

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

LVMPD; AND CCMSI,
Appellants,

v.

STATE OF NEVADA DEPARTMENT OF
BUSINESS AND INDUSTRY, DIVISION OF
INDUSTRIAL RELATIONS,
Respondent

No. 83262

Electronically Filed
Aug 18 2021 11:20 a.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.

Revised December 2015

1. Judicial District Eighth Department 15

County Clark Judge Joe Hardy, Jr.

District Ct. Case No. A-20-821892-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. 300
Las Vegas, Nevada 89102

Client(s) LVMPD 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 Christopher Eccles, Esq. Telephone 702-486-9073

Firm Division of Industrial Relations

Address 3360 West Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

Client(s) Division of Industrial Relations

Attorney Donald J. Bordelove, Esq. Telephone 702-456-3094

Firm Office of the Attorney General

Address 555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Client(s) State of Nevada Board for the Administration of the Subsequent Injury Account

(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 checked="" 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): <u>Failure to timely file brief</u> |
| <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 involving a dispute over contributions from the Subsequent Injury Account. However, the issue before this Court is a jurisdictional one. On September 24, 2020, Petitioners timely filed the subject Petition for Judicial Review contesting an August 19, 2020 Decision of the Board. When this appeal was filed, the lead attorney for the case was recovering from prostate cancer surgery. On November 9, 2020, the Record on Appeal was filed by the Board. On the front page of the Record it states that it contains "the entire record of the proceedings under review." On April 5, 2021, Petitioners filed their Opening Brief. Petitioners' Brief contained citations to relevant records in the Record on Appeal. Thereafter, Respondent DIR moved to dismiss the Petition based on the late filing of the Opening Brief, the allegation that the Petitioners had not filed the complete record on appeal, and that the Opening Brief did not contain citations to the Record. Petitioners opposed the same. After a hearing, the District Court granted the Motion to Dismiss. Petitioners requested reconsideration but the District Court denied the same.

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

Whether the District Court properly dismissed this matter.

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:

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.

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 Jun 21, 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 Jun 22, 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 Jul 19, 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. Appellants filed their Petition with the District Court pursuant to NRS 233B.130. The District Court dismissed Appellants' 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:

LVMPD and CCMSI- Petitioners

STATE OF NEVADA BOARD FOR THE ADMINISTRATION OF THE
SUBSEQUENT INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS and
THE DIVISION OF INDUSTRIAL RELATIONS- 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:

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.

LVMPD and CCMSI - Petition for Judicial Review

STATE OF NEVADA BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS and THE DIVISION OF
INDUSTRIAL RELATIONS - 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

Aug 18, 2021
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 18th day of August, 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. LVMPD - Jeff Roch.
2. CCMSI - Danielle Potter
3. Office of Attorney General - Donald J. Bordelove, Esq.
4. Aaron Ford, Esq., Attorney General
5. Department of Industrial Relations - Christopher Eccles, Esq.
6. Department of Industrial Relations - Division Headquarters
7. Department of Business and Industrial - Director Terry Reynolds
8. Supreme Court Settlement Judge - Ishi Kunin, Esq.

Dated this 18th day of August, 2021


Signature

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of August 2021, a true and correct copy of this

DOCKETING STATEMENT completed upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system and via US Mail.

LVMPD
Jeff Roch
Director of Risk Management
400 South MLK Blvd.
Las Vegas, Nevada 89106

Industrial Relations (DIR)
Christopher Eccles, Esq.
3360 West Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

CCMSI
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Claims Supervisor
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Las Vegas, Nevada 89133

Industrial Relations (DIR)
Division Headquarters
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Carson City, Nevada 89703

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State of Nevada
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100 North Carson Street
Carson City, Nevada 89701

Ishi Kunin, Esq.
Supreme Court Settlement Judge
10161 Park Run Drive, Ste. 150
Las Vegas, Nevada 89145

By


an Employee of LEWIS BRISBOIS BISGAARD
& SMITH LLP



1 NEOJ

2 Donald C. Smith, Esq.

3 Nevada Bar No.: 000413

4 Jennifer J. Leonescu

5 Nevada Bar No.: 006036

6 Christopher A. Eccles, Esq.

7 Nevada Bar No.: 009798

8 State of Nevada, Department of Business and Industry

9 Division of Industrial Relations

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12 Phone: (702) 486-9070

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15 ceccles@dir.nv.gov

16 Attorneys for Respondent Division of Industrial Relations

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 LAS VEGAS METROPOLITAN POLICE)
14 DEPARTMENT, and CANNON)
15 COCHRAN MANAGEMENT SERVICES,)
16 INC.)

