

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No. 83686

CARSON TAHOE HEALTH SYSTEM; AND GALLAGHER BASSETT SERVICES, INC.
Appellants,

v.

STEPHEN YASMER
Respondent.

Electronically Filed
Apr 27 2022 02:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from a District Court Order
Denying Petition for Judicial Review
Second Judicial District Court
Department 8
Case No. CV21-00809

RESPONDENT'S APPENDIX

VOLUME 1 OF 1
PAGES 1-134

NEVADA ATTORNEY FOR INJURED WORKERS

Evan Beavers, Esq.
Nevada State Bar No. 3399
ebeavers@naiw.nv.gov
Clark G. Leslie, Esq.
Nevada State Bar No. 10124
cleslie@naiw.nv.gov
1000 East William Street, Suite 208
Carson City, Nevada 89701
(775) 684-7555

Attorneys for Respondent
Stephen Yasmer

INDEX TO RESPONDENT'S APPENDIX

<u>DESCRIPTION OF DOCUMENT</u>	<u>VOL#</u>	<u>PAGE (S)</u>
Amended Order Granting Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada	1	RA 122 - RA 124
Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada	1	RA 28 - RA 41
Appellants' Request for Order Shortening Time on Motion for Stay	1	RA 42 - RA 58
Motion for Clarification of Stay Order	1	RA 125 - RA 131
Opposition to Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada	1	RA 59 - RA 118
Order Granting Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada	1	RA 119 - RA 121
Petitioners' Request for Order Shortening Time on Motion for Stay	1	RA 1 - RA 27
Second Amended Order Granting Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada	1	RA 132 - RA 134

1 3245
2 JOHN P. LAVERY, ESQ.
3 Nevada Bar No. 004665
4 JEANNE P. BAWA, ESQ.
5 Nevada Bar No. 007359
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7 2300 West Sahara Avenue. Suite 900, Box 28
8 Las Vegas, NV 89102
9 Phone: (702) 893-3383
10 Fax: (702) 366-9563
11 Email: john.lavery@lewisbrisbois.com
12 Email: jeanne.bawa@lewisbrisbois.com
13 Attorneys for Petitioners
14 CARSON TAHOE HEALTH SYSTEM and
15 GALLAGHER BASSETT SERVICES, INC.

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

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

15 Petitioners,

16 v.

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

22 Respondents.

CASE NO.: CV21-00809

DEPT. NO.: 8

HEARING REQUESTED

22 **PETITIONERS' REQUEST FOR ORDER**
23 **SHORTENING TIME ON MOTION FOR STAY**


24 COME NOW the Petitioners, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
25 BASSETT SERVICES, INC., (hereinafter referred to as the "Petitioners"), by and through their
26 attorneys, JOHN P. LAVERY, ESQ., and JEANNE P. BAWA, ESQ. of LEWIS, BRISBOIS,
27 BISGAARD & SMITH, LLP, and respectfully request an Order Shortening Time for Petitioner's
28 Motion for Stay.

1 This request for an Order Shortening Time is made and based upon the papers and
2 pleading on file herein, the Affidavit of JEANNE P. BAWA, ESQ., the attached Motion for Stay,
3 and any argument of counsel on this matter.

4 DATED this 3 day of May, 2021.

5 Respectfully submitted,

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

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

I, JEANNE P. BAWA, ESQ., do hereby swear under penalty of perjury that the assertion of this affidavit are true, that:

6. Should this Court be unable to accommodate the underlying Motion prior to the date of compliance, Affiant has also attached an Order Granting a Temporary Stay which, if signed by this Honorable Court, would stay this matter up until the date of the hearing on Petitioner's Motion.

•••••

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

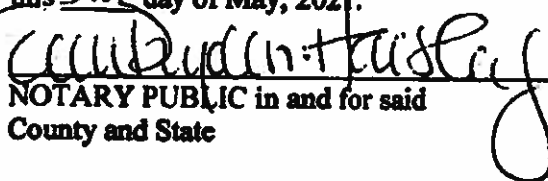
7. This request for Order Shortening Time is made in good faith and not for the purpose of undue advantage.

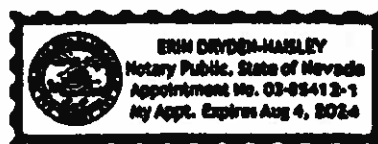
Further Affiant sayeth naught.

DATED this 3 day of May, 2021.


JEANNE P. BAWA, ESQ.

SUBSCRIBED AND SWORN to before me
this 30 day of May, 2021.


NOTARY PUBLIC in and for said
County and State




1 WHEREFORE, Petitioners, CARSON TAHOE HEALTH SYSTEM and GALLAGHER,
2 BASSETT SERVICES, INC., respectfully request that this Court grant their Request for an Order
3 Shortening Time so that their Motion for Stay Pending Appeal may be heard prior to the date of
4 compliance for the subject Appeals Officer's Decision and Order.

5 DATED this 3 day of May, 2021.

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

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

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the
3 day of May, 2021, service of the attached **PETITIONERS' REQUEST FOR ORDER
SHORTENING TIME ON MOTION FOR STAY** was made this date by depositing a true
copy of the same for mailing, first class mail, 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.
PO Box 2934
Clinton, IA 52733



An employee of LEWIS BRISBOIS BISGAARD &
SMITH LLP

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

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, Request for
Order Shortening Time filed in case number: CV21-00809.

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

- OR -

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

A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

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

Date: 5.3.21



(Signature)

JEANNE P. BAWA

(Print Name)

PETITIONERS

(Attorney for)

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

Index of Documents

Exhibit 1	Order Shortening Time	3 pages
Exhibit 2	Order Granting Temporary Stay	3 pages
Exhibit 3	Petitioner's Motion for Stay Pending Appeal	13 pages

FILED
Electronically
CV21-00809
2021-05-04 12:19:45 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8426677

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

"Exhibit 1"

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

ORDER SHORTENING TIME


GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED that the time of hearing of the above-entitled matter be, and,
the same will be heard, on the _____ day of _____ 2021, at _____
A.M./P.M. in Dept. No. 8.

DATED this _____ day of _____, 2021.

**BARRY L. BRESLOW,
DISTRICT COURT JUDGE**

Respectfully submitted 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, Nevada 89102
Phone: 702-893-3383
Fax: 702-366-9563
Attorneys for Petitioners
**CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.**

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

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

5
6 The undersigned does hereby affirm that the preceding document, **ORDER**

7 **SHORTENING TIME**

8 filed in case number: **CV21-00809**

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

11 - OR -

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

13 A specific state or federal law, to wit:

14 _____

15 - or -

16 ☐ For the administration of a public program

17 - or -

18 ☐ For an application for a federal or state grant

19 - or -

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

22
23 Date: 5/4/21

24 
(Signature)

25 JEANNE P. BAWA
26 (Print Name)

27 PETITIONERS
28 (Attorney for)

FILED
Electronically
CV21-00809
2021-05-04 12:19:45 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8426677

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

"Exhibit 2"

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

DATED this ____ day of _____, 2021.

**BARRY L. BRESLOW,
DISTRICT COURT JUDGE**

Respectfully submitted 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, Nevada 89102
Phone: 702-893-3383
Fax: 702-366-9563
Attorneys for Petitioners
CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.

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

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, **ORDER**
GRANTING TEMPORARY STAY
filed in case number: **CV21-00809**

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

- OR -

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

A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

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

Date: 5-4-21



(Signature)

JEANNE P. BAWA

(Print Name)

PETITIONERS

(Attorney for)

FILED
Electronically
CV21-00809
2021-05-04 12:19:45 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8426677

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

"Exhibit 3"

1 2190
2 JOHN P. LAVERY, ESQ.
3 Nevada Bar No. 004665
4 JEANNE P. BAWA, ESQ.
5 Nevada Bar No. 007359
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7 2300 W. Sahara Ave., Ste. 900, Box 28
8 Las Vegas, Nevada 89102
9 Telephone: 702-893-3383
10 E-mail: john.lavery@lewisbrisbois.com
11 E-mail: jeanne.bawa@lewisbrisbois.com
12 Attorneys for Petitioners
13 CARSON TAHOE HEALTH SYSTEM
14 and GALLAGHER BASSETT SERVICES, INC.

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

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

20 Petitioners,

21 v.

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

27 Respondents.

CASE NO:

DEPT. NO.:

HEARING NOT REQUESTED

28 **PETITIONERS' MOTION FOR STAY PENDING APPEAL**

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

35 ...


36 ...

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

3 DATED this 3 day of May, 2021.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By: 
8 JOHN F. LAVERY, ESQ.
9 Nevada Bar No. 004663
10 JEANNE P. BAWA, ESQ.
11 Nevada Bar No. 007359
12 2300 West Sahara Avenue, Suite 900, Box 28
13 Las Vegas, Nevada 89102
14 Phone: 702-893-3383
15 Fax: 702-366-9563
16 Attorneys for Petitioners
17 CARSON TAHOE HEALTH SYSTEM and
18 GALLAGHER BASSETT SERVICES, INC.
19
20
21
22
23
24
25
26
27
28

L.

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

Respondent appealed that Decision and Order to an Appeals Officer.

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

1 (Exhibit pp. 35-45.)

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

4 II.

5 **POINTS & AUTHORITIES**

6 A.

7 **JURISDICTION**

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

11 Additionally, NRS 616C.375 mandates:

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

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

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

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

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

3 B.

4 The Appeals Officer Erred as a Matter of Law

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

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

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

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

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

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

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

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

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

16 Under NRS 616C.150, the Respondent has the burden of proof to show that the injury
17 arose out of and in the course of employment. Respondent must satisfy this burden by a
18 preponderance of the evidence. Further, NRS 616B.612 mandates that an employee is only
19 entitled to compensation if he is injured in the course and scope of his employment.
20

21 The Nevada Supreme Court has held that:

22 An accident or injury is said to arise out of employment
23 when there is a causal connection between the injury and the
24 employee's work ... the injured employee must establish a link
25 between the workplace conditions and how those conditions
26 caused the injury ... a claimant must demonstrate that the origin of
27 the injury is related to some risk involved within the scope of
28 employment.

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

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

33 In Nevada, the Supreme Court has defined the term "arose out of," as contained in NRS
34 616C.150, to mean that there is a causal connection between the injury and the employee's work.

