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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

ROSA MYERS,

Petitioner,

Case No.: CV24-01054  
Dept. No.: 3

STATE OF NEVADA GOVERNMENT  
EMPLOYEE-MANAGEMENT RELATIONS  
BOARD; and CITY OF RENO; and RENO  
FIRE DEPARTMENT,

Respondents,

**SUMMONS**

**TO THE RESPONDENTS: YOU HAVE BEEN SUED. THE COURT MAY  
DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND  
IN WRITING WITHIN 45 DAYS. READ THE INFORMATION BELOW VERY  
CAREFULLY.**

A civil complaint or petition has been filed by the petitioner against you for the relief as set forth in that document (see complaint or petition).

1. If you intend to defend this lawsuit, you must do the following within 45 days after service of this summons, exclusive of the day of service:

a. File with the Clerk of the Court, whose address is shown below, a formal written answer to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;

b. Serve a copy of your answer upon the attorney or petitioner whose name and address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

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Dated this 23<sup>rd</sup> day May, 2024.

Issued on behalf of Petitioner:

ROSA MYERS  
Ronald J. Dreher, Esq.  
State Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
(775) 846-9804  
ron@dreherlaw.net  
*Attorney for Petitioner*

ALICIA L. LERUD  
CLERK OF THE COURT  
By: /S/Y.VILORIA  
Deputy Clerk



1 Code \$3550  
2 Ronald J. Dreher, Esq.  
3 Nevada Bar No. 15726  
4 P.O. Box 6494  
5 Reno, NV 89513  
6 775-846-9804  
7 ron@dreherlaw.net  
8 *Attorney for Petitioner*

5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6  
7 **IN AND FOR THE COUNTY OF WASHOE**

8 ROSA MYERS,

9 Petitioner,

Case No.:

Dept. No.:

10 vs.

11 STATE OF NEVADA GOVERNMENT  
12 EMPLOYEE-MANAGEMENT RELATIONS  
13 BOARD; and CITY OF RENO; and RENO  
14 FIRE DEPARTMENT,

15 Respondents.  
16 \_\_\_\_\_ /

17 **PETITION FOR JUDICIAL REVIEW**

18 **COMES NOW**, ROSA MYERS, by and through her undersigned attorney and hereby  
19 petitions this honorable Court for judicial review of the final decision of the State of Nevada  
20 Government Employee-Management Relations Board, (hereinafter "EMRB"), issued on or  
21 about April 8, 2024, with notice of entry and order mailed to Petitioner's Counsel on April 8,  
22 2024, and received by him on or about April 13, 2024. This Petition for Judicial Review  
23 concerns the EMRB's decision in *Myers v City of Reno and Reno Fire Department*, Case No.  
24 2023-013, Item No. 896. This Petition is filed pursuant to NRS Chapter 233B, specifically NRS  
25 233B.130 and NRS 233B.135, on the grounds stated herein below. Accordingly, Petitioner  
26 alleges as follows:  
27  
28

**PARTIES**

1  
2           1. Petitioner, Rosa Myers, (hereinafter “Petitioner Myers”), is a firefighter employed by  
3 the City of Reno in the Reno Fire Department. She is a local government employee as defined  
4 in NRS 288.050.

5           2. Respondent State of Nevada Government Employee-Management Relations Board,  
6 (hereinafter “EMRB”), is an agency of the State of Nevada created by NRS 288.080 and is  
7 charged with enforcing NRS Chapter 288. Respondent EMRB maintains offices at 3300 West  
8 Sahara Avenue, Suite 490, Las Vegas, NV 89102.

9  
10           3. Respondent City of Reno, (hereinafter “City”), is the largest municipality in Northern  
11 Nevada which oversees the Reno Fire Department and its employees. The City is a political  
12 subdivision of the State of Nevada and a local government employer under NRS 288.060. The  
13 City’s mailing address is 1 E. First Street, P.O. Box 1900, Reno, NV 89505.

14  
15           4. Respondent Reno Fire Department, (hereinafter “RFD”), is a division of the City and  
16 is a local fire department charged with providing fire protection and emergency medical  
17 services in the City of Reno. The RFD is made up of approximately 260 personnel to include  
18 firefighters.

**FACTS**

19  
20  
21           5. In September 2019, Petitioner Myers took the Fire Equipment Operator (FEO)  
22 examination.

23  
24           6. On September 26, 2019, the Reno Civil Service Commission issued the eligibility list  
25 from the September 2019 FEO examination. Petitioner Myers was not on the eligibility list.

26           7. On October 10, 2019, all firefighters placed on the September 26, 2019, eligibility  
27 list were promoted to the position of FEO.  
28

1 8. On October 19, 2019, while acting as an FEO, Petitioner Myers was one of the drivers  
2 of a fire apparatus and that was involved in a fatal accident with a pedestrian.

3 9. On October 31, 2019, the Reno Civil Service advised Petitioner Myers that there was  
4 a scoring error and that she and Firefighter Theresa Bruno had in fact passed the September  
5 2019 FEO examination. Petitioner Myers and Firefighter Bruno were placed on September 26,  
6 2019, promotional list. Petitioner Myers was placed higher on the list than several of those that  
7 had been promoted on October 10, 2019.  
8

9 10. On November 8, 2019, Firefighter Bruno was promoted to FEO.

