

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT and CANNON COCHRAN
MANAGEMENT SERVICES, INC.

Appellants,

vs.

ROBERT HOLLAND,

Respondent

No. 82843

Electronically Filed
May 27 2021 01:43 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 21

County Clark Judge Tara Clark Newberry

District Ct. Case No. A-20-818754-J

2. Attorney filing this docketing statement:

Attorney Daniel L. Schwartz, Esq. Telephone 702-893-3383

Firm Lewis Brisbois Bisgaard & Smith

Address 2300 W. Sahara Ave. Ste. 900
Las Vegas, Nevada 89102

Client(s) Las Vegas Metropolitan Police Department and CCMSI

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Lisa M. Anderson, Esq Telephone (702) 384-1616

Firm Greenman Goldberg Raby & Martinez

Address 2770 S. Maryland Parkway, Suite 100
Las Vegas, Nv 89109

Client(s) Robert Holland

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Workers' comp</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a workers' compensation case. On June 7, 2019, Respondent, a retired police officer, filed a claim for workers' compensation benefits based on two heart attacks that claimant suffered on May 26 and 27, 2019. However, prior to his retirement, Respondent was warned for several years that he was predisposed to heart disease based on elevated triglycerides and that if he did not correct the same he would be excluded from benefits. At his last physical in 2012, Respondent's triglycerides were 181. When he presented to the hospital for the subject heart attacks, his triglycerides were 348. Administrator denied this claim. Respondent appealed. On September 17, 2019, the Hearing Officer affirmed claim denial. Respondent appealed. On July 27, 2020, the Appeals Officer for Appeal Number 2004526-DM affirmed claim denial based on Respondent's failure to correct conditions which were predisposing him to heart disease. Respondent filed a Petition for Judicial Review. The District Court reversed the Appeals Officer, finding that substantial evidence did not support the Appeals Officer. The District Court also applied new requirements to the claim.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred in reweighing the evidence and implementing legal standards that did not previously exist for claims under NRS 617.457.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The District Court reweighed the evidence in contradiction to NRS 233B.135 and numerous cases interpreting that statute. See, Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270 (1993). The District Court also added new requirements to claims under NRS 617.457 including a requirement that claimants be instructed on how to correct predisposing conditions, claimants must be deemed to be in unfit for duty in addition to being assessed predisposing conditions, and lack of medication prescription proves that a claimant could correct a predisposing condition.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(10) as it is a Petition for Judicial Review of a final decision of an administrative agency. However, Petitioners would request that the Supreme Court retain review as this issue of predisposing conditions under NRS 617.457 appears with great regularity and there is little guidance on the same is to be applied.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Apr 5, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Apr 6, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Apr 27, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|--|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is a Petition for Judicial Review of a workers' compensation Appeals Officer. Respondent filed his Petition with the District Court pursuant to NRS 233B.130. The District Court granted Respondent's Petition. As this final judgment of the District Court aggrieved Appellants, this Court has jurisdiction to hear this appeal under NRS 233B.150.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

ROBERT HOLLAND - Petitioner

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, CANNON COCHRAN
MANAGEMENT SERVICES, INC., and THE DEPARTMENT OF
ADMINISTRATION, HEARINGS DIVISION, APPEALS OFFICE, an Agency of
the State of Nevada - Respondents.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The Department of Administration did not participate in the District Court
Petition.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

ROBERT HOLLAND - Petition for Judicial Review

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, and CANNON COCHRAN
MANAGEMENT SERVICES, INC. - Petition for Judicial Review

THE DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, APPEALS
OFFICE - None

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

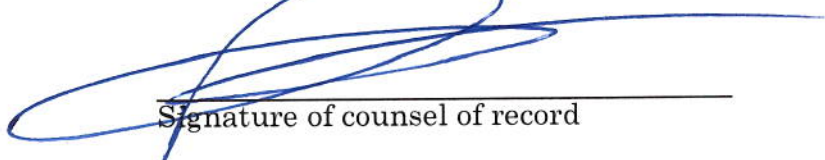
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

LVMPD and CCMSI
Name of appellant

Daniel L. Schwartz, Esq.
Name of counsel of record

Jun 19, 2019
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 27th day of May, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