1 In other words, the injured party must establish a link between the workplace conditions and how
2 those conditions caused the injury. Further, the Respondent must demonstrate that the origin of
3 the injury is related to some risk involved within the scope of employment. The Respondent has
4 failed to establish a compensable claim as set forth above. Therefore, the determination to deny
5 the claim is proper.
6

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

9 An accident or injury is said to arise out of employment when there
10 is a causal connection between the injury and the employee's
11 work. In other words, the injured party must establish a link
12 between the workplace conditions and how those conditions
13 caused the injury. Further, a claimant must demonstrate that
14 the origin of the injury is related to some risk involved within
15 the scope of employment. However, if an accident is not fairly
16 traceable to the nature of employment or the workplace
17 environment, then the injury cannot be said to arise out of the
18 claimant's employment. Finally, resolving whether an injury arose
19 out of employment is examined by a totality of the circumstances.
20

21 The Supreme Court held that the "Nevada Industrial Insurance Act is not a mechanism
22 which makes employers absolutely liable for injuries suffered by employees who are on the job."
23 Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605, 939 P.2d 1043 (1997). The Court
24 concluded by stating, "The requirements of 'arising out of and in the course of employment'
25 make it clear that a claimant must establish more than being at work and suffering an injury in
26 order to recover."
27

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

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

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

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

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

21 C.

22 Petitioners are the Only Parties Who Will Suffer Any Harm

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

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

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

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

III.

CONCLUSION

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

...

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

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

10 Dated this 3 day of May, 2021.

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13 By: 

14 JOHN E. LAVERY, ESQ.

15 Nevada Bar No. 004665

16 JEANNE P. BAWA, ESQ.

17 Nevada Bar No. 007359

18 2300 West Sahara Avenue, Suite 900, Box 28

19 Las Vegas, Nevada 89102

20 Phone: (702) 893-3383

21 Attorneys for Petitioners

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

CERTIFICATE OF SERVICE

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

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

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

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


An Employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, Motion for Stay
Pending Appeal filed in case number: _____

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

- OR -

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

A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

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

Date: 5-3-21


(Signature)

JEANNE P. BAWA
(Print Name)

PETITIONERS
(Attorney for)

1 2190
2 JOHN P. LAVERY, ESQ.
3 Nevada Bar No. 004665
4 L. MICHAEL FRIEND, ESQ.
5 Nevada Bar No. 011131
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7 2300 W. Sahara Ave., Ste. 900, Box 28
8 Las Vegas, Nevada 89102
9 Telephone: 702-893-3383
10 E-mail: john.lavery@lewisbrisbois.com
11 E-mail: michael.friend@lewisbrisbois.com
12 Attorneys for Appellants
13 CARSON TAHOE HEALTH SYSTEM and
14 GALLAGHER BASSETT SERVICES, INC.
15

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

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

13 Appellants,

14 vs.

15 STEPHEN YASMER,

16 Respondent.

CASE NO: CV21-00809

DEPT. NO.: VIII

17 APPELLANTS' MOTION FOR STAY PENDING APPEAL
18 TO THE SUPREME COURT OF NEVADA

19 COMES NOW the Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter
20 referred to as "Appellant Employer"), and the Third-Party Administrator, GALLAGHER
21 BASSETT SERVICES, INC., (hereinafter referred to as "Appellant Administrator"), by and
22 through their attorneys, JOHN P. LAVERY, ESQ., and L. MICHAEL FRIEND, ESQ., of
23 LEWIS BRISBOIS BISGAARD & SMITH LLP, and move this Court for a Motion for Stay
24 pending appeal to the Supreme Court of Nevada.

25 ...

26 ...

27 ...

28 ...

I.

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

...

1 Respondent timely appealed that Decision and Order to an Appeals Officer. (ROA p.
2 126.)

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

6 Appellants filed their Petition for Judicial Review on May 3, 2021.

7 On August 2, 2021, Respondent filed a Motion to Dismiss Petition for Judicial Review
8 due to lack of jurisdiction.

9 Appellants filed their Opposition to Respondent's Motion to Dismiss Petition for Judicial
10 Review on August 12, 2021, to which Respondent filed a Reply on August 17, 2021.

11 On September 13, 2021, the Court entertained argument during a hearing on
12 Respondent's Motion to Dismiss.

13 On September 20, 2021, the Court rendered an Order Granting Motion to Dismiss
14 Petition for Judicial Review, finding that it lacked jurisdiction to entertain Appellants' Petition
15 for Judicial Review.

16 Appellants filed an appeal with the Supreme Court of Nevada on October 14, 2021.

17 II.

18 **POINTS & AUTHORITIES**

19 A.

20 **JURISDICTION**

21 NRAP 8(a)(1) provides this Court with authority to hear the instant Motion for Stay:

22 A party must ordinarily move first in the district court for the
23 following relief:

- 24 (A) a stay of the judgment or order of, or proceedings in, a
25 district court pending appeal or resolution of a petition to
26 the Supreme Court or Court of Appeals for an
27 extraordinary writ;
28 (B) approval of a supersedeas bond; or
(C) an order suspending, modifying, restoring or granting
an injunction while an appeal or original writ petition is
pending

...

...

1 **NRS 233B.140** further provides that:

2 1. A Appellant who applies for a stay of the final decision in a contested
3 case shall file and serve a written motion for the stay on the agency and all
4 parties of record to the proceeding at the time of filing the petition for
5 judicial review.

6 2. In determining whether to grant a stay, the court shall consider the same
7 factors as are considered for a preliminary injunction under Rule 65 of the
8 Nevada Rules of Civil Procedure.

9 3. In making a ruling, the court shall:

10 (a) Give deference to the trier of fact; and

11 (b) Consider the risk to the public, if any, of staying the
12 administrative decision.

13 The Appellant must provide security before the court may issue a stay. For
14 reference, **NRCF Rule 65** provides in pertinent part as follows:

15 (a) Preliminary injunction.

16 (1) Notice. No preliminary injunction shall be issued without
17 notice to the adverse party.

18 (2) Consolidation of hearing with trial on merits. Before or after the
19 commencement of the hearing of an application for a preliminary
20 injunction, the court may order the trial of the action on the merits
21 to be advanced and consolidated with the hearing of the
22 application. Even when this consolidation is not ordered, any
23 evidence received upon an application for a preliminary injunction
24 which would be admissible upon the trial on the merits becomes
25 part of the record on the trial and need not be repeated upon the
26 trial. This subdivision (a)(2) shall be so construed and applied as to
27 save to the parties any rights they may have to trial by jury.

28 ***

 (d) Form and scope of injunction or restraining order. Every order granting
an injunction and every restraining order shall set forth the reasons for its
issuance; shall be specific in terms; shall describe in reasonable detail, and
not by reference to the complaint or other document, the act or acts sought
to be restrained; and is binding only upon the parties to the action, their
officers, agents, servants, employees, and attorneys, and upon those
persons in active concert or participation with them who receive actual
notice of the order by personal service or otherwise.

1 B.

2 **LEGAL ARGUMENT**

3 i.

4 **An Order Granting A Stay is Appropriate**
5 **Until this Appeal is Heard and Decided on its Merits**

6 A Stay of the Court's Order Granting Motion to Dismiss Petition for Judicial Review and
7 the Appeals Officer's Decision and Order is warranted. The Nevada Supreme Court has
8 consistently held that a stay is appropriate under circumstances such as those that exist in the
9 instant case. In Kress v. Corey, 65 Nev. 1, 189 P.2d 353 (1948), the Court noted that:

10 As general rule, a supersedeas or stay should be granted . . .
11 whenever it appears that without it the object of the appeal or writ
12 of error may be defeated or that it is reasonably necessary to
13 protect the Appellant or Plaintiff in error from irreparable or
14 serious injury in the case of reversal and it does not appear that the
15 Appellee or Defendant therein will sustain irreparable or
16 disproportionate injury in the case of affirmance.

14 Additionally, NRS 616C.375 mandates:

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

19 In DIR v. Circus Circus, 101 Nev. 405, 411-12, 705 P.2d 645, 649 (1985), the Nevada
20 Supreme Court stated that an insurer's proper procedure when aggrieved by a decision is to seek
21 a stay. The Nevada Supreme Court has also recognized that a stay should be granted where it
22 can be shown that the Appellant would suffer irreparable injury during the pendency of the
23 appeal, if the stay is not granted. White Pine Power v. Public Service Commission, 76 Nev. 263,
24 252 P.2d 256 (1960).

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

28 ...

1 In the instant case, an Order Granting a Stay of the Court's Order Granting Motion to
2 Dismiss Petition for Judicial Review and of the Appeals Officer's decision is appropriate for the
3 reasons set forth herein. The District Court, in granting Respondent's Motion to Dismiss, erred
4 as a matter of law in concluding it lacked jurisdiction to hear Appellants' Petition for Judicial
5 Review. Further, the Appeals Officer, in rendering her decision, erred as a matter of law in
6 failing to consider the evidence given and failed to properly apply the law as required by the
7 related case law and NRS Chapters 616A to 616D, inclusive. There is insufficient evidence to
8 support her decision that Respondent has proven the existence of a compensable industrial claim.

9 ii.

10 **The District Court Has Jurisdiction Over the Petition for Judicial Review**

11 NRS233B.130(2) sets forth the mandatory requirements for a Petition for Judicial
12 Review. Respondent moved to dismiss based on the premise that Appellants failed to file their
13 petition "in the district court in and for Carson City, in and for the county in which the aggrieved
14 party resides or in and for the county where the agency proceeding occurred." NRS
15 233B.130(2)(b).

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

21 With regard to foreign corporations, "the mere fact that it is doing business in this state
22 does not fix its residence in any particular county for the purpose of venue . . ." Western Pacific
23 Railroad v. Krom, 102 Nev. 40, 43, 714 P.2d 182, 184(1986)(citing, Byers v. Graton, 82 Nev.
24 92, 95, 411 P.2d 480, 481(1966). However, a foreign corporation cannot have fixed residency in
25 a particular Nevada county for purposes of NRS 233B.130(2)(b). Liberty Mut. v. Thomasson,
26 130 Nev. 28, 34, 317 P.3d 831, 836(2014). Despite not having a fixed residency, Gallagher
27 Bassett is licensed by the Nevada Division of Insurance to conduct business throughout Nevada.

1 As an aggrieved party, it should be able to select the forum. See Eaton v. District Court, 96 Nev.
2 773, 774, 616 P.2d 400(1980).

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

9 iii.

