

1                   IN THE SUPREME COURT OF THE STATE OF NEVADA

2  
3                                   \*       \*       \*       \*

4       EMPLOYERS INSURANCE COMPANY OF,       )  
5       NEVADA                                        )  
6                                   Appellant,        )  
7       vs.    )  
8       DANIEL CALTELAN,                                )  
9    )  
10                                   Respondent.        )  
11       \_\_\_\_\_)

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Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 83765

12                   **EMERGENCY MOTION FOR STAY PER NRAP 27(e) and NRAP 8**

13       DAVID H. BENAVIDEZ, ESQ.  
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1           **MOTION FOR EMERGENCY STAY PENDING SUPREME COURT REVIEW**

2           COMES NOW, the Appellant Employers Insurance Company of  
3 Nevada, by and through its counsel David H. Benavidez, and moves  
4 this Court for a stay pending the Supreme Court of Nevada review  
5 of the November 3, 2021 District Court Order granting the Petition  
6 for Judicial Review.  
7

8           This motion is based upon the following facts, points and  
9 authorities as well as the papers and pleadings submitted with the  
10 motion.  
11

12                           **ISSUES**

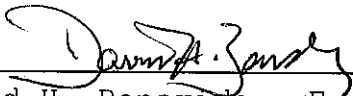
13           1. Did the District Court Judge abuse her discretion and  
14 error as a matter of law?  
15

16           2. Did Dr. Shah issue a valid disability slip in 2019?  
17

18           3. As a matter of law, was Dr. Shah's 2019 disability slip  
19 only good until the next disability slip per NRS 616C.475. Did  
20 the District Court error by finding and concluding Dr. Shah's 2019  
21 disability slip is good through the present time as it is unknown  
22 whether the claimant continues to treat with any doctor, whether  
23 a doctor presently has the claimant at full duty, light duty or  
24 completely off work.  
25

26           ///  
27  
28

1  
2 DATED this 8<sup>th</sup> day of November, 2021.

3   
4 David H. Benavidez, Esquire  
5 Counsel for Appellant

6 **STATEMENT OF THE FACTS**

7  
8 On December 31, 2017, Daniel Castelan slipped on a wet floor  
9 and was diagnosed with a contusion of the right knee, head injury,  
10 laceration of the hand, laceration of the head and lumbar strain.

11 On January 2, 2018, Concentra assessed closed head injury,  
12 forehead laceration, cervical and lumbar strain, sprains to the  
13 right knee and right elbow, facial contusion and laceration of  
14 left ring finger.  
15

16 On January 16, 2018, the Insurer accepted the cervical and  
17 lumbar strains, right knee and right elbow sprains, facial  
18 contusion, forehead laceration, closed head injury and left ring  
19 finger laceration.  
20

21 On February 2, 2018, Neurologist Germin diagnosed post  
22 concussion symptoms and ordered an MRI of the brain, EMG/nerve  
23 conduction studies and a referred to opthamology.  
24

25 A March 5, 2018 MRI of the brain was unremarkable.

26 A March 6, 2018 EMG/nerve conduction study performed by Dr.  
27  
28

1 Germin was normal.

2 A March 13, 2018 Visual Evoked Response Study performed by  
3 Dr. German was normal.  
4

5 On April 3, 2018, Dr. Germin found the claimant at maximum  
6 medical improvement (MMI) without the need for a permanent partial  
7 disability (PPD) evaluation.  
8

9 On May 7, 2018, the Insurer closed the claim without a PPD  
10 evaluation.

11 On June 15, 2018, Neurosurgeon Stuart Kaplan examined the  
12 cervical and lumbar spine. The doctor requested cervical and  
13 lumbar x-rays, MRIs and referred to physical therapy.  
14

15 A July 18, 2018 MRI of the cervical spine found minimal to  
16 mild degenerative changes, no canal or foraminal narrowing.  
17

18 A July 18, 2018 MRI of the lumbar spine found no evidence of  
19 acute fracture or traumatic misalignment, minimal degenerative  
20 changes at L5-S1 and no neural compromise.  
21

22 On July 20, 2018, Dr. Kaplan found no neurosurgical  
23 intervention was required and transferred to physical medicine.

24 On September 24, 2018, Phyiatriist Kong diagnosed cervical  
25 strain, low back pain, concussion without loss of consciousness  
26 and posttraumatic headache.  
27

28 On October 5, 2018, eye specialist Faldowski noted a history

1 of dry eye syndrome, other hereditary corneal dystrophies and  
2 opined the claimant was stable, not ratable and released the  
3 claimant to full duty.  
4

5 On October 23, 2018, Dr. Kong doctor found the claimant MMI  
6 and recommended a functional capacity evaluation (FCE).

7 On October 24, 2018, the Insurer denied the preexisting dry  
8 eye syndrome.  
9

10 On November 9, 2018, claimant's counsel requested an IME of  
11 the head with Neurologist Russell Shah.

12 A November 14, 2018 functional capacity evaluation  
13 recommended modified duty.  
14

15 On December 4, 2018, Dr. Kong found the claimant at MMI with  
16 ratable impairment.  
17

18 On December 12, 2018, the Insurer closed the claim.

19 On December 17, 2018, the Insurer scheduled the claimant for  
20 the PPD.

21 On January 17, 2019, the employer offered the claimant a  
22 permanent modified/alternative job.  
23

24 On January 21, 2019, Neurologist Chopra performed the PPD and  
25 found 0% impairment for the lumbar and cervical spine, central  
26 nervous system, right knee, right elbow, left thumb and the left  
27 fourth finger.  
28

1 On January 23, 2019, Dr. Kong agreed the permanent modified  
2 job is within the doctor's restrictions.

3  
4 On February 5, 2019, vocational rehabilitation counselor  
5 Cindi Rivera advised the claimant the employer had provided a  
6 permanent job within Dr. Kong's restrictions and as such, the  
7 vocational rehabilitation process would end and the case would be  
8 closed on February 12, 2019 regardless of whether the claimant  
9 accepts the job.  
10

11 On February 11, 2019, the Insurer determined the claimant had  
12 no ratable PPD for the lumbar, cervical, head, right knee, right  
13 elbow and left fingers.  
14

15 On February 12, 2019, in an email to the Insurer, claimant's  
16 counsel declined the permanent job offer.  
17

18 On November 18, 2019, Dr. Shah recommended medication and  
19 cognitive behavioral therapy as treatment. The doctor did not  
20 mention the permanent light duty offered by the employer and  
21 approved by Dr. Kong. Dr. Shah noted Long Term Disability to be  
22 determined after treatment is completed. Exhibit 11.  
23

24 A January 16, 2020 MRI of the brain was unremarkable.

25 On January 17, 2020, claimant's counsel requested treatment  
26 with Dr. Shah.  
27

28 On October 22, 2020, the Appeals Officer ruled from the bench

1 ordering TTD based Dr. Shah's report indicating Long Term  
2 Disability to be determined after treatment is completed.  
3 Exhibits 21-25 attached hereto.  
4

5 On October 28, 2020, Insurer Counsel drafted a letter to Dr.  
6 Shah asking the doctor if he found the claimant disabled from  
7 employment. If not, did he agree with the permanent job offered by  
8 the employer. Claimant counsel was copied on the letter. Exhibit  
9 12-13.  
10

11 On December 7, 2020, Dr. Shah responded noting he did not  
12 find the claimant disabled from employment, but offered temporary  
13 restrictions. "I did not address the work status issue in my  
14 report. I put him as a 'temporary for the head' body part injuries  
15 that I was evaluating him for. Mr. Castelan is able to work with  
16 accommodations and restriction with his head related complaints".  
17 Exhibits 14-17.  
18  
19

20 On December 9, 2020, Counsel for the Insurer filed a Motion  
21 to Reconsider the Appeals Officer Decision regarding TTD.  
22 Exhibits 18-20.  
23

24 On December 22, 2020, the Appeals Officer signed the decision  
25 drafted by claimant counsel. Exhibits 21-28  
26

27 On January 14, 2021, the Appeals Officer granted the motion  
28 to reconsider and denied TTD based on the addendum from Dr. Shah.

1 Exhibits 29-32.

2 On November 3, 2021, District Court Judge Adriana Escobar  
3 Granted the Claimant's Petition for Judicial Review noting the  
4 Appeals Officer violated NAC 616C.327(2) as she did not schedule  
5 a rehearing and instead reversed her decision based on Dr. Shah's  
6 clarification noting his vague report was actually a light duty  
7 release. Judge Escobar also granted the petition noting Appellant  
8 did not exercise due diligence is asking Dr. Shah for  
9 clarification before trial. Exhibits 48-51.

12 District Court Judge Escobar denied Appellant's request for  
13 a stay. She has not signed the proposed order. Exhibits 56-62.

15 **ARGUMENT IN SUPPORT OF MOTION FOR STAY**

16 When considering an application for a stay order pending  
17 appeal, there are four factors to address:

- 19 1. Whether the party requesting the stay order has made a  
20 strong showing that it is likely to prevail on the merits of  
21 appeal;
- 22 2. Whether or not the party requesting the stay has shown it  
23 would sustain irreparable injury absent the stay order;
- 24 3. Whether or not the issuance of a stay order would  
25 substantially harm the other interested parties; and  
26 4. Where the public interest lies.

