

1 **THE BOARD FOR ADMINISTRATION OF THE**
2 **SUBSEQUENT INJURY ACCOUNT**
3 **FOR SELF-INSURED EMPLOYERS**

4 * * * * *

5 In re: Subsequent Injury Request for Reimbursement

6 Claim No. 05H91T257488
7 Date of Injury: August 22, 2005
8 Insurer: New-Com, Inc.
9 Employer: MMC, Inc.
10 Third-Party Administrator: CCMSI
11 Submitted By: CCMSI

12 **AMENDED**
13 **FINDINGS OF FACT, CONCLUSIONS OF LAW**
14 **AND DETERMINATION OF THE BOARD**

15 **I. INTRODUCTION**

16 The injured worker suffered from a dropped foot and bad back, his preexisting conditions.
17 His trade was that of a carpenter. The applicant claims the injured worker was told by his
18 physicians, after suffering from the dropped foot, that he should not return to work as a carpenter
19 due to the dangers inherent in working on scaffolding and other areas where a carpenter would be
20 expected to ply his trade, because the dropped foot would increase the likelihood of injury due to a
21 fall. Four plus years later, he was referred by his Union to work as a journeyman carpenter. He
22 then suffered a subsequent industrial injury to his wrist and arm, when he fell off some scaffolding,
23 four or five feet high.

24 The employer/applicant for reimbursement, contends that the combined effects rule of NRS
25 616B.557(1)¹, quoted in the margin, and NRS 616B.560², also quoted in the margin, is satisfied

26 ¹NRS 616B.557 Payment of cost of additional compensation resulting from subsequent injury of employee of
27 self-insured employer. Except as otherwise provided in NRS 616B.560:

28 1. If an employee of a self-insured employer has a permanent physical impairment from any cause or origin and
incur a subsequent disability by injury arising out of and in the course of his employment which entitles him to
compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment
and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due
must be charged to the Subsequent Injury Account for Self-Insured Employers in accordance with regulations adopted
by the Board.

²NRS 616B.560 Reimbursement of self-insured employer for cost of additional compensation resulting from
subsequent injury.

Footnote continued on the next page

1 upon proof of proximate cause. An employer satisfies its burden of proving that the preexisting
2 condition combined with the subsequent industrial injury to substantially increase the
3 compensation paid the injured worker by showing that the preexisting permanent physical
4 impairment was the proximate cause of the subsequent industrial injury in this case, a fall from the
5 scaffolding.

6 The employer claims it satisfied this burden of proof even though the record lacks direct
7 evidence the dropped foot caused the fall. For proof of proximate cause, the employer claims the
8 injured worker was told he should not return to work as a carpenter because his dropped foot might
9 cause him to fall and hurt himself, again, perhaps more seriously. The employer, therefore, urged
10 the Board to adopt a common sense rule. According to the employer/applicant, common sense
11 dictates the conclusion that the dropped foot caused the fall since the injured worker was
12 purportedly advised that he should not work on scaffolding, uneven ground, or on ladders because
13 the dropped foot would unreasonably increase the chances that the injured worker might fall and
14 hurt himself again. Since the injured worker was working off a scaffold when he fell, therefore,
15 the bad foot must have been the cause of the fall.

16 The applicant/employer must take this position to prove the combined effects rule because
17 of an absence of proof of pathology linking the dropped foot and the subsequent injury. Similarly,

18
19 *Continuation of Footnote 2.*

20 1. A self-insured employer who pays compensation due to an employee who has a permanent physical impairment
21 from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment
22 which entitles him to compensation for disability that is substantially greater by (continued on page) (continuation of
footnote 2 from page 1) reason of the combined effects of the preexisting impairment and the subsequent injury than
that which would have resulted from the subsequent injury alone is entitled to be reimbursed from the Subsequent Injury
Account for Self-Insured Employers if:

23 (a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the
self-insured employer;

24 (b) The self-insured employer relied upon the false representation and this reliance formed a substantial basis of the
employment; and

25 (c) A causal connection existed between the false representation and the subsequent disability.

26 If the subsequent injury of the employee results in his death and it is determined that the death would not have occurred
except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the
Subsequent Injury Account for Self-Insured Employers.

27 2. A self-insured employer shall notify the Board of any possible claim against the Subsequent Injury Account for
28 Self-Insured Employers pursuant to this section no later than 60 days after the date of the subsequent injury or the date
the self-insured employer learns of the employee's false representation, whichever is later.

1 the applicant failed to establish that the disability rating assigned the subsequent injury was higher
2 due to the presence of the dropped foot.

3 The employer conceded to the Board, it cannot prove the elements of NRS 616B.557(1).
4 The employer, therefore, relies exclusively upon NRS 616B.560, and argues that the false
5 representation requirement contained in this statute is satisfied because the injured worker
6 presented himself for work knowing he was no longer able to perform the duties of a carpenter due
7 to his dropped foot. Under those conditions, holding oneself out as ready, willing and able to
8 perform the tasks assigned, is sufficient to satisfy NRS 616B.560, even though NRS 616B.560
9 claim turns upon proof of an intentional misrepresentation by the employee at the time of hire,
10 which the employer relies upon and which, also, substantially contributes to the subsequent injury.

11 While agreeing that the employer satisfied proof of the 6% rating requirement to establish
12 the presence of a preexisting permanent impairment, the Board disagreed with the employer's view
13 that the combined effects rule is satisfied by proof of proximate cause, only. The Board also
14 disagreed with the employer's contention that even assuming, *arguendo*, the combined effects rule
15 could be satisfied without proof of pathology between the preexisting condition and subsequent
16 injury, proximate cause was proved in this case. The Board believes that the applicant asks it to
17 stretch *Palsgraf* beyond recognition and this is not a *res ipsa loquitur* case. *See, Palsgraf v. Long*
18 *Island R. Co.*, 162 N.E. 99 (N.Y. 1928); *see also, Merluzzi v. Larson*, 96 Nev. 409 (1980) (rev'd.
19 on other grounds).

20 The Board disagrees with the applicant's view that simply presenting oneself from the
21 Union Hall to the employer as ready, willing and able to start work is a non-verbal form of
22 communication which satisfies NRS 616B.560. Assuming, *arguendo*, here, that non-verbal forms
23 of communication may satisfy NRS 616B.560, the Board reached the conclusion upon a
24 determination the applicant failed to show precisely what the injured worker knew about his
25 physical condition and what he knew about the physical demands of the job when he presented
26 himself for work. His presence at the job site was an ambiguous act. It was conduct that on its
27 face did not satisfy the volitional element of misrepresentation contained in NRS 616B.560(1)(a).