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

11 It was Respondent, not Appellants, who had the burden of proving his case by a
12 preponderance of all the evidence. State Indus. Ins. Sys. v. Hicks, 100 Nev. 567, 688 P.2d 324
13 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323 (1990);
14 Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

15 In attempting to prove his case, Respondent had the burden of going beyond speculation
16 and conjecture. That means Respondent had to establish the work connection of his injuries, the
17 causal relationship between the work related injury and his disability, the extent of his disability
18 and all facets of the claim by a preponderance of all the evidence. To prevail, a respondent had to
19 present and prove more evidence that an amount which would make his case and his opponent's
20 "evenly balanced." Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 849 P.2d 267 (1993); State
21 Indus. Ins. Sys. v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); State Indus. Ins. Sys. v. Kelly,
22 99 Nev. 774, 671P.2d 29 (1983); 3, A. Larson, The Law of Workmen's Compensation, §
23 80.33(a). Moreover, Nevada law makes it clear that statutes governing workers' compensation
24 are to be decided on the merits and not liberally construed. NRS 616A.010.

25 An accident or injury arises out of employment only when there is a causal connection
26 between the injury and the employee's work. Therefore, the injured party must establish a link
27
28

1 between the workplace conditions and how those conditions caused the injury. Further, a
2 claimant must demonstrate that the origin of the injury is related to some risk involved within the
3 scope of employment. However, if an accident is not fairly traceable to the nature of the
4 claimant's employment or the workplace environment, then the injury does not arise out of the
5 claimant's employment. Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043
6 (1997); Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005).

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

13 The Nevada Supreme Court, in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. 346
14 (2010), clarified Mitchell, supra, to the extent that Mitchell held that unexplained accidents are
15 never compensable.

16 Injuries resulting from employment-related risks are 'all the obvious kinds
17 of injur[ies] that one thinks of at once as industrial injur[ies]' and are
18 generally compensable . . . [such as] tripping on a defect at employer's
19 premises . . . Personal risk are those that are 'so clearly personal that, even
20 if they take effect while the employee is on the job, they could not
21 possibly be attributed to the employment . . . For example, 'a fall caused
22 by [a personal condition such as] a bad knee, or multiple sclerosis.
23 [Neutral] risks are those that are 'of neither distinctly employment nor
24 distinctly personal character . . . ('an unexplained fall, originating neither
25 from employment conditions nor from conditions personal to the
26 [employee]'. [Phillips'] injury occurred while traversing a staircase that
27 was free of defects, and there [was] no evidence that a risk personal to
28 [her] caused her fall. Thus, [this injury] falls within the neutral -risk
category . . . The act of descending a staircase at work, in and of itself,
does not present a greater risk than that faced by the general public . . .
[W]hether a fall is explained or unexplained is irrelevant. The key inquiry
is whether the risk faced by the employee was greater than the risk faced
by the general public.

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

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

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

25 It is Respondent's burden to prove that his injuries arose out of and in the course of his
26 employment, and based on the available evidence, Respondent cannot meet his burden.
27

28 ...

1 As the Appeals Officer's Decision and Order is based upon improper application of the
2 relevant law, Appellants believe they will prevail in their appeal, and on this basis, a Stay is
3 warranted.

4 iv.

5 **Appellants are the Only Parties Who Will Suffer Any Harm**

6 In the instant case, Respondent will not suffer any harm as he has already received the
7 emergent medical care that he needed. This is not a case involving emergency medical benefits
8 or where Respondent could suffer physical harm without further medical treatment. It can be
9 fairly said that no harm will result to Respondent by the staying of the Appeals Officer's
10 Decision and Order while this case proceeds on the merits of the underlying appeal.
11

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

17 It is anticipated that Respondent will argue that Appellants will not suffer "irreparable
18 harm" because they may have to pay retroactive temporary total disability (hereinafter referred to
19 as "TTD") benefits. There would be no irreparable harm if Appellants were able to recoup the
20 money that was paid if their Petition is successful. In that regard, not only are money damages
21 inadequate, money damages are not available. Ransier, supra. In Virginia Petroleum Job. Ass'n
22 v. Federal Power Com'n, 104 U.S. App. D.C. 106, 259 F.2d 921, 925 (D.C. Cir. 1958) the Court
23 found that "Mere injuries, however substantial, in terms of money, time, and energy necessarily
24 expended in the absence of a stay, are not enough [to be considered irreparable harm]. The
25 possibility that adequate compensatory or other corrective relief will be available at a later date,
26 in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."
27 Accordingly, without a stay, Appellants will suffer irreparable harm because there is no
28 possibility that adequate compensation or other corrective relief, except, pursuant to NRS

1 616C.155(2), for the last thirty (30) days of payments, if there was a clerical error or as the result
2 of incorrect information being received, will be available if Appellants prevail in this litigation.
3 Therefore, not only are money damages inadequate, money damages are not available.

4 Appellants, therefore, are the only parties that can, and will, suffer irreparable harm if the
5 instant motion is denied. Accordingly, it can be fairly said that no harm will result to Respondent
6 by the staying of the Appeals Officer's Decision and Order while this case proceeds on the
7 merits of the underlying appeal.

8 **III.**

9 **CONCLUSION**

10 Based upon all of the above, it is the belief of Appellants, CARSON TAHOE HEALTH
11 SYSTEM, and GALLAGHER BASSETT SERVICES, INC., that they have reason in good faith
12 to ask for a stay of the Order Granting Motion to Dismiss Petition for Judicial Review and, in
13 turn, the Appeals Officer decision dated April 15, 2021, particularly in light of the clear error of
14 law which has been established above.

15 WHEREFORE, Appellants, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
16 BASSETT SERVICES, INC., respectfully request that this Court grant their Motion for Stay
17 Pending Appeal to the Supreme Court of Nevada.

18 Dated this 21st day of October, 2021.

19 Respectfully submitted,

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By: /s/ L. Michael Friend

22 JOHN P. LAVERY, ESQ.

23 Nevada Bar No. 004665

24 L. MICHAEL FRIEND, ESQ.

25 Nevada Bar No. 011131

26 2300 West Sahara Avenue, Suite 900, Box 28

27 Las Vegas, Nevada 89102

28 Phone: (702) 893-3383

Attorneys for Appellants

CARSON TAHOE HEALTH SYSTEM and
GALLAGHER BASSETT SERVICES, INC.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 21st day of October, 2021, service of the attached **APPELLANTS' MOTION FOR STAY PENDING APPEAL TO THE SUPREME COURT OF NEVADA** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

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

Keli Taylor

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, Motion for Stay
7 Pending Appeal filed in case number: CV-21-00809

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

9
10 - OR -

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
17 - or -

18 ☐ For an application for a federal or state grant

19
20 - or -

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

22
23 Date: 10/21/21

/s/ L. Michael Friend
(Signature)

24 L. MICHAEL FRIEND
25 (Print Name)

26 APPELLANTS
27 (Attorney for)

1 2140
2 JOHN P. LAVERY, ESQ.
3 Nevada Bar No. 004665
4 L. MICHAEL FRIEND, ESQ.
5 Nevada Bar No. 011131
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7 2300 W. Sahara Ave., Ste. 900, Box 28
8 Las Vegas, Nevada 89102
9 Telephone: 702-893-3383
10 E-mail: john.lavery@lewisbrisbois.com
11 E-mail: michael.friend@lewisbrisbois.com
12 Attorneys for Appellants
13 CARSON TAHOE HEALTH SYSTEM and
14 GALLAGHER BASSETT SERVICES, INC.

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

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

13 Appellants,

14 vs.

15 STEPHEN YASMER,

16 Respondent.

CASE NO: CV21-00809

DEPT. NO.: VIII

17 **APPELLANTS' REQUEST FOR ORDER**
18 **SHORTENING TIME ON MOTION FOR STAY**

19 COMES NOW the Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter
20 referred to as "Appellant Employer"), and the Third-Party Administrator, GALLAGHER
21 BASSETT SERVICES, INC., (hereinafter referred to as "Appellant Administrator"), by and
22 through their attorneys, JOHN P. LAVERY, ESQ., and L. MICHAEL FRIEND, ESQ., of
23 LEWIS BRISBOIS BISGAARD & SMITH LLP, and respectfully request an Order Shortening
24 Time for Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada.

25 ...

26 ...

27 ...

28 ...

This request for an Order Shortening Time is made and based upon the papers and pleading on file herein, the Affidavit of L. MICHAEL FRIEND, ESQ., the attached Motion for Stay, and any argument of counsel on this matter.

DATED this 21st day of October, 2021.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ L. Michael Friend

JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665

L. MICHAEL FRIEND, ESQ.

Nevada Bar No. 011131

2300 West Sahara Avenue, Suite 900, Box 28

Las Vegas, Nevada 89102

Phone: 702-893-3383

Fax: 702-366-9563

Attorneys for Appellants

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

1 **AFFIDAVIT IN SUPPORT OF ORDER SHORTENING TIME**

2 STATE OF CALIFORNIA)
3 COUNTY OF SACRAMENTO) ss:

4 I, L. MICHAEL FRIEND, ESQ., do hereby swear under penalty of perjury that the
5 assertions of this affidavit are true, that:

6 1. Affiant is an attorney authorized and duly licensed to practice law in the State of
7 Nevada and is one of the attorneys of record for Appellants.

8 2. This affidavit is made in support of an ex-parte order shortening time for
9 Appellants' Motion for Stay (attached hereto as "Exhibit A") to be heard.

10 3. Affiant has personal knowledge of all matters set forth herein, except those
11 matters stated on information and belief, and is competent to testify thereto.

12 4. The above-named Affiant has good cause to request this Court for an Order
13 Shortening time. NRS 616C.375 states that an Appeals Officer's Decision and Order is not
14 stayed unless the District Court issues an Order of Stay within thirty (30) days from the date of
15 the Decision and Order. The time for appeal in this matter expires on or about November 15,
16 2021.

17 5. That a stay in this matter is warranted as, without one, Appellants will have to
18 comply with the Decision and Order at issue and administer the benefits ordered therein,
19 essentially rendering the underlying Notice of Appeal moot.

20 6. Should this Court be unable to accommodate the underlying Motion prior to the
21 date of compliance, Affiant has also attached an Order Granting a Temporary Stay which, if
22 signed by this Honorable Court, would stay this matter up until the date of the hearing on
23 Appellants' Motion.

24 ...

25 ...

26 ...

27 ...

28 ...

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

7. This request for Order Shortening Time is made in good faith and not for the purpose of undue advantage:

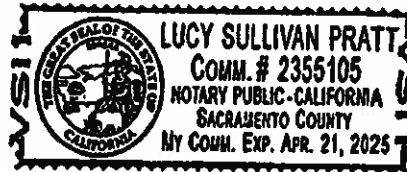
Further Affiant sayeth naught.

DATED this 19 day of October, 2021.

L. Michael Friend
L. MICHAEL FRIEND, ESQ.

SUBSCRIBED AND SWORN to before me
this 19 day of October, 2021.