10 11. On November 6, 2019, Petitioner Myers met with RFD Chief David Cochran, and  
11 he told her he was going to “hold off” on her promotion until the accident investigation was  
12 completed.  
13

14 12. On March 3, 2021, Petitioner Myers met with Chief Cochran, Deputy Reno City  
15 Attorney Mark Dunagan and her union representative Pete Briant to discuss her promotion to  
16 FEO. Mr. Dunagan advised Petitioner Myers that an “exit plan” was available if she would like  
17 to discuss options for leaving the RFD due to the October 19, 2019, accident. Chief Cochran  
18 stated that the “optics” of promoting Petitioner Myers to the FEO position would be a barrier to  
19 doing so. This was based on political concerns regarding the public image of the RFD and the  
20 City regarding the October 19, 2019, accident and not based in fact or substance.  
21

22 13. On December 29, 2022, Petitioner Myers advised Chief Cochran that the accident  
23 and criminal investigations were completed, and she requested to be promoted to FEO in  
24 accordance with what Chief Cochran had stated on November 6, 2019.  
25

26 15. On January 9, 2023, Chief Cochran responded to Petitioner Myers and stated that  
27 after consulting with the City’s legal department and the Civil Service Commission, he would  
28

1 not be promoting her to FEO.

2 16. On June 6, 2023, Petitioner Myers filed a prohibited practices complaint against the  
3 City and the RFD contending the City and RFD had discriminated Petitioner Myers for  
4 exercising her rights under the collective bargaining agreement, for filing complaints against the  
5 City and RFD, and for personal and political reasons. On March 19-20, 2024, a hearing was  
6 held by the EMRB concerning said complaint.  
7

8 17. On September 22, 2023, the EMRB issued an order denying Respondents City and  
9 RFD's motion to dismiss. (Ex. 1.)

10 18. On November 13, 2023, the EMRB denied Petitioner Myers's motion to for default  
11 order, but barred Respondents City and RFD's affirmative defenses due to these Respondents  
12 having failed to file an answer in this matter as required under NRS 288.220(3). (Ex. 2.)  
13

14 19. On April 8, 2024, the EMRB issues its decision in Case No. 2023-013. (Ex. 3.) Said  
15 Decision stated *inter alia* that : "Claimant knew, or should have known, the facts that gave rise  
16 to the claims as discussed above by September 2021, the Board lacks jurisdiction to hear this  
17 matter," and the "Equitable tolling does not apply to this matter as discussed herein."  
18 (Conclusion of Law Nos. 3-4, at page 11.) Additionally, the EMRB concluded that Petitioner  
19 Myers "failed to make a *prima facie* showing she was discriminated against," and "Respondents  
20 acted prudently, reasonably and appropriately and did not discriminate in any way . . . ."  
21 (Conclusion of Law Nos. 5-6, at pages 11-12.)  
22

23 20. The Decision referenced above is the final agency decision of the EMRB in this  
24 matter.  
25

26 21. Petitioner Myers is an aggrieved party as a result of the final decision of the EMRB.  
27  
28

1           22. Substantial rights of Petitioner Myers have been prejudiced because of the decision  
2 of the EMRB is :

- 3           a)     In violation of constitution of statutory provisions;  
4           b)     In excess of the statutory authority of the EMRB;  
5           c)     Made upon unlawful procedures;  
6           d)     Affected with other error of law;  
7           e)     Clearly erroneous in view of the reliable, probative and substantial evident on  
8 the whole record; and/or  
9           f)     Arbitrary, capricious or characterized abuse of discretion.

10           23. Petitioner Myers has been required to obtain the services of an attorney to pursue  
11 this Petition.  
12

13           **WHEREFORE**, Petitioner Rosa Myers respectfully requests that:  
14

15           1. That this Court review the final decision of the EMRB dated April 8, 2024, referenced  
16 hereinabove, and set it aside with respect to the findings and determinations, and remand it for  
17 a decision and ruling that the City of Reno and Reno Fire Department did discriminate against  
18 Petitioner Myers for exercising her rights under the collective bargaining agreement, for filing  
19 complaints against the City and RFD, and for personal and political reasons.  
20

21           2. That this Court award Petitioner its attorney's fees and costs; and  
22

23           3. That this Court grant Petitioner such other and further relief as it deems just in the  
24 premises.

25           ///

26           ///

27           ///

28           ///

**AFFIRMATION**

1  
2 The undersigned affirms that this document does not contain the personal information  
3 of any person.

4 Dated this 12<sup>th</sup> day May, 2024.

5  
6 /s/ Ronald J. Dreher  
7 Ronald J. Dreher, Esq.  
8 Nevada Bar No. 15726  
9 P.O. Box 6494  
10 Reno, NV 89513  
11 775-846-9804  
12 ron@dreherlaw.net  
13 *Attorney for Petitioner*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this date I deposited for mailing with the United States Post Office, Reno, Nevada, first-class postage affixed thereto, a true and correct copy of the foregoing PETITION FOR JUDICIAL REVIEW addressed as follows:

KARL S. HALL, Esq.  
Reno City Attorney  
hallk@reno.gov  
Jonathan D. Shipman, Esq.  
Assistant City Attorney  
shipmanj@reno.gov  
Chandeni Sendall, Esq.  
Assistant City Attorney  
sendallc@reno.gov  
Post Office Box 1900  
Reno, Nevada 89505  
(775) 334-2050  
*Attorneys for City of Reno,  
and the Reno Fire Department*

Sam Taylor, Esq.  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701  
*Attorney for Respondent EMRB*

Dated this 12<sup>th</sup> day of May, 2024.

