

Electronically Filed  
Jan 10 2022 08:57 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**NOAS**  
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Nevada Bar No. 005125  
L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
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*Attorneys for Appellants*  
*Las Vegas Metropolitan Police Department and*  
*Cannon Cochran Management Services, Inc. (CCMSI)*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT and CCMSI,

Appellants,

v.

WILLIAM FERGUSON,

Respondent.

CASE NO: A-21-830966-J

DEPT. NO.: XXVIII

**NOTICE OF APPEAL**

TO: WILLIAM FERGUSON, Respondent

TO: LISA ANDERSON, ESQ., of GGRM, Respondent's Attorney

NOTICE IS HEREBY GIVEN that Appellants, LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CCMSI (hereinafter referred to as the "Appellants"), by and through their attorneys, DANIEL L. SCHWARTZ, ESQ., and L. MICHAEL FRIEND, ESQ. of LEWIS, BRISBOIS, BISGAARD & SMITH, LLP, in the above-entitled action, hereby appeal to the Supreme Court of the State of Nevada from the attached "Order" entered in this action on or about

...

1 December 16, 2021, which granted Petitioners' Petition for Judicial Review and the "Notice of  
2 Entry of Order" filed on or about December 17, 2021.

3 DATED this 3<sup>rd</sup> day of January, 2022.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6  
7

8 By: /s/ L. Michael Friend, Esq.  
9 DANIEL L. SCHWARTZ, ESQ.  
10 Nevada Bar No. 005125  
11 L. MICHAEL FRIEND, ESQ.  
12 Nevada Bar No. 011131  
13 2300 W. Sahara Avenue, Suite 900  
14 Las Vegas, Nevada 89102  
15 Phone: 702-893-3383  
16 Fax: 702-366-9563  
17 Attorneys for Appellants  
18 *Las Vegas Metropolitan Police Department*  
19 *And CCMSI*  
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**CERTIFICATE OF MAILING**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 3<sup>rd</sup> day of January, 2022, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a true copy of the same for mailing, first class mail, as follows:

LISA M. ANDERSON  
GGRM  
2770 S. MARYLAND PKWY SUITE 100  
LAS VEGAS, NV 89109

LVMPD- HEALTH DETAIL  
ATTN: BERNADINE WELSH  
400 S. MARTIN LUTHER KING BLVD. BUILDING B  
LAS VEGAS, NV 89106

CCMSI  
ATTN: GABRIELA DIAZ  
P.O. BOX 35350  
LAS VEGAS, NV 89133

/s/ Stephanie Jensen  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

*Steven D. Grierson*

1 NEOJ  
2 LISA M. ANDERSON, ESQ.  
3 Nevada Bar No. 4907  
4 GGRM LAW FIRM  
5 2270 South Maryland Parkway, #100  
6 Las Vegas, Nevada 89109  
7 Phone: 702.384.1616 ~ Fax: 702.384.2990  
8 Email: landerson@ggrmlawfirm.com  
9 Attorneys for Petitioner

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 WILLIAM FERGUSON, )

10 Petitioner, )

11 vs. )

12 LAS VEGAS METROPOLITAN POLICE )  
13 DEPARTMENT, CCMSI and THE )  
14 DEPARTMENT OF ADMINISTRATION, )  
15 HEARINGS DIVISION, )

16 Respondents. )

CASE NO.: A-21-830966-J  
DEPT. NO.: XXVIII

17 NOTICE OF ENTRY OF ORDER

18 TO: All parties of interest.

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was  
20 entered in the above-entitled matter on the 6<sup>th</sup> day of December, 2021, a copy of which is  
21 attached.

22 DATED this 16<sup>th</sup> day of December, 2021.

23 GGRM LAW FIRM

24 By: *[Signature]*

25 LISA M. ANDERSON, ESQ.

26 Nevada Bar No. 4907

27 2770 South Maryland Parkway, #100

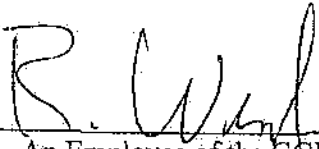
28 Las Vegas, Nevada 89109

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of GGRM LAW FIRM, and that on the 17<sup>th</sup> day of December, 2021, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and depositing a true and correct copy in a sealed envelope, postage fully prepaid, addressed as follows:

Daniel L. Schwartz, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH  
2300 West Sahara Avenue  
Suite 900 Box 28  
Las Vegas, Nevada 89102

  
An Employee of the GGRM LAW FIRM

*Heather S. Smith*  
CLERK OF THE COURT

1 **ORDG**

2 LISA M. ANDERSON, ESQ.

3 Nevada Bar No. 004907

4 GGRM LAW FIRM

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7 Las Vegas, Nevada 89109

8 Phone: (702) 384-1616

9 Facsimile: (702) 384-2990

10 Email: landerson@ggrmlawfirm.com

11 *Attorneys for Petitioner*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 WILLIAM FERGUSON, )

15 Petitioner )

16 vs. )

17 CASE NO. : A-21-830966-J

18 DEPT. NO. : XXVIII

19 LAS VEGAS METROPOLLITAN POLICE )

20 DEPARTMENT, CCMSI, and THE )

21 DEPARTMENT OF ADMINISTRATION, )

22 HEARINGS DIVISION, )

23 Respondents. )

24 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

25 This matter came before this Court on the Petition for Judicial Review filed by the  
26 Petitioner, WILLIAM FERGUSON. Petitioner was represented by LISA M. ANDERSON,  
27 ESQ. of the GGRM LAW FIRM. Respondents, LAS VEGAS METROPOLITAN POLICE  
28 DEPARTMENT and CCMSI, were represented by DANIAL L. SCHWARTZ, ESQ. of the law  
firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

After reviewing the record and considering the briefs, this matter is decided as follows:

///



IN RE: JEFFREY L. GORDON

1 This matter came before this Court on November 18, 2021 for hearing on the March 11,  
2 2021 Petition for Judicial Review. The Court has reviewed the August 6, 2021 Petitioner's  
3 Opening Brief, the September 8, 2021 Respondent's Answering Brief, and the October 8, 2021  
4 Petitioner's Reply Brief, and the entirety of the record, including the June 25, 2021 Transmittal  
5 of Record on Appeal, which contains the Record on Appeal, and hereby FINDS that pursuant to  
6 NRS 233B.135, the Appeals Officer's February 18, 2021 Decision and Order is arbitrary and  
7 capricious and not supported by substantial evidence in the Record on Appeal.  
8

