

FILED

Oct 28 2008

NEVADA DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

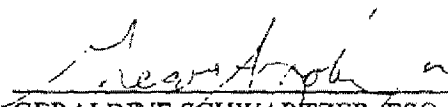
In the Matter of the Contested ) Claim No. : 08S31A167135  
Industrial Insurance Claim )  
of ) Hearing No. : 49522-NG  
GARY MOGG, ) Appeal No. : 54033-GS  
Claimant. ) Employer :  
FITZGERALDS CASINO/HOTEL

ORDER GRANTING APPLICATION TO PERMIT DISCOVERY

After careful review and consideration of the Employer's and Administrator's Application to  
Permit Discovery and good cause appearing,

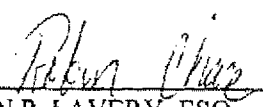
IT IS HEREBY ORDERED that the Application to Permit Discovery is GRANTED.

DATED this 28<sup>th</sup> day of October, 2008.

  
GERALDINE SCHWARTZER, ESQ.  
Appeals Officer

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By   
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383  
Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Appeals Division, does hereby certify that, on the date shown below, a true and correct copy of the foregoing **ORDER GRANTING APPLICATION TO PERMIT DISCOVERY** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102-4413, to the following:

Gary Mogg  
2379 Cliffwood Drive  
Henderson, NV 89074

Melodie Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

John P. Lavery, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101

DATED this 28<sup>th</sup> day of October, 2008.

  
An employee of the State of Nevada

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

FILED  
MAY 13 2008  
CLERK OF APPEALS

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of ) Hearing No.: 49522-NG  
GARY MOGG. ) Appeal No.: 54033-GS

OPPOSITION TO APPLICATION TO PERMIT DISCOVERY

COMES NOW Claimant, Gary Mogg and in opposition to the  
Employer's and Third-Party Administrator's Application to Permit  
Discovery states as follows:

The proposed discovery is irrelevant, over broad and  
burdensome. The issue on appeal is whether Claimant's injury  
arose within the course and scope of his employment, not on the  
injury itself. This fact is clearly demonstrated in the body of  
the February 26, 2008 determination letter itself (Employer's  
Index of Documents p. 15), wherein the Administrator bases its  
denial on Claimant's 'deviation from course and scope of  
employment' and 'employee's willful intention to injure himself,'  
as well as the Hearing Officer's Decision and Order.

Hence, medical histories, prior accidents, etc., are  
all irrelevant as they are outside the scope of this appeal.  
Therefore, Claimant submits the current application for discovery  
should be denied.

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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 210  
Las Vegas, NV 89102  
(702) 486-2830

AFFIRMATION

Pursuant to NRS 239.030, the undersigned affirms that  
no Social Security numbers appear in this document and/or its  
attachments, if any.

Respectfully submitted this 28 day of October, 2008.

NEVADA ATTORNEY FOR INJURED WORKERS



Melodie C. Swanson, Esq., Deputy  
Attorney for Claimant

WCS\_M000, GARY\_Opp Mat for Disc.WPD



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee  
3 of the State of Nevada, Nevada Attorney for Injured Workers, and  
4 that on this date I deposited for mailing at Las Vegas, Nevada, a  
5 true and correct copy of the within and foregoing OPPOSITION TO  
6 APPLICATION TO PERMIT DISCOVERY addressed to:

7 GARY MOGG  
8 2379 CLIFFWOOD DR  
9 HENDERSON NV 89074

10 JOHN P. LAVERY, ESQ.  
11 LEWIS BRISBOIS BISGAARD & SMITH LLP  
12 400 SOUTH FOURTH STREET STE 500  
13 LAS VEGAS NV 89101

14 DATED: 10/28/08

15 SIGNED: [Signature]

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NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
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Las Vegas, NV 89102 (702) 486-2830

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested ) Claim No. : 08S31A167135  
Industrial Insurance Claim )  
 ) Hearing No. : 49522-NG  
 )  
 of ) Appeal No. : 54033-GS  
 )  
 GARY MOGG, ) Employer :  
 ) FITZGERALDS CASINO/HOTEL  
 Claimant. )  
 ) Appeal Date : February 5, 2009  
 ) Appeal Time : 1:00 P.M.

APPLICATION TO PERMIT DISCOVERY

COMES NOW, the Employer, FITZGERALDS CASINO/HOTEL (hereinafter referred to as the "Employer"), and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., (hereinafter referred to as the "Administrator"), through their attorney's, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, pursuant to the provisions of NAC 616C.305, and move the Appeals Officer to permit discovery by deposition, interrogatory, and request to produce documents in the above matter. The reason for this application is that the Administrator and Employer believe that there may be medical evidence or doctor reports concerning the claimant's medical condition as it relates to the industrial injury or to pre-existing conditions which interact with that medical condition, which are not in the possession of the Administrator, the Employer, or their attorney, but are or will be in the possession of the deposed party.

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4817-5816-0131.1

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

1 Further, there may be employment information which is not in the possession of the  
2 Administrator or the Employer or their attorney, but are or will be in the possession of the deposed  
3 party. Discovery of said medical evidence and reporting is necessary to allow for a full and fair  
4 litigation of the above appeal. A copy of the proposed interrogatories and/or request for production of  
5 documents are attached.  
6

7 DATED this 24 day of October, 2008.

8 Respectfully submitted,

9 LEWIS BRISBOIS BISGAARD & SMITH LLP  
10

11 By: John P. Lavery  
12 JOHN P. LAVERY, ESQ.  
13 Nevada Bar No. 004665  
14 400 South Fourth Street, Suite 500  
15 Las Vegas, NV 89101  
16 (702) 893-3383  
17 Attorneys for the Employer  
18 FITZGERALDS CASINO/HOTEL  
19 And its Third-Party Administrator  
20 CANNON COCHRAN MANAGEMENT  
21 SERVICES, INC.  
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LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 883-3383

CERTIFICATE OF MAILING


Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 24th day of October, 2008, service of the foregoing **APPLICATION TO PERMIT DISCOVERY** was made this date by depositing a true and correct copy of the same in the United States Mail, first class postage fully prepaid therein, addressed as follows:

Gary Mogg  
2379 Cliffwood Drive  
Henderson, NV 89074

Melodie Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

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## ATTACHMENT

4817-5816-0131.1

Page 4

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested ) Claim No. : 08S31A167135  
Industrial Insurance Claim )  
 ) Hearing No. : 49522-NG  
 )  
 of ) Appeal No. : 54033-GS  
 )  
 ) Employer :  
 GARY MOGG, ) FITZGERALDS CASINO/HOTEL  
 )  
 Claimant. ) Appeal Date : February 5, 2009  
 ) Appeal Time : 1:00 P.M.  
 )

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN  
MANAGEMENT SERVICES, INC.'S FIRST SET OF INTERROGATORIES

TO: GARY MOGG, the claimant; and

TO: MELODIE C. SWANSON, ESQ., of NEVADA ATTORNEY FOR INJURED WORKERS, the  
claimant's attorney.

COMES NOW, the Employer, FITZGERALDS CASINO/HOTEL (hereinafter referred to as  
the "Employer"), and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT  
SERVICES, INC., (hereinafter referred to as the "Administrator"), by and through their attorneys,  
JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and propound the  
following interrogatories to the above-named claimant. Pursuant to NRS 616D.050 and Rule 33 of the  
Nevada Rules for Civil Procedure, LEWIS BRISBOIS BISGAARD & SMITH LLP hereby requests that  
you answer in writing and under oath, within thirty (30) days from the receipt hereof, the following  
interrogatories.

These interrogatories are deemed to be continuing. In the event that you obtain or receive  
additional information that would supplement, add to or otherwise change your answers to these  
interrogatories, then you are requested to supplement your answers thereto.

## INSTRUCTIONS AND DEFINITIONS

The following preliminary definitions and instructions apply to each of the interrogatories set forth hereafter and are deemed to be incorporated therein.

1. The purpose of these interrogatories is to allow the Employer and Administrator to discover information other than that which is contained in any evidence packet previously filed with the Appeals Officer in the above matter. With the exception of those initial interrogatories which ask you to identify yourself, where an interrogatory calls for the production of a document contained in any evidence packet previously filed in the above appeal, in lieu of providing said document, you may answer that part of the interrogatory by indicating the document exists as part of an evidence packet, identifying the source of the evidence packet containing such document and its date of filing with the Appeals Officer in the above-identified matter. This exception does not apply to any document which contains any sub-document, notation, addition, insertion, or marking of any kind which is not part of a document contained in an evidence packet filed with the Appeals Officer in the above-identified matter.

2. As used in these interrogatories, the terms "document" and "writing" and the plural forms thereof, shall mean any written, recorded, or graphic matters, however produced or reproduced, of every kind and description pertaining to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda, (including those of telephone and oral conversations) contracts, correspondence, agreements, applications, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer print-outs, medical and hospital records and reports, X-rays, advertisements, catalogs, or any handwritten, recorded transcript, punched, taped,

1 filmed, or graphic matter, however produced or reproduced in your possession, custody or control, or  
2 to which you have or have had access. Any document or writing as herein above defined which  
3 contains any sub-document, notation, addition, insertion, or marking of any kind which is not part of  
4 another document or documents, which do not contain any such comment, notation, addition, insertion  
5 or marking of any kind, which is part of another document, that document is to be considered a separate  
6 document.  
7

8 3. These interrogatories call for information, including information contained in writings.  
9 Information contained in writings includes any document in your possession or in the possession of  
10 your attorney, or others who are in possession of, or may have obtained information on your behalf.  
11

12 4. Whenever you are unable to state an answer to these interrogatories based upon your  
13 own personal knowledge, please so state and identify the person or persons you believe to have such  
14 knowledge, what you believe the correct answer to be, and the fact upon which you have your answer.  
15

16 5. A request that you state the source of information about certain facts includes a request  
17 that you state the means by which such knowledge has been preserved; if such source of information  
18 or facts is an oral communication, its date of origin, sender and recipient should be stated; and, if such  
19 source preservation is in writing, its date or origin, its nature, originator, recipient and last known  
20 custodian should be stated.

21 6. Where an interrogatory calls for the production of a document, that production may be  
22 satisfied by either including a copy of the document with your answer to these interrogatories, or by  
23 identifying the name and address of the custodian of that document or documents, a brief description  
24 of the documents, and by signing an authorization for release of said information containing the identity  
25 of each individual person, medical provider or medical facility which is the custodian of that document,  
26 and providing a general description of the type of information in the possession of that custodian, to  
27 allow the Employer and/or Administrator to obtain and examine copies of such records. Please note,  
28



1 however, that obtaining documents through a release of information can be time consuming and that  
2 by providing a release of information instead of providing the document may result in the necessity for  
3 a continuance of the hearing to provide time to obtain said documents.

4  
5 7. Where an interrogatory calls for an answer in more than one part, each part should be  
6 separated, so the answer is clearly understandable.

7 8. Each interrogatory should be construed independently. No interrogatory should be  
8 construed by reference to any other interrogatory if the result is a limitation of the scope of the answer  
9 to such interrogatory.

10  
11  
12 **INTERROGATORIES TO BE ANSWERED BY THE CLAIMANT**

13 **INTERROGATORY NO. 1:**

- 14  
15 1. a. State the (1) name, (2) address and (3) telephone number of each health/medical care  
16 provider, doctor, chiropractor, physician's assistant or therapist you have seen in the  
17 past ten (10) years;  
b. Give an account of the treatment/services provided; and  
c. Dates of the treatment/evaluation they provided.
- 18 2. a. State the (1) name, (2) address and (3) telephone number of any and all types of  
19 care/medical providers, including doctors, chiropractors, physician's assistants or  
20 therapists (not identified in the first part of this interrogatory) you have seen for  
21 treatment or evaluation to your neck, back and left arm.  
b. Give an account of the treatment/services provided; and  
c. Dates of the treatment/evaluation they provided.

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2 **INTERROGATORY NO. 2:**

3 Have you been involved in any motor vehicle and/or motorcycle accidents in the last ten (10)  
4 years? If so,

- 5 a. State the date the accident(s) occurred and a brief description of the circumstances of  
6 the accident.  
7 b. List each body part injured.  
8 c. List all physicians who treated you for this/these injury(ies). Include in your answer:  
9 1. The physician's name, address, and telephone number;  
10 2. Dates of treatment; and  
11 3. A description of the treatment rendered.

12  
13 **INTERROGATORY NO. 3:**

14 Have you been hospitalized in the last ten (10) years? If so,:

- 15 a. Identify the name and address of the hospital and the physician who admitted you.  
16 b. Describe the reason for the hospitalization.  
17 c. State the date of admission and discharge.

18  
19 **INTERROGATORY NO. 4:**

20 Have you ever been known by any other name? If so,:

- 21 a. State all other names by which you have been known;  
22 b. The date you were known by said names; and  
23 c. Your residential address(es) during the time you were known by said other name(s).

24  
25 **INTERROGATORY NO. 5:**

26 Are you currently eligible for or receiving compensation from any disability or retirement fund?

27 If so,:

- 28 a. State the name and address of the fund.  
29 b. Identify the date you qualified and/or began receiving benefits from the fund.  
30 c. Identify the basis on which you qualified for benefits from the fund (e.g., disability/years  
31 of service/age/survivor, etc.)

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1 INTERROGATORY NO. 6:

2 List for the last ten (10) years all employers, beginning with your most recent including:

- 3 a. The name, address, and phone number;  
4 b. Dates of service; and  
5 c. A description of your job duties.

6 INTERROGATORY NO. 7:

7 List all workers' compensation claims that you have had in the United States and/or any foreign  
8 country including:  
9

- 10 a. The claim number;  
11 b. Insurer's name, address, and telephone number;  
12 c. Employer's name, address, and telephone number;  
13 d. Dates of injury; and  
14 e. A description of the injury and body parts injured.

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1 INTERROGATORY NO. 8:

2 If you have ever made a demand or filed a claim for money damages for personal injury, please:

- 3 a. Describe the date and location of injury.  
4 b. Describe the mechanics of the injury.  
5 c. Describe the injury you sustained.  
6 d. State the name, address and telephone number of each health care provider, medical  
7 doctor, osteopathic physician, chiropractor, physician's assistant or therapist or other  
8 health care provider you saw on account of said incident/injury and give an account and  
9 dates of the treatment/evaluation they provided. You may omit any providers previously  
10 listed if it is clear when they treated you.

11 DATED this \_\_\_\_\_ day of October, 2008.

12 Respectfully submitted,

13 LEWIS BRISBOIS BISGAARD & SMITH LLP

14 By: John P. Lavery  
15 JOHN P. LAVERY, ESQ.

16 Nevada Bar No. 004665

17 400 South Fourth Street, Suite 500

18 Las Vegas, NV 89101

19 (702) 893-3383

20 Attorneys for the Employer

21 FITZGERALDS CASINO/HOTEL

22 And its Third-Party Administrator

23 CANNON COCHRAN MANAGEMENT

24 SERVICES, INC.  
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LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 600  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the \_\_\_\_\_ day of October, 2008, service of the foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S FIRST SET OF INTERROGATORIES** was made this date by depositing a true and correct copy of the same in the United States Mail, first class postage fully prepaid therein, addressed as follows:

Gary Mogg  
2379 Cliffwood Drive  
Henderson, NV 89074

Melodie Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

\_\_\_\_\_  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested ) Claim No. : 08S31A167135  
Industrial Insurance Claim )  
 ) Hearing No. : 49522-NG  
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 of ) Appeal No. : 54033-GS  
 )  
 GARY MOGG, ) Employer :  
 ) FITZGERALDS CASINO/HOTEL  
 Claimant. )  
 ) Appeal Date : February 5, 2009  
 ) Appeal Time : 1:00 P.M.

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN  
MANAGEMENT SERVICES, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS

To: GARY MOGG, the claimant, and

To: MELODIE C. SWANSON, ESQ., of NEVADA ATTORNEY FOR INJURED  
WORKERS, the claimant's attorney.

Comes now, the Employer, FITZGERALDS CASINO/HOTEL (hereinafter referred to as the  
"Employer"), and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES,  
INC., (hereinafter referred to as the "Administrator"), by and through their attorneys, JOHN P.  
LAVERY, ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, and pursuant to Rule 34 of the  
Nevada Rules of Civil Procedure, request that the claimant, GARY MOGG (hereinafter referred to as  
the "claimant"), produce for inspection and copying the documents described in these papers.  
Production shall occur within thirty (30) days of commencement of the discovery period, at the offices  
of LEWIS BRISBOIS BISGAARD & SMITH LLP, 400 South Fourth Street, Suite 500, Las Vegas,  
Nevada, 89101.

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**SECTION I**

**DEFINITIONS AND INSTRUCTIONS**

The following definitions and instructions shall apply to each request:

**A. Definitions**

1. Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Nevada Rules of Civil Procedure 34(a). This term encompasses any written or paper material in your possession, under your control, available at your request or in the possession of, under the control of, or available at the request of any of your agents or attorneys and includes without limitation any written or graphic matter of every kind or description, however produced or reproduced, whether in draft, in final, original or reproduction, signed or unsigned, and regardless of whether approved, sent, received, redrafted or executed, including, but not limited to written communications, letters, correspondence, memoranda, notes, records, business records, photographs, tape or sound recordings, contracts, agreements, notations of telephone conversations or personal conversations, diaries, desk calendars, reports, computer records, data compilations of any type or kind, or materials similar to any of the foregoing, however denominated, and to whomever addressed. "Document" shall exclude exact duplicates when originals are available, but shall include all copies made different from originals by virtue of any writings, notations, symbols, characters, impressions or any marks thereon.

2. Identify (With Respect to Persons). When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery involving the identification of that person.

1                   3.     Identify (With Respect to Documents). When referring to documents, "to  
2 identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii)  
3 date of the document; and (iv) author(s), addressee(s) and recipient(s).

4                   4.     Person. The term "person" is defined as any natural person or business, legal or  
5 governmental entity or association.

6                   5.     Concerning. The term "concerning" means relating to, referring to, describing,  
7 evidencing, or constituting.

8                   6.     All/Each. The terms "all" and "each" shall be construed as all and each.

9                   7.     And/Or. The connectives "and/or" shall be construed either disjunctively or  
10 conjunctively as necessary to bring within the scope of the discovery request all responses that might  
11 otherwise be construed to be outside of its scope.

12                   8.     Number. The use of the singular form of any word includes the plural and vice  
13 versa.

14                   B.     Instructions

15                   1.     If you contend that any document which production is called for by these requests  
16 is privileged or otherwise beyond the scope of Rule 26 of the Nevada Rules of Civil Procedure, please  
17 identify that document with the following information:

- 18                   a.     The type of document (e.g., report, letter, notices, notice, contract, etc.);  
19                   b.     The number of pages it comprises;  
20                   c.     The name of the person or persons who prepared or authored the  
21 document;

22     ...

23     ...

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- d. The name of the person to whom the document was addressed or distributed or shown;
- e. The date on the document purporting to reflect the date the document was prepared or transmitted;
- f. The general description of the subject matter of the document; and, if applicable; and
- g. The name of the person who asked that the document be prepared.

2. If you contend that only a portion of the document which production is called for by these requests is privileged or otherwise not subject to production, please provide a copy of the entire document deleting the privileged or objectionable portion. With respect to the deleted portion, to the extent that the produced portion of the document does not do so, you should provide the same information which would be provided if the entire document were withheld as privileged.

3. These requests reach all documents which are within your possession, custody or control. A document is deemed within your possession, custody or control if you have the legal right to obtain it, whether or not you now have physical possession of it. Thus, you must obtain and produce all documents within the possession or custody of people or entities over whom you have control, such as attorneys, agents or others. If you have knowledge of the existence of documents responsive to these requests, but contend that they are not within your possession, custody, or control, please provide the following information:

- a. A description of the documents, including in your description as much detail as possible;

...

...

...

b. The identity of the person or entity, including his, her or its address, believed by you to have possession or custody of the document or any copies of them at this time; and

c. A description of the efforts, if any, you have made to obtain possession or custody of the documents.

4. These requests to produce shall be deemed to be continuing, and any additional documents relating in any way to these requests to produce or your original responses, which are acquired subsequent to the date of responding to these requests, up to and including the time of trial, shall be furnished to defendant promptly after such documents are acquired as supplemental responses to these requests to produce.

## SECTION 2

1. Please provide the signed release attached to this Request for Production.

DATED this \_\_\_\_\_ day of October, 2008.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: Robert M. Lavery

JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665

400 South Fourth Street, Suite 500

Las Vegas, NV 89101

(702) 893-3383

Attorneys for the Employer

FITZGERALDS CASINO/HOTEL

And its Third-Party Administrator

CANNON COCHRAN MANAGEMENT  
SERVICES, INC.

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

CERTIFICATE OF MAILING

I hereby certify that, on the \_\_\_\_\_ day of October, 2008, I served a true and correct copy of the above and foregoing FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS by depositing same in the United States Mail, first class postage fully prepaid therein, addressed as follows:

Gary Mogg  
2379 Cliffwood Drive  
Henderson, NV 89074

Melodie Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

**AUTHORIZATION FOR USE AND DISCLOSURE OF  
PROTECTED HEALTH INFORMATION AND OTHER RECORDS**

NAME: GARY MOGG DOB: \_\_\_\_\_ SSN: \_\_\_\_\_

I HEREBY GRANT PERMISSION TO AND AUTHORIZE THE USE OR DISCLOSURE OF THE ABOVE NAMED INDIVIDUAL'S RECORDS AS DESCRIBED BELOW TO THESE DESIGNATED ENTITIES:

**LEWIS BRISBOIS BISGAARD & SMITH LLP, 400 South Fourth Street, Suite 500, Las Vegas, Nevada, 89101, (702) 893-3383**

and/or: \_\_\_\_\_

**THE FOLLOWING INDIVIDUAL(S), MEDICAL PROVIDER(S), AND/OR ORGANIZATION(S) ARE AUTHORIZED TO MAKE THE DISCLOSURE. PLEASE INCLUDE THE NAME(S), ADDRESS(ES), DATE(S) OF SERVICE AND TYPE(S) OF TREATMENT. ATTACH ANOTHER SHEET, IF NECESSARY.**

|          |          |
|----------|----------|
| 1. _____ | 5. _____ |
| 2. _____ | 6. _____ |
| 3. _____ | 7. _____ |
| 4. _____ | 8. _____ |

Any and all of the following information are to be disclosed:

1. Medical reports, records, charts, notes, itemized billing, letters, X-rays, films, MRI's, CT scans and reports, etc.;
2. Personnel, attendance, employment, payroll, wage records, school records and transcripts, etc.;
3. Insurance records, including all claims, itemized billing, correspondence, payments and all documents within the file, etc.;
4. Traffic accident reports, police photographs and investigation regarding any criminal and/or civil litigation matters, etc.; and
5. Exclusions: \_\_\_\_\_

**PURPOSE:** The above information is being obtained to assist said authorized entities in evaluation of my claim for benefits or damages. A copy or facsimile of this document shall be considered as effective and valid as the original.

I understand that I have the right to revoke this authorization at any time. I understand that, if I revoke this authorization, I must do so in writing. I understand that revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire on the following date, event, or condition: \_\_\_\_\_. If I fail to specify an expiration date, event or condition, this authorization will expire in one (1) year.

I understand that authorizing the disclosure of this health information is voluntary and that I am entitled to a copy of this authorization and acknowledge receipt of a copy thereof. I can refuse to sign this authorization. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

I understand that signing this authorization may not condition treatment, payment, enrollment or eligibility for benefits.

\_\_\_\_\_  
Claimant/Patient/Natural Parent/Guardian/Legal Representative

\_\_\_\_\_  
Date

SUBSCRIBED AND SWORN to before me

this day \_\_\_\_\_ of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC of said State and County

4833-0280-2689.1

1 NEVADA DEPARTMENT OF ADMINISTRATION

2 BEFORE THE APPEALS OFFICER

3 In the Matter of the Contested ) Claim No. : 08S31A167135  
4 Industrial Insurance Claim )  
5 ) Hearing No. : 49522-NG  
6 of ) Appeal No. : 54033-GS  
7 )  
8 GARY MOGG, ) Employer :  
9 ) FITZGERALDS CASINO/HOTEL  
Claimant. ) Appeal Date : November 12, 2008  
10 ) Appeal Time : 1:30 P.M.

11 FITZGERALDS CASINO/HOTEL'S AND CANNON  
12 COCHRAN MANAGEMENT SERVICES INC.'S INDEX OF DOCUMENTS

13 COMES NOW the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party  
14 Administrator, CANNON COCHRAN MANAGEMENT SERVICES INC., by and through their  
15 attorneys, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and submit  
16 the attached Index of Documents relating to the above-referenced matter. This is to affirm that all Social  
17 Security numbers have been redacted or otherwise removed.

18 DATED this 24 day of October, 2008.

19 Respectfully submitted,

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By: John P. Lavery  
22 JOHN P. LAVERY, ESQ.

23 Nevada Bar No. 004665  
24 400 South Fourth Street, Suite 500  
25 Las Vegas, NV 89101

26 Attorneys for the Employer  
27 FITZGERALDS CASINO/HOTEL  
28 And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES INC.

EMPLOYER'S EXHIBIT # A

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 693-3383

26990-MOGG

4837-3747-7635.1

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3363

| <u>DATE</u> | <u>DOCUMENT</u>   | <u>PAGE NO(S)</u> |
|-------------|---|-------------------|
| 01-27-08    | Notice of Injury or Occupational Disease  | 1                 |
| 01-29-08    | Incident Data report  | 2-4               |
| 01-29-08    | Employer's Guest Safety Continuation Statement                                  | 5                 |
| 01-29-08    | Form C-4  | 6                 |
| 01-29-08    | Medical reports from Concentra  | 7-10              |
| 01-29-08    | Form C-3  | 11                |
| 02-06-08    | Medical reports from Concentra  | 12-14             |
| 02-26-08    | The Administrator's Notice of Claim Denial                                      | 15                |
| 03-04-08    | The claimant's "Request for Hearing" re claim denial                            | 16                |
| 06-12-08    | Hearing Officer's "Order of Dismissal" re #49522-NG                             | 17-18             |
| 06-24-08    | Hearing Officer's "Order of Rescission" re 49522-NG                             | 19-20             |
| 06-24-08    | Hearing Officer's "Decision and Order" affirming claim denial re #49522-NG      | 21-22             |
| 07-21-08    | Appeals Officer's "Order of Appointment of Nevada Attorney for Injured Workers" | 23-24             |

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 24<sup>th</sup> day of October 2008, service of the foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S INDEX OF DOCUMENTS** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3363

IR

08.0250

**"NOTICE OF INJURY OR OCCUPATIONAL DISEASE"**

(Incident Report)

Pursuant to NRS 616C.015

Name of Employer

GARY MOSS FITZGERALD

|   |  |  |   |
|---|--|--|---|
| Name of Employee<br><u>GARY MOSS</u>  |  | Social Security Number   | Telephone Number<br><u>702-476-8869</u>             |
| Date of Accident<br>(if applicable)<br><u>1-27-08</u>   | Time of Accident<br>(if applicable)<br><u>1336</u> | Place where accident occurred (if applicable)<br><u>SURVEILLANCE ROOM</u>  |   |
| What is the nature of the injury or occupational disease?<br><u>LOWER BACK, NECK, LEFT ARM</u>  |  | Are any body parts involved?   |   |
| Briefly describe accident or circumstances of occupational disease:<br>Note: If you are claiming an occupational disease, indicate the date on which employee first became aware of connection between condition and employment.<br><u>ON 1-27-08 AT 1336 GARY WAS ATTEMPTING TO PLACE FEET ON COUNTER AND THE CHAIR FLIPPED OVER</u> |  |  |   |
| Name of witness:<br><u>SHELDON KANNER</u>   |  |  |   |
| Did the employee leave work because of the injury or occupational disease?<br><input type="checkbox"/> YES<br><input checked="" type="checkbox"/> NO  | If yes, when (date and time)                       | Has the employee returned to work?<br><input checked="" type="checkbox"/> YES<br><input type="checkbox"/> NO   | If yes, when (date and time)<br><u>1/31/08 1500</u> |
| Was first aid provided?<br><input type="checkbox"/> YES<br><input checked="" type="checkbox"/> NO   | If yes, by whom?                                   | Name and address of treating physician, if applicable or known:<br><u>CONVENTER MEDICAL CENTERS</u><br><u>5300 S. PARKS AVE. SUITE 100</u><br><u>LAS VEGAS, NV 89120</u> |   |
| Did the accident happen in the normal course of work (if applicable)?<br><input checked="" type="checkbox"/> YES<br><input type="checkbox"/> NO   |  |  |   |
| Was anyone else involved?<br><input type="checkbox"/> YES<br><input checked="" type="checkbox"/> NO   | Name of others involved:                           |  |   |

MY EMPLOYER/INSURER MAY HAVE MADE ARRANGEMENTS TO DIRECT ME TO A HEALTH CARE PROVIDER FOR MEDICAL TREATMENT OF MY INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE. I HAVE BEEN NOTIFIED OF THESE ARRANGEMENTS.

Peter Rossini 1/29/08  
Supervisor's Signature Date

Gary Moss 1/29/08  
Signature of Injured or Disabled Employee Date

TO FILE A CLAIM FOR COMPENSATION, SEE REVERSE SIDE, SECTION ENTITLED, CLAIM FOR COMPENSATION (FORM C-4).

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: <http://govcha.state.nv.us> E-mail: [cha@govcha.state.nv.us](mailto:cha@govcha.state.nv.us)

Employee should sign, date and retain a copy.  
Original to Employer, Copy to Employee



## Incident File Full Report

Incident File #IN2008000250

## INCIDENT DATA

Date/Time Occurred: January 28, 2008 15:03 Incident Status: Open  
 Date/Time Created: January 28, 2008 15:03 Created By: ssinclair  
 Property: Security Location: Security  
 Sublocation: Security Annex

Incident Type: Team Member Injury

Specific:

Category:

Details:

On January 28, 2008 at 1440 (according to the Security Office clock) I, Security Special Sylvia Sinclair was working in the Security Office when I received a telephone call from Surveillance Agent Gary Mogg. Mr. Mogg said that he was waiting for a return call from Brian Swartwood in regards to an injury that occurred on January 27, 2008. I advised Mr. Mogg that he needed to complete an Injury Report. Mr. Mogg said that he was not at work and he was in extreme pain and needed the information to go to Concentra Medical Center. I told him I could take his injury information over the phone but he would need the paperwork from the report to take to Concentra.

Mr. Mogg said that on January 27, 2008 at approximately 1336 he was attempting to place his feet on the counter in the Surveillance Room when his chair flipped over. He further said that he injured his neck, left arm and lower back. Mr. Mogg said that he had a previously existing injury and the fall aggravated the injury.

Surveillance Agent Sheldon Kanner was present during the incident and completed a Written Statement.

Due to the location of the incident there is coverage of what happened.

Notification was made to Brian Swartwood (left message on answering machine).

Daily Log #: DL20080008335

Synopsis: Received call from Gary Mogg on injury to previous existing injury

## PARTICIPANT DATA

|                                   |                             |
|-----------------------------------|-----------------------------|
| Full Name: Sinclair, Sylvia       | Company:                    |
| Primary Role: Officer             | Participant Type: Personnel |
| Secondary Role:                   | Taken From Scene: No        |
| Police Contacted: No              | Police Contacted Result:    |
| Full Name: Mogg, Gary Lee         | Company:                    |
| Primary Role: Injured Team member | Participant Type: Personnel |
| Secondary Role:                   | Taken From Scene: No        |
| Police Contacted: No              | Police Contacted Result:    |
| Full Name: Kanner, Sheldon Daniel | Company:                    |
| Primary Role: Witness             | Participant Type: Personnel |
| Secondary Role:                   | Taken From Scene: No        |
| Police Contacted: No              | Police Contacted Result:    |

Reporting Party

Supervisor:

Printed: January 29, 2008 9:48

Page 1 of 2

**Incident File Summary Report**

January 28, 2008

Incident File #: IN000800002501 Property: Security

Daily Log #: DL20080008335

Location: Security

Time Created: 15:03

Sublocation: Security Annex

Created By: jsinclair

Secondary Operator:

Incident Type: Team Member Injury

Specific:

Category:

Status: Open

Synopsis: Received call from Gary Mogg on injury to previous existing injury

Details: On January 29, 2008 at 1440 (according to the Security Office clock) I, Security Special Sylvia Sinclair was working in the Security Office when I received a telephone call from Surveillance Agent Gary Mogg. Mr. Mogg said that he was waiting for a return call from Brian Swartwood in regards to an injury that occurred on January 27, 2008. I advised Mr. Mogg that he needed to complete an Injury Report. Mr. Mogg said that he was not at work and he was in extreme pain and needed the information to go to Concentra Medical Center. I told him I could take his injury information over the phone but he would need the paperwork from the report to take to Concentra.

Mr. Mogg said that on January 27, 2008 at approximately 1336 he was attempting to place his feet on the counter in the Surveillance Room when his chair flipped over. He further said that he injured his neck, left arm and lower back. Mr. Mogg said that he had a previously existing injury and the fall aggravated the injury.

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Printed: January 29, 2008 9:41 Page 1 of 2

**Incident File Summary Report**

Incident File #: N25000000251338 Property: Surveillance

Daily Log #: DL20080008338

Location: Surveillance

Time Created: 15:21

Sublocation:

Created By: skanner

Secondary Operator:

Incident Type: Risk Management

Specific: Team Member Injury

Category:

Status: Under Investigation

**Synopsis:** VCR-10; At 13:31 1/27/08, Surveillance Inspector Gary Mogg was sitting at his work station. Mogg sat back and raised his legs putting them on the desk. The chair Mogg was sitting in started to lean left and Mogg fell on his left side. I asked Mogg if he was ok or if he needed help. Mogg stated he did not need any help. It took a little time for him to get up. Mogg returned to his station. On 1/28/2008 at 05:47, Mogg called in sick. Surveillance notified Security about the fall and will follow up with an injury report on 1/29/2008.

**Details:**

This was a live observation

**Participants**

|                           |                             |
|---------------------------|-----------------------------|
| Full Name: Mogg, Gary Lee | Company Name:               |
| Primary Role: Complainant | Participant Type: Personnel |
| Secondary Role:           | Taken From Scene: No        |
| Police Contacted: No      | Police Contacted Result:    |

|                                   |                             |
|-----------------------------------|-----------------------------|
| Full Name: Kanner, Sheldon Daniel | Company Name:               |
| Primary Role: Witness             | Participant Type: Personnel |
| Secondary Role:                   | Taken From Scene: No        |
| Police Contacted: No              | Police Contacted Result:    |

30 JAN 2008 08:05

FITZGERALDS LAS VEGAS  
GUEST SAFETY CONTINUATION STATEMENT

|  |  |  |  |  |  |   |  |  |  |   |  |
|--|--|--|--|--|--|---|--|--|--|---|--|
| IFR<br>08-0250   |  | Type Statement<br><input type="checkbox"/> Claimant<br><input type="checkbox"/> Driver |  | <input type="checkbox"/> Guest<br><input type="checkbox"/> Other |  | <input checked="" type="checkbox"/> Witness |  | <input type="checkbox"/> Officer   |  | <input type="checkbox"/> Team Member/Department |  |
| Name<br>Sheldon Kanner   |  |  |  | Date of Birth<br>1-7-45  |  | Age<br>63                                   |  | Sex<br>M   |  | e-mail  |  |
| Address<br>7340 West Rossmore Ave Apt 1021   |  |  |  | City<br>Las Vegas  |  | State<br>NV                                 |  | Zip Code<br>89110  |  |   |  |
| Home Phone<br>(702) 457 0996   |  |  |  | Work Phone<br>11 1   |  |   |  | Hotel Guest<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |  | Room #  |  |
| AT 13:30 JAN 27, 2008 I was sitting at my work station I noticed that Gary Molt was started to lay back and put his feet on the back of chair. At that time the chair started to lean to the left the chair & Gary fell over and Gary landed on his left side. At that time I ask him if he was OK and needed any help. Gary took awhile to get up. He started to rub his neck again I ask him if he needed any assistance he replied no. I wrote the JAIL Bill to work. |  |  |  |  |  |   |  |  |  |   |  |
| 30 JAN 2008  |  |  |  |  |  |   |  |  |  |   |  |

I have read this statement and affirm that all information I have provided is correct to the best of my knowledge and belief.