/s/ Ronald J. Dreher  
Ronald J. Dreher  
Nevada Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
*Attorney for Petitioner*

**EXHIBIT INDEX**

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<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Order Denying Motion to Dismiss	5
2	Order Denying Complainant's Motion for a Default Order	5
3	Notice of Entry of Order	15

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EXHIBIT 3

EXHIBIT 3

FILED  
April 8, 2024  
State of Nevada  
E.M.R.B.

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ROSA MYERS,  
Complainant,  
v.  
CITY OF RENO AND RENO FIRE  
DEPARTMENT,  
Respondents.

Case No. 2023-013

NOTICE OF ENTRY OF ORDER  
PANEL B  
ITEM NO. 896

TO: Complainant, by and through her attorney, Ronald J. Dreher, Esq.; and


TO: Respondents, by and through their attorneys, Jonathan Shipman, Assistant City Attorney, and Chandeni K. Sendall, Deputy City Attorney.

PLEASE TAKE NOTICE that the **DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW** was entered in the above-entitled matter on April 8, 2024.

A copy of said order is attached hereto.

DATED this 8<sup>th</sup> day of April 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY   
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 8<sup>th</sup> day of April 2024, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Ronald J. Dreher, Esq.  
P.O. Box 6494  
Reno, NV 89513

Jonathan D. Shipman, Esq.  
Assistant City Attorney  
Chandeni K. Sendall, Esq.  
Deputy City Attorney  
P.O. Box 1900  
Reno, Nevada 89505

  
\_\_\_\_\_  
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

FILED  
April 8, 2024  
State of Nevada  
E.M.R.B.

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ROSA MYERS,  
  
Complainant,  
  
v.  
  
CITY OF RENO AND RENO FIRE  
DEPARTMENT,  
  
Respondents.

Case No. 2023-013  
  
**DECISION, FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**  
  
**PANEL B**  
  
**ITEM NO. 896**

The State of Nevada, Government Employee-Management Relations Board (“Board”) held a hearing on this matter on March 19-20, 2024, pursuant to the provision of the Government Employee-Management Relations Act (“EMRA”), NRS Chapter 288, and NAC Chapter 288. The Board deliberated on the matter on March 20, 2024.

**I. BACKGROUND**

Rosa Myers (hereafter “Complainant”) filed a Complaint on June 6, 2023, alleging that Respondents had engaged in discrimination under NRS 288.270(1)(d) and (1)(f). Respondents filed a Motion to Dismiss on July 10, 2023, and this Motion was denied by the Board on September 22, 2023. On August 15, 2023, a Commissioner’s Order was entered which required the parties to provide documentation regarding the status of a related grievance filed by Complainant. On October 26, 2023, Complainant filed a Motion for Default regarding Respondents’ failure to file an Answer. The Board denied the Motion for a Default on November 16, 2023, although in the same Order, the Board did grant Complainant’s request to bar Respondents’ affirmative defenses.

...  
...

1 **II. DISCUSSION**

2 **A. Statute of Limitations.**

3 The Board may not consider, and must dismiss, any complaint filed more than six months after  
4 the occurrence which is the subject of the complaint. NRS 288.110(4). *Service Employees International*  
5 *Union, Local 1107 v. Clark County*, Case No. 2021-018, Item No. 877 (EMRB, June 8, 2022); *Eleni*  
6 *Konsolakis Garcia v. Service Employees International Union, Local 1107*, Case No. 2021-006, Item No.  
7 873 (EMRB, Aug. 19, 2021). The six-month window in which to file a complaint begins once a  
8 complaining party has unequivocal notice of the occurrence. *Id.*, see also *City of N. Las Vegas v. EMRB*,  
9 127 Nev. 631, 639 (2011) (“indicating that the six-month period is triggered when the complainant  
10 becomes aware that a prohibited practice actually happened”) (citation omitted). The notice requirement  
11 is satisfied by either actual or constructive notice of the facts giving rise to the complaint. See *Service*  
12 *Employees International, Local 1107 v. Clark County, supra*. In cases of employee discipline, those  
13 operative facts are deemed to be known at the point in time of discipline and when the employee learns  
14 of the adverse action. *Service Employees International, Local 1107 v. Clark County, supra* (citation  
15 omitted). However, the statute of limitations period set forth in the EMRA is subject to the doctrine of  
16 equitable tolling. *Id.*, see also *City of N. Las Vegas* at 640. Thus, regardless of the merits of an underlying  
17 case, this Board, by statute, may not decide a case that falls outside of the six-month statute of limitations  
18 set out in NRS 288.110(4) unless equitable tolling is present. The Board will first address the facts related  
19 to the statute of limitations and then determine whether equitable tolling is applicable.

20 1. Statute of Limitations Factual Analysis.

21 The Claimant’s case primarily relied on the following for proof that Respondents had engaged in  
22 discrimination:<sup>1</sup>

23 a. The use of the term “hold off” by Chief Cochran during a discussion with  
24 Complainant about her promotion on November 9, 2019. Complainant’s Opening  
25 Brief at p. 2; lines 25-26.

26 b. The five (5) grievances filed by Complainant and the resolution of such. Hearing  
27

28 <sup>1</sup> To the extent any issue is not referenced herein, it is only because the Board found such issues irrelevant to the claims.

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Exhibits 4 – 8 (hereafter “Exhibits.”).