Lucy Sullivan Pratt
NOTARY PUBLIC in and for said
County and State



1 WHEREFORE, Appellants, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
2 BASSETT SERVICES, INC., respectfully request that this Court grant their Request for an
3 Order Shortening Time so that their Motion for Stay Pending Appeal to the Supreme Court of
4 Nevada may be heard prior to the date of compliance for the subject Appeals Officer's Decision
5 and Order.

6 DATED this 21st day of October, 2021.

7 Respectfully submitted,

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

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, Nevada 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.

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

Index of Documents

Exhibit 1	Order Shortening Time	2 pages
Exhibit 2	Order Granting Temporary Stay	2 pages
Exhibit 3	Petitioner's Motion for Stay Pending Appeal	14 pages

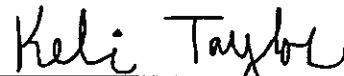
1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 21st day of
3 October, 2021, service of the attached **APPELLANTS' REQUEST FOR ORDER**
4 **SHORTENING TIME ON MOTION FOR STAY** was made this date by depositing a true
5 copy of the same for mailing, first class mail, as follows:

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

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

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

18
19
20
21
22
23
24
25
26
27
28


An employee of LEWIS BRISBOIS BISGAARD &
SMITH LLP

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

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

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

- OR -

- or -

- or -

Date: 10/21/21

APPELLANTS
(Attorney for)

FILED
Electronically
CV21-00809
2021-10-21 01:05:38 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8710111

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

"Exhibit 1"

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, Order
6 Shortening Time filed in case number: CV21-00809

7
8 ☒ Document does not contain the Social Security number of any person.

9 - OR -

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

11 A specific state or federal law, to wit:

12 _____
13 - or -

14 ☐ For the administration of a public program

15 - or -

16 ☐ For an application for a federal or state grant

17 - or -

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

20 Date: 10/21/21

21 /s/ L. Michael Friend
(Signature)

22 L. MICHAEL FRIEND
(Print Name)

23 APPELLANTS
24 (Attorney for)

1 between the workplace conditions and how those conditions caused the injury. Further, a
2 claimant must demonstrate that the origin of the injury is related to some risk involved within the
3 scope of employment. However, if an accident is not fairly traceable to the nature of the
4 claimant's employment or the workplace environment, then the injury does not arise out of the
5 claimant's employment. Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043
6 (1997); Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005).
7

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

13 The Nevada Supreme Court, in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. 346
14 (2010), clarified Mitchell, supra, to the extent that Mitchell held that unexplained accidents are
15 never compensable.

16 Injuries resulting from employment-related risks are 'all the obvious kinds
17 of injur[ies] that one thinks of at once as industrial injur[ies]' and are
18 generally compensable . . . [such as] tripping on a defect at employer's
19 premises . . . Personal risk are those that are 'so clearly personal that, even
20 if they take effect while the employee is on the job, they could not
21 possibly be attributed to the employment . . . For example, 'a fall caused
22 by [a personal condition such as] a bad knee, or multiple sclerosis.
23 [Neutral] risks are those that are 'of neither distinctly employment nor
24 distinctly personal character . . . ('an unexplained fall, originating neither
25 from employment conditions nor from conditions personal to the
26 [employee]'. [Phillips'] injury occurred while traversing a staircase that
27 was free of defects, and there [was] no evidence that a risk personal to
28 [her] caused her fall. Thus, [this injury] falls within the neutral -risk
category . . . The act of descending a staircase at work, in and of itself,
does not present a greater risk than that faced by the general public . . .
[W]hether a fall is explained or unexplained is irrelevant. The key inquiry
is whether the risk faced by the employee was greater than the risk faced
by the general public.

...

...

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

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

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

25 It is Respondent's burden to prove that his injuries arose out of and in the course of his
26 employment, and based on the available evidence, Respondent cannot meet his burden.
27
28

1 As the Appeals Officer's Decision and Order is based upon improper application of the
2 relevant law, Appellants believe they will prevail in their appeal, and on this basis, a Stay is
3 warranted.

4 iv.

5 **Appellants are the Only Parties Who Will Suffer Any Harm**

6 In the instant case, Respondent will not suffer any harm as he has already received the
7 emergent medical care that he needed. This is not a case involving emergency medical benefits
8 or where Respondent could suffer physical harm without further medical treatment. It can be
9 fairly said that no harm will result to Respondent by the staying of the Appeals Officer's
10 Decision and Order while this case proceeds on the merits of the underlying appeal.
11

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

17 It is anticipated that Respondent will argue that Appellants will not suffer "irreparable
18 harm" because they may have to pay retroactive temporary total disability (hereinafter referred to
19 as "TTD") benefits. There would be no irreparable harm if Appellants were able to recoup the
20 money that was paid if their Petition is successful. In that regard, not only are money damages
21 inadequate, money damages are not available. Ransier, supra. In Virginia Petroleum Job. Ass'n
22 v. Federal Power Com'n, 104 U.S. App. D.C. 106, 259 F.2d 921, 925 (D.C. Cir. 1958) the Court
23 found that "Mere injuries, however substantial, in terms of money, time, and energy necessarily
24 expended in the absence of a stay, are not enough [to be considered irreparable harm]. The
25 possibility that adequate compensatory or other corrective relief will be available at a later date,
26 in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."
27 Accordingly, without a stay, Appellants will suffer irreparable harm because there is no
28 possibility that adequate compensation or other corrective relief, except, pursuant to NRS

1 616C.155(2), for the last thirty (30) days of payments, if there was a clerical error or as the result
2 of incorrect information being received, will be available if Appellants prevail in this litigation.

3 Therefore, not only are money damages inadequate, money damages are not available.

4 Appellants, therefore, are the only parties that can, and will, suffer irreparable harm if the
5 instant motion is denied. Accordingly, it can be fairly said that no harm will result to Respondent
6 by the staying of the Appeals Officer's Decision and Order while this case proceeds on the
7 merits of the underlying appeal.

8 **III.**

9 **CONCLUSION**

10 Based upon all of the above, it is the belief of Appellants, CARSON TAHOE HEALTH
11 SYSTEM, and GALLAGHER BASSETT SERVICES, INC., that they have reason in good faith
12 to ask for a stay of the Order Granting Motion to Dismiss Petition for Judicial Review and, in
13 turn, the Appeals Officer decision dated April 15, 2021, particularly in light of the clear error of
14 law which has been established above.

15 WHEREFORE, Appellants, CARSON TAHOE HEALTH SYSTEM and GALLAGHER
16 BASSETT SERVICES, INC., respectfully request that this Court grant their Motion for Stay
17 Pending Appeal to the Supreme Court of Nevada.

18 Dated this 21st day of October, 2021.

19 Respectfully submitted,

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By: /s/ L. Michael Friend

22 JOHN P. LAVERY, ESQ.

23 Nevada Bar No. 004665

24 L. MICHAEL FRIEND, ESQ.

25 Nevada Bar No. 011131

26 2300 West Sahara Avenue, Suite 900, Box 28

27 Las Vegas, Nevada 89102

28 Phone: (702) 893-3383

Attorneys for Appellants

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 21st day of
3 October, 2021, service of the attached **APPELLANTS' MOTION FOR STAY PENDING**
4 **APPEAL TO THE SUPREME COURT OF NEVADA** was made this date by depositing a
5 true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

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

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

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

Keli Taylor

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, Motion for Stay

7 Pending Appeal filed in case number: CV-21-00809

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

9
10 - OR -

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

12 A specific state or federal law, to wit:

13
14 _____
15 - or -

16 ☐ For the administration of a public program

17 - or -

18 ☐ For an application for a federal or state grant

19 - or -

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

22
23 Date: 10/21/21

/s/ L. Michael Friend
(Signature)

24 L. MICHAEL FRIEND
25 (Print Name)

26 APPELLANTS
27 (Attorney for)

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

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

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

12 Appellants,

CASE NO. CV21-00809

13 vs.

DEPT. NO. 8

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

16 Respondents.
17 _____/

18 OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL TO THE
19 SUPREME COURT OF NEVADA

20 COMES NOW Respondent, Stephen Yasmer, by and through his
21 attorney, Todd Eikelberger, Esq., Deputy, Nevada Attorney for
22 Injured Workers, and hereby opposes Petitioners' Motion for Stay
23 Pending Appeal to the Supreme Court of Nevada.

24 ...

25 ...

26 ...

27 ...

28 ...


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

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 496-2830

1 This Opposition is made pursuant to, and based upon, NRAP
2 8(a)(1), NRAP 8(c), and NRS 616C.375, as well as, the papers and
3 pleadings on file herein including the September 20, 2021, Order
4 Granting Motion to Dismiss Petition for Judicial Review and the
5 following Memorandum of Points and Authorities.

6 RESPECTFULLY SUBMITTED this 4th day of November, 2021.

7 NEVADA ATTORNEY FOR INJURED WORKERS

8 
9 Todd Eikelberger, Esq., Deputy
10 Nevada Bar No. 9393
11 1000 East William Street, Suite 208
12 Carson City, Nevada 89701

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

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

1 MEMORANDUM OF POINTS AND AUTHORITIES
2 IN SUPPORT OF STEPHEN YASMER'S OPPOSITION TO APPELLANTS' MOTION
3 FOR STAY PENDING APPEAL TO THE SUPREME COURT OF NEVADA

4 The underlying issue in this case involves a dispute over the
5 denial of a workers' compensation claim. Carson Tahoe Health System
6 (herein "CTHS") and Gallagher Bassett Services, Inc., (herein
7 "GBS") filed a Petition for Judicial Review of the Appeals
8 Officer's April 15, 2021, Decision and Order, which reversed claim
9 denial, in Nevada's Second Judicial District on May 3, 2021. The
10 Court dismissed the petition on September 20, 2021, finding that it
11 lacked jurisdiction to conduct judicial review because the petition
12 had been impermissibly filed in Washoe County's district court.
13 CTHS and GBS then filed a motion for stay on October 21, 2021,
14 requesting that the underlying decision and order be stayed pending
15 appeal to the Nevada Supreme Court. However, the stay motion must
16 be denied as this Court does not have the ability to grant the
17 relief being requested since it lacks jurisdiction over the Appeals
18 Officer's April 15, 2021, Decision and Order and the time to obtain
19 a stay of that decision has run.

20 I.
21 ISSUE PRESENTED

22 Whether Carson Tahoe Health System and Gallagher Bassett
23 Services, Inc., have met the required standards to stay the
24 September 20, 2021, Order dismissing the Petition for Judicial
25 Review. Stephen Yasmer contends that the Motion for Stay must be
26 denied as Appellant's are not truly requesting the dismissal be
27 stayed, but that the underlying decision and order reversing claim
28 denial be stayed, and this Court lacks the ability to grant that
relief because it does not have jurisdiction over the underlying

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

1 matter and the time to obtain that relief has lapsed.

