

Electronically Filed  
Nov 12 2021 02:34 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 **NOAS**  
2 **DAVID H. BENAVIDEZ, ESQUIRE**  
3 Nevada Bar No. 004919  
4 **LAW OFFICE OF DAVID H. BENAVIDEZ**  
5 850 South Boulder Highway, #375  
6 Henderson, Nevada 89015  
7 Davidbenavidez@gmail.com  
8 (702) 565-9730  
9 Attorney for Appellant

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 EMPLOYERS INSURANCE COMPANY OF NEVADA, )  
10 )  
11 Appellant, )  
12 )  
13 vs. ) Case No.: A-21-828981-J  
14 ) Dept No.: XIV  
15 DANIEL CASTELAN, THE DEPARTMENT OF )  
16 ADMINISTRATION, HEARINGS DIVISION, )  
17 APPEALS OFFICE, an agency of the State )  
18 of Nevada )  
19 Respondents. )  
20 )  
21 )  
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27 )  
28 )

18 **NOTICE OF APPEAL**

19 NOTICE IS HEREBY GIVEN that EMPLOYERS INSURANCE COMPANY OF  
20 NEVADA, Appellant in the above-entitled action, hereby appeals  
21 to the Supreme Court of Nevada the Order Denying Petition for  
22 Judicial Review entered in this action on the November 3, 2021.

24 This appeal is taken on all matters of law and fact in this  
25 case.

27 ///

THE LAW OFFICE OF DAVID H. BENAVIDEZ  
850 S. BOULDER HIGHWAY, #375  
HENDERSON, NEVADA 89015  
(702) 565-9730  
FAX (702) 568-1301

1 DATED this 8th day of November, 2021.

2 LAW OFFICE OF DAVID H. BENAVIDEZ

3 By: David H Benavidez  
4 David H. Benavidez, Esquire  
5 Nevada Bar No. 004919  
6 850 S Boulder Hwy #375  
7 Henderson, NV 89015  
8 Attorney for Appellant

9 **CERTIFICATE OF MAILING**

10 I, the undersigned, declare under penalty of perjury, that I  
11 am an employee of the Law Office of David H. Benavidez, and on the  
12 8th day of November, 2021, I deposited the foregoing **NOTICE OF**  
13 **APPEAL** in the United States Mail, with first class postage fully  
14 prepaid thereon or sent via electronic delivery, copies of the  
15 attached document addressed as follows:

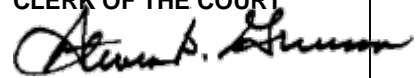
16 Jason Mills, Esq.  
17 GGRM Law Firm  
18 2770 S Maryland Pkwy #100  
19 Las Vegas, NV 89109

20 Peppermill, Inc.  
21 ATTN: Pam Sprau  
22 380 Brinkby Ave. Ste. B  
Reno, NV 89509

23 Employers Ins Co of NV  
24 ATTN: Cary Ferguson  
25 2550 Paseo Verde Pkwy. Ste. 100  
Henderson, NV 89074-9004

26 Rose Mary Keys  
27 Rose Mary Keys, Paralegal  
28

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HENDERSON, NEVADA 89015  
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FAX (702) 568-1301



1 **ASTA**  
2 **DAVID H. BENAVIDEZ, ESQUIRE**  
3 Nevada Bar No. 004919  
4 **LAW OFFICE OF DAVID H. BENAVIDEZ**  
5 850 South Boulder Highway, #375  
6 Henderson, Nevada 89015  
7 Davidbenavidez@gmail.com  
8 (702) 565-9730  
9 Attorney for Appellant

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 EMPLOYERS INSURANCE COMPANY OF NEVADA, )  
10 )  
11 Appellant, )

12 vs. )

) Case No.: A-21-828981-J

) Dept No.: XIV

13 DANIEL CASTELAN, THE DEPARTMENT OF )  
14 ADMINISTRATION, HEARINGS DIVISION, )  
15 APPEALS OFFICE, an agency of the State )  
16 of Nevada )

17 Respondents. )  
18 )

18 **CASE APPEAL STATEMENT**

19 1. Employers Insurance Company of Nevada, Appellant

20 2. District Court Judge Adriana Escobar

21 3. Counsel for Appellant is as follows:

22  
23 David H. Benavidez, Esquire  
24 LAW OFFICE OF DAVID H. BENAVIDEZ  
25 850 S. Boulder Highway, #375  
26 Henderson, Nevada 89015

27 4. Counsel for Respondent Daniel Castelan is as follows:  
28

Jason Mills, Esq.  
GGRM Law Firm  
2770 S Maryland Pkwy #100  
Las Vegas, NV 89109

5. All attorneys identified in the above response are licensed to practice law in Nevada.

6. Appellant retained counsel in the district court.

7. Appellant is represented by retained counsel on appeal.

8. Appellant was not granted leave to proceed in forma pauperis.

9. The Petition for Judicial Review was filed on February 5, 2021.

10. The Respondent appealed the Appeals Officer's January 14, 2021 order granting the Appellant's Motion to Reconsider noting the claimant would benefit from working in the light-duty position offered by the employer. The District Court Judge granted the Petition for Judicial Review.

11. The case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

12. The appeal does not involve child custody or visitation.

13. The appeal involves the possibility of settlement.

1 DATED this 8th day of November, 2021.

2  
3 By: David H. Benavidez  
4 David H. Benavidez, Esquire  
5 Nevada Bar No. 004919  
6 LAW OFFICE OF DAVID H. BENAVIDEZ  
7 850 S Boulder Hwy #375  
8 Henderson, NV 89015  
9 (702) 565-9730

10 **CERTIFICATE OF MAILING**

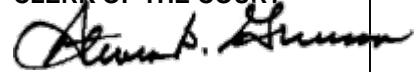
11 I, the undersigned, declare under penalty of perjury that I  
12 am an employee of the Law Office of David H. Benavidez, and on  
13 the 8th day of November, 2021, I deposited the foregoing **CASE**  
14 **APPEAL STATEMENT** in the United States Mail, with first class  
15 postage fully prepaid thereon or sent via electronic delivery,  
16 addressed as follows:

17 Jason Mills, Esq.  
18 GGRM Law Firm  
19 2770 S Maryland Pkwy #100  
20 Las Vegas, NV 89109

21 Peppermill, Inc.  
22 ATTN: Pam Sprau  
23 380 Brinkby Ave. Ste. B  
24 Reno, NV 89509

25 Employers Ins Co of NV  
26 ATTN: Cary Ferguson  
27 2550 Paseo Verde Pkwy. Ste. 100  
28 Henderson, NV 89074-9004

29 Rose Mary Keys  
30 Rose Mary Keys, Paralegal



**BOND**

**DAVID H. BENAVIDEZ, ESQUIRE**

Nevada Bar No. 004919

**LAW OFFICE OF DAVID H. BENAVIDEZ**

850 South Boulder Highway, #375

Henderson, Nevada 89015

Davidbenavidez@gmail.com

(702) 565-9730

Attorney for Appellant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

EMPLOYERS INSURANCE COMPANY OF NEVADA, )

Appellant, )

vs. )

) Case No.: A-21-828981-J

) Dept No.: XIV

DANIEL CASTELAN, THE DEPARTMENT OF )

ADMINISTRATION, HEARINGS DIVISION, )

APPEALS OFFICE, an agency of the State )

of Nevada )

Respondents. )

**NOTICE OF FILING BOND FOR COSTS ON APPEAL**

**Date: N/A**

**Time: N/A**

**NOTICE IS HEREBY GIVEN** that Appellant Employers Insurance Company of Nevada, by and through attorney David H. Benavidez, deposited with the Country Clerk of this Court, in compliance with NRAP rule 7, a bond of security for costs on appeal in the sum of five hundred dollars (\$500.00), a copy of which is

///

1 attached hereto.

2 DATED this 8th day of November, 2021.

3 LAW OFFICE OF DAVID H. BENAVIDEZ

4  
5  
6 By: David H. Benavidez

7 David H. Benavidez, Esquire

8 Nevada Bar No. 004919

9 850 S Boulder Hwy #375

10 Henderson, NV 89015

11 Attorney for Appellant

12  
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THE LAW OFFICE OF DAVID H. BENAVIDEZ  
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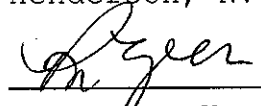
CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury that I am an employee of the Law Office of David H. Benavidez, and on the 8th day of November, 2021, I deposited the foregoing **NOTICE OF POSITION BOND** in the United States Mail, with first class postage fully prepaid thereon or sent via electronic delivery, addressed as follows:

Jason Mills, Esq.  
GGRM Law Firm  
2770 S Maryland Pkwy #100  
Las Vegas, NV 89109

Peppermill, Inc.  
ATTN: Pam Sprau  
380 Brinkby Ave. Ste. B  
Reno, NV 89509

Employers Ins Co of NV  
ATTN: Cary Ferguson  
2550 Paseo Verde Pkwy. Ste. 100  
Henderson, NV 89074-9004

  
Rose Mary Keys, Paralegal



**CASE SUMMARY****CASE NO. A-21-828981-J**

**Daniel Castelan, Petitioner(s)**  
**vs.**  
**Peppermill Hotel & Casino, Respondent(s)**

§  
 §  
 §  
 §  
 §

Location: **Department 14**  
 Judicial Officer: **Escobar, Adriana**  
 Filed on: **02/05/2021**  
 Case Number History:  
 Cross-Reference Case Number: **A828981**

**CASE INFORMATION**

Case Type: **Worker's Compensation Appeal**

Case Status: **02/05/2021 Open**





**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number A-21-828981-J  
 Court Department 14  
 Date Assigned 02/16/2021  
 Judicial Officer Escobar, Adriana







**PARTY INFORMATION**

<b>Petitioner</b>	<b>Castelan, Daniel</b>	<i>Lead Attorneys</i> <b>Mills, Jason D.</b> <i>Retained</i> 702-384-1616(W)
<b>Respondent</b>	<b>Employers Insurance Company of Nevada</b> <b>Nevada Department of Administration, Hearings Division Appeals Office</b>  <b>Peppermill Hotel &amp; Casino</b> <b>Peppermill Inc</b>	<b>Benavidez, David H</b> <i>Retained</i> 702-565-9730(W)

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**






02/05/2021	 Petition for Judicial Review Filed by: Petitioner Castelan, Daniel <i>[1] Petition for Judicial Review</i>
02/05/2021	 Initial Appearance Fee Disclosure Filed By: Petitioner Castelan, Daniel <i>[2] Initial Appearance Fee Disclosure</i>
02/08/2021	 Notice Filed By: Petitioner Castelan, Daniel <i>[3] Notice of Request to Transmit the Record on Appeal</i>
02/11/2021	 Statement of Intent to Participate in Petition for Judicial Filed By: Respondent Employers Insurance Company of Nevada <i>[4] Statement of Intent to Participate</i>