1. Lisa M. Anderson, Esq.
2. LVMPD
3. CCMSI
4. Nevada Dept. of Administration
5. Laura Freed, Nevada Dept. of Administration
6. Aaron Ford, Esq., Attorney General
7. Janet Trost, Supreme Court Settlement Judge

Dated this 27th day of May, 2021


Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 27 day of May 2021, a true and correct copy of
3 this **DOCKETING STATEMENT** completed upon all counsel of record by
4 electronically filing the document using the Nevada Supreme Court's electronic
5 filing system and via US Mail.
6

7 LISA M. ANDERSON, ESQ
8 GREENMAN, GOLDBERG, RABY &
9 MARTINEZ
2770 S MARYLAND PKWY SUITE 100
LAS VEGAS, NV 89109

Aaron Ford, Esq.
Nevada Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

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

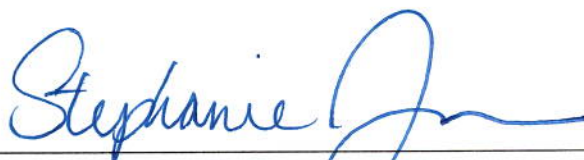
Laura Freed
Director, Department of Administration
Nevada Dept. Of Administration
515 East Musser Street, Third Floor
Carson City, Nevada 89701-4298

13 CCMSI
14 ATTN: STEPHANIE MACY
P.O. BOX 35350
LAS VEGAS, NV 89133

Janet Trost, Esq.
501 S. Rancho Drive, Suite H-56
Las Vegas, Nevada 89106

15 Department of Administration
16 2200 S Rancho Dr., Ste. 220
17 Las Vegas, NV 89102

18
19 By



an Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP

Steven D. Grierson

CASE NO: A-20-818754-J
Department 14

1 PTJR
2 LISA M. ANDERSON, ESQ.
3 Nevada Bar No. 4907
4 GREENMAN GOLDBERG RABY & MARTINEZ
5 2270 South Maryland Parkway
6 Suite 100
7 Las Vegas, NV 89109
8 Phone: 702.384.1616 ~ Fax: 702.384.2990
9 Email: landerson@ggrmlawfirm.com
10 *Attorneys for Petitioner*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 ROBERT HOLLAND,)

14 Petitioner,)

15 vs.)

CASE NO.:
DEPT. NO.:

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

20 Respondents.)
21)
22)
23)
24)
25)
26)
27)
28)

29 **PETITION FOR JUDICIAL REVIEW**
30 **ARBITRATION EXEMPTION CLAIMED**
31 **REVIEW OF ADMINISTRATIVE DECISION**

32 Date: N/A
33 Time: N/A

34 COMES NOW, Petitioner, BENJAMIN SOMERLOTT, by and through his attorney,
35 LISA M. ANDERSON, ESQ, of the law firm of GREENMAN GOLDBERG RABY &
36 MARTINEZ and prays for this Court to judicially review the decision of the Appeals Officer,
37 dated July 27, 2020 attached hereto as Exhibit "1" and made a part hereof. This Petition for
38 Judicial Review is made pursuant to the provisions of NRS 233B.130.

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Petitioner claims his substantial rights have been prejudiced because the administration findings, inferences, conclusions or decisions are:

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

WHEREFORE, Petitioner prays that this Court allow briefs to be filed, oral argument be heard, and following a review of the record, that this Court enters its Order reversing the above decision of the Appeals Officer.

DATED this 27th day of July, 2020.

GREENMAN GOLDBERG RABY & MARTINEZ



LISA M. ANDERSON, ESQ.
Nevada Bar No. 4907
2770 South Maryland Parkway
Suite 100
Las Vegas, NV 89109
Attorneys for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29th day of July, 2020, I served the foregoing by placing a copy of the PETITION FOR JUDICIAL REVIEW which a true copy thereof was placed in the United States Mail, postage prepaid, addressed to:

ROBERT HOLLAND
7409 Sand Pebble Lane
Las Vegas, Nevada 89129

Daniel L. Schwartz, Esq.
LEWIS BRISNOIS BISGAARD & SMITH
2300 West Sahara Avenue, #300, Box 28
Las Vegas, Nevada 89102

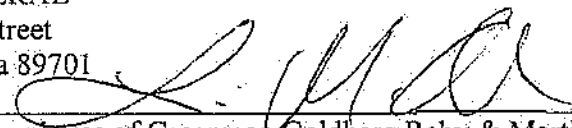
Health Detail
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
400 South Martin Luther King Boulevard, #B
Las Vegas, Nevada 89106

