briefs and hear oral argument.

10 DATED this 3 day of May, 2021.

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14 By: 
15 JOHN P. LAVERY, ESQ.
16 Nevada Bar No. 004665
17 JEANNE P. BAWA, ESQ.
18 Nevada Bar No. 007359
19 2300 West Sahara Avenue, Suite 900, Box 28
20 Las Vegas, Nevada 89102
21 Phone: 702-893-3383
22 Fax: 702-366-9563
23 Attorneys for Petitioners
24 CARSON TAHOE HEALTH SYSTEM
25 and GALLAGHER BASSETT SERVICES, INC.
26
27
28

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

Index of Documents

Exhibit 1 Appeals Officer's Decision and Order, 2100639-SYM

1-11

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 3rd day of May, 2021, service of the attached **PETITION FOR JUDICIAL REVIEW** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Stephen Yasmer
2257 Carson River Road
Carson City, NV 89701

Todd Eikelberger, Esq.
NEVADA ATTORNEY FOR INJURED
WORKERS
1000 E. William Street, Suite 208
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM
Attn: Risk Management
1600 Medical Pkwy.
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster
GALLAGHER BASSETT SERVICES,
INC.
PO Box 2934
Clinton, IA 52733

Sheila Y. Moore, Esq., Appeals Officer
NEVADA DEPT. OF ADMINISTRATION
Appeals Division, Appeals Office
1050 E. William Street, Ste. 450
Carson City, NV 89701

Michelle L. Morgando, Esq., Sr. Appeals
Officer
NEVADA DEPT. OF ADMINISTRATION
Appeals Division, Appeals Office
2200 S. Rancho Drive, Ste. 220
Las Vegas, NV 89102

Laura Freed, Director
DEPARTMENT OF ADMINISTRATION
515 E. Musser Street, Suite 300
Carson City, NV 89701

Aaron D. Ford, Nevada Attorney General
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, NV 89701


An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1 **SECOND JUDICIAL DISTRICT COURT**
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**
4 Pursuant to NRS 239B.030

5 The undersigned does hereby affirm that the preceding document, Petition for
6 Judicial Review filed in case number: _____

7
8 ☒ Document does not contain the Social Security number of any person.

9 - OR -

10
11 ☐ Document contains the Social Security number of a person as required by:

12 A specific state or federal law, to wit:

13 _____
14 - or -

15 ☐ For the administration of a public program

16 - or -

17 ☐ For an application for a federal or state grant

18 - or -

19
20 ☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

21
22 Date: 5/3/21

23 
(Signature)

24 JEANNE P. BAWA
(Print Name)

25 PETITIONERS
26 (Attorney for)
27
28

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

"EXHIBIT 1"

4823-1595-4407.1 / 26878-2777

000164

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED
APR 15 2021
DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

Hearing No.: 2100033-SD

of

Appeal No.: 2100639-SYM

STEPHEN YASMER

Stephen Yasmer was carrying a box of brochures and descended a staircase at Carson Tahoe Hospital on June 8, 2020, while in the course and scope of his employment with Carson Tahoe Health Systems. Mr. Yasmer's vision was impeded by the box and he misstepped causing him to fall and fracture his ankle. A claim for benefits was filed and denied by Gallagher Bassett Services, the third party administrator for the employer on June 23, 2020. The denial was appealed and the determination was affirmed by the Hearing Officer on August 6, 2020. Appeal was taken and forms the basis for the current matter.

DECISION AND ORDER

This appeal concerns a dispute over claim acceptance. The Appeals Officer finds that Stephen Yasmer has met the requirements under Nevada's workers' compensation scheme for claim compensability as he has proven, by a preponderance of the evidence, that his injury arose out of and in the course of his employment.

The above-entitled appeal was heard by the Appeals Officer

NEVADA ATTORNEY FOR JUDICIAL BRANCHES
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 First William Street, Suite 208
Carson City, NV 89701 (775) 684 7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-830

1 under Appeal Number 2100639-SYM. Claimant, Stephen Yasmer, was
2 present by telephone and represented by Todd Eikelberger, Esq.,
3 Deputy, Nevada Attorney for Injured Workers, who was also present
4 by telephone. Gallagher Bassett Services, the third-party
5 administrator for the employer, Carson Tahoe Health Systems, was
6 represented by John Lavery, Esq., of Lewis Brisbois Bisgaard &
7 Smith, LLP, who appeared by telephone.

8 The following were submitted, marked, and admitted into
9 evidence:

- 10 • Exhibit 1 consisting of 4 pages; and
11 • Exhibit 2 consisting of 34 pages.

12 Testimony was provided at hearing by:

- 13 • Stephen Yasmer by telephone.

14 Pursuant to Nevada's Administrative Procedures Act, Chapter
15 233B of the Nevada Revised Statutes; Nevada's Industrial Insurance
16 Act, Chapters 616A through 617, inclusive, of the Nevada Revised
17 Statutes; and related regulations, and, after careful consideration
18 of the totality of all evidence submitted and testimony provided,
19 the Appeals Officer finds and decides as follows:

20 I.

21 FINDINGS OF FACT¹

22 Stephen Yasmer, manager of rehabilitation services at Carson
23 Tahoe Health Systems (herein, "CTHS"), was injured while descending
24 stairs at Carson Tahoe Hospital (herein, "CH"), where he
25 maintained an office, with a large box in his hands on June 8,
26 ...