**CASE SUMMARY**  
**CASE NO. A-21-828981-J**

02/11/2021	 Peremptory Challenge Filed by: Petitioner Castelan, Daniel <i>[5] Peremptory Challenge of Judge</i>
02/12/2021	 Amended Petition Filed By: Petitioner Castelan, Daniel <i>[6] First Amended Petition for Judicial Review</i>
02/12/2021	 Statement Filed by: Respondent Employers Insurance Company of Nevada <i>[7] Amended Statement of Intent to Participate</i>
02/16/2021	 Notice of Department Reassignment <i>[8] Notice of Department Reassignment</i>
03/10/2021	 Order Setting Hearing <i>[9] Order Setting Hearing Re Petition for Judicial Review</i>
03/23/2021	 Motion Filed By: Petitioner Castelan, Daniel <i>[10] Motion to Reset Petition Hearing Once Agency Has Transmitted Record on Appeal</i>
03/24/2021	 Clerk's Notice of Nonconforming Document <i>[12] Notice of Nonconforming Document</i>
03/26/2021	 Clerk's Notice of Nonconforming Document and Curative Action <i>[13] Clerk's Notice of Curative Action</i>
03/26/2021	 Clerk's Notice of Hearing <i>[14] Notice of Hearing</i>
03/26/2021	 Certificate of Mailing Filed By: Petitioner Castelan, Daniel <i>[15] Certificate of Mailing</i>
05/10/2021	 Transmittal of Record on Appeal Party: Respondent Nevada Department of Administration, Hearings Division Appeals Office <i>[16] Transmittal of Record on Appeal</i>
05/10/2021	 Affidavit Filed By: Respondent Nevada Department of Administration, Hearings Division Appeals Office <i>[17] Affidavit &amp; Certification</i>
05/10/2021	 Certification of Transmittal Party: Respondent Nevada Department of Administration, Hearings Division Appeals Office <i>[18] Certification of Transmittal</i>
06/23/2021	 Stipulation and Order Filed by: Petitioner Castelan, Daniel <i>[19] Stipulation and Order Extending Briefing Schedule</i>

# CASE SUMMARY

CASE NO. A-21-828981-J

07/08/2021	 Brief Filed By: Petitioner Castelan, Daniel <i>[20] Petitioner's Opening Brief A-21-828981-J</i>
07/30/2021	 Brief Filed By: Respondent Employers Insurance Company of Nevada <i>[21] Respondent's Answering Brief</i>
08/19/2021	 Reply Filed by: Petitioner Castelan, Daniel <i>[22] Petitioner's Reply Brief A-21-828981-J</i>
08/20/2021	 Request Filed by: Petitioner Castelan, Daniel <i>[23] Request for Hearing on Petitioner's Petition for Judicial Review</i>
08/20/2021	 Clerk's Notice of Hearing <i>[24] Notice of Hearing</i>
08/26/2021	 Motion to Continue Filed By: Petitioner Castelan, Daniel <i>[25] Petitioner's Motion to Continue Hearing Set for September 23, 2021</i>
08/26/2021	 Clerk's Notice of Hearing <i>[26] Notice of Hearing</i>
09/20/2021	 Stipulation and Order Filed by: Petitioner Castelan, Daniel <i>[27] Stipulation and Order to Continue Hearing Set for September 23, 2021</i>
11/03/2021	 Objection Filed By: Respondent Employers Insurance Company of Nevada <i>[28] Respondent's Objection to the Proposed Order Granting Petition for Judicial Review</i>
11/03/2021	 Order Granting Judicial Review of Administrative Decision <i>[29] Order Granting Petition for Judicial Review A-20-828981-J</i>
11/03/2021	 Notice of Entry of Order Filed By: Petitioner Castelan, Daniel <i>[30] Notice of Entry of Order</i>
11/08/2021	 Motion to Stay Filed By: Respondent Peppermill Hotel & Casino; Respondent Employers Insurance Company of Nevada <i>[31] Motion for Stay Pending Supreme Court Review with Order Shortening Time</i>
11/08/2021	 Case Appeal Statement Filed By: Respondent Peppermill Hotel & Casino; Respondent Employers Insurance Company of Nevada <i>[32] Case Appeal Statement</i>
11/08/2021	 Notice of Filing Cost Bond Filed By: Respondent Peppermill Hotel & Casino; Respondent Employers Insurance Company of Nevada

**CASE SUMMARY****CASE NO. A-21-828981-J***[33] Notice of Filing Bond for Costs on Appeal*

11/08/2021



Notice of Appeal

Filed By: Respondent Peppermill Hotel &amp; Casino; Respondent Employers Insurance Company of Nevada

*[34] Notice of Appeal***DISPOSITIONS**

11/03/2021

**Order Granting Judicial Review** (Judicial Officer: Escobar, Adriana)

Debtors: Peppermill Hotel &amp; Casino (Respondent), Employers Insurance Company of Nevada (Respondent), Nevada Department of Administration, Hearings Division Appeals Office (Respondent), Peppermill Inc (Respondent)

Creditors: Daniel Castelan (Petitioner)

Judgment: 11/03/2021, Docketed: 11/04/2021

**HEARINGS**

04/22/2021

**CANCELED Petition for Judicial Review** (10:00 AM) (Judicial Officer: Escobar, Adriana)*Vacated*

05/06/2021

**CANCELED Motion** (10:00 AM) (Judicial Officer: Escobar, Adriana)*Vacated**Petitioner's Motion to Reset Petition Hearing Once Agency Has Transmitted Record on Appeal*

05/19/2021

**CANCELED Status Check** (3:00 AM) (Judicial Officer: Escobar, Adriana)*Vacated - Moot**Status Check regarding whether record has been transmitted*

10/14/2021

**Petition for Judicial Review** (10:00 AM) (Judicial Officer: Escobar, Adriana)

Events: 02/05/2021 Petition for Judicial Review

08/20/2021 Request

*Petitioner's Petition for Judicial Review*

Granted;

11/18/2021

**CANCELED Motion to Continue** (10:00 AM) (Judicial Officer: Escobar, Adriana)*Vacated**Petitioner's Motion to Continue Hearing Set for September 23, 2021***DATE****FINANCIAL INFORMATION****Petitioner** Castelan, Daniel

Total Charges

450.00

Total Payments and Credits

450.00

**Balance Due as of 11/9/2021****0.00****Respondent** Employers Insurance Company of Nevada

Total Charges

24.00

Total Payments and Credits

24.00

**Balance Due as of 11/9/2021****0.00****Respondent** Employers Insurance Company of Nevada

Appeal Bond Balance as of 11/9/2021

**500.00**

# DISTRICT COURT CIVIL COVER SHEET

County, Nevada

**CASE NO: A-21-828981-J**  
**Department 22**

Case No. \_\_\_\_\_

*(Assigned by Clerk's Office)*

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <div style="text-align: center;"> <b>DANIEL CASTELAN</b>                      P.O. Box 29066                      Las Vegas, NV 89126                 </div>	Defendant(s) (name/address/phone): <div style="text-align: center;">                     Peppermill Hotel &amp; Casino,                      Employers Insurance Company of Nevada,                      Hearings Division, Appeals Office, an Agency of the                      State of Nevada                 </div>
Attorney (name/address/phone): <div style="text-align: center;">                     Jason D. Mills, Esq.  <b>GGRM LAW FIRM</b>                      2770 S. Maryland Pkwy., Ste. 100, Las Vegas, NV 89109                      702-384-1616                 </div>	Attorney (name/address/phone): <div style="text-align: center;">         </div>

## II. Nature of Controversy *(please select the one most applicable filing type below)*

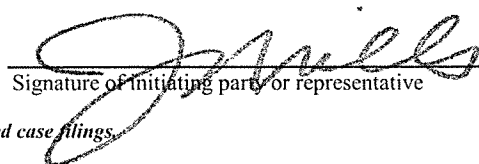
### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate <i>(select case type and estate value)</i></b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input checked="" type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

**February 5, 2021**

Date

  
 Signature of Initiating party or representative

*See other side for family-related case filings.*

1 **OGJR**

2 **JASON D. MILLS, ESQ.**

3 Nevada Bar No. 7447

4 **GGRM LAW FIRM**

5 2770 S. Maryland Parkway, Suite 100

6 Las Vegas, Nevada 89109

7 Phone: (702) 384-1616

8 Facsimile: (702) 384-2990

9 Email: [jmills@ggrmlawfirm.com](mailto:jmills@ggrmlawfirm.com)

10 *Attorneys for Petitioner*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DANIEL CASTELAN,

14 Petitioner,

15 v.

16 PEPPERMILL, INC., EMPLOYERS  
17 INSURANCE COMPANY OF  
18 NEVADA and THE DEPARTMENT  
19 OF ADMINISTRATION,  
20 HEARINGS DIVISION, APPEALS  
21 OFFICE, an Agency of the State of  
22 Nevada

23 Respondents.

CASE NO: A-21-828981-J

DEPT NO: XIV

24 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

25 This matter came before this Court on October 14, 2021, on the Petition for  
26 Judicial Review filed by Petitioner, DANIEL CASTELAN. Petitioner was  
27 represented JASON D. MILLS, ESQ. of GGRM LAW FIRM. Respondents,  
28



1 PEPPERMILL, INC., and EMPLOYERS INSURANCE COMPANY OF  
2 NEVADA were represented by DAVID H. BENAVIDEZ, ESQ. of THE LAW  
3 OFFICE OF DAVID H. BENAVIDEZ. No other parties were present or  
4 represented.  
5

6 After a review and consideration of the record, the Points and Authorities  
7 on file herein, and oral arguments of counsel, the Court hereby grants the Petition  
8 for Judicial Review, strikes the Appeals Officer's January 14, 2021, Decision and  
9 Order, reinstates the Appeals Officer's December 22, 2020, Decision and Order  
10 and orders the Respondent to authorize Dr. Shah's treatment plan outlined in his  
11 November 18, 2019 IME report, authorize Dr. Shah as the Petitioner's treating  
12 physician, and provide the Petitioner TTD benefits from November 18, 2019 to  
13 the present, plus interest.  
14  
15  
16  
17

### 18 **FINDINGS OF FACT**

19 The Petitioner sustained an industrial injury on December 31, 2017, while  
20 working in the course and scope of his employment with Peppermill Inc.  
21 ("Employer"). Specifically, while walking and carrying dishes, Petitioner slipped  
22 on standing water and fell, resulting in numerous facial injuries, a head injury and  
23 lacerations of the head and hand. (Record on Appeal "ROA" 206-247).  
24  
25

26 On January 16, 2018, the Respondent notified Petitioner that his claim was  
27 accepted for cervical strain, lumbar strain, right knee sprain, right elbow sprain,  
28

1 facial contusion, forehead laceration, closed head injury, and left ring finger  
2 laceration. (ROA 268-269).