- c. The use of the term “optics” was allegedly used during the March 3, 2021, meeting where Complainant, Chief Cochran, Captain Briant and Reno City attorney Dunagan were present.
- d. Other accidents involving Reno Fire Department personnel to include: Ms. Bruno, Mr. Price and Mr. Wheatley. Exhibits 19 – 21.

A discussion of the four (4) issues is set forth below.

a. Use of the Words “Hold Off.”

Chief Cochran testified that he told Complainant on November 9, 2019, that he would “hold off” on promoting Complainant until he had received a copy of the investigative report. The Chief’s recollection is bolstered by Complainant’s opening brief which states in relevant part: “[o]n November 6, 2019, Fire Chief David Cochran ( Chief Cochran ), advised FF Myers that he would hold off on her promotion until the results of the investigation were known...” Complainant’s Opening Brief at 2. Chief Cochran testified that his use of the words “hold off” meant that he would wait, or “hold off,” on making a decision whether he would promote Complainant at all until after he saw the investigative report. Complainant thought the Chief would promote her regardless of the outcome of the investigative report. *Id.* at 2-3. The Board finds it would be unreasonable for Complainant to think she would be promoted if the investigation determined that she was at fault or otherwise charged criminally for her conduct – which was the case. *See* Exhibits 27, 32 and 38. Regardless, it was apparent to Complainant that she would not be promoted once the investigative report was provided to Chief Cochran in 2021 and she was not promoted even after the 4th grievance was filed in September of 2021. Furthermore, it was obvious that Chief Cochran’s statement related solely to the investigative report and not the outcome of any criminal case that resulted from the report.

b. The Grievances.

Claimant filed five (5) grievances from December 2019 through February of 2023. The first four (4) grievances were primarily related to Chief Cochran’s decisions to prohibit Complainant from operating certain vehicles or otherwise seeking to impose discipline on Complainant for the accident in question. Grievance number four (4) filed in September of 2021, made no reference to any



1 discrimination. In fact, only the last grievance that was filed in February of 2023 mentioned any  
2 discrimination claims. Furthermore, the discriminatory practices grievance, and the claims that are  
3 currently before this board are really the direct result of Complainant's January 9, 2023, e-mail to Chief  
4 Cochran asking to be promoted and Chief Cochran's reasonable denial of this request. *See* Exhibit 72.  
5 Furthermore, the 5th grievance that was filed on February 9, 2023, specifically states that it was in relation  
6 to the Chief's decision to not promote Complainant. Exhibit 8 at 252. Notably, the Complainant's own  
7 union declined to participate in the final grievance due to a lack of evidence to support her claim. Exhibit  
8 73 at 584. It is also clear from the facts provided that Chief Cochran could not have lawfully promoted  
9 Complainant after the promotional list expired.

10 c. Use of the Term "Optics."

11 Based on the evidence presented to the Board, the term "optics" was only used once and that was  
12 during a meeting held on March 3, 2021. Chief Cochran testified that he never used the word "optics"  
13 during the March meeting and indicated that it may have been used by Reno City Attorney Dunagan.  
14 Captain Briant also testified that attorney Dunagan may have used the word "optics." Regardless of who  
15 said the word, it was used in March of 2021. Thus, Complainant knew, or should have known, the word  
16 was discriminatory at the time the word was used, i.e., more than two years prior to the filing of the  
17 discrimination claims with this Board.

18 d. The Other Reno Fire Department Accidents.

19 In examining the comparative accidents by Reno Fire Department personnel that Complainant  
20 provided in support of her claims, the Board notes the incidents either predate the grievance by several  
21 years or the accidents occurred after the filing of both grievance number five (5) and the Complaint in  
22 this case which was filed in June of 2023. Specifically, the claim involving Ms. Bruno occurred prior to  
23 November 2019 (Exhibit 19); the claim involving Mr. Price was included in a report dated June 2020  
24 (Exhibit 20); and the claim involving Mr. Wheatley occurred more than two (2) months after the  
25 Complaint in this case was filed (Exhibit 21). The Board finds the above incidents were known to  
26 Claimant years prior to the filing the Complaint in this case or after it was filed, in either event the prior  
27 accidents used by Complainant fell well outside of the 6-month statute of limitations. Furthermore, the  
28 Wheatley accident was obviously not the basis for the discrimination complaint since it occurred after

1 the Complaint was filed.

2 2. Equitable Tolling Legal and Factual Analysis.

3 The Nevada Supreme Court has defined equitable tolling as “[t]he doctrine that the statute of  
4 limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until  
5 after the limitations period had expired.” *City of N. Las Vegas v. EMRB*, 127 Nev. 631, 640 (2011).  
6 Furthermore, “the following factors, among any other relevant considerations, should be analyzed when  
7 determining whether equitable tolling will apply: (a) knowledge of the relevant facts; (b) the claimant’s  
8 diligence; (c) reliance on misleading authoritative agency statements and/or misleading employer  
9 conduct; (d) and any prejudice to the employer.” *Id.* (citation omitted). Importantly, “the law does not  
10 permit equitable tolling when a party simply did not realize the extent of his claim.” *Jeffrey Charles v.*  
11 *City of Henderson*, 132 Nev. 954 at 1 (2016).

12 a. Knowledge of Relevant Facts.

13 As discussed above, almost all of the facts that Complainant relied upon for the hearing occurred  
14 in 2021 or prior.<sup>2</sup> Thus, the Complainant knew or should have known about the facts giving rise to the  
15 Complaint by September of 2021 when the 4th grievance was filed.

