IN THE SUPREME COURT OF THE STATE OF NEVADA

FOCUS FRAMING and SUN CITY ELECTRIC, Appellants, v. MARTIN DURAN PEREZ Respondent.	SUPREME COURT NO: 79856 DISTRICT COURT NO: A-18-774722-J

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. The Appellant FOCUS FRAMING, states that it does not have any parent corporation, or any publicly held corporation that owns 10% or more of its stock, nor any publicly held corporation that has a direct financial interest in the outcome of the litigation. NRAP 26.1(a).
2. The Appellant SUN CITY ELECTRIC, states that it does not have any parent corporation, or any publicly held corporation that owns 10% or more of its stock, nor any publicly held corporation that has a direct financial interest in the outcome of the litigation. NRAP 26.1(a).
3. The undersigned counsel of record for FOCUS FRAMING and SUN CITY ELECTRIC has appeared in this matter before District Court. JOHN P. LAVERY, ESQ. has also appeared for the same before District Court. DANIEL L. SCHWARTZ, ESQ. has also appeared for the same at the administrative proceedings before the Department of Administration.

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These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

DATED this 10 day of April 2020.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Joel P. Reeves, Esq.
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I.

STATEMENT OF THE CASE

This is a workers' compensation case. On December 30, 2016, the Respondent, MARTIN DURAN PEREZ (hereinafter referred to as "Respondent") arrived to work and was upset about an allegedly short paycheck for a period where he was working under a supervisor named Pedro. On that day, 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 and they would help him. Mr. Pao testified that Pedro had no authority to resolve the paycheck issue Respondent was complaining of.

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. A Criminal Complaint was issued against Pedro's son, Jose Rosales.

On March 6, 2017, Petitioners denied Respondent's claim for worker's compensation benefits based on the fact that Respondent's injuries were unrelated to his employment. Respondent appealed

On June 1, 2017, following Hearing No. 1710955-MT, the Hearing Officer issued a Decision and Order reversing the March 6, 2017 determination denying the claim. Petitioners filed a timely appeal. In addition, the Petitioners filed a Motion for a Stay of the Hearing Officer's decision, which was granted.

On February 9, 2018, this case came on for hearing before the Appeals Officer. The testimonies of four separate witnesses were taken: Respondent; Respondent's brother-in-law; and two safety directors for Employer (Nicholas Pao and Kevin Mendoza).

On May 3, 2018, the Appeals Officer issued the subject Decision and Order reversing claim denial. The Decision makes no mention of the fact that neither Respondent nor Pedro had any power to correct the paycheck issue.

Petitioners filed the instant Petition for Judicial Review contesting the May 3, 2018 Appeals Officer's Decision and Order and the District Court granted a request for a stay.

On July 2, 2019, the District Court denied this Petition for Judicial Review, noting simply that the Appeal Officer was affirmed and the Petition was denied. The Notice of Entry of Order was filed on September 13, 2019.

On October 14, 2019, Petitioners filed the instant appeal to this Honorable Court. Petitioners also requested a stay from the District Court but the same was denied.

II.

SUMMARY OF THE ARGUMENT

Respondent's injuries and the situation leading to those injuries are truly unfortunate. Although Respondent's injuries are unfortunate, he cannot prove that his injuries arose out of the course and scope of his employment. Neither Respondent nor the person he was arguing with (Pedro) had any authority to resolve the paycheck dispute that begat Respondent's injuries. Respondent's mechanism of injury was therefore unrelated to his employment. Respondent was instructed that his paycheck dispute could be resolved by reaching out to payroll at the end of his workday. Instead of exercising that option, Respondent left his job site, scaled a house without attaching any sort of fall protection, and proceeded to argue on a rooftop with a party who had no authority to resolve the issue he was complaining of. The direct result of that argument was the injuries that are the subject of this claim.

