
**APPEALS BOARD
UTAH LABOR COMMISSION**

SHAWN A. ALLEN,

Petitioner,

vs.

**PACIFICORP and NEW HAMPSHIRE
INSURANCE COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-1064

Pacificorp and its insurance carrier, New Hampshire Insurance Company, (hereafter referred to jointly as "Pacificorp") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Holley's award of benefits to Shawn A. Allen 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. Allen claims workers' compensation benefits from Pacificorp for a left shoulder injury he received at work on April 7, 2008. Judge Holley held an evidentiary hearing and concluded that the work injury legally caused Mr. Allen's shoulder condition and awarded benefits accordingly. Pacificorp has filed a motion for review, arguing that the more stringent test for legal causation was not satisfied and benefits should be denied.

FINDINGS OF FACT

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

Mr. Allen had a preexisting left shoulder condition from a fall in 1998. On April 7, 2008, Mr. Allen was maneuvering an industrial jack from under a car while working at Pacificorp. When he first tried to pull the jack back, he bumped up against his workbench. Still facing the jack, he moved the jack forward again and maneuvered the jack slightly to his right. This time, facing the jack, Mr. Allen held the jack handle with his left hand as he quickly turned approximately 200 degrees clockwise and took two strong steps forward to begin moving the jack out of the bay. His first step forward was taken while in the process of completing the clockwise turn. As Mr. Allen

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took his second step, the jack hit a nut and abruptly jerked backward.¹ He was still completing the clockwise turn when he felt the jack pull his arm backward counter-clockwise, almost hyper-extending the shoulder. Mr. Allen felt immediate searing pain in his left shoulder and fell to the ground. There is no dispute that Mr. Allen's preexisting left shoulder condition from the 1998 injury contributed to this 2008 work injury.

At the hearing, Paul France, Ph.D., Bioengineering, testified as to the estimated exertion that would have been involved in the accident. Based on Dr. France's simulations of the accident, he estimated that the force Mr. Allen exerted at the time the jack suddenly stopped and jerked back would have ranged between 40-68 pounds, depending on the speed. He further testified that he attempted to simulate the force that would be involved in moving a garbage can weighing 90 pounds, and that the results were variable. He estimated that the force involved in moving the garbage can required 45-55 pounds of force.

DISCUSSION AND CONCLUSIONS OF LAW

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 both the "legal" and "medical" cause of the injury. Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). The only question here is whether Mr. Allen proved that his work was the legal cause of his injury. 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."

To assess whether Mr. Allen's specific work activities meet the Allen test of an "unusual or extraordinary exertion," his work activities must be compared 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 as examples 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.

Since the Supreme Court's decision in Allen, the Commission and the Commission Appeals Board have had occasion to consider legal causation in the context of many types and combinations

¹ Pacificorp argues there was no evidence that proves the jack hit a nut. The Appeals Board has reviewed the record and finds that the preponderance of the evidence shows the jack hit a nut.

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of exertion. In most cases, the exertion in question can fairly easily be characterized as “unusual or extraordinary” (and therefore compensable) or “usual and ordinary” (and therefore noncompensable). The Appeals Board views Mr. Allen’s exertion in this case as falling quite close to the dividing line between these two categories. However, the Appeals Board finds the exertion involved when Mr. Allen was pulling forward on the jack and it jerked back unexpectedly, satisfies the test for “unusual or extraordinary.” This exertion can be distinguished from other everyday acts such as taking full garbage cans to the street and carrying baggage for travel.

The Appeals Board concludes that the exertion Mr. Allen used when he injured his shoulder was unusual or extraordinary. Therefore, Mr. Allen’s work injury was the legal cause of his left shoulder condition and he is entitled to benefits.

ORDER

The Appeals Board finds Mr. Allen eligible for workers’ compensation benefits for his left shoulder injury and affirms Judge Holley’s award of benefits. It is so ordered.

Dated this 18th day of August, 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.