Dollar Rent a Car of Washington v. The Travelers Indemnity Company, 774 F.2d 1371 (1985).

**A. THE APPELLANT IS MORE THAN LIKELY TO PREVAIL ON THE MERITS.**

Where the decision concerns a question of law, the reviewing court may undertake independent appellate review, as opposed to the more deferential standard of review. Maxwell v SIIS, 109 Nev. 327, 849 P.2d 481 (1993).

To date, the claimant has rejected temporary and permanent light duty work. The claimant has refused to work. Furthermore, a disability slip is only good until the next disability slip. The District Courts finding and conclusion the disability slip is good though the present time is clearly an error of law and not supported by statute or case law. Does the claimant continue to treat to date with Dr. Shah? Is he full duty, off work, light duty? At the time of appeal, Dr. Shah noted Long Term Disability to be determined after treatment is completed. As a matter of law, this is not a disability slip. It does not remove the claimant from work, nor does it offer temporary restrictions. It says nothing about the claimant's ability to return to work. The notation does not satisfy the requirements of NRS 616C.475:

Amount and duration of compensation; limitations; requirements for certification of disability; offer of light-duty employment.

1. Except as otherwise provided in this section, NRS

1 616C.175 and 616C.390, every employee in the employ of an  
2 employer, within the provisions of chapters 616A to 616D,  
3 inclusive, of NRS, who is injured by accident arising out of  
4 and in the course of employment, or his or her dependents, is  
entitled to receive for the period of temporary total  
disability, 66 2/3 percent of the average monthly wage.

5 2. Except as otherwise provided in NRS 616B.028 and  
6 616B.029, an injured employee or his or her dependents are  
7 not entitled to accrue or be paid any benefits for a  
8 temporary total disability during the time the injured  
9 employee is incarcerated. The injured employee or his or her  
10 dependents are entitled to receive such benefits when the  
injured employee is released from incarceration if the  
injured employee is certified as temporarily totally disabled  
by a physician or chiropractor.

11 3. If a claim for the period of temporary total disability  
12 is allowed, the first payment pursuant to this section must  
13 be issued by the insurer within 14 working days after receipt  
of the initial certification of disability and regularly  
thereafter.

14 4. Any increase in compensation and benefits effected by  
the amendment of subsection 1 is not retroactive.

15 5. Payments for a temporary total disability must cease  
16 when:

17 (a) A physician or chiropractor determines that the employee  
18 is physically capable of any gainful employment for which the  
employee is suited, after giving consideration to the  
employee's education, training and experience;

19 (b) The employer offers the employee light-duty employment  
20 or employment that is modified according to the limitations  
or restrictions imposed by a physician or chiropractor  
pursuant to subsection 7; or

21 (c) Except as otherwise provided in NRS 616B.028 and  
22 616B.029, the employee is incarcerated.

23 6. Each insurer may, with each check that it issues to an  
24 injured employee for a temporary total disability, include a  
25 form approved by the Division for the injured employee to  
request continued compensation for the temporary total  
disability.

26 7. A certification of disability issued by a physician or  
27 chiropractor must:

28 (a) Include the period of disability and a description of  
any physical limitations or restrictions imposed upon the  
work of the employee;

1 (b) Specify whether the limitations or restrictions are  
2 permanent or temporary; and

3 (c) Be signed by the treating physician or chiropractor  
4 authorized pursuant to NRS 616B.527 or appropriately chosen  
5 pursuant to subsection 3 or 4 of NRS 616C.090.

6 8. If the certification of disability specifies that the  
7 physical limitations or restrictions are temporary, the  
8 employer of the employee at the time of the employee's  
9 accident may offer temporary, light-duty employment to the  
10 employee. If the employer makes such an offer, the employer  
11 shall confirm the offer in writing within 10 days after  
12 making the offer. The making, acceptance or rejection of an  
13 offer of temporary, light-duty employment pursuant to this  
14 subsection does not affect the eligibility of the employee to  
15 receive vocational rehabilitation services, including  
16 compensation, and does not exempt the employer from complying  
17 with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the  
18 regulations adopted by the Division governing vocational  
19 rehabilitation services. Any offer of temporary, light-duty  
20 employment made by the employer must specify a position that:

21 (a) Is substantially similar to the employee's position at  
22 the time of his or her injury in relation to the location of  
23 the employment and the hours the employee is required to  
24 work;

25 (b) Provides a gross wage that is:

26 (1) If the position is in the same classification of  
27 employment, equal to the gross wage the employee was  
28 earning at the time of his or her injury; or

(2) If the position is not in the same classification of  
employment, substantially similar to the gross wage the  
employee was earning at the time of his or her injury;  
and

(c) Has the same employment benefits as the position of the  
employee at the time of his or her injury.

Per subsection 7 of the statute, one can see Dr. Shah's  
language at the end of his report regarding disability does not  
comply with the requirements of subsection 7. If fails to  
include the period of disability and a description of any  
physical limitations or restrictions imposed upon the work of

1 the employee or specify whether the limitations or restrictions  
2 are permanent or temporary.

3  
4 Finally, the disability slip is only good until the next  
5 disability slip or "until competent medical authority determined  
6 to the contrary." See Nevada Indus. Comm'n v. Taylor 98 Nev.  
7 131, 642 P.2d 598, March 29, 1982. See also Amazon.com v Dee Dee  
8 Magee, 121 Nev 632, 119 P.3d 732, September 22, 2001, where the  
9 court, citing NRS 616C.475, concluded that TTD must cease when  
10 restrictions are recommended by the treating doctor and the  
11 employer offers light duty in accord with the restrictions, and  
12 State Indus. Ins. Sys. v. Snapp, 100 Nev. 290 (1984), where the  
13 court concluded a claimant is not entitled to compensation when he  
14 made no sincere effort to return to work.  
15

16  
17 The District Court Order for disability through the present  
18 time is erroneous and clearly an error of law.  
19

20 The Appellant is more than likely to prevail on this issue.  
21 A stay is warranted.  
22

23 **B. THE APPELLANT WILL CLEARLY SUSTAIN IRREPARABLE HARM.**

24 In Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948), the Nevada  
25 Court noted:

26 . . . whenever it appears that without it the object of the  
27 appeal of writ of error may be defeated or that it is  
28

1 reasonably necessary to protect appellant or plaintiff in  
2 error from irreparable or serious injury in the case of  
3 reversal and it does not appear that appellee or defendant in  
4 error will sustain irreparable harm or disproportion injury  
5 in case of affirmance.  
6

7 Once an insurer is forced, wrongfully, to pay compensation,  
8 there is no practical way or authorized legal proceeding by which  
9 the insurer may seek recoupment of benefits paid that were later  
10 found unwarranted on appeal. The Nevada Supreme Court recognized  
11 this point of law in Ransier v. SIIS, 104 Nev. 742, 766 P.2d 274  
12 (1988), and recently extended the rule to cover self-insured  
13 employers. Wyphoski v. Sparks Nugget, Inc., 915 P.2d 261, 112 Nev.  
14 413 (1996).  
15  
16

17 The claimant should not be awarded TTD benefits. All the  
18 physicians in the record, including Dr. Shah, opine he can work  
19 the light duty job offer. To date, the claimant refuses to work.  
20 He has not tried to return to work. No doctor opines he cannot  
21 return to work. Not even Dr. Shah finds the claimant disabled  
22 from employment. The decision to award TTD to date is erroneous,  
23 not supported by the record, statute or case law. Ordering TTD  
24 through the present time will clearly result in irreparable harm  
25 since a disability slip is only good until the next one.  
26  
27  
28

1 since a disability slip is only good until the next one.

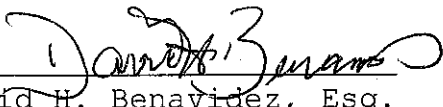
2 **C. PUBLIC POLICY SUPPORTS THE APPELLANT.**

3 The employer offered work. The claimant has refused to work.  
4 Public Policy does not support the claimant's refusal to work.  
5 Public policy supports work. Public policy does not support  
6 paying a claimant TTD when the employer had light and permanent  
7 light duty available.  
8  
9

10 **CONCLUSION**

11 Based on the above noted arguments, Appellant respectfully  
12 requests this Honorable Court grant the stay pending review by the  
13 Court.  
14

15 DATED this 10th day of November, 2021.

16  
17 By:   
18 David H. Benavidez, Esq.  
19 Nevada Bar No. 004919  
20 850 S Boulder Hwy #375  
21 Henderson, NV 89015  
22  
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25  
26  
27  
28

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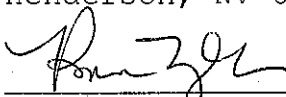
CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury, that I am an employee of The Law Office of David H. Benavidez and on the 10th day of November, 2021, I deposited the foregoing **EMERGENCY MOTION FOR STAY** in the United States Mail, with first class postage fully prepaid thereon or had hand-delivered, copies of the attached document 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

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

# **RADAR MEDICAL GROUP, LLP**

Mailing address: 10624 South Eastern Avenue, Suite A-425, Henderson, NV 89052  
Phone (702) 644-0500 Fax (702) 641-4600

**Russell J. Shah MD**  
Neurology /Neurophysiology

## **IME - NEUROLOGY**

Cary Ferguson  
Claims Adjustor  
Employers Insurance Company of Nevada  
PO BOX 32036  
Lakeland, FL 33802-2036

<b>PATIENT NAME:</b>	CASTELAN, DANIEL
<b>DOB:</b>	09-30-1989
<b>Gender:</b>	M
<b>Date of Injury:</b>	12-31-2017
<b>Claim Number</b>	2017345360
<b>Insurer:</b>	Employers Insurance Company of Nevada
<b>Employer:</b>	Peppermill, Inc
<b>Date of Evaluation:</b>	11-18-2019

Dear Cary Ferguson:

Mr. DANIEL CASTELAN was seen on 11-18-2019 for a neurologic IME to determine if the head injury complaints are related to the work injury sustained on 12-31-2017.