At the time of that his injuries were sustained, Respondent was not performing a task at the direction of his employer. In fact, had Respondent heeded the direction of his employer, stayed at his job site, and discussed the issue with payroll at the end of the day like he was instructed to do, the subject injuries would not have occurred. When Respondent acted in direct violation of the orders of his

employer by walking off his jobsite, he ceased performing any task related to his employment and had embarked on a personal objective.

Indeed, by pursuing his own directive and arguing with a party who had no authority to address Respondent's complaints, "[t]he interests of the employer were not being aided, protected or advanced in any manner by what [the claimant] did, and the quarrel and consequent injury had no reasonable connection with any work then being done for the plaintiff in error." Marion Cty. Coal Co. v. Indus. Com., 292 Ill. 463, 466, 127 N.E. 84, 85 (1920).

By failing to take into account that Respondent was not performing a task at the direction of his employer at the time of his injury, the Appeals Officer erred. Reversal is warranted as Respondent's injuries were not sustained in the course and scope of his employment.

Furthermore, the District Court erred by failing to make any findings of fact or law and simply affirming the Appeals Officer. Without any findings, it is impossible for this Court to review what the District Court concluded. See Poremba v. S. Nev. Paving, 388 P.3d 232, 238 (Nev. 2017).

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II.

STATEMENT OF THE ISSUES FOR REVIEW

1. IF NEITHER PARTY TO AN ARGUMENT HAVE ANY AUTHORITY OVER THE SUBJECT OF THE ARGUMENT, ARE ANY INJURIES SUSTAINED AS A RESULT OF THAT ARGUMENT COMPENSABLE THROUGH WORKERS' COMPENSATION?

2. DID THE DISTRICT COURT ERR BY FAILING TO MAKE ANY FINDINGS OF FACT OR LAW?

III.

FACTS NECESSARY TO UNDERSTAND ISSUE PRESENTED

On December 30, 2016, a C-4 form was completed which alleged that the Respondent was injured when he was pushed off a roof. The Respondent was treated at UMC Trauma for subdural hematoma on the date of the incident. The Respondent was taken off work. (Appendix p. 125)(hereinafter "APP p. ___")

A Supervisor Accident Investigation Report notes that the Respondent went to the second floor with no fall protection and was involved in workplace violence. (APP p. 126)

Foreman Rafael Benitez noted that he did not witness the event but found Mr. Perez passed out on the ground and called 911 and checked vitals. (APP pp. 127-128)

A Safety Report completed by Safety Manager Nicholas Pao, which noted that the Respondent was mad due to an alleged paycheck shortage while working

on Pedro's crew. The Respondent climbed an 8-foot ladder to get to where Pedro was working on a second floor. Pedro was tied off with safety gear but Respondent was not. The discussion with the two got "elevated." Pedro's son came up from the first floor to aid his father, and when Pedro's son asked the Respondent to stop, the Respondent allegedly started yelling at him and the son put his hands on the Respondent and pushed him away and the Respondent eventually fell off of the roof. (APP pp. 129-133)

Pedro Rosales also gave a statement and alleged that the Respondent came up to the second floor where he was working and began to say bad words to him and tried to hit him. He told the Respondent to give him time and he would try and resolve the problem on January 2, 2017. His son heard the offensive comments and came up to defend him and other people also were involved verbally, including an unidentified person who also came up to the second floor and later left. (APP pp. 134-135)

Pedro's son, Jose Rosales gave his version of what happened, as well. (APP pp. 136-137)

Statements by Eduardo Leon and Elvis Herrera noted that the son of the man working on the second floor pushed the Respondent who fell off of roof after a discussion between the parties. (APP pp. 138-141)

A statement from the Respondent indicated that he climbed to where Pedro was working and showed him his check and Pedro stated that houses do not make money. He then states that Pedro's son stated it wasn't good and that he was then grabbed and pushed off the roof. (APP p. 142)

An Industrial Injury or Illness form in Spanish was also executed by the Respondent. (APP pp. 143-144)

A Criminal Complaint was issued against Pedro's son, Jose Rosales. (APP p. 145)