SIGNATURE

DATE:

**WITNESS:**

TIME:

Page

•

Reviewed 01/22/2022

PLEASE TYPE OR PRINT

| EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED  |  |  |   |  |                           |   |  |
|---|--|--|---|--|---------------------------|---|--|
| First Name<br><b>GARY</b>   | M.I.<br><b>L</b>                                   | Last Name<br><b>MOSS</b>   | Birthday<br><b>12-4-59</b>  | Sex<br><b>M</b>  | SSN<br><b>000 00 0000</b> | Claim Number (insurer's use only)         |  |
| Home Address<br><b>2763 Chokecherry Av</b>  |  |  | Age<br><b>49</b>  | Height<br><b>5'11"</b>   | Weight<br><b>210</b>      | Social Security Number                    |  |
| City<br><b>Henderson</b>  | State<br><b>NV</b>                                 | Zip<br><b>89074</b>  | Telephone<br><b>702-476-8869</b>  |  | Primary Language Spoken   |   |  |
| Physical Address<br><b>SAME</b>   |  | City<br><b></b>  | State<br><b></b>  | Zip<br><b></b>   | Primary Language Spoken   |   |  |
| INSURER   |  | THIRD-PARTY ADMINISTRATOR  |   | Employee's Occupation (with Title When Injury or Occupational Disease Occurred)  |                           |   |  |
| Employer's Name/Company Name  |  |  |   |  |                           | Telephone                                 |  |
| Office Mail Address (Number and Street)   |  |  |   |  |                           |   |  |
| Date of Injury (if applicable)<br><b>1/27/08</b>  | Hour of Injury (if applicable)<br><b>am 1:30pm</b> | Date Employer Notified<br><b>1/27/08</b>   | Last Day of Work After Injury or Occupational Disease<br><b>1/27/08</b> | Supervisor to Whom Injury Reported<br><b>Jessie Brewer</b>   |                           |   |  |
| Address of Location of Accident (if applicable)<br><b>301 FEMONT ST</b>   |  |  |   |  |                           |   |  |
| What were you doing at the time of the accident? (if applicable)<br><b>Sitting in chair</b>   |  |  |   |  |                           |   |  |
| How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary.)<br><b>went to put legs up on corner of desk, chair flipped backwards, taking me to the floor, hitting back, neck, low back</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?<br><b>N/A</b>  |  |  |   |  |                           | Witnesses to the Accident (if applicable) |  |
| Nature of Injury or Occupational Disease  |  |  | Part(s) of Body Injured or Affected<br><b>Neck - Low back</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 MEDICAL, SURGICAL, PHYSIOLOGICAL, AND OCCUPATIONAL DISEASES ACTS UNDER THE STATE OF NEVADA, INCLUDING OR CHAPTER 665 OF NRS; I HEREBY AUTHORIZE ANY PHYSICIAN, 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 INADVERTENT, TREATMENT AND/OR COUNSELING FOR ABUS, PREVIOUS MEDICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOGRAPH OF THIS AUTHORIZATION SHALL BE AS A PART OF THE ORIGINAL. |  |  |   |  |                           |   |  |
| Date<br><b>1/29/08</b>  | Place<br><b>CHIEF</b>                              | Employee's Signature<br><b>GARY MOSS</b>   |   |  |                           |   |  |
| THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT   |  |  |   |  |                           |   |  |
| Place<br><b>W</b>   | Name of Facility<br><b>TIME</b>                    | Plans<br><b>POLANS</b>   |   |  |                           |   |  |
| Date<br><b>1/29/08</b>  | Hour<br><b>11:52</b>                               | Diagnosis and Description of Injury or Occupational Disease<br><b>C+T+L spine sprain</b>   |   | Is there evidence that the injured employee was under the influence of alcohol (or/and another controlled substance) at the time of the accident?<br><b>No</b> |                           |   |  |
| Treatment<br><b>Rx modified work</b>  |  | Have you advised the patient to remain off work two days if more?<br><b>No</b>   |   |  |                           |   |  |
| X-Ray Findings<br><b>(C)</b>  |  | If so, to the injured employee's capacity of: <input type="checkbox"/> full duty <input checked="" type="checkbox"/> modified duty       |   |  |                           |   |  |
| From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job related?<br><b>Yes</b>  |  | If modified duty, specify any limitations/recommendations:<br><b>see chart</b>   |   |  |                           |   |  |
| Is additional medical care by a physician indicated?<br><b>Yes</b>  |  | Do you know of any previous injury or disease contributing to this condition or occupational disease?<br><b>Neck + lower back injury</b> |   |  |                           |   |  |
| Date<br><b>1/29/08</b>  | Print Doctor's Name<br><b>DR. J. A. MOSS</b>       | I certify that the employer's copy of this form was mailed to the employer on:<br><b>1-30-08</b>   |   |  |                           |   |  |
| Address<br><b>5850 S FOLKERS ST 100</b>   |  | INSURER'S USE ONLY   |   |  |                           |   |  |
| City<br><b>W</b>  | State<br><b>NV</b>                                 | Zip<br><b>89074</b>  | Provider's Tax I.D. Number<br><b>602482</b>                             | Telephone<br><b>702-476-8869</b>   | Signature<br><b>MOSS</b>  |   |  |

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR PAGE 2 - INSURER/TPA PAGE 3 - EMPLOYER PAGE 4 - EMPLOYEE Form CH (Rev. 9/03)

PAGE 1



5850 S Polaris Ave Ste 100 LAS VEGAS, NV 89118 (702) 739-9957

|                   |                     |               |                         |
|-------------------|---------------------|---------------|-------------------------|
| Patient:          | Mogg, Gary          | Service Date: | 01/29/2008              |
| Soc. Sec. #       |                     | Injury Date:  | 01/27/2008              |
| Date of Birth:    | 12/04/1959          | Age:          | 48                      |
| Service Location: | CMC - LVG Las Vegas | Employer:     | Fitzgeralds/INJURY ONLY |
| Service ID #:     | 1200041508          |               | Attn: Brian Swartwood   |
| Claim #:          | 08S31A167135        |               | 301 Fremont Street      |
| Dictator:         | Adrian Adrian, MD   |               | LAS VEGAS, NV 89101     |
| Diagnosis:        | 847.0               |               | Cervical Strain         |

**Notes: CHIEF COMPLAINT:**

Patient is a 48 year old male employee of Fitzgeralds/INJURY ONLY who complains about his back which was injured on 01/27/2008 1:36:00 PM.

**PATIENT STATEMENT:**

Patient states: "Went to put legs up on corner of desk, chair flipped backwards, taking me to the floor, hitting L. arm, neck, low back."

**HISTORY OF PRESENT ILLNESS:**

This is a 48 y/o M who injured his neck on 01/27/2008 around 1:36 PM when he flipped backwards with his executive chair hurting his nec, left elbow and lower back. The pain began immediately. The pain is located on neck, Thoracic and lumbar. The pain is described as acute, mild and aching. Pain Intensity Level: 5/10. The symptoms are exacerbated by lifting, pulling, pushing, turning head, flexion of neck, extension of neck, activity or pressure. The symptoms are alleviated by resting or medications. Has prior history of neck injury and lower back injuries. The pain did not radiate. No weakness associated stiffness. Denies weakness of his entire body, urinary incontinence, fecal incontinence, dysuria, shortness of breath, difficulty breathing, morning stiffness and radicular symptoms.

**SOCIAL HISTORY:** Noncontributory based upon review of comprehensive questionnaire.

**FAMILY HISTORY:** Noncontributory based upon review of comprehensive questionnaire.

**PAST MEDICAL HISTORY:**

Past Medical History: See HPI.

**Current Medications:**

- Oxycodone/acetaminophen
- methadone Lyrical
- Soma
- temazepam

**Allergies:** Denies known allergies.

**ROS:**

**GENERAL:** No fever, chills, fatigueability or weight loss.

**CHEST:** Denies DOE, cyanosis, wheezing, cough and sputum production.

**CARDIOVASCULAR:** Denies chest pain, PND, orthopnea or reduced exercise tolerance.

**MUSCULOSKELETAL:** See HPI.

All other systems negative.

**PZ:**

**VITAL SIGNS:** See nurses notes.

**APPEARANCE:** Well nourished, well developed, in no acute distress. No deformities.

**MENTAL STATUS:** Patient alert, oriented x 3 & conversant.

Dictated But Not Read

Dictated By: Adrian Adrian, MD

Dictated On: Jan 29 2008 11:05AM

Printed Date: 04/28/2008

58492008008



5850 S Polaris Ave Ste 100 LAS VEGAS, NV 89118 (702) 739-9957

|                   |                     |               |                         |
|-------------------|---------------------|---------------|-------------------------|
| Patient:          | Mogg, Gary          | Service Date: | 01/29/2008              |
| Soc. Sec. #       |                     | Injury Date:  | 01/27/2008              |
| Date of Birth:    | 12/04/1959          | Age:          | 48                      |
| Service Location: | CMC - LVG Las Vegas | Employer:     | Fitzgeralds/INJURY ONLY |
| Service ID #:     | 1200041508          |               | Attn: Brian Swartwood   |
| Claim #:          | 08S31A167135        |               | 301 Fremont Street      |
| Dictator:         | Adrian Adrian, MD   |               | LAS VEGAS, NV 89101     |
| Diagnosis:        | 847.0               |               | Cervical Strain         |

Notes: SKIN: Normal. No lesions.  
HEENT: Atraumatic, normocephalic. No pharyngeal erythema or exudate. No stridor.

CHEST: Lungs clear to auscultation.

CARDIOVASCULAR: Normal S1, S2. No murmurs or gallops.

ABDOMEN: Bowel sounds normal. No tenderness or masses.

MUSCULOSKELETAL:

Cervical:

No external evidence of trauma. There is no bruising, skin irritation, skin discoloration or swelling.

The patient exhibits excessive soft tissue tenderness to gentle palpation directly over the spinous processes of the cervical vertebrae that does not localize to any level of the cervical spine. There is also excessive ST diffuse tenderness to very gentle palpation of the soft tissue. The patient has excessive verbal complaints of pain with groaning and withdraw from gentle palpation. Decreased active Range of Motion: All directions: 5 degrees with pain Tender posterior cervical nerve root Muscle spasm normal strength Normal intrinsic strength the opposite side was unremarkable. The remainder of the musculoskeletal examination was unremarkable.

Thoracic: No evidence of external trauma no pain on shoulder abduction or shoulder adduction no pain shoulder adduction No ecchymosis. No swelling. No point tenderness. No tenderness. Reflexes symmetrical

Lumbar: Normal FROM w/o pain No tenderness. No ecchymosis No palpable spasm. No contusion/ecchymosis No evidence of external trauma.  
Negative bilateral leg raise.

Full hip motion w/o pain right

Full hip motion w/o pain left

Normal strength

Reflexes symmetric.

Normal gait. No pain on pelvic compression Normal sensation No CVA tenderness. Negative Faberes Test.

PERIPHERAL VASCULAR: Radial, femoral and pedal pulses present and symmetrical. No edema.

NEUROLOGIC:

Cranial nerves intact: PERRLA Fundoscopic exam is normal.

Motor exam grossly normal

Sensory exam grossly normal

Reflexes symmetrical in the upper and lower extremities.

The remainder of the examination was unremarkable.

X-RAY / LAB REPORT:

C-Spine X-Ray:

C-spine x-ray: Report pending L spine: report pending.

ASSESSMENT:

Dictated But Not Read

Dictated By: Adrian Adrian, MD

Dictated On: Jan 29 2008 4:05AM

Printed Date: 04/28/2008

Page: 2



5850 S Polaris Ave Ste 100 LAS VEGAS, NV 89118 (702) 739-9957

|                   |                       |               |                         |
|-------------------|-----------------------|---------------|-------------------------|
| Patient:          | Mogg, Gary            | Service Date: | 01/29/2008              |
| Soc. Sec. #       |                       | Injury Date:  | 01/27/2008              |
| Date of Birth:    | 12/04/1959 Age: 48    | Employer:     | Fitzgeralds/INJURY ONLY |
| Service Location: | CMC - LVG Las Vegas   |               | Attn: Brian Swartwood   |
| Service ID #:     | 1200041508            |               | 301 Fremont Street      |
| Claim #:          | 08S31A167135          |               | LAS VEGAS, NV 89101     |
| Dictator:         | Adrian Adrian, MD     |               |                         |
| Diagnosis:        | 847.0 Cervical Strain |               |                         |

Notes: 1. Cervical strain. 847.0.  
2. Lumbar strain. 847.2.  
3. Thoracic strain. 847.1.

## PLAN:

## MEDICATIONS:

Written prescription given for,  
Soma 350 mg PO QHS PRN #10  
And Lortab 5/500 mg 1 TB PO Q 4-6 HRS PRN for pain#20, advised patient of side effects.

## PHYSICAL THERAPY:

Schedule for therapy 3 times per week for 2 weeks. Therapy is ordered to expedite the patients return to regular work and facilitate the patient reaching MMI as quickly as possible. Ice 3 to 6 times per day for 20 minutes and keep extremity elevated for at least one day, then alternate with warm moist heat daily.

## DURABLE GOODS:

- cervical collar
- cervical pillow
- lumbar roll

## ACTIVITY STATUS:

Modified activity  
- Off work rest of shift with limited activity as follows:  
Back or shoulder injury  
- No lifting over 10 lbs.  
- No pushing/pulling over 10 lbs. of force.  
- No reaching above shoulders.

## RETURN FOR EVALUATION: Tuesday February 5, 2008

Lifting precautions given. Patient is instructed to avoid twisting, when pulling or lifting. Advised of medication usage and side effects. Diagnosis, treatment plan and expectations were discussed with the patient. Patient had opportunity to ask questions, they were all answered. Patient voiced understanding and agreement with the treatment plan. Patient advised to return to the clinic sooner if symptoms worsen or new ones develop.

6 MAY 2008 00:00

Electronically signed by ADRIAN ADRIAN, MD.

Dictated But Not Read

Dictated By: Adrian Adrian, MD

Dictated On: Jan 29 2008 2:05AM

Printed Date: 04/28/2008



Claim Number:

### Concentra Medical Centers

6850 S Polaris Ave Ste 100 LAS VEGAS, NV 89118  
Phone: (702) 739-0857 Fax: (702) 735-9370

Service Date: 01/29/2008

Case Date: 01/27/2008

## Physician Activity Status Report

Patient: Mogg, Gary

SSN:

Address: 2763 Chokecherry Ave  
HENDERSON, NV 89074

Home: (702) 476-6869

Work: (702) 388-2483 Ext:

Employer Location: Fitzgeralds/INJURY ONLY

Address:

Attn: Brian Swartwood, 301 F

LAS VEGAS, NV 89101

Auth. by:

Gregg Brewer

Contact: Brian Swartwood

Role: Primary Contact

Phone: (702) 388-2448 Ext.:

Fax: (702) 388-2238

This Visit: Time In: 12:58 am

Time Out: 02:25 am

Recordable: N/A

Visit Type: New

Treating Provider: Adrian Adrian, MD

#### Medications:

Diagnosis: 847.0 Cervical Strain

847.1 Thoracic Strain

847.2 Lumbar Strain

☐ Dispensed Prescription Medication to Patient

☐ Dispensed Over-The-Counter Prescription

☒ Written Prescription given to Patient

#### Patient Status:

##### Modified Activity - Returning for follow-up visit

##### Restricted Activity (In effect until next physician visit):

Return to work on 01/29/2008 with the following restrictions

No lifting over 10 lbs.

No pushing and/or pulling over 10 lbs. of force

No reaching above shoulders

Remarks: PT 3xweek for 2 weeks.

30JAN2008CCM

#### Employer Notice:

The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

#### Anticipated Date of Maximum Medical Improvement:

#### Actual Date of Maximum Medical Improvement:

#### Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Tuesday February 5, 2008 11:30 pm

Provider/Facility: Adrian Adrian, 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 |  | Please Type or Print  |   | EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE  |   |
|--|--|---|---|---|---|
| EMPLOYER   | Employer's Name<br><b>FREDERICKS CHAIN/HOTEL</b>   | Name of Business (mfg., etc.)<br><b>CHAINING</b>  | FEDIN<br><b>88-0453840</b>  | OSHA Log #<br><b>137</b>  |   |
|  | Office Mail Address<br><b>301 FREMONT ST</b>   | Location ... If different from mailing address<br><b>SAME</b>   | Telephone<br><b>(702) 388-2245</b>  |   |   |
| EMPLOYEE   | City<br><b>LAS VEGAS</b>   | State<br><b>NV</b>  | Zip<br><b>89101</b>   | INSURER<br><b>ZURICH</b>  | THIRD-PARTY ADMINISTRATOR<br><b>CCMSI</b> |
|  | First Name<br><b>LOREN L</b>   | Last Name<br><b>MOGEL</b>   | Social Security<br><b>12-4-1957</b>   | Birthdate<br><b>48</b>  | Primary Language Spoken<br><b>ENGLISH</b> |
|  | Home Address (Number and Street)<br><b>2763 CHICKENHURST</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 |   |
| ACCIDENT OR DISEASE  | Was the employee paid for the day of injury?<br>(If applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |   | How long has this person been employed by you in Nevada?<br><b>1 yr 11 mo</b>   |   |   |
|  | In which state was employee hired?<br><b>NEVADA</b>  | Employee's occupation (job title) when hired or disabled<br><b>SECURITY GUARD</b>   | Department in which regularly employed<br><b>SECURITY</b>   |   |   |
|  | Telephone (Home)<br><b>446-6867</b>  | Is the injured employee a corporate officer? ... sole proprietor? ... partner?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was employee in your employ when injured or disabled by occupational disease (OSD)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |   |   |
| INJURY OR DISEASE  | Date of injury (if applicable)<br><b>1-27-2008</b>   | Time of injury (hours: minutes AM/PM, or approximate)<br><b>1:36 PM</b>   | Date employer notified of injury or OSD<br><b>1-27-2008</b>   | Supervisor to whom injury or OSD reported<br><b>BRUCE FINEBERG</b>  |   |
|  | Address or location of accident (Also provide city, county, state) (if applicable)<br><b>301 FREMONT ST LAS VEGAS NEVADA</b>   |   | Accident on employer's premises? (if applicable)<br><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)<br><b>SITTING IN CHAIR TRYING TO PUT FEET UP ON DESK</b><br><b>EMPLOYEE BEGAN WORK AT 6:00 AM - 1:36 PM - WAS SITTING IN A NOCKING CHAIR AND TRIED TO PUT HIS FEET ON A DESK WHEN THE CHAIR MOVED AND HE FELL</b>  |   |   |   |   |
| INJURY OR DISEASE  | Specify machine, tool, substance, or object most closely connected with the accident (if applicable)<br><b>ROLLING CHAIR</b>   | Witness<br><b>SHEDD KAWOKE</b>  | Was there more than one person injured in this accident? (if applicable)<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |   |
|  | Part of body injured or affected<br><b>NECK AND BACK</b>   | If fatal, give date of death<br><b>NA</b>   | Witness<br><b>N/A</b>   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |
|  | Nature of injury or Occupational Disease (scratches, cuts, bruise, strain, etc.)<br><b>CERVICAL STRAIN</b><br><b>THORACIC STRAIN</b><br><b>LUMBAR STRAIN</b>   | Witness<br><b>N/A</b>   | Did employee return to next scheduled shift after accident? (if applicable)<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   |   |
| IMPORTANT LOST TIME INFO   | If validity of claim is doubtful, state reason<br><b>NA</b>  |   | Location of initial treatment<br><b>SSCC S. POLARIS LAS VEGAS NV</b>  |   |   |
|  | Treating physician/chiropractor name<br><b>ADRIAN ADRIAN MD</b>  |   | Emergency Room <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   |   |
|  | How many days per week does employee work?<br><b>5</b>   | From <b>8:00 AM</b> <input type="checkbox"/> pm To <b>4:00 PM</b> <input type="checkbox"/> pm   | Last day wages were earned<br><b>1-27-2008</b>  |   |   |
| IMPORTANT LOST TIME INFO   | Scheduled days off<br><input type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input checked="" type="checkbox"/> W <input type="checkbox"/> T <input type="checkbox"/> F <input type="checkbox"/> S  | Are you paying injured or disabled employee's wages during disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No            |   |   |   |
|  | Date employee was hired<br><b>2-1-2007</b>   | Last day of work after injury or disability<br><b>1-27-2008</b>   | Date of return to work<br><b>1-31-2008</b>  | Number of work days lost<br><b>130</b>  |   |
|  | 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 checked="" type="checkbox"/> No <input type="checkbox"/> Do not know |   |   |
| IMPORTANT LOST TIME INFO   | 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 6 days or more, attach wage verification form (D-6). 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 ends on: <input checked="" type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THU <input type="checkbox"/> SAT <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                          | On the date of injury or disability the employee's wage was: <b>\$15</b> per hour <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 Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: <a href="http://govcha.state.nv.us">http://govcha.state.nv.us</a> E-mail: <a href="mailto:cha@govcha.state.nv.us">cha@govcha.state.nv.us</a>  |   |   |   |   |
| Insurer's Daily  | I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I have not affixed 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<br><b>71-2-2008</b>  | Date<br><b>1/29/08</b>  |   |
|  | Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3 <sup>rd</sup> Party   | Disputed Wage   | Account No.   | Class Code  |   |
|  | Claims Examiner's Signature  | Date  | Status Clerk  | Date  |   |

Form C-3 (rev. 11/05)

ORIGINAL - EMPLOYER

PAGE 2 - INSURER/TPA

PAGE 3 - EMPLOYEE

**Concentra Medical Centers**  
 5250 S Polaris Ave Ste 100 LAS VEGAS, NV 89118  
 Phone: (702) 730-8057 Fax: (702) 730-8370

## Transcription

|                          |                     |                      |                         |
|--------------------------|---------------------|----------------------|-------------------------|
| <b>Patient:</b>          | Mogg, Gary          | <b>Service Date:</b> | 2/6/2008                |
| <b>Soc. Sec. #:</b>      |                     | <b>Injury Date:</b>  | 1/27/2008               |
| <b>Date of Birth:</b>    | 12/4/1959 Age: 48   | <b>Employer:</b>     | Fitzgeralds/INJURY ONLY |
| <b>Service Location:</b> | CMC - LVG Las Vegas | <b>Dictated By:</b>  | Milan Parekh, M.D.      |
| <b>Service ID #:</b>     | 1200046896          | <b>Diagnosis:</b>    | 847.0 Cervical Strain   |

### Notes:

#### PROGRESS REPORT

**DATE OF INJURY:** 01/27/2008

**SUBJECTIVE:** Patient is a 40-year-old male employee of Fitzgerald's who presents today with complaints of neck and back pain. Says it is worse. Patient is out of medications. Patient apparently was sitting in a chair and just putting his legs up on the corner of the desk when the chair fell backwards. Patient complains of neck pain and low back pain. In general, all of his back. He apparently has an extremely large preexisting history of back pain issues. He says in 1972 he was involved in a motorcycle accident and then a car accident in 1977 as well as in 1984.

He had a work accident he says in 1982 and a left knee injury in 1987. He apparently did not have any kind of back vertebral fractures or disc injuries, but complains of disc bulges and bone spurs and degenerative disc issues for the most part. Also had shoulder injury in 1992 and 1993. He says in the year 2000 he had a lipoma that was removed at the base of the neck and has always had pain since then. He sees a spine surgeon by the name of Dr. William Smith who took him off of his methadone that he was on and put him on oxycodone of 8 pills a day. He is also on Lyrica for nerve pain in his left hand. He is also on Temazepam for sleep. Patient says that he has been off of the methadone for 37 days and he feels he is not being controlled well. Patient says he was given prescriptions for 30 days by Dr. Smith and he says that he called his office for a refill of the oxycodone, but they had refused because they said that it hadn't been quite 30 days and he says he is 33 days now, meaning 3 days off the medications. Patient is seeing the surgeon who says on Monday they are doing a CT scan. An MRI was also done of his cervical spine. Patient is not on any other medications otherwise. He was prescribed Lortab here.

**OBJECTIVE: VITAL SIGNS:** Done. **GENERAL:** Well-developed, well-nourished patient who subjectively displays pain. He is alert and oriented x3, can speak well without any difficulties. **HEAD:** No evidence of trauma is appreciated. **SKIN:** No skin changes are appreciated. **EYES:** EOMI. **PERRLA:** TMs: Clear. **THROAT:** Clear. **NECK:**

Supple, but patient has subjective complaints of tenderness with the slightest of touch to the skin of the neck, on any part of the neck or the upper back, mid back or lower back. Patient complains of pain anteriorly at the rib margins. Patient has overall good range of motion as I speak with him and he is able to move, but on examination he displays decreased range of motion on lateral rotation of the spine, only up to about 20 degrees bilaterally. Patient is able to sit and yet cannot bend forward up to even more than 30 degrees when standing. Patient is able to ambulate.

Dictated But Not Read  
 Dictated On: 2/6/2008 2:15 PM

Dictated By: Milan Parekh, M.D.

Last Update: 02/07/2008 4:15:50  
 Transcription Page 1 of 2

Last Updated By: transapp  
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Transcription Printed Date: 02/07/2008  
 Page Revision Date: 04/07/2004

7FEB2008CCN

**Concentra Medical Centers**  
 5850 S Posada Ave Ste 100 LAS VEGAS, NV 89116  
 Phone: (702) 736-9957 Fax: (702) 736-4370

## Transcription

|                          |                     |                      |                         |
|--------------------------|---------------------|----------------------|-------------------------|
| <b>Patient:</b>          | Mogg, Gary          | <b>Service Date:</b> | 2/6/2008                |
| <b>Soc. Sec. #:</b>      |                     | <b>Injury Date:</b>  | 1/27/2008               |
| <b>Date of Birth:</b>    | 12/4/1959 Age: 48   | <b>Employer:</b>     | Fitzgeralds/INJURY ONLY |
| <b>Service Location:</b> | CMC - LVG Las Vegas | <b>Dictated By:</b>  | Milan Parekh, M.D.      |
| <b>Service ID #:</b>     | 1200046896          | <b>Diagnosis:</b>    | 847.0 Cervical Strain   |

### Notes:

**ASSESSMENT:** Back pain. Previous history of a lot of preexisting issues with possible preexisting disc disease. Patient's lumbar spine x-rays that have been done here indicated narrowing of L1-L2 disc space with osteophyte formation anteriorly, grade I spondylolisthesis at L5 anteriorly on S1 with bilateral spondylolysis at this level. On the cervical spine, osteophyte formation present anterior and posterior C5-C6, C6-C7. Spinous and transverse processes appear normal. The prevertebral soft tissue is unremarkable. ——— spondylolysis.

**PLAN:** I will go ahead and prescribe patient Lortab 7.5/500 p.o. q.6h. p.r.n., dispensed #24. Patient has his appointment in 5 days with the specialist. I will also refer him to physiatry because I do not think this patient will ever improve in our care. Will continue to seek medications for pain and clearly with the preexisting conditions, he needs to go for further advanced level of care. I will go ahead and fill out the referral for physiatry. In the meantime, he is seeing his specialist through his medical insurance.

DD: 02/06/08

DT: 02/06/08

MEDQ/JOB: 301891-313597313

RD: 02/06/08

7FEB2008CCMSI

Dictated But Not Read  
 Dictated On: 2/6/2008 2:15 PM

Dictated By: Milan Parekh, M.D.

Last Update: 02/07/2008 4:15:59  
 r\_transcription Page 2 of 2

Last Updated By: transapp  
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Transcription Printed Date: 02/07/2008  
 Form Revision Date: 01/05/2008

Claim Number:

# Concentra Medical Centers

3850 S Polaris Ave Ste 100 LAS VEGAS, NV 89119  
Phone: (702) 739-8867 Fax: (702) 739-8370

Service Date: 02/06/2008

Case Date: 01/27/2008

## Physician Activity Status Report

Patient: Mogg, Gary

SSN:

Address: 2783 Chokecherry Ave  
HENDERSON, NV 89074

Employer Location: Fitzgerald/INJURY ONLY Contact: Brian Swartwood

Address: Attn: Brian Swartwood, 301 Firle: Primary Contact

Home: (702) 476-8869

LAS VEGAS, NV 89101

Phone: (702) 388-2448 Ext.:

Work: (702) 388-2483 Ext.:

Auth. by: Gregg Brewer

Fax: (702) 388-2238

This Visit: Time In: 12:30 pm

Time Out: 02:27 pm

Recordable: N/A

Visit Type: Flackback

Treating Provider: Milan S. Parekh, MD

Medications:

Diagnosis: 847.0 Cervical Strain

847.1 Thoracic Strain

847.2 Lumbar Strain

☐ Dispensed Prescription Medication to Patient

☐ Dispensed Over-The-Counter Prescription

☒ Written Prescription given to Patient

### Patient Status:

Modified Activity - Referred, but returning for follow-up visit

Restricted Activity (In effect until next physician visit):

Return to work on 02/06/2008 with the following restrictions

No lifting over 10 lbs.

No pushing and/or pulling over 10 lbs. of force

No reaching above shoulders

Remarks:

Employer Notice: The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

Anticipated Date of Maximum Medical Improvement:

Actual Date of Maximum Medical Improvement:

### Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Wednesday February 20, 2008 7:00 am

Provider/Facility: Milan S. Parekh, MD

6FEB20080005

Activity Status Report

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AA/EEO Employer

Revision Date: 10/31/2001



February 26, 2008

Gary Mogg  
2763 Chokecherry Ave  
Henderson, NV 89074

RE: Claim Number: 08S31A167135  
Date of Injury: 01/27/08  
Employer: Fitzgerald's  
Insurer: Zurich Insurance  
Body Part/Injury: Neck, Upper/Lower Back strain

**NOTICE OF CLAIM DENIAL**

Dear Mr. Mogg,

We are the Workers' Compensation Administrator for your employer/insurer. We are in receipt of a claim filed by you for the injury date and body part indicated above. Please be advised that after careful review of the documentation pertaining to your reported industrial injury, it has been determined that it does not meet the criteria required by Nevada Revised Statutes for the following reason(s):

- NRS 616C.150 requires that an employee must establish by a preponderance of evidence that an injury arose out of and in the course of employment.
- Deviation from course and scope of employment.
- NRS 616C.230 compensation is not payable for an injury caused by the employee's willful intention to injure himself.

From the description and circumstances outlined in your claim, it does not appear to meet the statutory requirements listed above to be eligible for coverage under chapters 616 or 617 of the Nevada Workers' Compensation code. Based on the above, the insurer respectfully declines to accept liability for the claim submitted, but the first date of treatment will be paid under this claim. We suggest that you submit any additional claims to your private insurance carrier for reimbursement of any medical expenses.

If you do not agree with this determination, you have the right to request a hearing regarding the matter. If this is your intention, please complete the enclosed "Request for Hearing" form and return it to the Department of Administration, Hearing Division, within seventy (70) days from the date of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'April Taft'.

April Taft  
Claims Specialist

Enclosure(s): Form D-12a

cc: File  
DIR  
Concentra Medical Centers  
Fitzgerald's

P.O. Box 35350  
Las Vegas, NV 89133-5350  
702-933-4800 phone  
702-933-4861 fax

# 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

| EMPLOYEE INFORMATION   |                  |                   |
|--|------------------|-------------------|
| Employee's Name: <u>GARY MAGG</u>                            |                  |                   |
| Address: <u>2763 Chokecherry Av.</u>                         |                  |                   |
| City: <u>HENDERSON</u>                                       | State: <u>NV</u> | Zip: <u>89074</u> |
| Employee's Telephone Number: <u>378-4603</u>                 |                  |                   |
| Claim No. <u>08531A167135</u> Date of Injury: <u>1/27/08</u> |                  |                   |
| INSURER INFORMATION  |                  |                   |
| Insurer's Name:  |                  |                   |
| Address:   |                  |                   |
| City:  | State:           | Zip:              |
| Insurer's Telephone Number:                                  |                  |                   |

| EMPLOYER INFORMATION                         |                  |                   |
|--|------------------|-------------------|
| Employer's Name: <u>Fitzgeralds Casino</u>   |                  |                   |
| Address: <u>301 Fremont ST</u>               |                  |                   |
| City: <u>LAS VEGAS</u>                       | State: <u>NV</u> | Zip: <u>89101</u> |
| Employer's Telephone Number: <u>388-2400</u> |                  |                   |
| THIRD-PARTY ADMINISTRATOR (TPA) INFORMATION  |                  |                   |
| TPA's Name: <u>CCMSI</u>                     |                  |                   |
| Address: <u>PO Box 35350</u>                 |                  |                   |
| City: <u>Las Vegas</u>                       | State: <u>NV</u> | Zip: <u>89133</u> |
| TPA's Telephone Number: <u>702-933-4800</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:

① I WAS ON THE JOB, ON CAMERA ② This department doesn't get breaks, so I was trying to stretch my legs out ③ NO Rule that states, can't put feet up on desk. ④ Faulty chair ⑤ Doctor states sprain of Cervical, lumbar, thorax.

This request for hearing is filed by, or on behalf of:

☒ The Injured Employee

☐ The Employer

and is dated this 4TH day of MARCH, 2008

Larry Magg  
Signature of Injured Employee/Employer

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

#49522-N6

D-12a (Rev. 06/05) 11

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

The Claimant's request for hearing was filed on March 6, 2008 and a hearing was scheduled for and heard on June 4, 2008 in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was neither present nor represented by legal counsel. The Employer was neither present nor represented by legal counsel. CCMSI was present via MIKE KOGLER.

**ISSUE**


The Claimant appealed the determination of CCMSI dated February 26, 2008.

The issue before the Hearing Officer is CLAIM DENIAL.

**ORDER OF DISMISSAL**

The claimant failed to appear. Therefore, this matter is hereby **DISMISSED**. Any hearing previously scheduled in this matter is hereby **VACATED**.

IT IS SO ORDERED this 12<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Nora Garcia  
Hearing Officer

**APPEAL RIGHTS**

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

08JUN2008



**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 duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS NV 89101

DEBORAH JONES  
CCMSI  
P O BOX 35350  
LAS VEGAS NV 89133-5350

Dated this 12<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Ava B. Tucker  
Employee of the State of Nevada

13150200

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135


GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

**ORDER OF RESCISSION**

A hearing was scheduled for and heard on June 4, 2008 that resulted in an Order of Dismissal due to the claimant's failure to appear. This Order of Dismissal was in error as the claimant was present. The Order of Dismissal entered on June 12, 2008 is hereby rescinded with a Decision and Order will follow under separate cover.

IT IS SO ORDERED this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Nora Garcia  
Hearing Officer

25JUN2008C0

19

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 duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS NV 89101

DEBORAH JONES  
CCMSI  
P O BOX 35350  
LAS VEGAS NV 89133-5350

Dated this \_\_\_\_ day of June, 2008.

\_\_\_\_\_  
Ava B. Tucker  
Employee of the State of Nevada

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

The Claimant's request for hearing was filed on March 6, 2008 and a hearing was scheduled for April 17, 2008. The hearing was reset and held on June 4, 2008 in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present but not represented by legal counsel. The Employer was neither present nor represented by legal counsel. CCMSI was present via MIKE KOGLER.

**ISSUE**

The Claimant appealed the determination of CCMSI dated February 26, 2008.  
The issue before the Hearing Officer is CLAIM DENIAL.

**DECISION AND ORDER**

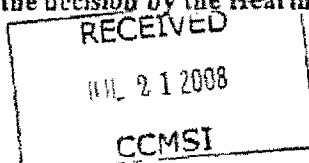
The facts of this case are that on January 27, 2008 the claimant was at work and went to put his legs on the corner of a desk that caused his chair to flip backwards. The claimant fell to the floor and hurt his left arm, neck and low back. The Supreme Court of Nevada has held that a positional risk test is incompatible with the Nevada Industrial Insurance Act. That to give rise to an industrial claim there must be a showing that the injury was caused by an increased risk posed by the employment. In this case, the act of resting his legs on the desk is deemed to not be connected to the employment nor an increased risk posed by the employment. Accordingly, the determination of the Insurer is hereby **AFFIRMED**. (See Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005))

IT IS SO ORDERED this 24<sup>th</sup> day of June, 2008.

  
Nora Garcia  
Hearing Officer

**APPEAL RIGHTS**

Pursuant to NRS 610C.345(1), should any party desire to appeal this final decision of the Hearing Officer, a request for appeal must be filed with Appeals Officer within thirty (30) days after the date of the decision by the 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 duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

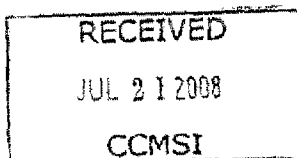
GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS NV 89101

DEBORAH JONES  
CCMSI  
P O BOX 35350  
LAS VEGAS NV 89133-5350

Dated this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Ava B. Tucker  
Employee of the State of Nevada



FILED

JUL 21 2008

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 08S31A167135

Appeal No: 54033-GS

GARY MOGG,

Claimant.