16 Petitioners,

17 vs.)

18 STATE OF NEVADA BOARD FOR THE)
19 ADMINISTRATION OF THE SUBSEQUENT)
20 INJURY ACCOUNT FOR SELF-INSURED)
21 EMPLOYERS,)

21 Respondents.)

Case No.: A-20-821892-J

Dept. No.: 15

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that an "Order" was entered in the above-captioned matter
23 on June 21, 2021, a true and correct copy of which is attached hereto.

24 DATED this 22nd day of June, 2021.

25 ///

27 ///

STATE OF NEVADA
Division of Industrial Relations - Division Counsel
3360 West Sahara Ave., Ste. 250
Las Vegas, Nevada 89102
(702) 486-9080

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By: 

Donald C. Smith, Esq.

Jennifer J. Leonescu, Esq.

Christopher A. Eccles, Esq.

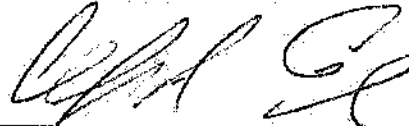
3360 W. Sahara Ave., Ste. 250

Las Vegas, NV 89102

Attorneys for Respondent Division of Industrial Relations

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Division of Industrial Relations, and that on this 22nd day of June, 2021, I caused the foregoing document entitled **Notice of Entry of Order** to be served upon those persons designated by the 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 14-02 and the NEFCR.



An employee of the State of Nevada
Division of Industrial Relations

ORDGDonald C. Smith, Esq.
Nevada Bar No.: 000413Jennifer J. Leonescu
Nevada Bar No.: 006036Christopher A. Eccles, Esq.
Nevada Bar No.: 009798

State of Nevada, Department of Business and Industry

Division of Industrial Relations

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donalddsmith@dir.nv.govjleonescu@dir.nv.govceccles@dir.nv.gov*Attorneys for Respondent Division of Industrial Relations***DISTRICT COURT
CLARK COUNTY, NEVADA**LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, and CANNON
COCHRAN MANAGEMENT SERVICES,
INC.

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J
Dept. No.: 15**ORDER GRANTING
RESPONDENT DIVISION OF
INDUSTRIAL RELATIONS'
MOTION TO DISMISS
PETITIONERS' PETITION
FOR JUDICIAL REVIEW**

The matters before the Court are Respondent Nevada Division of Industrial Relations' ("Division") Motion to Dismiss Petitioners' Petition for Judicial Review, and Respondent State of Nevada Board for the Administration of the Subsequent Injury Account for Self-Insured Employers' ("Board") Joinder thereto. The Court, having reviewed the papers and pleadings on file in this matter and having heard the oral arguments of counsel on June 7, 2021, and good cause appearing, hereby rules as follows:

I. FINDINGS

1. Respondent Division moved to dismiss Petitioners' Petition for Judicial Review on two bases: first, Petitioners failed to transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency as required by NRS 233B.131(1)(a), and second, Petitioners failed to timely file their Memorandum of Points and Authorities as required by NRS 233B.133(1).

2. NRS 233B.131(1)(a) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency." (Emphasis added).

3. NRS 233B.131(1)(b) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review." (Emphasis added).

4. Petitioners filed their Petition for Judicial Review on September 24, 2020. Thus, pursuant to the controlling statute, NRS 233B.131(1)(a), Petitioners' deadline to transmit the transcript to the Court was November 9, 2020.

5. It is undisputed that the Petitioners never transmitted the transcript to the Court.

6. It is undisputed that the Petitioners filed their Opening Brief 105 days late and that said Brief lacks citations to the transcript of the administrative proceeding under review.

7. The record of the underlying administrative proceeding is incomplete due to Petitioners' failure to transmit the transcript to the Court.