Name: CASTELAN, DANIEL  
 DOE: 11-18-2019

Chief Complaint:

COMPLAINT
Visual blurriness, imbalance
Memory problems, focusing difficulties
FATIGUE
LOWER BACK PAIN
HEADACHES
NECK PAIN

History:

Date of Injury: 12/31/2017

Mr. Castelan is a 30 yr old right handed male whom presents today stating he was referred over due to a work injury he had on 12/31/2017 around 10 PM. Pt states he used to work for the Peppermill Fire lounge as a dish washer. Pt states he slipped on a slippery floor while walking with porcelain dishes in his hands. Patient states he fell face first and hit his forehead on the plates landing on the floor with the face on the floor. Patient had to get stitches on the mid front of his forehead. He was confused, could not get up but tried. He felt cold in the face. He was very confused. He blacked out but never lost consciousness on the ground. He states he felt very sick right after and noticed blood coming down his face. He did not feel well and was confused. He was in pain and had a image of the head at Sunrise. He was not operated onto his brain. He was discharged and was in pain. He was unwell for a period of time. He did not see anyone till about 1-9-2018. He was given topiramate for the headaches and imbalance and had a allergy to the topiramate and was placed on Aleve. Initially, he recalls that there was a feeling in the mouth that the teeth were pointing from both side inwards. He feels even today the teeth feel "flimsy".

PRESENT COMPLAINTS:

- 1) He has not improved and feels the same symptoms as he did for the last year and a half with no improvement. He actually feels he is worsening in that he has more sharp pains in the bitemporal parietal region with sharp pricks to the head. He has tried cool showers and sleep to help the neck pain and the head pains. He is on Aleve all the time and no SE are noted.
- 2) He is forgetful and has memory problems with remembering and is writing items down. He is not remembering what to do. He does not feel depressed and has no suicidal thoughts, ideation, anger, spontaneous crying nor emotional outbursts. He is having problems with falling asleep and restlessness but does not feel anxious. ~~He is not getting better with the memory but unsure if he is worsening.~~ He believes he was put on seizure medications but did not have any seizures episodes but has episodic head pains that are incapacitating 3 times a month that are very intense with imbalance and has to sleep them off. He eventually gets better and there is no incontinence nor tongue biting. He has visual blurriness with these head pains in both eyes.
- 3) He has continued right eye abnormal vision poorly characterized and can not focus and things in the

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

vision are off. He has lost complete right eye vision once about a year ago for 5 -10 minutes with a head pain and there has been perhaps 1-2 additional very brief episodes in the last 12 months involving the right eye. He was given eye drops and has seen an ophthalmologist. He was not recommended for surgery and has a optometrist to see him early in 2020. The right eye vision is not normal since the face trauma. He did not have a right eye problem prior. There is no pain in the right eye nor behind the right eye pain. No jaw pain, no chewing pain, no light nor noise sensitivity nor smell sensitivity is noted. No ringing is noted. He is able to head okay. He has noted his appetite is okay. He does not feel depressed. He has weight that is steady but did have appetite decrease after the 12/31/2017 for some time.

- 4) The biggest problem he has is the memory is with forgetfulness. He has some loss of time staring off /spacing episodes but not with any tongue biting, incontinence nor shaking.
- 5) He has noted neck pain that continues but alleviated with Aleve which he uses almost daily at this point
- 6) He has upper back pain and he is noting that with no lifting, bending and taking it easy on his low back, he is able not to have any significant pain.
- 7) The teeth are still are normal in feeling at this point and has seen a dentist. Today, he notes that the teeth feel to him "flimsy". He is not undergoing any dental treatment at this time.
- 8) He has head pains in the occipital bilateral regions that are associated with upper neck/lower skull pain and he notes Aleve helps these symptoms.
- 9) He has continued scar where the stitches were in the forehead

#### Record Review:

Patient brought in records of Sunrise Hospital, MRI brain images from 3/5/2018; X-rays images cervical spine dated 7/10/2018; Cervical MRI spine imaging dated 7/18/2018. Lumbar MRI imaging was reviewed today.

Brain MRI imaging notable for diffuse mild hyper intensities demonstrated in the frontal subcortical regions best seen on axial cuts on my read. Report SDMI was unremarkable 3/2018.

153 pages of records reviewed sent prior to the patient by Employers were reviewed. The records included Kelly Hawkins Functional Capacity, C-3 report, Dr. Germin consult, testing and follow ups, Dr. Terri Akers chiropractic treatment, Dr. Ronald Kong treatment records, Sunrise records including imaging reports, Concentra records reviewed with the patient today.

#### Past Medical History:

MEDICAL CONDITION	DATE CONDITION STARTED
NONE STATED	

Was in good health prior to the accident and not experiencing any head nor spinal issues and has no major medical conditions such as diabetes nor hypertension.

Name: CASTELAN, DANIEL  
 DOE: 11-18-2019

## Surgical History:

SURGERY	DATE OF SURGERY
NONE STATED	

## Medications:

DATE	NAME	DOSAGE	SIG	DISCONTINUE DATE
11-18-2019	MVT CENTRUM			
11-18-2019	ALEVE			

## Allergy:

NO KNOWN ALLERGY	ALLERGEN	SIDE EFFECT
<input type="checkbox"/>	TOPAMAX	RASH, RED SPOTS

## Family History:

FAMILY MEMBER	CONDITION	COMMENTS
GRANDFATHER	KIDNEY CANCER	
MOTHER	DIABETES	

## Social History:

MARITAL	NO
CHILDREN	NO
EMPLOYER	NO
TOBACCO	NO
ETOH	NO
CONTROLLED SUBSTANCES	NO
MEDICAL MARIJUANA	NO
MAIN LANGUAGE	ENGLISH
EDUCATION	UNKNOWN

## REVIEW OF SYSTEMS

Constitutional Negative-unless documented in the HPI and/or Present complaints. Normal appetite, was with decrease appetite after the face trauma but now improved, normal steady weight, no

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

malaise, no generalized weakness, no diaphoresis, no unexplained weight loss

~~ENT:~~ Negative unless documented in the HPI and/or Present complaints. No sore throat, no painful swallowing, no change of speech, no slurred speech, no tongue numbness, no perioral numbness

~~Musculo:~~ Negative unless documented in the HPI and/or Present complaints. No joint pain, no swollen joints

~~Cardiac:~~ Negative unless documented in the HPI and/or Present complaints. No palpitations, no chest pain, no shortness of breath during activities is present. No syncope

~~Respiratory:~~ Negative unless documented in the HPI and/or Present complaints. No asthma, no bronchitis, no fever, no chills, no coughing and no shortness of breath is present.

~~GI:~~ Negative unless documented in the HPI and/or Present complaints. No nausea, no vomiting, no diarrhea and no constipation is present. No blood in the stool

~~GU:~~ Negative unless documented in the HPI and/or Present complaints. No bowel urgency, no bladder urgency, no bowel incontinence, no bladder incontinence, no painful urination, and no blood in the urine

~~Visual:~~ Negative unless documented in the HPI and/or Present complaints. No double vision, + blurred vision with head pain, positive right eye loss of vision with head pain about a year ago and now has still right visual disturbance poorly characterized and not normal, and has no eye pain is present.

~~Neurologic:~~ Negative unless documented in the HPI and/or Present complaints. +headache, + neck pain, no mid back pain, + low back pain, no weakness in the arms, no weakness in the hands, no weakness in the legs, no weakness on walking, no numbness or tingling in the arms, no numbness or tingling in the legs.

~~Psychiatric:~~ Negative unless documented in the HPI and/or Present complaints. No depression, no anxiety, + restlessness, + sleep onset difficulties, no active or recent suicidal ideation, thought, attempt or plan.

~~Dermatologic:~~ Negative unless documented in the HPI and/or Present complaints. No rash, no itching, no reports of abnormal moles, positive rash, itching and allergic reaction to the topiramate medication given but okay after discontinuation of the topiramate + mild scar where stitches were in the mid forehead

## EXAMINATION

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

Vital Signs:

TEMP	PULSE	RESP	HT	WT	BMI	BP SYST	BP DIAST	COMMENT	SPO2
98.5	73		65	187.2	31	128	72	RESP IN NORMAL RANGE	

General:

The patient is awake, alert appropriate and non-toxic appearing  
The patient appears to be in no distress. Oriented to name, place, date, time of the day was abnormal with him stating it was 4 PM (was 5:30 PM); street name, city name, state name, historical dates, day of the week, season and okay 3 step commands, participation, no neglect, no preference of the vision nor body preference, no staring off, no spacing out, no lip smacking, no automatism, conversant, well developed, well nourished, no psychomotor retardation, masked facies and appropriately concerned about his medical well being.

