

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

FOCUS FRAMING and SUN CITY
ELECTRIC,
Appellants,
v.
MARTIN DURAN PEREZ,
Respondent

No. 79856

Electronically Filed
Nov 04 2019 02:03 p.m.

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

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department X
County Clark Judge Tierra Jones
District Ct. Case No. A-18-774772-J

2. Attorney filing this docketing statement:

Attorney Daniel L. Schwartz, Esq. Telephone 702-893-3383
Firm Lewis Brisbois Bisgaard & Smith
Address 2300 W. Sahara Ave. Ste. 300
Las Vegas, Nevada 89102

Client(s) Focus Framing and Sun City Electric

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

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

Attorney Alika Angerman, Esq. Telephone (888)788-5640
Firm Bighorn Law
Address 716 S. Jones Blvd.
Las Vegas, NV 89107

Client(s) Martin Duran Perez

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

None

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

None

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

This is a workers' compensation case. On December 30, 2016, the Respondent, arrived to work and was upset about an allegedly short paycheck for a period where he was working under a supervisor named Pedro. Respondent's Safety Manager, Nicholas Pao, informed Respondent that the proper way to resolve his paycheck issue was to speak with payroll at the end of the day. Despite Mr. Pao's instruction, Respondent left his job site and walked to another job site where Pedro was working. Respondent then scaled a house frame, failed to attach any protective gear, and then proceeded to argue with Pedro about the check for approximately ten (10) minutes. Then, unfortunately, Pedro's son got involved in the argument and pushed Respondent off the house frame, causing injury to Respondent. Petitioners denied Respondent's claim for worker's compensation benefits. Respondent appealed. The Hearing Officer reversed claim denial. Petitioners appealed. The testimony of four separate witnesses was taken. The Appeals Officer reversed claim denial. The Decision and Order makes no mention of any of the testimony given. Petitioners filed the instant Petition for Judicial Review contesting the Appeals Officer's Decision and Order .

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

Whether the subject Appeals Officer committed reversible error by failing to address testimony which contradicts facts found by Appeals Officer.

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

None.

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

☐ N/A

☐ Yes

☒ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(10) as it is a Petition for Judicial Review of a final decision of an administrative agency.

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

Was it a bench or jury trial? _____

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

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Jul 2, 2019

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

17. Date written notice of entry of judgment or order was served Sep 13, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Oct 14, 2019

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

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

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

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

(a) Parties:

FOCUS FRAMING and SUN CITY ELECTRIC - Petitioners

MARTIN DURAN PEREZ and THE DEPARTMENT OF ADMINISTRATION,
HEARINGS DIVISION, APPEALS OFFICE, an Agency of the State of Nevada -
Respondents.

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

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

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

FOCUS FRAMING and SUN CITY ELECTRIC - Petition for Judicial Review

MARTIN DURAN PEREZ - None

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

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

FOCUS FRAMING

Name of appellant

Daniel L. Schwartz, Esq.

Name of counsel of record

Nov 4, 2019

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 4th day of November, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

1. Alike Angerman, Esq.
2. Focus Framing
3. Nevada Dept. of Administration
4. Deonne Contine, Nevada Dept. of Administration
5. Aaron Ford, Esq., Attorney General
6. Settlement Judge

Dated this 4th day of November, 2019


Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th day of November, 2019, a true and correct
3 copy of this **DOCKETING STATEMENT** completed upon all counsel of record
4 by electronically filing the document using the Nevada Supreme Court's electronic
5 filing system and via US Mail.
6

7
8 Alike Angerman, Esq.
9 Bighorn Law
10 716 S. Jones Blvd.
11 Las Vegas, NV 89107

12 Focus Framing
13 C/O Sun City Electric

14 Focus Framing
15 C/O Sun City Electric
16 ATTN: Patty Pizano
17 1220 S. Commerce St., #120
18 Las Vegas, NV 89102

19 Department of Administration
20 2200 S Rancho Dr., Ste. 220
21 Las Vegas, NV 89102

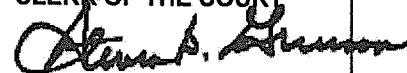
Aaron Ford, Esq.
Nevada Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

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

Ara Shirinian, Esq.
Settlement Judge
10651 Capesthorne Way
Las Vegas, NV 89135

22
23
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28 By 

an Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP



1 **NEOJ**
2 **ALIKA K. ANGERMAN, ESQ.**
3 Nevada Bar No. 12933
4 **BIGHORN LAW**
5 716 S. Jones Blvd.
6 Las Vegas, Nevada 89107
7 Tel: (702) 333-1111
8 Email: Alika@BighornLaw.com
9 *Attorneys for Respondent, Martin Duran Perez*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 FOCUS FRAMING and SUN CITY
11 ELECTRIC,

12 Petitioners,

13 v.