CCMSI
P.O. Box 35350
Las Vegas, Nevada 89133

Gregory A. Krohn, Esq.
Appeals Officer
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION
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Las Vegas, Nevada 89102

Deonne Contine, Director
STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
515 East Musser Street
Carson City, Nevada 89701

Aaron D. Ford, Esq.
STATE OF NEVADA
ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701


An Employee of Greenman Goldberg Raby & Martinez

NEVADA DEPARTMENT OF ADMINISTRATION

FILED

JUL 27 2020

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested
Industrial Insurance Claim

Claim No.: 19D34F989694

Hearing No.: 2001960-JK

Appeal No.: 2004526-DM

ROBERT HOLLAND
7409 SANDPEBBLE LN.
LAS VEGAS, NV 89129,

Employer:
LVMPD-HEALTH DETAIL
400 S. MARTIN L. KING BLVD., STE. B
LAS VEGAS, NV 89106

Claimant.

DECISION AND ORDER

The above-captioned appeals came on for hearing before Appeals Officer DENISE S. MCKAY, ESQ. The claimant, ROBERT HOLLAND, (hereinafter referred to as "claimant"), was represented by her counsel, LISA M. ANDERSON, ESQ., of GREENMAN GOLDBERG RABY & MARTINEZ. The Employer, LAS VEGAS METROPOLITAN POLICE DEPARTMENT, (hereinafter referred to as the "Employer"), was represented by DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP.

On July 23, 2019, the Administrator issued a determination denying the claim. Claimant appealed and in a Decision and Order dated September 17, 2019, the Hearing Officer affirmed claim denial. Claimant appealed to this Court, generating Appeal No. 2004526-DM.

After carefully considering the written evidence and arguments of counsel, the Appeals Officer finds and decides as follows:

FINDINGS OF FACT

1. The claimant, ROBERT HOLLAND, (hereinafter referred to as "claimant"), a retired police officer who was working corporate security at the time of this claim, alleges that on May 26, 2019, "while washing my vehicle I began to experience chest pain that radiated into my left arm. On Monday, 5/27/2019, I experienced the same symptoms occurred [sic] as I was leaving the gym." Dr. Wattoo completed two separate C-4 forms both indicating that the claimant had two heart attacks. One C-4 form added CAD, COPD, and emphysema to the listed diagnoses. Both noted three vessel

1 coronary artery disease with stenting. The claimant was taken off of work from May 27, 2019 to June
2 17, 2019. (Exhibit A pp. 1-2)

3 2. The Employer's Report of Industrial Injury or Occupational Disease notes reporting of
4 the claim on May 28, 2019, and it was also noted that the claimant had retired from the Employer.
5 (Exhibit A p. 3)

6 3. During his tenure with the Employer, the claimant was informed of elevated
7 triglycerides and was informed of the need to have a low fat diet.

8 4. On February 12, 2008, claimant's annual examining physician assessed elevated
9 triglycerides and was ordered to adopt a low fat diet. (Exhibit A pp. 4-10)

10 5. On March 9, 2009, the claimant was informed of the need to correct elevated
11 triglyceride and cholesterol levels. (Exhibit A pp. 11-18)

12 6. On February 22, 2010, the claimant was informed of abnormal lab results which
13 included low HDL findings. (Exhibit A pp. 19-25)

14 7. On January 24, 2011, the claimant was informed of the need to correct elevated
15 triglycerides, which were at 159, and the claimant was again advised to have a low fat diet. (Exhibit
16 A pp. 26-34)

17 8. On April 9, 2012, the claimant was again informed of the need to correct elevated
18 triglycerides, which had risen to 181 since the last examination, and was advised to have a low fat diet
19 and increased "cardio + 4 gm/day omega 2." (Exhibit A pp. 35-44)

20 9. Claimant retired on December 29, 2012.