2
3 **II.**
STATEMENT OF THE FACTS

4 CTHS and GBS filed their Petition for Judicial Review on or
5 around May 3, 2021, requesting review of an April 15, 2021,
6 Decision and Order issued by a Nevada Department of Administration
7 appeals officer.¹ The petition was filed in the Second Judicial
8 District Court - the district court for Washoe County.²

9 The underlying issue in this matter involves a dispute over
10 acceptance of a workers' compensation claim. On June 8, 2020,
11 Stephen Yasmer, manager of rehabilitation services for Petitioner
12 CTHS, fractured his ankle when he fell down stairs at Carson Tahoe
13 Hospital in Carson City while carrying a box for transport to a
14 satellite office location.³ He filed a claim for workers'
15 compensation benefits, but it was denied by Petitioner GBS, the
16 third-party administrator for the employer, on June 23, 2020.⁴
17 Yasmer appealed the denial and the matter was heard by Appeals
18 Officer Sheila Moore in Carson City, Nevada, on November 16, 2020.⁵
19 Claim denial was reversed on April 15, 2021, because it was found
20 that Yasmer's injury arose out of and in the course of his work for
21 CTHS.⁶ GBS and CTHS timely requested judicial review on May 3,

22
23 ¹ Exhibit 1.

24 ² Id.

25 ³ Exhibit 2.

26 ⁴ Exhibit 3.

27 ⁵ Exhibit 4.

28 ⁶ Exhibit 5, 9:9-14.

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

1 2021.⁷

2 Yasmer filed a motion to dismiss GBS and CTHS's Petition for
3 Judicial Review on August 2, 2021, arguing that the Court lacked
4 jurisdiction because the petition was not filed in the proper,
5 statutorily mandated judicial district.⁸ On September 20, 2021, the
6 Court ruled that it could not "find a viable basis under Nev. Rev.
7 Stat. § 233B.130(2)(b) to exercise jurisdiction. Therefore, the
8 Motion to Dismiss Petition for Judicial Review is **GRANTED**."⁹

9

10 **III.**
ARGUMENT

11 Carson Tahoe Health System and Gallagher Bassett's motion must
12 be denied as the time has run to stay the underlying decision and
13 order regarding claim acceptance and the Court has held it has no
14 jurisdiction to consider that matter thereby lacking the ability to
15 grant the actual relief being sought.

16 **A. LEGAL REQUIREMENTS TO STAY A DECISION.**

17 The ordering of a stay of a court's order is an extraordinary
18 remedy that can be granted under NRAP 8 when Appellants have met
19 all of the procedural requirements and when a court has
20 jurisdiction over the decision to be stayed.

21 Under Rule 8(c) of the Nevada Rules of Appellate Procedure, a
22 court is directed to consider four factors when determining whether
23 to issue a stay. These factors include whether Carson Tahoe Health
24 System and Gallagher Bassett Services, Inc., have a substantial

25

26 ⁷ Exhibit 1.

27 ⁸ Exhibit 6.

28 ⁹ Exhibit 7, 5:5-7 (emphasis in original).

1 likelihood of prevailing on the merits; the threat of serious or
2 irreparable harm to them if the stay is denied; the threat of
3 serious or irreparable harm to Yasmer if the stay is granted; and,
4 whether the object of the appeal will be defeated in the absence of
5 a stay.¹⁰

6 Further, NRS 616C.375 provides that "a decision [of an appeals
7 officer] is not stayed unless a stay is granted by the appeals
8 officer or district court within 30 days of the date on which the
9 decision was rendered."

10
11 **B. THE MOTION FOR STAY PENDING APPEAL TO THE SUPREME COURT OF**
12 **NEVADA MUST BE DENIED AS THE COURT DOES NOT HAVE THE ABILITY**
13 **TO GRANT THE RELIEF REQUESTED SINCE THE TIME FOR GRANTING A**
14 **STAY HAS RUN AND THE COURT HAS NO JURISDICTION OVER THE**
15 **UNDERLYING DECISION AND ORDER.**

16 In the present matter, the order that GBS and CTHS are
17 appealing, and can seek to have stayed, is the September 20, 2021,
18 Order Granting Motion to Dismiss Petition for Judicial Review. In
19 determining whether to issue a stay of that order, the Court would,
20 generally, analyze the above listed factors in conjunction with
21 that order. However, a stay of the dismissal is not actually the
22 relief Appellants are seeking. Instead, what they are seeking is to
23 have the underlying April 15, 2021, Appeals Officer Decision and
24 Order reversing claim denial stayed and that is not relief the
25 Court can provide.

26 A stay of the September 20, 2021, Order dismissing the

27 ¹⁰ NRAP 8(c). See generally, NRCP 65; Fritz Hansen A/S v. Eighth Judicial
28 Dist. Court, 116 Nev. 650, 6 P.3d 982 (2000); Kress v. Corey, 65 Nev. 1,
189 P.2d 352 (1948); Virginia Petroleum Jobbers Assn. v. Federal Power
Com., 259 F.2d 921 (D.C. Cir. 1958); 8 Larson Larson's Workers'
Compensation Law, § 130.08[4] (2003); and, American Horse Protection Assn.
v. Frizzell, 403 F.Supp. 1206 (9th Cir. 1975).

1 Petition for Judicial Review would only serve to keep the matter in
2 the district court - not stay the Appeals Officer's reversal of
3 claim denial. While CTHS and GBS claim they are seeking a stay of
4 dismissal order, they also specifically state that "[a] stay of the
5 ... Appeals Officer's Decision and Order is warranted."¹¹ However,
6 as the Court has already found it lacks jurisdiction over that
7 decision and order and the time has run for a stay to issue
8 regarding that determination, the Court does not have the ability
9 to grant the requested relief.

10 The majority of CTHS and Gallagher Bassett's argument in their
11 motion focuses on the belief that the Appeals Officer erred in
12 reversing claim denial - not that this Court's dismissal of their
13 petition was improper.¹² They are simply attempting to reargue their
14 position on the underlying matter and obtain a stay of that
15 decision and order. However, the time to obtain that relief has run
16 because a stay is required to be granted within 30 days from the
17 date the decision of an appeals officer was rendered or a it cannot
18 be stayed.¹³ The underlying decision and order issued on April 15,
19 2021; therefore, the stay was required to be granted by May 17,
20 2021. Since that date has passed, the Court is deprived of the
21 ability to now stay that decision and order and the current Motion
22 for Stay should be denied. Further, this Court has specifically
23 found it does not have jurisdiction to entertain an appeal of the
24 underlying decision and order so it also lacks the ability to stay

25
26 ¹¹ Appellants' Mot. Stay Pending Appeal to Supreme Court 6:6-7.

27 ¹² Appellants' Mot. Stay Pending Appeal to Supreme Court 8:9-11:3.

28 ¹³ NRS 616C.375.

1 that order.

2 An appellant bears the burden of demonstrating that appellate
3 jurisdiction is proper.¹⁴ The only arguments regarding jurisdiction
4 are the same that were made in opposing the Motion to Dismiss.¹⁵ No
5 argument is made that the Court has jurisdiction to stay the April
6 15, 2021, Decision and Order, when it previously determined it did
7 not have jurisdiction to exercise judicial review over that matter.

8 Appellant's attempt to argue, contrary to the Supreme Court's
9 decision Liberty Mut. v. Thomasson¹⁶, that principles of estoppel
10 should apply to confer jurisdiction or that prejudice to a party
11 can somehow confer jurisdiction on a court that has none, but no
12 authority is provided for these propositions.¹⁷ Subject matter
13 jurisdiction cannot be conferred by the parties or waived.¹⁸
14 Further, the lack of appellate jurisdiction goes to the appellate
15 court's ability to act and can be raised at any time.¹⁹

16 Essentially, Appellants are asking the Court to ignore the
17 statutes and precedent regarding jurisdiction in favor of balancing
18 or weighing the harms to the parties or whether they will be
19 prejudiced if jurisdiction is not found.²⁰ This is not appropriate
20 nor justified under Nevada law. Further, Appellant's never argue

21
22 ¹⁴ In re Estate of Miller, 111 Nev. 1, 5, 888 P.2d 433, 435 (1995).

23 ¹⁵ Appellants' Mot. Stay Pending Appeal to Supreme Court 7:10-8:8.

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

25 ¹⁷ Id. at 8:3-8.

26 ¹⁸ Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

27 ¹⁹ Id.

28 ²⁰ Appellants' Mot. Stay Pending Appeal to Supreme Court 8:1-8:8.

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

1 these are reasons to stay the dismissal.

2 The Nevada Supreme Court has held that failure of a petitioner
3 to strictly comply with the requirements of 233B.130(2) - just as
4 this Court found when it dismissed the Petition for Judicial Review
5 - results in a lack of jurisdiction for a district court to even
6 consider a petition for judicial review.²¹ Further, "only those
7 decisions falling within the APA's terms and challenged according
8 to the APA's procedures invoke the district court's jurisdiction."²²
9 Under Nevada law, "[a] district court is empowered to render a
10 judgment either for or against a person or entity only if it has
11 jurisdiction over the parties and the subject matter."²³ Therefore,
12 as the Court has determined it had no jurisdiction to hear an
13 appeal of the Appeals Officer's April 15, 2021, decision and order,
14 its subject matter jurisdiction has not been invoked and it cannot
15 render a determination regarding a stay of that decision.

16 Based on the foregoing, as the Court has already found it does
17 not have jurisdiction over the Appeals Officer's April 15, 2021,
18 Decision and Order and the time to request a stay of that decision
19 has run, it cannot grant the relief Appellants are requesting and
20 the Motion for Stay Pending Appeal to the Supreme Court of Nevada
21 must be denied.

22 ...

23 ...

24
25 ²¹ Washoe County v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726 (2012).

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

27 ²³ C.H.A. Venture v. G.C. Wallace Consulting Engineers, 106 Nev. 381, 383,
28 794 P.2d 707, 709, (1990) citing Young v. Nevada Tile Company, 103 Nev. 436, 442, 744 P.2d 902, 905, (1987).

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

IV.
CONCLUSION

A stay is an extraordinary remedy that should only be granted when the requirements have been followed and when a court has the ability to grant that relief. Further, it is Appellants' burden to show that a court has jurisdiction over the decision sought to be stayed and they have not done so in the present matter.

The Court does not have the ability to grant Appellant's requested relief since it lacks jurisdiction over the Appeals Officer's April 15, 2021, Decision and Order and the time to obtain a stay of that decision has run. Therefore, Yasmer respectfully requests this Court deny the Motion for Stay Pending Appeal to the Supreme Court of Nevada.