27 _____
28 ¹ Any finding of fact more appropriately considered to be a conclusion of
law, and vice versa, shall be so deemed.

NEVADA ATTORNEY FOR INJURED WORKERS
1800 East William Street, Suite 208
CARSON CITY, NV 897 1 (775) 684-75
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 '702' 480 283

1 2020.' He testified at hearing that he left the main therapy office
2 on the third floor and began descending the staircase carrying a
3 box of brochures for work.' Although carrying the box did not
4 impair his physical ability to walk, it did impede his visual
5 field.' He mis-stepped because he thought he had reached the
6 landing and fell two steps fracturing his left ankle.

7 Following the incident, he taken to the emergency room in
8 CTH where it was noted that:

9 h. was carrying a box [sic] supplies down to the basement
10 when he thought he was on the bottom stair and could not
11 see that there is [sic] still to [sic] more stairs
12 beneath MCV stepped forward thinking he was stepping onto
the landing and missed the bottom to [sic] stairs falling
hard on to his left ankle causing some notable
deformity.

13 The diagnosis was an acute left ankle dislocation, fibular
14 fracture, and posterior malleolus fracture. A C4 form was filled
15 out on June 8, 2020, and the physician checked the box indicating
16 that he could connect the left ankle injury as job incurred.

17 Yasmer was seen at Nevada Occupational Health on June 10,
18 2020, and told he would require an open reduction and internal
19 fixation of the left ankle so he was referred to Dr. Jeffrey
20 Cummings. Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,

21 Exhibit 1, 1 and testimony of Stephen Yasmer at hearing.

22 Testimony of Stephen Yasmer at hearing.

23 Id.

24 Id.

25 Exhibit 1, 8.

26 Id. at 1.

27 Id. at 1.

28 Id. at 16-17.

Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Ranchos Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

1 and indicated he required a "left ankle lateral malleolus and
2 syndesmosis open reduction internal fixation."¹¹ The procedure was
3 performed on June 15, 2020, at CTH.¹²

4 Yasmer filed a claim for workers' compensation benefits which
5 was denied by Gallagher Bassett Services, the third-party
6 administrator (herein, "TPA") for CTHS, on June 2, 2020.¹³ This
7 determination was appealed and, on August 6, 2020, the hearing
8 officer affirmed claim denial.¹⁴ That decision and order was
9 appealed and forms the basis for the current matter.

10 Dr. Cummings saw Yasmer again on September 2, 2020, for a
11 drainage of his wound and for hardware removal.¹⁵ Yasmer returned
12 on September 15, 2020, and it was found that the wound was healing
13 well, with no drainage, so the sutures were removed.

14 Yasmer's testimony at hearing regarding his work and mechanism
15 of injury are found to be consistent, reliable, and credible. The
16 medical reporting clearly shows Yasmer suffered a left ankle
17 fracture that required a reduction and then a draining of the wound
18 with hardware removal. Based on the foregoing, the Appeals Officer
19 finds that a preponderance of all evidence submitted supports
20 Yasmer's position that his claim should be accepted. The weight of
21 the evidence, the credible medical reporting, and the reliable
22 testimony of Yasmer establish that he suffered injury to his left
23

24 ¹¹ Id. at 15.

25 ¹² Id. at 25.

26 ¹³ Id. at 1.

27 ¹⁴ Id. at 5-6.

28 ¹⁵ Id. at 3.

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 894-1111
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-7831

1 ankle in the form of a fracture as he was walking down stairs
2 carrying a box of work brochures. Thus, his left ankle fracture is
3 found to be industrially related and compensable.

4 II.

5 CONCLUSIONS OF LAW

6 To qualify for benefits for an industrial injury, an employee
7 has the burden to demonstrate, by a preponderance of the evidence,
8 that an injury by accident arose out of and in the course of his
9 employment.¹⁵ The Nevada Supreme Court has defined a "preponderance
10 of evidence" as a standard of proof that "should lead the trier of
11 fact to find that the existence of the contested fact is more
12 probable than its nonexistence."¹⁶ Further, in evaluating the
13 evidence of a work injury, the fact finder must consider the
14 totality of the circumstances.¹⁷

15 In establishing a claim for benefits, an injury by accident
16 must be shown. Under Nevada law, an accident is an "unexpected or
17 unforeseen event happening suddenly and violently, with or without
18 human fault, and producing at the time objective symptoms of an
19 injury."¹⁸ While "a sudden and tangible happening of a traumatic
20 nature, producing an immediate or prompt result which is
21 established by medical evidence" constitutes an injury.

22 Applying these statutory definitions, it was unforeseen that

23
24 ¹⁵ NRS 616A.020; NRS 616A.030; NRS 616A.265(1).

25 ¹⁶ Brown v. State, 107 Nev. 164, 166, 827 P.2d 1379, 1381, (1991).

26 ¹⁷ Elc. Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,
1046 (1997).

27 ¹⁸ NRS 616A.020.

28 ¹⁹ NRS 616A.265(1).

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) 487 2830

1 Yasmer would miss a step and fall so the first prong of accident is
2 met. Since it caused him to suffer an ankle fracture, it was
3 capable of producing a harmful result and so happened suddenly and
4 violently. Therefore, Yasmer suffered an accident. Further, there
5 was an injury as a result of that accident since he adduced medical
6 evidence showing a sudden and tangible happening - an ankle
7 fracturing. It was traumatic in nature because it was capable of
8 producing a harmful result in Yasmer's left ankle which was later
9 diagnosed as a fracture.

