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TRANSCRIPT MINUTES

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

Wednesday, March 18, 2020
10:00 a.m.

3360 West Sahara Avenue, Suite 250
Las Vegas, Nevada, 89102
in the Executive Video Conference Room

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A P P E A R A N C E S

For the Board:

Cecilia Meyer (phone)
Board Vice Chair, Member

Suhair Sayegh (phone)
Board Member

Sharolyn Wilson (phone)
Board Member

Donald Bordelove, Esq. (phone)
Deputy Attorney General
Board Counsel

For the Division of Industrial Relations:

Christopher A. Eccles, Esq. (phone)
Counsel for DIR

For the Administrator of the DIR:

Vanessa Skrinjaric (Las Vegas)
Compliance Audit Investigator
Division of Industrial Relations
Workers' Compensation Section

Also Present:

Marisa Mayfield (phone)

Kasey McCourtney (phone)
CCMSI

Kim Price, Esq. (phone)
Lewis Brisbois Bisgaard & Smith

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LAS VEGAS, NEVADA, WEDNESDAY, MARCH 18, 2020,
10:00 A.M.

-oOo-

MS. SKRINJARIC: Okay. Cecilia, go right ahead.

VICE CHAIR MEYER: All right. This is the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers.

We'll begin with roll call. Vanessa, can you call the names out?

MS. SKRINJARIC: Okay. So present in Las Vegas, this is Vanessa Skrinjaric representing the Division of Industrial Relations.

And I'm going to call roll. Everybody is on the phone. So I will start with the current Vice Chair, Cecilia Meyer.

BOARD MEMBER MEYER: Here.

MS. JOYCE SMITH: Good morning. This is Joyce.

MS. SKRINJARIC: Okay. I'm going to -- hang on one second.

1 Hi, Joyce. Joyce, your board meeting is
2 actually tomorrow.

3 MS. JOYCE SMITH: Oh, good.

4 MS. SKRINJARIC: So we are calling roll for the
5 other board. So if you want to go ahead and get off,
6 Joyce, we will talk tomorrow.

7 MS. JOYCE SMITH: Thank you. Will do.

8 MS. SKRINJARIC: All right. Thank you.

9 Hang on one second. Marisa, is that you?

10 MS. MAYFIELD: Yes, it is. Thank you.

11 MS. SKRINJARIC: Okay. So I'm calling roll.

12 So I'll go ahead. That is Marisa. She is representing
13 item 5.a. So, Marisa, you are present. I will continue
14 on with roll.

15 All right. So Suhair?

16 BOARD MEMBER SAYEGH: Yes, this is Suhair
17 Sayegh with the Clark County School District.

18 MS. SKRINJARIC: Okay. Sharolyn Wilson?

19 BOARD MEMBER WILSON: Yes, this is Sharolyn
20 Wilson with Washoe County.

21 MS. SKRINJARIC: Okay. Christopher Eccles?

22 MR. ECCLES: Good morning. Present.

23 MS. SKRINJARIC: Okay. Kasey McCourtney?

24 MS. MCCOURTNEY: Present.

1 MS. SKRINJARIC: Okay. Donald Bordelove?

2 MR. BORDELOVE: Present.

3 MS. SKRINJARIC: Okay. And Kim Price?

4 MR. PRICE: I'm here. Thank you. Present.

5 MS. SKRINJARIC: Okay. And, I think, I have
6 everybody. Is that correct?

7 BOARD MEMBER MEYER: Yes.

8 MS. SKRINJARIC: All right. Great. All right.
9 Go ahead, Cecilia.

10 BOARD MEMBER MEYER: All right. This is the
11 time for public comment. The opportunity for public
12 comment is reserved for any matter listed below on the
13 agenda as well as any matter within the jurisdiction of
14 the Board. No action on such item may be taken by the
15 Board unless and until the matter has been noticed as an
16 action item. Comment from the public is limited to
17 three minutes per person.

18 Do we have anybody from the public present?

19 MS. SKRINJARIC: We do not.

20 BOARD MEMBER MEYER: All right. We'll move on
21 to the approval of the agenda. Did everybody get a copy
22 of the agenda for today's meeting?

23 BOARD MEMBER SAYEGH: Yes.

24 BOARD MEMBER WILSON: This is Sharolyn. Yes.

1 BOARD MEMBER MEYER: All right. I'll take a
2 motion to accept or to approve the agenda.

3 BOARD MEMBER SAYEGH: This is Suhair. I will
4 make the motion to approve the agenda for the
5 March 18th, 2020 meeting.

6 BOARD MEMBER WILSON: And this is Sharolyn.
7 I'll second that motion.

8 BOARD MEMBER MEYER: Will everybody in
9 agreement say "aye."

10 (Board members said "aye.")

11 BOARD MEMBER MEYER: Thank you.

12 Okay. We'll move on to the approval of the
13 minutes from the February 19th, 2020 meeting. Did
14 everybody get a copy of those minutes?

15 BOARD MEMBER SAYEGH: Yes.

16 BOARD MEMBER WILSON: This is Sharolyn. Yes.

17 BOARD MEMBER MEYER: All right. I'll take a
18 motion to accept the minutes.

19 BOARD MEMBER SAYEGH: This is Suhair. I'll
20 make the motion to approve the minutes from the
21 February 19th, 2020 meeting.

22 BOARD MEMBER WILSON: This is Sharolyn. I will
23 second that motion.

24 BOARD MEMBER MEYER: All in favor, say "aye."

1 (Board members said "aye.")

2 BOARD MEMBER MEYER: All right. We'll move on
3 to item five. This is action on a recommendation of the
4 Administrator of the Division of Industrial Relations
5 for approval of the following requests for reimbursement
6 from the Subsequent Injury fund, Account for
7 self-insured employers. This is item 5.a., claim number
8 0583-WC-18-0000200, for University Medical Center.

9 Vanessa.

10 MS. SKRINJARIC: Are there any disclosures?

11 BOARD MEMBER MEYER: I have none.

12 BOARD MEMBER WILSON: I have none.

13 MS. MAYFIELD: I have none.

14 BOARD MEMBER WILSON: This is Sharolyn. I have
15 none.

16 MS. SKRINJARIC: Okay.

17 BOARD MEMBER SAYEGH: Suhair. I have none.

18 MS. SKRINJARIC: Thank you.

19 It is the Administrator's recommendation to
20 accept this request pursuant to NRS 616B.557 for the
21 lumbar spine.

22 The total amount requested for reimbursement is
23 \$10,995.78. It is noted that numerous Explanation of
24 Review were submitted with this application indicating

1 additional funds expended that were not submitted in the
2 request for reimbursement. Therefore, these amounts
3 were not considered in this request. In the future,
4 please do not submit items you are not requesting for
5 reimbursement in your application. The amount of
6 verified costs is \$8,236.53. An explanation of the
7 disallowance is attached to this letter.

8 This request was received from Dalton L. Hooks,
9 Jr., Esq., of Hooks, Meng & Clemant on January 28th,
10 2020.

11 This employee was hired on August 1, 1996 as a
12 certified nursing assistant. The prior history is taken
13 from a November 9, 2016 permanent partial disability
14 report penned by Dr. Ward Wagner as no prior medical
15 records were submitted for review.

16 On or about May 27, 2015, the employee was
17 checking on a patient who was in a bed when the patient
18 grabbed her right arm and she fell backward onto her
19 back onto the concrete floor. She was seen at the Quick
20 Care with a diagnosis of lumbar sprain/strain.

21 On June 11, 2015, the employee saw
22 Dr. Bassewitz who noted lumbar pain which radiated into
23 the left anterior thigh. He ordered an MRI.

24 On July 1, 2015, the MRI noted circumferential

1 bulge at L5-S2 without significant central or foraminal
2 narrowing; multilevel facet arthrosis, most pronounced
3 at L5-S1, moderate, mild facet arthrosis at L3-4 and
4 L4-5; no significant central or foraminal narrowing at
5 any level; cholelithiasis noted incidentally; and lowest
6 lumbosacral vertebral body is fully sacralized with
7 sacralized transverse process and a well-formed disc
8 between this and the lower sacral segment, considered
9 S1.

10 The employee began physical therapy. The
11 employee then requested a transfer of care to
12 Dr. Lipshutz in October 2015 after Dr. Bassewitz deemed
13 her to be nonsurgical. Dr. Lipshutz noted a prior
14 work-related injury about a year ago which had resolved
15 prior to this injury. Dr. Lipshutz performed a
16 bilateral lumbar medial branch block at L2, 3, 4 and 5.
17 He stated she had lumbar facet syndrome. In February
18 2016, Dr. Lipshutz performed a left lumbar medial branch
19 radiofrequency ablation at L2, 3, 4 and 5. On
20 February 10, 2016, Dr. Lipshutz released her to full
21 duty.

22 On November 9, 2016, Dr. Ward determined that
23 the employee had a 14 percent whole person impairment
24 utilizing the range of motion method. He apportioned

1 50 percent, 7 percent whole person impairment, to
2 pre-accident degenerative changes in the lumbar spine,
3 leaving a 7 percent whole person impairment to the 2015
4 accident.

5 The employee returned to work for the employer.

6 On August 24, 2017, the employee was assisting
7 a patient in the bathroom when an altercation occurred
8 and the employee twisted her back. She did not go to
9 the Quick Care for treatment until August 28, 2017. She
10 was diagnosed with a lumbar strain.

11 Medical reporting will be taken from the
12 September 11, 2018 PPD evaluation penned by Dr. Razsadin
13 except as otherwise noted.

14 On September 5th, 2017, the patient saw
15 Dr. Dunn who ordered an MRI. On October 16, 2017,
16 Dr. Dunn noted the MRI results were: no acute findings
17 identified; mild lumbar spine degenerative changes; no
18 overall significant change since her prior study; no
19 high-grade canal or foraminal stenosis; mild right
20 foraminal narrowing at L3-4 slightly progressed.
21 Dr. Dunn ordered physical therapy.

22 The employee had one visit of physical therapy
23 on November 1, 2017. She didn't begin physical therapy
24 again until December 27, 2017. Physical therapy

1 continued until February 23rd, 2018.

2 At some point, prior to the end of 2017, the
3 employee retired.

4 On February 12, 2018, Dr. Dunn determined the
5 employee had reached maximum medical improvement. He
6 determined she was stable and not ratable. He also
7 released her to full duty.

8 On September 11, 2018, Dr. Razsadin performed a
9 PPD examination and found the employee fell into DRE
10 Category II for the lumbar spine. He recommended a
11 5 percent whole person impairment.

12 This was placed in abeyance as the TPA did not
13 send Dr. Razsadin records of the 2015 injury.

14 On October 25th, 2018, Dr. Razsadin penned an
15 addendum after receiving medical records of the 2015
16 injury. He maintained the employee should receive
17 5 percent whole person impairment.

18 On November 5th, 2018, Dr. Razsadin penned a
19 second addendum after receiving the PPD report from the
20 2015 injury which the TPA neglected to send him twice.
21 He determined that the employee was entitled to receive
22 16 percent whole person impairment less the prior 14
23 percent whole person impairment from the 2015 injury,
24 resulting in a net 2 percent whole person impairment for

1 the 2017 injury.

2 The employee did not take the 2 percent whole
3 person impairment in a lump sum. This submission
4 consists of the initial payment and monthly installments
5 from October 2018 to January 31, 2019.

6 It is noted that TTD and PPD were paid
7 incorrectly at the lower 84-day daily rate of \$98.49
8 rather than the recalculated one-year period daily rate
9 of \$104.74.

10 The employee had a prior industrial injury in
11 2015 for which she was rated at 14 percent. This was
12 apportioned by 50 percent for degenerative conditions.
13 The subsequent injury in 2017 required doctor's visits
14 and physical therapy for six months. It also resulted
15 in an additional 2 percent whole person impairment.
16 While the applicant did not submit a doctor's analysis
17 regarding the combined effects, other than
18 Dr. Razsadin's PPD report addressing apportionment, the
19 Administrator believes that absent the prior industrial
20 and nonindustrial conditions the subsequent injury would
21 have resulted in no more than a conservative course of
22 care.

23 Therefore, NRS 616B.557, subsection 1, has been
24 satisfied.

1 The employee was rated at 14 percent whole
2 person impairment under her May 2015 claim for the
3 lumbar spine. This was apportioned by 50 percent,
4 leaving a net 7 percent whole person impairment.

5 Therefore, NRS 616B.557, subsection 3, has been
6 satisfied.

7 The employer provided the following written
8 records to show knowledge of permanent impairment:

9 One, claim notes from TPA CorVel Enterprises
10 12/1/16 to 8/5/2018. Of particular note is an uploaded
11 email from Kimberly Buchanan, Clark County District
12 Attorney's Office, to Kathy Mone, claims adjustor, on
13 March 24th, 2017 which states, quote, "We got order
14 7 percent PPD plus cost eval. Order will be
15 forthcoming. Said 14 percent PPD which was apportioned
16 to 7 percent didn't justify apportionment so to consider
17 ourselves lucky," end quote, page 29.

18 Number two, June 8th, 2017 Decision and Order.
19 This has a date and time stamp from the D.A. Civil of
20 June 18, 2017 at 11:39 a.m. This Decision and Order
21 states the employee is to receive a 7 percent PPD
22 rating.

23 The Clark County District Attorney's Office,
24 Civil Division, represents Clark County in its workers'

1 compensation administrative appeals. In this employee's
2 case, Ms. Buchanan represented Clark County in the
3 employee's appeal of the closing of her claim without a
4 PPD rating.

5 The documents listed above show the District
6 Attorney's Office had possession of a decision and order
7 in which the employer had knowledge of a 7 percent whole
8 person impairment.

9 Therefore, NRS 616B.557, subsection 4, has been
10 satisfied.

11 Subsection 5 does not need to be satisfied in
12 order for this claim to be considered for reimbursement
13 since the date of injury is after the October 1, 2007
14 change in the requirements of the statute.

15 That is all I have on this claim.

16 BOARD MEMBER MEYER: Thank you, Vanessa.

17 Does the representative have anything to add?

18 MS. MAYFIELD: No, I do not.

19 BOARD MEMBER MEYER: Okay. I will open it to a
20 motion if -- does any of the Board members have
21 questions?

22 BOARD MEMBER SAYEGH: No.

23 BOARD MEMBER WILSON: This is Sharolyn. I do
24 not.

1 BOARD MEMBER SAYEGH: This is Suhair. I do
2 not, either.

3 BOARD MEMBER MEYER: Okay. I will accept a
4 motion.

5 BOARD MEMBER WILSON: This is Sharolyn. I will
6 make a motion to accept the Administrator's
7 recommendation regarding claim number
8 0583-WC-18-0000200, for the University Medical Center.

9 BOARD MEMBER SAYEGH: This is Suhair. I'll
10 second that motion. Oh, for the dollar amount, Board
11 members, if we can just clarify the dollar amount, for
12 \$8,236.53.

13 BOARD MEMBER MEYER: Thank you.

14 BOARD MEMBER WILSON: Thank you, Suhair.

15 BOARD MEMBER SAYEGH: You're welcome.

16 BOARD MEMBER MEYER: All in favor, say "aye."

17 (Board members said "aye.")

18 BOARD MEMBER MEYER: And the ayes have it.

19 Did I lose everybody?

20 BOARD MEMBER WILSON: I'm still here. Sorry
21 about that.

22 BOARD MEMBER SAYEGH: No. I'm still here.

23 BOARD MEMBER MEYER: Okay. It was silent there
24 for a long time.

1 BOARD MEMBER SAYEGH: Okay. Are we moving on
2 to the next one, or where are we at?

3 BOARD MEMBER MEYER: Yes, we're ready to move.

4 BOARD MEMBER SAYEGH: Okay.

5 BOARD MEMBER MEYER: We're ready to move on to
6 item 6.a., which is claim number 11C52B492221, for City
7 of Henderson.

8 Does anybody have disclosures?

9 This is Cecilia Meyer with City of Carson City,
10 and CCMSI is our third-party administrator, but that
11 will not affect my decision today.

12 BOARD MEMBER WILSON: And this is Sharolyn
13 Wilson with Washoe County. CCMSI is also our
14 third-party administrator. But that will not affect my
15 decision today.

16 BOARD MEMBER MEYER: Any other disclosures?

17 BOARD MEMBER SAYEGH: No.

18 BOARD MEMBER MEYER: All right. Okay.
19 Vanessa.

20 MS. SKRINJARIC: Okay. It is the
21 Administrator's recommendation to accept this third
22 supplemental request pursuant to NRS 616B.557 for the
23 left shoulder.

24 The total amount requested for reimbursement is

1 \$8,576.52. The amount of verified costs is \$8,576.52.

2 This request was received from CCMSI on
3 February 12th, 2020. This claim was originally approved
4 by the Board on August 27, 2014.

5 This request contains payment for PPD
6 installments from January 2019 to December 2019 in the
7 monthly amount of \$714.71.

8 That's all.

9 BOARD MEMBER MEYER: Do any of the Board
10 members have any questions?

11 BOARD MEMBER SAYEGH: No.

12 BOARD MEMBER WILSON: This is Sharolyn. No.

13 BOARD MEMBER MEYER: All right. I'll take a
14 motion.

15 BOARD MEMBER SAYEGH: This is Suhair. I'll go
16 ahead and make the motion to accept this third
17 supplement request for claim number 11C52B482221 in the
18 amount of \$8,576.52.

19 BOARD MEMBER WILSON: This is Sharolyn. I'll
20 second that motion.

21 BOARD MEMBER MEYER: Everybody in favor, say
22 "aye."

23 (Board members said "aye.")

24 BOARD MEMBER MEYER: All right. We'll move on

1 to item 6.b. This is claim number 12G28Y027465 for
2 Nevada Energy.

3 I have the same disclosure as previously
4 regarding CCMSI. This is Cecilia Meyer.

5 BOARD MEMBER WILSON: This is Sharolyn Wilson.
6 I also have the same disclosure regarding CCMSI.

7 BOARD MEMBER SAYEGH: This is Suhair. No
8 disclosure.

9 BOARD MEMBER MEYER: Thank you.
10 Vanessa.

11 MS. SKRINJARIC: This is Vanessa. It is the
12 Administrator's recommendation to accept this third
13 supplemental request pursuant to NRS 616B.557 for the
14 lumbar spine only.

15 The total amount requested for reimbursement is
16 \$44,251.09. The amount of verified costs is \$41,314.34.
17 An explanation of the disallowance is attached to this
18 letter.

19 This request was received from CCMSI on
20 February 12th, 2020. This claim was originally approved
21 by the Board on March 18, 2015 for the lumbar spine.

22 This request contains the following: office
23 visits with Dr. Berman's office from March 5th, 2019
24 through November 19, 2019; office visits with

1 Dr. Lewandowski's office from February 11, 2019 through
2 August 21, 2019; physical therapy from April 12, 2019
3 through May 29, 2019; cervical facet injections on
4 March 25th, 2019, April 1, 2019 and May 3rd, 2019;
5 lumbar trigger point injections on June 3rd, 2019;
6 bilateral SI joint injections under fluoroscopic
7 guidance on June 24th, 2019; bilateral lumbar facet
8 injections under fluoroscopic guidance on July 15, 2019;
9 drug screening on September 10, 2019; prescriptions from
10 February 7, 2019 through January 29th, 2020; permanent
11 total disability payments from April 1, 2019 through
12 January 31, 2020. This employee is eligible for a cost
13 of living increase pursuant to NRS 616C.473 after a
14 10 percent reduction for prior paid PPD lump sums
15 pursuant to NRS 616C.440. The 2020 monthly payment
16 amount is \$3,385.28, after offset.

17 In his November 19, 2019 report, Dr. Berman's
18 office noted the patient's current pain level as a 7 out
19 of 10 with medication. Her symptoms were currently
20 unchanged. The patient's recent brain scan was
21 unremarkable, although she complains of persistent
22 cervicogenic migraines. A trial Ajoovy injection was
23 started. The cervical is not an accepted body part in
24 the subsequent injury claim.

1 That's all.

2 BOARD MEMBER MEYER: Thank you.

3 Board members, do you have any questions or
4 comments?

5 BOARD MEMBER SAYEGH: No.

6 BOARD MEMBER WILSON: This is Sharolyn. No.

7 BOARD MEMBER MEYER: All right. I'll take a
8 motion.

9 BOARD MEMBER WILSON: This is Sharolyn.

10 BOARD MEMBER MEYER: This is Suhair. Oh, go
11 ahead, Sharolyn.

12 BOARD MEMBER WILSON: I'll make a motion to
13 accept the Administrator's recommendation regarding
14 claim number 12G28Y027465 in the amount of reimbursement
15 for \$41,314.34.

16 BOARD MEMBER SAYEGH: This is Suhair. I will
17 second that motion.

18 BOARD MEMBER MEYER: All in favor, say "aye."

19 (Board members said "aye.")

20 BOARD MEMBER MEYER: All right. We will move
21 on to item 6.c., which is claim number 10C52B373680 for
22 City of Henderson. Third-party administrator is CCMSI.

23 This is Cecilia Meyer. I have the same
24 disclosure as the last claim for CCMSI.

1 BOARD MEMBER WILSON: This is Sharolyn Wilson,
2 and I also have the same disclosure regarding CCMSI.

3 BOARD MEMBER SAYEGH: This is Suhair. No
4 disclosure.

5 BOARD MEMBER MEYER: Thank you.
6 Vanessa.

7 MS. SKRINJARIC: Okay. This is Vanessa. It is
8 the Administrator's recommendation to accept this
9 seventh supplemental request pursuant to NRS 616B.557
10 for the heart.

11 The total amount requested for reimbursement is
12 \$55,394.67. The amount of verified costs is \$55,394.67.

13 This request was received from CCMSI on
14 February 12th, 2020. The claim was originally approved
15 by the Board on December 19th, 2013. This request
16 contains payment and reporting for the following
17 expenses: office visits with Dr. Sirulnick on
18 November 2nd, 2018 and October 30th, 2019; ECG with
19 Dr. Sirulnick on November 2nd, 2018; and permanent total
20 disability payments from January 1, 2019 through
21 January 31, 2020 in the 2020 monthly amount of
22 \$4,334.27. This employee is eligible for a yearly COLA
23 pursuant to NRS 616C.473.

24 In his October 30th 219 report, Dr. Sirulnick

1 noted the patient had episodic palpitations. However,
2 he felt well, had no limitations and was still active in
3 kayaking on the lake. The patient would return for
4 evaluation in six months.

5 Signed Permanent Total Disability Report Forms,
6 D-14, for the years 2018 and 2019 were provided with
7 this submission.

8 That is all.

9 BOARD MEMBER MEYER: Thank you.

10 Board members, are there questions or comments?

11 BOARD MEMBER WILSON: This is Sharolyn. I have
12 none.

13 BOARD MEMBER SAYEGH: I have none.

14 BOARD MEMBER MEYER: Thank you. I'll take a
15 motion.

16 BOARD MEMBER SAYEGH: This time, we're both
17 silent. This is Suhair. I'll go ahead. I'll go ahead
18 and make a motion to accept the seventh supplement for
19 claim number 10C52B373680 for the City of Henderson in
20 the amount of \$55,394.67.

21 BOARD MEMBER WILSON: And this is Sharolyn. I
22 will second that motion.

23 BOARD MEMBER MEYER: All in favor, say "aye."

24 (Board members said "aye.")

1 BOARD MEMBER MEYER: All right. We will move
2 on to item 6.d., which is claim number 95388T288921 for
3 Silver State Disposal.

4 This is Cecilia Meyer. I have the same
5 disclosure regarding third-party administrator CCMSI.

6 BOARD MEMBER WILSON: And this is Sharolyn
7 Wilson. I also have the same disclosure regarding
8 CCMSI.

9 MS. SKRINJARIC: Okay. So the last --

10 BOARD MEMBER SAYEGH: This --

11 MS. SKRINJARIC: Go ahead. Sorry.

12 BOARD MEMBER SAYEGH: That's okay. This is
13 Suhair. No disclosures.

14 BOARD MEMBER MEYER: Thank you.

15 Vanessa.

16 MS. SKRINJARIC: Sure. The last two items have
17 been continued from prior Board meetings due to the
18 issue --

19 BOARD MEMBER MEYER: Oh, okay.

20 MS. SKRINJARIC: -- due to the issue of
21 decertification. So I will go ahead and read them into
22 the record.

23 It is the Administrator's recommendation to
24 accept this ninth supplemental request pursuant to NRS

1 616B.557 for the left knee.

2 The total amount requested for reimbursement is
3 \$127,887.45. The amount of verified costs is
4 \$127,743.45. An explanation of the disallowance is
5 attached to this letter.

6 This request was received from CCMSI on
7 July 26, 2019. This claim was originally approved by
8 the Board on June 22nd, 2000 for the left knee. The
9 insurer decertified on June 29th, 2001.

10 This request contains the following: permanent
11 total disability payments from September 1, 2013 through
12 May 21, 2019 in the monthly amount of \$1,822.44; IME
13 with Dr. Quaglieri on May 14, 2019; and travel for IME
14 on May 13 to 14, 2019.

15 On November 24, 2015 the Administrator
16 recommended that no additional benefits be reimbursed
17 until the employee was re-evaluated to confirm his
18 permanent total disability status concerning the left
19 knee. The Administrator also requested the physician
20 address the left knee as it relates to his permanent
21 total disability and absent any nonindustrial
22 conditions, would he still be considered to have a
23 permanent disability. Dr. Quaglieri evaluated the
24 employee on May 14, 2019 and determined that the

1 employee continued to be permanently totally disabled
2 for both industrial and nonindustrial problems with no
3 significant change in his circumstances since the last
4 review in 2010.

5 And that is all on this claim.

6 BOARD MEMBER MEYER: So, Mr. Bordelove, I have
7 a question. If this employer is decertified, if I
8 recall correctly, the Board had previous discussions
9 about whether or not we could allow any payments on this
10 particular decertified employer. Can you give us some
11 guidance?

12 MR. BORDELOVE: I don't remember those
13 discussions. I don't think I was counsel at that time.
14 So I don't know if Vanessa --

15 BOARD MEMBER MEYER: No, you weren't.

16 MR. BORDELOVE: -- knows what those were. Can
17 you refresh me on what those were, or?

18 MS. SKRINJARIC: Do you want me to refresh you
19 on the discussions? Is that the --

20 MR. BORDELOVE: Yes.

21 BOARD MEMBER MEYER: Yes, that would be great.

22 MS. SKRINJARIC: Okay. So the question that
23 the Board is asking is, once a self-insured employer is
24 decertified, they no longer pay assessments into the

1 fund. So what the Board is questioning is, if they are
2 no longer paying assessments, are they then eligible for
3 reimbursement from the fund?

4 MR. BORDELOVE: There's been no prior
5 determination --

6 BOARD MEMBER MEYER: Thank you, Vanessa.

7 MR. BORDELOVE: Sorry. I got to...

8 MS. SKRINJARIC: So that is, that is their
9 question.

10 MR. BORDELOVE: So no prior determination was
11 made on that?

12 MS. SKRINJARIC: No.

13 MR. BORDELOVE: I'd have to research that. I
14 wouldn't want to make a reaction decision to it.

15 BOARD MEMBER MEYER: Then, I believe, it would
16 be proper for the Board to continue this particular item
17 until counsel can do that research.

18 MS. MCCOURTNEY: This is Kasey. Can I just
19 have a -- maybe some sort of end line on that? Because
20 I know that this was last year, and it's been -- we
21 haven't had an answer for quite a few months. So I
22 just...

23 MS. SKRINJARIC: Absolutely.

24 MS. MCCOURTNEY: Thanks.

1 BOARD MEMBER MEYER: So where are we at?

2 MR. BORDELOVE: It sounds like -- I mean, off
3 the top of my head, I would think, as long as the
4 employer was certified prior, when the claim occurred,
5 it shouldn't be a problem. But it's possible there
6 might be even something like apportionment. So I want
7 to research that just to make sure.

8 BOARD MEMBER MEYER: I agree. So do I need to
9 take a motion on that, then, for the continuance?

10 MR. BORDELOVE: No. No, you can just continue
11 it on your own initiative.

12 BOARD MEMBER MEYER: Okay. Well, it's my
13 recommendation, then, that we continue until you are
14 able to research that.

15 Are we okay with that and ready to move on to
16 Cyprus?

17 MS. SKRINJARIC: Okay. So I can go ahead and
18 read Cyprus Foote in. However, the issue with Cyprus
19 Foote is Cyprus Foote is also decertified.

20 BOARD MEMBER MEYER: All right. Well, then, in
21 that case, Mr. Bordelove, is it necessary that Vanessa
22 read it into the record, or can we continue that, can we
23 continue this claim as well to allow you to research
24 that same issue?

1 MR. BORDELOVE: Yes. Yeah, you can just
2 continue it.

3 BOARD MEMBER MEYER: Okay. All right. We'll
4 continue, then, we will continue Cyprus, Cyprus as well.

5 MR. PRICE: If I may?

6 BOARD MEMBER MEYER: Please.

7 MR. PRICE: I have no problem not reading this
8 recommendation into the record, because when it
9 ultimately is voted on, it will be read into the record
10 at that time. So, by all means, please don't make
11 Vanessa read that into the record on my account. Thank
12 you.

13 BOARD MEMBER MEYER: All right. Thank you. We
14 appreciate that, Mr. Price.

15 All right. Well, that concludes the individual
16 claims at this time. So we'll move on to item 7, the
17 approval the Draft Decision of Findings of Fact and
18 Conclusions of Law, Determination of the Board
19 concerning Venetian Casino Resort, claim number
20 140380000228.

21 MR. PRICE: Thank you for your time. Good day.

22 MS. SKRINJARIC: Thank you, Mr. Price.

23 BOARD MEMBER MEYER: Thank you, Mr. Price.

24 MR. BORDELOVE: This is Donald Bordelove, Board

1 counsel. I can give you a brief overview, or if you
2 want to just make a motion, whatever. It's your
3 preference.

4 BOARD MEMBER MEYER: If you don't mind doing a
5 brief overview, I would appreciate that.

6 MR. BORDELOVE: Sure. So this, this decision
7 was heard de novo in November of 2019. It's one of the
8 holdover ones. So, as you all know, I wasn't counsel at
9 that time. So I reviewed the transcript. I reviewed
10 all the documents and the minutes everything in drafting
11 the decision, to pretty much just parallel what all of
12 your discussion was and deliberations from that meeting.

13 The Board denied the claim based on the
14 applicant's failure to satisfy the requirements of
15 616B.557(1) and 616B.557(4).

16 In August 2013, the employee slipped on some
17 oil and shampoo while cleaning a shower. She injured
18 her back. The MRI showed some right disc bulging,
19 annular tears, some degenerative disc disease. The
20 employee saw a doctor. The PPD evaluation found a
21 5 percent whole person impairment along with a 1 percent
22 for loss of daily living activities, for a total of
23 6 percent.

24 In regards to the present claim, in September

1 of 2014, the employee was lifting a sofa, sofa bed when
2 she suffered back pain in her lower back. X-rays were
3 unremarkable. She had another MRI, which showed
4 multilevel disc bulges, some foraminal stenosis greatest
5 at L5-S1. It was noted that there was no significant
6 change in appearance since the previous exam back in
7 2013.

8 A second opinion was obtained by Dr. Flangas,
9 who suggested it was just a reexacerbation of the
10 initial injury which occurred in 2012.

11 The employee started seeing Dr. Kong, did some
12 physical therapy which didn't help her. Had EMG nerve
13 conduction studies. They were incomplete due to the
14 employee's overreaction. The employee underwent an FCE
15 in March 2015. And Dr. Kong felt she had reached MMI
16 and was stable and ratable.

17 In April 2015, the employee underwent a PPD
18 with Dr. Lovass. He found a 5 percent whole person
19 impairment less the prior 6 percent PPD, leaving a net
20 0 percent impairment. After questioning from the
21 employee's counsel, the doctor submitted an addendum
22 finding 10 percent whole person impairment less the
23 6 percent, leaving a net 4 percent whole person
24 impairment. The insurer requested a second PPD. In

1 June 2015, Dr. Duffy found 20 percent WPI less the prior
2 6 percent, leaving a net 14 percent. The insurer
3 disputed this percentage and requested a third one. In
4 September, Dr. Choi found 11 percent WPI less the
5 6 percent, leaving a net of 5 percent. The insured
6 offered this amount but the employee didn't accept it,
7 so installments were paid. In February 2016, a fourth
8 PPD was obtained. Dr. Thompson found a 15 percent WPI
9 less 6 percent, leaving a net of 9 percent, and this was
10 accepted by a lump sum.

11 You're all well-familiar with the requirements of
12 616.557(1). The employee's original 2013 injury was a
13 left L3-4 and right L5-S1 annular tear, L3-4 and L5-S1
14 degenerative disc disease, and subjective lower
15 extremity. Her 2014 MRI was compared to the 2013 MRI
16 which was essentially unchanged. The employee did not
17 undergo vocational rehabilitation because of the FCE
18 invalid result. Due to the invalid FCE, Dr. Kong
19 released the employee to full duty. Her claim closed
20 eight months after she first sought treatment. The
21 employee's subsequent lumbar injury occurred after she
22 worked for less than a month in her full-duty job. The
23 subsequent injury consisted of six months of minimal
24 visits to medical providers, medication and physical

1 therapy, an MRI, FCE and EMG studies. No total
2 temporary disability was paid on this claim.

3 The employee's subsequent injury resulted in no
4 more an aggravation of her prior degenerative lumbar
5 condition requiring a conservative course of treatment.
6 Her second injury resulted in less treatment than the
7 first one. The extent of the original injury was never
8 fully explored due to the invalid FCE. No medical
9 opinion was provided in this request to state that
10 absent the employee's first injury, the costs of the
11 subsequent claim were substantially greater than would
12 have resulted from the subsequent injury alone.

13 As the Board discussed in that meeting and with
14 prior counsel, while a medical opinion is not required
15 for the applicant to meet its burden, the Board found
16 that based on the facts of the case, as detailed, the
17 applicant to establish by a preponderance of the
18 evidence that the subsequent disability was
19 substantially greater by reason of the combined effects
20 of the preexisting impairment and the subsequent injury
21 than which would have resulted from the subsequent
22 injury alone. So that provision was not satisfied.

23 Next, in regards to 616B.557(4), which is the
24 knowledge provision, as indicated in the North Lake

1 Tahoe Fire Protection District case, the employer
2 satisfied the written record requirement by showing that
3 the employee's preexisting condition could reasonably be
4 due to one of the conditions recognized by the statute
5 even if the employer cannot precisely identify the
6 specific medical condition. In other words, employer is
7 entitled to reimbursement if it produces a written
8 record from which its prior knowledge of the employee's
9 qualifying disability can fairly and reasonably be
10 inferred. As such, the employee's preexisting permanent
11 physical impairment, which is recognized by statute,
12 must be fairly and reasonably inferred from the written
13 record.

14 The employee, excuse me, the employer submitted
15 a letter dated September 11, 2018, after the subsequent
16 injury and multiple PPDs, in which they allege knowledge
17 of the prior 6 percent WPI. The October 2014 claim
18 acceptance letter was enclosed as well as the March 23rd
19 PPD award letter. There is nothing on those to indicate
20 it was in the employer's possession, such as no stamp of
21 receipt. The letters simply indicated a cc to Venetian.
22 There was no address or specific location. As the Board
23 found previously, there was no presentation of witnesses
24 to lay any foundation in this regard. Further, there

1 was no written record of the expenditure on the claim by
2 the TPA sent to the employer.

3 As the Board previously discussed with the
4 prior counsel, NRS 47.250 lists disputable presumptions,
5 including that a letter duly directed and mailed was
6 received in the regular course of business. However,
7 the Board found this presumption did not apply as it was
8 failed to be shown that the letter was duly directed and
9 mailed. And then I put citations in the order
10 indicating that that's required.

11 As the Board previously discussed, the statute
12 is plain and unambiguous that knowledge of the permanent
13 physical impairment at the time the employee was hired
14 or that the employee was retained in employment after
15 the self-insured employer acquired such knowledge. As
16 such, the employer must provide written documentation
17 that it had knowledge of the permanent physical
18 impairment before the subsequent injury, as held by the
19 Lake Tahoe case as well as the Holiday case. However,
20 as indicated, the applicant failed to meet his burden.
21 And as such, that requirement was not satisfied as well.
22 And as such, the Board denied the claim.

23 BOARD MEMBER MEYER: Thank you.

24 So are we -- oh, I see. Okay. I'm with us

1 now. So we're going to take a motion on the approval of
2 the draft decision. Is that my correct understanding?

3 MR. BORDELOVE: Correct.

4 BOARD MEMBER MEYER: Okay. Great. Well, then,
5 does the Board have any questions or any comments
6 regarding this draft?

7 BOARD MEMBER WILSON: This is Sharolyn, and I
8 do not.

9 BOARD MEMBER SAYEGH: This is Suhair. I do
10 not.

11 BOARD MEMBER MEYER: All right. Then, I'll
12 take a motion on the approval of the Draft Decision of
13 Findings of Fact.

14 BOARD MEMBER WILSON: This is Sharolyn. I will
15 make a motion that the Board approve the Draft Decision
16 of Findings of Fact, Conclusions of Law and
17 Determination of the Board, concerning the Venetian
18 Casino Resort, claim number 140380000228.

19 BOARD MEMBER SAYEGH: This is Suhair. I will
20 second that motion.

21 BOARD MEMBER MEYER: Everybody in favor, say
22 "aye."

23 (Board members said "aye.")

24 BOARD MEMBER MEYER: So with that, this

1 decision will be finalized and mailed out. Is that
2 correct?

3 MR. BORDELOVE: Correct. It'll be served on
4 all parties. And then they'll have --

5 BOARD MEMBER MEYER: Sure.

6 MR. BORDELOVE: -- the requisite period of time
7 to appeal to the district court if they so choose.

8 BOARD MEMBER MEYER: Okay. Thank you very
9 much.

10 MR. BORDELOVE: Of course.

11 BOARD MEMBER MEYER: All right. Then, we will
12 move on to item 8, additional items, general matters of
13 concern to the Board members regarding matters not
14 appearing on the agenda.

15 Does anybody have any concerns? I think that
16 we should discuss the resignation of Chair, former
17 Chairperson Amy Wong.

18 MS. SKRINJARIC: Well, that only -- this is
19 Vanessa. That only leaves three members on a
20 five-person board. So if anybody knows of anyone who is
21 qualified, I strongly encourage you to ask them to
22 apply. Obviously, with the -- the Governor, of course,
23 is probably very swamped right now. But that would be
24 great if they could apply.

1 BOARD MEMBER MEYER: I agree. It appears
2 that -- if I remember right, prior to Suhair and
3 Sharolyn coming onto the Board, when we've had only
4 three Board members previously, I believe that if
5 somebody was going to be on vacation or was not able to
6 attend a Board meeting, we either had to change that
7 date or cancel that particular Board meeting.

8 MS. SKRINJARIC: I think, until we get another
9 Board member, that is going to have to occur. So when
10 we get to item 8.c., we'll have to go through that
11 again, because I don't remember if there were going to
12 be people out.

13 BOARD MEMBER MEYER: Okay. Perfect.

14 All right. Then, item 8.b., old and new
15 business. Is there any other old or new business
16 anybody want to discuss?

17 MS. SKRINJARIC: The only new business I
18 have -- this is Vanessa -- is that I forwarded to
19 everyone the regulations that were finally passed after,
20 I think, eight years. So, yay.

21 So some of the things that we've all been
22 discussing just anecdotally in terms of like no stacking
23 of body parts, they're finally in regulation. So that's
24 good news.

1 BOARD MEMBER MEYER: Great. Thank you.

2 All right. Item 8.c., scheduling of the next
3 meeting. Vanessa, do you want to go over those dates
4 that you're showing?

5 MS. SKRINJARIC: Sure. So, currently, I have
6 April 22nd, June 17th, July 22nd, August 19,
7 September 23rd, October 21, November 10 and December 9.
8 And I honestly do not recall if any of the three
9 remaining Board members have any conflicts. Sorry.

10 BOARD MEMBER MEYER: Does anybody have any
11 conflicts for any of those dates?

12 BOARD MEMBER SAYEGH: This is Suhair. Not that
13 I know of.

14 BOARD MEMBER WILSON: This is Sharolyn. My
15 only concern would be the month of July. My daughter is
16 going to have a baby. So I'm just not sure what that
17 month looks like for me. So I will just have to keep
18 you informed as that develops.

19 BOARD MEMBER MEYER: Okay. Perfect. Thank
20 you, Sharolyn.

21 All right. We'll move on to eight nine, public
22 comment. The opportunity for public comment is reserved
23 for any matter within the jurisdiction of the Board. No
24 action on such an item can be taken by the Board unless

1 and until the matter has been agendized as an action
2 item. Comment from the public is limited to three
3 minutes per person.

4 Is there any public in attendance who wish to
5 speak?

6 MS. SKRINJARIC: There is no public here.

7 BOARD MEMBER MEYER: Okay. Thank you.

8 If there's nothing else, then I will take a
9 motion for adjournment.

10 BOARD MEMBER SAYEGH: This is Suhair. I will
11 go ahead and make that motion to adjourn this meeting.

12 BOARD MEMBER WILSON: And this is Sharolyn. I
13 will second that motion.

14 BOARD MEMBER MEYER: All in favor, say "aye."

15 (Board members said "aye.")

16 BOARD MEMBER MEYER: All right.

17 MS. SKRINJARIC: All right. Thank you guys
18 very much.

19 Cecilia, I will be sending you the payment
20 memos. If you could please sign and scan them back to
21 me, I would very much appreciate it.

22 BOARD MEMBER MEYER: Absolutely.

23 MS. SKRINJARIC: All right. Thank you guys
24 very much for all of your time that you give to the

1 Board. Take care.

2 BOARD MEMBER MEYER: All right. Thanks so
3 much. Bye-bye.

4 BOARD MEMBER SAYEGH: Thank you.

5 BOARD MEMBER WILSON: Thank you.

6 MR. BORDELOVE: Thank you.

7 BOARD MEMBER MEYER: Bye.

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