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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**JAMES DANIEL BILLS,**

**Petitioner,**

**vs.**

**TRUGREEN/CHEM LAWN and  
ZURICH AMERICAN INSURANCE CO.,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 07-0340**

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James Daniel Bills asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Mr. Bills' 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 Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Bills claims workers' compensation benefits from TruGreen/Chemlawn and its insurance carrier, Zurich American Insurance Co., (referred to jointly as "TruGreen" hereafter) for a right-eye injury allegedly caused by a work accident at TruGreen on May 12, 2005. Judge Marlowe held an evidentiary hearing on Mr. Bills' claim and then referred the medical aspects of the claim to an impartial panel of medical experts. Relying on the panel's report and other evidence of record, Judge Marlowe awarded limited medical benefits and temporary disability compensation to Mr. Bills, but denied his claims to other benefits.

In requesting Appeals Board review of Judge Marlowe's decision, Mr. Bills argues that Judge Marlowe erred in denying his claims to permanent partial disability compensation. He also argues that Judge Marlowe miscalculated the amount of his temporary disability compensation and erred in not awarding additional medical benefits.

**FINDINGS OF FACT**

The Appeals Board adopts Judge Marlowe's findings of fact. The facts relevant to the issues raised in the motion for review can be summarized as follows.

Trugreen employed Mr. Bills in its lawn care business, where Mr. Bills earned an average of \$545.11 per week in salary and commissions prior to May 12, 2005. On that day, Mr. Bills accidentally sprayed weed killer in his right eye. Beginning the next day and continuing for several

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weeks, he received medical attention for the eye injury. Mr. Bills was also subsequently examined by Trugreen's medical consultant. Due to a disagreement between Trugreen's medical consultant and some of Mr. Bills' physicians regarding the nature and cause of Mr. Bills' continuing right-eye problems, Judge Marlowe referred the matter to an impartial panel composed of specialists in the fields of neurology and ophthalmology.

The medical panel reviewed Mr. Bills' medical records and the opinions of the other physicians who had treated or examined him. The panel also personally examined Mr. Bills on two occasions. The panel then concluded that Mr. Bills' work accident had caused a temporary injury to his right eye but no permanent impairment. The panel also concluded that Mr. Bills had reached medical stability by July 11, 2005, and that no additional medical care was necessary to treat the work-related injury to his eye.

**DISCUSSION AND CONCLUSIONS OF LAW**

Mr. Bills raises three concerns with Judge Marlowe's decision. Each is addressed separately below.

**Permanent partial disability compensation.** Although Mr. Bills argues he is entitled to permanent partial disability compensation, he does not explain the factual basis for his argument, or identify any evidence that would support such an award. To the contrary, the well-reasoned, impartial and persuasive opinion of the medical panel establishes that Mr. Bills suffered no permanent impairment from his work accident. Consequently, there is no basis for awarding permanent partial disability compensation.

**Recommended medical care / future medical care.** Mr. Bills states that Judge Marlowe erred in finding that medical care was reasonable and necessary only until July 10, 2008. Mr. Bills does not explain or support this contention. The Appeals Board accepts the impartial medical panel's determination that Mr. Bills' medical care through July 10, 2008, was necessary to treat his work injury, but no further treatment of the injury was required after that date.

**Average weekly wage.** Mr. Bills states that Judge Marlowe miscalculated his temporary disability compensation rate because she did not include his commissions in determining his average weekly wage. However, it is apparent from Judge Marlowe's decision that she did include Mr. Bills' commissions as part of his income. The Appeals Board therefore concludes that Judge Marlowe has correctly determined Mr. Bills' weekly compensation rate.

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**ORDER**

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

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