ORDER FOR APPOINTMENT OF  
NEVADA ATTORNEY FOR INJURED WORKERS

The Appeals Officer, having received and considered the Claimant's written request for the appointment of the Nevada Attorney for Injured Workers; finds the Claimant would be better served by legal representation and accordingly;

IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this matter.

IT IS SO ORDERED this 21st day of July, 2008.

Geraldine H. Schwartzer  
GERALDINE H SCHWARTZER, ESQ.  
APPEALS OFFICER

RECEIVED

JUL 21 2008

CCMSI

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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 ORDER FOR APPOINTMENT OF NEVADA ATTORNEY FOR INJURED WORKERS was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

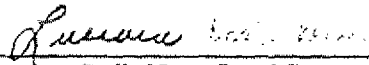
GARY MOGG  
2379 CLIFFWOOD DR  
HENDERSON NV 89074

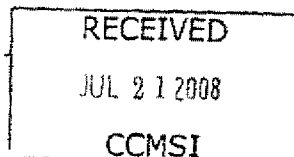
NAIW  
GENERAL COUNSEL  
2200 S RANCHO DR #230  
LAS VEGAS NV 89102

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS NV 89101

CCMSI  
DEBORAH JONES  
P O BOX 35350  
LAS VEGAS NV 89133-5350

Dated this 21<sup>st</sup> day of July, 2008.

  
Luciana Della Neve, Legal Secretary II  
Employee of the State of Nevada



1 NEVADA DEPARTMENT OF ADMINISTRATION

2 BEFORE THE APPEALS OFFICER

3 In the Matter of the Contested  
4 Industrial Insurance Claim

5 of

6 GARY MOGG,

7 Claimant.

Claim No. : 08S31A167135

Hearing No. : 49522-NG

Appeal No. : 54033-GS

Employer :  
FITZGERALDS CASINO/HOTEL

Appeal Date : November 12, 2008

Appeal Time : 1:30 P.M.

10 FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN  
11 MANAGEMENT SERVICES INC.'S APPEAL MEMORANDUM

12 COMES NOW the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party  
13 Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through their  
14 attorneys, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and for their  
15 appeal memorandum, state as follows:  
16

17 1. That the Administrator's February 26, 2008 determination, closing the industrial  
18 insurance claim, must be affirmed as a matter of law.

19 2. The Hearing Officer's Decision and Order dated June 24, 2008, which affirmed the  
20 Administrator's February 26, 2008 claim closure determination, must be affirmed as a matter of law.  
21

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

4818-7468-2115,1

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 693-3383



1 WHEREFORE, the Employer and the Administrator respectfully request that this Hearing  
2 Officer provide the following relief:

3 1. That this Hearing Officer affirm the Administrator's February 26, 2008 determination  
4 closing the industrial insurance claim.

5 2. That the Appeals Officer affirm the Hearing Officer's Decision and Order, dated June  
6 24, 2008, which affirmed the Administrator's February 26, 2008 claim closure determination.

7 DATED this 21 day of October, 2008.

8 Respectfully submitted,

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10 By [Signature]  
11 JOHN P. LAVERY, ESQ.

12 Nevada Bar No. 004665

13 400 South Fourth Street, Suite 500

14 Las Vegas, NV 89101

15 (702) 893-3383

16 Attorneys for the Employer

17 FITZGERALDS CASINO/HOTEL

18 And its Third-Party Administrator

19 CANNON COCHRAN MANAGEMENT

20 SERVICES, INC.

21 **DOCUMENTS TO BE PRODUCED AT HEARING**

22 The Employer and the Administrator have produced those documents contained in the Index of  
23 Documents consisting of twenty-four (24) pages. The Employer and the Administrator will also rely  
24 upon any and all documents introduced by the claimant, SUBJECT TO OBJECTION. The Employer  
25 and the Administrator reserve the right to introduce any additional documentation which may come into  
26 their possession between the date of filing the instant memorandum and the hearing in this matter.

27 ...

28 ...

1 This evidence may contain affidavits or declarations which the proponent proposes to introduce  
2 into evidence pursuant to NRS 616C.355, unless any party, within seven (7) days after the mailing or  
3 delivery of this notice, invokes its right to cross-examine the affiant and/or declarant. Failure to timely  
4 invoke the right to cross-examine will be deemed a waiver of such right.  
5

6 **STATEMENT OF THE ISSUES**

7 The following issues are before the Appeals Officer for review:

8 1. Whether the Administrator's February 26, 2008 determination, closing the industrial  
9 insurance claim, was proper.

10 2. Whether the Hearing Officer's Decision and Order dated June 24, 2008, which affirmed  
11 the Administrator's February 26, 2008 determination, which closed the industrial insurance claim, was  
12 proper.  
13

14 **WITNESSES**

15 The Employer and the Administrator may call the claimant, himself, to testify if he does not take  
16 the stand on his own behalf. The Employer and the Administrator may call any and all of the claimant's  
17 treating and/or examining physicians for rebuttal or other purposes at the time of hearing. The  
18 Employer and the Administrator further reserve the right to call any other rebuttal witness as may be  
19 necessary.  
20

21 **TIME ESTIMATED FOR HEARING**

22 It is estimated that the time for hearing of this Employer's and Administrator's case will be one  
23 (1) hour or less.  
24

25 ...

26 ...

27 ...

28 ...

I.

STATEMENT OF THE FACTS

On January 29, 2008, the claimant, Gary Mogg (hereinafter referred to as the "claimant"), completed a Notice of Injury or Occupational Disease (hereinafter referred to as "Form C-1"). He alleged that, on January 27, 2008, while working within the course and scope of his employment for the Employer, he injured his back, neck and left arm. He described the accident as occurring when he "was attempting to place his feet on counter and the chair flipped over." (Employer's and Administrator's Exhibit p. 1, hereinafter referred to as "Exhibit p. \_\_\_\_".)

On January 28, 2008, an Incident Data report was completed by Security Officer Sylvia Sinclair. Security Officer Sinclair spoke with the claimant by telephone. The claimant was employed as a Surveillance Agent. The claimant stated that, on January 27, 2008, he was attempting to place his feet on the counter in the Surveillance Room when his chair flipped over. He further stated that he injured his neck, left arm, and lower back. The claimant said he had a pre-existing injury and the fall aggravated the injury. (Exhibit pp. 2-4.)

On January, 29, 2008, a co-worker, Sheldon Kanner, provided a witness statement as follows:

At 13:30 Jan 27, 2008 I was sitting at my work station. I noticed that [claimant] was starting to lean back and put his feet on the desk in front of him. At that time the chair started to lean to the left the chair & [claimant] fell over and [claimant] landed on his left side. At that time I ask him if he needed any assistance. He walk around awhile then went back to work. (Exhibit p. 5.)

On January 29, 2008, the claimant completed an Employee's Claim for Compensation/Report of Initial Treatment (hereinafter referred to as "Form C-4"). The claimant stated that he injured his neck and lower back when he went to put his legs up on the corner of a desk causing the chair to flip backwards. (Exhibit p. 6.)

...

...

1 The physician's portion of the Form C-4 was completed at Concentra Medical Center  
2 (hereinafter referred to as "Concentra") by Dr. Adrian. The claimant was diagnosed with a strain of the  
3 cervical, lumbar and thoracic spine. Physical therapy was recommended. The claimant was placed on  
4 restricted duty. (Exhibit pp. 6-10.)  
5

6 The Employer completed an Employer's Report of Industrial Injury or Occupational Disease  
7 (hereinafter referred to as "Form C-3") on January 29, 2008. (Exhibit p. 11.)  
8

9 The claimant had a follow up appointment with Concentra on February 6, 2008. It was noted  
10 that the claimant had a significant pre-existing history related to his back. In 1972, the claimant was in  
11 a motorcycle accident. In 1977, he was in a motor vehicle accident. He had another motor vehicle  
12 accident in 1984. He also had a work related accident in 1982, and a left knee injury in 1987. He had  
13 a shoulder injury in 1992 and 1993. "He says in the year 2000 he had a lipoma that was removed at the  
14 base of his neck and has always had pain since then." He is treating with a spine surgeon, Dr. William  
15 Smith who took him off methadone in January of 2008 and switched him to eight (8) pills of  
16 Oxycodone per day. He was also on Lyrica for pain in his left hand. Dr. Parekh's assessment was as  
17 follows:  
18

19 "Back pain. Previous history of a lot of preexisting issues with possible  
20 preexisting disc disease. Patient's lumbar spine x-rays that have been done her  
21 indicated a narrowing of L1-L2 disc space with osteophyte formation anteriorly,  
22 grade 1 spondylolisthesis at L5 anteriorly on S1 with bilateral spondylolysis at  
23 this level. On the cervical spine, osteophyte formation present anterior and  
24 posterior C5-6, C6-C7. Spinous and transverse processes appear normal."  
25 (Exhibit pp. 12-14.)  
26

27 In a letter dated February 26, 2008, the Administrator issued a determination denying the  
28 claimant's industrial insurance claim. (Exhibit p. 15.) The claimant disagreed with the Administrator's  
29 determination and a hearing was scheduled and held at the Hearing Officer level on June 4, 2008. In  
30 ...  
31 ...

1 a Hearing Officer's Decision and Order dated June 12, 2008, the Hearing Officer dismissed the  
2 claimant's appeal due to the claimant's failure to appear. An Order of Rescission was issued on June  
3 24, 2008, as the claimant was present for the hearing. (Exhibit pp. 16-20.)

4  
5 The Hearing Officer issued a Decision and Order on June 24, 2008. The Hearing Officer  
6 affirmed the Administrator's claim denial because the claimant's injury was not due to an increased risk  
7 posed by his employment and the act of resting his legs on his desk was deemed not to be connected  
8 to the claimant's employment nor an increased risk posed by the employment. (Exhibit pp. 21-22.)

9  
10 The claimant was appointed an attorney with Nevada Attorney for Injured Workers on July 21,  
11 2008. (Exhibit pp. 23-24.)

12 II.

13 ARGUMENT

14 The Claimant is Unable to Establish that He Sustained an Injury  
15 by Accident While Working Within the Course and Scope of His Employment

16 It is well-settled that the claimant, not the Employer, has the burden of proving his case by a  
17 preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567, 688 P.2d  
18 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323 (1990);  
19 Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

20  
21 In attempting to prove his case, the claimant has the burden of going beyond speculation and  
22 conjecture. That means that the claimant must establish the work related injury and his disability, the  
23 extent of his disability, and all facets of the claim by a preponderance of the evidence. To prevail, a  
24 claimant must present and prove more evidence than an amount which would make his case and his  
25 opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993); SIIS v. Khweiss,  
26 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The  
27 Law of Workmen's Compensation, § 80.33(a).  
28

1 In the present case, the claimant is alleging that he injured his lower back, neck and left arm  
2 when he went to prop his legs up on a desk causing his chair to flip over. The claimant was employed  
3 as a Surveillance Agent. The description of the incident does not establish a causal connection between  
4 his alleged injury and his employment as required by NRS 616C.150. The claimant has not carried his  
5 NRS 616C.150 burden as there is no medical evidence that connects his injury to the duties arising from  
6 the course and scope of his employment. His treating physician, Dr. Parekh, details a very significant  
7 history of pre-existing injuries and the fact that the claimant was currently treating with Dr. Smith for  
8 injuries to his spine.  
9

10 NRS 616C.150 specifically provides:

11  
12 An injured employee or his dependents are not entitled to receive  
13 compensation pursuant to the provisions of chapters 616A to 616D, inclusive,  
14 of NRS unless the employee or his dependents establish by a preponderance of  
15 the evidence that the employee's injury arose out of and in the course of his  
16 employment.

17 "An accident or injury is said to arise out of employment when there is  
18 a causal connection between the injury and the employee's work. In other words,  
19 the injured party must establish a link between the workplace conditions and  
20 how those conditions caused the injury. Further, a claimant must demonstrate  
21 that the origin of the injury is related to some risk involved within the scope of  
22 employment. However, if an accident is not fairly traceable to the nature of  
23 employment or the workplace environment, then the injury cannot be said to  
24 arise out of the claimant's employment. Finally, resolving whether an injury  
25 arose out of employment is examined by a totality of the circumstances." See,  
26 also, Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104  
(2005). (Emphasis added.)

27 In Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 939 P.2d 1043 (1997), the Nevada  
28 Supreme Court held that the "Nevada Industrial Insurance Act is not a mechanism which makes  
employers absolutely liable for injuries suffered by employees who are on the job." Id., at 605. The  
Gorsky Court concluded by stating, "The requirements of 'arising out of and in the course of  
employment' make it clear that a claimant must establish more than being at work and suffering an  
injury in order to recover."

1 NRS 616A.030 and NRS 616A.265(1) mandate:

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

5 NRS 616A.265 "Injury" and "personal injury" defined.

6 1. "Injury" or "personal injury" means a sudden and tangible happening  
7 of a traumatic nature, producing an immediate or prompt result which is  
8 established by medical evidence, including injuries to prosthetic devices. Except  
9 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 employment unless the  
employee received remuneration for participation in the event.

10 The claimant was sitting down and went to prop his legs up on a desk when his chair flipped  
11 over. The incident does not constitute an injury or accident that is in any way related to a risk involved  
12 within the scope of his employment. The Gorsky Court has clearly established that the claimant must  
13 establish more than being at work and suffering an injury in order to have a compensable industrial  
14 claim.

15 As the claimant has offered no evidence that the origin of his injury was related to some risk  
16 involved in the scope of his employment, this is not a compensable industrial injury. The claimant was  
17 merely sitting in a chair propping his legs up on a desk causing his chair to flip over when he claims to  
18 have injured himself. Per the Gorsky court, the claimant must establish more than being at work and  
19 suffering an injury in order to recover. The claimant does not describe an accident that arises from the  
20 course and scope of his employment. Obviously, there is nothing in the claimant's job duties that  
21 require him to prop his legs up on the corner of his desk.

22 The facts in the present appeal, fall squarely under the ruling in Mitchell. The Mitchell Court  
23 concluded that a positional-risk test is incompatible with the Nevada Industrial Insurance Act. As we  
24 recognized in Gorsky, NRS 616C.150 imposes the burden on the claimant to show, by a preponderance  
25 of the evidence, that the injury arose out of and in the course of the employment. Because the  
26  
27  
28

1 positional-risk test reduces the claimant's burden and requires only a showing that the claimant  
2 sustained an injury on the job, it directly contravenes the language of NRS 616C.150. The claimant has  
3 not shown by a preponderance of the evidence that the cause for his chair tipping over arose out of and  
4 in the course of his employment.  
5

6 The Mitchell court rejected the positional-risk test, and likewise rejected the proposition that  
7 non-compensable injuries having no causal connection with the employment become compensable  
8 when they are exacerbated by workplace conditions that are neither peculiar to employment nor related  
9 to the cause of the injury in the first place. Mitchell's work environment did not cause her to fall, and  
10 the staircase did not make her workplace conditions "any different from or any more dangerous than  
11 those a member of the general public could expect to confront in a non-work setting." A rule allowing  
12 her to obtain compensation for any exacerbation would, in effect, abrogate the causal connection  
13 required already discussed. In the present appeal the claimant was sitting in a chair attempting to prop  
14 his legs up on his desk and tipped his chair over. The claimant's work environment did not cause his  
15 chair to tip over, and the chair he was sitting in did not make his workplace conditions any more  
16 dangerous than those a member of the general public could expect to find in a non-work setting.  
17  
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19 Based on the above facts, the Employer properly denied the claimant's claim for industrial  
20 insurance benefits, and that determination must be affirmed as a matter of law.  
21

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LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

III.

CONCLUSION

The claimant is unable to establish that he sustained an injury by accident while working within the course and scope of his employment.

WHEREFORE, the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., respectfully request that this Appeals Officer affirm the Administrator's February 26, 2008 determination, which denied the claimant's claim for industrial insurance benefits, and that the Appeals Officer affirm the June 24, 2008 Hearing Officer's Decision and Order, which affirmed the Administrator's February 26, 2008 claim denial determination.

DATED this 24 day of October, 2008.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By Robert P. Lavery  
JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383  
Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

CERTIFICATE OF MAILING

I hereby certify that, on the 24<sup>th</sup> day of October, 2008, I served a true and correct copy of the above and foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S HEARING MEMORANDUM** by depositing same in the United States Mail, first class postage fully prepaid therein, addressed as follows:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested ) Claim No. : 08s31A16713529  
Industrial Insurance Claim )  
 ) Hearing No. : 49522-NG  
 )  
 of ) Appeal No. : 54033-GS  
 )  
 ) Employer :  
 GARY MOGG, ) FITZGERALDS CASINO/HOTEL  
 )  
 Claimant. ) Appeal Date : November 12, 2008  
 ) Appeal Time : 1:30 P.M.

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN  
MANAGEMENT SERVICES INC.'S NOTICE OF INTENT TO PARTICIPATE

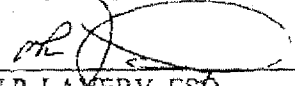
The Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through their attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, and JOHN P. LAVERY, ESQ., hereby provide their Notice of Intent to Participate and request that all matters requiring notice, and all correspondence initiated herein, be served upon:

JOHN P. LAVERY, ESQ.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383

DATED this 10 day of October, 2008.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:   
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383

4819-5502-7459.1 / 26990-Mogg

CERTIFICATE OF MAILING

I hereby certify that, on this 10 day of October, 2008, I served a true and correct copy of the above and foregoing FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S NOTICE OF INTENT TO PARTICIPATE was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Gary Mogg  
2379 Cliffwood Drive  
Henderson, NV 89074

Melodie Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 E. Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

FILED

JUL 21 2008

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 08S31A167135

Appeal No: 54033-GS

GARY MOGG,

Claimant.

NOTICE OF APPEAL AND ORDER TO APPEAR

1. **ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED** that a hearing will be held on a **STACKED CALENDAR** by the Appeals Officer, pursuant to NRS 616 and 617 on:

**DATE:** NOVEMBER 12, 2008

**TIME:** 1:30 P.M.

**PLACE:** DEPT OF ADMINISTRATION, HEARINGS DIVISION  
2200 SOUTH RANCHO DRIVE, SUITE 220  
LAS VEGAS NV 89102

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. In the event that all parties to this action agree to have the matter RE-SCHEDULED AND SET FOR A DATE AND TIME CERTAIN, you are hereby required to submit AT LEAST TWO (2) DAYS prior to the scheduled Hearing date a written request, submitted by letter, facsimile or by email, to the Appeals Office advising the Appeals Office that all parties to the action have agreed to remove the action from the Stacked Calendar. A continuance of the hearing date also may be obtained pursuant to NAC 616C.318. The matter will otherwise proceed as scheduled on the STACKED CALENDAR ON A TIME AVAILABLE BASIS.

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 this 21st day of July, 2008.

*Geraldine H. Schwartz*

GERALDINE H SCHWARTZER, ESQ.  
APPEALS OFFICER

1 CERTIFICATE OF MAILING

2  
3 The undersigned, an employee of the State of Nevada, Department of Administration,  
4 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
5 the foregoing NOTICE OF APPEAL AND ORDER TO APPEAR was duly mailed, postage  
6 prepaid OR placed in the appropriate addressee runner file at the Department of Administration,  
7 Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

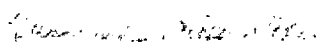
8  
9 GARY MOGG  
10 2379 CLIFFWOOD DR  
11 HENDERSON NV 89074

12  
13 NAIW  
14 GENERAL COUNSEL  
15 2200 S RANCHO DR #230  
16 LAS VEGAS NV 89102

17  
18 FITZGERALD CASINO  
19 301 E FREMONT ST  
20 LAS VEGAS NV 89101

21  
22 CCMSI  
23 DEBORAH JONES  
24 P O BOX 35350  
25 LAS VEGAS NV 89133-5350

26  
27 Dated this 21<sup>st</sup> day of July, 2008.

28  
  
\_\_\_\_\_  
Luciana Della Neve, Legal Secretary II  
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:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135

GARY MOGG  
2763 CHOKO CHERRY AVE  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

2379 Cliffwood Dr

RECEIVED  
AND  
FILED  
JUL 18 AM 9:32

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: 6/24/08

*(Please attach a copy of the Hearing Officer's Decision)*

PERSON REQUESTING APPEAL: (circle one) CLAIMANT/EMPLOYER/INSURER

REASON FOR APPEAL: I Feel I have a valid claim and  
Mistakes were made in the decision

If you are represented by an attorney or other agent, please print the name and address below.

Name of Attorney or Representative

Address

City, State, Zip Code

Telephone Number

GARY MOGG  
Person requesting this hearing (please print)

Gary Mogg  
Person requesting this hearing (signature)

530 28 0658  
Social Security No.

378-4603  
Telephone Number

7/18/08  
Date

**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:

Gary Mogg  
Signature

378 4603  
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  
2200 S RANCHO DRIVE, SUITE 220  
LAS VEGAS, NV 89102  
(702) 486-2527

#54033-ES

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

The Claimant's request for hearing was filed on March 6, 2008 and a hearing was scheduled for April 17, 2008. The hearing was reset and held on June 4, 2008 in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present but not represented by legal counsel. The Employer was neither present nor represented by legal counsel. CCMSI was present via MIKE KOGLER.

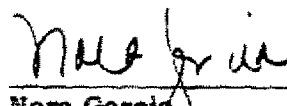
**ISSUE**

The Claimant appealed the determination of CCMSI dated February 26, 2008.  
The issue before the Hearing Officer is CLAIM DENIAL.

**DECISION AND ORDER**

The facts of this case are that on January 27, 2008 the claimant was at work and went to put his legs on the corner of a desk that caused his chair to flip backwards. The claimant fell to the floor and hurt his left arm, neck and low back. The Supreme Court of Nevada has held that a positional risk test is incompatible with the Nevada Industrial Insurance Act. That to give rise to an industrial claim there must be a showing that the injury was caused by an increased risk posed by the employment. In this case, the act of resting his legs on the desk is deemed to not be connected to the employment nor an increased risk posed by the employment. Accordingly, the determination of the Insurer is hereby **AFFIRMED**. (See Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005))

IT IS SO ORDERED this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Nora Garcia  
Hearing Officer

**APPEAL RIGHTS**

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



**CERTIFICATE OF MAILING**

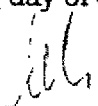
The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS NV 89101

DEBORAH JONES  
CCMSI  
P O BOX 35350  
LAS VEGAS NV 89133-5350

Dated this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Ava B. Tucker  
Employee of the State of Nevada

JUL 21 2008

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 08S31A167135

GARY MOGG,

Appeal No: 54033-GS

Claimant.

**ORDER FOR APPOINTMENT OF**  
**NEVADA ATTORNEY FOR INJURED WORKERS**

The Appeals Officer, having received and considered the Claimant's written request for the appointment of the Nevada Attorney for Injured Workers; finds the Claimant would be better served by legal representation and accordingly;

IT IS HEREBY ORDERED the Nevada Attorney for Injured Workers is hereby appointed, pursuant to NRS 616A.450 to represent the Claimant in this matter.

IT IS SO ORDERED this 21st day of July, 2008.

Geraldine H. Schwartzer  
GERALDINE H SCHWARTZER, ESQ.  
APPEALS OFFICER

1 CERTIFICATE OF MAILING

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

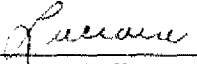
6 GARY MOGG  
7 2379 CLIFFWOOD DR  
8 HENDERSON NV 89074

9 NAIW  
10 GENERAL COUNSEL  
11 2200 S RANCHO DR #230  
12 LAS VEGAS NV 89102

13 FITZGERALD CASINO  
14 301 E FREMONT ST  
15 LAS VEGAS NV 89101

16 CCMST  
17 DEBORAH JONES  
18 P O BOX 35350  
19 LAS VEGAS NV 89133-5350

20 Dated this 21<sup>ST</sup> day of July, 2008.

21   
22 Luciana Della Neve, Legal Secretary II  
23 Employee of the State of Nevada  
24  
25  
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28

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135

GARY MOGG  
~~2763 CHOKE CHERRY AVE~~  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

2379 Cliffwood Dr

I WISH TO APPEAL THE HEARING OFFICER DECISION DATED: 6/24/08

*(Please attach a copy of the Hearing Officer's Decision)*

PERSON REQUESTING APPEAL: (circle one) CLAIMANT/EMPLOYER/INSURER

REASON FOR APPEAL: I Feel I have a valid claim and  
Mistakes were made in the decision

If you are represented by an attorney or other agent, please print the name and address below.

|                                    |                    |   |
|------------------------------------|--------------------|---|
| Name of Attorney or Representative | <u>GARY MOGG</u>   | Person requesting this hearing (please print) |
| Address                            | <u>Gary Mogg</u>   | Person requesting this hearing (signature)    |
| City, State, Zip Code              | <u>530 28 0658</u> | Social Security No.                           |
| Telephone Number                   | <u>378-4603</u>    | <u>7/18/08</u>                                |
|                                    | Telephone Number   | Date  |

**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:

|                  |                  |
|------------------|------------------|
| <u>Gary Mogg</u> | <u>378 4603</u>  |
| Signature        | 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  
2200 S RANCHO DRIVE, SUITE 220  
LAS VEGAS, NV 89102  
(702) 486-2527

#54033-615

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

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 49522-NG  
Claim Number: 08S31A167135

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON, NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS, NV 89101

The Claimant's request for hearing was filed on March 6, 2008 and a hearing was scheduled for April 17, 2008. The hearing was reset and held on June 4, 2008 in accordance with Chapters 616 and 617 of the Nevada Revised Statutes.

The Claimant was present but not represented by legal counsel. The Employer was neither present nor represented by legal counsel. CCMSI was present via MIKE KOGLER.

**ISSUE**

The Claimant appealed the determination of CCMSI dated February 26, 2008.  
The issue before the Hearing Officer is CLAIM DENIAL.

**DECISION AND ORDER**

The facts of this case are that on January 27, 2008 the claimant was at work and went to put his legs on the corner of a desk that caused his chair to flip backwards. The claimant fell to the floor and hurt his left arm, neck and low back. The Supreme Court of Nevada has held that a positional risk test is incompatible with the Nevada Industrial Insurance Act. That to give rise to an industrial claim there must be a showing that the injury was caused by an increased risk posed by the employment. In this case, the act of resting his legs on the desk is deemed to not be connected to the employment nor an increased risk posed by the employment. Accordingly, the determination of the Insurer is hereby **AFFIRMED**. (See Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005))

IT IS SO ORDERED this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Nora Garcia  
Hearing Officer

**APPEAL RIGHTS**

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

**CERTIFICATE OF MAILING**

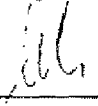
The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **DECISION AND ORDER** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive., #210, Las Vegas, Nevada, to the following:

GARY MOGG  
2763 CHOKE CHERRY AVE  
HENDERSON NV 89074

FITZGERALD CASINO  
301 E FREMONT ST  
LAS VEGAS NV 89101

DEBORAH JONES  
CCMSI  
P O BOX 35350  
LAS VEGAS NV 89133-5350

Dated this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Ava B. Tucker  
Employee of the State of Nevada

1 NEVADA DEPARTMENT OF ADMINISTRATION

2 BEFORE THE APPEALS OFFICER

3 In the Matter of the Contested  
4 Industrial Insurance Claim

) Claim No. : 08S31A167135

) Hearing No. : 49522-NG

) Appeal No. : 54033-GS

) Employer :

5  
6  
7  
8 GARY MOGG,

) FITZGERALDS CASINO/HOTEL

9 Claimant.

) Appeal Date : May 5, 2009

) Appeal Time : 1:00 P.M.

10  
11  
12 FITZGERALDS CASINO/HOTEL'S AND CANNON  
13 COCHRAN MANAGEMENT SERVICES INC.'S WITNESS LIST

14 COMES NOW, the Employer, JOHN JORY CORPORATION (hereinafter referred to as  
15 the "Employer"), and its Third- Party Administrator, NELSON DAVISON ADMINISTRATORS,  
16 INC., (hereinafter referred to as the "Administrator"), by and through their attorneys, JOHN P.  
17 LAVERY, ESQ, and LEWIS BRISBOIS BISGAARD & SMITH LLP, and file their witness list in the  
18 pending appeal:

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28 ...

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4812-0579-4051.1 /26990-397

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1. Gregg Brewer, Director of Surveillance. He drafted the January 27, 2009 memorandum submitted into evidence (page 34). Mr. Brewer currently resides in Indiana and will need to testify by telephone.

DATED this 30 day of April, 2009.

LEWIS BRISBOIS BISGAARD &amp; SMITH LLP

By: Robert Chase  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383  
Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.



CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 30<sup>th</sup> day of April, 2009, service of the foregoing FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S WITNESS LIST was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

FILED

MAR 09 2009

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

)  
) Claim No: 08S31A167135

)  
) Appeal No: 54033-GS

GARY MOGG,

)  
)  
) Claimant.  
)  
)  
)

ORDER DENYING APPLICATION FOR DISCOVERY

The Claimant, by and through his attorney, filed a February 18, 2009 Application to Conduct Discovery. The Employer/Insurer, by and through its attorney filed an Objection to the Application.

This appeal was scheduled for a hearing on February 5, 2009. Approximately 45 minutes prior to the hearing, Claimant, by and through his attorney requested a continuance of the hearing because the Claimant came to her office with a terrible toothache, couldn't talk because of the infected tooth, and scheduled a dentist appointment for later that afternoon. The Claimant was suffering the toothache since the day before, but did not contact his counsel to request continuing the hearing until just before the scheduled hearing. Due to the representations made by counsel that this was an emergency, the continuance was granted and the appeal hearing rescheduled. The request for continuance did not involve further discovery requests.

After reviewing the Application and the Opposition, the Appeals Officer agrees with the comments made in the Opposition and the vague and overbroad nature of the request for the names and addresses of all prior employees of the surveillance department. Furthermore, all discovery and preparation for the hearing was to be completed prior to the February 5, 2009 hearing. For good cause;

**IT IS HEREBY ORDERED** the application for discovery is denied.

**IT IS SO ORDERED** this 9th day of March, 2009.

  
GERALDINE H. SCHWARTZER, ESQ.  
APPEALS OFFICER

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration, Hearings  
3 Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing  
4 ORDER DENYING APPLICATION FOR DISCOVERY was duly mailed, postage prepaid OR  
5 placed in the appropriate addressee runner file at the Department of Administration, Hearings Division,  
6 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

7 GARY MOGG  
8 2379 CLIFFWOOD DR  
9 HENDERSON NV 89074

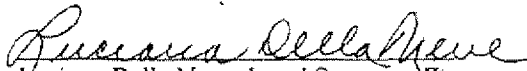
10 MELODIE SWANSON ESQ  
11 NV ATTORNEY FOR INJURED WORKERS  
12 2200 S RANCHO DR #230  
13 LAS VEGAS NV 89102

14 FITZGERALD CASINO  
15 301 E FREMONT ST  
16 LAS VEGAS NV 89101

17 CCMSI  
18 DEBORAH JONES  
19 P O BOX 35350  
20 LAS VEGAS NV 89133-5350

21 JOHN LAVERY ESQ  
22 LEWIS BRISBOIS BISGAARD & SMITH LLP  
23 400 S FOURTH ST STE 500  
24 LAS VEGAS NV 89101

25 Dated this 9th day of March, 2009.

26   
27 Luciana Della Neve, Legal Secretary II  
28 Employee of the State of Nevada

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim

of

GARY MOGG,

Claimant.

Claim No. : 08S31A167135

Hearing No. : 49522-NG

Appeal No. : 54033-GS

Employer :  
FITZGERALDS CASINO/HOTEL

Appeal Date : May 5, 2009

Appeal Time : 1:00 P.M.

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT  
SERVICES INC.'S OBJECTION TO CLAIMANT'S REQUEST TO CONDUCT DISCOVERY

COMES NOW, the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through their attorneys, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and object to the claimant's Request to Conduct Discovery.

The Appeal's hearing was scheduled to be conducted on February 5, 2009. It was the claimant, who on the day of the hearing, requested a continuance because he was not feeling well. The hearing was continued due to the claimant's illness, not for the purpose of conducting further discovery. Furthermore, the claimant's request for the names and addresses of all "prior employees" of the "surveillance department" is vague, overbroad and is not relevant to the issue of claim acceptance. The claimant should not be allowed to conduct further discovery at this point in the litigation process.

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4815-8949-1971.1

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

1 For the aforementioned reasons, the Employer and Administrator respectfully request that the  
2 Appeals Officer deny the claimant's Application to Conduct Discovery.

3 DATED this 26 day of February, 2009.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By: Robert Chase  
8 JOHN P. LAVERY, ESQ.  
9 Nevada Bar No. 004665  
10 400 South Fourth Street, Suite 500  
11 Las Vegas, NV 89101  
12 (702) 893-3383  
13 Attorneys for the Employer  
14 FITZGERALDS CASINO/HOTEL  
15 And its Third-Party Administrator  
16 CANNON COCHRAN MANAGEMENT  
17 SERVICES, INC  
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LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3363

CERTIFICATE OF MAILING

I hereby certify that, on this 26<sup>th</sup> day of February, 2009, I served a true and correct copy of the above and foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S OBJECTION TO CLAIMANT'S APPLICATION TO CONDUCT DISCOVERY** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC.  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of ) Hearing No.: 49522-NG  
GARY MOGG. ) Appeal No.: 54033-GS

APPLICATION FOR DISCOVERY

COMES NOW Claimant, Gary Mogg, by and through his  
attorney, Melodie C. Swanson, Esq., Deputy Nevada Attorney for  
Injured Workers, and pursuant to NAC 616C.305, requests the  
Appeals Officer's Order allowing discovery.

POINTS AND AUTHORITIES

The NAC requires application for an Order Allowing  
Discovery when a party seeks to do depositions or serve  
Interrogatories.

**NAC 616C.305 Request or application to  
permit discovery by deposition or  
interrogatories. (NRS 616C.310)**

1. A party who wishes a hearing or appeals  
officer to permit discovery by deposition or  
interrogatories must request such discovery  
at any prehearing conference held in the  
matter or submit a written application to  
that officer at least 30 days before the  
hearing. The application must:

(a) Set forth the reason why the discovery  
is necessary; and  
(b) Be accompanied by the appropriate  
orders for discovery.

2. The hearing or appeals officer shall  
approve or deny the application within 5  
days after the receipt of the application.

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2209 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) 436-2830

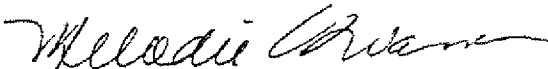
1 Claimant requires contact information on prior co-  
2 workers to adequately prepare and rebut Employer's witnesses at  
3 time of hearing. Exhibit "1". Employer's proposed witnesses are  
4 all current employees.

5 AFFIRMATION

6 Pursuant to NRS 239.030, the undersigned affirms that  
7 no Social Security numbers appear in this document and/or its  
8 attachments.

9 DATED this 18 day of February, 2009.

10 NEVADA ATTORNEY FOR INJURED WORKERS

11 

12 Melodie C. Swanson, Esq., Deputy  
13 Attorney for the Claimant

14 MCS\_HOGG, GARY\_Application for Discovery.WPD  
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee  
3 of the State of Nevada, Nevada Attorney for Injured Workers, and  
4 that service of the within and foregoing APPLICATION FOR  
5 DISCOVERY was made this day by depositing a true and correct copy  
6 thereof for mailing at Las Vegas, Nevada, addressed to:

7 JOHN P. LAVERY, ESQ.  
8 LEWIS, BRISBOIS, ET AL  
9 400 S FOURTH STREET STE 500  
10 LAS VEGAS NV 89101

11 GARY MOGG  
12 2379 CLIFFWOOD DR  
13 HENDERSON NV 89074

14 DATED: 2-18-09

15 SIGNED: Antia L. Thompson

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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 DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of )  
Hearing No.: 49522-NG  
Appeal No.: 54033-GS  
GARY MOGG. )

CLAIMANT'S REQUEST FOR ANSWERS TO INTERROGATORIES

TO: FITZGERALDS CASINO/HOTEL, Employer;  
TO: CANNON COCHRAN MANAGEMENT SERVICES INC., Administrator;  
and  
TO: JOHN P. LAVERY, ESQ., their attorney.  
COMES NOW Claimant, Gary Mogg, by and through his  
attorney, Melodie C. Swanson, Esq., Deputy Nevada Attorney for  
Injured Workers, and hereby requests that, pursuant to Rule 33 of  
the Nevada Rules of Civil Procedure, hereby requests that the  
Employer/Administrator respond in writing and under oath to the  
following Interrogatories within thirty (30) days after service  
hereof to this request.

INSTRUCTIONS

1. Pursuant to the NRCP, these Interrogatories are  
deemed to be continuing. In the event that you obtain or receive  
additional information that would add to or otherwise change your  
answers to these, then you are ordered to supplement your answers  
thereto.

2. If any Interrogatory cannot be answered in  
full after exercise of due diligence to secure the Interrogatory

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  
2200 South Rasecho Drive, Suite 230  
Las Vegas, NV 89102  
(775) 684-7555  
(702) 486-2830

1 to the fullest extent possible, specifying why such Interrogatory  
2 cannot be answered completely and stating whatever knowledge or  
3 information is presently available concerning the unanswered  
4 portion of such Interrogatory, state whether there are any  
5 documents which reflect or relate to any of the information  
6 requested in that Interrogatory and identify the custodian(s) of  
7 the documents.

8 INTERROGATORY NO. 1:

9 Please provide the name, last known address and contact  
10 phone numbers for all prior employees of the "surveillance  
11 department" who worked in that department at any time during 2007  
12 and 2008, who are presently no longer employed by the Fitzgerald  
13 Casino, or other parent or subsidiary company.

14 AFFIRMATION

15 Pursuant to NRS 239.030, the undersigned affirms that  
16 no Social Security numbers appear in this document and/or its  
17 attachments.

18 DATED this \_\_\_\_\_ day of February, 2009.

19 NEVADA ATTORNEY FOR INJURED WORKERS

20  
21 Melodie C. Swanson, Esq., Deputy  
22 Attorney for Claimant

23 MCS\_MOGG, GARY\_Request for AI.WPD  
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SIGNED: \_\_\_\_\_

JOINT APPENDIX Page 152

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim

of

GARY MOGG,

Claimant.

Claim No. : 08S31A167135

Hearing No. : 49522-NG

Appeal No. : 54033-GS

Employer :  
FITZGERALDS CASINO/HOTEL

Appeal Date : February 5, 2009

Appeal Time : 1:00 P.M.

03 FEB -4 PM 4:21

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN  
MANAGEMENT SERVICES INC.'S SUPPLEMENTAL APPEAL MEMORANDUM

COMES NOW the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through their attorneys, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and for their supplemental appeal memorandum, state as follows:

1. That the Administrator's February 26, 2008 determination, closing the industrial insurance claim, must be affirmed as a matter of law.

2. The Hearing Officer's Decision and Order dated June 24, 2008, which affirmed the Administrator's February 26, 2008 claim closure determination, must be affirmed as a matter of law.

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4851-4297-9075.1

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 400  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

1 WHEREFORE, the Employer and the Administrator respectfully request that this Hearing  
2 Officer provide the following relief:

3 1. That this Hearing Officer affirm the Administrator's February 26, 2008 determination  
4 closing the industrial insurance claim.

5 2. That the Appeals Officer affirm the Hearing Officer's Decision and Order, dated June  
6 24, 2008, which affirmed the Administrator's February 26, 2008 claim closure determination.

7 DATED this 3 day of February, 2008.

8 Respectfully submitted,

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By   
12 JOHN P. LAVERY, ESQ.

13 Nevada Bar No. 004665

14 400 South Fourth Street, Suite 500

15 Las Vegas, NV 89101

16 (702) 893-3383

17 Attorneys for the Employer

18 FITZGERALDS CASINO/HOTEL

19 And its Third-Party Administrator

20 CANNON COCHRAN MANAGEMENT

21 SERVICES, INC.

22 **DOCUMENTS TO BE PRODUCED AT HEARING**

23 The Employer and the Administrator have produced those documents contained in the Index of  
24 Documents consisting of twenty-four (24) pages and their supplemental Index of Documents consisting  
25 of pages twenty-five through thirty-four (25-34). The Employer and the Administrator will also rely  
26 upon any and all documents introduced by the claimant, SUBJECT TO OBJECTION. The Employer  
27 and the Administrator reserve the right to introduce any additional documentation which may come into  
28 their possession between the date of filing the instant memorandum and the hearing in this matter.

1 This evidence may contain affidavits or declarations which the proponent proposes to introduce  
2 into evidence pursuant to NRS 616C.355, unless any party, within seven (7) days after the mailing or  
3 delivery of this notice, invokes its right to cross-examine the affiant and/or declarant. Failure to timely  
4 invoke the right to cross-examine will be deemed a waiver of such right.  
5

6 **STATEMENT OF THE ISSUES**

7 The following issues are before the Appeals Officer for review:

8 1. Whether the Administrator's February 26, 2008 determination, closing the industrial  
9 insurance claim, was proper.  
10

11 2. Whether the Hearing Officer's Decision and Order dated June 24, 2008, which affirmed  
12 the Administrator's February 26, 2008 determination, which closed the industrial insurance claim, was  
13 proper.  
14

15 **WITNESSES**

16 The Employer and the Administrator may call the claimant, himself, to testify if he does not take  
17 the stand on his own behalf. The Employer and the Administrator may call Brian Swartwood, Sheldon  
18 Kanner, Edward Cashmon and any and all of the claimant's treating and/or examining physicians for  
19 rebuttal or other purposes at the time of hearing. The Employer and the Administrator further reserve  
20 the right to call any other rebuttal witness as may be necessary.  
21

22 **TIME ESTIMATED FOR HEARING**

23 It is estimated that the time for hearing of this Employer's and Administrator's case will be one  
24 (1) hour or less.  
25  
26  
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28

I.

STATEMENT OF THE FACTS

On January 29, 2008, the claimant, Gary Mogg (hereinafter referred to as the "claimant"), completed a Notice of Injury or Occupational Disease (hereinafter referred to as "Form C-1"). He alleged that, on January 27, 2008, while working within the course and scope of his employment for the Employer, he injured his back, neck and left arm. He described the accident as occurring when he "was attempting to place his feet on counter and the chair flipped over." (Employer's and Administrator's Exhibit p. 1, hereinafter referred to as "Exhibit p. \_\_\_\_.")

On January 28, 2008, an Incident Data report was completed by Security Officer Sylvia Sinclair. Security Officer Sinclair spoke with the claimant by telephone. The claimant was employed as a Surveillance Agent. The claimant stated that, on January 27, 2008, he was attempting to place his feet on the counter in the Surveillance Room when his chair flipped over. He further stated that he injured his neck, left arm, and lower back. The claimant said he had a pre-existing injury and the fall aggravated the injury. (Exhibit pp. 2-4.)

On January, 29, 2008, a co-worker, Sheldon Kanner, provided a witness statement as follows:

At 13:30 Jan 27, 2008 I was sitting at my work station. I noticed that [claimant] was starting to lean back and put his feet on the desk in front of him. At that time the chair started to lean to the left the chair & [claimant] fell over and [claimant] landed on his left side. At that time I ask him if he needed any assistance. He walk around awhile then went back to work. (Exhibit p. 5.)

On January 29, 2008, the claimant completed an Employee's Claim for Compensation/Report of Initial Treatment (hereinafter referred to as "Form C-4"). The claimant stated that he injured his neck and lower back when he went to put his legs up on the corner of a desk causing the chair to flip backwards. (Exhibit p. 6.)



1 The physician's portion of the Form C-4 was completed at Concentra Medical Center  
2 (hereinafter referred to as "Concentra") by Dr. Adrian. The claimant was diagnosed with a strain of the  
3 cervical, lumbar and thoracic spine. Physical therapy was recommended. The claimant was placed on  
4 restricted duty. (Exhibit pp. 6-10.)  
5

6 The Employer completed an Employer's Report of Industrial Injury or Occupational Disease  
7 (hereinafter referred to as "Form C-3") on January 29, 2008. (Exhibit p. 11.)  
8

9 The claimant had a follow up appointment with Concentra on February 6, 2008. It was noted  
10 that the claimant had a significant pre-existing history related to his back. In 1972, the claimant was  
11 in a motorcycle accident. In 1977, he was in a motor vehicle accident. He had another motor vehicle  
12 accident in 1984. He also had a work related accident in 1982, and a left knee injury in 1987. He had  
13 a shoulder injury in 1992 and 1993. "He says in the year 2000 he had a lipoma that was removed at the  
14 base of his neck and has always had pain since then." He is treating with a spine surgeon, Dr. William  
15 Smith who took him off methadone in January of 2008 and switched him to eight (8) pills of  
16 Oxycodone per day. He was also on Lyrica for pain in his left hand. Dr. Parekh's assessment was as  
17 follows:  
18

19 "Back pain. Previous history of a lot of preexisting issues with possible  
20 preexisting disc disease. Patient's lumbar spine x-rays that have been done her  
21 indicated a narrowing of L1-L2 disc space with osteophyte formation anteriorly,  
22 grade 1 spondylolisthesis at L5 anteriorly on S1 with bilateral spondylolysis at  
this level. On the cervical spine, osteophyte formation present anterior and  
posterior C5-6, C6-C7. Spinous and transverse processes appear normal."

23 (Exhibit pp. 12-14.)  
24

25 In a letter dated February 26, 2008, the Administrator issued a written determination denying  
26 the claimant's industrial insurance claim. (Exhibit p. 15.) The claimant disagreed with the  
27 Administrator's determination and a hearing was scheduled and held at the Hearing Officer level on  
28 June 4, 2008. In a Hearing Officer's Decision and Order dated June 12, 2008, the Hearing Officer

1 dismissed the claimant's appeal due to the claimant's failure to appear. An Order of Rescission was  
2 issued on June 24, 2008, as the claimant was present for the hearing. (Exhibit pp. 16-20.)

3 The Hearing Officer issued a Decision and Order on June 24, 2008. The Hearing Officer  
4 affirmed the Administrator's claim denial because the claimant's injury was not due to an increased risk  
5 posed by his employment and the act of resting his legs on his desk was deemed not to be connected  
6 to the claimant's employment nor an increased risk posed by the employment. (Exhibit pp. 21-22.)

7 The claimant was appointed an attorney with Nevada Attorney for Injured Workers on July 21,  
8 2008. (Exhibit pp. 23-24.)

9  
10 Becky Shope, Surveillance Inspector, provided a voluntary statement as follows:

11 I Becky Shope have currently been working here at Fitzgeralds Casino and Hotel  
12 in the Surveillance Department. During my time here in Surveillance it has been  
13 the procedure of the room to be constantly on guard at all time to observe  
14 anything at any time. At no time has it been allowed to rest any of our body  
15 parts on the working station. The only time when we use the working station for  
16 our personal use is for when he [sic] have lunch. (Exhibit p. 25.)

17 William Preston Friday, provided a voluntary statement as follows:

18 It is my knowledge that any surveillance Inspector or agent is not aloud [sic] to  
19 have his or her feet on the desk while working. This may indicate someone  
20 sleeping, or not doing his or hers [sic] job. This is not a professional position  
21 while in any Surveillance room. (Exhibit p. 27.)

22 Philip Gravier, provided a voluntary statement as follows:

23 I Philip Gravier, have worked in surveillance room at the Fitzgerald's since May  
24 of 2008. In that time that I've been here I've never been authorized to put my  
25 feet on the desk. (Exhibit p. 28.)  
26 ...  
27 ...  
28 ...

1 Vicky Harper, swing shift surveillance inspector, provided a voluntary statement as follows:

2 I have been employed with the Fitzgerald surveillance room for just over a year  
3 now. To my knowledge placing your feet on the workstation desk has never  
4 been accepted. (Exhibit p. 29.)

5 Sheldon Kanner, Surveillance Inspector, provided a voluntary statement as follows:

6 I, Sheldon Kanner have been working for the Fitzgerald for over 2 years in the  
7 Surveillance department. I have been in the work field for 45 years and I never  
8 seen anybody put there feet upon there work station. It is unprofessional and  
9 you cannot effectively do there assigned work in that position. I was told when  
I accepted the position that I must be aware of what is going on at all times.  
(Exhibit p. 30.)

10 Edward J. Cashmon, Surveillance Manager, provided a voluntary statement as follows:

11 I, Edward Cashmon have been employed in the Surveillance Department of the  
12 Fitzgerald's since 1995 and to my knowledge it has never been policy,  
13 condoned, or authorized to place your feet on the Surveillance console/desk to  
stretch your legs. (Exhibit p. 31.)

14 Bruce Carley a Surveillance Inspector, provided a voluntary statement as follows:

15 I have been working in the Surveillance Department since March 2007. It is the  
16 policy of the room to act in a professional manner at all times. Using the work  
17 station as a foot rest (For example, putting your feet on the desk) violates this  
policy. (Exhibit p. 32.)

18 David Rusyn, a Surveillance Inspector, provided a voluntary statement as follows:

19 In my entire career as a Surveillance Inspector I have never observed any  
20 inspector place his feet on his desk. I do not believe that this would be  
21 considered acceptable behavior by any Inspector I have ever worked with.  
22 Furthermore, to my knowledge no inspector has been authorized to place their  
feet on the desk. (Exhibit p. 33.)

23 Brian Swartwood, Employees Relation Manager/Risk Management provided a memorandum  
24 explaining that he did not recall the date of purchase for the chair involved in the incident. After the  
25 incident the chair was inspected and no defects were found. The chair has continued to be used in the  
26

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1 Surveillance Room. To the best of his knowledge it is not common practice for the Surveillance staff  
2 to put their feet on the desk while sitting at work. The chairs are wheeled on a hard surface, and to put  
3 your feet up would not be a safe work place activity. (Exhibit p. 34.)  
4

5 II.

6 ARGUMENT

7 The Claimant is Unable to Establish that He Sustained an Injury  
8 by Accident While Working Within the Course and Scope of His Employment

9 It is well-settled that the claimant, not the Employer, has the burden of proving his case by a  
10 preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567, 688 P.2d  
11 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323 (1990);  
12 Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).  
13

14 In attempting to prove his case, the claimant has the burden of going beyond speculation and  
15 conjecture. That means that the claimant must establish the work related injury and his disability, the  
16 extent of his disability, and all facets of the claim by a preponderance of the evidence. To prevail, a  
17 claimant must present and prove more evidence than an amount which would make his case and his  
18 opponent's "evenly balanced." Maxwell v. SIIS, 109 Nev. 327, 849 P. 2d 267 (1993); SIIS v. Khweiss,  
19 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, The  
20 Law of Workmen's Compensation, § 80.33(a).  
21

22 In the present case, the claimant is alleging that he injured his lower back, neck and left arm  
23 when he went to prop his legs up on a desk causing his chair to flip over. The claimant was employed  
24 as a Surveillance Agent. The description of the incident does not establish a causal connection between  
25 his alleged injury and his employment as required by NRS 616C.150. The claimant has not carried his  
26

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1 NRS 616C.150 burden as there is no medical evidence that connects his injury to the duties arising from  
2 the course and scope of his employment. His treating physician, Dr. Parekh, details a very significant  
3 history of pre-existing injuries and the fact that the claimant was currently treating with Dr. Smith for  
4 injuries to his spine.

5  
6 NRS 616C.150 specifically provides:

7 An injured employee or his dependents are not entitled to receive  
8 compensation pursuant to the provisions of chapters 616A to 616D, inclusive,  
9 of NRS unless the employee or his dependents establish by a preponderance of  
10 the evidence that the employee's injury arose out of and in the course of his  
11 employment.

12 "An accident or injury is said to arise out of employment when there is  
13 a causal connection between the injury and the employee's work. In other words,  
14 the injured party must establish a link between the workplace conditions and  
15 how those conditions caused the injury. Further, a claimant must demonstrate  
16 that the origin of the injury is related to some risk involved within the scope of  
17 employment. However, if an accident is not fairly traceable to the nature of  
18 employment or the workplace environment, then the injury cannot be said to  
19 arise out of the claimant's employment. Finally, resolving whether an injury  
20 arose out of employment is examined by a totality of the circumstances." See,  
21 also, Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104  
22 (2005). (Emphasis added.)

23 In Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 939 P.2d 1043 (1997), the Nevada  
24 Supreme Court held that the "Nevada Industrial Insurance Act is not a mechanism which makes  
25 employers absolutely liable for injuries suffered by employees who are on the job." Id., at 605. The  
26 Gorsky Court concluded by stating, "The requirements of 'arising out of and in the course of  
27 employment' make it clear that a claimant must establish more than being at work and suffering an  
28 injury in order to recover." The statement's from the claimant's coworkers confirm that propping one's  
feet up on the desk was not a common practice for a Surveillance agent and any injury stemming from  
that action should not be considered to arise out of and in the course of employment.

1 NRS 616A.030 and NRS 616A.265(1) mandate:

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

5 NRS 616A.265 "Injury" and "personal injury" defined.

6 1. "Injury" or "personal injury" means a sudden and tangible happening  
7 of a traumatic nature, producing an immediate or prompt result which is  
8 established by medical evidence, including injuries to prosthetic devices. Except  
9 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 employment unless the  
employee received remuneration for participation in the event.

10 The claimant was sitting down and went to prop his legs up on a desk when his chair flipped  
11 over. The incident does not constitute an injury or accident that is in any way related to a risk involved  
12 within the scope of his employment. The Gorsky Court has clearly established that the claimant must  
13 establish more than being at work and suffering an injury in order to have a compensable industrial  
14 claim.

15 As the claimant has offered no evidence that the origin of his injury was related to some risk  
16 involved in the scope of his employment, this is not a compensable industrial injury. The claimant was  
17 merely sitting in a chair propping his legs up on a desk causing his chair to flip over when he claims to  
18 have injured himself. Per the Gorsky court, the claimant must establish more than being at work and  
19 suffering an injury in order to recover. The claimant does not describe an accident that arises from the  
20 course and scope of his employment. Obviously, there is nothing in the claimant's job duties that  
21 require him to prop his legs up on the corner of his desk.

22 ...

23 ...

24 ...

25 ...

26 ...

1 The facts in the present appeal, fall squarely under the ruling in Mitchell. The Mitchell Court  
2 concluded that a positional-risk test is incompatible with the Nevada Industrial Insurance Act. As we  
3 recognized in Gorsky, NRS 616C.150 imposes the burden on the claimant to show, by a preponderance  
4 of the evidence, that the injury arose out of and in the course of the employment. Because the  
5 positional-risk test reduces the claimant's burden and requires only a showing that the claimant  
6 sustained an injury on the job, it directly contravenes the language of NRS 616C.150. The claimant has  
7 not shown by a preponderance of the evidence that the cause for his chair tipping over arose out of and  
8 in the course of his employment.

10  
11 The Mitchell court rejected the positional-risk test, and likewise rejected the proposition that  
12 non-compensable injuries having no causal connection with the employment become compensable  
13 when they are exacerbated by workplace conditions that are neither peculiar to employment nor related  
14 to the cause of the injury in the first place. Mitchell's work environment did not cause her to fall, and  
15 the staircase did not make her workplace conditions "any different from or any more dangerous than  
16 those a member of the general public could expect to confront in a non-work setting." A rule allowing  
17 her to obtain compensation for any exacerbation would, in effect, abrogate the causal connection  
18 required already discussed. In the present appeal the claimant was sitting in a chair attempting to prop  
19 his legs up on his desk and tipped his chair over. The claimant's work environment did not cause his  
20 chair to tip over, and the chair he was sitting in did not make his workplace conditions any more  
21 dangerous than those a member of the general public could expect to find in a non-work setting.

24 Based on the above facts, the Employer properly denied the claimant's claim for industrial  
25 insurance benefits, and that determination must be affirmed as a matter of law.

26 ...

27 ...

28 4851-4297-9075.1

III.

CONCLUSION

The claimant is unable to establish that he sustained an injury by accident while working within the course and scope of his employment.

WHEREFORE, the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., respectfully request that this Appeals Officer affirm the Administrator's February 26, 2008 determination, which denied the claimant's claim for industrial insurance benefits, and that the Appeals Officer affirm the June 24, 2008 Hearing Officer's Decision and Order, which affirmed the Administrator's February 26, 2008 claim denial determination.

DATED this 6 day of February 2009.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By

  
JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665

400 South Fourth Street, Suite 500

Las Vegas, NV 89101

(702) 893-3383

Attorneys for the Employer

FITZGERALDS CASINO/HOTEL

And its Third-Party Administrator

CANNON COCHRAN MANAGEMENT  
SERVICES, INC.



LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 803-3383

CERTIFICATE OF MAILING

I hereby certify that, on the 3rd day of February, 2009, I served a true and correct copy of the above and foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S HEARING MEMORANDUM** by depositing same in the United States Mail, first class postage fully prepaid therein, addressed as follows:

Melodie C. Swanson, Esq. (Via hand-delivery)  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

**BEFORE THE APPEALS OFFICER**

) Appeal Time : 1:00 P.M.

...

JOINT APPENDIX Page 166

SUPPLEMENTAL WITNESS LIST

The Employer and the Administrator may call their employees to testify in person regarding the facts of the case, including Brian Swartwood, Employee Relations Manager/Risk Management, Sheldon Kanner, Surveillance Inspector and Edward Cashma, Surveillance Manager. The Employer and the Administrator may call the claimant, himself, to testify if he does not take the stand on his own behalf. The Employer and the Administrator may call any and all of the claimant's treating and/or examining physicians for rebuttal or other purposes at the time of hearing. The Employer and the Administrator further reserve the right to call any other rebuttal witness as may be necessary.

DATED this 2 day of February, 2009.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:   
JOHN P. LAVERY, ESQ.

Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383  
Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 21<sup>st</sup> day of February, 2009, service of the foregoing FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S SUPPLEMENTAL WITNESS LIST was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Melodie C. Swanson, Esq. (Via facsimile & U.S. mail)  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim

) Claim No. : 08S317-167135  
)  
) Hearing No. : 49522-NG  
)  
) Appeal No. : 54033-GS  
)  
) Employer :  
) FITZGERALDS CASINO/HOTEL  
)  
) Appeal Date : February 5, 2009  
) Appeal Time : 1:00 P.M.

of.

GARY MOGG,

Claimant.

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN  
MANAGEMENT SERVICES INC.'S SUPPLEMENTAL INDEX OF DOCUMENTS

COMES NOW, the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party  
Administrator, CANNON COCHRAN MANAGEMENT SERVICES INC., by and through the  
attorneys, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and submit  
the attached Supplemental Index of Documents relating to the above-referenced matter. This is to affirm  
that all Social Security numbers have been redacted or otherwise removed.

DATED this 30 day of January, 2009.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: Robin Chase  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES INC.

LEWIS BRISBOIS BISGAARD & SMITH LLP  
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LEWIS BRISBOIS BISGAARD & SMITH LLP  
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LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

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| <u>DATE</u> | <u>DOCUMENT</u>   | <u>PAGE NO(S)</u> |
|-------------|---|-------------------|
|             | Witness statements  | 25-33             |
| 01-27-09    | Memorandum from Gregg Brewer, Director of Surveillance to<br>Brian Swartwood, Employee Relations Manager/Risk<br>Management | 34                |

26990-397

4844-4397-0307.1

2

**CERTIFICATE OF MAILING**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 30<sup>th</sup> day of January 2009, service of the foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S SUPPLEMENTAL INDEX OF DOCUMENTS** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
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P. O. Box 35350  
Las Vegas, NV 89133-5350



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

January 22, 2009

I Becky Shope have currently been working here at the Fitzgeralds Casino and Hotel in the Surveillances Department. During my time here in Surveillance it has been the procedure of the room to be constantly on guard at all time to observe anything at any time. At no time has it been allowed to rest any of our body parts on the working station. The only time when we use the working station for our personal use is for when he have lunch.

Surveillance Inspector  
Becky Shope

*Becky Shope*

Witness By:

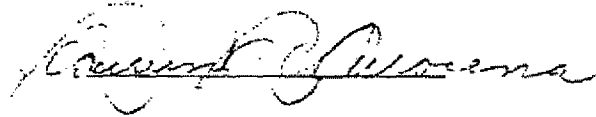
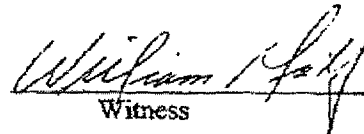
*[Signature]*



To Whom It May Concern:

January 23<sup>rd</sup>, 2009

As long as I have been employed by Fitzgerald's Surveillance, I have never seen or heard of anyone putting their feet up on the work consoles. To my knowledge this is definitely not a practice for surveillance personnel..

A handwritten signature in cursive script, appearing to read "Robert Gussena", written over a horizontal line.A handwritten signature in cursive script, appearing to read "William Kelly", written over a horizontal line.  
Witness

To: whom it may concern

01/23/09

Re: Surveillance room

It is my knowledge that any Surveillance Inspector or agent is not aloud to have his or hers feet on the desk while working. This may indicate someone sleeping, or not doing his or hers job. This is not a professional position while in any Surveillance room

Respectfully Submitted

*William Preston Friday*  
William Preston Friday


*Robert L. Williams*

### To Whom It May Concern:

I, Philip Gravier, have worked in the surveillance room at the Fitzgerald's since May of 2008. In the time that I've been here I've never been authorized to put my feet on the desk.

  
\_\_\_\_\_  
Phil Gravier

Date 1-23-09

  
\_\_\_\_\_  
Witness

Date 1-23-09

To Whom It May Concern:

I have been employed with the Fitzgerald surveillance room for just over a year now. To my knowledge placing your feet on the workstations desk has never been accepted.

Swing Sift Surveillance Inspector  
Vicky Harper

V. Harper

01/24/09  
Date

William H. Hefey  
Witness

01-24-09  
Date

January 24, 2009

I, Sheldon Kanner have been working for the Fitzgerald for over 2 years in the Surveillance department. I have been in the work field for 45 years and I never seen anybody put there feet upon there work station. It is unprofessional and you cannot effectively do there assigned work in that position. I was told when I accepted the position that I must be aware of what is going on at all times.

Surveillance Inspector

Sheldon Kanner



Witness By:



01/27/09

To whom it may concern,

I, Edward Cashmon have been employed in the Surveillance Department of the Fitzgeralds since 1995 and to my knowledge it has never been policy, cordoned, or authorized to place your feet on the Surveillance console/desk to stretch your legs.

Edward J. Cashmon  
Surveillance Manager



I have been working in the Surveillance Department since March, 2007. It is the policy of the room to act in a professional manner at all times. Using the work station as a foot rest ( For example, putting your feet on the desk.) violates this policy.

Surveillance Inspector

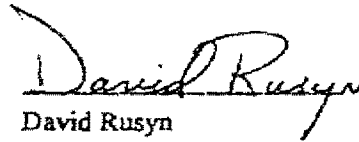
Witness

Bruce Carley 1.22.2009



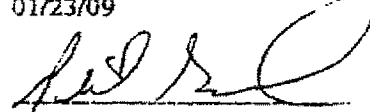
Rocky Shope  
Surveillance

In my entire career as a Surveillance Inspector I have never observed any inspector place his feet on his desk. I do not believe that this would be considered acceptable behavior by any inspector I have ever worked with. Furthermore, to my knowledge no inspector has been authorized to place their feet on their desk.



David Rusyn

01/23/09



Witness





## MEMORANDUM

---

**To:** Brian Swartwood, Employee Relations Manager/Risk Management  
**From:** Gregg Brewer, Director of Surveillance  
**CC:** File  
**Date:** 1/27/2009  
**Subject:** Response to questions re: Gary Mogg

---

I received your request for responses on the case involving Gary Mogg. My responses are as follows:

1. I do not recall the purchase date of the chair involved in the incident.
2. After the injury, the chair was inspected and no defects were found. The chair was continued to be used in the Surveillance Room.
3. As noted above, the chair was not discarded, but continued to be used in the Surveillance Room as there were no defects to the item.
4. As noted above, the chair was inspected, and not found to be faulty or damaged.
5. It was not, and to the best of my knowledge is not common practice for the Surveillance Staff to put their feet on the desk while sitting at work. The chairs are wheeled on a hard surface, and to put your feet up would not be a safe workplace activity.
6. Putting one's feet up on the desk was not specifically disallowed in the employee handbook/rulebook. However, it would not be an approved practice.

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of ) Hearing No.: 49522-NG  
GARY MOGG. ) Appeal No.: 54033-GS

HEARING STATEMENT

I.

STATEMENT OF FACTS

Claimant, Gary Mogg, a surveillance inspector for Fitzgerald's Casino, suffered injury to his neck, back and elbow when the chair he was seated in at his work station, buckled and threw him to the ground.

His claim was denied on the grounds his injury did not arise within the course and scope of his employment.

The Hearing Officer affirmed claim denial.

II.

ISSUES PRESENTED

1. Claim denial.

III.

DOCUMENTARY EVIDENCE

1. Administrator's evidence packets, subject to objection.

2. Claimant reserves the right to submit evidence at a later time pursuant to NAC 616.

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

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IV.

WITNESSES

Claimant shall testify and reserves the right to  
identify and call percipient, rebuttal or impeachment witnesses.

V.

TELEPHONE TESTIMONY

No.

VI.

INTERPRETER SERVICES

No.

VII.

ANTICIPATED LENGTH OF HEARING

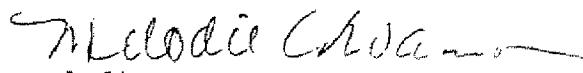
One hour.

AFFIRMATION

Pursuant to NRS 239.030, the undersigned affirms that  
no Social Security numbers appear in this document and/or its  
attachments, if any.

DATED this 28 day of January, 2009.

NEVADA ATTORNEY FOR INJURED WORKERS

  
Melodie C. Swanson, Esq., Deputy  
Attorney for Claimant

MCS\_MOOG, GARY\_Hearing Statement.WPD

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JOHN P. LAVERY, ESQ. VIA FACSIMILE  
LEWIS, BRISBOIS, ET AL (702) 366-9689  
400 S FOURTH STREET STE 500  
LAS VEGAS NV 89101

DATED: 1-28-09

SIGNED: *Wanda L. Thompson*

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555

22000 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-3830

FILED

JAN 07 2009

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of )  
Hearing No.: 49522-NG  
Appeal No.: 54033-GS  
GARY MOGG. )

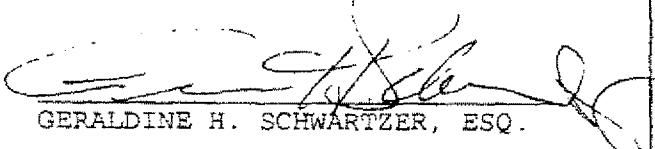
ORDER GRANTING MOTION FOR DISCOVERY

For good cause shown, Claimant's Motion for Discovery  
is GRANTED.

IT IS SO ORDERED.


Dated this 7th day of January, 2009.

APPEALS OFFICER

  
GERALDINE H. SCHWARTZER, ESQ.

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS

  
Melodie C. Swanson, Esq., Deputy  
Attorney for Claimant

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

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada,  
3 Department of Administration, Hearings Division, does hereby  
4 certify that on the date shown below, a true and correct copy of  
5 the foregoing ORDER GRANTING MOTION FOR DISCOVERY was mailed,  
6 postage prepaid at Las Vegas, Nevada, to the following:

7 MELODIE C. SWANSON, ESQ., DEPUTY  
8 NEVADA ATTORNEY FOR INJURED WORKERS  
9 2200 S RANCHO DRIVE STE 230  
10 LAS VEGAS NV 89102

11 JOHN P. LAVERY, ESQ.,  
12 LEWIS, BRISBOIS, ET AL  
13 400 S FOURTH STREET STE 500  
14 LAS VEGAS NV 89101

15 GARY MOGG  
16 2379 CLIFFWOOD DR  
17 HENDERSON NV 89074

18 CCMSI  
19 PO BOX 35350  
20 LAS VEGAS NV 89133-5350

21 FITZGERALD CASINO/HOTEL  
22 301 E FREMONT ST  
23 LAS VEGAS NV 89101

24 DATED: January 7, 2009

25 SIGNED: Rebecca DellaPenna

26  
27  
28  
NEVADA ATTORNEY FOR INJURED WORKERS  
1080 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7535  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER:

In the Matter of the Contested ) Claim No. : 08S31A167135  
Industrial Insurance Claim )  
 ) Hearing No. : 49522-NG  
 )  
 of ) Appeal No. : 54033-GS  
 )  
 ) Employer :  
 8 GARY MOGG, ) FITZGERALDS CASINO/HOTEL  
 )  
 9 Claimant )

FITZGERALDS CASINO/  
HOTEL'S AND CANNON COCHRAN MANAGEMENT  
SERVICES, INC.'S OPPOSITION TO CLAIMANT'S MOTION FOR DISCOVERY

COMES NOW the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party  
Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through their  
attorneys, JOHN P. LAVERY, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP., and oppose  
the Claimant's Motion for Discovery.

DATED this 7 day of January, 2009.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: \_\_\_\_\_  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383  
Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.

1 The proposed discovery is irrelevant, overbroad and vague. The claimant's request for admissions  
2 are not relevant to whether or not the claimant was in the course and scope of his employment when he  
3 was injured. The claimant has failed to set for any specific reasons why the discovery is necessary.  
4

5 CONCLUSION

6 WHEREFORE, the Employer, FITZGERALDS CASINO/HOTEL, and its Third-Party  
7 Administrator, CANNON COCHRAN MANAGEMENT SERVICES, INC., respectfully oppose the  
8 Claimant's Motion for Discovery.

9 DATED this 7 day of January, 2009.  
10

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH, LLP.

13  
14 By: John P. Lavery  
15 JOHN P. LAVERY, ESQ.  
16 Nevada Bar No. 004665  
17 400 South Fourth Street, Suite 500  
18 Las Vegas, NV 89101  
19 (702) 893-3383  
20 Attorneys for the Employer  
21 FITZGERALDS CASINO/HOTEL  
22 And its Third-Party Administrator  
23 CANNON COCHRAN MANAGEMENT  
24 SERVICES, INC.  
25  
26  
27  
28

LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383



LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 683-3383

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 7<sup>th</sup> day of January, 2009, service of the foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES, INC.'S OPPOSITION TO CLAIMANT'S MOTION FOR DISCOVERY** was made this date by depositing a true and correct copy of the same for mailing, postage prepaid thereon, in an envelope to the following:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of ) Hearing No.: 49522-NG  
GARY MOGG. ) Appeal No.: 54033-GS

MOTION FOR DISCOVERY

COMES NOW Claimant, Gary Mogg, by and through his  
attorney, Melodie C. Swanson, Esq., Deputy Nevada Attorney for  
Injured Workers, and pursuant to NAC 616C.305, requests the  
Appeals Officer's Order allowing discovery.

POINTS AND AUTHORITIES


The NAC 616C.305 requires application for an Order  
Allowing Discovery when a party seeks to do. Attached as Exhibit  
1 are Claimant's proposed Admission Requests to Employer.  
Claimant submits the answers to these admissions are essential to  
assist Claimant in proving his case.

AFFIRMATION

Pursuant to NRS 239.030, the undersigned affirms that  
no Social Security number appear in this document and/or its  
attachments.

DATED this 2 day of January 2, 2009.

NEVADA ATTORNEY FOR INJURED WORKERS

  
Melodie C. Swanson, Esq., Deputy  
Attorney for the Claimant

MCS\_MOOG, GARY\_Mtn Discovery.WPD

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

**EXHIBIT 1**

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of ) Hearing No.: 49522-NG  
GARY MOGG. ) Appeal No.: 54033-GS

CLAIMANT'S REQUEST FOR ADMISSIONS

TO: FITZGERALD'S CASINO/HOTEL, Employer;  
TO: CCMSI, Third-Party Administrator; and  
TO: JOHN P. LAVERY, ESQ., its attorney.

COMES NOW Claimant, Gary Mogg, by and through his attorney, Melodie C. Swanson, Esq., Deputy Nevada Attorney for Injured Workers, and hereby requests that, pursuant to Rule 36 of the Nevada Rules of Civil Procedure, that the Employer respond in writing and under oath to the following Admission Requests within thirty (30) days after service hereof.

ADMIT OR DENY:

1. That the chair at issue in this workers' compensation claim was a recent purchase for that surveillance work area.

2. That the chair at issue was never utilized again for sitting purposes in the surveillance area.

3. That the chair at issue was returned and/or discarded shortly after claimant's accident.

4. That the chair at issue was determined to be faulty.

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1           5. That it was a common practice for surveillance  
2 employees working in "the eye in the sky" area to put their feet  
3 up on their desks to stretch at times.