9 Judicial review of a final decision of an agency is governed by NRS 233B.155. An  
10 agency's factual determinations may be disturbed on appeal if they are arbitrary and capricious  
11 due to the lack of substantial evidence. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547,  
12 2 P.3d 850, 854 (2000). On the other hand, an agency's legal determination is reviewed de novo.  
13 SIIS v. Khweiss, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). Here, both factual and legal  
14 determinations are at issue as to whether Petitioner satisfied the legal requirements of NRS  
15 617.457 to qualify for the conclusive presumption to claim compensation for his alleged  
16 occupationally related heart disease. The Court will address each issue in turn.  
17

18 First, the Appeals Officer made an error of law when applying the burden of proof of  
19 NRS 617.457. The opposing party, not the claimant, has the burden to meet the requirements  
20 under NRS 617.457(11) to disqualify a claimant from received compensatory benefits. See  
21 Manwill v. Clark County, 123 Nev. 238, 243-44, 162 P.3d 876, 880 (2007). Applying here,  
22 Respondents had the burden to prove that Petitioner did not take corrective action to lower his  
23 weight, triglycerides, and cholesterol. As such, the Appeals Officer erred in shifting this burden  
24 to Petitioner.  
25  
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1           The Manwill Court held that a claimant has no burden to disprove the failure to correct  
2 predisposing conditions did not lead to a claimant's heart disease under NRS 617.457(11), or  
3 that no predisposing conditions exist, to receive the benefits under NRS 617.457. *See*, 123 Nev.  
4 238, 242-44 (2007). The predisposing conditions section under NRS 617.457 has existed since  
5 1973. NRS 617.457(11); *see*, 1973 Nev. Stat. ch. 504, § 1, at 769. In 1989, the Nevada legislature  
6 set the current conclusive presumption found in NRS 617.457(1). 1989 Nev. Stat. ch. 480, § 2,  
7 at 1021. Since that time, the Nevada legislature has only expanded the ability for claims under  
8 NRS 617.457 to be accepted. *Compare* NRS 617.457(1989) with NRS 617.457(2017); *see also*,  
9 Manwill, 123 Nev. 238; Gallagher v. City of Las Vegas, 114 Nev. 595, 601, 959 P.2d 519, 522  
10 (1998).  
11

12  
13           The Manwill Court knew the existence of, and failure to correct, predisposing conditions  
14 would exclude a claimant from benefits under NRS 617.457. Manwill, 123 Nev. 238, 242-43.  
15 However, the Court found a claimant has absolutely no burden to show they do not have any  
16 predisposition conditions and/or had the ability to correct them but failed to do so. *See, Id.* at  
17 244. If such a burden and requirement existed, then the Nevada Supreme Court would have  
18 listed it as such, but instead merely requires a claimant to "show only two things: heart disease  
19 and five years' qualifying employment before disablement." *Id.* at 242-44. The claimant in  
20 Manwill did not have to show the correction of a predisposing condition within their ability to  
21 correct nor did he have to show no predisposing conditions existed. *Id.*  
22  
23

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INJURY ATTORNEYS

1 As such, it is the opposing party's burden to meet the requirements under NRS  
2 617.457(11) to exclude a claimant from receiving the benefits under NRS 617.457, which states:

3 Failure to correct predisposing conditions which lead to heart  
4 disease when so ordered in writing by the examining physician  
5 subsequent to a physical examination required pursuant to  
6 subsection 4 or 5 excludes the employee from the benefits of this  
section if the correction is within the ability of the employee.

7 Second, the Appeals Officer's factual determinations were arbitrary and capricious as  
8 substantial evidence that Petitioner made reasonable attempts to correct his predisposing  
9 conditions was belied by the record. Despite Respondents' contentions, Las Vegas v. Burns is  
10 persuasive and should be applied here. No. 76099-COA 2019 WL 6003344 (Nev. Ct. App. Nov.  
11 13, 2019) (finding that because there was no evidence in the record, the appeals officer's  
12 decision could not have been supported by substantial evidence). Petitioner's range fluctuation  
13 in his blood work is clear and convincing evidence that Petitioner engaged in diet and exercise  
14 to correct his predisposing conditions.  
15

16 Petitioner contends that his annual physical examinations show a consistent effort,  
17 however unsuccessful it may have proven, to control predisposing conditions. Petitioner's  
18 annual physicals leading up to this claim simply do not support any assertion from Respondents  
19 that Petitioner failed to correct predisposing conditions that were within his ability to correct.  
20

21		2013	2014	2015	2016	2017	2018	2019
22								
23	Cholesterol	198	180	186	201	180	180	183
24	Triglycerides	129	202	108	145	97	137	113
25	LDL	117	96	117	120	109	103	112
26	HDL	55	44	47	52	52	49	48
27								
28	Weight	199	205	207	208	208	215	209



With the support of the annual physicals from 2014 to 2019, Petitioner maintains that, to the best of his ability, he engaged in diet and exercise to correct the predisposing conditions when corrective actions were provided. Petitioner's 2013 annual physical revealed normal levels. (ROA pages 507-531) Petitioner's 2014 annual physical revealed elevated triglycerides. (ROA pages 532-552) Petitioner took the necessary steps to correct his triglyceride predisposing condition as evidenced by his normal 2015 annual physical. (ROA pages 553-573) Petitioner's 2016 annual physical showed slightly elevated cholesterol. (ROA pages 574-594) Petitioner again took the necessary steps to correct this predisposing condition as confirmed by his normal 2017 annual physical. (ROA pages 595-616) The subsequent annual physicals in 2018 and 2019 were also normal. (ROA pages 338-383) While Respondent identified Petitioner's weight in the 2017 (208) and 2019 (209) physicals, it should be noted that his weight was nearly identical in years 2013 (199), 2014 (205), 2015 (207) and 2016 (208) and Petitioner was not instructed to lose weight in those years, thus revealing significant inconsistencies in what is Petitioner's ideal weight.

This evidence was substantial enough for the Appeals Officer to conclude that Petitioner took reasonable corrective action. Accordingly, the Appeals Officer incorrectly concluded that Petitioner failed to provide substantial evidence and did not take corrective action towards his predisposing conditions.

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1 For these reasons, this Court FINDS that the Appeals Officer's February 18, 2021  
2 Decision and Order is not supported by substantial evidence and GRANTS Petitioner's,  
3 William Ferguson, Petition for Judicial Review reversing the Appeals Officer's Decision.

4 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
5 The Court FURTHER FINDS that this case is closed.

Dated this 16th day of December, 2021

*Ronald J. Israel*

RONALD J. ISRAEL  
DISTRICT COURT JUDGE  
AF0289 ADA0 EF43 JT  
Ronald J. Israel  
District Court Judge

10 Submitted by:

11 GGRM LAW FIRM

12 *[Signature]*  
13 LISA M. ANDERSON, ESQ.