16 b. Diligence.

17 In previous cases, the Board has found a lack of diligence when the Complainant waited 8 months  
18 to around one year to press claims. *See Eleni Konsolakis Garcia, supra; see also Bantz v. Washoe County*  
19 *Sch. Dist.*, Case No. 2017–028, Item No. 832 (EMRB, Sept. 13, 2018). The Board has determined that  
20 Claimant knew or should have known about the facts giving rise to the Complaint by September of 2021.  
21 In sum, the Complainant sat on her allegations for almost two years which cannot be described as diligent  
22 in any way.

23 c. Misleading Statements or Conduct.

24 The Board finds that Claimant did not provide any proof of misleading statements or conduct on  
25 the part of Respondents. As such, this part of the tolling analysis fails.

26  
27 <sup>2</sup> The Wheatley accident used by the Complainant occurred after the Complaint in this case was  
28 filed and could not form the basis of a discrimination Complaint. The Board also finds that it was not  
probative or useful as additional proof of discrimination since the facts and outcome are not comparable  
to Complainant’s accident.

1                   d.     Prejudice to Respondents.

2                   The Respondents would be greatly prejudiced if the Board decided to allow the claim to proceed  
3 given the discussion above.

4                   Given the discussion above, the Board further finds that equitable tolling is not applicable to the  
5 facts in this case because Complainant knew or should have known her discrimination claims were tied  
6 to these same facts, she was not diligent in pursuing her claims and there was no evidence of any  
7 misleading conduct by the Respondents and allowing such claims would be prejudicial to Respondents.  
8 Thus, given all the evidence presented to the Board, as well as the discussion contained herein, the Board  
9 finds that all of Claimants claims are barred under NRS 288.110(4).

10                  Notwithstanding the fact that all of the claims set forth in the Complaint are barred by the Statute  
11 of Limitations, the Board conducted an analysis of the discrimination claims as set forth below to provide  
12 more guidance to the parties and others who may find themselves in similar situations.<sup>3</sup>

13                  **B.     Discrimination under NRS 288.270(1)(d).**

14                  The Complainant alleges that Respondents impermissibly discriminated against her pursuant to  
15 NRS 288.180(1)(d) which states:

16                         1.     It is a prohibited practice for a local government employer or its  
17 designated representative willfully to:

18                                 \* \* \*

19                                 (d) Discharge or otherwise discriminate against any employee because the  
20 employee has signed or filed an affidavit, petition or complaint or given any  
information or testimony under this chapter, or because the employee has  
formed, joined or chosen to be represented by any employee organization.

21                  The analytical framework the Board must use for discrimination claims was established in *Reno*  
22 *Police Protective Ass'n v. City of Reno*, 102 Nev. 98, (1986) and later modified in *Bisch v. Las Vegas*  
23 *Metro Police Dep't*, 129 Nev. 328 (2013). Under this framework, an aggrieved employee must make  
24 a *prima facie* showing sufficient to support the inference that the protected conduct was a motivating  
25 factor in the employer's decision. Once this is established. the burden shifts to the employer to  
26

27                                 <sup>3</sup> The Board's normal practice is to simply dismiss the case on the grounds the Board lacks  
28 jurisdiction. However, the Board feels it would be helpful to the parties and the public for the Board to  
discuss the discrimination claims and analysis.

1 demonstrate by a preponderance of the evidence that the same action would have taken place even in the  
2 absence of the protected conduct. *Bisch* at 340. The aggrieved employee may then offer evidence that  
3 the employer’s proffered legitimate explanation is merely pretextual and thus conclusively restore the  
4 inference of unlawful motivation. *Id.* Moreover, the Nevada Supreme Court has adopted the modified  
5 “*Transportation Management*” test, which states that “it is not enough for the employee to simply put  
6 forth evidence that is capable of being believed; rather, this evidence must actually be believed by the  
7 factfinder. *Id.* (*citations omitted*). Finally, the analysis for a discrimination claim brought under NRS  
8 288.270(1)(d) is the same as a discrimination claim brought under  
9 NRS 288.270(1)(f). *Tammy Bonner and Bachera Washington v. City of North Las Vegas*, Case No.  
10 2015-027, Item No. 820 (EMRB, Feb 8, 2017).

11 As stated above, the first four (4) grievances were primarily related to Chief Cochran’s decisions  
12 to prohibit Complainant from operating certain vehicles or otherwise seeking to impose discipline on  
13 Complainant for the accident and as noted above. Only the last grievance that was filed in February of  
14 2023, related to discrimination claims. Again, the Complainant’s own union declined to participate in  
15 the final grievance due to a lack of evidence to support her claim. Exhibit 73 at 585.

16 The evidence in this case clearly shows that Respondents actions were reasonable in light of the  
17 facts and circumstances known to them. For example, despite having been found at fault for killing a  
18 pedestrian who was lawfully within the crosswalk, and having ignored a traffic signal while doing so,  
19 Claimant was not terminated, demoted or suspended without pay. *See* Exhibit 32 at 457. This is also  
20 despite having been criminally charged for the same conduct.<sup>4</sup> *See* Exhibit 38. The Board finds that  
21 Respondents took reasonable actions with respect to Claimant in an effort to protect public safety and to  
22 impose discipline after the Chief was provided evidence that Claimant was at fault in an incident that led  
23 to someone’s death. There were also no e-mails, notes or testimony provided by Complainant showing  
24 that Respondents were taking any action based on the Complainant filing grievances. Thus, based on all  
25 of the evidence presented, the Board finds that there is no evidence that the grievances filed by  
26 Complainant were a motivating factor in any decision made by the Respondents relative to Complainant’s

27 <sup>4</sup> The Claimant asserted that she had been exonerated when the criminal case was dismissed.  
28 This assertion is simply incorrect. In fact, the criminal case was not dismissed due to lack of evidence,  
rather it was due to an application made under NRS 178.566. Exhibits 15 through 17.