3  
4 Following acceptance of liability for the industrial injury claim, Petitioner  
5 received medical treatment at Concentra Medical Centers from January 22, 2018,  
6 to approximately March 2, 2018. Petitioner also received medical treatment from  
7 Dr. Leo Germin for his head injury and, on December 12, 2018, a Hearing Officer  
8 affirmed the Respondent's October 31, 2018, determination denying his request  
9 for a follow up appointment with Dr. Germin. Petitioner timely appealed this  
10 Decision and Order to the Appeals Officer, resulting in Appeal Number 1908458-  
11 DM. (ROA 685-689).

12  
13  
14  
15 On October 24, 2018, the Respondent denied Petitioner's request for  
16 payment of medical bills for dry eye syndrome treatment. This determination was  
17 affirmed by a Hearing Officer, which Petitioner timely appealed, resulting in  
18 Appeal Number 1908459-DM. (ROA 679-684).

19  
20  
21 As a result of the Respondent's determination to deny Petitioner's continued  
22 medical treatment with Dr. Germin, Petitioner requested that he be scheduled for  
23 an Independent Medical Evaluation pursuant to NRS 616C.145 with Dr. Russell  
24 Shah for his head injury. The Respondent failed to timely respond to this request,  
25 resulting in a de facto denial of this request, which the Petitioner timely appealed.  
26  
27 A Hearing Officer affirmed the de facto denial and Petitioner timely appealed this  
28



1 Decision and Order to the Appeals Officer, resulting in Appeal Number 1911529-  
2 DM. (ROA 664-669).

3  
4 On December 4, 2018, Petitioner was placed on permanent light duty  
5 restrictions by Dr. Ronald Kong. These restrictions were based on the FCE  
6 performed on November 15, 2018, which indicated that Petitioner “did not appear  
7 to be capable of safely performing all of his pre-injury job duties (cleanup for  
8 Peppermill, Inc.) without modifications. Specifically, he appears to fall short of  
9 requirement for occasional lifting and carrying up to 80 lbs.” The FCE report also  
10 indicated that Petitioner is capable of working a medium physical demand level.  
11 The FCE evaluation failed to consider the head injury. (ROA 354-378).

12  
13  
14  
15 On February 5, 2019, the Vocational Rehabilitation Counselor notified  
16 Petitioner that the Employer offered him a permanent light duty job of  
17 hostess/cashier, which required him to “greet and seat guests, distribute guest  
18 between food servers, accept payment on guest tickets and give proper change,  
19 answer phones and properly direct calls and directing beverage service, bussing  
20 and cleaning of tables.” The permanent light duty job was approved by Dr. Ronald  
21 Kong. The counselor also notified Petitioner that because of the permanent light  
22 duty job offer, his vocational rehabilitation process closed February 12, 2019, and  
23 his vocational rehabilitation maintenance was terminated. (ROA 389). Petitioner  
24 did not accept this light duty position because of his head injury.  
25  
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1           Petitioner timely appealed the Vocational Rehabilitation counselor's  
2 determination dated February 5, 2019, and the Hearing Officer was bypassed,  
3  
4 resulting in Appeal Number 1912693-DM. (ROA 645-652).

5           On December 12, 2018, and December 19, 2018, the Respondent notified  
6  
7 Petitioner that his claim was closed for further medical treatment, and he was  
8 scheduled for a PPD Evaluation. This determination was affirmed by a Hearing  
9  
10 Officer on March 6, 2019, which Petitioner timely appealed, resulting in Appeal  
11  
12 Number 1913110-DM. (ROA 639-644).

13           On February 1, 2019, Petitioner underwent a PPD evaluation with Dr.  
14  
15 Gobinder Chopra, who indicated that Petitioner had a 0% whole person  
16 impairment. On February 11, 2019, the Respondent notified Petitioner that his  
17 claim was closed with a 0% whole person impairment. Petitioner timely appealed  
18 this determination, and the Hearing Officer was bypassed, resulting in Appeal  
19  
20 Number 1913610-DM. (ROA 405-412).

21           On November 6, 2019, the Appeals Officer filed an Interim Order which  
22  
23 ordered that Petitioner undergo an Independent Medical Evaluation with Dr.  
24  
25 Russell Shah for the Petitioner's head injury. (ROA 176-179).

26           On November 18, 2019, Petitioner underwent the IME with Dr. Shah. Dr.  
27  
28 Shah opined that Petitioner's industrially related impressions include a concussion  
with "post concussive syndrome with continued cognitive impairment, sleep



1 impairment and vestibular impairment consisting of memory difficulties, focusing  
2 difficulties, insomnia, restlessness and imbalance sensations.” Dr. Shah also  
3 indicated that Petitioner needed additional medical treatment for his head injury,  
4 and he had not reached maximum medical improvement for the concussion and  
5 that he “more likely than not has a permanent post traumatic brain injury from the  
6 December 31, 2017, trauma.” Dr. Shah recommended further medical treatment,  
7 including brain exercises, medication, and cognitive behavioral therapy. Dr. Shah  
8 also placed Petitioner on temporary disability. (ROA 164-175).

12 On January 17, 2020, Petitioner requested authorization for Dr. Shah’s  
13 treatment plan. However, the Respondent failed to respond to this request,  
14 resulting in a de facto denial. Petitioner appealed this determination to the Hearing  
15 Officer, but the matter was subsequently bypassed to the Appeals Officer, resulting  
16 in Appeal Number 2017002-DM. (ROA 133-141).

19 All appeal numbers were consolidated with Appeal Number 1908458-DM  
20 before Appeals Officer Denise McKay. Esq. (ROA 131-132).

22 On October 22, 2020, the consolidated appeals 1908458-DM, et al. came on  
23 for hearing before Appeals Officer Denise McKay, Esq. and a ruling was issued  
24 from the bench. (ROA 42-49). Specifically, during her ruling the Appeals Officer  
25 stated, “With regard to the light-duty job offer, I don’t necessarily agree that Dr.  
26 Shah needs to opine on it because Dr. Shah has clearly said this claimant needs  
27  
28

1 much more testing and treatment, so it doesn't seem worthwhile to even ask Dr.  
2 Shah to opine on that." (ROA 42, lines 14-18). Further the Appeals Officer stated,  
3 "the time is not right for anybody to be determining if this claimant is ready to take  
4 this valid light-duty job offer." (ROA 46, lines 15-17). Finally, the Appeals Officer  
5 stated, "With regard to the entirety of Dr. Shah's reporting and his phrasing about  
6 the temporary disability, he's substantially complied with this slip requirement."  
7 (ROA 49, lines 5-8).

8  
9  
10  
11 On November 20, 2020, Petitioner's Counsel, Jason D. Mills, Esq. hand  
12 delivered the Proposed Decision and Order for the consolidated matters to the  
13 Administrative Court and sent the Proposed Decision and Order via fax to  
14 Respondent's counsel. (ROA 99-100).

15  
16 On December 9, 2020, the Respondent filed its "Motion to Reconsider the  
17 Appeals Officer Decision Regarding TTD." (ROA 68-98). In its Motion, the  
18 Respondent conceded to having drafted a letter to Dr. Shah after the administrative  
19 trial ("Trial") had concluded, stating that "On October 28, 2020, Insurer Counsel  
20 drafted a letter to Dr. Shah asking the doctor if he found the claimant disabled from  
21 employment. If not did he agree with the permanent job offered by the employer."  
22 (ROA 68-69). Based on this newly manufactured evidence, not newly discovered,  
23 the Respondent moved the Administrative Court to "reconsider [the] order for  
24 TTD." (ROA 69).



1 On December 22, 2020, the Appeals Officer issued Administrative Decision  
2 and Order 1908458-DM et al. which found, in relevant part:  
3

4 “Regarding appeal number 1912693-DM, under NRS  
5 616C.590, the vocational rehabilitation issue is  
6 premature at this time because he has not been placed on  
7 a permanent light duty restriction based upon his closed  
8 head injuries because he is not at maximum medical  
9 improvement. Additionally, Dr. Shah’s reporting of  
10 November 18, 2019, indicates that as of that date,  
11 claimant is on temporary total disability status as it  
12 pertains to Claimant’s industrial closed head injury. As  
13 such, the Claimant is entitled to TTD benefits pursuant  
14 to NRS 616C.475, plus interest pursuant to NRS  
15 616C.335.”

16 (ROA 59).

17 “The full nature and duration and whether claimant can  
18 return to gainful employment will be determined by Dr.  
19 Shah in the future following additional industrial care by  
20 Dr. Shah. At that time, depending on the subsequent  
21 findings by Dr. Shah, the issue of permanent restrictions  
22 and what type, if any, permanent modified duty job  
23 Claimant is capable of performing will be determined at  
24 that time pursuant to NRS 616C.590. However, the issue  
25 is not currently ripe for adjudication given the state of  
26 Claimant’s temporary total disability status.”

27 (ROA 59).

28 Following these Conclusions of Law, the Appeals Officer ordered “that the  
determination from the vocational rehabilitation services counselor dated February  
5, 2019, is also **REVERSED** and the Insurer is **REMANDED** to provide Claimant

1 TTD benefits from November 18, 2019, to the present, plus interest.” (ROA 59-  
2 60).

3  
4 On January 14, 2021, the Appeals Officer issued her Order Granting the  
5 Respondent’s Motion for Reconsideration, which merely amended the December  
6 22, 2020, Order, rather than schedule the rehearing within 30 days of the granted  
7 petition, as required by NAC 616C.327. (ROA 51-53). The Appeals Officer  
8 amended the December 22, 2020, Order to erroneously deny the Petitioner’s  
9 entitlement to TTD benefits. Id.  
10

11  
12 The Petitioner timely filed his Petition for Judicial Review of the  
13 Administrative Court on grounds that the Order as amended by the Appeals Officer  
14 on January 14, 2021, violates the substantial rights of the Petitioner as it was  
15 rendered upon unlawful procedure and is in excess of the statutory authority of the  
16 agency, pursuant to NRS 233B.135(3).  
17

18  
19 On May 11, 2021, the Department of Administration transmitted the Record  
20 on Appeal, and the Petitioner filed his Opening Brief on July 8, 2021. The  
21 Respondent filed its Answering Brief on July 30, 2021, and the Petitioner filed his  
22 Reply Brief on August 19, 2021. This Petition for Judicial Review came before  
23 the Court on October 14, 2021.  
24

25  
26 The Issue before the Court is whether the Appeals Officer’s Decision and  
27 Order initially dated December 22, 2020, but later modified by the Appeals  
28

1 Officer, in violation of NAC 616C.372 on January 14, 2021, was improper. The  
2 determinations initially giving rise to this dispute are the Insurer's ("Respondent")  
3 February 11, 2019, determination regarding the Claimant's ("Petitioner")  
4 treatment with Dr. Shah and the Respondent's February 5, 2019, determination  
5 regarding the Petitioner's vocational rehabilitation status and entitlement to  
6 temporary total disability ("TTD") benefits.  
7

### 8 CONCLUSIONS OF LAW

9  
10 In contested workers' compensation claims, judicial review first requires an  
11 identification of whether the issue to be resolved is a factual or legal issue. While  
12 questions of law may be reviewed de novo by this Court, a more deferential  
13 standard must be employed when reviewing the factual findings of an  
14 administrative adjudicator.  
15

16  
17 NRS 233B.135, which governs judicial review of a final decision of an  
18 administrative agency, provides, in pertinent part, the following:  
19

20  
21 2. The final decision of the agency shall be deemed  
22 reasonable and lawful until reversed or set aside in  
23 whole or in part by the court. The burden of proof is on  
24 the party attacking or resisting the decision to show that  
the final decision is invalid pursuant to subsection 3.

