
**APPEALS BOARD
UTAH LABOR COMMISSION**

DEAN J. SORENSEN,

Petitioner,

vs.

**BIG D CONSTRUCTION and LIBERTY
MUTUAL INSURANCE CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 04-1213

Big D Construction and its insurance carrier, Liberty Mutual Insurance Co., (referred to jointly as "Big D") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's preliminary award of permanent total disability benefits to Dean J. Sorensen 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. Sorensen claims permanent total disability benefits from Big D for a work accident that occurred on November 11, 1997, injuring his left hip. After holding an evidentiary hearing, Judge La Jeunesse found that Mr. Sorensen established that he was entitled to permanent total disability compensation and issued a preliminary order for benefits.

In its motion for review, Big D argues that Mr. Sorensen is not entitled to permanent total disability compensation because he failed to show that he could not perform other work reasonably available.

FINDINGS OF FACT

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

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On November 11, 1997, Mr. Sorensen, who worked for Big D as a framing carpenter, fell eleven feet and landed on his left hip. He was diagnosed with a complex fracture, left acetabulum, and underwent total left hip replacement surgery. Mr. Sorensen had surgery again on October 6, 1998. Then, after repeatedly dislocating the hip and undergoing multiple reductions of the dislocation, Mr. Sorensen was diagnosed with a failed left total hip arthroplasty and underwent surgery again on November 10, 1999, and then on February 6, 2001. He has since been diagnosed with chronic left hip girdle and referred low back pain as well as anxiety and depression as a result of the work accident.

Mr. Sorensen was left with the following “lifetime” restrictions due to his work accident: no lifting over 30 pounds maximum and 20 pounds repetitively; no pushing or pulling more than 30 pounds; no walking or standing more than 20 minutes at a time, 2.5 hours per workday; no climbing ladders or stairs as part of regular work duties; no squatting, kneeling, jumping, or running; no sitting with the left hip flexed more than 80 degrees; no use of scaffolding; and no operating of a vehicle more than 20 minutes or while on narcotics. He was also placed in a sedentary to light work category.

At the time of the 1997 work accident, Mr. Sorensen was 36 years of age. He has a high school degree and went to college for two and a half years after the accident, but quit before completing an associate degree due to the hip pain. Prior to working as a framing carpenter for Big D, Mr. Sorensen installed pipelines for two years, worked as a truck driver, and, dating back to 1987, was a laborer in construction and worked with heavy machinery. After the accident, Mr. Sorensen worked for six days as a truck driver and later underwent two months of training in order to operate a dental lab he planned on purchasing. His hip pain and inability to concentrate caused him to abandon these jobs. Mr. Sorensen currently owns a farm with seven cows and a crop that he pays others to harvest, thereby making an annual income of approximately \$15,000.

DISCUSSION AND CONCLUSIONS OF LAW

The only issue before the Appeals Board is whether Mr. Sorensen is entitled to permanent total disability benefits. Section 34A-2-413 of the Utah Workers' Compensation Act requires Mr. Sorensen to show that (1) he suffered a significant impairment or combination of impairments from the work accident; (2) he is permanently and totally disabled as determined under a four-part test under 413(c); and (3) the work accident was the direct cause of his disability. It is the second criteria—showing he is permanently and totally disabled—that is in dispute. Namely, Big D contends that Mr. Sorensen failed to show that he is unable to perform other work reasonably available taking into account his age, education, past work experience, medical capacity and residual functional capacity.

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As a result of Mr. Sorensen's work accident, he has been left with a disability that substantially limits his ability to walk, stand, and even sit to some degree. His past work experience has generally been as a laborer or a truck driver, both of which he can no longer perform. Mr. Sorensen attempted to work and was unsuccessful. He is limited to working in a sedentary to light classification, but he was unable to find such work within his limitations. The Appeals Board finds that Mr. Sorensen is unable to perform other work reasonably available taking into account his age, education, past work experience, medical capacity and residual functional capacity, and concurs with Judge La Jeunesse's preliminary award for permanent total disability benefits.

ORDER

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

Dated this 21st day of July, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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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.