14 Nevada Bar No. 004907  
15 2770 South Maryland Parkway  
16 Suite 100  
17 Las Vegas, Nevada 89109  
Attorneys for Petitioner

18 Approved as to form and content:

19 LEWIS-BRISBOIS BISGAARD & SMITH

20 *[Signature]*  
21 DANIEL L. SCHWARTZ, ESQ.

22 Nevada Bar No. 005125  
23 2300 West Sahara Avenue  
24 Suite 900, Box 28  
25 Las Vegas, Nevada 89102  
Attorneys for Respondents

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 William Ferguson, Petitioner(s)

CASE NO: A-21-830966-J

7 vs.

DEPT. NO. Department 28

8 Las Vegas Metropolitan Police  
9 Department, 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 Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/16/2021

16 Daniel Schwartz

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17 Joel Reeves

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18 robert windrem

rwindrem@ggrmlawfirm.com

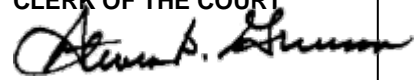
19 Lisa Anderson, Esq.

landerson@ggrmlawfirm.com

20 Stephanie Jensen

stephanie.jensen@lewisbrisbois.com

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**ASTA**  
DANIEL L. SCHWARTZ, ESQ.  
Nevada Bar No. 005125  
L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
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Attorneys for Appellants  
*Las Vegas Metropolitan Police Department and  
Cannon Cochran Management Services, Inc. (CCMSI)*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT and CCMSI,

Appellants,

v.

WILLIAM FERGUSON,

Respondent.

CASE NO: A-21-830966-J

DEPT. NO.: XXVIII

**CASE APPEAL STATEMENT**

1. Name of appellants filing this case appeal statement:

Las Vegas Metropolitan Police Department and Cannon Cochran Management  
Services, Inc.

2. Identify the judge issuing the decision, judgment, or order appealed from:

Hon. Ronald J. Israel, Eighth Judicial District Court Judge

...

...

...

1           3.       Identify each appellant and the name and address of counsel for each appellant:

2                   Daniel L. Schwartz, Esq.  
3                   L. Michael Friend, Esq.  
4                   LEWIS BRISBOIS BISGAARD & SMITH LLP  
5                   2300 West Sahara Avenue, Suite 900, Box 28  
6                   Las Vegas, NV 89102  
7                   Attorneys for Appellants  
8                   LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
9                   and CANNON COCHRAN MANAGEMENT SERVICES, INC.

10           4.       Identify each respondent and the name and address of appellate counsel, if known,  
11           for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much  
12           and provide the name and address of that respondent's trial counsel): :

13                   Lisa Anderson, Esq.  
14                   GGRM LAW FIRM  
15                   2770 S. Maryland Pkwy., Ste. 100  
16                   Las Vegas, NV 89109  
17                   Attorneys for Respondent  
18                   William Ferguson

19           5.       Indicate whether any attorney identified above in response to question 3 or 4 is not  
20           licensed to practice law in Nevada and, if so, whether the district court granted that attorney  
21           permission to appear under SCR 42 (attach a copy of any district court order granting such  
22           permission):

23                   All attorneys identified above are licensed to practice law in Nevada.

24           6.       Indicate whether appellant was represented by appointed or retained counsel in the  
25           district court:

26                   Appellants retained counsel in the District Court.

27           7.       Indicate whether appellant is represented by appointed or retained counsel on  
28           appeal:

                  Appellants are represented by retained counsel on appeal.

...

...

28

1           8.       Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
2 date of entry of the district court order granting such leave:

3                   Appellants were not granted leave to proceed in forma pauperis.

4           9.       Indicate the date the proceedings commenced in the district court (e.g., date  
5 complaint, indictment, information, or petition was filed):

6                   The Petition for Judicial Review of the Appeals Officer's Decision of February 18,  
7 2021, was filed on March 11, 2021.

8           10.      Provide a brief description of the nature of the action and result in the district court,  
9 including the type of judgment or order being appealed and the relief granted by the district court:

10                   This is a workers' compensation case involving a police officer's claim for  
11 heart disease under NRS 617.457 (the Heart & Lung Bill). Claimant met the  
12 requirements under the statute for the conclusive presumption that his heart disease  
13 arose out of and in the course and scope of his employment (i.e., he was employed  
14 as an officer for over 2 years and he was diagnosed with diseases of the heart  
15 causing disablement).

16                   An officer can, however, be excluded from the conclusive presumption  
17 under NRS 617.457(11). That section requires claimants to participate in yearly  
18 examinations which are provided by the employer. If at that yearly examination, the  
19 examining physician identifies a condition which is predisposing a claimant to  
20 heart disease (such as smoking, being overweight, or having elevated triglycerides)  
21 and orders the claimant to correct the same in writing, it is incumbent upon the  
22 claimant to at least attempt to correct the same if it is within his ability to correct or  
23 claimants can be excluded from the conclusive presumption. If the claimant does  
24 not correct the predisposing condition or at least make a good faith effort to attempt

1 to correct the condition, the claimant is not entitled to any benefits under NRS  
2 617.457.

3 In this case, Appellant Administrator denied Claimant's heart disease claim  
4 because he failed to correct or make a good faith effort to correct predisposing  
5 conditions that were within his ability to correct (i.e., being overweight and high  
6 cholesterol). Claimant appealed that determination.  
7

8 On February 18, 2021, after receiving written closing briefs, the Appeals  
9 Officer affirmed claim denial for the 2020 claim. The Appeals Officer found  
10 Claimant did establish a disability and thus presumptively made out a claim.  
11 However, Claimant failed to attempt to correct conditions which were predisposing  
12 him to heart disease. Therefore, claim denial was proper.  
13

14 Claimant filed a Petition for Judicial Review of the Appeals Officer's  
15 Decision and Order, alleging the Appeals Officer improperly concluded Claimant  
16 was excluded from the conclusive presumption related to his 2020 claim based on  
17 his failure to correct predisposing conditions within his ability to correct. Following  
18 briefing on the subject, the District Court issued an Order Granting Claimant's  
19 Petition for Judicial Review on December 16, 2021. The District Court ruled that  
20 the Appeals Officer's was arbitrary and capricious and his conclusions lacked  
21 substantial evidence.  
22

23 Appellants seek review of this decision. Appellants believe the District  
24 Court's reversal was based on reweighing the evidence.  
25

26 . . .

27 . . .

28 . . .