NEVADA ATTORNEY FOR INJURED WORKERS



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

Attorney for Respondent
Stephen Yasmer

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

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

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL TO THE
SUPREME COURT OF NEVADA filed in District Court Case Number: CV21-
00809

 X Does not contain the Social Security Number of any
person

- OR -

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

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

- OR -

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


Signature

11/4/2021
Date

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

Attorney for Respondent,
Stephen Yasmer

INDEX OF EXHIBITS

EXHIBIT NO.

DESCRIPTION

1	May 3, 2021, Petition for Judicial Review.
2	June 8, 2020, C-4 Form.
3	June 23, 2020, Claim Denial letter from Gallagher Bassett Services, Inc.
4	Cover page of Transcript of Proceedings from November 16, 2020.
5	April 15, 2021, Decision of Appeals Officer.
6	August 2, 2021, Respondent's Motion to Dismiss Petition for Judicial Review.
7	September 20, 2021, Order Granting Motion to Dismiss Petition for Judicial Review.
8	Proposed Order Denying Motion for Stay.

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

CERTIFICATE OF SERVICE

Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing **OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL TO THE SUPREME COURT OF NEVADA** was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s)

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

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

LLOYD MICHAEL FRIEND ESQ (michael.friend@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

DATED: _____

November 4, 2021

SIGNED: _____

Jane Sargent

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

EXHIBIT 1

EXHIBIT 1

1 **S3550**
2 **JOHN P. LAVERY, ESQ.**
3 **Nevada Bar No. 004663**
4 **JEANNE P. BAWA, ESQ.**
5 **Nevada Bar No. 007359**
6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
7 **2300 West Sahara Avenue, Suite 900, Box 28**
8 **Las Vegas, Nevada 89102**
9 **Phone: (702) 893-3383**
10 **Facsimile: (702) 366-9563**
11 **Email: john.lavery@lewisbrisbois.com**
12 **Email: jeanne.bawa@lewisbrisbois.com**
13 **Attorneys for Petitioners**
14 **CARSON TAHOE HEALTH SYSTEM**
15 **and GALLAGHER BASSETT SERVICES, INC.**

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

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

21 **Petitioners,**

22 **v.**

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

28 **Respondents.**

Case No.

Dept. No.

PETITION FOR JUDICIAL REVIEW

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

...


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

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

10 DATED this 3 day of May, 2021.

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

Index of Documents

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

1-11

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

4823-1595-4407.1 / 26878-2777

CERTIFICATE OF MAILING

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

Stephen Yasner
2257 Carson River Road
Carson City, NV 89701

Todd Eikelberger, Esq.
NEVADA ATTORNEY FOR INJURED
WORKERS
1000 E. William Street, Suite 206
Carson City, NV 89701

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

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

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

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

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

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


An employee of LEWIS BRISBOIS RISGAARD & SMITH LLP

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

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, Petition for
Judicial Review filed in case number: _____

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

- OR -

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

A specific state or federal law, to wit:

- or -

For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

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

Date: 5/3/21



(Signature)

JEANNE P. BAWA

(Print Name)

PETITIONERS

(Attorney for)

FILED
Electronically
CV21-00809
2021-11-04 03:19:24 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8733367 : yvitoria

EXHIBIT 2

EXHIBIT 2

FILED
Electronically
CV21-00809
2021-11-04 03:19:24 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8733367 : yvlloria

EXHIBIT 3

EXHIBIT 3



Gallagher Bassett Services, Inc.

June 23, 2020

Steven Yeager
2257 Carson River Road
Carson City, NV 89701

Re: Employee: Carson Tahoe
Date of Injury: 6/8/20
Claim #: 000706-038452-WC-01

Dear Mr. Yeager:

Gallagher Bassett Service, 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 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 bodily injury.

NRS 616A.265 1. "Injury" or "Personal Injury" means a sudden and tangible happening of a traumatic nature, producing a 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 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. Regional Manager

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

FILED
Electronically
CV21-00809
2021-11-04 03:19:24 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8733367 : yvilorla

EXHIBIT 4

EXHIBIT 4

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the
Contested Industrial
Insurance Claim of:

STEPHEN YASMER,

Claimant

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE
HONORABLE SHEILA Y. MOORE, ESQ.
APPEALS OFFICER**

**NOVEMBER 16, 2020
9:00 AM**

**1050 E. WILLIAMS STREET, SUITE 450
CARSON CITY, NEVADA 89701**

Ordered by:

Transcribed By: Wendy Letner, Precise Transcripts

2021 MAY 26 P 12:28

EXHIBIT 5

EXHIBIT 5

MAC

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

FILED
APR 15 2021
DEPT. OF ADMINISTRATION
APPEALS OFFICER

In the Matter of the
Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

of

STEPHEN YASMER

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

DECISION AND ORDER

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

The above-entitled appeal was heard by the Appeals Officer

BRUNDA J. KROEMER FOR THOMAS MORGAN
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 694-7555
2200 South Rancho Drive, Suite 200
Las Vegas, NV 89102 (702) 406-2020

Nevada Attorney For Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 694-7555
22 S South Reno Drive, Suite 200
Las Vegas, NV 89102 (702) 486 2838

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.

Memorandum for JAMES H. HARRIS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2300 South Reno Drive, Suite 210
Las Vegas, NV 89102 (702) 496-2830

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.

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

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

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

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

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

22 ³ Testimony of Stephen Yasmer at hearing.

23 ⁴ Id.

24 ⁵ Id.

25 ⁶ Exhibit 1, 8.

26 ⁷ Id. at 10.

27 ⁸ Id. at 1.

28 ⁹ Id. at 16-17.

Deborah Alexander was born 10/10/1968
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

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

4 Yasmer filed a claim for workers' compensation benefits which
5 was denied by Gallagher Bassett Services, the third-party
6 administrator (herein, "TPA") for CTHS, on June 23, 2020. 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.
16 Medical reporting clearly shows Yasmer suffered a left ankle
17 fracture that required a reduction and then a draining of the wound
18 with hardware removal. Based on the foregoing, the Appeals Officer
19 finds that a preponderance of all evidence submitted supports
20 Yasmer's position that his claim should be accepted. The weight of
21 the evidence, the credible medical reporting, and the reliable
22 testimony of Yasmer establish that he suffered injury to his left
23

24 ¹⁰ Id. at 18.

25 ¹¹ Id. at 25.

26 ¹² Id. at 4.

27 ¹³ Id. at 5-6.

28 ¹⁴ Id. at 39.

Nevada Department of Taxation
1000 East William Street, Suite 200
Carson City, NV 89701 (795) 694-7555
2490 South Ranch Drive, Suite 250
Las Vegas, NV 89102 (712) 486-2830

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

4 II.

5 CONCLUSIONS OF LAW

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

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

22 Applying those statutory definitions, it was unforeseen that

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

25 ¹⁶ Brown v. State, 107 Nev. 164, 166, 807 P.2d 179, 381, 199 .

26 ¹⁷ Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 60, 64, 939 P.2d 43,
1046 (1997).

27 ¹⁸ NRS 616A.030.

28 ¹⁹ NRS 616A.265(1).

Reuben Arrington, Vice President
1000 East William Street, Suite 208
Carson City, NV 89702 (775) 686-7555
2200 South Rancho Drive, Suite 220
Las Vegas, NV 89102 (702) 486-2830

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

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

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

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

24
25 ²¹ 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 ²² Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842
(1997).

28 ²³ Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d
2, 5 (2010).

Rebecca Armstrong for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89703 (775) 684-7555
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102 (702) 466-2930

1 compensable, and neutral risks are compensable if they satisfy the
2 increased-risk test. Personal risks are those that are
3 attributable to personal issues - not to the employment.
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."
8 Neutral risks are those that do not fall within either the
9 employment or personal risk categories. ⁶

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 ⁶ Id. at 351-53, 240 P.3d at 5-7.

26 ⁷ Id. at 351, 240 P.3d at 5.

27 ⁸ 1-4 Larson's Workers' Compensation Law § 4.01.

28 ⁹ Phillips at 351, 240 P.3d at 6.

Sharon Aronson for Innocent Women
1040 East William Street, Suite 200
Carson City, NV 89701 (775) 684-7555
2200 Beech Ranch Drive, Suite 210
Las Vegas, NV 89102 (702) 486-2830

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

9 Furthermore, the evidence establishes that Yasmer's injury
10 occurred within the course of his employment. "[W]hether the injury
11 occurs within the course of the employment refers . . . to the time
12 and place of employment, i.e. whether the injury occurs at work,
13 during working hours, and while the employee is reasonably
14 performing his or her duties." As discussed, Yasmer's injury
15 occurred while he was at work in the hospital. It happened while he
16 was reasonably performing his job duties as he was required to
17 carry the box of brochures. Further, he was conferring a benefit on
18 his employer at the time of the injury.⁸

19 Finally, credible and probative medical evidence, from which
20 a reasonable conclusion can be formed that Yasmer's injury occurred
21 in the course and scope of his employment, was provided by his
22 physicians.⁹ Specifically, the emergency room doctor checked the
23 box on the C4 form indicating that he could directly connect the
24

25
26 ⁸ Hood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

27 ⁹ See Evans v. Southwest Gas, 108 Nev. 1002, 1006, 842 P.2d 719, 721
(1992).

28 ¹⁰ United Exposition Servs. Co. v. St. . . . and . . . Ins. Svs., 109 Nev. 421,
425, 851 P.2d 423, 425.

STENOGRAPHER FOR JUDICIAL PROCEEDINGS
1600 East William Street, Suite 100
Carson City, NV 89701 (775) 684-7555
2300 South Rancho Drive, Suite 200
Las Vegas, NV 89102 (702) 686-2030

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

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

15 **ORDER**

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

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27

28 ³⁰ See NRS 616C.098.

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

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

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

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

9 APPEALS OFFICER

10 
11 SHEILA Y. MOORE

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

17 Submitted by:

18 NEVADA ATTORNEY FOR INJURED WORKERS

19 
20 Todd Eikelberger, Esq., Deputy
21 1000 East William St., #208
22 Carson City, Nevada 89701
23
24
25
26
27
28

CERTIFICATE OF MAILING

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

STEPHEN YASMER
2257 CARSON RIVER ROAD
CARSON CITY, NV 89701

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

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

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

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

Dated this 15 day of April, 2021.