21 10. The claimant was hospitalized at the Summerlin Hospital Medical Center from May 29,
22 2019, through June 4, 2019. Dr. Chaudry performed cardiac catheterization procedures on June 3,
23 2019, which included stent and diagonal placement. It was noted that claimant had a history of
24 asthma, hypothyroidism, and hypertension. (Exhibit A pp. 45-71)

25 11. On June 13, 2019, the adjuster sent a letter of introduction which asked the claimant to
26 execute attached medical release and history forms. (Exhibit A pp. 72-76)

27 12. On June 20, 2019, the claimant executed a medical release and noted that in 2015, he
28 was diagnosed with high blood pressure, and was on medication for the same. (Exhibit A pp. 77-80)

balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The Law of Workmen's Compensation, § 80.33(a).

3. NRS 616A.010(2) makes it clear that:

A claim for compensation filed pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS must be decided on its merit and not according to the principle of common law that requires statutes governing worker's compensation to be liberally construed because they are remedial in nature.

4. Here, the claimant has failed to meet the requirements for coverage under NRS 617.457 due to the claimant's history of failure to correct predisposing factors/conditions on a continuous basis, despite being warned on multiple occasions that failure to do so could result in exclusion from the benefits of the statute (after his retirement, the claimant admits that he has been diagnosed with high blood pressure in 2015 and is/was taking medication for the same).

5. **NRS 617.457 Heart diseases as occupational diseases of firefighters, arson investigators and police officers.**

1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 2 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

2. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 1.

3. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the

1 provisions of this chapter if caused by extreme overexertion in times of
2 stress or danger and a causal relationship can be shown by competent
3 evidence that the disability or death arose out of and was caused by the
4 performance of duties as a volunteer firefighter by a person entitled to
5 the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to
6 the provisions of NRS 616A.145 and who, for 5 years or more, has
7 served continuously as a volunteer firefighter in this State by
8 continuously maintaining an active status on the roster of a volunteer
9 fire department.

10 4. Except as otherwise provided in subsection 5, each employee
11 who is to be covered for diseases of the heart pursuant to the provisions
12 of this section shall submit to a physical examination, including an
13 examination of the heart, upon employment, upon commencement of
14 coverage and thereafter on an annual basis during his or her
15 employment.

16 5. During the period in which a volunteer firefighter is
17 continuously on active status on the roster of a volunteer fire
18 department, a physical examination for the volunteer firefighter is
19 required:

- 20 (a) Upon employment;
- 21 (b) Upon commencement of coverage; and
- 22 (c) Once every 3 years after the physical examination that is
23 required pursuant to paragraph (b),
24 E until the firefighter reaches the age of 50 years. Each volunteer
25 firefighter who is 50 years of age or older shall submit to a physical
26 examination once every 2 years during his or her employment.

27 6. The employer of the volunteer firefighter is responsible for
28 scheduling the physical examination. The employer shall mail to the
volunteer firefighter a written notice of the date, time and place of the
physical examination at least 10 days before the date of the physical
examination and shall obtain, at the time of mailing, a certificate of
mailing issued by the United States Postal Service.

7. Failure to submit to a physical examination that is scheduled
by his or her employer pursuant to subsection 6 excludes the volunteer
firefighter from the benefits of this section.

8. The chief of a volunteer fire department may require an
applicant to pay for any physical examination required pursuant to this
section if the applicant:

- (a) Applies to the department for the first time as a volunteer
firefighter; and
- (b) Is 50 years of age or older on the date of his or her application.

9. The volunteer fire department shall reimburse an applicant for
the cost of a physical examination required pursuant to this section if
the applicant:

- (a) Paid for the physical examination in accordance with
subsection 8;
- (b) Is declared physically fit to perform the duties required of a
firefighter; and
- (c) Becomes a volunteer with the volunteer fire department.

1
2 10. Except as otherwise provided in subsection 8, all physical
3 examinations required pursuant to subsections 4 and 5 must be paid for
4 by the employer.

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

10 12. A person who is determined to be:

11 (a) Partially disabled from an occupational disease pursuant to the
12 provisions of this section; and

13 (b) Incapable of performing, with or without remuneration, work
14 as a firefighter, arson investigator or police officer,
15 E may elect to receive the benefits provided under NRS 616C.440 for a
16 permanent total disability.

17 13. Claims filed under this section may be reopened at any time
18 during the life of the claimant for further examination and treatment of
19 the claimant upon certification by a physician of a change of
20 circumstances related to the occupational disease which would warrant
21 an increase or rearrangement of compensation.