The Respondent was treated at UMC on the date of the incident described as a 20-foot fall after being pushed off of a roof. The Respondent was transferred out of the Emergency Department after a subdural bleed was discovered along with a possible right 8th rib fracture. X-rays of the left shoulder revealed no acute osseous abnormality, and a CT scan of the brain revealed a subdural hematoma, and a MRI of the cervical spine was normal except for soft tissue swelling from T-1 through T-3. Other diagnostic testing was essentially normal. (APP pp. 147-180)

A claim denial determination was issued on March 6, 2017. (APP pp. 181-183)

On March 21, 2017, the Respondent appealed the claim denial determination. (APP p. 184)

On March 30, 2017, the adjuster denied March 21, 2017, requests for 1) TTD beginning on December 30, 2016, to present and 2) request for transfer of care to Dr. Garber. (APP pp. 185-186)

Following Hearing No. 1710955-MT, the Hearing Officer issued a Decision and Order dated June 1, 2017, reversing the March 6, 2017 determination denying the claim. (APP pp. 187-189.) Insurer filed a timely appeal. (APP p. 190.) In addition, the Insurer filed a Motion for a Stay of the Hearing Officer's decision, which was granted. (APP p. 192.)

On February 9, 2018, this case came on for hearing before the Appeals Officer. The testimonies of four separate witnesses were taken: Respondent; Respondent's brother-in-law; and two safety directors for Employer (Nicholas Pao and Kevin Mendoza). Of note, Respondent testified that, on the day in question, he was working on a house under the supervision of a crew leader named Francisco. On that day, Respondent received a check for the work he had done the previous week when he was working for a different crew leader, Pedro. (APP pp. 9-10; 13-15) Respondent believed that his paycheck was low and testified that he went to Pedro to discuss his paycheck. Respondent testified that he left the job site that he was working on, walked three houses down to where Pedro was, climbed a ladder to get to Pedro, did not attach any sort of safety measures to himself, and spent at least ten (10) minutes talking to Pedro on the second floor of a house frame. After

about ten (10) minutes of discussion, Pedro's son climbed the ladder and pushed Respondent off the house.

The Respondent's brother-in-law (Eduardo Leon) was also working on the job site but his testimony did not add anything worth noting to this case.

Mr. Pao, a safety director for Employer, testified that, on the day in question, he was on the job site prior to the incident and testified that he and Mr. Mendoza (the other safety director) spoke with Respondent about his check. Mr. Pao testified as follows:

> NICHOLAS PAO: Yeah, [Respondent] brought it to our attention that there was a discrepancy on his paycheck from Pedro. We had basically told him, at the end of the day, take it to the office and Lucy would get that corrected.
>
> DANIEL SCHWARTZ: At that point in time, when you were having this conversation with him, would Pedro have had any ability to do anything with that paycheck?
>
> NICHOLAS PAO: No. He couldn't have done nothing. He could've maybe made a phone call and told Lucy to get the check corrected, but as far as him cutting a check for him, no.
>
> DANIEL SCHWARTZ: So, your—your—I don't want to say advice, but what you told Mr. Duran-Perez, concerning the paycheck was to go to the office.
>
> NICHOLAS PAO: Go to the office at the end of the day. Yeah.
>
> DANIEL SCHWARTZ: And then did you leave the jobsite?

NICHOLAS PAO: Yeah.

(APP p. 35:6-24)

Mr. Pao also testified that, contrary to Respondent's testimony, Pedro was in fact wearing a safety harness. (APP p. 37; 38-39) Further, Mr. Pao explained the check payment process. Crew leaders (like Pedro and Francisco) keep track of their subordinate's hours and turn those hours into a foreman and the foreman turns the hours into payroll and payroll issues checks. (APP p. 39) He reiterated that a foreman would not be able to do anything with a check after it was cut.

Mr. Mendoza corroborated Mr. Pao's testimony as he helped translate for Mr. Pao on that day.

On May 3, 2018, the Appeals Officer issued the subject Decision and Order reversing claim denial. (APP pp. 65-71)

On May 18, 2018, Respondents filed the instant Petition for Judicial Review, contesting the Appeals Officer's May 3, 2018 Decision and Order. The District Court also granted a stay. (APP pp. 371-381; 416-419)

On July 2, 2019, the District Court affirmed the Appeals Officer and denied this Petition for Judicial Review. The Notice of Entry of Order was filed on September 13, 2019. (APP pp. 490-495)

On October 14, 2019, Respondents filed an appeal with this Honorable Court contesting the Appeals Officer's May 3, 2018 Decision and Order as well as

the District Court's affirmance of that Order. (APP pp. 528-539) Respondents also requested a stay from the District Court but the same was denied. (APP p. 550)

IV.

JURISDICTION

Appellants have timely and properly appealed this Petition for Judicial Review of the Appeals Officer's Decision dated May 3, 2018. NRS 233B.130. Said Petition was timely filed with the District Court on May 18, 2018. On September 13, 2019, the Notice of Entry of Order of the District Court's Decision and Order affirming the Appeals Officer's Decision was filed. Appellants timely and properly filed an appeal of that Decision and Order with this Honorable Court on October 14, 2019. See NRS 233B.150; NRAP Rule 3; NRAP Rule 4. This Court has jurisdiction over the instant appeal.

A. ROUTING STATEMENT

Under NRAP 17(b)(10), this case would be presumptively assigned to the Court of Appeals as it concerns a Petition for Judicial Review of an administrative agency's final decision.

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B. STANDARD OF REVIEW

Judicial review of a final decision of an agency is governed by NRS 233B.135.

> **NRS 233B.135 Judicial review: Manner of conducting; burden of; standard for review.**
>
> 1. Judicial review of a final decision of an agency must be:
>
> (a) Conducted by the court without a jury; and
>
> (b) Confined to the record.
>
> In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.
>
> 2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.
>
> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
>
> (a) In violation of constitutional or statutory provisions;
>
> (b) In excess of the statutory authority of the agency;
>
> (c) Made upon unlawful procedure;
>
> (d) Affected by other error of law;
>
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) Arbitrary or capricious or characterized by abuse of discretion.

The standard of review is whether there is substantial evidence to support the underlying decision. The reviewing court should limit its review of administrative decisions to determine if they are based upon substantial evidence. North Las Vegas v. Public Service Comm'n., 83 Nev. 278, 291, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639 P.2d 552 (1982). Substantial evidence is that quantity and quality of evidence which a reasonable man would accept as adequate to support a conclusion. See, Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270 (1993); and Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839 (1997).

When reviewing administrative court decisions, this Court has held that, on factual determinations, the findings and ultimate decisions of an appeals officer are not to be disturbed unless they are clearly erroneous or otherwise amount to an abuse of discretion. Nevada Industrial Comm'n. v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977). An administrative determination regarding a question of fact will not be set aside unless it is against the manifest weight of the evidence. Nevada Indus. Comm'n. v. Hildebrand, 100 Nev. 47, 51, 675 P.2d 401 (1984).

C. THIS COURT CAN SET ASIDE A CLEARLY ERRONEOUS DECISION THAT CONSTITUTES AN ERROR OF LAW OR IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

This Court may set aside, in whole or in part, a final decision of an administrative agency where substantial rights of the Appellants have been

prejudiced because the final decision is in violation of statutory provisions, affected by other error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary, capricious or characterized by abuse of discretion. NRS 233B.135(3).

1. This Court Can Set Aside a Decision That is Based on Incorrect Conclusions of Law and is Free to Address Purely Legal Questions Without Deference to the Appeals Officer's Decision.

This Court has acknowledged and applied these statutory principles holding, for example, that a reviewing court may set aside an agency decision if the decision was based upon an incorrect conclusion of law or otherwise affected by an error of law. State Indus. Ins. Sys. v. Giles, 110 Nev. 216, 871 P.2d 920 (1994); Jessop v. State Indus. Ins. Sys., 107 Nev. 888, 822 P.2d 116 (1991); see, also, NRS 233B.135(3)(d). Further, this Court has stated that appellate review on questions of law is de novo, and that the reviewing court is free to address purely legal questions without deference to the agency's decision. Giles, supra; Mirage v. State, Dep't of Admin., 110 Nev. 257, 871 P.2d 317 (1994); American Int'l Vacations v. MacBride, 99 Nev. 324, 326, 661 P.2d 1301, 1302 (1983); see, also, State Dep't of Motor Vehicles v. Torres, 105 Nev. 558, 560, 799 P.2d 959, 960-961 (1989).

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2. This Court Can Set Aside a Decision That is Not Supported by Substantial Evidence.

In determining whether an administrative decision is supported by substantial evidence, the methodology for this Court is also well-defined. First, for each issue appealed, the pertinent rule of law is identified. Thereafter, the evidence on appeal is reviewed to determine whether the agency's decision on each issue is supported by substantial factual evidence. Torres, *id*. If the decision of the administrative agency on the appealed issue is supported by substantial factual evidence, this Court must affirm the decision of the agency as to that issue. On the other hand, a decision by an administrative agency that lacks support in the form of substantial evidence is arbitrary or capricious and, thus, an abuse of discretion that warrants reversal. NRS 233B.135(3); Titanium Metals Corp. v. Clark County, 99 Nev. 397, 399, 663 P.2d 355, 357 (1983).

Substantial evidence has been defined as that quantity and quality of evidence which a reasonable man could accept as adequate to support a conclusion. State Emp't Sec. Dep't v. Hilton Hotels Corp., 102 Nev. 606, 608 at n.1, 729 P.2d 497 (1986). Additionally, substantial evidence is not to be considered in isolation from opposing evidence, but evidence that survives whatever in the record fairly detracts from its weight. Universal Camera Corp. v. NLRB, 340 U.S. 474, 477, 488 (1951); Container Stevedoring Co. v. Director, OWCP, 935 F.2d 1544, 1546 (9th Cir. 1991). This latter point is clearly the significance of the requirement in

NRS 233B.135(3)(e) which states that the reviewing court consider the whole record.

Furthermore, a decision that is affected by error of law cannot be found to be supported by substantial evidence. A decision that lacks support in the form of substantial evidence is arbitrary or capricious and, thus, an abuse of discretion that warrants reversal. Titanium Metals, *id*.

NRS 616A.010(2) and (4) are clear that Nevada no longer has liberal construction. Issues must be decided on their merits, and not according to the common law principle that requires statutes governing workers' compensation to be liberally construed. That means workers' compensation statutes must not be interpreted or construed broadly or liberally in favor of any party.

In this case, the Appeals Officer's decision is not supported by substantial evidence. Further, as District Court affirmed the Appeals Officer's Decision, the errors of the Appeals Officer are also the errors of the District Court. This Honorable Court retains review of the instant Petition for Judicial Review.

V.

LEGAL ARGUMENT

A. THE APPEALS OFFICER AND THEREFORE THE DISTRICT COURT ERRED AS A MATTER OF LAW

It was the Respondent, not Appellants, who had the burden of proving entitlement to any benefits under any accepted industrial insurance claim by a

preponderance of all the evidence. State Industrial Insurance System v. Hicks, 100 Nev. 567, 688 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's Compensation Div., 798 P.2d 323 (1990); Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

In attempting to prove his or her case, the Respondent has the burden of going beyond speculation and conjecture. That means that the Respondent must establish all facets of the claim by a preponderance of all the evidence. To prevail, a Respondent must present and prove more evidence than an amount which would make his case and his opponent's "evenly balanced." Maxwell v. SIIS, Id.; SIIS v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); SIIS v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, the Law of Workmen's Compensation, § 80.33(a).

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

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

B. NEITHER RESPONDENT NOR PEDRO HAD AUTHORITY OVER THE SUBJECT DISPUTE

The issue in the present case is that no party to the altercation at issue had any authority over the subject of that altercation. No party had any authority to address the paycheck issue that Respondent was complaining of. As such, the

altercation at issue was outside the scope of the employment for all parties involved. Therefore, Respondent's injuries were unrelated to his employment.

Further, the Appeals Officer excluded all evidence of how Respondent's paycheck process works and how the paycheck dispute resolution process was explained to Respondent. It was legal error to find this claim compensable when Respondent was explicitly informed by Mr. Pao and Mr. Mendoza that his prior crew leader (Pedro) had no control over paycheck dispute resolution. As will be shown below, though certain types of work place violence can be compensable when the violence is begat by an argument over work related issues, if the parties to the violence have no authority over the argument subject, any injuries which result are not compensable because the argument was not related to the parties' job performance.

Under NRS 616C.150(1), the Respondent has the burden of proof to show that the injury arose out of and in the course and scope of his employment. The Respondent must satisfy this burden by a preponderance of the factual and medical evidence. Further, NRS 616B.612 mandates that an employee is only entitled to compensation if he is injured in the course and scope of his employment.

This Court has held that:

> An accident or injury is said to arise out of employment when there is a **causal connection between the injury and the employee's work** ... the injured party must establish a link between **the workplace conditions and**

> **how those conditions caused the injury** ... a claimant must demonstrate that the origin of the injury is related to some risk involved within the scope of employment.

Rio Suite Hotel v. Gorsky, 113 Nev. 600, 939 P.2d 1043(1997). (emphasis added)

The same Court further stated that the "Nevada Industrial Insurance Act is not a mechanism which makes insurers/employers absolutely liable for injuries suffered by employees who are on the job." (Id.)

Further, this Court held in Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005):

> An accident or injury is said to arise out of employment when there is a causal connection between the injury and the employee's work. In other words, the injured party must establish a link between the workplace conditions and how those conditions caused the injury. Further, a Respondent must demonstrate that the origin of the injury is related to some risk involved within the scope of employment. However, if an accident is not fairly traceable to the nature of employment or the workplace environment, then the injury cannot be said to arise out of the Respondent's employment. Finally, resolving whether an injury arose out of employment is examined by a totality of the circumstances.

With respect to the subject issue of assaults, Nevada decisions are sparse. However, this Court did endorse the general rule that "injuries resulting from assaults by fellow workmen when the attack results from personal animosity unconnected with the employment, are not compensable." Cummings v. United Resort Hotels, Inc., 85 Nev. 23 (1969)(Citing Pacific Employers Ins. Co. v.

Industrial Acc. Comm., 293 P.2d 502 (Cal. App. 1956)). The salient portion of the rule above is the holding that *injuries unconnected to employment are not compensable*. This is the guiding principle in determining compensability of workers' compensation claims.

Professor Larson's treatise on workers' compensation expounds on this subject and explains that claim denial has been upheld when workplace fights concern a subject which the employee had no control over. See 1 Larson's Workers' Compensation Law § 8.01[4] (2018). For example, claim denial was affirmed where a worker was killed by another worker over a dispute as to the contents of a coal car when neither party had any ability to control what was in the car. That Court held that "[t]he interests of the employer were not being aided, protected or advanced in any manner by what [the claimant] did, and the quarrel and consequent injury had no reasonable connection with any work then being done for the plaintiff in error." Marion Cty. Coal Co. v. Indus. Com., 292 Ill. 463, 466, 127 N.E. 84, 85 (1920).

In another case, a claimant was injured while protecting his employer's property from teamsters who were in a dispute with the employer. The Court upheld claim denial under the theory that "[h]ad Respondent remained at his work he would not have been injured. His presence at the place of fighting was in pursuance of no demand of his employment." Clark v. Clark, 189 Mich. 652, 655,