8. As a result of the incomplete record, and of Petitioners' failure to cite to the transcript in their late-filed Opening Brief, this Court cannot conduct a judicial review based upon the whole record as required by NRS 233B.135.

...

10. The requirements of NRS 233B.131(1)(a) and (b) are mandatory because the statute employs the word "shall." Thus, the Petitioners' failure to transmit the transcript to the court renders their Petition for Judicial Review subject to dismissal.

11. NRS 233B.131(1)(a) is plain and unambiguous, yet Petitioners failed to comply with their 45-day statutory deadline. Moreover, Petitioners position, in their written Opposition to the Division's Motion to Dismiss, and during the oral argument—that they are not required to transmit the transcript to the court—is contradicted by the plain and unambiguous language of the statute. As of June 7, 2021—the date of the hearing on the Division's Motion to Dismiss—Petitioners were 211 days past their statutory deadline to transmit the transcript to the Court.

12. Good cause for a delay in transmitting the transcript, however, may be shown pursuant to NRS 233B.131 because the statute allows the court to alter the 45-day deadline. Thus, the 45-day deadline is not jurisdictional.

13. Petitioners' argument that Respondents were statutorily required to file the *complete* record of the underlying administrative proceeding is contradicted by the structure and plain and unambiguous language of NRS 233B.131, the controlling statute. Petitioners' position is erroneous as a matter of law. Indeed, the legislative history of the 2015 amendment to NRS 233B.131 shows that the underlying policy for requiring petitioners to transmit the transcript to the court was to decrease the burden on taxpayers.

14. Petitioners have not met their burden to show good cause for their ongoing delay to transmit the transcript to the Court.

15. Mr. Price did not provide the Court with an affidavit or declaration specifying how his medical condition affected his ability to comply with statutory requirements during the intervening 211 days. The Court assumes that he had a serious medical condition but finds the effects of the condition vague.

16. Moreover, two other attorneys from Mr. Price's law firm are listed on the Court's electronic service list for this case.

17. Petitioners bear the burden to show good cause, but they have not met their burden under the *Scrimmer* factors. *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000).

18. Furthermore, Petitioners' extensive unexcused delay is mooted by their position that they are not statutorily required to transmit the transcript to the Court.

II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Respondent Division's Motion to Dismiss Petitioners' Petition for Judicial Review and the Board's Joinder thereto are GRANTED.

DATED this ____ day of _____, 20____ Dated this 21st day of June, 2021

HON. JUDGE JOE HARDY, JR.

Respectfully submitted by:
DIVISION OF INDUSTRIAL RELATIONS

F18 060 65D6 31EC
Joe Hardy
District Court Judge

Donald C. Smith, Esq.
Jennifer J. Leonescu, Esq.
Christopher A. Eccles, Esq.
Division of Industrial Relations
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102

Attorneys for Respondent Division of Industrial Relations

Approved as to form and content by:
LEWIS BRISBOIS BISGAARD & SMITH

By: _____
Kim D. Price, Esq.
Nevada Bar No. 7873
2300 W. Sahara Ave., Ste. 300, Box 28
Las Vegas, NV 89102
Attorneys for Petitioners LVMPD and CCMSI

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Las Vegas Metropolitan Police
7 Department, Petitioner(s)

CASE NO: A-20-821892-J

8 vs.

DEPT. NO. Department 15

9 State of Nevada Department of
10 Business & Industry,
11 Respondent(s)

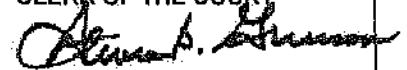
12 **AUTOMATED CERTIFICATE OF SERVICE**

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

16 Service Date: 6/21/2021

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27
28



CASE NO: A-20-821892-J
Department 14

1 **PTJR**
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15 Facsimile: 702.366.9563

16 Attorneys for LVMPD and CCMSI

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT; and CANNON COCHRAN
15 MANAGEMENT SERVICES, INC.,

16 Petitioners,

17 vs.

18 STATE OF NEVADA BOARD FOR THE
19 ADMINISTRATION OF THE
20 SUBSEQUENT INJURY ACCOUNT FOR
21 SELF-INSURED EMPLOYERS.

22 Respondent.

Case No.