10 Based on the foregoing, Yasmer has proven he suffered an
11 injury by accident. Further, he has also shown a connection of that
12 injury by accident to his work.

13 Generally, an injury arises out of employment if there is "a
14 causal connection between the injury and the employee's work," in
15 which "the origin of the injury is related to some risk involved
16 within the scope of employment." To find causation a physician
17 must establish to a "reasonable degree of medical probability that
18 the condition in question was caused by the industrial injury or
19 sufficient facts must be shown so that the trier of fact can make
20 a reasonable conclusion that the condition was caused by the
21 industrial injury."

22 There are three categories of risks: employment, personal, and
23 neutral. Employment risks are compensable, personal risks are not
24

25 Mitchell v. Clark Cnty. S. Dist., 121 Nev. 179, 181, 111 P.3d 1104,
26 1106 (2005) (quoting Gorsky, 113 Nev. at 654, 939 P.2d at 146).

27 Harne v. State Indus. Ins. Sys., 113 Nev. 532, 537-P, 936 P.2d 39, 842
(1997).

28 Rio A. v. ..., 113 Nev. 346, 351, 94 P.3d
2, 5 (2004).

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 8
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 compensable, and neutral risks are compensable if they satisfy the
2 increased-risk test.²³ Personal risks are those that are
3 attributable to personal issues - not to the employment.²⁴
4 Employment risks include "obvious kinds of injur[ies] that one
5 thinks of at once as industrial injuries. All the things that can
6 go wrong around a modern factory, office, mill, mine, retail
7 establishment, transportation system, or construction project."²⁵
8 Neutral risks are those that do not fall within either the
9 employment or personal risk categories.

10 Yasmer's injury was caused by an employment risk as his left
11 ankle fracture arose out of his work duties since he was conveying
12 a benefit to his employer when he was carrying the box of work
13 brochures down stairs at the facility where he worked. Accordingly,
14 Yasmer's injury is considered to have arisen from an employment
15 risk and, as such, he has met his burden of proof in showing that
16 his injury arose out of his employment.

17 In the Supreme Court case of Rio All Suite Hotel & Casino v.
18 Phillips, 126 Nev. 346, 240 P.3d 2 (2010), it was found that an
19 injury from climbing stairs was a compensable, neutral risk because
20 the claimant in that matter was required to climb the stairs by her
21 employer. CTHS argued that Yasmer was not required to use the
22 stairs, unlike the claimant in Phillips, and therefore his injury
23 did not arise out of his employment. However, Yasmer argued that
24 the stairs were not dispositive of the issue in this matter but

25 ²³ Id. at 351-53, 240 P.3d at 5-7.

26 ²⁴ Id. at 351, 240 P.3d at 5.

27 ²⁵ 1-4 Larson's Workers' Compensation Law § 4.01.

28 Phillips at 351, 240 P.3d at 6.

NEVADA ATTORNEY FOR INSURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7566
2200 South Ranch Drive, Suite 208
Las Vegas, NV 89102 (702) 400-2800

1 rather it was the act of carrying the box. Yasmer was required to
2 carry the box of brochures, which impeded his vision and caused him
3 to misjudge his location on the staircase, resulting in him falling
4 and fracturing his ankle. Pursuant to Phillips, carrying a box of
5 brochures from one location to another is an employment risk that
6 impedes a person's field of vision. Because of that, Yasmer fell
7 and fractured his ankle, thus, his injury arose out of his
8 employment.

9 Furthermore, the evidence establishes that Yasmer's injury
10 occurred within the course of his employment. "[W]hether the injury
11 occurs within the course of the employment refers . . . to the time
12 and place of employment, i.e. whether the injury occurs at work,
13 during working hours, and while the employee is reasonably
14 performing his or her duties."²⁷ As discussed, Yasmer's injury
15 occurred while he was at work in the hospital. It happened while he
16 was reasonably performing his job duties as he was required to
17 carry the box of brochures. Further, he was claiming a benefit on
18 his employer at the time of the injury.

19 Finally, credible and probative medical evidence, from which
20 a reasonable conclusion can be formed that Yasmer's injury occurred
21 in the course and scope of his employment, was provided by his
22 physicians.²⁸ Specifically, the emergency room doctor checked the
23 box on the C4 form indicating that he could directly connect the
24

25
26 ²⁷ Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

27 ²⁸ See Evans v. Southwest Gas, 102 Nev. 1002, 1006, 842 P.2d 719, 721
(1992).

28 ²⁹ United E. v. S., 109 Nev. 400,
851 P.2d 1000.

Nevada Attorney for Insurance Matters
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684 7555
220 South Reno Blvd., Suite 210
Las Vegas, NV 89102 (702) 496-2810

1 left ankle fracture as job incurred. Also, Dr. Cummings noted that
2 the injury occurred at work when Yasmer missed a step while
3 carrying a box. This reporting is the most persuasive, credible
4 medical evidence and is based on facts supported by evidence."
5 Thus, Yasmer, through his credible testimony and presentation of
6 probative medical reporting, and other evidence, has met his burden
7 of proof in showing that his injury by accident arose out of and in
8 the course of his employment.

9 Based on the foregoing, sufficient facts have been presented
10 to establish, by a preponderance of the evidence, that the June 8,
11 2020, fall caused an injury by accident that arose out of and in
12 the scope of employment. Thus, Yasmer has met his burden of proof
13 for his claim for industrial injury benefits to be compensable
14 under Nevada's workers' compensation scheme.