CASE NO: A-18-774772-J

DEPT. NO:X

14 MARTIN DURAN PEREZ, and THE
15 DEPARTMENT OF ADMINISTRATION
16 HEARINGS DIVISION, APPEALS OFFICE,
17 an Agency of the State of Nevada

18 Respondents.

19 **NOTICE OF ENTRY OF ORDER DENYING THE PETITION FOR JUDICIAL**
20 **REVIEW**

21 PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was entered
22 in favor of Respondents on April 16, 2019 by the above-entitled court.

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A copy of said Order is attached hereto.

DATED this 13th day of September, 2019.

BIGHORN LAW

By: /s/ Alike K. Angerman
ALIKA K. ANGERMAN, ESQ.
Nevada Bar No. 12933
716 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorneys for Respondent

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee
3 of BIGHORN LAW, and on September 13, 2019, I served a copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER DENYING THE PETITION FOR JUDICIAL REVIEW** as follows:
5

6 ☒ Electronic Service – By serving a copy thereof through the Court’s electronic service
7 system

8 ☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage
9 prepaid and addressed as listed below; and/or

10 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
11 number(s) shown below and in the confirmation sheet filed herewith. Consent to service
12 under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile
13 transmission is made in writing and sent to the sender via facsimile within 24 hours of
receipt of this Certificate of Service; and/or

14 **LEWIS BRISBOIS BISGAARD & SMITH**

JOEL REEVES, ESQ.

Nevada Bar No. 13231

2300 W. Sahara Ave. Suite 300, Box 28

16 Las Vegas, Nevada 89102

E-SERVICE

17 *Attorneys for Petitioner*

18 **FOCUS FRAMING/PLUMBING**

C/O Sun City Electric

1220 S. Commerce Street Suite 120

20 Las Vegas, Nevada 89102

Via US Postal Mailing

23 By: /s/ Eva G. Dhimi

24 An employee of **BIGHORN LAW**

EXHIBIT 1



1 **ORDR**
2 **BIGHORN LAW**
3 **ALIKA K. ANGERMAN, ESQ.**
4 **716 S. Jones Blvd**
5 **Las Vegas, NV 89107**
6 **alika@bighornlaw.com**
7 **Phone: (702) 333-1111**
8 **Fax: (702) 507-0092**
9 ***Attorneys for Petitioner***

6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9 *****

9 **FOCUS FRAMING and SUN CITY**
10 **ELECTRIC,**

11 **Petitioners,**

12 **v.**

13 **MARTIN DURAN PEREZ, and THE**
14 **DEPARTMENT OF**
15 **ADMINISTRATION, HEARINGS**
16 **DIVISION, APPEALS OFFICE, an**
17 **Agency of the State of Nevada**

18 **Respondents.**

CASE NO.: A-18-774772-J
DEPT. NO.: X

17 **ORDER DENYING THE PETITION FOR JUDICIAL REVIEW**

18 **After careful review and consideration of the papers and pleadings on file herein:**

19 **THE COURT ORDERS the Appeals Officer Decision and Order be AFFIRMED and the Petition**
20 **for Judicial review is DENIED.**

21 **DATED this 16 day of April 2019.**

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District Court Judge
Tierra Jones

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Submitted by:

BIGHORN LAW

By:

ALIKA K. ANGERMAN, ESQ.

Nevada Bar No.: 12933

716 S. Jones Blvd.

Las Vegas, NV 89107

Phone: 702-333-1111

Fax: 702-507-0092

Attorneys for Respondent

Approved as to form and content:

LEWIS BRISBOIS BISGAARD & SMITH

By:

JOEL REEVES, ESQ.

