

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CARSON TAHOE HEALTH SYSTEM  
and GALLAGHER BASSETT  
SERVICES, INC.,

Appellants,

v.

STEPHEN YASMER,

Respondents.

Supreme Court Case No.: 83686

Electronically Filed  
Mar 14 2022 04:52 p.m.

District Court Case No.: CV21-00809  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANTS' APPENDIX VOLUME II**

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1 CASE NO. CV21-00809

2 DEPT NO. 8

3

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5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

\* \* \* \* \*

9 CARSON TAHOE HEALTH SYSTEM and  
10 GALLAGHER BASSETT SERVICES, INC.,

11

Petitioner,

12

vs.

RECORD ON APPEAL

13

14 STEPHEN YASMER; and the STATE OF  
NEVADA DEPARTMENT OF ADMINISTRATION,  
HEARINGS DIVISION, APPEALS OFFICE,  
an Agency of the State of Nevada,

15

Respondents.

16

ORIGINAL

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RECORD ON APPEAL

18

IN ACCORDANCE WITH THE

19

20 NEVADA ADMINISTRATIVE PROCEDURE ACT  
(Chapter 233B of NRS)

21

22

23 Attorney for Petitioner

Attorney for Respondents

24 JOHN P LAVERY ESQ  
LEWIS BRISBOIS BISGAARD

TODD EIKELBERGER ESQ DEPUTY  
NEVADA ATTORNEY FOR INJURED  
WORKERS

25

& SMITH LLP

1000 E WILLIAM ST STE 208  
CARSON CITY NV 89701

26

2300 W SAHARA AVE

27

STE 900 BOX 28  
LAS VEGAS NV 89102-4375

28



1 CASE NO. CV21-00809

2 DEPT NO. 8

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5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

\* \* \* \* \*

9 CARSON TAHOE HEALTH SYSTEM and  
10 GALLAGHER BASSETT SERVICES, INC.,

11 Petitioner,

12

vs.

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14 STEPHEN YASMER; and the STATE OF  
NEVADA DEPARTMENT OF ADMINISTRATION,  
HEARINGS DIVISION, APPEALS OFFICE,  
an Agency of the State of Nevada,

15

Respondents.

16

**AFFIRMATION**

17

**Pursuant to NRS 239B.030**

18

19 The undersigned does hereby affirm that the following  
document **DOES NOT** contain the social security number of any  
person:

20

1. Record on Appeal

21

22

APPEALS OFFICER

23

  
SHEILA Y. MOORE

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CASE NO. CV21-00809

DEPT. NO. 8

CARSON TAHOE HEALTH SYSTEM and GALLAGHER BASSETT SERVICES, INC.  
VS. STEPHEN YASMER; and the STATE OF NEVADA DEPARTMENT OF  
ADMINISTRATON, HEARINGS DIVISION, APPEALS OFFICE, an Agency of  
the State of Nevada

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oOo

000202

1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER  
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**FILED**  
**APR 15 2021**  
DEPT. OF ADMINISTRATION  
APPEALS OFFICER

6 In the Matter of the  
7 Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

8 of

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

9 STEPHEN YASMER  
10 \_\_\_\_\_/

11 Stephen Yasmer was carrying a box of brochures and descended  
12 a staircase at Carson Tahoe Hospital on June 8, 2020, while in the  
13 course and scope of his employment with Carson Tahoe Health  
14 Systems. Mr. Yasmer's vision was impeded by the box and he mis-  
15 stepped causing him to fall and fracture his ankle. A claim for  
16 benefits was filed and denied by Gallagher Bassett Services, the  
17 third party administrator for the employer on June 23, 2020. The  
18 denial was appealed and the determination was affirmed by the  
19 Hearing Officer on August 6, 2020. Appeal was taken and forms the  
20 basis for the current matter.

21 DECISION AND ORDER

22 This appeal concerns a dispute over claim acceptance. The  
23 Appeals Officer finds that Stephen Yasmer has met the requirements  
24 under Nevada's workers' compensation scheme for claim  
25 compensability as he has proven, by a preponderance of the  
26 evidence, that his injury arose out of and in the course of his  
27 employment.

28 The above-entitled appeal was heard by the Appeals Officer

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

000203  
001

1 under Appeal Number 2100639-SYM. Claimant, Stephen Yasmer, was  
2 present by telephone and represented by Todd Eikelberger, Esq.,  
3 Deputy, Nevada Attorney for Injured Workers, who was also present  
4 by telephone. Gallagher Bassett Services, the third-party  
5 administrator for the employer, Carson Tahoe Health Systems, was  
6 represented by John Lavery, Esq., of Lewis Brisbois Bisgaard &  
7 Smith, LLP, who appeared by telephone.

8 The following were submitted, marked, and admitted into  
9 evidence:

- 10 • Exhibit 1 consisting of 45 pages; and  
11 • Exhibit 2 consisting of 34 pages.

12 Testimony was provided at hearing by:

- 13 • Stephen Yasmer by telephone.

14 Pursuant to Nevada's Administrative Procedures Act, Chapter  
15 233B of the Nevada Revised Statutes; Nevada's Industrial Insurance  
16 Act, Chapters 616A through 617, inclusive, of the Nevada Revised  
17 Statutes; and related regulations, and, after careful consideration  
18 of the totality of all evidence submitted and testimony provided,  
19 the Appeals Officer finds and decides as follows:

20 I.

21 FINDINGS OF FACT<sup>1</sup>

22 Stephen Yasmer, manager of rehabilitation services at Carson  
23 Tahoe Health Systems (herein "CTHS"), was injured while descending  
24 stairs at Carson Tahoe Hospital (herein, "CTH"), where he  
25 maintained an office, with a large box in his hands on June 8,  
26 ...

27 \_\_\_\_\_  
28 <sup>1</sup> Any finding of fact more appropriately considered to be a conclusion of  
law, and vice versa, shall be so deemed.

1 2020.<sup>2</sup> He testified at hearing that he left the main therapy office  
2 on the third floor and began descending the staircase carrying a  
3 box of brochures for work.<sup>3</sup> Although carrying the box did not  
4 impair his physical ability to walk, it did impede his visual  
5 field.<sup>4</sup> He mis-stepped because he thought he had reached the  
6 landing and fell two steps fracturing his left ankle.<sup>5</sup>

7 Following the incident, he taken to the emergency room in  
8 CTH where it was noted that:

9 he was carrying a box [sic] supplies down to the basement  
10 when he thought he was on the bottom stair and could not  
11 see that there is [sic] still to [sic] more stairs  
12 beneath MCV stepped forward thinking he was stepping onto  
the landing and missed the bottom to [sic] stairs falling  
hard on to his left ankle causing some notable  
deformity.<sup>6</sup>

13 The diagnosis was an acute left ankle dislocation, fibular  
14 fracture, and posterior malleolus fracture.<sup>7</sup> A C4 form was filled  
15 out on June 8, 2020, and the physician checked the box indicating  
16 that he could connect the left ankle injury as job incurred.<sup>8</sup>

17 Yasmer was seen at Nevada Occupational Health on June 10,  
18 2020, and told he would require an open reduction and internal  
19 fixation of the left ankle so he was referred to Dr. Jeffrey  
20 Cummings.<sup>9</sup> Dr. Cummings at Tahoe Fracture saw him on June 12, 2020,

21 \_\_\_\_\_  
22 <sup>2</sup> Exhibit 1, 1 and testimony of Stephen Yasmer at hearing.

23 <sup>3</sup> Testimony of Stephen Yasmer at hearing.

24 <sup>4</sup> Id.

25 <sup>5</sup> Id.

26 <sup>6</sup> Exhibit 1, 8.

27 <sup>7</sup> Id. at 10.

28 <sup>8</sup> Id. at 1.

<sup>9</sup> Id. at 16-17.

1 and indicated he required a "left ankle lateral malleolus and  
2 syndismosis open reduction internal fixation."<sup>10</sup> The procedure was  
3 performed on June 15, 2020, at CTH.<sup>11</sup>

4 Yasmer filed a claim for workers' compensation benefits which  
5 was denied by Gallagher Bassett Services, the third-party  
6 administrator (herein, "TPA") for CTHS, on June 23, 2020.<sup>12</sup> This  
7 determination was appealed and, on August 6, 2020, the hearing  
8 officer affirmed claim denial.<sup>13</sup> That decision and order was  
9 appealed and forms the basis for the current matter.

10 Dr. Cummings saw Yasmer again on September 2, 2020, for a  
11 drainage of his wound and for hardware removal.<sup>14</sup> Yasmer returned  
12 on September 15, 2020, and it was found that the wound was healing  
13 well, with no drainage, so the sutures were removed.

14 Yasmer's testimony at hearing regarding his work and mechanism  
15 of injury are found to be consistent, reliable, and credible. The  
16 medical reporting clearly shows Yasmer suffered a left ankle  
17 fracture that required a reduction and then a draining of the wound  
18 with hardware removal. Based on the foregoing, the Appeals Officer  
19 finds that a preponderance of all evidence submitted supports  
20 Yasmer's position that his claim should be accepted. The weight of  
21 the evidence, the credible medical reporting, and the reliable  
22 testimony of Yasmer establish that he suffered injury to his left  
23

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24 <sup>10</sup> Id. at 18.

25 <sup>11</sup> Id. at 25.

26 <sup>12</sup> Id. at 4.

27 <sup>13</sup> Id. at 5-6.

28 <sup>14</sup> Id. at 39.

1 ankle in the form of a fracture as he was walking down stairs  
2 carrying a box of work brochures. Thus, his left ankle fracture is  
3 found to be industrially related and compensable.

4 II.

5 CONCLUSIONS OF LAW

6 To qualify for benefits for an industrial injury, an employee  
7 has the burden to demonstrate, by a preponderance of the evidence,  
8 that an injury by accident arose out of and in the course of his  
9 employment.<sup>15</sup> The Nevada Supreme Court has defined a "preponderance  
10 of evidence" as a standard of proof that "should lead the trier of  
11 fact 'to find that the existence of the contested fact is more  
12 probable than its nonexistence.'"<sup>16</sup> Further, in evaluating the  
13 evidence of a work injury, the fact finder must consider the  
14 totality of the circumstances.<sup>17</sup>

15 In establishing a claim for benefits, an injury by accident  
16 must be shown. Under Nevada law, an accident is an "unexpected or  
17 unforeseen event happening suddenly and violently, with or without  
18 human fault, and producing at the time objective symptoms of an  
19 injury."<sup>18</sup> While "a sudden and tangible happening of a traumatic  
20 nature, producing an immediate or prompt result which is  
21 established by medical evidence" constitutes an injury.<sup>19</sup>

22 Applying those statutory definitions, it was unforeseen that  
23

24 <sup>15</sup> NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).

25 <sup>16</sup> Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).

26 <sup>17</sup> Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,  
1046 (1997).

27 <sup>18</sup> NRS 616A.030.

28 <sup>19</sup> NRS 616A.265(1).

1 Yasmer would miss a step and fall so the first prong of accident is  
2 met. Since it caused him to suffer an ankle fracture, it was  
3 capable of producing a harmful result and so happened suddenly and  
4 violently. Therefore, Yasmer suffered an accident. Further, there  
5 was an injury as a result of that accident since he adduced medical  
6 evidence showing a sudden and tangible happening - an ankle  
7 fracturing. It was traumatic in nature because it was capable of  
8 producing a harmful result in Yasmer's left ankle which was later  
9 diagnosed as a fracture.

10 Based on the foregoing, Yasmer has proven he suffered an  
11 injury by accident. Further, he has also shown a connection of that  
12 injury by accident to his work.

13 Generally, an injury arises out of employment if there is "'a  
14 causal connection between the injury and the employee's work,' in  
15 which 'the origin of the injury is related to some risk involved  
16 within the scope of employment.'"<sup>20</sup> To find causation a physician  
17 must establish to a "reasonable degree of medical probability that  
18 the condition in question was caused by the industrial injury or  
19 sufficient facts must be shown so that the trier of fact can make  
20 a reasonable conclusion that the condition was caused by the  
21 industrial injury."<sup>21</sup>

22 There are three categories of risks: employment, personal, and  
23 neutral.<sup>22</sup> Employment risks are compensable, personal risks are not  
24

25 <sup>20</sup> Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,  
26 1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

27 <sup>21</sup> Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842  
(1997).

28 <sup>22</sup> Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d  
2, 5 (2010).



1 compensable, and neutral risks are compensable if they satisfy the  
2 increased-risk test.<sup>23</sup> Personal risks are those that are  
3 attributable to personal issues - not to the employment.<sup>24</sup>  
4 Employment risks include "obvious kinds of injur[ies] that one  
5 thinks of at once as industrial injuries. All the things that can  
6 go wrong around a modern factory, office, mill, mine, retail  
7 establishment, transportation system, or construction project."<sup>25</sup>  
8 Neutral risks are those that do not fall within either the  
9 employment or personal risk categories.<sup>26</sup>

10 Yasmer's injury was caused by an employment risk as his left  
11 ankle fracture arose out of his work duties since he was conveying  
12 a benefit to his employer when he was carrying the box of work  
13 brochures down stairs at the facility where he worked. Accordingly,  
14 Yasmer's injury is considered to have arisen from an employment  
15 risk and, as such, he has met his burden of proof in showing that  
16 his injury arose out of his employment.

17 In the Supreme Court case of Rio All Suite Hotel & Casino v.  
18 Phillips, 126 Nev. 346, 240 P.3d 2 (2010), it was found that an  
19 injury from climbing stairs was a compensable, neutral risk because  
20 the claimant in that matter was required to climb the stairs by her  
21 employer. CTHS argued that Yasmer was not required to use the  
22 stairs, unlike the claimant in Phillips, and therefore his injury  
23 did not arise out of his employment. However, Yasmer argued that  
24 the stairs were not dispositive of the issue in this matter but

25 <sup>23</sup> Id. at 351-53, 240 P.3d at 5-7.

26 <sup>24</sup> Id. at 351, 240 P.3d at 5.

27 <sup>25</sup> 1-4 Larson's Workers' Compensation Law § 4.01.

28 <sup>26</sup> Phillips at 351, 240 P.3d at 6.

1 rather it was the act of carrying the box. Yasmer was required to  
2 carry the box of brochures, which impeded his vision and caused him  
3 to misjudge his location on the staircase, resulting in him falling  
4 and fracturing his ankle. Pursuant to Phillips, carrying a box of  
5 brochures from one location to another is an employment risk that  
6 impedes a person's field of vision. Because of that, Yasmer fell  
7 and fractured his ankle, thus, his injury arose out of his  
8 employment.

9 Furthermore, the evidence establishes that Yasmer's injury  
10 occurred within the course of his employment. "[W]hether the injury  
11 occurs within the course of the employment refers . . . to the time  
12 and place of employment, i.e. whether the injury occurs at work,  
13 during working hours, and while the employee is reasonably  
14 performing his or her duties."<sup>27</sup> As discussed, Yasmer's injury  
15 occurred while he was at work in the hospital. It happened while he  
16 was reasonably performing his job duties as he was required to  
17 carry the box of brochures. Further, he was conferring a benefit on  
18 his employer at the time of the injury.<sup>28</sup>

19 Finally, credible and probative medical evidence, from which  
20 a reasonable conclusion can be formed that Yasmer's injury occurred  
21 in the course and scope of his employment, was provided by his  
22 physicians.<sup>29</sup> Specifically, the emergency room doctor checked the  
23 box on the C4 form indicating that he could directly connect the  
24

25  
26 <sup>27</sup> Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

27 <sup>28</sup> See Evans v. Southwest Gas, 108 Nev. 1002, 1006, 842 P.2d 719, 721  
(1992).

28 <sup>29</sup> United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,  
425, 851 P.2d 423, 425.

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 left ankle fracture as job incurred.<sup>30</sup> Also, Dr. Cummings noted that  
2 the injury occurred at work when Yasmer missed a step while  
3 carrying a box. This reporting is the most persuasive, credible  
4 medical evidence and is based on facts supported by evidence.<sup>31</sup>  
5 Thus, Yasmer, through his credible testimony and presentation of  
6 probative medical reporting, and other evidence, has met his burden  
7 of proof in showing that his injury by accident arose out of and in  
8 the course of his employment.

9 Based on the foregoing, sufficient facts have been presented  
10 to establish, by a preponderance of the evidence, that the June 8,  
11 2020, fall caused an injury by accident that arose out of and in  
12 the scope of employment. Thus, Yasmer has met his burden of proof  
13 for his claim for industrial injury benefits to be compensable  
14 under Nevada's workers' compensation scheme.

15 ORDER

16 For the above reasons, the Hearing Officer's August 6, 2020,  
17 Decision and Order affirming the third party administrator's June  
18 23, 2020, determination regarding claim denial is **REVERSED**.

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28 <sup>30</sup> See NRS 616C.098.

<sup>31</sup> McClanahan v. Raleys, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 Therefore, Gallagher Bassett Services, the third party  
2 administrator for the employer, Carson Tahoe Health Systems, shall  
3 accept Stephen Yasmer's claim, claim number 000706-038452-WC-01,  
4 for benefits as a compensable workers' compensation claim and shall  
5 provide or reimburse for all appropriate treatment and benefits  
6 available under chapters 616A to 617, inclusive, of the Nevada  
7 Revised Statutes.

8 IT IS SO ORDERED this 14th day of April, 2021.


9 APPEALS OFFICER

10   
11 SHEILA Y. MOORE

12 N O T I C E: Pursuant to NRS 233B.130 and NRS 616C.370, should  
13 any party desire to appeal this final decision of the Appeals  
14 Officer, a Petition for Judicial Review must be filed with the  
15 District Court within thirty (30) days after service by mail of  
16 this decision.

17 Submitted by:

18 NEVADA ATTORNEY FOR INJURED WORKERS

19   
20 Todd Eikelberger, Esq., Deputy  
21 1000 East William St., #208  
22 Carson City, Nevada 89701

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **Decision** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

STEPHEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

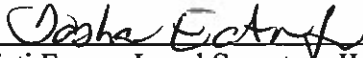
NAIW  
1000 E WILLIAM #208  
CARSON CITY NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES, INC  
PO BOX 2934  
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 900 BOX 28  
LAS VEGAS NV 89102-4375

Dated this 15 day of April, 2021.

  
\_\_\_\_\_  
Kristi Fraser, Legal Secretary II  
Employee of the State of Nevada

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the  
Contested Industrial  
Insurance Claim of:

STEPHEN YASMER,

Claimant

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
HONORABLE SHEILA Y. MOORE, ESQ.  
APPEALS OFFICER

NOVEMBER 16, 2020  
9:00 AM

1050 E. WILLIAMS STREET, SUITE 450  
CARSON CITY, NEVADA 89701

Ordered by:

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Transcribed By: Wendy Letner, Precise Transcripts

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2021 MAY 26 P 12:20

STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
APPEALS DIVISION

A P P E A R A N C E S

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On behalf of the Claimant:

Todd Eikelberger, Esq.

NAIW

1000 E. William, #230

Carson City, NV 89703

On behalf of the Insurer:

John Lavery, Esq.

Lewis, Brisbois, Bisgaard & Smith, LLP

2300 W. Sahara Ave., Ste. 300, Box 28

Las Vegas, NV 89102-4375

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I N D E XEXAMINATIONDIRECTCROSSREDIRECTRECROSS

Todd Eikelberger

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John Lavery

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E X H I B I T SEVIDENCEIDENTIFIEDENTERED

Exhibit 1

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Exhibit 2

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P R O C E E D I N G S

APPEALS OFFICER: It's November 16th, 2020.

It's approximately 9 o'clock in the morning. This is the time and date set for appeal number 21006--639 in the contested industrial insurance claim of Stephen Yasmer. The following employees are present via telephone, Todd Eikelberger representing Mr. Yasmer, and John Lavery representing the employer, Carson Tahoe Health System. This is claimant's appeal of an August 6th, 2020 hearing officer's decision and order affirming claim denial. I have a total of two exhibits. We'll start with the claimant's first exhibit. It was filed November 12th, 2020, and consists of 45 pages. Any objections, Mr. Lavery?

JOHN LAVERY: No, ma'am.

APPEALS OFFICER: This will be marked and entered as Exhibit 1. And then we have Carson Tahoe Health Systems and Gallagher Bassett Services' index of document filed on November 4th, 2020, and consists of 34 pages. Any objections, Mr. Eikelberger?

TODD EIKELBERGER: No, Your Honor.

APPEALS OFFICER: Okay. This will be marked and entered as Exhibit 2. Opening statement, Mr. Eikelberger?

TODD EIKELBERGER: Very briefly, Your Honor. We're here today asking you to reverse the August 6th, 2020 decision

1 and order denying the claim of Mr. Yasmer as the evidence will  
2 show he fell at work. It occurred in the course and scope of  
3 his employment as he was carrying a box when he missed a stair  
4 coming down and fell and broke his leg.

5 APPEALS OFFICER: Thank you. Mr. Lavery,  
6 opening statements?

7 JOHN LAVERY: Yes, ma'am. Again, very  
8 briefly, the, the, the, the essential facts in this case I  
9 don't believe are in dispute. The claimant was descending a  
10 set of stairs, simply miscounted or misstepped and fell and  
11 broke his ankle. There's nothing about the workplace  
12 environment that caused him to fall. He had the ability to  
13 utilize the elevator which he chose not to do so. It's a--  
14 it's a Phillips analysis, it's a Mitchell analysis, and  
15 there's simply nothing about this actual scenario that brings  
16 it within the parameters of either one of those cases. Yes,  
17 he was at work. Yes, he was performing a job function. But  
18 being at work and having a problem doesn't make your problem  
19 work-related. He doesn't satisfy the necessary elements of  
20 the Nevada Industrial Insurance Act in the two cases that I  
21 just cited to you to establish a compensable, compensable  
22 claim in the State of Nevada.

23 APPEALS OFFICER: Thank you. Mr. Eikelberger,  
24 which is-would you want to just-do you want me to get your  
25 client on the phone at this time?

1 TODD EIKELBERGER: Yes, please.

2 APPEALS OFFICER: Okay. One moment, gentlemen.

3 [Dials, rings].

4 STEPHEN YASMER: Good morning. This is Steve.

5 APPEALS OFFICER: Hi, Mr. Yasmer. This is-my, my  
6 name's Appeals Officer Sheila Moore. I'm calling for your  
7 Worker's Compensation appeal hearing. One moment and I'll  
8 conference in the attorneys.

9 STEPHEN YASMER: Thank you. [Unintelligible]

10 APPEALS OFFICER: Mr. Yasmer is now present  
11 with us. Mr. Eikelberger, are you still there?

12 TODD EIKELBERGER: I am.

13 APPEALS OFFICER: Mr. Lavery, are you still  
14 there?

15 JOHN LAVERY: Yes, ma'am.

16 APPEALS OFFICER: Thank you. Okay. Mr.  
17 Eikelberger, at this time would you like to call your first  
18 witness?

19 TODD EIKELBERGER: Yes, Your Honor. I'd like to  
20 call Stephen Yasmer.

21 APPEALS OFFICER: Okay. Sir, at this time I do  
22 need to swear you in so if you will please raise your  
23 right. Do you swear or affirm the testimony you're about  
24 to give in this matter is the truth, the whole truth, and  
25 nothing but the truth? Mr. Yasmer?

1                   STEPHEN YASMER:       I do.

2                   APPEALS OFFICER:     Thank you, sir. These  
3 proceedings are audio recorded so please wait for the  
4 completion of each question before you begin answering. It  
5 simply makes for a cleaner transcript. Okay, sir?

6                   STEPHEN YASMER:       Yes.

7                   APPEALS OFFICER:     Okay. Thank you. Mr.  
8 Eikelberger, go ahead.

9                   TODD EIKELBERGER:    Thank you, Your Honor. Mr.  
10 Yasmer, can you please state your name and spell it for the  
11 court?

12                  STEPHEN YASMER:       My first name is Stephen, S-  
13 T-E-P-H-E-N, last name is Yasmer, Y-A-S-M-E-R.

14                  TODD EIKELBERGER:    And were you working on June  
15 8th, 2020?

16                  STEPHEN YASMER:       Yes, I was.

17                  TODD EIKELBERGER:    And who were you working for?

18                  STEPHEN YASMER:       Carson Tahoe Health.

19                  TODD EIKELBERGER:    And what do you do for that  
20 company?

21                  STEPHEN YASMER:       My position there is the  
22 manager of rehab therapy services.

23                  TODD EIKELBERGER:    And what does that job  
24 entail?

1           STEPHEN YASMER:       I manage a department of 69  
2 employees consisting of physical therapists, occupational  
3 therapists, speech pathologists, and support staff, and  
4 those employees work in four different physical locations.

5           TODD EIKELBERGER:    And where are those  
6 locations?

7           STEPHEN YASMER:       The main hospital at the  
8 north end of Carson City. The specialty medical center  
9 which is the old hospital on Fleischmann here in Carson  
10 City. There is an outpatient clinic in the Carson Mall  
11 which is on South Stewart Street and an outpatient clinic  
12 in the Minden Medical Center on Ironwood Drive.

13          TODD EIKELBERGER:    And does your job require you  
14 to visit all those locations?

15          STEPHEN YASMER:       Yes.

16          TODD EIKELBERGER:    Okay. And where are you  
17 based out of?

18          STEPHEN YASMER:       My office is physically  
19 located at the outpatient clinic in the Carson Mall on  
20 South Stewart Street.

21          TODD EIKELBERGER:    Okay. And how often do you  
22 visit all the different locations?

23          STEPHEN YASMER:       Several times a week.

24          TODD EIKELBERGER:    Okay. And did you suffer an  
25 injury while you were working for that company on June 8th,

1 2020?

2 STEPHEN YASMER: Yes, I did.

3 TODD EIKELBERGER: Can you tell the court what  
4 happened?

5 STEPHEN YASMER: I was leaving or had left  
6 the, the therapy office at the main hospital which is on  
7 the third floor and I was transporting a box of supplies  
8 consisting of facemasks and disinfectant spray that needed  
9 to go to the outpatient clinic on South Stewart Street. I  
10 was descending stairs from the third floor with the  
11 supplies and missed a step. I fell and landed on the  
12 landing in between the first and second floors and  
13 sustained an injury to my left ankle.

14 TODD EIKELBERGER: And why in your opinion did  
15 you miss a step?

16 STEPHEN YASMER: I-well, I was descending as I  
17 normally do those stairs. I have done so hundreds of  
18 times. But I think the, the box impaired my ability to see  
19 exactly where I was. I know that I thought I had reached  
20 the landing and that's why I stepped out into space when I  
21 was still two steps up.

22 TODD EIKELBERGER: Okay. And did the box make  
23 it more difficult to traverse those steps?

24 STEPHEN YASMER: It, it didn't make it more  
25 physically difficult but it did impair my ability to see.

1 Like I said, I thought I had reached the landing but I had  
2 not.

3 TODD EIKELBERGER: And does it take longer to  
4 take the elevator than it does to take the stairs?

5 STEPHEN YASMER: Yes.

6 TODD EIKELBERGER: Okay. And why is it that you  
7 take the stairs there?

8 STEPHEN YASMER: As a matter of habit. I had-  
9 -I have taken those stairs since that hospital opened  
10 almost 15 years ago. It's very common in healthcare  
11 practice to avoid elevators and get some exercise as a  
12 normal part of your day.

13 TODD EIKELBERGER: And do you always take the  
14 stairs?

15 STEPHEN YASMER: Yes.

16 TODD EIKELBERGER: Okay. And how often do you  
17 take those stairs on an average day?

18 STEPHEN YASMER: Probably about a half a dozen  
19 times just depending on meetings and where those meetings  
20 are located in the hospital.

21 TODD EIKELBERGER: Okay. And do you use the  
22 stairs to go up and down?

23 STEPHEN YASMER: Yes.

24 TODD EIKELBERGER: Is, is there any requirement  
25 that you take the elevator?

1                   STEPHEN YASMER:       No.

2                   TODD EIKELBERGER:   Okay. Now, following that  
3 fall, what body parts were injured?

4                   STEPHEN YASMER:       My left ankle.

5                   TODD EIKELBERGER:   Okay. And if reporting  
6 indicates there's anything to the knee would that be a  
7 typo?

8                   STEPHEN YASMER:       Perhaps. I think I, I may  
9 have banged my knee and I may have mentioned that in the  
10 emergency room, but, it, it was a superficial injury.

11                  TODD EIKELBERGER:   Okay. And so, you said you  
12 went to the emergency room. Did you seek treatment right  
13 after this fall?

14                  STEPHEN YASMER:       I did.

15                  TODD EIKELBERGER:   And where was that treatment?

16                  STEPHEN YASMER:       I had to be assisted out of  
17 the stairwell and then taken to the emergency department  
18 there at the main hospital, the regional medical center.

19                  TODD EIKELBERGER:   And what was diagnosed?

20                  STEPHEN YASMER:       I had sustained a dislocation  
21 of my left ankle and a fracture of my distal fibula.

22                  TODD EIKELBERGER:   And did you file a claim?

23                  STEPHEN YASMER:       I did.

24                  TODD EIKELBERGER:   And was the claim accepted?

25                  STEPHEN YASMER:       It was not.



1                   TODD EIKELBERGER:   And what treatment have you  
2 had on that ankle and why?

3                   STEPHEN YASMER:       In the emergency room they  
4 reduced the dislocation. In other words, they just got the  
5 bones back in alignment where they belong and splinted me.  
6 I had a subsequent consultation with an orthopedist who  
7 performed a surgery on the ankle to secure the fractured  
8 bone. And let's see, that was June. About two and a half  
9 months later I developed an infection in that ankle. I had  
10 a second surgery to remove the hardware.

11                  TODD EIKELBERGER:   And since that accident, have  
12 you been able to work?

13                  STEPHEN YASMER:       I have.

14                  TODD EIKELBERGER:   Okay. And are you still  
15 working for that company?

16                  STEPHEN YASMER:       Yes, I am.

17                  TODD EIKELBERGER:   Okay. Nothing further, Your  
18 Honor.

19                  APPEALS OFFICER:     Thank you. Mr Lavery?

20                  JOHN LAVERY:         Thanks, Your Honor. Sir, can  
21 you hear me?

22                  STEPHEN YASMER:       I can.

23                  JOHN LAVERY:         Okay. As long--as long as  
24 you and I can hear each other. Looks like you're not

1 required to use the elevator. You're not required to use  
2 the stairs, correct?

3               STEPHEN YASMER:       I am not.

4               JOHN LAVERY:           Okay. So, you, you simply  
5 made a choice. It's your--it's your personal preference to  
6 go up and down the stairs?

7               STEPHEN YASMER:       It is.

8               JOHN LAVERY:           Okay. And if I'm in the  
9 hospital I [unintelligible] as just Joe Admins [ph] coming  
10 in and out of the door I could go up and down the stairs.  
11 I could go up and down the elevator just like you can,  
12 right?

13              STEPHEN YASMER:       The public is directed to the  
14 elevators. The stairs are available as an emergency exit  
15 for visitors.

16              JOHN LAVERY:           Okay. So, I, I have access  
17 to them just like you do? I have the ability to go use the  
18 stairs if I wanted, but if I say I want the exercise and I  
19 want to go up and down the stairs, I can go up and down the  
20 stairs as well, correct?

21              STEPHEN YASMER:       You may.

22              JOHN LAVERY:           Okay. And you said that  
23 there is the boxes that you were carrying didn't impinge  
24 your ability to, to walk up and down the stairs, correct?

1                   STEPHEN YASMER:       It was a single box and it  
2 did--it did not--it was not a heavy box. I'm not sure I  
3 understand your question, but it was not a heavy box.

4                   JOHN LAVERY:           Okay. It didn't--it didn't  
5 impede your ability to walk or move up and down the stairs,  
6 correct?

7                   STEPHEN YASMER:       It did [unintelligible].  
8 Physically walk, no. It did impede my vision a bit.

9                   JOHN LAVERY:           I have nothing further.  
10 Thank you.

11                   APPEALS OFFICER:      Thank you, Mr. Lavery. Mr.,  
12 Mr. Eikelberger.

13                   TODD EIKELBERGER:    Yeah. Very briefly. You  
14 said that the public is directed towards the elevator. But  
15 they do have the option to take the stairs? Is that right?

16                   STEPHEN YASMER:       That is correct.

17                   TODD EIKELBERGER:    But the signs in the hospital  
18 would direct them towards the elevator if they wanted to go  
19 up and down in the hospital. Is that right?

20                   STEPHEN YASMER:       That is correct. The ho-the  
21 elevators have signage that for, for nonemployees that is  
22 a, a directory of where various departments are located and  
23 how to get there. The stairs do not have those things.

24                   TODD EIKELBERGER:    Okay. Nothing further, Your  
25 Honor.

1 APPEALS OFFICER: Thank you. Mr. Lavery, any  
2 follow-up?

3 JOHN LAVERY: There's nothing that requires  
4 you to go up and down using the elevator, however. If I  
5 had walked to the--to the elevator and find out that your  
6 department's on the third floor and I'm coming to see you I  
7 can walk down the hall to the stairs and go up the stairs,  
8 correct?

9 STEPHEN YASMER: The doors are not locked.  
10 You can. Yes, you can freely enter the stairwells.

11 JOHN LAVERY: Okay. Okay. Thank you.  
12 Nothing further.

13 APPEALS OFFICER: Mr. Eikelberger, anything  
14 further?

15 TODD EIKELBERGER: No, Your Honor.

16 APPEALS OFFICER: Thank you for your testimony,  
17 Mr., Mr. Yasmer. Mr. Eikelberger, any further testimony on  
18 behalf of the claimant?

19 TODD EIKELBERGER: No, Your Honor.

20 APPEALS OFFICER: Mr. Lavery, any testimony on  
21 behalf of the employer?

22 TODD EIKELBERGER: No, Your Honor.

23 APPEALS OFFICER: Okay. I believe this  
24 [unintelligible] is appropriate for final argument. Mr.  
25 Eikelberger, go ahead.

1           TODD EIKELBERGER:   Thank you, Your Honor. On  
2 Exhibit 1, page 1 is the C4 form and it does show as per  
3 claimant's testimony that he was walking down the stairs  
4 carrying a box and he fell. The doctor diagnosed a left  
5 ankle dislocation and a fracture and indicated that he  
6 believed that the claim was industrially related or related  
7 to his work. The C1 form is on page 3 of that exhibit, and  
8 on that form the employer does not doubt the validity of  
9 the claim nor does the employer indicate that there was a,  
10 a, a policy or procedure that had the root cause towards  
11 the injury. The claim was denied on June 23rd, 2020 on  
12 page 4, and it was denied indicating that the review of the  
13 file indicates the accident was a result of the  
14 miscalculating steps. There was no related--a work-related  
15 accident and you are not required to take the stairs as  
16 there is an elevator. That was affirmed by a decision and  
17 order of the hearing officer on page 5 of the exhibit.  
18 Page 8 gets into the actual treatment, and I'll go briefly  
19 over these because I don't think that there's an issue as  
20 to what was injured and what the treatment entailed. But  
21 page 8 indicates that the patient is a 50-year-old male who  
22 is a physical therapist here at our facility who reports  
23 that he was carrying a box of supplies down to the basement  
24 when he thought he was on the bottom of the stairs and  
25 [unintelligible] that there's still more stairs but he

1 [unintelligible] he stepped forward thinking he was  
2 stepping on the landing and missed the bottom of the stairs  
3 falling hard on his left ankle causing some notable  
4 deformity. On page 10 the final diagnosis was acute left  
5 ankle dislocation, acute fibular fracture, and acute left  
6 posterior malleolus [ph] fracture. On page 15 claimant  
7 went to Nevada Occupational Health and it shows that on  
8 June 10th, 2020, that he, Mr. Yasmer, rolled his left ankle  
9 when he went to step going down some stairs with a box at  
10 work [unintelligible] days ago. He went to the ER where he  
11 was found to have a fracture dislocation of the ankle which  
12 was reduced in the emergency room. And on page 17 of the  
13 [unintelligible] patient required open reduction internal  
14 fixation of the left ankle. We have set up an appointment  
15 for him to see Dr. Cummings, orthopedist, later this week  
16 who will assume the patient's care. Claimant went to Dr.  
17 Cummings on June 12th, 2020 on page 18. He noted that he  
18 needed a left ankle malleolus and syndesmosis, open  
19 reduction internal fixation. On page 20 on June 12th, the  
20 doctor indicated Stephen is a new patient referred by Dr.  
21 [unintelligible], 50-year-old male who presents after a  
22 left ankle injury. He was going down the stairs of the  
23 hospital with boxes and twisted his ankle. He had a  
24 fracture dislocation of the ankle. He had a fibula  
25 fracture with posterior displacement of the talus. There

1 is no sign of a posterior malleolar fracture. Seems to be  
2 only laterally [unintelligible] reduced as well as the  
3 syndesmosis. Page 22 he indicates that [unintelligible]  
4 left ankle open reduction internal fixation of the left  
5 malleolus, some possible syndesmosis, open reduction and  
6 internal fixation as well. The surgical report is on page  
7 25 for those procedures that he had done. On page 34 the  
8 doctor notes on July 28th that at this point being it is a  
9 serious one we are going to tentatively put him on for  
10 Monday for irrigation and debridement, closure of the  
11 wound. He will check in with us on Thursday. On page 36  
12 it was then noted that he has a malleolus fracture and  
13 syndesmosis repair, open reduction and internal fixation  
14 and was doing better with [unintelligible] for the most  
15 part stopped over the lateral malleolus. He says there's  
16 just one little pinhole but for the most part, it is doing  
17 fine. We had it drained, and on page 39 is the report for  
18 the drainage of that wound. And finally, on page 43,  
19 September 15th, 2020, it notes that a 50-year-old male who  
20 is here for follow-up regarding his left ankle status post  
21 ID and removal of deep hardware. The wound is healing  
22 well. Based on that, Your Honor, it's our contention that  
23 this claim does qualify as a Worker's Compensation claim  
24 under 616C.150 which does indicate that an employee or  
25 dependent of the injured employee are not entitled to

1 receive compensation pursuant to the provisions of chapter  
2 616A and 616B inclusive of NRS unless the employee or the  
3 dependent establish by the preponderance of the evidence  
4 that the employee's injury arose out of and in the course  
5 of his employment. Now, under that statute, Your Honor, we  
6 have claimant's testimony as well as the records that show  
7 that he was working at the time of this injury and he was  
8 doing his job at the time of the injury and it was his job  
9 that did cause the injury. He was taking a box of supplies  
10 from one location that his--where he was overseeing to  
11 another location and missed a step because he had the box  
12 in the way and couldn't see it. He testified it did impede  
13 his vision. Without that box, he may have gone up and down  
14 those stairs just fine. In this case, we'll also submit  
15 that he meets the definitions of NRS 616A.030 accident  
16 which is an unexpected or unperceived event happening  
17 suddenly and violently with or without human fault and  
18 producing at the time of objective symptoms of the injury  
19 given that he would not foresee that he was going to trip  
20 on the chairs, and it did cause a, a violent injury to him.  
21 There was no fault. He was simply going down the stairs  
22 with that box and he also suffered an injury which was  
23 [unintelligible] 616A.265 which is a sudden and tangible  
24 happening of a traumatic nature producing an immediate or  
25 [unintelligible] which is established by medical evidence.