PETITION FOR JUDICIAL REVIEW

Arbitration Exemption Claimed:
Review of Administrative Decision

23 COMES NOW, Petitioners, Las Vegas Metropolitan Police Department ("LVMPD") and
24 Cannon Cochran Management Services, Inc. ("CCMSI") by and through their attorneys, DANIEL
25 L. SCHWARTZ, ESQ., JOEL P. REEVES, ESQ., and KIM D. PRICE, ESQ., of LEWIS
26 BRISBOIS BISGAARD & SMITH LLP, in the above-entitled Petition for Judicial Review and
27 petitions this Court for judicial review of the Findings of Fact, Conclusions of Law, and
28 Determination of the State of Nevada Board for the Administration of the Subsequent Injury

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

4832-8281-3644.1

1 Account for Self-Insured Employers ("BOARD"), mailed on August 27, 2020, a copy of which is
2 attached hereto as Exhibit "1."

3 The instant Petition for Judicial Review is filed pursuant to NRS 616C.370, NRS
4 616B.557, and Chapter 233B of the Nevada Revised Statutes which mandates that judicial review
5 shall be the sole and exclusive authorized judicial proceeding in contested industrial insurance
6 claims for compensation for injury or death.
7

8 The decision of the BOARD was in violation of constitutional or statutory provisions, was
9 in excess of the authority of the BOARD, was based upon errors of law, is arbitrary or capricious
10 in nature, and constitutes an abuse of discretion. The Petitioners, LVMPD and CCMSI,
11 specifically request, pursuant to NRS 233B.133, that this Court receive written briefs and hear oral
12 argument.

13 DATED this 24 day of September, 2020.
14

15 Respectfully submitted,

16 LEWIS BRISBOIS BISGAARD & SMITH

17
18 By:

19 DANIEL L. SCHWARTZ, ESQ.

20 Nevada Bar No. 5125

21 JOEL P. REEVES, ESQ.

22 Nevada Bar No. 13231

23 KIM D. PRICE, ESQ.

24 Nevada Bar No. 7873

25 2300 W. Sahara Avenue, Suite 300, Box 28

26 Las Vegas, Nevada 89102

27 Telephone: 702.893.3383

28 Facsimile: 702.366.9563

Attorneys for Petitioners

LVMPD and CCMSI

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on September 20, 2020, a true and correct copy of the foregoing **PETITION FOR JUDICIAL REVIEW** was duly mailed, postage prepaid and addressed to the following:

LVMPD
Jeff Roch
Director of Risk Management
400 South MLK Blvd.
Las Vegas, Nevada 89106
Petitioner

CCMSI
Dusty Marshall
Claims Supervisor
PO Box 35350
Las Vegas, Nevada 89133
Petitioner

Donald J. Bordelove
Deputy Attorney General
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Respondent

State of Nevada
Attorney General Aaron Ford
100 North Carson Street
Carson City, Nevada 89701
Attorneys for Respondent

Industrial Relations (DIR)
Christopher Eccles, Esq.
3360 West Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

Industrial Relations (DIR)
Division Headquarters
400 West King Street, Suite 400
Carson City, Nevada 89703

///

///

///

///

1 Department of Business and Industry
2 Director Terry Reynolds
3 1830 College Parkway, Suite 100
4 Carson City, Nevada 89706


5 
6 Dawn Bateman
7 Employee of Lewis Brisbois Bisgaard & Smith

EXHIBIT "1"

EXHIBIT "1"

1 STATE OF NEVADA
2 BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT
3 INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS
4

5 In re: Subsequent Injury Request for Reimbursement

6 Claim No: 12D34C229979

7 Date of Injury: 06-22-12

8 Insurer: Las Vegas Metropolitan Police Department

9 Employer: Las Vegas Metropolitan Police Department

10 Third-Party Administrator: CCMSIS

11 Submitted by: Kim Price with Lewis Brisbois Bisgaard &
12 Smith LLP

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DETERMINATION OF THE
BOARD

13 PLEASE TAKE NOTICE that the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
14 DETERMINATION OF THE BOARD was entered on August 19, 2020 in the above-captioned matter,
15 a copy of which is attached hereto.

