APPEALS BOARD
UTAH LABOR COMMISSION

JAIME MIRANDA, **Petitioner,** **vs.** **STANDARD DRYWALL and NATIONAL UNION FIRE INSURANCE OF PITTSBURGH,** **Respondents.**	**ORDER ON MOTION FOR REVIEW** **----------** **ORDER OF REMAND** **Case No. 03-0889**

Standard Drywall and its insurance carrier, National Union Fire Insurance of Pittsburgh, (referred to jointly as "Standard Drywall") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to Jaime Miranda 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 Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Miranda claimed workers' compensation benefits for cranial and cervical nerve injuries caused by a work accident at Standard Drywall on August 1, 2003. Judge Marlowe held an evidentiary hearing and then appointed a medical panel to review the medical aspects of Mr. Miranda's claim. Based on the panel's report, Judge Marlowe awarded benefits, including continuing temporary total disability compensation.

In its motion for review, Standard Drywall argues that Mr. Miranda has failed to prove that: 1) his work accident is the medical cause of his alleged injuries; and 2) he is entitled to temporary total disability benefits after December 2003.

FINDINGS OF FACT

The Appeals Board finds the following facts material to the issues raised by Standard Drywall's motion for review. The Appeals Board also adopts Judge Marlowe's findings of fact to the extent they are consistent with this decision.

While working on a roof for Standard Drywall on August 1, 2003, Mr. Miranda fell about five feet from one level of a roof to a lower level. When he landed, a stray nail gun cartridge discharged and hit him in the neck, requiring immediate medical attention and surgery. After the

accident and surgery, Mr. Miranda continued to experience pain, numbness and tingling in his face, neck, upper left arm and upper/middle back, as well as a loss of taste. Mr. Miranda then presented for treatment of his complaints several times after August 1, 2003, up until he was examined by Dr. Rosado on December 4, 2003. Dr. Rosado diagnosed Mr. Miranda with various cranial nerve and cervical spine injuries resulting from the work accident. Dr. Rosada concluded that Mr. Miranda had not reached medical stability until December 4, 2003, and had a 33% permanent whole person impairment as a result of his work injuries.

During March 2004, Standard Drywall arranged for Mr. Miranda to be examined by its medical consultants, Dr. Tagge and Dr. Moress. Dr. Tagge found no medical causal connection between Mr. Miranda's work accident and medical problems. Dr. Tagge concluded that Mr. Miranda had reached medical stability by September 1, 2003, with no permanent impairments. Dr. Moress's opinion was generally the same as that of Dr. Tagge.

In view of the conflicts of medical opinion between Mr. Miranda's doctor and Standard Drywall's consulting physicians, Judge Marlowe appointed an impartial panel of medical experts to review the medical aspects of Mr. Miranda's claim. The panel consisted of a specialist in occupational medicine and a specialist in neurology. It considered Mr. Miranda's medical history and reviewed all his medical records, including the opinions of Dr. Tagge, Dr. Moress, and Dr. Rosada. The panel also personally examined Mr. Miranda and arranged for additional diagnostic testing. Based on the foregoing information and the panelists' expertise, the panel determined that Mr. Miranda's work injury and the ensuing surgery had injured his facial and trigeminal nerves, as well as other nerves affecting his left arm and hand. The panel further concluded that Mr. Miranda might require further observation and physical therapy before reaching "maximal improvement." Finally, the panel offered its provisional assessment that Mr. Miranda had a 20% whole person impairment from his injuries.

For the reasons discussed below, the Appeals Board accepts the opinions of the medical panel and Dr. Rosada that Mr. Miranda's work accident and ensuing surgery medically caused his injuries. As also discussed below, the Appeals Board accepts Dr. Rosada's opinion that Mr. Miranda reached medical stability on December 4, 2003.

DISCUSSION AND CONCLUSIONS OF LAW

Judge Marlowe relied on the medical panel's opinion in concluding that Mr. Miranda was entitled to medical and disability benefits for his injuries, including temporary total disability compensation from the date of his accident and continuing indefinitely. Standard Drywall argues that Judge Marlowe's finding of a medical causal connection between Mr. Miranda's work accident and his medical problems is incorrect because it relies on the medical panel's allegedly flawed report. With respect to Judge Marlowe's award of temporary total disability compensation, Standard Drywall again argues that the medical panel's opinion is incorrect and should be disregarded. The Appeals Board addresses each of these topics below.