1 In this case, again, it was established by medical evidence  
2 that he had broken his ankle or broken his fibula and also  
3 suffered a strain to his ankle. Based on that, he has  
4 suffered, therefore, an injury or accident and does clearly  
5 meet the definition under 616C.150. However, that case or  
6 that issue was taken up by the Supreme Court in Rio All  
7 Suites Hotel and Casino versus Phillips which was at 126  
8 Nevada 346, 240 [unintelligible] third, page 2. And the  
9 court looked at cases to determine whether or not injuries  
10 were personal in nature, work-related, or non-work related  
11 and non-personal in nature, and the court noted on page 351  
12 of the Nevada Reporter, on page 5 of the Pacific Reporter,  
13 that injuries resulting from employment-related risks for  
14 all the obvious type of injuries that [unintelligible]  
15 Exhibit 1 as industrial injuries that are generally  
16 compensable according to Larsen [ph], [unintelligible]  
17 involved that are due to employer risk including tripping  
18 on a defect at the employer's premises or falling on any  
19 [unintelligible] ground at the worksite. I would submit to  
20 you that in a very similar hearing and case though there  
21 wasn't a specific defect, carrying a box which he had to  
22 carry for his work because he was transporting from one  
23 location to the other impeded his view and he then tripped  
24 on the stairs because he did not see that he was not on the  
25 last step but--or on the ground step but had one more step

1 to go. The court further notes the personal risk for those  
2 that are still clearly personal, but even if they affect--  
3 take effect while the employee is on the job they could not  
4 possibly be attributed to the employment. And then it  
5 talks about neutral risks which are neither distinctly  
6 employment nor distinctly personal in character. The court  
7 then further indicates there on, on page 353 of the Nevada  
8 Reporter, on page 7 of the Pacific Reporter, under the  
9 increased risk test which is the test that they determine  
10 to use when they consider a neutral risk, an employee may  
11 recover if she is subjected to a risk greater than that to  
12 which the general public is exposed even if the risk to  
13 which the employee is exposed is not quantity-qualitatively  
14 peculiar to the employment, the injury may be compensable  
15 as long as you gave us an increased quantity of risk.  
16 Thus, when an employee is exposed to common risks more  
17 frequently than the general public there may be an  
18 increased risk. In the Phillips case, the court noted  
19 further down the act of ascending a staircase at work in it  
20 of itself does not present a greater risk than the facts--  
21 or than faced by the general public, however, when an  
22 employee is required to use the stairs more frequently than  
23 a member of the general public, she faces an increased risk  
24 of injury. Moreover, steps of an unusual height or the  
25 manner in which an employee is required to perform her job

1 may increase her risk of falling on a staircase. That is  
2 also relevant here, Your Honor. If it is not determined he  
3 was [unintelligible] actually doing his work and that it  
4 was a work-related risk given that he was transporting a  
5 box which impeded his view because again he did have the  
6 box. So, in this case, it was definitely the manner in  
7 which he was required to perform his job increased his risk  
8 of falling on the staircase because he was transporting  
9 that box. Further, he did indicate he always takes the  
10 stairs. The stairs are faster than taking the elevator.  
11 He takes those stairs at least six times a day. Whether he  
12 is required to or not he still takes them six times a day  
13 which is greater than the use--the general public would use  
14 them. So, when he comes to the hospital he'd go up the  
15 stairs once wherever they're going and then back down them.  
16 He also is on the third floor going down to the bottom  
17 floor so that's three flights of stairs both ways, again,  
18 six times a day, and further as noted he was carrying the  
19 box. He also testified that the general public is  
20 generally directed to the elevators for [unintelligible]  
21 for their use rather than the stairs, and on the elevator  
22 is [unintelligible] a directory of where to go as the post-  
23 -the stairs which do not have that directory and do not  
24 direct the employee or the member of the general public as  
25 to where to go. Based on that, it is our position the

1 claimant has shown that he suffered an injury by accident  
2 in the course and scope of his employment meeting the  
3 requirements--statutory requirements. And further, we  
4 believe it's a work-related risk meeting the Phillips test  
5 and that it should be compensable. But if it is concluded  
6 that it is a neutral risk, it is our position that he also  
7 meets those requirements given the nature of the task he  
8 was doing, the fact that he was carrying the box, and the  
9 fact that he takes the stairs far more than the general  
10 public [unintelligible] directed to use the elevator.  
11 Thank you.

12 APPEALS OFFICER: Thank you. One moment,  
13 please. Mr. Lavery, go ahead.

14 JOHN LAVERY: Thank you, Your Honor. You  
15 sort of grazed by the dispositive portion of that which was  
16 this gentleman is not required to use the stairs. In fact,  
17 he--he's in a place that the general public whether they  
18 choose to or not just, just like Mr. Yasmer chose to  
19 utilize the staircase, I have the equal ability and the  
20 equal right to utilize the stairwell as well. He is not  
21 required to utilize the stairwell. He did so out of--out  
22 of habit by his own choice. That's not a requirement of  
23 the employer. I am not disputing that he was injured and  
24 clearly he was. He fell but he fell as a result of a  
25 misstep and nothing further. There is nothing about the

1 workplace environment, there's nothing about the employment  
2 that caused him to fall. He simply misstepped and he  
3 misstepped in an area where the general public has equal  
4 access and equal right to be. In Phillips, you had a maid  
5 who was required to utilize the stairwell and did it  
6 thousands of times over the course of the year. That's not  
7 the case here. At, at most, Mr. Yasmer says he goes up and  
8 down those stairs six times a day if that. By his own  
9 acknowledgment, he's not even in that building every day.  
10 So, to suggest that somehow he's at a greater risk than you  
11 or I walking up and down the, the, the stairwell is, is  
12 simply incorrect. In fact, he's acknowledged and the  
13 employer's acknowledged, everybody's acknowledged that he  
14 had access to a--to an elevator and he believed that he was  
15 at some greater risk. He had the ability to utilize that  
16 elevator and made a choice not to. That choice did not  
17 impute [ph] it to the employer as some form of a  
18 requirement for him to do what he did. This is in fact a  
19 Phillips analysis. He doesn't satisfy the essential  
20 elements of, of those because he's not required to do  
21 anything. None of this is mandatory or required by his  
22 employment. And, and that's what the, the analysis that  
23 was put forth to you failed because he's not required to do  
24 any of it. Even if he was required to carry the box he's  
25 not required to carry the box down the stairs which

1 distinguishes it from Phillips and the analysis that needs  
2 to be done. So, to suggest that somehow he was required to  
3 carry the box, he was required to carry the box down the  
4 stairs isn't supported by the record. It isn't supported  
5 by Mr. Yasmer's own testimony. Yes, he was at work. Yes,  
6 he fell. That is--that is the end of the analysis in terms  
7 of, of whether or not there is a, a causal relationship  
8 under Mitchell, under Phillips. Clearly, it's not a Gorsky  
9 issue. I'm not sitting here saying Mr. Yasmer had some  
10 predisposing condition that caused him to fall and that's a  
11 distinction that the Supreme Court made in Phillips. But  
12 the Supreme Court has also been quite clear that being at  
13 work and having a problem doesn't make your problem work-  
14 related. The mere fact that you were at work and fell  
15 doesn't now somehow come back to the employer as a  
16 compensable element. So, once we get past the fact that he  
17 wasn't required to, to be where he was or do what he did,  
18 and he wasn't required to do either one, then he fails in  
19 the Phillips analysis. And it also appears to be the, the  
20 dispositive case on the issue and it's very rare in Nevada  
21 that we even have that. But in this particular  
22 circumstance, it--it's virtually identical in terms of the  
23 analysis but the factual predicant--the, the factual basis  
24 upon which Phillips was decided was that someone was  
25 required--was required. It was mandated. They didn't have

1 a choice to do a certain thing a tremendous number of times  
2 over the course of the year up and down the same set of  
3 stairs. And the court said you are at a greater risk  
4 because you've got--you, you have to do it so many times.  
5 That scenario doesn't exist here. This company  
6 [unintelligible] by, by Mr. Yasmer's own acknowledgment.  
7 And, and I'm not saying--this is not a fault thing. I'm  
8 not saying that Mr. Yasmer did something wrong or  
9 intentionally did something, but he made a choice. He had  
10 a choice. He exercised a choice. He was not required to  
11 do anything. It was the--there is nothing about the, the  
12 work environment. There's nothing about the work scenario  
13 that caused him to fall. He simply misstepped. Every one  
14 of us missteps. Anybody that says they don't  
15 [unintelligible] isn't telling the truth in my--in my  
16 estimation. Everybody has misstepped at one point or  
17 another. Mr. Yasmer simply did that while he was at work.  
18 That doesn't bring him within the course and scope of his  
19 employment. It doesn't bring him under the purview of  
20 Phillips for establishing a compensable claim. The factual  
21 scenario as he's acknowledged today, as everyone's  
22 acknowledged, the fact that he is not required to do any of  
23 the things that led up to his fall doesn't bring him within  
24 the course and scope of his employment, and under the  
25 Phillips' analysis the, the hearing officer was correct in

1 affirming my client's determination to deny this claim.

2 And I'll submit it to you on that basis [ph].

3 APPEALS OFFICER: Thank you, Mr. Lavery. Mr.  
4 Eikelberger?

5 TODD EIKELBERGER: Yes, Your Honor. The  
6 dispositive issue here isn't the stairs. It's the box he  
7 was carrying. Mr. Yasmer [unintelligible] going up and  
8 down the stairs and her vision was unimpeded. She simply  
9 slipped on those stairs and it was found because she did it  
10 thousands of times a [unintelligible] in a year that that  
11 was going to be covered. In this case, he--Mr. Yasmer also  
12 does go up and down those stairs thousands of times though  
13 he may not be required to but he was required to carry that  
14 box. And he could have tripped and misstepped and broken  
15 his ankle and his leg or sprained his ankle and broken his  
16 leg even without going on the stairs because the box was  
17 impeding his vision and that's what made him misstep. That  
18 is his testimony. He has gone up and down those stairs six  
19 times a day every day at work. He does it all the time and  
20 he generally doesn't misstep. He did testify that he--that  
21 he had to carry that box which was a requirement of his  
22 work. That is what caused him to misstep. Again, he just  
23 happened to do it on the stairs which is where he fell and  
24 broke his leg. He could have also done that anywhere and  
25 potentially also sprained his ankle and broken his leg



1 because the box was impeding his view. Therefore, it does  
2 fall under the neutral risk under Phillips--under the  
3 Phillips case and should be compensable. Although again,  
4 because he was carrying the box which was part of his job  
5 and then he fell, we do also believe that that was a work-  
6 related risk. Further, Your Honor, carrying that box he  
7 could have had this misstep and had it anywhere. He is not  
8 required to take the stairs, no, but just as if someone  
9 tripped over something else, the, the carpet, a rug, and  
10 anything else they couldn't see while they're walking  
11 somewhere they weren't necessarily required to use that  
12 route, but it was because of what they were carrying and  
13 what they were doing that caused the--whatever misstep that  
14 he had and then he suffered an injury. That is the same  
15 situation here. It's not the stairs that are dispositive,  
16 it's the fact that he was doing his job and taking a box of  
17 supplies over to another location. Thank you.

18 APPEALS OFFICER: Thank you. At this time,  
19 this matter is submitted for decision. Mr. Yasmer, if you  
20 have any questions regarding these proceedings you can  
21 direct those to your attorney, but I'll have a decision and  
22 order rendered within 30 days. And with that, we are off  
23 the record.

24 [END OF PROCEEDINGS]  
25

**CERTIFICATE OF TRANSCRIPT**

I, Wendy Letner, as the Official Transcriber, hereby  
Certify that the attached proceedings before the Judge,

In the Matter of the  
Contested Industrial  
Insurance Claim of:

STEPHEN YASMER,

Claimant

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

were held as herein appears and that this is the original  
transcript thereof and that the statements that appear in  
this transcript were transcribed by me to the best of my  
ability.

I further certify that this transcript is a true, complete  
and accurate record of the proceeding that took place in  
this matter on November 16, 2020 in Carson City, Nevada.



Wendy Letner  
Precise Transcripts  
May 19, 2021

ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the  
Industrial Insurance Claim,

of

STEPHEN YASMER

Claim No.: 000706-038452-WC-01

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

DOH: 11/16/2020, at 9:00 a.m.

FILED

NOV 12 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

CLAIMANT'S FIRST EXHIBIT

Page #

1	C-4 Form	
2	C-3 Form	
3	C-1 Form	
4	Insurer's Claim Denial Letter	06/23/2020
5-7	Hearing Officer's Decision and Order Hearing Number 2100033-SD	08/06/2020
8-12	Medical Reporting - ER at Carson Tahoe Health	06/08/2020
13-14	Diagnostic Testing Reports - Carson Tahoe Health	06/08/2020
15-17	Medical Reporting - Nevada Occupational Health	06/10/2020
18-19	Surgery Procedure Information - Tahoe Fracture	06/12/2020
20-22	Medical Reporting - Nevada Occupational Health	06/12/2020
23	New Referral Form - Nevada Occupational Health	06/12/2020
24	Physician Order for Surgery - Tahoe Fracture	06/12/2020
25-26	Operative Report - Carson Tahoe Health	06/15/2020
27	Diagnostic Testing Report - Carson Tahoe Health	06/15/2020
28-31	Medical Reporting - Tahoe Fracture	06/30/2020
32-35	Medical Reporting - Tahoe Fracture	07/28/2020

ENTERED INTO  
EVIDENCE AS EXHIBIT

000243

1 36-38 Medical Reporting - Tahoe Fracture 08/25/2020  
2 39-40 Operative Report - Carson Tahoe Health 09/02/2020  
3 41-42 Medical Reporting - Tahoe Fracture 09/03/2020  
4 43-45 Medical Reporting - Tahoe Fracture 09/15/2020

5 AFFIRMATION

6 Pursuant to NAC 616C.303, I affirm that no personal information  
7 appears in this exhibit.

8 DATED this 12<sup>th</sup> day of November, 2020.

9  
10 NEVADA ATTORNEY FOR INJURED WORKERS

11 

12 Todd Eikelberger, Esq., Deputy  
13 Attorney for Claimant  
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TIME RECEIVED  
June 8, 2020 at 12:17:33 PM CDT

REMOTE CSID  
7754457570

DURATION  
144

PAGES  
5

STATUS  
Received

06-09-20;10:01AM;CTH PATIENT FINANCE

:7754457570

# 2 / 6

CARSON TAHOE  
HEALTH

EMPLOYEE'S CLAIM FOR COMPENSATION / REPORT OF INITIAL  
TREATMENT FORM C-4

Post Office Box 2166  
Carson City, Nevada  
89702-2166  
775/445-8030

PAGE 1 of 1

PLEASE TYPE OR PRINT		EMPLOYEE'S CLAIM PROVIDER INFORMATION REQUESTED	
First Name <b>Stephen</b>	ML	Last Name <b>Yasmer</b>	Birthdate <b>10-18-69</b>
Home Address <b>2257 Carson River DR</b>	City <b>CC</b>	State <b>NV</b>	Zip <b>89701</b>
Trailing Address <b>same</b>	City <b>CC</b>	State <b>NV</b>	Zip <b>89701</b>
INSURER	THIRD-PARTY ADMINISTRATOR	Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred	Telephone <b>445-8000</b>
Employer's Name/Company Name <b>CTH</b>	Office/Mail Address (Number and Street) <b>1600 Medical Parkway Carson City, NV 89701</b>	Date of Injury (if applicable) <b>6-8-2000</b>	Hours Injury (if applicable) <b>11 am</b>
Date Employer Notified <b>6-8-20</b>	Last Day of Work After Injury or Occupational Disease <b>6-8-20</b>	Supervisor to Whom Injury Reported <b>N/A</b>	
Address or Location of Accident (if applicable) <b>Carson Tahoe Hospital</b>			
What were you doing at the time of the accident? (if applicable) <b>walking down stairs carrying a box &amp; Fell</b>			
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) <b>Fell</b>			
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? <b>N/A</b>		Witnesses to the Accident (if applicable) <b>N/A</b>	
Nature of Injury or Occupational Disease <b>Fall</b>		Part(s) of Body Injured or Affected <b>Foot</b>	
I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACT (NRS 616A TO 616D) INCLUSIVE OR CHAPTER 817 OF NRS. I HEREBY AUTHORIZE ANY PHYSICIAN OR CHIROPRACTOR, SURGEON, PRACTITIONER OR OTHER PERSON ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER ANY MEDICAL OR OTHER INFORMATION INCLUDING BENEFITS PAID OR PAYABLE, PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR AIDS, PSYCHOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. AUTHORIZATION A. PHOTOSTAT SHALL BE AS VALID AS THE ORIGINAL.			
Date <b>6/8/20</b>	Place <b>Carson Tahoe</b>	Employee's Signature <b>Stephen Yasmer</b>	
THIS REPORT LETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT			
Place <b>Carson Tahoe ER</b>	Name of Facility <b>Carson Tahoe Medical Center</b>		
Date <b>6/8/2020</b>	Diagnosis and Description of Injury or Occupational Disease <b>L Ankle dislocation &amp; Fracture</b>	Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (if yes, please explain)	
Hour <b>1200</b>	Treatment: <b>Reduction &amp; splinting and cast</b>	Have you advised the patient to remain off work five days or more? <input checked="" type="checkbox"/> Yes Indicate dates: from <b>6/8/20</b> through <b>6/13/20</b>	
X-Ray Findings: <b>Dislocation &amp; Fracture and Posttraumatic Arthritis</b>	<input type="checkbox"/> No If no, is the injured employee capable of: <input type="checkbox"/> full duty <input checked="" type="checkbox"/> modified duty If modified duty, specify any limitations / restrictions:		
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)			
Date	Print Doctor's Name	I certify that the employer's copy of this form was mailed to the employer on:	
Address <b>1600 Medical Parkway</b>	City <b>Carson City, NV</b>	State <b>NV</b>	Zip <b>89701</b>
City	State	Zip	Provider's Tax ID Number
City	State	Zip	Telephone <b>775-445-8000</b>
Doctor's Signature <b>Stephen Yasmer</b>	Degree		

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR

PAGE 2 - INSURER / TPA

PAGE 3 - EMPLOYER

PAGE 4 - EMPLOYER

Patient Demographics

Form C-4 Rev. (05/28/12)



14

Reg C4 - Page 2/2

CONFIDENTIAL INFORMATION \*COPY\* This document is for ACCT# 2016000308. Printed by Gloria Angelica Santos

Job 886362 (06/09/2020 10:03) - Page 2 Doc# 1

000245

043

TO AVOID PENALTY, THIS REPORT IS BE COMPLETED AND MAILED TO WITH 5 WORKING DAYS OF RECEIVING THE FORM		Reset Form Print Form		EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE	
EMPLOYEE	Employer's Name <b>CARSON TAHOE HEALTH SYSTEM</b>		Nature of Business (mfg., etc.) <b>Healthcare</b>		FEIN <b>88-0502318</b>
	Office Mail Address <b>1600 MEDICAL PARKWAY</b>		Location (if different from mailing address) <b>1600 MEDICAL PARKWAY CARSON CITY, NV</b>		Telephone <b>(775) 445-8176</b>
	City <b>CARSON CITY</b>	State <b>NV</b>	Zip <b>89703</b>	INSURER <b>Zurich</b>	
EMPLOYEE	First Name <b>Stephen</b>		Last Name <b>Yasmer</b>		Birth date <b>10/18/1969</b>
	Home Address (Number and Street) <b>2257 Carson River Rd</b>		Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	Age <b>50</b>
	City <b>Carson City</b>	State <b>NV</b>	Zip <b>89701</b>	Was the employee paid for the day of injury? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
ACCIDENT OR DISEASE	In which state was employee hired? <b>NV</b>		Employee's occupation (job title) when hired or disabled <b>Manager Therapy Services</b>		Department in which regularly employed <b>Physical Therapy</b>
	Telephone <b>(775) 883-4880</b>		Is the injured employee a corporate officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Date of Injury (if applicable) <b>06/08/2020</b>	Time of Injury (Hours:Minute AM/PM) (if applicable) <b>11:00AM</b>	Date employee notified of injury or O/D <b>06/08/2020</b>		Supervisor to whom injury or O/D reported <b>Scott Mattes</b>
ACCIDENT OR DISEASE	Address or location of accident (Also provide city, county, state) (if applicable) <b>1600 MEDICAL PARKWAY CARSON CITY, NV 89703</b>				Accident on employer's premises? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	What was the employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) <b>Walking down stairs while carrying a box</b>				
	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. <b>Employee thought he was at the landing between floors but was still 2 steps up and fell</b>				
ACCIDENT OR DISEASE	Employee began work at: <b>08:00:00</b>				
	Specify machine, tool, substance, or object most closely connected with the accident (if applicable) <b>Stairs</b>		Witness <b>None</b>		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Part of body injured or affected <b>Left Ankle</b>	If fatal, give date of death	Witness <b>"</b>		Did employee return to next scheduled shift after accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ACCIDENT OR DISEASE	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) <b>Ankle Dislocation and Fracture</b>		Witness <b>"</b>		Will you have light duty work available, if necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If validity of claim is contested, state reason <b>None</b>		Location of Initial Treatment <b>1600 Medical Parkway Carson City, NV 89703</b>		Emergency Room <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Treating physician/chiropractor name <b>Dr. Daryl Calvo</b>		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
IMPORTANT LONG TERM INFO	How many days per week does employee work? <b>5</b>		From <b>8:00</b> <input checked="" type="checkbox"/> am <input type="checkbox"/> pm To <b>4:30</b> <input type="checkbox"/> am <input checked="" type="checkbox"/> pm		Last day wages were earned <b>06/08/2020</b>
	Scheduled days off <input checked="" type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> T <input type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> R		Rotating <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Are you paying injured or disabled employee's wages during disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Date employee was hired <b>04/04/2005</b>	Last day of work after injury or disability <b>06/08/2020</b>	Date of return to work <b>6/9/20</b>		Number of work days lost <b>00</b>
IMPORTANT LONG TERM INFO	Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired? <b>n/a</b>		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Do Not Know
	For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability.				
	Pay Period (mark all) <input type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input checked="" type="checkbox"/> W <input type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> R		Employee type <input checked="" type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER		On the date of injury or disability, the employee's wage was <b>\$ 63.76</b>
Insurer Use Only	For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: <a href="http://dhhs.nv.gov/Programs/CHA">http://dhhs.nv.gov/Programs/CHA</a> E-mail: <a href="mailto:cha@govcha.nv.gov">cha@govcha.nv.gov</a>				
	I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I also understand that providing false information is a violation of Nevada law.		Employer's Signature and Title <b>Terry Long RN, Manager Employee</b>		Date <b>06/09/2020</b>
	Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> No Pail		Desired Wage		Class Code
Insurer Use Only	Claim Examiner's Signature		Date		Status Clerk
					Date



CARSON TAHOE  
HEALTH

# NOTICE OF INJURY OR OCCUPATIONAL DISEASE (Incident Report Form, C-1)

In the event of employee injury or illness this form must be completed by the employee and the Department Manager or Supervisor before the end of the shift in which the injury occurs.

Employee Name Stephen Vanner Dept. Paramedics Shift hours Varies  
Physical Address 225 N. Carson Ave. Rd. Carson City, NV 89701 Telephone 775-971-7442  
Marital Status: S M D W Wid Date of Injury 6/8/20 Time of Injury 11:15 AM or PM  
Injured: During Work Hours? Yes No  
On Hospital Premises? Yes No  
Manager/Supervisor Reported To Scott Mathes Time 11:45  
If there were any witnesses, please list names and have them sign below:

(Witness) Explain in detail how injury occurred (moving patient, cleaning patient room, etc.)  
Carrying boxes of supplies, thought I had reached the  
landing, but I was still 7-8 ft up. I fell.  
Part of Body Injured (Left Arm, Lower Back, etc.) Left ankle  
Other Pertinent Information:  
I hereby declare the above is a true and factual account of the injury that occurred.  
I understand that if treatment is sought, it will be authorized by either my manager, administrative coordinator or employee health.  
Employee Signature [Signature] Date 6/8/20 Time 11:17

## MANAGER/SUPERVISOR SECTION (please complete all areas)

This entire report form is to be submitted to Employee Health within 3 days of injury.

Date of Injury 6/8/20 Date Manager/Supervisor Notified 6/8/20 Time 11:45  
Was this injury reported at once? (please explain) Yes  
Specify object or substance which directly injured employee fall  
Nature of injury (contusion, puncture, etc.) broken ankle  
Employee sent to Regional Healthcare Emergency Dept. for treatment? Yes No Other  
Did you talk to employee about HOW injury occurred? (please explain) Yes  
If witnessed, did you talk to each witness about what was observed?  
How could this injury have been prevented? take the elevator  
What actions are you taking to prevent future incidents? education  
Were there techniques, procedures or policies that the employee did not follow? (please indicate) no  
Was there a root cause related to this injury? ie: Policy or procedure revision no  
Are you assured that this injury is job related? (please explain) yes  
Other pertinent information

Request injury to be investigated? Yes No  
[Signature] Date 6/10/20 Time 9:10  
Manager: Supervisor (if applicable) Date Time

## EMPLOYEE HEALTH/EMERGENCY DEPARTMENT/ADMINISTRATIVE COORDINATOR

This portion to be completed by Employee Health, Emergency Room Physician or Administrative Coordinator

Diagnosis and Description of Occupational Injury or Disease  
Initial Treatment  
Is further medical care by a physician indicated?  
Was employee: Returned to work? Sent home? Hospitalized?  
If yes, how long do you anticipate employee to be off work?  
Additional Comments  
Evaluated/Treated By: Signature Date



**Gallagher Bassett Services, Inc.**

June 23, 2020

Steven Yasmer  
2257 Carson River Road  
Carson City, NV 89701

Re: Employer: Carson Tahoe  
D/Injury: 6/8/20  
Claim #: 000706-038452-WC-01

Dear Mr. Yasmer:

Gallagher Bassett Services, Inc. administers the workers' compensation program for the above captioned employer. Review of the file indicates that your accident was a result of you miscalculating the steps. There was no work related accident. You are not required to take the stairs as there is an elevator for your use.

NRS 616C.150, 1. An injured employee is not entitled to receive compensation pursuant to the provisions of chapter's 616A to 616D, inclusive, of NRS unless the employee or his dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of employment.

NRS 616A.030 "Accident" means an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury.

NRS 616A.265 1. "Injury" or "Personal Injury" means a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result, which is established by medical evidence, including injuries to prosthetic devices. Any injury sustained by an employee while engaging in an athletic or social event sponsored by his employer shall be deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event.

If you disagree with this decision, you have a right to file an appeal by completing the attached Request for Hearing Form and mailing it, along with a copy of this letter, to the address on the form. The completed Request for Hearing must be received by the hearing division within seventy days of the date of this letter. If you do not appeal within seventy days, you lose your right to appeal.

Sincerely,

*Yvette D McCollum*

Yvette D McCollum

Sr. Resolution Manager

Encl: Request for Hearing Form  
cc: Employer / Medical provider / file

000248  
0546



**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 2100033-SD  
Claim Number: 000706-038452-WC-01

STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

**BEFORE THE HEARING OFFICER**

The Claimant's request for Hearing was filed on July 6, 2020 and a Hearing was scheduled for July 30, 2020. The Hearing was held on July 30, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer/Insurer was represented by John Lavery, Esquire, by telephone conference call.

**ISSUE**

The Claimant appealed the Insurer's determination dated June 23, 2020. The issue before the Hearing Officer is claim denial.

**DECISION AND ORDER**

The determination of the Insurer is hereby **AFFIRMED**.

**NRS 616A.030** defines "accident" as "an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury". **NRS 616A.265** defines an "injury" as "a sudden and tangible happening of a traumatic nature producing an immediate or prompt result which is established by medical evidence, including injuries to prosthetic devices". **NRS 616C.150(1)** provides the injured employee has the burden of proof to show, by a preponderance of the evidence, the injury arose out of and in the course of employment. An injury on the job location is not sufficient to hold that the injury arose out of and in the course and scope of employment. See *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997). In the instant matter, the Claimant has not met his burden. As such, the Hearing Officer finds the insurer's determination is proper and hereby **AFFIRMED**.

In the Matter of the Contested  
Industrial Insurance Claim of  
Hearing Number:  
Page 2

STEVEN YASMER  
2100033-SD

**APPEAL RIGHTS**

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 6th day of August, 2020.

  
Spring Dykstra, Hearing Officer

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES INC  
PO BOX 2934  
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 300 BOX 28  
LAS VEGAS NV 89102-4375

Dated this 6th day of August, 2020.



Karen Dyer  
Employee of the State of Nevada

MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MMoral)

DATE & TIME OF SERVICE:  
06/08/2020

MODE OF ARRIVAL:  
POV

CHIEF COMPLAINT:  
Left ankle injury

HISTORY OF PRESENT ILLNESS:

Patient is a 50-year-old male who is a physical therapist here at our facility who reports that he was carrying a box supplies down to the basement when he thought he was on the bottom stair and could not see that there is still to more stairs beneath MCV stepped forward thinking he was stepping onto the landing and missed the bottom to stairs falling hard on to his left ankle causing some notable deformity. Patient states he thinks he might have sprained his right ankle as well but does not have significant pain or concern to that area denies hitting his head denies any loss of consciousness denies any pain anywhere else. Patient reports a co-worker got a pair crutches in the came down to the ER to be checked in.

PAST MEDICAL HISTORY:  
Seasonal allergies

PAST SURGICAL HISTORY:  
Shoulder

CURRENT MEDICATIONS:  
Reviewed current med rec in chart

ALLERGIES:  
Vicodin

SOCIAL HISTORY:  
Patient reports daily tobacco use with daily alcohol use as well denies any marijuana drug use

REVIEW OF SYSTEMS:  
A 10-point review of systems was performed and the pertinent positives and negatives are listed in the History of Present Illness

PHYSICAL EXAM:  
Vital signs:  
Blood pressure is 127/87 with a heart rate of 74 respiratory rate of 18  
temperature of 98.1° and O2 95% on room air  
General: Pleasant nontoxic in moderate distress

MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

Head: Normocephalic atraumatic  
ENT: PERILIA EOMI sclerae anicteric  
Neck: Supple no stridor  
Lungs: Clear to auscultation bilaterally  
Cardiovascular regular rate and rhythm no obvious murmurs rubs or gallops cap refill less than 2 sec symmetric radial pulses no pedal edema  
Abdomen: good bowel sounds soft abdomen nontender nondistended negative Murphy's no McBurney's no peritonitis  
Back: no midline tenderness to palpation or step-offs normal range of motion  
Skin: intact warm dry no obvious rashes  
Extremities: Patient has noticeable deformity to left ankle consistent with a possible dislocation palpable pedal pulse to left foot decreased sensation severe tenderness to palpation patient has tenderness with extension of right ankle has no bony nose tenderness to palpation bilateral malleolus no midfoot tenderness to palpation no head of 5th metatarsal tenderness to palpation  
Neuro: Alert oriented to person place time and situation GCS 15 symmetric face has 5/5 strength throughout normal sensation to light touch throughout no limb ataxia  
Psych: Calm and cooperative

DIAGNOSTIC STUDIES:

Left ankle x-ray shows

IMPRESSION:

Posterior dislocation of the talus.

Comminuted displaced fracture of the distal fibular diaphysis.

Electronically Signed by: Edmund Pillsbury 6/8/2020 1:06 PM

Post reduction film shows

IMPRESSION:

1. Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains.
2. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Electronically Signed by: Fahres Ahmed 6/8/2020 1:36 PM

EMERGENCY ROOM COURSE (MDM):

Patient is a 50-year-old male with the above-noted complaint. Upon initial presentation patient has a very obvious notable deformity of his left ankle with decreased sensation the patient does maintain perfusion he has cap refill

MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

of 3 seconds with a palpable pedal pulse. I called x-ray in asked for x-rays soon as possible as well as I notified my supervising physician Dr. Calvo to trying get a reduction done as soon as possible. X-ray with results noted above do show a fibular fracture with dislocation patient was given propofol for conscious sedation please see Dr. Calvo as noted sees is me with this procedure at which point I was able to successfully reduce the dislocation and patient was placed in a Cadillac splint. Patient tolerated procedure well had no complications patient already has crutches we discussed appropriate symptomatic management at home patient was found to be PMP negative he is given prescription for Percocet as he states that Norco makes him very itchy. Patient is already established with Tahoe fracture was given referral to follow up with his orthopedic provider we discussed very strict return precautions as well as appropriate symptomatic management at home to which patient verbalized understanding and agreement plan feels comfortable going home at this time patient did present a C4 form which was filled out.

FINAL DIAGNOSIS:

Acute left ankle dislocation  
Acute left fibula fracture  
Acute left posterior malleolus fracture

DISPOSITION:

Home POV with a ride

This patient was seen under disaster/mass casualty incident conditions.

Voice Recognition Disclaimer:

Voice Recognition Disclaimer This document may have been created using voice recognition software. The software does have a chance of producing errors of grammar and possibly content. I have made every reasonable attempt to find and correct any obvious errors.

Electronic Signatures:

Smith, Matthew W (PA-C) (Signed Jun-08-2020 14:20)  
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 14:20 by Smith, Matthew W (PA-C)

MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

This is Calvo dictating a supervising physician attestation note. Please note this is a 50-year-old male who works here at the hospital who stepped off a step and had a sudden left ankle pain. After missing a step. On physical exam there is an obvious posterior dislocation of the ankle he has thready posterior tibial pulse he has subjective numbness but normal motor function of the left foot. X-ray shows a posterior ankle dislocation with associated fibular fracture. This was reduced under propofol sedation. Following this he was doing much better it could pulses and neurovascular status in the left ankle he was placed in a splint he will follow up with Orthopedics. He has remained remain nonweightbearing. Please see Matthew Smith's note for further emergency department course workup and plan. I spent 15 minutes of direct face-to-face time with this patient

Conscious Sedation

Patient did require moderate sedation for left ankle dislocation. Risks and benefits were discussed and patient elected to proceed with the procedure. Respiratory therapy and nursing staff were present at all times. Patient received a total of 120 mg of IV propofol. This was pushed by myself. The reduction was completed by Matthew Smith please see his note for further details. During the moderate sedation there was no hypotension or hypoxia. Patient had continuous blood pressure monitoring and continuous pulse oximetry. The patient is completely neurovascularly intact post procedure. Patient tolerated the procedure very well without complications. Patient is now resting comfortably and does not appear to be in any distress. Patient is now back to baseline. Intraservice time was 13 minutes.

Voice Recognition Disclaimer:

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Electronic Signatures:

Calvo, Darryl v (Physician) (Signed Jun-08-2020 17:21)  
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 17:21 by Calvo, Darryl v (Physician)

TIME RECEIVED  
June 9, 2020 at 12:50:26 PM CDT

REMOTE CSID  
7754457570

DURATION  
142

PAGES  
4

STATUS  
Failed to receive

ERROR CODE ( 700 )  
Error in fax transmission

Resend06-09-20; 10:34AM; CTH PATIENT FINANCE

7754457570

# 3/ 8

MRN: 020163119  
VISIT ID: 2016000308  
PATIENT NAME: STEPHEN YASMER  
PATIENT DOB: 10/18/1969

### Emergency Room Note (MModal)

This is Calvo dictating a supervising physician attestation note. Please note this is a 50-year-old male who works here at the hospital who stepped off a step and had a sudden left ankle pain. After missing a step. On physical exam there is an obvious posterior dislocation of the ankle he has thready posterior tibial pulse he has subjective numbness but normal motor function of the left foot. X-ray shows a posterior ankle dislocation with associated fibular fracture. This was reduced under propofol sedation. Following this he was doing much better it could pulses and neurovascular status in the left ankle he was placed in a splint he will follow up with Orthopedics. He has remained remain nonweightbearing. Please see Matthew Smith's note for further emergency department course workup and plan. I spent 15 minutes of direct face-to-face time with this patient

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Calvo, Darryl v (Physician) (Signed Jun-08-2020 17:21)  
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 17:21 by Calvo, Darryl v (Physician)



CARSON TAHOE REGIONAL HEALTHCARE  
P.O. Box 2168,  
Carson City, NV 89702-2168

Patient Name: STEPHEN YASMER  
MRN: 020163119  
Account: 2016000308

Check-In# 3594855  
Order# 001DWKDZJ  
Exam XR ANKLE LT MIN 3 VIEW

TYPE OF EXAM: RAD7361  
DATE: 05/08/2020  
INDICATION: Pain W/Trauma^FF

Ordering Physician: MATTHEW W SMITH  
Attending Physician: MDS ER

EXAM: Left ankle radiographs, 3 views.

HISTORY: Pain W/Trauma

COMPARISON: None available.

FINDINGS: Posterior dislocation of the talar dome is noted. There is a comminuted fracture of the distal fibular diaphysis. No other Fracture is noted.

IMPRESSION:

Posterior dislocation of the talus.

Comminuted displaced fracture of the distal fibular diaphysis.

Electronically Signed by: Edmund Pillsbury 6/8/2020 1:06 PM

Electronically Signed By: EDMUND P PILLSBURY, MD

CARSON TAHOE REGIONAL HEALTHCARE  
P.O. Box 2168,  
Carson City, NV 89702-2168

Patient Name: STEPHEN YASMER  
MRN: 020163119  
Account: 2016000308

Check-In# 3594901  
Order# H1866728  
Exam XR ANKLE I.T 2VW

TYPE OF EXAM: RAD7621  
DATE: 06/08/2020  
INDICATION: Pain W/Trauma^FF

Ordering Physician: MATTHEW W SMITH  
Attending Physician: MDS ER

EXAM: Left ankle radiographs, 2 views.