1           11.     Indicate whether the case has previously been the subject of an appeal to or original  
2 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of  
3 the prior proceeding:

4                   No.

5           12.     Indicate whether this appeal involves child custody or visitation:

6                   No.

7           13.     If this is a civil case, indicate whether this appeal involves the possibility of  
8 settlement  
9

10                  Yes.

11           DATED this 3<sup>rd</sup> day of January, 2022.

12                                   Respectfully submitted,

13                                   LEWIS BRISBOIS BISGAARD & SMITH LLP

14                                   By: /s/ L. Michael Friend

15                                   DANIEL L. SCHWARTZ, ESQ.

16                                   Nevada Bar No. 005125

17                                   L. MICHAEL FRIEND, ESQ.

18                                   Nevada Bar No. 011131

19                                   2300 West Sahara Avenue, Suite 900, Box 28

20                                   Las Vegas, NV 89102

21                                   Phone: (702) 893-3383

22                                   Fax: (702) 366-9563

23                                   Attorneys for Appellants

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**CERTIFICATE OF MAILING**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 3<sup>rd</sup> day of January, 2022, service of the **CASE APPEAL STATEMENT** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Lisa Anderson, Esq.  
GGRM LAW FIRM  
2770 S. Maryland Pkwy., Ste. 100  
Las Vegas, NV 89109

\_\_\_\_\_  
/s/ Stephanie Jensen  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

**CASE SUMMARY****CASE NO. A-21-830966-J**

**William Ferguson, Petitioner(s)**  
**vs.**  
**Las Vegas Metropolitan Police Department, Respondent**  
**(s)**

§  
 §  
 §  
 §  
 §

Location: **Department 28**  
 Judicial Officer: **Israel, Ronald J.**  
 Filed on: **03/11/2021**  
 Case Number History:  
 Cross-Reference Case Number: **A830966**

**CASE INFORMATION****Statistical Closures**

11/18/2021 Summary Judgment

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

Case Status: **11/18/2021 Closed**

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

Case Number A-21-830966-J  
 Court Department 28  
 Date Assigned 06/01/2021  
 Judicial Officer Israel, Ronald J.

**PARTY INFORMATION**

**Petitioner** **Ferguson, William**

*Lead Attorneys*

**Anderson, Lisa M**  
*Retained*  
 7023841616(W)

**Respondent** **CCMSI**

**Schwartz, Daniel L**  
*Retained*  
 702-893-3383(W)

**Las Vegas Metropolitan Police Department**

**Schwartz, Daniel L**  
*Retained*  
 702-893-3383(W)

**The Department of Administration Hearings Division**

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

03/11/2021



Petition for Judicial Review  
 Filed by: Petitioner Ferguson, William  
*[1] Petition for Judicial Review*

03/16/2021



Notice of Intent to Participate  
 Filed By: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI  
*[2] Notice of Intent to Participate*

03/16/2021



Initial Appearance Fee Disclosure  
 Filed By: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI  
*[3] Initial Appearance Fee Disclosure*

05/28/2021



Peremptory Challenge  
 Filed by: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI  
*[4] Peremptory Challenge of Judge*

**CASE SUMMARY**  
**CASE NO. A-21-830966-J**

06/01/2021	 Notice of Department Reassignment <i>[5] Notice of Department Reassignment</i>
06/25/2021	 Transmittal of Record on Appeal Party: Respondent The Department of Administration Hearings Division <i>[6] Transmittal of Record on Appealr</i>
06/25/2021	 Affidavit Filed By: Respondent The Department of Administration Hearings Division <i>[7] Affidavit</i>
06/25/2021	 Certification of Transmittal <i>[8] Certification of Transmittal</i>
08/06/2021	 Brief Filed By: Petitioner Ferguson, William <i>[9] Petitioner's Opening Brief</i>
09/08/2021	 Brief Filed By: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI <i>[10] Respondents' Answering Brief</i>
10/08/2021	 Brief Filed By: Petitioner Ferguson, William <i>[11] Petitioner's Reply Brief</i>
10/15/2021	 Request Filed by: Petitioner Ferguson, William <i>[12] Request for Hearing on Petitioner's Petition for Judicial Review</i>
10/19/2021	 Order <i>[13] Order Scheduling In Chambers Decision On Petition For Judicial Review</i>
12/16/2021	 Order Granting Motion Filed By: Petitioner Ferguson, William <i>[14] Order Granting Petition For Judicial Review</i>
12/17/2021	 Notice of Entry of Order Filed By: Petitioner Ferguson, William <i>[15] Notice of Entry of Order</i>
01/03/2022	 Notice of Appeal Filed By: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI <i>[16] Notice of Appeal</i>
01/03/2022	 Case Appeal Statement Filed By: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI <i>[17] Case Appeal Statement</i>
01/03/2022	 Motion Filed By: Respondent Las Vegas Metropolitan Police Department; Respondent CCMSI <i>[18] APPELLANTS MOTION FOR STAY PENDING APPEAL TO THE NEVADA SUPREME</i>

# CASE SUMMARY

## CASE NO. A-21-830966-J

COURT

**DISPOSITIONS**

12/16/2021

**Order Granting Judicial Review** (Judicial Officer: Israel, Ronald J.)

Debtors: Las Vegas Metropolitan Police Department (Respondent), CCMSI (Respondent), The Department of Administration Hearings Division (Respondent)

Creditors: William Ferguson (Petitioner)

Judgment: 12/16/2021, Docketed: 12/17/2021

**HEARINGS**

11/18/2021

**Petition for Judicial Review (3:00 AM)** (Judicial Officer: Israel, Ronald J.)

Decision Made; Minute Order - No Hearing Held

Journal Entry Details:

*Petitioner filed this Petition for Judicial Review on August 6, 2021. Respondents filed their Answer on September 8, 2021, in which Petitioner replied on October 8, 2021. Petitioner seeks judicial review of whether there was substantial evidence for Respondents to deny liability of his claims of occupationally related heart disease. Judicial review of a final decision of an agency is governed by NRS 233B.135. An agency's factual determinations may be disturbed on appeal if they are arbitrary and capricious due to the lack of substantial evidence. *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 547, 2 P.3d 850, 854 (2000). On the other hand, an agency's legal determination is reviewed de novo. *SIIS v. Khweiss*, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). Here, both factual and legal determinations are at issue as to whether Petitioner satisfied the legal requirements of NRS 617.457 to qualify for the conclusive presumption to claim compensation for his alleged occupationally related heart disease. The Court will address each issue in turn. First, the Appeals Officer made an error of law when applying the burden of proof of NRS 617.457. The opposing party, not the claimant, has the burden to meet the requirements under NRS 617.457(11) to disqualify a claimant from receiving compensatory benefits. See *Manwill v. Clark County*, 123 Nev. 238, 243 44, 162 P.3d 876, 880 (2007). Applying here, Respondents had the burden to prove that Petitioner did not take corrective action to lower his weight, triglycerides, and cholesterol. As such, the Appeals officer erred in shifting this burden to Petitioner. Second, the Appeals Officer's factual determinations were arbitrary and capricious as substantial evidence that Petitioner made reasonable attempts to correct his predisposing conditions was belied by the record. Despite Respondents contentions, *Las Vegas v. Burns* is persuasive and should be applied here. No. 76099-COA 2019 WL 6003344 (Nev. Ct. App. Nov. 13, 2019) (finding that because there was no evidence in the record, the appeals officer's decision could not have been supported by substantial evidence). Petitioner's range fluctuation in his blood work is clear and convincing evidence that Petitioner engaged in diet and exercise to correct his predisposing conditions. This evidence was substantial enough for the Appeals Officer to conclude that Petitioner took reasonable corrective action. Accordingly, the Appeals Officer incorrectly concluded that Petitioner failed to provide substantial evidence and did not take corrective action towards his predisposing conditions. For these reasons, the Appeals Officer's Decision and Order is REVERSED. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Petitioner's counsel is to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21. CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;*

DATE

FINANCIAL INFORMATION

**Respondent CCMSI**

Total Charges

474.00

Total Payments and Credits

474.00

**Balance Due as of 1/4/2022****0.00****Respondent Las Vegas Metropolitan Police Department**

Total Charges

253.00

Total Payments and Credits

253.00

**Balance Due as of 1/4/2022****0.00**

## DISTRICT COURT CIVIL COVER SHEET

County, Nevada

CASE NO: A-21-830966-J  
Department 4

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

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

WILLIAM FERGUSON

Defendant(s) (name/address/phone):

Las Vegas Metropolitan Police Department, CCMSI  
and the Department of Administration  
Hearings Division

Attorney (name/address/phone):

Lisa M. Anderson, Esq.

Attorney (name/address/phone):

Daniel L. Schwartz, Esq.

Greenman Goldberg Ray &amp; Martinez

Lewis Brisbois Bisgaard &amp; Smith

2770 South Maryland Parkway, #100

2300 West Sahara Avenue, #900, Box 28

Las Vegas, Nevada 89109 702-384-1616

Las Vegas, Nevada 89102 702-893-3383

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

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

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

March 11, 2021

Date

Signature of initiating party or representative

See other side for family-related case filings.

*Heather S. Smith*  
CLERK OF THE COURT

1 **ORDG**

2 LISA M. ANDERSON, ESQ.

3 Nevada Bar No. 004907

4 GGRM LAW FIRM

5 2770 South Maryland Parkway

6 Suite 100

7 Las Vegas, Nevada 89109

8 Phone: (702) 384-1616

9 Facsimile: (702) 384-2990

10 Email: landerson@ggrmlawfirm.com

11 *Attorneys for Petitioner*

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 WILLIAM FERGUSON,

15 Petitioner

16 vs.

17 LAS VEGAS METROPOLLITAN POLICE )  
18 DEPARTMENT, CCMSI, and THE )  
19 DEPARTMENT OF ADMINISTRATION, )  
20 HEARINGS DIVISION, )

21 Respondents.

22 CASE NO. : A-21-830966-J  
23 DEPT. NO. : XXVIII

24 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

25 This matter came before this Court on the Petition for Judicial Review filed by the  
26 Petitioner, WILLIAM FERGUSON. Petitioner was represented by LISA M. ANDERSON,  
27 ESQ. of the GGRM LAW FIRM. Respondents, LAS VEGAS METROPOLITAN POLICE  
28 DEPARTMENT and CCMSI, were represented by DANIAL L. SCHWARTZ. ESQ. of the law  
firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.

After reviewing the record and considering the briefs, this matter is decided as follows:

///



1 This matter came before this Court on November 18, 2021 for hearing on the March 11,  
2 2021 Petition for Judicial Review. The Court has reviewed the August 6, 2021 Petitioner's  
3 Opening Brief, the September 8, 2021 Respondent's Answering Brief, and the October 8, 2021  
4 Petitioner's Reply Brief, and the entirety of the record, including the June 25, 2021 Transmittal  
5 of Record on Appeal, which contains the Record on Appeal, and hereby FINDS that pursuant to  
6 NRS 233B.135, the Appeals Officer's February 18, 2021 Decision and Order is arbitrary and  
7 capricious and not supported by substantial evidence in the Record on Appeal.

8  
9 Judicial review of a final decision of an agency is governed by NRS 233B.155. An  
10 agency's factual determinations may be disturbed on appeal if they are arbitrary and capricious  
11 due to the lack of substantial evidence. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547,  
12 2 P.3d 850, 854 (2000). On the other hand, an agency's legal determination is reviewed de novo.  
13 SIIS v. Khweiss, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). Here, both factual and legal  
14 determinations are at issue as to whether Petitioner satisfied the legal requirements of NRS  
15 617.457 to qualify for the conclusive presumption to claim compensation for his alleged  
16 occupationally related heart disease. The Court will address each issue in turn.

17  
18  
19 First, the Appeals Officer made an error of law when applying the burden of proof of  
20 NRS 617.457. The opposing party, not the claimant, has the burden to meet the requirements  
21 under NRS 617.457(11) to disqualify a claimant from received compensatory benefits. See  
22 Manwill v. Clark County, 123 Nev. 238, 243-44, 162 P.3d 876, 880 (2007). Applying here,  
23 Respondents had the burden to prove that Petitioner did not take corrective action to lower his  
24 weight, triglycerides, and cholesterol. As such, the Appeals Officer erred in shifting this burden  
25 to Petitioner.