22 14. A person who files a claim for a disease of the heart specified
23 in this section after he or she retires from employment as a firefighter,
24 arson investigator or police officer is not entitled to receive any
25 compensation for that disease other than medical benefits.

26 15. The Administrator shall review a claim filed by a claimant
27 pursuant to this section that has been in the appeals process for longer
28 than 6 months to determine the circumstances causing the delay in
processing the claim. As used in this subsection, "appeals process"
means the period of time that:

(a) Begins on the date on which the claimant first files or submits a
request for a hearing or an appeal of a determination regarding the
claim; and

(b) Continues until the date on which the claim is adjudicated to a
final decision.

16 16. Except as otherwise provided in this subsection, if an
17 employer, Administrator or third-party administrator denies a claim
18 that was filed pursuant to this section and the claimant ultimately
19 prevails, the Administrator may order the employer, Administrator or
20 third-party administrator, as applicable, to pay to the claimant a benefit
21 penalty of not more than \$200 for each day from the date on which an
22 appeal is filed until the date on which the claim is adjudicated to a final
23 decision. Such benefit penalty is payable in addition to any benefits to
24 which the claimant is entitled under the claim and any fines and
25 penalties imposed by the Administrator pursuant to NRS 616D.120. If
26 a hearing before a hearing officer is requested pursuant to NRS
27 616C.315 and held pursuant to NRS 616C.330, the employer,
28 Administrator or third-party administrator, as applicable, shall pay to
the claimant all medical costs which are associated with the

1 occupational disease and are incurred from the date on which the
2 hearing is requested until the date on which the claim is adjudicated to
3 a final decision. If the employer, Administrator or third-party
4 administrator, as applicable, ultimately prevails, the employer,
5 Administrator or third-party administrator, as applicable, is entitled to
6 recover the amount paid pursuant to this subsection in accordance with
7 the provisions of NRS 616C.138.

8
9
10 5. Claimant was employed as a police officer with the Las Vegas Metropolitan Police
11 Department from 1987 until his retirement in 2012. (Ex. A, p. 3).

12 6. Claimant attended annual physicals from 2008 through 2012. At his 2008 physical, his
13 labs revealed elevated triglyceride levels. (Ex. 1, p. 48). At his 2009 physical, his labs revealed
14 elevated cholesterol, triglycerides, and LDL levels. (Ex. 1, p. 91). At his 2010 physical, his lab results
15 revealed an elevated LDL level. (Ex. 1, pp. 119). At his 2011 physical, his lab results revealed
16 elevated cholesterol and triglyceride levels and he was instructed to start a low-fat diet. (Ex. 1, pp.
17 122-23). At his 2012 physical, his labs revealed elevated triglycerides and he was instructed to begin a
18 low-fat diet and increase cardiovascular exercise. (Ex. 1, pp. 149). Claimant retired in 2012 and so did
19 not undergo any additional physicals.

20 7. On May 29, 2019, Claimant visited Summerlin Hospital with symptoms of a heart
21 attack. There, he was diagnosed with two heart attacks, coronary artery disease (CAD), chronic
22 obstructive pulmonary disease (COPD), and emphysema. (Ex. A, p. 1). Claimant was admitted to the
23 hospital for six days, until June 4, 2019. (Ex. 1, pp. 13-40). On the day of his discharge from the
24 hospital, Claimant was advised by Dr. Mojica that, "he likely should stop the testosterone since it may
25 be causing erythrocytosis and could have precipitated his heart disease." (Ex. 1, p. 40). Claimant's
26 blood was taken and analyzed on May 30, 2019. (Ex. 1, p. 39)

27 ...

28 ...

...

1 8. This Court converted the data from Claimant's physicals and his 2019 hospitalization
2 into the following chart for ease of reference, with asterisks denoting the years and levels for which he
3 received written warnings:

	2008	2009	2010	2011	2012	2019
Cholesterol	188	223	189	186*	186	132
Triglycerides	175	177	130	159*	181*	348
LDL	125	153	128	117	120	86

11 9. On July 23, 2019, Administrator denied the claim. On September 17, 2019, a Hearing
12 Officer issued a Decision and Order affirming Administrator's July 23, 2019, determination. Claimant
13 now appeals, seeking acceptance of his claim for heart disease under NRS 617.457.