HISTORY: Pain W/Trauma

COMPARISON: Left ankle radiographs June 8, 2020

FINDINGS: Interval reduction and splinting of the left ankle. Talus now appears appropriately positioned after reduction. Improved comminuted angulated distal fibular fracture. Posterior apex angulation persists although is improved.

Osseous fragment projects posterior to the talus and could represent an additional fracture, not significant changed.

Plantar calcaneal enthesophyte.

IMPRESSION:

1. Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains.
2. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Electronically Signed by: Farres Ahmed 6/8/2020 1:36 PM

Electronically Signed By: FARRER AHMED, MD

**Patient Visit Charting Notes**

Stephen Yasmer, DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/10/2020	W/O Incident New Date of Injury: 6/08/2020	Dr. Jay B. MD	

**Subjective:****Chief Complaint**

Patient presents for evaluation of the left foot/ankle.

**History of Present Illness**

The patient is a 50 year old male, presenting for a new patient visit with the following condition(s):

Mr. Yasmer rolled his left ankle when he missed a step coming down some stairs with a box at work 2 days ago. He went to the ER where he was found have a fracture dislocation of the ankle which was reduced in the emergency room. He was placed in a posterior splint and given crutches.

Today reports he is doing pretty well. He has manageable pain. No numbness in the toes. He is using the crutches.

**Past Medical History**

ALLERGIES / ADVERSE REACTIONS: Vicoden

MEDICATIONS: Aleve and Oxycotone

PROBLEMS: Major or Chronic Illnesses: No known illnesses noted by patient.

OTHER PERSONAL HISTORY: Left Shoulder Rotary Cuff Repair.  
Right Bicep tendon repair.  
Hernia Repair.

FAMILY HISTORY: Family History: No negative family history noted by patient.

SOCIAL HISTORY: Patient currently uses alcohol. Patient is currently a smoker.

WORK HISTORY: Patient currently works full time as a(n) manual laborer, a physically demanding position.

**Review of Systems**

SKIN: Denies abnormal hair growth, bleeding, change in color or size of moles, easy bruising, itching, hair loss, rash, or history of skin cancer or severe sunburn.

NEUROLOGICAL: Denies blackouts, dysarthria, dizziness, double vision, fainting, headaches, loss of balance, coordination or sensation, motor weakness, paralysis, tingling, prickling, numbness or tremors.

PSYCHIATRIC: Denies anxiety, depression, difficulty remembering things or thinking, hallucinations, insomnia, irritability, panic, suicidal thought or history of psych hospitalizations or suicide attempts.

ENDOCRINE SYSTEM: Denies cold or heat intolerance, fatigue, neck swelling, polydipsia or polyuria.

HEMATOLOGIC / LYMPHATIC: Denies easy bleeding or bruising, history of anemia, or swollen lymph nodes.

**Nevada Occupational Health & Injury Care Center**  
**Patient Visit Charting Notes**  
**Stephen Yasmer, DOB: 10/18/1969**

Date	Charting Summary	Provider	Clinician
------	------------------	----------	-----------

**ALLERGIC / IMMUNOLOGIC:** Denies rhinitis, hay fever, itchy eyes, urticaria, angioedema, or sensitivity to foods or drugs.

**GENITOURINARY:** Denies blood in urine, difficulties urinating, frequency of urination, incontinence, or history of kidney stones. No discharge from penis, testicular pain, lumps in testicles or scrotum, or problems with erection or ejaculation.

**GASTROINTESTINAL:** Denies abdominal pain, blood in stools or black stools, change in bowel frequency or stool size, constipation, diarrhea, difficulty swallowing, food intolerance, heartburn, nausea, vomiting or need for antacids.

**RESPIRATORY:** Denies coughing, coughing up blood or phlegm, night sweats, shortness of breath, wheezing or history of asthma, pneumonia or tuberculosis.

**CARDIOVASCULAR:** Denies chest pain or pressure, edema, excessive sweating, heart racing, palpitations, shortness of breath or history of heart murmur, hypertension, rheumatic fever or valve disease.

**EARS, NOSE, MOUTH & THROAT:** Denies bleeding gums, earaches, ear discharge, hay fever or seasonal allergies, hearing loss, hoarseness, nasal discharge or nosebleeds, sinus problems, sore throats, tinnitus or vertigo.

**EYES:** Denies blurred vision, cataracts, dimness, excessive tearing, flashing lights, itching, pain, redness or history of cataracts or glaucoma.

**CONSTITUTIONAL:** Denies change in appetite, fatigue, fever, weakness, weight gain or weight loss.

**Objective:**

**Examination/Procedures**

Temperature: 97.9°F. Blood Pressure: 158/95. Pulse: 69. Respiration: 16. (Entered by Betz, Jay E. MD 6/10/2020 at 12:43PM ).

The patient is well-nourished well-developed. He is in no distress. He has a posterior splint on the left foot ankle and using crutches.

The splint was left in place. Neurovascular status of the toes is intact.

Review ER x-ray images show reduced fracture dislocation of the ankle involving the lateral and posterior malleoli.

**Imaging/Test Results**

X-ray report Left Ankle 6-8-20: Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

**Assessment:**

**Diagnosis**

Fracture/Dislocation left ankle

**Work Status**

Date: 10/12/2020

Nevada Occupational Health & Injury Care Center

Page: 3

**Patient Visit Charting Notes**

Stephen Yasmer, DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
------	------------------	----------	-----------

Wear splint. Non weight bearing. Use crutches to ambulate.  
ST

Plan:

**Orders**

I recommend referral to a qualified orthopedist. Dr. Cummings is requested. (Betz, Jay E. MD, 6/10/20 at 1:10PM).

**Discussion & Plan**

The patient will require open reduction and internal fixation of the left ankle. We have set up an appointment for him to see Dr. Cummings, orthopedist, later this week who will assume the patient's care. Pending that he should use the crutches, avoid weight-bearing and elevate the foot when possible. He feels he can manage his pain with OTC analgesics and occasional Percocet from the ER.

A total of 40 minutes was spent in the evaluation and treatment of the patient today

Signature:



Date: 6/10/2020 1:47PM

000261  
059



# **Tahoe Fracture & Orthopedic Medical Clinic, Inc.**

*Relieving your pain. Restoring your function. Returning your life.*

**Tahoe Fracture and Orthopedic Medical Clinic**

973 Mica Drive Ste 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

June 12, 2020

Page 1

Surgery Orders

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

06/12/2020 - Surgery Orders: Surgery Packet

Provider: JEFFREY CUMMINGS MD

Location of Care: Tahoe Fracture and Orthopedic Mica

Status: ON HOLD DOCUMENT. Contents are preliminary

## **PROCEDURE INFORMATION:**

Surgeon: JEFFREY CUMMINGS MD Location: Carson Valley Medical Center

Surgery Date: 06/17/2020 Surgery Length: 30 min

Admit Type: Outpatient Assist: Tonn

Initiate pre-surgical anesthesia protocol

Consent for: Left Ankle Lateral Malleolus and Syndesmosis Open Reduction Internal Fixation

Procedure(s): Left Ankle Lateral Malleolus and Syndesmosis Open Reduction Internal Fixation

QTY: 1

CPT Code(s): 27829, 27814

Diagnosis: S82.65XB, S93.439A

Equipment:

Zimmer Ankle Fracture Set C-Arm

Surgery Coordinator:

Kenneth

## **Chart**

Allergies:

- VICODIN

Medications:

## **Vital Signs**

Ht (in.): 70 Wt (lbs.): 165 BMI: 23.67 P: 63 BP: 140 / 95 mm Hg

## **Demographics**

Patient Name: Stephen B Yasmer Chart #: 211247

Address: 2257 Carson River Rd Carson City, NV 89701

DOB: 10/18/1969 Sex: Male SSN: 530-02-8852

000262

*Delo*



**Tahoe Fracture  
& Orthopedic  
Medical Clinic, Inc.**

*Relieving your pain. Restoring your function. Returning your life.*

**Tahoe Fracture and Orthopedic Medical Clinic**

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

June 12, 2020

Page 2

Surgery Orders

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

Home Phone: (775) 883-4680 Work Phone: (775) 885-6687 Cell Phone: 7757213843

Primary Insurance

Secondary Insurance

Work Comp

172421-PENDING WC DOI: 6/8/2020

**Pre-Op Orders**

**Anesthesia:**

Initiate pre-surgical anesthesia protocol

General

**IV/Antibiotics/Medications:**

Cefazolin (Ancef) 1gm IV once in pre-op (if less than 75 kilo) OR Cefazolin (Ancef) 2gm IV (if greater than 75 kilo)

**Prep Other:**

**Pre-Op Labs**

**DME**

**Discharge:**

Other: Post op at NV OCC

Signature: JS

000263

06/1

**Patient Visit Charting Notes**

Stephen Yasmer, DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist Visit Date of Injury: 6/08/2020	Dr. Jay Betz MD	Dr. Jay Betz MD

**Subjective:****Chief Complaint**

Stephen is here referred by Dr. Betz with regards to his left foot/ankle.

**History of Present Illness**

Referring Physician: Jay Betz MD

Dear Dr. Betz,

Thank you for this consultation and evaluation.

Steven is a new patient, referred over by Dr. Betz. A 50-year-old male who presents after his left ankle injury. He was coming down steps at the hospital with boxes and he twisted his ankle. He had a fracture dislocation of the ankle. Had a fibula fracture with posterior displacement of the talus. There is no sign of a posterior malleolar fracture. Seems to be all laterally. The mortise appears to be reduced as well as the syndesmosis.

However, there is a risk of syndesmosis injury as well.

**Past Medical History**

ALLERGIES / ADVERSE REACTIONS: Vicoden

MEDICATIONS: Aleve and Oxycotone

PROBLEMS: Major or Chronic Illnesses: No known illnesses noted by patient.

OTHER PERSONAL HISTORY: Left Shoulder Rotary Cuff Repair.

Right Bicep tendon repair.

Hernia Repair.

FAMILY HISTORY: Family History: No negative family history noted by patient.

SOCIAL HISTORY: Patient currently uses alcohol. Patient is currently a smoker.

WORK HISTORY: Patient currently works full time as a(n) manual laborer, a physically demanding position.

**Review of Systems**

SKIN: Denies abnormal hair growth, bleeding, change in color or size of moles, easy bruising, itching, hair loss, rash, or history of skin cancer or severe sunburn.

NEUROLOGICAL: Denies blackouts, dysarthria, dizziness, double vision, fainting, headaches, loss of balance, coordination or sensation, motor weakness, paralysis, tingling, prickling, numbness or tremors.

PSYCHIATRIC: Denies anxiety, depression, difficulty remembering things or thinking, hallucinations, insomnia, irritability, panic, suicidal thought or history of psych hospitalizations or suicide attempts.



**Patient Visit Charting Notes**

Stephen Yasmer, DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
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ENDOCRINE SYSTEM: Denies cold or heat intolerance, fatigue, neck swelling, polydipsia or polyuria.

HEMATOLOGIC / LYMPHATIC: Denies easy bleeding or bruising, history of anemia, or swollen lymph nodes.

ALLERGIC / IMMUNOLOGIC: Denies rhinitis, hay fever, itchy eyes, urticaria, angioedema, or sensitivity to foods or drugs.

GENITOURINARY: Denies blood in urine, difficulties urinating, frequency of urination, incontinence, or history of kidney stones. No discharge from penis, testicular pain, lumps in testicles or scrotum, or problems with erection or ejaculation.

GASTROINTESTINAL: Denies abdominal pain, blood in stools or black stools, change in bowel frequency or stool size, constipation, diarrhea, difficulty swallowing, food intolerance, heartburn, nausea, vomiting or need for antacids.

RESPIRATORY: Denies coughing, coughing up blood or phlegm, night sweats, shortness of breath, wheezing or history of asthma, pneumonia or tuberculosis.

CARDIOVASCULAR: Denies chest pain or pressure, edema, excessive sweating, heart racing, palpitations, shortness of breath or history of heart murmur, hypertension, rheumatic fever or valve disease.

EARS, NOSE, MOUTH & THROAT: Denies bleeding gums, earaches, ear discharge, hay fever or seasonal allergies, hearing loss, hoarseness, nasal discharge or nosebleeds, sinus problems, sore throats, tinnitus or vertigo.

EYES: Denies blurred vision, cataracts, dimness, excessive tearing, flashing lights, itching, pain, redness or history of cataracts or glaucoma.

CONSTITUTIONAL: Denies change in appetite, fatigue, fever, weakness, weight gain or weight loss.

**Objective:****Examination/Procedures**

Temperature: 97.8°F. (Entered by Betz, Jay E. MD 6/12/2020 at 11:22AM ).

On exam today the swelling is still present. He can flex and extend in toes. There is good cap refill. Palpable dorsalis pedis pulse. Sensation is intact. He still has swelling of the ankle.

**Imaging/Test Results**

X-ray report Left Ankle 6-8-20: Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

**Assessment:****Diagnosis**

Fracture/Dislocation left ankle

**Patient Visit Charting Notes**

Stephen Yasmer , DOB: 10/18/1969

Date      Charting Summary      Provider      Clinician

**Work Status**

Wear splint. Non weight bearing. Use crutches to ambulate. Keep leg elevated.

**Plan:**

**Orders**

I recommend a STAT left ankle malleolus and syndesmosis open reduction internal fixation.

**Discussion & Plan**

We will plan for left ankle open reduction internal fixation of the lateral malleolus, with possible syndesmosis open reduction internal fixation as well.

He understands the risks, the benefits and alternatives to the procedure including, but not limited to, infection, bleeding, nerve and blood vessel damage, heart attack, stroke, death, persistent pain, need for surgery.

Sincerely,

Jeffrey Cummings, MD  
Board Certified Orthopedic Surgeon  
Board Certified Sports Medicine

Dictated using voice recognition by the provider.

\*\*\* As a result of using voice recognition, there is naturally more typographical and grammatical errors that can occur and need to be taken into consideration when reviewing these medical records.

**NEVADA OCCUPATIONAL HEALTH CENTER**

**3488 GONI RD.  
CARSON CITY NV, 89706  
PHONE NUMBER: 775-887-5030  
FAX NUMBER: 775-887-5040**

**Jeffrey Cummings**

**NEW REFERRAL**

**PATIENT NAME:** Stephen Yasmer

**PATIENT ADDRESS:** 2257 Carson River Carson City, NV 89701

**DATE OF BIRTH:** Oct 18, 1969

**PHONE NUMBER:** (775) 721-3843

**INSURANCE INFORMATION:** Gallagher Bassett (NV Claims)

P.O. Box 400970

Las Vegas, NV 89140

7027894500

7027894454

**CLAIM NUMBER:**

**DATE OF INJURY:** Jun 08, 2020

**REFERRAL SUMMARY**

I recommend a STAT left ankle melleolus and syndisnosis open reduction internal fixation. 06-12-2020

S82.65XB

S93.439A

**PHYSICIAN SIGNATURE:**



06-12-2020

000267  
065

PHYSICIAN ORDERS FOR SURGERY

JEFFREY R. CUMMINGS, M.D.

PHONE: (775) 783-6190 ext. 7202

FAX: (775) 783-6195

AVOL  
w/c

Surgery Date: 6/17/20 Surgery Length: 30 min Start Time: \_\_\_\_\_

Patient Name: Stephen Yasmer ☒ M ☐ F DOB: 10-18-1969

Phone: (775) 721-3843 ALT: ( ) \_\_\_\_\_

Insurance: WC Gallagher Bassett Secondary Insurance: \_\_\_\_\_

Clearance Needed: \_\_\_\_\_

Ref: CVML Inpatient / Outpatient

Referring: Drum Anesthesia: Gen

Procedure: Zimmer Ankle Fracture Fix, Drum

Antibiotics: ☐ TED Hose (Knee-high) ☐ SCD's

Diagnosis: Ⓢ Ankle Dislocation & Fracture of lateral malleolus and Syndesmosis

Consent Signed for Surgical Procedure: SIAT Left Ankle  
Lateral malleolar and Syndesmosis open  
Reduction Internal Fixation

ICD-9 Code (CPT): \_\_\_\_\_

ICD-9 Code / ICD 10: \_\_\_\_\_

TESTING ORDERS:

- |                                |   |
|--------------------------------|---|
| <input type="checkbox"/> EKG   | <input type="checkbox"/> UA                               |
| <input type="checkbox"/> CXR   | <input type="checkbox"/> TYPE & SCREEN (per protocol)     |
| <input type="checkbox"/> CBC   | <input type="checkbox"/> TYPE & CROSS _____ UNITS         |
| <input type="checkbox"/> BMP   | <input type="checkbox"/> MRSA NASAL SWAB                  |
| <input type="checkbox"/> ESR   | <input type="checkbox"/> FLEXION / EXTENSION C-SPINE XRAY |
| <input type="checkbox"/> OTHER | <input type="checkbox"/> OTHER: _____                     |

Pre-Appointment: \_\_\_\_\_

PHYSICIAN SIGNATURE: [Signature] DATE 06-12-20 TIME: 9:30



Patient Sticker

000268  
Odo

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020163119 ACCT#: 2016400411

NAME: YASMER, STEPHEN

#211247

Clinician: Cummings, Jeffrey R

SURGEON: JEFFREY R CUMMINGS, MD

DATE: 06/15/2020

ANESTHESIA:

General.

ANESTHESIOLOGIST:

Spencer Mellum, DO

FIRST ASSISTANT:

Stephanie Tonn, PA-C

## PREOPERATIVE DIAGNOSES:

1. Left ankle lateral malleolus fracture.
2. Left ankle syndesmosis disruption.

## POSTOPERATIVE DIAGNOSES:

1. Left ankle lateral malleolus fracture.
2. Left ankle syndesmosis disruption.

## PROCEDURES:

1. Left ankle open reduction, internal fixation of the lateral malleolus.
2. Left ankle open reduction, internal fixation of the syndesmosis.

## INDICATION FOR OPERATION:

A 50-year-old male slipped going down the stairs at Carson Tahoe Hospital. Had an injury, a fracture dislocation of the left ankle. He understood the risks, the benefits, and alternatives to procedure.

## DESCRIPTION OF PROCEDURE:

After obtaining proper consent, the patient was taken to the operating room, administered general anesthesia. Was sterilely prepped and draped in the left lower extremity. An Esmarch was used for exsanguination. The tourniquet was inflated to 250 mmHg. A longitudinal incision was made over the lateral aspect of the ankle. Dissection was done down to the lateral malleolus. The fracture site was identified. The fracture site was cleaned of soft tissue and the soft tissue was elevated off the bone. Using the Zimmer distal fibula plate and set, a lag screw was placed from anterior to posterior, holding the fracture reduced. Taking a 5-hole plate, it was secured to the distal fibula. Confirming position and alignment, the screws were filled both proximally and distally. The fracture site was then stressed to assess the syndesmosis, and this is where the noted gapping of the mortise was. It was decided at this point to use a Biomet TightRope. The TightRope was drilled through the whole level of the syndesmosis, angled anteriorly, across the fibula and tibia. The button was passed through the fibula and tibia tunnel and flipped over the medial cortex. The button was cinched, holding the syndesmosis secure and reduced. C-arm was used to confirm position, alignment, and reduction. The wounds were irrigated and closed with 3-0 Vicryl, 3-0 nylon in a running stitch. Sterile dressing applied. The patient was placed in a splint, taken to Recovery in stable condition. Needle and sponge counts correct.

00026

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020163119 ACCT#: 2016400411

NAME: YASMER, STEPHEN

Clinician: Cummings, Jeffrey R

Jeffrey R Cummings, MD

JRC/MODL

DD: 06/15/2020 18:02:56

DT: 06/15/2020 19:39:26

396831/883146846



## TAHOE FRACTURE CLINIC (SUBJEC)

CARSON TAHOE  
Regional Medical CenterPO Box 2188  
Carson City, NV 89702-2188  
775/882-1361

## DIAGNOSTIC SERVICES REPORT

Check-In #      Order #      Exam      SXR ANKLE LT 2 VW 73600LT  
3597443      H1868752      OPI9906

ICD:

TYPE OF EXAM: SXR ANKLE LT 2 VW 73600LT  
INDICATION:

DATE: 08/15/2020 at 18:00

FINAL

EXAM: 3 views of the left ankle

HISTORY: LEFT ANKLE LATERAL MELLEOLUS AND SYNDISMOSIS OPEN REDUCTION INTERNAL  
FIXATION

COMPARISON: None available.

FLUOROSCOPY TIME: 20 seconds

FINDINGS: Intraoperative fluoroscopic guidance is obtained. Multiple  
intraoperative fluoroscopic spot images show lateral plate screw fixation of the  
distal fibula in anatomic alignment, transfixing the previously seen oblique  
fracture through the distal fibula. Additionally, there is new syndesmotic  
fixation hardware. No immediate hardware competition is noted.

## IMPRESSION:

1. Intraoperative fluoroscopy as above.

Electronically Signed by: Erik Maki 8/15/2020 7:28 PM

Flu Appt.  
on 8/30/20

8/18/20

Electronically Signed By: MAKI, ERIK

FINAL

Patient Name

YASMER, STEPHEN

MRN

020163119

Account #

2016400411

DOB

Age

Sex

Check-In

10/18/1969

50

M

08/15/20 at 18:00

3597443

Loc/Room

Ordering Physician

CUMMINGS, JEFFREY R

973 MICA DR SUITE 201

CARSON CITY, NV 89705

7757836190

DX:

Attending Physician

Page 1 of 1

000271

27

TAHOE FRACTURE CLINIC {SUBJEC}

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973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 1

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**06/30/2020 - Office Visit: Post Op: L Ankle (W/C)****Provider: JEFFREY CUMMINGS MD****Location of Care: Tahoe Fracture and Orthopedic Mica****DOS: 06/30/20****HISTORY OF PRESENT ILLNESS:**

Stephen Yasmer presents today for follow up of his left ankle ORIF on June 15, 2020. He is doing well. He also had a syndesmosis repair. He is not taking pain medications. He has been nonweightbearing on that leg.

**Past Medical History - reviewed**

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

**\*\*Note: Patient has metal in his body.**

He does not have a hearing aid.

**Surgical History - reviewed**

Hernia Surgery

Arthroscopic Shoulder Surgery (left)

R Distal Bicep Repair 8/1/18

Left Ankle ORIF 6/15/20

**Medications and Allergies**

**Patient has drug allergies.**

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

**ALLERGIES**

VICODIN (Critical)

ORT Score: 0

**Family History - reviewed**

Arthritis

Heart Disease



TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 2

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

### Social History

Patient is single, Former smoker, and lives with spouse/partner. Has 0 children. Drinks alcohol 8-14 times per week. Exercises. Education completed: post graduate. Occupation: Physical therapist. Dominant hand: right. Patient is not claustrophobic.

### Review of Systems

**General:** Complaints of sweats

**Eyes:** Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

**ENT:** Patient denies decreased hearing, difficulty swallowing.

**Cardiovascular:** Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

**Respiratory:** Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

**Gastrointestinal:** Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

**Genitourinary:** Patient denies urinary urgency, urinary frequency.

**Musculoskeletal:** Patient denies joint swelling, joint pain, muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

**Skin:** Complaints of Excess sweating.

**Neurologic:** Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

**Psychiatric:** Patient denies anxiety, depression.

**Endocrine:** Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

**Heme/Lymphatic:** Patient denies fevers, abnormal bruising.

**Allergic/Immunologic:** Patient denies seasonal allergies, persistent infections.

### Vital Signs:

Ht (in.): 70 Wt (lbs.): 165

### Tobacco Use:

Current every day smoker

### Body:

BMI: 23.76 (Normal)

### GENERAL EXAM

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September 29, 2020

Page 3

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**General Appearance:** Stephen B Yasmer is a 50 years old male.**RADIOGRAPHS:**

Three views of the patient's left ankle were obtained and reviewed. They show a distal fibula fracture with a plate in good position. There is one broken pin which was noted at the time of surgery. A K-wire broke off as it was being removed. It is well buried in the bone with no evidence of change today on x-ray. His mortise is well aligned. There is evidence of a syndesmosis repair with a TightRope.

**PHYSICAL EXAMINATION:**

Stephen Yasmer is a pleasant 50-year-old male, alert and oriented, in no distress. He presents today nonweightbearing on the left ankle. He is using an assistive device on his knee. His splint was removed. His incision was well approximated. Stitches were removed. Steri-Strips were applied. He still has soft tissue swelling. He has good dorsalis pedis pulse. There is no evidence of discharge or sign of infection.

**IMPRESSION:**

Left ankle fracture with ORIF and syndesmosis repair on June 15, 2020 with normal early result.

**PLAN:**

We will keep the patient nonweightbearing. We will get him in a CAM boot. We will see him back again in four weeks for x-rays of that ankle.

Stephanie Tonn, PA-C

for Jeffrey R. Cummings, M.D.

ST/JRC: pv/

**NoWork Status:**

Patient's job description was reviewed.

Restrictions are: Temporary

Is this employee's condition permanent and stationary? No

Medications may be taken while working.

This injury is occupational.

Diagnosis: **Left ankle fracture**

Employee may return to Light Duty status.

No Lifting, No Carrying

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September 29, 2020

Page 4

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**Comments:** Sedentary job required.**Follow Up**

Employee should be re-evaluated for work status by a physician in 4 weeks.

**DME Dispense**

Stephen B Yasmer was prescribed a prefabricated L4360B-GENESIS WALKER TALL for Displaced fracture of lateral malleolus of left fibula initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA) that required a custom fit by an individual with expertise and specialized training. The prefabricated orthosis was modified in the following manner in order to provide an individualized fit to the patient at time of delivery:

- Identification of appropriate positioning and alignment of anatomical landmarks
- Pt is WC

Verbal and written instructions for the use and application of this item were given. Patient was instructed that should the brace result in increased pain, decreased sensation, increased swelling, or an overall worsening of their medical condition, to please contact our office immediately.

**Electronically signed by STEPHANIE TONN PAC on 08/13/2020 at 9:18 AM**

TAHOE FRACTURE CLINIC {SUBJEC}

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September 29, 2020

Page 1

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**07/28/2020 - Office Visit: RE: L Ankle****Provider: JEFFREY CUMMINGS MD****Location of Care: Tahoe Fracture and Orthopedic Mica****DOS: 07/28/20****HISTORY:**

Steve is here six weeks status post left knee open reduction and internal fixation. He is doing well for the most part. Pain is diminished and decreasing. His biggest concern is when can he walk and get on again. However, he did state he has been having some serous drainage from the distal aspect of the wound. Inspection of the wound today, there is no erythema, no signs of infection. However, he does have serous drainage from what appears to be one of the suture sites, possibly a stitch abscess. The wound was washed with Betadine and it was probed. The probe did not go deep, did not get down to metal, but did not find a stitch consistent with a stitch abscess.

**Past Medical History - reviewed**

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

He does not have metal in his body.

He does not have a hearing aid.

**Surgical History - reviewed**

Hernia Surgery

Arthroscopic Shoulder Surgery (left)

R Distal Bicep Repair 8/1/18

**Medications and Allergies**

**Patient has drug allergies.**

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

**ALLERGIES**

VICODIN (Critical)

**Family History - reviewed**

Arthritis

## TAHOE FRACTURE CLINIC {SUBJEC}


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September 29, 2020

Page 2

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Heart DiseaseSocial History
Patient is single, Current every day smoker, and lives with spouse/partner. Has 0 children. Drinks alcohol
8-14 times per week. Exercises. Education completed: post graduate. Occupation: Physical therapist.
Dominant hand: right. Patient is not claustrophobic.
Review of SystemsGeneral: Complaints of sweats .
**Eyes:** Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

**ENT:** Patient denies decreased hearing, difficulty swallowing.

**Cardiovascular:** Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

**Respiratory:** Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

**Gastrointestinal:** Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

**Genitourinary:** Patient denies urinary urgency, urinary frequency.

**Musculoskeletal:** Patient denies joint swelling, joint pain, muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

**Skin:** Complaints of . Excess sweating.

**Neurologic:** Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

**Psychiatric:** Patient denies anxiety, depression.

**Endocrine:** Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

**Heme/Lymphatic:** Patient denies fevers, abnormal bruising.

**Allergic/Immunologic:** Patient denies seasonal allergies, persistent infections.
Vital Signs:

Ht (in.): 70 Wt (lbs.): 170

Tobacco Use:

Current every day smoker

Body:

BMI: 24.48 (Normal)

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 3

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID. 211247

Ins: University of Utah

### GENERAL EXAM

**General Appearance:** Stephen B Yasmer is a pleasant 50 years old well developed, well nourished male.

**Coordination:** Normal

**Orientation:** 3+

**Gait:** Normal

### PLAN:

At this point, being it is a serous wound, we are going to tentatively put him on for Monday for irrigation and debridement and closure of that wound. He is going to check in with us on Thursday. If there are still any signs of draining, we will proceed with this. He understands this.

Jeffrey R. Cummings, M.D.

JRC: csm/smu

### Work Status:

This injury is occupational.

**Diagnosis:** Displaced fracture of lateral malleolus of left fibula, initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA)

Employee may return to Light Duty status.

**Comments:** no walking standing for another 2 weeks then may start progressing to weight bearing

### Follow Up

Electronically signed by JEFFREY CUMMINGS MD on 08/18/2020 at 10:35 AM

000278

076 34

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September 29, 2020

Page 4

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

TAHOE FRACTURE CLINIC {SUBJEC}



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September 29, 2020

Page 1

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**08/25/2020 - Office Visit: Post Op: L Ankle**

**Provider: JEFFREY CUMMINGS MD**

**Location of Care: Tahoe Fracture and Orthopedic Mica**

**Status: ON HOLD DOCUMENT. Contents are preliminary**

**DOS: 08/25/20**

**HISTORY:**

A 50-year-old male who is here with regards to his left ankle. He has lateral malleolus fracture and a syndesmosis repair, an open reduction and internal fixation. He is doing better. The drainage for the most part stopped over the lateral malleolus. He states there is just one little pinhole, but for most part it is fine. We had that drained. There is no pus, no erythema coming from that area. He overall is doing better. It is just a lot of scar on that lateral malleolus. His range of motion is good. He is still having aching and pain. He is only 10 weeks out from his injury.

**Past Medical History - reviewed**

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

**\*\*Note: Patient has metal in his body.**

He does not have a hearing aid.

**Surgical History - reviewed**

Hernia Surgery

Arthroscopic Shoulder Surgery (left)

R Distal Bicep Repair 8/1/18

Left Ankle ORIF 6/15/20

**Medications and Allergies**

**Patient has drug allergies.**

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

**ALLERGIES**

VICODIN (Critical)

000280

078

36



TAHOE FRACTURE CLINIC {SUBJEC}



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## Tahoe Fracture and Orthopedic Medical Clinic

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September 29, 2020

Page 2

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

ORT Score: 0

### Family History - reviewed

Arthritis

Heart Disease

### Social History

Patient is single, Current every day smoker, and lives with spouse/partner. Has 0 children. Drinks alcohol 8-14 times per week. Exercises. Education completed: post graduate. Occupation: Physical therapist. Dominant hand: right. Patient is not claustrophobic.

### Review of Systems

**General:** Complains of sweats

**Eyes:** Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

**ENT:** Patient denies decreased hearing, difficulty swallowing.

**Cardiovascular:** Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

**Respiratory:** Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

**Gastrointestinal:** Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

**Genitourinary:** Patient denies urinary urgency, urinary frequency.

**Musculoskeletal:** Patient denies joint swelling, joint pain, muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

**Skin:** Complains of . Excess sweating.

**Neurologic:** Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

**Psychiatric:** Patient denies anxiety, depression.

**Endocrine:** Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

**Heme/Lymphatic:** Patient denies fevers, abnormal bruising.

**Allergic/Immunologic:** Patient denies seasonal allergies, persistent infections.

### Vital Signs:

Ht (in.): 70 Wt (lbs.): 170

000281

079

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September 29, 2020

Page 3

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**Tobacco Use:**

Current every day smoker

**Body:**

BMI: 24.48 (Normal)

**GENERAL EXAM****General Appearance:** Stephen B Yasmer is a pleasant 50 years old well developed, well nourished male.**Coordination:** Normal**Orientation:** 3+**Gait:** Normal**RADIOGRAPHS:**

X-rays repeated today still seem every early callus formation and we will have him gradually progress to activity, still no running, no jumping activities.

**PLAN:**

We will see him back here in four to six weeks with repeat x-ray of the left ankle. Then, we will see him back here in six weeks, but if he has any increased drainage or erythema of that wound, he is going to let us know.

Jeffrey R. Cummings, M.D.

JRC: csm/smu

TAHOE FRACTURE CLINIC {SUBJEC}

09/03/2020 08:42

(FAX)

P.002/003

**CARSON TAHOE**  
— HEALTH —

Carson Tahoe Regional Health  
1600 Medical Parkway  
Post Office Box 2168  
Carson City, Nevada 89702-2168  
(775) 445-8000

Page 1 of 2

**SURGEON:**  
**DATE:**

**JEFFREY R CUMMINGS, MD**  
**09/02/2020**

**ANESTHESIA:**  
General.

**ANESTHESIOLOGIST:**  
Drexler.

**FIRST ASSISTANT:**  
Stephanie Tonn.

**PREOPERATIVE DIAGNOSIS:**  
Infected left ankle hardware.

**POSTOPERATIVE DIAGNOSIS:**  
Infected left ankle hardware.

**PROCEDURE:**  
1. Left ankle incision and drainage.  
2. Left ankle removal of deep hardware.

**INDICATION FOR OPERATION:**

A 50-year-old male with a history of open reduction, internal fixation of the lateral malleolus and syndesmosis 3 months ago. He has had off and on drainage from the wound. He has not wanted to have it drained until yesterday it really opened up and had some purulent material. He has swelling over the lateral ankle and it is decided to take him to the operating room today for incision and drainage and removal of hardware. He understands the risks, the benefits, and alternatives to the procedure.

**DESCRIPTION OF PROCEDURE:**

After obtaining proper consent, the patient was taken to the operating room, administered general anesthesia, was sterilely prepped and draped in the left lower extremity. The leg was elevated,

**YASMER, STEPHEN B**  
**020163119**  
**ADMITTED: 09/02/2020**  
**POS 999 66**  
**Patient Account Number: 2024501813**

**Operative Report**

463302

000283

TAHOE FRACTURE CLINIC {SUBJEC}

09/03/2020 08:42

(FAX)

P.003/003

Page 2 of 2

tourniquet was inflated to 250 mmHg. A longitudinal incision was made over the previous wound with ellipsing the wound itself. Cultures were obtained both aerobic, anaerobic and fungal. There was just a small purulent area at the superficial wound itself. Otherwise, it was more of a serous deep drainage. This was cultured as well. The wound was opened both proximally and distally to remove the hardware. The hardware was removed. The tightrope was removed as well. Small wound was opened medially to remove that medial side button and the stitches were removed. Lag screw was removed. Fracture site was tested. It is 3 months out, seemed to be bridged and healed. The mortise remained reduced. At this point, we will plan to not reimplant the hardware. Using a rongeur and a curette, the wound base was debrided removing all questionable soft tissue. The pulse lavage irrigator was used. Curette was used also in the screw holes to clean these out. Pulse lavage irrigator was used to clean the wound. It was closed in layers with 3-0 Vicryl and 3-0 and nylon to close the skin. Sterile dressing was applied. The patient was placed in a splint, taken to recovery in stable condition. Needle and sponge count correct, taken to recovery without complication. He is going to need IV antibiotics. We are going to consult Infectious Disease. Will place order for a PICC line. All the hardware has been removed so hopefully we can get ahead of this. Will keep him nonweightbearing for another 4-6 weeks and proceed from there.

---

Jeffrey R Cummings, MD

JRC/MODL

DD: 09/02/2020 16:08:08

DT: 09/02/2020 16:39:45

463302/891779341

YASMER, STEPHEN B  
020163119

ADMITTED: 09/02/2020

POS 999 66

Patient Account Number: 2024501813

Operative Report

463302

000284

082

40

TAHOE FRACTURE CLINIC {SUBJEC}



**Tahoe Fracture  
& Orthopedic  
Medical Clinic, Inc.**

*Relieving your pain. Restoring your function. Returning your life.*

**Tahoe Fracture and Orthopedic Medical Clinic**

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 1

Clinical Lists Update

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**09/03/2020 - Clinical Lists Update: Medication Update**

**Provider: STEPHANIE TONN PAC**

**Location of Care: Tahoe Fracture and Orthopedic Mica**

**Medications:**

**PERCOCET 5-325 MG ORAL TABLET (OXYCODONE-ACETAMINOPHEN)** Take 1 tablet By Mouth Q 4-6 hours as needed for pain. (7 day supply) Dx: G89.18 #40 x 0

Route: ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769985902940

**XANAX 0.25 MG ORAL TABLET (ALPRAZOLAM)** Take 1 tablet By Mouth Q6 hours as needed for anxiety. (5 day supply) Dx: G89.18 #20 x 0

Route: ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769985902900

**XANAX 0.25 MG ORAL TABLET (ALPRAZOLAM)** Take 1 tablet By Mouth Q6 hours as needed for anxiety. (5 day supply) Dx: G89.18 #20 x 0

Route: ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769898899010

**PERCOCET 5-325 MG ORAL TABLET (OXYCODONE-ACETAMINOPHEN)** Take 1 tablet By Mouth Q 4-6 hours as needed for pain. (7 day supply) Dx: G89.18 #40 x 0

Route: ORAL

Entered by: Jose Victor

Authorized by: STEPHANIE TONN PAC

Electronically signed by: Jose Victor on 09/03/2020

Method used: Print then Give to Patient

Note to Pharmacy: Route: ORAL;

RxID: 1914769898898900

TAHOE FRACTURE CLINIC {SUBJEC}



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Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 2

Clinical Lists Update

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Electronically signed by STEPHANIE TONN PAC on 09/15/2020 at 3:09 PM

TAHOE FRACTURE CLINIC {SUBJEC}

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& Orthopedic  
Medical Clinic, Inc.***Relieving your pain. Restoring your function. Returning your life.***Tahoe Fracture and Orthopedic Medical Clinic**

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Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 1

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

**09/15/2020 - Office Visit: 1st Post Op: L Ankle****Provider: JEFFREY CUMMINGS MD****Location of Care: Tahoe Fracture and Orthopedic Mica****Status: ON HOLD DOCUMENT. Contents are preliminary****DOS: 09/15/20****HISTORY:**

A 50-year-old male who is here for follow up regarding his left ankle status post I&D and removal of deep hardware. The wound is healing well. No sign of infection, no drainage, no erythema. Sutures are removed. Steri-Strips are placed.