4           6. That putting one's feet up on the desk while seated  
5 in a desk chair during a shift was not specifically disallowed in  
6 any employee hand/rule book.

7                           AFFIRMATION

8           Pursuant to NRS 239.030, the undersigned affirms that  
9 no Social Security number appear in this document and/or its  
10 attachments.

11           DATED this 2 day of January, 2009.

12                           NEVADA ATTORNEY FOR INJURED WORKERS

13                           *Melodie Swanson*

14                           Melodie C. Swanson, Esq., Deputy  
15                           Attorney for Claimant

16 MCS\_MOGG, GARY\_Reg Admissions.WPD  
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NEVADA ATTORNEY FOR INJURED WORKERS  
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2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee  
3 of the State of Nevada, Nevada Attorney for Injured Workers, and  
4 that service of the within and foregoing CLAIMANT'S REQUEST FOR  
5 ADMISSIONS was made this day by depositing for mailing at Las  
6 Vegas, Nevada, a true copy of the attached document addressed to:

7 JOHN P. LAVERY, ESQ.  
8 LEWIS, BRISBOIS, ET AL  
9 400 S FOURTH STREET STE 500  
10 LAS VEGAS NV 89101

11 GARY MOGG  
12 2379 CLIFFWOOD DR  
13 HENDERSON NV 89074

14 DATED: \_\_\_\_\_

15 SIGNED: \_\_\_\_\_

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NEVADA ATTORNEY FOR INJURED WORKERS  
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2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830

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 service of the within and foregoing MOTION FOR DISCOVERY was made this day by depositing a true and correct copy thereof for mailing at Las Vegas, Nevada, addressed to:

JOHN P. LAVERY, ESQ.  
LEWIS, BRISBOIS, ET AL  
400 S FOURTH STREET STE 500  
LAS VEGAS NV 89101

GARY MOGG  
2379 CLIFFWOOD DR  
HENDERSON NV 89074

DATED: 1/2/09

SIGNED: 

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 210  
Las Vegas, NV 89102 (702) 486-2830

FILED

NOV 04 2008

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No: 08S31A167135

Appeal No: 54033-GS

GARY MOGG,

Claimant.


ORDER REGARDING DISCOVERY

An Order Granting Discovery was issued on October 28, 2008. The matter of complying with the discovery requests came on for further consideration after the Claimant, by and through his counsel, filed an Opposition to the Employer/Insurer's Application for Discovery and asked for further consideration. The discovery requests involve medical issues and pre-existing medical conditions.

An attorney telephone conference was held on November 3, 2008 to discuss bifurcation of the issues in the appeal. The parties agreed to suspend discovery proceedings pending the outcome of the February 5, 2009 hearing and decision on the issue of whether the Claimant was in the scope of performing his work duties at the time of the January 27, 2008 incident. For good cause appearing;

**IT IS HEREBY ORDERED** the discovery requested by the Employer/Insurer is suspended pending further proceedings.

**IT IS SO ORDERED** this 4th day of November, 2008.

  
GERALDINE H. SCHWARTZ, ESQ.  
APPEALS OFFICER



1 CERTIFICATE OF MAILING

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

6 GARY MOGG  
7 2379 CLIFFWOOD DR  
8 HENDERSON NV 89074

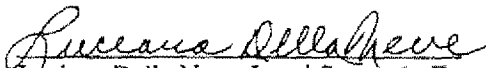
8 MELODIE SWANSON ESQ  
9 NV ATTORNEY FOR INJURED WORKERS  
10 2200 S RANCHO DR #230  
11 LAS VEGAS NV 89102

11 FITZGERALD CASINO  
12 301 E FREMONT ST  
13 LAS VEGAS NV 89101

13 CCMSI  
14 DEBORAH JONES  
15 P O BOX 35350  
16 LAS VEGAS NV 89133-5350

16 JOHN LAVERY ESQ  
17 LEWIS BRISBOIS BISGAARD & SMITH LLP  
18 400 S FOURTH ST STE 500  
19 LAS VEGAS NV 89101

19 Dated this 4th day of November, 2008.  
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21  
22   
23 Luciana Della Neve, Legal Secretary II  
24 Employee of the State of Nevada  
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CLERK OF THE COURT

1 **NEOJ**  
2 JOHN P. LAVERY, ESQ.  
3 Nevada Bar No. 004665  
4 JEANNE P. BAWA, ESQ.  
5 Nevada Bar No. 007359  
6 LEWIS BRISBOIS BISGAARD & SMITH LLP  
7 400 South Fourth Street, Suite 500  
8 Las Vegas, NV 89101  
9 Phone: (702) 893-3383  
10 Fax: (702) 366-9689  
11 Email: [lavery@lbbbslaw.com](mailto:lavery@lbbbslaw.com)  
12 Email: [bawa@lbbbslaw.com](mailto:bawa@lbbbslaw.com)  
13 Attorneys for Petitioners  
14 FITZGERALDS CASINO/HOTEL and  
15 CANNON COCHRAN MANAGEMENT  
16 SERVICES, INC.

11  
12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 FITZGERALDS CASINO/HOTEL: and )  
15 CANNON COCHRAN MANAGEMENT )  
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23 **NOTICE OF ENTRY OF ORDER**

24  
25 YOU, AND EACH OF YOU, please take notice that an **ORDER GRANTING MOTION FOR**  
26 **STAY PENDING APPEAL TO SUPREME COURT** was entered in the above-captioned matter on  
27  
28

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4832-7125-9910 / 26990-397

1 May 7, 2010, a copy of which is attached hereto and made a part hereof.<sup>1/</sup>

2 DATED this 11 day of May, 2010.

3 Respectfully submitted,

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By: 

8 JOHN P. LAVERY, ESQ.

9 Nevada Bar No. 004665

10 JEANNE P. BAWA, ESQ.

11 Nevada Bar No. 007359

12 400 South Fourth Street, Suite 500

13 Las Vegas, NV 89101

14 Phone: (702) 893-3383

15 Fax: (702) 366-9689

16 Attorneys for Petitioners

17 FITZGERALDS CASINO/HOTEL and

18 CANNON COCHRAN MANAGEMENT

19 SERVICES, INC.

20  
21  
22  
23  
24  
25  
26  
27  
28 <sup>1/</sup>**NOTICE:** Pursuant to NRCP Rule 4, should any party desire to appeal this final District Court Order, the notice 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.

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4833-7125-9910.1 / 26990-397

1 CERTIFICATE OF MAILING

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 11<sup>th</sup> day of May,  
3 2010, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made this date by depositing  
4 a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:  
5

6 Gary T. Watson, Esq. (Via hand-delivery)  
7 NEVADA ATTORNEY FOR INJURED WORKERS  
8 2200 South Rancho Drive, Suite 230  
9 Las Vegas, NV 89102-4413

10 Attn: Workers' Comp. Dept.  
11 FITZGERALDS CASINO/HOTEL  
12 301 East Fremont Street  
13 Las Vegas, NV 89101

14 April Taft, Claims Specialist  
15 CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
16 P. O. Box 35350  
17 Las Vegas, NV 89133-5350

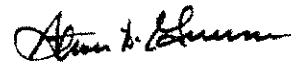
18 Geraldine Schwartz, Esq., Appeals Officer  
19 NEVADA DEPARTMENT OF ADMINISTRATION  
20 Hearings Division  
21 2200 South Rancho Drive, Suite 220  
22 Las Vegas, NV 89102

23  
24  
25  
26  
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An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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## ATTACHMENT

  
CLERK OF THE COURT

1 **ORDR**

2 JOHN P. LAVERY, ESQ.

3 Nevada Bar No. 004665

4 JEANNE P. BAWA, ESQ.

5 Nevada Bar No. 007359

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7 400 South Fourth Street, Suite 500

8 Las Vegas, NV 89101

9 Phone: (702) 893-3383

10 Fax: (702) 366-9689

11 Email: [lavery@lbbslaw.com](mailto:lavery@lbbslaw.com)

12 Email: [bawa@lbbslaw.com](mailto:bawa@lbbslaw.com)

13 Attorneys for Petitioners

14 FITZGERALDS CASINO/HOTEL and

15 CANNON COCHRAN MANAGEMENT

16 SERVICES, INC.

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 FITZGERALDS CASINO/HOTEL and )

20 CANNON COCHRAN MANAGEMENT )

21 SERVICES, INC. )

22 Petitioners. )

23 vs. )

CASE NO.: A594516

DEPT NO.: XXI

24 GARY MOGG; and the STATE OF NEVADA )

25 DEPARTMENT OF ADMINISTRATION, )

26 HEARINGS DIVISION, APPEALS OFFICE, )

27 an Agency of the State of Nevada. )

28 Respondents. )

**ORDER GRANTING MOTION FOR STAY PENDING APPEAL TO SUPREME COURT**

This matter came on for hearing on April 21, 2010 for consideration of Petitioners' Motion for Stay pending appeal to the Nevada Supreme Court.

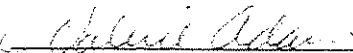
LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4830-1841-5878 / 126690-397

1 After careful review and consideration of the Petitioners' Motion for Stay and good cause  
2 appearing,

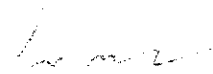
3 IT IS HEREBY ORDERED that the Petitioners' Motion for Stay is **GRANTED**. Petitioners  
4 will pay Respondent's initial bill from Concentra Medical Centers dated January 29, 2008. No  
5 additional bills will be paid while the appeal is pending in Supreme Court.  
6

7 DATED this 28<sup>th</sup> day of April, 2010.  
8

9  
10   
11 VALERIE ADAIR  
12 DISTRICT COURT JUDGE

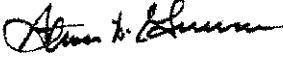
13 Submitted by:

14 LEWIS BRISBOIS BISGAARD & SMITH LLP

15 By   
16 JOHN P. LAVERY, ESQ.  
17 Nevada Bar No. 004665  
18 JEANNE P. BAWA, ESQ.  
19 Nevada Bar No. 007359  
20 400 South Fourth Street, Suite 500  
21 Las Vegas, NV 89101  
22 Phone: (702) 893-3383  
23 Facsimile: (702) 366-9689  
24 Attorneys for Petitioners  
25  
26  
27  
28

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4070-1541-4578 / 26990-397

  
CLERK OF THE COURT

1 **ORDR**

2 JOHN P. LAVERY, ESQ.

3 Nevada Bar No. 004665

4 JEANNE P. BAWA, ESQ.

5 Nevada Bar No. 007359

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

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10 Fax: (702) 366-9689

11 Email: [jlavery@lbbbslaw.com](mailto:jlavery@lbbbslaw.com)

12 Email: [jbawa@lbbbslaw.com](mailto:jbawa@lbbbslaw.com)

13 Attorneys for Petitioners

14 FITZGERALDS CASINO/HOTEL and

15 CANNON COCHRAN MANAGEMENT

16 SERVICES, INC.

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 FITZGERALDS CASINO/HOTEL; and

20 CANNON COCHRAN MANAGEMENT

21 SERVICES, INC.,

22 Petitioners,

23 vs.

CASE NO.: A594516

DEPT NO.: XXI

24 GARY MOGG; and the STATE OF NEVADA

25 DEPARTMENT OF ADMINISTRATION,

26 HEARINGS DIVISION, APPEALS OFFICE,

27 an Agency of the State of Nevada.

28 Respondents.

**ORDER GRANTING MOTION FOR STAY PENDING APPEAL TO SUPREME COURT**

This matter came on for hearing on April 21, 2010 for consideration of Petitioners' Motion for Stay pending appeal to the Nevada Supreme Court.

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

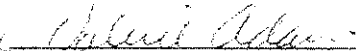
4820-1841-5878 / 26990-397



1 After careful review and consideration of the Petitioners' Motion for Stay and good cause  
2 appearing,


3 IT IS HEREBY ORDERED that the Petitioners' Motion for Stay is **GRANTED**. Petitioners  
4 will pay Respondent's initial bill from Concentra Medical Centers dated January 29, 2008. No  
5 additional bills will be paid while the appeal is pending in Supreme Court.

6 DATED this 28<sup>th</sup> day of April, 2010.

7  
8  
9  
10   
11 VALERIE ADAIR  
12 DISTRICT COURT JUDGE

13 Submitted by:

14 LEWIS BRISBOIS BISGAARD & SMITH LLP

15 By:   
16 JOHN P. LAVERY, ESQ.  
17 Nevada Bar No. 004665  
18 JEANNE P. BAWA, ESQ.  
19 Nevada Bar No. 007359  
20 400 South Fourth Street, Suite 500  
21 Las Vegas, NV 89101  
22 Phone: (702) 893-3383  
23 Facsimile: (702) 366-9689  
24 Attorneys for Petitioners  
25  
26  
27  
28

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4826-1641-5878 / 26990-397

  
CLERK OF THE COURT

1 ASTA  
2 JOHN P. LAVERY, ESQ.  
3 Nevada Bar No. 004665  
4 JEANNE B. BAWA, ESQ.  
5 Nevada Bar No. 007359  
6 NANCY E. HELMBOLD, ESQ.  
7 Nevada Bar No. 006678  
8 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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11 Telephone: (702) 893-3383  
12 Facsimile: (702) 893-3789  
13 Email: [lavery@lbbslaw.com](mailto:lavery@lbbslaw.com)  
14 Email: [bawa@lbbslaw.com](mailto:bawa@lbbslaw.com)  
15 Email: [helmbold@lbbslaw.com](mailto:helmbold@lbbslaw.com)  
16 Attorneys for Appellants  
17 FITZGERALDS CASINO/HOTEL and  
18 CANNON COCHRAN MANAGEMENT  
19 SERVICES, INC.

13  
14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 FITZGERALDS CASINO/HOTEL and )  
17 CANNON COCHRAN MANAGEMENT )  
18 SERVICES, INC., ) CASE NO.: A-09-594516-J  
19 ) DEPT NO.: XXI  
20 Appellants, )  
21 v. )  
22 GARY MOGG; and the STATE )  
23 OF NEVADA DEPARTMENT OF )  
24 ADMINISTRATION, APPEALS OFFICE, )  
an Agency of the State of Nevada, )  
Respondents. )

25 CASE APPEAL STATEMENT

26 I, Name of appellants' filing this case appeal statement: FITZGERALDS  
27 CASINO/HOTEL and CANNON COCHRAN MANAGEMENT SERVICES, INC.  
28

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

(843-7421-3125 / 26990-397

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

3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited): FITZGERALDS CASINO/HOTEL and CANNON COCHRAN MANAGEMENT SERVICES, INC., GARY MOGG, and the DIVISION OF INDUSTRIAL RELATIONS.

4. Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited): FITZGERALDS CASINO/HOTEL and CANNON COCHRAN MANAGEMENT SERVICES, INC., and GARY MOGG.

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:

JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004465  
JEANNE P. BAWA, ESQ.  
Nevada Bar No. 007359  
NANCY E. HELMBOLD, ESQ.  
Nevada Bar No. 006678  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
(702) 893-3383 Phone  
Attorneys for Appellants  
FITZGERALDS CASINO/HOTEL and  
CANNON COCHRAN MANAGEMENT SERVICES, INC.,

Gary T. Watson, Esq.  
Nevada Bar No. 000450  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102  
(702) 486-2830  
Attorneys for Respondent  
GARY MOGG

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4849 7421-3125 1 /26990-397

-2-





CLERK OF THE COURT

1 NOAS  
2 JOHN P. LAVERY, ESQ.  
3 Nevada Bar No. 004665  
4 JEANNE P. BAWA  
5 Nevada Bar No. 007359  
6 NANCY E. HELMBOLD, ESQ.  
7 Nevada Bar No. 006678  
8 LEWIS BRISBOIS BISGAARD & SMITH LLP  
9 400 South Fourth Street, Suite 500  
10 Las Vegas, Nevada 89101  
11 Telephone: (702) 893-3383  
12 Facsimile: (702) 893-3789  
13 Email: [lavery@lbbslaw.com](mailto:lavery@lbbslaw.com)  
14 Email: [bawa@lbbslaw.com](mailto:bawa@lbbslaw.com)  
15 Email: [helmbold@lbbslaw.com](mailto:helmbold@lbbslaw.com)  
16 Attorneys for Appellants  
17 FITZGERALDS CASINO/HOTEL and  
18 CANNON COCHRAN MANAGEMENT  
19 SERVICES, INC.

13  
14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 FITZGERALDS CASINO/HOTEL and )  
17 CANNON COCHRAN MANAGEMENT )  
18 SERVICES, INC., )

CASE NO.: A-09-594516-J

DEPT NO.: XXI

19 Appellants, )

20 v. )

21 GARY MOGG; and the STATE )  
22 OF NEVADA DEPARTMENT OF )  
23 ADMINISTRATION, APPEALS OFFICE, )  
24 an Agency of the State of Nevada, )

25 Respondents. )

26 NOTICE OF APPEAL

27 TO: GARY MOGG, Respondent, and,

28 TO: GARY T. WATSON, ESQ., of NEVADA ATTORNEY FOR INJURED  
WORKERS, counsel of record for Respondent.

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4841-2209-6133 / 26990-397

1 NOTICE IS HEREBY GIVEN that the Appellant Employer, FITZGERALDS  
2 CASINO/HOTEL, and the Third-Party Administrator, CANNON COCHRAN MANAGEMENT  
3 SERVICES, INC., (hereinafter referred to as "Appellants"), in the above-entitled action, hereby appeal  
4 to the Supreme Court of the State of Nevada from the attached "Order" entered in this action on March  
5 22, 2010 which denied Appellants, FITZGERALDS CASINO/HOTEL'S and CANNON COCHRAN  
6 MANAGEMENT SERVICES, INC.'S. Petition for Judicial Review, and the "Notice of Entry of  
7 Order" having been filed on March 23, 2010.

8  
9 DATED this 8 day of April, 2010.

10 Respectfully submitted,

11 LEWIS BRISBOIS BISGAARD & SMITH LLP

12  
13  
14 By: N. J. P. Lavery  
15 JOHN P. LAVERY, ESQ.  
16 Nevada Bar No. 004665  
17 JEANNE P. BAWA, ESQ.  
18 Nevada Bar No. 006678  
19 NANCY E. HELMBOLD, ESQ.  
20 Nevada Bar No. 006678  
21 400 South Fourth Street, Suite 500  
22 Las Vegas, NV 89101  
23 Phone: (702) 893-3383  
24 Fax: (702) 366-9689  
25 Attorneys for Appellants  
26 FITZGERALDS CASINO/HOTEL and  
27 CANNON COCHRAN MANAGEMENT  
28 SERVICES, INC.

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## ATTACHMENT

LEWIS  
BRISBOIS  
BISCHARD  
& SMITH LLP  
ATTORNEYS AT LAW

4841-2209-6133,1 /26990-397

Electronically Filed  
03/23/2010 12:13:45 PM

  
CLERK OF THE COURT

1 NEO  
2 GARY T. WATSON, ESQ., Deputy  
3 Nevada Attorney for Injured Workers  
4 Nevada State Bar No.: 000450  
5 2200 South Rancho Drive, Suite 230  
6 Las Vegas, Nevada 89102  
7 (702) 486-2830  
8 Attorney for Respondent Gary Mogg

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 FITZGERALDS CASINO/HOTEL; AND )  
10 CANNON COCHRAN MANAGEMENT )  
11 SERVICES, INC., )

12 Petitioners, )

CASE NO. A-09-594516-J  
DEPT NO. XXI

13 v. )

14 GARY MOGG; and the DEPARTMENT OF )  
15 ADMINISTRATION, HEARINGS )  
16 DIVISION, APPEALS OFFICE, )  
17 an Agency of the State of Nevada, )

18 Respondents. )

NOTICE OF ENTRY OF ORDER

19 TO: FITZGERALDS CASINO/HOTEL and CCMSI, Petitioners; and

20 TO: JOHN P. LAVERY, ESQ., its counsel:

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a  
22 DECISION AND ORDER DENYING PETITION FOR JUDICIAL REVIEW in the  
23 above-entitled matter was entered herein on the 22<sup>ND</sup> day of March,  
24 2010, a true and correct copy of which is attached hereto.

25 DATED this \_\_\_\_\_ day of March, 2010.

26 Respectfully submitted:

27 /s/ Gary T. Watson  
28 GARY T. WATSON, ESQ., deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No.: 000450  
2200 S. Rancho Drive Ste 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Mogg

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

612450 005524 WPL



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 service of the within and foregoing NOTICE OF ENTRY OF DECISION AND ORDER DENYING PETITION FOR JUDICIAL REVIEW was made this day by depositing for mailing at Las Vegas, Nevada, a true copy of the attached document addressed to:

JOHN P. LAVERY, ESQ.  
LEWIS, BRISBOIS, ET AL  
400 S FOURTH STREET STE 500  
LAS VEGAS NV 89101

GARY MOGG  
2379 CLIFFWOOD DRIVE  
HENDERSON NV 89074

DATED: 3/23/16

SIGNED: /s/ Erin Haisley  
ERIN HAISLEY

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701  
(775) 684-7555  
2200 South Rancho Drive, Suite 220  
Las Vegas, NV 89102  
(702) 486-1830

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

NOTICE OF ENTRY OF DECISION AND ORDER  
DENYING PETITION FOR JUDICIAL REVIEW

filed in District Court Case Number A-09-594516-J

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.

/s/ Gary T. Watson  
Signature

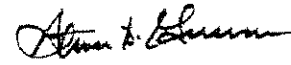
3/23/10  
Date

GARY T. WATSON, ESQ., deputy Nevada  
Attorney for Injured Workers  
Print Name

Attorney for Respondent  
Title

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 208  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 210  
Las Vegas, NV 89102 (702) 486-2830

Electronically Filed  
03/22/2010 10:06:12 AM



CLERK OF THE COURT

1 ORDD  
2 GARY T. WATSON, ESQ., Deputy  
3 Nevada Attorney for Injured Workers  
4 Nevada State Bar No. 000450  
5 2200 South Rancho Drive, Suite 230  
6 Las Vegas, Nevada 89102  
7 (702) 486-2830  
8 Attorney for Respondent Gary Mogg

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 FITZGERALDS CASINO/HOTEL; AND )  
8 CANNON COCHRAN MANAGEMENT )  
9 SERVICES, INC., )

Petitioners, )

CASE NO. A-09-594516-J  
DEPT NO. XXI

10 v. )

DATE: February 17, 2010  
TIME: 9:30 a.m.

11 GARY MOGG; and the DEPARTMENT OF )  
12 ADMINISTRATION, HEARINGS )  
13 DIVISION, APPEALS OFFICE, )  
14 an Agency of the State of Nevada, )

Respondents. )

DECISION AND ORDER  
DENYING PETITION FOR JUDICIAL REVIEW

17 The Court, having reviewed the parties' briefs and the  
18 Record on Appeal on Petitioner's Petition for Judicial Review,  
19 and having considered arguments of counsel, and finding good  
20 cause therefore, hereby finds that the June 15, 2009 Decision and  
21 Order of the appeals officer was not in violation of applicable  
22 statutory and regulatory provisions, nor in excess of the  
23 statutory authority of the appeals officer, nor made upon  
24 unlawful procedures, nor affected by other errors of law. The  
25 Court further finds that there is substantial, reliable and  
26 probative evidence in the Record to support the Findings of Fact  
27 and Conclusions of Law contained in the appeals officer's  
28 Decision and Order.

|   |   |   |  |
|---|---|---|--|
| <input type="checkbox"/> Voluntary Dis          | <input type="checkbox"/> Slip Dis       | <input type="checkbox"/> Sum Jdgmt      | FINAL DISPOSITIONS<br><input type="checkbox"/> Time Limit Expired<br><input checked="" type="checkbox"/> Dismissed (with or without prejudice)<br><input type="checkbox"/> Judgment Entered/Paid in full |
| <input type="checkbox"/> Involuntary (stat) Dis | <input type="checkbox"/> Slip Jdgmt     | <input type="checkbox"/> Non-Jury Trial |  |
| <input type="checkbox"/> Jdgmt on Aff Award     | <input type="checkbox"/> Enforced Jdgmt | <input type="checkbox"/> Jury Trial     |  |
| <input type="checkbox"/> Min to Dis (by deft)   | <input type="checkbox"/> Transferred    |   |  |

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

Wherefore, it is the decision of this Court that the  
appeals officer's June 15, 2009 Decision and Order is hereby  
AFFIRMED, and the Petition for Judicial Review is hereby  
DISMISSED with prejudice. The previous July 27, 2009 Order  
Granting Motion for Stay is RESCINDED.

IT IS SO ORDERED.

DATED this 19<sup>th</sup> day of March, 2010.

*Valerie Allen*

DISTRICT COURT JUDGE

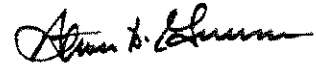
Submitted by:

*Gary T. Watson*

GARY T. WATSON, ESQ., Deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No. 000450  
2200 S. Rancho Drive, Suite 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Mogg

GTW,MOGG, GARY\_Order Denying RJR.WPD

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 205  
Carson City, NV 89701 (775) 684-7555  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102 (702) 486-2830



CLERK OF THE COURT

1 NEO  
2 GARY T. WATSON, ESQ., Deputy  
3 Nevada Attorney for Injured Workers  
4 Nevada State Bar No.: 000450  
5 2200 South Rancho Drive, Suite 230  
6 Las Vegas, Nevada 89102  
7 (702) 486-2830  
8 Attorney for Respondent Gary Mogg

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 FITZGERALDS CASINO/HOTEL; AND )  
8 CANNON COCHRAN MANAGEMENT )  
9 SERVICES, INC., )

Petitioners,

CASE NO. A-09-594516-J  
DEPT NO. XXI

v.

11 GARY MOGG; and the DEPARTMENT OF )  
12 ADMINISTRATION, HEARINGS )  
13 DIVISION, APPEALS OFFICE, )  
14 an Agency of the State of Nevada, )

Respondents.

NOTICE OF ENTRY OF ORDER

16 TO: FITZGERALDS CASINO/HOTEL and CCMSI, Petitioners; and

17 TO: JOHN P. LAVERY, ESQ., its counsel:

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a  
19 DECISION AND ORDER DENYING PETITION FOR JUDICIAL REVIEW in the  
20 above-entitled matter was entered herein on the 22<sup>ND</sup> day of March,  
21 2010, a true and correct copy of which is attached hereto.

DATED this \_\_\_\_\_ day of March, 2010.

Respectfully submitted:

/s/ Gary T. Watson

GARY T. WATSON, ESQ., deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No.: 000450  
2200 S. Rancho Drive Ste 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Mogg

818435-025925-WPD

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 NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that service of the within and foregoing NOTICE OF ENTRY OF DECISION AND ORDER DENYING PETITION FOR JUDICIAL REVIEW was made this day by depositing for mailing at Las Vegas, Nevada, a true copy of the attached document addressed to:

JOHN P. LAVERY, ESQ.  
LEWIS, BRISBOIS, ET AL  
400 S FOURTH STREET STE 500  
LAS VEGAS NV 89101

GARY MOGG  
2379 CLIFFWOOD DRIVE  
HENDERSON NV 89074

DATED: 3/23/10

SIGNED: /s/ Erin Haisley  
ERIN HAISLEY

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

NOTICE OF ENTRY OF DECISION AND ORDER  
DENYING PETITION FOR JUDICIAL REVIEW

filed in District Court Case Number A-09-594516-J

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.

/s/ Garv T. Watson  
Signature

3/23/10  
Date

GARY T. WATSON, ESQ., deputy Nevada  
Attorney for Injured Workers  
Print Name

Attorney for Respondent  
Title

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

  
CLERK OF THE COURT

ORDD  
GARY T. WATSON, ESQ., Deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No. 000450  
2200 South Rancho Drive, Suite 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Gary Mogg

DISTRICT COURT  
CLARK COUNTY, NEVADA

FITZGERALDS CASINO/HOTEL; AND  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.,

Petitioners,

v.

GARY MOGG; and the DEPARTMENT OF  
ADMINISTRATION, HEARINGS  
DIVISION, APPEALS OFFICE,  
an Agency of the State of Nevada,

Respondents.

CASE NO. A-09-594516-J  
DEPT NO. XXI

DATE: February 17, 2010  
TIME: 9:30 a.m.

DECISION AND ORDER  
DENYING PETITION FOR JUDICIAL REVIEW

The Court, having reviewed the parties' briefs and the Record on Appeal on Petitioner's Petition for Judicial Review, and having considered arguments of counsel, and finding good cause therefore, hereby finds that the June 15, 2009 Decision and Order of the appeals officer was not in violation of applicable statutory and regulatory provisions, nor in excess of the statutory authority of the appeals officer, nor made upon unlawful procedures, nor affected by other errors of law. The Court further finds that there is substantial, reliable and probative evidence in the Record to support the Findings of Fact and Conclusions of Law contained in the appeals officer's Decision and Order.

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| <input type="checkbox"/> Voluntary Dis          | <input type="checkbox"/> Stop Dis      | <input type="checkbox"/> Sum Jdgmt      | FINAL DISPOSITIONS  |
| <input type="checkbox"/> Involuntary (stat) Dis | <input type="checkbox"/> Stop Jdgmt    | <input type="checkbox"/> Non-Jury Trial | <input type="checkbox"/> Time Limit Expired                               |
| <input type="checkbox"/> Jdgmt on Arls Award    | <input type="checkbox"/> Default Jdgmt | <input type="checkbox"/> Jury Trial     | <input checked="" type="checkbox"/> Dismissed (with or without prejudice) |
| <input type="checkbox"/> Min to Dis (by deflt)  | <input type="checkbox"/> Transferred   |   | <input type="checkbox"/> Judgment Satisfied/Paid in full                  |

NEVADA ATTORNEY FOR INJURED WORKERS  
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(775) 684-7555  
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Las Vegas, NV 89102  
(702) 486-2830





*Alvin L. Lavin*

CLERK OF THE COURT

ORDD  
GARY T. WATSON, ESQ., Deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No. 000450  
2200 South Rancho Drive, Suite 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Gary Mogg

DISTRICT COURT  
CLARK COUNTY, NEVADA

FITZGERALDS CASINO/HOTEL; AND )  
CANNON COCHRAN MANAGEMENT )  
SERVICES, INC., )

Petitioners, )

v. )

GARY MOGG; and the DEPARTMENT OF )  
ADMINISTRATION, HEARINGS )  
DIVISION, APPEALS OFFICE, )  
an Agency of the State of Nevada, )

Respondents. )

CASE NO. A-09-594516-J  
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|   |  |   |   |
|---|--|---|---|
| <input type="checkbox"/> Voluntary Dis          | <input type="checkbox"/> Stop Dis      | <input type="checkbox"/> Sum Jdgmt      | <b>FINAL DISPOSITIONS</b>   |
| <input type="checkbox"/> Involuntary (stat) Dis | <input type="checkbox"/> Stop Jdgmt    | <input type="checkbox"/> Non-Jury Trial | <input type="checkbox"/> Time Limit Expired                               |
| <input type="checkbox"/> Jdgmt on Auto Award    | <input type="checkbox"/> Default Jdgmt | <input type="checkbox"/> Jury Trial     | <input checked="" type="checkbox"/> Dismissed (with or without prejudice) |
| <input type="checkbox"/> Min to Dis (by debt)   | <input type="checkbox"/> Transferred   |   | <input type="checkbox"/> Judgment Satisfied/Paid in full                  |

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

Wherefore, it is the decision of this Court that the  
appeals officer's June 15, 2009 Decision and Order is hereby  
AFFIRMED, and the Petition for Judicial Review is hereby  
DISMISSED with prejudice. The previous July 27, 2009 Order  
Granting Motion for Stay is RESCINDED.

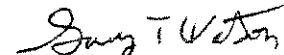
IT IS SO ORDERED.

DATED this 19<sup>th</sup> day of March, 2010.



DISTRICT COURT JUDGE

Submitted by:



GARY T. WATSON, ESQ., Deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No. 000450  
2200 S. Rancho Drive, Suite 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Mogg

GTW\_MOGG, GARY\_Order Denying PJR.WPD

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*E. J. Smith*  
CLERK OF THE COURT

1 NEOJ  
2 JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
3 JEANNE P. BAWA, ESQ.  
Nevada Bar No. 007359  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
5 400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
6 Phone: (702) 893-3383  
7 Fax: (702) 366-9689  
8 Email: [lavery@lbbslaw.com](mailto:lavery@lbbslaw.com)  
9 Email: [bawa@lbbslaw.com](mailto:bawa@lbbslaw.com)  
Attorneys for Petitioners  
10 FITZGERALDS CASINO/HOTEL and  
CANNON COCHRAN MANAGEMENT  
11 SERVICES, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

14 FITZGERALDS CASINO/HOTEL; and )  
15 CANNON COCHRAN MANAGEMENT )  
16 SERVICES, INC. )

17 Petitioners, )

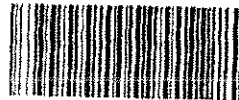
18 vs. )

19 GARY MOGG; and the STATE OF NEVADA )  
20 DEPARTMENT OF ADMINISTRATION, )  
21 HEARINGS DIVISION, APPEALS OFFICE, )  
an Agency of the State of Nevada, )

22 Respondents. )  
23 )

CASE NO.: A594516  
DEPT NO.: XXI

A-09-594516-J  
297417



NOTICE OF ENTRY OF ORDER

YOU, AND EACH OF YOU, please take notice that an  
ORDER GRANTING MOTION FOR STAY was entered in the above-captioned matter on July

CLERK OF THE COURT

AUG 3 2009

RECEIVED

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

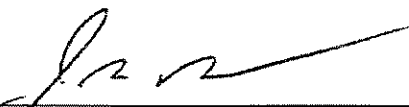
4816-6373-1716.1 /26990-397

1 30, 2009, a copy of which is attached hereto and made a part hereof.<sup>1/</sup>

2 DATED this 3 day of August, 2009.

3  
4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By:   
8 JOHN P. LAVERY, ESQ.  
9 Nevada Bar No. 004665  
10 JEANNE P. BAWA, ESQ.  
11 Nevada Bar No. 007359  
12 400 South Fourth Street, Suite 500  
13 Las Vegas, NV 89101  
14 Phone: (702) 893-3383  
15 Fax: (702) 366-9689  
16 Attorneys for Petitioners  
17 FITZGERALDS CASINO/HOTEL and  
18 CANNON COCHRAN MANAGEMENT  
19 SERVICES, INC.  
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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  
28 notice 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.

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4816-6373-1716.1 /26990-397

2

1 CERTIFICATE OF MAILING

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 3rd day  
3 of August, 2009 service of the foregoing **NOTICE OF ENTRY OF ORDER** was made this date  
4 by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada,  
5 addressed as follows:  
6

7 Melodie C. Swanson, Esq.  
8 NEVADA ATTORNEY FOR INJURED WORKERS  
9 2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

10 Attn: Workers' Comp. Dept.  
11 FITZGERALDS CASINO/HOTEL  
12 301 East Fremont Street  
Las Vegas, NV 89101

13 April Taft, Claims Specialist  
14 CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
15 P. O. Box 35350  
Las Vegas, NV 89133-5350

16 Geraldine Schwartzer, Esq., Appeals Officer  
17 NEVADA DEPT. OF ADMINISTRATION  
18 Hearings Division  
2200 South Rancho Drive, Suite 220  
19 Las Vegas, NV 89102

20  
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23 An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP  
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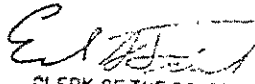
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ATTACHMENT

1 ORDR  
2 JOHN P. LAVERY, ESQ.  
3 Nevada Bar No. 004665  
4 JEANNE P. BAWA, ESQ.  
5 Nevada Bar No. 007359  
6 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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12 Email: [bawa@lbbslaw.com](mailto:bawa@lbbslaw.com)  
13 Attorneys for Petitioners  
14 FITZGERALDS CASINO/HOTEL and  
15 CANNON COCHRAN MANAGEMENT  
16 SERVICES, INC.  
17

FILED

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CLERK OF THE COURT

11  
12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA  
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15 FITZGERALDS CASINO/HOTEL; and )  
16 CANNON COCHRAN MANAGEMENT )  
17 SERVICES, INC. )

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vs.

CASE NO.: A594516  
DEPT NO.: XXI

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IT IS HEREBY ORDERED that the Petitioners' Motion for Stay is GRANTED.

DATED this 22<sup>nd</sup> day of July, 2009.

VALERIE ADAIR  
\_\_\_\_\_  
VALERIE ADAIR  
DISTRICT COURT JUDGE

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:   
\_\_\_\_\_  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
JEANNE P. BAWA, ESQ.  
Nevada Bar No. 007359  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
Phone: (702) 893-3383  
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Attorneys for Petitioners

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BRISBOIS  
BISGAARD  
& SMITH LLP

4813-8349-7476.1 / 26990-397

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1 ORDR

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12 Email: [bawa@lbbslaw.com](mailto:bawa@lbbslaw.com)

13 Attorneys for Petitioners

14 FITZGERALDS CASINO/HOTEL and

15 CANNON COCHRAN MANAGEMENT

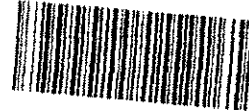
16 SERVICES, INC.

FILED

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*Erin J. Smith*  
CLERK OF THE COURT

A-09-594516-J  
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DISTRICT COURT

CLARK COUNTY, NEVADA

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Petitioners,

vs.

CASE NO.: A594516

DEPT NO.: XXI

GARY MOGG; and the STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION,  
HEARINGS DIVISION, APPEALS OFFICE,  
an Agency of the State of Nevada,

Respondents.

ORDER GRANTING MOTION FOR STAY

After careful review and consideration of the Petitioners' Motion for Stay and good

cause appearing,

...

4813-8349-7476.1 / 26990-397

07-27-09A03:47 RCVD

CLERK OF THE COURT

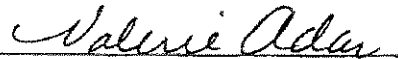
JUL 30 2009

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LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

1 IT IS HEREBY ORDERED that the Petitioners' Motion for Stay is GRANTED.

2 DATED this 27<sup>th</sup> day of July, 2009.

3  
4  
5 

6 VALERIE ADAIR  
7 DISTRICT COURT JUDGE

8 Submitted by:

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

16 400 South Fourth Street, Suite 500

17 Las Vegas, NV 89101

18 Phone: (702) 893-3383

19 Facsimile: (702) 366-9689

20 Attorneys for Petitioners

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28  
LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4813-8349-7476.1 / 26990-397

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CLERK OF THE COURT

NOTC  
MELODIE C. SWANSON, ESQ., Deputy  
Nevada Attorney for Injured Workers  
Nevada State Bar No. 002494  
2200 South Rancho Drive, Suite 230  
Las Vegas, Nevada 89102  
(702) 486-2830  
Attorney for Respondent Gary Mogg

DISTRICT COURT  
CLARK COUNTY, NEVADA

FITZGERALDS CASINO/HOTEL; and )  
CANNON COCHRAN MANAGEMENT )  
SERVICES, INC., )

Petitioners, )

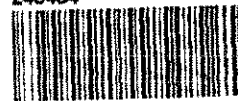
CASE NO. A-09-594516-J  
DEPT NO. XXI

v. )

GARY MOGG; and the DEPARTMENT OF )  
ADMINISTRATION, HEARINGS )  
DIVISION, APPEALS OFFICE, )  
an Agency of the State of Nevada, )

Respondents. )

A-09-594516-J  
240454



NOTICE OF INTENT TO PARTICIPATE IN AND  
RESPONSE TO PETITION FOR JUDICIAL REVIEW

COMES NOW Respondent, Gary Mogg, by and through the  
office of the Nevada Attorney for Injured Workers, in the above-  
entitled Petition for Judicial Review and for a reply and answer  
alleges as follows:

Respondent hereby gives notice pursuant to  
NRS 233B.130(3) of intent to participate in this judicial review  
proceeding.

Respondent alleges the record before the appeals  
officer and this Court clearly reflects the findings, inferences,  
conclusions and decision being reviewed are not in violation of  
constitutional or statutory provisions or in excess of the

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JUL 09 2009

CLERK OF THE COURT

NEVADA ATTORNEY FOR INJURED WORKERS  
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1 statutory authority of the appeals officer or made upon unlawful  
2 procedures or affected by other error of law.

3 Respondent further alleges there is substantial  
4 reliable and probative evidence in the record before the appeals  
5 officer and this Court to support the findings, inferences,  
6 conclusions and decision of the appeals officer and the findings,  
7 inferences, conclusions and decision were not arbitrary or  
8 capricious, or characterized by abuse or unwarranted exercise of  
9 discretion by the appeals officer.

10 WHEREFORE, it is prayed that this Court affirm the  
11 decision of the appeals officer, and enter an Order in accordance  
12 therewith, dismissing the instant Petition with prejudice.

13 DATED this 8 day of July, 2009.

14 NEVADA ATTORNEY FOR INJURED WORKERS

15  
16   
17 MELODIE C. SWANSON, ESQ., Deputy  
18 Nevada Attorney for Injured Workers  
19 Nevada State Bar No. 002494  
20 2200 South Rancho Drive, Suite 230  
21 Las Vegas, Nevada 89102  
22 (702) 486-2830  
23 Attorney for Respondent Gary Mogg  
24  
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26  
27  
28

MCS\_MOGG, GARY\_Not of Intent to Participate.WPD

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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 service of the within and foregoing NOTICE OF INTENT TO PARTICIPATE IN AND RESPONSE TO PETITION FOR JUDICIAL REVIEW was made this day by depositing for mailing at Las Vegas, Nevada, a true copy of the attached document addressed to:

JOHN P. LAVERY, ESQ.  
LEWIS, BRISBOIS, ET AL  
400 S FOURTH ST STE 500  
LAS VEGAS NV 89101

GARY MOGG  
2379 CLIFFWOOD DR  
HENDERSON NV 89074

APPEALS OFFICE GERALDINE H. SCHWARTZER, ESQ.  
DEPARTMENT OF ADMINISTRATION  
2200 S RANCHO DR STE 220  
LAS VEGAS NV 89102

APRIL TAFT, CLAIMS SPECIALIST  
CCMSI  
PO BOX 35350  
LAS VEGAS NV 89133

ATTN: WORKERS' COMP. DEPT.  
FITZGERALDS CASINO AND HOTEL  
301 EAST FREMONT ST  
LAS VEGAS NV 89101

DATED: 7-9-09

SIGNED: Anita L. Thompson

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding

NOTICE OF INTENT TO PARTICIPATE IN AND RESPONSE TO PETITION FOR  
JUDICIAL REVIEW

filed in District Court Case Number A-09-594516-J

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.

Melodie Swanson  
Signature

7-8-09  
Date

MELODIE C. SWANSON, ESO., deputy Nevada  
Attorney for Injured Workers  
Print Name

Attorney for Respondent  
Title

NEVADA ATTORNEY FOR INJURED WORKERS  
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*E. J. Smith*  
CLERK OF THE COURT

PET  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
JEANNE P. BAWA, ESQ.  
Nevada Bar No. 007359  
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Attorneys for Petitioners  
FITZGERALDS CASINO/HOTEL and  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

A-09-594516-J  
218247



FITZGERALDS CASINO/HOTEL; and )  
CANNON COCHRAN MANAGEMENT )  
SERVICES, INC. )

Petitioners, )

vs. )

GARY MOGG; and the STATE OF NEVADA )  
DEPARTMENT OF ADMINISTRATION, )  
HEARINGS DIVISION, APPEALS OFFICE, )  
an Agency of the State of Nevada, )

Respondents. )

CASE NO. *A09594516 J*  
DEPT. NO. : *XXI*

Date of Hearing: N/A  
Time of Hearing: N/A

PETITION FOR JUDICIAL REVIEW

COMES NOW the Petitioners, FITZGERALDS CASINO/HOTEL (hereinafter referred to as "Petitioner Employer"), and CANNON COCHRAN MANAGEMENT SERVICES, INC.,

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4821-6695-9619.1 / 26990-397



1 (hereinafter referred to as "Petitioner Administrator"), by and through their attorneys, JOHN P.  
2 LAVERY, ESQ., JEANNE B. BAWA, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP,  
3  
4 in the above-entitled Petition for Judicial Review and petition this Court for judicial review of the  
5 decision of the Appeals Officer, GERALDINE SCHWARTZER, ESQ., filed on June 15, 2009, a  
6 copy of which is attached hereto as Exhibit "1."

7 The instant Petition for Judicial Review is filed pursuant to NRS Chapter 616C.370, which  
8 mandates that judicial review shall be the sole and exclusive authorized judicial proceeding in  
9  
10 contested industrial insurance claims for compensation for injury or death and pursuant to NRS  
11 2333.130, et seq.

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1 The decision of the Appeals Officer was in violation of constitutional or statutory  
2 provisions, was in excess of the authority of the Appeals Officer, was based upon errors of law,  
3 is arbitrary or capricious in nature, and constitutes an abuse of discretion. Petitioner specifically  
4 requests, pursuant to NRS 233B.133, that this Court receive written briefs and hear oral  
5 argument.  
6

7 DATED this 29 day of June, 2009.

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

16 400 South Fourth Street, Suite 500

17 Las Vegas, NV 89101

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19 Fax: (702) 366-9689

20 Attorneys for Petitioners

21 FITZGERALDS CASINO/HOTEL and

22 CANNON COCHRAN MANAGEMENT

23 SERVICES, INC.  
24  
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FILED

JUN 15 2009

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the )  
Industrial Insurance Claim ) Claim No.: 08S31A167135  
of ) Hearing No.: 49522-NG  
GARY MOGG. ) Appeal No.: 54033-GS

DECISION AND ORDER

This matter came on for hearing on May 5, 2009 pursuant to NRS Chapters 616A-D and 233B. The Claimant, Gary Mogg, was present and represented by his appointed counsel, Melodie C. Swanson, Esq., Deputy Nevada Attorney for Injured Workers. The Employer, Fitzgerald Casino, and Third-Party Administrator, Cannon Cochran Management Services, Inc., were represented by John P. Lavery, Esq., Lewis Brisbois Bisgaard & Smith, LLP.

The following documents were admitted into evidence:

Employer's "A" - 24 pp.

Employer's "B" - 10 pp.

During cross-examination of the Claimant, it was discovered the Employer had possession of a surveillance tape of the incident that was never heretofore produced. Claimant's counsel objected as to timeliness. Without waiving that objection, and after conferring with the Claimant, it was agreed the surveillance tape would be produced. The hearing was continued to allow time for review of said tape by Claimant's counsel and the Appeals Officer.

....

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1 This matter came on again for hearing on May 14, 2009,  
2 pursuant to NRS Chapters 616A-D and 233B. The Claimant, Gary  
3 Mogg, was present and represented by his appointed counsel,  
4 Melodie C. Swanson, Esq., Deputy Nevada Attorney for Injured  
5 Workers. The Employer, Fitzgerald Casino, and Third-Party  
6 Administrator, Cannon Cochran Management Services, Inc., were  
7 represented by John P. Lavery, Esq., Lewis Brisbois Bisgaard &  
8 Smith, LLP.

9 The surveillance tape was admitted into evidence.

10 The Employer and Third-Party Administrator's responses  
11 to Claimant's Requests for Admission had been filed.

12 Witness, Sheldon Kanner, was called to testify for the  
13 Employer and Third-Party Administrator. Counsel concluded with  
14 their closing arguments.

15 The Claimant timely appealed the Hearing Officer's June  
16 24, 2008 Decision and Order which affirmed the Third-Party  
17 Administrator's February 26, 2008 determination of claim denial.  
18 The Claimant contended that the totality of evidence presented  
19 supported the finding of a job accident causing compensable  
20 industrial injuries. The Employer and Third-Party Administrator  
21 contended the claim should be denied as Claimant deviated from  
22 the course and scope of his employment and he willfully intended  
23 to injure himself. However, at time of hearing, counsel for the  
24 Employer and Third-Party Administrator withdrew one of the bases  
25 for denial that Claimant willfully intended to injure himself.

26 Having duly considered the testimony of the Claimant  
27 and witness, the documentary evidence, and arguments of counsel,  
28 . . . .

1 and finding good cause therefore, the Appeals Officer finds and  
2 decides as follows:

3 FINDINGS OF FACT

4 1. The Claimant worked as a surveillance officer for  
5 the Fitzgerald Hotel Casino at the time of his injury on January  
6 27, 2008. Claimant timely reported his injuries, sought prompt  
7 treatment, and the C-4 physician linked his injuries to this  
8 incident (Exh. A, p. 6).

9 2. The Claimant credibly testified that while he was  
10 at his work station performing his work duties of observing the  
11 monitors, the chair he was seated in fell backwards when he tried  
12 to raise his legs to place on the corner of his work station.  
13 The self-insured employer argued the Claimant deviated from his  
14 job duties by raising his legs up to place on the table and,  
15 therefore, he was not hurt in the course and scope of his work  
16 duties.

17 3. There were a number of written statements offered  
18 by the self-insured employer by various individuals stating this  
19 was not a professional way of performing the work duties and it  
20 was not allowed to place any of one's body parts on the work  
21 station. However, there was no evidence of a work rule  
22 prohibiting resting your legs on the work station or of a sign in  
23 the work room prohibiting such conduct. In fact, the self-  
24 insured employer admitted in response to Claimant's Request for  
25 Admission No. 6, on file herein, that putting one's feet up on  
26 the desk while seated in a desk chair during a shift was not  
27 specifically disallowed in any employee hand/rule book. Hence,  
28 . . . .

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1 these written statements are not found to be relevant or  
2 persuasive.

3 4. The Claimant further testified he was able to view  
4 the monitors while his feet were raised and placed on the corner  
5 of the desk. Claimant was physically taller and leaner than his  
6 co-worker, Sheldon Kanner, who also testified at hearing.  
7 Whether or not Claimant's change of position is considered a  
8 momentary act of personal comfort, it does not rise to the level  
9 of a "substantial" deviation from his employment duties, if he is  
10 even considered to have deviated from his duties in the first  
11 instance. Claimant testified to an eight (8) hour shift with no  
12 designated breaks. The meal period consisted of getting your  
13 food and eating at the work station. Two people were assigned  
14 during his shift to sit in the room and observe the monitors.  
15 The self-insured employer's witness, Sheldon Kanner, also  
16 attested to the fact that meals would be eaten at the work  
17 stations.

18 5. There was no evidence the Claimant was playing  
19 around or deliberately trying to hurt himself by raising his legs  
20 to get more comfortable while performing his work duties. The  
21 surveillance tape of the incident clearly shows this was an  
22 accident while the Claimant was performing his work duties.  
23 Claimant's testimony is found to be credible and persuasive and  
24 clearly supported by the surveillance tape evidence.

25 6. The self-insured employer argued that Mitchell v.  
26 Clark County Sch. Dist., 121 Nev 179, 113 P.3d 1104 (2005)  
27 applies in this case in that Claimant has not shown any causal  
28 connection between his injury and the workplace. That argument

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1 is rejected. Claimant's job duties required him to be viewing  
2 surveillance monitors nearly his entire eight hour shift,  
3 including mealtime. Claimant was utilizing a chair provided by  
4 the self-insured employer for that purpose. It was the chair  
5 that collapsed backwards during a moment of Claimant's shift of  
6 position while performing his job duties. Hence, the risk of  
7 injury is clearly attributable to this workplace environment.

8 7. Any Finding of Fact more appropriately deemed to be  
9 a Conclusion of Law, and vice versa, shall be so deemed.

10 CONCLUSIONS OF LAW

11 1. The Claimant proved, by a preponderance of credible  
12 evidence presented, that he suffered compensable work injuries  
13 arising in the course and scope of his employment when the chair  
14 he was seated in while performing his assigned work duties fell  
15 backwards when he was changing position on January 27, 2008. NRS  
16 616A.030; NRS 616A.035; NRS 616A.265; NRS 616C.150(1).

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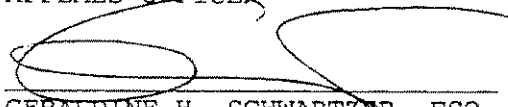
ORDER

APPEALS OFFICE

The June 24, 2008 Hearing Officer Decision and Order below is **REVERSED** and this matter is **REMANDED** to the Employer and Third-Party Administrator for claim acceptance pursuant to NRS 616 and provision of all appropriate benefits.

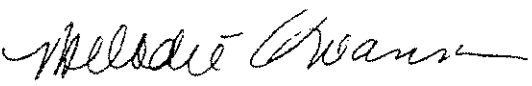
DATED this 15th day of June, 2009.

APPEALS OFFICER

  
GERALDINE H. SCHWARTZ, ESQ.

Submitted by:

NEVADA ATTORNEY FOR INJURED WORKERS

  
Melodie C. Swanson, Esq., Deputy  
Attorney for Claimant

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

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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada,  
3 Department of Administration, Hearings Division, does hereby  
4 certify that on the date shown below, a true and correct copy of  
5 the foregoing DECISION AND ORDER was duly mailed, postage prepaid  
6 at Las Vegas, Nevada, to the following:

7 MELODIE C. SWANSON, ESQ., DEPUTY  
8 NEVADA ATTORNEY FOR INJURED WORKERS  
9 2200 S RANCHO DRIVE STE 230  
LAS VEGAS NV 89102

10 JOHN P. LAVERY, ESQ.  
11 LEWIS, BRISBOIS, ET AL  
400 S FOURTH STREET STE 500  
LAS VEGAS NV 89101

12 GARY MOGG  
13 2379 CLIFFWOOD DR  
HENDERSON NV 89074

14 APRIL TAFT  
15 CANNON COCHRAN MANAGEMENT  
16 SERVICES INC./CCMSI  
PO BOX 35350  
LAS VEGAS NV 89133

17 FITZGERALD'S CASINO & HOTEL  
18 ATTN: WORKERS' COMPENSATION DEPT  
301 EAST FREMONT ST  
19 LAS VEGAS NV 89101

20 DATED: June 15, 2004

21 SIGNED: Julianne R. Hall  
22  
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JIM GIBBONS  
Governor

STATE OF NEVADA



ANDREW K. CLINGER  
Director

BRYAN A. NIX  
Senior Appeals Officer

DEPARTMENT OF ADMINISTRATION  
**HEARINGS DIVISION**

Appeals Officer  
2200 S. Rancho Drive  
Suite 220  
Las Vegas, Nevada 89102  
(702) 486-2527 • Fax (702) 486-2555

June 2, 2009

Melodie C. Swanson, Esq.  
Nevada Attorney for Injured Workers  
2200 S. Rancho Drive, Suite 230  
Las Vegas, Nevada 89102

RE: GARY MOGG  
APPEAL NO.: 54033-GS

Dear Ms. Swanson:

After a review of the evidence, the Hearing Officer's decision is reversed. The issue is the February 26, 2008 claim denial.

The Claimant, a surveillance officer, was at his station performing his work duties of observing the monitors. He fell off his chair when he tried to raise his legs to place on the corner of his work station. The self-insured employer argued the Claimant deviated from his job duties by raising his legs up to place on the table and, therefore, he was not hurt in the course and scope of his work duties. There were a number of statements by various individuals stating this was not a professional way of performing the work duties and it is not allowed to place any of your body parts on the work station. However, there was no evidence of a work rule prohibiting resting your legs on the work station or of a sign in the work room prohibiting such conduct.

The Claimant testified he was able to view the monitors while his feet were raised and placed on the corner of the desk. He also testified to an eight (8) hour shift with no designated breaks. The meal period consisted of getting your food and eating at the work station. Two people were assigned during his shift to sit in the room and observe the monitors. There was no evidence the Claimant was playing around or deliberately tried to hurt himself by raising his legs to get more comfortable while performing his work duties. The tape of the incident clearly shows this was an accident while the Claimant was performing his work duties.

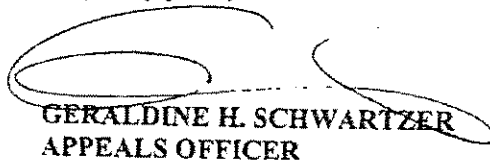
Melodie C. Swanson, Esq.

June 2, 2009

Page - 2 -

Please prepare a Decision and Order consistent with the above and your argument, and provide a copy to all parties pursuant to NAC 616C.306. I will look for the proposed Decision and Order within ten (10) days of the date of this letter.

Very truly yours,



GERALDINE H. SCHWARTZER  
APPEALS OFFICER

GHS:ld

cc: John P. Lavery, Esq.

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ORIGINAL

BEFORE THE APPEALS OFFICER

In the Matter of the  
Contested Industrial  
Insurance Claim,

of

GARY MOGG,

Claimant.

Claim No.: 08S31A167135

Appeal No.: 54033-GS

FILED

2009 MAY 14 PM 2:26

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE GERALDINE SCHWARTZER

APPEALS OFFICER

Thursday, May 14, 2009

4:25 p.m.

2200 South Rancho Drive, Suite 220

Las Vegas, Nevada 89102

Ordered by: John Lavery, Esq.  
Lewis, Brisbois, Bisgaard & Smith  
400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101

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A P P E A R A N C E S

On behalf of the Claimant:

Melodie Swanson, Esq.  
Nevada Attorney for Injured Workers  
2200 South Rancho Drive, Suite 230  
Las Vegas, Nevada 89102

On behalf of Fitzgerald Casino:

John Lavery, Esq.  
Lewis, Brisbois, Bisgaard & Smith  
400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101

Also Present:

Edward Cashman

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I N D E X

| EXAMINATION    | DIRECT | CROSS | REDIRECT | RECROSS |
|----------------|--------|-------|----------|---------|
| SHELDON KANNER | 7      | 19    | 26       |         |

| EXHIBITS     | IDENTIFIED | IN EVIDENCE |
|--------------|------------|-------------|
| EMPLOYER'S C | 5          | 5           |

\* \* \*

1 PROCEEDINGS

2

3 APPEALS OFFICER SCHWARTZER: We're on record  
4 in the matter of the contested industrial insurance  
5 claim of Gary Mogg. Present in the courtroom is the  
6 Claimant. He's represented by Ms. Swanson.  
7 Representing Fitzgerald's is Mr. Lavery and also  
8 present is -- I'm sorry.

9 MR. CASHMAN: Edward Cashman.

10 APPEALS OFFICER SCHWARTZER: This is a  
11 Claimant's appeal from a Hearing Officer decision.  
12 Previously this was on May 5th, 2009, and it was  
13 continued until this date for further proceedings.

14 We marked into evidence Employer's A,  
15 24 pages, Employer's B, 25 through 34. I received the  
16 video.

17 Did you see the video?

18 MS. SWANSON: Yes, I did.

19 APPEALS OFFICER SCHWARTZER: How come it  
20 bounces around so much?

21 MS. SWANSON: It is hard to watch.

22 APPEALS OFFICER SCHWARTZER: It is what it is.

23 MR. LAVERY: It is what it is. I apologize.

24 That is the quality of the production that's made.

25 These are tapes and videos that are used over and over

1 and over over an extended period of time.

2 APPEALS OFFICER SCHWARTZER: Oh, okay. If you  
3 use the tape over and over and over again, that's what  
4 happens.

5 All right. Any objection to the DVD?

6 MS. SWANSON: No. In fact, I'm ready to  
7 submit and go to closings based on that. The DVD says  
8 it all.

9 APPEALS OFFICER SCHWARTZER: Okay. Well, we  
10 were in the middle of doing cross-examination?

11 MR. LAVERY: We were doing cross of the  
12 Claimant.

13 APPEALS OFFICER SCHWARTZER: So did you want  
14 to do further --

15 MR. LAVERY: I don't -- I'm sorry.

16 APPEALS OFFICER SCHWARTZER: -- cross-exam?

17 MR. LAVERY: I didn't mean to interrupt. I  
18 don't think that there's anything more that I  
19 necessarily need to glean from him. We had gotten  
20 through most of it. It was just a question of whether  
21 after I looked at the videotape there was anything else  
22 that I needed to talk to him about or examine him  
23 about. I don't believe that there is.

24 APPEALS OFFICER SCHWARTZER: Okay. Did you  
25 have any other witnesses, Ms. Swanson?



1 MS. SWANSON: Not on behalf of Claimant, no.  
2 APPEALS OFFICER SCHWARTZER: Mr. Lavery any  
3 witnesses?  
4 MR. LAVERY: I do. I have Mr. Cashman and  
5 Mr. Kanner both. Now, after you hear Mr. Cashman  
6 testify, I can always make an offer of proof with  
7 respect to Mr. Kanner.  
8 APPEALS OFFICER SCHWARTZER: Who is the one  
9 that was in the room with him?  
10 MR. LAVERY: Mr. Kanner.  
11 APPEALS OFFICER SCHWARTZER: Mr. Kanner?  
12 MR. LAVERY: Yes. Would you rather hear  
13 Mr. Kanner first?  
14 APPEALS OFFICER SCHWARTZER: I think I would  
15 rather hear Mr. Kanner.  
16 MR. LAVERY: Okay. That's certainly fine.  
17 Want me to call him now?  
18 APPEALS OFFICER SCHWARTZER: Sure.  
19 MR. LAVERY: Okay. I didn't know if there was  
20 anything else you needed from us before we got to that  
21 point.  
22 MR. LAVERY: Go ahead and have a seat over  
23 there for me, please.  
24 APPEALS OFFICER SCHWARTZER: Not a seat.  
25 Remain standing.

1 MR. LAVERY: Oh, I'm sorry.  
2 APPEALS OFFICER SCHWARTZER: Remain standing  
3 over there. Face me. Raise your right hand.  
4 Do you solemnly swear or affirm that the  
5 testimony you are about to give in this matter will be  
6 the truth and nothing but the truth?  
7 THE WITNESS: I do.  
8 APPEALS OFFICER SCHWARTZER: Thank you.  
9 Please have a seat, and if you could state your name  
10 and spell your last name for the record.  
11 MR. LAVERY: Yes, Sheldon Kanner, K-a-n-n-e-r.  
12 APPEALS OFFICER SCHWARTZER: Thank you.  
13 Mr. Lavery.  
14 MR. LAVERY: Thank you, your Honor.  
15  
16 DIRECT EXAMINATION  
17 BY MR. LAVERY:  
18 Q Mr. Kanner, how are you employed?  
19 A I'm with the Fitzgerald Casino as a  
20 surveillance inspector.  
21 Q How long have you worked in that capacity?  
22 A Oh, approximately two and a half years working  
23 at Fitzgerald.  
24 Q Were you working in that capacity on January  
25 the 27th of 2008?

1           A     Yes, I was.

2           Q     Do you recognize the gentleman to my far right  
3     here in the purple? Is it purple? The purple shirt.

4           A     Yes, I do.

5           Q     The only gentleman that's sitting to my right  
6     actually.

7           A     Yes.

8           Q     So it should be limited.

9           A     Yes, I do.

10          Q     You recognize the gentleman. Is that  
11     Mr. Mogg?

12          A     Yes, it is.

13          Q     Were you working with Mr. Mogg on January 27th  
14     of 2008?

15          A     Yes, I was.

16          Q     Can you briefly describe to me and to the  
17     Court the area in which you were working?

18          A     Yes. We were working in a room called the  
19     surveillance room/observation room, which has monitors,  
20     cameras, computers. Our function is to observe and  
21     report any incidents that happen on the floor. Our  
22     main goal is to keep a watch and protect the assets of  
23     the company.

24          Q     Okay. When you say you're watching what's  
25     happening on the floor, I understand what you mean.

1 You're not talking about the floor in the room where  
2 you're sitting. You're talking about a casino floor?

3 A I'm talking about the casino floor, slot  
4 machine area, table area, some of the back-off rooms,  
5 wherever we have cameras.

6 Q Okay. I'm going to walk you through this just  
7 so everybody, including the record, gets a flavor for  
8 the room itself, how it's situated, where you were in  
9 relationship to Mr. Mogg as all this was going on.

10 MS. SWANSON: I'm just going to place a  
11 continuing objection on the record as to relevance.  
12 None of that relevant.

13 APPEALS OFFICER SCHWARTZER: Well, your  
14 objection's noted and overruled.

15 MR. LAVERY: Thank you, your Honor.

16 APPEALS OFFICER SCHWARTZER: However, quite  
17 frankly, you know, the videotape, the tape or whatever  
18 it is, is in the record. So I don't think you have to  
19 go into much detail about the room.

20 MR. LAVERY: Okay. Well, I'm getting to a  
21 particular point. So I will skip to that point.

22 BY MR. LAVERY:

23 Q You said that you're looking at monitors?

24 A Yes, sir.

25 Q How many monitors are you looking at?

1       A     Right now we're looking at about -- there's  
2     approximately 40 monitors that we're looking at.  
3       Q     Okay. Two of you in the room?  
4       A     Two of us in the room.  
5       Q     20 a piece?  
6       A     We look at -- it's not 20 a piece. We look at  
7     all of them as much as we can.  
8       Q     Okay.  
9       A     We don't see everything at one time, but we  
10    monitor -- we try to monitor -- if we see any  
11    infractions or anything like that, we key in on it.  
12       Q     All right. Mr. Mogg previously testified that  
13    you're essentially sitting at a table in a chair;  
14    correct?  
15       A     Right.  
16       Q     The monitors -- is the ceiling essentially as  
17    high as the ceiling in this room?  
18       A     Maybe a little higher. Yeah, it's a little  
19    higher than that.  
20       Q     Eight feet? Nine feet?  
21       A     Yeah, something like that.  
22       Q     Okay. And as I sit facing you, let's assume  
23    that this is the posture that you are sitting in when  
24    you're viewing these monitors.  
25       Do the monitors run from the ceiling to the

1 floor? How far down do they come?  
2 A All the way down to the floor.  
3 Q All the way down to the floor.  
4 So if you're sitting at a table looking at  
5 these monitors, you can see the monitors all the way to  
6 the floor?  
7 A Yes, you could.  
8 Q If you were to lean back in a chair and put  
9 your feet up, can you see the monitors in that --  
10 A No, you couldn't. No, you can't.  
11 Q Let me finish the question.  
12 Can you see the monitors down at the floor?  
13 A No.  
14 Q You were actually present in the video room on  
15 the day that Mr. Mogg fell; is that correct?  
16 A That's right.  
17 Q Did you actually see Mr. Mogg fall to the  
18 floor?  
19 A Yes, I did.  
20 Q Okay. Can you briefly describe to the Appeals  
21 Officer what you saw?  
22 A I saw Mr. Mogg starting to lean back on his  
23 chair and just in a relaxing way. He put up his one  
24 foot, and then when he put up the second foot, I saw  
25 the chair start to lean just to the left which was

1 towards me. But when he started like this he went --  
2 it was like slow motion going down, and he just tipped  
3 over onto the floor.

4 Q Okay. Did the chair break? Did it collapse?  
5 A No.  
6 Q Did it fall apart?  
7 A No, sir.  
8 Q Okay. It was simply a matter of somebody  
9 leaning back in a chair and just like you did when  
10 you're in the second grade. You flip over backwards?  
11 A He went to the left.  
12 Q Okay.  
13 A He went to the left.  
14 Q Did the chair -- is the chair similar to the  
15 ones that we have in here that have the wheels on it?  
16 A Yes.  
17 Q Okay. And this particular chair has a star  
18 pattern on the bottom of it. It looks like there's  
19 five wheels on it.  
20 Is it set up essentially the same way?  
21 A No. It has four, four wheels.  
22 Q After Mr. Mogg fell did he get up and leave  
23 the room?  
24 A He did not. He walked around a little bit.  
25 Q Okay.

1       A     To my knowledge he walked around a little bit  
2     trying to help whatever pain he was in, and I don't  
3     know, and then eventually he left. He walked out. He  
4     took a break. It was sometime like after 2:00 o'clock.  
5     He took a break for about 15 minutes, 15, 20 minutes.

6       Q     Do me a favor and explain to the Court -- you  
7     said he took a break.

8             What's the process for taking a break? I  
9     mean, you guys are obviously sitting in a room trying  
10    to keep track of what's going on in a fairly crowded  
11    casino.

12            What's the process if you want to take a  
13    break?

14       A     If you want to take a --

15       Q     If you want to stretch your legs.

16       A     You want to stretch your legs? If it was two  
17    people working in the room, you just say, "Hey, Shell"  
18    or to Gary, "I'm going to take a break. I'll be back."  
19    You know, because we're authorized two 10-minute breaks  
20    and one 30-minute break, and that was from day one when  
21    I started. That was what they told us we were allowed,  
22    two 10-minute breaks and one 30-minute break.

23            Because of our situation in our room, as an  
24    inspector we cannot eat lunch with anybody. So what we  
25    do is we go into the employee dining room, get our



1 food, and bring it back and sit at our desk and eat.  
2 We're still on the break. If you want to answer a  
3 phone, we do.

4 I'm not a smoker. So I don't go out on a  
5 smoke break or anything like that. If a person's a  
6 smoker, they'll go out and take a smoke break or  
7 they'll take a walk somewhere just to clear their  
8 heads. And that was from day one from all the bosses  
9 that I've worked with here.

10 Now, if you want to take a break he'd say,  
11 "Hey, Shell, I'm going to take -- I'm going to catch a  
12 smoke or I'm going to go grab a drink. I'm going to  
13 the restroom" or something like that. If we're by  
14 ourselves, we're still authorized to take a break. We  
15 try not to, but if we've got to go to the bathroom, we  
16 want a drink or you want to catch a smoke, we just  
17 take one of our radios so we're in contact with  
18 security.

19 Q So you actually have like a walkie-talkie  
20 radio?

21 A We have a walkie-talkie. Each one of us in  
22 the room has a hand-held walkie-talkie so we're in  
23 contact all the time with security.

24 Q So even if you sit in there by yourself and  
25 you say, "Hey, I just really need to go to the

1 bathroom" or "I just really want to stretch my legs" or  
2 "I want to go have a cigarette" or "I'm going to go  
3 grab something to eat and bring it back," you take a  
4 radio and you're free to leave?

5 A And you're free to leave and that's okay by  
6 -- that was okay by the management because when we're  
7 working by ourselves, we do have bodily functions. We  
8 do -- you know, like I said, we're all authorized a  
9 10-minute break or two 10-minute breaks, a 20-minute  
10 break, a half hour break.

11 Q If you're looking at this bank of monitors  
12 that's in front of you and let's say you want to  
13 stretch your legs, can you stand up and continue to  
14 perform your job functions by looking at these  
15 monitors?

16 A Yes, yes.

17 Q Can you walk around the room? Is the room big  
18 enough to walk around in?

19 A It's not -- in other words, where you're  
20 standing you're already into the tapes. So you're  
21 not -- you cannot walk too far back not to see the  
22 monitors if you're standing.

23 Q All right. Let me -- again, I realize we have  
24 a videotape of the room, but just to get an  
25 appreciation for the dimensions of the room, do you

1 enter the door -- do you enter the room from the back?  
2 A Enter the room right where that door is right  
3 there. That's how we enter the room.  
4 Q All right. Let's assume for purposes of this  
5 discussion that this is the back of the room.  
6 How far is it from -- and I don't mean to  
7 yell. I'm just trying to keep my voice loud enough so  
8 it picks up on the --  
9 MR. LAVERY: Judge, how am I doing?  
10 APPEALS OFFICER SCHWARTZER: You're picking up  
11 on all the microphones.  
12 MR. LAVERY: I'm shocked.  
13 BY MR. LAVERY:  
14 Q Let's say we enter the room from the back of  
15 the room.  
16 A Right.  
17 Q How far is it from the doorway in the back of  
18 the room to the point where we hit the monitors?  
19 A To that wall? Maybe 10, 12 feet, something  
20 like that. I'm not -- you know, measurement-wise, but  
21 if I'm stepping out --  
22 Q All right. 10 or 12 feet is essentially the  
23 distance from the corner of this table to this wall.  
24 That's approximately 10 to 12 feet.  
25 Is that about right?