25  
26 3. The court shall not substitute its judgment for that of  
27 the agency as to the weight of evidence on a question of  
28 fact. The court may remand or affirm the final decision  
or set it aside in whole or in part if substantial rights of

1 the petitioner have been prejudiced because the final  
2 decision of the agency is:

- 3 (a) In violation of constitutional or statutory  
4 provisions;  
5 (b) In excess of the statutory authority of the agency;  
6 (c) Made upon unlawful procedure;  
7 (d) Affected by other error of law;  
8 (e) Clearly erroneous in view of the reliable, probative  
and substantial evidence on the whole record; or  
9 (f) Arbitrary or capricious or characterized by abuse  
of discretion.

10 Relating to the standard of review of administrative decisions, our Supreme  
11 Court has consistently held that the factual findings made by administrative  
12 adjudicators may not be disturbed on appeal unless they lack the support of  
13 substantial evidence. SIIS v. Hicks, 100 Nev. 567, 688 P.2d 324 (1984); SIIS v.  
14 Thomas, 101 Nev. 293, 701 P.2d 1012 (1985); SIIS v. Swinney, 103 Nev. 17, 731  
15 P.2d 359 (1987); SIIS v. Christensen, 106 Nev. 85, 787 P.2d 408 (1990).

16 Thus, “the central inquiry is whether substantial evidence in the record  
17 supports the agency decision.” Brocas v. Mirage Hotel & Casino, 109 Nev. 579,  
18 583, 854 P.2d 862, 865 (1993). Substantial evidence is “that quantity and quality  
19 of evidence which a reasonable [person] could accept as adequate to support a  
20 conclusion.” State Employment Sec. Dep’t v. Hilton Hotels, 102 Nev. 606, 608  
21 n.1, 729 P.2d 497, 498 n.1 (1986). Therefore, if the agency’s decision lacks  
22 substantial evidentiary support, the decision is unsustainable as being arbitrary and  
23 capricious. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547, 2 P.3d 850,  
24  
25  
26  
27  
28



1 854 (2000). The Court must defer to an agency's findings of fact only as long as  
2 they are supported by substantial evidence. Law Offices of Barry Levinson v.  
3 Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008).

5 On the other hand, purely legal questions may be determined by the District  
6 Court without deference to an agency determination, upon de novo review. SIIS  
7 v. Khweiss, 108 Nev. at 126, 825 P.2d at 220 (1992). Furthermore, the construction  
8 of a statute is a question of law, subject to de novo review. See State, Dep't of  
9 Motor Vehicles v. Lovett, 110 Nev. 473, 476, 874 P.2d 1274, 1249 (1994).

12 However, NRS 233B.135(3) identifies multiple scenarios in which the  
13 reviewing court may set it aside in whole or in part an administrative decision.  
14 That is when a petitioner's substantial rights have been prejudiced as a result of  
15 unlawful procedure. *See* NRS 233B.135(3)(c).

18 Further, the Supreme Court of Nevada has determined that a reviewing court  
19 may set aside an agency decision if substantial rights of the petitioner have been  
20 prejudiced because the decision of the agency is in violation of constitution or  
21 statutory provisions. Field v. State, Dep't of Motor Vehicles & Pub. Safety, 111  
22 Nev. 552, 554, (1995).

25 In this matter, the Administrative Order as amended by the Appeals Officer  
26 on January 14, 2021, contains both violation of regulatory law as well as unlawful  
27 procedure, and this Court finds that it is clearly prejudicial to the Petitioner's  
28

1 substantial rights. The Administrative Order, as amended by the Appeals Officer  
2 on January 14, 2021, directly contradicts the plain and unambiguous language  
3 found in NAC 616C.327. Specifically, NAC 616C.327(2) states:

5           2. The appeals officer shall grant or deny the petition  
6           for rehearing within 15 days after the receipt of the  
7           petition. If the petition is granted, the rehearing must be  
8           held within 30 days after the petition is granted.

9           The Court finds that the language of NAC 616C.327 is plain and  
10          unambiguous. Accordingly, there is no need to go beyond this plain meaning. *See*  
11          City of N. Las Vegas v. Warburton, 127 Nev. 682, 686, (2011) (“When the text of  
12          a statute is plain and unambiguous, [we] should ... not go beyond that meaning.”),  
13          and Silver State Elec. v. State, Dep’t of Tax., 123 Nev. 80, 85, (2007) (“These  
14          rules of statutory construction also apply to administrative regulations”).  
15          Therefore, if a petition for rehearing is granted, or in this instance, a motion for  
16          reconsideration, the appeals officer is required to hold the rehearing within 30 days  
17          after the petition is granted. *See* NAC 616C.327(2).

18          The Court acknowledges that motions for reconsideration are not  
19          recognized under Nevada Workers’ Compensation administration, rather petitions  
20          for rehearing are the regulatorily accepted means for aggrieved parties to seek  
21          remedies outside of the appellate process. *See* NAC 616C.327. But for the  
22          purposes of this Order, the Court will treat the Respondent’s motion for  
23          reconsideration, the appeals officer is required to hold the rehearing within 30 days  
24          after the petition is granted. *See* NAC 616C.327(2).

1 reconsideration as a petition for rehearing, as the title of the respondent's  
2 December 9, 2020, document has no bearing on the Court's decision in this case.

3  
4 The Court finds that the amendments made to the Administrative Decision  
5 post trial, and therefore the Administrative Decision in and of itself, are in violation  
6 of regulatory and statutory law. NRS 233B.135(3)(c) provides that a court may  
7 remand an agency decision if the Petitioner's substantial rights have been  
8 prejudiced because the agency's decision is made upon unlawful procedure or is  
9 in violation of statutory procedures. The Supreme Court of Nevada has previously  
10 found that an appeals officer's failure to meet relevant statutory requirements is  
11 considered "procedurally deficient." Elizondo v. Hood Mach., Inc., 129 Nev. 780,  
12 785, (2013).

13  
14 In Elizondo, the Supreme Court of Nevada considered whether an  
15 administrative order that failed to include "findings of fact and conclusions of law,  
16 separately stated" pursuant to NRS 233B.125 was procedurally sufficient. Id. The  
17 Court in Elizondo found that because the language of NRS 233B.125 was plain  
18 and unambiguous ("a final decision must include findings of fact and conclusions  
19 of law, separately stated"), the appeals officer was bound by this mandate. Id. The  
20 Court went on to conclude that "the appeals officer's order fails to meet the  
21 statutory requirements of NRS 233B.125 and is thus procedurally deficient." Id.

1 The Court finds that the facts of Elizondo are similar to the facts of this  
2 petition, and the facts before this Court lend themselves to an interpretation under  
3 the precedent established by the Supreme Court of Nevada in Elizondo. The  
4 appeals officer violated plain and unambiguous regulatory law when she failed to  
5 hold a rehearing within 30 days after the Respondent's Motion was granted, as it  
6 is evident that no rehearing was scheduled. Rather, the appeals officer simply  
7 granted the Respondent's Motion and stripped the Petitioner of his monetary  
8 benefits via amended order. The Appeals Officer's failure to schedule the  
9 rehearing directly contradicts NAC 616C.327, which constitutes a clear violation  
10 of a regulatory provision and is highly prejudicial to the Petitioner's substantial  
11 rights.

12 Accordingly, the Administrative Order is in direct violation of relevant  
13 regulatory provisions, is highly prejudicial to his substantial rights, and therefore  
14 must be found to be procedurally deficient pursuant to NRS 233B.135, as clarified  
15 in Elizondo v. Hood Mach., Inc., 129 Nev. 780, (2013).

16 In support of its position, the Respondent argued that the Administrative  
17 Order is supported by substantial evidence and contains no error of law.  
18 (Respondent's Brief p. 8). For the aforementioned reasons, the Court finds that this  
19 argument bears no relevance to judicial review as NRS 233B.135(3) identifies  
20 multiple scenarios in which the reviewing court may set it aside in whole or in part  
21

1 an administrative decision. That is when a petitioner's substantial rights have been  
2 prejudiced as a result of unlawful procedure. *See* NRS 233B.135(3)(c).

3  
4 Further, the Respondent argued that its motion for reconsideration was  
5 proper as it was based on newly discovered evidence. (Respondent's Brief p. 14-  
6 15). However, the Court concludes that the response from Dr. Shah fails to meet  
7 the burden of "newly discovered evidence."  
8

9 In workers' compensation matters, rehearing of a decision is only  
10 appropriate if it is "based on good cause or newly discovered evidence." *See* NAC  
11 616C.327(1). However, the Respondent failed to show good cause for rehearing,  
12 and failed to produce newly discovered evidence.  
13  
14

15 Though the precedential case law in the state of Nevada is limited on the  
16 question of newly discovered evidence in civil cases, the Ninth Circuit Court of  
17 Appeals has found that "evidence is not newly discovered if it was in the party's  
18 possession at the time of summary judgement or could have been discovered with  
19 reasonable diligence." Wallis v. J.R. Simplot Co., 26 F.3d 885, 892 n.6 (9th Cir.  
20 1994) (emphasis added); *see also* Defs. Of Wildlife v. Bernal, 204 F.3d 920, 929  
21 (9th Cir. 2000) (providing that, in moving for a new trial based on newly  
22 discovered evidence under FRCP 59(a), the movant must demonstrate "the  
23 exercise of due diligence would not have resulted in the evidence being discovered  
24 at an earlier stage").  
25  
26  
27  
28



1 Nevada's higher courts have confirmed this interpretation of "newly  
2 discovered evidence" in various unpublished opinions, through their reliance on  
3 Drespel v. Drespel, 56 Nev. 368, 374, (1935) (recognizing that evidence that was  
4 within a party's power to present during a first trial will not constitute newly  
5 discovered evidence supporting a grant of a motion for a new trial). The Court in  
6 Drespel was presented with the question of whether a new trial should be grand  
7 upon the ground of newly discovered evidence following the plaintiff's recovery  
8 in a divorce action. Drespel v. Drespel, 56 Nev. 368, (1935). The Court ultimately  
9 affirmed the denial of a new trial on grounds that "reasonable diligence was not  
10 used prior to the trial to discover the evidence offered." Id. (emphasis added).  
11 Therefore, because there was no evidence that reasonable diligence was used prior  
12 to the trial to discover the evidence offered in support of the motion for new trial,  
13 the evidence offered failed to constitute "newly discovered evidence." Id.