14 10. NRS 617.457(1) provides that occupational disease claimants who are disabled by
15 heart disease after having continuously worked as full-time police for two or more years are entitled to
16 a conclusive presumption that the heart disease was a sufficiently work-related occupational disease.
17 NRS 617.457(11) provides an exception to this presumption, when an examining physician orders a
18 claimant in writing to correct predisposing conditions which lead to heart disease and the claimant
19 fails to do so, if the correction is within the ability of the claimant.

20 11. Claimant seeks claim acceptance for heart diseases under NRS 617.457. Claimant has
21 adduced evidence constituting a preponderance that he was a police officer for more than two years
22 and suffers from at least one disabling heart disease. Claimant was hospitalized for six days due to two
23 heart attacks and was diagnosed with coronary artery disease during that stay.

24 12. Administrator contends that Claimant should be precluded from coverage because he
25 did not correct the predisposing conditions of which he was properly warned. Claimant was warned in
26 2011 and 2012 of high triglyceride levels, and when he was admitted to the hospital in 2019, his
27 triglyceride level was almost double what it was in 2012. This evidence alone satisfies Administrator's
28 burden of establishing the existence of a predisposing condition that Claimant was ordered in writing

1 to correct and which was within his ability to correct. Claimant has offered no evidence to contradict
2 any of these points. In fact, Claimant wrongly states that Claimant's triglyceride level was "normal" at
3 the time of his 2012 physical. The medical records in evidence establish that Claimant failed to correct
4 his predisposing condition of high triglycerides, and therefore he must be excluded from coverage
5 under NRS 617.457.

6 **DECISION AND ORDER**


7 The claimant, ROBERT HOLLAND, has failed to meet her burden of establishing a
8 compensable claim.

9 IT IS HEREBY ORDERED that the Hearing Officer's Decision and Order dated
10 September 17, 2019, which affirmed claim denial, is AFFIRMED.

11 IT IS ALSO HEREBY ORDERED that the July 23, 2019 determination denying the
12 claim is AFFIRMED.

13 IT IS SO ORDERED.

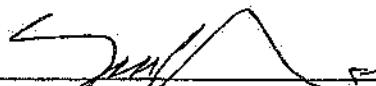
14 DATED this 21st day of July, 2020.

15 
16 DENISE S. MCKAY, ESQ.
17 APPEALS OFFICER

18 NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final decision of
19 the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
20 thirty (30) days after service by mail of this decision.

21 Submitted by:

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By: 
24 Daniel L. Schwartz, Esq.
25 Nevada Bar No. 5125
26 2300 W. Sahara Ave., Ste. 300, Box 28
27 Las Vegas, NV 89102
28 Attorneys for the Employer

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing **DECISION AND ORDER** was duly mailed, postage prepaid OR placed in the appropriate
5 addressee file maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada,
6 to the following:


7 LISA ANDERSON, ESQ.
8 GREENMAN GOLDBERG RABY & MARTINEZ
9 2770 S. MARYLAND PKWY., STE. 100
10 LAS VEGAS, NV 89109

11 LVMPD - HEALTH DETAIL
12 ATTN.: BERNADINE WELSH
13 400 S. MARTIN L. KING BLVD., STE. B
14 LAS VEGAS, NV 89106

15 CCMSI
16 ATTN.: LISA KOEHLER
17 P.O. BOX 35350
18 LAS VEGAS, NV 89133

19 DANIEL L. SCHWARTZ, ESQ.
20 LEWIS BRISBOIS BISGAARD & SMITH LLP
21 2300 W. SAHARA AVE., STE. 300, BOX 28
22 LAS VEGAS, NV 89102

23 DATED this 27th day of July, 2020.

24 
25 _____
26 An employee of the State of Nevada
27
28

Steven D. Grierson

1 NEOJ
2 LISA M. ANDERSON, ESQ.
3 Nevada Bar No. 4907
4 GREENMAN GOLDBERG RABY & MARTINEZ
5 2270 South Maryland Parkway
6 Suite 100
7 Las Vegas, NV 89109
8 Phone: 702.384.1616 ~ Fax: 702.384.2990
9 Email: landerson@ggrmlawfirm.com
10 Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

9 ROBERT HOLLAND,

10 Petitioner,

11 vs.

