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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**RANDY WOLFE-VELARDE,**

**Petitioner,**

**vs.**

**ALCOA and INDEMNITY  
INSURANCE CO. OF NORTH  
AMERICA,**

**Respondents.**

**ORDER DENYING  
REQUEST FOR  
RECONSIDERATION**

**Case No. 04-1135**

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Alcoa and its insurance carrier, Indemnity Insurance Co. of North America, (referred to jointly as “Alcoa”) ask the Appeals Board of the Utah Labor Commission to reconsider its prior decision awarding benefits to Randy Wolfe-Velarde under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this matter pursuant to Utah Code Annotated § 63G-4-302.

**BACKGROUND AND ISSUES PRESENTED**

Mr. Wolfe-Velarde claims workers’ compensation benefits from Alcoa for a work accident that occurred on August 23, 2004, that injured his back. Judge La Jeunesse found there was no proof that Mr. Wolfe-Velarde had a preexisting condition that contributed to his injury and, even if there had been proof, the aggregate exertions of Mr. Wolfe-Velarde’s employment on August 23, 2004, exceeded typical nonemployment activity, thereby satisfying the more stringent test for legal causation. Judge La Jeunesse awarded benefits.

Alcoa filed a motion for review with the Appeals Board who concurred with Judge La Jeunesse’s findings of fact. In affirming Judge La Jeunesse’s decision, the Appeals Board recognized that Alcoa failed to prove Mr. Wolfe-Velarde’s preexisting back complaints contributed to his work injury.

In asking the Appeals Board to reconsider its decision, Alcoa argues that Mr. Wolfe-Velarde’s preexisting degenerative condition should be found to have contributed to his back injury, requiring application of the more stringent test for legal causation, which it claims Mr. Wolfe-Velarde would not satisfy.

**ORDER DENYING REQUEST FOR RECONSIDERATION  
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**DISCUSSION**

Alcoa asks the Appeals Board to find that Mr. Wolfe- Velarde's preexisting condition contributed to his back injury based on its previous experience in reviewing other decisions involving degenerative disc conditions and because there is no dispute in the medical community that a degenerative disc condition leads to the type of injury Mr. Wolfe-Velarde suffered. However, the Appeals Board can make no such presumption, as made clear in Nyrehn v. Industrial Commission, 800 P. 2d 300, 334 (Utah App. 1990), which held that:

[The Commission] may not simply presume that the finding of a preexisting condition warrants application of the Allen test. **An employer must prove medically** that the claimant "suffers from a preexisting condition which **contributes** to the injury. (Citations omitted; emphasis added.)

Alcoa failed to prove that Mr. Wolfe-Velarde's preexisting condition contributed to his back condition. The Appeals Board notes that even if such a connection were made, that Judge La Jeunesse found and the Appeals Board affirmed in its previous decision, the cumulative exertions Mr. Wolfe-Velarde engaged in on August 23, 2004, satisfies the more stringent test for legal causation. Therefore the Appeals Board affirms its previous decision that Mr. Wolfe-Velarde's accident on August 23, 2004, was the medical and legal cause of his back condition, and the award of benefits was correct.

**ORDER**

The Appeals Board denies Alcoa's request for reconsideration. It is so ordered.

Dated this 24<sup>th</sup> day of March, 2009.

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Colleen Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.