1           MR. LAVERY: Counsel, I don't mean to be --  
2   are you in agreement with that statement?  
3           MS. SWANSON: I am not good at measurements,  
4   but I'm going to object as to relevance again. It  
5   doesn't matter if he was doing his job well or badly.  
6   It's irrelevant to this workers' compensation case.  
7           APPEALS OFFICER SCHWARTZER: I'm going to let  
8   him make his record.  
9           So go ahead.  
10          MR. LAVERY: I'm not driving to whether he was  
11   doing it well or badly, your Honor, but thank you.  
12          MS. SWANSON: Well, yes, you are.  
13   BY MR. LAVERY:  
14       Q    Answer my question, sir.  
15       A    It's, I would say, between 12 and 15 feet.  
16       Q    Okay. And how far is the table that you're  
17   sitting at back from the wall of monitors?  
18           In other words, if the wall of monitors --  
19       A    Maybe four or five feet.  
20       Q    -- is here at the 10-foot mark --  
21       A    Right.  
22       Q    -- 15-foot mark, how far back from that set of  
23   monitors are you?  
24       A    Maybe six feet.  
25       Q    So if you're standing up looking at the

1 monitors you can do your job; correct?  
2 A Yes, yes.  
3 Q If you're sitting at the table looking forward  
4 you can do your job; correct?  
5 A Yes, yes.  
6 Q If you're leaning back with your feet up on  
7 the table leaned back in a chair, you can't see the  
8 monitors. So you can't do your job.  
9 Is that right?  
10 A You can't see. No, you can't see.  
11 APPEALS OFFICER SCHWARTZER: Mr. Lavery?  
12 MR. LAVERY: Court's indulgence, your Honor.  
13 I don't have anything further, your Honor. Thank you.  
14 APPEALS OFFICER SCHWARTZER: Ms. Swanson.  
15 MS. SWANSON: Thank you. May I approach the  
16 witness, your Honor. I just want to show him these two  
17 signed statements.  
18 APPEALS OFFICER SCHWARTZER: Which statements  
19 are you looking at?  
20 MS. SWANSON: One's on Page 5 of Employer's A.  
21 The other's on Page 30 of Employer's B.  
22 APPEALS OFFICER SCHWARTZER: All right.  
23 MS. SWANSON: Okay.  
24 APPEALS OFFICER SCHWARTZER: Thank you.  
25 MS. SWANSON: Thank you.

1 CROSS-EXAMINATION

2 BY MS. SWANSON:

3 Q I want to show you first Page 5 of  
4 Employer's A.

5 Can you tell me if that is your handwritten  
6 statement?

7 A Yes, it is.

8 Q Okay. And then showing you Page 30 of  
9 Employer's B, it has a typed statement.

10 Can you tell me if that's your signature and  
11 if everything --

12 A That is.

13 MR. LAVERY: I'm sorry. Which page?

14 MS. SWANSON: Page 30 of B.

15 MR. LAVERY: Oh, I'm sorry.

16 MS. SWANSON: Exhibit B.

17 MR. LAVERY: Thank you.

18 BY MS. SWANSON:

19 Q So you just testified that it's important that  
20 you just sit very straight on the chair looking ahead  
21 at the monitors to do your job correctly at all times;  
22 is that correct?

23 A Sitting straight in a chair, being diligent in  
24 watching the monitors.

25 Q Okay.

1           A     Keeping an eye -- keeping a mental -- mentally  
2     note to watch the monitors.

3           Q     Okay. So you say when you lean back in the  
4     chair you can't see all the monitors down on the floor;  
5     right?

6           A     No, ma'am. No, ma'am.

7           Q     And if he turns -- what's -- I notice there  
8     was a monitor on the desk.

9                     What does that -- what is that monitor for?

10          A     Those monitors are working monitors. That's  
11     if we see something we want to key in on or do  
12     something, we have a thing called the key pad right in  
13     front of us. Say, for instance, I see something in one  
14     section and I want to go into a pan tilt and zoom  
15     camera, which is the ones that move around and see,  
16     I'll just key in and I have a joy stick that I work  
17     through.

18                     Now, if you lean back, you cannot work with  
19     that joy stick because it's sitting on -- you can't  
20     move it all the way back because there's a short cable  
21     to it.

22          Q     Okay.

23          A     Now, if --

24                     APPEALS OFFICER SCHWARTZER: Okay.

25                     MS. SWANSON: That's all right. That's all

1 right.

2 APPEALS OFFICER SCHWARTZER: You've answered

3 the question.

4 BY MS. SWANSON:

5 Q We got it. Okay.

6 Did you happen to watch the surveillance clip

7 when Mr. Mogg fell out of the chair in January 2008,

8 the one that's in evidence now?

9 A Yeah.

10 Q How long ago has it been since you viewed

11 that, approximately?

12 A Couple months ago, I would assume.

13 Q Okay. So you saw yourself in that video

14 before the fall turning your chair and leaning back,

15 did you not?

16 MR. LAVERY: Object to the relevance, your

17 Honor. What he was --

18 APPEALS OFFICER SCHWARTZER: Overruled. He

19 can answer the question, if he remembers it.

20 THE WITNESS: It's possible. I can't say that

21 I did or I did not. It's like anybody else. I'm just

22 turning. I'm still having my eyes -- I'm turning. I'm

23 not leaning back so that I can't see.

24 BY MS. SWANSON:

25 Q Okay. And you're there for what? Eight-hour



1 shifts; is that correct?

2 A It's eight-hour shifts, yes, ma'am.

3 Q Okay. And you're eating your lunch at your  
4 monitor station?

5 A Yes, ma'am.

6 Q All right. Now, I reviewed the tape also.  
7 Did you actually see Mr. Mogg as he was  
8 putting his feet up on the desk and the chair falling  
9 back?

10 A I saw him, yes, ma'am.

11 Q Okay. Because when I watched the tape it  
12 appeared that you were looking -- you were turning away  
13 from him looking at the monitor on your desk.

14 MR. LAVERY: Your Honor, that's argumentative  
15 at this point. He's answered the question.

16 APPEALS OFFICER SCHWARTZER: Well, she can --

17 MR. LAVERY: Counsel's interpretation of what  
18 she sees is not germane. The witness has testified.  
19 If she wants to use that argument that's different, but  
20 at this point it's argumentative to the witness.

21 APPEALS OFFICER SCHWARTZER: Well, if he -- he  
22 can answer the question. If he disagrees with it, then  
23 he can say "I disagree with it" or if he doesn't  
24 remember he can say "I don't remember" or if he  
25 remembers clearly he can say what he remembers.

1           So go ahead. Answer the question.

2           THE WITNESS: This has been a year and a half  
3 ago. I don't know exactly everything that happened in  
4 that room. I don't know where my eyes were pointing at  
5 that point.

6 BY MS. SWANSON:

7           Q But you say you saw the -- you watched the  
8 tape about two months ago.

9           A Okay. But if you watch the tape, you can't  
10 see my -- can you see my eyes moving?

11          Q Sir, I can see the direction you were sitting.

12          APPEALS OFFICER SCHWARTZER: Okay. Now you're  
13 getting into argument.

14          MR. LAVERY: Your Honor, again, thank you.

15          APPEALS OFFICER SCHWARTZER: So, Ms. Swanson,  
16 next question.

17          MS. SWANSON: All right.

18 BY MS. SWANSON:

19          Q And because you testified it was important to  
20 keep your eyes on the monitor at all times, when did  
21 nearly four seconds shy of three minutes was your  
22 attention away from the monitors, your back to the  
23 monitors, focusing on Mr. Mogg?

24          MR. LAVERY: Your Honor, that assumes facts  
25 not in evidence.

1           APPEALS OFFICER SCHWARTZER: Excuse me. I'm  
2   sorry. First of all, where do you get your timing  
3   from?  
4           MS. SWANSON: I was doing the timing on the  
5   tape.  
6           APPEALS OFFICER SCHWARTZER: Did you -- on the  
7   tape.  
8           MS. SWANSON: On the tape.  
9           APPEALS OFFICER SCHWARTZER: Well, the tape is  
10  going to speak for itself. If you have any specific  
11  questions to ask him, you can.  
12           MR. LAVERY: Thank you.  
13           MS. SWANSON: Well, I'm asking him why he took  
14  his eyes off for nearly three minutes.  
15           APPEALS OFFICER SCHWARTZER: First of all,  
16  Mr. Lavery is correct. You're assuming facts not in  
17  evidence because you haven't established that he took  
18  his eyes off of the monitors.  
19   BY MS. SWANSON:  
20       Q    All right. When this happened did you turn  
21   your attention to Mr. Mogg?  
22       A    Yes, I did. I asked him if he was okay.  
23       Q    Okay.  
24       A    Because I was concerned that a fellow  
25   co-worker fell.

1 Q Okay. So did you think he might be hurt from  
2 that fall?

3 A I asked him if he was okay. Yes, I did. I  
4 did ask him that.

5 Q So how long did you focus your attention on  
6 Mr. Mogg before going back to the monitors?

7 A Ma'am, I cannot give you an actual estimate on  
8 that.

9 Q Okay. And did Mr. Mogg eventually go back to  
10 being seated in that chair?

11 APPEALS OFFICER SCHWARTZER: What do you mean  
12 by "eventually"?

13 MS. SWANSON: Well, he said he stood up. He  
14 stood up for a few minutes --

15 MR. LAVERY: Are we talking about --

16 MS. SWANSON: -- after he fell.

17 MR. LAVERY: -- that day? Within the week?

18 MS. SWANSON: That day. This is all right  
19 after the fall.

20 THE WITNESS: That particular chair, I cannot  
21 tell you yes or no. I don't remember that. I do  
22 remember him going back to work after. I know he  
23 walked out, took a break, and came back. He did work,  
24 finished the shift.

25 ///

1 BY MS. SWANSON:  
2 Q Did you tell Mr. Mogg to switch that chair out  
3 with another chair that day?  
4 MR. LAVERY: Object to the relevance, your  
5 Honor.  
6 APPEALS OFFICER SCHWARTZER: Overruled.  
7 You can answer that question.  
8 THE WITNESS: I don't remember, ma'am.  
9 MS. SWANSON: Okay. I don't have any further  
10 questions.  
11 APPEALS OFFICER SCHWARTZER: Mr. Lavery?  
12 MR. LAVERY: Just one.  
13  
14 REDIRECT EXAMINATION  
15 BY MR. LAVERY:  
16 Q The whole time that -- you said that  
17 surveillance officers could actually leave the room if  
18 they wanted to as long as they had a radio; correct?  
19 A If they're by themselves, yes.  
20 Q Okay. But during the course of the time that  
21 you were in this room did you have a radio there with  
22 you?  
23 A Oh, I had a radio, yes.  
24 MR. LAVERY: Okay. Nothing further, your  
25 Honor.

1 APPEALS OFFICER SCHWARTZER: Ms. Swanson?  
2 MS. SWANSON: Nothing further.  
3 APPEALS OFFICER SCHWARTZER: Thank you very  
4 much.  
5 THE WITNESS: Okay.  
6 APPEALS OFFICER SCHWARTZER: Is he free to go?  
7 MR. LAVERY: He is free to go. Absolutely.  
8 APPEALS OFFICER SCHWARTZER: You are free to  
9 go.  
10 THE WITNESS: Okay.  
11 APPEALS OFFICER SCHWARTZER: Thank you.  
12 MR. LAVERY: Thank you.  
13 APPEALS OFFICER SCHWARTZER: Did you have  
14 another witness?  
15 MR. LAVERY: Your Honor, in an effort to  
16 expedite this matter I do have Mr. --  
17 APPEALS OFFICER SCHWARTZER: Cashman.  
18 MR. LAVERY: -- Cashman here. Sorry. I was  
19 trying to get back to my notes, who we've called to --  
20 I would make an offer of proof that if called to  
21 testify, he would testify consistently with the  
22 statements made by Mr. Kanner.  
23 APPEALS OFFICER SCHWARTZER: Except he wasn't  
24 in the room.  
25 MR. LAVERY: Except for the fact that he

1 wasn't in the room, but with respect to the policies  
2 and procedures and set-up of the room, he would testify  
3 consistent with that of Mr. Kanner.

4 APPEALS OFFICER SCHWARTZER: Well, Mr. Kanner  
5 testified as to the set-up of the room.

6 MR. LAVERY: Correct.

7 APPEALS OFFICER SCHWARTZER: Not so much the  
8 policies and the procedures.

9 MR. LAVERY: Well, in terms of when you can  
10 leave the room, what you can do.

11 APPEALS OFFICER SCHWARTZER: Oh, okay.

12 MR. LAVERY: Who can take a -- those are  
13 policies and procedures of the hotel.

14 APPEALS OFFICER SCHWARTZER: Would you accept  
15 that or do you want him to testify?

16 MS. SWANSON: No, I'll accept that. I don't  
17 want him to testify.

18 APPEALS OFFICER SCHWARTZER: Okay. Thank you.  
19 The offer of proof is made and accepted.

20 Ms. Swanson, did you have any other witnesses?

21 MS. SWANSON: No, your Honor.

22 APPEALS OFFICER SCHWARTZER: So we're into  
23 final argument, Ms. Swanson.

24 MS. SWANSON: Thank you. Well, Mr. Mogg's  
25 industrial claim was denied on two bases in the claim

1 denial letter; one, that he deviated from the course  
2 and scope of his employment and the other that he  
3 willfully intended to injure himself.

4 We not only have the testimony of Mr. Mogg,  
5 but what we usually never have in every other case is a  
6 tape of that actual accident. And as the old saying  
7 goes, a picture's worth a thousand words, and I think  
8 that shows that this was an accident in the course and  
9 scope of his employment, an unexpected and unforeseen  
10 incident happening with or without human fault as  
11 defined under 030 producing objective symptoms of  
12 injury.

13 Because when you look at that tape going on  
14 even further, you can see it took Mr. Mogg several  
15 minutes to get up and be seated in the chair, and he's  
16 constantly rubbing his arm and rubbing his neck,  
17 et cetera, et cetera. And he did report it the next  
18 day and timely filed the report. The C-4 physician  
19 linked his injuries, his cervical, thoracic, and lumbar  
20 strains, to this incident on the C-4 form.

21 MR. LAVERY: Your Honor, I'm sorry. If I may,  
22 I'll stipulate to the fact that Mr. Mogg did not  
23 willfully intend to injure himself. So Counsel doesn't  
24 need to devote argument to that point.

25 MS. SWANSON: Okay.



1 APPEALS OFFICER SCHWARTZER: Okay. Thank you.

2 MR. LAVERY: I think that was generic language  
3 that was placed in the determination that wasn't  
4 appropriate.

5 APPEALS OFFICER SCHWARTZER: Okay.

6 MS. SWANSON: Okay. Well, then it's also  
7 clear from the videotape that he did not deviate from  
8 his course and scope. He's there. They were having to  
9 work long shifts. There's a statement from -- I'm just  
10 trying to see. It was Ms. Shope, I think it is, in  
11 Employer's B at Page 25, I think it is, that says that;  
12 that even confirms that they have to eat their lunch at  
13 their desk even.

14 So they're sitting there for long shifts, and  
15 as Mr. Mogg made abundantly clear in the  
16 cross-examination the other day with Mr. Lavery, that  
17 sure, anybody can, you know, be stretching their legs  
18 out under the desk, et cetera, or standing up, but he  
19 was specifically trying to get the circulation back up  
20 into his legs by actually elevating, elevating his  
21 feet.

22 I think that we can see physically that  
23 Mr. Mogg is a lot taller than Mr. Kanner, was it, the  
24 last witness, in terms of being able to see, see the  
25 monitors, et cetera. And that's all irrelevant because

1 the work comp symptom is a no fault symptom. It  
2 doesn't matter how good or how bad an employee was, how  
3 good or how bad that he was able to perform his job  
4 duties or that he was performing his job duties.

5 He is allowed to position himself for some  
6 personal comfort when having to stay in that room  
7 practically the entire time of his shift except for  
8 bathroom breaks. And it is an admitted fact in the  
9 Employer's response to our request for admissions that  
10 they admitted that putting one's feet up on the desk  
11 while seated in a desk chair during the shift was not  
12 specifically disallowed in any employee handbook or  
13 rule book.

14 So whatever -- the majority of the other  
15 statements that are in evidence in Employer's B just go  
16 to, well, I don't think it's professional or in my  
17 personal opinion we shouldn't do that, but it's not a  
18 violation. So it's not relevant here.

19 The Employer's appeal memo argues Mitchell at  
20 one point. However, obviously in Mitchell the Claimant  
21 could not explain the cause of her fall because she was  
22 just walking along a flat surface.

23 Here Mr. Mogg clearly was sitting in a chair  
24 provided by the Employer in the middle of his job  
25 duties while he was trying to, for his own personal

1     comfort, to just elevate his legs a moment when the  
2     chair threw him back and he fell. It's obvious from  
3     the tape that he did suffer an injury just from his  
4     inability to move around very well after that.

5             So I submit that the Claimant was not  
6     abandoning his employment duties, did not -- he  
7     testified he did not willfully throw himself -- throw  
8     himself back on that chair to cause him to fall and  
9     that this clearly is an accident that happened that  
10    caused the injury that should be an accepted  
11    compensable claim. Thank you.

12            APPEALS OFFICER SCHWARTZER: Thank you.  
13    Mr. Lavery.

14            MR. LAVERY: Your Honor, I am absolutely  
15    dumbfounded by the statement that it doesn't matter  
16    whether or not he was performing his job duties when he  
17    was injured. You have to be working within the course  
18    and scope of your employment.

19            APPEALS OFFICER SCHWARTZER: I don't think she  
20    meant that he wasn't doing his job duties.

21            MS. SWANSON: Deviated.

22            APPEALS OFFICER SCHWARTZER: She was saying  
23    that he was trying to get more comfortable while  
24    performing the job duties.

25            MR. LAVERY: Okay. And you have now accepted

1 testimony from two individuals that said he could not  
2 perform his job duties in the position that he was  
3 trying to maintain because by leaning back in the  
4 chair -- the Claimant testified that there were things  
5 on his desk -- and the record will bear this out --  
6 that there were things on the table in front of him  
7 that made it difficult for him to do his job while he  
8 was sitting there, but you have unrefuted testimony now  
9 from two individuals that if you're leaning back in a  
10 chair --

11 APPEALS OFFICER SCHWARTZER: Don't do that,  
12 Mr. Lavery.

13 MR. LAVERY: -- doing this --

14 APPEALS OFFICER SCHWARTZER: Please don't.  
15 You know, you can say it with words.

16 MR. LAVERY: Okay.

17 APPEALS OFFICER SCHWARTZER: But, you know, I  
18 don't want to see you go flying back.

19 MR. LAVERY: When you're leaning back with  
20 your feet up on the table, you can't perform the  
21 essential functions of your job, period, and he  
22 deviated from that.

23 If you read the Mitchell case -- and the  
24 Supreme Court is quite succinct in its language. I am  
25 referring to Page 182 of the Mitchell case. We noted

1 that the statute language made it clear that the Nevada  
2 Industrial Act was not intended to make employers  
3 absolutely liable for an injury that might happen while  
4 an employee was working, but rather required a claimant  
5 to establish more than merely being at work and  
6 suffering an injury in order to recover.

7 They go on to say Mitchell attempts to  
8 distinguish Gorsky, which is as we know --

9 APPEALS OFFICER SCHWARTZER: I know Gorsky.

10 MR. LAVERY: Okay. I'm just trying to make it  
11 clear for the record, your Honor.

12 APPEALS OFFICER SCHWARTZER: Okay.

13 MR. LAVERY: Attempts to distinguish Gorsky  
14 based on the fact that Gorsky's injuries resulted from  
15 a preexisting medical condition whereas Mitchell had no  
16 health problems predisposing her to a fall. This  
17 argument is misplaced.

18 Our interpretation of 616C.150, the  
19 preponderance of the evidence establishing that the  
20 condition or injury arose out of and in the course and  
21 scope of the employment, in Gorsky does not focus on  
22 whether conditions personal to the claimant caused an  
23 injury but on whether the cause of the injury is  
24 sufficiently connected to a risk of employment.

25 Mitchell further argues that we should modify

1 Gorsky in adopting a positional risk test for  
2 compensability, which is essentially what we're saying.  
3 It's because he was there, because he was in this room,  
4 and because he fell over backwards, he's in that  
5 position because of his employment and, therefore, he  
6 got hurt.

7 He wasn't doing anything in furtherance of his  
8 employment when he leaned back in a chair for his own  
9 comfort. And just from a purely logical standpoint, if  
10 you're trying to get blood flow back into your legs,  
11 you don't lean back and put your legs in the air. That  
12 takes the blood flow away from your legs.

13 APPEALS OFFICER SCHWARTZER: Wait a minute.  
14 First of all, I don't have any medical testimony  
15 regarding the blood flow. I do have his testimony, the  
16 Claimant's testimony, as to the reason why he was doing  
17 that but . . .

18 MR. LAVERY: Right, from a -- I'm just  
19 exercising a little common sense. I'll move on from  
20 there.

21 The Supreme Court says an injury arises out  
22 of -- I'm sorry. An injury arises out of employment  
23 under positional risk analysis if the only connection  
24 to the employment with the injury is that the  
25 obligations placed the employee at a particular place

1 at a particular time when he or she was injured by some  
2 neutral force.

3 We don't have somebody sitting down in a chair  
4 and the chair collapsing out from underneath them. If  
5 you did, we're not here. We don't have an argument.  
6 The chair was misused. The Claimant was not performing  
7 his job duties. He was deviating. And, in fact,  
8 again, you have unrefuted testimony that he could not  
9 perform the essential functions of his job doing what  
10 he was doing.

11 If he sits down in the chair and the chair  
12 explodes out from underneath him, I don't have a  
13 problem with it and, in fact, we don't have an  
14 argument, but that's not what occurred here. What  
15 occurred here is somebody deviating from his  
16 employment, using the chair improperly, leaning  
17 backwards, and falling over.

18 Like I said before, just like you do when  
19 you're in the second grade and you lean back in a chair  
20 because you're trying to be comfortable or you're  
21 trying to be smart or you're trying to be whatever it  
22 is that you're trying to do and you fall over  
23 backwards. It happens, just like you didn't want to  
24 see me do here a minute ago, which is why you don't do  
25 it.

1           You know, we get this argument that it's not  
2   in the manual that you can't put your feet up on the  
3   desk. Well, it's not in the manual that you can't try  
4   and do a handstand on a chair or on a table. I mean,  
5   we can't foresee every possible scenario.

6           The question becomes what this gentleman was  
7   doing, why he was doing it, and whether it prevented  
8   him from doing the essential functions of his job,  
9   which the unrefuted testimony you have is that it did,  
10   whether he was --

11          APPEALS OFFICER SCHWARTZER: Actually, he  
12   testified that it wouldn't prevent him from seeing the  
13   monitors. So you have a difference of opinion  
14   between --

15          MR. LAVERY: Okay. Fair enough. Fair enough.

16          APPEALS OFFICER SCHWARTZER: -- the witnesses.

17          MR. LAVERY: Bearing in mind the remainder of  
18   the statements that he made with respect to the  
19   visualization of the monitors, if you go back and  
20   review the record and match that against everything  
21   else that was said, I would submit that the two  
22   individuals who testified to the contrary could be  
23   given greater weight, but that's obviously at your  
24   discretion. So I'm not going to delve into the  
25   discretion or the weight that you give the individual



1 testimony.

2           Nonetheless, he deviated from his job duties.  
3 He deviated from the proper use of the chair. He fell.  
4 I can't deny that, but the notion that this is a no  
5 fault with respect to these sets of circumstances isn't  
6 borne out by the Mitchell case.

7           Because if you do, if you take that position,  
8 then you're falling squarely in opposition to the  
9 positional risk test that the Supreme Court has set  
10 forth in Mitchell; that just being there and having a  
11 problem, just being there doing whatever it is you're  
12 doing isn't enough, and the mere fact that you are  
13 there and it is your employment is not sufficient.

14           The Claimant can't establish that he was  
15 working within the course and scope of his employment  
16 when this occurred. He deviated from that. He  
17 deviated from the proper use of the chair and he fell  
18 over backwards.

19           That does not rise to the level of satisfying  
20 616C.150 or the Mitchell case. In fact, it flies  
21 squarely in opposition to the Mitchell case that speaks  
22 essentially directly on point to the circumstances that  
23 we're looking at here. And through that analysis the  
24 Claimant cannot meet his burden as a matter of law, and  
25 my client's determination to deny this claim has to be

1 affirmed. I'll submit it to you on that basis. Thank  
2 you.

3 APPEALS OFFICER SCHWARTZER: Thank you.

4 MS. SWANSON: Mitchell and Gorsky merely just  
5 stand for the premise that the employer is not a  
6 guarantor of all injuries that happen at the workplace.  
7 Gorsky stated the claimant must merely show some sort  
8 of causal connection between the job duties and the  
9 work environment.

10 Here again, he was at the monitor desk as we  
11 saw on the tape and everything doing his job duties.  
12 He said he could see. He's a lot taller than the  
13 witnesses, the gentleman present in the courtroom to  
14 the right of Mr. Lavery and the other one who  
15 testified, and he's built a lot different in stature.

16 Deviation. I submit this was not -- it  
17 doesn't even come close to any sort of substantial  
18 deviation from his employment duties. I was trying to  
19 research that, and with deviation, all I could come up  
20 with was as it was related to horseplay in Larson's.  
21 The Nevada Supreme Court has not ruled on horseplay.

22 Larson's was citing -- in its treatise talked  
23 about that mere inconsequential deviation from the  
24 workplace does not qualify; that unless it's some sort  
25 of substantial deviation from what the job duties were,

1 that it should be a compensable claim.

2 So I submit that his merely -- we don't even  
3 know how long he was going to have his feet up. They  
4 could have just been up for 30 seconds, 60 seconds, but  
5 he didn't have time for that because the chair  
6 collapsed and threw him back.

7 So I submit that that was not -- if it's a  
8 deviation at all, which I don't -- I'm not submitting,  
9 but if you should find that it was some sort of  
10 deviation, it's not substantial enough to deny this  
11 man's industrial claim. Thank you.

12 APPEALS OFFICER SCHWARTZER: Okay. Thank you.  
13 The matter stands submitted. It's going to take about  
14 30 days before you get a decision. I'm sorry it's  
15 going to take a little while because I know we've been  
16 having hearings and stuff, but I'm going to be away for  
17 a while. So when I come back I'll try to do it.

18 It will take at least 30 days. If you have  
19 any questions, please contact Ms. Swanson. I cannot  
20 answer your questions directly. Okay?

21 MR. CASHMAN: Okay. Because I --

22 APPEALS OFFICER SCHWARTZER: I cannot answer  
23 your questions either, Mr. Cashman. You have  
24 Mr. Lavery.

25 MR. CASHMAN: I didn't understand --

1 MR. LAVERY: Thank you, your Honor.  
2 MR. CASHMAN: -- what that whole thing was  
3 about anyway.  
4 APPEALS OFFICER SCHWARTZER: Well, I'm just  
5 saying that it's going to take at least 30 days before  
6 you get a decision, at least. It may take somewhat  
7 longer. If you have questions, contact Ms. Swanson.  
8 That's what --  
9 MS. SWANSON: Yes. I'll explain it all to  
10 him.  
11 APPEALS OFFICER SCHWARTZER: -- the whole  
12 thing meant.  
13 MS. SWANSON: We appreciate you fitting us in  
14 so quickly again.  
15 APPEALS OFFICER SCHWARTZER: Okay.  
16 MR. LAVERY: Thank you, your Honor.  
17 APPEALS OFFICER SCHWARTZER: We're off record.  
18 (Proceedings concluded at 5:00 p.m.)  
19  
20  
21  
22  
23  
24  
25

\* \* \*

1 C E R T I F I C A T I O N

2

3 TITLE: GARY MOGG

4

5 DATE: May 14, 2009

6

7 LOCATION: Las Vegas, Nevada

8

9

10 The below signature certifies that the  
11 proceedings and evidence are contained fully and  
12 accurately in the tapes and notes as reported at the  
13 proceedings in the above referenced matter before the  
14 Department of Administration, Appeals Office.

15

16

17

18

19

20

21 \_\_\_\_\_  
KELLY PAULSON

\_\_\_\_\_  
DATE

22 CERTIFIED COURT REPORTER #628

23

24

25

1 May 14, 2009, Thursday  
2 Kelly Paulson, CCR No. 628  
3 E-MAILED ON 7-30-09

4 TRANSCRIPT OF PROCEEDINGS 4:25 p.m.  
5 BEFORE THE DEPARTMENT OF ADMINISTRATION

6 In the Matter of the )  
7 Contested Industrial )  
8 Insurance Claim, )  
9 of ) Claim No.: 08S31A167135  
10 GARY MOGG, ) Appeal No.: 54033-GS  
11 Claimant. )  
12 Las Vegas, Nevada )

13 On behalf of the Claimant:

14 Melodie Swanson, Esq.  
15 Nevada Attorney for Injured Workers  
2200 South Rancho Drive, Suite 230  
Las Vegas, Nevada 89102

16 On behalf of Fitzgerald Casino:

17 John Lavery, Esq.  
18 Lewis, Brisbois, Bisgaard & Smith  
400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101

19 Also Present:

20 Edward Cashman

21  
22  
23 Total Number of Pages: 42  
24  
25

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim

of

GARY MOGG,

Claimant.

) Claim No. : 08S31A167135  
)  
) Hearing No. : 49522-NG  
)  
) Appeal No. : 54033-GS  
)  
) Employer :  
) FITZGERALDS CASINO/HOTEL  
)  
) Appeal Date : February 10, 2009  
) Appeal Time : 10:00 A.M.

FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT  
SERVICES INC.'S RESPONSE TO THE CLAIMANT'S REQUEST FOR ADMISSIONS

ADMIT OR DENY:

1. That the chair at issue in this workers' compensation claim was a recent purchase for that surveillance work area.
2. That the chair at issue was never utilized again for sitting purposes in the surveillance area.
3. That the chair at issue was returned and/or discarded shortly after claimant's accident.
4. That the chair at issue was determined to be faulty.
5. That it was common practice for surveillance employees working in "the eye in the sky" area to put their feet up on their desks to stretch at times.
6. That putting one's feet up on the desk while seated in a desk chair during a shift was not specifically disallowed in any employee hand/rule book.

LEWIS BRISBOIS BISGAARD & SMITH LLP  
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TELEPHONE (702) 893-3393

26990-397

4841-0324-9411.1

RESPONSE TO CLAIMANT'S REQUEST FOR ADMISSIONS:

1. The request calls for an admission which would be irrelevant. Without waiving said objection the request for admission is denied.
2. The request calls for an admission which would be irrelevant. Without waiving said objection the request for admission is denied.
3. The request calls for an admission which would be irrelevant. Without waiving said objection the request for admission is denied.
4. The request for admission is vague and ambiguous and calls for an admission which would be irrelevant. Without waiving said objection, the request for admission is denied.
5. The request for admission is vague and ambiguous and calls for an admission which would be irrelevant. Without waiving said objection, the request for admission is denied.
6. The request calls for an admission which would be irrelevant. Without waiving said objection the request for admission is admitted.

DATED this 30 day of January, 2009.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: Robin Chase  
JOHN P. LAVERY, ESQ.  
Nevada Bar No. 004665  
ROBIN L. CHASE, ESQ.  
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Attorneys for the Employer  
FITZGERALDS CASINO/HOTEL  
And its Third-Party Administrator  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.



AFFIDAVIT

STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF CLARK     )

I, Robin L. Chase, being first duly sworn, deposes and says:

1. That I am one of the attorney's for Fitzgeralds Casino/Hotel and Cannon Cochran Management Services, Inc.

2. That I have read the foregoing "Fitzgeralds Casino/Hotel And Cannon Cochran Management Services, Inc.'s Responses To The Claimant's Request For Admissions" in the contested industrial insurance claim of the claimant, GARY MOGG, and know the contents thereof.

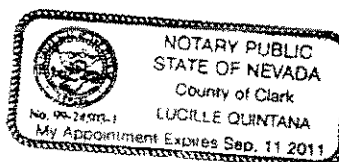
3. That the same is true of my own knowledge except as to those matters therein stated on information and belief and, as to those matters, I believe them to be true.

DATED this 30 day of January, 2009.

Robin Chase  
ROBIN L. CHASE

SUBSCRIBED AND SWORN to before me this 30 day of January, 2009 by ROBIN L. CHASE.

[Signature]  
NOTARY PUBLIC



LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 SOUTH FOURTH STREET, SUITE 500  
LAS VEGAS, NEVADA 89101  
TELEPHONE (702) 893-3383

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 30<sup>th</sup> day of January, 2009, service of the foregoing **FITZGERALDS CASINO/HOTEL'S AND CANNON COCHRAN MANAGEMENT SERVICES INC.'S RESPONSE TO THE CLAIMANT'S REQUEST FOR ADMISSIONS** was made this date by depositing a true copy of the same for mailing,

first class mail, as follows:

Melodie C. Swanson, Esq.  
NEVADA ATTORNEY FOR INJURED WORKERS  
2200 South Rancho Drive, Suite 230  
Las Vegas, NV 89102-4413

Attn: Workers' Comp. Dept.  
FITZGERALDS CASINO/HOTEL  
301 East Fremont Street  
Las Vegas, NV 89101

April Taft, Claims Specialist  
CANNON COCHRAN MANAGEMENT SERVICES, INC./CCMSI  
P. O. Box 35350  
Las Vegas, NV 89133-5350

  
An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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DIRECT DIAL: 702.693.4361  
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May 11, 2009

File No.  
26990-397

**Via Hand Delivery**

Geraldine Schwartzer, Esq., Appeals Officer  
NEVADA DEPT. OF ADMINISTRATION  
Hearings Division  
2200 South Rancho Drive, Suite 220  
Las Vegas, NV 89102

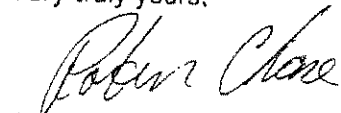
Re: Claimant : Gary Mogg  
Claim No. : 08S31A167135  
Appeal No. : 54033-GS

Dear Appeals Officer Schwartzer:

Pursuant to NAC 616C.307, enclosed is a DVD we will be submitting as evidence. We are also submitting a copy of this DVD to the claimant's counsel. Please let us know if we will need to provide viewing equipment.

Should you have any questions or require anything further, please do not hesitate to contact me.

Very truly yours,



John P. Lavery for  
LEWIS BRISBOIS BISGAARD & SMITH LLP

JPL:lq

cc: Melodie C. Swanson, Esq. (Via hand delivery with copy of DVD)

---

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ORANGE COUNTY • PHOENIX • SACRAMENTO • SAN BERNARDINO • SAN DIEGO • SAN FRANCISCO • TAMPA • TUCSON

4836 4039-2707.1

**First Class Mail**

**LEWIS  
BRISBOIS  
BIGGAARD  
& SMITH LLP**  
ATTORNEYS AT LAW  
400 S. Fourth St., Suite 500  
Las Vegas, Nevada 89101

TO:

Geraldine H. Schwartz, Esq.,  
Appeals Officer  
NEVADA DEPT. OF ADMINISTRATION  
Hearings Division  
2200 South Rancho Drive, Suite 220  
Las Vegas, NV 89102

EMPLOYER'S EXHIBIT # C

63 JUL 11 11 03 36

FILED

**This Document has  
Attachment(s) / Exhibit(s)  
that are not being scanned at  
this time.**

*DVD+R  
Evidence*

**Please refer to the Original  
Document if necessary.**

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ORIGINAL

BEFORE THE APPEALS OFFICER

In the Matter of the  
Contested Industrial  
Insurance Claim,

of

GARY MOGG,

Claimant.

Claim No.: 08S31A167135  
Appeal No.: 54033-GS

FILED

026171355  
026171355

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE GERALDINE SCHWARTZER

APPEALS OFFICER

Tuesday, May 5, 2009

1:24 p.m.

2200 South Rancho Drive, Suite 220

Las Vegas, Nevada 89102

Ordered by: John Lavery, Esq.  
Lewis, Brisbois, Bisgaard & Smith  
400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101

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A P P E A R A N C E S

On behalf of the Claimant:

Melodie Swanson, Esq.  
Nevada Attorney for Injured Workers  
2200 South Rancho Drive, Suite 230  
Las Vegas, Nevada 89102

On behalf of Fitzgerald Casino:

John Lavery, Esq.  
Lewis, Brisbois, Bisgaard & Smith  
400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101

Also Present:

Mr. Cashman

|    |              |            |             |                     |
|----|--------------|------------|-------------|---------------------|
| 1  | I N D E X    |            |             |                     |
| 2  |              |            |             |                     |
| 3  | EXAMINATION  | DIRECT     | CROSS       | REDIRECT    RECROSS |
| 4  | GARY MOGG    | 11         | 22          |                     |
| 5  |              |            |             |                     |
| 6  |              |            |             |                     |
| 7  |              |            |             |                     |
| 8  |              |            |             |                     |
| 9  | EXHIBITS     | IDENTIFIED | IN EVIDENCE |                     |
| 10 |              |            |             |                     |
| 11 | EMPLOYER'S A | 4          | 4           |                     |
| 12 | EMPLOYER'S B | 4          | 8           |                     |
| 13 |              |            |             |                     |
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1 PROCEEDINGS

2  
3 APPEALS OFFICER SCHWARTZER: We're on record  
4 in the matter of the contested industrial insurance  
5 claim of Gary -- is it Mogg?