16 Dated: August 27, 2020.

17 AARON D. FORD
18 Attorney General

19 By: /s/ Donald J. Bordelove

20 Donald J. Bordelove

21 Deputy Attorney General

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26 Attorneys for the Board
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 27th day of August 2020, I served the NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DETERMINATION OF THE BOARD by depositing for mailing at General Services, State of Nevada, in a sealed envelope, postage prepaid a true copy to the following:

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Employee of the State of Nevada
Office of the Attorney General

STATE OF NEVADA
BOARD FOR ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS

In re: Subsequent Injury Request for Reimbursement

Claim No: 12D34C229979

Date of Injury: 06-22-12

Insurer: Las Vegas Metropolitan Police Department

Employer: Las Vegas Metropolitan Police Department

Third-Party Administrator: CCMSIS

Submitted by: Kim Price with Lewis Brisbois Bisgaard &
Smith LLP

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DETERMINATION OF THE BOARD**

This matter came before the State of Nevada, Board for the Administration of the Subsequent Injury Account for Self-Insured Employers ("Board") for consideration and decision upon appeal by the applicant from the Subsequent Injury Account ("Account"). In its preliminary decision, the Board upheld the recommendation of the Administrator, Division of Industrial Relations, State of Nevada ("Administrator") to accept the claim pursuant to NRS 616.557 for the right knee. The cervical and lumbar spine do not qualify for consideration and were not requested by the insurer.

This appeal was heard in a *de novo* hearing conducted on September 28, 2018. At the conclusion of the meeting, the Board voted to affirm the recommendation of the Administrator. The total amount requested for reimbursement is \$14,008.47. This amount was under by \$13,952.14 in medical expenses. The amount that should have been requested for reimbursement is \$27,960.61. This claim had subrogation recovery that was included in the request. The amount of verified claim costs subject to reimbursement pursuant to NAC 616B.7702(1)(b) is \$<69,630.88>. Since there was subrogation recovery the amount to be considered is less than the verified costs spent on the claim. Disallowances under this claim are considered against all expenses prior to the reduction of the subrogation recovery, therefore, allowing no reimbursement.

The employee was hired by the Las Vegas Metropolitan Police Department (LVMPD) on July 18, 2006. On September 29, 2006, he injured his right knee. The C-3 Form listed a right knee strain. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee. The injured employee

1 sought treatment at UMC and was diagnosed with sprain/strain of the right knee and x-rays were
2 normal. He was taken off work through October 3, 2006 and then released to modified duty. The
3 patient saw Dr. Higgins on October 3, 2006. His impression was a bucket handle tear, medial
4 semilunar cartilage and he requested surgery. The patient had partial debridement of the anterior
5 cruciate ligament (ACL) with partial synovectomy and medial meniscorrhesis on October 4, 2006. In
6 follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006 and an ACL repair
7 after he was finished would be considered. The patient attended physical therapy and was given a knee
8 brace. As of February 13, 2007, the patient had an ACL deficient knee. He was working in the field
9 and could continue as long as he protected the knee. He was released from care.

10 On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his right
11 knee. The C-3 Form indicated right knee strain, and the January 7, 2008 C-4 Form also noted right
12 knee strain. The C-4 Form was received by the employer on January 14, 2008. The injured employee
13 had three additional surgeries under this claim and treated with Drs. Patti, Miao and Tingey. The last
14 surgery was done in December 2008 with follow up under Dr. Tingey. Reporting under the PPD only
15 goes through September 21, 2009 and the patient continued to follow up. He had been released to full
16 duty and as of October 27, 2009, the patient had reached MMI and was stable and ratable. Dr. Perry
17 evaluated this injured employee for permanent impairment and found 7% WPI and did not apportion for
18 the prior injury or surgery. The rater was not furnished with any medical reporting prior to the 2008
19 date of injury and the patient denied any previous injuries to the right knee.