14  
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17  
18  
19 Most recently, the Nevada Supreme Court has confirmed that the  
20 "reasonable diligence" standard for the effort of a moving party is a low threshold.  
21 In Motor Coach Indus., Inc. v. Khiabani by & through Rigaud, 137 Nev. Adv. Op.  
22 42, 493 P.3d 1007 (2021) the Appellant, Motor Coach, had moved the lower court  
23 for a new trial following the entry of judgement upon jury verdict for the Appellee.  
24 The theory put forth by Motor Coach was that news reporting that occurred post  
25 trial "brought to light new facts that merited a new trial." Id. 1015. Motor Coach  
26  
27  
28

1 went on to argue that “the revelations in these reports placed Khiabani's continued  
2 employment—had he lived—in such doubt that a new trial was warranted.” Id.  
3  
4 1015–16. However, the both the District Court and the Supreme Court in Khiabani  
5 disagreed with this argument, as evidence put forth showed that the Appellee  
6 “provided MCI with a release months before trial commenced, authorizing MCI  
7 to obtain Khiabani's employment information from the medical school.” Id. 1016.  
8  
9 The Court went on to find that, because Motor Coach failed to subpoena the  
10 Appellee’s employment information, the evidence could have been discovered  
11 with reasonable diligence, and therefore this information fails to constitute “newly  
12 discovered evidence.”  
13  
14

15 Similarly, in this case, the Court finds that the evidence submitted by the  
16 Respondent in support of its Motion for Reconsideration could have been  
17 discovered with reasonable diligence during the normal course of discovery, prior  
18 to the conclusion of the administrative trial, and therefore must not be considered  
19 “newly discovered.” The Court finds that the Respondent cannot show that the  
20 documents offered in support of its Motion for Reconsideration satisfy the burden  
21 of being considered “newly discovered.” In support of its Motion for  
22 Reconsideration, the Respondent supplied only the response of Dr. Shah to a letter  
23 crafted by the Respondent’s counsel on October 28, 2020, post-trial. The  
24 Respondent conceded in its Motion and its Brief that it was only after the Appeals  
25  
26  
27  
28

1 Officer issued a ruling ordering the Respondent to pay TTD benefits that  
2 Respondent's counsel prepared the letter to Dr. Shah. (ROA 68-69, Respondent's  
3 Brief p. 6-7). The Respondent made no allegation that this evidence was  
4 unobtainable prior to the administrative trial, and the Court concludes that, had  
5 Respondent's counsel simply exercised reasonable diligence, this evidence could  
6 have easily been obtained and submitted to the record prior to the October 22,  
7 2020, hearing.

8 Rather than exercising reasonable diligence, Respondent simply waited  
9 until the date of the administrative trial, waited for the presentation of the  
10 Petitioner's arguments and evidence, and then waited until an adverse ruling had  
11 been issued against it before making the decision to go on an improper and  
12 unwarranted post-trial discovery expedition. Therefore, the Court concludes that  
13 the ill-gotten means by which the December 7, 2020, response from Dr. Shah was  
14 procured mandate that the response be stricken from the record as a fugitive  
15 document and that because this document was obtained improperly, through  
16 unauthorized and improper post-trial discovery, this document has no effect upon  
17 this industrial injury claim.

### 18 **ORDER**

19 In summation, THIS COURT FINDS AND HEREBY ORDERS that the  
20 January 14, 2021, Decision and Order is in violation of statutory provisions, made  
21





NEVADA'S PREMIER INJURY  
LAW FIRM

1 upon unlawful procedure, and violates the Petitioner's substantial rights. Based on  
2 the Court's finding, it is hereby ORDERED the Appeals Officer's January 14,  
3  
4 2021, Decision and Order is stricken, Appeals Officer's December 22, 2020,  
5 Decision and Order is reinstated, and the Respondent is ordered to authorize Dr.  
6 Shah's treatment plan outlined in his November 18, 2019, IME report, authorize  
7 Dr. Shah as the Petitioner's treating physician, and provide the Petitioner TTD  
8 benefits from November 18, 2019, to the present, plus interest  
9  
10  
11

12 DATED this Q. Escobar day of \_\_\_\_\_, 2021.  
13  
14

15 By: Q. Escobar  
16 ADRIANA ESCOBAR  
17 DISTRICT COURT JUDGE

18 Submitted by:  
19 GGRM LAW FIRM  
20  
21

Dated this 3rd day of November, 2021

Q. Escobar

20A 746 3D18 705A  
Adriana Escobar  
District Court Judge

22 By: /s/ Jason D. Mills, Esq.  
23 JASON D. MILLS, ESQ.  
24 Nevada Bar No. 7447  
25 2770 S. Maryland Parkway  
26 Suite 100  
27 Las Vegas, Nevada 89109  
28 *Attorney for Petitioner*

1                   **CERTIFICATION PURSUANT TO COURT GUIDELINES**

2                   Counsel submitting this document certifies as follows (check one):

3  
4                   \_\_\_\_\_ The court has waived the requirements set forth in the Guidelines;

5  
6                   \_\_\_\_\_ No party appeared at the hearing or filed an objection to the motion;

7  
8                     X   I have delivered a copy of this proposed order to all counsel who  
9                   appeared at the hearing, and each has approved or disapproved the order, or  
10                  failed to respond as indicated below:

11  
12                  [   ] Approved   [ X ] Disapproved   [   ] Failed to Respond

13  
14                  \_\_\_\_\_/s/ David Benavidez

15                  DAVID H. BENAVIDEZ ESQ., of THE LAW OFFICE OF DAVID H.  
16                  BENAVIDEZ, Attorney for Respondents PEPPERMILL, INC., and  
17                  EMPLOYERS INSURANCE COMPANY OF NEVADA.



NEVADA'S PREMIER INJURY  
LAW FIRM

## Ethan Wallace

---

**From:** David Benavidez <davidbenavidez@gmail.com>  
**Sent:** Monday, November 1, 2021 7:19 AM  
**To:** Jason Mills  
**Cc:** Ethan Wallace  
**Subject:** Re: Proposed Order Granting PJR, Castelan v. Peppermill, Inc et al., A-21-828981-J

Disapproved.

On Sun, Oct 31, 2021 at 6:36 PM Jason Mills <[jmills@ggrmlawfirm.com](mailto:jmills@ggrmlawfirm.com)> wrote:

Dave;

Do you want me to put your electronic signature attached along with the “**DISAPPROVED**” check box or do you wish me to leave your electronic signature off/blank and simply check “**FAILED TO RESPOND**” on the order I am submitting to the court?

Thank you, sir.



**Jason D. Mills, Esq.**  
Strategic Development Partner

O: 702.384.1616 | F: 702.384.2990 | [www.ggrmlawfirm.com](http://www.ggrmlawfirm.com)  
2770 S. Maryland Pkwy., Ste. 100 Las Vegas, NV 89109



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Daniel Castelan, Petitioner(s)

CASE NO: A-21-828981-J

7 vs.

DEPT. NO. Department 14

8 Peppermill Hotel & Casino,  
9 Respondent(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Judicial Review of Administrative Decision was served  
14 via the court's electronic eFile system to all recipients registered for e-Service on the above  
entitled case as listed below:

15 Service Date: 11/3/2021

16 Ethan Wallace

ewallace@ggrmlawfirm.com

17 Veronica Salas

vsalas@ggrmlawfirm.com

18 Jason Mills

jmills@ggrmlawfirm.com

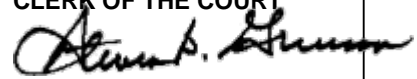
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1 **NEOJ**  
2 **JASON D. MILLS, ESQ.**  
3 Nevada Bar No. 7447  
4 **GGRM LAW FIRM**  
5 2770 S. Maryland Parkway, Suite 100  
6 Las Vegas, Nevada 89109  
7 Phone: (702) 384-1616  
8 Facsimile: (702) 384-2990  
9 Email: jmills@ggrmlawfirm.com  
10 *Attorneys for Petitioner*

11  
12 **DISTRICT COURT**  
13  
14 **CLARK COUNTY, NEVADA**

15 DANIEL CASTELAN,  
16  
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24  
25  
26  
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28  
Petitioner,

CASE NO: A-21-828981-J

DEPT NO: XIV

v.

PEPPERMILL, INC., EMPLOYERS  
INSURANCE COMPANY OF  
NEVADA and THE DEPARTMENT  
OF ADMINISTRATION,  
HEARINGS DIVISION, APPEALS  
OFFICE, an Agency of the State of  
Nevada

Respondents.

**NOTICE OF ENTRY OF ORDER**

TO: All parties of interest.

PLEASE TAKE NOTICE that an Order was entered in the above-entitled  
case on the 3rd day of November, 2021.



1 A true and accurate copy of which is attached.

2 DATED this 3<sup>rd</sup> day of November, 2021.

3  
4 GGRM LAW FIRM

5  
6  
7 By: /s/ Jason D. Mills, Esq.  
8 JASON D. MILLS, ESQ.  
9 Nevada Bar No. 7447  
10 2770 S. Maryland Parkway  
11 Suite 100  
12 Las Vegas, Nevada 89109  
13 *Attorney for Petitioner*  
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NEVADA'S PREMIER INJURY  
LAW FIRM

**CERTIFICATE OF SERVICE**

**ELECTRONIC**

Pursuant to NRCP 5(b), I certify that I am an employee of GGRM LAW FIRM, and that on the 3<sup>rd</sup> day of November, 2021, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, to wit:

**BY MAIL**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November, 2021, I served the foregoing by placing a copy of the NOTICE OF ENTRY OF ORDER which a true copy thereof was placed in the United States Mail, postage prepaid, addressed to:

David H. Benavidez, Esq.  
The Law Office of David H. Benavidez  
850 S. Boulder Highway #375  
Henderson, Nevada 89015

/s/ Ethan Wallace  
An Employee of GGRM LAW FIRM

1 **OGJR**  
2 **JASON D. MILLS, ESQ.**  
3 Nevada Bar No. 7447  
4 **GGRM LAW FIRM**  
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7 Phone: (702) 384-1616  
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10 *Attorneys for Petitioner*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 DANIEL CASTELAN,  
14  
15 Petitioner,

CASE NO: A-21-828981-J

DEPT NO: XIV

16 v.

17 PEPPERMILL, INC., EMPLOYERS  
18 INSURANCE COMPANY OF  
19 NEVADA and THE DEPARTMENT  
20 OF ADMINISTRATION,  
21 HEARINGS DIVISION, APPEALS  
22 OFFICE, an Agency of the State of  
23 Nevada

24 Respondents.

25 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

26 This matter came before this Court on October 14, 2021, on the Petition for  
27 Judicial Review filed by Petitioner, DANIEL CASTELAN. Petitioner was  
28 represented JASON D. MILLS, ESQ. of GGRM LAW FIRM. Respondents,





1 PEPPERMILL, INC., and EMPLOYERS INSURANCE COMPANY OF  
2 NEVADA were represented by DAVID H. BENAVIDEZ, ESQ. of THE LAW  
3 OFFICE OF DAVID H. BENAVIDEZ. No other parties were present or  
4 represented.  
5

6 After a review and consideration of the record, the Points and Authorities  
7 on file herein, and oral arguments of counsel, the Court hereby grants the Petition  
8 for Judicial Review, strikes the Appeals Officer's January 14, 2021, Decision and  
9 Order, reinstates the Appeals Officer's December 22, 2020, Decision and Order  
10 and orders the Respondent to authorize Dr. Shah's treatment plan outlined in his  
11 November 18, 2019 IME report, authorize Dr. Shah as the Petitioner's treating  
12 physician, and provide the Petitioner TTD benefits from November 18, 2019 to  
13 the present, plus interest.  
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### 18 **FINDINGS OF FACT**

19 The Petitioner sustained an industrial injury on December 31, 2017, while  
20 working in the course and scope of his employment with Peppermill Inc.  
21 ("Employer"). Specifically, while walking and carrying dishes, Petitioner slipped  
22 on standing water and fell, resulting in numerous facial injuries, a head injury and  
23 lacerations of the head and hand. (Record on Appeal "ROA" 206-247).  
24  
25

26 On January 16, 2018, the Respondent notified Petitioner that his claim was  
27 accepted for cervical strain, lumbar strain, right knee sprain, right elbow sprain,  
28

1 facial contusion, forehead laceration, closed head injury, and left ring finger  
2 laceration. (ROA 268-269).

3  
4 Following acceptance of liability for the industrial injury claim, Petitioner  
5 received medical treatment at Concentra Medical Centers from January 22, 2018,  
6 to approximately March 2, 2018. Petitioner also received medical treatment from  
7 Dr. Leo Germin for his head injury and, on December 12, 2018, a Hearing Officer  
8 affirmed the Respondent's October 31, 2018, determination denying his request  
9 for a follow up appointment with Dr. Germin. Petitioner timely appealed this  
10 Decision and Order to the Appeals Officer, resulting in Appeal Number 1908458-  
11 DM. (ROA 685-689).

12  
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14  
15 On October 24, 2018, the Respondent denied Petitioner's request for  
16 payment of medical bills for dry eye syndrome treatment. This determination was  
17 affirmed by a Hearing Officer, which Petitioner timely appealed, resulting in  
18 Appeal Number 1908459-DM. (ROA 679-684).

19  
20  
21 As a result of the Respondent's determination to deny Petitioner's continued  
22 medical treatment with Dr. Germin, Petitioner requested that he be scheduled for  
23 an Independent Medical Evaluation pursuant to NRS 616C.145 with Dr. Russell  
24 Shah for his head injury. The Respondent failed to timely respond to this request,  
25 resulting in a de facto denial of this request, which the Petitioner timely appealed.  
26  
27 A Hearing Officer affirmed the de facto denial and Petitioner timely appealed this  
28

1 Decision and Order to the Appeals Officer, resulting in Appeal Number 1911529-  
2 DM. (ROA 664-669).

3  
4 On December 4, 2018, Petitioner was placed on permanent light duty  
5 restrictions by Dr. Ronald Kong. These restrictions were based on the FCE  
6 performed on November 15, 2018, which indicated that Petitioner “did not appear  
7 to be capable of safely performing all of his pre-injury job duties (cleanup for  
8 Peppermill, Inc.) without modifications. Specifically, he appears to fall short of  
9 requirement for occasional lifting and carrying up to 80 lbs.” The FCE report also  
10 indicated that Petitioner is capable of working a medium physical demand level.  
11 The FCE evaluation failed to consider the head injury. (ROA 354-378).

12  
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14  
15 On February 5, 2019, the Vocational Rehabilitation Counselor notified  
16 Petitioner that the Employer offered him a permanent light duty job of  
17 hostess/cashier, which required him to “greet and seat guests, distribute guest  
18 between food servers, accept payment on guest tickets and give proper change,  
19 answer phones and properly direct calls and directing beverage service, bussing  
20 and cleaning of tables.” The permanent light duty job was approved by Dr. Ronald  
21 Kong. The counselor also notified Petitioner that because of the permanent light  
22 duty job offer, his vocational rehabilitation process closed February 12, 2019, and  
23 his vocational rehabilitation maintenance was terminated. (ROA 389). Petitioner  
24 did not accept this light duty position because of his head injury.  
25  
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1           Petitioner timely appealed the Vocational Rehabilitation counselor's  
2 determination dated February 5, 2019, and the Hearing Officer was bypassed,  
3 resulting in Appeal Number 1912693-DM. (ROA 645-652).

4  
5           On December 12, 2018, and December 19, 2018, the Respondent notified  
6 Petitioner that his claim was closed for further medical treatment, and he was  
7 scheduled for a PPD Evaluation. This determination was affirmed by a Hearing  
8 Officer on March 6, 2019, which Petitioner timely appealed, resulting in Appeal  
9 Number 1913110-DM. (ROA 639-644).

10  
11  
12           On February 1, 2019, Petitioner underwent a PPD evaluation with Dr.  
13 Gobinder Chopra, who indicated that Petitioner had a 0% whole person  
14 impairment. On February 11, 2019, the Respondent notified Petitioner that his  
15 claim was closed with a 0% whole person impairment. Petitioner timely appealed  
16 this determination, and the Hearing Officer was bypassed, resulting in Appeal  
17 Number 1913610-DM. (ROA 405-412).

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21           On November 6, 2019, the Appeals Officer filed an Interim Order which  
22 ordered that Petitioner undergo an Independent Medical Evaluation with Dr.  
23 Russell Shah for the Petitioner's head injury. (ROA 176-179).

24  
25           On November 18, 2019, Petitioner underwent the IME with Dr. Shah. Dr.  
26 Shah opined that Petitioner's industrially related impressions include a concussion  
27 with "post concussive syndrome with continued cognitive impairment, sleep  
28



1 impairment and vestibular impairment consisting of memory difficulties, focusing  
2 difficulties, insomnia, restlessness and imbalance sensations.” Dr. Shah also  
3 indicated that Petitioner needed additional medical treatment for his head injury,  
4 and he had not reached maximum medical improvement for the concussion and  
5 that he “more likely than not has a permanent post traumatic brain injury from the  
6 December 31, 2017, trauma.” Dr. Shah recommended further medical treatment,  
7 including brain exercises, medication, and cognitive behavioral therapy. Dr. Shah  
8 also placed Petitioner on temporary disability. (ROA 164-175).

12 On January 17, 2020, Petitioner requested authorization for Dr. Shah’s  
13 treatment plan. However, the Respondent failed to respond to this request,  
14 resulting in a de facto denial. Petitioner appealed this determination to the Hearing  
15 Officer, but the matter was subsequently bypassed to the Appeals Officer, resulting  
16 in Appeal Number 2017002-DM. (ROA 133-141).

19 All appeal numbers were consolidated with Appeal Number 1908458-DM  
20 before Appeals Officer Denise McKay. Esq. (ROA 131-132).

22 On October 22, 2020, the consolidated appeals 1908458-DM, et al. came on  
23 for hearing before Appeals Officer Denise McKay, Esq. and a ruling was issued  
24 from the bench. (ROA 42-49). Specifically, during her ruling the Appeals Officer  
25 stated, “With regard to the light-duty job offer, I don’t necessarily agree that Dr.  
26 Shah needs to opine on it because Dr. Shah has clearly said this claimant needs  
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28

1 much more testing and treatment, so it doesn't seem worthwhile to even ask Dr.  
2 Shah to opine on that." (ROA 42, lines 14-18). Further the Appeals Officer stated,  
3 "the time is not right for anybody to be determining if this claimant is ready to take  
4 this valid light-duty job offer." (ROA 46, lines 15-17). Finally, the Appeals Officer  
5 stated, "With regard to the entirety of Dr. Shah's reporting and his phrasing about  
6 the temporary disability, he's substantially complied with this slip requirement."  
7 (ROA 49, lines 5-8).

8  
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10  
11 On November 20, 2020, Petitioner's Counsel, Jason D. Mills, Esq. hand  
12 delivered the Proposed Decision and Order for the consolidated matters to the  
13 Administrative Court and sent the Proposed Decision and Order via fax to  
14 Respondent's counsel. (ROA 99-100).

15  
16 On December 9, 2020, the Respondent filed its "Motion to Reconsider the  
17 Appeals Officer Decision Regarding TTD." (ROA 68-98). In its Motion, the  
18 Respondent conceded to having drafted a letter to Dr. Shah after the administrative  
19 trial ("Trial") had concluded, stating that "On October 28, 2020, Insurer Counsel  
20 drafted a letter to Dr. Shah asking the doctor if he found the claimant disabled from  
21 employment. If not did he agree with the permanent job offered by the employer."  
22 (ROA 68-69). Based on this newly manufactured evidence, not newly discovered,  
23 the Respondent moved the Administrative Court to "reconsider [the] order for  
24 TTD." (ROA 69).



1 On December 22, 2020, the Appeals Officer issued Administrative Decision  
2 and Order 1908458-DM et al. which found, in relevant part:

3  
4 “Regarding appeal number 1912693-DM, under NRS  
5 616C.590, the vocational rehabilitation issue is  
6 premature at this time because he has not been placed on  
7 a permanent light duty restriction based upon his closed  
8 head injuries because he is not at maximum medical  
9 improvement. Additionally, Dr. Shah’s reporting of  
10 November 18, 2019, indicates that as of that date,  
11 claimant is on temporary total disability status as it  
12 pertains to Claimant’s industrial closed head injury. As  
13 such, the Claimant is entitled to TTD benefits pursuant  
14 to NRS 616C.475, plus interest pursuant to NRS  
15 616C.335.”

16 (ROA 59).

17 “The full nature and duration and whether claimant can  
18 return to gainful employment will be determined by Dr.  
19 Shah in the future following additional industrial care by  
20 Dr. Shah. At that time, depending on the subsequent  
21 findings by Dr. Shah, the issue of permanent restrictions  
22 and what type, if any, permanent modified duty job  
23 Claimant is capable of performing will be determined at  
24 that time pursuant to NRS 616C.590. However, the issue  
25 is not currently ripe for adjudication given the state of  
26 Claimant’s temporary total disability status.”

27 (ROA 59).