**Past Medical History - reviewed**

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

**\*\*Note: Patient has metal in his body.**

He does not have a hearing aid.

**Surgical History - reviewed**

Hernia Surgery

Arthroscopic Shoulder Surgery (left)

R Distal Bicep Repair 8/1/18

Left Ankle ORIF 6/15/20; HWR + I&D 9/2/20 - Strep. Infxn.

**Medications and Allergies**

**Patient has drug allergies.**

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

**ALLERGIES**

VICODIN (Critical)

**MEDICATIONS**

XANAX 0.25 MG ORAL TABLET (ALPRAZOLAM) Take 1 tablet By Mouth Q6 hours as needed for anxiety. (5 day supply) Dx: G89.18; Route: ORAL

000287

085

43

TAHOE FRACTURE CLINIC {SUBJEC}

**Tahoe Fracture  
& Orthopedic  
Medical Clinic, Inc.***Relieving your pain. Restoring your function. Returning your life.***Tahoe Fracture and Orthopedic Medical Clinic**

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Phone: 7757836190 Fax: 7757836191

September 29, 2020

Page 2

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

PERCOCET 5-325 MG ORAL TABLET (OXYCODONE-ACETAMINOPHEN) Take 1 tablet By Mouth Q 4-6 hours as needed for pain. (7 day supply) Dx: G89.18; Route: ORAL

ORT Score: 0

**Family History - reviewed**

Arthritis

Heart Disease

**Social History**

Patient is single, Current every day smoker, and lives with spouse/partner. Has 0 children. Drinks alcohol 8-14 times per week. Exercises. Education completed: post graduate. Occupation: Physical therapist. Dominant hand: right. Patient is not claustrophobic.

**Review of Systems****General:** Complains of sweats**Eyes:** Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.**ENT:** Patient denies decreased hearing, difficulty swallowing.**Cardiovascular:** Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.**Respiratory:** Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.**Gastrointestinal:** Patient denies vomiting, loss of appetite, hemorrhoids, nausea.**Genitourinary:** Patient denies urinary urgency, urinary frequency.**Musculoskeletal:** Patient denies joint swelling, joint pain, muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.**Skin:** Complains of Excess sweating.**Neurologic:** Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.**Psychiatric:** Patient denies anxiety, depression.**Endocrine:** Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.**Heme/Lymphatic:** Patient denies fevers, abnormal bruising.**Allergic/Immunologic:** Patient denies seasonal allergies, persistent infections.**Vital Signs:**



TAHOE FRACTURE CLINIC {SUBJECT}

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& Orthopedic  
Medical Clinic, Inc.***Relieving your pain. Restoring your function. Returning your life.***Tahoe Fracture and Orthopedic Medical Clinic**

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Phone: 7757836190 Fax: 7757836191

September 29, 2020

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Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 445-5756

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: University of Utah

Ht (in.): 70 Wt (lbs.): 170

**Tobacco Use:**

Current every day smoker

**Body:**

BMI: 24.48 (Normal)

**GENERAL EXAM****General Appearance:** Stephen B Yasmer is a 50 years old male.**PLAN:**

We will have him continue nonweightbearing status. We will see him back here in three weeks. He is following up with Dr. Schwartz with regards to infectious disease. He has been on declining daptomycin for three weeks. He is following up with Dr. Schwartz, whether he continues that or converts to orals, the final culture ended up being Strep B. We will see him back here in three weeks. He states the ankle feels a ton better.

Jeffrey R. Cummings, M.D.

JRC: csm/smu

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing **CLAIMANT'S FIRST EXHIBIT** addressed to:

STEPHEN YASMER  
2257 CARSON RIVER RD  
CARSON CITY NV 89701

JOHN P LAVERY ESQ  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 900 BOX 28  
LAS VEGAS NV 89102

DATED: NOVEMBER 12, 2020

SIGNED: ALEX ANDRACA

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

NOV - 4 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim

of

STEPHEN YASMER,

Claimant.

Appeal No. : 2100639-SYM

Hearing No. : 21000033-SD

Claim No. : 000706-038452-WC-01

Employer :  
CARSON TAHOE HEALTH SYSTEM

Appeal Date : November 16, 2020

Appeal Time : 9:00 A.M.

CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER  
BASSETT SERVICES, INC.'S INDEX OF DOCUMENTS

COMES NOW, Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter referred to as "Employer"), and its Third-Party Administrator, GALLAGHER BASSETT SERVICES, INC., (hereinafter referred to as "Administrator"), by and through their attorneys, JOHN P. LAVERY, ESQ., and JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, and submit the attached Index of Documents relating to the above-referenced matter.

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ENTERED INTO  
EVIDENCE AS EXHIBIT

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DATED this 5<sup>th</sup> day of November, 2020.

LEWIS BRISBOIS BISGAARD &amp; SMITH LLP

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**  
ATTORNEYS AT LAW

<b>1</b>	<b><u>DATE</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO(S).</u></b>
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<b>6</b>	06-10-20	Dr. Jay Betz's medical records	10-14
<b>7</b>	06-12-20	Dr. Jeffrey Cummings' medical records	15-18
<b>8</b>	06-15-20	Dr. Cummings' operative report	19-20
<b>9</b>	06-15-20	X-ray of Claimant's left ankle	21
<b>10</b>	06-23-20	Administrator's determination letter to Claimant regarding claim denial	22
<b>11</b>	06-30-20	Dr. Cummings' medical records	23-28
<b>12</b>	07-02-20	Authorization Request	29
<b>13</b>	07-06-20	Claimant's Request for Hearing regarding Administrator's 06-23-20 determination	30
<b>14</b>	08-06-20	The Hearing Officer's Decision and Order affirming Administrator's 06-23-20 determination, 2100033-SD	31-33
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**CERTIFICATE OF MAILING**


Pursuant to NRCP Rule 5(b), I hereby certify that, on the 3<sup>rd</sup> day of November, 2020,

I served a true and correct copy of the above and foregoing document entitled **CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER BASSETT SERVICES, INC.'S INDEX OF DOCUMENTS** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as follows:

Todd Eikelberger, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
1000 E. William Street, Suite 208  
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM  
Attn: Risk Management  
1600 Medical Pkwy.  
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster  
GALLAGHER BASSETT SERVICES, INC.  
P.O. Box 2934  
Clinton, IA 52733



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

CARSON TAHOE  
HEALTH

EMPLOYEE'S CLAIM FOR COMPENSATION / REPORT OF INITIAL  
TREATMENT FORM C-4

Post Office Box 2188  
Carson City, Nevada  
89702-2188  
775-445-8000

PAGE 1 of 1

EMPLOYEE SIGNATURE (PROVIDER INFORMATION REQUESTED)					
First Name <b>Stephen</b>	ML	Last Name <b>Yasmer</b>	Birthdate <b>10.18.69</b>	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Claim Number (Insurers Use Only)
Home Address <b>325 Carson River Dr</b>		Age <b>50</b>	Height	Weight	Social Security Number
City <b>CC</b>	State <b>NV</b>	Zip <b>89701</b>	Telephone <b>721-3843</b>		
Home Address <b>same</b>	City	State	Zip	Primary Language Spoken	
INSURER	THIRD-PARTY ADMINISTRATOR		Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred		
Employer's Name/Company Name <b>CCH</b>				Telephone <b>445-8000</b>	
Office Mail Address (Number and Street) <b>1600 Medical Parkway Carson City, NV 89701</b>					
Date of Injury (if applicable) <b>6-8-2000</b>	Hours Injury (if applicable) <b>11 am</b>	Date Employee Notified <b>6-8-20</b>	Last Day of Work After Injury or Occupational Disease <b>6-8-20</b>	Supervisor to Whom Injury Reported <b>N/A</b>	
Address or Location of Accident (if applicable) <b>Carson Tahoe Hospital</b>					
What were you doing at the time of the accident? (if applicable) <b>walking down stairs carrying a box &amp; fell</b>					
How did the injury or occupational disease occur? (be specific and answer to detail. Use additional sheet if necessary) <b>Fell</b>					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? <b>N/A</b>				Witnesses to the Accident (if applicable) <b>N/A</b>	
Nature of Injury or Occupational Disease <b>Fall</b>			Part(s) of Body Injured or Affected <b>Foot</b>		
I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS AND TO ENJOY THE PROTECTION OF CHAPTER 672 OF NRS. I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGEON, PRACTITIONER OR OTHER PERSON AUTHORIZED TO PROVIDE MEDICAL SERVICES TO ME TO DISCLOSE TO ANY EMPLOYER, INSURER, GOVERNMENT AGENCY, EMPLOYER'S MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY OR OTHER INSTITUTION OR ORGANIZATION TO BE ENTITLED TO EACH OTHER ANY MEDICAL OR OTHER INFORMATION INCLUDING BENEFITS PAID OR PAYABLE, PAST OR PRESENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT, AND/OR COUNSELING FOR ADDICTION, PSYCHOLOGICAL CONDITIONS, ALCOHOL, OR CONTROLLED SUBSTANCES, FOR WHICH I MUST OBTAIN SPECIFIC AUTHORIZATION. A PHOTOGRAPH SHALL BE AS VALUABLE AS THE ORIGINAL.					
Date <b>6/8/20</b>	Signature <b>Carson Tahoe</b>		Employee's Signature <b>Stephen Yasmer</b>		
THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT					
Place <b>Carson Tahoe ER</b>	Name of Facility <b>Carson Tahoe Medical Center</b>				
Date <b>6/8/2000</b>	Diagnosis and Description of Injury or Occupational Disease <b>L Ankle dislocation &amp; Fracture</b>		Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input type="checkbox"/> Yes (if yes, please explain)		
Hour <b>12:00</b>	Treatment <b>Reduction &amp; splinting and crutches</b>		How you advised the patient to sample off work (in days or weeks)? <input checked="" type="checkbox"/> Yes indicate dates from <b>6/8/20</b> to <b>6/11/20</b> <b>closed by doctor</b>		
X-Ray Findings <b>Dislocation &amp; Fracture and hardware</b>	From information given by the employee, together with medical evidence, do you directly connect this injury or occupational disease to job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> No if no, is the injured employee capable of: <input type="checkbox"/> full duty <input checked="" type="checkbox"/> modified duty If modified duty, specify any limitations / restrictions:		
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)			
Date	Physician's Name		I certify that the employer's copy of this form was mailed to the employer etc.		
Address <b>1600 Medical Parkway Carson City, NV 89701</b>			INSURERS USE ONLY		
City <b>Carson City</b>	State <b>NV</b>	Zip <b>89701</b>	Provider's Facility Name <b>Carson Tahoe Medical Center</b>	Telephone <b>775-445-8000</b>	
Doctor's Signature <b>6/8/2000</b>		Dates			

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR

PAGE 2 - INSURER / TPA

PAGE 3 - EMPLOYER

PAGE 4 - EMPLOYEE

Patient Demographics

Form C-4 Rev. 06/20/12



YASMER, STEPHEN

PT# 2016000108 MS# 020163119  
10/18/69 50Y N

MRN: 020163119  
VISIT ID: 2016000308  
PATIENT NAME: STEPHEN YASMER  
PATIENT DOB: 10/18/1969

Emergency Room Note (MModal)

DATE & TIME OF SERVICE:  
06/08/2020

MODE OF ARRIVAL:  
POV

CHIEF COMPLAINT:  
Left ankle injury

HISTORY OF PRESENT ILLNESS:

Patient is a 50-year-old male who is a physical therapist here at our facility who reports that he was carrying a box supplies down to the basement when he thought he was on the bottom stair and could not see that there is still to more stairs beneath. He stepped forward thinking he was stepping onto the landing and missed the bottom to stairs falling hard on to his left ankle causing some notable deformity. Patient states he thinks he might have sprained his right ankle as well but does not have significant pain or concern to that area. He denies hitting his head, denies any loss of consciousness, denies any pain anywhere else. Patient reports a co-worker got a pair of crutches in the ER to be checked in.

PAST MEDICAL HISTORY:  
Seasonal allergies

PAST SURGICAL HISTORY:  
Shoulder

CURRENT MEDICATIONS:  
Reviewed current med rec in chart

ALLERGIES:  
Viscodin

SOCIAL HISTORY:  
Patient reports daily tobacco use with daily alcohol use as well denies any marijuana or drug use

REVIEW OF SYSTEMS:  
A 10-point review of systems was performed and the pertinent positives and negatives are listed in the History of Present Illness

PHYSICAL EXAM:  
Vital signs:  
Blood pressure is 127/87 with a heart rate of 74 respiratory rate of 18  
temperature of 98.1° and O2 95% on room air  
General: Pleasant nontoxic in moderate distress

2  
000296  
843



MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

Head: Normocephalic atraumatic  
ENT: PERIOL EOMI sclerae anicteric  
Neck: Supple no stridor  
Lungs: Clear to auscultation bilaterally  
Cardiovascular regular rate and rhythm no obvious murmurs rubs or gallops cap refill less than 2 sec symmetric radial pulses no pedal edema  
Abdomen: good bowel sounds soft abdomen nontender nondistended negative Murphy's no McBurney's no peritonitis  
Back: no midline tenderness to palpation or step-offs normal range of motion  
Skin: intact warm dry no obvious rashes  
Extremities: Patient has noticeable deformity to left ankle consistent with a possible dislocation palpable pedal pulse to left foot decreased sensation severe tenderness to palpation patient has tenderness with extension of right ankle has no bony nose tenderness to palpation bilateral malleolus no midfoot tenderness to palpation no head of 5th metatarsal tenderness to palpation  
Neuro: Alert oriented to person place time and situation GCS 15 symmetric face has 5/5 strength throughout normal sensation to light touch throughout no limb ataxia  
Psych: Calm and cooperative

DIAGNOSTIC STUDIES:

Left ankle x-ray shows

IMPRESSION:

Posterior dislocation of the talus.

Comminuted displaced fracture of the distal fibular diaphysis.

Electronically Signed by: Edmund Pillsbury 6/8/2020 1:06 PM

Post reduction film shows

IMPRESSION:

1. Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains.
2. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Electronically Signed by: Farres Ahmed 6/8/2020 1:36 PM

EMERGENCY ROOM COURSE (NOM):

Patient is a 50-year-old male with the above-noted complaint. Upon initial presentation patient has a very obvious notable deformity of his left ankle with decreased sensation the patient does maintain perfusion he has cap refill

MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

of 3 seconds with a palpable pedal pulse. I called x-ray in asked for x-rays soon as possible as well as I notified my supervising physician Dr. Calvo to trying get a reduction done as soon as possible. X-ray with results noted above do show a fibular fracture with dislocation patient was given propofol for conscious sedation please see Dr. Calvo as noted sees is me with this procedure at which point I was able to successfully reduce the dislocation and patient was placed in a Cadillac splint. Patient tolerated procedure well had no complications patient already has crutches we discussed appropriate symptomatic management at home patient was found to be PMP negative he is given prescription for Percocet as he states that Norco makes him very itchy. Patient is already established with Tahoe fracture was given referral to follow up with his orthopedic provider we discussed very strict return precautions as well as appropriate symptomatic management at home to which patient verbalized understanding and agreement plan feels comfortable going home at this time patient did present a C4 form which was filled out.

FINAL DIAGNOSIS:

Acute left ankle dislocation  
Acute left fibula fracture  
Acute left posterior malleolus fracture

DISPOSITION:

Home POV with a ride

This patient was seen under disaster/mass casualty incident conditions.

Voice Recognition Disclaimer:

Voice Recognition DisclaimerThis document may have been created using voice recognition software. The software does have a chance of producing errors of grammar and possibly content. I have made every reasonable attempt to find and correct any obvious errors.

Electronic Signatures:

Smith, Matthew W (PA-C) (Signed Jun-08-2020 14:20)  
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 14:20 by Smith, Matthew W (PA-C)

MRN:020163119  
VISIT ID:2016000308  
PATIENT NAME:STEPHEN YASMER  
PATIENT DOB:10/18/1969

Emergency Room Note (MModal)

This is Calvo dictating a supervising physician attestation note. Please note this is a 50-year-old male who works here at the hospital who stepped off a step and had a sudden left ankle pain. After missing a step. On physical exam there is an obvious posterior dislocation of the ankle he has thready posterior tibial pulse he has subjective numbness but normal motor function of the left foot. X-ray shows a posterior ankle dislocation with associated fibular fracture. This was reduced under propofol sedation. Following this he was doing much better it could pulses and neurovascular status in the left ankle he was placed in a splint he will follow up with Orthopedics. He has remained remain nonweightbearing. Please see Matthew Smith's note for further emergency department course workup and plan. I spent 15 minutes of direct face-to-face time with this patient

Conscious Sedation

Patient did require moderate sedation for left ankle dislocation. Risks and benefits were discussed and patient elected to proceed with the procedure. Respiratory therapy and nursing staff were present at all times. Patient received a total of 120 mg of IV propofol. This was pushed by myself. The reduction was completed by Matthew Smith please see his note for further details. During the moderate sedation there was no hypotension or hypoxia. Patient had continuous blood pressure monitoring and continuous pulse oximetry. The patient is completely neurovascularly intact post procedure. Patient tolerated the procedure very well without complications. Patient is now resting comfortably and does not appear to be in any distress. Patient is now back to baseline. Intraservice time was 13 minutes.

Voice Recognition Disclaimer:

Voice Recognition DisclaimerThis document may have been created using voice recognition software. The software does have a chance of producing errors of grammar and possibly content. I have made every reasonable attempt to find and correct any obvious errors.

Electronic Signatures:

Calvo, Darryl v (Physician) (Signed Jun-08-2020 17:21)  
Authored: Dictation Free Text, Disclaimer

Last Updated: Jun-08-2020 17:21 by Calvo, Darryl v (Physician)

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000299  
097

CARSON TAHOE REGIONAL HEALTHCARE  
P.O. Box 2168,  
Carson City, NV 89702-2168

Patient Name: STEPHEN YASMER  
MRN: 020163119  
Account: 2016000308

Check-In# 3894855  
Order# 0018WKDZJ  
Exam XR ANKLE LT MIN 3 VIEW

TYPE OF EXAM: RAD7361  
DATE: 06/08/2020  
INDICATION: ^Pain W/Trauma^FF

Ordering Physician: MATTHEW W SMITH  
Attending Physician: MDS ER

EXAM: Left ankle radiographs, 3 views.

HISTORY: Pain W/Trauma

COMPARISON: None available.

FINDINGS: Posterior dislocation of the talar dome is noted. There is a comminuted fracture of the distal fibular diaphysis. No other fracture is noted.

IMPRESSION:

Posterior dislocation of the talus.

Comminuted displaced fracture of the distal fibular diaphysis.

Electronically signed by: Edmund Pillsbury 6/8/2020 1:06 PM

Electronically signed By: EDMUND P PILLSBURY, MD

CARSON TANOE REGIONAL HEALTHCARE  
P.O. Box 2168,  
Carson City, NV 89702-2168

Patient Name: STEPHEN YASMER  
MRN: 020163119  
Account: 2016000308

Check-In# 3594901  
Order# H1866728  
Exam XR ANKLE LT 2VW

TYPE OF EXAM: RAD7521  
DATE: 06/08/2020  
INDICATION: ^Pain W/Trauma^FF

Ordering Physician: MATTHEW W SMITH  
Attending Physician: MDS ER

EXAM: Left ankle radiographs, 2 views.

HISTORY: Pain W/Trauma.

COMPARISON: Left ankle radiographs June 8, 2020

FINDINGS: Interval reduction and splinting of the left ankle. Talus now appears appropriately positioned after reduction. Improved comminuted angulated distal fibular fracture. Posterior apex angulation persists although is improved.

Oseous fragment projects posterior to the talus and could represent an additional fracture, not significant changed.

Plantar calcaneal enthesophyte.

IMPRESSION:

1. Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains.
2. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

Electronically Signed by: Farras Ahmed 6/8/2020 1:36 PM

Electronically Signed By: FARRAS AHMED, MD

TO AVOID PENALTY, THIS REPORT MUST BE  
COMPLETED AND MAILED TO THE INSURER WITHIN  
6 WORKING DAYS OF RECEIPT OF THE C-4 FORM

Reset Form  
Print Form

EMPLOYER'S REPORT OF INDUSTRIAL INJURY  
OR OCCUPATIONAL DISEASE

<b>EMPLOYER</b>	Employer's Name <b>CARSON TAHOE HEALTH SYSTEM</b>		Nature of Business (mfg., etc.) <b>Healthcare</b>		FEIN <b>88-0502318</b>		OSHA Log # <b>MV6549399</b>	
	Office Mail Address <b>1600 MEDICAL PARKWAY</b>		Location... If different from mailing address <b>1600 MEDICAL PARKWAY CARSON CITY, NV</b>				Telephone <b>(775) 445-8176</b>	
	City <b>CARSON CITY</b>	State <b>NV</b>	Zip <b>89703</b>	INSURER <b>Zurich</b>			THIRD-PARTY ADMINISTRATOR <b>GALLAGHER BASSETT - LAS VEGAS</b>	
<b>EMPLOYEE</b>	First Name M.I. Last Name <b>Stephen Yasmer</b>		Social Security		Birthdate <b>10/18/1969</b>		Age <b>50</b>	
	Home Address (Number and Street) <b>2257 Carson River Rd</b>		Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		Primary Language Spoken <b>English</b>	
	City <b>Carson City</b>		State <b>NV</b>		Zip <b>89701</b>		Was the employee paid for the day of injury? (If applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>ACCIDENT OR DISEASE</b>	In which state was employee hired? <b>NV</b>		Employee's occupation (job title) when hired or disabled <b>Manager Therapy Services</b>			Department in which regularly employed: <b>Physical Therapy</b>		
	Telephone <b>(775) 883-4680</b>		Is the injured employee a corporate officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		...sole proprietor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		...partner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Date of injury (if applicable) <b>08/08/2020</b>		Time of injury (Hours:Minute AM/PM) (if applicable) <b>11:00AM</b>		Date employer notified of injury or O/D <b>08/08/2020</b>		Supervisor to whom injury or O/D reported <b>Scott Mattes</b>	
	Address or location of accident (Also provide city, county, state) (if applicable) <b>1600 MEDICAL PARKWAY CARSON CITY, NV 89703</b>						Accident on employer's premises? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) <b>Walking down stairs while carrying a box</b>							
<b>INJURY OR DISEASE</b>	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. <b>Employee thought he was at the landing between floors but was still 2 steps up and fell</b>							
	<b>Employee began work at: 08:00:00</b>							
	Specify machine, tool, substance, or object most closely connected with the accident (if applicable) <b>Stairs</b>				Witness		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Part of body injured or affected <b>Left Ankle</b>		If fatal, give date of death		Witness			
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) <b>Ankle Dislocation and Fracture</b>				Witness			
	Did employee return to next scheduled shift after accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Will you have light duty work available, if necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	If validity of claim is doubted, state reason <b>None</b>				Location of Initial Treatment <b>1600 Medical Parkway Carson City, NV 89703</b>			
	Treating physician/chiropractor name <b>Dr. Daryl Calvo</b>				Emergency Room <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	IMPORTANT: How many days per week does employee work? <b>5</b>		From <b>8:00</b> <input checked="" type="checkbox"/> am <input type="checkbox"/> pm To <b>4:30</b> <input type="checkbox"/> am <input checked="" type="checkbox"/> pm		Last day wages were earned <b>06/08/2020</b>			
	Scheduled days off <input checked="" type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> T <input type="checkbox"/> F <input checked="" type="checkbox"/> S <input type="checkbox"/> Rotating <input type="checkbox"/>		Are you paying injured or disabled employee's wages during disability? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Date employee was hired <b>04/04/2005</b>		Last day of work after injury or disability <b>06/08/2020</b>		Date of return to work		Number of work days lost		
Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired?		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Do Not Know				
For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be off work 5 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability.								
Pay Period <input type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THUR <input checked="" type="checkbox"/> SAT ends on: <input type="checkbox"/> MON <input type="checkbox"/> WED <input type="checkbox"/> FRI		Employee is paid: <input checked="" type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER <input type="checkbox"/> BI-WEEKLY <input type="checkbox"/> SEMI-MONTHLY		On the date of injury or disability the employee's wage was: <b>\$ 63.76</b> per <input checked="" type="checkbox"/> Hr <input type="checkbox"/> Day <input type="checkbox"/> Wk <input type="checkbox"/> Mo				
For assistance with Workers' Compensation Issues you may contact the Office of the Governor's Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: <a href="http://dhs.nv.gov/Programs/OSHA">http://dhs.nv.gov/Programs/OSHA</a> E-mail: <a href="mailto:osha@dhs.nv.gov">osha@dhs.nv.gov</a>								
I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I also understand that providing false information is a violation of Nevada law.				Employer's Signature and Title <b>Terry Long RN, Manager Employee</b>		Date <b>08/09/2020</b>		
Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3rd Party		Deemed Wage		Account No.		Class Code		
Claims Examiners' Signature		Date		Status Clerk		Date		





**CARSON TAHOE**  
HEALTH

**OFFICE OF INJURY OR OCCUPATIONAL DISEASE**  
(Incident Report Form, C-1)

In the event of employee injury or illness this form must be completed by the employee and the Department Manager or Supervisor before the end of the shift in which the injury occurs.

Employee Name Stephen Varnes Dept Therapy Shift hours Varies  
Physical Address 2257 Barnes Rd, Carson City, NV 89701 Telephone 775-721-2842  
Marital Status: S ☒ M ☐ Div ☐ Wid ☐ Date of Injury 6/8/20 Time of Injury 1115 AM or PM ☒  
Injured: During Work Hours? ☒ Yes ☐ No SS # \_\_\_\_\_  
On Hospital Premises? ☒ Yes ☐ No Manager/Supervisor Reported To Scott Miller Time 1145  
If there were any witnesses, please list names and have them sign below.

(Witness) \_\_\_\_\_  
Explain in detail how injury occurred (moving patient, cleaning patient room, etc.)  
Going down stairs with box of supplies. Thought I had reached the landing, but I was still 7-8 steps up. I fell.  
Part of Body Injured (Left Arm, Lower Back, etc.) Left ankle  
Other Pertinent Information \_\_\_\_\_  
I hereby declare the above is a true and factual account of the injury that occurred.  
I understand that if treatment is sought, it will be authorized by either my manager, administrative coordinator or employee health.  
S. Varnes 6/8/20 1417  
Employee Signature Date Time

**MANAGER/SUPERVISOR SECTION (please complete all areas)**

This entire report form is to be submitted to Employee Health within 5 days of injury.

Date of Injury 6/8/20 Date Manager/Supervisor Notified 6/8/20 Time 1145  
Was this injury reported at once? (please explain) yes  
Specify object or substance which directly injured employee fall  
Nature of injury (contusion, puncture, etc.) broken ankle  
Employee sent to Regional Hospital's Emergency Dept. for treatment? ☒ Yes ☐ No ☐ Other \_\_\_\_\_  
Did you talk to employee about HOW injury occurred? (please explain) yes  
If witnessed, did you talk to each witness about what was observed? \_\_\_\_\_  
How could this injury have been prevented? take the elevator  
What actions are you taking to prevent future incidents? education  
Were there techniques, procedures or policies that the employee did not follow? (please indicate) no  
Was there a root cause related to this injury? i.e. Policy or procedure revision no  
Are you assured that this injury is job related? (please explain) yes  
Other pertinent information \_\_\_\_\_

Request injury to be investigated? ☒ Yes ☐ No  
Michael 6/10/20 910  
Manager Date Time Supervisor (if applicable) Date Time

**EMPLOYEE HEALTH/EMERGENCY DEPARTMENT/ADMINISTRATIVE COORDINATOR**

This portion to be completed by Employee Health, Emergency Room Physician or Administrative Coordinator

Diagnosis and Description of Occupational Injury or Disease \_\_\_\_\_  
Initial Treatment \_\_\_\_\_  
Is further medical care by a physician indicated? \_\_\_\_\_  
Was employee returned to work? \_\_\_\_\_ Sent home? \_\_\_\_\_ Hospitalized? \_\_\_\_\_  
If yes, how long do you anticipate employee to be off work? \_\_\_\_\_  
Additional Comments \_\_\_\_\_  
Evaluated/Treated By \_\_\_\_\_ Date \_\_\_\_\_

TIME RECEIVED  
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REMOTE CSID  
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DURATION  
102

PAGES  
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Date 6/10/20

**Nevada Occupational Health & Injury Care Center**  
3488 Goni Road  
Suite 141

Page 2

### Request for Authorization

**Request To:** Gallagher Bassett (NV Claims)  
P.O. Box 400970  
Las Vegas, NV 89140

**Requested By:** Betz, Jay E. MD  
3488 Goni Rd.  
Suite 141  
Carson City, NV 89706

**Telephone:** (702) 789-4500  
**E-Mail:**

**Fax:** (702) 789-4454

**Telephone:** (775) 887-5030  
**E-Mail:**

**Fax:** (775) 887-5040

### Supporting Notes

**Subject: Chief Complaint**

Patient presents for evaluation of the left foot/ankle.

**History of Present Illness**

The patient is a 50 year old male, presenting for a new patient visit with the following condition(s):

Mr. Yasmer rolled his left ankle when he missed a step coming down some stairs with a box at work 2 days ago. He went to the ER where he was found have a fracture dislocation of the ankle which was reduced in the emergency room. He was placed in a posterior splint and given crutches.

Today reports he is doing pretty well. He has manageable pain. No numbness in the toes. He is using the crutches.

**Past Medical History**

ALLERGIES / ADVERSE REACTIONS: Vicoden

MEDICATIONS: Aleve and Oxycotone

PROBLEMS: Major or Chronic Illnesses: No known illnesses noted by patient.

OTHER PERSONAL HISTORY: Left Shoulder Rotary Cuff Repair.  
Right Bicep tendon repair.  
Hernia Repair.

FAMILY HISTORY: Family History: No negative family history noted by patient.

SOCIAL HISTORY: Patient currently uses alcohol. Patient is currently a smoker.

WORK HISTORY: Patient currently works full time as a(n) manual laborer , a physically demanding position.

**Review of Systems**

SKIN: Denies abnormal hair growth, bleeding, change in color or size of moles, easy bruising, itching, hair loss, rash, or history of skin cancer or severe sunburn.

NEUROLOGICAL: Denies blackouts, dysarthria, dizziness, double vision, fainting, headaches, loss of balance, coordination or sensation, motor weakness, paralysis, tingling, prickling, numbness or tremors.



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**Telephone:** (775) 887-5030  
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**Fax:** (775) 887-5040

**Supporting Notes**

**PSYCHIATRIC:** Denies anxiety, depression, difficulty remembering things or thinking, hallucinations, insomnia, irritability, panic, suicidal thought or history of psych hospitalizations or suicide attempts.

**ENDOCRINE SYSTEM:** Denies cold or heat intolerance, fatigue, neck swelling, polydipsia or polyuria.

**HEMATOLOGIC / LYMPHATIC:** Denies easy bleeding or bruising, history of anemia, or swollen lymph nodes,.

**ALLERGIC / IMMUNOLOGIC:** Denies rhinitis, hay fever, itchy eyes, urticaria, angioedema, or sensitivity to foods or drugs.

**GENITOURINARY:** Denies blood in urine, difficulties urinating, frequency of urination, incontinence, or history of kidney stones. No discharge from penis, testicular pain, lumps in testicles or scrotum, or problems with erection or ejaculation.

**GASTROINTESTINAL:** Denies abdominal pain, blood in stools or black stools, change in bowel frequency or stool size, constipation, diarrhea, difficulty swallowing, food intolerance, heartburn, nausea, vomiting or need for antacids.

**RESPIRATORY:** Denies coughing, coughing up blood or phlegm, night sweats, shortness of breath, wheezing or history of asthma, pneumonia or tuberculosis.

**CARDIOVASCULAR:** Denies chest pain or pressure, edema, excessive sweating, heart racing, palpitations, shortness of breath or history of heart murmur, hypertension, rheumatic fever or valve disease.

**EARS, NOSE, MOUTH & THROAT:** Denies bleeding gums, earaches, ear discharge, hay fever or seasonal allergies, hearing loss, hoarseness, nasal discharge or nosebleeds, sinus problems, sore throats, tinnitus or vertigo.

**EYES:** Denies blurred vision, cataracts, dimness, excessive tearing, flashing lights, itching, pain, redness or history of cataracts or glaucoma.

**CONSTITUTIONAL:** Denies change in appetite, fatigue, fever, weakness, weight gain or weight loss.

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Carson City, NV 89706

**Telephone:** (702) 789-4500  
**E-Mail:**

**Fax:** (702) 789-4454

**Telephone:** (775) 887-5030  
**E-Mail:**

**Fax:** (775) 887-5040

### Supporting Notes

**Objective: Examination/Procedures**

Temperature: 97.9°F. Blood Pressure: 158/95. Pulse: 69. Respiration: 16. (Entered by Betz, Jay E. MD 6/10/2020 at 12:43PM ).

The patient is well-nourished well-developed. He is in no distress. He has a posterior splint on the left foot ankle and using crutches.

The splint was left in place. Neurovascular status of the toes is intact.

Review ER x-ray images show reduced fracture dislocation of the ankle involving the lateral and posterior malleoli.

**Imaging/Test Results**

X-ray report Left Ankle 6-8-20: Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

**Assessment: Diagnosis**

Fracture/Dislocation left ankle

**Work Status**

Wear splint. Non weight bearing. Use crutches to ambulate.  
ST

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**Telephone:** (775) 887-5030  
**E-Mail:**

**Fax:** (775) 887-5040

#### Supporting Notes

**Plan:** Orders

I recommend referral to a qualified orthopedist. Dr. Cummings is requested. (Betz, Jay E. MD, 6/10/20 at 1:10PM).

#### Discussion & Plan

The patient will require open reduction and internal fixation of the left ankle. We have set up an appointment for him to see Dr. Cummings, orthopedist, later this week who will assume the patient's care. Pending that he should use the crutches, avoid weight-bearing and elevate the foot when possible. He feels he can manage his pain with OTC analgesics and occasional Percocet from the ER.

A total of 40 minutes was spent in the evaluation and treatment of the patient today

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Page 1

### Request for Authorization

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**Fax:** (702) 789-4454

**Telephone:** (775) 887-5030  
**E-Mail:**

**Fax:** (775) 887-5040

#### Authorization Request

**Purpose:** Orthopedist Referral

**Comments:** I recommend referral to a qualified orthopedist. Dr. Cummings is requested

#### Patient Information

**Patient:** Stephen Yasmer  
2257 Carson River  
Carson City, NV 89701

**Employer:** Carson Tahoe Health-Injury Only  
1600 Medical Pkwy  
Carson City, NV 89703

**Telephone:** (775) 721-3843

**Identity:**

**Gender:** Male

**Birth Date:** 10/18/69  
**Marital:** Unknown

**Age:** 50

**Telephone:** (775) 445-8176  
**Policy:**

**Fax:** (775) 888-3226

#### Visit Information

**Visit Date:** 6/10/20

**Date of Injury or Illness:** 6/08/20

**Claim Number:**

**Description:** Patient presents for evaluation of the left foot/ankle.

**ICD-9:** 000

**Left Ankle Dislocation with Fx**

#### Supporting Notes

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 1

# Patient Charting Note

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist Visit Injury Date: 6/08/2020	Cummings, Jeffrey	

## Subjective:

### Chief Complaint

Stephen is here referred by Dr. Betz with regards to his left foot/ankle.

### History of Present Illness

Referring Physician: Jay Betz MD

Dear Dr. Betz,

Thank you for this consultation and evaluation.

Steven is a new patient, referred over by Dr. Betz. A 50-year-old male who presents after his left ankle injury. He was coming down steps at the hospital with boxes and he twisted his ankle. He had a fracture dislocation of the ankle. Had a fibula fracture with posterior displacement of the talus. There is no sign of a posterior malleolar fracture. Seems to be all laterally. The mortise appears to be reduced as well as the syndesmosis.

However, there is a risk of syndesmosis injury as well.

### Past Medical History

ALLERGIES / ADVERSE REACTIONS: Vicoden

MEDICATIONS: Aleve and Oxycotone

PROBLEMS: Major or Chronic Illnesses: No known illnesses noted by patient.

OTHER PERSONAL HISTORY: Left Shoulder Rotary Cuff Repair.  
Right Bicep tendon repair.  
Hernia Repair.

FAMILY HISTORY: Family History: No negative family history noted by patient.

SOCIAL HISTORY: Patient currently uses alcohol. Patient is currently a smoker.

WORK HISTORY: Patient currently works full time as a(n) manual laborer , a physically demanding position.

### Review of Systems

SKIN: Denies abnormal hair growth, bleeding, change in color or size of moles, easy bruising, itching, hair loss, rash, or history of skin cancer or severe sunburn.

NEUROLOGICAL: Denies blackouts, dysarthria, dizziness, double vision, fainting, headaches, loss of balance, coordination or sensation, motor weakness, paralysis, tingling, prickling, numbness or tremors.

PSYCHIATRIC: Denies anxiety, depression, difficulty remembering things or thinking, hallucinations, insomnia, irritability, panic, suicidal thought or history of psych hospitalizations or suicide attempts.

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 2

# Patient Charting Note

Stephen Yasmer , DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist Visit Injury Date: 6/08/2020	Cummings, Jeffrey	

**ENDOCRINE SYSTEM:** Denies cold or heat intolerance, fatigue, neck swelling, polydipsia or polyuria.

**HEMATOLOGIC / LYMPHATIC:** Denies easy bleeding or bruising, history of anemia, or swollen lymph nodes.

**ALLERGIC / IMMUNOLOGIC:** Denies rhinitis, hay fever, itchy eyes, urticaria, angioedema, or sensitivity to foods or drugs.

**GENITOURINARY:** Denies blood in urine, difficulties urinating, frequency of urination, incontinence, or history of kidney stones. No discharge from penis, testicular pain, lumps in testicles or scrotum, or problems with erection or ejaculation.

**GASTROINTESTINAL:** Denies abdominal pain, blood in stools or black stools, change in bowel frequency or stool size, constipation, diarrhea, difficulty swallowing, food intolerance, heartburn, nausea, vomiting or need for antacids.