6 THE CLAIMANT: Mogg, yes.

7 APPEALS OFFICER SCHWARTZER: Claimant is  
8 present. He's represented by Ms. Swanson.  
9 Representing the Self-Insured Employer, Fitzgeralds, is  
10 Mr. Lavery. This is a Claimant's appeal from a Hearing  
11 Officer's decision. The issue is the February 26,  
12 2008, claim denial.

13 I received from the Employer two packets, one  
14 consisting of 24 pages that was dated October 24th,  
15 2008, and a supplement that consists of Pages 25  
16 through 34.

17 Any objection?

18 MS. SWANSON: Yes. I don't have any objection  
19 to the first one dated October 24th, 2008.

20 APPEALS OFFICER SCHWARTZER: All right.  
21 That's marked and entered into evidence as Employer's  
22 Exhibit A.

23 MS. SWANSON: I do have an objection to the  
24 second one on several bases, and actually, these  
25 objections also apply to the supplemental witness lists

1 that were filed as well.

2 With respect to the exhibit, the January 30th  
3 one, it contains mostly witness statements, one, two,  
4 three, four, five, it looks like, as well as an  
5 unsigned memorandum from someone at the hotel, a  
6 Mr. Brewer, that's unsigned.

7 First of all, as to these other witnesses,  
8 none of them are percipient witnesses other than  
9 Mr. Canner who provided his percipient witness  
10 statement as part of Employer's A at or near the time  
11 of the actual incident. The second statement here is  
12 just his opinion as to policy as well as the other  
13 witness statements here that are not in affidavit form  
14 or declaration form.

15 And so my first objection is as to relevancy  
16 because the work comp system is a no fault system.  
17 Also, based on Employer's responses to our admission  
18 request, it now becomes a stipulated fact that there's  
19 no employee handbook or manual that specifically  
20 prohibits the act of putting one's feet up on the desk  
21 to stretch their legs during the work shift, and that's  
22 what all these statements are going towards. But we  
23 have a signed admission that is now a stipulated fact  
24 as to that. So these are irrelevant on that basis.

25 APPEALS OFFICER SCHWARTZER: And, therefore,

1 I'll decide how much weight I'm going to give them.  
2 MS. SWANSON: Well . . .  
3 APPEALS OFFICER SCHWARTZER: Ms. Swanson, I  
4 have another case at 2:00.  
5 MS. SWANSON: I know, but I would like to make  
6 all my objections.  
7 APPEALS OFFICER SCHWARTZER: So make it quick.  
8 MS. SWANSON: Okay. I'll speed up. Second  
9 objection, and these were raised the first time we were  
10 supposed to go forward at hearing but for Mr. Mogg's  
11 dental problem, and so -- because these were only filed  
12 two or three days before the February hearing.  
13 So, you know, in line with your decision  
14 denying Claimant's request for further discovery after  
15 the February hearing, that all discovery and everything  
16 should have been done and filed before by the time of  
17 the -- timely by the time of the February hearing, that  
18 these statements should also be considered untimely  
19 and, therefore, not admissible under that same line of  
20 thought.  
21 APPEALS OFFICER SCHWARTZER: Okay. They were  
22 presented after --  
23 MS. SWANSON: No, just three days before the  
24 hearing date.  
25 APPEALS OFFICER SCHWARTZER: They were

1 presented three days before the hearing.

2 MS. SWANSON: Before the February hearing

3 date.

4 MR. LAVERY: The hearing date that did not go

5 forward.

6 MS. SWANSON: Right.

7 APPEALS OFFICER SCHWARTZER: Right, I

8 understand that. I remember. I'm just --

9 MR. LAVERY: Just so we're clear for the

10 record.

11 APPEALS OFFICER SCHWARTZER: Okay.

12 MS. SWANSON: So I would base it on the fact

13 that they're deemed untimely.

14 APPEALS OFFICER SCHWARTZER: All right. They

15 were untimely. However, you have had sufficient time

16 since then to do any investigation that you want with

17 regard to this.

18 MS. SWANSON: Right, and I wanted to do

19 subsequent discovery, and that was denied based on the

20 fact that we should have done that timely before

21 February.

22 APPEALS OFFICER SCHWARTZER: Mr. Lavery, is

23 there anything you want to say?

24 MR. LAVERY: Your Honor correctly noted it's

25 weighed by admissibility. Each of those are part of

1 the claims file, and I have a statutory obligation to  
2 submit these documents. The Court's going to give them  
3 the weight that they deem appropriate.

4 APPEALS OFFICER SCHWARTZER: Okay. With that  
5 understanding, I'm marking them as Employer's B and --

6 MS. SWANSON: Wait.

7 APPEALS OFFICER SCHWARTZER: Do you have any  
8 witnesses?

9 MS. SWANSON: It will just be the Claimant,  
10 but I do want to say that they are not part of the  
11 claims file because they're dated the end of January  
12 '09. So they're dated just within a week or so of the  
13 hearing date.

14 APPEALS OFFICER SCHWARTZER: Oh.

15 MR. LAVERY: They were generated in response  
16 to a request by the Employer and were made part of the  
17 claims file.

18 MS. SWANSON: Well, they were not part of the  
19 claims file --

20 APPEALS OFFICER SCHWARTZER: So they're part  
21 of the claims file now.

22 MS. SWANSON: -- that was given to us.

23 APPEALS OFFICER SCHWARTZER: If you could come  
24 here and -- come over here. Remain standing by the  
25 microphone and I'll swear you in. Raise your right

1 hand.

2 Do you solemnly swear or affirm that the  
3 testimony you are about to give in this matter will be  
4 the truth and nothing but the truth?

5 THE CLAIMANT: I do.

6 APPEALS OFFICER SCHWARTZER: Please have a  
7 seat. Could you state your name and spell your last  
8 name for the record.

9 THE CLAIMANT: Gary Mogg, M-o-g-g.

10 APPEALS OFFICER SCHWARTZER: And a mailing  
11 address, please.

12 THE CLAIMANT: 2379 Cliffwood Drive,  
13 Henderson, Nevada 89074.

14 APPEALS OFFICER SCHWARTZER: Thank you very  
15 much.

16 Ms. Swanson.

17 MS. SWANSON: May I just ask, we appear to  
18 have some witnesses in the room, if they can be  
19 excluded during his testimony.

20 APPEALS OFFICER SCHWARTZER: Any witnesses in  
21 the room, Mr. Lavery?

22 MR. LAVERY: Your Honor, I have two potential  
23 witnesses. Both are representatives of the Employer.  
24 I can obviously keep one of them here as a  
25 representative of the Employer.

1 APPEALS OFFICER SCHWARTZER: Just one.  
2 MR. LAVERY: Correct.  
3 APPEALS OFFICER SCHWARTZER: The other one has  
4 to leave.  
5 MS. SWANSON: If they're supervisory.  
6 APPEALS OFFICER SCHWARTZER: Who are the  
7 witnesses? Excuse me. I'm sorry.  
8 MS. SWANSON: If they're supervisory.  
9 APPEALS OFFICER SCHWARTZER: Who are the  
10 people that you have?  
11 MR. LAVERY: It's Mr. Cashman and Mr. Canner.  
12 APPEALS OFFICER SCHWARTZER: All right. Which  
13 one are you keeping as a representative?  
14 MR. LAVERY: I'll keep Mr. Cashman here.  
15 APPEALS OFFICER SCHWARTZER: Who's  
16 Mr. Cashman?  
17 MR. CASHMAN: Right here, your Honor.  
18 APPEALS OFFICER SCHWARTZER: Have a seat next  
19 to Mr. Lavery. Please wait outside.  
20 MR. CANNER: No problem.  
21 APPEALS OFFICER SCHWARTZER: All right.  
22 Ms. Swanson.  
23 MS. SWANSON: Thank you.  
24 ///  
25 ///

1 DIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Mr. Mogg, on January 27th, 2008, where were  
4 you employed?

5 A At the Fitzgerald Hotel and Casino.

6 Q And in what position?

7 A Surveillance inspector.

8 Q And as a surveillance inspector can you  
9 briefly describe what your job duties consist of?

10 A Briefly, watch the monitors. There's a wall  
11 that has -- I think it's 38 of them, two on the desk,  
12 two on the desk. There's two station desks, VCRs to  
13 the right; one, two, three, four, or five five-inch,  
14 two more five-inch. I was on Station 1. Sheldon  
15 Canner was on Station 2.

16 Q All right. So backing up, is it my  
17 understanding that a surveillance inspector is what we  
18 commonly refer to as the eye in the sky in the casinos?

19 A Yes, ma'am.

20 Q Okay, just to make that clear.

21 And how long had you worked for the Fitz when  
22 this accident happened, approximately?

23 A A little over a year.

24 APPEALS OFFICER SCHWARTZER: Now, I'm sorry.  
25 Fitz is Fitzgerald?



1 MS. SWANSON: Oh, Fitzgerald. I'm sorry.  
2 APPEALS OFFICER SCHWARTZER: Thank you. So it  
3 was a little over a year?  
4 THE CLAIMANT: Yes, ma'am.  
5 BY MS. SWANSON:  
6 Q All right. And how many hours was a normal  
7 shift?  
8 A Eight hours.  
9 Q Okay. And during that eight-hour shift were  
10 you allowed to leave the location you were at for lunch  
11 or breaks, et cetera?  
12 A No. We were not allowed breaks. We went to  
13 the cafeteria, got our food, returned to the room. If  
14 we had to go to the bathroom, we went to the bathroom,  
15 returned to the room.  
16 Q Okay. So you were required to even eat your  
17 lunch at your station?  
18 A Yes, ma'am.  
19 Q Okay. And you were assigned a particular  
20 station in this room?  
21 A At that time, yes.  
22 Q Okay. And during a normal shift at that time  
23 I believe you said, but I just want to make it clear,  
24 that there were always two surveillance inspectors at  
25 any given time during a shift?

1           A     For the most part, yes.

2           Q     Okay.

3           A     Occasionally there was only one.

4           Q     All right. Now, we're here today about an  
5     accident you had while working at the Fitzgerald on  
6     January 27th, 2008.

7                     Can you explain to us what happened?

8           A     It was about an hour and a half left in my  
9     shift, and instead of taking a break, we had new chairs  
10    that were just ordered by Greg Brewer, who was the  
11    manager, and they were on casters. I went to swivel  
12    and put my feet up to get something, and the chair  
13    bucked and threw me down on the ground. I tried to  
14    catch myself and couldn't.

15          Q     Which direction did you fall off the chair?

16          A     To the left.

17          Q     Okay. And what was the purpose of your  
18    putting your feet up on the desk?

19          A     To get some circulation in my legs.

20          Q     Okay. And this was how far into your shift  
21    already?

22          A     Six and a half hours.

23          Q     Okay. Now, if the chair hadn't of thrown you  
24    back, back and on the ground, if you had gotten to the  
25    point where you were able to rest your feet on -- first

1 of all, what part of the desk were you going to rest  
2 your feet on?

3 A The corner.

4 Q Okay. And if you had been able to get into  
5 that position, did it obstruct your view of the  
6 monitors you were assigned to watch?

7 A Absolutely not.

8 MR. LAVERY: Your Honor, I'm going to object.  
9 It calls for speculation. Since he never got to that  
10 point, he can't testify as to whether or not he could  
11 or could not see.

12 MS. SWANSON: Well, let me ask this.

13 APPEALS OFFICER SCHWARTZER: You can lay a  
14 little --

15 MS. SWANSON: I'll lay a foundation. Thank  
16 you.

17 APPEALS OFFICER SCHWARTZER: -- foundation.

18 BY MS. SWANSON:

19 Q Had you done that before during your shift in  
20 terms of propping your feet up on the corner of your  
21 desk?

22 A Yes, I had.

23 Q Okay. On the prior occasions that you had  
24 done that did it obstruct your view of any of the  
25 monitors you were assigned to watch?

1           A     Absolutely not.

2           Q     Okay.  So going back to the actual accident,

3 describe physically what you were feeling and what was

4 happening with your body.

5           A     After I hit the floor?

6           Q     Well, during and after.

7           A     Well, as I was raising my legs, left leg

8 first, I went right leg and the chair seemed to buck.

9 I fell to the left, landed on my left elbow and my left

10 side.

11          Q     Okay.

12          A     I laid there for a couple minutes.  Sheldon

13 Canner said, "Are you okay?"

14                I said, "I don't know."

15          Q     So Sheldon -- okay.  I'm sorry.  I didn't mean

16 to interrupt you.  Okay.

17          A     And it took me a few minutes to get up holding

18 my side, my arm, because it landed on -- it's a tile

19 floor.

20          Q     Okay.  And did you finish your shift?

21          A     Yes, I did.

22          Q     Okay.  And you had how much longer to go on

23 that particular shift?

24          A     An hour, hour and a half.

25          Q     All right.  And your co-worker was Sheldon

1 Canner?

2 A Yes.

3 Q He was the only other person present in the  
4 room at that time?

5 A Yes, ma'am.

6 Q Okay. And physically in the room how far away  
7 would he have been from you?

8 A Approximately eight feet.

9 Q Okay.

10 A Maybe ten.

11 Q Okay. Does he observe the same set of  
12 monitors or is that divided?

13 A No. It's like part of the -- half of the room  
14 and half of the room.

15 Q Okay. Now, who provided that chair for you?

16 MR. LAVERY: Object to the relevance, your  
17 Honor.

18 APPEALS OFFICER SCHWARTZER: Overruled.  
19 Go ahead. You can answer it, if you know.

20 THE CLAIMANT: Greg Brewer.

21 BY MS. SWANSON:

22 Q Basically it was the Employer. It was an  
23 Employer provided chair.

24 A The Employer.

25 Q Okay. And was it similar to the other chairs

1 in that area during the past year that you had been  
2 working there?  
3 A No.  
4 MR. LAVERY: Same objection.  
5 MS. SWANSON: Okay.  
6 APPEALS OFFICER SCHWARTZER: Your objection's  
7 noted. Overruled.  
8 And you said no?  
9 THE CLAIMANT: No.  
10 BY MS. SWANSON:  
11 Q Okay. Do you know why?  
12 MR. LAVERY: Calls for speculation, your  
13 Honor.  
14 MS. SWANSON: If he knows.  
15 APPEALS OFFICER SCHWARTZER: If he knows.  
16 THE CLAIMANT: I do know.  
17 BY MS. SWANSON:  
18 Q Okay. Please answer then.  
19 A The old chairs were more of a lounge type.  
20 These were more of an executive chair that I voted not  
21 to get.  
22 Q And earlier you said they were relatively new  
23 chairs at that time?  
24 A Yes, ma'am.  
25 Q How many of these new chairs were ordered?

1           A     Two.

2           Q     Two? Okay. Now, were you able to return to

3     work at all after this accident?

4           MR. LAVERY: Object to the relevance.

5           MS. SWANSON: I'm laying a foundation with

6     that question.

7           APPEALS OFFICER SCHWARTZER: Regarding what?

8     The issue is claim denial.

9           MS. SWANSON: The chair, going back to the

10    chair.

11          APPEALS OFFICER SCHWARTZER: Well, then just

12    discuss the chair.

13    BY MS. SWANSON:

14          Q     Okay. At any time after that day of the

15    accident had you had a personal occasion to view that

16    chair again?

17          MR. LAVERY: Object to the relevance, your

18    Honor. We're here to determine whether or not he was

19    hurt within the course and scope of his employment.

20    Whatever he did after that date is not relevant to that

21    issue.

22          MS. SWANSON: Well, except in the appeals

23    memo --

24          APPEALS OFFICER SCHWARTZER: Ms. Swanson?

25          MS. SWANSON: -- and things they're saying

1     that that chair -- that nothing was wrong with the  
2     chair, the chair had been put back into use in that  
3     room that they were working in, et cetera, et cetera.  
4     So it is important.

5             APPEALS OFFICER SCHWARTZER: Are you trying to  
6     say that it wasn't put back into use?

7             MS. SWANSON: Right, yes.

8             THE CLAIMANT: It was discarded.

9             MR. LAVERY: Your Honor.

10            APPEALS OFFICER SCHWARTZER: Excuse me.

11            MR. LAVERY: I'm going to object and move to  
12     strike.

13            APPEALS OFFICER SCHWARTZER: There's no  
14     question and your answer has to be stricken.

15            Why don't you get to that point.

16            MS. SWANSON: Okay.

17     BY MS. SWANSON:

18            Q     Yes. To your personal knowledge had that  
19     chair that you had the accident with ever been brought  
20     back into that room for use by --

21            A     No.

22            MR. LAVERY: Your Honor, again I'm going to  
23     have to object because even if it wasn't, it's a  
24     subsequent remedial measure which would be  
25     inadmissible. So either way it doesn't matter.



1 MS. SWANSON: It's not a subsequent remedial  
2 measure because I'm not talking about if it was fixed  
3 or not.

4 APPEALS OFFICER SCHWARTZER: Well, actually,  
5 there is an argument to be made on Mr. Lavery's behalf  
6 regarding that. However, I'm not going to count what  
7 he says in the hearing memorandum. So it's really  
8 irrelevant.

9 BY MS. SWANSON:

10 Q Okay. As you know, your claim was denied on  
11 the basis that you deviated from the course and scope  
12 of your employment and that you willfully injured  
13 yourself.

14 You're aware of that?

15 A Right.

16 Q All right. So first regarding the deviation  
17 -- and with all the objections, I'm sorry, this may  
18 have been asked and answered already, but you did  
19 testify earlier that you had done that in the past; is  
20 that correct?

21 A Yes, ma'am.

22 Q Okay.

23 APPEALS OFFICER SCHWARTZER: And just to be  
24 clear, done what in the past?

25 MS. SWANSON: I'm sorry.

1 THE CLAIMANT: Put my foot up on the corner of  
2 the desk.  
3 APPEALS OFFICER SCHWARTZER: Okay.  
4 BY MS. SWANSON:  
5 Q Okay. And on those prior occasions it had not  
6 caused you to be unable to view the monitors that you  
7 were requested -- that was part of your job duty in  
8 that position?  
9 MR. LAVERY: Asked and answered.  
10 THE CLAIMANT: Absolutely not.  
11 MS. SWANSON: Okay. All right.  
12 APPEALS OFFICER SCHWARTZER: The objection is  
13 overruled. He answered.  
14 MS. SWANSON: Okay.  
15 MR. LAVERY: Twice.  
16 BY MS. SWANSON:  
17 Q Did you have any intention to willfully and  
18 intentionally injure yourself that day?  
19 A Absolutely not.  
20 Q Okay. Did you do anything to your knowledge  
21 that would have intentionally caused you to fall  
22 backward that day?  
23 A No.  
24 Q Okay. What are you seeking here today?  
25 A To have my medical reinstated and the therapy

1 that should have happened.

2 Q For your claim to be accepted?

3 A My claim to be accepted.

4 MS. SWANSON: Okay. I'll pass the witness.

5 APPEALS OFFICER SCHWARTZER: Mr. Lavery.

6 MR. LAVERY: Thank you, your Honor.

7

8 CROSS-EXAMINATION

9 BY MR. LAVERY:

10 Q You said that you had the ability to get up  
11 and leave the room to go to lunch; is that right?

12 MS. SWANSON: Objection. That misstates his  
13 testimony.

14 MR. LAVERY: He can tell me. I asked him if  
15 it was right. He can tell me whether it's right or  
16 wrong without Counsel testifying for him.

17 APPEALS OFFICER SCHWARTZER: The objection's  
18 noted. It's overruled.

19 Go ahead. If that's not correct, just tell  
20 him it's not correct.

21 THE CLAIMANT: No. We could go get our lunch  
22 and bring it back.

23 BY MR. LAVERY:

24 Q Okay. By getting your lunch, you can actually  
25 physically stand up, leave the surveillance room, and

1 go to a room somewhere?

2 A About 20 feet away, get our food, and come  
3 back.

4 Q Okay. So is it in the same surveillance room  
5 or you actually leave the surveillance room and go to  
6 another room?

7 A We're in a hallway. They're in the hallway  
8 for the team members, as it's referred to.

9 Q Okay. So the bottom line is you can stand up  
10 out of a chair and walk somewhere else to get your  
11 lunch and come back; correct?

12 A Yes.

13 Q Okay. And I believe you said you could do the  
14 same thing if you needed to use a restroom; correct?

15 A Right. There's no restroom in the room.

16 Q All right. So you'd actually have to  
17 physically get up, walk out of the room, and go  
18 somewhere else; correct?

19 A Absolutely.

20 Q Okay. Now, in response to your counsel's  
21 question or questions, you indicated that -- and these  
22 were your words because I wrote them down -- instead of  
23 taking a break, you decided to put your feet up on the  
24 corner of the table; correct?

25 A Correct, as you did.

1 Q Okay. So you had the option of taking a break  
2 and doing something other than what you did; correct?  
3 A Taking a break, going to the bathroom, going  
4 to the TMDR where we're not supposed to hang out.  
5 APPEALS OFFICER SCHWARTZER: I'm sorry. The  
6 TM- -- what is that?  
7 THE CLAIMANT: It's called the TMDR. It's the  
8 lunchroom for all the employees.  
9 APPEALS OFFICER SCHWARTZER: Oh, okay.  
10 THE CLAIMANT: That's where we get our food,  
11 but we are not allowed to be in there, associate in  
12 there. People aren't supposed to know us, but they do.  
13 APPEALS OFFICER SCHWARTZER: I didn't  
14 understand the abbreviation. That's all.  
15 THE CLAIMANT: Surveillance is supposed to be  
16 secret.  
17 APPEALS OFFICER SCHWARTZER: All right.  
18 It's T --  
19 THE CLAIMANT: TMDR, team member dining room.  
20 APPEALS OFFICER SCHWARTZER: Okay. Thank you.  
21 I've heard of EDA.  
22 THE CLAIMANT: EDR?  
23 APPEALS OFFICER SCHWARTZER: Yes, EDR.  
24 THE CLAIMANT: Correct, employee dining room.  
25 APPEALS OFFICER SCHWARTZER: Right.

1 THE CLAIMANT: Fitzgerald's calls them team  
2 members.  
3 APPEALS OFFICER SCHWARTZER: All right. Thank  
4 you. Mr. Lavery.  
5 BY MR. LAVERY:  
6 Q The chair you're sitting in, is it on wheels?  
7 A The one I'm sitting in now?  
8 Q No, the chair you were sitting in at the time.  
9 A Absolutely.  
10 Q Okay. So if I understand your testimony  
11 correctly, you're sitting in a chair looking at a bank  
12 of monitors; is that correct?  
13 A Yes.  
14 Q Okay. Your intent was to stretch your legs;  
15 correct?  
16 A Yes.  
17 Q Okay. So you couldn't extend your legs in  
18 front of you in this rolling chair?  
19 A Stretch my legs, get some blood circulating in  
20 them, because when you're in a seated position, the  
21 blood goes down to your feet. They end up getting  
22 numb. If you've ever worked in surveillance you know  
23 what it's like; dark, dirty, dingy.  
24 MR. LAVERY: Okay. Your Honor, I'm going to  
25 move to strike as nonresponsive.

1 BY MR. LAVERY:

2 Q My question was, you couldn't extend your legs  
3 in front of you to stretch your legs, to extend your  
4 legs in front of you?

5 A Only a little bit because there was a row of  
6 wooden tape holders behind there and a case next to me  
7 that had the VCR and the DVD player and all of this.  
8 So you could only move so much.

9 Q Were you sitting up against the wall? Were  
10 you physically face up against the wall watching these  
11 monitors?

12 A No.

13 Q Okay. How far back from the wall were you?

14 A From the wall of monitors?

15 Q Yes.

16 A To about right here.

17 APPEALS OFFICER SCHWARTZER: Okay. Now --

18 THE CLAIMANT: From this wall. So what is  
19 that?

20 BY MR. LAVERY:

21 Q 10 feet? 15 feet?

22 A 12 feet.

23 Q So you're 12 feet away from the monitors?

24 A And I think the room is 18 feet wide.

25 Q Okay. You've got a table in front of you?

1           A     Right.

2           Q     Correct? Your legs are under the table?

3           A     Yes.

4           Q     So again, you can't extend your legs under the  
5 table if you want to stretch your legs?

6           A     To a point, yes.

7           Q     Is there anything that prevents you from  
8 extending your legs in front of you?

9           A     The case behind me where you would back the  
10 chair up into the case.

11          Q     You'll agree with me that I have a table in  
12 front of me; correct?

13          A     Yes.

14          Q     Okay. You'll agree with me that I'm sitting  
15 in a rolling chair; correct?

16          A     Yes.

17          Q     Okay. You'll agree that I can extend my legs  
18 without the chair ever moving; correct?

19          A     Correct, but have you ever been in a  
20 surveillance room in the Fitzgerald's?

21          Q     Sir, this is --

22                APPEALS OFFICER SCHWARTZER: Okay. He gets to  
23 ask the questions.

24                THE CLAIMANT: There is --

25                APPEALS OFFICER SCHWARTZER: Not you.



1           MR. LAVERY: Move to strike at this point,  
2 your Honor, as not responding to a question.

3           APPEALS OFFICER SCHWARTZER: Okay. If it's  
4 something -- if it's something that your counsel feels  
5 has to be further explained she'll ask -- she'll have a  
6 chance to ask you some further questions, but right now  
7 just listen to his question and answer the question.

8           THE CLAIMANT: Okay. The answer is my legs  
9 would be obstructed to be stretched out.

10 BY MR. LAVERY:

11         Q     How high are these -- how high is the chair up  
12 off the ground that you were sitting in?

13         A     Oh, average, two foot, I guess.

14         Q     Okay. And you're looking at a bank of  
15 monitors in front of you; correct?

16         A     Yes.

17         Q     How low is the lowest monitor?

18         A     About two foot off the floor.

19         Q     Okay. So you're essentially looking straight  
20 at it? You're sitting in a chair that's two feet off  
21 the ground and the monitors are two feet off the  
22 ground, and you're essentially looking straight at it?

23         A     Well, the bottom row is a little bit  
24 obstructed because of the stuff on the desk.

25         Q     So if there's things on the desk they would

1 obstruct your view of the monitor? Is that what you  
2 just said?

3 A To a point, yes.

4 Q Okay. And when we say "monitor" we're talking  
5 essentially about a small television; correct?

6 A Yeah, basically. I think they're 19-inch that  
7 are on the wall.

8 Q How many are there? How many are you  
9 looking at?

10 A How many was I looking at?

11 Q Yes, at any given point.

12 A 16.

13 Q 4-by-4? Four across and four up starting two  
14 feet off the ground and going up?

15 A Approximately.

16 Q Is that a fair characterization?

17 A Approximately.

18 Q Okay. And if there's things on the desk that  
19 obstruct your view sitting in the chair, what prevents  
20 you from standing up to look at the monitor?

21 A I've done that many occasions.

22 Q Okay. So if you needed or wanted to stretch  
23 your legs and get the blood flow, you could just  
24 simply --

25 A But where does the blood flow when you stand

1 up?

2 Q Sir? Sir, let me finish my question, please.

3 If you wanted to stretch your legs and get the

4 blood flow, you could stand up; correct?

5 A Stand up does not get the blood flowing.

6 Q Sir, is my statement correct?

7 A No, it's not.

8 APPEALS OFFICER SCHWARTZER: He's saying no.

9 THE CLAIMANT: It's not.

10 BY MR. LAVERY:

11 Q Then answer my question as no.

12 A No.

13 Q Thank you.

14 A Geez.

15 APPEALS OFFICER SCHWARTZER: Counsel and

16 Mr. Mogg, both of you just calm down. And that's all

17 you had to do is say, "No, it's not correct."

18 THE CLAIMANT: I tried.

19 APPEALS OFFICER SCHWARTZER: Okay.

20 THE CLAIMANT: And he kept forcing the issue.

21 APPEALS OFFICER SCHWARTZER: Well, that's

22 cross-examination. Mr. Lavery.

23 MR. LAVERY: Thank you, your Honor.

24 BY MR. LAVERY:

25 Q This happened on January 27th; correct?

1           A     Correct.

2           Q     Why did you wait until January 29th to fill  
3     out an injury report?

4           A     I didn't. I called in the next day, the 28th,  
5     when I couldn't return to work. Called security. I  
6     think I called our supervisor or something, Sylvia  
7     Sinclair. Her statement should be in there.

8           Q     Okay. You called the next day?

9           A     Yes, sir.

10          Q     Okay. Why didn't you report it on the day  
11     that it happened?

12          A     Because I went home.

13          Q     You still had a couple hours left in your  
14     shift, didn't you?

15          A     About an hour and a half, yeah.

16          Q     You know where to go to report an accident;  
17     right?

18          A     Well, Sheldon said he would do his report. We  
19     have a tape of it. I didn't think I would need to  
20     except for that I didn't return to work, could not  
21     return to work.

22                APPEALS OFFICER SCHWARTZER: Have a tape of  
23     what?

24                THE CLAIMANT: The room.

25                APPEALS OFFICER SCHWARTZER: You have a tape

1 of the room?

2 THE CLAIMANT: The surveillance room is

3 recorded. There is a tape of the actual fall. I've

4 seen it. I don't know why --

5 MR. LAVERY: It should have been sent to you.

6 THE CLAIMANT: -- they haven't prepared it.

7 MR. LAVERY: You should have it.

8 APPEALS OFFICER SCHWARTZER: I don't have it.

9 MS. SWANSON: Excuse me. I don't have it

10 either.

11 MR. LAVERY: I'll make it available to both of

12 you. I told you the last time we were here that there

13 was a tape of available.

14 MS. SWANSON: I don't recall.

15 APPEALS OFFICER SCHWARTZER: Well, first of

16 all, I don't know. Were you here the last time?

17 MR. LAVERY: Yes, I was.

18 MS. SWANSON: Yes, he was.

19 MR. LAVERY: Absolutely I was.

20 MS. SWANSON: But I do not recall a tape.

21 MR. LAVERY: Absolutely.

22 MS. SWANSON: The statute requires that the

23 Employer/Insurer must produce --

24 APPEALS OFFICER SCHWARTZER: Okay.

25 MS. SWANSON: -- everything within the first

1 30 days.

2 MR. LAVERY: I understand.

3 APPEALS OFFICER SCHWARTZER: Ms. Swanson, you

4 don't want the tape?

5 MS. SWANSON: No, I'm not saying that.

6 APPEALS OFFICER SCHWARTZER: I would like to

7 see the tape.

8 MS. SWANSON: This is my first knowledge of

9 the tape. So yes, I think he needs to see the tape.

10 MR. LAVERY: Well, that's not an accurate

11 characterization because -- I'm not going to --

12 APPEALS OFFICER SCHWARTZER: I don't know what

13 went on between the two of you.

14 MR. LAVERY: I'm not going to have that

15 conversation. That's correct.

16 APPEALS OFFICER SCHWARTZER: But I do know

17 that I don't have the tape, and I would like the tape.

18 MR. LAVERY: I will be more than happy to make

19 that available to you.

20 MS. SWANSON: I don't see mention of a tape in

21 your appeal memo.

22 APPEALS OFFICER SCHWARTZER: You will provide

23 it. Thank you.

24 MR. LAVERY: Be more than happy to.

25 Absolutely.

1           APPEALS OFFICER SCHWARTZER: Thank you.

2           THE CLAIMANT: Craig Brewer's statement --

3           APPEALS OFFICER SCHWARTZER: Okay.

4           Mr. Lavery.

5           MR. LAVERY: Your Honor, given the fact that

6           the tape exists, I don't want to deprive Counsel or the

7           Court of the opportunity to review it before we proceed

8           any further, and I've got two witnesses that we're

9           probably not going to get through before this time

10          allotment is set. I can finish with this witness in

11          just a minute and give everybody the opportunity to

12          review that before we proceed any further.

13          APPEALS OFFICER SCHWARTZER: Would you like to

14          see the tape before you --

15          MS. SWANSON: Well, first, I don't -- I'm not

16          sure how to answer that.

17          APPEALS OFFICER SCHWARTZER: Well, take a

18          moment and think about it.

19          MS. SWANSON: Okay. Can I consult with my

20          client a moment?

21          APPEALS OFFICER SCHWARTZER: Absolutely. I'll

22          go off record for a moment.

23          MS. SWANSON: Thank you.

24          (Discussion off the record)

25          APPEALS OFFICER SCHWARTZER: I'm back on

1 record now.

2 MS. SWANSON: All right.

3 APPEALS OFFICER SCHWARTZER: Ms. Swanson?

4 MS. SWANSON: Yes. I discussed it with

5 Mr. Mogg because he had said that he saw it. So

6 without waiving any objection as to timeliness, I do

7 want to see that tape, and I don't want to deprive the

8 Court of seeing it either at this point since it was

9 mentioned, though I do have a few follow-up questions

10 for this witness if Mr. Lavery's concluded his cross

11 here.

12 MR. LAVERY: Well, at this point I'm not sure

13 that I am concluded.

14 MS. SWANSON: Okay. All right.

15 MR. LAVERY: But rather than --

16 APPEALS OFFICER SCHWARTZER: Not sure if you

17 are concluded?

18 MR. LAVERY: Well, again, if we're going to go

19 through this review of the tape, then rather than

20 reopen what we're doing, I would prefer to stop at this

21 point and give everybody --

22 APPEALS OFFICER SCHWARTZER: How long do you

23 think it will take to get the tape?

24 MR. LAVERY: A week tops. I'll have it to you

25 by Friday.



1           APPEALS OFFICER SCHWARTZER: Do you have your  
2   calendars?

3           MS. SWANSON: I don't. I'd have to -- I can  
4   just call my secretary.

5           THE CLAIMANT: Is that the 7th?

6           MR. LAVERY: Whatever works for --

7           THE CLAIMANT: No, the 9th.

8           MR. LAVERY: -- Counsel and the Court, I will  
9   make myself available for.

10          APPEALS OFFICER SCHWARTZER: Okay. Because,  
11   you know, part of the problem is I don't have a  
12   secretary for a little while.

13          (Off the record)

14          APPEALS OFFICER SCHWARTZER: After  
15   off-the-record discussion with the parties, Mr. Lavery  
16   will provide the tape, and this matter is continued  
17   until May 14th at 4:00 o'clock.

18          And please be prepared. I will continue with  
19   the hearing until we're finished. So it could go way  
20   past 5:00. Okay?

21          MS. SWANSON: Okay.

22          APPEALS OFFICER SCHWARTZER: Thank you. I'm  
23   going off record.

24          (Proceedings concluded at 1:57 p.m.)

25                           \* \* \*

1 CERTIFICATION

2

3 TITLE: GARY MOGG

4

5 DATE: May 5, 2009

6

7 LOCATION: Las Vegas, Nevada

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9

10 The below signature certifies that the  
11 proceedings and evidence are contained fully and  
12 accurately in the tapes and notes as reported at the  
13 proceedings in the above referenced matter before the  
14 Department of Administration, Appeals Office.

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21 KELLY PAULSON

DATE

22 CERTIFIED COURT REPORTER #628

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1 May 5, 2009, Tuesday  
Kelly Paulson, CCR No. 628  
2 E-MAILED ON 7-20-09  
3 TRANSCRIPT OF PROCEEDINGS 1:24 p.m.  
4 BEFORE THE DEPARTMENT OF ADMINISTRATION  
5  
6 In the Matter of the )  
Contested Industrial )  
7 Insurance Claim, )  
8 of ) Claim No.: 08S31A167135  
9 GARY MOCG, ) Appeal No.: 54033-GS  
10 Claimant. )  
11 Las Vegas, Nevada )

12  
13 On behalf of the Claimant:

14 Melodie Swanson, Esq.  
Nevada Attorney for Injured Workers  
2200 South Rancho Drive, Suite 230  
15 Las Vegas, Nevada 89102

16 On behalf of Fitzgerald Casino:

17 John Lavery, Esq.  
Lewis, Brisbois, Bisgaard & Smith  
18 400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101  
19

20 Also Present:

21 Mr. Cashman  
22

23 Total Number of Pages: 37  
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FITZGERALDS CASINO/HOTEL; and  
CANNON COCHRAN MANAGEMENT  
SERVICES, INC.  
  
Appellants,  
  
vs.  
  
GARY MOGG,  
  
Respondent.

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| 3 Appeals Officer's Notice of Appeal and Order to Appear<br>(Filed 7/21/08)  | 262-266            |
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| 4  | Hearing Officer's Decision and Order affirming claim denial<br>(Filed 6/24/08)                               | 270-271 |
| 6  | John P. Lavery's letter to Appeals Officer Schwartz<br>regarding submission of DVD<br>(Dated 5/11/09)        | 98-100  |
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