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### Summary of City of North Las Vegas v. Warburton, 127 Nev. Adv. Op. No. 62

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*Nevada Law Journal*

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*City of North Las Vegas v. Warburton*, 127 Nev. Adv. Op. No. 62 (Oct. 6, 2011)<sup>1</sup>  
ADMINISTRATIVE LAW – WORKER’S COMPENSATION

**Summary**

The Court considered an appeal from a district court order granting a petition for judicial review in a workers’ compensation action.

**Disposition/Outcome**

The Supreme Court of Nevada affirmed the District Court’s order granting respondent Mallory Warburton’s (“Warburton”) petition for judicial review, affirming the administrative hearing officer’s determination that respondent’s worker’s compensation benefits must be determined using an average monthly wage calculation at the \$12-an-hour rate of pay.

**Factual and Procedural History**

In 2005, respondent Warburton began working for appellant City of North Las Vegas (“the City”) as a lifeguard. She was promoted to pool manager in 2006. As a manager, she expected to be paid \$12 per hour. Her timecard reflected her job title as “pool manager” and she performed the duties required of a manager, but the City continued paying her \$10 per hour while her promotion was processed. During the time of her employment, Warburton picked up her paycheck and uniforms at one city pool, then began driving in the direction of the pool where she worked. Warbuton was struck head-on by another driver and suffered injuries that required the amputation of her foot. She filed a worker’s compensation claim

The City determined Warburton’s injuries arose within the scope of her employment and began paying her worker’s compensation benefits, using the \$10 per hour rate. Warburton appealed the calculation of her benefits, and the hearing officer directed the City to pay her benefits using the \$12 per hour rate to reflect her promotion to pool manager. The City appealed, and the appeals officer reversed the hearing officer’s finding. Warburton petitioned the District Court for judicial review. The District Court concluded that Warburton’s benefits should be calculated using the \$12 per hour rate because Warburton had been promoted to pool manager at the time of the accident. The City appealed.

**Discussion**

Justice Hardesty wrote for the unanimous three-justice panel. The Court began its discussion by reiterating the standards of review for administrative agency conclusions, stating that they are reviewed de novo and in accordance with statutory interpretation principles.

Generally, worker’s compensation benefits are calculated by averaging a 12-week history of past earnings, and if 12 weeks are not available, then benefits can be calculated using a 4-week history.<sup>7</sup> When neither is available, the earnings can be calculated using the pay rate as of

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<sup>1</sup> By Daniela LaBounty

<sup>7</sup> NEV. ADMIN. CODE § 616C.435 (2007); NEV. REV. STAT. 616C.420 (2007).

the accident.<sup>8</sup> However, if that method cannot be applied fairly, then benefits can be calculated using a rate that is a reasonable representation of the average monthly wage pursuant to NAC 616C.420 to 616C.447.<sup>9</sup>

Warburton was promoted to pool manager, yet her pay-check still reflected the previous \$10 per hour wage. The appeals officer made no finding of her primary job basing her worker's compensation benefits on a 12-week history. The Court did not consider this a reasonable or fair calculation of her benefits. NAC616C.444 provides that for worker's who changed jobs at the time of an accident benefits must be calculated at a rate that reflects the employee's primary job at the time of injury. Because of the specificity of NAC 616C.444, it prevails as the controlling regulation.<sup>10</sup>

The Court held that NAC 616C.444 and NAC 616C.435(7) are plain and unambiguous. No finding was made as to Warburton's primary job, therefore, NAC 616C.444 was applied incorrectly by the appeals officer. However, the district court found sufficient evidence in the record to determine Warburton's primary job the day of her accident was pool manager. The Court implied from the available findings that the appeals officer would have determined Warburton's primary job as a pool manager. Therefore, the Court affirmed the district court's decision upholding the hearing officer's determination that Warburton's benefits should be calculated using the \$12 per hour rate.

### **Conclusion**

NAC 616C.435(7)(a) requires that the average monthly wage for worker's compensation benefits be calculated at sum that reasonably reflects the monthly wage, and NAC 616.444 provides that the rate to calculate benefits must relate to the primary job at the time of accident.

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<sup>8</sup> NEV. ADMIN. CODE § 616C.435(5).

<sup>9</sup> *Id.* at 616C.435(7)(a).

<sup>10</sup> *See State, Tax Comm'n v. American Home Shield*, 127 Nev. \_\_\_, \_\_\_, 254 P.3d 601, 605 (2011) ("A specific statute controls over a general statute.").