Nevada Bar No.: 13231

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

Las Vegas, NV 89102

Attorneys For Petitioner



1 PTJR
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 005125
4 JOEL P. REEVES, ESQ.
5 Nevada Bar No. 013231
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7 2300 W. Sahara Ave. Ste. 300
8 Las Vegas, Nevada 89102
9 Telephone: 702-893-3383
10 Facsimile: 702-366-9689
11 Email: daniel.schwartz@lewisbrisbois.com
12 Attorneys for Petitioners
13 Focus Framing and
14 Sun City Electric
15
16
17
18

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 FOCUS FRAMING and SUN CITY ELECTRIC,

12 Petitioners,

CASE NO: A-18-774772-J

13 v.

DEPT. NO.: Department 30

14 MARTIN DURAN PEREZ. and THE
15 DEPARTMENT OF ADMINISTRATION,
16 HEARINGS DIVISION, APPEALS OFFICE,
17 an Agency of the State of Nevada,

18 Respondents.

19 PETITION FOR JUDICIAL REVIEW

20 COMES NOW the Petitioners, FOCUS FRAMING and SUN CITY ELECTRIC
21 (hereinafter referred to as the "Petitioners"), by and through their attorneys, DANIEL L.
22 SCHWARTZ, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, in the above-entitled
23 Petition for Judicial Review and petition this Court for judicial review of the Appeals Officer's
24 Decision and Order, filed on May 3, 2018, a copy of which is attached hereto as "Exhibit 1."

25 The instant Petition for Judicial Review is filed pursuant to NRS Chapter 616C.370,
26 which mandates that judicial review shall be the sole and exclusive authorized judicial
27 proceeding in contested industrial insurance claims for compensation for injury or death and
28 pursuant to NRS 233B.130, et seq.

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. The Petitioners,
4 FOCUS FRAMING and SUN CITY ELECTRIC, specifically request, pursuant to NRS
5 233B.133, that this Court receive written briefs and hear oral argument.

6 DATED this 15 day of May, 2018.

7 Respectfully submitted,

8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

9
10
11 By: 

DANIEL L. SCHWARTZ, ESQ.

Nevada Bar No. 005125

JOEL P. REEVES, ESQ.

Nevada Bar No. 013231

2300 W. Sahara Ave. Ste. 300

Las Vegas, Nevada 89102

Phone: 702-893-3383

Fax: 702-366-9689

Attorneys for Petitioners

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 18th day of May, 2018, service of the attached **PETITION FOR JUDICIAL REVIEW** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Morris Anderson Law
Jacob Leavitt, Esq.
716 S. Jones Blvd.
Las Vegas, NV 89107

Focus Framing
C/O Sun City Electric

Focus Framing
C/O Sun City Electric
ATTN: Patty Pizano
1220 S. Commerce St., #120
Las Vegas, NV 89102

Adam P. Laxalt, Esq.
Nevada Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

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

Department of Administration
Hearings Division – Appeals Office
Attn: Appeals Officer Gary Pulliam, Esq.
2200 S. Rancho Dr. Ste. 220
Las Vegas, NV 89102
Appeal Nos.: 1505946-GP; 1506242-GP;
1509390-GP; 1513312-GP


An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT 1

EXHIBIT 1

1 BIGHORN LAW
2 ALIKA K. ANGERMAN, ESQ.
3 Nevada Bar No. 12933
4 716 S. Jones Blvd.
5 Las Vegas, Nevada 89107
6 Phone: (702) 333-1111
7 Fax: (702) 507-0092
8 Alika@bighornlaw.com
9 Attorneys for Claimant

FILED
MAY 03 2018
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER

9 In the Matter of the Contested
10 Insurance Claim

11 of

12 MARTIN DURAN PEREZ,

13 Claimant.

APPEAL NO: 1714955-CJY

HEARING NO.: 1710955-MT

EMPLOYER: Focus Plumbing/Framing

CLAIM NO.: 2016-0022

14
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16 DECISION AND ORDER

17 This matter was submitted for decision for the Appeals Officer. Claimant was
18 represented by ALIKA K. ANGERMAN, Esq. of the law Bighorn Law; Employer FOCUS
19 PLUMBING (hereinafter referred to as "Employer"), was represented by DANIEL
20 SCHWARTZ, ESQ. of Lewis Brisbois, Bisgaard & Smith LLP.
21