28 ///

1 The Board, therefore, declined to follow the applicant's position on the grounds that the
2 elements of NRS 616B.557 and NRS 616B.560 had not been proven, save and except for the 6%
3 rating requirement. Since the burden is upon the applicant to prove by a preponderance of the
4 evidence satisfaction of each of the elements of either NRS 616B.557 or NRS 616B.560, if that is
5 the section, as here, relied upon by the applicant, the Board affirmed the Administrator's
6 recommendation to deny the claim.

7 **II. STATEMENT OF FACTS**

8 1. This case first came on for hearing before the Board for the Administration of the
9 Subsequent Injury Account for Self-Insured Employers (the Board) on Thursday, December 20,
10 2007, 1 Tr. p. 3; 1.³ On this date, however, only three members of the Board were present and
11 able to hear the case, although this constituted a quorum of the Board. NRS 616B.551. The Board,
12 therefore, expressed a concern that a full board or at least one more member of the Board be
13 present before hearing this matter. John Lavery, Esq., Lewis Brisbois Bisgaard & Smith LLP,
14 appearing on behalf of the applicant, stipulated to continue the matter to a date when at least four
15 members of the Board could be present to hear and decide the case. 1 Tr., pp. 3;25.

16 2. The case was subsequently heard on February 13, 2008.

17 3. The exhibits offered and admitted into evidence for this matter were:

- 18 Exhibit 1: Notice dated July 18, 2007 of the adverse, tentative, decision;
- 19 Exhibit 2: Notice of Appeal dated August 1, 2007;
- 20 Exhibit 3: Administrator's staff report dated May 15, 2007, with exhibits A through O
and an explanation of allowances attached.
- 21 Exhibit 4: Applicant's position statement, dated November 28, 2007, with five hundred
fifty-one (551) pages of exhibits attached.

22 4. No other documents or records were offered into evidence.

23 5. New-Com, Inc., is the Insurer in this matter. Staff Report, p. 1, dated May 15,
24 2007, (hereinafter "SR."). MMC, Inc., is the Employer for this matter. SR. 1. The matter was
25 submitted by the Third-party Administrator, CCMSI. SR. 1.

26
27
28 ³"1 Tr." stands for the transcript of December 20, 2007 hearing and "2 Tr." stands for the transcript of the
hearing conducted on February 13, 2008.

1 6. John Lavery, Esq., Lewis Brisbois Bisgaard & Smith LLP, appeared on behalf of
2 the applicant. 1 Tr., p. 2, 2 Tr., p. 2.

3 7. Jennifer Leonescue, Esq., appeared on behalf of the Administrator, DIR, on
4 December 20, 2007. 1 Tr., p. 2.

5 8. John Wiles, Esq., appeared on behalf of the Administrator, DIR, on February 13,
6 2008. 1 Tr., p. 2.

7 9. Jacque Everhart, DIR, appeared on behalf of the Administrator, on December 20,
8 2007, 1 Tr., p. 2, and on February 13, 2008, 2 Tr. p. 2.

9 10. For the hearing of December 20, 2007, Board Chairperson, Victoria Robinson,
10 conducted the meeting of the Board. Member Tina Sanchez attended the meeting from Las Vegas,
11 Nevada and member Linda Keenan appeared via telephone conference call from Reno, Nevada.
12 1 Tr. p. 2.

13 11. For the hearing on February 13, 2008, Board Chairperson Victoria Robinson, Vice-
14 chairperson, RJ LaPuz and member Tina Sanchez attended the meeting from Las Vegas, Nevada
15 and member Linda Keenan appeared via telephone conference call from Reno, Nevada. 2 Tr., p. 2.

16 12. The meetings were duly noticed according to the Nevada Open Meeting law, and all
17 Board members had before them the same documents and records in the possession of the other
18 members of the Board. The meetings were conducted in such a manner that each member could
19 hear the other while the hearing was in progress.

20 13. Four members out of a total of five Board members were, therefore, present to hear
21 this matter and decide the case before the Board at the February 13, 2008 meeting.

22 14. Member Tina Sanchez advised the Board that the applicant's attorney Mr. Lavery,
23 represents her employer, MGM Mirage on worker's compensation claims. She did not believe his
24 representation would impact her independent judgment and, therefore, she would participate in the
25 hearing and disposition of this case. 2Tr., pp. 12;21-25, 13;1.

26 15. The injured worker's preexisting impairment occurred on July 13, 2001, when,
27 while working as a carpenter, he slipped while walking on some reinforced steel, *see*, Staff Report
28 (SR) dated May 15, 2007, pp. 1 and 2, and injured his lumbar spine. SR., 2.

1 16. For this preexisting condition, initially, the diagnosis was lumbosacrol strain.
2 Eventually, however, the injured worker underwent a left L5-S1, microdisectomy and a left L4-5
3 foraminotomy due to a left lumbar five radiculopathy, with the resultant foot drop. SR., 2.
4 According to the injured worker's patient history, the original injury occurred when he slipped on
5 an iron bar. He did not fall down but caught himself. Exhibit 4, at 213. On August 19, 2001, the
6 patient underwent a foraminectomy and disectomy and was on light duty at work as of September
7 2001. *Id.*

8 17. In a note from his treating surgeon, Gary M. Flangas, M.D., he advised that until
9 February 2002, the injured worker would have current work restrictions of "no lifting in excess of
10 20 pounds, no prolonged standing, sitting, stooping or bending." Exhibit 4 at 220.

11 18. In a report dated December 20, 2001, from Mark O. Reed, M.D., P.C., Dr. Reed
12 noted under the history of present illness as follows:

13 [The injured worker] is a 52-year old-male who reports that back on 07/13/01 while
14 working as a construction carpenter slipped on some loose rebar wrenching his
15 back. He reports that he did under go work up and treatment with a positive MRI
16 and per the operative report on 08/16/01 underwent left L5-S1 microdisectomy
17 and left L 4-5 foraminotomy utilizing microscpic dissection technique by Dr.
18 Flangas. He reports that prior to the surgery he did have actual footdrop, **and his**
19 **radiating symptoms and footdrop have improved postoperatively.** (Emphasis
20 added). *Id.*, at 225.