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**EYES:** Denies blurred vision, cataracts, dimness, excessive tearing, flashing lights, itching, pain, redness or history of cataracts or glaucoma.

**CONSTITUTIONAL:** Denies change in appetite, fatigue, fever, weakness, weight gain or weight loss.

## Objective:

### **Examination/Procedures**

Temperature: 97.8°F. (Entered by Betz, Jay E. MD 6/12/2020 at 11:22AM ).

On exam today the swelling is still present. He can flex and extend in toes. There is good cap refill. Palpable dorsalis pedis pulse. Sensation is intact. He still has swelling of the ankle.

### **Imaging/Test Results**

X-ray report Left Ankle 5-8-20: Anatomic alignment at the tibiotalar joint after reduction of the talar dislocation. Osseous fractured fragment posterior to the talus remains. Improved alignment of a comminuted angulated distal fibular fracture. Posterior apex angulation persists.

## Assessment:

### **Diagnosis**

Date: 07/09/2020

Nevada Occupational Health & Injury Care Center

Page: 3

# Patient Charting Note

Stephen Yasmer, DOB: 10/18/1969

Date	Charting Summary	Provider	Clinician
6/12/2020	New Specialist- Visit Injury Date: 6/08/2020	Cummings, Jeffrey	

Fracture/Dislocation left ankle

## Work Status

Wear splint. Non weight bearing. Use crutches to ambulate. Keep leg elevated.

## Plan:

## Orders

I recommend a STAT left ankle malleolus and syndismosis open reduction internal fixation.

## Discussion & Plan

We will plan for left ankle open reduction internal fixation of the lateral malleolus, with possible syndesmosis open reduction internal fixation as well.

He understands the risks, the benefits and alternatives to the procedure including, but not limited to, Infection, bleeding, nerve and blood vessel damage, heart attack, stroke, death, persistent pain, need for surgery.

Sincerely,

Jeffrey Cummings, MD  
Board Certified Orthopedic Surgeon  
Board Certified Sports Medicine

Dictated using voice recognition by the provider.

\*\*\* As a result of using voice recognition, there is naturally more typographical and grammatical errors that can occur and need to be taken into consideration when reviewing these medical records.

TIME RECEIVED  
June 12, 2020 at 1:17:29 PM

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(775) 887-5040

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Date 6/12/20

**Nevada Occupational Health & Injury Care Center**  
3488 Goni Road  
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Page 1

### Request for Authorization

**Request To:** Gallagher Bassett (NV Claims)  
P.O. Box 400970  
Las Vegas, NV 89140

**Requested By:** Cummings, Jeffrey  
3488 Goni Rd  
Carson City, NV 89706

**Telephone:** (702) 789-4500  
**E-Mail:**

**Fax:** (702) 789-4454

**Telephone:** (775) 887-5030  
**E-Mail:**

**Fax:** (775) 887-5040

#### Authorization Request

**Purpose:** STAT Surgery With Dr. Cummings

**Comments:** I recommend a STAT left ankle melleolus and syndismosis open reduction internal fixation.

CPT: 27829, 27814

ICD: S82.65XB, S93.439A

Surgery to be preformed on 06/17/20

#### Patient Information

**Patient:** Stephen Yasmer  
2257 Carson River  
Carson City, NV 89701

**Employer:** Carson Tahoe Health-Injury Only  
1600 Medical Pkwy  
Carson City, NV 89703

**Telephone:** (775) 771-3943

**Identity:**

**Gender:** Male

**Birth Date:** 10/18/69

**Marital:** Unknown

**Age:** 50

**Telephone:** (775) 445-8176

**Policy:**

**Fax:** (775) 888-3226

#### Visit Information

**Visit Date:** 6/12/20

**Date of Injury or Illness:** 6/08/20

**Claim Number:**

**Description:** Patient presents for evaluation of the left foot/ankle.

ICD-9: 000

Left Ankle Dislocation with Fx



TIME RECEIVED  
July 2, 2020 at 11:39:35 AMREMOTE CSID  
775-783-6191DURATION  
327STATUS  
Received

TAHOE FRACTURE CLINIC (SUBJECT)

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020163119 ACCT#: 2016400411

NAME: YASMER, STEPHEN

#211247

Clinician: Cummings, Jeffrey R

SURGEON: JEFFREY R CUMMINGS, MD

DATE: 06/15/2020

ANESTHESIA:

General.

ANESTHESIOLOGIST:

Spencer Mellum, DO

FIRST ASSISTANT:

Stephanie Tonn, PA-C

## PREOPERATIVE DIAGNOSES:

1. Left ankle lateral malleolus fracture.
2. Left ankle syndesmosis disruption.

## POSTOPERATIVE DIAGNOSES:

1. Left ankle lateral malleolus fracture.
2. Left ankle syndesmosis disruption.

## PROCEDURES:

1. Left ankle open reduction, internal fixation of the lateral malleolus.
2. Left ankle open reduction, internal fixation of the syndesmosis.

## INDICATION FOR OPERATION:

A 50-year-old male slipped going down the stairs at Carson Tahoe Hospital. Had an injury, a fracture dislocation of the left ankle. He understood the risks, the benefits, and alternatives to procedure.

## DESCRIPTION OF PROCEDURE:

After obtaining proper consent, the patient was taken to the operating room, administered general anesthesia. Was sterilely prepped and draped in the left lower extremity. An Esmarch was used for exsanguination. The tourniquet was inflated to 250 mmHg. A longitudinal incision was made over the lateral aspect of the ankle. Dissection was done down to the lateral malleolus. The fracture site was identified. The fracture site was cleaned of soft tissue and the soft tissue was elevated off the bone. Using the Zimmer distal fibula plate and set, a lag screw was placed from anterior to posterior, holding the fracture reduced. Taking a 5-hole plate, it was secured to the distal fibula. Confirming position and alignment, the screws were filled both proximally and distally. The fracture site was then stressed to assess the syndesmosis, and this is where the noted gapping of the mortise was. It was decided at this point to use a Biomet TightRope. The TightRope was drilled through the whole level of the syndesmosis, angled anteriorly, across the fibula and tibia. The button was passed through the fibula and tibia tunnel and flipped over the medial cortex. The button was cinched, holding the syndesmosis secure and reduced. C-arm was used to confirm position, alignment, and reduction. The wounds were irrigated and closed with 3-0 Vicryl, 3-0 nylon in a running stitch. Sterile dressing applied. The patient was placed in a splint, taken to Recovery in stable condition. Needle and sponge counts correct.

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TAHOE FRACTURE CLINIC (SUBJEC)

CARSON TAHOE REGIONAL HEALTHCARE P.O. Box 2168, Carson City, NV 89702-2168

MR#: 020163119 ACCT#: 2016400411

NAME: YASMER, STEPHEN

Clinician: Cummings, Jeffrey R

Jeffrey R Cummings, MD

JRC/MODL

DD: 06/15/2020 18:02:56

DT: 06/15/2020 19:39:26

396831/883146846

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Received

TAHOE FRACTURE CLINIC (SUBJECT)



PO Box 2168  
Carson City, NV 89702-2168  
775/882-1361

### DIAGNOSTIC SERVICES REPORT

Check-In #                      Order #                      Exam                      SXR ANKLE LT 2 VW 73600LT  
3597443                      H1888752                      OPI8906

ICD:

TYPE OF EXAM:    SXR ANKLE LT 2 VW 73600LT

DATE: 06/15/2020 at 18:00

INDICATION:

FINAL

EXAM: 3 views of the left ankle

HISTORY: LEFT ANKLE LATERAL MELLEOLUS AND SYNDISMOSIS OPEN REDUCTION INTERNAL FIXATION

COMPARISON: None available.

FLUOROSCOPY TIME: 20 seconds

FINDINGS: Intraoperative fluoroscopic guidance is obtained. Multiple intraoperative fluoroscopic spot images show lateral plate screw fixation of the distal fibula in anatomic alignment, transfixing the previously seen oblique fracture through the distal fibula. Additionally, there is new syndesmotic fixation hardware. No immediate hardware competition is noted.

*Flu Appt.  
on 6/30/20*

IMPRESSION:

1. Intraoperative fluoroscopy as above.

Electronically Signed by: Erik Maki 6/15/2020 7:26 PM

*6/15/20*

Electronically Signed By:    MAKI, ERIK

FINAL

Page 1 of 1

Patient Name		MRN	Account #
YASMER, STEPHEN		020183119	2016400411
DOB	Age	Sex	Check-In
10/18/1989	50	M	06/15/20 at 18:00
Ordering Physician			3597443
CUMMINGS, JEFFREY R			
973 MICA DR SUITE 201			Attending Physician
CARSON CITY, NV 89705			
7757838190			
DX:			



**Gallagher Bassett Services, Inc.**

June 23, 2020

Steven Yasmer  
2257 Carson River Road  
Carson City, NV 89701

Re: Employer: Carson Tahoe  
D/Injury: 6/8/20  
Clam #: 000706-038452-WC-01

Dear Mr. Yasmer:

Gallagher Bassett Services, Inc. administers the workers' compensation program for the above captioned employer. Review of the file indicates that your accident was a result of you miscalculating the steps. There was no work related accident. You are not required to take the stairs as there is an elevator for your use.

**NRS 616C.150, 1. An injured employee is not entitled to receive compensation pursuant to the provisions of chapter's 616A to 616D, inclusive, of NRS unless the employee or his dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of employment.**

**NRS 616A.030 "Accident" means an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury.**

**NRS 616A.265 1. "Injury" or "Personal Injury" means a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result, which is established by medical evidence, including injuries to prosthetic devices. Any injury sustained by an employee while engaging in an athletic or social event sponsored by his employer shall be deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event.**

If you disagree with this decision, you have a right to file an appeal by completing the attached Request for Hearing Form and mailing it, along with a copy of this letter, to the address on the form. The completed Request for Hearing must be received by the hearing division within seventy days of the date of this letter. If you do not appeal within seventy days, you lose your right to appeal.

Sincerely,

*Yvette D McCollum*

Yvette D McCollum

Sr. Resolution Manager

Encl: Request for Hearing Form  
cc: Employer / Medical provider / file

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July 2, 2020 at 11:39:35 AMREMOTE CSID  
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TAHOE FRACTURE CLINIC [SUBJECT]

**Tahoe Fracture  
& Orthopedic  
Medical Clinic, Inc.***Relieving your pain. Restoring your function. Returning your life.***Tahoe Fracture and Orthopedic Medical Clinic**

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 1

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

**06/30/2020 - Office Visit: Post Op: L Ankle (W/C)****Provider: JEFFREY CUMMINGS MD****Location of Care: Tahoe Fracture and Orthopedic Mica****Status: ON HOLD DOCUMENT. Contents are preliminary****Past Medical History - reviewed**

The patient/family denies any pertinent past medical history.

He does not have pacemaker.

**\*\*Note: Patient has metal in his body.**

He does not have a hearing aid.

**Surgical History - reviewed**

Hernia Surgery

Arthroscopic Shoulder Surgery (left)

R Distal Bicep Repair 8/1/18

Left Ankle ORIF 6/15/20

**Medications and Allergies****Patient has drug allergies.**

Vicodin

Patient denies food allergies.

Patient denies metal allergies.

Patient denies latex allergy.

**ALLERGIES**

VICODIN (Critical)

ORT Score: 0

**Family History - reviewed**

Arthritis

Heart Disease

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TAHOE FRACTURE CLINIC (SUBJECT)



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Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 2

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

### Social History

Patient is single, Former smoker, and lives with spouse/partner. Has 0 children. Drinks alcohol 8-14 times per week. Exercises. Education completed: post graduate. Occupation: Physical therapist. Dominant hand: right. Patient is not claustrophobic.

### Review of Systems

**General:** Complains of sweats.

**Eyes:** Patient denies eye irritation, double vision, vision loss - 1 eye, vision loss - both eyes, eye pain, blurring, light sensitivity, discharge, halos.

**ENT:** Patient denies decreased hearing, difficulty swallowing.

**Cardiovascular:** Patient denies chest pain or discomfort, palpitations, difficulty breathing while lying down, swelling of hands or feet, weight gain, racing/skipping heart beats, blackouts/fainting, shortness of breath with exertion.

**Respiratory:** Patient denies shortness of breath, cough, chest discomfort, wheezing, coughing up blood.

**Gastrointestinal:** Patient denies vomiting, loss of appetite, hemorrhoids, nausea.

**Genitourinary:** Patient denies urinary urgency, urinary frequency.

**Musculoskeletal:** Patient denies joint swelling, joint pain, muscle cramps, stiffness, back pain, presence of joint fluid, gout, arthritis, muscle weakness, muscle aches, loss of strength.

**Skin:** Complains of Excess sweating.

**Neurologic:** Patient denies headaches, poor balance, disturbances in coordination, brief paralysis, numbness, falling down, weakness, tingling, visual disturbances, fainting, seizures, memory loss, migraines, tremors, dizziness.

**Psychiatric:** Patient denies anxiety, depression.

**Endocrine:** Patient denies heat intolerance, cold intolerance, weight change, excessive thirst, excessive urination.

**Heme/Lymphatic:** Patient denies fevers, abnormal bruising.

**Allergic/Immunologic:** Patient denies seasonal allergies, persistent infections.

### Vital Signs:

Ht (in.): 70 Wt (lbs.): 165

### Tobacco Use:

Current every day smoker

### Body:

BMI: 23.76 (Normal)

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TAHOE FRACTURE CLINIC (SUBJEC)



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*Relieving your pain. Restoring your function. Returning your life.*

**Tahoe Fracture and Orthopedic Medical Clinic**

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 3

Office Visit

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

## GENERAL EXAM

**General Appearance:** Stephen B Yasmer is a 50 years old male.

## NoWork Status:

Patient's job description was reviewed.

Restrictions are: Temporary

Is this employee's condition permanent and stationary? No

Medications may be taken while working.

This injury is occupational.

**Diagnosis: Left ankle fracture**

Employee may return to Light Duty status.

No Lifting, No Carrying

**Comments:** Sedentary job required.

## Follow Up

Employee should be re-evaluated for work status by a physician in 4 weeks.

## DME Dispense ment

Stephen B Yasmer was prescribed a prefabricated L4360B-GENESIS WALKER TALL for Displaced fracture of lateral malleolus of left fibula initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA) that required a custom fit by an individual with expertise and specialized training. The prefabricated orthosis was modified in the following manner in order to provide an individualized fit to the patient at time of delivery:

- Identification of appropriate positioning and alignment of anatomical landmarks

Pt is WC

Verbal and written instructions for the use and application of this item were given. Patient was instructed

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TAHOE FRACTURE CLINIC (SUBJECT)



# **Tahoe Fracture & Orthopedic Medical Clinic, Inc.**

*Relieving your pain. Restoring your function. Returning your life.*

**Tahoe Fracture and Orthopedic Medical Clinic**

973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 4

Office Visit

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**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

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that should the brace result in increased pain, decreased sensation, increased swelling, or an overall worsening of their medical condition, to please contact our office immediately.

---



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TAHOE FRACTURE CLINIC (SUBJECT)



# **Tahoe Fracture & Orthopedic Medical Clinic, Inc.**

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973 Mica Drive Ste. 201 Carson City, NV 89705

Phone: 7757836190 Fax: 7757836191

July 2, 2020

Page 1

Physician Orders

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

**06/30/2020 - Physician Orders: DME Order**

**Provider: JEFFREY CUMMINGS MD**

**Location of Care: Tahoe Fracture and Orthopedic Mica**

**Status: ON HOLD DOCUMENT. Contents are preliminary**

## **DME Order**

**Patient Name:** Stephen B Yasmer

**Account:** 211247

**Physician:** JEFFREY CUMMINGS MD

**Request Date:** 06/30/2020 11:11 AM

**\*\*Patient is in clinic**

**Other Info:** Workers Comp

<b>Name and Type of Brace</b>	<b>Side</b>	<b>HCPC Code</b>
Genesis mid calf walker Left	L	L4360

## **Diagnosis:**

S82.62xA. Displaced Fracture of lateral malleolus of left fibula, initial encounter of closed fracture.

## **PRE-CERTIFICATION/PRE-DETERMINATION**

## **PATIENT ESTIMATE**

**Add-Ons:** w/c

Completed by Ielmore on June 30, 2020 12:43 PM

## **PATIENT NOTIFICATION**

## **BRACE ORDERED**

## **BRACE FIT**

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July 2, 2020 at 11:39:35 AM

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DURATION  
327

STATUS  
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TAHOE FRACTURE CLINIC (SUBJECT)



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July 2, 2020

Page 2

Physician Orders

**Stephen B Yasmer** Home: (775) 883-4680 Office: (775) 885-6687

Male 50 Years Old DOB: 10/18/1969

Patient ID: 211247

Ins: CDS Group Health \*

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STATUS  
Received

TAHOE FRACTURE CLINIC (SUBJECT)



## Authorization Request

Victoria Stroud

P: (775) 392-4482

F: (775) 783-6906

[workcomp@tahoe fracture.com](mailto:workcomp@tahoe fracture.com)

Date: 07/02/2020

To:

Attn:

GALLAGHER BASSETT NV

Phone:

8003700594

Fax:

775-783-6906

Patient Name: Stephen B Yasmer

DOB: 10/18/1969

Claim Number: 000706MV6549399

DOI: 06/08/2020

Body Part(s):

Employer: Carson Tahoe Regional Healthcare

Requesting Physician: CUMMINGS MD, JEFFREY R

NPI #: 1740271238

Diagnosis: Displaced fracture of lateral malleolus of left fibula - initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA)

ICD-9 Code: Displaced fracture of lateral malleolus of left fibula - initial encounter for closed fracture (ICD-824.2) (ICD10-S82.62xA)

Requested Services/Testing: Genesis Mid Calf Walker- Left

CPT Code: L4360

Facility: Tahoe Fracture and Orthopedics Medical Clinic

Tax ID: \_\_\_\_\_

☐ Approved

☐ Denied

Signature: \_\_\_\_\_

\*\*Please return this fax with your signature and tracking number when approved\*\*

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender, which is privileged. The information is intended only for the use of individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the take of any action in reliance of the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of this document.

0000033

# REQUEST FOR HEARING - CONTESTED CLAIM

(Pursuant to NAC 616C.274)

REPLY TO: Department of administration  
Hearings Division  
1050 E. William Street, Ste. 400  
Carson City, NV 89701  
(775) 687-5966

OR Department of Administration  
Hearings Division  
2200 S. Rancho Drive, Suite 210  
Las Vegas, NV 89102  
(702) 486-2525

2020 JUL -6 A 10:30

EMPLOYEE INFORMATION		
Employee's Name: <u>Stephen Yarnes</u>		
Address: <u>2257 Carson River Rd</u>		
<u>Carson City</u>		
City: <u>Carson City</u>	State: <u>NV</u>	Zip: <u>89701</u>
Employee's Telephone Number: <u>775-721-3843</u>		
Claim No.: <u>000706</u> Date of Injury: <u>6/8/20</u>		
<u>038452-NV-01</u>		
INSURER INFORMATION		
Insurer's Name: «Selfinsured» «Insurance Company»		
Address: <u>1</u>		
City: State: Zip:		
Insurer's Telephone Number:		

Employer Information		
Employer's Name: <u>Carson Family Health</u>		
Address: <u>1600 Medical Plaza</u>		
<u>Carson City</u>		
City: <u>Carson City</u>	State: <u>NV</u>	Zip: <u>89706</u>
Employer's Telephone Number: <u>775-445-8000</u>		
THIRD-PARTY ADMINISTRATOR (TPA) INFORMATION		
TPA's Name: <u>Gallagher Bassett Services, Inc.</u>		
Address: <u>P.O. Box 70030</u>		
City: <u>Las Vegas</u> State: <u>NV</u> Zip: <u>89170</u>		
TPA's Telephone Number: <u>702-789-4500</u>		

Do Not Complete or Mail This Form Unless You Disagree With the Insurer's Determination.

YOU MUST INCLUDE A COPY OF THE DETERMINATION LETTER OR A HEARING WILL NOT BE SCHEDULED PURSUANT TO NRS 616C.315.

Briefly explain the basis for this appeal:

My accident meets ALL criteria of NRS 616C.150,  
616A.130, and 616A.265. I was performing specific  
work duties while "on the clock" at the time of my accident.

This request for hearing is filed by, or on behalf of: ☒ The Injured Employee

☐ The Employer

and is dated 30th day of June, 2020.

Signature of Injured Employee/Employer

Injured Employee's/Employer's Rep. (Advisor)

THVS  
7-30-20  
@11:00  
SD

**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 2100033-SD  
Claim Number: 000706-038452-WC-01

STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

**BEFORE THE HEARING OFFICER**

The Claimant's request for Hearing was filed on July 6, 2020 and a Hearing was scheduled for July 30, 2020. The Hearing was held on July 30, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer/Insurer was represented by John Lavery, Esquire, by telephone conference call.

**ISSUE**

The Claimant appealed the Insurer's determination dated June 23, 2020. The issue before the Hearing Officer is claim denial.

**DECISION AND ORDER**

The determination of the Insurer is hereby **AFFIRMED**.

**NRS 616A.030** defines "accident" as "an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury". **NRS 616A.265** defines an "injury" as "a sudden and tangible happening of a traumatic nature producing an immediate or prompt result which is established by medical evidence, including injuries to prosthetic devices". **NRS 616C.150(1)** provides the injured employee has the burden of proof to show, by a preponderance of the evidence, the injury arose out of and in the course of employment. An injury on the job location is not sufficient to hold that the injury arose out of and in the course and scope of employment. See *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997). In the instant matter, the Claimant has not met his burden. As such, the Hearing Officer finds the insurer's determination is proper and hereby **AFFIRMED**.

123<sup>000325</sup>31

In the Matter of the Contested  
Industrial Insurance Claim of  
Hearing Number:  
Page 2

STEVEN YASMER  
2100033-SD

**APPEAL RIGHTS**

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 6th day of August, 2020.

  
\_\_\_\_\_  
Spring Dykstra, Hearing Officer

124000326<sup>32</sup>

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES INC  
PO BOX 2934  
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 300 BOX 28  
LAS VEGAS NV 89102-4375

Dated this 6th day of August, 2020.

A handwritten signature in black ink, appearing to read "Karen Dyer", is written over a horizontal line.

Karen Dyer  
Employee of the State of Nevada

**REQUEST FOR HEARING BEFORE THE APPEALS OFFICER**  
**NEVADA DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

*Stephen*  
**STEVEN YASMER**  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

Hearing Number: 2100033-SD  
Claim Number: 000706-038452-  
WC-01

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: AUGUST 6, 2020

*(Please attach a copy of the Hearing Officer's Decision)*

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER/INSURER

REASON FOR APPEAL: *My injury DID arise out of and in the course of employment. I was performing an essential job function when injured.*

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

*Stephen Yasmer*  
Person requesting this hearing (please print)

Address

Person requesting this hearing (signature)

City, State, Zip Code

Telephone Number

*775-721-3843*  
Telephone Number

*8/28/20*  
Date

WILL AN INTERPRETER BE REQUIRED?

YES [ ]

NO ☒

If so, what language: \_\_\_\_\_

**NOTICE**

If the Hearing Officer Decision is appealed, CLAIMANTS are entitled to free legal representation by the Nevada Attorney for Injured Workers (NAIW). If you want NAIW to represent you, please sign below:

*S. Yasmer*  
Claimant's signature

*775-721-3843*  
Claimant's Telephone Number

If you are appealing the Hearing Officer's decision, file this form no later than thirty (30) days after that decision at:

NEVADA DEPARTMENT OF ADMINISTRATION  
APPEALS OFFICE  
1050 E. WILLIAMS STREET SUITE 450  
CARSON CITY, NV 89701  
(775) 687-8420

**FILED**

AUG 31 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

*2106639-54m*  
*mm 11-16-20*  
*C 9:00*

*126* 000328 *34*



ORIGINAL

FILED

NOV 16 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim

of

STEPHEN YASMER,

Claimant.

Appeal No. : 2100639-SYM

Hearing No. : 21000033-SD

Claim No. : 000706-038452-WC-01

Employer :  
CARSON TAHOE HEALTH SYSTEM

Appeal Date : November 16, 2020  
Appeal Time : 9:00 A.M.

CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER  
BASSETT SERVICES, INC.'S APPEAL MEMORANDUM

COMES NOW, Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter referred to as "Employer"), and its Third-Party Administrator, GALLAGHER BASSETT SERVICES, INC. (hereinafter referred to as "Administrator"), by and through their attorneys, JOHN P. LAVERY, ESQ., JEANNE P. BAWA, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and for their appeal memorandum state as follows:

1. That Administrator's June 23, 2020 determination denying liability for Claimant's claim, must be affirmed as a matter of law.

2. That the Hearing Officer's August 6, 2020 Decision and Order, which affirmed claim denial, must be affirmed as a matter of law.

...

...

...

...

...

...

...

...

1 WHEREFORE, Employer and Administrator respectfully request that this Appeals Officer  
2 provide the following relief:


3 1. That this Appeals Officer affirm Administrator's June 23, 2020 determination,  
4 which denied Claimant's claim for industrial insurance benefits.

5 2. That this Appeals Officer affirm the Hearing Officer's August 6, 2020 Decision  
6 and Order, which affirmed claim denial.

7 DATED this 13 day of November, 2020.

8 Respectfully submitted,

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By   
12 JOHN P. LAVERY, ESQ.  
13 Nevada Bar No. 004665  
14 JEANNE P. BAWA, ESQ.  
15 Nevada Bar No. 007359  
16 2300 West Sahara Avenue, Suite 900  
17 Las Vegas, NV 89102  
18 Attorneys for Employer  
19 CARSON TAHOE HEALTH SYSTEM  
20 And its Third-Party Administrator  
21 GALLAGHER BASSETT SERVICES, INC.

22 **DOCUMENTS TO BE PRODUCED AT HEARING**

23 Employer and Administrator have produced those documents contained in their Index of  
24 Documents consisting of thirty-four (34) pages, filed separately. Employer and Administrator will  
25 also rely upon any and all documents introduced by Claimant, SUBJECT TO OBJECTION.  
26 Employer and Administrator reserve the right to introduce any additional documentation which  
27 may come into their possession between the date of filing the instant memorandum and the  
28 hearing in this matter. Pursuant to NRS 239B.030, this is to affirm that all Social Security  
numbers have been redacted or otherwise removed.

This evidence may contain affidavits or declarations, which the proponent proposes to  
introduce into evidence pursuant to NRS 616C.355, unless any party, within seven (7) days after  
the mailing or delivery of this notice, invokes its right to cross-examine the affiant and/or

1 declarant. Failure to timely invoke the right to cross-examine will be deemed a waiver of such  
2 right.

3 **STATEMENT OF THE ISSUES**

4 The following issues are before the Appeals Officer for review:

5 1. Whether Administrator's June 23, 2020 determination, which denied Claimant's  
6 claim for industrial insurance benefits, was proper.

7 2. Whether the Hearing Officer's August 6, 2020 Decision and Order, affirming claim  
8 denial, was proper.

9 **WITNESSES**

10 Employer and Administrator may call its employees most knowledgeable regarding the  
11 facts of the case to testify telephonically. Employer and Administrator may call Claimant,  
12 himself, to testify if he does not testify on his own behalf. Employer and Administrator further  
13 reserve the right to call any other rebuttal witness as may be necessary.

14 **TIME ESTIMATED FOR HEARING**

15 It is estimated that the time for hearing of this Employer's and Administrator's case will be  
16 one (1) hour or less.

17 **I.**

18 **STATEMENT OF THE FACTS**

19 Claimant, Stephen Yasmer (hereinafter referred to as "Claimant"), alleged injury to his left  
20 foot as the result of falling on some stairs on June 8, 2020. Claimant sought medical treatment the  
21 same day in the Carson Tahoe ER, where he completed an Employee's Claim for  
22 Compensation/Report of Initial Treatment (Form C-4). Claimant reported that he was carrying a  
23 box walking downstairs when he fell. (Exhibit p. 1.)

24 Claimant was diagnosed with a left ankle dislocation (Fibula) and posterior malleolus  
25 fracture. The ankle was reduced in the ER and was splinted. Claimant was referred to Tahoe  
26 Fracture where he was already a patient and was released to light duty work. (Exhibit pp. 1- 7.)

27 Claimant and his manager completed an incident report on June 10, 2020. Claimant stated  
28 that he was carrying a box of supplied down the stairs and he thought he was at the bottom of the

1 stairs but still had 2 more steps to go and so he mis-stepped and fell. Claimant's manager indicated  
2 that he should have used the elevator instead of the stairs. (Exhibit p. 9.)

3 Claimant was evaluated by Dr. Jay Betz on June 10, 2020. Dr. Betz referred the claimant  
4 to Dr. Jeffrey Cummings for surgery. (Exhibit pp. 10-14.)

5 Dr. Cummings evaluated the claimant on June 12, 2020. He recommended ORIF surgery  
6 (Exhibit pp. 15-18.)

7 Dr. Cummings performed surgery on June 15, 2020. (Exhibit pp. 19-21.)

8 On June 23, 2020, Administrator denied liability for this claim. (Exhibit p. 22.)

9 Claimant appealed that determination to a Hearing Officer. (Exhibit p. 30.)

10 The issue of claim denial was heard by a Hearing Officer on July 30, 2020. In a written  
11 Decision and Order dated August 6, 2020, the Hearing Officer affirmed claim denial. (Exhibit pp.  
12 31-33.)

13 Claimant appealed that Decision and Order to this Court.

14 **II.**

15 **ARGUMENT**

16 **A.**

17 **Claimant Cannot Establish That He Has a Compensable Claim**

18 It is Claimant, not Insurer, who has the burden of proving his case, and that is by a  
19 preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567, 688  
20 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323  
21 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

22 In attempting to prove his case, Claimant has the burden of going beyond speculation and  
23 conjecture. That means that Claimant must establish all of the facets of the claim by a  
24 preponderance of all of the evidence. To prevail, a claimant must present and prove more  
25 evidence than an amount which would make his case and his opponent's "evenly balanced."  
26 Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss, 108 Nev. 123, 825 P.2d  
27 218 (1992), SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The Law of Workmen's  
28 Compensation, § 80.33(a).

1 Claimant alleges that he injured his ankle while walking down some stairs while he was  
2 carrying a box. His manager states that the claimant should have been using the elevator to  
3 perform this task, as there is an elevator for employee use and the claimant simply chose not to use  
4 it. It is Claimant's burden to prove that his injuries arose out of and in the course of his  
5 employment, and based on the available evidence, Claimant cannot meet his burden.

6  
7 **NRS 616C.150 Compensation prohibited unless preponderance  
of evidence establishes that injury arose out of and in course of  
employment;**

8 1. An injured employee or his dependents are not entitled to  
9 receive compensation pursuant to the provisions of chapters 616A to 616D,  
10 inclusive, of NRS unless the employee or his dependents establish by a  
preponderance of the evidence that the employee's injury arose out of and  
in the course of his employment.

11 **NRS 616A.030 "Accident" defined.** "Accident" means an  
12 unexpected or unforeseen event happening suddenly and violently, with or  
without human fault, and producing at the time objective symptoms of an  
13 injury.

14 **NRS 616A.265 "Injury" and "personal injury" defined.**

15 1. "Injury" or "personal injury" means a sudden and tangible  
16 happening of a traumatic nature, producing an immediate or prompt result  
which is established by medical evidence, including injuries to prosthetic  
17 devices. Except as otherwise provided in subsection 3, any injury sustained  
by an employee while engaging in an athletic or social event sponsored by  
his employer shall be deemed not to have arisen out of or in the course of  
18 employment unless the employee received remuneration for participation in  
the event.

19 Here, the Nevada Supreme Court has held that:

20 An award of compensation cannot be based solely upon possibilities  
21 and speculative testimony. A testifying physician must state to a  
degree of reasonable medical probability that the condition in  
22 question was caused by the industrial injury.

23 United Exposition Services Co. v. SIIS, 109 Nev. 421, 851 P.2d 423 (1993).

24 This holding has been affirmed and bolstered in the Horne v. SIIS, 113 Nev. 532, 936 P.2d  
25 839 (1997) case, which held that "mere speculation and belief does not rise to the level of  
reasonable medical certainty."

26 Furthermore, the Supreme Court has held that:

27 An accident or injury is said to arise out of employment when there  
28 is a causal connection between the injury and the employee's work

1 ... the injured party must establish a link between the workplace  
2 conditions and how those conditions caused the injury ... a claimant  
3 must demonstrate that the origin of the injury is related to some risk  
involved within the scope of employment.

4 Rio Suite Hotel v. Gorsky, 113 Nev. 600, 939 P.2d 1043(1997).

5 The same Court further stated that the "Nevada Industrial Insurance Act is not a  
6 mechanism which makes employers absolutely liable for injuries suffered by employees who are  
7 on the job." (Id.)

8 Further, the Nevada Supreme Court held in Mitchell v. Clark County School District, 121  
9 Nev. 179, 111 P.3d 1104 (2005):

10 An accident or injury is said to arise out of employment when there  
11 is a causal connection between the injury and the employee's work.  
12 In other words, the injured party must establish a link between the  
workplace conditions and how those conditions caused the injury.  
13 Further, a claimant must demonstrate that the origin of the injury is  
related to some risk involved within the scope of employment.  
14 However, if an accident is not fairly traceable to the nature of  
employment or the workplace environment, then the injury cannot  
15 be said to arise out of the claimant's employment. Finally, resolving  
whether an injury arose out of employment is examined by a totality  
of the circumstances.

16 The Court in Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605, 939 P.2d 1043  
17 (1997) held that the "Nevada Industrial Insurance Act is not a mechanism which makes employers  
18 absolutely liable for injuries suffered by employees who are on the job." The Court concluded by  
19 stating, "The requirements of 'arising out of and in the course of employment' make it clear that a  
20 claimant must establish more than being at work and suffering an injury in order to recover."

21 The Nevada Supreme Court, in Rio All Suite Hotel and Casino v. Phillips, 126 Nev. Ad.  
22 Opn. 34(2010), clarified Mitchell, supra, to the extent that Mitchell held that unexplained  
23 accidents are never compensable.

24 Injuries resulting from employment-related risks are 'all the obvious kinds of injur[ies]  
25 that one thinks of at once as industrial injur[ies]' and are generally compensable . . . [such as]  
26 tripping on a defect at employer's premises . . . Personal risk are those that are 'so clearly personal  
27 that, even if they take effect while the employee is on the job, they could not possibly be attributed  
28 to the employment . . . For example, 'a fall caused by [a personal condition such as] a bad knee, or

1 multiple sclerosis. [Neutral] risks are those that are 'of neither distinctly employment nor  
2 distinctly personal character . . . ('an unexplained fall, originating neither from employment  
3 conditions nor from conditions personal to the [employee]'. [Phillips'] injury occurred while  
4 traversing a staircase that was free of defects, and there [was] no evidence that a risk personal to  
5 [her] caused her fall. Thus, [this injury] falls within the neutral -risk category . . . The act of  
6 descending a staircase at work, in and of itself, does not present a greater risk than that faced by  
7 the general public . . . [W]hether a fall is explained or unexplained is irrelevant. The key inquiry  
8 is whether the risk faced by the employee was greater than the risk faced by the general public.

9 In the instant claim, Claimant is unable to meet his NRS 616C.150 burden as the claimant  
10 was not required to use the stairs to bring supplies to his department.

11 **III.**

12 **CONCLUSION**

13 Claimant cannot prove that his industrial insurance claim was denied improperly.

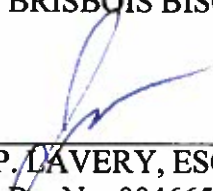
14 ...

15 WHEREFORE, Employer and Administrator respectfully request that the Appeals Officer  
16 affirm the Hearing Officer's August 6, 2020 Decision and Order, which affirmed Administrator's  
17 June 23, 2020 determination denying liability for this claim.

18 DATED this 13 day of November, 2020.

19 Respectfully submitted,

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21  
22 By   
23 JOHN P. LAVERY, ESQ.  
24 Nevada Bar No. 004665  
25 JEANNE P. BAWA, ESQ.  
26 Nevada Bar No. 007359  
27 2300 West Sahara Avenue, Suite 900  
28 Las Vegas, NV 89102  
Attorneys for Employer  
CARSON TAHOE HEALTH SYSTEM  
And its Third-Party Administrator  
GALLAGHER BASSETT SERVICES, INC.

**CERTIFICATE OF MAILING**

Pursuant to NRCP Rule 5(b), I hereby certify that, on the 13<sup>th</sup> day of November, 2020,

I served a true and correct copy of the above and foregoing document entitled **CARSON TAHOE HEALTH SYSTEM'S AND GALLAGHER BASSETT SERVICES, INC.'S APPEAL MEMORANDUM** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as follows:

Todd Eikelberger, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
1000 E. William Street, Suite 208  
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM  
Attn: Risk Management  
1600 Medical Pkwy.  
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster  
GALLAGHER BASSETT SERVICES, INC.  
P.O. Box 2934  
Clinton, IA 52733



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP



ORIGINAL

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

FILED  
SEP 29 2020  
DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the  
Industrial Insurance Claim

Claim No.: 000706-038452-WC-01

of

Hearing No.: 2100033-SD

Appeal No.: 2100639-SYM

STEPHEN YASMER

DOH: 11/16/2020 @ 9:00 A.M.

CLAIMANT'S HEARING STATEMENT

I

DOCUMENTARY EVIDENCE

1. Claimant may rely on portions of any evidence packet previously submitted, or to be submitted, by the employer and/or insurer, subject to objection.

2. Claimant will also rely on any evidence packet previously submitted, or to be submitted, on behalf of the claimant.

3. Claimant reserves the right to file additional evidence and to rely on all subsequently-filed evidence.

II

STATEMENT OF THE ISSUE

Whether the Hearing Officers' Decision and Order dated August 6, 2020, affirming the Insurer's determination dated June 23, 2020, regarding claim denial was proper.

...

...

## III

POSSIBLE WITNESSES

1. Claimant may testify, either in person or by telephone, concerning the facts and circumstances underlying her claim.

2. Claimant reserves the right to call additional witnesses who may testify, either in person or by telephone, regarding the claimant's industrial injury.

3. Any witness named or called by any other party.

4. Impeaching or rebuttal witnesses as necessary.

## IV

ESTIMATED TIME

Estimated hearing time: One (1) hour.