CASE NO.: A-20-818754-J
DEPT. NO.: XXI

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

16 Respondents.

17 NOTICE OF ENTRY OF ORDER

18
19 TO: All parties of interest.

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was
21 entered in the above-entitled matter on the 5th day of April, 2021, a copy of which is attached.

22 DATED this 6th day of April, 2021.

23
24 GREENMAN GOLDBERG RABY & MARTINEZ

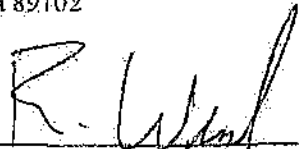
25 By: *Lisa M. Anderson*
26 LISA M. ANDERSON, ESQ.

27 Nevada Bar No. 4907
28 2770 South Maryland Parkway, #100
Las Vegas, Nevada 89109
Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of GREENMAN GOLDBERG RABY & MARTINEZ, and that on the 14th day of April, 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 GREENMAN GOLDBERG RABY & MARTINEZ

ORDC
LISA M. ANDERSON, ESQ.
Nevada Bar No. 004907
GREENMAN GOLDBERG RABY & MARTINEZ
2770 South Maryland Parkway
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Las Vegas, Nevada 89109
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Facsimile: (702) 384-2990
Email: landerson@ggrmlawfirm.com
Attorneys for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT HOLLAND,
Petitioner

vs.

CASE NO. : A-20-818754-J
DEPT. NO. : XXI

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

Respondents.

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

This matter came before this Court on the Petition for Judicial Review filed by the Petitioner, ROBERT HOLLAND. Petitioner was represented by LISA M. ANDERSON, ESQ. of the law firm of GREENMAN GOLDBERG RABY & MARTINEZ. Respondents, LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CCMSI, were represented by DANIAL L. SCHWARTZ, ESQ. and JOEL P. REEVES, 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 March 10, 2021 for hearing on the July 29, 2020
2 Petition for Judicial Review. The Court has re-reviewed the December 29, 2020 Petitioner's
3 Opening Brief, the February 1, 2021 Respondent's Answering Brief, and the March 2, 2021
4 Petitioner's Reply Brief, and the entirety of the record, including the November 20, 2021⁰
5 Transmittal of Record on Appeal, which contains the Record on Appeal, and hereby FINDS that
6 pursuant to NRS 233B.135, the Appeals Officer's July 27, 2020 Decision and Order is not
7 supported by substantial evidence in the Record on Appeal.
8

9 Here, the parties agree that, pursuant to NRS 617.457(1), Petitioner meets the two (2)
10 qualifications for the conclusive presumption that Petitioner's related heart condition has arisen
11 out of and in the course of the employment: (1) Petitioner has related heart disease; and (2)
12 Petitioner is a retired twenty-five (24)⁵ year veteran of Las Vegas Metropolitan Police
13 Department. However, the parties are in disagreement of whether or not pursuant to NRS
14 617.457(11), Petitioner failed to correct predisposing conditions after ordered to do so in writing,
15 and that the correction was within the ability of Petitioner, such that Petitioner would no longer
16 be entitled to the NRS 617.457(1) conclusive presumption.
17

18 Although the Appeals Officer's July 27, 2020 Decision and Order recite Petitioner's
19 related medical history and that Petitioner did not correct the predisposing conditions of which
20 he was warned, i.e. cholesterol, triglycerides, LDL, all of which contribute to heart disease, the
21 Decision and Order does so summarily.
22

23 First, the Court FINDS that the medical records did contain written instructions to
24 Petitioner to correct predisposing conditions. However, the Court notes that these written
25 instructions were much too general in nature to effect change to Petitioner's cholesterol,
26 triglycerides, LDL Levels, and not at all specific and pointed. Rather, specific and pointed
27
28

1 advice would have included recommendations that Petitioner adopt a given regimented
2 diet plan and/or given regimented exercise routine, both programs of which would have
3 laid out diet specific instructions as to what Petitioner could and could not eat, and specific
4 exercise instructions as to what exercises Petitioner needed to complete, frequency,
5 duration, etc.
6