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

FILED
Electronically
CV21-00809
2021-11-04 03:19:24 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8733367 : yvitoria

EXHIBIT 6

EXHIBIT 6

1 2300
2 Evan Beavers Esq. (NV Bar 3399)
3 ebeavers@naw.nv.gov
4 Todd Eikelberger, Esq. (NV Bar 9393)
5 teikelberger@naw.nv.gov
6 1000 East William Street, Suite 208
7 Carson City, Nevada 89701
8 (775) 684-7555; (775) 684-7575
9 Attorney for Respondent, Stephen Yasmer

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

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

15 Petitioner,

CASE NO. CV21-00809

16 vs.

DEPT. NO. 8

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

22 Respondents.

23 MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

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

...

...

Stephen Yasmer for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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

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

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

DATED this 2 day of August, 2021.

NEVADA ATTORNEY FOR INJURED WORKERS



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

Attorneys for Respondent

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

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

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

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

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

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

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

Nevada Department for Human Resources
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 496-2830

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

4 The underlying issue in this matter involves a dispute over
5 acceptance of a workers' compensation claim. On June 8, 2020,
6 Yasmer, manager of rehabilitation services for Petitioner CTHS,
7 fractured his ankle when he fell down stairs at Carson Tahoe
8 Hospital in Carson City. He filed a claim for workers'
9 compensation benefits, but it was denied by Petitioner GBS, the
10 third-party administrator for the employer, on June 23, 2020.¹
11 Yasmer appealed the denial and the matter was heard in front of
12 Appeals Officer Sheila Moore in Carson City, Nevada, on November
13 16, 2020.²

14 The C4 form, which is the claim for compensation, indicates
15 that Stephen Yasmer resides in Carson City, the same place the
16 injury occurred.³ The C3 form, the employer's report of industrial
17 injury, lists the address for CTHS as Carson City, Nevada.⁴ The
18 certificate of service attached to the appeals officer's decision
19 and order, as well as the one attached to the petition for judicial
20 review, lists a Carson City address for Petitioner CTHS and an Iowa

21
22 ¹ Exhibit 1.

23 ² Exhibit 2.

24 ³ Exhibit 3.

25 ⁴ Exhibit 4.

26 ⁵ Exhibit 5.

27 ⁶ Exhibit 6.

28 ⁷ Exhibit 7.

NEVADA ATTORNEY FOR INJURED WORKERS
1003 East William Street, Suite 230
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

1 address for Petitioner GBS.¹

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

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

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

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

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

25 ¹ Exhibits 1 & 2.

26 ⁹ Exhibit 7.

27 ¹⁰ Exhibit 8.

28 ¹¹ NRS 616C.370.

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

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

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

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

21 _____
22 ¹² NRS 233B.130(6).

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

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

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

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

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

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

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

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

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

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

NEVADA ATTORNEY FOR DEFENSE WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 466-2830

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

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

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

14 Under Nevada law, "[a] district court is empowered to render
15 a judgment either for or against a person or entity only if it has
16 jurisdiction over the parties and the subject matter."²⁰
17 Furthermore, if the 30 day filing period contained in NRS
18 233B.130(2)(d) has elapsed, a petitioner cannot correct or
19 otherwise amend its lack of compliance with NRS 233B.130(2)(b) as
20

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

23 ¹⁹ Id. at 432, 282 P.3d at 725.

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

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

28 ²² Id. at 32, 317 P.3d at 835.

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

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

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

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

6
7 **IV.**
CONCLUSION

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

12 DATED this 2 day of August, 2021.

13 NEVADA ATTORNEY FOR INJURED WORKERS

14 

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

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

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

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

INDEX OF EXHIBITS

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

Nevada Attorney for Injured Workers
1000 East William Street, Suite 205
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION
Pursuant to NRS 239B.030

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

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

-OR-

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

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

-OR-

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


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

8/2/2021
Date

FILED
Electronically
CV21-00809
2021-11-04 03:19:24 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8733367 : yvitoria

EXHIBIT 7

EXHIBIT 7

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
22 **II. LEGAL STANDARD**

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

6 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.
27
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 officer's decision and order list an address in Carson City. *Resp't Mot. to Dismiss Pet. for*
28

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.

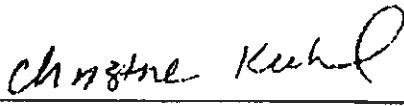
15
16
17 
18 **BARRY L. BRESLOW**
19 **DISTRICT JUDGE**

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

CERTIFICATE OF SERVICE

Pursuant to 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

FILED
Electronically
CV21-00809
2021-11-04 03:19:24 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8733367 : yvitoria

EXHIBIT 8

EXHIBIT 8

1 2842
Evan Beavers Esq. (NV Bar 3399)
2 ebeavers@naiw.nv.gov
Todd Eikelberger, Esq. (NV Bar 9393)
3 teikelberger@naiw.nv.gov
1000 East William Street, Suite 208
4 Carson City, Nevada 89701
(775) 684-7555; (775) 684-7575
5 Attorney for Respondent, Stephen Yasmer

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

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

12 Appellants,

13 vs.

CASE NO. CV21-00809

DEPT. NO. 8

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

16 Respondents.
17 _____/

18 ORDER DENYING APPELLANTS' MOTION FOR STAY PENDING APPEAL TO THE
19 SUPREME COURT OF NEVADA

20 This matter comes before the Court on Carson Tahoe Health
21 System (herein "CTHS") and Gallagher Bassett Services, Inc.'s
22 (herein "GBS") October 21, 2021 Motion for Stay Pending Appeal to
23 the Supreme Court of Nevada.

24 On May 3, 2021, Appellants filed a Petition for Judicial
25 Review of the Appeals Officer's April 15, 2021, Decision and Order
26 which reversed claim denial. The Court dismissed the petition on
27 September 20, 2021, finding that it lacked jurisdiction to conduct
28 judicial review because the petition had been impermissibly filed

1 in Washoe County's district court. Appellants are in the process of
2 appealing the dismissal to Nevada's Supreme Court and filed a
3 motion for stay requesting that the dismissal order and underlying
4 Appeals Officer's decision and order be stayed pending appeal to
5 the Nevada Supreme Court. Respondent filed his Opposition to the
6 stay motion on November 4, 2021.

7 **DISCUSSION**

8 The ordering of a stay is an extraordinary remedy that should
9 only be granted when the requirements to obtain that relief have
10 been followed and when a court has the ability to grant that
11 relief. Further, it is Appellants' burden to show that a court has
12 jurisdiction over the matter sought to be stayed and they have not
13 done so.

14 A stay of the September 20, 2021, Order dismissing the
15 Petition for Judicial Review would only serve to keep the matter in
16 the district court - not stay the Appeals Officer's reversal of
17 claim denial.

18 Regarding the staying of the Appeals Officer's April 15, 2021,
19 Decision and Order, NRS 616C.375 provides that "a decision [of an
20 appeals officer] is not stayed unless a stay is granted by the
21 appeals officer or district court within 30 days of the date on
22 which the decision was rendered." The 30 day time period lapsed
23 almost 6 months ago so the Court does not have the ability to now
24 stay that decision.

25 Further, this Court has specifically found it is without
26 jurisdiction to entertain an appeal of the Appeals Officer's April
27 15, 2021, Decision and Order and order so it lacks the ability to
28 stay that order.

1 This Court does not have the ability to grant Appellant's
2 requested relief. As such, an order to stay the enforcement of the
3 Appeals Officer's Decision and Order is not appropriate under the
4 circumstances, nor is an order staying the dismissal.


JUDGMENT

6 Therefore, based on the foregoing and good cause appearing,
7 IT IS HEREBY ORDERED that Appellants' Motion for Stay Pending
8 Appeal to the Supreme Court of Nevada is DENIED.

9 DATED this _____ day of _____, 2021.

**BARRY L. BRESLOW,
DISTRICT COURT JUDGE**

13 Submitted by:

14 
15 NEVADA ATTORNEY FOR INJURED WORKERS
16 Todd Eikelberger, Esq., Deputy
1000 East William Street, Suite 208
Carson City, Nevada 89701

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

Appellants,

vs.

STEPHEN YASMER,

Respondent.

**ORDER GRANTING APPELANTS' MOTION FOR STAY
PENDING APPEAL TO THE SUPREME COURT OF NEVADA**

Before the Court is a *Motion to Stay Pending Appeal* (hereinafter, "*Motion to Stay*"), filed by Appellant, CARSON TAHOE HEALTH SYSTEM (hereinafter, "CTHS") and GALLAGHER BASSETT SERVICES, INC. (hereinafter, "Gallagher, Inc.") on October 21, 2021. Respondent, STEPHEN YASMER, filed his *Opposition to Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada* (hereinafter, "*Opposition*"), on November 4, 2021. Appellants' filed a *Reply in Support of Motion for Stay Pending Appeal to the Supreme Court of Nevada* (hereinafter "*Reply*") on November 9, 2021, and this matter was submitted to the Court on December 1, 2021.

As a general rule, a supersedeas or stay should be granted...whenever it appears that without it the objects of the appeal or writ of error may be defeated, or that it is reasonably necessary to protect appellant or plaintiff in error from irreparable injury in the case of

1 reversal, and it does not appear that appellee or defendant in error will sustain irreparable or
2 disproportionate injury, in the case of affirmance. *Kress v. Corey*, 65 Nev. 1, 189 P.2d 353
3 (1948).

4 Here, there would be disproportionate harm to Appellants' in the absence of a stay. The
5 Respondent has already received medical care for the injuries to his ankle, and there have been
6 no allegations that Respondent will suffer additional physical harm without medical treatment.
7 Therefore, the Court finds the Respondent will not be subjected to further harm if the Appeals
8 Officer's Decision and Order is stayed while the case proceeds on the merits of the underlying
9 appeal¹. However, if the Court denies the *Motion to Stay*, the object of the appeal would be
10 somewhat mooted.

11 Based upon the foregoing, and good cause appearing,

12 IT IS HEREBY ORDERED that Appellants' *Motion for Stay Pending Appeal to the*
13 *Supreme Court of Nevada* is **GRANTED** as set forth above.
14

15 IT IS SO ORDERED.²

16 DATED this 13 day of December, 2021.

17
18 
19 **BARRY L. BRESLOW**
20 **DISTRICT JUDGE**

21
22
23
24
25
26
27
28 ¹ This Court takes no position as to the merits of the appeal.

² The Appellants' *Request for Order Shortening Time on Motion for Stay* is denied as moot.

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 13 day of December, 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:

LLOYD FRIEND, ESQ.

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.

C. KUHL
Judicial Assistant

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

Appellants,

vs.

STEPHEN YASMER,

Respondent.