15 ORDER

16 For the above reasons, the Hearing Officer's August 6, 2020,
17 Decision and Order affirming the third party administrator's June
18 23, 2020, determination regarding claim denial is REVERSED.

19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...

27
28 See NRS 616C.390.
"McLanahan v. Baleva, 11 Nev. 921, 928, 34 P.3d 573, 576 (2001).

1 Therefore, Gallagher Bassett Services, the third party
2 administrator for the employer, Carson Tahoe Health Systems, shall
3 accept Stephen Yasmer's claim, claim number 000706-038452-WC-01,
4 for benefits as a compensable workers' compensation claim and shall
5 provide or reimburse for all appropriate treatment and benefits
6 available under chapters 616A to 617, inclusive, of the Nevada
7 Revised Statutes.

8 IT IS SO ORDERED this 14th day of April, 2021.

9 APPEALS OFFICER

10
11 SHEILA Y. MOORE

12 N O T I C E: Pursuant to NRS 233B.130 and NRS 16C.370, should
13 any party desire to appeal this final decision of the Appeals
14 Officer, a Petition for Judicial Review must be filed with the
15 District Court within thirty (30) days after service by mail of
16 this decision.

17 Submitted by:

18 NEVADA ATTORNEY FOR INJURED WORKERS

19 *Frederick E.*
20 Fred Eikelberger, Esq., Deputy
21 1040 East William St., #200
22 Carson City, Nevada 89701

23
24
25
26
27
28
Nevada Attorney for Injured Workers
1040 East William Street, Suite 200
Carson City, NV 89701
220 South Rancho Drive, Suite 200
Las Vegas, NV 89102

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 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:

STEPHEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES, INC
PO BOX 2934
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102-4375

Dated this 15 day of April, 2021.



Kristi Fraser, Legal Secretary II
Employee of the State of Nevada

EXHIBIT 3

EXHIBIT 3

INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY			
TIME RECEIVED June 8, 2020 at 12:17:33 PM CDT	REMOTE CSIO 7754457570	DURATION 144	PAGES 6
06-09-23:10:01AM:CTH PATIENT FINANCE		STATUS Received	
		17754457570	# 21 6

CARSON TAHOE
HEALTH

EMPLOYEE'S CLAIM FOR COMPENSATION / REPORT OF INITIAL
TREATMENT FORM C-4

Post Office Box 2166
Carson City, Nevada
89702-2166
775445-8030

PAGE 1 of 1

PLEASE TYPE OR PRINT		EMPLOYEE'S SOCIAL SECURITY NUMBER (REQUIRED)	
First Name Stephen	Last Name YASHER	Birth Date 10-18-69	Sex M
Home Address 3357 Carson River Rd	City Carson City, NV	State NV	Zip 89701
Phone CC	Area Code 721	Number 3843	Telephone 721-3843
Working Address same	City Carson City	State NV	Zip 89701
INSURER CTH	THIRD-PARTY ADMINISTRATOR CTH	Employer's Occupation (Job Title) When Injury or Occupational Disease Occurred N/A	Employer's Telephone 445-8000
Employer's Name/Company Name CTH	Employer's Address (Number and Street) 1600 Medical Parkway	City Carson City, NV	State NV
Date of Injury (if applicable) 6-8-2006	Hours of Injury (if applicable) 11 am	Day of Injury (if applicable) 6-8-20	Last Day of Work After Injury or Occupational Disease 6-8-20
Location of Injury (if applicable) Carson Tahoe Hospital	What were you doing at the time of the accident? (if applicable) walking down stairs carrying a box & fell	How did this injury or occupational disease occur? (Be specific and complete in detail. Use additional sheets if necessary) Fell	Supervisor's Name (if injury reported) N/A
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? N/A	Witnesses to this Accident (if applicable) N/A		
Nature of Injury or Occupational Disease Fall		Part(s) of Body Injured or Affected Foot	
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 INDUSTRIAL DISABILITY AND OCCUPATIONAL DISEASE ACT. I AGREE TO PROVIDE OR CLARIFY ANY INFORMATION THAT MAY BE NECESSARY TO DETERMINE ANY FURTHER ACTION OR FACTOR, SUCH AS PRACTITIONER OR OTHER PERSON ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENT HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER ANY MEDICAL OR OTHER INFORMATION IN CONNECTION WITH THIS CLAIM OR PAYABLE. I AGREE TO THIS RELEASE OF INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR CORRELATION FOR ANY PHYSIOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. AUTHORIZATION IS A PREREQUISITE FOR ANY CLAIM TO BE VALID AS THE ORIGINAL.			
Date 6/8/20	Place Carson Tahoe	Employee's Signature Stephen Yasher	
THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 30 WORKING DAYS OF TREATMENT.			
Place Carson Tahoe ER	Name of Facility Carson Tahoe Medical Center		
Date 6/8/20	Diagnosis and Description of Injury or Occupational Disease L Ankle dislocation & Fracture	Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? No <input type="checkbox"/> Yes (if yes, please explain)	
Hour 12:00	Treatment Reduction & Splinting and Casts	Have you advised the patient to refrain from work for a day or more? Yes Indicate date: from 6/8/20 to 6/9/20	
Physician's Name Dr. Yasher	Is the injured employee capable of: <input type="checkbox"/> No <input type="checkbox"/> Modified duty	If modified duty, specify any limitations/restrictions: None	
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job related? Yes <input type="checkbox"/> No	Is additional medical care by a physician indicated? Yes <input type="checkbox"/> No		
Do you know of any previous injury or disease contributing to this condition or occupational disease? No <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain if yes)	Date 6/8/20	Physician's Name Dr. Yasher	Is a copy of this report being made to the employer? Yes
Address 1600 Medical Parkway	City Carson City, NV	State NV	Zip 89701
Physician's Signature Dr. Yasher	Physician's Title MD	Physician's License Number 88052221	Physician's Telephone 775-445-8000