1 promotion or discipline. As a result, Complainant has failed to meet her burden showing that the actions  
2 taken by Respondents were discriminatory under NRS 288.270(1)(d).

3 **C. Discrimination under NRS 288.270(1)(f).**

4 Complainant also alleged that Respondents engaged in political and personal discrimination  
5 against Complainant. It is impermissible for a local government employer to discriminate against an  
6 employee under NRS 288.270(1)(f) because of "...race, color, religion, sex, sexual orientation, gender  
7 identity or expression, age, physical or visual handicap, national origin or because of political or personal  
8 reasons or affiliations." See *Steven B. Kilgore v. City of Henderson*, Case No. A1-045763, Item No.  
9 550H (EMRB, March 30, 2005). Moreover, the analytical framework for discrimination complaints  
10 brought under NRS 288.270(1)(f) are the same as set forth above in Section A above. See also *Bisch*,  
11 *supra*.

12 Complainant argued that she was treated differently from others who had accidents while  
13 employed at the Reno Fire Department due to political and personal reasons. However, not one of the  
14 other referenced accidents involved a death, nor was anyone in the other matters ever criminally charged.  
15 In addition, one of the accidents presented by Complainant arose more than two months after the  
16 Complaint in this case was filed, and as such, it really had no bearing on this case or Complainant's  
17 claims. Moreover, the comparisons provided by Complainant regarding the accidents of other Reno Fire  
18 Department employees and the facts related to each stand in stark contrast to Complainant's case and are  
19 simply not comparable. For example, there is no indication that Ms. Bruno was ever criminally charged  
20 or even cited regarding her accident involving a pedestrian which occurred in her privately owned vehicle  
21 and the same can be said for all of the other cases cited by Complainant. In fact, there was ample evidence  
22 presented to the Board showing that Complainant is the only Reno Fire Department employee who has  
23 ever killed a member of the public while on duty, and this fact alone is sufficient to warrant different  
24 treatment regarding promotional opportunities and discipline.

25 Complainant also asserted Reno Fire Chief ("Chief Cochran") stated that the "optics" related to  
26 her accident was the basis for his decision to hold off on Complainant's promotion. However, Chief  
27 Cochran testified that never used the word "optics" during the March 3, 2021, meeting between  
28

1 Complainant, Chief Cochran, Capt. Briant and Reno City Attorney Dunagan.<sup>5</sup> The Board finds that Chief  
2 Cochran's testimony was very credible overall, including on this point. The Board also finds that  
3 Complainant's testimony was sometimes less than credible. Furthermore, Captain Briant indicated that  
4 either Chief Cochran or Attorney Dunagan had used the term "optics" during the March 3, 2021, meeting  
5 which tends to corroborate Chief Cochran's testimony.

6 The Board further finds that it was very reasonable for Chief Cochran to have delayed  
7 Complainant's promotion pending the outcome of the accident investigation. However, by the time Chief  
8 Cochran had been given a copy of the report early 2021, the promotional list had expired and the Reno  
9 Civil Service Rules preclude Chief Cochran from promoting Complainant.<sup>6</sup> The Board also finds that  
10 the fact Ms. Bruno was promoted is not a valid basis for Complainant to demand a promotion given the  
11 huge gap in facts between their respective accidents as noted above.<sup>7</sup>

12 The Board also finds Respondents' actions which initiated Complainant's grievances after 2019  
13 were reasonable because those actions were based on the investigative reports and criminal charges which  
14 clearly indicating that Complainant acted unlawfully and was at fault for the death of the pedestrian. *See*  
15 *generally* Exhibits 27, 32 and 38. In sum, there was more than sufficient evidence indicating that Chief  
16 Cochran's decisions were prudent and in line with public safety concerns and prudent fire department  
17 operations.

18 Complainant has completely failed to prove that political or personal reasons were the motivating  
19 factor in any decisions made by Respondents. In fact, the evidence showed that Respondents' actions  
20 were motivated almost entirely by the facts related to the accident, the police investigative reports  
21 regarding the accident and the criminal complaint involving Complainant related to the accident. Such  
22 conduct cannot reasonably be described as politically motivated nor was there any proof provided that  
23 Respondents' conduct was due to personal animus or discriminatory intent. Logically, if personal animus  
24

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25 <sup>5</sup> Chief Cochran noted that it may have been Reno city attorney Dunagan who made the statement  
regarding optics.

26 <sup>6</sup> Chief Cochran is the only person who could have lawfully promoted Complainant from the  
27 valid promotional list which expired on September 26, 2020. Exhibit 39 at 476.

28 <sup>7</sup> This also includes the initial mistake in scoring relative to Ms. Bruno and Complainant for the  
promotion list.

1 had been a factor in this case, Complainant would have probably faced far more severe discipline than  
2 what Chief Cochran meted out. As such, the Board finds that neither political nor personal discrimination  
3 served as a motivating factor in any conduct undertaken by the Respondents.

### 4 III. FINDINGS OF FACT

5 1. The Board has determined the following facts based on a preponderance of evidence, this  
6 includes facts set forth in the Discussion above that are not included in the listing below.

7 2. The following constitute the majority of the evidence presented by Complainant in support  
8 of the discrimination claims:

9 a. The use of the term “hold off” by Chief Cochran during a discussion with  
10 Complainant about her promotion on November 9, 2019. Complainant’s Opening  
11 Brief at p. 2; lines 25-26.

12 b. The five (5) grievances filed by Complainant and the resolution of such. Hearing  
13 Exhibits 4 – 8 (hereafter “Exhibits.”).

14 c. The use of the term “optics” was allegedly used during the March 3, 2021, meeting  
15 where Complainant, Chief Cochran, Captain Briant and Reno City attorney  
16 Dunagan were present.

17 d. Other accidents involving Reno Fire Department personnel to include:  
18 Ms. Bruno, Mr. Price and Mr. Wheatley. Exhibits 19 – 21.

19 3. Chief Cochran testified that he never used the word “optics” during the March meeting  
20 and indicated that it may have been used by Reno City Attorney Dunagan and the Board believed  
21 this testimony.

22 4. Regardless of who used the term “optics,” the evidence indicated that the term was used  
23 only once during a meeting in March of 2021.

24 5. Chief Cochran’s testimony was very credible.

25 6. The testimony of Complainant was sometimes less than credible.

26 7. The first four grievances filed by Complainant mentioned nothing about discrimination  
27 on the part of Respondents.

28 8. The final grievance filed by Complainant was the first mention of discriminatory conduct

1 Respondents.

2 9. The Complainant's own union declined to participate in the final grievance due to a lack  
3 of evidence to support her claim.

4 10. Complainant knew, or should have known, of her discrimination claims by September of  
5 2021 when the 4th grievance was filed because almost all of the evidence presented by Complainant for  
6 her discrimination claims arose on or before this date.

7 11. There was insufficient evidence presented to support the claims of discrimination.

8 12. The Complainant's accident was not relevant to supporting the discrimination claims  
9 given the death that resulted, the finding that Claimant was at fault in the accident report and the  
10 subsequent criminal charges filed.

11 13. Claimant was not exonerated for the criminal charges as she suggested, rather the case  
12 was dismissed in a civil compromise under NRS 178.566.

13 14. Chief Cochran's actions relative to Claimant's grievances and discrimination claims were  
14 reasonable and taken to ensure public safety.

15 15. The Board found no evidence to support any of the discrimination claims as  
16 discussed herein.

17 16. To the extent a conclusion of law may be deemed a conclusion of fact, it shall be  
18 considered as such.

#### 19 IV. CONCLUSIONS OF LAW

20 1. The Board has exclusive jurisdiction over claims of unfair labor practices and prohibited  
21 practices under NRS Chapter 288.

22 2. NRS 288.110(4) contains a six-month statute of limitations and the Board may not hear  
23 claims filed outside of this statute of limitations.

24 3. Since the Claimant knew, or should have known, the facts that gave rise to the claims as  
25 discussed above by September of 2021, the Board lacks jurisdiction to hear this matter.

26 4. Equitable tolling does not apply to this matter as discussed herein.

27 5. The Complainant failed to make a *prima facie* showing that she was  
28 discriminated against.



1           6.     The Board finds that Respondents acted prudently, reasonably and appropriately and did  
2 not discriminate in any way against Complainant as discussed herein.

3           7.     To the extent a conclusion of fact may be deemed a conclusion of law, it shall be  
4 considered as such.  
5

6   **V. ORDER**

7           Based on the foregoing, it is hereby **ORDERED** that claims filed by Complainant are hereby  
8 **DISMISSED WITH PREJUDICE** on the grounds that Complainant’s claims are barred under  
9 NRS 288.110(4). Furthermore, this case should also be **DISMISSED WITH PREJUDICE** because  
10 Complainant failed to make a *prima facie* showing sufficient to support the inference that the protected  
11 conduct under NRS 288.270(1)(d) or 288.270(1)(f) was a motivating factor in any of the  
12 employer’s decisions.

13           DATED this 8<sup>th</sup> day of April 2024.

14  
15   GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

16 By: Michael J. Smith  
17           MICHAEL J. SMITH, Presiding Officer

18 By: Sandra Masters  
19           SANDRA MASTERS, Board Member

20  
21 By: Tammara M. Williams  
22           TAMMARA M. WILLIAMS, Board  
23 Member

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Clerk of the Court  
Transaction # 10329176 : csulezic

EXHIBIT 2

EXHIBIT 2

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November 13, 2023  
State of Nevada  
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**STATE OF NEVADA**  
**GOVERNMENT EMPLOYEE-MANAGEMENT**  
**RELATIONS BOARD**

ROSA MYERS,

Complainant,

v.

CITY OF RENO AND RENO FIRE  
DEPARTMENT,

Respondents.

Case No. 2023-013

**NOTICE OF ENTRY OF ORDER**  
**EN BANC**

TO: Complainant, by and through their attorney, Ronald J. Dreher, Esq.; and

TO: Respondents, by and through their attorneys, Karl S. Hall, Reno City Attorney and Jonathan Shipman, Assistant City Attorney.

PLEASE TAKE NOTICE that the **ORDER DENYING COMPLAINANT'S MOTION FOR A DEFAULT ORDER** was entered in the above-entitled matter on November 13, 2023.

A copy of said order is attached hereto.

DATED this 13th day of November 2023.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY Isabel Franco

ISABEL FRANCO  
Administrative Assistant II

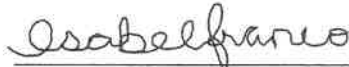
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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 13th day of November 2023, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Ronald J. Dreher, Esq.  
P.O. Box 6494  
Reno, NV 89513

Karl S. Hall, Reno City Attorney  
Jonathan Shipman, Assistant City Attorney  
Post Office Box 1900  
Reno, Nevada 89505

  
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ISABEL FRANCO  
Administrative Assistant II

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STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ROSA MYERS,

Complainant,

v.

CITY OF RENO AND RENO FIRE  
DEPARTMENT,

Respondents.

Case No. 2023-013

**ORDER DENYING COMPLAINANT'S  
MOTION FOR A DEFAULT ORDER**

**EN BANC**

On November 8, 2023, this matter came before the State of Nevada, Government Employee-Management Relations Board (the "Board") for consideration and decision pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288. At issue was Respondent's Motion for a Default Order.

Under NAC 288.220(1) a party may file an Answer within 20 days after receipt of a Complaint. The use of the term "may" clearly indicate that the filing of an Answer is permissive and not mandatory. However, as provided under NRS 288.220(3), there is a penalty for filing an Answer beyond the timeframe specified in subsection (1). The penalty is that any affirmative defenses contained in an Answer are barred without the consent of the opposing party or the Board. In this case the opposing party is seeking to have a default judgment entered in their favor indicating they are not providing their consent. Moreover, the Board has decided that it will similarly not provide its consent. Thus, while the Answer is deemed filed, it must be noted that given the lack of consent from the Board and Complainant, any affirmative defenses are barred.

...

1           Based on the foregoing, it is hereby **ORDERED** that Complainant's Motion to for a Default  
2 Order is hereby **DENIED**.

3           It is further **ORDERED** that the Answer may be deemed filed but all affirmative defenses are  
4 hereby **BARRED**.

5           It is further **ORDERED** that a hearing is granted for the case and that the Commissioner shall  
6 schedule this matter for a hearing.

7

8           Dated this 13 day of November 2023.

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GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

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BY:   
BRENT C. ECKERSLEY, Chair

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Clerk of the Court  
Transaction # 10329176 : csulezic

EXHIBIT 1

EXHIBIT 1

FILED  
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**STATE OF NEVADA**  
**GOVERNMENT EMPLOYEE-MANAGEMENT**  
**RELATIONS BOARD**

ROSA MYERS,  
  
Complainant,  
v.  
CITY OF RENO AND RENO FIRE  
DEPARTMENT,  
  
Respondents.

Case No. 2023-013

**NOTICE OF ENTRY OF ORDER**  
**EN BANC**

TO: Complainant, by and through their attorney, Ronald J. Dreher, Esq.; and

TO: Respondents, by and through their attorneys, Karl S. Hall, Reno City Attorney and Jonathar Shipman, Assistant City Attorney.

PLEASE TAKE NOTICE that the **ORDER DENYING MOTION TO DISMISS COMPLAINT** was entered in the above-entitled matter on September 22, 2023.

A copy of said order is attached hereto.

DATED this 22<sup>nd</sup> day of September 2023.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY Isabel Franco  
ISABEL FRANCO  
Administrative Assistant II

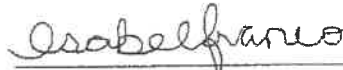


**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 22<sup>nd</sup> day of September 2023, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Ronald J. Dreher, Esq.  
P.O. Box 6494  
Reno, NV 89513

Karl S. Hall, Reno City Attorney  
Jonathan Shipman, Assistant City Attorney  
Post Office Box 1900  
Reno, Nevada 89505

  
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ISABEL FRANCO  
Administrative Assistant II

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STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ROSA MYERS,

Complainant,

v.

CITY OF RENO AND RENO FIRE DEPARTMENT,

Respondents.

Case No. 2023-013

**ORDER DENYING MOTION TO  
DISMISS COMPLAINT**

**EN BANC**

On September 20, 2023, this matter came before the State of Nevada, Government Employee-Management Relations Board (the "Board") for consideration and decision pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288. At issue was Respondent's Motion to Dismiss.

The Board may deny a motion to dismiss if there are material facts in dispute. *Pershing County Law Enforcement Association & Operating Engineers Local Union, No. 3 v. Pershing County*, Case No. A1-045974, Item No. 725, (2010); *Eduardo M. Flores v. Clark County, A Nevada Public Entity, Clark County Department of Juvenile Services, A Department of lark County*, Case No. A1-045990, Item No. 737 (2010); *Leonard Cardinale v. City of North Las Vegas*, Case No. 2019-010, Item No. 871 (2019); *AFSCME, Local 4041 v. State of Nevada, Department of Corrections, High Desert State Prison, et al.*, Case No. 2020-002, Item No. 862 (2020). It is still unclear to the Board what the status of the grievances are with respect to Complainant and the import of such based on the filings made thus far. Moreover, the parties are still disputing the effect of the grievances and their validity.

Based on the foregoing, it is hereby **ORDERED** that Respondent's Motion to Dismiss the Complaint be **DENIED**.

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It is further **ORDERED** that Prehearing Statements in Case No. 2023-013 will be due twenty  
one days following the issuance of the Notice of Entry of Order.

Dated this 22nd day of September 2023.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By:   
BRENT ECKERSLEY, ESQ., Chair