
**APPEALS BOARD
UTAH LABOR COMMISSION**

LORRIE SHREVE,

Petitioner,

vs.

**UNIVERSITY OF UTAH HOSPITAL and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-0899

The University of Utah Hospital and its insurance carrier, Workers Compensation Fund, (referred to jointly as "the Hospital") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's award of benefits to Lorrie Shreve 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

Ms. Shreve claims workers' compensation benefits for a herniated lumbar disc which she attributes to her work at the Hospital on April 8, 2008. In denying liability for Ms. Shreve's claim, the Hospital asserts that Ms. Shreve's work was not the "legal cause" of her injury.

After an evidentiary hearing, Judge Hann referred the medical aspects of Ms. Shreve's claim to an impartial medical panel. Then, based on the panel's opinion, Judge Hann concluded that Ms. Shreve's work was the legal cause of her injury and that she was entitled to benefits.

In requesting Appeals Board review of Judge Hann's decision, the Hospital argues that the medical panel's opinion is incorrect and, therefore, cannot support a finding of legal causation. The Hospital also argues that a hearing should be held on the panel's report.

FINDINGS OF FACT

As noted above, the Hospital's sole defense in this matter is that Ms. Shreve's work at the Hospital is not the legal cause of her injury. The Commission finds the following facts material to that issue.

Ms. Shreve experienced episodes of back pain for several years and was diagnosed with

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degenerative lumbar disc disease prior to the incident at the Hospital on April 8, 2008. Then, while working at the Hospital on April 8, 2008, Ms. Shreve attempted to remove paper that was jammed in a printer. She bent over from the waist and then twisted as she pulled on the paper. Her back “popped” and she felt immediate pain. Over the next hour, the pain increased and radiated down her back.

Dr. Bauman diagnosed Ms. Shreve with a “free fragment disc herniation directly under the nerve root at L4-L5” caused by the work incident of April 2008. Dr. Anderson, the Hospital’s medical consultant, expressed the opinion that Ms. Shreve’s pre-existing degenerative condition had contributed to the lumbar disc injury. Judge Hann appointed an impartial panel of medical experts to evaluate whether Ms. Shreve’s pre-existing condition contributed to her work injury.

The panel, composed of an orthopedic surgeon and a neurologist, reviewed Ms. Shreve’s medical history, her available pertinent medical records, and the opinions of Dr. Bauman and Dr. Anderson. The panel confirmed that Ms. Shreve’s work exertion at the Hospital on April 8, 2008, caused an acute disc herniation. The panel further concluded that Ms. Shreve’s preexisting degenerative condition did not contribute to that acute disc herniation.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A -2-401 of the Utah Workers’ Compensation Act provides medical and disability benefits to employees injured by accident “arising out of and in the course of” employment. In *Allen v. Industrial Commission*, 729 P.2d at 26, the Utah Supreme Court held that an injury “arises out of” employment when the work-related event or exertion is both the “legal cause” and the “medical cause” of the injury. It is the element of “legal causation” that is in dispute in this case.

Under the *Allen* decision, one of two alternative tests for legal causation is applied to an injured worker’s claim for benefits, depending on whether or not the injured worker suffered from a preexisting condition. These alternate tests are described by the Supreme Court in *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), as follows:

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.)

However, not every pre-existing condition will trigger application of the more stringent “unusual or extraordinary exertion” test for legal causation. As the Utah Court of Appeals stated in *Nyrehn v. Industrial Commission*, 800 P. 2d 300, 334 (Utah App. 1990) (emphasis added):

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[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.)

Applying the foregoing principles to this case, Ms. Shreve's claim for benefits is subject to the more stringent test for legal causation only if the preponderance of medical opinion and evidence shows that her preexisting degenerative back condition contributed to the acute disc herniation she suffered while working at the Hospital on April 8, 2009. The Commission's panel of impartial medical experts concluded that Ms. Shreve's preexisting back problems did not contribute to the disc herniation. If the panel's opinion is accepted, then Ms. Shreve's claim is only subject to the ordinary standard for legal causation, and any usual or ordinary exertion will suffice to establish legal causation.

The Hospital argues against reliance on the medical panel's opinion by asserting that the panel used a too-narrow "but for" standard to evaluate whether Ms. Shreve's preexisting back problems contributed to her herniated disc. The Appeals Board notes it is the Hospital, not the medical panel, that uses the "but for" terminology. But more importantly, the Hospital's criticism does not take into account the panel's entire report, in context. The report explains that Ms. Shreve's work injury involved "a rather massive disc herniation" and that her preexisting diagnosis of internal disc disruption "does not prognosticate the occurrence or probability of a massive disc herniation." The panel also observes that Ms. Shreve "was functioning at a very active level" prior to her work injury on April 8, 2008. The panel is unequivocal as to its ultimate conclusion: "The panel finds no specific pre-existing condition that contributed to [Ms. Shreve's] 8 April 2008 industrial injury and by the nature of the diagnosis feels this was a new injury."

The Hospital also argues that Judge Hann misinterpreted the panel's comments regarding discographic diagnosis of disc disruption. Even if that is true, Judge Hann's misinterpretation of the report does not affect the validity of the report itself. The Hospital also argues that a hearing should be held on its objections to the panel's report. Section 34A-2-601 of the Utah Workers' Compensation Act permits, but does not require, such a hearing. A hearing is generally held when a medical panel has not adequately explained its conclusions or when new evidence raises substantial doubt regarding the panel's conclusions. In this case, neither of those conditions is met. The panel has adequately explained its opinion and, although the Hospital submitted a supplemental opinion by its medical consultant, that opinion mirrored the consultant's previous opinion that had already been submitted. Under these circumstances, the Commission concludes that no hearing is required on the medical panel's report.

For the foregoing reasons, the Appeals Board accepts the medical panel's opinion and concludes that Ms. Shreve's work at the Hospital on April 8, 2008, is the legal cause of her disc herniation. She is therefore entitled to workers' compensation benefits for that injury.

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ORDER

The Appeals Board affirms Judge Hann's decision of July 27, 2009. It is so ordered.

Dated this 27th day of October, 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.