26  
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INJURY ATTORNEYS

1 The Manwill Court held that a claimant has no burden to disprove the failure to correct  
2 predisposing conditions did not lead to a claimant's heart disease under NRS 617.457(11), or  
3 that no predisposing conditions exist, to receive the benefits under NRS 617.457. *See*, 123 Nev.  
4 238, 242-44 (2007). The predisposing conditions section under NRS 617.457 has existed since  
5 1973. NRS 617.457(11); *see*, 1973 Nev. Stat. ch. 504, § 1, at 769. In 1989, the Nevada legislature  
6 set the current conclusive presumption found in NRS 617.457(1). 1989 Nev. Stat. ch. 480, § 2,  
7 at 1021. Since that time, the Nevada legislature has only expanded the ability for claims under  
8 NRS 617.457 to be accepted. *Compare* NRS 617.457(1989) with NRS 617.457(2017); *see also*,  
9 Manwill, 123 Nev. 238; Gallagher v. City of Las Vegas, 114 Nev. 595, 601, 959 P.2d 519, 522  
10 (1998).  
11

12  
13 The Manwill Court knew the existence of, and failure to correct, predisposing conditions  
14 would exclude a claimant from benefits under NRS 617.457. Manwill, 123 Nev. 238, 242-43.  
15 However, the Court found a claimant has absolutely no burden to show they do not have any  
16 predisposition conditions and/or had the ability to correct them but failed to do so. *See, Id.* at  
17 244. If such a burden and requirement existed, then the Nevada Supreme Court would have  
18 listed it as such, but instead merely requires a claimant to "show only two things: heart disease  
19 and five years' qualifying employment before disablement." *Id.* at 242-44. The claimant in  
20 Manwill did not have to show the correction of a predisposing condition within their ability to  
21 correct nor did he have to show no predisposing conditions existed. *Id.*  
22

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INJURY ATTORNEYS

1 As such, it is the opposing party's burden to meet the requirements under NRS  
2 617.457(11) to exclude a claimant from receiving the benefits under NRS 617.457, which states:

3 Failure to correct predisposing conditions which lead to heart  
4 disease when so ordered in writing by the examining physician  
5 subsequent to a physical examination required pursuant to  
6 subsection 4 or 5 excludes the employee from the benefits of this  
section if the correction is within the ability of the employee.

7 Second, the Appeals Officer's factual determinations were arbitrary and capricious as  
8 substantial evidence that Petitioner made reasonable attempts to correct his predisposing  
9 conditions was belied by the record. Despite Respondents' contentions, Las Vegas v. Burns is  
10 persuasive and should be applied here. No. 76099-COA 2019 WL 6003344 (Nev. Ct. App. Nov.  
11 13, 2019) (finding that because there was no evidence in the record, the appeals officer's  
12 decision could not have been supported by substantial evidence). Petitioner's range fluctuation  
13 in his blood work is clear and convincing evidence that Petitioner engaged in diet and exercise  
14 to correct his predisposing conditions.  
15

16 Petitioner contends that his annual physical examinations show a consistent effort,  
17 however unsuccessful it may have proven, to control predisposing conditions. Petitioner's  
18 annual physicals leading up to this claim simply do not support any assertion from Respondents  
19 that Petitioner failed to correct predisposing conditions that were within his ability to correct.  
20

21		2013	2014	2015	2016	2017	2018	2019
22								
23	Cholesterol	198	180	186	201	180	180	183
24	Triglycerides	129	202	108	145	97	137	113
25	LDL	117	96	117	120	109	103	112
26	HDL	55	44	47	52	52	49	48
27								
28	Weight	199	205	207	208	208	215	209



LAW OFFICES  
INJURY ATTORNEYS

1 With the support of the annual physicals from 2014 to 2019, Petitioner maintains that, to  
2 the best of his ability, he engaged in diet and exercise to correct the predisposing conditions  
3 when corrective actions were provided. Petitioner's 2013 annual physical revealed normal  
4 levels. (ROA pages 507-531) Petitioner's 2014 annual physical revealed elevated triglycerides.  
5 (ROA pages 532-552) Petitioner took the necessary steps to correct his triglyceride predisposing  
6 condition as evidenced by his normal 2015 annual physical. (ROA pages 553-573) Petitioner's  
7 2016 annual physical showed slightly elevated cholesterol. (ROA pages 574-594) Petitioner  
8 again took the necessary steps to correct this predisposing condition as confirmed by his normal  
9 2017 annual physical. (ROA pages 595-616) The subsequent annual physicals in 2018 and  
10 2019 were also normal. (ROA pages 338-383) While Respondent identified Petitioner's weight  
11 in the 2017 (208) and 2019 (209) physicals, it should be noted that his weight was nearly  
12 identical in years 2013 (199), 2014 (205), 2015 (207) and 2016 (208) and Petitioner was not  
13 instructed to lose weight in those years, thus revealing significant inconsistencies in what is  
14 Petitioner's ideal weight.  
15  
16  
17

18 This evidence was substantial enough for the Appeals Officer to conclude that Petitioner  
19 took reasonable corrective action. Accordingly, the Appeals Officer incorrectly concluded that  
20 Petitioner failed to provide substantial evidence and did not take corrective action towards his  
21 predisposing conditions.  
22

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28 ///

1 For these reasons, this Court FINDS that the Appeals Officer's February 18, 2021  
2 Decision and Order is not supported by substantial evidence and GRANTS Petitioner's,  
3 William Ferguson, Petition for Judicial Review reversing the Appeals Officer's Decision.

4 Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.  
5 The Court FURTHER FINDS that this case is closed.

Dated this 16th day of December, 2021



RONALD J. ISREAL

DISTRICT COURT

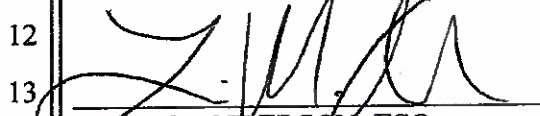
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JT

Ronald J. Israel  
District Court Judge

10 Submitted by:

11 GGRM LAW FIRM,

12 

13 LISA M. ANDERSON, ESQ.

14 Nevada Bar No. 004907

15 2770 South Maryland Parkway

16 Suite 100

17 Las Vegas, Nevada 89109

Attorneys for Petitioner

18 Approved as to form and content:

19 LEWIS BRISBOIS BISGAARD & SMITH

20 

21 DANIEL L. SCHWARTZ, ESQ.

22 Nevada Bar No. 005125

23 2300 West Sahara Avenue

24 Suite 900, Box 28

25 Las Vegas, Nevada 89102

Attorneys for Respondents

26

27

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

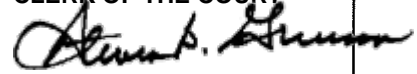
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6 William Ferguson, Petitioner(s) | CASE NO: A-21-830966-J  
7 vs. | DEPT. NO. Department 28  
8 Las Vegas Metropolitan Police  
9 Department, Respondent(s)

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 Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/16/2021

15 Daniel Schwartz daniel.schwartz@lewisbrisbois.com  
16 Joel Reeves joel.reeves@lewisbrisbois.com  
17 robert windrem rwindrem@ggrmlawfirm.com  
18 Lisa Anderson, Esq. landerson@ggrmlawfirm.com  
19 Stephanie Jensen stephanie.jensen@lewisbrisbois.com  
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1 NEOJ  
2 LISA M. ANDERSON, ESQ.  
3 Nevada Bar No. 4907  
4 GGRM LAW FIRM  
5 2270 South Maryland Parkway, #100  
6 Las Vegas, Nevada 89109  
7 Phone: 702. 384.1616 ~ Fax: 702.384.2990  
8 Email: landerson@ggrmlawfirm.com  
9 *Attorneys for Petitioner*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