The patient has a clear sensorium.

The patient is a fair historian.

The patient has no visual gaze preference and has fair eye contact

The patient has no obvious visual or body neglect

The patient is with no obvious bradykinesia, tearing, emotional lability, pressured speech, distractibility, inappropriate gestures, inappropriate behaviors, inappropriate posture and/or movements.

The patient demonstrates no significant anxiousness behavior

The patient does not appear to be hyperexcitability and calmly sitting the chair

The patient on general exam demonstrated no light sensitivity

The patient on general exam demonstrated no noise sensitivity

No inappropriate laughing/behaviors were observed

Vocal prosody: Normal

Cardiac:

There is no murmur.

There is no carotid bruit.

Pulses are palpable, regular rhythm

No edema is noted

VA is grossly intact

No nasal breathing irregularities, no sinus tenderness, no sinus discharge

Musculoskeletal:

There is bilateral cervical paraspinal muscle tenderness.

There is no cervical spinal processes tenderness.

There is bilateral tightness and/or muscle spasm of the cervical paraspinal region

There is no florid muscle spasm of the cervical paraspinal area

Tenderness to neither trapezius muscles was present.

Tenderness overlying the shoulder blades was not present.

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

Tenderness to neither shoulder areas was present.  
A negative Tinel's sign at both wrists.  
A negative Tinel's sign at both medial elbow grooves.  
A negative Phalen's sign at both wrists.

No anterior chest 1st. rib tenderness  
There is no upper between shoulder blades thoracic paraspinal muscle tenderness.  
There is no mid thoracic paraspinal muscle tenderness  
There is no lower thoracic paraspinal muscle tenderness  
There is no thoracic spinal processes tenderness.  
There is right lower tightness and/or muscle spasm of the thoracic paraspinal muscles  
There is no florid muscle spasm of the thoracic paraspinal muscles.  
There is no lumbar paraspinal muscle tenderness.  
There is no lumbar sacral spinous processes tenderness.  
There is right tightness and/or spasm of the lumbar paraspinal muscles  
There is no florid muscle spasm of the lumbar paraspinal muscles

Scoliosis: Grossly normal  
Spinal curvature: Grossly normal

Cervical range: Cervical range of motion was limited mild on extension with pain

Negative axial compression maneuver  
No posterior occipital nerve tenderness  
No Adson's.  
No Lhermitte's.  
No Spurling's.

No Battle's sign  
No ear discharge  
No ear vesicles  
Normal TM  
No raccoon eyes

No TMJ tenderness.  
No TMJ click.  
No temporal artery tenderness.  
No cervical dystonia

Lumbar range: Lumbar range of motion was normal.  
Pain on extension: None

Shoulder range: Shoulder range of motion was normal on the right side

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

Shoulder range of motion was normal on the left side

**Cranial Nerves:**

PEARLA

EOMI with normal conjugate eye movements and normal tracking

Dizziness on tracking: None

Light sensitivity: None

Visual field full with no visual field cut

No preference body and/or visual

No neglect body and/or visual

Weber/Rinne was normal

Split on the forehead tuning fork: None

The fundi margins demonstrated sharp disc margins.

The pupils were reactive symmetrically.

No nystagmus.

Anicteric

Tongue protrudes forward

Uvula raises midline

No dysarthria

Shoulder shrug was performed.

Hearing was intact.

The smile is symmetric.

**Motor :**

**Upper:**

Normal power of 5 was noted in all major muscles of the upper proximal.

Normal power of 5 was noted in the muscles of the upper distal.

Tone in the upper extremities was normal.

Reflexes were 2 throughout upper

Absent upper spasticity

Absent Hoffman signs are present.

The abductor pollicis brevis was with full power.

Grip was normal.

No drift.

Rapid alternating movements of the upper were normal.

**Lower:**

Normal power of 5 was noted in the muscles proximal lowers.

Normal power of 5 was noted in the muscles distal lowers

Heel walk was normal.

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

Toe walk was normal.  
Rapid alternating movements of the lowers were normal.  
Tone in the lower extremities was normal  
No ankle clonus  
Absent Babinski  
Absent spasticity lowers  
Reflexes 2

No muscle fasciculations are noted.

Sensory: Normal sensory examination of the upper  
Normal sensory examination of the lower

Coordination: Unremarkable coordination exam of trunk  
Unremarkable coordination exam of the upper extremity  
Unremarkable coordination exam of the lower extremity.

Gait: Non wide based gait which is symmetric.  
Able to hold a Tandem stance and Tandem walk  
No limp is noted  
The patient has fair gait initiation abilities  
The patient has fair turn-around capabilities  
The patient has fair arm swing momentum  
The patient has fair ability to stop as well as retropulsion testing reflexes.  
Romberg was performed and demonstrated with no sway.  
Fair agility, maneuverability is noted on overall gait testing.

Extrapyramidal: No abnormal movements such as twitching, stiffening, tonic, clonic activity  
myoclonic activity is observed. No rigidity is present. No tremor is noted.

Exaggeration: None

Emotional Overlay: None

#### IMPRESSION from 12/31/2017 Trauma- INDUSTRIAL RELATED

1. Face trauma

Name: CASTELAN, DANIEL  
 DOE: 11-18-2019

2. Concussion

3. Facial bleed - midline lower forehead just above nasal region with mild dermatologic scar

4. Cephalgia with biparietal /temporal head sharp pains

5. Post concussive syndrome with continued cognitive impairment, sleep impairment and vestibular impairment consisting of memory difficulties, focusing difficulties, insomnia, restlessness and imbalance sensations.

6. Transient neurologic episodes of intense head pains about 3 X/month that are likely migraines and had an apparent drug interaction with the topiramate currently being treated with Aleve medications

7. Bilateral occipital pains that are arising from the skull pain of the posterior upper cervical frequently occurring being treated with Aleve medication and/or cold showers and /or sleep combination

DISCUSSION

DANIEL CASTELAN was seen for an Neurologic IME for head injury related symptoms. The question was if they were related to the 12/31/2017 industrial injury.

During the course of treatment, the records indicated that the primary treating physicians had tried topiramate for the head pain migraine type symptoms. Unfortunately, the patient had a side effect and apparently no other medication was tried. The patient was made MMI in late 2018 by the primary treating physician.

In addition, there are transient neurologic events characterized by incapacitating episodes that are unlikely to be seizures. They are likely migraine events that are occurring about 3 times a month. The treating Neurologist did complete a EEG study in 2018 with no clear epileptic events. The MRI brain showed no clear epileptic structural abnormality that is likely to cause a seizure. There are bifrontal subcortical white matter changes best seen on the axial cuts on the images. The report was read by SDMI as unremarkable. The 3 Tesla MRI brain appears to be having some motion which can obscure findings.

I was ask only to evaluate the head injury complaints and will not address the cervical/neck complaints nor the low back /lumbar complaints today.

There are three types of head pain complaints that the patient is now experiencing. The three transient neurologic monthly attacks of incapacitating head pains are likely migraines, and are not seizures at this point. The patient would be a candidate depending on risk and/or benefits to have additional treatment such as potential Botox, preventative headaches medications therapies (please not allergic reaction to topiramate) and or CRGP monthly subcutaneous injections if the other first line medications are ineffective.

A muscle relaxant may also be of benefit at this time given the different types of head pains that are being described.

Name: CASTELAN, DANIEL  
DOE: 11-18-2019

at this time

**TREATMENT THAT WILL BE NEEDED TO REACH MAXIMAL MEDICAL IMPROVEMENT**

- 1) See above discussion
- 2) Medication therapy for three types of head pains including and not limited to likely migraines presenting as transient neurologic events
- 3) Brain exercises
- 4) ~~Cognitive behavioral therapy~~ with app's and/or psychologist to improve the sleep
- 5) ~~Biofeedback therapy~~ with neuropsychology to improve with thinking, processing, focusing, memory and cognition
- 6) Medication therapy if more conservative treatment failures to be considered such as donepezil or other medications
- 7) Aqua therapy /conditioning and may or may not including balance therapy to improve his imbalance sensation with the cephalgia

**LONG TERM DISABILITY STATUS**

To be determined after treatment is completed. Unable to determine as unclear if the treatment above will resolve fully the post concussive syndrome

Thank you very much for allowing me to participate in the care of your patient. Please feel free to contact me if you have any questions. Thank you once again.

Sincerely,



Russell J Shah MD

cc: Jason D. Mills & Associates, Ltd.

cc: Law Offices of David H. Benavidez

**LAW OFFICE OF DAVID H. BENAVIDEZ**

**850 S. Boulder Highway, #375**

**Henderson, Nevada 89015**

**Office (702) 565-9730**

**Fax (702) 568-1301**

October 26, 2020

**US Mail and Fax (702) 641-4600**

**Radar Medical Group, LLP**

**ATTN: Russell J. Shah, M.D.**

**10624 South Eastern Ave, Ste. A-425**

**Henderson, NV 89052**

**Claimant: Daniel Castelan**

**Employer: Peppermill, Inc.**

**Date of Birth: September 30, 1989**

**Claim No.: 2017345360**

**Appeal No.: 1908458/1908459/1911259/1912693/  
1913610/1913610/1913110-DM**

Dear Dr. Shah,

I represent Employers Insurance Company of Nevada in the workers compensation claim of Daniel Castelan. On November 18, 2019, you conducted an Independent Medical Evaluation. In your report, you noted "long term disability status to be determined after treatment is completed." I am enclosing your November 18, 2019 report. Please review your report and answer the following question:

On November 18, 2019 did you take Mr. Castelan off work. Yes ☐ No ☐

I am enclosing a permanent light duty job offer from the employer that was approved by Dr. Kong, the claimant's treating physician. Do you agree the claimant can work the permanent light duty job? Yes ☐ No ☐

\_\_\_\_\_  
Russell J. Shah, M.D.