28 Following these Conclusions of Law, the Appeals Officer ordered “that the  
determination from the vocational rehabilitation services counselor dated February  
5, 2019, is also **REVERSED** and the Insurer is **REMANDED** to provide Claimant

1 TTD benefits from November 18, 2019, to the present, plus interest.” (ROA 59-  
2 60).

3  
4 On January 14, 2021, the Appeals Officer issued her Order Granting the  
5 Respondent’s Motion for Reconsideration, which merely amended the December  
6 22, 2020, Order, rather than schedule the rehearing within 30 days of the granted  
7 petition, as required by NAC 616C.327. (ROA 51-53). The Appeals Officer  
8 amended the December 22, 2020, Order to erroneously deny the Petitioner’s  
9 entitlement to TTD benefits. Id.  
10

11  
12 The Petitioner timely filed his Petition for Judicial Review of the  
13 Administrative Court on grounds that the Order as amended by the Appeals Officer  
14 on January 14, 2021, violates the substantial rights of the Petitioner as it was  
15 rendered upon unlawful procedure and is in excess of the statutory authority of the  
16 agency, pursuant to NRS 233B.135(3).  
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18  
19 On May 11, 2021, the Department of Administration transmitted the Record  
20 on Appeal, and the Petitioner filed his Opening Brief on July 8, 2021. The  
21 Respondent filed its Answering Brief on July 30, 2021, and the Petitioner filed his  
22 Reply Brief on August 19, 2021. This Petition for Judicial Review came before  
23 the Court on October 14, 2021.  
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25  
26 The Issue before the Court is whether the Appeals Officer’s Decision and  
27 Order initially dated December 22, 2020, but later modified by the Appeals  
28



1 Officer, in violation of NAC 616C.372 on January 14, 2021, was improper. The  
2 determinations initially giving rise to this dispute are the Insurer's ("Respondent")  
3 February 11, 2019, determination regarding the Claimant's ("Petitioner")  
4 treatment with Dr. Shah and the Respondent's February 5, 2019, determination  
5 regarding the Petitioner's vocational rehabilitation status and entitlement to  
6 temporary total disability ("TTD") benefits.  
7

### 8 CONCLUSIONS OF LAW

9  
10 In contested workers' compensation claims, judicial review first requires an  
11 identification of whether the issue to be resolved is a factual or legal issue. While  
12 questions of law may be reviewed de novo by this Court, a more deferential  
13 standard must be employed when reviewing the factual findings of an  
14 administrative adjudicator.  
15

16  
17 NRS 233B.135, which governs judicial review of a final decision of an  
18 administrative agency, provides, in pertinent part, the following:  
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20  
21 2. The final decision of the agency shall be deemed  
22 reasonable and lawful until reversed or set aside in  
23 whole or in part by the court. The burden of proof is on  
24 the party attacking or resisting the decision to show that  
the final decision is invalid pursuant to subsection 3.

25 3. The court shall not substitute its judgment for that of  
26 the agency as to the weight of evidence on a question of  
27 fact. The court may remand or affirm the final decision  
28 or set it aside in whole or in part if substantial rights of

1 the petitioner have been prejudiced because the final  
2 decision of the agency is:

- 3 (a) In violation of constitutional or statutory  
4 provisions;  
5 (b) In excess of the statutory authority of the agency;  
6 (c) Made upon unlawful procedure;  
7 (d) Affected by other error of law;  
8 (e) Clearly erroneous in view of the reliable, probative  
and substantial evidence on the whole record; or  
9 (f) Arbitrary or capricious or characterized by abuse  
of discretion.

10 Relating to the standard of review of administrative decisions, our Supreme  
11 Court has consistently held that the factual findings made by administrative  
12 adjudicators may not be disturbed on appeal unless they lack the support of  
13 substantial evidence. SIIS v. Hicks, 100 Nev. 567, 688 P.2d 324 (1984); SIIS v.  
14 Thomas, 101 Nev. 293, 701 P.2d 1012 (1985); SIIS v. Swinney, 103 Nev. 17, 731  
15 P.2d 359 (1987); SIIS v. Christensen, 106 Nev. 85, 787 P.2d 408 (1990).

16 Thus, “the central inquiry is whether substantial evidence in the record  
17 supports the agency decision.” Brocas v. Mirage Hotel & Casino, 109 Nev. 579,  
18 583, 854 P.2d 862, 865 (1993). Substantial evidence is “that quantity and quality  
19 of evidence which a reasonable [person] could accept as adequate to support a  
20 conclusion.” State Employment Sec. Dep’t v. Hilton Hotels, 102 Nev. 606, 608  
21 n.1, 729 P.2d 497, 498 n.1 (1986). Therefore, if the agency’s decision lacks  
22 substantial evidentiary support, the decision is unsustainable as being arbitrary and  
23 capricious. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547, 2 P.3d 850,  
24  
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1 854 (2000). The Court must defer to an agency's findings of fact only as long as  
2 they are supported by substantial evidence. Law Offices of Barry Levinson v.  
3 Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008).

5 On the other hand, purely legal questions may be determined by the District  
6 Court without deference to an agency determination, upon de novo review. SIIS  
7 v. Khweiss, 108 Nev. at 126, 825 P.2d at 220 (1992). Furthermore, the construction  
8 of a statute is a question of law, subject to de novo review. See State, Dep't of  
9 Motor Vehicles v. Lovett, 110 Nev. 473, 476, 874 P.2d 1274, 1249 (1994).

12 However, NRS 233B.135(3) identifies multiple scenarios in which the  
13 reviewing court may set it aside in whole or in part an administrative decision.  
14 That is when a petitioner's substantial rights have been prejudiced as a result of  
15 unlawful procedure. *See* NRS 233B.135(3)(c).

18 Further, the Supreme Court of Nevada has determined that a reviewing court  
19 may set aside an agency decision if substantial rights of the petitioner have been  
20 prejudiced because the decision of the agency is in violation of constitution or  
21 statutory provisions. Field v. State, Dep't of Motor Vehicles & Pub. Safety, 111  
22 Nev. 552, 554, (1995).

25 In this matter, the Administrative Order as amended by the Appeals Officer  
26 on January 14, 2021, contains both violation of regulatory law as well as unlawful  
27 procedure, and this Court finds that it is clearly prejudicial to the Petitioner's  
28

1 substantial rights. The Administrative Order, as amended by the Appeals Officer  
2 on January 14, 2021, directly contradicts the plain and unambiguous language  
3 found in NAC 616C.327. Specifically, NAC 616C.327(2) states:

5           2. The appeals officer shall grant or deny the petition  
6 for rehearing within 15 days after the receipt of the  
7 petition. If the petition is granted, the rehearing must be  
8 held within 30 days after the petition is granted.

9           The Court finds that the language of NAC 616C.327 is plain and  
10 unambiguous. Accordingly, there is no need to go beyond this plain meaning. *See*  
11 City of N. Las Vegas v. Warburton, 127 Nev. 682, 686, (2011) (“When the text of  
12 a statute is plain and unambiguous, [we] should ... not go beyond that meaning.”),  
13 and Silver State Elec. v. State, Dep’t of Tax., 123 Nev. 80, 85, (2007) (“These  
14 rules of statutory construction also apply to administrative regulations”).  
15 Therefore, if a petition for rehearing is granted, or in this instance, a motion for  
16 reconsideration, the appeals officer is required to hold the rehearing within 30 days  
17 after the petition is granted. *See* NAC 616C.327(2).

18           The Court acknowledges that motions for reconsideration are not  
19 recognized under Nevada Workers’ Compensation administration, rather petitions  
20 for rehearing are the regulatorily accepted means for aggrieved parties to seek  
21 remedies outside of the appellate process. *See* NAC 616C.327. But for the  
22 purposes of this Order, the Court will treat the Respondent’s motion for  
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1 reconsideration as a petition for rehearing, as the title of the respondent's  
2 December 9, 2020, document has no bearing on the Court's decision in this case.  
3

4 The Court finds that the amendments made to the Administrative Decision  
5 post trial, and therefore the Administrative Decision in and of itself, are in violation  
6 of regulatory and statutory law. NRS 233B.135(3)(c) provides that a court may  
7 remand an agency decision if the Petitioner's substantial rights have been  
8 prejudiced because the agency's decision is made upon unlawful procedure or is  
9 in violation of statutory procedures. The Supreme Court of Nevada has previously  
10 found that an appeals officer's failure to meet relevant statutory requirements is  
11 considered "procedurally deficient." Elizondo v. Hood Mach., Inc., 129 Nev. 780,  
12 785, (2013).  
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16 In Elizondo, the Supreme Court of Nevada considered whether an  
17 administrative order that failed to include "findings of fact and conclusions of law,  
18 separately stated" pursuant to NRS 233B.125 was procedurally sufficient. Id. The  
19 Court in Elizondo found that because the language of NRS 233B.125 was plain  
20 and unambiguous ("a final decision must include findings of fact and conclusions  
21 of law, separately stated"), the appeals officer was bound by this mandate. Id. The  
22 Court went on to conclude that "the appeals officer's order fails to meet the  
23 statutory requirements of NRS 233B.125 and is thus procedurally deficient." Id.  
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1 The Court finds that the facts of Elizondo are similar to the facts of this  
2 petition, and the facts before this Court lend themselves to an interpretation under  
3 the precedent established by the Supreme Court of Nevada in Elizondo. The  
4 appeals officer violated plain and unambiguous regulatory law when she failed to  
5 hold a rehearing within 30 days after the Respondent's Motion was granted, as it  
6 is evident that no rehearing was scheduled. Rather, the appeals officer simply  
7 granted the Respondent's Motion and stripped the Petitioner of his monetary  
8 benefits via amended order. The Appeals Officer's failure to schedule the  
9 rehearing directly contradicts NAC 616C.327, which constitutes a clear violation  
10 of a regulatory provision and is highly prejudicial to the Petitioner's substantial  
11 rights.

12 Accordingly, the Administrative Order is in direct violation of relevant  
13 regulatory provisions, is highly prejudicial to his substantial rights, and therefore  
14 must be found to be procedurally deficient pursuant to NRS 233B.135, as clarified  
15 in Elizondo v. Hood Mach., Inc., 129 Nev. 780, (2013).

16 In support of its position, the Respondent argued that the Administrative  
17 Order is supported by substantial evidence and contains no error of law.  
18 (Respondent's Brief p. 8). For the aforementioned reasons, the Court finds that this  
19 argument bears no relevance to judicial review as NRS 233B.135(3) identifies  
20 multiple scenarios in which the reviewing court may set it aside in whole or in part  
21

1 an administrative decision. That is when a petitioner's substantial rights have been  
2 prejudiced as a result of unlawful procedure. *See* NRS 233B.135(3)(c).

3  
4 Further, the Respondent argued that its motion for reconsideration was  
5 proper as it was based on newly discovered evidence. (Respondent's Brief p. 14-  
6 15). However, the Court concludes that the response from Dr. Shah fails to meet  
7 the burden of "newly discovered evidence."  
8

9  
10 In workers' compensation matters, rehearing of a decision is only  
11 appropriate if it is "based on good cause or newly discovered evidence." *See* NAC  
12 616C.327(1). However, the Respondent failed to show good cause for rehearing,  
13 and failed to produce newly discovered evidence.  
14

15  
16 Though the precedential case law in the state of Nevada is limited on the  
17 question of newly discovered evidence in civil cases, the Ninth Circuit Court of  
18 Appeals has found that "evidence is not newly discovered if it was in the party's  
19 possession at the time of summary judgement or could have been discovered with  
20 reasonable diligence." Wallis v. J.R. Simplot Co., 26 F.3d 885, 892 n.6 (9th Cir.  
21 1994) (emphasis added); *see also* Defs. Of Wildlife v. Bernal, 204 F.3d 920, 929  
22 (9th Cir. 2000) (providing that, in moving for a new trial based on newly  
23 discovered evidence under FRCP 59(a), the movant must demonstrate "the  
24 exercise of due diligence would not have resulted in the evidence being discovered  
25 at an earlier stage").  
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1 Nevada's higher courts have confirmed this interpretation of "newly  
2 discovered evidence" in various unpublished opinions, through their reliance on  
3  
4 Drespel v. Drespel, 56 Nev. 368, 374, (1935) (recognizing that evidence that was  
5 within a party's power to present during a first trial will not constitute newly  
6 discovered evidence supporting a grant of a motion for a new trial). The Court in  
7 Drespel was presented with the question of whether a new trial should be grand  
8 upon the ground of newly discovered evidence following the plaintiff's recovery  
9 in a divorce action. Drespel v. Drespel, 56 Nev. 368, (1935). The Court ultimately  
10 affirmed the denial of a new trial on grounds that "reasonable diligence was not  
11 used prior to the trial to discover the evidence offered." Id. (emphasis added).  
12 Therefore, because there was no evidence that reasonable diligence was used prior  
13 to the trial to discover the evidence offered in support of the motion for new trial,  
14 the evidence offered failed to constitute "newly discovered evidence." Id.

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19 Most recently, the Nevada Supreme Court has confirmed that the  
20 "reasonable diligence" standard for the effort of a moving party is a low threshold.  
21 In Motor Coach Indus., Inc. v. Khiabani by & through Rigaud, 137 Nev. Adv. Op.  
22 42, 493 P.3d 1007 (2021) the Appellant, Motor Coach, had moved the lower court  
23 for a new trial following the entry of judgement upon jury verdict for the Appellee.  
24 The theory put forth by Motor Coach was that news reporting that occurred post  
25 trial "brought to light new facts that merited a new trial." Id. 1015. Motor Coach  
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1 went on to argue that “the revelations in these reports placed Khiabani's continued  
2 employment—had he lived—in such doubt that a new trial was warranted.” Id.  
3  
4 1015–16. However, the both the District Court and the Supreme Court in Khiabani  
5 disagreed with this argument, as evidence put forth showed that the Appellee  
6 “provided MCI with a release months before trial commenced, authorizing MCI  
7 to obtain Khiabani's employment information from the medical school.” Id. 1016.  
8  
9 The Court went on to find that, because Motor Coach failed to subpoena the  
10 Appellee’s employment information, the evidence could have been discovered  
11 with reasonable diligence, and therefore this information fails to constitute “newly  
12 discovered evidence.”  
13  
14

15 Similarly, in this case, the Court finds that the evidence submitted by the  
16 Respondent in support of its Motion for Reconsideration could have been  
17 discovered with reasonable diligence during the normal course of discovery, prior  
18 to the conclusion of the administrative trial, and therefore must not be considered  
19 “newly discovered.” The Court finds that the Respondent cannot show that the  
20 documents offered in support of its Motion for Reconsideration satisfy the burden  
21 of being considered “newly discovered.” In support of its Motion for  
22 Reconsideration, the Respondent supplied only the response of Dr. Shah to a letter  
23 crafted by the Respondent’s counsel on October 28, 2020, post-trial. The  
24 Respondent conceded in its Motion and its Brief that it was only after the Appeals  
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1 Officer issued a ruling ordering the Respondent to pay TTD benefits that  
2 Respondent's counsel prepared the letter to Dr. Shah. (ROA 68-69, Respondent's  
3 Brief p. 6-7). The Respondent made no allegation that this evidence was  
4 unobtainable prior to the administrative trial, and the Court concludes that, had  
5 Respondent's counsel simply exercised reasonable diligence, this evidence could  
6 have easily been obtained and submitted to the record prior to the October 22,  
7 2020, hearing.

8 Rather than exercising reasonable diligence, Respondent simply waited  
9 until the date of the administrative trial, waited for the presentation of the  
10 Petitioner's arguments and evidence, and then waited until an adverse ruling had  
11 been issued against it before making the decision to go on an improper and  
12 unwarranted post-trial discovery expedition. Therefore, the Court concludes that  
13 the ill-gotten means by which the December 7, 2020, response from Dr. Shah was  
14 procured mandate that the response be stricken from the record as a fugitive  
15 document and that because this document was obtained improperly, through  
16 unauthorized and improper post-trial discovery, this document has no effect upon  
17 this industrial injury claim.

### 18 **ORDER**

19 In summation, THIS COURT FINDS AND HEREBY ORDERS that the  
20 January 14, 2021, Decision and Order is in violation of statutory provisions, made  
21

1 upon unlawful procedure, and violates the Petitioner's substantial rights. Based on  
2 the Court's finding, it is hereby ORDERED the Appeals Officer's January 14,  
3  
4 2021, Decision and Order is stricken, Appeals Officer's December 22, 2020,  
5 Decision and Order is reinstated, and the Respondent is ordered to authorize Dr.  
6 Shah's treatment plan outlined in his November 18, 2019, IME report, authorize  
7 Dr. Shah as the Petitioner's treating physician, and provide the Petitioner TTD  
8 benefits from November 18, 2019, to the present, plus interest  
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12 DATED this Q. Escobar day of \_\_\_\_\_, 2021.  
13  
14

15 By: Q. Escobar  
16 ADRIANA ESCOBAR  
17 DISTRICT COURT JUDGE

18 Submitted by:  
19 GGRM LAW FIRM  
20  
21

Dated this 3rd day of November, 2021

Q. Escobar

20A 746 3D18 705A  
Adriana Escobar  
District Court Judge

22 By: /s/ Jason D. Mills, Esq.  
23 JASON D. MILLS, ESQ.  
24 Nevada Bar No. 7447  
25 2770 S. Maryland Parkway  
26 Suite 100  
27 Las Vegas, Nevada 89109  
28 *Attorney for Petitioner*

1                    **CERTIFICATION PURSUANT TO COURT GUIDELINES**

2                    Counsel submitting this document certifies as follows (check one):

3  
4                    \_\_\_\_\_ The court has waived the requirements set forth in the Guidelines;

5  
6                    \_\_\_\_\_ No party appeared at the hearing or filed an objection to the motion;

7  
8                      X   I have delivered a copy of this proposed order to all counsel who  
9                    appeared at the hearing, and each has approved or disapproved the order, or  
10                  failed to respond as indicated below:

11  
12                  [ ] Approved   [ X ] Disapproved   [ ] Failed to Respond

13  
14                  \_\_\_\_\_ /s/ David Benavidez

15                  DAVID H. BENAVIDEZ ESQ., of THE LAW OFFICE OF DAVID H.  
16                  BENAVIDEZ, Attorney for Respondents PEPPERMILL, INC., and  
17                  EMPLOYERS INSURANCE COMPANY OF NEVADA.



NEVADA'S PREMIER INJURY  
LAW FIRM

## Ethan Wallace

---

**From:** David Benavidez <davidbenavidez@gmail.com>  
**Sent:** Monday, November 1, 2021 7:19 AM  
**To:** Jason Mills  
**Cc:** Ethan Wallace  
**Subject:** Re: Proposed Order Granting PJR, Castelan v. Peppermill, Inc et al., A-21-828981-J

Disapproved.

On Sun, Oct 31, 2021 at 6:36 PM Jason Mills <[jmills@ggrmlawfirm.com](mailto:jmills@ggrmlawfirm.com)> wrote:

Dave;

Do you want me to put your electronic signature attached along with the “**DISAPPROVED**” check box or do you wish me to leave your electronic signature off/blank and simply check “**FAILED TO RESPOND**” on the order I am submitting to the court?

Thank you, sir.



**Jason D. Mills, Esq.**  
Strategic Development Partner

O: 702.384.1616 | F: 702.384.2990 | [www.ggrmlawfirm.com](http://www.ggrmlawfirm.com)  
2770 S. Maryland Pkwy., Ste. 100 Las Vegas, NV 89109



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Daniel Castelan, Petitioner(s)

CASE NO: A-21-828981-J

7 vs.

DEPT. NO. Department 14

8 Peppermill Hotel & Casino,  
9 Respondent(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Judicial Review of Administrative Decision was served  
14 via the court's electronic eFile system to all recipients registered for e-Service on the above  
entitled case as listed below:

15 Service Date: 11/3/2021

16 Ethan Wallace

ewallace@ggrmlawfirm.com

17 Veronica Salas

vsalas@ggrmlawfirm.com

18 Jason Mills

jmills@ggrmlawfirm.com

19 Denise McKay

denise.mckay@admin.nv.gov

20 David Benavidez

davidbenavidez@gmail.com

21  
22  
23  
24  
25  
26  
27  
28

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL; STATEMENT; NOTICE OF FILING  
BOND FOR COSTS ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET;  
ORDER GRANTING PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF ORDER

DANIEL CASTELAN,

Petitioner(s),

vs.

PEPPERMILL HOTEL & CASINO;  
EMPLOYERS INSURANCE COMPANY OF  
NEVADA; THE DEPARTMENT OF  
ADMINISTRATION, HEARINGS DIVISION,  
APPEALS OFFICE, an agency of the STATE  
OF NEVADA,

Respondent(s),

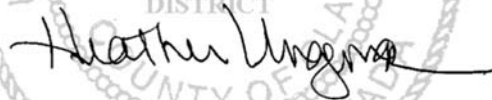
Case No: A-21-828981-J

Dept No: XIV

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 9 day of November 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

November 9, 2021

Elizabeth A. Brown  
Clerk of the Court  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701-4702

RE: DANIEL CASTELAN vs. PEPPERMILL HOTEL & CASINO; EMPLOYERS INSURANCE  
COMPANY OF NEVADA; THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION,  
APPEALS OFFICE, an agency of the STATE OF NEVADA  
D.C. CASE: A-21-828981-J

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed November 9, 2021. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

October 14, 2021

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,  
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", written over a horizontal line.

Heather Ungermann, Deputy Clerk



THE LAW OFFICE OF DAVID H. BENAVIDEZ

850 S BOULDER HWY., STE. 375  
HENDERSON, NV 89015-7564

90-7162/3222

5576

DATE 11/8/21

PAY TO THE  
ORDER OF

Supreme Court of Nevada

\$ 250.00

Two Hundred Fifty <sup>00</sup>/<sub>100</sub>

DOLLARS



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CHASE

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David A. Gishler

Sup Ct filing Fee

MEMO

Check # 1-71828961-5

David H. Benavidez

+ 3222716271

824953806 5576