Respectfully submitted this 25<sup>th</sup> day of September, 2020.

NEVADA ATTORNEY FOR INJURED WORKERS



Todd Eikelberger, Esq., Deputy  
Attorney for the Claimant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing CLAIMANT'S HEARING STATEMENT addressed to:

STEPHEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY NV 89706

JOHN P LAVERY ESQ  
LEWIS BRISBOIS ET AL  
2300 W SAHARA AVE STE 300 BOX 28  
LAS VEGAS NV 89102-4375

DATED: September 29, 2020

SIGNED: 

BEFORE THE APPEALS OFFICER

FILED

SEP - 2 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 000706-038452-WC-01

Hearing No: 2100033-SD

Appeal No: 2100639-SYM

STEPHEN YASMER,

Claimant.

**NOTICE OF APPEAL AND ORDER TO APPEAR**

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held by the Appeals Officer, pursuant to NRS 616 and 617 on:

**DATE:** Monday, November 16, 2020

**TIME:** 9:00AM

**PLACE:** DEPT OF ADMINISTRATION, APPEALS OFFICE  
1050 E. WILLIAMS STREET, SUITE 450  
CARSON CITY, NV 89701

2. The **INSURER** shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.
3. **ALL PARTIES** shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.
4. **Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.**
5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.
6. Any party wishing to reschedule this hearing should consult with opposing counsel or parties, and immediately make such a request to the Appeals Office in writing supported by an affidavit.
7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

**IT IS SO ORDERED.**

  
SHEILA Y MOORE  
APPEALS OFFICER

138 000340

1 NEVADA DEPARTMENT OF ADMINISTRATION  
2 BEFORE THE APPEALS OFFICER

**FILED**

3 1050 E. WILLIAM, SUITE 450  
4 CARSON CITY, NV 89701

SEP - 2 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

5  
6 In the Matter of the Contested  
7 Industrial Insurance Claim of:

Claim No: 000706-038452-WC-01

8 Hearing No: 2100033-SD

9 Appeal No: 2100639-SYM

10 STEPHEN YASMER,

11 Claimant.

12 ORDER FOR APPOINTMENT OF  
13 NEVADA ATTORNEY FOR INJURED WORKERS

14 The Appeals Officer, having received and considered the Claimant's  
15 written request for the appointment of the Nevada Attorney for Injured Workers;  
16 finds the Claimant would be better served by legal representation and accordingly;

17 IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers  
18 is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this  
19 matter.

20 IT IS SO ORDERED.

21   
22 SHEILA Y MOORE  
23 APPEALS OFFICER  
24  
25  
26  
27  
28

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**REQUEST FOR HEARING BEFORE THE APPEALS OFFICER**  
**NEVADA DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

*Stephen*  
STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

Hearing Number: 2100033-SD  
Claim Number: 000706-038452-  
WC-01

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: AUGUST 6, 2020

*(Please attach a copy of the Hearing Officer's Decision)*

PERSON REQUESTING APPEAL: (circle one) CLAIMANT/EMPLOYER/INSURER

REASON FOR APPEAL: *My injury DID arise out of and in the course of employment. I was performing an essential job function when injured.*

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

*Stephen Yasmer*  
Person requesting this hearing (please print)

Address

Person requesting this hearing (signature)

City, State, Zip Code

Telephone Number

*775-721-3843*  
Telephone Number

*8/28/20*  
Date

WILL AN INTERPRETER BE REQUIRED?

YES [ ]

NO ☒

If so, what language: \_\_\_\_\_

**NOTICE**

If the Hearing Officer Decision is appealed, CLAIMANTS are entitled to free legal representation by the Nevada Attorney for Injured Workers (NAIW). If you want NAIW to represent you, please sign below:

*S. Yasmer*  
Claimant's signature

*775-721-3843*  
Claimant's Telephone Number

If you are appealing the Hearing Officer's decision, file this form no later than thirty (30) days after that decision at:

NEVADA DEPARTMENT OF ADMINISTRATION  
APPEALS OFFICE  
1050 E. WILLIAMS STREET SUITE 450  
CARSON CITY, NV 89701  
(775) 687-8420

**FILED**

AUG 31 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

000342

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*2106639-54m*  
*mm 11-16-20*  
*C 9.00*

1 **CERTIFICATE OF MAILING**

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing **NOTICE OF APPEAL AND ORDER TO APPEAR** was duly mailed, postage  
5 prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration,  
6 Hearings Division, 1050 E. Williams Street, Carson City, Nevada, to the following:

7 STEPHEN YASMER  
8 2257 CARSON RIVER ROAD  
9 CARSON CITY, NV 89701

10 NAIW  
11 1000 E WILLIAM #208  
12 CARSON CITY NV 89701

13 CARSON TAHOE HEALTH SYSTEM  
14 1600 MEDICAL PARKWAY  
15 CARSON CITY, NV 89703

16 GALLAGHER BASSETT SERVICES, INC  
17 PO BOX 2934  
18 CLINTON, IA 52733-2934

19 JOHN P LAVERY ESQ  
20 LEWIS BRISBOIS BISGAARD & SMITH LLP  
21 2300 W SAHARA AVE STE 300 BOX 28  
22 LAS VEGAS NV 89102-4375

23 Dated this 2nd day of September, 2020.

24 KF  
25 Kristi Fraser, Legal Secretary II  
26 Employee of the State of Nevada  
27  
28

**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 2100033-SD  
Claim Number: 000706-038452-WC-01

STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

**BEFORE THE HEARING OFFICER**

The Claimant's request for Hearing was filed on July 6, 2020 and a Hearing was scheduled for July 30, 2020. The Hearing was held on July 30, 2020, in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present by telephone conference call. The Employer/Insurer was represented by John Lavery, Esquire, by telephone conference call.

**ISSUE**

The Claimant appealed the Insurer's determination dated June 23, 2020. The issue before the Hearing Officer is claim denial.

**DECISION AND ORDER**

The determination of the Insurer is hereby **AFFIRMED**.

**NRS 616A.030** defines "accident" as "an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury". **NRS 616A.265** defines an "injury" as "a sudden and tangible happening of a traumatic nature producing an immediate or prompt result which is established by medical evidence, including injuries to prosthetic devices". **NRS 616C.150(1)** provides the injured employee has the burden of proof to show, by a preponderance of the evidence, the injury arose out of and in the course of employment. An injury on the job location is not sufficient to hold that the injury arose out of and in the course and scope of employment. See *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997). In the instant matter, the Claimant has not met his burden. As such, the Hearing Officer finds the insurer's determination is proper and hereby **AFFIRMED**.



In the Matter of the Contested  
Industrial Insurance Claim of  
Hearing Number:  
Page 2

STEVEN YASMER  
2100033-SD

**APPEAL RIGHTS**

Pursuant to NRS 616C.345(1), should any party desire to appeal this final Decision and Order of the Hearing Officer, a request for appeal must be filed with the Appeals Officer within thirty (30) days of the date of the decision by the Hearing Officer.

IT IS SO ORDERED this 6th day of August, 2020.

  
\_\_\_\_\_  
Spring Dykstra, Hearing Officer

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 400, Carson City, Nevada, to the following:

STEVEN YASMER  
2257 CARSON RIVER ROAD  
CARSON CITY, NV 89701

CARSON TAHOE HEALTH SYSTEM  
1600 MEDICAL PARKWAY  
CARSON CITY, NV 89703

GALLAGHER BASSETT SERVICES INC  
PO BOX 2934  
CLINTON, IA 52733-2934

JOHN P LAVERY ESQ  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 300 BOX 28  
LAS VEGAS NV 89102-4375

Dated this 6th day of August, 2020.

A handwritten signature in black ink, appearing to read "Karen Dyer", is written over a horizontal line.

Karen Dyer  
Employee of the State of Nevada

1 1170  
2 Evan Beavers Esq.  
3 Nevada State Bar No. 3399  
4 ebeavers@naiw.nv.gov  
5 Todd Eikelberger, Esq.  
6 Nevada State Bar No. 9393  
7 teikelberger@naiw.nv.gov  
8 Nevada Attorney for Injured Workers  
9 1000 East William Street, Suite 208  
10 Carson City, Nevada 89701  
11 (775) 684-7555  
12 Attorneys for: Respondent, Stephen Yasmer

PRB now due: 9/8  
✓  
ETH

8 IN THE SECOND JUDICIAL DISTRICT COURT OF  
9 THE STATE OF NEVADA IN AND FOR THE  
10 COUNTY OF WASHOE

10 CARSON TAHOE HEALTH SYSTEM and  
11 GALLAGHER BASSETT SERVICES, INC.

CASE NO. CV21-00809

12 Petitioner,

DEPT. NO. 8

13 vs.

14 STEPHEN YASMER; and the STATE OF  
15 NEVADA DEPARTMENT OF  
16 ADMINISTRATION, HEARINGS  
17 DIVISION, APPEALS OFFICE, an  
18 Agency of the State of Nevada,

19 Respondents.

Copy to JPB  
AUG 10 2021

20 RESPONDENT'S ANSWERING BRIEF

21  
22  
23  
24  
25  
26  
27  
28  
NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

JPB 26878-2777  
000347

1 Evan Beavers Esq.  
Nevada State Bar No. 3399  
2 [ebeavers@naiw.nv.gov](mailto:ebeavers@naiw.nv.gov)  
Todd Eikelberger, Esq.  
3 Nevada State Bar No. 9393  
[teikelberger@naiw.nv.gov](mailto:teikelberger@naiw.nv.gov)  
4 Nevada Attorney for Injured Workers  
1000 East William Street, Suite 208  
5 Carson City, Nevada 89701  
(775) 684-7555  
6 Attorneys for: Respondent, Stephen Yasmer

7  
8 IN THE SECOND JUDICIAL DISTRICT COURT OF  
9 THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE

10 CARSON TAHOE HEALTH SYSTEM and  
GALLAGHER BASSETT SERVICES, INC.

CASE NO. CV21-00809

11  
12 Petitioner,

DEPT. NO. 8

13 vs.

14 STEPHEN YASMER; and the STATE OF  
NEVADA DEPARTMENT OF  
15 ADMINISTRATION, HEARINGS  
DIVISION, APPEALS OFFICE, an  
16 Agency of the State of Nevada,

17 Respondents.  
18 \_\_\_\_\_/

19 **NRAP 26.1 DISCLOSURE**

20 The undersigned counsel of record certifies that the following  
21 are persons and entities as described in NRAP 26.1(a) and must be  
22 disclosed. These representations are made in order that the judges  
23 of this court may evaluate possible disqualifications or recusal.  
24 Respondent's parent corporations: None.

25 ...

26 ...

27 ...

28 ...

1 Firms having appeared: Nevada Attorney for Injured Workers

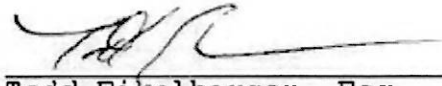
2 Respondent's pseudonyms: None.

3 Submitted this 9<sup>th</sup> day of August, 2021.

4

5 NEVADA ATTORNEY FOR INJURED WORKERS

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7   
Todd Eikelberger, Esq.

Nevada State Bar No. 9393

8 Attorney for Respondent, Stephen Yasmer

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NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555

2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS  
 1000 East William Street, Suite 208  
 Carson City, NV 89701 (775) 684-7555  
 2200 South Rancho Drive, Suite 230  
 Las Vegas, NV 89102 (702) 486-2830

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NEVADA ATTORNEY FOR INJURED WORKERS  
 1000 East William Street, Suite 208  
 Carson City, NV 89701 (775) 684-7555  
 2200 South Rancho Drive, Suite 230  
 Las Vegas, NV 89102 (702) 486-2830

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NEVADA ATTORNEY FOR INJURED WORKERS  
 1000 East William Street, Suite 208  
 Carson City, NV 89701 (775) 684-7555  
 2200 South Rancho Drive, Suite 230  
 Las Vegas, NV 89102 (702) 486-2830

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NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Ranch Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

## MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner, Stephen Yasmer, by and through his attorney, Todd Eikelberger, Esq., Deputy of the Nevada Attorney for Injured Workers, hereby submits this Answering Brief pursuant to NRS 233B.130, NRS 233B.133, NRS 233B.135, and NRAP 28 as more fully set forth below.

### I. JURISDICTIONAL STATEMENT

This court lacks jurisdiction to consider this matter. Stephen Yasmer, a resident of Carson City, was injured in the course and scope of his employment with Carson Tahoe Health System (herein "CTHS") in Carson City on June 8, 2020, and he filed a claim for workers' compensation benefits. Gallagher Bassett Services, Inc., the third-party administrator for the employer and a foreign corporation doing business in Nevada, denied the claim on June 23, 2020. Yasmer timely appealed that determination letter within 70 days, on July 6, 2020, as required by NRS 616C.315(3)(a). The matter was heard by the hearing officer who, on August 6, 2020, affirmed the determination. Yasmer timely appealed that decision to the appeals officer within 30 days, on August 28, 2020, as allowed by NRS 616C.345(1).

The appeals officer rendered a final decision and order which reversed claim denial and was filed on April 15, 2021. Gallagher Bassett Services and CTHS, as aggrieved parties under NRS 233B.130(1), timely petitioned for judicial review within 30 days, as required by NRS 233B.130(2)(d), on May 3, 2021. Also, the requirements under NRS 233B.130(2)(a) and (c) were met regarding the naming of parties and service requirements; however, the residency

1 requirement regarding the place of filing in NRS 233B.130(2) (b) was  
2 not met.<sup>1</sup> This requirement is mandatory and jurisdictional thus,  
3 this court does not have jurisdiction to entertain the petition.

4 NRS 233B.130(2) (b) requires the petition for judicial review  
5 be filed in Carson City, the county where the agency proceeding  
6 occurred, or the county where an aggrieved party resides. Neither  
7 Carson Tahoe Health System nor Gallagher Bassett reside in Washoe  
8 County and the agency proceeding occurred in Carson City. Therefore,  
9 the petition was not filed in the proper district court and filing  
10 requirements in NRS 233B.130 have been held to be mandatory  
11 jurisdictional requirements. Thus, this Court does not have  
12 jurisdiction to review the April 15, 2021 decision and order.

13  
14 **II.**  
**STATEMENT OF THE ISSUES**

15 Whether the Appeals Officer properly found Stephen Yasmer's  
16 workers' compensation claim for his left ankle compensable.

17 This appeal concerns a dispute over the denial of a workers'  
18 compensation claim. Based on the facts presented, and current law,  
19 the appeals officer properly found Yasmer's workers' compensation  
20 claim should be accepted. This holding was based upon substantial  
21 evidence; did not violate constitutional or statutory provisions;  
22 was not in excess of the statutory authority of the agency; was not  
23 arbitrary, capricious, erroneous, or affected by an error of law or  
24 procedure; and did not constitute an abuse of discretion. Therefore,  
25 the April 15, 2021, Decision and Order was proper and the Petition  
26 for Judicial Review should be denied.

27  
28 <sup>1</sup> See Mot. to Dismiss Pet. for Jud. Review.

### III.

### STATEMENT OF THE CASE

3 Stephen Yasmer was injured in the course and scope of his  
4 employment with Carson Tahoe Health System and filed a claim for  
5 workers' compensation benefits. Gallagher Bassett Services, Inc.,  
6 the third-party administrator for the employer, denied the claim.  
7 Yasmer appealed that determination and the appeals officer reversed  
8 claim denial on April 15, 2021, finding Yasmer legally entitled to  
9 benefits for his left ankle fracture under Nevada's workers'  
10 compensation laws.

11       Petitioners Gallagher Bassett and CTHS requested judicial  
12 review on May 3, 2021. At the same time, they filed their Motion for  
13 Stay Pending Appeal and their Request for Order Shortening Time on  
14 Motion for Stay. Yasmer filed a Statement of Intent to Participate  
15 on May 10, 2021. The parties then filed their Stipulation to Extend  
16 Time to File Opposition to Motion for Stay and Temporarily Stay  
17 Decision and Order Pending a Ruling on the Motion on May 11, 2021.  
18 A Request for Submission of Stipulation was filed on the same day  
19 and the Order Extending Time to File Opposition to Motion for Stay  
20 and Temporarily Staying Decision and Order Pending a Ruling on the  
21 Motion was filed on May 18, 2021.

22 The Record on Appeal was transmitted on June 4, 2021. Following  
23 opposition by Yasmer on May 26, 2021, a Request for Submission of  
24 Motion for Stay Pending Appeal was filed on July 1, 2021.

25 Gallagher Bassett and CTHS's filed Petitioner's Opening Brief  
26 on July 13, 2021.

27 A Motion to Dismiss Petition for Judicial Review was filed on  
28 August 2, 2021.

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

IV.  
STATEMENT OF THE FACTS

1  
2  
3 Stephen Yasmer, manager of rehabilitation services at Carson  
4 Tahoe Health System (herein "CTHS"), was injured while descending  
5 stairs at Carson Tahoe Hospital (herein, "CTH") (where his employer  
6 maintained an office) with a large box in his hands on June 8,  
7 2020.<sup>2</sup> He testified at hearing that he left the main therapy office  
8 on the third floor and began descending the staircase carrying a box  
9 of supplies to take to another of CTHS's facilities.<sup>3</sup> Although  
10 carrying the box did not impair his physical ability to walk, it did  
11 impede his visual field.<sup>4</sup> He mis-stepped because he thought he had  
12 reached the landing and fell two steps fracturing his left ankle.<sup>5</sup>

13 Yasmer also testified that he always takes the stairs when he  
14 is working in the hospital office and uses the stairs "a half dozen  
15 times" per day going up and down.<sup>6</sup> Finally, he testified that there  
16 is no requirement that he take the elevator at work.<sup>7</sup>

17 Following the incident, he was taken to the emergency room in  
18 CTH where it was noted that:

19 he was carrying a box [sic] supplies down to the basement  
20 when he thought he was on the bottom stair and could not  
21 see that there is [sic] still to [sic] more stairs  
22 beneath MCV stepped forward thinking he was stepping onto

23 ...

24 ...

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25 <sup>2</sup> ROA 19-20, 43.

26 <sup>3</sup> Id. at 20.

27 <sup>4</sup> Id.

28 <sup>5</sup> Id. at 20-21.

<sup>6</sup> Id. at 21.

<sup>7</sup> Id. at 21-22.

1 the landing and missed the bottom to [sic] stairs falling  
2 hard on to his left ankle causing some notable deformity.<sup>8</sup>

3 The diagnosis was acute left ankle dislocation, fibular fracture,  
4 and posterior malleolus fracture.<sup>9</sup> A C4 form was filled out on June  
5 8, 2020, and the physician checked the box indicating that he could  
6 connect the left ankle injury as job incurred.<sup>10</sup> The employer filled  
7 out the manager/supervisor section on Yasmer's Notice of Injury form  
8 on June 10, 2020, and, in response to the question "[h]ow could this  
9 injury have been prevented," answered "take the elevator."<sup>11</sup>

10 Yasmer was seen at Nevada Occupational Health on June 10, 2020,  
11 and told he would require an open reduction and internal fixation  
12 of the left ankle so he was referred to Dr. Jeffrey Cummings.<sup>12</sup> Dr.  
13 Cummings, at Tahoe Fracture, saw him on June 12, 2020, and indicated  
14 he required a "left ankle lateral melleolus and syndismosis open  
15 reduction internal fixation."<sup>13</sup> The procedure was performed on June  
16 15, 2020, at CTH.<sup>14</sup>

17 Yasmer filed a claim for workers' compensation benefits which  
18 was denied by Gallagher Bassett Services, Inc., the third-party  
19 administrator for CTHS, on June 23, 2020.<sup>15</sup> This determination was  
20 appealed and, on August 6, 2020, the hearing officer affirmed claim

21  
22 <sup>8</sup> Id. at 50.

23 <sup>9</sup> Id. at 52.

24 <sup>10</sup> Id. at 43.

25 <sup>11</sup> Id. at 45.

26 <sup>12</sup> Id. at 59.

27 <sup>13</sup> Id. at 60.

28 <sup>14</sup> Id. at 67.

<sup>15</sup> Id. at 46.

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 denial.<sup>16</sup> That decision and order was appealed and forms the basis  
2 for the current matter.

3 Dr. Cummings saw Yasmer again on September 2, 2020, for a  
4 drainage of his wound and for hardware removal.<sup>17</sup> Yasmer returned on  
5 September 15, 2020, and it was found that the wound was healing  
6 well, with no drainage, so the sutures were removed.

7 The Appeals Officer found Yasmer's testimony at hearing  
8 regarding his work and mechanism of injury to be consistent,  
9 reliable, and credible.<sup>18</sup> It was also found that "[t]he medical  
10 reporting clearly showed Yasmer suffered a left ankle fracture that  
11 required a reduction and then a draining of the wound with hardware  
12 removal" and "that a preponderance of all evidence submitted  
13 supports Yasmer's position that his claim should be accepted."<sup>19</sup>  
14 Finally, it was found that Yasmer established "he suffered injury  
15 to his left ankle in the form of a fracture as he was walking down  
16 stairs carrying a box" and "his left ankle fracture is found to be  
17 industrially related and compensable."<sup>20</sup> It was held that:

18 sufficient facts have been presented to establish, by a  
19 preponderance of the evidence, that the June 8, 2020,  
20 fall caused an injury by accident that arose out of and  
21 in the scope of employment. Thus, Yasmer has met his  
burden of proof for his claim for industrial injury  
benefits to be compensable under Nevada's workers'  
compensation scheme.<sup>21</sup>

22 ...

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23  
24 <sup>16</sup> Id. at 47-48.

25 <sup>17</sup> Id. at 81.

26 <sup>18</sup> Id. at 4.

27 <sup>19</sup> Id.

28 <sup>20</sup> Id. at 4-5

<sup>21</sup> Id. at 9.

1 And, it was ordered that:

2 Gallagher Bassett Services, the third party administrator  
3 for the employer, Carson Tahoe Health Systems, shall  
4 accept Stephen Yasmer's claim, claim number  
5 000706-038452-WC-01, for benefits as a compensable  
6 workers' compensation claim and shall provide or  
reimburse for all appropriate treatment and benefits  
available under chapters 616A to 617, inclusive, of the  
Nevada Revised Statutes.<sup>22</sup>

7 V.

8 SUMMARY OF THE ARGUMENT

9 The dispute in this case concerns the denial of a workers'  
10 compensation claim. The appeals officer found that, based on the  
11 evidence as a whole, Yasmer's left ankle fracture was compensable  
12 under Nevada's workers' compensation scheme. This position was  
13 backed up by testimony from Yasmer and the medical reporting.  
14 Therefore, the Decision and Order was supported by substantial  
15 evidence in the record; thus, the appeals officer did not commit  
16 abuse of discretion and the April 15, 2021, Decision and Order was  
17 not arbitrary, capricious, or lacking substantial evidence so it  
should not be reversed.

18 CTHS and Gallagher Bassett contend that the appeals officer  
19 erred as a matter of law, but provide no legal justification for  
20 their position nor any analysis as to why the Appeals Officer's  
21 legal position was incorrect. They argue that the appeals officer  
22 should have considered Yasmer's risk a neutral risk requiring an  
23 analysis of whether the risk to Yasmer was greater than to the  
24 general public, rather than the employment risk that was found, but  
25 provide no analysis for this position. Therefore, CTHS and Gallagher  
26 Bassett argue that the appeals officer acted in an arbitrary and

27  
28 <sup>22</sup> Id. at 10.

1 capricious manner, abused her discretion, and rendered a decision  
2 that was not supported by the evidence.

3 No legal justification or statutory provisions are provided to  
4 support CTHS and Gallagher Bassett's arguments. There is simply a  
5 mis-characterization of evidence used to justify classifying  
6 Yasmer's risk as neutral. Also, they ignore the appeals officer's  
7 analysis regarding Yasmer's risk constituting an employment risk and  
8 simply state that she was wrong without legally justifying that  
9 position. Further, substantial evidence supports the appeals  
10 officer's decision.

11 As there is no showing that there was an error of law, that the  
12 decision lacked substantial evidence, or that the appeals officer  
13 abused her discretion the Petition for Judicial Review must be  
14 denied.

15  
16 **VI.**  
**ARGUMENT**

17 **A. THE APPROPRIATE STANDARD OF REVIEW IS DEFERENCE TO THE**  
18 **APPEALS OFFICER'S FINDINGS OF FACT AND CONCLUSIONS OF**  
**LAW.**

19 The purpose of Nevada's workers' compensation scheme is to  
20 provide benefits - not deny compensation.<sup>23</sup> Further, it must not be  
21 interpreted to favor the rights of employers or insurers over those  
22 of injured workers.<sup>24</sup> In Nevada, the standard for judicial review of  
23 a final decision of an administrative law judge is confined to the

24 ...

25 ...

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27 <sup>23</sup> State Indus. Ins. Sys. v. Weaver, 103 Nev. 196, 200, 734 P.2d 740  
(1987); NRS 616A.010.

28 <sup>24</sup> NRS 616A.010(4).



1 record,<sup>25</sup> and the burden of proof is on the party attacking or  
2 resisting the decision to show the final decision is invalid.<sup>26</sup>

3 A court's role in reviewing the present matter is to consider  
4 the evidence presented at hearing and determine whether the April  
5 15, 2021, Decision and Order is invalid or clearly erroneous based  
6 on the record as a whole, affected by error of law, made in  
7 violation of a statutory provision, arbitrary, capricious, or  
8 characterized by an abuse of discretion.<sup>27</sup> An agency's decision must  
9 be affirmed if supported by substantial evidence<sup>28</sup> which "a  
10 reasonable mind might accept as adequate to support a conclusion."<sup>29</sup>  
11 Further, a reviewing court cannot "re-weigh the evidence or revisit  
12 an appeals officer's credibility determination."<sup>30</sup>

13 When reviewing the decision of an administrative agency, the  
14 reviewing court is limited to the record below and may not  
15 substitute its judgment for that of the appeals officer as to  
16 questions of fact.<sup>31</sup> Therefore, CTHS and Gallagher Bassett are not  
17 allowed to re-argue the findings of fact if they are supported by  
18 substantial evidence.

19 Where an appeals officer has decided pure issues of law, it is  
20 appropriate for the reviewing court to make an independent judgment,  
21

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22 <sup>25</sup> NRS 233B.135(1).

23 <sup>26</sup> NRS 233B.135(2).

24 <sup>27</sup> NRS 233B.135(3)(a-f).

25 <sup>28</sup> NRS 233B.135(3)(e).

26 <sup>29</sup> NRS 233B.135(4).

27 <sup>30</sup> Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 362, 184  
28 P.3d. 378, 384 (2008).

<sup>31</sup> NRS 233B.135(3).

1 rather than use a more deferential standard of review.<sup>32</sup> Statutory  
2 interpretation and construction are considered issues of law.<sup>33</sup>  
3 However, deference is still given to an appeals officer's  
4 conclusions of law that are closely related to factual  
5 determinations and they should not be disturbed if supported by  
6 substantial evidence.<sup>34</sup>

7 In this matter, CTHS and Gallagher Bassett have failed to meet  
8 their burden to show that the underlying Decision and Order was  
9 rendered arbitrarily or capriciously, was affected by error of law,  
10 or violated a statute, or that the appeals officer abused her  
11 discretion. They make several assertions of how the Appeals  
12 Officer's Decision is not to their liking, but the assertions are  
13 just attempts to force the Court to impermissibly re-weigh the  
14 evidence presented in this matter under a standard more favorable  
15 to their position.

16 **B. THE PETITION FOR JUDICIAL REVIEW SHOULD BE DENIED AS THE**  
17 **APPEALS OFFICER'S DECISION AND ORDER IS LEGALLY SOUND AND**  
18 **THE PETITIONER HAS FAILED TO PROVE OTHERWISE.**

19 **i. The Decision and Order should be upheld because the**  
20 **appeals officer's findings of fact are based on**  
21 **substantial evidence and support the conclusions of**  
22 **law which are grounded in sound legal reasoning.**

23 All findings of fact in the April 15, 2021, Decision and Order  
24 are substantiated by evidence admitted at hearing. The Appeals  
25 Officer has the authority to choose to give weight to medical  
26

27 <sup>32</sup> Elizondo v. Hood Mach., Inc., 129 Nev. 780, 784-85, 312 P.3d 479, 482  
28 (2013).

<sup>33</sup> Id. at 784, 312 P.3d at 482.

<sup>34</sup> Clark County. Sch. Dist. v. Bundley, 122 Nev. 1440, 1445, 148 P.3d 750,  
754 (2006).

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 evidence and testimony as deemed appropriate.<sup>35</sup> Any other  
2 conclusions than those listed in the Decision would require a re-  
3 weighing of the evidence.

4 The finder of fact is authorized to determine the weight given  
5 to evidence presented at hearing so long as there was substantial  
6 evidence on the record to justify the finding - an appellate court  
7 is not. The Appeals Officer had substantial evidence on the record  
8 to support the findings of fact in this matter so CTHS and Gallagher  
9 Bassett cannot prevail and their petition must be denied.

10 The law was properly applied to the facts by the Appeals  
11 Officer in reaching the holding. Based on the totality of evidence  
12 submitted, it was correctly found that Yasmer is entitled to  
13 compensation for his ankle fracture and claim denial was not  
14 appropriate.

15 To qualify for benefits for an industrial injury, an employee  
16 has the burden to demonstrate, by a preponderance of the evidence,  
17 that an injury by accident arose out of and in the course of his  
18 employment.<sup>36</sup> The Nevada Supreme Court has defined a "preponderance  
19 of evidence" as a standard of proof that "should lead the trier of  
20 fact 'to find that the existence of the contested fact is more  
21 probable than its nonexistence.'"<sup>37</sup> Further, in evaluating the  
22 evidence of a work injury, the fact finder must consider the  
23 totality of the circumstances.<sup>38</sup>

24  
25 <sup>35</sup> McClanahan v. Raley's, 117 Nev. 921, 34 P.3d 573 (2001).

26 <sup>36</sup> NRS 616C.150(1); NRS 616A.030; NRS 616A.265(1).

27 <sup>37</sup> Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1381, (1991).

28 <sup>38</sup> Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043,  
1046 (1997).

1 Initially, the Appeals Officer analyzed the statutory  
2 definitions of accident and injury and properly applied those  
3 definitions to the facts to conclude that an injury by accident had  
4 occurred. This assessment was not challenged by CTHS and Gallagher  
5 Bassett.

6 The Appeals Officer then correctly found that the injury by  
7 accident arose out of Yasmer's work. Generally, an injury arises out  
8 of employment if there is "'a causal connection between the injury  
9 and the employee's work,' in which 'the origin of the injury is  
10 related to some risk involved within the scope of employment.'"<sup>39</sup> To  
11 find causation a physician must establish to a "reasonable degree  
12 of medical probability that the condition in question was caused by  
13 the industrial injury or sufficient facts must be shown so that the  
14 trier of fact can make a reasonable conclusion that the condition  
15 was caused by the industrial injury."<sup>40</sup>

16 There are three categories of risks: employment, personal, and  
17 neutral.<sup>41</sup> Employment risks are compensable, personal risks are not  
18 compensable, and neutral risks are compensable if they satisfy the  
19 increased-risk test.<sup>42</sup> Personal risks are those that are  
20 attributable to personal issues - not to the employment.<sup>43</sup>  
21 Employment risks include "obvious kinds of injur[ies] that one  
22

23 <sup>39</sup> Mitchell v. Clark Cnty. Sch. Dist., 121 Nev. 179, 182, 111 P.3d 1104,  
24 1106 (2005) (quoting Gorsky, 113 Nev. at 604, 939 P.2d at 1046).

25 <sup>40</sup> Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537-8, 936 P.2d 839, 842  
(1997).

26 <sup>41</sup> Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d  
27 2, 5 (2010).

28 <sup>42</sup> Id. at 351-53, 240 P.3d at 5-7.

<sup>43</sup> Id. at 351, 240 P.3d at 5.

1 thinks of at once as industrial injuries. All the things that can  
2 go wrong around a modern factory, office, mill, mine, retail  
3 establishment, transportation system, or construction project."<sup>44</sup>  
4 Neutral risks are those that do not fall within either the  
5 employment or personal risk categories.<sup>45</sup>

6 The Appeals Officer correctly concluded that Yasmer proved his  
7 injury was caused by an employment risk. A preponderance of the  
8 evidence showed that the left ankle was fractured while performing  
9 work duties since Yasmer was conveying a benefit to his employer as  
10 he was carrying a box of supplies down stairs at the facility where  
11 he worked to take it to a satellite facility.<sup>46</sup>

12 Further, it was found that carrying the box of supplies from  
13 one location to another was an employment risk because a box can  
14 impede a person's field of vision. In the present matter, Yasmer  
15 fell and fractured his ankle because he mis-stepped due to the box  
16 blocking his ability to see what step he was on. When an employee  
17 carries a box for an employer which impedes his or her vision the  
18 person risks tripping or mis-stepping, falling, and suffering injury  
19 regardless of where he or she is walking; thus, the risk is an  
20 employment related risk. Accordingly, Yasmer's injury was caused by  
21 an employment risk and the Appeals Officer's determination that he  
22 met his burden of proof in proving that his injury arose out of his  
23 employment was proper and based on substantial evidence.

24  
25 <sup>44</sup> 1-4 Larson's Workers' Compensation Law § 4.01.

26 <sup>45</sup> Phillips at 351, 240 P.3d at 6.

27 <sup>46</sup> See Evans v. Southwest Gas, 108 Nev. 1002, 1006-1007, 842 P.2d 719, 721  
28 (1992) (analyzing whether an employee conferred a benefit upon an employer  
or furthered the business interests of an employer to determine whether  
the employee was acting within the scope of employment when injured).

1 Also, there was sufficient medical reporting on the record from  
2 which a reasonable conclusion could be formed that Yasmer's injury  
3 caused his industrial condition.<sup>47</sup> Specifically, the emergency room  
4 doctor checked the box on the C4 form indicating he could directly  
5 connect the left ankle fracture as job incurred.<sup>48</sup> Also, Dr.  
6 Cummings noted that the injury occurred at work when Yasmer missed  
7 a step while carrying a box. The Appeals Officer found this  
8 reporting to be the most persuasive, credible medical evidence, as  
9 was her prerogative, and was therefore correct in determining  
10 Yasmer's left ankle condition was caused by the industrial injury.<sup>49</sup>

11 Finally, the evidence on the record established that Yasmer's  
12 injury occurred within the course of his employment. "[W]hether the  
13 injury occurs within the course of the employment refers . . . to  
14 the time and place of employment, i.e. whether the injury occurs at  
15 work, during working hours, and while the employee is reasonably  
16 performing his or her duties."<sup>50</sup> As Yasmer's injury occurred when he  
17 was at work in the hospital while reasonably performing his job  
18 duties - he was required to carry the box and was conferring a  
19 benefit on his employer at the time of the injury - it was proper  
20 to find that, based on the evidence presented, his injury by  
21 accident occurred within the course of his employment.

22 The Appeals Officer's decision was legally correct. There were  
23 sufficient facts proven to find that the ankle injury was caused by  
24

25 <sup>47</sup> United Exposition Servs. Co. v. State Indus. Ins. Sys., 109 Nev. 421,  
26 425, 851 P.2d 423, 425 (1993).

27 <sup>48</sup> See NRS 616C.098.

28 <sup>49</sup> McClanahan v. Raleys, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001).

<sup>50</sup> Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 an industrial injury while Yasmer was performing work for his  
2 employer. Therefore, the Appeals Officer's conclusion that Yasmer's  
3 injury arose out of and in the course of his employment and is  
4 compensable under Nevada's workers' compensation scheme is supported  
5 by substantial evidence on the record and cannot be reversed.

6 **ii. Petitioner's arguments do not form an appropriate**  
7 **basis to reverse the appeals officer's Decision and**  
8 **Order.**

8 It is a petitioner's burden to show that a final agency  
9 decision is invalid and Carson Tahoe Health System and Gallagher  
10 Bassett fail to make this showing. There was no misapplication of  
11 the law and the findings of fact are supported by substantial  
12 evidence in the record. Further, CTHS and Gallagher Bassett's  
13 arguments for reversal are not supported by the law.

14 While it's asserted in the petition that the Appeals Officer  
15 erred as a matter of law, the commission of any such error has not  
16 been shown, nor was it shown that the April 15, 2021, Decision and  
17 Order was unsupported by substantial evidence on the record. As  
18 there was no misapplication of the law and the findings of fact are  
19 supported by substantial evidence, CTHS and Gallagher Bassett's  
20 request for review should be denied.

21 Two arguments are advanced for reversal of the April 15, 2021,  
22 Decision and Order. However, both focus on the wrong aspect of the  
23 issue - the place the injury occurred rather than the action the  
24 employee was performing when he was injured. The first argument made  
25 by CTHS and Gallagher Bassett appears to challenge whether Yasmer's  
26 injury arose out of his employment and the other appears to  
27 challenge whether he was in the course of his employment when he  
28 suffered the accident. These arguments would only suffice to allow

1 reversal if Petitioners convince a court to re-weigh the evidence  
2 which is not proper under Nevada Law and does not constitute grounds  
3 for a reversal of an administrative law judge's decision and order.

4 CTHS and Gallagher Bassett argue that Yasmer's injury did not  
5 arise out of his employment because the risk he faced was not  
6 greater than that faced by the general public while descending  
7 stairs.<sup>51</sup> Use of the neutral risk test is advocated because the  
8 "fall was not caused by a defect on the stairs nor was it from  
9 conditions personal to him."<sup>52</sup> Additionally, it is stated that  
10 "whether the fall was explained or unexplained is irrelevant."<sup>53</sup>

11 Under this argument, there is no analysis as to why the risk  
12 Yasmer was subjected to constituted a neutral risk rather than an  
13 employment one, nor how the appeals officer was incorrect in finding  
14 that falling while carrying a box that impeded an employee's vision,  
15 as part of the person's job, constituted a compensable employment  
16 risk. The argument focuses on where the injury occurred, rather than  
17 what the claimant was doing when he was injured, to force use of the  
18 neutral risk test. Yasmer was performing a work task when he fell.  
19 The obstructed view is what caused the employment risk he faced  
20 while performing work duties not an explanation of why he fell.  
21 Therefore, the risk was an employment risk. There is no analysis or  
22 authority provided to explain how the location of the accident would  
23 convert a risk of employment to a neutral risk.