10 WILLIAM FERGUSON, )  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of GGRM LAW FIRM, and that on the 17<sup>th</sup> day of December, 2021, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and depositing a true and correct copy in a sealed envelope, postage fully prepaid, addressed as follows:

Daniel L. Schwartz, Esq.  
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An Employee of the GGRM LAW FIRM



INJURY ATTORNEYS

*Heather S. Lewis*  
CLERK OF THE COURT

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11 *Attorneys for Petitioner*

DISTRICT COURT

CLARK COUNTY, NEVADA

10 WILLIAM FERGUSON, )  
11 )  
12 Petitioner )

13 vs. )

CASE NO. : A-21-830966-J  
DEPT. NO. : XXVIII

14 LAS VEGAS METROPOLLITAN POLICE )  
15 DEPARTMENT, CCMSI, and THE )  
16 DEPARTMENT OF ADMINISTRATION, )  
17 HEARINGS DIVISION, )

18 Respondents. )

**ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

20 This matter came before this Court on the Petition for Judicial Review filed by the  
21 Petitioner, WILLIAM FERGUSON. Petitioner was represented by LISA M. ANDERSON,  
22 ESQ. of the GGRM LAW FIRM. Respondents, LAS VEGAS METROPOLITAN POLICE  
23 DEPARTMENT and CCMSI, were represented by DANIAL L. SCHWARTZ. ESQ. of the law  
24 firm LEWIS BRISBOIS BISGAARD & SMITH. No other parties were present or represented.  
25 After reviewing the record and considering the briefs, this matter is decided as follows:  
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1 This matter came before this Court on November 18, 2021 for hearing on the March 11,  
2 2021 Petition for Judicial Review. The Court has reviewed the August 6, 2021 Petitioner's  
3 Opening Brief, the September 8, 2021 Respondent's Answering Brief, and the October 8, 2021  
4 Petitioner's Reply Brief, and the entirety of the record, including the June 25, 2021 Transmittal  
5 of Record on Appeal, which contains the Record on Appeal, and hereby FINDS that pursuant to  
6 NRS 233B.135, the Appeals Officer's February 18, 2021 Decision and Order is arbitrary and  
7 capricious and not supported by substantial evidence in the Record on Appeal.

8  
9 Judicial review of a final decision of an agency is governed by NRS 233B.155. An  
10 agency's factual determinations may be disturbed on appeal if they are arbitrary and capricious  
11 due to the lack of substantial evidence. Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547,  
12 2 P.3d 850, 854 (2000). On the other hand, an agency's legal determination is reviewed de novo.  
13 SIIS v. Khweiss, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). Here, both factual and legal  
14 determinations are at issue as to whether Petitioner satisfied the legal requirements of NRS  
15 617.457 to qualify for the conclusive presumption to claim compensation for his alleged  
16 occupationally related heart disease. The Court will address each issue in turn.

17  
18 First, the Appeals Officer made an error of law when applying the burden of proof of  
19 NRS 617.457. The opposing party, not the claimant, has the burden to meet the requirements  
20 under NRS 617.457(11) to disqualify a claimant from received compensatory benefits. See  
21 Manwill v. Clark County, 123 Nev. 238, 243-44, 162 P.3d 876, 880 (2007). Applying here,  
22 Respondents had the burden to prove that Petitioner did not take corrective action to lower his  
23 weight, triglycerides, and cholesterol. As such, the Appeals Officer erred in shifting this burden  
24 to Petitioner.

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1       The Manwill Court held that a claimant has no burden to disprove the failure to correct  
2 predisposing conditions did not lead to a claimant's heart disease under NRS 617.457(11), or  
3 that no predisposing conditions exist, to receive the benefits under NRS 617.457. *See*, 123 Nev.  
4 238, 242-44 (2007). The predisposing conditions section under NRS 617.457 has existed since  
5 1973. NRS 617.457(11); *see*, 1973 Nev. Stat. ch. 504, § 1, at 769. In 1989, the Nevada legislature  
6 set the current conclusive presumption found in NRS 617.457(1). 1989 Nev. Stat. ch. 480, § 2,  
7 at 1021. Since that time, the Nevada legislature has only expanded the ability for claims under  
8 NRS 617.457 to be accepted. *Compare* NRS 617.457(1989) with NRS 617.457(2017); *see also*,  
9 Manwill, 123 Nev. 238; Gallagher v. City of Las Vegas, 114 Nev. 595, 601, 959 P.2d 519, 522  
10 (1998).  
11

12  
13       The Manwill Court knew the existence of, and failure to correct, predisposing conditions  
14 would exclude a claimant from benefits under NRS 617.457. Manwill, 123 Nev. 238, 242-43.  
15 However, the Court found a claimant has absolutely no burden to show they do not have any  
16 predisposition conditions and/or had the ability to correct them but failed to do so. *See, Id.* at  
17 244. If such a burden and requirement existed, then the Nevada Supreme Court would have  
18 listed it as such, but instead merely requires a claimant to "show only two things: heart disease  
19 and five years' qualifying employment before disablement." *Id.* at 242-44. The claimant in  
20 Manwill did not have to show the correction of a predisposing condition within their ability to  
21 correct nor did he have to show no predisposing conditions existed. *Id.*  
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INJURY ATTORNEYS



1 As such, it is the opposing party's burden to meet the requirements under NRS  
2 617.457(11) to exclude a claimant from receiving the benefits under NRS 617.457, which states:

3 Failure to correct predisposing conditions which lead to heart  
4 disease when so ordered in writing by the examining physician  
5 subsequent to a physical examination required pursuant to  
6 subsection 4 or 5 excludes the employee from the benefits of this  
section if the correction is within the ability of the employee.

7 Second, the Appeals Officer's factual determinations were arbitrary and capricious as  
8 substantial evidence that Petitioner made reasonable attempts to correct his predisposing  
9 conditions was belied by the record. Despite Respondents' contentions, Las Vegas v. Burns is  
10 persuasive and should be applied here. No. 76099-COA 2019 WL 6003344 (Nev. Ct. App. Nov.  
11 13, 2019) (finding that because there was no evidence in the record, the appeals officer's  
12 decision could not have been supported by substantial evidence). Petitioner's range fluctuation  
13 in his blood work is clear and convincing evidence that Petitioner engaged in diet and exercise  
14 to correct his predisposing conditions.  
15

16  
17 Petitioner contends that his annual physical examinations show a consistent effort,  
18 however unsuccessful it may have proven, to control predisposing conditions. Petitioner's  
19 annual physicals leading up to this claim simply do not support any assertion from Respondents  
20 that Petitioner failed to correct predisposing conditions that were within his ability to correct.

