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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**DONNA E. JONES,**

**Petitioner,**

**vs.**

**RESORT RETAILERS and  
ZENITH INSURANCE COMPANY,**

**Respondents.**

**ORDER DENYING REQUEST  
FOR RECONSIDERATION**

**Case No. 2002480**

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Resort Retailers and its insurance carrier, Zenith Insurance Co., (referred to jointly as “Resort”) ask the Appeals Board of the Utah Labor Commission to reconsider its prior decision affirming benefits for Donna E. Jones under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this matter pursuant to § 63G-4-302 of the Utah Administrative Procedures Act.

**BACKGROUND AND ISSUES PRESENTED**

Ms. Jones claims workers’ compensation benefits for a work accident that occurred on December 28, 2001, causing injury to her back. A hearing was held and the medical issues were referred to a medical panel. The panel found Ms. Jones’s back injuries were caused by her work accident, that she had not reached medical stability, and that spinal surgery was necessary. Resort Retailers then presented another medical opinion and Judge Lima issued her decision, which excluded the medical panel’s opinion. On remand from the Commission, Judge Lima admitted the medical panel report and the new medical opinion into evidence. Judge Lima then submitted the medical issues again to the panel in light of Resort Retailers’ new medical opinion. The panel examined Ms. Jones, reviewed the new evidence, and then issued another report. The panel again found that Ms. Jones’s back injury was caused by her work accident and that surgery was necessary. Judge Lima awarded benefits based on the panel’s recommendation. Resort Retailers filed a motion for review with the Appeals Board. The Appeals Board denied the motion for review and affirmed Judge Lima’s opinion.

In its Motion for Reconsideration, Resort Retailers offers a new medical opinion to refute the previous medical panels’ opinions as to causation and the recommendation for surgery. Resort Retailers argues that because three more years have passed since the Commission awarded benefits, including spinal surgery, the Commission should hold a new evidentiary hearing to decide whether Ms. Jones’ back condition still requires surgery.

## **DISCUSSION**

The issues of medical causation, medical stability and recommended medical care have been adjudicated in this matter. Nevertheless, Resort Retailers provides a recent medical opinion from its medical consultant that reaches an opinion contrary to the medical panel. A review of this new opinion also shows that the medical consultant based his opinion on the medical evidence that the medical panel already had reviewed. The Appeals Board declines to reopen the evidentiary record to include Resort Retailers' recent medical opinion on issues already decided. The Appeals Board reaffirms its previous decision in this case and denies Resort Retailers' Motion for Reconsideration.

## **ORDER**

The Appeals Board hereby denies Resort Retailers' Motion for Reconsideration. It is so ordered.

Dated this 21<sup>st</sup> day of July, 2009.

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Colleen Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch

## **NOTICE OF APPEAL RIGHTS**

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.