24 ...  
25

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26 <sup>51</sup> Pet'r, Travelers' Open. Brief, 7:17-19.

27 <sup>52</sup> Id. at 7:14-19.

28 <sup>53</sup> Id. at 7:16.



1 Further, no analysis is provided as to how or why an accident  
2 caused by a mis-step versus a hazard on the floor impacts a  
3 determination that an injury was caused by an employment risk.  
4 Finally, there is no argument provided as to why the Appeals  
5 Officer's conclusion is legally incorrect or lacking in substantial  
6 evidence - it is simply stated. This argument is merely a request  
7 to have the evidence re-evaluated under a standard more advantageous  
8 to CTHS and Gallagher Bassett and not a reason for reversal.

9 The argument that Yasmer was not in the course of his  
10 employment because he was walking down stairs, rather than taking  
11 an elevator, is also advanced.<sup>54</sup> In making this argument, CTHS and  
12 Gallagher Bassett write that Yasmer's "manager states that the  
13 Respondent should have been using the elevator to perform this task  
14 as there is an elevator for employee use."<sup>55</sup> However, this both mis-  
15 states and mis-characterizes the evidence. Yasmer's manager was  
16 asked how the injury could have been prevented and stated that  
17 Yasmer could have used the elevator. He never stated that Yasmer was  
18 prohibited from using the stairs, nor did he say that Yasmer should  
19 not have been using the stairs. He merely says the accident would  
20 have been avoided had an elevator been used. Further, there is no  
21 evidence on the record that there was a policy that Yasmer use an  
22 elevator or evidence of any prohibition against using the stairs.

23 CTHS and Gallagher Bassett state that "there is an elevator for  
24 employee use and the Respondent simply chose not to use it."<sup>56</sup>  
25

26 <sup>54</sup> Id. at 7:6-11 and 7:27-28.

27 <sup>55</sup> Id. at 7:6-8.

28 <sup>56</sup> Id. at 7:7-8.

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Ranch Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 However, there is no argument or analysis as to how this statement  
2 is relevant or how the finding that Yasmer was in the course of his  
3 employment, despite not taking the elevator, was improper.  
4 Additionally, there is no analysis as to how a failure to use the  
5 elevator removed Yasmer from the course of his work or caused his  
6 injury to be non-compensable.

7       There was no misapplication of the law and the findings of fact  
8 in the decision are supported by substantial evidence on the record.  
9 CTHS and Gallagher Bassett are simply seeking an impermissible re-  
10 weighing of the facts under a standard more favorable to their  
11 position. They have not shown the April 15, 2021, Decision and Order  
12 was invalid so their petition should be denied.

13       Yasmer has met his burden under Nevada law for his claim to be  
14 accepted. CTHS and Gallagher Bassett do nothing more than ask for  
15 a re-weighing of the evidence in this matter hoping for a favorable  
16 outcome. However, the Appeals Officer made factual determinations,  
17 based on the medical reporting, other evidence, and testimony, that  
18 Yasmer's claim is compensable.

19       CTHS and Gallagher Bassett have failed to show anything that  
20 would justify a reversal of the Appeals Officer's Decision and  
21 Order. CTHS and Gallagher Bassett were unable to produce viable  
22 arguments for reversal because the Appeals Officer's Decision and  
23 Order is supported by substantial evidence on the record.

24       In sum, the April 15, 2021, Decision and Order reflects a sound  
25 and legal application of the law to the facts, and the decision is  
26 supported by substantial evidence as well as grounds and reasons.  
27 CTHS and Gallagher Bassett are simply unhappy with the outcome and  
28 are impermissibly attempting to coax the Court into re-weighing the

1 evidence in their favor. The Appeals Officer did not commit abuse  
2 of discretion and the decision in this matter was not arbitrary,  
3 capricious, or lacking substantial evidence; thus, the petition  
4 should be denied and the appeals officer's decision should be  
5 affirmed.


6 **VII.**  
7 **CONCLUSION**

8 It is Gallagher Bassett and CTHS's burden to show that the  
9 final agency decision is invalid and it has not. They have failed  
10 to meet their burden to have the April 15, 2021, Decision and Order  
11 reversed as they have not proven substantial rights were prejudiced.  
12 Therefore, CTHS and Gallagher Bassett have not made a sufficient  
13 showing to support their petition.

14 The April 15, 2021, Decision and Order was supported by  
15 substantial evidence and constituted a proper application of Nevada  
16 law to the facts in this matter. This did not constitute a violation  
17 of a statutory provision; was not an error of law; and, was not  
18 arbitrary, capricious, or characterized by an abuse of discretion.  
19 Therefore, the decision was proper and should not be reversed.  
20 Stephen Yasmer respectfully requests the Petition for Judicial  
21 Review be denied.

22 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of August, 2021.

23 NEVADA ATTORNEY FOR INJURED WORKERS

24   
25 Evan Beavers, Esq. (NV Bar #3399)  
26 Todd Eikelberger, Esq. (NV Bar #9393)  
27 1000 East William Street, Suite 208  
28 Carson City, Nevada 89701

Attorneys for Respondent, Stephen Yasmer

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

CERTIFICATE OF COMPLIANCE  
(NRAP 28.2)

1  
2  
3 1. I hereby certify that this brief complies with the formatting  
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP  
5 32(a)(5) and the type style requirements of NRAP 32(a)(6)  
6 because:

7       \_\_\_ This brief has been prepared in a proportionally spaced  
8 typeface using [state name and version of word processing  
9 program] in font [state font size and name of type style] or  
10     X This brief has been prepared in a monospaced  
11 typeface using Word Perfect X3 with 10.5 characters  
12 per inch in Courier New Font size 12.

13 2. I further certify that this brief complies with the page-or  
14 type-volume limitations of NRAP 32(a)(7) because, excluding the  
15 parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

16       \_\_\_ Proportionately spaced, has a typeface of 14 points or  
17 more and contains \_\_\_ words; or  
18       \_\_\_ Monospaced, has 10.5 or fewer characters per inch, and  
19 contains \_\_\_ words or \_\_\_ lines of text; or  
20     X Does not exceed 30 pages.

21 3. Finally, I hereby certify that I have read this appellate  
22 brief, and to the best of my knowledge, information, and belief,  
23 it is not frivolous or interposed for any improper purpose. I  
24 further certify that this brief complies with all applicable  
25 Nevada Rules of Appellate Procedure, in particular NRAP 23(e)(1),  
26 which requires every assertion in the brief regarding matters in  
27 the record to be supported by a reference to the page and volume  
28 number, if any, of the transcript or appendix where the matter

1 relied on is to be found. I understand that I may be subject to  
2 sanctions in the event that the accompanying brief is not in  
3 conformity with the requirements of the Nevada Rules of Appellate  
4 Procedure.

5 Respectfully submitted this 9<sup>th</sup> day of August, 2021.

6 NEVADA ATTORNEY FOR INJURED WORKERS

7 

8 Evan Beavers, Esq. (NV Bar #3399)  
9 Todd Eikelberger, Esq. (NV Bar #9393)  
10 1000 East William Street, Suite 208  
11 Carson City, Nevada 89701

12 Attorneys for Respondent, Stephen Yasmer  
13  
14  
15  
16  
17  
18  
19  
20  
21

22 NEVADA ATTORNEY FOR INJURED WORKERS  
23 1000 East William Street, Suite 208  
24 Carson City, NV 89701 (775) 684-7555  
25 2200 South Rancho Drive, Suite 230  
26 Las Vegas, NV 89102 (702) 486-2830  
27  
28

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding  
**RESPONDENT'S ANSWERING BRIEF**, filed in regard to Nevada  
Department of Administration Hearings Division Appeal Number  
2100639-SYM (Second Judicial District Court Case Number CV21-  
00809):

  X   Does not contain the Social Security Number of any  
person.

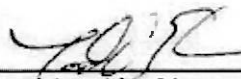
**-OR-**

           Contains the Social security Number of a person as  
required by:

A. A specific State or Federal law, to wit:

**-or-**

B. For the administration of a public program or for  
an application for a Federal or State grant.

  
\_\_\_\_\_  
Todd Eikelberger, Esq, Deputy  
Nevada Attorney for Injured Workers  
Attorney for Respondent, Stephen Yasmer

8/9/2021  
Date

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing **RESPONDENT'S ANSWERING BRIEF** was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s)

JOHN P LAVERY ESQ ([John.Lavery@lewisbrisbois.com](mailto:John.Lavery@lewisbrisbois.com))  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 900 BOX 28  
LAS VEGAS NV 89102

JEANNE P BAWA ESQ ([Jeanne.Bawa@lewisbrisbois.com](mailto:Jeanne.Bawa@lewisbrisbois.com))  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 900 BOX 28  
LAS VEGAS NV 89102

DATED: AUGUST 9, 2021

SIGNED: ALEX ANDRACA

2645  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W. Sahara Ave., Ste. 900, Box 28  
Las Vegas, Nevada 89102  
Telephone: 702-893-3383  
E-mail: [john.lavery@lewisbrisbois.com](mailto:john.lavery@lewisbrisbois.com)  
E-mail: [michael.friend@lewisbrisbois.com](mailto:michael.friend@lewisbrisbois.com)  
Attorneys for Petitioners  
CARSON TAHOE HEALTH SYSTEM  
and GALLAGHER BASSETT SERVICES, INC.

**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

CARSON TAHOE HEALTH SYSTEM and  
GALLAGHER BASSETT SERVICES, INC.,

Petitioners,

v.

STEPHEN YASMER; and the STATE OF  
NEVADA DEPARTMENT OF  
ADMINISTRATION, HEARINGS DIVISION,  
APPEALS OFFICE, an Agency of the State of  
Nevada,

Respondents.

CASE NO: CV21-00809

DEPT. NO.: 8

**HEARING NOT REQUESTED**

**PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS  
PETITION FOR JUDICIAL REVIEW**

COMES NOW the Employer, CARSON TAHOE HEALTH SYSTEM (hereinafter referred to as "Petitioner Employer"), and the Third-Party Administrator, GALLAGHER BASSETT SERVICES, INC., (hereinafter referred to as "Petitioner Administrator"), by and through their attorneys, JOHN P. LAVERY, ESQ., and JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, and hereby files the instant Opposition to Respondent's Motion to Dismiss Petition for Judicial Review.

...

...




1           This Opposition is based upon all papers and pleadings on file herein; the memorandum  
2 of points and authorities attached hereto; and any other further argument and evidence as may  
3 properly be presented to the court at the hearing on this Motion.

4           DATED this 12<sup>th</sup> day of August, 2021.

5                               Respectfully submitted,

6                               LEWIS BRISBOIS BISGAARD & SMITH LLP

7  
8                               By:   
9                               JOHN P. LAVERY, ESQ.  
10                              Nevada Bar No. 004665  
11                              L. MICHAEL FRIEND, ESQ.  
12                              Nevada Bar No. 011131  
13                              2300 West Sahara Avenue, Suite 900, Box 28  
14                              Las Vegas, Nevada 89102  
15                              Phone: 702-893-3383  
16                              Fax: 702-366-9563  
17                              Attorneys for Petitioners  
18                              CARSON TAHOE HEALTH SYSTEM and  
19                              GALLAGHER BASSETT SERVICES, INC.  
20  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF RELEVANT FACTS**

4 This is a worker's compensation Petition for Judicial Review. The motion at issue  
5 concerns only procedural matters, so Petitioners will not recount facts related to the underlying  
6 claim.

7 Petitioners are Gallagher Bassett Services, Inc. (hereinafter "Gallagher Bassett"), a  
8 nationwide third-party administrator, and Carson Tahoe Health, a comprehensive healthcare  
9 network. Gallagher Bassett is a foreign corporation headquartered in Illinois and licensed by the  
10 Nevada Division of Insurance to do business in the State of Nevada. (Exhibit A.) Carson Tahoe  
11 Health is a domestic corporation with 21 locations, including 2 in Washoe County, serving  
12 patients throughout Northern Nevada. (Exhibit B.)

13 The Appeals Officer in the underlying claim rendered her Decision and Order on April  
14 15, 2021. Per NRS 233B.130(2)(b), Petitioners had until May 17, 2021, to file a Petition for  
15 Judicial Review. Petitioners filed their Petition for Judicial Review and Motion for Stay Pending  
16 Appeal on May 3, 2021. Respondent filed a Statement of Intent to Participate on May 10, 2021.  
17 On May 11, 2021, the parties stipulated to allow Respondent additional time to oppose the  
18 motion. On May 26, 2021, Respondent filed his Opposition to Petitioners' Motion for Stay  
19 Pending Appeal. The Record on Appeal was transmitted on June 4, 2021. Petitioners filed their  
20 Opening Brief on July 13, 2021. On August 4, 2021, Respondent filed the instant Motion to  
21 Dismiss Petition for Judicial Review.

22 **II.**

23 **ARGUMENT**

24 NRS233B.130(2) sets forth the mandatory requirements for a Petition for Judicial  
25 Review. Respondent has moved to dismiss based on the premise that Petitioners failed to file  
26 their petition "in the district court in and for Carson City, in and for the county in which the  
27 aggrieved party resides or in and for the county where the agency proceeding occurred." NRS  
28 233B.130(2)(b).

1 In this case, the aggrieved parties are the employer, Carson Tahoe Health System, and its  
2 third-party administrator, Gallagher Bassett. Carson Tahoe Health System provides healthcare to  
3 patients throughout northern Nevada, with 21 locations including 2 in Reno. The question is  
4 whether this connection to Washoe County is sufficient to establish residency for a domestic  
5 corporation. Petitioners posit that it is, and, therefore, jurisdiction vests with this Court.

6 With regard to foreign corporations, “the mere fact that it is doing business in this state  
7 does not fix its residence in any particular county for the purpose of venue . . .” Western Pacific  
8 Railroad v. Krom, 102 Nev. 40, 43, 714 P.2d 182, 184(1986)(citing, Byers v. Graton, 82 Nev.  
9 92, 95, 411 P.2d 480, 481(1966). However, a foreign corporation cannot have fixed residency in  
10 a particular Nevada county for purposes of NRS 233B.130(2)(b). Liberty Mut. v. Thomasson,  
11 130 Nev. 28, 34, 317 P.3d 831, 836(2014). Despite not having a fixed residency, Gallagher  
12 Bassett is licensed by the Nevada Division of Insurance to conduct business throughout Nevada.  
13 As an aggrieved party, it should be able to select the forum. See Eaton v. District Court, 96 Nev.  
14 773, 774, 616 P.2d 400(1980).

15 There has been no prejudice to Respondent, nor any delay in his participation in this  
16 litigation, as evidenced by the fact that he was able to make his appearance in this case and  
17 obtain agreement from Petitioners to extend his time to oppose Petitioners’ Motion for Stay, all  
18 within the 30 days in which a Petition could be filed. NRS 233B.130(2)(d). Further, estoppel  
19 should apply as Respondent filed responsive pleadings with the Court, contrary to its current  
20 position that the matter should be dismissed. Finally, policy prefers deciding cases on the merits.

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III.

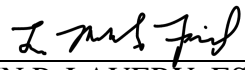
CONCLUSION

Based on the above, Petitioners respectfully request that Respondent's Motion to Dismiss be denied and this matter be allowed to proceed to a hearing on the merits.

Dated this 12<sup>th</sup> day of August, 2021.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:   
\_\_\_\_\_  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
2300 West Sahara Avenue, Suite 900, Box 28  
Las Vegas, Nevada 89102  
Phone: (702) 893-3383  
Attorneys for Petitioners  
CARSON TAHOE HEALTH SYSTEM and  
GALLAGHER BASSETT SERVICES, INC.

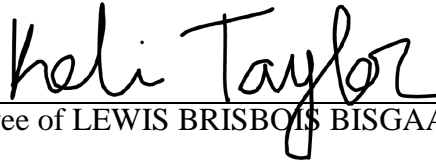
**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 12<sup>th</sup> day of August, 2021, service of the attached **PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Todd Eikelberger, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
1000 E. William Street, Suite 208  
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM  
Attn: Risk Management  
1600 Medical Pkwy.  
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster  
GALLAGHER BASSETT SERVICES, INC.  
PO Box 2934  
Clinton, IA 52733



An Employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1  
2 **SECOND JUDICIAL DISTRICT COURT**  
3 **COUNTY OF WASHOE, STATE OF NEVADA**

4 **AFFIRMATION**  
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document,  
7 PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR  
8 JUDICIAL REVIEW filed in case number: CV21-00809  
9

10 ☒ Document does not contain the Social Security number of any person.

11 **- OR -**

12  
13 ☐ Document contains the Social Security number of a person as required by:

14 A specific state or federal law, to wit:

15 \_\_\_\_\_  
16 **- or -**

17 ☐ For the administration of a public program

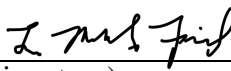
18 **- or -**

19 ☐ For an application for a federal or state grant

20 **- or -**

21 ☐ Confidential Family Court Information Sheet  
22 (NRS 125.130, NRS 125.230 and NRS 125B.055)  
23

24 Date: August 12, 2021

25   
(Signature)

26 L. MICHAEL FRIEND, ESQ.  
(Print Name)

27 PETITIONERS  
28 (Attorney for)

Department of Business and Industry

## Nevada Division of Insurance



FILED  
Electronically  
CV21-00809  
2021-08-12 09:33:13 AM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 8591703 : csulezic

- Help me find...
  - Self-Insured Workers' Compensation
  - File a Complaint
  - About Us
  - Contact Us
  - Sitemap
  - State of Nevada Links
- Consumers
- Health Insurance Rates
- Healthcare Reform
- Licensing
- Insurers
- Captive Insurers
- News & Notices

## GALLAGHER BASSETT SERVICES INC (ADJ)

## Address:

777 N RAINBOW BLVD STE 330  
LAS VEGAS, NV 89107-1192

## Phone

630-285-4122

## URL:

## Email:

cari\_miller@gbtpa.com

## National Producer Number:

NEW SEARCH

License Type	License Number	Original Issue Date	Status	Effective Date	Expiration Date
Independent Adjuster	9379	09/05/2000	Active	03/30/2005	04/01/2023

Qualification Type	Original Issue Date	Status	Effective Date
Adj - Property and Casualty	07/01/2018	Active	07/01/2018

▶ 1 Individual Associations

Exhibit A

## ► 1 Organization Associations

- Consumers
  - Health Insurance Rates
  - Healthcare Reform
  - Licensing
  - News & Notices
  - About Us
  - Self-Insured
  - Contact Us
- 
- 2013 Nevada Division of Insurance
  - Site Map
  - Privacy Policy
  - Search



carsontahoe.com/about-us.html



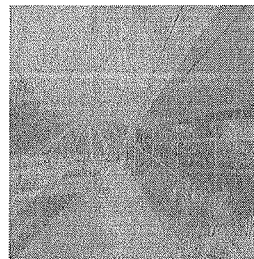
## About Us

**Our Mission:** At Carson Tahoe Health, we enhance the health and well-being of the communities we serve.

**Our Core Values** include putting patients first and treating everyone with dignity and respect.

Carson Tahoe Health is a comprehensive healthcare network featuring two hospitals, two urgent cares, an emergent care center, outpatient services and a provider network with 21 regional locations. Our reach stretches far and wide, encompassing Carson City, Minden, Gardnerville, Carson Valley, South Reno, Dayton, Lake Tahoe, Yerington, and beyond.

At Carson Tahoe, we treat the whole person; mind, body and soul. Our goal is to elicit intuitive feelings of compassion, family, and peace of mind, as this is at the heart of everything we do, how we do it, and why we do what we do. We intertwine the art and science of healthcare, combining the healing elements of 'nature' with the caring aspects of 'nurture', along with state-of-the-art lifesaving technologies, advanced expertise, and beautiful facilities designed to cultivate the best possible patient experience.



### About Us

- Annual Report
- Community Benefits
- Community Health Needs Assessment
- Community Partners
- Community Publications
- Connect With Us
- Contact Us
- CTH Board
- CTH History
- FAQ

Exhibit B

000385



FIND A PROVIDER

FIND A LOCATION

SERVICES

HELPFUL INFO

JOIN OUR TEAM

1

Carson Tahoe Medical Group Center for Wound Healing | Reno

VIEW MORE



3.7 miles away



**Address**  
6630 S. McCarran Blvd., Building C Reno, NV 89509



**Phone**  
View all Department  
Phone Numbers



**Departments**  
Center for Wound Healing

Carson Tahoe Medical Group - Reno Office | Reno

VIEW MORE



7.4 miles away



**Address**  
10539 Professional Circle, Suite 200, Reno, NV 89521



**Phone**  
View all Department  
Phone Numbers



**Departments**  
Cardiology, Internal Medicine

1 **3790**

2 Evan Beavers Esq.  
3 Nevada State Bar No. 3399  
4 ebeavers@naiw.nv.gov  
5 Todd Eikelberger, Esq.  
6 Nevada State Bar No. 9393  
7 teikelberger@naiw.nv.gov  
8 Nevada Attorney for Injured Workers  
9 1000 East William Street, Suite 208  
10 Carson City, Nevada 89701  
11 (775) 684-7555  
12 Attorneys for: Respondent, Stephen Yasmer

13  
14 IN THE SECOND JUDICIAL DISTRICT COURT OF  
15 THE STATE OF NEVADA IN AND FOR THE  
16 COUNTY OF WASHOE

17 CARSON TAHOE HEALTH SYSTEM and  
18 GALLAGHER BASSETT SERVICES, INC.

CASE NO. CV21-00809

19 Petitioner,

DEPT. NO. 8

20 vs.

21 STEPHEN YASMER; and the STATE OF  
22 NEVADA DEPARTMENT OF  
23 ADMINISTRATION, HEARINGS  
24 DIVISION, APPEALS OFFICE, an  
25 Agency of the State of Nevada,

26 Respondents.  
27 \_\_\_\_\_/

28  
29 REPLY IN SUPPORT OF STEPHEN YASMER'S  
30 MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

31 Respondent, Stephen Yasmer, by and through his attorney, Todd  
32 Eikelberger, Esq., Deputy, Nevada Attorney for Injured Workers,  
33 hereby replies to the opposition to his Motion to Dismiss Petition  
34 for Judicial Review filed by the Petitioners on or about August 12,  
35 2021.

36 ...

37 ...

38 ...

1 This Reply is made and based upon NRS 233B.130, SJDCR 12, the  
2 papers and pleadings on file, and the attached Memorandum of Points  
3 and Authorities.

4 DATED this 17<sup>th</sup> day of August, 2021.

5 NEVADA ATTORNEY FOR INJURED WORKERS

6 

7 Evan Beavers, Esq. (NV Bar #3399)  
8 Todd Eikelberger, Esq. (NV Bar #9393)  
9 1000 East William Street, Suite 208  
Carson City, Nevada 89701

10 Attorneys for Respondent, Stephen Yasmer

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NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 I.  
ARGUMENT

4 Respondent, Stephen Yasmer filed his Motion to Dismiss  
5 Petition for Judicial Review on August 2, 2021, because the court  
6 lacks jurisdiction to consider the petition under NRS  
7 233B.130(2)(b) as it was improperly filed in Nevada's Second  
8 Judicial District in Washoe County. NRS 233B.130(2)(b) requires  
9 that petitions for judicial review of workers' compensation matters  
10 be "instituted by filing a petition in the district court in and  
11 for Carson City, in and for the county in which the aggrieved party  
12 resides or in and for the county where the agency proceeding  
13 occurred." Applying this requirement, the May 3, 2021, Petition for  
14 Judicial Review was required to be filed in the district court for  
15 Carson City, Nevada. The Nevada Supreme Court has held that failure  
16 to strictly comply with the requirements of NRS 233B.130(2) results  
17 in a lack of jurisdiction for a district court to consider a  
18 petition for judicial review necessitating dismissal.<sup>1</sup>

19 Carson Tahoe Health System (herein, "CTHS") and Gallagher  
20 Bassett Services, Inc. opposed Yasmer's Motion to Dismiss on August  
21 12, 2021. They argued the court has jurisdiction because CTHS  
22 maintains two offices in Reno, out of its 21 locations state-wide,  
23 so it resides in Washoe County for purposes of NRS 233B.130(2)(b);<sup>2</sup>  
24 Gallagher Bassett is a foreign corporation licensed by the Nevada  
25 Department of Insurance enabling it to file in any forum in Nevada  
26

27 <sup>1</sup> Washoe County v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726 (2012).

28 <sup>2</sup> Pet'rs' Opp'n to Resp't's Mot. Dismiss Pet. Jud. Review, 4:1-5.

1 making Washoe County a proper place to file under NRS  
2 233B.130(2)(b);<sup>3</sup> and estoppel should apply as to dismissal as  
3 Yasmer was able to appear, and appeared, so there is no prejudice.<sup>4</sup>  
4 However, none of these arguments give this court jurisdiction to  
5 entertain the petition for review.

6 Carson Tahoe Health System's offices in Reno, Nevada, do not  
7 make it a resident of Washoe County. In Liberty Mut. v. Thomasson<sup>5</sup>,  
8 cited in both the motion<sup>6</sup> and opposition<sup>7</sup>, the Nevada Supreme Court  
9 held "that, for purposes of NRS 233B.130(2)(b), a corporation's  
10 place of residence is that which is listed as the principal place  
11 of business in its articles of incorporation."<sup>8</sup> Carson Tahoe Health  
12 System and Gallagher Bassett do not allege that Washoe County is  
13 CTHS's principal place of business listed in its articles, merely  
14 that it maintains two of its twenty-one locations in Reno, Nevada.<sup>9</sup>  
15 Additionally, all of Carson Tahoe Health System's officers and  
16 directors have "1600 Medical Parkway, Carson City, NV, 89703"  
17 listed as their address on the Nevada Secretary of State's online  
18 Entity Information sheet.<sup>10</sup> Therefore, CTHS and Gallagher Bassett  
19 have not proven that Carson Tahoe Health Systems' principal place

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21 <sup>3</sup> Id. at 4:11-14.

22 <sup>4</sup> Id. at 4:15-20.

23 <sup>5</sup> Liberty Mut. v. Thomasson, 130 Nev. 28, 317 P.3d 831 (2014).

24 <sup>6</sup> Mot. Dismiss Pet. Jud. Review, 5:15-18, 6:10-12, 6:18-7:3.

25 <sup>7</sup> Opp'n, 4:9-10.

26 <sup>8</sup> Thomasson at 33, 317 P.3d at 836.

27 <sup>9</sup> Opp'n, 4:2-3.

28 <sup>10</sup> Id. at exhibit 8.

1 of business in its articles of incorporation is Washoe County such  
2 that the residency requirement of NRS 233B.130(2)(b) has been met.

3 Also, Gallagher Bassett's foreign corporation status  
4 disqualifies it from residing anywhere in the State of Nevada and  
5 being licensed by the Department of Insurance does not alter this  
6 disqualification. The Court in Thomasson specifically held that "a  
7 foreign corporation cannot have a fixed residence in any Nevada  
8 county" for purposes of the residency requirement in NRS  
9 233B.130(2)(b) "and thus Washoe County was not the proper county  
10 ... to seek judicial review."<sup>11</sup> Additionally, no authority is  
11 provided in the opposition that licensure by the Nevada Department  
12 of Insurance confers any type of residency status on a foreign  
13 corporation. Therefore, since Gallagher Bassett does not reside in  
14 Washoe County, the residency requirement of NRS 233B.130(2)(b)  
15 still has not been met by the petitioners.

16 As neither CTHS nor Gallagher Bassett reside in Washoe County,  
17 the petition was improperly filed and must be dismissed as this  
18 court lacks jurisdiction to entertain the matter. "When a party  
19 seeks judicial review of an administrative decision [in Nevada],  
20 strict compliance with the statutory requirements for such review  
21 is a precondition to jurisdiction by the court of judicial  
22 review."<sup>12</sup>

23 It is mandatory that a court have jurisdiction to hear a  
24 matter and when it does not neither a lack of prejudice nor consent  
25

---

26 <sup>11</sup> Thomasson 130 Nev. at 34, 317 P.3d at 836.

27 <sup>12</sup> Kame v. Employment Security Dep't, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989)  
28 citing Teepe v. Review Board of Indiana Emp. Sec. Div., 136 Ind.App. 331, 200  
N.E. 2d 538, 539 (1964), (dealing with the time period for filing a petition).

1 may convey the required jurisdiction. Under Nevada law, "[a]  
2 district court is empowered to render a judgment either for or  
3 against a person or entity only if it has jurisdiction over the  
4 parties and the subject matter."<sup>13</sup> Further, "[n]oncompliance with  
5 the requirements [of NRS 233B.130] is grounds for dismissal of the  
6 appeal."<sup>14</sup> And, "only those decisions falling within the APA's terms  
7 and challenged according to the APA's procedures invoke the  
8 district court's jurisdiction."<sup>15</sup> Petitioners provide no authority  
9 for the premise that either consent or a lack of prejudice serve to  
10 waive mandatory, jurisdictional filing requirements. Specifically,  
11 in Thomasson the Court held "that NRS 233B.130(2)(b) is mandatory  
12 and jurisdictional. Thus, failure to strictly comply with NRS  
13 233B.130(2)(b) requires dismissal."<sup>16</sup> No exceptions were provided.

14 Based on the foregoing, neither Petitioner resides in Washoe  
15 County. CTHS resides in Carson City, and GBS does not reside in the  
16 State of Nevada as it is a foreign corporation. Further, the agency  
17 proceeding being appealed did not occur in Washoe County and  
18 jurisdiction may not be conveyed by a lack prejudice or consent.  
19 Thus, the Second Judicial District Court does not have jurisdiction  
20 to consider the May 3, 2021, Petition for Judicial Review and it  
21 must be dismissed.

---

22  
23 <sup>13</sup> C.H.A. Venture v. G.C. Wallace Consulting Engineers, 106 Nev. 381, 383, 794  
24 P.2d 707, 709, (1990) citing Young v. Nevada Tile Company, 103 Nev. 436, 442,  
25 744 P.2d 902, 905, (1987).

26  
27 <sup>14</sup> Kame, 105 Nev. at 25, 769 P.2d at 68 (citing Teepe v. Review Board of  
28 Indiana Emp. Sec. Div., 200 N.E.2d 538, 539 (Ind.App. 1964)).

<sup>15</sup> Otto, 128 Nev. at 431, 282 P.3d at 725 (citing Private Inv. Licensing Bd.  
v. Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1019 (1982)).

<sup>16</sup> Thomasson 130 Nev. at 32, 317 P.3d at 835.



NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

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II.  
CONCLUSION

The Petitioners have not complied with the filing requirements of NRS 233B.130(2)(b) and, therefore, the Second Judicial District Court does not have jurisdiction to hear the petition so it must be dismissed.

DATED this 17<sup>th</sup> day of August, 2021.

NEVADA ATTORNEY FOR INJURED WORKERS



Evan Beavers, Esq. (NV Bar #3399)  
Todd Eikelberger, Esq. (NV Bar #9393)  
1000 East William Street, Suite 208  
Carson City, Nevada 89701

Attorneys for Respondent, Stephen Yasmer

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding  
REPLY IN SUPPORT OF STEPHEN YASMER'S MOTION TO DISMISS PETITION FOR  
JUDICIAL REVIEW, filed in regard to Nevada Department of  
Administration Hearings Division Appeal Number 2100639-SYM (Second  
Judicial District Court Case Number CV21-00809):

X Does not contain the Social Security Number of any  
person.


-OR-

Contains the Social security Number of a person as  
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for  
an application for a Federal or State grant.

  
Todd Eikelberger, Esq, Deputy  
Nevada Attorney for Injured Workers  
Attorney for Respondent, Stephen Yasmer

Date

8/17/2021

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 3(d)(1) and 25(d), as well as NRCP 5, I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing **REPLY IN SUPPORT OF STEPHEN YASMER'S MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was electronically submitted to the clerk of the Court for the Second Judicial District by using the eFlex system, resulting in electronic service to the following user(s)

JOHN P LAVERY ESQ ([John.Lavery@lewisbrisbois.com](mailto:John.Lavery@lewisbrisbois.com))  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 900 BOX 28  
LAS VEGAS NV 89102

JEANNE P BAWA ESQ ([Jeanne.Bawa@lewisbrisbois.com](mailto:Jeanne.Bawa@lewisbrisbois.com))  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W SAHARA AVE STE 900 BOX 28  
LAS VEGAS NV 89102

DATED: AUGUST 17, 2021

SIGNED: ALEX ANDRACA

**RPLY**  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W. Sahara Avenue, Suite 900, Box 28  
Las Vegas, Nevada 89102  
Telephone: 702-893-3383  
Facsimile: 702-366-9563  
Email: [john.lavery@lewisbrisbois.com](mailto:john.lavery@lewisbrisbois.com)  
Email: [michael.friend@lewisbrisbois.com](mailto:michael.friend@lewisbrisbois.com)  
Attorneys for Petitioners  
CARSON TAHOE HEALTH SYSTEM  
and GALLAGHER BASSETT SERVICES, INC.

**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

CARSON TAHOE HEALTH SYSTEM and  
GALLAGHER BASSETT SERVICES, INC.,

Petitioners,

v.

STEPHEN YASMER; and the STATE OF  
NEVADA DEPARTMENT OF  
ADMINISTRATION, HEARINGS DIVISION,  
APPEALS OFFICE, an Agency of the State of  
Nevada,

Respondents.

CASE NO: CV21-00809

DEPT. NO.: VIII

**PETITIONERS' REPLY BRIEF**

JOHN P. LAVERY, ESQ  
L. MICHAEL FRIEND, ESQ.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W. Sahara Avenue, Suite 900, Box 28  
Las Vegas, Nevada 89102-4375  
*Attorneys for Petitioners*  
*CARSON TAHOE HEALTH SYSTEM*  
*and GALLAGHER BASSETT SERVICES, INC.*

TODD EIKELBERGER, ESQ.  
NEVADA ATTORNEY FOR INJURED  
WORKERS  
1000 E. William Street, Suite 208  
Carson City, NV 89701  
*Attorney for Respondent*  
*Stephen Yasmer*

1                                   **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
2                                   **THE STATE OF NEVADA IN AND FOR THE**  
3                                   **COUNTY OF WASHOE**

4 CARSON TAHOE HEALTH SYSTEM and  
5 GALLAGHER BASSETT SERVICES, INC.,

6                                   Petitioners,

7 v.

8 STEPHEN YASMER; and the STATE OF  
9 NEVADA DEPARTMENT OF  
10 ADMINISTRATION, HEARINGS DIVISION,  
11 APPEALS OFFICE, an Agency of the State of  
12 Nevada,

13                                   Respondents.

CASE NO:   CV21-00809

DEPT. NO.:   VIII

14                                   **NRAP 26.1 DISCLOSURE**

15                   The undersigned counsel of record certifies that the following are persons and entities as  
16 described in NRAP 26.1(a), and must be disclosed:

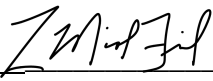
- 17           1. The Respondent, CARSON TAHOE HEALTH SYSTEM, states that it does not have any  
18           parent corporation, or any publicly held corporation that owns 10% or more of its stock,  
19           nor any publicly held corporation that has a direct financial interest in the outcome of the  
20           litigation. NRAP 26.1(a).
- 21           2. The Respondent, GALLAGHER BASSETT SERVICES, INC., states that it does not  
22           have any parent corporation, or any publicly held corporation that owns 10% or more of  
23           its stock, nor any publicly held corporation that has a direct financial interest in the  
24           outcome of the litigation.
- 25           3. The undersigned counsel states that the following attorneys have appeared or are expected  
26           to appear in this court, including the district court and administrative agency:

- JOHN P. LAVERY, ESQ. of LEWIS BRISBOIS BISGAARD & SMITH LLP,  
Attorney or Record for Respondents;
- JEANNE P. BAWA, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP;  
Attorney or Record for Respondents; and,
- L. MICHAEL FRIEND, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP,  
Attorney or Record for Respondents;

These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

DATED this 15<sup>th</sup> day of September, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:   
\_\_\_\_\_  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
2300 West Sahara Avenue, Suite 900, Box 28  
Las Vegas, NV 89102  
Phone: (702) 893-3383  
Facsimile: (702) 366-9563  
Attorneys for Petitioners  
CARSON TAHOE HEALTH SYSTEM  
and GALLAGHER BASSETT SERVICES, INC.

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**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page No(s).</u></b>
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<i>Maxwell v. State Indus. Ins. Sys.</i> , 109 Nev. 327, 849 P.2d 267 (1993) .....	1
<i>McCracken v. Fancy</i> , 98 Nev. 30, 639 P.2d 552 (1982) .....	1
<i>Mitchell v. Clark County School District</i> , 121 Nev. 179, 111 P.3d 1104 (2005) .....	1, 2
<i>Nassiri v. Chiropractic Physicians’ Bd. of Nev.</i> , 130 Nev. 245, 327 P.3d 487 (2014) .....	1
<i>North Las Vegas v. Public Service Common</i> , 83 Nev. 278, 429 P.2d 66 (1967) .....	1
<i>Rio Suite Hotel &amp; Casino v. Gorsky</i> , 113 Nev. 600, 939 P.2d 1043 (1997) .....	1
<i>Rio All Suite Hotel &amp; Casino v. Phillips</i> , 126 Nev. 346, 240 P.3d 2 (2010) .....	2
<b><u>Others</u></b>	
A. Larson, <i>The Law of Workmen’s Compensation</i> , § 80.33(a) .....	2



1 I.

2 REPLY

3 The issues in this appeal are ones of fact and law. While the Court is not required to give  
4 deference to pure legal questions determined by the agency, those conclusions of the agency  
5 which are “closely related to the agency’s view of the facts, are entitled to deference, and will not  
6 be disturbed if they are supported by substantial evidence.” Jones v. Rosner, 102 Nev. 215, 217,  
7 719 P.2d 805, 806 (1986).

8 In regard to review of factual determinations, this Court reviews an appeals officer’s  
9 factual findings for substantial evidence. North Las Vegas v. Public Service Comm’n., 83 Nev.  
10 278, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial  
11 evidence is that quantity and quality of evidence which a reasonable man would accept as  
12 adequate to support a conclusion. Nassiri v. Chiropractic Physicians’ Bd. of Nev., 130 Nev. 245,  
13 249, 327 P.3d 487, 490 (2014); Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 331, 849 P.2d  
14 267, 270 (1993); Horne v. State Indus. Ins. Sys., 113 Nev. 532, 537, 936 P.2d 839 (1997).