\_\_\_\_\_  
Date

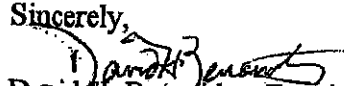
Please bill your time directly to : Employers Ins Co of NV

Attn: Cary Ferguson

2550 Paseo Verde Pkwy. Ste. 100

Henderson, NV 89074-9004

Sincerely,

  
David H. Benavidez, Esquire

Enclosures

cc: Jason Mills, Esq..  
EICON

DHB:rmk

Name: CASTELAN, DANIEL  
Date of Report: 11-28-2020

## **RADAR MEDICAL GROUP, LLP**

Mailing address: 10624 South Eastern Avenue, Suite A-425, Henderson, NV 89052  
Phone (702) 644-0500 Fax (702) 641-4600

**Russell J. Shah MD**  
Neurology /Neurophysiology

### **IME - NEUROLOGY Supplemental Report**

David H. Benavidez, Esq.  
Law Offices of David H. Benavidez  
850 South Boulder Highway, # 375  
Henderson, NV 89015  
Office: (702) 565-9730  
Fax: (702) 568-1301

**PATIENT NAME:** CASTELAN, DANIEL  
**DOB:** 09-30-1989  
**Gender:** M  
**Date of Injury:** 12-31-2017  
**Claim Number** 2017345360  
**Insurer:** Employers Insurance Company of Nevada  
**Employer:** Peppermill, Inc  
**Date of Supplemental:** 11-28-2020

Dear Mr. David Benavidez:

Mr. DANIEL CASTELAN was seen on November 18th, 2019 for a Neurologic IME to determine if the head injury complaints were related to the work injury sustained on 12-31-2017. I was ask to review additional medical records and answer specific questions as outlined in your October 26th, 2020 letter to me.

Name: CASTELAN, DANIEL  
Date of Report: 11-28-2020

**Question # 1:**

On November 18, 2019 did you take Mr. Castlan off work?

**Answer:**

No. I did not take Mr. Daniel Castelan off work during my IME on November 18, 2019. I did not address the work status issue on my report. I put him as a *"temporary disability for the head"* body part injuries that I was evaluating him for. Mr. Daniel Castelan is able to work with accomodations and restriction while on treatment with his head injury related complaints.

**Question # 2:**

Dr. Ronald Kong has approved a permanent light duty offer by the employer. Do you agree that the claimant can work the permanent light duty job?

**Answer:**

- 1) The claimant would benefit and be allowed to have a permanent light duty
- 2) I am unable to determine if Dr. Ronald Kong's signing off on this particular "new modified permanent light job duty" offer was medically appropriate. The basis of my opinion is that Mr. Daniel Castelan has migraines and head pains some of which are located in the occipital region arising from the upper neck area. The job description of the permanent light duty being offered by Peppermill Inc (employer) notes a constant 1-10 lbs. lifting, occasional 10-20 lb. lifting and constant walking. During the IME that I performed in November of 2019, the issue of spine pain appear to be instigating some of the head pain symptoms.
- 3) The instigating mechanisms that are producing the head trauma related migraine type symptoms are to be addressed if not cured. in order to determine the long term medication and/or non medication treatments that will be required once the patient reaches MMI status. It would be reasonable that *"some of the occipital pain"* (back of the head pain) arising from the cervicogenic (neck ) areas are instigating the head migraines. Please note that I only evaluated the head injuries from the face and head trauma and the ongoing head related complaints on my IME and have not addressed the spine issues on my IME.

I did try to reach Mr. Daniel Castelan by telephone today at 702-344-4274, but his telephone number contact from 2019 was disconnected. I am unable to determine if Mr. Daniel Castelan has reached MMI status for the head injury as I was not able to contact him.

**MEDICAL OPINION STATEMENT**

I reviewed the chart, previous 2019 IME that I produced, and reviewed the reports from Dr. Travis Snyder at Simon Med of the brain mri and brain mra that were ordered by myself for the IME and received post IME evaluation of 2019. I reviewed the materials from the October 26, 2020 correspondence by the Law Offices of David Benavidez. I reviewed the job offer description and the treating physician Dr. Ronald Kong's acceptance of the permanent light duty offer by Peppermill Inc employer. It notes constant 0 - 10 lbs. of lifting and occasional 10-20 lbs. of lifting with constant walking as a job duty that are all related to the spine

**Name:** CASTELAN, DANIEL  
**Date of Report:** 11-28-2020

complaints that are not being evaluated by my IME. I personally required 66 minutes today to prepare the report after reviewing the records and offering a supplemental report and adequately answer the questions that were ask of me.

The above opinions were made by myself after careful examination of the claimant and review of the medical records. The opinions are were formulated after I personally reviewed all the information and used logic to assist the claimant to reach maximal medical improvement status. Should any additional information be made available to me, I will look at that information and may alter my medical opinion. I am a license active in good standing practicing Neurologist in the State of Nevada.

**Previous IME Impressions from 12/31/2017 Industrial Related Work Injury**

1. Face trauma
2. Concussion
3. Facial bleed - midline lower forehead just above nasal region with mild dermatologic scar
4. Cephalgia with biparietal/temporal head sharp pains
5. Post concussive syndrome with continued cognitive impairment, sleep impairment and vestibular impairment consisting of memory difficulties, focusing difficulties, insomnia, restlessness and imbalance sensations.
6. Transient neurologic episodes of intense head pains about 3 X/month that are likely migraines and had an apparent drug interaction with the topiramate currently being treated with Aleve medications
7. Bilateral occipital pains that are arising from the skull pain of the posterior upper cervical frequently occurring being treated with Aleve medication and/or cold showers and /or sleep combination

Sincerely,



Russell J Shah MD

cc: Jason D. Mills & Associates, Ltd.

cc: Law Offices of David H. Benavidez  
850 S. Boulder Highway, #375  
Henderson, NV 89015  
(702) 565-9730  
Fax (720) 568-1301

cc: Employers Insurance company of Nevada  
Attn: Cary Ferguson  
2550 Paseo Verde Pkwy, Suite 100  
Henderson, NV 89074-9004



# **RADAR MEDICAL GROUP, LLP**

University Urgent Care

**Dr. Russell J. Shah, MD**

**Dr. Dipti R. Shah, MD**

Neurology and Clinical Neurophysiology

Internal Medicine/Nephrology

Phone: (702)644-0500 Fax: (702)641-4600

**DATE:**

12-07-20

**FROM: CLAUDIA G.**

**TO:**

Jason Mills

**Fax Number:**

702-822-4440

David Benavides

702-568-1301

☒ **URGENT**

☐ **REPLY ASAP**

☐ **PLEASE REVIEW**

☐ **PLEASE COMMENT**

☐ **FOR YOUR INFORMATION**

**NUMBER OF PAGES INCLUDING COVER:**

4 pages

**Patient Name:**

Daniel Castejan

**DOB:**

09/30/89

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# fax cover

BEFORE THE APPEALS OFFICER

In the Matter of the Contested )  
Industrial Insurance Claim ) Claim No: 2017345360  
 )  
 of )  
 ) Appeal No: 1911258-DM  
 DANIEL CASTELAN, ) 1908459-DM  
 ) 1911259-DM  
 ) 1913610-DM  
 Claimant. ) 1913110-DM  
 ) 2017002-DM

EMPLOYERS INSURANCE COMPANY OF NEVADA'S  
MOTION TO RECONSIDER THE APPEALS OFFICER DECISION REGARDING TTD

Employers Insurance Company of Nevada (Insurer), by and  
through its counsel David H. Benavidez, submits the following  
opposition to the proposed decision and requests reconsideration  
regarding TTD.

One issue before the Appeals Officer was TTD/Permanent light  
duty.

Counsel requested an IME with Dr. Shah who issued an opinion  
recommending further treatment. The doctor does not mention the  
permanent light duty offered by the employer and approved by Dr.  
Kong. Dr. Shah notes Long Term Disability to be determined after  
treatment is completed.

On October 22, 2020, this Appeals Officer ruled from the  
bench ordering TTD based on the opinion of Dr. Shah.

On October 28, 2020, Insurer Counsel drafted a letter to Dr.  
Shah asking the doctor if he found the claimant disabled from

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FAX (702) 568-1301

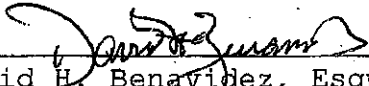
THE LAW OFFICE OF DAVID H. BENAVIDEZ  
850 S. BOULDER HIGHWAY, #375  
HENDERSON, NEVADA 89015  
(702) 565-9730  
FAX (702) 568-1301

1 employment. If not, did he agree with the permanent job offered  
2 by the employer.

