
**APPEALS BOARD
UTAH LABOR COMMISSION**

MARCIA A. WALLING,

Petitioner,

vs.

**C & D ENTERPRISES, INC. and
HARTFORD FIRE INSURANCE
COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-0987

Marcia A. Walling asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's denial of her 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

Ms. Walling claims workers' compensation benefits for a low-back injury she experienced while sweeping and twisting at the waist on July 11, 2008, while working for C&D Enterprises, Inc. ("C&D"). Judge Hann held an evidentiary hearing on Ms. Walling's claim and referred the medical aspects of the claim to an impartial medical panel.

Judge Hann adopted the panel's conclusion that Ms. Walling suffers from a preexisting condition that contributed to her injury, and found that her injury was not compensable because it was not caused by an unusual or extraordinary exertion, as required by the Utah Supreme Court's decision in *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986). Ms. Walling challenges the denial of benefits by arguing that the sweeping and twisting was unusual considering her size and physical condition.

FINDINGS OF FACT

The Appeals Board adopts Judge Hann's findings of fact, summarized as follows. Ms. Walling was working for C&D as a security guard on July 11, 2008, when she was sweeping water out of a puddle next to her station where visitors would sometimes have to stand. Ms. Walling used a regular broom to sweep the water up out of the puddle so it would run down the driveway and disperse. Ms. Walling had been sweeping the water for about five to fifteen minutes when she

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twisted at the waist and felt a shock and pain in her back and right leg.

There is no dispute that Ms. Walling suffers from a preexisting condition in her back. Because of the preexisting condition, Judge Hann found that the more stringent standard for legal causation applied to the case. Judge Hann determined that Ms. Walling had not met this standard because sweeping and twisting were not unusual or extraordinary exertions required when a preexisting condition contributes to an injury. As a result, Judge Hann found that Ms. Walling's injury was not compensable under the Utah Workers' Compensation Act.

DISCUSSION AND CONCLUSIONS OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code Ann. §34A-2-401. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was both the legal cause and the medical cause of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). In this case, C&D concedes that the requirement of "medical causation" has been satisfied. The Commission therefore turns to the question of whether Ms. Walling's work on July 11, 2008, also satisfies the requirement of legal causation.

In *Allen*, *ibid.*, the Utah Supreme Court discussed the context in which the requirement of legal causation is applied.

Whether an injury arose out of or in the course of employment is difficult to determine where the employee brings to the workplace a personal element of risk such as a preexisting condition. Just because a person suffers a preexisting condition, he or she is not disqualified from obtaining compensation. Our cases make clear that "the aggravation or lighting up of a pre-existing disease by an industrial accident is compensable" (Citation omitted.) To meet the legal causation requirement, a claimant with a preexisting condition must show that the employment contributed something substantial to increase the risk he already faced in everyday life because of his condition. This additional element of risk in the workplace is usually supplied by an exertion greater than that undertaken in normal, everyday life.

In its subsequent decision in *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under *Allen*, an 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."**

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The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted; emphasis added.)

Thus, because Ms. Walling suffered from a preexisting back condition that contributed to her current injury, she must satisfy the more stringent prong of the *Allen* test for legal causation by showing that her work at C&D involved "some unusual or extraordinary exertion over and above the usual wear and tear and exertions of nonemployment life." To assess whether Ms. Walling's particular work activities met the *Allen* test of an "unusual or extraordinary exertion," the Commission must compare her work activities to other typical activities and exertions experienced by men and women in modern nonemployment life. *See Allen* at 26. Some of the specific examples cited by the Supreme Court in *Allen* of typical nonemployment exertion are "taking full garbage cans to the street, lifting and carrying baggage for travel, changing a flat tire on an automobile, lifting a small child to chest height, and climbing the stairs in buildings."

Ms. Walling contends that sweeping water out of a puddle and twisting at the waist should be considered unusual or extraordinary exertions because they were strenuous and not normal for her, however, the *Allen* standard requires comparison to the nonemployment life of any other person. While moderate sweeping and twisting at the waist may have been uncommon for Ms. Walling, they are not unusual or extraordinary exertions compared to the nonemployment life of any other person.

For the foregoing reasons, the Appeals Board agrees with Judge Hann's finding that sweeping and twisting are not unusual or extraordinary exertions. The Appeals Board therefore concurs with Judge Hann's determination that Ms. Walling is not entitled to workers' compensation benefits for the injury she suffered on July 11, 2008.

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ORDER

The Appeals Board affirms Judge Hann's decision of July 27, 2009, on this matter. 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.