20 In regards to the present claim, on June 22, 2012, he was involved in a motor vehicle accident
21 and injured his cervical and lumbar spine and right knee. The C-4 Form noted central cord syndrome.
22 Medical reporting was taken from the November 8, 2012 PPD evaluation penned by Dr. Perry. The
23 patient was taken to the hospital via ambulance, treated and released to follow up with Dr. Tingey for
24 his knee and Dr. Flangas for the spine. MRI of the knee was done and the impression was sprain/strain
25 with a history of ACL reconstruction and microfracture. On September 5, 2012, the patient was taken
26 to surgery for the right knee and underwent arthroscopic chondroplasty, medial femoral condyle with
27 compartment synovectomy. He attended physical therapy and as of October 18, 2012, Dr. Tingey
28 released him to full duty and he had reached MMI and was stable and ratable.

1 The injured employee was rated for the cervical and lumbar spine as well as the right knee. He
2 was found to have 12% WPI, combined, for the cervical and lumbar spine and no additional impairment
3 for the right knee. The claim was successfully subrogated and the insurer received reimbursement in
4 the amount of \$83,325.00 to be applied to the claim.

5 Based on NRS 616C.215(2) and (5), where, as here, the insurer or the Administrator is
6 subrogated to the proceeds from the recovery against a third party by the injured worker, the insurer is
7 entitled to lien the entire award, leaving no room for apportionment. In the alternative, if there were
8 apportionment, the figure offered by the applicant under its apportionment theory was not established.
9 The Board finds NRS 616C.215(2) and (5) applies in this matter and finds that based on the facts of this
10 case apportionment is not appropriate.

11 In the same vein as this case, if the injured employee receives compensation, the insurer, or in
12 case of claims involving a subsequent injury account the Administrator, has a right of action against the
13 person so liable to pay damages and is subrogated to the rights of the injured employee.
14 NRS 616C.215(2)(B). NRS 616C.215(5) further provides that in any case where the insurer or the
15 Administrator is subrogated to the rights of the injured employee, the insurer or the Administrator has a
16 lien upon the total proceeds of any recovery from some person other than the employer. The injured
17 employee is not entitled to double recovery for the same injury (NRS 616C.215(5)), nor can a self-
18 insured employer recover more than the amount of its total claim expenditures (NRS 616C.215(4)). As
19 such, the self-insured employer is required to offset the total amounts received through subrogation.
20 The subrogation recovery by the self-insured employer exceeds the amount of reimbursement that was
21 approved in this case.

22 FINDINGS OF FACT

- 23 1. The employee was hired by the Las Vegas Metropolitan Police Department (LVMPD)
- 24 on July 18, 2006.
- 25 2. On September 29, 2006, he injured his right knee.
- 26 3. The C-3 Form listed a right knee strain.
- 27 4. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee.
- 28

1 5. The injured employee sought treatment at UMC and was diagnosed with sprain/strain of
2 the right knee and x-rays were normal.

3 6. He was taken off work through October 3, 2006 and then released to modified duty.

4 7. The patient saw Dr. Higgins on October 3, 2006.

5 8. His impression was a bucket handle tear, medial semilunar cartilage and he requested
6 surgery.

7 9. The patient had partial debridement of the anterior cruciate ligament (ACL) with partial
8 synovectomy and medial meniscorrhesis on October 4, 2006.

9 10. In follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006
10 and an ACL repair after he was finished would be considered.

11 11. The patient attended physical therapy and was given a knee brace.

12 12. As of February 13, 2007, the patient had an ACL deficient knee.

13 13. He was working in the field and could continue as long as he protected the knee.

14 14. He was released from care.

15 15. On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his
16 right knee.

17 16. The C-3 Form indicated right knee strain, and the January 7, 2008 C-4 Form also noted
18 right knee strain.

19 17. The C-4 Form was received by the employer on January 14, 2008.

20 18. The injured employee had three additional surgeries under this claim and treated with
21 Drs. Patti, Miao and Tingey.

22 19. The last surgery was done in December 2008 with follow up under Dr. Tingey.

23 20. Reporting under the PPD only goes through September 21, 2009 and the patient
24 continued to follow up.

25 21. He had been released to full duty and as of October 27, 2009, the patient had reached
26 MMI and was stable and ratable.

27 22. Dr. Perry evaluated this injured employee for permanent impairment and found 7% WPI
28 and did not apportion for the prior injury or surgery.

1 23. The rater was not furnished with any medical reporting prior to the 2008 date of injury
2 and the patient denied any previous injuries to the right knee.

3 24. On June 22, 2012, he was involved in a motor vehicle accident and injured his cervical
4 and lumbar spine and right knee.

5 25. The C-4 Form noted central cord syndrome.

6 26. Medical reporting was taken from the November 8, 2012 PPD evaluation penned by
7 Dr. Perry.

8 27. The patient was taken to the hospital via ambulance, treated and released to follow up
9 with Dr. Tingey for his knee and Dr. Flangas for the spine.

10 28. MRI of the knee was done and the impression was sprain/strain with a history of ACL
11 reconstruction and microfracture.

12 29. On September 5, 2012, the patient was taken to surgery for the right knee and underwent
13 arthroscopic chondroplasty, medial femoral condyle with compartment synovectomy.

14 30. He attended physical therapy and as of October 18, 2012, Dr. Tingey released him to full
15 duty and he had reached MMI and was stable and ratable.

16 31. The injured employee was rated for the cervical and lumbar spine as well as the right
17 knee.

18 32. He was found to have 12% WPI, combined, for the cervical and lumbar spine and no
19 additional impairment for the right knee.

20 33. The claim was successfully subrogated and the insurer received reimbursement in the
21 amount of \$83,325.00 to be applied to the claim.

22 34. The total amount requested for reimbursement is \$14,008.47.

23 35. This amount was under by \$13,952.14 in medical expenses.

24 36. The amount that should have been requested for reimbursement is \$27,960.61.

25 37. This claim had subrogation recovery that was included in the request.

26 38. The amount of verified claim costs subject to reimbursement pursuant to
27 NAC 616B.7702(1)(b) is \$<69,630.88>.

1 39. Since there was subrogation recovery the amount to be considered is less than the
2 verified costs spent on the claim.

3 40. If any of the foregoing findings is more appropriately construed as a conclusion of law,
4 it may be so construed.

5 CONCLUSIONS OF LAW

6 1. Based on NRS 616C.215(2) and (5), where, as here, the insurer or the Administrator is
7 subrogated to the proceeds from the recovery against a third party by the injured worker, the insurer is
8 entitled to lien the entire award, leaving no room for apportionment.

9 2. In the alternative, if there were apportionment, the figure offered by the applicant under
10 its apportionment theory was not established.

11 3. The Board finds NRS 616C.215(2) and (5) applies in this matter and finds that based on
12 the facts of this case apportionment is not appropriate.

13 4. Disallowances under this claim are considered against all expenses prior to the reduction
14 of the subrogation recovery, therefore, allowing no reimbursement.

15 5. If the injured employee receives compensation, the insurer, or in case of claims
16 involving a subsequent injury account the Administrator, has a right of action against the person so
17 liable to pay damages and is subrogated to the rights of the injured employee. NRS 616C.215(2)(B).

18 6. NRS 616C.215(5) further provides that in any case where the insurer or the
19 Administrator is subrogated to the rights of the injured employee, the insurer or the Administrator has a
20 lien upon the total proceeds of any recovery from some person other than the employer.

21 7. The injured employee is not entitled to double recovery for the same injury
22 (NRS 616C.215(5)), nor can a self-insured employer recover more than the amount of its total claim
23 expenditures (NRS 616C.215(4)).

24 8. As such, the self-insured employer is required to offset the total amounts received
25 through subrogation.

26 9. The subrogation recovery by the self-insured employer exceeds the amount of
27 reimbursement that was approved in this case.

1 10. If any of the foregoing conclusions is more appropriately construed as a finding of fact,
2 it may be so construed.

3 ORDER

4 IT IS, THEREFORE, ORDERED the application for reimbursement for the above-referenced
5 claim is APPROVED.

6 Dated this 19th day of August, 2020.

7 BOARD FOR ADMINISTRATION OF
8 THE SUBSEQUENT INJURY ACCOUNT
9 FOR SELF-INSURED EMPLOYERS

10 BY: /s/ Cecilia Meyer
11 Cecilia Meyer, Chair