3 On December 7, 2020, Dr. Shah responded noting he did not  
4 find the claimant disabled from employment. "I did not address  
5 the work status issue in my report. I put him as a 'temporary  
6 disability for the head' body part injuries that I was evaluating  
7 him for. Mr. Castelan is able to work with accommodations and  
8 restriction with his head related complaints".  
9  
10

11 He approved the permanent light duty job.  
12 Good cause exists to reconsider your order for TTD.

13 Dated this 9th day of December, 2020.

14   
15 David H. Benavidez, Esquire  
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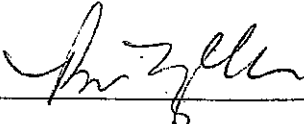
CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury, that I am an employee of the Law Office of David H. Benavidez, and on the 9th day of December, 2020, I deposited the foregoing MOTION TO RECONSIDER in the United States Mail, with first class postage fully prepaid thereon, sent via electronic delivery or placed in the appropriate address at the Department of Administration Hearing Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada 89102, to the following:

Jason Mills, Esq.  
Jason Dr. Mills & Associates LTD  
1201 S Maryland Pkwy  
Las Vegas, NV 89104-1727

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



Assistant

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FILED

DEC 22 2020

APPEALS OFFICE

STATE OF NEVADA  
BEFORE THE DEPARTMENT OF ADMINISTRATION  
APPEALS OFFICE

In the Matter of the Contested  
Industrial Insurance Claim

of

DANIEL CASTELAN,  
Claimant.

Claim No.: 2017345360

Appeal No.: 1908458-DM  
1908459-DM  
1911259-DM  
1913610-DM  
1913110-DM  
2017002-DM

DECISION AND ORDER

The above-entitled matter came on for hearing before Appeals Officer DENISE MCKAY, ESQ., on October 22, 2020 at 9:00 a.m. pursuant to Chapters 616A-D, 617, and 233B of the Nevada Revised Statutes. The Claimant, DANIEL CASTELAN (hereinafter "Claimant") was represented by JASON D. MILLS, ESQ., of the law firm of JASON D. MILLS & ASSOCIATES, LTD. The EMPLOYERS INSURANCE COMPANY OF NEVADA (hereinafter "Insurer") was represented by DAVID H. BENAVIDEZ, ESQ. of the LAW OFFICE OF DAVID H. BENAVIDEZ. Having accepted and reviewed the filed evidence in the record, the Appeals Officer does hereby find, conclude and order as follows:

FINDINGS OF FACT

1. Claimant sustained an industrial injury on December 31, 2017 during the course scope of employment while he was working for Peppermill Inc. ("Employer"). He was walking with dishes when he slipped and fell in standing water on the floor.
2. On December 31, 2017, Claimant received treatment at Sunrise Hospital where the C-4 Form was completed and he was diagnosed with facial injuries, head injury and laceration.

DOCOOS

3. On January 16, 2018, Employers Insurance Company of Nevada ("Insurer") notified Claimant that his claim was accepted for cervical strain, lumbar strain, right knee sprain, right elbow sprain, facial contusion, forehead laceration, closed head injury and left ring finger laceration.
4. Claimant received medical treatment at Concentra Medical Centers from January 22, 2018 to approximately March 2, 2018.
5. His medical care was subsequently transferred to Dr. Ronald Kong and Dr. Stuart Kaplan.
6. Claimant also received medical treatment by Dr. Leo Germin for his head injury and on December 12, 2018, a Hearing Officer affirmed an Insurer's October 31, 2018 determination denying Claimant's request for a follow up with Dr. Germin. Claimant timely appealed the Hearing Officer's Decision and Order. This is appeal number 1908458-DM.
7. On October 24, 2018, the Insurer denied Claimant's request for payment of medical bills for dry eye syndrome treatment. The determination was affirmed by a Hearing Officer, which Claimant timely appealed. This is Appeal number 1908459-DM.
8. As a result of the Insurer's determination to deny Claimant's continued medical treatment with Dr. Germin, Claimant requested an IME under NRS 616C.145 with Dr. Russell Shah for his head injury on November 9, 2018.
9. Claimant timely appealed the Insurer's de facto denial of his November 9, 2018 request. A Hearing Officer affirmed the de facto denial and Claimant timely appealed the Decision and Order. This is appeal number 1911529-DM.

1 10. Claimant had been placed on permanent light duty restrictions by Dr. Ronald Kong on  
2 November 6, 2018. The restrictions were based on the FCE performed on November  
3 15, 2018, which indicated that Claimant "did not appear to be capable of safely  
4 performing all of his pre-injury job duties (clean up for Peppermill, Inc.) without  
5 modifications. Specifically, he appears to fall short of requirement for occasional lifting  
6 and carrying up to 80 lbs." The FCE report also indicated that Claimant is capable of  
7 working a medium physical demand level. The FCE evaluation did not take into account  
8 Claimant's head injury.  
9

10 11. On February 5, 2019, the Vocational Rehabilitation Counselor notified Claimant that  
11 the Employer offered him a permanent light duty job of Hostess/Cashier, which required  
12 him to "greet and seat guests, distribute guest between food servers, accept payment on  
13 guest tickets and give proper change, answer phones and properly direct calls, and  
14 directing beverage service, bussing and cleaning of tables." The permanent light duty  
15 job was approved by Dr. Ronald Kong. The counselor also notified Claimant that  
16 because of the permanent light duty job offer, his vocational rehabilitation process  
17 closed February 12, 2019 and his vocational rehabilitation maintenance was terminated.  
18

19 12. Claimant did not accept the permanent light duty job because of his head injury.  
20

21 13. Claimant timely appealed the Vocational Rehabilitation's counselor's determination  
22 dated February 5, 2019 and the Hearing Officer was bypassed. This is appeal number  
23 1912693-DM.  
24

25 14. On December 12, 2018 and December 19, 2018, the Insurer notified Claimant that his  
26 claim was closed for further medical treatment and he was scheduled for a PPD  
27  
28

evaluation. This determination was affirmed by a Hearing Officer on March 6, 2019, which Claimant timely appealed. This is appeal number 1913110-DM.

15. Claimant underwent a PPD evaluation by Dr. Gobinder Chopra on February 1, 2019.

Dr. Chopra indicated that Claimant did not suffer a whole person impairment and gave him a 0%.

16. On February 11, 2019, the Insurer notified Claimant that his claim was closed with a 0% whole person impairment. Claimant timely appealed and the Hearing Officer was bypassed. This is appeal number 1913610-DM.

17. Per an Interim Order entered by this Court on November 6, 2019, Dr. Russell Shah performed an IME pursuant to NRS 616C.145 on November 18, 2019 of Claimant's head injury.

18. Dr. Shah opined that Claimant's industrial related impressions included a concussion with "post concussive syndrome with continued cognitive impairment, sleep impairment and vestibular impairment consisting of memory difficulties, focusing difficulties, insomnia, restlessness and imbalance sensations." Dr. Shah also indicated that Claimant needed additional medical treatment for his head injury and he had not reached maximum medical improvement for the concussion and that he "more likely than not has a permanent post traumatic brain injury from the December 31 2017 trauma."

19. Dr. Shah recommended further medical treatment, which included brain exercises, medication and cognitive behavioral therapy. Dr. Shah also placed Claimant on temporary disability.

20. On January 17, 2020, Claimant requested authorization for Dr. Shah's treatment plan.

However, the Insurer did not respond. Claimant then appealed its de facto denial of his request. The Hearing Officer was bypassed. This is appeal number 2017002-DM.

21. These Finding of Facts are based upon substantial evidence within the record.

22. Any Finding of Fact more appropriately deemed a Conclusion of Law shall be so deemed, and vice versa.

### CONCLUSIONS OF LAW

The Appeals Officer concludes as follows:

23. Appeal number 1908458-DM is moot as Claimant was seen by Dr. Russell Shah.

24. Appeal number 1908459-DM is dismissed as the eye is not currently a part of this claim.

25. Appeal number 1911259-DM is also moot as the IME was performed via the Interim Order dated November 6, 2019.

26. The Claimant testified at the time of the hearing and the Appeals Officer finds him to be a genuine and credible witness.

27. Regarding appeal numbers 1913610-DM, 1913110-DM and 2017002-DM, claim closure and the scheduling of the PPD evaluation are premature pursuant to NRS 616C.235 and NRS 616C.490. Claimant has met his burden that he remains in need of industrial care based on the findings of Dr. Shah's reporting. As such the Claimant is not at maximum medical improvement and his claim was prematurely closed. He was also prematurely rated, and a new rating examination of his accepted body parts will be initiated once the Claimant has reached maximum medical improvement pursuant to NRS 616C.490.

28. Additionally, the treatment plan of Dr. Shah shall be authorized by the Insurer and as Dr. Shah is on the Insurer's current provider treating panel, Dr. Shah shall act as the treating physician on Claimant's claim pursuant to NRS 616C.090.

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

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

### **ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that appeal numbers 1908458-DM, 1908459-DM and 1911259-DM are hereby **DISMISSED**.

