
**APPEALS BOARD
UTAH LABOR COMMISSION**

ROBERTA M. HALL,

Petitioner,

vs.

**WALMART and NATIONAL
UNION FIRE OF PITTSBURG,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 20031004

Walmart and its insurance carrier, National Union Fire of Pittsburg, (referred to jointly as "Walmart") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's award of benefits to Roberta M. Hall 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

Ms. Hall claims workers' compensation benefits for a work accident that occurred on January 22, 2002, injuring her right foot. Judge George held an evidentiary hearing and then, based on conflicting medical opinions as to medical causation, referred the medical aspects of the case to a medical panel. After reviewing the medical panel's opinion, Walmart asked that two additional medical opinions be submitted to the panel. Judge Hann, who had been reassigned the case, declined to submit the additional medical reports to the panel and, based on the evidence, found that the work injury caused Ms. Hall's foot injury and awarded benefits.

In its motion for review, Walmart argues that because the panel's opinion needed clarification, it was error for Judge Hann not to submit the new evidence to a panel or permit a hearing on the matter. Walmart contends that the preponderance of the evidence shows Ms. Hall's foot condition was not caused by a work injury.

FINDINGS OF FACT

The Appeals Board adopts Judge Hann's findings of facts. The facts relevant to the issues in the motion for review can be summarized as follows:

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Ms. Hall has insulin dependent diabetes and in 1999 was diagnosed with diabetic neuropathy in both feet. On January 21, 2002, Ms. Hall was working at Walmart when her right foot was struck by a commercial floor buffing machine. After the foot swelling failed to resolve, Ms. Hall sought medical treatment on March 27, 2002.

Ms. Hall's first doctor, Dr. Burleigh, was uncertain whether the work injury had caused her foot condition. Ms. Hall then began treatment with Dr. Kenney, who found that Ms. Hall's right foot condition was a direct result of the work injury. However, Walmart's medical consultants, Drs. Moress and Benowitz, denied that Ms. Hall's foot condition was caused by the work injury, and that the condition was attributed solely to diabetic neuropathy.

The medical panel, consisting of an orthopedic surgeon and a specialist in foot and ankle treatment, reviewed the findings of fact, the medical records, and examined Ms. Hall. The panel found that, although Ms. Hall suffers from diabetic polyneuropathy, it was the work accident that caused her right foot condition.

DISCUSSION AND CONCLUSIONS OF LAW

The first issue before the Appeals Board is whether the panel's opinion needed clarification in light of Walmart's submission of two new medical reports. Commission Rule R602-2-2.B offers guidance on this issue. It provides:

A hearing on objections to the panel report **may** be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge **may**, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification. (Emphasis added.)

The Appeals Board has reviewed the evidentiary record, the two new medical reports, and the panel's opinion and does not find that the panel's opinion is in need of further clarification. One of the reports was from Dr. Moress, wherein he stated his disagreement with the panel's report and reiterated his previous opinion; the second opinion was from Dr. Smith, who, similar to Walmart's other medical consultants, had the opinion of no medical causation. The Appeals Board notes that both parties had previously provided medical evidence supportive of their respective positions on medical causation. The additional opinions that Walmart wants resubmitted to the panel have previously been represented in Walmart's evidence. They do not create any controversy that would require the panel to clarify its opinion. Therefore, the Appeals Board concurs with Judge Hann's decision not to resubmit the medical evidence to the panel or to hold a hearing on Walmart's objections.

Walmart's next contention is that the preponderance of the evidence supports a finding of no medical causation. However, there were actually conflicting medical opinions as to medical

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causation in the record, and for this reason Judge Hann appointed an independent panel of experts to evaluate the medical issues of the claim. The panelists, who are experts in medical specialties relevant to Ms. Hall's claim, reviewed the medical record, personally examined Ms. Hall, and concluded that Ms. Hall's right foot condition was medically caused by the work injury. Given the panel's expertise and independence, the Appeals Board finds the panel's opinion persuasive and supported by other medical evidence in the record, including the opinion of Dr. Kenney.

In summary, the Appeals Board finds that Ms. Hall's right foot condition was medically caused by the January 22, 2002, work injury and she is entitled to benefits.

ORDER

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

Dated this 28th day of April, 2009.

Patricia S. Drawe

Joseph E. Hatch

For the reasons stated in the Motion for Review, I dissent.

Colleen S. Colton, Chair

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission 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.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Roberta M. Hall 20031004, was mailed first class postage prepaid this ____ day of May, 2009, to the following:

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