21 19. Dr. Reed, under the heading of Recommendations, further stated:

22 Will request job description, as he was an industrial as he [the injured worker] was
23 an industrial carpenter, possibly heavy duty type of job requiring ambulation on
24 uneven surfaces, climbing of ladders, ramps, stairs and uneven surfaces that may be
25 a factor with his footdrop here. *Id.* at 227.

26 20. Dr. Reed also recommended that a functional capacity examination be given and
27 Dr. Reed continued him on his prior restricted duty on a temporary basis. *Ibid.*

28 21. On January 2, 2002, a functional capacity evaluation (FCE) was completed by
29 Kelly G. Hawkins and Associates. *Id.* at 230.

30 22. The report first noted that the Demand Category under the Department of Labor for
31 the position was "Heavy." *Id.* at 231.

32 ///

1 23. The results of the FCE concluded as follows:

2 Based on today's FCE test results in comparison with the supplied job description,
3 [the injured worker] appears capable of **resuming work as a Carpenter at this**
4 **time** as long as 40 pound lifting does not exceed a frequent basis. Please note that
5 some of the non-material handling activities may cause initial soreness upon return
6 to work, but should not result in re-injury. (Emphasis added). *Id.* at 235.

7 24. The FCE noted also:

8 [The injured worker] has the capability to lift the maximum of 65 pounds from 6
9 inches above the floor to waist height; 85 pounds from knee to waist level; he can
10 lift 60 pounds from waist to shoulder level; 45 pounds from chest to over head and
11 can carry 45 pounds at waist level. Pushing and pulling capabilities are measured at
12 82 and 48 pounds respectively. *Id.* at 234.

13 25. The FCE stated further: "Additionally [the injured worker] is able to sit in a soft
14 chair, stand, walk and reach 'constantly'; can climb and kneel 'frequently'; and can sit in a hard
15 chair, bend, squat and crawl 'occasionally' as defined by the Department of Labor." *Ibid.*

16 26. In a report dated January 24, 2002, Dr. Reed then stated in a follow-up and
17 discharge summary report:

18 This man had a history of an 08/16/01 left L5-S1 microdiscectomy and left L4-L5
19 foraminotomy by Dr. Flangas with an actual foot drop prior to the surgery which
20 did partial resolve, though I am concerned about his on-going foot drop and ability
21 to climb ladders, stairs, ramps, uneven surfaces beyond the FCE lifting capacities
22 here. *Id.* at 244.

23 27. Dr. Reed then made the following recommendation:

24 In light of the above factors...I believe he [the injured worker] should be deemed
25 medically stable. Will give him a heavy duty 85 pound maximum lift, occasional
26 bending, squatting and kneeling. I believe medically in relation to his left ankle
27 drop that **we should discourage him from stair, ladder, ramp climbing and**
28 **uneven surface walking or climbing.** (Emphasis added). *Id.* at 245.

29 28. There is also, a physician's note in Dr. Reed's handwriting. It is difficult to read but
30 it appears to state:

31 Heavy duty-85# max. lift. Occasional bending/squatting/kneeling. No
32 stairs/ladders/[??] uneven surface walking or climbing. PPD, post-opp with left
33 foot drop is permanent. Indicated. *Id.* at 246.

34 29. Dr. Reed also opined on January 11, 2002, that he agreed with the restrictions set
35 forth in the FCE, stated the injured worker could not be released to "full duty" as a carpenter and
36 advised that the modifications needed for the position were: no stairs/ladder or uneven surface

1 walking or climbing due to left foot drop. The doctor signed this on February 5, 2002. *Id.* at 247.
2 He, therefore, did not bar all carpentry work, only full duty carpentry at this time.

3 30. Following this report from Dr. Reed, the injured worker requested placement on
4 temporary total disability benefits because he had been laid off from Sletten Construction. *Id.* at
5 248. The injured worker was then advised that he would be paid temporary total disability until a
6 determination was made as to whether the injured worker was eligible for vocational rehabilitation
7 maintenance/services. *Ibid.*

8 31. On February 7, 2002, the injured worker's former employer, Sletten Construction
9 was advised that the injured worker had been released to return to work with permanent
10 restrictions as set forth in the FCE and report from Dr. Reed. The employer was asked whether it
11 could provide employment consistent with the limitations set forth in the FCE and by Dr. Reed.
12 *Id.* at 249. On February 19, 2002, Sletten Construction was informed that the injured worker had
13 been referred for a vocational assessment to determine if he would require vocational rehabilitation
14 services. *Id.* at 253.

15 32. In an undated report, Richard W. Kudrewicz, M.D., advised that he examined the
16 injured worker on February 21, 2002, and determined that the injured worker was stable, rateable,
17 cooperative and had a DRE category III 10% impairment wholeman lumbosacral spine.
18 *Id.* at 254-257.

19 33. In a letter dated March 5, 2002, the injured worker was advised that his former
20 employer failed to respond regarding the provision of modified employment per his work
21 restrictions and as a result, he was eligible to commence vocational rehabilitation process. *Id.* at
22 259. As of April 3, 2002, the injured worker accepted a permanent partial disability lump sum
23 payment of Twenty-eight Thousand Four Hundred Thirty-eight Dollars 76/Cents (\$28,438.76). *Id.*
24 at 273.

25 34. By April 19, 2002, it was determined that the position of Estimator for an
26 excavating company was an appropriate or suitable position for which to vocationally retrain the
27 injured worker under a program of vocational rehabilitation. *Id.* at 279. An employer was
28 identified that expressed a willingness to retrain the injured worker and efforts were undertaken to

1 make this happen. *Id.* at 280. As of May 3, 2002, the injured worker was described as anxious to
2 start the training opportunity with the excavating company to learn to become an excavation
3 company estimator. *Id.* at 284. The parties, however, were unable to agree upon a viable
4 vocational rehabilitation training program with the excavation company and as a result, the injured
5 worker, although disappointed, sought a lump sum buyout in lieu of going forward with a
6 vocational rehabilitation services plan. *Id.* at 299.

7 35. On July 26, 2002, the injured worker accepted a lump sum buyout of vocational
8 rehabilitation services in the amount of Nineteen Thousand Dollars (\$19,000). *Id.* at 309. *See*
9 *also, Id.*, at 310-312.

10 36. In the lump sum of rehabilitation agreement that the injured worker was required to
11 read and sign, it states at paragraph 7:

12 The injured employee acknowledges that he has been informed that a physician or
13 chiropractor has released [sic] him to work with the following physical limitations
14 and considerations: (a) 85 pounds of maximum lift; occasional bending, squatting,
15 and kneeling; **and be discouraged** from stair, ladder or ramp climbing and walking
16 and climbing on uneven surfaces, as reported by Dr. Mark Reed, M.D., on January
17 24, 2002. (Emphasis added). Exhibit 4, at 311.

18 37. As for the subsequent injury, the injured worker began working for the applicant on
19 August 5, 2005, as a journeymen carpenter, having been referred to the job site from the
20 Carpenters Union Hall. SR. 2, Exhibit B to SR. *See also*, Exhibit 4, at 25.

21 38. The Union agreement in effect at the time of the referral provided as follows:

22 Subject to the terms of this Section, the individual Employer retains the right to
23 reject any workman referred by the Union for any reason, and the individual
24 Employer may discharge any employee for any cause which he may deem
25 sufficient, provided, however, in the hiring or discharging there shall not be any
26 discrimination or (sic) the part of the Employer against any employee for activities
27 in behalf of or in representation of the Union not interfering with the proper
28 performance of his duties. Exhibit 4 at 91.

39. The agreement also provided: "no show-up time will be applicable when a
workman reports in a physically unfit condition to work or fails to report to the job site within 1
hour after being dispatched to a job located within twenty (20) miles from the Local Union Hall
..." *Id.* at 92.

///

1 40. The subsequent injury occurred on August 22, 2005. *See*, C-3, Exhibit C to SR.
2 According to the C-3, the injury occurred when the injured worker "fell off rebar approx. 4'
3 fracturing R. elbow." *Ibid.* According to the injured worker, the injury occurred as follows: "I
4 was moving rebar for the whole on forms, he said he was up about 4' off slab, unhooked to move
5 on rebar and fell." Attachment to exhibit C to SR.

6 41. According to the C-4, the injury occurred when the injured worker: "Fell to right
7 side when on [intelligible]. He was checking steel for tazer ties. C-4 attached Exhibit C to SR.

8 42. According to the Henderson Fire Department Emergency report, the injury
9 occurred: "PT stated he was standing approx. 3-4 feet above ground 'slipped' fell back on dirt and
10 hit elbow." Attachment to Exhibit C to SR.

11 43. Then according to the emergency room report: "the patient states that he was at
12 work today and fell approximately 4 feet.... He landed on his right elbow and subsequently the left
13 wrist." ER report attached to Exhibit C to SR.

14 44. According to the postoperative report: "This is a 56-year-old male who sustained a
15 fall at work resulting in a comminuted fracture of the right proximal ulna including olecranon as
16 well as his left distal radius." Post Op. Report attached to Exhibit C, to SR.

17 45. In a vocational assessment report dated December 2, 2005, the following is
18 attributed to the injured worker: "He [the injured worker] was working on a retaining wall,
19 standing on rebar, working from left to right. He reports that his left foot slipped from rebar and
20 he fell 5 feet on dirt, landing first on his left wrist then right elbow. Exhibit 4 at 330.

21 46. The claim was accepted for coverage under worker's compensation for the right
22 elbow/left wrist fractures only. Exhibit E to SR.

23 47. According to the injured worker, he also described the occurrence of the injury as
24 follows: "Per the patient, the patient was up approximately at a five-foot height, moved to the
25 right when he fell off the platform, landing face down on to its right elbow." Exhibit J to SR.

26 48. On October 22, 2005, the patient was seen by Jason M. Tarno, D.O., C.I.M.E., who
27 gave the injured worker a 5% whole person impairment for the injured right elbow and left wrist,
28 only.

1 49. Richard W. Kudrewicz, M.D., conducted a record review for purposes of
2 subsequent injury account purposes. His report was dictated March 31, 2007. *See*, Exhibit K to
3 SR., a three page report.

4 50. Dr. Kudrewicz claims the following: "This gentlemen [the injured worker]
5 apparently took a [vocational rehabilitation] buyout with the stipulation that he would not return to
6 work as a carpenter." *Id.* at 3.

7 51. Also according to Dr. Kudrewicz:

8 He [the injured worker] subsequently did return to work as a carpenter and put himself into
9 a situation where he was at risk because of his neurologic difficulties in the left leg. He
10 was up on scaffolding, building a retaining wall, and subsequently fell. He sustained injury
to his right elbow with two subsequent surgical interventions and a total of 5% impairment
whole person.

11 52. Finally according to Dr. Kudrewicz:

12 There is no question that his gentlemen should not have been on the scaffold based
13 upon his preexisting left lower extremity radiculopathy with foot drop and
significant weakness. He put himself in significant increased risks by being on that
14 scaffold with his neurologic difficulties in his left leg. The history indicates that the
patient was approximately at a 5 foot height, moved to his right, when he fell off the
platform and landing face down onto his right elbow.

15
16 53. Given these descriptions of the injury, absent from the record is direct evidence
17 establishing the mechanics of the fall itself, including that the left foot drop was the actual,
18 proximate cause of the fall. While Dr. Kudrewicz feels that the injured worker should not have
19 been on the scaffolding or on the work site as a carpenter in the first place, his recitation of the
20 incident, itself, does not mention any facts from which to conclude that the foot drop actually
21 caused the slip and fall from the scaffolding.

22 54. "Dr. Kudrewicz opined that the insurer should receive 100% reimbursement of the
23 cost of this claim from the account [the subsequent injury account] based upon the injured
24 employee's non-compliance with medical recommendations and that he put himself at increased
25 risks for injury." 2 Tr., 8; 8-13.

26 55. Additionally, the Administrator points out: "There are no supporting documents [in
27 the record] that indicated the costs of this claim were increased due to the prior lumbar condition
28 or that the left foot issue caused the fall."

1 56. The injured worker worked for a different employer at the time of the first, lumbar
2 injury that caused the foot drop. 2 Tr., 9;2-4.

3 57. The Administrator also advised the Board: "The paperwork submitted from the
4 Union Hall does not list any prior conditions. The insurer submitted an employee information
5 sheet that only contained the employee's name and address and emergency contact information."
6 *Id.* at 9; 4-8, *see also*, Exhibit B to SR.

7 58. On December 1, 2005, the employer sent an e-mail to the employer's TPA
8 indicating that the employer only became aware of the injured worker's prior condition as of the
9 staff meeting that was conducted on that date. *Id.* at 9;9-12, *see also*, Exhibit M to SR. This
10 statement by the Administrator was not challenged by the applicant during the course of the
11 hearing.

12 59. According to Exhibit M to the SR.: "He [the injured worker] should never have
13 been working at an MMC job site as a carpenter but I realize he was Union dispatched for the 11
14 days, in their employ."

15 60. The Administrator also asserted at the hearing: "The file does not indicate that [the
16 employer] ... retained the [injured worker] in employment after [December 1, 2005]. He was paid
17 TTD from August 23, 2005, though April 30, 2006. The last TTD check noted that he returned to
18 work on May 1, 2006, but there was nothing to support this note." 2 Tr. 10; 6-12.

19 61. The Administrator stated the following also from the record presented to the
20 Administrator in support of the application: "This gentlemen was hired from the Union Hall. He
21 was not presented with any documents from the employer that asked him if he had any prior
22 conditions that would limit his ability to perform the job of a journeyman carpenter." *Id.* at
23 10;13-17. Finally, according to the Administrator: "This gentlemen was not asked about any
24 prior conditions ... " *Id.* at 11; 6-7. Further: "There is no documentation that supports that the
25 injured employee made a false statement to the employer about his physical condition." *Id.* at 11;
26 11-13.

27 ///

28 ///

1 62. During the course of the hearing, the applicant, through legal counsel, stipulated
2 that the employer could not establish eligibility for reimbursement under NRS 616B.557.
3 Therefore, the applicant was relying solely upon NRS 616B.560 to establish eligibility for
4 reimbursement. *Id.* at 13; 12-18.

5 63. Also, during the course of the hearing, the applicant conceded that it had no proof
6 of actual causation that the fall from the scaffolding resulting in the subsequent injury was the
7 direct and proximate cause of the left foot drop: "Do I have a snap shot? I do have somebody
8 there with a camera saying it was his foot drop and there he went? No." *Id.* at 17; 15-17.

9 64. Additionally, the employer admits that there is no pathology present between the
10 preexisting condition and the subsequent elbow injury. *Id.* at 18; 14-25. The applicant admits
11 further that a five (5) year period had elapsed from the time of the first injury to the subsequent
12 injury. 2 Tr., 18; 3-5.

13 65. According to the Administrator, there is no evidence that the employee made any
14 false representation to either the Union or the employer. A Union referral slip was presented and
15 the slip itself is devoid of any substantive information about the worker as of the time he was
16 being referred. *Id.* at 29; 12-17, *see also*, Exhibit 4, p. 25, the Union referral slip.

17 66. According to the applicant, proof of the combined effect requirement of NRS
18 616B.560, is satisfied by proximate cause, with or without any proof of pathology: "So the
19 combined effect is that the first injury creates, causes, provides the catharsis-the word went right
20 out of my head-the origins, the predicate for the second injury. The effect of the two."
21 *Id.* at 34; 1-5.

22 67. Additionally, the applicant claims misrepresentation was established when the
23 injured worker showed up for work: "If I show up-if I say-if you fall and say, I need a carpenter, I
24 need a plumber, I need a mechanic, and I show up on the doorstep. Yeah, I'm your guy, have I
25 not represented to you that I am a carpenter?" *Id.* at 34; 23-25, 35; 1-3.

26 68. With respect to the misrepresentation requirement of NRS 616B.560, the applicant
27 argues that simply appearing at the employer's work site without saying anything to the employer
28 may be sufficient to constitute a misrepresentation for purposes of NRS 66B.560. According to

1 the applicant, if an employee appears for work when he knows he cannot do the job at the time of
2 hire, there has been a non-verbal form of misrepresentation for purposes of NRS 616B.560. The
3 employee need not say anything to the employer about his employment qualifications. *Id.* at 35;
4 21-25.

5 69. When asked, then, what the misrepresentation was in this case based upon this
6 reading of the knowing misrepresentation requirement of NRS 616B.560(1)(a), the applicant
7 stated that the misrepresentation was established by virtue of the buyout agreement wherein,
8 according to the applicant, the injured worker states he is accepting the buyout with the
9 knowledge that he cannot go back to work outside of his restrictions. *Id.* at 41; 3-9.

10 70. The applicant, however, admits that the buyout agreement does not say that "the
11 injured worker can't be a carpenter." *Id.* at 42; 5-9.

12 71. The applicant then relies for support that the injured worker misrepresented
13 himself when he appeared to go to work in 2005 upon the claim: "... Dr. Reid (sic) specifically
14 told him [the injured worker] that he could not go back to what he was doing before. Which was
15 working as a carpenter." *Id.* at 42; 22-25.

16 72. The applicant admits that aside from showing up and then relying upon the
17 vocational rehabilitation agreement with reference to Doctor Reed, there is nothing further the
18 applicant can point to where there is a misrepresentation. *Id.* at 43; 17-21.

19 73. The applicant then summarized what the applicant was relying upon to establish
20 the misrepresentation as follows:

21 He [the injured worker] was specifically advised by his treating physician at the
22 time that his original claim was closed, to not to return to this level of work. I am
23 relying upon the fact that he executed a buyout of his vocational rehabilitation
24 acknowledging that fact. I am relying on the fact that he showed up to the
25 employer holding himself-or to the Union holding himself out as being physically
26 capable of performing the job as a Union carpenter. I am relying on the
27 representation that he made when he showed up to this employer in response to the
28 request for a carpenter knowing perfectly well that he had physical limitation that
precluded him from doing so." *Id.* at 44; 6-20.

74. The applicant was then asked if the misrepresentation was something the injured
worker said-whether they had a record of what the injured worker said or was it just the fact that
the injured worker showed up for work. In response, the applicant conceded that there was no

1 paper work establishing what representation or statement, if any, the injured worker said when the
2 injured worker showed up to commence employment with the applicant. "You are not going to
3 find it in the paper work." *Id.* at 46; 8.

4 75. There is no proof in the record which shows that the employer had articulated in
5 any way to the employee or Union making the referral, the kind of physical qualifications, job
6 duties, and the like that would be associated with the position of carpenter that was being
7 requisitioned from the Union hall. *Id.* at 50; 9-24, 51; 12-24.

8 76. There is nothing in the record to establish that the injured worker was asked by
9 either the Union or the employer whether and to what extent the injured worker could perform the
10 requirements of the job.

11 77. There is nothing in the record to establish that either the Union or the employer
12 informed the injured worker of the specific physical requirements associated with the job for
13 which the injured worker was being requisitioned and that therefore, the injured worker was
14 aware of these qualifications when he first showed up to begin working. *Id.* at 55; 19-25.

15 78. To the extent that any of the following Conclusion of Law also constitutes
16 Statements of Fact, they are incorporated herein.

