
**APPEALS BOARD
UTAH LABOR COMMISSION**

CAROLE PYPER,

Petitioner,

vs.

**MASCO CONTRACTOR
SERVICES, INC. and
TRAVELERS INSURANCE CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 04-0899

Carole Pyper asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's limited award of benefits to Ms. Pyper under the Utah Occupational Disease Act, Title 34A, Chapter 3, 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. Pyper claims medical expenses and recommended medical care from Masco Contractor Services, Inc. and its insurance carrier, Travelers Insurance Co., (referred to jointly as "Masco") for an occupational disease allegedly caused by her work at Masco. Ms. Pyper claims her myofascial pain syndrome and cervical degenerative disc disease were caused and/or aggravated by her work at Masco. Judge Marlowe held an evidentiary hearing and later referred the disputed medical issues to an impartial panel of medical experts. After reviewing the panel's opinion, Judge Marlowe adopted the panel's findings and awarded Ms. Pyper medical expenses up through March 26, 2001, when her occupational disease reached medical stability.

In her motion for review, Ms. Pyper argues Judge Marlowe improperly apportioned her medical expenses and that she is entitled to additional medical care. In its response, Masco argues that if the Appeals Board determines Judge Marlowe apportioned Ms. Pyper's benefits, such apportionment of medical expenses is authorized under § 34A-3-110 of the Occupational Disease Act.

FINDINGS OF FACT

The Appeals Board adopts Judge Marlowe's findings of facts. The issues relevant to Ms. Pyper's motion for review can be summarized as follows:

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Ms. Pyper worked for Masco beginning in 1999. About 75% of Ms. Pyper's duties included performing data entry; however, her work station was not set up in a fashion conducive to performing this task and Ms. Pyper was constantly turning her head and twisting her body. As a result, Ms. Pyper began experiencing muscle spasms in her shoulder and right side of her neck and migraines. Her doctor diagnosed myofascial pain syndrome and cervical degenerative disc disease, a preexisting condition that was aggravated by Ms. Pyper's work activities. She underwent conservative treatment, which included injections, physical and massage therapy, and pain medication.

Masco's medical consultant, Dr. Knoebel, examined Ms. Pyper on March 26, 2001. His impression was that Ms. Pyper had right shoulder girdle tension myalgia caused by multiple factors, including her work activities. He found Ms. Pyper's condition was at maximum medical improvement and recommended palliative care, such as stretching and home exercise. However, Ms. Pyper continued to complain of pain and ongoing severe headaches and continued medical treatment. One of her doctors, Dr. Reichman, suggested fusion surgery. Masco obtained a second opinion and later approved the surgery. In October of 2002, Ms. Pyper had C5-6 fusion surgery. Following surgery, she continued to receive medical treatment for her shoulder pain and headaches.

In August 2004, Dr. Gregory, one of Ms. Pyper's treating physicians stated in a Summary of Medical Records that Ms. Pyper's ongoing neck and shoulder problems are medically caused by her repetitive work activities and that the prior medical care had all been necessary. Masco obtained another opinion from its medical consultant, Dr. Knorrp, who concluded Ms. Pyper's work-caused medical condition reached stability on March 26, 2001, and that all necessary medical treatment concluded by that date.

Due to the conflicting opinions as to whether Ms. Pyper's current condition and ongoing medical treatment were caused by her work activities, Judge Marlowe appointed a medical panel. The panel found Ms. Pyper's work activities caused her myofascial pain syndrome and, arguably, temporarily aggravated her preexisting degenerative disc disease. The panel found that Ms. Pyper's occupational disease reached medical stability by March 26, 2001, and that any additional medical care beyond that date was not necessary to treat the occupational disease. The panel further indicated that, up until March 26, 2001, Ms. Pyper's preexisting degenerative disc disease contributed zero percent to Ms. Pyper's symptoms and complaints.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-3-103 of the Occupational Disease Act defines a compensable occupational disease as "any disease or illness that arises out of and in the course of employment and is medically caused or aggravated by that employment." Section 34A-3-110 of the statute further provides for apportionment of these benefits under certain circumstances.

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Ms. Pyper argues Judge Marlowe improperly apportioned Ms. Pyper's benefits in her order. According to the medical evidence, Ms. Pyper developed myofascial pain syndrome from her work activities at Masco that reached medical stability by March 26, 2001, and required no further care. Ms. Pyper's preexisting cervical degenerative disc disease may have been temporarily aggravated by the work activities, but this also would have reached medical stability by March 26, 2001, and required no further care. Based on the evidence, Judge Marlowe ordered Masco to pay for Ms. Pyper's medical care up through March 26, 2001. Benefits were not apportioned in Judge Marlowe's order.

The Appeals Board notes Masco's argument that if the Appeals Board determines that Judge Marlowe apportioned Ms. Pyper's medical benefits, the Occupational Disease Act authorizes this apportionment. This question has recently been resolved in Dale T. Smith & Sons v. Utah Labor Commission, 208 P.3d 533 (Utah 2009), wherein the Utah Supreme Court held that medical expenses constitute compensation under the Act and may be subject to apportionment. However, Judge Marlowe did not apportion benefits nor was such apportionment warranted under the facts of this case.

Ms. Pyper also argues that Masco should be liable for any possible injury that she may have suffered from cervical surgery because Masco approved of and paid for the surgery. However, the preponderance of the evidence shows that Ms. Pyper's cervical surgery was not necessary to treat her occupational disease and therefore is not compensable under the statute, regardless of whether Masco previously authorized or paid for this treatment.

In summary, the Appeals Board concludes Judge Marlowe did not improperly apportion benefits for medical expenses and no further award for medical benefits is necessary.

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ORDER

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

Dated this 18th day of August, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

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.