
**APPEALS BOARD
UTAH LABOR COMMISSION**

MAHDI ALI JAFF,

Petitioner,

vs.

**WILLEY HONDA and EMPLOYERS
COMPENSATION INSURANCE
COMPANY,**

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 06-0272

Mahdi Ali Jaff asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Trayner's denial of Mr. Jaff'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. Jaff claims workers' compensation benefits from Willey Honda and its insurance carrier, Employers Compensation Insurance Company, (referred to jointly as "Willey Honda") for a work accident that occurred on April 16, 2005, allegedly injuring his back. Following an evidentiary hearing, Judge Trayner awarded benefits. Willey Honda appealed this decision to the Appeals Board and the matter was remanded to Judge Trayner to hold further proceedings. On remand, Judge Trayner held a supplementary hearing and then found that the work accident was not the legal cause of Mr. Jaff's back condition and denied benefits.

In his motion for review, Mr. Jaff argues that the exertion involved in his work accident satisfied the more stringent test for legal causation or—in an alternative theory first raised on appeal—that his cumulative exertions leading up to the injury satisfied the test for legal causation. He also asks the Appeals Board to amend and consider his claim as an occupational disease claim.

FINDINGS OF FACT

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

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Mr. Jaff has a history of back problems. On April 16, 2005, Mr. Jaff was rotating tires on a suspended vehicle at work when he hurt his back attempting to lift a tire, weighing a maximum of 30 pounds, to about shoulder height.

DISCUSSION AND CONCLUSIONS OF LAW

The first issue before the Appeals Board is whether the exertion involved when Mr. Jaff lifted the tire to shoulder height was unusual or extraordinary, thus satisfying the more stringent test for legal causation. Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was the "legal cause" of the injury. Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). The requirement of legal causation is explained in Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986):

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some **unusual or extraordinary exertion** over and above the "usual wear and tear and exertions of nonemployment life." (Citations omitted; emphasis added.)

Because Mr. Jaff suffered from a preexisting condition that contributed to his back condition, his claim is subject to the more stringent test for legal causation, which requires that he show his work related exertion was "unusual or extraordinary." The Appeals Board does not find that the exertion described in the record and Mr. Jaff's motion for review constitutes an unusual or extraordinary exertion as compared to the usual wear and tear exertions of nonemployment life.

Mr. Jaff also argues that the exertion satisfied the more stringent test for legal causation under an alternative cumulative trauma theory. The Appeals Board, however, declines to review an issue not previously raised prior to or during the hearing. If Mr. Jaff had wished to pursue this theory, he should have timely pursued it in order to permit Willey Honda notice and the opportunity to defend against this theory. Similarly, the Appeals Board will not consider his claim under the Occupational Disease Act as this was not a claim previously presented or argued at the hearing. The Appeals Board further notes that the evidentiary record fails to support either claim.

The Appeals Board concludes that Mr. Jaff has not satisfied the test for legal causation and affirms Judge Trayner's decision denying benefits.

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ORDER

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

Dated this 28th day of April, 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.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Mahdi Ali Jaff 06-0272, was mailed first class postage prepaid this ____day of April, 2009, to the following:

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