21		2013	2014	2015	2016	2017	2018	2019
22								
23	Cholesterol	198	180	186	201	180	180	183
24	Triglycerides	129	202	108	145	97	137	113
25	LDL	117	96	117	120	109	103	112
26	HDL	55	44	47	52	52	49	48
27	Weight	199	205	207	208	208	215	209
28								



1 With the support of the annual physicals from 2014 to 2019, Petitioner maintains that, to  
2 the best of his ability, he engaged in diet and exercise to correct the predisposing conditions  
3 when corrective actions were provided. Petitioner's 2013 annual physical revealed normal  
4 levels. (ROA pages 507-531) Petitioner's 2014 annual physical revealed elevated triglycerides.  
5 (ROA pages 532-552) Petitioner took the necessary steps to correct his triglyceride predisposing  
6 condition as evidenced by his normal 2015 annual physical. (ROA pages 553-573) Petitioner's  
7 2016 annual physical showed slightly elevated cholesterol. (ROA pages 574-594) Petitioner  
8 again took the necessary steps to correct this predisposing condition as confirmed by his normal  
9 2017 annual physical. (ROA pages 595-616) The subsequent annual physicals in 2018 and  
10 2019 were also normal. (ROA pages 338-383) While Respondent identified Petitioner's weight  
11 in the 2017 (208) and 2019 (209) physicals, it should be noted that his weight was nearly  
12 identical in years 2013 (199), 2014 (205), 2015 (207) and 2016 (208) and Petitioner was not  
13 instructed to lose weight in those years, thus revealing significant inconsistencies in what is  
14 Petitioner's ideal weight.  
15  
16  
17

18 This evidence was substantial enough for the Appeals Officer to conclude that Petitioner  
19 took reasonable corrective action. Accordingly, the Appeals Officer incorrectly concluded that  
20 Petitioner failed to provide substantial evidence and did not take corrective action towards his  
21 predisposing conditions.  
22

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24 ///

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1 For these reasons, this Court FINDS that the Appeals Officer's February 18, 2021  
2 Decision and Order is not supported by substantial evidence and GRANTS Petitioner's,  
3 William Ferguson, Petition for Judicial Review reversing the Appeals Officer's Decision.

4 Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.  
5 The Court FURTHER FINDS that this case is closed.

Dated this 16th day of December, 2021  
*Ronald J. Israel*

~~RONALD J. ISREAL~~  
DISTRICT COURT JUDGE  
AF828C ADA0 EF43 JT  
Ronald J. Israel  
District Court Judge

10 Submitted by:

11 GGRM LAW FIRM

12 *[Signature]*  
13 *[Signature]*

14 LISA M. ANDERSON, ESQ.  
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16 2770 South Maryland Parkway  
17 Suite 100  
18 Las Vegas, Nevada 89109  
19 Attorneys for Petitioner

18 Approved as to form and content:

19  
20 LEWIS-BRISBOIS BISGAARD & SMITH

21 *[Signature]*  
22 DANIEL L. SCHWARTZ, ESQ.

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25 Suite 900, Box 28  
26 Las Vegas, Nevada 89102  
27 Attorneys for Respondents  
28



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5	William Ferguson, Petitioner(s)	CASE NO: A-21-830966-J
6	vs.	DEPT. NO. Department 28
7	Las Vegas Metropolitan Police	
8	Department, Respondent(s)	
9		

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 Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/16/2021

16 Daniel Schwartz	daniel.schwartz@lewisbrisbois.com
17 Joel Reeves	joel.reeves@lewisbrisbois.com
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Worker's Compensation Appeal

# COURT MINUTES

November 18, 2021

A-21-830966-J William Ferguson, Petitioner(s)  
vs.  
Las Vegas Metropolitan Police Department, Respondent(s)

November 18, 2021	3:00 AM	Petition for Judicial Review	Minute Order - No Hearing Held
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**HEARD BY:** Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Christopher Darling

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- Petitioner filed this Petition for Judicial Review on August 6, 2021. Respondents filed their Answer on September 8, 2021, in which Petitioner replied on October 8, 2021. Petitioner seeks judicial review of whether there was substantial evidence for Respondents to deny liability of his claims of occupationally related heart disease.

Judicial review of a final decision of an agency is governed by NRS 233B.135. An agency's factual determinations may be disturbed on appeal if they are arbitrary and capricious due to the lack of substantial evidence. *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 547, 2 P.3d 850, 854 (2000). On the other hand, an agency's legal determination is reviewed de novo. *SIIS v. Khweiss*, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). Here, both factual and legal determinations are at issue as to whether Petitioner satisfied the legal requirements of NRS 617.457 to qualify for the conclusive presumption to claim compensation for his alleged occupationally related heart disease. The Court will address each issue in turn.

First, the Appeals Officer made an error of law when applying the burden of proof of NRS 617.457. The opposing party, not the claimant, has the burden to meet the requirements under NRS

617.457(11) to disqualify a claimant from receiving compensatory benefits. See *Manwilll v. Clark County*, 123 Nev. 238, 243 44, 162 P.3d 876, 880 (2007). Applying here, Respondents had the burden to prove that Petitioner did not take corrective action to lower his weight, triglycerides, and cholesterol. As such, the Appeals officer erred in shifting this burden to Petitioner.

Second, the Appeals Officer s factual determinations were arbitrary and capricious as substantial evidence that Petitioner made reasonable attempts to correct his predisposing conditions was belied by the record. Despite Respondents contentions, *Las Vegas v. Burns* is persuasive and should be applied here. No. 76099-COA 2019 WL 6003344 (Nev. Ct. App. Nov. 13, 2019) (finding that because there was no evidence in the record, the appeals officer s decision could not have been supported by substantial evidence). Petitioner s range fluctuation in his blood work is clear and convincing evidence that Petitioner engaged in diet and exercise to correct his predisposing conditions. This evidence was substantial enough for the Appeals Officer to conclude that Petitioner took reasonable corrective action. Accordingly, the Appeals Officer incorrectly concluded that Petitioner failed to provide substantial evidence and did not take corrective action towards his predisposing conditions. For these reasons, the Appeals Officer s Decision and Order is REVERSED.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Petitioner s counsel is to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21.

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.



# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

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

WILLIAM FERGUSON,

Petitioner(s),

vs.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT; CCMSI; THE DEPARTMENT  
OF ADMINISTRATION, HEARINGS  
DIVISION,

Respondent(s),

Case No: A-21-830966-J

Dept No: XXVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 4 day of January 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk