

---

**APPEALS BOARD  
UTAH LABOR COMMISSION**

**JOSE M. LOPEZ,**

**Petitioner,**

**vs.**

**CONAGRA BEEF COMPANY,  
SWIFT and ZURICH INSURANCE**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case Nos. 03-0467, 03-0468  
03-0469 and 03-0470**

---

Swift and its insurance carrier, Zurich Insurance, (referred to jointly as "Swift" hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Jose M. Lopez under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-2-801(3) of the Utah Workers Compensation Act.

**BACKGROUND AND ISSUE PRESENTED**

Beginning in 1995 and continuing through 2002, Mr. Lopez worked in a slaughterhouse which was first owned by ConAgra but later sold to Swift. Mr. Lopez asserts that he injured his low back in a series of four accidents, the first three occurring while he was employed by ConAgra and the fourth occurring while he was employed by Swift.

Based on evidence presented at hearing and the reports of an impartial panel of medical experts, Judge Lima concluded that Mr. Lopez first injured his low back while working for ConAgra on December 15, 1997. This injury was temporarily aggravated by the next two work accidents at ConAgra on January 20, 1998, and August 20, 1999. Judge Lima further concluded that Mr. Lopez's fourth accident, on November 11, 2002, while working for Swift, resulted in a permanent aggravation to the low-back injury.

Judge Lima awarded various workers' compensation benefits to Mr. Lopez and allocated liability for those benefits to either ConAgra or Swift according to the requirements of the Utah Workers' Compensation Act and the circumstances of each of Mr. Lopez's four work accidents. ConAgra does not contest Judge Lima's decision. Swift, however, does challenge the decision. Specifically, Swift contends that Mr. Lopez was not involved in an "accident" while working for Swift on November 11, 2002, and did not suffer a compensable injury on that date. Swift asserts

**ORDER AFFIRMING ALJ'S DECISION**  
**JOSE M. LOPEZ**  
**PAGE 2 OF 5**

that Mr. Lopez's back problems are simply a continuation of the back problems he was already suffering prior to his work for Swift.

**FINDINGS OF FACT**

The Appeals Board adopts Judge Lima's findings of fact. As material to the issues raised by Swift's motion for review, those facts can be summarized as follows.

Mr. Lopez's work for ConAgra and later for Swift involved heavy lifting and other significant exertions necessary for the processing of cattle carcasses. This work was done at a rapid rate—each day, Mr. Lopez handled between 1,400 and 1,500 carcasses. The exertion required by Mr. Lopez's work was even greater when dealing with large carcasses and in winter when the hides were more difficult to handle.

Mr. Lopez first experienced low-back pain on December 15, 1997, while working for ConAgra. Over the next several months, Mr. Lopez received conservative medical care for his back pain while continuing to work. On January 20, 1998, he slipped in hydraulic oil, and on August 20, 1999, he was hit by a carcass. After both accidents, Mr. Lopez continued to work and received additional conservative care for low-back pain. On November 11, 2002, after Swift had purchased the facility, Mr. Lopez was performing his regular work duties but was experiencing difficulty with the equipment. Also, the carcasses were larger than usual. These factors increased the exertion required to perform his tasks. Mr. Lopez's back pain rapidly increased and, over the following days, spread to his right leg and foot. He was diagnosed with a herniated disk with extruded material at the L4/L5 level of his spine. He underwent surgery to repair this condition on January 20, 2003, and reached medical stability on April 15, 2003.

The Appeals Board is persuaded by the opinion of the medical panel that the first of Mr. Lopez's accidents (December 15, 1997) resulted in a lumbar disc herniation, which was temporarily aggravated by the second and third accidents (January 20, 1998 and August 20, 1999), and then permanently aggravated by the fourth accident (November 11, 2002), thereby necessitating surgery. The Appeals Board also accepts the panel's opinion that Mr. Lopez has suffered a permanent 13% whole person impairment from the foregoing events, with 50% of that impairment attributable to the first accident and 50% attributable to the fourth accident.

**DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2-401 of the Utah Workers' Compensation Act provides disability compensation and medical benefits to workers injured "by accident" arising out of and in the course of employment. Swift contends that Mr. Lopez was not involved in an "accident" at Swift on November 11, 2002, and therefore is not entitled to any workers' compensation benefits from Swift. However, the Utah Supreme Court has defined the term "accident" as used in § 401 of the Act as "an unexpected or unintended occurrence that may be *either* the cause *or* the result of an injury."

**ORDER AFFIRMING ALJ'S DECISION**  
**JOSE M. LOPEZ**  
**PAGE 3 OF 5**

*Allen v. Industrial Commission*, 729 P.2d 15, 22 (Utah 1986) (emphasis in original). Applying this definition to the events of November 11, 2002, the Appeals Board concludes that Mr. Lopez's rapidly increasing back pain was an unexpected and unintended occurrence that was the result of his work exertions, thereby constituting an accident within the meaning of § 401.

Swift also argues Mr. Lopez has failed to show that his work at Swift on November 11, 2002, was the legal and medical cause of his back injury. Regarding the element of legal causation, the Appeals Board finds that the lifting and other exertions performed by Mr. Lopez on November 11, 2002, were unusual and extraordinary and, therefore, sufficient to meet even the more stringent test for legal causation. Regarding the element of medical causation, the Appeals Board has accepted the medical panel's opinion that Mr. Lopez's work at Swift on November 11, 2002, permanently aggravated his back problems and necessitated surgery. The Appeals Board therefore finds that Mr. Lopez has met his burden of proving medical causation.

The Appeals Board notes Swift's argument that the Board should reject the medical panel's opinion regarding the apportionment of Mr. Lopez's impairment between the injury suffered while working for ConAgra on December 15, 1997, and the injury suffered while working for Swift on November 11, 2002. The Appeals Board has carefully considered the panel's opinion, as expressed and developed in the panel's initial report and supplemental reports to Judge Lima. The Appeals Board notes the panel's medical expertise and long experience in evaluating medical problems such as those experienced by Mr. Lopez. The Appeals Board also notes the panel's impartiality in this matter, as well as its access to and review of all pertinent medical records and opinions. While it is undeniably difficult to assess medical causation in a multiple-injury case such as this, the Appeals Board finds the panel's opinion to be thorough, well-reasoned, and persuasive.

Finally, Swift suggests that the medical panel erred by attributing some degree of medical causation of Mr. Lopez's back problems to the November 11, 2002, events at Swift. In support of this argument, Swift points to the fact that Mr. Lopez had suffered a herniated disc prior to November 11, 2002. However, as the medical panel has described in its report, Mr. Lopez's accident at Swift on November 11, 2002, permanently aggravated Mr. Lopez's preexisting disc injury to the extent that surgery became necessary. Consequently, the Appeals Board finds that the panel has correctly apportioned liability for Mr. Lopez's overall impairment between first and fourth accidents.

**[INTENTIONALLY LEFT BLANK]**

**ORDER AFFIRMING ALJ'S DECISION**  
**JOSE M. LOPEZ**  
**PAGE 4 OF 5**

**ORDER**

The Appeals Board affirms Judge Lima's decision. It is so ordered.

Dated this 28<sup>th</sup> day of April, 2009.

---

Colleen S. Colton, Chair

---

Patricia S. Drawe

---

Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

**ORDER AFFIRMING ALJ'S DECISION**  
**JOSE M. LOPEZ**  
**PAGE 5 OF 5**

**CERTIFICATE OF MAILING**

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Jose M. Lopez, Case No. 03-0467, was mailed first class postage prepaid this \_\_\_\_ day of April, 2009, to the following:

Jose M. Lopez  
800 2nd St  
Ogden UT 84404

ConAgra  
410 N 200 W  
Hyrum UT 84319

Scott Lythgoe, Esq.  
289 24th St Ste 150  
Ogden UT 84401

Theodore E. Kanell, Esq.  
136 E S Temple Ste 1700  
Salt Lake City UT 84111

Ford Scalley, Esq.  
P O Box 11429  
Salt Lake City UT 84147

---

Sara Danielson  
Utah Labor Commission