



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

BOARD MEETING DATE: *May 07, 2020*

DATE: Tuesday, May 05, 2020

TO: Board of County Commissioners

FROM: Cathy Hill, Comptroller
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THROUGH: Christine Vuletich

SUBJECT: Recommendation to authorize the filing of an appeal to the Supreme Court of a Court of Appeals decision in Ross v. Washoe County, No. 78618-COA. The Court of Appeals found that injuries sustained by an employee three days prior to a conference may be a work-related injury, vacated the decision of a hearing officer and remanded for further fact-finding. In the alternative, the Board can take action to authorize the filing of a petition for re-hearing by the Court of Appeals, take no action, which would return the case to the hearing officer for further review, or take other action deemed appropriate by the Board. All Commission Districts.

SUMMARY

This is a recommendation to authorize the filing of an appeal to the Supreme Court of a Court of Appeals decision in Ross v. Washoe County, No. 78618-COA. The Court of Appeals found that injuries sustained by an employee three days prior to a conference may be a work-related injury, vacated the decision of a hearing officer and remanded for further fact-finding. In the alternative, the Board can take action to authorize the filing of a petition for re-hearing by the Court of Appeals, take no action, which would return the case to the hearing officer for further review, or take other action deemed appropriate by the Board.

Washoe County Strategic Objective supported by this item: Stewardship of our Community

PREVIOUS ACTION

There has been no previous action on this issue.

AGENDA ITEM # _____

BACKGROUND¹

As the attached decision of the Court of Appeals recites, a worker's compensation claim was filed by Mr. Ross after he sustained an injury while attending the Peace Officers Research Association of California conference in Anaheim California which was scheduled for November 17 to 20, 2016. Three days prior to the conference on November 14, 2016, Mr. Ross was injured by a bicyclist. Mr. Ross filed a workers' compensation claim which was denied by the County's third-party administrator who found the injury did not arise out of and in the course of his employment. A hearing officer reversed that finding concluding that Mr. Ross' activities at the conference furthered the County's interests. An appeals officer reversed the hearing officer and found that it was more likely Mr. Ross was in Anaheim for recreation/vacation time at the time of the accident; that Mr. Ross was not required to be in Anaheim three days prior to the conference; that regardless of the fact he received association pay there was no evidence he engaged in association activity or that there was any association activity planned for that day; and that the personal comfort doctrine, which holds that travelling employees may be in a location for work related purposes even when there are no work-related events scheduled for a specific day, was therefore not applicable.

Mr. Ross petitioned to the Second Judicial District Court for judicial review which was denied and then appealed to the Court of Appeal which has now issued the attached opinion vacating and remanding the matter for further factfinding by the hearing officer based on a recently decided case, Buma v. Providence Corp. Dev., 135 Nev., Adv. Op. 60, 453 P.3d 904 (2019). Buma was decided in December 2019, after the District Court case and prior to the Court of Appeals decision. Buma further explained the personal comfort doctrine and reiterated that travelling employees may be in a location for a work-related purpose even without any specific work events scheduled for that day. The Court of Appeals found Mr. Ross' presence in Anaheim three days prior to the actual conference may have been within the personal comfort doctrine and therefore remanded for further factfinding.

Staff now recommends the Board authorize the filing of an appeal to the Nevada Supreme Court. In the alternative, the Board may authorize the filing of a petition for rehearing by the Court of Appeals, or do nothing and let the case be remanded to the appellate hearing officer for further factfinding.

FISCAL IMPACT

Washoe County employs outside counsel for representation in worker's compensation cases and the impact to the County would therefore be the costs incurred on appeal to the Nevada Supreme Court.

¹ This background is taken from the Court of Appeals decision, attached.

RECOMMENDATION

It is recommended that the Board authorize the filing of an appeal to the Supreme Court of a Court of Appeals decision in Ross v. Washoe County, No. 78618-COA. The Court of Appeals found that injuries sustained by an employee three days prior to a conference may be a work- related injury, vacated the decision of a hearing officer and remanded for further fact-finding. In the alternative, the Board can take action to authorize the filing of a petition for re-hearing by the Court of Appeals, take no action, which would return the case to the hearing officer for further review, or take other action deemed appropriate by the Board

POSSIBLE MOTION

A possible motion would be to authorize the filing of an appeal to the Supreme Court of a Court of Appeals decision in Ross v. Washoe County, No. 78618-COA. The Court of Appeals found that injuries sustained by an employee three days prior to a conference may be a work- related injury, vacated the decision of a hearing officer and remanded for further fact-finding. In the alternative, the Board can take action to authorize the filing of a petition for re-hearing by the Court of Appeals, take no action, which would return the case to the hearing officer for further review, or take other action deemed appropriate by the Board.