**IT IS FURTHER ORDERED** that the Hearing Officer's Decision and Order (hearing numbers 1908633-MT and 1919684-MT) and the Insurer's February 11, 2019 determination are hereby **REVERSED**, and the Insurer is **REMANDED** to authorize Dr. Shah's treatment plan outlined in his November 18, 2019 IME report and to authorize Dr. Shah as Claimant's treating physician.

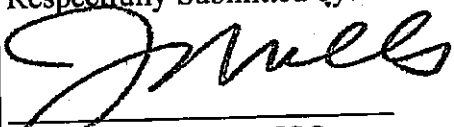
**IT IS FURTHER ORDERED** that the determination from the vocational rehabilitation services counselor dated February 5, 2019 is also **REVERSED** and the Insurer is

1 REMANDED to provide Claimant TTD benefits from November 18, 2019 to the present, plus  
2 interest.

3 Dated this 22nd day of December, 2020.

4  
5  
6   
7 DENISE MCKAY, ESQ.  
8 Appeals Officer

9 Respectfully Submitted by:

10 

11 JASON D. MILLS, ESQ.

12 Nevada Bar No. 7447

13 JASON D. MILLS & ASSOCIATES, LTD.

14 2200 S. Rancho Dr., Ste. 140

15 Las Vegas, NV 89102

16 Attorney for Claimant

17  
18  
19  
20  
21  
22  
23  
24 PURSUANT TO NRS 616C.370 and NRS 233B.130, should any party desire to appeal this  
25 final determination of the Appeals Officer, a Petition for Judicial Review must be filed with  
26 the District Court with thirty (30) days after service by mail of this Decision  
27  
28

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Hearings Division, Department of Administration, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration Hearings Division, 2200 S. Rancho, #220, Las Vegas, Nevada, to the following:

Daniel Castelan  
PO Box 29066  
Las Vegas, Nevada 89126


Jason D. Mills, Esq.  
Jason D. Mills & Associates, Ltd.  
2200 S. Rancho Dr., Ste. 140  
Las Vegas, NV 89102

Peppermill Hotel & Casino  
C/O Walt Kiser  
380 Brinkby Avenue Suite B  
Reno, NV 89509

Employers Insurance Cooperation of NV  
ATTN: Maria Cable  
2550 Paseo Verde Parkway, Suite 100  
Henderson, NV 89074

Davide Benavidez, Esq.  
Law Office of David Benavidez  
850 S. Boulder Highway #375  
Henderson, NV 89015

Dated this 22<sup>nd</sup> day December, 2020.

  
An Employee of the State of Nevada

FILED

JAN 14 2021

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Industrial  
Insurance Claim of:

) Claim No: 2017345360

) Appeal No: 1908458-DM

) 1908459-DM

) 1911259-DM

) 1912693-DM

) 1913610-DM

) 1913110-DM

) 2017002-DM

DANIEL CASTELAN,

Claimant.

ORDER GRANTING EMPLOYERS INSURANCE COMPANY OF NEVADA'S  
MOTION FOR RECONSIDERATION

Having received Employers' Motion for Reconsideration and Claimant's Opposition thereto, I determine as follows:

The evidence in the record supports the conclusion that the Claimant is not MMI. Dr. Kong's release of Claimant as MMI was for Claimant's physical conditions only and did not address Claimant's ongoing cognitive problems. (Ex. 1, pp. 171-73). As to the latter, Dr. Shah concluded the Claimant is still in need of treatment. (Ex. 3, pp. 212-14).

At the time of the hearing in this matter, I read Dr. Shah's description of the Claimant's ongoing cognitive problems and need for further treatment as necessarily limiting the Claimant's ability to perform the light duty job offered by the employer. However, Dr. Shah's November 28, 2020, letter clarifies that the Claimant is not so limited and would, in fact, benefit from working in the offered light-duty position. This evidence constitutes good cause for reconsidering my December 22, 2020, Order insofar as it awarded Claimant TTD beginning from November 18, 2019 (the date employer made the light-duty job offer). Accordingly, the Motion for Reconsideration is granted and Claimant is not entitled to receive TTD payments.

With the benefit of hindsight, the determination from the vocational rehabilitation services counselor dated February 5, 2019, removing Claimant from voc rehab services, was not appropriate because since Claimant is not and was not MMI, he should not have been receiving voc rehab services yet.

The Order dated December 22, 2020, is modified as follows: lines 4-8 of page 6, beginning with the word "Additionally," are deleted. Lines 12-14 of page 6, beginning with the word "However," are deleted. Lines 27-28 of page 6 and lines 1-2 of page 7 are modified to

1 read, "IT IS FURTHER ORDERED that the determination from the vocational rehabilitation  
2 services counselor dated February 5, 2019, is REVERSED. Claimant's eligibility for vocational  
3 rehabilitation services shall be determined upon his being released as MMI on all accepted  
4 conditions."

5 IT IS SO ORDERED this 14<sup>th</sup> day of January, 2021.

6  
7   
8 DENISE S MCKAY, ESQ.  
9 APPEALS OFFICER  
10

11 NOTICE: Pursuant to N.R.S. 233B.130, should any party desire to appeal this final determination  
12 of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within  
13 thirty (30) days after service by mail of this decision  
14  
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1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing ORDER GRANTING EMPLOYERS INSURANCE COMPANY OF  
5 NEVADA'S MOTION FOR RECONSIDERATION was duly mailed, postage prepaid OR  
placed in the appropriate addressee runner file at the Department of Administration, Hearings  
Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

6 DANIEL CASTELAN  
7 PO BOX 29066  
8 LAS VEGAS NV 89126

9 JASON MILLS ESQ  
10 GREENMAN GOLDBERG RABY & MARTINEZ  
2770 S MARYLAND PKWY STE 100  
LAS VEGAS NV 89109

11 PEPPERMILL HOTEL & CASINO  
12 ATTN PAM SPRAU  
13 380 BRINKBY AVE STE B  
RENO NV 89509

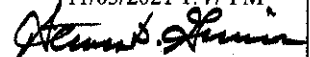
14 EMPLOYERS INS CO OF NV  
15 ATTN WORKERS COMP DIVISION  
2340 CORPORATE CIRCLE STE 200  
16 HENDERSON NV 89074-7753

17 DAVID BENAVIDEZ ESQ  
18 LAW OFFICE OF DAVID BENAVIDEZ  
850 S BOULDER HIGHWAY # 375  
19 HENDERSON NV 89015-7564

20 Dated this 14<sup>th</sup> day of January, 2021.

21   
22 \_\_\_\_\_  
23 Bianca Salazar, Legal Secretary II  
24 Employee of the State of Nevada  
25  
26  
27  
28



  
 CLERK OF THE COURT
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

10 *Attorneys for Petitioner*11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**

13 DANIEL CASTELAN,

CASE NO: A-21-828981-J

14 Petitioner,

DEPT NO: XIV

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  
 Nevada

22 Respondents.

23 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW**
 24  
 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  
26  
27  
28

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

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

22       On November 18, 2019, Petitioner underwent the IME with Dr. Shah. Dr.  
23 Shah opined that Petitioner's industrially related impressions include a concussion  
24 with "post concussive syndrome with continued cognitive impairment, sleep  
25  
26  
27  
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  
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  
4 "the time is not right for anybody to be determining if this claimant is ready to take  
5 this valid light-duty job offer." (ROA 46, lines 15-17). Finally, the Appeals Officer  
6  
7 stated, "With regard to the entirety of Dr. Shah's reporting and his phrasing about  
8 the temporary disability, he's substantially complied with this slip requirement."  
9  
10 (ROA 49, lines 5-8).

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  
14 Administrative Court and sent the Proposed Decision and Order via fax to  
15 Respondent's counsel. (ROA 99-100).

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  
23 (ROA 68-69). Based on this newly manufactured evidence, not newly discovered,  
24  
25 the Respondent moved the Administrative Court to "reconsider [the] order for  
26  
27 TTD." (ROA 69).  
28

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  
18 NRS 233B.135, which governs judicial review of a final decision of an  
19 administrative agency, provides, in pertinent part, the following:  
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  
provisions;  
4 (b) In excess of the statutory authority of the agency;  
5 (c) Made upon unlawful procedure;  
6 (d) Affected by other error of law;  
7 (e) Clearly erroneous in view of the reliable, probative  
and substantial evidence on the whole record; or  
8 (f) Arbitrary or capricious or characterized by abuse  
of discretion.

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

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



NEVADA'S PREMIER INJURY  
LAW FIRM

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).  
4

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).  
10  
11

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).  
16  
17

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).  
23  
24

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).  
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21           The Court acknowledges that motions for reconsideration are not  
22 recognized under Nevada Workers' Compensation administration, rather petitions  
23 for rehearing are the regulatorily accepted means for aggrieved parties to seek  
24 remedies outside of the appellate process. *See* NAC 616C.327. But for the  
25 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

13 Accordingly, the Administrative Order is in direct violation of relevant  
14 regulatory provisions, is highly prejudicial to his substantial rights, and therefore  
15 must be found to be procedurally deficient pursuant to NRS 233B.135, as clarified  
16 in Elizondo v. Hood Mach., Inc., 129 Nev. 780, (2013).  
17

18 In support of its position, the Respondent argued that the Administrative  
19 Order is supported by substantial evidence and contains no error of law.  
20 (Respondent's Brief p. 8). For the aforementioned reasons, the Court finds that this  
21 argument bears no relevance to judicial review as NRS 233B.135(3) identifies  
22 multiple scenarios in which the reviewing court may set it aside in whole or in part  
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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").  
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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  
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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  
8 Drespel was presented with the question of whether a new trial should be grand  
9 upon the ground of newly discovered evidence following the plaintiff's recovery  
10 in a divorce action. Drespel v. Drespel, 56 Nev. 368, (1935). The Court ultimately  
11 affirmed the denial of a new trial on grounds that "reasonable diligence was not  
12 used prior to the trial to discover the evidence offered." Id. (emphasis added).  
13  
14 Therefore, because there was no evidence that reasonable diligence was used prior  
15 to the trial to discover the evidence offered in support of the motion for new trial,  
16  
17 the evidence offered failed to constitute "newly discovered evidence." Id.

18  
19 Most recently, the Nevada Supreme Court has confirmed that the  
20  
21 "reasonable diligence" standard for the effort of a moving party is a low threshold.  
22 In Motor Coach Indus., Inc. v. Khiabani by & through Rigaud, 137 Nev. Adv. Op.  
23 42, 493 P.3d 1007 (2021) the Appellant, Motor Coach, had moved the lower court  
24 for a new trial following the entry of judgement upon jury verdict for the Appellee.  
25 The theory put forth by Motor Coach was that news reporting that occurred post  
26 trial "brought to light new facts that merited a new trial." Id. 1015. Motor Coach  
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  
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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  
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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 2021, Decision and Order is stricken, Appeals Officer's December 22, 2020,  
4 Decision and Order is reinstated, and the Respondent is ordered to authorize Dr.  
5 Shah's treatment plan outlined in his November 18, 2019, IME report, authorize  
6 Dr. Shah as the Petitioner's treating physician, and provide the Petitioner TTD  
7 benefits from November 18, 2019, to the present, plus interest  
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11

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

15 By: Q. Escobar  
16 ADRIANA ESCOBAR  
17 DISTRICT COURT JUDGE  
18

Dated this 3rd day of November, 2021

19 Submitted by:  
20 GGRM LAW FIRM  
21

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

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.  
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NEVADA'S PREMIER INJURY  
LAW FIRM

## Ethan Wallace

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**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 DISTRICT COURT  
3 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

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17 Veronica Salas

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18 Jason Mills

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NEVADA'S PREMIER INJURY  
LAW FIRM

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9 Email: [jmills@ggrmlawfirm.com](mailto:jmills@ggrmlawfirm.com)  
10 *Attorneys for Respondent*

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

15 **EMPLOYERS INSURANCE**  
16 **COMPANY OF NEVADA,**

17 **Appellant,**

18 **v.**

19 **DANIEL CASTELAN,**

20 **Respondent.**

CASE NO: A-21-828981-J

DEPT NO: XIV

21 **ORDER DENYING MOTION FOR STAY PENDING APPEAL TO**

22 **THE NEVADA SUPREME COURT**

23 This matter came before this Court on November 30, 2021, on the Motion  
24 for Stay Pending Appeal to the Nevada Supreme Court filed by Appellant,  
25 EMPLOYER'S INSURANCE COMPANY OF NEVADA ("Appellant").  
26 Appellant was represented by DAVID H. BENAVIDEZ, ESQ. of THE LAW  
27 OFFICE OF DAVID H. BENAVIDEZ. Respondent, DANIEL CASTELAN, was  
28



1 represented by JUAN M. SCLAFANI, ESQ. of the law firm of GGRM LAW  
2 FIRM. No other parties were present or represented.

3  
4 After a review and consideration of the record, the Points and Authorities  
5 on file herein, and oral arguments of counsel, the Court determined as follows:

6  
7 An order for stay is not a right to be exercised, but a matter of judicial  
8 discretion to be used by the Court, when appropriate, upon application of a party.  
9 NRS 233B.140(3) provides that in making a ruling, the Court shall give deference  
10 to the trier of fact and consider the risk to the public, if any, of staying the  
11 administrative decision.  
12

13  
14 When considering an application for a stay order pending appeal, there are  
15 four factors which must be addressed:

- 16  
17 1) Whether the petitioner for the stay order has made a *strong* showing  
18 that it is likely to prevail on the merits of the appeal;  
19  
20 2) Whether or not the petitioner has shown it would sustain irreparable  
21 injury absent the stay order;  
22  
23 3) Whether or not the issuance of a stay order would substantially harm  
24 the other interested parties; and  
25  
26 4) Where the public interest lies.  
27  
28



1 Dollar Rent a Car of Washington v. Travelers Indem., 774 F.2d 1371, 1374 (Nev.  
2 1975); American Horse Protection Assoc. v. Frizzel, 403 F.Supp. 1206, 1215  
3 (Nev. 1975).  
4

5 Appellant has the burden of demonstrating that it will suffer irreparable  
6 harm if the stay order is not issued. Dollar Rent a Car of Washington v. Travelers  
7 Indem., 774 F.2d at 1374; American Horse Protection Assoc. v. Frizzel, 403  
8 F.Supp. at 1215. Appellant argues in its Motion that if the stay is not granted, it  
9 will be irreparably harmed because of the payment of benefits.  
10  
11

12 In order to show that it will prevail on the merits, Appellant has the burden  
13 of demonstrating that the Appeals Officer's decision was factually or legally  
14 incorrect and that the Appeals Officer acted arbitrarily or capriciously. NRS  
15 233B.135(2); Campbell v. Nevada Tax Com'n, 853 P.2d 717 (Nev. 1993). In  
16 determining the appropriateness of the Appeals Officer's decision, this Court may  
17 not substitute its judgment for that of the Appeals Officer as to the weight of the  
18 evidence. N.R.S. 233B.135; SIIS v. Campbell, 862 P.2d 1184 (Nev. 1993);  
19 Campbell v. Nev. Tax Com'n, 853 P.2d 717 (Nev. 1993). On questions of fact, this  
20 Court is limited to determining whether *substantial evidence* exists in the record  
21 to support the Appeals Officer's decision. Desert Inn Casino & Hotel v. Moran,  
22 106 Nev. 334, 792 P.2d 400, 401 (1990); SIIS v. Swinney, 103 Nev. 17, 20, 731  
23 P.2d 359, 361 (1987). Substantial evidence is "that quantity and quality of  
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1 evidence which a reasonable [person] could accept as adequate to support a  
2 conclusion." State of Nevada Emplmt. Sec. Dept. v. Hilton Hotels Corp., 102 Nev.  
3 606, 607-08, 729 P.2d 497, 498 (1986), quoting Robertson Transp. Co. v. P.S.C.,  
4 39 Wis.2d 653, 159 N.W.2d. 636, 638 (1968).

5  
6 The Court finds that, upon review of the record, the Appellant has failed to  
7 establish a strong showing to prevail on the merits of its appeal to the Supreme  
8 Court of Nevada. Further, Appellant argued in its Motion that if the stay is not  
9 granted, it will be irreparably harmed because of the payment of benefits. This  
10 argument, however, is without merit since there are no Nevada Supreme Court  
11 cases that indicate irreparable harm results from the sole payment of money. To  
12 the contrary, the Nevada Supreme Court, in DIIR v. Circus Circus Enterprises,  
13 held that:  
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17

18 ...the object of workers' (sic) compensation social  
19 legislation is to provide the disabled worker with  
20 benefits during the period of his disability so that the  
21 worker and his dependents may survive the catastrophe  
22 which the temporary cessation of necessary income  
23 occasions.

24 101 Nev. 405, 408, 705 P.2d 645, 648 (1985).

25 The court also indicated that "...it is clearly the injured worker and not the  
26 employer who is more likely to be irreparably harmed when immediate payment  
27 of benefits is contrasted with delayed payment pending the outcome of the hearing  
28

1 on the merits." Id. Respondent is the party more likely to be harmed by the  
2 issuance of a stay since he would continue to be denied the payment of appropriate  
3 benefits currently being withheld. Respondent is the only party that will suffer  
4 tangible harm as he will be the party that will be subject to a continued delay of  
5 substantial monetary benefits that have been affirmed by the Administrative  
6 Appeals Officer. The Court concludes that, while the Appellant may not be able to  
7 recover these costs, this is insufficient to establish the irreparable harm required to  
8 justify granting its Motion for Stay. Finally, the Court finds that public policy  
9 favors the payment of benefits to the Respondent over any potential harm that may  
10 result to the Appellant.

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15 **ORDER**

16 In summation, THIS COURT FINDS AND ORDERS that the Appellant has  
17 failed to establish a likelihood of prevailing on the merits of its appeal before the  
18 Supreme Court of Nevada and have further failed to establish that it will suffer  
19 irreparable harm if the stay is not granted. Accordingly, the Appellant's Motion  
20 for Stay Pending Appeal to the Nevada Supreme Court is DENIED and the Order  
21 Denying Petition for Judicial Review remains in effect.

22 DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

23  
24  
25  
26 By: \_\_\_\_\_  
27 ADRIANA ESCOBAR  
28 DISTRICT COURT JUDGE

1 Submitted by:  
2 GGRM LAW FIRM

3  
4 By: /s/ Jason D. Mills, Esq.  
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