Medical causation. In order for Mr. Miranda to receive workers' compensation benefits for his injuries, he must establish, among other things, that his work accident is the medical cause of those injuries. To that end, he submitted Dr. Rosada's opinion that his cranial nerve and cervical spine injuries were caused by the accident. Standard Drywall submitted contrary opinions from its own medical experts.

Section 34A-2-601 of the Utah Workers' Compensation Act permits the Commission's ALJs to refer the medical aspects of disputed workers' compensation cases to panels of medical experts. The Commission's Rule R602-2-2 requires ALJs to appoint medical panels where there are "significant medical issues." Rule R602-2-2 further provides that significant medical issues must "generally" be shown by conflicting medical opinions. In light of the conflict of medical opinion in this case, it was appropriate for Judge Marlowe to appoint a medical panel to consider the medical aspects of Mr. Miranda's claim.

The medical panel consisted of two impartial medical specialists who had the opportunity to review the complete medical record, including the reports of all the doctors, to examine Mr. Miranda, and to order and review an MRI test. Based on this impartial and extensive review, the panel opined that Mr. Miranda's condition was caused by the work accident. The Appeals Board finds this conclusion to be well reasoned and consistent with the underlying evidence. Judge Marlowe properly relied on this portion of the panel's report, and the Appeals Board concurs with her finding that Mr. Miranda's injuries were caused by his work accident. Mr. Miranda is therefore entitled to workers' compensation benefits for those injuries.

Temporary total disability compensation. Temporary total disability compensation is one of several specific benefits provided by the Utah Workers' Compensation Act. It provides subsistence income for injured workers during the period they are healing from their injuries. Temporary total disability compensation ends when the injured worker reaches medical stability.

The medical panel's comments indicate that Mr. Miranda had not yet reached medical stability. On that basis, Judge Marlowe ordered Standard Drywall to continue paying temporary total disability compensation indefinitely. Standard Drywall contends that Judge Marlowe erred in relying on the panel's assessment. For the following reasons, the Appeals Board agrees with Standard Drywall's argument.

As pointed out in Standard Drywall's motion for review, "medical stability" does not mean that the injured worker will not experience any further improvement or require any further medical care. Rather, medical stability is achieved when the injured worker's rate of improvement has plateaued. In this case, the parties submitted different opinions as to the date on which Mr. Miranda had reached medical stability. Standard Drywall's medical consultants believed that Mr. Miranda was stable by early September 2003. Dr. Rosada, Mr. Miranda's own examining doctor, concluded that he had reached medical stability by December 4, 2003. The medical panel reported that Mr. Miranda's condition had not yet stabilized because he "may" require additional physical therapy and observation before he reaches "maximal" improvement. The panel phrased its opinion on that

question in somewhat vague and speculative terms. The Appeals Board also notes that the panel's opinion regarding medical stability was substantially different from the opinions of all other medical experts. For these reasons, the Appeals Board is not persuaded by the panel's opinion on this point.

Having found the medical panel's opinion regarding medical stability to be unpersuasive, the Appeals Board turns to the other medical opinions to resolve the issue. The opinions of Dr. Moress and Dr. Tagge do not appear to be based on a correct diagnosis of Mr. Miranda's injuries and, for that reason, are also unpersuasive. On the other hand, Dr. Rosada's opinion is derived from a generally correct diagnosis and is coupled with an analysis of the effect Mr. Miranda's injuries would have had on his ability to work. In summary, Dr. Rosada concluded that Mr. Miranda did not reach medical stability until December 4, 2003. The Appeals Board accepts Dr. Rosada's assessment and finds that Mr. Miranda is entitled to temporary total disability compensation to that date.

In light of this determination, the Appeals Board finds it unnecessary to address Standard Drywall's other arguments. However, the Appeals Board notes that Judge Marlowe dismissed Mr. Miranda's claim for permanent partial disability compensation because he was not yet medically stable. Because the Appeals Board has reached a different conclusion on the question of medical stability, it appears that Mr. Miranda's claim for permanent partial disability compensation must be reinstated and adjudicated. The Appeals Board will therefore remand this matter to Judge Marlowe for further proceedings to resolve that claim.

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ORDER

The Appeals Board remands this matter to Judge Marlowe for further proceedings to adjudicate Mr. Miranda's claim for permanent partial disability compensation. At the conclusion of such additional proceedings, Judge Marlowe will issue a new decision that resolves that issue and incorporates the findings and conclusions of this decision and awards benefits accordingly. It is so ordered.

Dated this 27th day of May, 2008.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch