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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**RONALD P. SEELY,**

**Petitioner,**

**vs.**

**NFT TRANSPORTATION and  
BANKERS STANDARD INSURANCE,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 20040398**

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Ronald P. Seely asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Sessions' denial of Mr. Seely's claim for benefits 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**

Mr. Seely claims workers' compensation benefits from NFT Transportation and its insurance carrier, Bankers Standard Insurance, (referred to jointly as "NFT" hereafter) for a work accident that occurred on March 6, 1996, injuring his back. NFT Transportation accepted liability for the back injury and paid workers' compensation benefits to Mr. Seely. On April 29, 2004, Mr. Seely filed the present claim to compel NFT to pay additional benefits, including permanent total disability compensation.

Judge Sessions held an evidentiary hearing and then referred the medical aspects of Mr. Seely's claim to a medical panel. Judge Sessions adopted the panel's findings and issued a brief decision. The matter was later remanded to Judge Sessions by the Appeals Board with instructions to make necessary findings of facts and conclusions of law to support his decision. On May 5, 2006, Judge Sessions issued a more detailed decision awarding medical expenses, temporary disability compensation and permanent partial disability compensation to Mr. Seely, but denying Mr. Seely's claim for permanent total disability compensation. Judge Sessions found that the 1996 work injury was not the direct cause of Mr. Seely's permanent total disability.

In his motion for review, Mr. Seely argues that the 1996 work injury was the direct cause of his permanent total disability. Mr. Seely also argues that Judge Sessions failed to adequately explain his reasoning for his conclusions of law.

**FINDINGS OF FACT**

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The Appeals Board adopts Judge Sessions' findings of fact with supplementation from the evidentiary record. The following facts are material to the issues in the motion for review and can be summarized as follows:

Mr. Seely worked as a mechanic for NFT since 1993. On March 6, 1996, Mr. Seely fell out of a vehicle he was repairing, catching his belt on a radiator support and jerking his low back. The initial assessment was L4 radiculopathy and lumbosacral strain. He underwent conservative treatment with Dr. Bacon, including physical therapy and injections. On August 30, 1996, and September 16, 1996, Mr. Seely was also treated by Dr. Craner for abdominal pain with some diarrhea, which was later diagnosed as colitis.

On March 3, 1997, Mr. Seely underwent back surgery. Mr. Seely continued to complain of back and leg pain and he underwent a second back surgery on April 3, 2000. Mr. Seely reported fluctuating levels of pain over the next few years, receiving further treatment for his back pain, primarily pain management. On December 20, 2000, Dr. Colledge commented on Mr. Seely's work ability. He indicated that Mr. Seely would not do well lifting over 30 pounds but he should be able to do jobs where he could modify his environment, such as by changing positions every 20-30 minutes. Dr. Colledge found Mr. Seely's back condition had reached medical stability by January 31, 2001.

In the meantime, on October 30, 2000, Mr. Seely left his employment with NFT and by December 11, 2000, he was working full-time as an air quality control specialist. He was terminated from this position on February 2, 2001, for reasons unrelated to his medical conditions. He has not returned to work.

A functional capacity examination was conducted on February 28, 2001. The examiner observed that Mr. Seely was able to: sit 34 minutes, 18 minutes repeated; stand 20 static and 48 minutes dynamic; walk with no limitation other than reported sharp pain at pace greater than 3.5 (walking ½ mile in 10 minutes); no limitations to climbing stairs or pushing/pulling; and an ability to lift up to 80 pounds. As a result of the testing, it was recommended that Mr. Seely could work in the heavy physical demand category for working. Dr. Colledge reviewed the results and reiterated that Mr. Seely should not be released to lifting more than 25-30 pounds. Dr. Colledge completed a physical capacity evaluation of Mr. Seely, indicating that in an eight-hour work day, Mr. Seely could: sit, stand, or walk two to four hours at a time for a total of four to six hours a day; lift 20 pounds frequently and 30 pounds occasionally; and stoop, squat, kneel, climb, twist, rotate and crawl occasionally.

On July 23, 2001, Mr. Seely reported incontinence issues to Dr. Craner. Mr. Seely underwent a series of testing to discover the reason for the incontinence. He continued to receive medical treatment for this issue until about 2004, although he still continues to have ongoing incontinence problems. Dr. Craner states that Mr. Seely may have suffered nerve dysfunction secondary to his back problems.

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On June 9, 2003, NFT's medical consultants, Drs. Moress and Knoebel, examined Mr. Seely and found failed back syndrome. The consultants concluded Mr. Seely's bowel/rectal incontinence was not medically caused by the 1996 work accident. On November 8, 2004, a supplemental report was issued by Drs. Moress and Knoebel following another examination of Mr. Seely. The consultants found the results of the February 2001 functional capacity examination were still valid. However, they recommended Mr. Seely work in a light to medium physical demand category, to include occasional lifting of 30 pounds, frequent lifting of 20 pounds, and constant lifting of 10 pounds.

At the hearing held on April 13, 2005, Mr. Seely testified that due to back and leg pain, performing basic household tasks would be difficult because he needed to sit or lie down frequently to relieve the pain. He reported limitations in his ability to walk, stand, and push or pull (such as operating a vacuum), and that after about 45 minutes of walking, standing or sitting he needs to lie down for about one hour. However, Mr. Seely also testified in great detail limitations he has in his daily life due to his incontinence condition. Mark Hedrick, a vocational expert testified about Mr. Seely's ability to find work. Based on the physical restrictions from Drs. Moress and Knoebel related to Mr. Seely's low back condition (not the bowel incontinence condition), Mr. Hedrick stated there were jobs available that Mr. Seely could perform within his restrictions, such as a dispatcher, security guard, traffic clerk, small products assembler, auto-repair service estimator, and emissions inspector.

Due to a dispute in the medical opinions as to whether Mr. Seely's incontinence issues were caused by the work injury or subsequent surgeries, a medical panel was appointed. The medical panel examined Mr. Seely, reviewed the medical records, and provided an opinion on August 9, 2005. The panel found a medical causal connection between Mr. Seely's lower back symptoms and the work accident. The panel found Mr. Seely reached medical stability from the work injury nine months following the surgery of April 3, 2000, and that as a result of the back condition, Mr. Seely was left with a 20% whole person impairment. The panel found that Mr. Seely's unverifiable incontinence condition was not medically caused by the 1996 work injury or subsequent surgeries.

**DISCUSSION AND CONCLUSIONS OF LAW**

The issue before the Appeals Board is whether Mr. Seely is qualified for permanent total disability compensation. Under Section 34A-2-413(1)(B) of the Utah Workers' Compensation Act, Mr. Seely is entitled to these benefits provided that he can prove that (1) he sustained a significant impairment or combination of impairments as a result of the work accident; (2) he is permanently and totally disabled as further determined under a four-part test set forth under § 413(C); and (3) the work accident was the direct cause of his permanent total disability. Judge Sessions concluded that Mr. Seely failed to establish that the work accident was the direct cause of his permanent total disability, and dismissed his claim for permanent total disability compensation; Mr. Seely challenges this finding.

At the conclusion of the hearing, both parties provided conflicting opinions as to whether Mr. Seely's bowel condition was medically caused by the work accident and therefore an impartial panel

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of experts was appointed to review the matter. The Appeals Board has reviewed the panel's report and finds the report persuasive and supported by the facts. Therefore, as a preliminary matter, the Appeals Board finds that Mr. Seely's bowel condition was not medically caused by the work accident. The Appeals Board reviews Mr. Seely's claim for permanent total disability based on the evidence of Mr. Seely's low back condition and limitations only.

Assuming, for purposes of this motion for review, that Mr. Seely successfully demonstrated that he sustained a significant impairment as a result of the work accident and that he is permanently and totally disabled as defined under § 413(c), the Appeals Board is not convinced that the work accident was the direct cause of his alleged permanent total disability.

According to the evidentiary record, at the most restrictive, Mr. Seely was limited in walking up to half a mile in 10 minutes, sitting 34 minutes and 18 minutes repeated, standing 20 minutes static and 48 minutes dynamic, lifting 20 pounds frequently and 30 pounds occasionally; he qualified for the light to medium physical demand category for working.<sup>1</sup> It was these restrictions that the vocational expert used to determine whether Mr. Seely could perform any available jobs. Several jobs were identified that Mr. Seely was qualified for and that he would be able to perform, even with his physical restrictions. Although Mr. Seely testified to substantial limitations he has in his daily activities, including limitations from both his bowel condition and his low back condition, the reported limitations due to his back condition are not supported by the evidence.

Reviewing the evidentiary record, including Mr. Seely's testimony, the Appeals Board finds that if Mr. Seely was found to be permanently and totally disabled, the disability was not caused by his back condition, but rather by the limitations Mr. Seely has placed on himself due to his incontinence condition. Thus, the work injury was not the direct cause of any permanent and total disability.

The Appeals Board notes Mr. Seely's second argument that Judge Sessions' failed to adequately explain the reasons for his conclusions. The Appeals Board recognizes that Judge Sessions' reasoning in stating his conclusions was brief; however, the Appeals Board is satisfied that Judge Sessions' decision is sufficient as supplemented by this decision. In summary, the Appeals Board concurs with Judge Sessions' finding that Mr. Seely is not qualified for permanent total disability and his dismissal of Mr. Seely's claim for these benefits.

**ORDER**

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

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<sup>1</sup> However, the Appeals Board notes that Dr. Colledge had only limited Mr. Seely's walking, sitting, or standing to 2-4 hours at one time and permitted occasional stooping, squatting, kneeling, climbing, twisting, rotating and crawling.

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

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch

**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.