
**APPEALS BOARD
UTAH LABOR COMMISSION**

AUSTIN R. JONES,

Petitioner,

vs.

**PINTAIL CONSTRUCTION and AUTO
OWNERS INSURANCE COMPANY,**

Respondents.

**ORDER MODIFYING
ALJ'S DECISION**

Case No. 07-1060

Pintail Construction and its insurance carrier, Auto Owners Insurance Company, (referred to jointly as "Pintail" hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Holley's award of temporary total disability compensation to Austin R. Jones 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. Jones claims workers' compensation benefits for a back injury resulting from an accident while working for Pintail on May 9, 2005. Judge Holley held an evidentiary hearing on Mr. Jones' claim and referred the medical aspects of the claim to an impartial panel of medical experts. After receiving the panel's report, Judge Holley found, among other things, that Mr. Jones had reached medical stability from his work injuries by June 19, 2005. Judge Holley awarded medical and disability benefits to Mr. Jones, including temporary total disability compensation for the period of January 3 to January 11, 2007. Pintail challenges this award of temporary total disability compensation on the grounds that the Utah Workers' Compensation Act does not provide for such compensation after an injured worker reaches medical stability.

DISCUSSION AND CONCLUSIONS OF LAW

There is no dispute that Mr. Jones's injury is compensable under the Utah Workers' Compensation Act. The only question before the Appeals Board is whether Mr. Jones is entitled to temporary total disability compensation for the one-week period in dispute.

Subsection 34A-2-410(1)(a) of the Act, which generally establishes the right of injured workers to temporary total disability compensation, provides that "in case of temporary disability, so long as the disability is total, the employee shall receive (compensation)" This provision must

ORDER MODIFYING ALJ'S DECISION
AUSTIN R. JONES
PAGE 2 OF 2

be interpreted in light of the Utah Supreme Court's decision in *Booms v. Rapp*, 720 P. 2d 1363, 1366 (Utah 1986). There, the Court ruled that "once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits." The Court further observed that "[i]dentifying when the healing period has ended **does not require a finding of ability to work**; stabilization is strictly a medical question that is appropriately decided on the basis of medical evidence." (Emphasis added.)

In this case, Mr. Jones reached medical stability from his work injury by June 19, 2005. Pursuant to *Booms v. Rapp*, *ibid.*, his entitlement to temporary disability compensation ended on that date, regardless of whether he was actually able to return to his former work or to alternative light-duty work. Consequently, Mr. Jones is not entitled to temporary total disability compensation for the period of January 3 to January 11, 2007.

ORDER

The Appeals Board modifies Judge Holley's decision in this matter by striking the award of temporary total disability compensation to Mr. Jones for the period of January 3 to January 11, 2007. The Appeals Board also strikes the corresponding award of attorney's fees. It is so ordered.

Dated this 28th day of May, 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.