**AMENDED ORDER GRANTING APPELLANTS' MOTION FOR STAY
PENDING APPEAL TO THE SUPREME COURT OF NEVADA**

Before the Court is a *Motion to Stay Pending Appeal* (hereinafter, "*Motion to Stay*"), filed by Appellant, CARSON TAHOE HEALTH SYSTEM (hereinafter, "CTHS") and GALLAGHER BASSETT SERVICES, INC. (hereinafter, "Gallagher, Inc.") on October 21, 2021. Respondent, STEPHEN YASMER, filed his *Opposition to Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada* (hereinafter, "*Opposition*"), on November 4, 2021. Appellants' filed a *Reply in Support of Motion for Stay Pending Appeal to the Supreme Court of Nevada* (hereinafter "*Reply*") on November 9, 2021, and this matter was submitted to the Court on December 1, 2021.

As a general rule, a supersedeas or stay should be granted...whenever it appears that without it the objects of the appeal or writ of error may be defeated, or that it is reasonably necessary to protect appellant or plaintiff in error from irreparable injury in the case of

1 reversal, and it does not appear that appellee or defendant in error will sustain irreparable or
2 disproportionate injury, in the case of affirmance. *Kress v. Corey*, 65 Nev. 1, 189 P.2d 353
3 (1948).

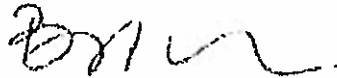
4 Here, there would be disproportionate harm to Appellants' in the absence of a stay. The
5 Respondent has already received medical care for the injuries to his ankle, and there have been
6 no allegations that Respondent will suffer additional physical harm without medical treatment.
7 Therefore, the Court finds the Respondent will not be subjected to further harm if the Court's
8 *Order Granting Motion to Dismiss Petition for Judicial Review and Appeals Officer's Decision*
9 and Order is stayed while the case proceeds on the merits of the underlying appeal¹. However,
10 if the Court denies the *Motion to Stay*, the object of the appeal would be somewhat mooted.

11 Based upon the foregoing, and good cause appearing,

12 IT IS HEREBY ORDERED that Appellants' *Motion for Stay Pending Appeal to the*
13 *Supreme Court of Nevada* is GRANTED as set forth above.

14 IT IS SO ORDERED.²

15 DATED this 13 day of December, 2021.

16
17
18 

19 BARRY L. BRESLOW
20 DISTRICT JUDGE

21
22
23
24
25
26
27
28 ¹ This Court takes no position as to the merits of the appeal.

² The Appellants' *Request for Order Shortening Time on Motion for Stay* is denied as moot.

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 13 day of December, 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:

LLOYD FRIEND, ESQ.

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.

C. KUHIL
Judicial Assistant

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

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

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

17 Appellants,
18

19 vs.
20

CASE NO. CV21-00809

DEPT. NO. 8

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

25 Respondents.
26
27
28

MOTION FOR CLARIFICATION OF STAY ORDER

29 COMES NOW Respondent, Stephen Yasmer, by and through his
30 attorney, Todd Eikelberger, Esq., Deputy, Nevada Attorney for
31 Injured Workers, and hereby requests clarification of language in
32 the December 13, 2021, Amended Order Granting Appellants' Motion for
33 Stay Pending Appeal to the Supreme Court of Nevada.
34
35 ...
36 ...
37 ...
38 ...

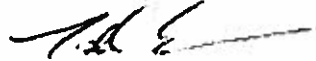
Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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

1 This motion is made pursuant to, and based upon, NRAP 8(a)(1),
2 NRAP 8(c), and NRS 616C.375, as well as, the papers and pleadings
3 on file herein.

4 RESPECTFULLY SUBMITTED this 17th day of December, 2021.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

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

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

Nevada Attorney for Injured Workers
1000 East William Street, Suite 20F
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

MEMORANDUM OF POINTS AND AUTHORITIES

Stephen Yasmer seeks to have this Court clarify the language in its December 13, 2021, stay order at page 2, line 8, which states "Appeals Officer's Decision and Order is stayed while the case proceeds on the merits of the underlying appeal."¹ The court previously ruled it lacks jurisdiction to review the Appeals Officer's April 15, 2021, Decision and Order under Nevada's Administrative Procedure Act (herein "APA") and dismissed the matter without ruling on the merits. Therefore, this Court may be intending to stay further proceedings on the petition filed in this matter, but it is unclear what substantive jurisdiction is being exercised to stay enforcement of the Appeals Officer's decision. In addition, this Court has made no decision on the merits of the issues raised in the petition, so there can be no appellate review "on the merits of the underlying appeal." Thus, clarification of the order is sought.

The ordering of a stay is an extraordinary remedy that can be granted only when an appellant meets all of the procedural requirements and a court has jurisdiction over the decision to be stayed. On September 20, 2021, this Court specifically found it does not have jurisdiction to review the underlying Appeals Officer decision and order.² Nevada's Supreme Court has held that failure of a petitioner to strictly comply with the requirements of NRS 233B.130(2) - just as this Court found when it dismissed the Petition for Judicial Review - results in a lack of jurisdiction

¹ Am. Order Granting Appellant's Mot. Stay Pending Appeal to Supreme Court 2:8-9.

² Order Granting Mot. Dismiss Pet. Jud. Review 5:5-7.

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

1 for a district court to even consider a petition for judicial
2 review, much less order a stay of the underlying decision for which
3 review is being sought and then order that the matter proceed to a
4 review on the merits in a higher court.³

5 Further, "only those decisions falling within the APA's terms
6 and challenged according to the APA's procedures invoke the
7 district court's jurisdiction."⁴ Under Nevada law, "[a] district
8 court is empowered to render a judgment either for or against a
9 person or entity only if it has jurisdiction over the parties and
10 the subject matter."⁵ As the Court has already determined it has no
11 subject matter jurisdiction to review the underlying matter, it has
12 no jurisdiction to stay enforcement of that decision nor order a
13 subsequent review on the merits.

14 While the order dismissing the petition for lack of subject
15 matter jurisdiction can be stayed by the court, the effect is to
16 stop all proceedings in district court until an appellate court
17 reviews that subject matter jurisdiction determination. The issue
18 on appeal is the jurisdictional determination. The merits of the
19 petition are not subject to appeal and review at this time because
20 the district court has found it has no jurisdiction over the
21 underlying decision. If that determination is reversed the matter
22 can proceed to a review on the merits, but not until, and if, that
23 occurs. Further, this court did not hear the petition on its merits

24
25 ³ Washoe County v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726 (2012).

26 ⁴ Id. at 431, 282 P.3d 719, 725 (citing Private Inv. Licensing Bd. v. Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1019 (1982)).

27 ⁵ C.H.A. Venture v. G.C. Wallace Consulting Engineers, 106 Nev. 381, 383,
28 794 P.2d 707, 709, (1990) citing Young v. Nevada Tile Company, 103 Nev. 436, 442, 744 P.2d 902, 905, (1987).

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

1 so the Supreme Court has no determination regarding the merits to
2 review.

3 Based on the foregoing, it is requested that the court clarify
4 the language contained in lines 8-9 on page 2 of its December 13,
5 2021, Amended Order Granting Appellant's Motion for Stay Pending
6 Appeal to the Supreme Court.

7 NEVADA ATTORNEY FOR INJURED WORKERS

8 

9
10 Todd Eikelberger, Esq., Deputy
11 Nevada Bar No. 9393
12 1000 East William Street, Suite 208
13 Carson City, Nevada 89701

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

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

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION
FOR CLARIFICATION OF STAY ORDER filed in District Court Case
Number: CV21-00809

 X Does not contain the Social Security Number of any
person

- OR -

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

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

- OR -

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


Signature

Date

12/17/21

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

Attorney for Respondent,
Stephen Yasmer

CERTIFICATE OF SERVICE

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

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

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

LLOYD MICHAEL FRIEND ESQ (michael.friend@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
2300 W SAHARA AVE STE 900 BOX 28
LAS VEGAS NV 89102

DATED:

December 20, 2021

SIGNED:

Alysa Sargent

Nevada Attorney for Injured Workers
1000 East William Street, Suite 204
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

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

Appellants,

vs.

STEPHEN YASMER,

Respondent.

**SECOND AMENDED ORDER GRANTING APPELANTS' MOTION FOR
STAY PENDING APPEAL TO THE SUPREME COURT OF NEVADA¹**

Before the Court is a *Motion to Stay Pending Appeal* (hereinafter, "*Motion to Stay*"), filed by Appellant, CARSON TAHOE HEALTH SYSTEM (hereinafter, "CTHS") and GALLAGHER BASSETT SERVICES, INC. (hereinafter, "Gallagher, Inc.") on October 21, 2021. Respondent, STEPHEN YASMER, filed his *Opposition to Appellants' Motion for Stay Pending Appeal to the Supreme Court of Nevada* (hereinafter, "*Opposition*"), on November 4, 2021. Appellants' filed a *Reply in Support of Motion for Stay Pending Appeal to the Supreme Court of Nevada* (hereinafter "*Reply*") on November 9, 2021, and this matter was submitted to the Court on December 1, 2021.

¹ This order is issued in response to the motion for clarification submitted to the Court on January 25, 2022.

1 As a general rule, a supersedeas or stay should be granted... whenever it appears that
2 without it the objects of the appeal or writ of error may be defeated, or that it is reasonably
3 necessary to protect appellant or plaintiff in error from irreparable injury in the case of
4 reversal, and it does not appear that appellee or defendant in error will sustain irreparable or
5 disproportionate injury, in the case of affirmance. *Kress v. Corey*, 65 Nev. 1, 189 P.2d 353
6 (1948).

7 Here, there would be disproportionate harm to Appellants' in the absence of a stay. The
8 Respondent has already received medical care for the injuries to his ankle, and there have been
9 no allegations that Respondent will suffer additional physical harm without medical treatment.
10 Therefore, the Court finds the Respondent will not be subjected to further harm if the Court's
11 *Order Granting Motion to Dismiss Petition for Judicial Review* and Appeals Officer's Decision
12 and Order is stayed while the case proceeds on the underlying appeal. However, if the Court
13 denies the *Motion to Stay*, the object of the appeal would be somewhat mooted.

14 Based upon the foregoing, and good cause appearing,

15 IT IS HEREBY ORDERED that Appellants' *Motion for Stay Pending Appeal to the*
16 *Supreme Court of Nevada* is GRANTED as set forth above.

17 IT IS SO ORDERED.²

18 DATED this 14 day of February, 2022.

19
20
21 
22 BARRY L. BRESLOW
23 DISTRICT JUDGE
24
25
26
27
28

² The Appellants' *Request for Order Shortening Time on Motion for Stay* is denied as moot.

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

CERTIFICATE OF SERVICE

Pursuant to 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 14 day of February, 2022, 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:

LLOYD FRIEND, ESQ.

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.

C. KUHL
Judicial Assistant