15 An accident or injury arises out of employment only when there is a causal connection  
16 between the injury and the employee’s work. Therefore, the injured party must establish a link  
17 between the workplace conditions and how those conditions caused the injury, as well as that the  
18 origin of the injury is related to some risk involved within the scope of employment. Rio Suite  
19 Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043 (1997); Mitchell v. Clark County  
20 School District, 121 Nev. 179, 111 P.3d 1104 (2005).

22 In this case, there is not substantial evidence to support the Appeals Officer’s conclusion  
23 and Respondent’s position that his actions when the fall occurred are related to a risk involved  
24 with his employment. Respondent was walking down some stairs while he was carrying a box.  
25 The evidence shows there is an elevator available for use. Respondent admitted he had the option  
26 to take the elevator or the stairs, but he made the personal choice to use the stairs while carrying a  
27 box that impeded his view. (ROA p. 24.) The mechanism of injury reported by Respondent is not  
28

1 of the quantity or quality that is adequate to support the Appeals Officer’s conclusion that this was  
2 an employment related risk.

3 Respondents’ fall was not due to an employment-related risk, nor a personal risk, but  
4 rather was “neither distinctly employment nor distinctly personal character.” 1 Larson’s Workers’  
5 Compensation Law § 4.03, at 4-2. See also Mitchell, 121 Nev. at 181 n.7, 111 P.3d at 1106 n.7  
6 (“An unexplained fall, originating neither from employment conditions nor from conditions  
7 personal to the [employee], is considered to be caused by a neutral risk.”); Rio All Suite Hotel &  
8 Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d 2, 6 (2010).

10 The Appeals Officer erred as a matter of law by applying the standard for an employment-  
11 related risk. This case should have been evaluated as a neutral risk. That would require an analysis  
12 of whether the risk faced by the Respondent was greater than the risk faced by the general public.  
13 The facts simply do not support that conclusion. The general public was able to use the stairs  
14 where Respondent fell (ROA p. 26); therefore, there is not sufficient evidence to support that he  
15 faced a greater risk than the public—in fact, he faced the same risk. Moreover, Respondent had the  
16 option of using the elevator, which would have circumvented this entire situation. Simply being  
17 injured while at work is not enough to satisfy an injured worker’s burden to establish that the  
18 injury arose out of an in the course and scope of his employment.  
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II.

CONCLUSION

For all of the aforementioned reasons, Petitioners move this reviewing court to grant the instant petition, and order the claim to remain denied for failure to timely file the claim for compensation and for failure to establish a compensable injury. Wherefore, Petitioners pray that this Court grant their Petition for Judicial Review and reverse the Appeals Officer's Order dated April 15, 2021.

DATED this 15<sup>th</sup> day of September, 2021.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By 

JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665

L. MICHAEL FRIEND, ESQ.

Nevada Bar No. 011131

2300 West Sahara Avenue, Suite 900, Box 28

Las Vegas, NV 89102

Phone: (702) 893-3383

Facsimile: (702) 366-9563

Attorneys for Petitioners

CARSON TAHOE HEALTH SYSTEM and

GALLAGHER BASSETT SERVICES, INC.

**CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared with a one inch margin in a proportionally spaced typeface using Microsoft WORD software in 12 point Times New Roman font.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the document type volume limitation does not exceed 7,000 words. Per WORD's word count utility, this document, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), contains 2,008 words.

3. I further certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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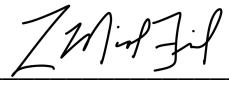
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1 4. Lastly, this Brief does not contain a social security number.

2 DATED this 15<sup>th</sup> day of September, 2021.

3 Respectfully submitted,

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5  
6 By 

7 JOHN P. LAVERY, ESQ.

8 Nevada Bar No. 004665

9 L. MICHAEL FRIEND, ESQ.

10 Nevada Bar No. 011131

11 2300 West Sahara Avenue, Suite 900, Box 28

12 Las Vegas, NV 89102

13 Phone: (702) 893-3383

14 Facsimile: (702) 366-9563

15 Attorneys for Petitioners

16 CARSON TAHOE HEALTH SYSTEM

17 and GALLAGHER BASSETT SERVICES, INC.

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 15<sup>th</sup> day of  
3 September, 2021, service of the attached **PETITIONERS' REPLY BRIEF** was made this date  
4 by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada,  
5 addressed follows:

6 Todd Eikelberger, Esq.  
7 NEVADA ATTORNEY FOR INJURED WORKERS  
8 1000 E. William Street, Suite 208  
9 Carson City, NV 89701

10 CARSON TAHOE HEALTH SYSTEM  
11 Attn: Risk Management  
12 1600 Medical Pkwy.  
13 Carson City, NV 89706

14 Yvette McCollum, Sr. Claims Adjuster  
15 GALLAGHER BASSETT SERVICES, INC.  
16 P.O. Box 2934  
17 Clinton, IA 52733

*Keli Taylor*

18  
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28  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1 **SECOND JUDICIAL DISTRICT COURT**  
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document Petitioner's Opening  
6 Brief filed in case number: CV21-00809.

7  
8 ☒ Document does not contain the Social Security number of any person.

9  
10 **- OR -**

11 ☐ Document contains the Social Security number of a person as required by:

12 A specific state or federal law, to wit:  
13 \_\_\_\_\_

14  
15 **- or -**

16 ☐ For the administration of a public program


17  
18 **- or -**

19 ☐ For an application for a federal or state grant

20  
21 **- or -**

22 ☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

23  
24 Date: September 15<sup>th</sup>, 2021

25   
(Signature)

26 L. MICHAEL FRIEND, ESQ.  
27 (Print Name)

28 PETITIONERS  
(Attorney for)

1 **2540**  
2 **NEOJ**  
3 JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
4 L. MICHAEL FRIEND, ESQ.  
Nevada Bar No. 011131  
5 LEWIS BRISBOIS BISGAARD & SMITH  
2300 West Sahara Avenue, Suite 900, Box 28  
6 Las Vegas, NV 89102  
Phone: (702) 893-3383  
7 Fax: (702) 366-9563  
Email: [john.lavery@lewisbrisbois.com](mailto:john.lavery@lewisbrisbois.com)  
8 Email: [michael.friend@lewisbrisbois.com](mailto:michael.friend@lewisbrisbois.com)  
Attorneys for Appellants  
9 CARSON TAHOE HEALTH SYSTEM and  
GALLAGHER BASSETT SERVICES, INC.

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
11 **THE STATE OF NEVADA IN AND FOR THE**  
12 **COUNTY OF WASHOE**

12 CARSON TAHOE HEALTH SYSTEM and  
13 GALLAGHER BASSETT SERVICES, INC.,

14 Petitioners,

15 v.

16 STEPHEN YASMER; and the STATE OF  
17 NEVADA DEPARTMENT OF  
ADMINISTRATION, HEARINGS  
18 DIVISION, APPEALS OFFICE, an Agency of  
the State of Nevada,

19 Respondents.

CASE NO: CV21-00809

DEPT. NO.: VIII

20 **NOTICE OF ENTRY OF ORDER**

21 TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL.  
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1 YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that an **ORDER GRANTING**  
2 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was entered with the Clerk of  
3 the Court in the above-captioned matter on the 20th day of September, 2021. A copy of which is  
4 attached hereto and made a part hereof.<sup>1</sup>

5 DATED this 14<sup>th</sup> day of October, 2021.

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By /s/ L. Michael Friend

10 JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665

11 L. MICHAEL FRIEND, ESQ.

Nevada Bar No. 011131

12 2300 West Sahara Avenue, Suite 900, Box 28

Las Vegas, NV 89102

13 Phone: (702) 893-3383

Fax: (702) 366-9563

14 Attorneys for Appellants

CARSON TAHOE HEALTH SYSTEM and

15 GALLAGHER BASSETT SERVICES, INC.

16  
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27 <sup>1</sup> **NOTICE:** Pursuant to NRCP Rule 4, should any party desire to appeal this final District Court Order, the notice  
28 of appeal must be filed with the clerk of the District Court after entry of a written judgment or order, and no later than  
thirty (30) days after the date that the written notice of entry of the judgment or order appealed from is served.

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*Index of Documents*

Exhibit 1      Order Granting Motion to Dismiss Petition for Judicial Review      1-6

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**CERTIFICATE OF MAILING**

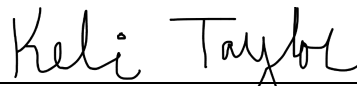
Pursuant to NRCF Rule 5(b), I hereby certify that, on the 14<sup>th</sup> day of October, 2021, I served a true and correct copy of the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as follows:

Stephen Yasmer  
2257 Carson River Road  
Carson City, NV 89701

Evan Beavers, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
1000 E. William Street, Suite 208  
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM  
Attn: Risk Management  
1600 Medical Pkwy.  
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster  
GALLAGHER BASSETT SERVICES, INC.  
PO Box 2934  
Clinton, IA 52733



\_\_\_\_\_  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1 **SECOND JUDICIAL DISTRICT COURT**  
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, Notice of Entry  
6 of Order filed in case number: CV21-00809

7  
8 ☒ Document does not contain the Social Security number of any person.

9 **- OR -**

10  
11 ☐ Document contains the Social Security number of a person as required by:

12 A specific state or federal law, to wit:

13 \_\_\_\_\_  
14 **- or -**

15 ☐ For the administration of a public program

16 **- or -**

17 ☐ For an application for a federal or state grant

18 **- or -**

19 ☐ Confidential Family Court Information Sheet  
20 (NRS 125.130, NRS 125.230 and NRS 125B.055)

21  
22 Date: 10/14/21

/s/ L. Michael Friend  
23 (Signature)

24 L. MICHAEL FRIEND, ESQ.  
(Print Name)

25 Petitioners  
26 (Attorney for)

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*“EXHIBIT I”*

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE  
7

8 CARSON TAHOE HEALTH SYSTEM  
9 and, GALLAGHER BASSET SERVICES,  
10 INC.,

Case No. CV21-00809

Dept. No. 8

Petitioner,

11 vs.

12 STEPHEN YASMER; and APPEALS  
13 OFFICE of the DEPARTMENT OF  
ADMINISTRATION,

14 Respondents.  
15 \_\_\_\_\_ /

16 **ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

17 Before the Court are two motions: (1) *Motion to Stay Pending Appeal* ("Motion to  
18 Stay"), filed by Petitioner, CARSON TAHOE HEALTH SYSTEM (hereinafter, "CTHS") and  
19 GALLAGHER BASSETT SERVICES, INC. (hereinafter, "Gallagher, Inc.") on May 3, 2021.  
20 Respondent, STEPHEN YASMER, filed his *Opposition to Petitioner's Motion for Stay*  
21 *Pending Appeal* ("Opposition"), on May 26, 2021. This matter was submitted to the Court on  
22 June 30, 2021; and

23 (2): a *Motion to Dismiss Petition for Judicial Review* ("Motion to Dismiss") filed on  
24 August 2, 2021, by Respondent, STEPHEN YASMER. The Petitioners, CTHS and  
25 GALLAGHER, INC., filed their *Opposition to Respondent's Motion to Dismiss Petition for*  
26 *Judicial Review* ("Opposition") on August 12, 2021, to which the Respondent filed a *Reply* on  
27  
28

1 August 17, 2021. On September 13, 2021, the Court entertained argument during a hearing on  
2 the *Motion to Stay* and the *Motion to Dismiss*, and took the matters under submission.

3 Having reviewed the pleadings, relevant authorities, and arguments of counsel, the  
4 Court **GRANTS** the Respondent's *Motion to Dismiss Petition for Judicial Review*, and finds as  
5 follows<sup>1</sup>:

6 **I. BACKGROUND**

7 According to the record, Stephen Yasmer (hereinafter "Respondent"), was employed at  
8 CTHS. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 1: 26-27. While working, the  
9 Respondent was carrying a box of supplies down a stair case when he mis-stepped and fell.  
10 *Pet'r Mot. For Stay Pending Appeal*, 3: 11-13. As a result of the fall, Respondent was  
11 diagnosed with a dislocation, and fracture of his left ankle. *Id.* 3: 8-9. The Respondent  
12 underwent surgery for his injury. *Id.* 3: 19.

13 Respondent filed a claim for workers' compensation benefits, which was denied by  
14 Gallagher, Inc. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 3: 9-11. The Respondent  
15 appealed that determination, and the Hearing Officer affirmed the claim denial. *Pet'r Mot. For*  
16 *Stay Pending Appeal*, 3: 22-25. The Respondent appealed this decision to an Appeals Officer  
17 who reversed the Petitioner Administrator's denial of liability for Respondent's claim. *Id.* 3:  
18 27-29. As a result, Gallagher, Inc. was ordered to accept the Respondent's claim for benefits as  
19 a workers' compensation claim. *Opp'n to Pet'r Mot. For Stay Pending Appeal*,  
20 4: 16-20.

21 **II. LEGAL STANDARD**

22 In order to challenge a final decision and order issued by a Nevada Department of  
23 Administration appeals officer, a party must file a petition for judicial review. NRS 616C.370.  
24 When a party seeks judicial review of an administrative decision [in Nevada], strict compliance  
25 with the statutory requirements is a precondition to jurisdiction by the court of judicial review.  
26

27  
28 <sup>1</sup> In light of the Court's order granting the *Motion to Dismiss Petition for Judicial Review*, the  
*Motion for Stay Pending Appeal* is rendered moot.

1 *Kame v. Employment Security Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989) citing *Teepe v.*  
2 *Review Board of Indiana Emp. Sec. Div.*, 136 Ind. App. 331, 200 N.E. 2d 538, 539 (1964).

3 Requirements for judicial review petitions are contained in NRS 233B.130(2), which requires  
4 that petitions are filed:

5 "In the district court in and for Carson City, in and for the county in which the aggrieved  
6 party resides, or in and for the county where the agency proceeding occurred."  
7 NRS 233B.130(2)(b).

8 The Nevada Supreme Court has held that failure of a petitioner to strictly comply with the  
9 requirements set out in NRS 233B.130(2) results in a lack of jurisdiction for a district court to  
10 consider a petition for judicial review. *Washoe County v. Otto*, 128 Nev. 424, 434, 282 P.3d  
11 719, 726 (2012).

### 12 **III. DISCUSSION**

#### 13 **A. The Motion to Dismiss Petition for Judicial Review Is Granted Because The** 14 **Second Judicial District Court Lacks Jurisdiction.**

15 In his *Motion to Dismiss*, the Respondent asserts the Second Judicial District Court does  
16 not have jurisdiction because the *Petition for Judicial Review* was not filed in the proper district  
17 court. Petitioner contends that jurisdiction is proper as to both CTHS and Gallagher, Inc.

18 In support, Petitioner first argues because CTHS has two locations in Reno and treats  
19 patients throughout northern Nevada, it can establish residency in Washoe County as a domestic  
20 corporation. Additionally, Petitioner attests that as an aggrieved party, Gallagher, Inc. has the  
21 capacity to select the forum. *Pet'r Opp'n to Resp't Mot. to Dismiss Pet. for Judicial. Review*, 4:  
22 13-14.

23 NRS 233B.130(2)(b) requires a petition for judicial review be filed in one of three  
24 specific places. One location permitted by the statute is in the district court in and for Carson  
25 City. The instant *Petition for Judicial Review* was filed in the Second Judicial District Court in  
26 and for the County of Washoe. Under the statutory requirements, the Court does not have  
27 jurisdiction to review the *Petition* on this basis.  
28



1 Alternatively, the statute permits a petition for judicial review to be filed in and for the  
2 county in which the aggrieved party resides. For purposes of Nev. Rev. Stat. § 233B.130(2)(b),  
3 a corporation's place of residence is that which is listed as the principal place of business in its  
4 articles of incorporation. *Liberty Mut. v. Thomasson*, 130 Nev. 28, 34, 317 P.3d 837, 836  
5 (2012). Yet, a foreign corporation cannot have a fixed residence in any Nevada county for  
6 purposes of Nev. Rev. Stat. § 233B.130(2)(b)'s residency requirement. *Id.*

7 The Petitioner argues that Gallagher, Inc. and CTHS are the aggrieved parties. *Pet'r*  
8 *Opp'n to Respt's Mot. to Dismiss Pet. for Judicial Review*, 4: 1-5. Gallagher, Inc. is a foreign  
9 corporation, that is licensed by the Nevada Department of Insurance to conduct business  
10 throughout Nevada. *Id.* 4: 11-13. The Nevada Supreme Court has determined that a foreign  
11 corporation, such as Gallagher, Inc., cannot have a fixed residence in any Nevada county for  
12 these jurisdictional purposes. Furthermore, Gallagher, Inc. has not alleged that its principal  
13 place of business is in Washoe County. Considering both binding precedent, and the lack of  
14 authority to support licensure by the Nevada Department of Insurance conferring any type of  
15 residency status, the Court cannot exercise jurisdiction over Gallagher, Inc. under Nev. Rev.  
16 Stat. § 233B.130(2)(b).

17 CTHS has offices in Reno, Nevada. However, CTHS maintains over twenty locations  
18 statewide, with only two of those locations being in Reno. *Pet'r Opp'n to Respt's Mot. to*  
19 *Dismiss Pet. for Judicial Review*, 4: 2-3. Despite maintaining locations in Reno, CTHS has  
20 registered its officers and directors to an address in Carson City. *Id.* at Exhibit 8. CTHS has not  
21 alleged, nor has it proven that its principal place of business is in Washoe County. Therefore,  
22 CTHS has failed to establish that they meet the residency requirements delineated by Nev. Rev.  
23 Stat. § 233B.130(2)(b), making jurisdiction improper in Washoe County.

24 The statute finds one more location to be appropriate; a petition for judicial review can  
25 be filed in and for the county in which the agency proceeding occurred. In this case, the agency  
26 proceeding did not take place in Washoe County. The certificate of service for both the appeals  
27 officer's decision and order list an address in Carson City. *Resp't Mot. to Dismiss Pet. for*  
28

1 *Judicial Review*, Exhibit 8. Since the agency proceeding occurred outside of Washoe County,  
2 this Court does not have jurisdiction.

3 Under Nevada law, “[a] district court is empowered to render a judgment either for or  
4 against a person or entity only if it has jurisdiction over the parties and the subject matter.”

5 *Young v. Nevada Title Company*, 103 Nev. 436, 442, 744, P.2d 902, 905 (1987). The Court  
6 cannot find a viable basis under Nev. Rev. Stat. § 233B.130(2)(b) to exercise jurisdiction.

7 Therefore, the *Motion to Dismiss Petition for Judicial Review* is **GRANTED**.

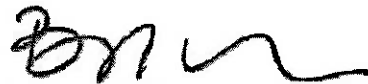
8 **IV. CONCLUSION**

9 Based upon the foregoing, and good cause appearing,

10 IT IS HEREBY ORDERED that Respondent’s *Motion to Dismiss Petition for Judicial*  
11 *Review* is **GRANTED** as set forth above. The *Petition for Judicial Review* is  
12 **DISMISSED**.

13 **IT IS SO ORDERED.**

14 DATED this 20 day of September, 2021.

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18 BARRY L. BRESLOW  
19 DISTRICT JUDGE  
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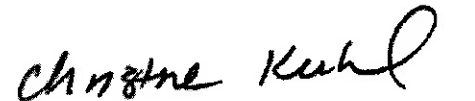
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20 day of September, 2021, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.

  
Judicial Assistant

1 **2515**  
JOHN P. LAVERY, ESQ.  
2 Nevada Bar No. 004665  
L. MICHAEL FRIEND, ESQ.  
3 Nevada Bar No. 011131  
LEWIS BRISBOIS BISGAARD & SMITH  
4 2300 West Sahara Avenue, Suite 900, Box 28  
Las Vegas, NV 89102  
5 Phone: (702) 893-3383  
Fax: (702) 366-9563  
6 Email: [john.lavery@lewisbrisbois.com](mailto:john.lavery@lewisbrisbois.com)  
Email: [michael.friend@lewisbrisbois.com](mailto:michael.friend@lewisbrisbois.com)  
7 Attorneys for Appellants  
CARSON TAHOE HEALTH SYSTEM and  
8 GALLAGHER BASSETT SERVICES, INC.

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
**THE STATE OF NEVADA IN AND FOR THE**  
11 **COUNTY OF WASHOE**

12 CARSON TAHOE HEALTH SYSTEM and  
13 GALLAGHER BASSETT SERVICES, INC.,

14 Appellants,

15 vs.

16 STEPHEN YASMER,

17 Respondent.

CASE NO: CV21-00809

DEPT. NO.: VIII

18 **NOTICE OF APPEAL**

19 TO: STEPHEN YASMER, Respondent and,

20 TO: EVAN BEAVERS, ESQ., NEVADA ATTORNEY FOR INJURED WORKERS,  
21 counsel of record for Respondent.

22 NOTICE IS HEREBY GIVEN that Appellants, CARSON TAHOE HEALTH SYSTEM and  
23 GALLAGHER BASSETT SERVICES, INC., (hereinafter referred to as "Appellants"), in the above-  
24 entitled action, hereby appeal to the Supreme Court of the State of Nevada from the attached "Order  
25 Granting Motion to Dismiss Petition For Judicial Review entered in this action on September 20, 2021  
26

27 . . .

28 . . .

1 which dismissed Appellants' Petition for Judicial Review and the "Notice of Entry of Order" filed on  
2 October 14, 2021.

3 DATED this 21<sup>st</sup> day of October, 2021.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By: /s/ L. Michael Friend

8 JOHN P. LAVERY, ESQ.

9 Nevada Bar No. 004665

10 L. MICHAEL FRIEND, ESQ.

11 Nevada Bar No. 011131

12 2300 West Sahara Avenue, Suite 900, Box 28

13 Las Vegas, NV 89102

14 Phone: (702) 893-3383

15 Fax: (702) 366-9563

16 Attorneys for Appellants

17 CARSON TAHOE HEALTH SYSTEM and

18 GALLAGHER BASSETT SERVICES, INC.

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**Index of Documents**

Exhibit 1      Notice of Entry of Order, CV21-00809      1-12

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 21<sup>st</sup> day of  
3 October, 2021, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a  
4 true copy of the same for mailing, first class mail, as follows:

5 Stephen Yasmer  
6 2257 Carson River Road  
7 Carson City, NV 89701

8 Evan Beavers, Esq.  
9 NEVADA ATTORNEY FOR INJURED  
10 WORKERS  
11 1000 E. William Street, Suite 208  
12 Carson City, NV 89701

13 CARSON TAHOE HEALTH SYSTEM  
14 Attn: Risk Management  
15 1600 Medical Pkwy.  
16 Carson City, NV 89706

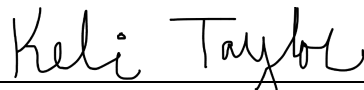
17 Yvette McCollum, Sr. Claims Adjuster  
18 GALLAGHER BASSETT SERVICES, INC.  
19 PO Box 2934  
20 Clinton, IA 52733

21 Sheila Y. Moore, Esq., Appeals Officer  
22 NEVADA DEPT. OF ADMINISTRATION  
23 Appeals Division, Appeals Office  
24 1050 E. William Street, Ste. 450  
25 Carson City, NV 89701

Michelle L. Morgando, Esq., Sr. Appeals  
Officer  
NEVADA DEPT. OF ADMINISTRATION  
Appeals Division, Appeals Office  
2200 South Rancho Drive, Suite 220  
Las Vegas, NV 89102

Laura Freed, Director  
DEPARTMENT OF ADMINISTRATION  
515 E. Musser Street, Suite 300  
Carson City, NV 89701

Aaron D. Ford, Nevada Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, NV 89701

26  
27  
28 

An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1 **SECOND JUDICIAL DISTRICT COURT**  
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, Notice of Appeal  
6 filed in case number: CV21-00809

7  
8 ☒ Document does not contain the Social Security number of any person.

9 **- OR -**

10  
11 ☐ Document contains the Social Security number of a person as required by:

12 A specific state or federal law, to wit:

13 \_\_\_\_\_  
14 **- or -**

15 ☐ For the administration of a public program

16 **- or -**

17 ☐ For an application for a federal or state grant

18 **- or -**

19 ☐ Confidential Family Court Information Sheet  
20 (NRS 125.130, NRS 125.230 and NRS 125B.055)

21  
22 Date: 10/21/21

/s/ L. Michael Friend  
23 (Signature)

L. MICHAEL FRIEND, ESQ.  
24 (Print Name)

APPELLANTS  
25 (Attorney for)  
26  
27  
28



FILED  
Electronically  
CV21-00809  
2021-10-21 11:14:21 AM  
Alicia L. Lerud  
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*“EXHIBIT 1”*

1 **2540**  
2 **NEOJ**

3 **JOHN P. LAVERY, ESQ.**  
4 Nevada Bar No. 004665

5 **L. MICHAEL FRIEND, ESQ.**  
6 Nevada Bar No. 011131

7 **LEWIS BRISBOIS BISGAARD & SMITH**  
8 2300 West Sahara Avenue, Suite 900, Box 28  
9 Las Vegas, NV 89102  
10 Phone: (702) 893-3383

11 Fax: (702) 366-9563

12 Email: [john.lavery@lewisbrisbois.com](mailto:john.lavery@lewisbrisbois.com)

13 Email: [michael.friend@lewisbrisbois.com](mailto:michael.friend@lewisbrisbois.com)

14 Attorneys for Appellants

15 **CARSON TAHOE HEALTH SYSTEM and**  
16 **GALLAGHER BASSETT SERVICES, INC.**

17 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
18 **THE STATE OF NEVADA IN AND FOR THE**  
19 **COUNTY OF WASHOE**

20 **CARSON TAHOE HEALTH SYSTEM and**  
21 **GALLAGHER BASSETT SERVICES, INC.,**

22 **Petitioners,**

23 **v.**

24 **STEPHEN YASMER; and the STATE OF**  
25 **NEVADA DEPARTMENT OF**  
26 **ADMINISTRATION, HEARINGS**  
27 **DIVISION, APPEALS OFFICE, an Agency of**  
28 **the State of Nevada,**

**Respondents.**

CASE NO: CV21-00809

DEPT. NO.: VIII

**NOTICE OF ENTRY OF ORDER**

**TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL.**

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1 YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that an **ORDER GRANTING**  
2 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** was entered with the Clerk of  
3 the Court in the above-captioned matter on the 20th day of September, 2021. A copy of which is  
4 attached hereto and made a part hereof.<sup>1</sup>

5 DATED this 14<sup>th</sup> day of October, 2021.

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By /s/ L. Michael Friend

10 JOHN P. LAVERY, ESQ.

11 Nevada Bar No. 004665

12 L. MICHAEL FRIEND, ESQ.

13 Nevada Bar No. 011131

14 2300 West Sahara Avenue, Suite 900, Box 28

15 Las Vegas, NV 89102

16 Phone: (702) 893-3383

17 Fax: (702) 366-9563

18 Attorneys for Appellants

19 CARSON TAHOE HEALTH SYSTEM and

20 GALLAGHER BASSETT SERVICES, INC.

21  
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27 <sup>1</sup> **NOTICE:** Pursuant to NRCP Rule 4, should any party desire to appeal this final District Court Order, the notice  
28 of appeal must be filed with the clerk of the District Court after entry of a written judgment or order, and no later than  
thirty (30) days after the date that the written notice of entry of the judgment or order appealed from is served.

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*Index of Documents*

Exhibit 1      Order Granting Motion to Dismiss Petition for Judicial Review      1-6

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**CERTIFICATE OF MAILING**

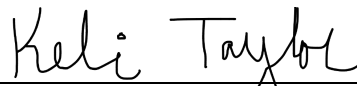
Pursuant to NRCF Rule 5(b), I hereby certify that, on the 14<sup>th</sup> day of October, 2021, I served a true and correct copy of the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** by depositing same in the United States Mail, with first-class postage fully prepaid thereon, and addressed as follows:

Stephen Yasmer  
2257 Carson River Road  
Carson City, NV 89701

Evan Beavers, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
1000 E. William Street, Suite 208  
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM  
Attn: Risk Management  
1600 Medical Pkwy.  
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster  
GALLAGHER BASSETT SERVICES, INC.  
PO Box 2934  
Clinton, IA 52733



\_\_\_\_\_  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1 **SECOND JUDICIAL DISTRICT COURT**  
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, Notice of Entry  
6 of Order filed in case number: CV21-00809

7  
8 ☒ Document does not contain the Social Security number of any person.

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17 ☐ For an application for a federal or state grant

18 **- or -**

19 ☐ Confidential Family Court Information Sheet  
20 (NRS 125.130, NRS 125.230 and NRS 125B.055)

21  
22 Date: 10/14/21

/s/ L. Michael Friend  
23 (Signature)

24 L. MICHAEL FRIEND, ESQ.  
(Print Name)

25 Petitioners  
26 (Attorney for)

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*“EXHIBIT I”*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

CARSON TAHOE HEALTH SYSTEM  
and, GALLAGHER BASSET SERVICES,  
INC.,

Case No. CV21-00809

Dept. No. 8

Petitioner,

vs.

STEPHEN YASMER; and APPEALS  
OFFICE of the DEPARTMENT OF  
ADMINISTRATION,

Respondents.

**ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

Before the Court are two motions: (1) *Motion to Stay Pending Appeal* ("Motion to Stay"), filed by Petitioner, CARSON TAHOE HEALTH SYSTEM (hereinafter, "CTHS") and GALLAGHER BASSETT SERVICES, INC. (hereinafter, "Gallagher, Inc.") on May 3, 2021. Respondent, STEPHEN YASMER, filed his *Opposition to Petitioner's Motion for Stay Pending Appeal* ("Opposition"), on May 26, 2021. This matter was submitted to the Court on June 30, 2021; and

(2): a *Motion to Dismiss Petition for Judicial Review* ("Motion to Dismiss") filed on August 2, 2021, by Respondent, STEPHEN YASMER. The Petitioners, CTHS and GALLAGHER, INC., filed their *Opposition to Respondent's Motion to Dismiss Petition for Judicial Review* ("Opposition") on August 12, 2021, to which the Respondent filed a *Reply* on



1 August 17, 2021. On September 13, 2021, the Court entertained argument during a hearing on  
2 the *Motion to Stay* and the *Motion to Dismiss*, and took the matters under submission.

3 Having reviewed the pleadings, relevant authorities, and arguments of counsel, the  
4 Court **GRANTS** the Respondent's *Motion to Dismiss Petition for Judicial Review*, and finds as  
5 follows<sup>1</sup>:

6 **I. BACKGROUND**

7 According to the record, Stephen Yasmer (hereinafter "Respondent"), was employed at  
8 CTHS. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 1: 26-27. While working, the  
9 Respondent was carrying a box of supplies down a stair case when he mis-stepped and fell.  
10 *Pet'r Mot. For Stay Pending Appeal*, 3: 11-13. As a result of the fall, Respondent was  
11 diagnosed with a dislocation, and fracture of his left ankle. *Id.* 3: 8-9. The Respondent  
12 underwent surgery for his injury. *Id.* 3: 19.

13 Respondent filed a claim for workers' compensation benefits, which was denied by  
14 Gallagher, Inc. *Opp'n to Pet'r Mot. For Stay Pending Appeal*, 3: 9-11. The Respondent  
15 appealed that determination, and the Hearing Officer affirmed the claim denial. *Pet'r Mot. For*  
16 *Stay Pending Appeal*, 3: 22-25. The Respondent appealed this decision to an Appeals Officer  
17 who reversed the Petitioner Administrator's denial of liability for Respondent's claim. *Id.* 3:  
18 27-29. As a result, Gallagher, Inc. was ordered to accept the Respondent's claim for benefits as  
19 a workers' compensation claim. *Opp'n to Pet'r Mot. For Stay Pending Appeal*,  
20 4: 16-20.

21 **II. LEGAL STANDARD**

22 In order to challenge a final decision and order issued by a Nevada Department of  
23 Administration appeals officer, a party must file a petition for judicial review. NRS 616C.370.  
24 When a party seeks judicial review of an administrative decision [in Nevada], strict compliance  
25 with the statutory requirements is a precondition to jurisdiction by the court of judicial review.  
26

27  
28 <sup>1</sup> In light of the Court's order granting the *Motion to Dismiss Petition for Judicial Review*, the  
*Motion for Stay Pending Appeal* is rendered moot.

1 *Kame v. Employment Security Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989) citing *Teepe v.*  
2 *Review Board of Indiana Emp. Sec. Div.*, 136 Ind. App. 331, 200 N.E. 2d 538, 539 (1964).

3 Requirements for judicial review petitions are contained in NRS 233B.130(2), which requires  
4 that petitions are filed:

5 "In the district court in and for Carson City, in and for the county in which the aggrieved  
6 party resides, or in and for the county where the agency proceeding occurred."  
7 NRS 233B.130(2)(b).

8 The Nevada Supreme Court has held that failure of a petitioner to strictly comply with the  
9 requirements set out in NRS 233B.130(2) results in a lack of jurisdiction for a district court to  
10 consider a petition for judicial review. *Washoe County v. Otto*, 128 Nev. 424, 434, 282 P.3d  
11 719, 726 (2012).

### 12 **III. DISCUSSION**

#### 13 **A. The Motion to Dismiss Petition for Judicial Review Is Granted Because The** 14 **Second Judicial District Court Lacks Jurisdiction.**

15 In his *Motion to Dismiss*, the Respondent asserts the Second Judicial District Court does  
16 not have jurisdiction because the *Petition for Judicial Review* was not filed in the proper district  
17 court. Petitioner contends that jurisdiction is proper as to both CTHS and Gallagher, Inc.

18 In support, Petitioner first argues because CTHS has two locations in Reno and treats  
19 patients throughout northern Nevada, it can establish residency in Washoe County as a domestic  
20 corporation. Additionally, Petitioner attests that as an aggrieved party, Gallagher, Inc. has the  
21 capacity to select the forum. *Pet'r Opp'n to Resp't Mot. to Dismiss Pet. for Judicial. Review*, 4:  
22 13-14.

23 NRS 233B.130(2)(b) requires a petition for judicial review be filed in one of three  
24 specific places. One location permitted by the statute is in the district court in and for Carson  
25 City. The instant *Petition for Judicial Review* was filed in the Second Judicial District Court in  
26 and for the County of Washoe. Under the statutory requirements, the Court does not have  
27 jurisdiction to review the *Petition* on this basis.  
28

1 Alternatively, the statute permits a petition for judicial review to be filed in and for the  
2 county in which the aggrieved party resides. For purposes of Nev. Rev. Stat. § 233B.130(2)(b),  
3 a corporation's place of residence is that which is listed as the principal place of business in its  
4 articles of incorporation. *Liberty Mut. v. Thomasson*, 130 Nev. 28, 34, 317 P.3d 837, 836  
5 (2012). Yet, a foreign corporation cannot have a fixed residence in any Nevada county for  
6 purposes of Nev. Rev. Stat. § 233B.130(2)(b)'s residency requirement. *Id.*

7 The Petitioner argues that Gallagher, Inc. and CTHS are the aggrieved parties. *Pet'r*  
8 *Opp'n to Respt's Mot. to Dismiss Pet. for Judicial Review*, 4: 1-5. Gallagher, Inc. is a foreign  
9 corporation, that is licensed by the Nevada Department of Insurance to conduct business  
10 throughout Nevada. *Id.* 4: 11-13. The Nevada Supreme Court has determined that a foreign  
11 corporation, such as Gallagher, Inc., cannot have a fixed residence in any Nevada county for  
12 these jurisdictional purposes. Furthermore, Gallagher, Inc. has not alleged that its principal  
13 place of business is in Washoe County. Considering both binding precedent, and the lack of  
14 authority to support licensure by the Nevada Department of Insurance conferring any type of  
15 residency status, the Court cannot exercise jurisdiction over Gallagher, Inc. under Nev. Rev.  
16 Stat. § 233B.130(2)(b).

17 CTHS has offices in Reno, Nevada. However, CTHS maintains over twenty locations  
18 statewide, with only two of those locations being in Reno. *Pet'r Opp'n to Respt's Mot. to*  
19 *Dismiss Pet. for Judicial Review*, 4: 2-3. Despite maintaining locations in Reno, CTHS has  
20 registered its officers and directors to an address in Carson City. *Id.* at Exhibit 8. CTHS has not  
21 alleged, nor has it proven that its principal place of business is in Washoe County. Therefore,  
22 CTHS has failed to establish that they meet the residency requirements delineated by Nev. Rev.  
23 Stat. § 233B.130(2)(b), making jurisdiction improper in Washoe County.

24 The statute finds one more location to be appropriate; a petition for judicial review can  
25 be filed in and for the county in which the agency proceeding occurred. In this case, the agency  
26 proceeding did not take place in Washoe County. The certificate of service for both the appeals  
27 officer's decision and order list an address in Carson City. *Resp't Mot. to Dismiss Pet. for*  
28

1 *Judicial Review*, Exhibit 8. Since the agency proceeding occurred outside of Washoe County,  
2 this Court does not have jurisdiction.

3 Under Nevada law, “[a] district court is empowered to render a judgment either for or  
4 against a person or entity only if it has jurisdiction over the parties and the subject matter.”  
5 *Young v. Nevada Title Company*, 103 Nev. 436, 442, 744, P.2d 902, 905 (1987). The Court  
6 cannot find a viable basis under Nev. Rev. Stat. § 233B.130(2)(b) to exercise jurisdiction.

7 Therefore, the *Motion to Dismiss Petition for Judicial Review* is **GRANTED**.

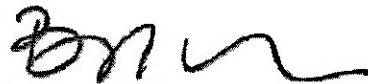
8 **IV. CONCLUSION**

9 Based upon the foregoing, and good cause appearing,

10 IT IS HEREBY ORDERED that Respondent’s *Motion to Dismiss Petition for Judicial*  
11 *Review* is **GRANTED** as set forth above. The *Petition for Judicial Review* is  
12 **DISMISSED**.

13 **IT IS SO ORDERED.**

14 DATED this 20 day of September, 2021.

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18 BARRY L. BRESLOW  
19 DISTRICT JUDGE  
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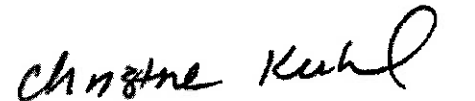
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20 day of September, 2021, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN P. LAVERY, ESQ.

EVAN BEAVERS, ESQ.

TODD EIKELBERGER, ESQ.

  
Judicial Assistant