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FINDING OF FACTS

1. On December 30, 2016, Claimant suffered an injury while in the course and scope of his employment as a laborer with Employer. Claimant was upset because he believed his paycheck was short from the work conducted a week earlier while he was a member of Pedro Rosale's crew. On December 30, 2016 Claimant went to ask Mr. Pedro Rosales about his check. Claimant climbed to the roof of the house where Mr. Rosales was working. Claimant was talking to Mr. Rosales when Mr. Rosales' son intervened and pushed Claimant off of the roof. Claimant fell to the ground where he landed sustaining serious injuries to include, but not limited to, "1) traumatic fall 2) Traumatic subdural hematoma 3) Possible right 8th rib fracture 4) Musculoskeletal chest pain" as the initial hospital diagnosis. Although not working on Pedro Rosales' crew on December 30, 2016, Claimant credibly testified that if there was an issue with his check that he needed to talk to Pedro Rosales.

2. On December 30, 2016, Claimant underwent CT scans of the chest, abdomen, thoracic spine and lumbar spine.

3. On December 31, 2016, Claimant had an x-ray performed on his shoulder and a CT scan of his brain. In addition, Claimant underwent an MRI of his cervical.

4. On March 6, 2017, Employer issued a determination denying Claimant's claim.

5. On March 20, 2017, Claimant appealed Employer's claim denial determination.

6. On June 1, 2017, Hearing Officer Megan Trenkler issued her Decision and Order which REVERSED/REMANDED Employer's March 6, 2017 claim denial determination.

7. On June 30, 2017, Employer appealed Hearing Officer Trenkler's Decision and Order and filed a Motion for Stay Pending Appeal.

8. On July 17, 2017, Claimant filed an Opposition to Motion For Stay Pending Appeal.

9. On August 2, 2017, Employer's Motion for Stay was granted.

10. After consideration of the totality of the evidence presented in this case and the arguments of counsel, I find as follows:

- 1 a. I find that Claimant was employed by Focus when, on December 30, 2016, he was
2 assaulted and pushed off a roof of a house under construction. The circumstances of this
3 assault lead me to conclude the claim is compensable. The decision of the Hearing Officer
4 is proper and AFFIRMED.
- 5 b. This is not a case where the assault and injuries were sustained through animosity and ill
6 feelings arising from some cause entirely unrelated with the employee's company. There
7 is a clear indication that the work issue (short paycheck) was the catalyst which led to this
8 unfortunate incident. [Wood v. Safeway, Inc., 121 NEV 724 121 P.3d 1026 (2005)]. As
9 such Claimant is entitled to all appropriate benefits.
- 10 c. These Findings of Fact are based upon substantial evidence within the record.
- 11 11. If any finding of fact is more appropriately deemed a conclusion of law it shall be
12 so deemed, or vice versa.

13 CONCLUSION OF LAW

- 14
- 15 1. Nevada Revised Statutes ("NRS") 616C.150 only requires Claimant to demonstrate that he was
16 injured within the course and scope of his employment by preponderance of the evidence, nothing
17 greater. "NRS 616C.150 does not require an injured worker to offer a greater number of expert
18 witnesses who express opinions in his favor to establish that an injury arose... [t]he 'preponderance
19 of the evidence' merely refers to the greater weight of the evidence." McClanahan v. Raley's, Inc. 34
20 P.3d 573, 576 (2001).
- 21 2. Workers' Compensation is statutorily driven and defined. Claimant must prove, by preponderance
22 that he was in the course and scope when an accident occurred.
- 23 3. Rio All Suite Hotel & Casino v. Phillips, states that generally, "injuries caused by employment related
24 risks are deemed to arise out of employment and are compensable." 240 P.3d 2, 5 (2010).
- 25 4. The threshold requirement in an industrial injury is that Claimant's injury must have occurred within
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1 the course and scope of employment. Phillips, at 5: Course and Scope simply means that the injured
2 worker was at work, and scheduled to be there, when the accident occurred. Here, Claimant was
3 working at an assigned time and scheduled to be in the same construction housing complex. Claimant
4 went to the house across the street to inquire with the foreman that he worked with the week prior
5 as to why his hours were not properly reflected. His pay and hours are indeed work related. The fact
6 that this claim was filed because of the intentional tort of Jose Rosales (Pedro's son) does not
7 change compensability. These injuries arose out of and in the course of employment. Claimant
8 was on the job when this incident occurred, and the injuries resulted by the assault due to work-
9 related issues (short paycheck).

10
11 5. Accident is statutorily defined in NRS 616A.030 as "Accident" means an unexpected or unforeseen
12 event happening suddenly and violently, with or without human fault, and producing at the time
13 objective symptoms of an injury." Clearly, Claimant did not anticipate being pushed off of a roof by
14 anyone let alone someone who was not a part of the conversation. Claimant wanted clarification for
15 his hours from the foreman he worked with for the subject pay period. In the instant case, Claimant
16 meets the statutory requirement of accident.

17
18 6. Injury is defined in NRS 616A.265 as a "sudden and tangible happening" that produces an
19 "immediate or prompt result" which is established by medical evidence. Here, the initial treating
20 physician who completed the Form C-4 causally related the injury to the work place incident.
21 Employer bears the burden under NRS 616C.175 if it believes Claimant has a prior condition.
22 Employer must prove that the alleged prior condition is the substantial cause for the work injury, if
23 not, then it is a compensable claim.

24
25 ///

26 ///

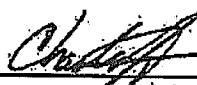
27 ///

1 ORDER

2 Therefore, after considering the totality of the evidence presented in Appeal
3 1714955-CJY IT IS HEREBY ORDERED that the Hearing Officer's decision in June 1,
4 2017 is hereby AFFIRMED and the Employer's March 6, 2017 claim denial determination
5 is REVERSED.
6


7 Dated this 30 day of May, 2018.

8 APPEALS OFFICER

9
10 
11 CHARLES J. YORK, ESQ.
12

13 Submitted by:

14 BIGHORN LAW

15 
16 ALIKA K. ANGERMAN, ESQ.
17 Nevada Bar No. 12933
18 716 South Jones Boulevard
Las Vegas, NV 89107

19 NOTICE: Pursuant to NRS 616.543 and NRS 233B.130, should any party desire to
20 appeal this determination of the Appeals Officer, a Petition of Judicial Review must be
21 filed with the District Court within thirty (30) days after service by mail of this Decision.
22
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28

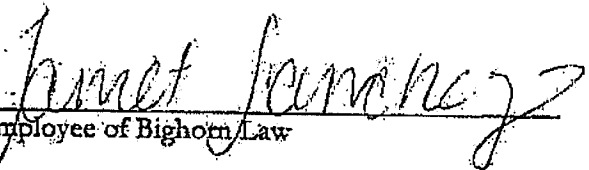
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of BIGHORN LAW and that on the day of April, 2018, I duly deposited for mailing at Las Vegas, Nevada, a true copy of the forgoing DECISION and ORDER, postage prepaid, addressed to the following:

Daniel Schwartz, Esq.
Lewis Brisbois Bisgaard & Smith LLP
2300 W. Sahara Suite 300, Box 28
Las Vegas, NV 89102

Focus Framing/Plumbing
1220 S. Commerce Street Suite 120
Las Vegas, Nevada 89102

Martin Duran Perez
3555 E. Lake Mead
Blvd Apt. #147
Las Vegas, NV 89115


An Employee of Bighorn Law

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 was duly mailed, postage prepaid OR placed in the appropriate
5 addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho
6 Drive, #220, Las Vegas, Nevada, to the following:

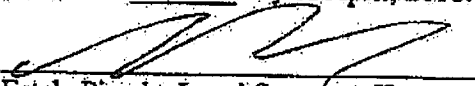
7 MARTIN DURAN PEREZ
8 3555 E LAKE MEAD BLVD #147
9 LAS VEGAS NV 89115

10 ALIKA ANGERMAN ESQ
11 BIGHORN LAW
12 716 S JONES BLVD
13 LAS VEGAS NV 89107-3614

14 FOCUS PLUMBING
15 ATTN PATTY PAIZANO
16 1220 S COMMERCE ST STE 120
17 LAS VEGAS NV 89102

18 DANIEL SCHWARTZ ESQ
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20 2300 W SAHARA AVE STE 300 BOX 28
21 LAS VEGAS NV 89102-4375

22 Dated this 3rd day of May, 2018.

23 
24 Estela Pinedo, Legal Secretary II
25 Employee of the State of Nevada
26
27
28