7 Second, with regard to the NRS 617.457(11) requirement that correction of the
8 predisposed conditions be within Petitioner's ability, the Court FINDS that Petitioner's
9 medical records do not contain sufficient documentation that correcting the predisposing
10 conditions was within Petitioner's ability as contemplated by NRS 617.457(11).
11 Specifically, the physician's recommendations of diet change and exercise programs, i.e.
12 low fat diet, cardio, and 4 mg/day omega 2, etc., coupled with recurring testing of
13 cholesterol, triglycerides, LDL, which primarily yielded unchanging results, is an
14 insufficient basis to support the NRS 617.457(11) requirement that correcting Petitioner's
15 predisposed conditions: cholesterol, triglycerides, LDL, was within the ability of the
16 employee to control.
17
18

19 Third, for the relevant period 2008 to 2012, the reviewing physicians that conducted
20 Petitioner's annual physical examination concluded: 2008 - In conclusion with all the
21 information that has been provided to me, it appears you are in good health and remain
22 acceptable for employment; and for 2009 2012 - In conclusion with all the information that has
23 been provided to me, it appears that the employee is in good health and remains acceptable for
24 employment.
25

26 ///

27 ///

28 ///

1 The physician's minimal recommendations of a low fat diet, cardio, and 4 mg/day
2 omega 2, combined with a finding that Petitioner was in good health suggest to this Court
3 that Petitioner exercised good faith in adhering to the physician's recommendations.
4 Additionally, there was no indication in the Record to the contrary. This, in fact, resulted
5 in Petitioner receiving consecutive bills of good health from 2008 to 2012.
6

7 Lastly, the physicians did not prescribe any cholesterol, triglycerides, or LDL medication
8 to further control Petitioner's cholesterol, triglycerides, LDL levels. This illustrates to this Court
9 that Petitioner, in good faith, was doing what he was supposed to be doing, and despite following
10 his physician's recommendations, Petitioner's inability to alter his cholesterol, triglycerides, or
11 LDL levels suggests that Petitioner may have been incapable of correcting his predisposing
12 conditions through diet and exercise alone. This negates the NRS 617.457(11) requirement that
13 correction of the predisposed conditions be within Petitioner's ability.
14

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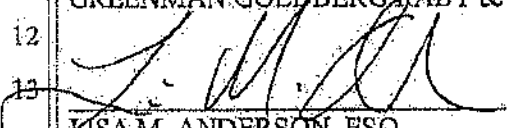
Greenman Goldberg Raby Martinez & Martinez
ASSOCIATE ATTORNEYS

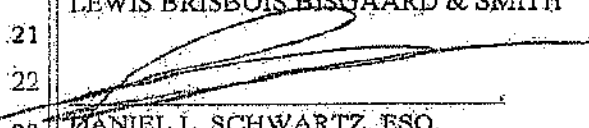
1 Therefore, this Court FINDS that the Appeals Officer's July 27, 2020 Decision and
2 Order is not supported by substantial evidence and necessarily GRANTS Petitioner, Robert
3 Holland's, Petition for Judicial Review.

4 Dated this _____ day of _____, 2021.

Dated this 5th day of April, 2021

7 
8 TARA CLARK NEWBERRY
9 DISTRICT COURT JUDGE
10 238 42F 3A34 07EE
11 Tara Clark Newberry
12 District Court Judge

10 Submitted by:
11 GREENMAN GOLDBERG RABY & MARTINEZ
12 
13 LISA M. ANDERSON, ESQ.
14 Nevada Bar No. 004907
15 GREENMAN GOLDBERG RABY & MARTINEZ
16 2770 South Maryland Parkway
17 Suite 100
18 Las Vegas, Nevada 89109
19 Attorneys for Petitioner

19 Approved as to form and content:
20 LEWIS BRISBOIS BISGAARD & SMITH
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22 DANIEL L. SCHWARTZ, ESQ.
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24 JOEL REEVES, ESQ.
25 Nevada Bar No. 013231
26 2300 West Sahara Avenue
27 Suite 900, Box 28
28 Las Vegas, Nevada 89102
Attorneys for Respondents

1 CSERV

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Robert Holland, Petitioner(s) CASE NO: A-20-818754-J
7 vs. DEPT. NO. Department 21
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 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: 4/5/2021

15 Daniel Schwartz daniel.schwartz@lewisbrisbois.com
16 Joel Reeves joel.reeves@lewisbrisbois.com
17 robert windrem rwindrem@ggrmlawfirm.com
18 lisa anderson landerson@ggrmlawfirm.com
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