

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 II

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1 CASE NO. CV21-00809

2 DEPT NO. 8

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

7

IN AND FOR THE COUNTY OF WASHOE

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* * * * *

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

11 Petitioner,

RECORD ON APPEAL

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vs.

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

15

Respondents.

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ORIGINAL

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RECORD ON APPEAL

18

IN ACCORDANCE WITH THE

19

NEVADA ADMINISTRATIVE PROCEDURE ACT
(Chapter 233B of NRS)

20

21

22

23 Attorney for Petitioner

Attorney for Respondents

24

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1 CASE NO. CV21-00809

2 DEPT NO. 8

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

7 IN AND FOR THE COUNTY OF WASHOE

8 * * * * *

9 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.

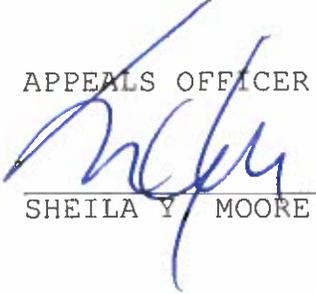
18 _____/

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

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

- 24 1. Record on Appeal

25 APPEALS OFFICER

26 
27 _____
28 SHEILA Y. MOORE

CASE NO. CV21-00809

DEPT. NO. 8

CARSON TAHOE HEALTH SYSTEM and GALLAGHER BASSETT SERVICES, INC.
VS. STEPHEN YASMER; and the STATE OF NEVADA DEPARTMENT OF
ADMINISTRATON, HEARINGS DIVISION, APPEALS OFFICE, an Agency of
the State of Nevada

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1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER
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FILED
APR 15 2021
DEPT. OF ADMINISTRATION
APPEALS OFFICER

6 In the Matter of the
7 Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

8 of

Hearing No.: 2100033-SD

9 Appeal No.: 2100639-SYM

10 STEPHEN YASMER
_____ /

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

21 DECISION AND ORDER

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

28 The above-entitled appeal was heard by the Appeals Officer

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000203
001

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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.

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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
13 the landing and missed the bottom to [sic] stairs falling
14 hard on to his left ankle causing some notable
15 deformity.⁶

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

20 Yasmer was seen at Nevada Occupational Health on June 10,
21 2020, and told he would require an open reduction and internal
22 fixation of the left ankle so he was referred to Dr. Jeffrey
23 Cummings.⁹ Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,

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

25 ³ Testimony of Stephen Yasmer at hearing.

26 ⁴ Id.

27 ⁵ Id.

28 ⁶ Exhibit 1, 8.

⁷ Id. at 10.

⁸ Id. at 1.

⁹ Id. at 16-17.

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1 and indicated he required a "left ankle lateral melleolus 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.

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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).

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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).

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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 _____
26 ²³ Id. at 351-53, 240 P.3d at 5-7.

27 ²⁴ Id. at 351, 240 P.3d at 5.

28 ²⁵ 1-4 Larson's Workers' Compensation Law § 4.01.

²⁶ Phillips at 351, 240 P.3d at 6.

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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.

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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**.

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28 ³⁰ See NRS 616C.098.

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

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

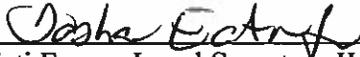
NAIW
1000 E WILLIAM #208
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CARSON TAHOE HEALTH SYSTEM
1600 MEDICAL PARKWAY
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GALLAGHER BASSETT SERVICES, INC
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JOHN P LAVERY ESQ
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Dated this 15 day of April, 2021.



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

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:

RECEIVED
AND
FILED

2021 MAY 26 P 12:29

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
GENERAL INVESTIGATION
AND RECORDS DIVISION

Transcribed By: Wendy Letner, Precise Transcripts

A P P E A R A N C E S

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I N D E X

EXAMINATION

DIRECT

CROSS

REDIRECT

RE CROSS

Todd Eikelberger

6

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John Lavery

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E X H I B I T S

EVIDENCE

IDENTIFIED

ENTERED

Exhibit 1

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Exhibit 2

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P R O C E E D I N G S

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APPEALS OFFICER: It's November 16th, 2020.
It's approximately 9 o'clock in the morning. This is the
time and date set for appeal number 21006--639 in the
contested industrial insurance claim of Stephen Yasmer.
The following employees are present via telephone, Todd
Eikelberger representing Mr. Yasmer, and John Lavery
representing the employer, Carson Tahoe Health System.
This is claimant's appeal of an August 6th, 2020 hearing
officer's decision and order affirming claim denial. I
have a total of two exhibits. We'll start with the
claimant's first exhibit. It was filed November 12th,
2020, and consists of 45 pages. Any objections, Mr.
Lavery?

JOHN LAVERY: No, ma'am.

APPEALS OFFICER: This will be marked and entered
as Exhibit 1. And then we have Carson Tahoe Health Systems
and Gallagher Bassett Services' index of document filed on
November 4th, 2020, and consists of 34 pages. Any objections,
Mr. Eikelberger?

TODD EIKELBERGER: No, Your Honor.

APPEALS OFFICER: Okay. This will be marked and
entered as Exhibit 2. Opening statement, Mr. Eikelberger?

TODD EIKELBERGER: Very briefly, Your Honor. We're
here today asking you to reverse the August 6th, 2020 decision

1 and order denying the claim of Mr. Yasmer as the evidence will
2 show he fell at work. It occurred in the course and scope of
3 his employment as he was carrying a box when he missed a stair
4 coming down and fell and broke his leg.

5 APPEALS OFFICER: Thank you. Mr. Lavery,
6 opening statements?

7 JOHN LAVERY: Yes, ma'am. Again, very
8 briefly, the, the, the, the essential facts in this case I
9 don't believe are in dispute. The claimant was descending a
10 set of stairs, simply miscounted or misstepped and fell and
11 broke his ankle. There's nothing about the workplace
12 environment that caused him to fall. He had the ability to
13 utilize the elevator which he chose not to do so. It's a--
14 it's a Phillips analysis, it's a Mitchell analysis, and
15 there's simply nothing about this actual scenario that brings
16 it within the parameters of either one of those cases. Yes,
17 he was at work. Yes, he was performing a job function. But
18 being at work and having a problem doesn't make your problem
19 work-related. He doesn't satisfy the necessary elements of
20 the Nevada Industrial Insurance Act in the two cases that I
21 just cited to you to establish a compensable, compensable
22 claim in the State of Nevada.

23 APPEALS OFFICER: Thank you. Mr. Eikelberger,
24 which is-would you want to just-do you want me to get your
25 client on the phone at this time?

1 TODD EIKELBERGER: Yes, please.

2 APPEALS OFFICER: Okay. One moment, gentlemen.

3 [Dials, rings].

4 STEPHEN YASMER: Good morning. This is Steve.

5 APPEALS OFFICER: Hi, Mr. Yasmer. This is-my, my

6 name's Appeals Officer Sheila Moore. I'm calling for your

7 Worker's Compensation appeal hearing. One moment and I'll

8 conference in the attorneys.

9 STEPHEN YASMER: Thank you. [Unintelligible]

10 APPEALS OFFICER: Mr. Yasmer is now present

11 with us. Mr. Eikelberger, are you still there?

12 TODD EIKELBERGER: I am.

13 APPEALS OFFICER: Mr. Lavery, are you still

14 there?

15 JOHN LAVERY: Yes, ma'am.

16 APPEALS OFFICER: Thank you. Okay. Mr.

17 Eikelberger, at this time would you like to call your first

18 witness?

19 TODD EIKELBERGER: Yes, Your Honor. I'd like to

20 call Stephen Yasmer.

21 APPEALS OFFICER: Okay. Sir, at this time I do

22 need to swear you in so if you will please raise your

23 right. Do you swear or affirm the testimony you're about

24 to give in this matter is the truth, the whole truth, and

25 nothing but the truth? Mr. Yasmer?

1 STEPHEN YASMER: I do.

2 APPEALS OFFICER: Thank you, sir. These
3 proceedings are audio recorded so please wait for the
4 completion of each question before you begin answering. It
5 simply makes for a cleaner transcript. Okay, sir?

6 STEPHEN YASMER: Yes.

7 APPEALS OFFICER: Okay. Thank you. Mr.
8 Eikelberger, go ahead.

9 TODD EIKELBERGER: Thank you, Your Honor. Mr.
10 Yasmer, can you please state your name and spell it for the
11 court?

12 STEPHEN YASMER: My first name is Stephen, S-
13 T-E-P-H-E-N, last name is Yasmer, Y-A-S-M-E-R.

14 TODD EIKELBERGER: And were you working on June
15 8th, 2020?

16 STEPHEN YASMER: Yes, I was.

17 TODD EIKELBERGER: And who were you working for?

18 STEPHEN YASMER: Carson Tahoe Health.

19 TODD EIKELBERGER: And what do you do for that
20 company?

21 STEPHEN YASMER: My position there is the
22 manager of rehab therapy services.

23 TODD EIKELBERGER: And what does that job
24 entail?

1 STEPHEN YASMER: I manage a department of 69
2 employees consisting of physical therapists, occupational
3 therapists, speech pathologists, and support staff, and
4 those employees work in four different physical locations.

5 TODD EIKELBERGER: And where are those
6 locations?

7 STEPHEN YASMER: The main hospital at the
8 north end of Carson City. The specialty medical center
9 which is the old hospital on Fleischmann here in Carson
10 City. There is an outpatient clinic in the Carson Mall
11 which is on South Stewart Street and an outpatient clinic
12 in the Minden Medical Center on Ironwood Drive.

13 TODD EIKELBERGER: And does your job require you
14 to visit all those locations?

15 STEPHEN YASMER: Yes.

16 TODD EIKELBERGER: Okay. And where are you
17 based out of?

18 STEPHEN YASMER: My office is physically
19 located at the outpatient clinic in the Carson Mall on
20 South Stewart Street.

21 TODD EIKELBERGER: Okay. And how often do you
22 visit all the different locations?

23 STEPHEN YASMER: Several times a week.

24 TODD EIKELBERGER: Okay. And did you suffer an
25 injury while you were working for that company on June 8th,

1 2020?

2 STEPHEN YASMER: Yes, I did.

3 TODD EIKELBERGER: Can you tell the court what
4 happened?

5 STEPHEN YASMER: I was leaving or had left
6 the, the therapy office at the main hospital which is on
7 the third floor and I was transporting a box of supplies
8 consisting of facemasks and disinfectant spray that needed
9 to go to the outpatient clinic on South Stewart Street. I
10 was descending stairs from the third floor with the
11 supplies and missed a step. I fell and landed on the
12 landing in between the first and second floors and
13 sustained an injury to my left ankle.

14 TODD EIKELBERGER: And why in your opinion did
15 you miss a step?

16 STEPHEN YASMER: I-well, I was descending as I
17 normally do those stairs. I have done so hundreds of
18 times. But I think the, the box impaired my ability to see
19 exactly where I was. I know that I thought I had reached
20 the landing and that's why I stepped out into space when I
21 was still two steps up.

22 TODD EIKELBERGER: Okay. And did the box make
23 it more difficult to traverse those steps?

24 STEPHEN YASMER: It, it didn't make it more
25 physically difficult but it did impair my ability to see.

1 Like I said, I thought I had reached the landing but I had
2 not.

3 TODD EIKELBERGER: And does it take longer to
4 take the elevator than it does to take the stairs?

5 STEPHEN YASMER: Yes.

6 TODD EIKELBERGER: Okay. And why is it that you
7 take the stairs there?

8 STEPHEN YASMER: As a matter of habit. I had-
9 -I have taken those stairs since that hospital opened
10 almost 15 years ago. It's very common in healthcare
11 practice to avoid elevators and get some exercise as a
12 normal part of your day.

13 TODD EIKELBERGER: And do you always take the
14 stairs?

15 STEPHEN YASMER: Yes.

16 TODD EIKELBERGER: Okay. And how often do you
17 take those stairs on an average day?

18 STEPHEN YASMER: Probably about a half a dozen
19 times just depending on meetings and where those meetings
20 are located in the hospital.

21 TODD EIKELBERGER: Okay. And do you use the
22 stairs to go up and down?

23 STEPHEN YASMER: Yes.

24 TODD EIKELBERGER: Is, is there any requirement
25 that you take the elevator?

1 STEPHEN YASMER: No.

2 TODD EIKELBERGER: Okay. Now, following that
3 fall, what body parts were injured?

4 STEPHEN YASMER: My left ankle.

5 TODD EIKELBERGER: Okay. And if reporting
6 indicates there's anything to the knee would that be a
7 typo?

8 STEPHEN YASMER: Perhaps. I think I, I may
9 have banged my knee and I may have mentioned that in the
10 emergency room, but, it, it was a superficial injury.

11 TODD EIKELBERGER: Okay. And so, you said you
12 went to the emergency room. Did you seek treatment right
13 after this fall?

14 STEPHEN YASMER: I did.

15 TODD EIKELBERGER: And where was that treatment?

16 STEPHEN YASMER: I had to be assisted out of
17 the stairwell and then taken to the emergency department
18 there at the main hospital, the regional medical center.

19 TODD EIKELBERGER: And what was diagnosed?

20 STEPHEN YASMER: I had sustained a dislocation
21 of my left ankle and a fracture of my distal fibula.

22 TODD EIKELBERGER: And did you file a claim?

23 STEPHEN YASMER: I did.

24 TODD EIKELBERGER: And was the claim accepted?

25 STEPHEN YASMER: It was not.

1 TODD EIKELBERGER: And what treatment have you
2 had on that ankle and why?

3 STEPHEN YASMER: In the emergency room they
4 reduced the dislocation. In other words, they just got the
5 bones back in alignment where they belong and splinted me.
6 I had a subsequent consultation with an orthopedist who
7 performed a surgery on the ankle to secure the fractured
8 bone. And let's see, that was June. About two and a half
9 months later I developed an infection in that ankle. I had
10 a second surgery to remove the hardware.

11 TODD EIKELBERGER: And since that accident, have
12 you been able to work?

13 STEPHEN YASMER: I have.

14 TODD EIKELBERGER: Okay. And are you still
15 working for that company?

16 STEPHEN YASMER: Yes, I am.

17 TODD EIKELBERGER: Okay. Nothing further, Your
18 Honor.

19 APPEALS OFFICER: Thank you. Mr Lavery?

20 JOHN LAVERY: Thanks, Your Honor. Sir, can
21 you hear me?

22 STEPHEN YASMER: I can.

23 JOHN LAVERY: Okay. As long--as long as
24 you and I can hear each other. Looks like you're not

1 required to use the elevator. You're not required to use
2 the stairs, correct?

3 STEPHEN YASMER: I am not.

4 JOHN LAVERY: Okay. So, you, you simply
5 made a choice. It's your--it's your personal preference to
6 go up and down the stairs?

7 STEPHEN YASMER: It is.

8 JOHN LAVERY: Okay. And if I'm in the
9 hospital I [unintelligible] as just Joe Admins [ph] coming
10 in and out of the door I could go up and down the stairs.
11 I could go up and down the elevator just like you can,
12 right?

13 STEPHEN YASMER: The public is directed to the
14 elevators. The stairs are available as an emergency exit
15 for visitors.

16 JOHN LAVERY: Okay. So, I, I have access
17 to them just like you do? I have the ability to go use the
18 stairs if I wanted, but if I say I want the exercise and I
19 want to go up and down the stairs, I can go up and down the
20 stairs as well, correct?

21 STEPHEN YASMER: You may.

22 JOHN LAVERY: Okay. And you said that
23 there is the boxes that you were carrying didn't impinge
24 your ability to, to walk up and down the stairs, correct?

1 STEPHEN YASMER: It was a single box and it
2 did--it did not--it was not a heavy box. I'm not sure I
3 understand your question, but it was not a heavy box.

4 JOHN LAVERY: Okay. It didn't--it didn't
5 impede your ability to walk or move up and down the stairs,
6 correct?

7 STEPHEN YASMER: It did [unintelligible].
8 Physically walk, no. It did impede my vision a bit.

9 JOHN LAVERY: I have nothing further.
10 Thank you.

11 APPEALS OFFICER: Thank you, Mr. Lavery. Mr.,
12 Mr. Eikelberger.

13 TODD EIKELBERGER: Yeah. Very briefly. You
14 said that the public is directed towards the elevator. But
15 they do have the option to take the stairs? Is that right?

16 STEPHEN YASMER: That is correct.

17 TODD EIKELBERGER: But the signs in the hospital
18 would direct them towards the elevator if they wanted to go
19 up and down in the hospital. Is that right?

20 STEPHEN YASMER: That is correct. The ho-the
21 elevators have signage that for, for nonemployees that is
22 a, a directory of where various departments are located and
23 how to get there. The stairs do not have those things.

24 TODD EIKELBERGER: Okay. Nothing further, Your
25 Honor.

1 APPEALS OFFICER: Thank you. Mr. Lavery, any
2 follow-up?

3 JOHN LAVERY: There's nothing that requires
4 you to go up and down using the elevator, however. If I
5 had walked to the--to the elevator and find out that your
6 department's on the third floor and I'm coming to see you I
7 can walk down the hall to the stairs and go up the stairs,
8 correct?

9 STEPHEN YASMER: The doors are not locked.
10 You can. Yes, you can freely enter the stairwells.

11 JOHN LAVERY: Okay. Okay. Thank you.
12 Nothing further.

13 APPEALS OFFICER: Mr. Eikelberger, anything
14 further?

15 TODD EIKELBERGER: No, Your Honor.

16 APPEALS OFFICER: Thank you for your testimony,
17 Mr., Mr. Yasmer. Mr. Eikelberger, any further testimony on
18 behalf of the claimant?

19 TODD EIKELBERGER: No, Your Honor.

20 APPEALS OFFICER: Mr. Lavery, any testimony on
21 behalf of the employer?

22 TODD EIKELBERGER: No, Your Honor.

23 APPEALS OFFICER: Okay. I believe this
24 [unintelligible] is appropriate for final argument. Mr.
25 Eikelberger, go ahead.

1 TODD EIKELBERGER: Thank you, Your Honor. On
2 Exhibit 1, page 1 is the C4 form and it does show as per
3 claimant's testimony that he was walking down the stairs
4 carrying a box and he fell. The doctor diagnosed a left
5 ankle dislocation and a fracture and indicated that he
6 believed that the claim was industrially related or related
7 to his work. The C1 form is on page 3 of that exhibit, and
8 on that form the employer does not doubt the validity of
9 the claim nor does the employer indicate that there was a,
10 a, a policy or procedure that had the root cause towards
11 the injury. The claim was denied on June 23rd, 2020 on
12 page 4, and it was denied indicating that the review of the
13 file indicates the accident was a result of the
14 miscalculating steps. There was no related--a work-related
15 accident and you are not required to take the stairs as
16 there is an elevator. That was affirmed by a decision and
17 order of the hearing officer on page 5 of the exhibit.
18 Page 8 gets into the actual treatment, and I'll go briefly
19 over these because I don't think that there's an issue as
20 to what was injured and what the treatment entailed. But
21 page 8 indicates that the patient is a 50-year-old male who
22 is a physical therapist here at our facility who reports
23 that he was carrying a box of supplies down to the basement
24 when he thought he was on the bottom of the stairs and
25 [unintelligible] that there's still more stairs but he

1 [unintelligible] he stepped forward thinking he was
2 stepping on the landing and missed the bottom of the stairs
3 falling hard on his left ankle causing some notable
4 deformity. On page 10 the final diagnosis was acute left
5 ankle dislocation, acute fibular fracture, and acute left
6 posterior malleolus [ph] fracture. On page 15 claimant
7 went to Nevada Occupational Health and it shows that on
8 June 10th, 2020, that he, Mr. Yasmer, rolled his left ankle
9 when he went to step going down some stairs with a box at
10 work [unintelligible] days ago. He went to the ER where he
11 was found to have a fracture dislocation of the ankle which
12 was reduced in the emergency room. And on page 17 of the
13 [unintelligible] patient required open reduction internal
14 fixation of the left ankle. We have set up an appointment
15 for him to see Dr. Cummings, orthopedist, later this week
16 who will assume the patient's care. Claimant went to Dr.
17 Cummings on June 12th, 2020 on page 18. He noted that he
18 needed a left ankle malleolus and syndesmosis, open
19 reduction internal fixation. On page 20 on June 12th, the
20 doctor indicated Stephen is a new patient referred by Dr.
21 [unintelligible], 50-year-old male who presents after a
22 left ankle injury. He was going down the stairs of the
23 hospital with boxes and twisted his ankle. He had a
24 fracture dislocation of the ankle. He had a fibula
25 fracture with posterior displacement of the talus. There

1 is no sign of a posterior malleolar fracture. Seems to be
2 only laterally [unintelligible] reduced as well as the
3 syndesmosis. Page 22 he indicates that [unintelligible]
4 left ankle open reduction internal fixation of the left
5 malleolus, some possible syndesmosis, open reduction and
6 internal fixation as well. The surgical report is on page
7 25 for those procedures that he had done. On page 34 the
8 doctor notes on July 28th that at this point being it is a
9 serious one we are going to tentatively put him on for
10 Monday for irrigation and debridement, closure of the
11 wound. He will check in with us on Thursday. On page 36
12 it was then noted that he has a malleolus fracture and
13 syndesmosis repair, open reduction and internal fixation
14 and was doing better with [unintelligible] for the most
15 part stopped over the lateral malleolus. He says there's
16 just one little pinhole but for the most part, it is doing
17 fine. We had it drained, and on page 39 is the report for
18 the drainage of that wound. And finally, on page 43,
19 September 15th, 2020, it notes that a 50-year-old male who
20 is here for follow-up regarding his left ankle status post
21 ID and removal of deep hardware. The wound is healing
22 well. Based on that, Your Honor, it's our contention that
23 this claim does qualify as a Worker's Compensation claim
24 under 616C.150 which does indicate that an employee or
25 dependent of the injured employee are not entitled to

1 receive compensation pursuant to the provisions of chapter
2 616A and 616B inclusive of NRS unless the employee or the
3 dependent establish by the preponderance of the evidence
4 that the employee's injury arose out of and in the course
5 of his employment. Now, under that statute, Your Honor, we
6 have claimant's testimony as well as the records that show
7 that he was working at the time of this injury and he was
8 doing his job at the time of the injury and it was his job
9 that did cause the injury. He was taking a box of supplies
10 from one location that his--where he was overseeing to
11 another location and missed a step because he had the box
12 in the way and couldn't see it. He testified it did impede
13 his vision. Without that box, he may have gone up and down
14 those stairs just fine. In this case, we'll also submit
15 that he meets the definitions of NRS 616A.030 accident
16 which is an unexpected or unperceived event happening
17 suddenly and violently with or without human fault and
18 producing at the time of objective symptoms of the injury
19 given that he would not foresee that he was going to trip
20 on the chairs, and it did cause a, a violent injury to him.
21 There was no fault. He was simply going down the stairs
22 with that box and he also suffered an injury which was
23 [unintelligible] 616A.265 which is a sudden and tangible
24 happening of a traumatic nature producing an immediate or
25 [unintelligible] which is established by medical evidence.

1 In this case, again, it was established by medical evidence
2 that he had broken his ankle or broken his fibula and also
3 suffered a strain to his ankle. Based on that, he has
4 suffered, therefore, an injury or accident and does clearly
5 meet the definition under 616C.150. However, that case or
6 that issue was taken up by the Supreme Court in Rio All
7 Suites Hotel and Casino versus Phillips which was at 126
8 Nevada 346, 240 [unintelligible] third, page 2. And the
9 court looked at cases to determine whether or not injuries
10 were personal in nature, work-related, or non-work related
11 and non-personal in nature, and the court noted on page 351
12 of the Nevada Reporter, on page 5 of the Pacific Reporter,
13 that injuries resulting from employment-related risks for
14 all the obvious type of injuries that [unintelligible]
15 Exhibit 1 as industrial injuries that are generally
16 compensable according to Larsen [ph], [unintelligible]
17 involved that are due to employer risk including tripping
18 on a defect at the employer's premises or falling on any
19 [unintelligible] ground at the worksite. I would submit to
20 you that in a very similar hearing and case though there
21 wasn't a specific defect, carrying a box which he had to
22 carry for his work because he was transporting from one
23 location to the other impeded his view and he then tripped
24 on the stairs because he did not see that he was not on the
25 last step but--or on the ground step but had one more step

1 to go. The court further notes the personal risk for those
2 that are still clearly personal, but even if they affect--
3 take effect while the employee is on the job they could not
4 possibly be attributed to the employment. And then it
5 talks about neutral risks which are neither distinctly
6 employment nor distinctly personal in character. The court
7 then further indicates there on, on page 353 of the Nevada
8 Reporter, on page 7 of the Pacific Reporter, under the
9 increased risk test which is the test that they determine
10 to use when they consider a neutral risk, an employee may
11 recover if she is subjected to a risk greater than that to
12 which the general public is exposed even if the risk to
13 which the employee is exposed is not quantity-qualitatively
14 peculiar to the employment, the injury may be compensable
15 as long as you gave us an increased quantity of risk.
16 Thus, when an employee is exposed to common risks more
17 frequently than the general public there may be an
18 increased risk. In the Phillips case, the court noted
19 further down the act of ascending a staircase at work in it
20 of itself does not present a greater risk than the facts--
21 or than faced by the general public, however, when an
22 employee is required to use the stairs more frequently than
23 a member of the general public, she faces an increased risk
24 of injury. Moreover, steps of an unusual height or the
25 manner in which an employee is required to perform her job

1 may increase her risk of falling on a staircase. That is
2 also relevant here, Your Honor. If it is not determined he
3 was [unintelligible] actually doing his work and that it
4 was a work-related risk given that he was transporting a
5 box which impeded his view because again he did have the
6 box. So, in this case, it was definitely the manner in
7 which he was required to perform his job increased his risk
8 of falling on the staircase because he was transporting
9 that box. Further, he did indicate he always takes the
10 stairs. The stairs are faster than taking the elevator.
11 He takes those stairs at least six times a day. Whether he
12 is required to or not he still takes them six times a day
13 which is greater than the use--the general public would use
14 them. So, when he comes to the hospital he'd go up the
15 stairs once wherever they're going and then back down them.
16 He also is on the third floor going down to the bottom
17 floor so that's three flights of stairs both ways, again,
18 six times a day, and further as noted he was carrying the
19 box. He also testified that the general public is
20 generally directed to the elevators for [unintelligible]
21 for their use rather than the stairs, and on the elevator
22 is [unintelligible] a directory of where to go as the post-
23 -the stairs which do not have that directory and do not
24 direct the employee or the member of the general public as
25 to where to go. Based on that, it is our position the

1 claimant has shown that he suffered an injury by accident
2 in the course and scope of his employment meeting the
3 requirements--statutory requirements. And further, we
4 believe it's a work-related risk meeting the Phillips test
5 and that it should be compensable. But if it is concluded
6 that it is a neutral risk, it is our position that he also
7 meets those requirements given the nature of the task he
8 was doing, the fact that he was carrying the box, and the
9 fact that he takes the stairs far more than the general
10 public [unintelligible] directed to use the elevator.

11 Thank you.

12 APPEALS OFFICER: Thank you. One moment,
13 please. Mr. Lavery, go ahead.

14 JOHN LAVERY: Thank you, Your Honor. You
15 sort of grazed by the dispositive portion of that which was
16 this gentleman is not required to use the stairs. In fact,
17 he--he's in a place that the general public whether they
18 choose to or not just, just like Mr. Yasmer chose to
19 utilize the staircase, I have the equal ability and the
20 equal right to utilize the stairwell as well. He is not
21 required to utilize the stairwell. He did so out of--out
22 of habit by his own choice. That's not a requirement of
23 the employer. I am not disputing that he was injured and
24 clearly he was. He fell but he fell as a result of a
25 misstep and nothing further. There is nothing about the

1 workplace environment, there's nothing about the employment
2 that caused him to fall. He simply misstepped and he
3 misstepped in an area where the general public has equal
4 access and equal right to be. In Phillips, you had a maid
5 who was required to utilize the stairwell and did it
6 thousands of times over the course of the year. That's not
7 the case here. At, at most, Mr. Yasmer says he goes up and
8 down those stairs six times a day if that. By his own
9 acknowledgment, he's not even in that building every day.
10 So, to suggest that somehow he's at a greater risk than you
11 or I walking up and down the, the, the stairwell is, is
12 simply incorrect. In fact, he's acknowledged and the
13 employer's acknowledged, everybody's acknowledged that he
14 had access to a--to an elevator and he believed that he was
15 at some greater risk. He had the ability to utilize that
16 elevator and made a choice not to. That choice did not
17 impute [ph] it to the employer as some form of a
18 requirement for him to do what he did. This is in fact a
19 Phillips analysis. He doesn't satisfy the essential
20 elements of, of those because he's not required to do
21 anything. None of this is mandatory or required by his
22 employment. And, and that's what the, the analysis that
23 was put forth to you failed because he's not required to do
24 any of it. Even if he was required to carry the box he's
25 not required to carry the box down the stairs which

1 distinguishes it from Phillips and the analysis that needs
2 to be done. So, to suggest that somehow he was required to
3 carry the box, he was required to carry the box down the
4 stairs isn't supported by the record. It isn't supported
5 by Mr. Yasmer's own testimony. Yes, he was at work. Yes,
6 he fell. That is--that is the end of the analysis in terms
7 of, of whether or not there is a, a causal relationship
8 under Mitchell, under Phillips. Clearly, it's not a Gorsky
9 issue. I'm not sitting here saying Mr. Yasmer had some
10 predisposing condition that caused him to fall and that's a
11 distinction that the Supreme Court made in Phillips. But
12 the Supreme Court has also been quite clear that being at
13 work and having a problem doesn't make your problem work-
14 related. The mere fact that you were at work and fell
15 doesn't now somehow come back to the employer as a
16 compensable element. So, once we get past the fact that he
17 wasn't required to, to be where he was or do what he did,
18 and he wasn't required to do either one, then he fails in
19 the Phillips analysis. And it also appears to be the, the
20 dispositive case on the issue and it's very rare in Nevada
21 that we even have that. But in this particular
22 circumstance, it--it's virtually identical in terms of the
23 analysis but the factual predicant--the, the factual basis
24 upon which Phillips was decided was that someone was
25 required--was required. It was mandated. They didn't have

1 a choice to do a certain thing a tremendous number of times
2 over the course of the year up and down the same set of
3 stairs. And the court said you are at a greater risk
4 because you've got--you, you have to do it so many times.
5 That scenario doesn't exist here. This company
6 [unintelligible] by, by Mr. Yasmer's own acknowledgment.
7 And, and I'm not saying--this is not a fault thing. I'm
8 not saying that Mr. Yasmer did something wrong or
9 intentionally did something, but he made a choice. He had
10 a choice. He exercised a choice. He was not required to
11 do anything. It was the--there is nothing about the, the
12 work environment. There's nothing about the work scenario
13 that caused him to fall. He simply misstepped. Every one
14 of us missteps. Anybody that says they don't
15 [unintelligible] isn't telling the truth in my--in my
16 estimation. Everybody has misstepped at one point or
17 another. Mr. Yasmer simply did that while he was at work.
18 That doesn't bring him within the course and scope of his
19 employment. It doesn't bring him under the purview of
20 Phillips for establishing a compensable claim. The factual
21 scenario as he's acknowledged today, as everyone's
22 acknowledged, the fact that he is not required to do any of
23 the things that led up to his fall doesn't bring him within
24 the course and scope of his employment, and under the
25 Phillips' analysis the, the hearing officer was correct in

1 affirming my client's determination to deny this claim.

2 And I'll submit it to you on that basis [ph].

3 APPEALS OFFICER: Thank you, Mr. Lavery. Mr.
4 Eikelberger?

5 TODD EIKELBERGER: Yes, Your Honor. The
6 dispositive issue here isn't the stairs. It's the box he
7 was carrying. Mr. Yasmer [unintelligible] going up and
8 down the stairs and her vision was unimpeded. She simply
9 slipped on those stairs and it was found because she did it
10 thousands of times a [unintelligible] in a year that that
11 was going to be covered. In this case, he--Mr. Yasmer also
12 does go up and down those stairs thousands of times though
13 he may not be required to but he was required to carry that
14 box. And he could have tripped and misstepped and broken
15 his ankle and his leg or sprained his ankle and broken his
16 leg even without going on the stairs because the box was
17 impeding his vision and that's what made him misstep. That
18 is his testimony. He has gone up and down those stairs six
19 times a day every day at work. He does it all the time and
20 he generally doesn't misstep. He did testify that he--that
21 he had to carry that box which was a requirement of his
22 work. That is what caused him to misstep. Again, he just
23 happened to do it on the stairs which is where he fell and
24 broke his leg. He could have also done that anywhere and
25 potentially also sprained his ankle and broken his leg

1 because the box was impeding his view. Therefore, it does
2 fall under the neutral risk under Phillips--under the
3 Phillips case and should be compensable. Although again,
4 because he was carrying the box which was part of his job
5 and then he fell, we do also believe that that was a work-
6 related risk. Further, Your Honor, carrying that box he
7 could have had this misstep and had it anywhere. He is not
8 required to take the stairs, no, but just as if someone
9 tripped over something else, the, the carpet, a rug, and
10 anything else they couldn't see while they're walking
11 somewhere they weren't necessarily required to use that
12 route, but it was because of what they were carrying and
13 what they were doing that caused the--whatever misstep that
14 he had and then he suffered an injury. That is the same
15 situation here. It's not the stairs that are dispositive,
16 it's the fact that he was doing his job and taking a box of
17 supplies over to another location. Thank you.

18 APPEALS OFFICER: Thank you. At this time,
19 this matter is submitted for decision. Mr. Yasmer, if you
20 have any questions regarding these proceedings you can
21 direct those to your attorney, but I'll have a decision and
22 order rendered within 30 days. And with that, we are off
23 the record.

24 [END OF PROCEEDINGS]
25

CERTIFICATE OF TRANSCRIPT

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

In the Matter of the
Contested Industrial
Insurance Claim of:

STEPHEN YASMER,

Claimant

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

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

I further certify that this transcript is a true, complete and accurate record of the proceeding that took place in this matter on November 16, 2020 in Carson City, Nevada.



Wendy Letner
Precise Transcripts
May 19, 2021

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Industrial Insurance Claim,

of

STEPHEN YASMER

Claim No.: 000706-038452-WC-01

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

DOH: 11/16/2020, at 9:00 a.m.

FILED

NOV 12 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

CLAIMANT'S FIRST EXHIBIT

Page #

1	C-4 Form	
2	C-3 Form	
3	C-1 Form	
4	Insurer's Claim Denial Letter	06/23/2020
5-7	Hearing Officer's Decision and Order Hearing Number 2100033-SD	08/06/2020
8-12	Medical Reporting - ER at Carson Tahoe Health	06/08/2020
13-14	Diagnostic Testing Reports - Carson Tahoe Health	06/08/2020
15-17	Medical Reporting - Nevada Occupational Health	06/10/2020
18-19	Surgery Procedure Information - Tahoe Fracture	06/12/2020
20-22	Medical Reporting - Nevada Occupational Health	06/12/2020
23	New Referral Form - Nevada Occupational Health	06/12/2020
24	Physician Order for Surgery - Tahoe Fracture	06/12/2020
25-26	Operative Report - Carson Tahoe Health	06/15/2020
27	Diagnostic Testing Report - Carson Tahoe Health	06/15/2020
28-31	Medical Reporting - Tahoe Fracture	06/30/2020
32-35	Medical Reporting - Tahoe Fracture	07/28/2020

ENTERED INTO
EVIDENCE AS EXHIBIT

1
041

000243

1 36-38 Medical Reporting - Tahoe Fracture 08/25/2020
2 39-40 Operative Report - Carson Tahoe Health 09/02/2020
3 41-42 Medical Reporting - Tahoe Fracture 09/03/2020
4 43-45 Medical Reporting - Tahoe Fracture 09/15/2020

5 AFFIRMATION

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

8 DATED this 12th day of November, 2020.

9
10 NEVADA ATTORNEY FOR INJURED WORKERS

11 

12 Todd Eikelberger, Esq., Deputy
13 Attorney for Claimant
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*** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY ***

TIME RECEIVED
June 8, 2020 at 12:17:33 PM CDT
06-09-20; 10:01AM: CTH PATIENT FINANCE

REMOTE CSID
7754457570

DURATION
144

PAGES
6

STATUS
Received

: 7754457570

2 / 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
775445-8000

PAGE 1 of 1

EMPLOYEE'S CLAIM FOR COMPENSATION		PROVIDER'S INFORMATION REQUESTED	
First Name Stephen	ML	Last Name Yasmer	Birthdate 10-18-69
Sex ♂	Claim Number (Insurers Use Only)	Age 50	Height
Home Address 2257 Carson River DR	City CC	State NV	Zip 89701
Telephone 721-3843	Primary Language Spoken	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
Address or Location of Accident (if applicable) Carson Tahoe Hospital	Last Day of Work After Injury or Occupational Disease 6-8-20	Supervisor to Whom Injury Reported N/A	Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred
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	Witnesses to the Accident (if applicable) 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		Nature of Injury or Occupational Disease Fall	
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 ACT (NRS 616A TO 616D INCLUSIVE OR CHAPTER 817 OF NRS). I HEREBY AUTHORIZE ANY PHYSICIAN OR 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 IS VALID AS LONG AS THE ORIGINAL PHOTOSTAT SHALL BE AS VALID AS THE ORIGINAL.		Date 6/8/20	
THIS REPORT		LETTERED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT	
Place Carson Tahoe ER	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)	
Date 6/8/2020	Treatment: Reduction & splinting and casted	Have you advised the patient to remain off work five days or more? <input checked="" type="checkbox"/> Yes Indicate dates: from 6/8/20 through 6/13/20	
Hour 12:00	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		Do you know of any previous injury or disease contributing to this 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	INSURER'S USE ONLY	Date	
City Carson City, NV	Provider's Tax ID Number 830502301	Telephone 775-445-8000	
Doctor's Signature Stephen Yasmer	Degree	Date	

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR

PAGE 2 - INSURER / TPA

PAGE 3 - EMPLOYER

PAGE 4 - EMPLOYER

Patient Demographics

Form C-4 Rev. (05/28/12)



14

Reg C4 - Page 2/2

CONFIDENTIAL INFORMATION *COPY* This document is for ACCT# 2018000308. Printed by Gloria Angelica Santos

Job 886362 (06/09/2020 10:03) - Page 2 Doc# 1



YASMER, STEPHEN

PTH# 2016000308 MR# 020163119

10/18/69

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000245

043

TO AVOID PENALTY, THIS FORM MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 5 WORKING DAYS OF RECEIVING THIS FORM. Reset Form Print Form EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

EMPLOYER INFORMATION: Employer's Name: CARSON TAHOE HEALTH SYSTEM; Nature of Business: Healthcare; FEIN: 88-0602318; OSHA Log #: MV6549399; Office Mail Address: 1600 MEDICAL PARKWAY; Location: 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 INFORMATION: First Name: Stephen; Last Name: Yasmer; Birth-date: 10/18/1969; Age: 50; Primary Language Spoken: English; Home Address: 2257 Carson River Rd; City: Carson City; State: NV; Zip: 89701; Sex: Male; Marital Status: Married; Was the employee paid for the day of injury? Yes; 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: Manager Therapy Services; Department: Physical Therapy

ACCIDENT OR DISEASE INFORMATION: Date of Injury: 06/08/2020; Time of Injury: 11:00AM; Date employer notified: 06/08/2020; Address of location of accident: 1600 MEDICAL PARKWAY CARSON CITY, NV 89703; What was the employee doing: Walking down stairs while carrying a box; How did this injury or occupational disease occur: 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 INFORMATION: Specify machine, tool, substance, or object most closely connected with the accident: Stairs; Part of body injured: Left Ankle; Nature of injury: Ankle Dislocation and Fracture; Training physician name: Dr. Daryl Calvo; Location of Initial Treatment: 1600 Medical Parkway Carson City, NV 89703; Did employee return to next scheduled shift after accident? No; Will you have light duty work available? No

EMPLOYMENT INFORMATION: How many days per week does employee work? 5; From 8:00 am To 4:30 pm; Last day wages were earned: 06/08/2020; Scheduled days off: S, M, T, W, T, F, S, R; Are you paying injured or disabled employee's wages during disability? Yes

EMPLOYMENT INFORMATION: Date employee was hired: 04/04/2005; Last day of work other injury or disability: 06/08/2020; Date of return to work: 6/9/20; Number of work days lost: 00; Was the employee hired to work 40 hours per week? Yes; Did the employee receive unemployment compensation any time during the last 12 months? No; 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: \$ 63.76

For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: <http://dhhs.nv.gov/Programs/CHA> E-mail: che@govcha.nv.gov

INSURER USE ONLY: I affirm that the information provided above regarding the accident or occupational disease is correct to the best of my knowledge. Employer's Signature and Title: Terry Long RN, Manager Employee; Date: 06/09/2020; Claim is: Accepted; Denied; Deleted; No Party; Date: ; Status Clerk: ; Date: ; Class Code: ; Claim 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 Varnon, Dept: Pharmacy, Shift hours: Varied, Physical Address: 225 N. Carson Ave. Rd., Carson City, NV 89701, Telephone: 775-921-2442, Date of Injury: 6/8/20, Time of Injury: 11:15 AM of PM, Injured: During Work Hours? Yes, On Hospital Premises? Yes, Manager/Supervisor Reported To: Scott Mathes, Time: 11:45

Witness: Explain in detail how injury occurred (moving patient, cleaning patient room, etc.): Carrying boxes of supplies, thought I had reached floor but I was still 7-8 ft 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: 1:17

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: 11:45, Was this injury reported at once? 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, 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? 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, Date: 6/10/20, Time: 9:10, Supervisor (if applicable): [Signature], Date: [Blank], Time: [Blank]

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: [Blank], Time: [Blank]

For assistance with Workers' Compensation issues you may contact the Office of the Governor Consumer Health Assistance. Toll Free: 1-800-333-1597 Website: http://govcha.state.nv.us Email: cha@govcha.state.nv.us

FORM 1118-015 (11/25/15)

000247 1745



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
Claim #: 000706-038452-WC-01

Dear Mr. Yasmer:

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

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

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.



Karen Dyer
Employee of the State of Nevada

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

Emergency Room Note (MMortal)

DATE & TIME OF SERVICE:
06/09/2020

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 two more stairs beneath MCV stepped forward thinking he was stepping onto the landing and missed the bottom two 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: Fahres 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.

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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)

TIME RECEIVED
June 9, 2020 at 12:50:26 PM CDT

REMOTE CSID
7754457570

DURATION
142

PAGES
4

STATUS
Failed to receive

ERROR CODE (700)
Error in fax transmission.

Resend06-09-20; 10:34AM; CTH PATIENT FINANCE

7754457570

3/ 8

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

Emergency Room Note (MModal)

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

Patient Name: STEPHEN YASMER
MRN: 020163119
Account: 2016000308

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

TYPE OF EXAM: RAD7361
DATE: 05/08/2020
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: Q20163119
Account: 2018000308

Check-In# 3594901
Order# H1866728
Exam XR ANKLE I.T 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: FARRER AHMED, MD

Patient Visit Charting Notes

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/10/2020	W/O Incident New Date of Injury: 6/08/2020	J. H. AND	

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.

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,.

Nevada Occupational Health & Injury Care Center
Patient Visit Charting Notes
Stephen Yasmer , DOB: 10/18/1969

Date Charting Summary Provider Clinician

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: 97.9°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

Patient Visit Charting Notes

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
------	------------------	----------	-----------

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

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

Signature:



Date: 6/10/2020 1:47PM



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973 Mica Drive Ste 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

June 12, 2020
Page 1
Surgery 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 *

06/12/2020 - Surgery Orders: Surgery Packet

Provider: JEFFREY CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: ON HOLD DOCUMENT. Contents are preliminary

PROCEDURE INFORMATION:

Surgeon: JEFFREY CUMMINGS MD Location: Carson Valley Medical Center

Surgery Date: 06/17/2020 Surgery Length: 30 min

Admit Type: Outpatient Assist: Tonn

Initiate pre-surgical anesthesia protocol

Consent for: Left Ankle Lateral Malleolus and Syndismosis Open Reduction Internal Fixation

Procedure(s): Left Ankle Lateral Malleolus and Syndismosis Open Reduction Internal Fixation

QTY: 1

CPT Code(s): 27829, 27814

Diagnosis: S82.65XB, S93.439A

Equipment:

Zimmer Ankle Fracture Set C-Arm

Surgery Coordinator:

Kenneth

Chart

Allergies:

- VICODIN

Medications:

Vital Signs

Ht (in.): 70 Wt (lbs.): 165 BMI: 23.67 P: 63 BP: 140 / 95 mm Hg

Demographics

Patient Name: Stephen B Yasmer Chart #: 211247

Address: 2257 Carson River Rd Carson City, NV 89701

DOB: 10/18/1969 Sex: Male SSN: 530-02-8852



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Phone: 7757836190 Fax: 7757836191

June 12, 2020
Page 2
Surgery 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 *

Home Phone: (775) 883-4680 Work Phone: (775) 885-6687 Cell Phone: 7757213843

Primary Insurance
Secondary Insurance

Work Comp
172421-PENDING WC DOI: 6/8/2020

Pre-Op Orders

Anesthesia:

Inhale pre-surgical anesthesia protocol
General

IV/Antibiotics/Medications:

Cefazolin (Ancef) 1gm IV once in pre-op (if less than 75 kilo) OR Cefazolin (Ancef) 2gm IV (if greater than 75 kilo)

Prep Other:

Pre-Op Labs

DME

Discharge:

Other: Post op at NV OCC

Signature: _____

JS

Patient Visit Charting Notes

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialt: Walt	Cummins	
	Date of Injury: 6/08/2020		

Sublective:

Chief Complaint

Stephen is here referred by Dr. Betz wit 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	Charting Summary	Provider	Clinician
------	------------------	----------	-----------

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

Fracture/Dislocation left ankle

Patient Visit Charting Notes

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
------	------------------	----------	-----------

Work Status

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

Plan:

Orders

I recommend a STAT left ankle malleolus and syndismosis 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.

NEVADA OCCUPATIONAL HEALTH CENTER

**3488 GONI RD.
CARSON CITY NV, 89706
PHONE NUMBER: 775-887-5030
FAX NUMBER: 775-887-5040**

Jeffrey Cummings

NEW REFERRAL

PATIENT NAME: Stephen Yasmer

PATIENT ADDRESS: 2257 Carson River Carson City, NV 89701

DATE OF BIRTH: Oct 18, 1969

PHONE NUMBER: (775) 721-3843

INSURANCE INFORMATION: Gallagher Bassett (NV Claims)

P.O. Box 400970

Las Vegas, NV 89140

7027894500

7027894454

CLAIM NUMBER:

DATE OF INJURY: Jun 08, 2020

REFERRAL SUMMARY

I recommend a STAT left ankle melleolus and syndismosis open reduction internal fixation. 06-12-2020

S82.65XB S93.439A

PHYSICIAN SIGNATURE:



06-12-2020

AVOC
w/c

PHYSICIAN ORDERS FOR SURGERY

JEFFREY R. CUMMINGS, M.D.

PHONE: (775) 783-6190 ext. 7202

FAX: (775) 783-6195

Order Date: 6/17/20 Surgery Length: 30 min Start Time: _____

Physician Name: Stephen Yasmer M F DOB: 10-18-1969

Physician Phone: (775) 721-3843 ALT. () _____

Physician Insurance: WC Gallagher Bassett Secondary Insurance: _____

Clearance Needed: _____

Room: CVML Inpatient / Outpatient

Bed: 700 Anesthesia: Gen

Procedure: Zimmer Ankle fracture set, Gen

Pre-Op Antibiotics: _____ TED Hose (Knee-high) SCD'S

Diagnosis: ⓐ Ankle Dislocation & Fracture of lateral malleolus and Syndesmosis

Consent Signed for Surgical Procedure: STAT Left Ankle Lateral malleolar and Syndesmosis open reduction internal fixation

Procedure Code / CPT: _____

Diagnosis Code / ICD 9: _____

PRE-OP TESTING ORDERS:

- EKG
- UA
- CXR
- TYPE & SCREEN (per protocol)
- CBC
- TYPE & CROSS _____ UNITS
- BMP
- MRSA NASAL SWAB
- CUP
- FLEXION / EXTENSION C-SPINE XRAY
- OTHER: _____

Physician Appointment: _____

PHYSICIAN SIGNATURE: [Signature] DATE 06-12-20 TIME: 9:30



Patient Sticker

000268
Old

00025

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

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

#211247

Clinician: Cummlngs, 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.

deh

00026

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

MR#: 020163110 ACCT#: 2016400411

NAME: YASMER, STEPHEN

Clinician: Cummings, Jeffrey R

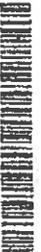
Jeffrey R Cummings, MD

JRC/MODL

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

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

396831/883146846



TAHOE FRACTURE CLINIC (SUBJECT)



PO Box 2188
Carson City, NV 89702-2188
775/882-1361

DIAGNOSTIC SERVICES REPORT

Check-In # 3597443 Order # H1868752 Exam OPI9906 SXR ANKLE LT 2 VW 73600LT

ICD:

TYPE OF EXAM: SXR ANKLE LT 2 VW 73600LT

DATE: 08/15/2020 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 8/30/20*

IMPRESSION:

1. Intraoperative fluoroscopy as above.

Electronically Signed by: Erik Maki 8/15/2020 7:28 PM

8/18/20

Electronically Signed By: MAKI, ERIK

FINAL

Page 1 of 1

Patient Name		MRN	Account #
YASMER, STEPHEN		020163119	2016400411
DOB	Age	Sex	Check-In
10/18/1969	50	M	08/15/20 at 18:00
Ordering Physician		3597443	Loc/Room

Attending Physician

CUMMINGS, JEFFREY R
873 MICA DR SUITE 201
CARSON CITY, NV 89705
7757836190

DX:

TAHOE FRACTURE CLINIC {SUBJEC}



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Phone: 7757836190 Fax: 7757836191

September 29, 2020
Page 1
Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756
Male 50 Years Old DOB: 10/18/1969 Patient ID: 211247 Ins: University of Utah

06/30/2020 - Office Visit: Post Op: L Ankle (W/C)
Provider: JEFFREY CUMMINGS MD
Location of Care: Tahoe Fracture and Orthopedic Mica

DOS: 06/30/20

HISTORY OF PRESENT ILLNESS:

Stephen Yasmer presents today for follow up of his left ankle ORIF on June 15, 2020. He is doing well. He also had a syndesmosis repair. He is not taking pain medications. He has been nonweightbearing on that leg.

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

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Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 2

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

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)

GENERAL EXAM

TAHOE FRACTURE CLINIC {SUBJEC}



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Phone: 7757836190 Fax: 7757836191

September 29, 2020
Page 3
Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756
Male 50 Years Old DOB: 10/18/1969 Patient ID: 211247 Ins: University of Utah

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

RADIOGRAPHS:

Three views of the patient's left ankle were obtained and reviewed. They show a distal fibula fracture with a plate in good position. There is one broken pin which was noted at the time of surgery. A K-wire broke off as it was being removed. It is well buried in the bone with no evidence of change today on x-ray. His mortise is well aligned. There is evidence of a syndesmosis repair with a TightRope.

PHYSICAL EXAMINATION:

Stephen Yasmer is a pleasant 50-year-old male, alert and oriented, in no distress. He presents today nonweightbearing on the left ankle. He is using an assistive device on his knee. His splint was removed. His incision was well approximated. Stitches were removed. Steri-Strips were applied. He still has soft tissue swelling. He has good dorsalis pedis pulse. There is no evidence of discharge or sign of infection.

IMPRESSION:

Left ankle fracture with ORIF and syndesmosis repair on June 15, 2020 with normal early result.

PLAN:

We will keep the patient nonweightbearing. We will get him in a CAM boot. We will see him back again in four weeks for x-rays of that ankle.

Stephanie Tonn, PA-C
for Jeffrey R. Cummings, M.D.
ST/JRC: pv/

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

TAHOE FRACTURE CLINIC {SUBJEC}



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Tahoe Fracture and Orthopedic Medical Clinic

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 4

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

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 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.

Electronically signed by STEPHANIE TONN PAC on 08/13/2020 at 9:18 AM

TAHOE FRACTURE CLINIC {SUBJEC}

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September 29, 2020

Page 1

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

07/28/2020 - Office Visit: RE: L Ankle**Provider: JEFFREY CUMMINGS MD****Location of Care: Tahoe Fracture and Orthopedic Mica****DOS: 07/28/20****HISTORY:**

Steve is here six weeks status post left knee open reduction and internal fixation. He is doing well for the most part. Pain is diminished and decreasing. His biggest concern is when can he walk and get on again. However, he did state he has been having some serous drainage from the distal aspect of the wound. Inspection of the wound today, there is no erythema, no signs of infection. However, he does have serous drainage from what appears to be one of the suture sites, possibly a stitch abscess. The wound was washed with Betadine and it was probed. The probe did not go deep, did not get down to metal, but did not find a stitch consistent with a stitch abscess.

Past Medical History - reviewed

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

He does not have 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

Medications and Allergies**Patient has drug allergies.**

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

ALLERGIES

VICODIN (Critical)

Family History - reviewed

Arthritis

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 2

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Heart DiseaseSocial History

Patient is single, Current every day 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.): 170

Tobacco Use:

Current every day smoker

Body:

BMI: 24.48 (Normal)

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020
Page 3
Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756
Male 50 Years Old DOB: 10/18/1969 Patient ID. 211247 Ins: University of Utah

GENERAL EXAM

General Appearance: Stephen B Yasmer is a pleasant 50 years old well developed, well nourished male.

Coordination: Normal

Orientation: 3+

Gait: Normal

PLAN:

At this point, being it is a serous wound, we are going to tentatively put him on for Monday for irrigation and debridement and closure of that wound. He is going to check in with us on Thursday. If there are still any signs of draining, we will proceed with this. He understands this.

Jeffrey R. Cummings, M.D.
JRC: csm/smu

Work Status:

This injury is occupational.

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

Employee may return to Light Duty status.

Comments: no walking standing for another 2 weeks then may start progressing to waight bearing

Follow Up

Electronically signed by JEFFREY CUMMINGS MD on 08/18/2020 at 10:35 AM

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September 29, 2020

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Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 1
Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

08/25/2020 - Office Visit: Post Op: L Ankle

Provider: JEFFREY CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: ON HOLD DOCUMENT. Contents are preliminary

DOS: 08/25/20

HISTORY:

A 50-year-old male who is here with regards to his left ankle. He has lateral malleolus fracture and a syndesmosis repair, an open reduction and internal fixation. He is doing better. The drainage for the most part stopped over the lateral malleolus. He states there is just one little pinhole, but for most part it is fine. We had that drained. There is no pus, no erythema coming from that area. He overall is doing better. It is just a lot of scar on that lateral malleolus. His range of motion is good. He is still having aching and pain. He is only 10 weeks out from his injury.

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)

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 2
Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

ORT Score: 0

Family History - reviewed

Arthritis

Heart Disease

Social History

Patient is single, Current every day 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.): 170

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September 29, 2020

Page 3
Office Visit**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Tobacco Use:**Current every day smoker****Body:****BMI: 24.48 (Normal)****GENERAL EXAM****General Appearance:** Stephen B Yasmer is a pleasant 50 years old well developed, well nourished male.**Coordination:** Normal**Orientation:** 3+**Gait:** Normal**RADIOGRAPHS:**

X-rays repeated today still seem every early callus formation and we will have him gradually progress to activity, still no running, no jumping activities.

PLAN:

We will see him back here in four to six weeks with repeat x-ray of the left ankle. Then, we will see him back here in six weeks, but if he has any increased drainage or erythema of that wound, he is going to let us know.

Jeffrey R. Cummings, M.D.

JRC: csm/smu

TAHOE FRACTURE CLINIC {SUBJEC}

09/03/2020 08:42

(FAX)

P.002/003



CARSON TAHOE
— HEALTH —

Carson Tahoe Regional Health
1600 Medical Parkway
Post Office Box 2168
Carson City, Nevada 89702-2168
(775) 445-8000

Page 1 of 2

SURGEON:
DATE:

JEFFREY R CUMMINGS, MD
09/02/2020

ANESTHESIA:
General.

ANESTHESIOLOGIST:
Drexler.

FIRST ASSISTANT:
Stephanie Tonn.

PREOPERATIVE DIAGNOSIS:
Infected left ankle hardware.

POSTOPERATIVE DIAGNOSIS:
Infected left ankle hardware.

PROCEDURE:
1. Left ankle incision and drainage.
2. Left ankle removal of deep hardware.

INDICATION FOR OPERATION:
A 50-year-old male with a history of open reduction, internal fixation of the lateral malleolus and syndesmosis 3 months ago. He has had off and on drainage from the wound. He has not wanted to have it drained until yesterday it really opened up and had some purulent material. He has swelling over the lateral ankle and it is decided to take him to the operating room today for incision and drainage and removal of hardware. He understands the risks, the benefits, and alternatives to the 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. The leg was elevated,

YASMER, STEPHEN B
020163119
ADMITTED: 09/02/2020
POS 999 66
Patient Account Number: 2024501813

Operative Report

463302

000283

081

TAHOE FRACTURE CLINIC {SUBJEC}

09/03/2020 08:42

(FAX)

P.003/003

Page 2 of 2

tourniquet was inflated to 250 mmHg. A longitudinal incision was made over the previous wound with ellipsing the wound itself. Cultures were obtained both aerobic, anaerobic and fungal. There was just a small purulent area at the superficial wound itself. Otherwise, it was more of a serous deep drainage. This was cultured as well. The wound was opened both proximally and distally to remove the hardware. The hardware was removed. The tightrope was removed as well. Small wound was opened medially to remove that medial side button and the stitches were removed. Lag screw was removed. Fracture site was tested. It is 3 months out, seemed to be bridged and healed. The mortise remained reduced. At this point, we will plan to not reimplant the hardware. Using a rongeur and a curette, the wound base was debrided removing all questionable soft tissue. The pulse lavage irrigator was used. Curette was used also in the screw holes to clean these out. Pulse lavage irrigator was used to clean the wound. It was closed in layers with 3-0 Vicryl and 3-0 and nylon to close the skin. Sterile dressing was applied. The patient was placed in a splint, taken to recovery in stable condition. Needle and sponge count correct, taken to recovery without complication. He is going to need IV antibiotics. We are going to consult Infectious Disease. Will place order for a PICC line. All the hardware has been removed so hopefully we can get ahead of this. Will keep him nonweightbearing for another 4-6 weeks and proceed from there.

Jeffrey R Cummings, MD

JRC/MODL

DD: 09/02/2020 16:08:08

DT: 09/02/2020 16:39:45

463302/891779341

YASMER, STEPHEN B
020163119
ADMITTED: 09/02/2020
POS 999 66
Patient Account Number: 2024501813

Operative Report

463302

000284

082

40

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 1

Clinical Lists Update

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

09/03/2020 - Clinical Lists Update: Medication Update

Provider: STEPHANIE TONN PAC

Location of Care: Tahoe Fracture and Orthopedic Mica

Medications:

PERCOCET 5-325 MG ORAL TABLET (OXYCODONE-ACETAMINOPHEN) Take 1 tablet By Mouth Q 4-6 hours as needed for pain. (7 day supply) Dx: G89.18 #40 x 0

Route:ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769985902940

XANAX 0.25 MG ORAL TABLET (ALPRAZOLAM) Take 1 tablet By Mouth Q6 hours as needed for anxiety. (5 day supply) Dx: G89.18 #20 x 0

Route:ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769985902900

XANAX 0.25 MG ORAL TABLET (ALPRAZOLAM) Take 1 tablet By Mouth Q6 hours as needed for anxiety. (5 day supply) Dx: G89.18 #20 x 0

Route:ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769988899010

PERCOCET 5-325 MG ORAL TABLET (OXYCODONE-ACETAMINOPHEN) Take 1 tablet By Mouth Q 4-6 hours as needed for pain. (7 day supply) Dx: G89.18 #40 x 0

Route:ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

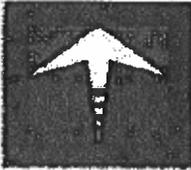
Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769988898900

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 2

Clinical Lists Update

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Electronically signed by STEPHANIE TONN PAC on 09/15/2020 at 3:09 PM

TAHOE FRACTURE CLINIC {SUBJECT}



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September 29, 2020

Page 1

Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

09/15/2020 - Office Visit: 1st Post Op: L Ankle

Provider: JEFFREY CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: ON HOLD DOCUMENT. Contents are preliminary

DOS: 09/15/20

HISTORY:

A 50-year-old male who is here for follow up regarding his left ankle status post I&D and removal of deep hardware. The wound is healing well. No sign of infection, no drainage, no erythema. Sutures are removed. Steri-Strips are placed.

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; HWR + I&D 9/2/20 - Strep. Infxn.

Medications and Allergies

Patient has drug allergies.

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

ALLERGIES

VICODIN (Critical)

MEDICATIONS

XANAX 0.25 MG ORAL TABLET (ALPRAZOLAM) Take 1 tablet By Mouth Q6 hours as needed for anxiety. (5 day supply) Dx: G89.18, Route: ORAL

000287

085

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TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

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Office Visit

Stephen B Yasmer Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

PERCOCET 5-325 MG ORAL TABLET (OXYCODONE-ACETAMINOPHEN) Take 1 tablet By Mouth Q 4-6 hours as needed for pain. (7 day supply) Dx: G89.18; Route: ORAL

ORT Score: 0

Family History - reviewed

Arthritis

Heart Disease

Social History

Patient is single, Current every day 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:

000288

D86

44

TAHOE FRACTURE CLINIC {SUBJECT}

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September 29, 2020

Page 3
Office Visit**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Ht (in.): 70 Wt (lbs.): 170

Tobacco Use:

Current every day smoker

Body:

BMI: 24.48 (Normal)

GENERAL EXAM**General Appearance:** Stephen B Yasmer is a 50 years old male.**PLAN:**

We will have him continue nonweightbearing status. We will see him back here in three weeks. He is following up with Dr. Schwartz with regards to infectious disease. He has been on declining daptomycin for three weeks. He is following up with Dr. Schwartz, whether he continues that or converts to orals, the final culture ended up being Strep B. We will see him back here in three weeks. He states the ankle feels a ton better.

Jeffrey R. Cummings, M.D.

JRC: csm/smu

CERTIFICATE OF SERVICE

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

STEPHEN YASMER
2257 CARSON RIVER RD
CARSON CITY NV 89701

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

DATED: NOVEMBER 12, 2020

SIGNED: ALEX ANDRACA

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

NOV - 4 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

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In the Matter of the Contested
Industrial Insurance Claim

of

STEPHEN YASMER,

Claimant.

Appeal No. : 2100639-SYM
Hearing No. : 21000033-SD
Claim No. : 000706-038452-WC-01
Employer :
CARSON TAHOE HEALTH SYSTEM
Appeal Date : November 16, 2020
Appeal Time : 9:00 A.M.

CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER
BASSETT SERVICES, INC.'S INDEX OF DOCUMENTS

COMES NOW, Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter referred to
as "Employer"), and its Third-Party Administrator, GALLAGHER BASSETT SERVICES, INC.,
(hereinafter referred to as "Administrator"), by and through their attorneys, JOHN P. LAVERY,
ESQ., and JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, and
submit the attached Index of Documents relating to the above-referenced matter.

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ENTERED INTO
EVIDENCE AS EXHIBIT 2

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that all Social Security numbers have been redacted or otherwise removed.

DATED this 3rd day of November, 2020.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By  _____
JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665
JEANNE P. BAWA, ESQ.
Nevada Bar No. 007359
2300 West Sahara Avenue, Suite 900, Box 28
Las Vegas, NV 89102-4375
Phone: (702) 893-3383
Facsimile: (702) 366-9563
Attorneys for Employer
CARSON TAHOE HEALTH SYSTEM
And its Third-Party Administrator
GALLAGHER BASSETT SERVICES, INC.

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CERTIFICATE OF MAILING

Pursuant to NRCP Rule 5(b), I hereby certify that, on the 3rd day of November, 2020,

I served a true and correct copy of the above and foregoing document entitled **CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER BASSETT SERVICES, INC.'S INDEX OF DOCUMENTS** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as 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.
P.O. Box 2934
Clinton, IA 52733

Walter Taylor

An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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. He 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. He 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:
Visodin

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

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

Emergency Room Note (MModal)

Head: Normocephalic atraumatic
ENT: PERIOLA 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: Farès Ahmed 6/8/2020 1:36 PM

EMERGENCY ROOM COURSE (NOM):

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:020169119
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 DisclaimerThis 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)

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

Patient Name: STEPHEN YASMER
MRN: 020163119
Account: 2016000308

Check-In# 3894855
Order# 0018WKEZJ
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

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CARSON TANOE 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: RAD7521
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: Farras Ahmed 6/8/2020 1:36 PM

Electronically Signed By: FARRAS 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	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)
	City Carson City	State NV	Zip 89701	In which state was employee hired? NV		Employee's occupation (job title) when hired or disabled Manager Therapy Services	
	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	Department in which regularly employed: Physical Therapy
ACCIDENT OR DISEASE	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		Did employee return to next scheduled shift after accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) Ankle Dislocation and Fracture		Witness		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		
	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		Least 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 type="checkbox"/> S <input checked="" type="checkbox"/> 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-WEEKLY <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 Assistant: Toll Free: 1-844-333-1597 Web site: http://dhs.nv.gov/Programs/OCHA E-mail: ohc@nvcha.nv.gov							
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

OFFICE 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 Yarnes, Dept: Therapy, Shift hours: varies, Physical Address: 2257 Barna Road, Carson City, NV 89701, Telephone: 775-721-2842, Marital Status: S, Div: M, Date of Injury: 6/8/20, Time of Injury: 1115 AM, Injured: During Work Hours? Yes, On Hospital Premises? Yes, Manager/Supervisor Reported To: Scott Miller, Time: 1145

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

Witness section with signature of Stephen Yarnes, Date: 6/8/20, Time: 1417. Includes a handwritten explanation of the injury: 'Going down stairs with box of supplies. Thought I had reached the landing, but I was still 7-8 steps up. I fell.'

MANAGER/SUPERVISOR SECTION (please complete all areas)

This entire report form is to be submitted to Employee Health within 5 days of injury.

Manager/Supervisor section with Date of Injury: 6/8/20, Date Manager/Supervisor Notified: 6/8/20, Time: 1145. Includes questions about reporting, nature of injury (fall from broken auto), and prevention (take the elevator, education).

Investigation section with Manager: [Signature], Date: 6/10/20, Time: 910, Supervisor: [Signature], Date: [Blank], Time: [Blank].

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, Was employee returned to work?, Sent home?, Hospitalized?, Additional Comments, Evaluated/Treated By: [Signature], Date: [Blank].

000303 101 (FORM 00016 (11/20/16))

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, pricking, numbness or tremors.

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Telephone: (775) 887-5030
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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.

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Request for Authorization

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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

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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

108 00031016

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 3

Patient Charting Note

Stephen Yasmer, DOB: 10/18/1989

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

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 melleolus and syndismosis 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) 771-2243

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: 6/12/20 **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 AM

REMOTE CSID
775-783-6191

DURATION
327

STATUS
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

#211247

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

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DURATION
327

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 AM

REMOTE CSID
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DURATION
327

STATUS
Received

TAHOE FRACTURE CLINIC (SUBJECT)



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

DIAGNOSTIC SERVICES REPORT

Check-In # 3597443 Order # H1888752 Exam OPI8906 SXR ANKLE LT 2 VW 73600LT

ICD:

TYPE OF EXAM: SXR ANKLE LT 2 VW 73600LT
INDICATION:

DATE: 08/15/2020 at 18:00

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 6/13/20*

IMPRESSION:

1. Intraoperative fluoroscopy as above.

Electronically Signed by: Erik Maki 8/15/2020 7:26 PM

6/15/20

Electronically Signed By: MAKI, ERIK

FINAL

Page 1 of 1

Patient Name		MRN	Account #
YASMER, STEPHEN		020183119	2018400411
DOB	Age	Sex	Check-In
10/18/1989	50	M	08/15/20 at 18:00
Ordering Physician		3597443	Loc/Room

CUMMINGS, JEFFREY R
973 MICA DR SUITE 201
CARSON CITY, NV 89705
7757838180

Attending Physician

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, 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

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.

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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

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TAHOE FRACTURE CLINIC (SUBJECT)



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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
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STATUS
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TAHOE FRACTURE CLINIC (SUBJEC)



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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 Dispense ment

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

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DURATION
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TAHOE FRACTURE CLINIC (SUBJECT)



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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
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TAHOE FRACTURE CLINIC (SUBJECT)



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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 lelmore 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 (SUBJEC)



**Tahoe Fracture
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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

STATUS
Received

TAHOE FRACTURE CLINIC (SUBJECT)



Authorization Request

Victoria Stroud
P: (775) 392-4482
F: (775) 783-6906
workcomp@tahoefracture.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.

00000033

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 210
Las Vegas, NV 89102
(702) 486-2525

2020 JUL -6 A 10:30

EMPLOYEE INFORMATION			
Employee's Name:	Stephen James		
Address:	2257 Carson Rider Rd		
City:	Carson City	State NV	Zip: 89701
Employee's Telephone Number:	775-721-3843		
Claim No.:	000706	Date of Injury:	6/8/20
038952-NV-01 INSURER INFORMATION			
Insurer's Name:	«Selfinsured» «Insurance Company»		
Address:			
City:	State:	Zip:	
Insurer's Telephone Number:			

Employer Information			
Employer's Name:	Carson James Health		
Address:	1600 Medical Plaza		
City:	Carson City	State: NV	Zip: 89706
Employer's Telephone Number:	775-445-8000		
THIRD-PARTY ADMINISTRATOR (TPA) INFORMATION			
TPA's Name:	Gallagher Bassett Services, Inc.		
Address:	P.O. Box 70030		
City:	Las Vegas	State: NV	Zip: 89170
TPA's Telephone Number:	702-789-4500		

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
[Signature]

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**.

123⁰⁰⁰³²⁵31

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

124000326³²

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.



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

Telephone Number

775-721-3843
Telephone Number

8/28/20
Date

WILL AN INTERPRETER BE REQUIRED?

YES []

NO [X]

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:

[Signature]
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

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DEPT. OF ADMINISTRATION
APPEALS OFFICER

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

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In the Matter of the Contested
Industrial Insurance Claim

of

STEPHEN YASMER,

Claimant.

Appeal No. : 2100639-SYM
Hearing No. : 21000033-SD
Claim No. : 000706-038452-WC-01
Employer :
CARSON TAHOE HEALTH SYSTEM
Appeal Date : November 16, 2020
Appeal Time : 9:00 A.M.

**CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER
BASSETT SERVICES, INC.'S APPEAL MEMORANDUM**

COMES NOW, Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter referred to as "Employer"), and its Third-Party Administrator, GALLAGHER BASSETT SERVICES, INC. (hereinafter referred to as "Administrator"), by and through their attorneys, JOHN P. LAVERY, ESQ., JEANNE P. BAWA, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and for their appeal memorandum state as follows:

1. That Administrator's June 23, 2020 determination denying liability for Claimant's claim, must be affirmed as a matter of law.

2. That the Hearing Officer's August 6, 2020 Decision and Order, which affirmed claim denial, must be affirmed as a matter of law.

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1 declarant. Failure to timely invoke the right to cross-examine will be deemed a waiver of such
2 right.

3 **STATEMENT OF THE ISSUES**

4 The following issues are before the Appeals Officer for review:

5 1. Whether Administrator's June 23, 2020 determination, which denied Claimant's
6 claim for industrial insurance benefits, was proper.

7 2. Whether the Hearing Officer's August 6, 2020 Decision and Order, affirming claim
8 denial, was proper.

9 **WITNESSES**

10 Employer and Administrator may call its employees most knowledgeable regarding the
11 facts of the case to testify telephonically. Employer and Administrator may call Claimant,
12 himself, to testify if he does not testify on his own behalf. Employer and Administrator further
13 reserve the right to call any other rebuttal witness as may be necessary.

14 **TIME ESTIMATED FOR HEARING**

15 It is estimated that the time for hearing of this Employer's and Administrator's case will be
16 one (1) hour or less.

17 **I.**

18 **STATEMENT OF THE FACTS**

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

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

27 Claimant and his manager completed an incident report on June 10, 2020. Claimant stated
28 that he was carrying a box of supplied down the stairs and he thought he was at the bottom of the

1 stairs but still had 2 more steps to go and so he mis-stepped and fell. Claimant's manager indicated
2 that he should have used the elevator instead of the stairs. (Exhibit p. 9.)

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

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

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

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

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

10 The issue of claim denial was heard by a Hearing Officer on July 30, 2020. In a written
11 Decision and Order dated August 6, 2020, the Hearing Officer affirmed claim denial. (Exhibit pp.
12 31-33.)

13 Claimant appealed that Decision and Order to this Court.

14 II.

15 ARGUMENT

16 A.

17 Claimant Cannot Establish That He Has a Compensable Claim

18 It is Claimant, not Insurer, who has the burden of proving his case, and that is by a
19 preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567, 688
20 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323
21 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

22 In attempting to prove his case, Claimant has the burden of going beyond speculation and
23 conjecture. That means that Claimant must establish all of the facets of the claim by a
24 preponderance of all of the evidence. To prevail, a claimant must present and prove more
25 evidence than an amount which would make his case and his opponent's "evenly balanced."
26 Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss, 108 Nev. 123, 825 P.2d
27 218 (1992), SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The Law of Workmen's
28 Compensation, § 80.33(a).

1 Claimant alleges that he injured his ankle while walking down some stairs while he was
2 carrying a box. His manager states that the claimant should have been using the elevator to
3 perform this task, as there is an elevator for employee use and the claimant simply chose not to use
4 it. It is Claimant's burden to prove that his injuries arose out of and in the course of his
5 employment, and based on the available evidence, Claimant cannot meet his burden.

6
7 **NRS 616C.150 Compensation prohibited unless preponderance
of evidence establishes that injury arose out of and in course of
employment;**

8 1. An injured employee or his dependents are not entitled to
9 receive compensation pursuant to the provisions of chapters 616A to 616D,
10 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 his employment.

11 **NRS 616A.030 "Accident" defined.** "Accident" means an
12 unexpected or unforeseen event happening suddenly and violently, with or
without human fault, and producing at the time objective symptoms of an
13 injury.

14 **NRS 616A.265 "Injury" and "personal injury" defined.**

15 1. "Injury" or "personal injury" means a sudden and tangible
16 happening of a traumatic nature, producing an immediate or prompt result
17 which is established by medical evidence, including injuries to prosthetic
18 devices. Except as otherwise provided in subsection 3, 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.

19 Here, the Nevada Supreme Court has held that:

20 An award of compensation cannot be based solely upon possibilities
21 and speculative testimony. A testifying physician must state to a
22 degree of reasonable medical probability that the condition in
question was caused by the industrial injury.

23 United Exposition Services Co. v. SIIS, 109 Nev. 421, 851 P.2d 423 (1993).

24 This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev. 532, 936 P.2d
25 839 (1997) case, which held that "mere speculation and belief does not rise to the level of
26 reasonable medical certainty."

27 Furthermore, the Supreme Court has held that:

28 An accident or injury is said to arise out of employment when there
is a causal connection between the injury and the employee's work

1 ... the injured party must establish a link between the workplace
2 conditions and how those conditions caused the injury ... a claimant
3 must demonstrate that the origin of the injury is related to some risk
involved within the scope of employment.

4 Rio Suite Hotel v. Gorsky, 113 Nev. 600, 939 P.2d 1043(1997).

5 The same Court further stated that the “Nevada Industrial Insurance Act is not a
6 mechanism which makes employers absolutely liable for injuries suffered by employees who are
7 on the job.” (Id.)

8 Further, the Nevada Supreme Court held in Mitchell v. Clark County School District, 121
9 Nev. 179, 111 P.3d 1104 (2005):

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

16 The Court in Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605, 939 P.2d 1043
17 (1997) held that the “Nevada Industrial Insurance Act is not a mechanism which makes employers
18 absolutely liable for injuries suffered by employees who are on the job.” The Court concluded by
19 stating, “The requirements of ‘arising out of and in the course of employment’ make it clear that a
20 claimant must establish more than being at work and suffering an injury in order to recover.”

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

24 Injuries resulting from employment-related risks are ‘all the obvious kinds of injur[ies]
25 that one thinks of at once as industrial injur[ies]’ and are generally compensable . . . [such as]
26 tripping on a defect at employer’s premises . . . Personal risk are those that are ‘so clearly personal
27 that, even if they take effect while the employee is on the job, they could not possibly be attributed
28 to the employment . . . For example, ‘a fall caused by [a personal condition such as] a bad knee, or

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

9 In the instant claim, Claimant is unable to meet his NRS 616C.150 burden as the claimant
10 was not required to use the stairs to bring supplies to his department.

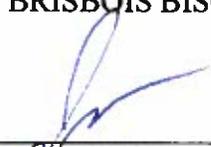
11 **III.**
12 **CONCLUSION**

13 Claimant cannot prove that his industrial insurance claim was denied improperly.

14 ...
15 WHEREFORE, Employer and Administrator respectfully request that the Appeals Officer
16 affirm the Hearing Officer's August 6, 2020 Decision and Order, which affirmed Administrator's
17 June 23, 2020 determination denying liability for this claim.

18 DATED this 13 day of November, 2020.

19 Respectfully submitted,
20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By 
22 JOHN P. LAVERY, ESQ.
23 Nevada Bar No. 004665
24 JEANNE P. BAWA, ESQ.
25 Nevada Bar No. 007359
26 2300 West Sahara Avenue, Suite 900
27 Las Vegas, NV 89102
28 Attorneys for Employer
CARSON TAHOE HEALTH SYSTEM
And its Third-Party Administrator
GALLAGHER BASSETT SERVICES, INC.

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CERTIFICATE OF MAILING

Pursuant to NRCP Rule 5(b), I hereby certify that, on the 13th day of November, 2020,

I served a true and correct copy of the above and foregoing document entitled **CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER BASSETT SERVICES, INC.'S APPEAL MEMORANDUM** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as 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.
P.O. Box 2934
Clinton, IA 52733



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED
SEP 29 2020
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

DOH: 11/16/2020 @ 9:00 A.M.

CLAIMANT'S HEARING STATEMENT

I

DOCUMENTARY EVIDENCE

1. Claimant may rely on portions of any evidence packet previously submitted, or to be submitted, by the employer and/or insurer, subject to objection.

2. Claimant will also rely on any evidence packet previously submitted, or to be submitted, on behalf of the claimant.

3. Claimant reserves the right to file additional evidence and to rely on all subsequently-filed evidence.

II

STATEMENT OF THE ISSUE

Whether the Hearing Officers' Decision and Order dated August 6, 2020, affirming the Insurer's determination dated June 23, 2020, regarding claim denial was proper.

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III

POSSIBLE WITNESSES

1. Claimant may testify, either in person or by telephone, concerning the facts and circumstances underlying her claim.
2. Claimant reserves the right to call additional witnesses who may testify, either in person or by telephone, regarding the claimant's industrial injury.
3. Any witness named or called by any other party.
4. Impeaching or rebuttal witnesses as necessary.

IV

ESTIMATED TIME

Estimated hearing time: One (1) hour.

Respectfully submitted this 25th day of September, 2020.

NEVADA ATTORNEY FOR INJURED WORKERS



Todd Eikelberger, Esq., Deputy
Attorney for the Claimant

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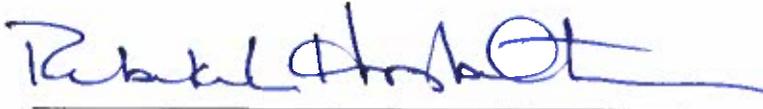
CERTIFICATE OF SERVICE

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

STEPHEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY NV 89706

JOHN P LAVERY ESQ
LEWIS BRISBOIS ET AL
2300 W SAHARA AVE STE 300 BOX 28
LAS VEGAS NV 89102-4375

DATED: September 29, 2020

SIGNED: 

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5 BEFORE THE APPEALS OFFICER

FILED

SEP - 2 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

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

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

8 STEPHEN YASMER,

9 Claimant.

10 NOTICE OF APPEAL AND ORDER TO APPEAR

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

13 **DATE:** Monday, November 16, 2020

14 **TIME:** 9:00AM

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

16 2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the
17 Claimant's file relating to the matter on appeal.

18 3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to
19 be considered on appeal.

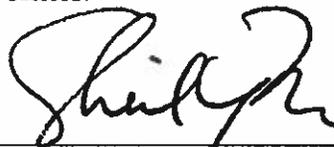
20 4. **Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social
21 security numbers redacted or otherwise removed and an affirmation to this effect must be
22 attached. The documents otherwise may be rejected by the Hearings Division.**

23 5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be
24 subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.

25 6. Any party wishing to reschedule this hearing should consult with opposing counsel or parties,
26 and immediately make such a request to the Appeals Office in writing supported by an affidavit.

27 7. The injured employee may be represented by a private attorney or seek assistance and advice
28 from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED.



SHEILA Y MOORE
APPEALS OFFICER

1 NEVADA DEPARTMENT OF ADMINISTRATION
2 BEFORE THE APPEALS OFFICER

FILED

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

SEP - 2 2020

DEPT. OF ADMINISTRATION
APPEALS OFFICER

5
6 In the Matter of the Contested
7 Industrial Insurance Claim of:

Claim No: 000706-038452-WC-01

8 Hearing No: 2100033-SD

9 Appeal No: 2100639-SYM

10 STEPHEN YASMER,

11 Claimant.

12 ORDER FOR APPOINTMENT OF
13 NEVADA ATTORNEY FOR INJURED WORKERS

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

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

20 **IT IS SO ORDERED.**

21 
22 _____
23 SHEILA Y MOORE
24 APPEALS OFFICER

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**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 _____
Person requesting this hearing (please print) Stephen Yasmer

Address _____
Person requesting this hearing (signature) _____

City, State, Zip Code _____

Telephone Number _____
Telephone Number 775-721-3843 Date 8/28/20

WILL AN INTERPRETER BE REQUIRED? YES [] NO [X]
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:

Claimant's signature *Stephen Yasmer* Claimant's Telephone Number 775-721-3843

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

*2106639-54m
mm 11-16-20
C 9.00*

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1 CERTIFICATE OF MAILING

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

6 STEPHEN YASMER
7 2257 CARSON RIVER ROAD
8 CARSON CITY, NV 89701

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

10 CARSON TAHOE HEALTH SYSTEM
11 1600 MEDICAL PARKWAY
12 CARSON CITY, NV 89703

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

15 JOHN P LAVERY ESQ
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17 2300 W SAHARA AVE STE 300 BOX 28
18 LAS VEGAS NV 89102-4375

18 Dated this 2nd day of September, 2020.

19 
20 _____
21 Kristi Fraser, Legal Secretary II
22 Employee of the State of Nevada
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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**.

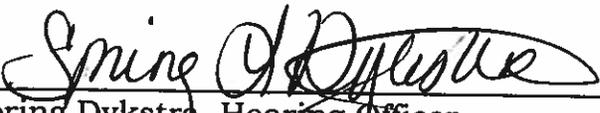
In the Matter of the Contested
Industrial Insurance Claim of
Hearing Number:
Page 2

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:

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Dated this 6th day of August, 2020.



Karen Dyer
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10 Carson City, Nevada 89701
11 (775) 684-7555
12 Attorneys for: Respondent, Stephen Yasmer

PRB now due: 9/8
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ETH

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

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

CASE NO. CV21-00809

12 Petitioner,

DEPT. NO. 8

13 vs.

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

19 Respondents.

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AUG 10 2021

20 RESPONDENT'S ANSWERING BRIEF

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15 ADMINISTRATION, HEARINGS
DIVISION, APPEALS OFFICE, an
16 Agency of the State of Nevada,

17 Respondents.
18 _____/

19 **NRAP 26.1 DISCLOSURE**

20 The undersigned counsel of record certifies that the following
21 are persons and entities as described in NRAP 26.1(a) and must be
22 disclosed. These representations are made in order that the judges
23 of this court may evaluate possible disqualifications or recusal.

24 Respondent's parent corporations: None.

25 ...

26 ...

27 ...

28 ...

1 Firms having appeared: Nevada Attorney for Injured Workers

2 Respondent's pseudonyms: None.

3 Submitted this 9th day of August, 2021.

4

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

7 Todd Eikelberger, Esq.
8 Nevada State Bar No. 9393
9 Attorney for Respondent, Stephen Yasmer

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MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner, Stephen Yasmer, by and through his attorney, Todd Eikelberger, Esq., Deputy of the Nevada Attorney for Injured Workers, hereby submits this Answering Brief pursuant to NRS 233B.130, NRS 233B.133, NRS 233B.135, and NRAP 28 as more fully set forth below.

**I.
JURISDICTIONAL STATEMENT**

This court lacks jurisdiction to consider this matter. Stephen Yasmer, a resident of Carson City, was injured in the course and scope of his employment with Carson Tahoe Health System (herein "CTHS") in Carson City on June 8, 2020, and he filed a claim for workers' compensation benefits. Gallagher Bassett Services, Inc., the third-party administrator for the employer and a foreign corporation doing business in Nevada, denied the claim on June 23, 2020. Yasmer timely appealed that determination letter within 70 days, on July 6, 2020, as required by NRS 616C.315(3)(a). The matter was heard by the hearing officer who, on August 6, 2020, affirmed the determination. Yasmer timely appealed that decision to the appeals officer within 30 days, on August 28, 2020, as allowed by NRS 616C.345(1).

The appeals officer rendered a final decision and order which reversed claim denial and was filed on April 15, 2021. Gallagher Bassett Services and CTHS, as aggrieved parties under NRS 233B.130(1), timely petitioned for judicial review within 30 days, as required by NRS 233B.130(2)(d), on May 3, 2021. Also, the requirements under NRS 233B.130(2)(a) and (c) were met regarding the naming of parties and service requirements; however, the residency

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1 requirement regarding the place of filing in NRS 233B.130(2) (b) was
2 not met.¹ This requirement is mandatory and jurisdictional thus,
3 this court does not have jurisdiction to entertain the petition.

4 NRS 233B.130(2) (b) requires the petition for judicial review
5 be filed in Carson City, the county where the agency proceeding
6 occurred, or the county where an aggrieved party resides. Neither
7 Carson Tahoe Health System nor Gallagher Bassett reside in Washoe
8 County and the agency proceeding occurred in Carson City. Therefore,
9 the petition was not filed in the proper district court and filing
10 requirements in NRS 233B.130 have been held to be mandatory
11 jurisdictional requirements. Thus, this Court does not have
12 jurisdiction to review the April 15, 2021 decision and order.

13
14 **II.**
STATEMENT OF THE ISSUES

15 Whether the Appeals Officer properly found Stephen Yasmer's
16 workers' compensation claim for his left ankle compensable.

17 This appeal concerns a dispute over the denial of a workers'
18 compensation claim. Based on the facts presented, and current law,
19 the appeals officer properly found Yasmer's workers' compensation
20 claim should be accepted. This holding was based upon substantial
21 evidence; did not violate constitutional or statutory provisions;
22 was not in excess of the statutory authority of the agency; was not
23 arbitrary, capricious, erroneous, or affected by an error of law or
24 procedure; and did not constitute an abuse of discretion. Therefore,
25 the April 15, 2021, Decision and Order was proper and the Petition
26 for Judicial Review should be denied.

27
28 ¹ See Mot. to Dismiss Pet. for Jud. Review.

1 IV.
2 STATEMENT OF THE FACTS

3 Stephen Yasmer, manager of rehabilitation services at Carson
4 Tahoe Health System (herein "CTHS"), was injured while descending
5 stairs at Carson Tahoe Hospital (herein, "CTH") (where his employer
6 maintained an office) with a large box in his hands on June 8,
7 2020.² He testified at hearing that he left the main therapy office
8 on the third floor and began descending the staircase carrying a box
9 of supplies to take to another of CTHS's facilities.³ Although
10 carrying the box did not impair his physical ability to walk, it did
11 impede his visual field.⁴ He mis-stepped because he thought he had
12 reached the landing and fell two steps fracturing his left ankle.⁵

13 Yasmer also testified that he always takes the stairs when he
14 is working in the hospital office and uses the stairs "a half dozen
15 times" per day going up and down.⁶ Finally, he testified that there
16 is no requirement that he take the elevator at work.⁷

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

19 he was carrying a box [sic] supplies down to the basement
20 when he thought he was on the bottom stair and could not
21 see that there is [sic] still to [sic] more stairs
22 beneath MCV stepped forward thinking he was stepping onto

21 ...

22 ...

23
24 ² ROA 19-20, 43.

25 ³ Id. at 20.

26 ⁴ Id.

27 ⁵ Id. at 20-21.

28 ⁶ Id. at 21.

⁷ Id. at 21-22.

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1 the landing and missed the bottom to [sic] stairs falling
2 hard on to his left ankle causing some notable deformity.⁸

3 The diagnosis was acute left ankle dislocation, fibular fracture,
4 and posterior malleolus fracture.⁹ A C4 form was filled out on June
5 8, 2020, and the physician checked the box indicating that he could
6 connect the left ankle injury as job incurred.¹⁰ The employer filled
7 out the manager/supervisor section on Yasmer's Notice of Injury form
8 on June 10, 2020, and, in response to the question "[h]ow could this
9 injury have been prevented," answered "take the elevator."¹¹

10 Yasmer was seen at Nevada Occupational Health on June 10, 2020,
11 and told he would require an open reduction and internal fixation
12 of the left ankle so he was referred to Dr. Jeffrey Cummings.¹² Dr.
13 Cummings, at Tahoe Fracture, saw him on June 12, 2020, and indicated
14 he required a "left ankle lateral melleolus and syndismosis open
15 reduction internal fixation."¹³ The procedure was performed on June
16 15, 2020, at CTH.¹⁴

17 Yasmer filed a claim for workers' compensation benefits which
18 was denied by Gallagher Bassett Services, Inc., the third-party
19 administrator for CTHS, on June 23, 2020.¹⁵ This determination was
20 appealed and, on August 6, 2020, the hearing officer affirmed claim

21

22 ⁸ Id. at 50.

23 ⁹ Id. at 52.

24 ¹⁰ Id. at 43.

25 ¹¹ Id. at 45.

26 ¹² Id. at 59.

27 ¹³ Id. at 60.

28 ¹⁴ Id. at 67.

¹⁵ Id. at 46.

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1 denial.¹⁶ That decision and order was appealed and forms the basis
2 for the current matter.

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

7 The Appeals Officer found Yasmer's testimony at hearing
8 regarding his work and mechanism of injury to be consistent,
9 reliable, and credible.¹⁸ It was also found that "[t]he medical
10 reporting clearly showed Yasmer suffered a left ankle fracture that
11 required a reduction and then a draining of the wound with hardware
12 removal" and "that a preponderance of all evidence submitted
13 supports Yasmer's position that his claim should be accepted."¹⁹
14 Finally, it was found that Yasmer established "he suffered injury
15 to his left ankle in the form of a fracture as he was walking down
16 stairs carrying a box" and "his left ankle fracture is found to be
17 industrially related and compensable."²⁰ It was held that:

18 sufficient facts have been presented to establish, by a
19 preponderance of the evidence, that the June 8, 2020,
20 fall caused an injury by accident that arose out of and
21 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.²¹

22 ...

23
24 ¹⁶ Id. at 47-48.

25 ¹⁷ Id. at 81.

26 ¹⁸ Id. at 4.

27 ¹⁹ Id.

28 ²⁰ Id. at 4-5

²¹ Id. at 9.

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1 And, it was ordered that:

2 Gallagher Bassett Services, the third party administrator
3 for the employer, Carson Tahoe Health Systems, shall
4 accept Stephen Yasmer's claim, claim number
5 000706-038452-WC-01, for benefits as a compensable
6 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.²²

7
8 **V.**
SUMMARY OF THE ARGUMENT

9 The dispute in this case concerns the denial of a workers'
10 compensation claim. The appeals officer found that, based on the
11 evidence as a whole, Yasmer's left ankle fracture was compensable
12 under Nevada's workers' compensation scheme. This position was
13 backed up by testimony from Yasmer and the medical reporting.
14 Therefore, the Decision and Order was supported by substantial
15 evidence in the record; thus, the appeals officer did not commit
16 abuse of discretion and the April 15, 2021, Decision and Order was
17 not arbitrary, capricious, or lacking substantial evidence so it
should not be reversed.

18 CTHS and Gallagher Bassett contend that the appeals officer
19 erred as a matter of law, but provide no legal justification for
20 their position nor any analysis as to why the Appeals Officer's
21 legal position was incorrect. They argue that the appeals officer
22 should have considered Yasmer's risk a neutral risk requiring an
23 analysis of whether the risk to Yasmer was greater than to the
24 general public, rather than the employment risk that was found, but
25 provide no analysis for this position. Therefore, CTHS and Gallagher
26 Bassett argue that the appeals officer acted in an arbitrary and

27
28 ²² Id. at 10.

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1 capricious manner, abused her discretion, and rendered a decision
2 that was not supported by the evidence.

3 No legal justification or statutory provisions are provided to
4 support CTHS and Gallagher Bassett's arguments. There is simply a
5 mis-characterization of evidence used to justify classifying
6 Yasmer's risk as neutral. Also, they ignore the appeals officer's
7 analysis regarding Yasmer's risk constituting an employment risk and
8 simply state that she was wrong without legally justifying that
9 position. Further, substantial evidence supports the appeals
10 officer's decision.

11 As there is no showing that there was an error of law, that the
12 decision lacked substantial evidence, or that the appeals officer
13 abused her discretion the Petition for Judicial Review must be
14 denied.

15
16 **VI.**
ARGUMENT

17 **A. THE APPROPRIATE STANDARD OF REVIEW IS DEFERENCE TO THE**
18 **APPEALS OFFICER'S FINDINGS OF FACT AND CONCLUSIONS OF**
19 **LAW.**

20 The purpose of Nevada's workers' compensation scheme is to
21 provide benefits - not deny compensation.²³ Further, it must not be
22 interpreted to favor the rights of employers or insurers over those
23 of injured workers.²⁴ In Nevada, the standard for judicial review of
24 a final decision of an administrative law judge is confined to the

25 ...

26 ...

27 ²³ State Indus. Ins. Sys. v. Weaver, 103 Nev. 196, 200, 734 P.2d 740
(1987); NRS 616A.010.

28 ²⁴ NRS 616A.010(4).

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1 record,²⁵ and the burden of proof is on the party attacking or
2 resisting the decision to show the final decision is invalid.²⁶

3 A court's role in reviewing the present matter is to consider
4 the evidence presented at hearing and determine whether the April
5 15, 2021, Decision and Order is invalid or clearly erroneous based
6 on the record as a whole, affected by error of law, made in
7 violation of a statutory provision, arbitrary, capricious, or
8 characterized by an abuse of discretion.²⁷ An agency's decision must
9 be affirmed if supported by substantial evidence²⁸ which "a
10 reasonable mind might accept as adequate to support a conclusion."²⁹
11 Further, a reviewing court cannot "re-weigh the evidence or revisit
12 an appeals officer's credibility determination."³⁰

13 When reviewing the decision of an administrative agency, the
14 reviewing court is limited to the record below and may not
15 substitute its judgment for that of the appeals officer as to
16 questions of fact.³¹ Therefore, CTHS and Gallagher Bassett are not
17 allowed to re-argue the findings of fact if they are supported by
18 substantial evidence.

19 Where an appeals officer has decided pure issues of law, it is
20 appropriate for the reviewing court to make an independent judgment,
21

22 ²⁵ NRS 233B.135(1).

23 ²⁶ NRS 233B.135(2).

24 ²⁷ NRS 233B.135(3)(a-f).

25 ²⁸ NRS 233B.135(3)(e).

26 ²⁹ NRS 233B.135(4).

27 ³⁰ Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 362, 184
P.3d. 378, 384 (2008).

28 ³¹ NRS 233B.135(3).

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1 rather than use a more deferential standard of review.³² Statutory
2 interpretation and construction are considered issues of law.³³
3 However, deference is still given to an appeals officer's
4 conclusions of law that are closely related to factual
5 determinations and they should not be disturbed if supported by
6 substantial evidence.³⁴

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

16 **B. THE PETITION FOR JUDICIAL REVIEW SHOULD BE DENIED AS THE**
17 **APPEALS OFFICER'S DECISION AND ORDER IS LEGALLY SOUND AND**
18 **THE PETITIONER HAS FAILED TO PROVE OTHERWISE.**

19 **i. The Decision and Order should be upheld because the**
20 **appeals officer's findings of fact are based on**
21 **substantial evidence and support the conclusions of**
22 **law which are grounded in sound legal reasoning.**

23 All findings of fact in the April 15, 2021, Decision and Order
24 are substantiated by evidence admitted at hearing. The Appeals
25 Officer has the authority to choose to give weight to medical

26 ³² Elizondo v. Hood Mach., Inc., 129 Nev. 780, 784-85, 312 P.3d 479, 482
(2013).

27 ³³ Id. at 784, 312 P.3d at 482.

28 ³⁴ Clark County. Sch. Dist. v. Bundley, 122 Nev. 1440, 1445, 148 P.3d 750,
754 (2006).

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1 evidence and testimony as deemed appropriate.³⁵ Any other
2 conclusions than those listed in the Decision would require a re-
3 weighing of the evidence.

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

10 The law was properly applied to the facts by the Appeals
11 Officer in reaching the holding. Based on the totality of evidence
12 submitted, it was correctly found that Yasmer is entitled to
13 compensation for his ankle fracture and claim denial was not
14 appropriate.

15 To qualify for benefits for an industrial injury, an employee
16 has the burden to demonstrate, by a preponderance of the evidence,
17 that an injury by accident arose out of and in the course of his
18 employment.³⁶ The Nevada Supreme Court has defined a "preponderance
19 of evidence" as a standard of proof that "should lead the trier of
20 fact 'to find that the existence of the contested fact is more
21 probable than its nonexistence.'"³⁷ Further, in evaluating the
22 evidence of a work injury, the fact finder must consider the
23 totality of the circumstances.³⁸

24 _____
25 ³⁵ McClanahan v. Raley's, 117 Nev. 921, 34 P.3d 573 (2001).

26 ³⁶ NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).

27 ³⁷ Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).

28 ³⁸ Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,
1046 (1997).

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1 Initially, the Appeals Officer analyzed the statutory
2 definitions of accident and injury and properly applied those
3 definitions to the facts to conclude that an injury by accident had
4 occurred. This assessment was not challenged by CTHS and Gallagher
5 Bassett.

6 The Appeals Officer then correctly found that the injury by
7 accident arose out of Yasmer's work. Generally, an injury arises out
8 of employment if there is "a causal connection between the injury
9 and the employee's work," in which 'the origin of the injury is
10 related to some risk involved within the scope of employment.'³⁹ To
11 find causation a physician must establish to a "reasonable degree
12 of medical probability that the condition in question was caused by
13 the industrial injury or sufficient facts must be shown so that the
14 trier of fact can make a reasonable conclusion that the condition
15 was caused by the industrial injury."⁴⁰

16 There are three categories of risks: employment, personal, and
17 neutral.⁴¹ Employment risks are compensable, personal risks are not
18 compensable, and neutral risks are compensable if they satisfy the
19 increased-risk test.⁴² Personal risks are those that are
20 attributable to personal issues - not to the employment.⁴³
21 Employment risks include "obvious kinds of injur[ies] that one

22
23 ³⁹ Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,
1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

24
25 ⁴⁰ Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842
(1997).

26
27 ⁴¹ Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d
2, 5 (2010).

28 ⁴² Id. at 351-53, 240 P.3d at 5-7.

⁴³ Id. at 351, 240 P.3d at 5.

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1 thinks of at once as industrial injuries. All the things that can
2 go wrong around a modern factory, office, mill, mine, retail
3 establishment, transportation system, or construction project."⁴⁴
4 Neutral risks are those that do not fall within either the
5 employment or personal risk categories.⁴⁵

6 The Appeals Officer correctly concluded that Yasmer proved his
7 injury was caused by an employment risk. A preponderance of the
8 evidence showed that the left ankle was fractured while performing
9 work duties since Yasmer was conveying a benefit to his employer as
10 he was carrying a box of supplies down stairs at the facility where
11 he worked to take it to a satellite facility.⁴⁶

12 Further, it was found that carrying the box of supplies from
13 one location to another was an employment risk because a box can
14 impede a person's field of vision. In the present matter, Yasmer
15 fell and fractured his ankle because he mis-stepped due to the box
16 blocking his ability to see what step he was on. When an employee
17 carries a box for an employer which impedes his or her vision the
18 person risks tripping or mis-stepping, falling, and suffering injury
19 regardless of where he or she is walking; thus, the risk is an
20 employment related risk. Accordingly, Yasmer's injury was caused by
21 an employment risk and the Appeals Officer's determination that he
22 met his burden of proof in proving that his injury arose out of his
23 employment was proper and based on substantial evidence.

24 _____
25 ⁴⁴ 1-4 Larson's Workers' Compensation Law § 4.01.

26 ⁴⁵ Phillips at 351, 240 P.3d at 6.

27 ⁴⁶ See Evans v. Southwest Gas, 108 Nev. 1002, 1006-1007, 842 P.2d 719, 721
28 (1992) (analyzing whether an employee conferred a benefit upon an employer
or furthered the business interests of an employer to determine whether
the employee was acting within the scope of employment when injured).

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1 Also, there was sufficient medical reporting on the record from
2 which a reasonable conclusion could be formed that Yasmer's injury
3 caused his industrial condition.⁴⁷ Specifically, the emergency room
4 doctor checked the box on the C4 form indicating he could directly
5 connect the left ankle fracture as job incurred.⁴⁸ Also, Dr.
6 Cummings noted that the injury occurred at work when Yasmer missed
7 a step while carrying a box. The Appeals Officer found this
8 reporting to be the most persuasive, credible medical evidence, as
9 was her prerogative, and was therefore correct in determining
10 Yasmer's left ankle condition was caused by the industrial injury.⁴⁹

11 Finally, the evidence on the record established that Yasmer's
12 injury occurred within the course of his employment. "[W]hether the
13 injury occurs within the course of the employment refers . . . to
14 the time and place of employment, i.e. whether the injury occurs at
15 work, during working hours, and while the employee is reasonably
16 performing his or her duties."⁵⁰ As Yasmer's injury occurred when he
17 was at work in the hospital while reasonably performing his job
18 duties - he was required to carry the box and was conferring a
19 benefit on his employer at the time of the injury - it was proper
20 to find that, based on the evidence presented, his injury by
21 accident occurred within the course of his employment.

22 The Appeals Officer's decision was legally correct. There were
23 sufficient facts proven to find that the ankle injury was caused by
24

25 ⁴⁷ United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,
425, 851 P.2d 423, 425 (1993).

26 ⁴⁸ See NRS 616C.098.

27 ⁴⁹ McClanahan v. Raleys, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

28 ⁵⁰ Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

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1 an industrial injury while Yasmer was performing work for his
2 employer. Therefore, the Appeals Officer's conclusion that Yasmer's
3 injury arose out of and in the course of his employment and is
4 compensable under Nevada's workers' compensation scheme is supported
5 by substantial evidence on the record and cannot be reversed.

6 **ii. Petitioner's arguments do not form an appropriate**
7 **basis to reverse the appeals officer's Decision and**
8 **Order.**

8 It is a petitioner's burden to show that a final agency
9 decision is invalid and Carson Tahoe Health System and Gallagher
10 Bassett fail to make this showing. There was no misapplication of
11 the law and the findings of fact are supported by substantial
12 evidence in the record. Further, CTHS and Gallagher Bassett's
13 arguments for reversal are not supported by the law.

14 While it's asserted in the petition that the Appeals Officer
15 erred as a matter of law, the commission of any such error has not
16 been shown, nor was it shown that the April 15, 2021, Decision and
17 Order was unsupported by substantial evidence on the record. As
18 there was no misapplication of the law and the findings of fact are
19 supported by substantial evidence, CTHS and Gallagher Bassett's
20 request for review should be denied.

21 Two arguments are advanced for reversal of the April 15, 2021,
22 Decision and Order. However, both focus on the wrong aspect of the
23 issue - the place the injury occurred rather than the action the
24 employee was performing when he was injured. The first argument made
25 by CTHS and Gallagher Bassett appears to challenge whether Yasmer's
26 injury arose out of his employment and the other appears to
27 challenge whether he was the in course of his employment when he
28 suffered the accident. These arguments would only suffice to allow

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1 reversal if Petitioners convince a court to re-weigh the evidence
2 which is not proper under Nevada Law and does not constitute grounds
3 for a reversal of an administrative law judge's decision and order.

4 CTHS and Gallagher Bassett argue that Yasmer's injury did not
5 arise out of his employment because the risk he faced was not
6 greater than that faced by the general public while descending
7 stairs.⁵¹ Use of the neutral risk test is advocated because the
8 "fall was not caused by a defect on the stairs nor was it from
9 conditions personal to him."⁵² Additionally, it is stated that
10 "whether the fall was explained or unexplained is irrelevant."⁵³

11 Under this argument, there is no analysis as to why the risk
12 Yasmer was subjected to constituted a neutral risk rather than an
13 employment one, nor how the appeals officer was incorrect in finding
14 that falling while carrying a box that impeded an employee's vision,
15 as part of the person's job, constituted a compensable employment
16 risk. The argument focuses on where the injury occurred, rather than
17 what the claimant was doing when he was injured, to force use of the
18 neutral risk test. Yasmer was performing a work task when he fell.
19 The obstructed view is what caused the employment risk he faced
20 while performing work duties not an explanation of why he fell.
21 Therefore, the risk was an employment risk. There is no analysis or
22 authority provided to explain how the location of the accident would
23 convert a risk of employment to a neutral risk.

24 ...

25
26 ⁵¹ Pet'r, Travelers' Open. Brief, 7:17-19.

27 ⁵² Id. at 7:14-19.

28 ⁵³ Id. at 7:16.

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1 Further, no analysis is provided as to how or why an accident
2 caused by a mis-step versus a hazard on the floor impacts a
3 determination that an injury was caused by an employment risk.
4 Finally, there is no argument provided as to why the Appeals
5 Officer's conclusion is legally incorrect or lacking in substantial
6 evidence - it is simply stated. This argument is merely a request
7 to have the evidence re-evaluated under a standard more advantageous
8 to CTHS and Gallagher Bassett and not a reason for reversal.

9 The argument that Yasmer was not in the course of his
10 employment because he was walking down stairs, rather than taking
11 an elevator, is also advanced.⁵⁴ In making this argument, CTHS and
12 Gallagher Bassett write that Yasmer's "manager states that the
13 Respondent should have been using the elevator to perform this task
14 as there is an elevator for employee use."⁵⁵ However, this both mis-
15 states and mis-characterizes the evidence. Yasmer's manager was
16 asked how the injury could have been prevented and stated that
17 Yasmer could have used the elevator. He never stated that Yasmer was
18 prohibited from using the stairs, nor did he say that Yasmer should
19 not have been using the stairs. He merely says the accident would
20 have been avoided had an elevator been used. Further, there is no
21 evidence on the record that there was a policy that Yasmer use an
22 elevator or evidence of any prohibition against using the stairs.

23 CTHS and Gallagher Bassett state that "there is an elevator for
24 employee use and the Respondent simply chose not to use it."⁵⁶
25

26 ⁵⁴ Id. at 7:6-11 and 7:27-28.

27 ⁵⁵ Id. at 7:6-8.

28 ⁵⁶ Id. at 7:7-8.

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1 However, there is no argument or analysis as to how this statement
2 is relevant or how the finding that Yasmer was in the course of his
3 employment, despite not taking the elevator, was improper.
4 Additionally, there is no analysis as to how a failure to use the
5 elevator removed Yasmer from the course of his work or caused his
6 injury to be non-compensable.

7 There was no misapplication of the law and the findings of fact
8 in the decision are supported by substantial evidence on the record.
9 CTHS and Gallagher Bassett are simply seeking an impermissible re-
10 weighing of the facts under a standard more favorable to their
11 position. They have not shown the April 15, 2021, Decision and Order
12 was invalid so their petition should be denied.

13 Yasmer has met his burden under Nevada law for his claim to be
14 accepted. CTHS and Gallagher Bassett do nothing more than ask for
15 a re-weighing of the evidence in this matter hoping for a favorable
16 outcome. However, the Appeals Officer made factual determinations,
17 based on the medical reporting, other evidence, and testimony, that
18 Yasmer's claim is compensable.

19 CTHS and Gallagher Bassett have failed to show anything that
20 would justify a reversal of the Appeals Officer's Decision and
21 Order. CTHS and Gallagher Bassett were unable to produce viable
22 arguments for reversal because the Appeals Officer's Decision and
23 Order is supported by substantial evidence on the record.

24 In sum, the April 15, 2021, Decision and Order reflects a sound
25 and legal application of the law to the facts, and the decision is
26 supported by substantial evidence as well as grounds and reasons.
27 CTHS and Gallagher Bassett are simply unhappy with the outcome and
28 are impermissibly attempting to coax the Court into re-weighing the

1 evidence in their favor. The Appeals Officer did not commit abuse
2 of discretion and the decision in this matter was not arbitrary,
3 capricious, or lacking substantial evidence; thus, the petition
4 should be denied and the appeals officer's decision should be
5 affirmed.

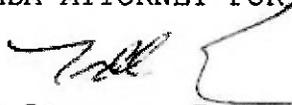
6 **VII.**
7 **CONCLUSION**

8 It is Gallagher Bassett and CTHS's burden to show that the
9 final agency decision is invalid and it has not. They have failed
10 to meet their burden to have the April 15, 2021, Decision and Order
11 reversed as they have not proven substantial rights were prejudiced.
12 Therefore, CTHS and Gallagher Bassett have not made a sufficient
13 showing to support their petition.

14 The April 15, 2021, Decision and Order was supported by
15 substantial evidence and constituted a proper application of Nevada
16 law to the facts in this matter. This did not constitute a violation
17 of a statutory provision; was not an error of law; and, was not
18 arbitrary, capricious, or characterized by an abuse of discretion.
19 Therefore, the decision was proper and should not be reversed.
20 Stephen Yasmer respectfully requests the Petition for Judicial
21 Review be denied.

22 RESPECTFULLY SUBMITTED this 9th day of August, 2021.

23 NEVADA ATTORNEY FOR INJURED WORKERS

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CERTIFICATE OF COMPLIANCE
(NRAP 28.2)

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1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

____ This brief has been prepared in a proportionally spaced typeface using [state name and version of word processing program] in font [state font size and name of type style] or
 X This brief has been prepared in a monospaced typeface using Word Perfect X3 with 10.5 characters per inch in Courier New Font size 12.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

____ Proportionately spaced, has a typeface of 14 points or more and contains ____ words; or
____ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or
 X Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 23(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter

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1 relied on is to be found. I understand that I may be subject to
2 sanctions in the event that the accompanying brief is not in
3 conformity with the requirements of the Nevada Rules of Appellate
4 Procedure.

5 Respectfully submitted this 9th day of August, 2021.

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AFFIRMATION
Pursuant to NRS 239B.030

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The undersigned does hereby affirm that the preceding
RESPONDENT'S ANSWERING BRIEF, 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.

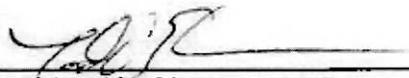
-OR-

 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
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8/9/2021
Date

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CERTIFICATE OF SERVICE

Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing **RESPONDENT'S ANSWERING BRIEF** was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s)

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

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

12
13 Petitioners,

14 v.

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

17
18 Respondents.

CASE NO: CV21-00809

DEPT. NO.: 8

HEARING NOT REQUESTED

19 **PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS**
20 **PETITION FOR JUDICIAL REVIEW**

21 COMES NOW the Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter
referred to as "Petitioner Employer"), and the Third-Party Administrator, GALLAGHER
22 BASSETT SERVICES, INC., (hereinafter referred to as "Petitioner Administrator"), by and
23 through their attorneys, JOHN P. LAVERY, ESQ., and JEANNE P. BAWA, ESQ., of LEWIS
24 BRISBOIS BISGAARD & SMITH LLP, and hereby files the instant Opposition to Respondent's
25 Motion to Dismiss Petition for Judicial Review.
26

27 ...

28 ...

1 This Opposition is based upon all papers and pleadings on file herein; the memorandum
2 of points and authorities attached hereto; and any other further argument and evidence as may
3 properly be presented to the court at the hearing on this Motion.

4 DATED this 12th day of August, 2021.

5 Respectfully submitted,

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF RELEVANT FACTS**

4 This is a worker’s compensation Petition for Judicial Review. The motion at issue
5 concerns only procedural matters, so Petitioners will not recount facts related to the underlying
6 claim.

7 Petitioners are Gallagher Bassett Services, Inc. (hereinafter “Gallagher Bassett”), a
8 nationwide third-party administrator, and Carson Tahoe Health, a comprehensive healthcare
9 network. Gallagher Bassett is a foreign corporation headquartered in Illinois and licensed by the
10 Nevada Division of Insurance to do business in the State of Nevada. (Exhibit A.) Carson Tahoe
11 Health is a domestic corporation with 21 locations, including 2 in Washoe County, serving
12 patients throughout Northern Nevada. (Exhibit B.)

13 The Appeals Officer in the underlying claim rendered her Decision and Order on April
14 15, 2021. Per NRS 233B.130(2)(b), Petitioners had until May 17, 2021, to file a Petition for
15 Judicial Review. Petitioners filed their Petition for Judicial Review and Motion for Stay Pending
16 Appeal on May 3, 2021. Respondent filed a Statement of Intent to Participate on May 10, 2021.
17 On May 11, 2021, the parties stipulated to allow Respondent additional time to oppose the
18 motion. On May 26, 2021, Respondent filed his Opposition to Petitioners’ Motion for Stay
19 Pending Appeal. The Record on Appeal was transmitted on June 4, 2021. Petitioners filed their
20 Opening Brief on July 13, 2021. On August 4, 2021, Respondent filed the instant Motion to
21 Dismiss Petition for Judicial Review.

22 **II.**

23 **ARGUMENT**

24 NRS233B.130(2) sets forth the mandatory requirements for a Petition for Judicial
25 Review. Respondent has moved to dismiss based on the premise that Petitioners failed to file
26 their petition “in the district court in and for Carson City, in and for the county in which the
27 aggrieved party resides or in and for the county where the agency proceeding occurred.” NRS
28 233B.130(2)(b).

1 In this case, the aggrieved parties are the employer, Carson Tahoe Health System, and its
2 third-party administrator, Gallagher Bassett. Carson Tahoe Health System provides healthcare to
3 patients throughout northern Nevada, with 21 locations including 2 in Reno. The question is
4 whether this connection to Washoe County is sufficient to establish residency for a domestic
5 corporation. Petitioners posit that it is, and, therefore, jurisdiction vests with this Court.

6 With regard to foreign corporations, “the mere fact that it is doing business in this state
7 does not fix its residence in any particular county for the purpose of venue . . .” Western Pacific
8 Railroad v. Krom, 102 Nev. 40, 43, 714 P.2d 182, 184(1986)(citing, Byers v. Graton, 82 Nev.
9 92, 95, 411 P.2d 480, 481(1966). However, a foreign corporation cannot have fixed residency in
10 a particular Nevada county for purposes of NRS 233B.130(2)(b). Liberty Mut. v. Thomasson,
11 130 Nev. 28, 34, 317 P.3d 831, 836(2014). Despite not having a fixed residency, Gallagher
12 Bassett is licensed by the Nevada Division of Insurance to conduct business throughout Nevada.
13 As an aggrieved party, it should be able to select the forum. See Eaton v. District Court, 96 Nev.
14 773, 774, 616 P.2d 400(1980).

15 There has been no prejudice to Respondent, nor any delay in his participation in this
16 litigation, as evidenced by the fact that he was able to make his appearance in this case and
17 obtain agreement from Petitioners to extend his time to oppose Petitioners’ Motion for Stay, all
18 within the 30 days in which a Petition could be filed. NRS 233B.130(2)(d). Further, estoppel
19 should apply as Respondent filed responsive pleadings with the Court, contrary to its current
20 position that the matter should be dismissed. Finally, policy prefers deciding cases on the merits.

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III.

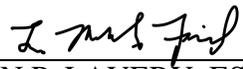
CONCLUSION

Based on the above, Petitioners respectfully request that Respondent's Motion to Dismiss be denied and this matter be allowed to proceed to a hearing on the merits.

Dated this 12th day of August, 2021.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

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Attorneys for Petitioners
CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 12th day of
3 August, 2021, service of the attached **PETITIONERS' OPPOSITION TO RESPONDENT'S**
4 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was made this date by
5 depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed
6 follows:

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

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

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



16 An Employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1
2 **SECOND JUDICIAL DISTRICT COURT**
3 **COUNTY OF WASHOE, STATE OF NEVADA**

4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document,
7 PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR
8 JUDICIAL REVIEW filed in case number: CV21-00809

9
10 Document does not contain the Social Security number of any person.

11 **- OR -**

12
13 Document contains the Social Security number of a person as required by:

14 A specific state or federal law, to wit:

15 _____

16 **- or -**

17 For the administration of a public program

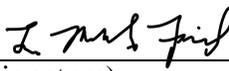
18 **- or -**

19 For an application for a federal or state grant

20 **- or -**

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

23
24 Date: August 12, 2021

25 
(Signature)

26 L. MICHAEL FRIEND, ESQ.
(Print Name)

27 PETITIONERS
28 (Attorney for)

Department of Business and Industry
Nevada Division of Insurance



- Help me find...
 - Self-Insured Workers' Compensation
 - File a Complaint
 - About Us
 - Contact Us
 - Sitemap
 - State of Nevada Links
- Consumers
- Health Insurance Rates
- Healthcare Reform
- Licensing
- Insurers
- Captive Insurers
- News & Notices

GALLAGHER BASSETT SERVICES INC (ADJ)

Address:

777 N RAINBOW BLVD STE 330
LAS VEGAS, NV 89107-1192

Phone

630-285-4122

URL:

Email:

cari_miller@gbtpa.com

National Producer Number:

NEW SEARCH

License Type	License Number	Original Issue Date	Status	Effective Date	Expiration Date
Independent Adjuster	9379	09/05/2000	Active	03/30/2005	04/01/2023

Qualification Type	Original Issue Date	Status	Effective Date
Adj - Property and Casualty	07/01/2018	Active	07/01/2018

▶ 1 Individual Associations

Exhibit A

▶ 1 Organization Associations

- Consumers
- Health Insurance Rates
- Healthcare Reform
- Licensing
- News & Notices
- About Us
- Self-Insured
- Contact Us

- 2013 Nevada Division of Insurance
- Site Map
- Privacy Policy
- Search

carsontahoe.com/about-us.html



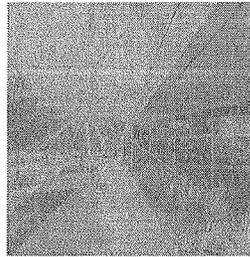
About Us

Our Mission: At Carson Tahoe Health, we enhance the health and well-being of the communities we serve.

Our **Core Values** include putting patients first and treating everyone with dignity and respect.

Carson Tahoe Health is a comprehensive healthcare network featuring two hospitals, two urgent cares, an emergent care center, outpatient services and a provider network with 21 regional locations. Our reach stretches far and wide, encompassing Carson City, Minden, Gardnerville, Carson Valley, South Reno, Dayton, Lake Tahoe, Yerington, and beyond.

At Carson Tahoe, we treat the whole person; mind, body and soul. Our goal is to elicit intuitive feelings of compassion, family, and peace of mind, as this is at the heart of everything we do, how we do it, and why we do what we do. We intertwine the art and science of healthcare, combining the healing elements of 'nature' with the caring aspects of 'nurture', along with state-of-the-art lifesaving technologies, advanced expertise, and beautiful facilities designed to cultivate the best possible patient experience.



About Us

- Annual Report
- Community Benefits
- Community Health Needs Assessment
- Community Partners
- Community Publications
- Connect With Us
- Contact Us
- CTH Board
- CTH History
- FAQ

Exhibit B

000385



FIND A PROVIDER

FIND A LOCATION

SERVICES

HELPFUL INFO

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Carson Tahoe Medical Group Center for Wound Healing | Reno

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Address
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Phone
View all Department
Phone Numbers



Departments
Center for Wound Healing

Carson Tahoe Medical Group - Reno Office | Reno

VIEW MORE



7.4 miles away



Address
10539 Professional Circle, Suite 200, Reno, NV 89521



Phone
View all Department
Phone Numbers



Departments
Cardiology, Internal Medicine

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6 (775) 684-7555
Attorneys for: Respondent, Stephen Yasmer

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

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

CASE NO. CV21-00809

11
12 Petitioner,

DEPT. NO. 8

13 vs.

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

17 Respondents.
18 _____/

19 **REPLY IN SUPPORT OF STEPHEN YASMER'S**
MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

20
21 Respondent, Stephen Yasmer, by and through his attorney, Todd
22 Eikelberger, Esq., Deputy, Nevada Attorney for Injured Workers,
23 hereby replies to the opposition to his Motion to Dismiss Petition
24 for Judicial Review filed by the Petitioners on or about August 12,
25 2021.

26 ...
27 ...
28 ...

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Las Vegas, NV 89102 (702) 486-2830

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

4 DATED this 17th day of August, 2021.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

7
8 Evan Beavers, Esq. (NV Bar #3399)
9 Todd Eikelberger, Esq. (NV Bar #9393)
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12 Attorneys for Respondent, Stephen Yasmer

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 I.
ARGUMENT

4 Respondent, Stephen Yasmer filed his Motion to Dismiss
5 Petition for Judicial Review on August 2, 2021, because the court
6 lacks jurisdiction to consider the petition under NRS
7 233B.130(2)(b) as it was improperly filed in Nevada's Second
8 Judicial District in Washoe County. NRS 233B.130(2)(b) requires
9 that petitions for judicial review of workers' compensation matters
10 be "instituted by filing a petition in the district court in and
11 for Carson City, in and for the county in which the aggrieved party
12 resides or in and for the county where the agency proceeding
13 occurred." Applying this requirement, the May 3, 2021, Petition for
14 Judicial Review was required to be filed in the district court for
15 Carson City, Nevada. The Nevada Supreme Court has held that failure
16 to strictly comply with the requirements of NRS 233B.130(2) results
17 in a lack of jurisdiction for a district court to consider a
18 petition for judicial review necessitating dismissal.¹

19 Carson Tahoe Health System (herein, "CTHS") and Gallagher
20 Bassett Services, Inc. opposed Yasmer's Motion to Dismiss on August
21 12, 2021. They argued the court has jurisdiction because CTHS
22 maintains two offices in Reno, out of its 21 locations state-wide,
23 so it resides in Washoe County for purposes of NRS 233B.130(2)(b);²
24 Gallagher Bassett is a foreign corporation licensed by the Nevada
25 Department of Insurance enabling it to file in any forum in Nevada
26

27 ¹ Washoe County v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726 (2012).

28 ² Pet'rs' Opp'n to Resp't's Mot. Dismiss Pet. Jud. Review, 4:1-5.

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1 making Washoe County a proper place to file under NRS
2 233B.130(2)(b);³ and estoppel should apply as to dismissal as
3 Yasmer was able to appear, and appeared, so there is no prejudice.⁴
4 However, none of these arguments give this court jurisdiction to
5 entertain the petition for review.

6 Carson Tahoe Health System's offices in Reno, Nevada, do not
7 make it a resident of Washoe County. In Liberty Mut. v. Thomasson⁵,
8 cited in both the motion⁶ and opposition⁷, the Nevada Supreme Court
9 held "that, for purposes of NRS 233B.130(2)(b), a corporation's
10 place of residence is that which is listed as the principal place
11 of business in its articles of incorporation."⁸ Carson Tahoe Health
12 System and Gallagher Bassett do not allege that Washoe County is
13 CTHS's principal place of business listed in its articles, merely
14 that it maintains two of its twenty-one locations in Reno, Nevada.⁹
15 Additionally, all of Carson Tahoe Health System's officers and
16 directors have "1600 Medical Parkway, Carson City, NV, 89703"
17 listed as their address on the Nevada Secretary of State's online
18 Entity Information sheet.¹⁰ Therefore, CTHS and Gallagher Bassett
19 have not proven that Carson Tahoe Health Systems' principal place
20

21 ³ Id. at 4:11-14.

22 ⁴ Id. at 4:15-20.

23 ⁵ Liberty Mut. v. Thomasson, 130 Nev. 28, 317 P.3d 831 (2014).

24 ⁶ Mot. Dismiss Pet. Jud. Review, 5:15-18, 6:10-12, 6:18-7:3.

25 ⁷ Opp'n, 4:9-10.

26 ⁸ Thomasson at 33, 317 P.3d at 836.

27 ⁹ Opp'n, 4:2-3.

28 ¹⁰ Id. at exhibit 8.

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1 of business in its articles of incorporation is Washoe County such
2 that the residency requirement of NRS 233B.130(2)(b) has been met.
3 Also, Gallagher Bassett's foreign corporation status
4 disqualifies it from residing anywhere in the State of Nevada and
5 being licensed by the Department of Insurance does not alter this
6 disqualification. The Court in Thomasson specifically held that "a
7 foreign corporation cannot have a fixed residence in any Nevada
8 county" for purposes of the residency requirement in NRS
9 233B.130(2)(b) "and thus Washoe County was not the proper county
10 ... to seek judicial review."¹¹ Additionally, no authority is
11 provided in the opposition that licensure by the Nevada Department
12 of Insurance confers any type of residency status on a foreign
13 corporation. Therefore, since Gallagher Bassett does not reside in
14 Washoe County, the residency requirement of NRS 233B.130(2)(b)
15 still has not been met by the petitioners.

16 As neither CTHS nor Gallagher Bassett reside in Washoe County,
17 the petition was improperly filed and must be dismissed as this
18 court lacks jurisdiction to entertain the matter. "When a party
19 seeks judicial review of an administrative decision [in Nevada],
20 strict compliance with the statutory requirements for such review
21 is a precondition to jurisdiction by the court of judicial
22 review."¹²

23 It is mandatory that a court have jurisdiction to hear a
24 matter and when it does not neither a lack of prejudice nor consent
25

26 ¹¹ Thomasson 130 Nev. at 34, 317 P.3d at 836.

27 ¹² 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).

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1 may convey the required jurisdiction. Under Nevada law, "[a]
2 district court is empowered to render a judgment either for or
3 against a person or entity only if it has jurisdiction over the
4 parties and the subject matter."¹³ Further, "[n]oncompliance with
5 the requirements [of NRS 233B.130] is grounds for dismissal of the
6 appeal."¹⁴ And, "only those decisions falling within the APA's terms
7 and challenged according to the APA's procedures invoke the
8 district court's jurisdiction."¹⁵ Petitioners provide no authority
9 for the premise that either consent or a lack of prejudice serve to
10 waive mandatory, jurisdictional filing requirements. Specifically,
11 in Thomasson the Court held "that NRS 233B.130(2)(b) is mandatory
12 and jurisdictional. Thus, failure to strictly comply with NRS
13 233B.130(2)(b) requires dismissal."¹⁶ No exceptions were provided.

14 Based on the foregoing, neither Petitioner resides in Washoe
15 County. CTHS resides in Carson City, and GBS does not reside in the
16 State of Nevada as it is a foreign corporation. Further, the agency
17 proceeding being appealed did not occur in Washoe County and
18 jurisdiction may not be conveyed by a lack prejudice or consent.
19 Thus, the Second Judicial District Court does not have jurisdiction
20 to consider the May 3, 2021, Petition for Judicial Review and it
21 must be dismissed.

22
23 ¹³ 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).

24
25 ¹⁴ Kame, 105 Nev. at 25, 769 P.2d at 68 (citing Teepe v. Review Board of
Indiana Emp. Sec. Div., 200 N.E.2d 538, 539 (Ind.App. 1964)).

26
27 ¹⁵ Otto, 128 Nev. at 431, 282 P.3d at 725 (citing Private Inv. Licensing Bd.
v. Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1019 (1982)).

28 ¹⁶ Thomasson 130 Nev. at 32, 317 P.3d at 835.

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II.
CONCLUSION

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

DATED this 17th day of August, 2021.

NEVADA ATTORNEY FOR INJURED WORKERS



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Todd Eikelberger, Esq. (NV Bar #9393)
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Attorneys for Respondent, Stephen Yasmer

1 CERTIFICATE OF SERVICE

2 Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5, I
3 certify that I am an employee of the State of Nevada, Nevada
4 Attorney for Injured Workers, and that on this date, the foregoing
5 **REPLY IN SUPPORT OF STEPHEN YASMER'S MOTION TO DISMISS PETITION FOR**
6 **JUDICIAL REVIEW** was electronically submitted to the clerk of the
7 Court for the Second Judicial District by using the eFlex system,
8 resulting in electronic service to the following user(s)

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17 DATED: AUGUST 17, 2021

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19 SIGNED: ALEX ANDRACA

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9 Attorneys for Petitioners
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and GALLAGHER BASSETT SERVICES, INC.

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

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

14 Petitioners,

15 v.

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

20 Respondents.

CASE NO: CV21-00809

DEPT. NO.: VIII

21
22 **PETITIONERS' REPLY BRIEF**

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WORKERS
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Attorney for Respondent
Stephen Yasmer

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**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.: VIII

NRAP 26.1 DISCLOSURE

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

1. The Respondent, CARSON TAHOE HEALTH SYSTEM, states that it does not have any parent corporation, or any publicly held corporation that owns 10% or more of its stock, nor any publicly held corporation that has a direct financial interest in the outcome of the litigation. NRAP 26.1(a).
2. The Respondent, GALLAGHER BASSETT SERVICES, INC., states that it does not have any parent corporation, or any publicly held corporation that owns 10% or more of its stock, nor any publicly held corporation that has a direct financial interest in the outcome of the litigation.
3. The undersigned counsel states that the following attorneys have appeared or are expected to appear in this court, including the district court and administrative agency:

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- JOHN P. LAVERY, ESQ. of LEWIS BRISBOIS BISGAARD & SMITH LLP, Attorney or Record for Respondents;
- JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP; Attorney or Record for Respondents; and,
- L. MICHAEL FRIEND, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, Attorney or Record for Respondents;

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

DATED this 15th day of September, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

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Nevada Bar No. 004665
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NRAP 26.1 DISCLOSURE i-ii

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TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page No(s).</u>
<i>Horne v. State Indus. Ins. Sys.</i> , 113 Nev. 532, 936 P.2d 839 (1997)	1
<i>Jones v. Rosner</i> , 102 Nev. 215, 719 P.2d 805 (1986)	1
<i>Maxwell v. State Indus. Ins. Sys.</i> , 109 Nev. 327, 849 P.2d 267 (1993)	1
<i>McCracken v. Fancy</i> , 98 Nev. 30, 639 P.2d 552 (1982)	1
<i>Mitchell v. Clark County School District</i> , 121 Nev. 179, 111 P.3d 1104 (2005)	1, 2
<i>Nassiri v. Chiropractic Physicians’ Bd. of Nev.</i> , 130 Nev. 245, 327 P.3d 487 (2014)	1
<i>North Las Vegas v. Public Service Common</i> , 83 Nev. 278, 429 P.2d 66 (1967)	1
<i>Rio Suite Hotel & Casino v. Gorsky</i> , 113 Nev. 600, 939 P.2d 1043 (1997)	1
<i>Rio All Suite Hotel & Casino v. Phillips</i> , 126 Nev. 346, 240 P.3d 2 (2010)	2
<u>Others</u>	
A. Larson, <i>The Law of Workmen’s Compensation</i> , § 80.33(a)	2

1 I.

2 REPLY

3 The issues in this appeal are ones of fact and law. While the Court is not required to give
4 deference to pure legal questions determined by the agency, those conclusions of the agency
5 which are “closely related to the agency’s view of the facts, are entitled to deference, and will not
6 be disturbed if they are supported by substantial evidence.” Jones v. Rosner, 102 Nev. 215, 217,
7 719 P.2d 805, 806 (1986).

8 In regard to review of factual determinations, this Court reviews an appeals officer’s
9 factual findings for substantial evidence. North Las Vegas v. Public Service Comm’n., 83 Nev.
10 278, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial
11 evidence is that quantity and quality of evidence which a reasonable man would accept as
12 adequate to support a conclusion. Nassiri v. Chiropractic Physicians’ Bd. of Nev., 130 Nev. 245,
13 249, 327 P.3d 487, 490 (2014); Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 331, 849 P.2d
14 267, 270 (1993); Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537, 936 P.2d 839 (1997).

15 An accident or injury arises out of employment only when there is a causal connection
16 between the injury and the employee’s work. Therefore, the injured party must establish a link
17 between the workplace conditions and how those conditions caused the injury, as well as that the
18 origin of the injury is related to some risk involved within the scope of employment. Rio Suite
19 Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043 (1997); Mitchell v. Clark County
20 School District, 121 Nev. 179, 111 P.3d 1104 (2005).

22 In this case, there is not substantial evidence to support the Appeals Officer’s conclusion
23 and Respondent’s position that his actions when the fall occurred are related to a risk involved
24 with his employment. Respondent was walking down some stairs while he was carrying a box.
25 The evidence shows there is an elevator available for use. Respondent admitted he had the option
26 to take the elevator or the stairs, but he made the personal choice to use the stairs while carrying a
27 box that impeded his view. (ROA p. 24.) The mechanism of injury reported by Respondent is not
28

1 of the quantity or quality that is adequate to support the Appeals Officer’s conclusion that this was
2 an employment related risk.

3 Respondents’ fall was not due to an employment-related risk, nor a personal risk, but
4 rather was “neither distinctly employment nor distinctly personal character.” 1 Larson’s Workers’
5 Compensation Law § 4.03, at 4-2. See also Mitchell, 121 Nev. at 181 n.7, 111 P.3d at 1106 n.7
6 (“An unexplained fall, originating neither from employment conditions nor from conditions
7 personal to the [employee], is considered to be caused by a neutral risk.”); Rio All Suite Hotel &
8 Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d 2, 6 (2010).

10 The Appeals Officer erred as a matter of law by applying the standard for an employment-
11 related risk. This case should have been evaluated as a neutral risk. That would require an analysis
12 of whether the risk faced by the Respondent was greater than the risk faced by the general public.
13 The facts simply do not support that conclusion. The general public was able to use the stairs
14 where Respondent fell (ROA p. 26); therefore, there is not sufficient evidence to support that he
15 faced a greater risk than the public—in fact, he faced the same risk. Moreover, Respondent had the
16 option of using the elevator, which would have circumvented this entire situation. Simply being
17 injured while at work is not enough to satisfy an injured worker’s burden to establish that the
18 injury arose out of an in the course and scope of his employment.

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II.

CONCLUSION

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

DATED this 15th day of September, 2021.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By  _____

JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
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CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.

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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 2,008 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.

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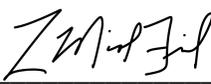
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4. Lastly, this Brief does not contain a social security number.

DATED this 15th day of September, 2021.

Respectfully submitted,

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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 15th day of September, 2021, service of the attached **PETITIONERS' REPLY BRIEF** 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.
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Yvette McCollum, Sr. Claims Adjuster
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Attorneys for Appellants
9 CARSON TAHOE HEALTH SYSTEM and
10 GALLAGHER BASSETT SERVICES, INC.

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

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

16 Petitioners,

17 v.

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

20 Respondents.

CASE NO: CV21-00809

DEPT. NO.: VIII

21 **NOTICE OF ENTRY OF ORDER**

22 TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL.

23 ...

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1 YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that an **ORDER GRANTING**
2 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was entered with the Clerk of
3 the Court in the above-captioned matter on the 20th day of September, 2021. A copy of which is
4 attached hereto and made a part hereof.¹

5 DATED this 14th day of October, 2021.

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8

9 By /s/ L. Michael Friend
10 JOHN P. LAVERY, ESQ.
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18 Attorneys for Appellants
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20 GALLAGHER BASSETT SERVICES, INC.
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26 ¹ **NOTICE:** Pursuant to NRCP Rule 4, should any party desire to appeal this final District Court Order, the notice
27 of appeal must be filed with the clerk of the District Court after entry of a written judgment or order, and no later than
28 thirty (30) days after the date that the written notice of entry of the judgment or order appealed from is served.

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Index of Documents

Exhibit 1 Order Granting Motion to Dismiss Petition for Judicial Review 1-6

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CERTIFICATE OF MAILING

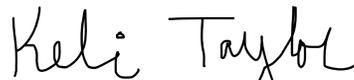
Pursuant to NRCF Rule 5(b), I hereby certify that, on the 14th day of October, 2021, I served a true and correct copy of the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as follows:

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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, Notice of Entry
6 of Order filed in case number: CV21-00809

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

21
22 Date: 10/14/21

/s/ L. Michael Friend
23 (Signature)

L. MICHAEL FRIEND, ESQ.
24 (Print Name)

Petitioners
25 (Attorney for)

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“EXHIBIT 1”

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

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

Case No. CV21-00809

Dept. No. 8

Petitioner,

vs.

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

Respondents.

ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Before the Court are two motions: (1) *Motion to Stay Pending Appeal* (“*Motion to Stay*”), filed by Petitioner, CARSON TAHOE HEALTH SYSTEM (hereinafter, “CTHS”) and GALLAGHER BASSETT SERVICES, INC. (hereinafter, “Gallagher, Inc.”) on May 3, 2021. Respondent, STEPHEN YASMER, filed his *Opposition to Petitioner’s Motion for Stay Pending Appeal* (“*Opposition*”), on May 26, 2021. This matter was submitted to the Court on June 30, 2021; and

(2): a *Motion to Dismiss Petition for Judicial Review* (“*Motion to Dismiss*”) filed on August 2, 2021, by Respondent, STEPHEN YASMER. The Petitioners, CTHS and GALLAGHER, INC., filed their *Opposition to Respondent’s Motion to Dismiss Petition for Judicial Review* (“*Opposition*”) on August 12, 2021, to which the Respondent filed a *Reply* on

1 August 17, 2021. On September 13, 2021, the Court entertained argument during a hearing on
2 the *Motion to Stay* and the *Motion to Dismiss*, and took the matters under submission.

3 Having reviewed the pleadings, relevant authorities, and arguments of counsel, the
4 Court **GRANTS** the Respondent's *Motion to Dismiss Petition for Judicial Review*, and finds as
5 follows¹:

6 **I. BACKGROUND**

7 According to the record, Stephen Yasmer (hereinafter "Respondent"), was employed at
8 CTHS. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 1: 26-27. While working, the
9 Respondent was carrying a box of supplies down a stair case when he mis-stepped and fell.
10 *Pet'r Mot. For Stay Pending Appeal*, 3: 11-13. As a result of the fall, Respondent was
11 diagnosed with a dislocation, and fracture of his left ankle. *Id.* 3: 8-9. The Respondent
12 underwent surgery for his injury. *Id.* 3: 19.

13 Respondent filed a claim for workers' compensation benefits, which was denied by
14 Gallagher, Inc. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 3: 9-11. The Respondent
15 appealed that determination, and the Hearing Officer affirmed the claim denial. *Pet'r Mot. For*
16 *Stay Pending Appeal*, 3: 22-25. The Respondent appealed this decision to an Appeals Officer
17 who reversed the Petitioner Administrator's denial of liability for Respondent's claim. *Id.* 3:
18 27-29. As a result, Gallagher, Inc. was ordered to accept the Respondent's claim for benefits as
19 a workers' compensation claim. *Opp'n to Pet'r Mot. For Stay Pending Appeal*,
20 4: 16-20.

21 **II. LEGAL STANDARD**

22 In order to challenge a final decision and order issued by a Nevada Department of
23 Administration appeals officer, a party must file a petition for judicial review. NRS 616C.370.
24 When a party seeks judicial review of an administrative decision [in Nevada], strict compliance
25 with the statutory requirements is a precondition to jurisdiction by the court of judicial review.
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28 ¹ In light of the Court's order granting the *Motion to Dismiss Petition for Judicial Review*, the
Motion for Stay Pending Appeal is rendered moot.

1 *Kame v. Employment Security Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989) citing *Teepe v.*
2 *Review Board of Indiana Emp. Sec. Div.*, 136 Ind. App. 331, 200 N.E. 2d 538, 539 (1964).

3 Requirements for judicial review petitions are contained in NRS 233B.130(2), which requires
4 that petitions are filed:

5 "In the district court in and for Carson City, in and for the county in which the aggrieved
6 party resides, or in and for the county where the agency proceeding occurred."
NRS 233B.130(2)(b).

7 The Nevada Supreme Court has held that failure of a petitioner to strictly comply with the
8 requirements set out in NRS 233B.130(2) results in a lack of jurisdiction for a district court to
9 consider a petition for judicial review. *Washoe County v. Otto*, 128 Nev. 424, 434, 282 P.3d
10 719, 726 (2012).

11 **III. DISCUSSION**

12 **A. The Motion to Dismiss Petition for Judicial Review Is Granted Because The** 13 **Second Judicial District Court Lacks Jurisdiction.**

14 In his *Motion to Dismiss*, the Respondent asserts the Second Judicial District Court does
15 not have jurisdiction because the *Petition for Judicial Review* was not filed in the proper district
16 court. Petitioner contends that jurisdiction is proper as to both CTHS and Gallagher, Inc.

17 In support, Petitioner first argues because CTHS has two locations in Reno and treats
18 patients throughout northern Nevada, it can establish residency in Washoe County as a domestic
19 corporation. Additionally, Petitioner attests that as an aggrieved party, Gallagher, Inc. has the
20 capacity to select the forum. *Pet'r Opp'n to Resp't Mot. to Dismiss Pet. for Judicial. Review*, 4:
21 13-14.

22 NRS 233B.130(2)(b) requires a petition for judicial review be filed in one of three
23 specific places. One location permitted by the statute is in the district court in and for Carson
24 City. The instant *Petition for Judicial Review* was filed in the Second Judicial District Court in
25 and for the County of Washoe. Under the statutory requirements, the Court does not have
26 jurisdiction to review the *Petition* on this basis.
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1 Alternatively, the statute permits a petition for judicial review to be filed in and for the
2 county in which the aggrieved party resides. For purposes of Nev. Rev. Stat. § 233B.130(2)(b),
3 a corporation's place of residence is that which is listed as the principal place of business in its
4 articles of incorporation. *Liberty Mut. v. Thomasson*, 130 Nev. 28, 34, 317 P.3d 837, 836
5 (2012). Yet, a foreign corporation cannot have a fixed residence in any Nevada county for
6 purposes of Nev. Rev. Stat. § 233B.130(2)(b)'s residency requirement. *Id.*

7 The Petitioner argues that Gallagher, Inc. and CTHS are the aggrieved parties. *Pet'r*
8 *Opp'n to Respt's Mot. to Dismiss Pet. for Judicial Review*, 4: 1-5. Gallagher, Inc. is a foreign
9 corporation, that is licensed by the Nevada Department of Insurance to conduct business
10 throughout Nevada. *Id.* 4: 11-13. The Nevada Supreme Court has determined that a foreign
11 corporation, such as Gallagher, Inc., cannot have a fixed residence in any Nevada county for
12 these jurisdictional purposes. Furthermore, Gallagher, Inc. has not alleged that its principal
13 place of business is in Washoe County. Considering both binding precedent, and the lack of
14 authority to support licensure by the Nevada Department of Insurance conferring any type of
15 residency status, the Court cannot exercise jurisdiction over Gallagher, Inc. under Nev. Rev.
16 Stat. § 233B.130(2)(b).

17 CTHS has offices in Reno, Nevada. However, CTHS maintains over twenty locations
18 statewide, with only two of those locations being in Reno. *Pet'r Opp'n to Respt's Mot. to*
19 *Dismiss Pet. for Judicial Review*, 4: 2-3. Despite maintaining locations in Reno, CTHS has
20 registered its officers and directors to an address in Carson City. *Id.* at Exhibit 8. CTHS has not
21 alleged, nor has it proven that its principal place of business is in Washoe County. Therefore,
22 CTHS has failed to establish that they meet the residency requirements delineated by Nev. Rev.
23 Stat. § 233B.130(2)(b), making jurisdiction improper in Washoe County.

24 The statute finds one more location to be appropriate; a petition for judicial review can
25 be filed in and for the county in which the agency proceeding occurred. In this case, the agency
26 proceeding did not take place in Washoe County. The certificate of service for both the appeals
27 proceeding did not take place in Washoe County. The certificate of service for both the appeals
28 officer's decision and order list an address in Carson City. *Resp't Mot. to Dismiss Pet. for*

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Judicial Review, Exhibit 8. Since the agency proceeding occurred outside of Washoe County, this Court does not have jurisdiction.

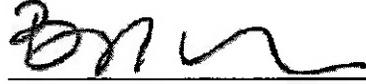
Under Nevada law, “[a] district court is empowered to render a judgment either for or against a person or entity only if it has jurisdiction over the parties and the subject matter.” *Young v. Nevada Title Company*, 103 Nev. 436, 442, 744, P.2d 902, 905 (1987). The Court cannot find a viable basis under Nev. Rev. Stat. § 233B.130(2)(b) to exercise jurisdiction. Therefore, the *Motion to Dismiss Petition for Judicial Review* is **GRANTED**.

IV. CONCLUSION

Based upon the foregoing, and good cause appearing,
IT IS HEREBY ORDERED that Respondent’s *Motion to Dismiss Petition for Judicial Review* is **GRANTED** as set forth above. The *Petition for Judicial Review* is **DISMISSED**.

IT IS SO ORDERED.

DATED this 20 day of September, 2021.



BARRY L. BRESLOW
DISTRICT JUDGE

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20 day of September, 2021, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.



Judicial Assistant

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7 Attorneys for Appellants
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8 GALLAGHER BASSETT SERVICES, INC.

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

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

CASE NO: CV21-00809
DEPT. NO.: VIII

14 Appellants,

15 vs.

16 STEPHEN YASMER,

17 Respondent.

18 **NOTICE OF APPEAL**

19 TO: STEPHEN YASMER, Respondent and,

20 TO: EVAN BEAVERS, ESQ., NEVADA ATTORNEY FOR INJURED WORKERS,
21 counsel of record for Respondent.

22 NOTICE IS HEREBY GIVEN that Appellants, CARSON TAHOE HEALTH SYSTEM and
23 GALLAGHER BASSETT SERVICES, INC., (hereinafter referred to as “Appellants”), in the above-
24 entitled action, hereby appeal to the Supreme Court of the State of Nevada from the attached “Order
25 Granting Motion to Dismiss Petition For Judicial Review entered in this action on September 20, 2021
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which dismissed Appellants’ Petition for Judicial Review and the “Notice of Entry of Order” filed on
October 14, 2021.

DATED this 21st day of October, 2021.

Respectfully submitted,
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ L. Michael Friend
JOHN P. LAVERY, ESQ.
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Attorneys for Appellants
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Index of Documents

Exhibit 1 Notice of Entry of Order, CV21-00809 1-12

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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 21st day of October, 2021, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a true copy of the same for mailing, first class mail, as follows:

Stephen Yasmer
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Carson City, NV 89701

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NEVADA ATTORNEY FOR INJURED
WORKERS
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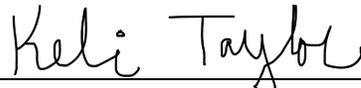
Yvette McCollum, Sr. Claims Adjuster
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PO Box 2934
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Sheila Y. Moore, Esq., Appeals Officer
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Carson City, NV 89701



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, Notice of Appeal
6 filed in case number: CV21-00809

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

21
22 Date: 10/21/21

/s/ L. Michael Friend
(Signature)

L. MICHAEL FRIEND, ESQ.
(Print Name)

APPELLANTS
(Attorney for)

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“EXHIBIT 1”

1 **2540**
2 **NEOJ**
3 **JOHN P. LAVERY, ESQ.**
4 Nevada Bar No. 004665
5 **L. MICHAEL FRIEND, ESQ.**
6 Nevada Bar No. 011131
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14 Attorneys for Appellants
15 **CARSON TAHOE HEALTH SYSTEM and**
16 **GALLAGHER BASSETT SERVICES, INC.**

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

12 **CARSON TAHOE HEALTH SYSTEM and**
13 **GALLAGHER BASSETT SERVICES, INC.,**

14 Petitioners,

15 v.

16 **STEPHEN YASMER; and the STATE OF**
17 **NEVADA DEPARTMENT OF**
18 **ADMINISTRATION, HEARINGS**
19 **DIVISION, APPEALS OFFICE, an Agency of**
20 **the State of Nevada,**

21 Respondents.

CASE NO: CV21-00809

DEPT. NO.: VIII

22 **NOTICE OF ENTRY OF ORDER**

23 **TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL.**

24 ...

25 ...

26 ...

27 ...

28 ...

1 YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that an **ORDER GRANTING**
2 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was entered with the Clerk of
3 the Court in the above-captioned matter on the 20th day of September, 2021. A copy of which is
4 attached hereto and made a part hereof.¹

5 DATED this 14th day of October, 2021.

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8

9 By /s/ L. Michael Friend

10 JOHN P. LAVERY, ESQ.

11 Nevada Bar No. 004665

12 L. MICHAEL FRIEND, ESQ.

13 Nevada Bar No. 011131

14 2300 West Sahara Avenue, Suite 900, Box 28

15 Las Vegas, NV 89102

16 Phone: (702) 893-3383

17 Fax: (702) 366-9563

18 Attorneys for Appellants

19 CARSON TAHOE HEALTH SYSTEM and

20 GALLAGHER BASSETT SERVICES, INC.

21

22

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¹ **NOTICE:** Pursuant to NRCP Rule 4, should any party desire to appeal this final District Court Order, the notice of appeal must be filed with the clerk of the District Court after entry of a written judgment or order, and no later than thirty (30) days after the date that the written notice of entry of the judgment or order appealed from is served.

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Index of Documents

Exhibit 1 Order Granting Motion to Dismiss Petition for Judicial Review 1-6

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CERTIFICATE OF MAILING

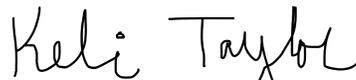
Pursuant to NRCF Rule 5(b), I hereby certify that, on the 14th day of October, 2021, I served a true and correct copy of the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as follows:

Stephen Yasmer
2257 Carson River Road
Carson City, NV 89701

Evan Beavers, 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

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, Notice of Entry
6 of Order filed in case number: CV21-00809

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

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

21
22 Date: 10/14/21

23 /s/ L. Michael Friend
(Signature)

24 L. MICHAEL FRIEND, ESQ.
(Print Name)

25 Petitioners
26 (Attorney for)

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“EXHIBIT 1”

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

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

Case No. CV21-00809

Dept. No. 8

Petitioner,

vs.

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

Respondents.

ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Before the Court are two motions: (1) *Motion to Stay Pending Appeal* (“*Motion to Stay*”), filed by Petitioner, CARSON TAHOE HEALTH SYSTEM (hereinafter, “CTHS”) and GALLAGHER BASSETT SERVICES, INC. (hereinafter, “Gallagher, Inc.”) on May 3, 2021. Respondent, STEPHEN YASMER, filed his *Opposition to Petitioner’s Motion for Stay Pending Appeal* (“*Opposition*”), on May 26, 2021. This matter was submitted to the Court on June 30, 2021; and

(2): a *Motion to Dismiss Petition for Judicial Review* (“*Motion to Dismiss*”) filed on August 2, 2021, by Respondent, STEPHEN YASMER. The Petitioners, CTHS and GALLAGHER, INC., filed their *Opposition to Respondent’s Motion to Dismiss Petition for Judicial Review* (“*Opposition*”) on August 12, 2021, to which the Respondent filed a *Reply* on

1 August 17, 2021. On September 13, 2021, the Court entertained argument during a hearing on
2 the *Motion to Stay* and the *Motion to Dismiss*, and took the matters under submission.

3 Having reviewed the pleadings, relevant authorities, and arguments of counsel, the
4 Court **GRANTS** the Respondent's *Motion to Dismiss Petition for Judicial Review*, and finds as
5 follows¹:

6 **I. BACKGROUND**

7 According to the record, Stephen Yasmer (hereinafter "Respondent"), was employed at
8 CTHS. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 1: 26-27. While working, the
9 Respondent was carrying a box of supplies down a stair case when he mis-stepped and fell.
10 *Pet'r Mot. For Stay Pending Appeal*, 3: 11-13. As a result of the fall, Respondent was
11 diagnosed with a dislocation, and fracture of his left ankle. *Id.* 3: 8-9. The Respondent
12 underwent surgery for his injury. *Id.* 3: 19.

13 Respondent filed a claim for workers' compensation benefits, which was denied by
14 Gallagher, Inc. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 3: 9-11. The Respondent
15 appealed that determination, and the Hearing Officer affirmed the claim denial. *Pet'r Mot. For*
16 *Stay Pending Appeal*, 3: 22-25. The Respondent appealed this decision to an Appeals Officer
17 who reversed the Petitioner Administrator's denial of liability for Respondent's claim. *Id.* 3:
18 27-29. As a result, Gallagher, Inc. was ordered to accept the Respondent's claim for benefits as
19 a workers' compensation claim. *Opp'n to Pet'r Mot. For Stay Pending Appeal*,
20 4: 16-20.

21 **II. LEGAL STANDARD**

22 In order to challenge a final decision and order issued by a Nevada Department of
23 Administration appeals officer, a party must file a petition for judicial review. NRS 616C.370.
24 When a party seeks judicial review of an administrative decision [in Nevada], strict compliance
25 with the statutory requirements is a precondition to jurisdiction by the court of judicial review.
26
27

28 ¹ In light of the Court's order granting the *Motion to Dismiss Petition for Judicial Review*, the
Motion for Stay Pending Appeal is rendered moot.

1 *Kame v. Employment Security Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989) citing *Teepe v.*
2 *Review Board of Indiana Emp. Sec. Div.*, 136 Ind. App. 331, 200 N.E. 2d 538, 539 (1964).

3 Requirements for judicial review petitions are contained in NRS 233B.130(2), which requires
4 that petitions are filed:

5 "In the district court in and for Carson City, in and for the county in which the aggrieved
6 party resides, or in and for the county where the agency proceeding occurred."
7 NRS 233B.130(2)(b).

8 The Nevada Supreme Court has held that failure of a petitioner to strictly comply with the
9 requirements set out in NRS 233B.130(2) results in a lack of jurisdiction for a district court to
10 consider a petition for judicial review. *Washoe County v. Otto*, 128 Nev. 424, 434, 282 P.3d
11 719, 726 (2012).

12 **III. DISCUSSION**

13 **A. The Motion to Dismiss Petition for Judicial Review Is Granted Because The** 14 **Second Judicial District Court Lacks Jurisdiction.**

15 In his *Motion to Dismiss*, the Respondent asserts the Second Judicial District Court does
16 not have jurisdiction because the *Petition for Judicial Review* was not filed in the proper district
17 court. Petitioner contends that jurisdiction is proper as to both CTHS and Gallagher, Inc.

18 In support, Petitioner first argues because CTHS has two locations in Reno and treats
19 patients throughout northern Nevada, it can establish residency in Washoe County as a domestic
20 corporation. Additionally, Petitioner attests that as an aggrieved party, Gallagher, Inc. has the
21 capacity to select the forum. *Pet'r Opp'n to Resp't Mot. to Dismiss Pet. for Judicial. Review*, 4:
22 13-14.

23 NRS 233B.130(2)(b) requires a petition for judicial review be filed in one of three
24 specific places. One location permitted by the statute is in the district court in and for Carson
25 City. The instant *Petition for Judicial Review* was filed in the Second Judicial District Court in
26 and for the County of Washoe. Under the statutory requirements, the Court does not have
27 jurisdiction to review the *Petition* on this basis.

28

1 Alternatively, the statute permits a petition for judicial review to be filed in and for the
2 county in which the aggrieved party resides. For purposes of Nev. Rev. Stat. § 233B.130(2)(b),
3 a corporation's place of residence is that which is listed as the principal place of business in its
4 articles of incorporation. *Liberty Mut. v. Thomasson*, 130 Nev. 28, 34, 317 P.3d 837, 836
5 (2012). Yet, a foreign corporation cannot have a fixed residence in any Nevada county for
6 purposes of Nev. Rev. Stat. § 233B.130(2)(b)'s residency requirement. *Id.*

7 The Petitioner argues that Gallagher, Inc. and CTHS are the aggrieved parties. *Pet'r*
8 *Opp'n to Respt's Mot. to Dismiss Pet. for Judicial Review*, 4: 1-5. Gallagher, Inc. is a foreign
9 corporation, that is licensed by the Nevada Department of Insurance to conduct business
10 throughout Nevada. *Id.* 4: 11-13. The Nevada Supreme Court has determined that a foreign
11 corporation, such as Gallagher, Inc., cannot have a fixed residence in any Nevada county for
12 these jurisdictional purposes. Furthermore, Gallagher, Inc. has not alleged that its principal
13 place of business is in Washoe County. Considering both binding precedent, and the lack of
14 authority to support licensure by the Nevada Department of Insurance conferring any type of
15 residency status, the Court cannot exercise jurisdiction over Gallagher, Inc. under Nev. Rev.
16 Stat. § 233B.130(2)(b).

17 CTHS has offices in Reno, Nevada. However, CTHS maintains over twenty locations
18 statewide, with only two of those locations being in Reno. *Pet'r Opp'n to Respt's Mot. to*
19 *Dismiss Pet. for Judicial Review*, 4: 2-3. Despite maintaining locations in Reno, CTHS has
20 registered its officers and directors to an address in Carson City. *Id.* at Exhibit 8. CTHS has not
21 alleged, nor has it proven that its principal place of business is in Washoe County. Therefore,
22 CTHS has failed to establish that they meet the residency requirements delineated by Nev. Rev.
23 Stat. § 233B.130(2)(b), making jurisdiction improper in Washoe County.

24 The statute finds one more location to be appropriate; a petition for judicial review can
25 be filed in and for the county in which the agency proceeding occurred. In this case, the agency
26 proceeding did not take place in Washoe County. The certificate of service for both the appeals
27 proceeding did not take place in Washoe County. The certificate of service for both the appeals
28 officer's decision and order list an address in Carson City. *Resp't Mot. to Dismiss Pet. for*

1 *Judicial Review*, Exhibit 8. Since the agency proceeding occurred outside of Washoe County,
2 this Court does not have jurisdiction.

3 Under Nevada law, “[a] district court is empowered to render a judgment either for or
4 against a person or entity only if it has jurisdiction over the parties and the subject matter.”
5 *Young v. Nevada Title Company*, 103 Nev. 436, 442, 744, P.2d 902, 905 (1987). The Court
6 cannot find a viable basis under Nev. Rev. Stat. § 233B.130(2)(b) to exercise jurisdiction.

7 Therefore, the *Motion to Dismiss Petition for Judicial Review* is **GRANTED**.

8 **IV. CONCLUSION**

9 Based upon the foregoing, and good cause appearing,

10 IT IS HEREBY ORDERED that Respondent’s *Motion to Dismiss Petition for Judicial*
11 *Review* is **GRANTED** as set forth above. The *Petition for Judicial Review* is
12 **DISMISSED**.

13 **IT IS SO ORDERED.**

14 DATED this 20 day of September, 2021.

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18 BARRY L. BRESLOW
19 DISTRICT JUDGE

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20 day of September, 2021, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.



Judicial Assistant