17 **III. CONCLUSIONS OF LAW**

18 1. To the extent any of the preceding Findings of Fact constitute conclusions of law
19 or mixed Findings of Fact and Conclusions of Law, they are incorporated herein.

20 2. The applicant filed a timely appeal of the tentative decision of the Board. NAC
21 616B.7706(1).

22 3. A quorum of the Board was present at all pertinent times to hear this case and
23 render its decision. NRS 616B.551.

24 4. Based upon the representation of the applicant that the elements of NRS 616B.557
25 have not been established and, therefore, the applicant is not pressing a claim under this section of
26 the Nevada Revised Statutes, 2Tr., 13; 12-18, the record before the Board, and other good cause
27 appearing, the Board concludes that the elements of NRS 616B.557 have not been established and
28 the applicant is not entitled to reimbursement according to NRS 616B.557.

1 5. The applicant pursues its claim, therefore, under NRS 616B.560, quoted in the
2 margin, above. Like its counterpart, NRS 616B.557, NRS 616B.560 requires proof of the
3 "combined effects" rule that the injured worker suffered from a preexisting permanent physical
4 impairment which "combines with" the subsequent industrial injury to substantially increase the
5 compensation paid the injured worker over that which would have resulted from the subsequent
6 injury alone. The Board reads the concept of compensation paid, in the broadest sense to include
7 disability benefits, medical treatment and care, or both.

8 6. To satisfy the requirements of NRS 616B.560, the record must also show by a
9 preponderance of the evidence that the injured worker "knowingly made a false representation as
10 to his physical condition at the time of hire, the self-insured employer relied upon the knowing
11 misrepresentation, this reliance formed a "substantial basis" for the employment, and a "causal
12 nexus" existed between the false representation and the subsequent disability. NRS
13 616B.560(1)(a) through (c).

14 7. The burden of proof lies with the applicant to show that each element of the
15 eligibility criterion set out in NRS 616B.557 and NRS 616B.560 has been satisfied. *See, United*
16 *Exposition Service v. State Industrial Insurance System*, 109 Nev. 421, 424, 851 P.2d 423 (1993).
17 Thus, the applicant must prove by a preponderance of the evidence that both the "combined
18 effects" rule of Section 1 and the misrepresentation criterion set forth in subsections 1(a) through
19 (c) have been satisfied. If, therefore, the applicant fails to establish the "combined effects" rule
20 has been satisfied, the application must be rejected even if the misrepresentation rules were
21 satisfied by proof in the record. The converse would also be true.

22 8. Taking the combined effects rule, first, the applicant argues the provision is a
23 proximate cause rule. It is satisfied, then, if the preexisting condition is the proximate cause of
24 the subsequent injury, whether or not, there is any pathology linking the preexisting permanent
25 physical impairment and the subsequent injury, or whether or not, the preexisting condition
26 exacerbates the disability rating or combines with the subsequent injury to actually increase the
27 cost of treatment and care such as by prolonging the treatment needed to cure the subsequent
28 injury. 2Tr., 17, 18.

1 9. The Board, however, reads the "combined effects" rule as more than proximate
2 cause. The Board requires proof of some pathology between the preexisting condition and the
3 subsequent injury which results in a substantial increase in the compensation paid than if there
4 had been the subsequent injury, alone. Diabetes, with its impact upon an open wound, prolonging
5 treatment and thus, the cost thereof, is an example.

6 10. Applying this understanding of the "combined effects" rule to this case, the
7 applicant fails in its burden because the applicant has failed to show that the injured worker's back
8 condition and dropped foot, the preexisting conditions, physiologically were connected to the
9 broken wrist and elbow, the subsequent conditions. 2 Tr., 18; 14-25.

10 11. Similarly, the record is devoid of proof that either the back condition or the
11 dropped foot enhanced the disability rating for the injured wrist and arm. The 5% rating given
12 the subsequent condition was expressly for the elbow and wrist, alone. See, SR, p. 2, Exhibit J.

13 12. Even if, however, a "proximate cause" approach is taken under the combined
14 effects rule, the applicant fails because there is neither direct nor indirect evidence to show that
15 the dropped foot actually caused the fall which resulted in the subsequent injury. As the applicant
16 stated during the course of the hearing: "Do I have a snap shot? Do I have somebody there with a
17 camera saying it was his foot drop and there he went? **No.** But you are looking at the cause
18 rather than the result." (Emphasis added.) 2 Tr., 17; 15-18.

19 13. The applicant contends that an inference can be drawn that the dropped left foot
20 must have caused the problem since the injured worker was told that he should not work on
21 scaffolding and uneven surfaces because the dropped foot would increase the likelihood of
22 another fall and additional injury. The applicant argues, common sense dictates that because the
23 injured worker had the dropped foot, the likelihood of a fall from scaffolding would increase.
24 The injured worker then fell off of scaffolding. Therefore, the dropped foot must have caused the
25 fall. This is the essence of the proximate cause claim.

26 14. The Board is of the opinion, however, that this "common sense" stretches the
27 concept of proximate cause to the breaking point. The inference that the applicant wishes the
28 Board to draw is not compelled by information about the cause of the fall which the applicant

1 supplied the Board. There could be many reasons why an injured worker might fall from the
2 scaffolding ranging from a loose board, to a distraction, to simply the lack of attention paid by the
3 injured worker to what he was doing. Any of these might be equally likely to have caused the
4 fall. The record does not inexorably require the Board to conclude that the dropped foot caused
5 the fall.

6 15. This application fails because the threshold requirement, proof of "combined
7 effects," is not satisfied even if the proximate cause approach to this provision of NRS 616B.560
8 is adopted.

9 16. As for the rest of NRS 616B.560, the applicant claims the misrepresentation aspect
10 of the statute is satisfied simply because the injured worker presented himself for work as a
11 journeyman carpenter, whether or not the injured worker verbally expressed to the employer that
12 he was capable of performing this work.

13 17. The applicant's position is that the injured worker must have known he was
14 incapable of working on scaffolding or uneven surfaces as a journeyman carpenter. Therefore, he
15 misrepresented himself, within the meaning of NRS 616B.560 simply by presenting himself to do
16 the job, even though he may have said nothing to the employer about his qualifications, physical
17 condition, or abilities. Couched in other terms, when an employee shows up to work knowing he
18 has limitations which might prevent him from doing the job, this form of non-verbal
19 communication is sufficient without more to satisfy misrepresentation required by NRS
20 616B.560(1)(a), according to the applicant. 2 Tr., 22; 4-23.

21 18. The applicant must adopt this position because the applicant did not present any
22 evidence the injured worker verbally communicated to the employer any information about his
23 qualifications, physical condition or any restrictions that might apply to his ability to do the job of
24 journeyman carpenter. The injured worker, moreover, was present at the job site upon referral
25 from the Union hall. *See*, Exhibit B to SR, also, Exhibit 4, at 25, the Union hall referral slip.

26 19. The Board believes NRS 616B.560(1)(a) requires the applicant to prove by a
27 preponderance of the evidence that the employee intentionally conveyed information to the

28 ///

1 employer about his physical condition that the employee knew at the time of communication, was
2 false, which the employer then relied upon to decide to hire the employee. 2 Tr, 52; 1-19.

3 20. There is no information in the record of an affirmative communication from the
4 employee to the Union about himself, his qualifications and his abilities to perform the work of a
5 journeyman carpenter.

6 21. The referral sheet provided the employer does not meet this test because it has no
7 meaningful information about the qualifications of the injured worker. Furthermore, the record is
8 not clear whether the referral sheet, Exhibit B to SR, Exhibit 4 at 25, was given the employer by
9 the Union making the referral, or the by the injured worker.

10 22. The Union Collective Bargaining Agreement (CBA) does not shed any light on the
11 issue, either. The discussion contained in the CBA about the qualifications of a journeyman
12 carpenter does not address the physical demands of a journeyman carpenter. See, Exhibit 4 at p.
13 64 of the Collective Bargaining Agreement (CBA).

14 23. Furthermore, the fact that the injured worker reported for work is not necessarily
15 an implicit fraudulent misrepresentation of the injured worker's capacity or ability to perform the
16 job, assuming, *arguendo*, that non-verbal forms of communication like merely showing up for
17 work could constitute a misrepresentation to the employer about the injured worker's ability to do
18 the job in the first place.

19 24. In this case, nearly five years had elapsed since the original injury and the time the
20 injured worker reported to work upon referral to the applicant. He may well have been working,
21 in the interim, as a journeyman carpenter and therefore, when he reported to work, could well
22 have believed that he could do the job and was misrepresenting in his mind, nothing by reporting
23 to work. 2 Tr., 52; 1-20.

24 25. Furthermore, the record is not clear that the injured worker was prohibited from
25 working as a journeyman carpenter. The results of the FCE placed him in the capacity of the
26 Department of Labor's "Heavy Category." Exhibit 4, at 234. He could lift as much as 65 pounds
27 and pull 82 pounds. *Ibid*. Most important, the test concluded with the assessment that based
28 upon the test results, the injured worker was capable of "...resuming work as a Carpenter...." *Id*.

1 at 235. Employment as a carpenter did not exceed the injured worker's capacity.

2 26. Then, Dr. Reed did not actually prohibit the injured worker from a return to
3 carpentry. In his report dated January 24, 2002, in response to the results of the FCE, he said that
4 "...we should discourage him [the injured worker] from stair, ladder, ramp climbing and uneven
5 surface walking or climbing." *Id.* at 245. He did not state that the injured worker should never
6 again accept employment as a carpenter. He should only be discouraged from working under the
7 kind of conditions noted.

8 27. Dr. Reed was a little more adamant about avoiding work in high places, uneven
9 surfaces, ladders and the like, in his statement of February 5, 2002. There is no proof that this
10 information was provided to the injured worker. *Id.* at 247.

11 28. Then, in one of the last communications actually given to the injured worker about
12 his physical abilities to work, which he signed in conjunction with securing the vocational
13 rehabilitation buyout, he acknowledged he had been told:

14 ...that a physician or chiropractor has release (sic) him to work with the following
15 physical limitations and considerations: (a) 85 pounds maximum lift; occasional
16 bending, squatting, and kneeling; and **be discouraged** from stair, ladder or ramp
climbing and walking and climbing on uneven surfaces, as reported by Dr. Reed,
MD. On January 24, 2002. Exhibit 4, at 311.

17 The reference, here, is to Dr. Reed's report quoted above in Conclusion of Law numbered 27.
18 Even then, within the context of a vocational rehabilitation buyout, he was only discouraged from
19 working in precarious places while being approved to make a maximum lift of 85 pounds, putting
20 him in the Department of Labor Heavy Category. *See*, Conclusion of Law 26, above.

21 29. Recall, further, that the injured worker was qualified for vocational rehabilitation
22 services in the first place when his former employer at the time of the original injury, Sletten
23 Bros. Construction, ignored correspondence from vocational rehabilitation services that asked if
24 Sletten Bros. Construction would be willing to provide modified duty employment for the injured
25 worker. Exhibit 4, at 249, 250, 259. By disregarding the correspondence, Sletten Bros.
26 Construction provided no indication the injured worker was unable to perform in the capacity of a
27 carpenter.

28 ///

1 30. Moreover, the results of the FCE showed that the injured worker could return to
2 employment as a "carpenter." Exhibit 4 at 235. Also, Dr. Reed did not ban the injured worker
3 from carpentry work, *per se*, only stating at the time, January 11, 2002, that he should not return
4 to "full duty" as a carpenter. Modified duty as a carpenter was not ruled out by Dr. Reed. *Id.* at
5 247.

6 31. Furthermore, absent from the record is evidence which shows the job duties and
7 responsibilities for this assignment from the Union hall had been communicated to the injured
8 worker by the time he was hired by the applicant. He may well have not known how arduous the
9 physical demands might have been for this job, or whether he would be required to work heights,
10 on scaffold or uneven surfaces.

11 32. These circumstances are fatal to the applicant's position due to the volitional
12 element clearly required by NRS 616B.560(1)(a). The use of the phrase "knowingly made a false
13 representation" admits of no other conclusion because the misrepresentation, whether verbal or
14 non-verbal, according to the employer was that the injured worker asserted he could do the job
15 when he could not. For this to be a knowing misrepresentation, however, by the employee, the
16 employee must (a) be fully aware of this physical condition at the time of hire, (b) be fully aware
17 of the demands of the job, and (c) continue to hold himself out as physically able to do these
18 duties when he knows he cannot do them.

19 33. If the employer is incapable of showing that the employee knew what the physical
20 demands of the job were at the time of hire, proof that there was a "knowing misrepresentation" is
21 by definition lacking. Similarly, if the employee was unaware of the real limits of his physical
22 condition and, therefore, genuinely believed he was fully capable of performing the duties of the
23 job as explained to him, there is no "knowing misrepresentation" about one's physical condition.

24 34. Thus, a communication or representation based upon confusion, incomplete
25 information, erroneous information, faulty memory, negligence, lack of information or a
26 misunderstanding would not survive the scrutiny of NRS 616B.560(1)(a).

27 ///

28 ///

1 35. A prospective employee does not transgress NRS 616B.560(1)(c) by asserting he
2 could "do the job" if the physical demands of the position were unknown to the prospective
3 employee in the first place.

4 36. The applicant fails here for the want of proof that the injured worker was informed
5 and, therefore, knew about the physical demands of the job at the time of hire. The applicant's
6 non-verbal "holding oneself out" theory does not survive the test of NRS 616B.560(1)(a) absent
7 proof of this knowledge. The record does not reveal that the physical demands of the job for
8 which the injured worker was referred were disclosed to the injured worker by the time he was
9 hired. He could not have misrepresented himself, then, because he had no standard against which
10 to make the misrepresentation.

11 37. Similarly, the applicant's "holding oneself out" theory fails because it is not clear,
12 the injured worker was told the full extent of his limitation or his physical condition prohibited
13 him from working as a journeyman carpenter. This factor, too, eviscerates petitioner's claim, the
14 injured worker knowingly held himself out at the time of hire that he could do the job when he
15 knew he could not.

16 38. The facts here do not lead to the inexorable conclusion, the injured worker must
17 have known he could not do the job and, therefore, the mere fact that he showed up to answer the
18 call for a journeyman carpenter on this job, constituted an intentional misrepresentation to the
19 employee. Having, in fact, been informed that he could return to work as a carpenter, that he
20 could do work that was labeled "Heavy" per the Department of Labor Standards, and that he only
21 should be "discouraged" from working on scaffolding and on uneven surfaces, the injured worker
22 could well have believed when he responded to the Union Hall referral that he could preform the
23 physical tasks of the job if he were careful. On the facts of this case, it cannot be gainsaid that
24 this could well have been the injured worker's mind set. Proof by a preponderance of the
25 evidence of the volitional aspect of misrepresentation is, therefore, lacking.

26 39. These facts do not warrant the leap of faith required to draw the conclusion that
27 the injured worker, therefore, had to know that he was incapable of doing the job, as measured
28 against the requirements of the job, when he presented himself for hire. Due to the volitional

1 element, however, nothing less is required of the applicant to satisfy the burden of proof under
2 NRS 616B.560. This is a burden the employer has not satisfied.

3 40. The CBA does not save the employer, either as it expressly allows the employer to
4 decide for itself whether the worker being referred is competent to do the job prior to hire and
5 upon referral to the signator to the CBA. The decision to hire is up to the employer, not the
6 Union, under this CBA. Exhibit 4, *Labor Agreement*, at 91.

7 41. Accordingly, the applicant fails in its burden of proof to establish a claim for
8 reimbursement under NRS 616B.560.

9 **IV. DECISION OF THE BOARD.**

10 Based upon the Findings of Fact and Conclusions of Law set out above, the
11 recommendation of the Administrator of the Division of Industrial Relations for the State of
12 Nevada to deny the application for reimbursement is hereby affirmed by the Board for the
13 Administration of the Subsequent Injury Account for Self-Insured Employers. Upon a motion by
14 Linda Keenan, seconded by Vice-Chairman, RJ LaPuz, the Board concluded that the applicant
15 failed to establish by a preponderance of the evidence that NRS 616B.557 (1) and (4) were
16 satisfied. The vote on this motion was four in favor and none, against.

17 Furthermore, upon a motion by Linda Keenan, seconded by Vice-Chairman RJ LaPuz, the
18 application for reimbursement from the Account based upon NRS 616B.560 (1), (1) (a), (1) (b)
19 and (1) (c) and NRS 616B.560 (2) was denied upon a vote of four members in favor and none
20 against as to NRS 616B.560 (1) and three members in favor and one against as to NRS 616B.560
21 (1)(a), (1)(b), (1) (c) and (2). (Sanchez dissenting as to these sections). A quorum being present
22 to vote upon the motions, both motions were duly adopted. 2 Tr., 64,65.

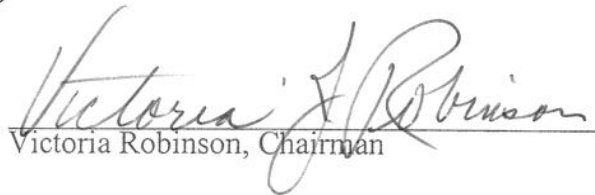
23 Further, at the meeting of the Board held on February 19, 2009, upon a motion by RJ
24 LaPuz, seconded by Tina Sanchez, Chairman, Victoria Robinson, Vice-Chairman, RJ LaPuz, and
25 members Tina Sanchez and Linda Keenan, voted to adopt the draft written decision as the
26 decision of the Board.

27 ///

28 ///

1 Finally, upon the advice of counsel, the Board reviewed this decision due to the errors in
2 the draft of February 19, 2009, which required a rewrite of the decision. This iteration of the
3 Decision was accordingly reviewed by Board members who participated in the original
4 proceedings or read the record from the original proceedings, thereby entitling the members
5 present to vote on the Decisions. *See*, NRS 233B.124. Upon a motion by RJ LaPuz, seconded by
6 Tina Sanchez, Chairman Robinson, Vice-chairperson LaPuz and Board member Sanchez,
7 approved this iteration of the Decision as the Decision of the Board by a vote of 3 in favor and 0
8 against. A quorum was present to consider the motion. *See*, NRS 616B.551. One position of the
9 Board is vacant.

10 Dated this 8th day of October, 2009

11
12 
13 Victoria Robinson, Chairman
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Zeh & Winograd, and that on this date I served the attached *Findings of Fact, Conclusions of Law and Determination of the Board* on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, postage prepaid, certified mail/return receipt requested, and placed for collection and mailing in the United States Mail, at Reno, Nevada, J. Michael McGroarty, Esq. John P. Lavery, Esq. Lewis Brisbois Bisgaard & Smith LLP Attorneys at Law 400 South Fourth Street, Suite 500 Las Vegas, NV 89101 John F. Wiles, Division Counsel Department of Business and Industry Division of Industrial Relations 1301 North Green Valley Parkway, Suite 200 Henderson, NV 89074
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 22nd day of October, 2009.


Karen Weisbrot

S:\KarenK\SIE\Decisions\05H91T257488\Amended Decision R7.wpd