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR

PAGE 2 - INSURER/TPA

PAGE 3 - EMPLOYER

PAGE 4 - EMPLOYEE

Patient Demographic

Form C-4 Rev. (05/20/17)



14

Reg C4 - Page 2/2

CONFIDENTIAL INFORMATION "COPY" This document is for ACCT# 2016000308. Printed by Gloria Angelica Santos
Job 888362 (06/09/2020 10:03) - Page 2 Doc 1

YASHER, STEPHEN
VIN 2016000308
10/10/69
50Y
M

000177

EXHIBIT 4

EXHIBIT 4

Gallagher Bassett Services, Inc.

June 23, 2020

Steven Yashner
2257 Carson River Road
Carson City, NV 89701

Re: Employer: Carson Tahoe
D/Injury: 6/8/20
Claim #: 000706-038452-WC-01

Dear Mr. Yashner:

Gallagher Bassett Services, Inc. administers the workers' compensation program for the above captioned employer. Review of the file indicates that your accident was a result of you miscalculating the steps. There was no work related accident. You are not required to take the stairs as there is an elevator for your use.

NRS 616C.150, 1. An injured employee is not entitled to receive compensation pursuant to the provisions of chapter's 616A to 616D, inclusive, of NRS unless the employee or his dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of employment.

NRS 616A.030 "Accident" means 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 1. "Injury" or "Personal Injury" means 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. Any injury sustained by an employee while engaging in an athletic or social event sponsored by his employer shall be deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event.

If you disagree with this decision, you have a right to file an appeal by completing the attached Request for Hearing form and mailing it, along with a copy of this letter, to the address on the form. The completed Request for Hearing must be received by the hearing division within seventy days of the date of this letter. If you do not appeal within seventy days, you lose your right to appeal.

Sincerely,

Yvette D McCollum

Yvette D. McCollum

Sr. Resolution Manager

Encl: Request for Hearing Form
cc: Employer / Medical provider / file

EXHIBIT 5

EXHIBIT 5

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the
Contested Industrial
Insurance Claim of:

STEPHEN YASMER,

Claimant

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
HONORABLE SHEILA Y. MOORE, ESQ.
APPEALS OFFICER

NOVEMBER 16, 2020
9:00 AM

1050 E. WILLIAMS STREET, SUITE 450
CARSON CITY, NEVADA 89701

Ordered by:

Transcribed By: Wendy Letner, Precise Transcripts

2021 MAY 26 P 12:29

EXHIBIT 6

EXHIBIT 6

EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE		Reset Form Print Form	
Employer's Name CARSON TAHOE HEALTH SYSTEM		Nature of Business (mfg, etc) Healthcare	
City and State 1600 MEDICAL PARKWAY CARSON CITY NV 89703		Location 1600 MEDICAL PARKWAY CARSON CITY, NV	
Phone (775) 445-8176		Third-Party Administrator GALLAGHER BASSETT - LAS VEGAS	
Employer's Name Stephen Yesmer		Date of Birth 10/18/1969	
Home Address (Number and Street) 2257 Carson River Rd		Age 80	
City Carson City NV 89701		Primary Language Spoken English	
Employer's Description (What does he or she do?) Manager Therapy Services		How long has this person been employed by you? 15 Year(s) 2 Month(s)	
Telephone (775) 883-4880		Physical Therapy Scott Malles	
Date of Injury (If applicable) 08/08/2020		Time of Injury (Hour Minute AM/PM) (If applicable) 11:00AM	
Address or location of incident (do not include city, county, state) (If applicable) 1600 MEDICAL PARKWAY CARSON CITY, NV 89703		Date of Report 06/08/2020	
What was the nature of the injury or occupational disease? (Include the activity being performed, the location, and the nature of the injury or occupational disease.) Walking down stairs while carrying a box			
How did the injury or occupational disease occur? (Include the activity being performed, the location, and the nature of the injury or occupational disease.) Employee thought he was at the landing between floors but was still 2 steps up and fell			
Employee began work at: 08:00:00			
Specify machine, tool, equipment, or object most closely connected with the incident (If applicable) Stairs			
Part of body injured (If applicable) Left Ankle			
Nature of injury or occupational disease (per doctor, nurse, etc.) Ankle Dislocation and Fracture			
Location of incident (If applicable) 1600 Medical Parkway Carson City, NV 89703			
Emergency Room Yes			
Has any days per week was employee work? 5			
Hours 8:00			
Are you paying compensation to the employee's wages during disability? Yes			
Date of injury or occupational disease 08/08/2020			
Date of report to pay 6/9/20			
Number of work days lost 00			
Was the employee injured by a motor vehicle? Yes			
For the purpose of compensation, indicate the employee's gross earnings by pay period for 12 months prior to the date of injury or disability. If the injured employee is expected to be off work 3 days or more, attach wage verification form (N-8). Gross earnings will include overtime, bonuses, and all other compensation, but will not include retirement for purposes of this report.			
For purposes of compensation, indicate the employee's gross earnings by pay period for 12 months prior to the date of injury or disability. \$63.76			
For assistance with Workers' Compensation Issues you may contact the Office of the Governor's Health Assistance 24hr Toll Free: 1-888-333-1597 Web site: http://dhs.nv.gov/Programs/CMA E-mail: chd@nv.gov			
Signature of Employer Terry Long RN, Manager Employee			
Date 08/09/2020			
Signature of Employee Class Code			
Date			

EXHIBIT 7

EXHIBIT 7

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

GALLAGHER BASSETT SERVICES, INC.

Entity Number:

C6759-1993

Entity Type:

Foreign Corporation (80)

Entity Status:

Active

Formation Date:

06/11/1993

NV Business ID:

NV19931053644

Termination Date:

Perpetual

Annual Report Due Date:

6/30/2021

Domicile Name:**Jurisdiction:**

Delaware

REGISTERED AGENT INFORMATION

000185

Name of Individual or Legal Entity:

CORPORATION SERVICE COMPANY

Status:

Active

CRA Agent Entity Type:**Registered Agent Type:**

Commercial Registered Agent

NV Business ID:

NV20101844335

Office or Position:**Jurisdiction:**

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Mailing Address:**Individual with Authority to Act:**

GEORGE MASSIH

Fictitious Website or Domain Name:**OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
President	SCOTT R HUDSON	2850 GOLF ROAD, ROLLING MEADOWS, IL, 60008, USA	06/14/2019	Active
Secretary	APRIL HANES-DOWD	2850 GOLF ROAD, ROLLING MEADOWS, IL, 60008, USA	06/14/2019	Active

000186

Title	Name	Address	Last Updated	Status
Treasurer	JACK H LAZZARO	2850 GOLF ROAD, ROLLING MEADOWS, IL, 60008, USA	06/14/2019	Active
Director	JAMES J BOND	2850 GOLF ROAD, ROLLING MEADOWS, IL, 60008, USA	06/14/2019	Active
Director	ELIZABETH STARUCK	2850 GOLF ROAD, ROLLING MEADOWS, IL, 60008, USA	06/14/2019	Active

Page 1 of 2, records 1 to 5 of 6

CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	1,000	1.0000000000000

Page 1 of 1, records 1 to 1 of 1

Unlimited Foreign Entities Only

No Stock Foreign Entities Only

Number of No Par Value Shares:
0

Total Authorized Capital:
1,000

[Filing History](#)
[Name History](#)
[Mergers/Conversions](#)

[Return to Search](#)[Return to Results](#)

EXHIBIT 8

EXHIBIT 8

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

CARSON TAHOE HEALTH SYSTEM

Entity Number:

C17255-2001

Entity Type:

Domestic Nonprofit Corporation (82)

Entity Status:

Active

Formation Date:

06/28/2001

NV Business ID:

NV20011349173

Termination Date:

Perpetual

Annual Report Due Date:

6/30/2022

Solicits Charitable Contribution:

No

REGISTERED AGENT INFORMATION**Name of Individual or Legal Entity:**

000189

ALLISON MACKENZIE, LTD.

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

NEVADA

Street Address:

402 NORTH DIVISION STREET, Carson City, NV, 89703, USA

Mailing Address:

Individual with Authority to Act:

MIKE PAVLAKIS

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Secretary	LORI HANEY	1600 MEDICAL PARKWAY, Carson City, NV, 89703, USA	05/13/2021	Active
Treasurer	DAVID BAKER, M.D.	1600 MEDICAL PARKWAY, Carson City, NV, 89703, USA	05/13/2021	Active
Director	ALAN H GARRETT	1600 MEDICAL PARKWAY, Carson City, NV, 89703, USA	05/13/2021	Active

000190

Title	Name	Address	Last Updated	Status
Director	LORI HANEY	1600 MEDICAL PARKWAY, Carson City, NV, 89703, USA	05/13/2021	Active
Director	DAVID BAKER, M.D.	1600 MEDICAL PARKWAY, Carson City, NV, 89703, USA	05/13/2021	Active

< Previous

...

1

2

3

4

...

Next >

Page 1 of 4, records 1 to 5 of 16

Go to Page

CURRENT SHARES

Class/Series	Type	Share Number	Value
--------------	------	--------------	-------

No records to view.

Number of No Par Value Shares:

0

Total Authorized Capital:

[Filing History](#)[Name History](#)[Mergers/Conversions](#)[Return to Search](#)[Return to Results](#)

EXHIBIT 9

EXHIBIT 9

1 **3060**

Evan Beavers Esq. (NV Bar 3399)

2 ebeavers@naiw.nv.gov

Todd Eikelberger, Esq. (NV Bar 9393)

3 teikelberger@naiw.nv.gov

1000 East William Street, Suite 208

4 Carson City, Nevada 89701

(775) 684-7555; (775) 684-7575

5 Attorney for Respondent, Stephen Yasmer

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

8 IN AND FOR THE COUNTY OF WASHOE

9
10 CARSON TAHOE HEALTH SYSTEM and
11 GALLAGHER BASSETT SERVICES, INC.

12 Petitioner,

CASE NO. CV21-00809

13 vs.