155 N.W. 507, 508 (1915).[1]

Finally, in a more recent decision, two years prior to the controversy therein, a claimant had used her own personal money to buy a drink machine for the office. On the subject day, a drink truck was parked in the parking lot to refill the machine. A police officer wrote the truck driver a parking ticket and the claimant came out to contest the ticket. The claimant was eventually arrested for disorderly conduct and sustained injury during the arrest. The court upheld claim denial as there was "no testimony from plaintiff, her superior or any other witness that states that plaintiff had any supervisory authority over the parking lot as a result of her employment and was thus involved with duties created by her job at the time she was injured... We are of the opinion that the trial court could properly find that ***any injuries suffered by plaintiff did not occur while the employee was rendering service which she was hired to do by her employer and, therefore, was not in the course of the employment.***" Legions v. Liberty Mut. Ins. Co., 703 S.W.2d 620, 623 (Tenn. 1986)(emphasis added)

Here, just as in the cases cited above, neither Respondent, Pedro, nor Pedro's son had any authority over the subject of the dispute, i.e. Respondent's paycheck. Respondent was even informed by Mr. Pao and Mr. Mendoza on the

[1] See Also Libraro v. Ocean Casket Co., 60 A.D.2d 736, 401 N.Y.S.2d 304 (App. Div. 1977) where claim denial was affirmed when an employee left his employment to assist a co-employee who was being assaulted and was then himself shot.

very day of the incident that if he desired to contest his paycheck, the proper way to do so was to contact payroll at the end of the day. Instead of doing that, Respondent left his job site, walked over to Pedro's job site, climbed to the second story of a house frame, did not attach any safety equipment, and engaged in a ten (10) minute long argument about the paycheck before Pedro's son unfortunately pushed him off the frame. Though Respondent's injuries are unfortunate, in no way was Respondent performing his job at the time of his injuries.

Indeed, Respondent left his job duties to discuss a subject with Pedro that he knew Pedro had no authority over. By virtue of the fact that Pedro had no authority over Respondent's paycheck dispute and compounded by the fact that Respondent had just that day been informed as to the proper way to dispute his paycheck, Respondent left the course and scope of his employment when he walked off his job site to engage Pedro. Put simply, the argument with Pedro was not related to Respondent's employment because Respondent had just been informed the proper way to dispute his paycheck and he knew that Pedro had no authority to adjust his pay.

The Appeals Officer was apprised of the state of this law at the hearing on this matter. By failing to address the fact that the subject altercation was *not* related to Respondent's employment, the Appeals Officer committed reversible error. This

Court should grant the Petition for Judicial Review, reverse the Appeals Officer, and affirm the Petitioner's determination to deny this claim.

C. THE DISTRICT COURT ERRED BY NOT MAKING ANY FINDINGS OF FACT OR LAW

The District Court's Order simply states as follows: "THE COURT ORDERS the Appeals Officer Decision and Order be AFFIRMED and the Petition for Judicial review is DENIED." There are no findings of fact. There are no conclusions of law. There is nothing for this Court to review and therefore the District Court's Order was improper and should be reversed. (See Poremba v. S. Nev. Paving, 388 P.3d 232, 238 (Nev. 2017)[2]

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[2] "Without detailed factual findings and conclusions of law, this court cannot review the merits of an appeal; thus, administrative agencies are required to issue orders that contain factual findings and conclusions of law. NRS 233B.125. In pertinent part, the statute reads:

> A decision or order adverse to a party in a contested case *must* be in writing or stated in the record. . . . [A] final decision *must include findings of fact and conclusions of law, separately stated*. Findings of fact and decisions *must* be based upon substantial evidence. Findings of fact, if set forth in statutory language, *must* be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

Id. (emphases added). Each and every clause in this statute contains mandatory instruction for the appeals officer, leaving no room for discretion"

VI.

CONCLUSION

Based upon the foregoing, Appellant requests that this Court reverse the Appeals Officer and the District Court and find that the Respondent's claim for workers' compensation benefits was properly denied.

Dated this _10____ day of April 2020.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 5,300 words and 531 lines of text.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or Appendix where the matter relied on is to be found.

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4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted,
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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 10 day of April 2020, service of the attached **APPELLANTS' OPENING BRIEF** was made this date by depositing a true copy of the same for mailing, first class mail, and/or electronic service as follows:

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