DEPT. NO. 8

14 STEPHEN YASMER; and the STATE OF
15 NEVADA DEPARTMENT OF
ADMINISTRATION, HEARINGS
16 DIVISION, APPEALS OFFICE, an
Agency of the State of Nevada,

17 Respondents.
18 _____/

19
20 **ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

21 This matter comes before the Court on a Petition for Judicial
22 Review of an appeals officer's decision and order rendered on April
23 15, 2021, in favor of Respondent, Stephen Yasmer, filed by
24 Petitioners Carson Tahoe Health System and Gallagher Bassett
25 Services, Inc., on May 3, 2021. A temporary stay pending briefing
26 issued on May 18, 2020. An Opposition to the motion for stay was
27 filed by Respondent, Stephen Yasmer, on May 26, 2021. A Request for
28 Submission of the Motion for Stay was filed on July 1, 2021.

1 Finally, Petitioner's Opening Brief was filed on July 13, 2021.

2 The underlying issue in this matter involves a dispute over
3 acceptance of a workers' compensation claim. Petitioners, Carson
4 Tahoe Health System (herein "CTHS") and Gallagher Bassett Services,
5 Inc., (herein "GBS") filed their Petition for Judicial Review in
6 Nevada's Second Judicial District. However, none of the aggrieved
7 parties reside in Washoe County and the agency proceeding occurred
8 in Carson City so, under the Nevada Administrative Procedure Act
9 (herein "APA"), the petition was not filed in the proper district
10 court. Filing requirements in the statute authorizing judicial
11 review under the APA are mandatory jurisdictional requirements.
12 Therefore, as the petition was improperly filed, this court lacks
13 jurisdiction to conduct judicial review and the matter must be
14 dismissed.

15 **FACTUAL BACKGROUND**

16 CTHS and GBS filed a Petition for Judicial Review on or around
17 May 3, 2021, requesting the court review an April 15, 2021,
18 Decision and Order issued by a Nevada Department of Administration
19 appeals Officer. The petition was filed in the Second Judicial
20 District Court - the district court for Washoe County.

21 The underlying issue in this matter involves a dispute over
22 acceptance of a workers' compensation claim. On June 8, 2020,
23 Yasmer, manager of rehabilitation services for Petitioner CTHS,
24 fractured his ankle when he fell down stairs at Carson Tahoe
25 Hospital in Carson City. He filed a claim for workers' compensation
26 benefits, but it was denied by Petitioner GBS, the third-party
27 administrator for the employer, on June 23, 2020. Yasmer appealed
28 the denial and the matter was heard in front of Appeals Officer

1 Sheila Moore in Carson City, Nevada, on November 16, 2020.

2 The C4 form, which is the claim for compensation, indicates
3 that Stephen Yasmer resides in Carson City, the same place the
4 injury occurred. The C3 form, the employer's report of industrial
5 injury, lists the address for CTHS as Carson City, Nevada.¹ The
6 certificate of service attached to the appeals officer's decision
7 and order, as well as the one attached to the petition for judicial
8 review, lists a Carson City address for Petitioner CTHS and an Iowa
9 address for Petitioner GBS.

10 A review of the Nevada Secretary of State website reveals that
11 Gallagher Bassett Services, Inc., is a foreign corporation from
12 Delaware doing business in Nevada with a registered agent residing
13 in Carson City, Nevada. Carson Tahoe Health Systems is a domestic
14 corporation with a registered agent also residing in Carson City.

15 The petition filed in the Second Judicial District Court
16 pertains to an injury that occurred outside Washoe County, an
17 agency proceeding that occurred in Carson City, and parties that
18 reside outside Washoe County. There is no relationship between
19 Washoe County and the petition filed at all.

20 **DISCUSSION**

21 To challenge a final decision and order issued by a Nevada
22 Department of Administration appeals officer, a party must file a
23 petition for judicial review.² Chapter 233B of the Nevada Revised
24 Statutes contains the Administrative Procedure Act and, more
25 specifically, the requirements for judicial review of a final
26

27 ¹ Exhibit 6.

28 ² NRS 616C.370.

1 decision in an administrative proceeding are found in NRS 233B.130.
2 Further, "the provisions of ... chapter [233B] are the exclusive
3 means of judicial review of, or judicial action concerning, a final
4 decision in a contested case involving an agency to which this
5 chapter applies."^{3 4}

6 "When a party seeks judicial review of an administrative
7 decision [in Nevada], strict compliance with the statutory
8 requirements for such review is a precondition to jurisdiction by
9 the court of judicial review."⁵ Further, "filing requirements are
10 mandatory and jurisdictional."⁶

11 NRS 233B.130(2) contains the requirements for judicial review
12 petitions. Subsection (a) of that section of the statute details
13 the parties to be named, (c) lists additional people to be served,
14 and (d) requires the petition to be filed with 30 days after
15 service of the final agency decision. However, subsection (b)
16 mandates the court in which to file and specifically requires that
17 petitions for judicial review be "instituted by filing a petition
18 in the district court in and for Carson City, in and for the county
19 in which the aggrieved party resides or in and for the county where
20

21 ³ NRS 233B.130(6).

22 ⁴ NRS 233B.020 contains the legislative intent behind the APA and notes it
23 was created to establish the "minimum procedural requirements for the ...
24 adjudication procedure of all agencies of the Executive Department of the
State Government." Thus, the act applies to adjudication procedures of
appeals officers in the Department of Administration.

25 ⁵ Kame v. Employment Security Dep't, 105 Nev. 22, 25, 769 P.2d 66, 68,
26 (1989) citing Teepe v. Review Board of Indiana Emp. Sec. Div., 136
Ind.App. 331, 200 N.E. 2d 538, 539, (1964), (dealing with the time period
for filing a petition).

27 ⁶ Civil Service Com'n for City of Reno v. Second Judicial District Court
28 ex rel. County of Washoe, 118 Nev. 186, 189-190, 42 P. 3d 268, 271,
(2002).

1 the agency proceeding occurred." Applying the residency requirement
2 of subsection (b), the May 3, 2021, Petition for Judicial Review
3 was required to be filed in the district court for Carson City,
4 Nevada.

5 The language of NRS 233B.130(2)(b) is clear and provides three
6 potential jurisdictions where a petition can be filed - the
7 district where the proceeding took place, the district where a
8 petitioner resides, or Carson City. Thus, under Nevada law, one of
9 those three locations must be selected when filing a petition.
10 However, the immediate petition was not filed in compliance with
11 NRS 233B.130(2)(b).

12 Based on the certificates of service of the documents
13 submitted in this matter, the claim forms from the underlying
14 claim, and the entity information from the Nevada Secretary of
15 State, neither Petitioner resides in Washoe County. CTHS resides in
16 Carson City, and GBS does not reside in the State of Nevada as it
17 is a foreign corporation and, as such, cannot reside in any county
18 of the state.⁷ Further, the agency proceeding being appealed did
19 not occur in Washoe County, and, not even the injury at issue
20 occurred in Washoe County. Thus, the Second Judicial District Court
21 does not have jurisdiction to hear the May 3, 2021, Petition for
22 Judicial Review and it must be dismissed.

23 The Nevada Supreme Court has held that failure of a petitioner
24 to strictly comply with the requirements of 233B.130(2) results in
25 a lack of jurisdiction for a district court to consider a petition
26
27

28 ⁷ Liberty Mut. v. Thomasson, 130 Nev. 28, 34, 317 P.3d 831, 836 (2014).

1 for judicial review.⁸ Further, "only those decisions falling within
2 the APA's terms and challenged according to the APA's procedures
3 invoke the district court's jurisdiction."⁹

4 When a petitioner seeks "to invoke a district court's
5 jurisdiction to consider a petition for judicial review, the
6 petitioner must strictly comply with the APA's procedural
7 requirements" contained in NRS 233B.130(2).¹⁰ In short, the Nevada
8 Supreme Court has interpreted NRS 233B.130(2) to be a strict
9 compliance statute, not a substantial compliance statute.¹¹

10 The word "must" precedes paragraphs (a)-(c) of NRS 233B.130(2)
11 and "imposes a mandatory requirement."¹² Thus, "NRS 233B.130(2) (b)
12 is mandatory and jurisdictional."¹³ Failure to follow its
13 requirements deprives a court of jurisdiction and requires the
14 petition to be dismissed.

15 Under Nevada law, "[a] district court is empowered to render
16 a judgment either for or against a person or entity only if it has
17 jurisdiction over the parties and the subject matter."¹⁴
18 Furthermore, if the 30 day filing period contained in NRS
19

20 ⁸ Washoe County v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726 (2012).

21 ⁹ Id. at 431, 282 P.3d 719, 725 (citing Private Inv. Licensing Bd. v.
22 Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1019 (1982)).

23 ¹⁰ Id. at 432, 282 P.3d at 725.

24 ¹¹ See Leven v. Frey, 123 Nev. 399, 406-407, 168 P.3d 712, 717 (2007)
(stating that the Nevada Supreme Court determines whether a statute
25 requires strict or substantial compliance).

26 ¹² Thomasson, 130 Nev. at 31, 317 P.3d at 834.

27 ¹³ Id. at 32, 317 P.3d at 835.

28 ¹⁴ C.H.A. Venture v. G.C. Wallace Consulting Engineers, 106 Nev. 381, 383,
794 P.2d 707, 709, (1990) citing Young v. Nevada Tile Company, 103 Nev.
436, 442, 744 P.2d 902, 905, (1987).

1 233B.130(2)(d) has elapsed, a petitioner cannot correct or
2 otherwise amend its lack of compliance with NRS 233B.130(2)(b) as
3 is the case in the present matter.¹⁵ "Noncompliance with the
4 requirements is grounds for dismissal of the appeal."¹⁶

5 Based on the foregoing, the Second Judicial District Court
6 does not have jurisdiction to consider this matter and the Petition
7 for Judicial Review must be dismissed.

8 **JUDGMENT**


9 THEREFORE, IT IS HEREBY ORDERED that Case Number CV21-00809 is
10 DISMISSED WITH PREJUDICE.

11 IT IS SO ORDERED.

12 DATED this _____ day of _____, 2021.

13
14
15 BARRY L. BRESLOW,
DISTRICT COURT JUDGE

16 Submitted by:

17 
18 NEVADA ATTORNEY FOR INJURED WORKERS
Todd Eikelberger, Esq., Deputy
19 1000 East William Street, Suite 208
Carson City, Nevada 89701
20
21
22
23
24
25

26 ¹⁵ Liberty Mutual v. Thomasson, 130 Nev. Adv. Rep. 4, 317 P.3d 831, 836
(2014).

27 ¹⁶ Kame, 105 Nev. at 25, 769 P.2d at 68 (citing Teepe v. Review Board of
28 Indiana Emp. Sec. Div., 200 N.E.2d 538, 539 (Ind.App. 1964)).