
**APPEALS BOARD
UTAH LABOR COMMISSION**

JIMMY ROBERTS,

Petitioner,

vs.

**BROWN SALES AND EQUIPMENT and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-1328

Jimmy Roberts asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's dismissal of Mr. Roberts' 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

Mr. Roberts claims workers' compensation benefits from Brown Sales and Equipment and its workers compensation insurance carrier, Workers' Compensation Fund, (referred to jointly hereafter as "Brown") for injuries allegedly suffered in a work accident on May 30, 2008. As part of its preparation to defend against Mr. Roberts' claim, Brown scheduled a medical exam of Mr. Roberts to be conducted by Dr. Marble. Mr. Roberts filed a motion to stop the exam. Judge Hann denied the request and ordered Mr. Roberts to attend and cooperate with the exam. Judge Hann also advised Mr. Roberts that failure to cooperate with the exam would be grounds for dismissal of his claim.

Mr. Roberts appeared at the exam but refused to sign the standard release form provided by Dr. Marble. Instead, Mr. Roberts proffered his own release form. Dr. Marble again asked Mr. Roberts to sign a standard release. When Mr. Roberts refused to sign that release, Dr. Marble terminated the exam.

Brown moved for dismissal of Mr. Roberts' claim on the grounds that he had failed to cooperate with the medical exam. Judge Hann granted the motion and dismissed Mr. Roberts' claim "without prejudice." Mr. Roberts now asks the Appeals Board to reinstate his claim. In support of this request, Mr. Roberts asserts that Judge Hann failed to consider Mr. Roberts' timely response to Brown's motion to dismiss and that he had good cause for declining to sign Dr. Marble's release form.

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DISCUSSION

The file in this matter indicates that Judge Hann issued her order dismissing Mr. Roberts' claim on June 15, 2009, the same day that the Commission received Mr. Roberts' response to Brown's motion for dismissal. Consequently, it is possible that Mr. Roberts is correct in his belief that Judge Hann did not see the response prior to issuing her decision. The Appeals Board has therefore considered the contents of Mr. Roberts' response as part of its deliberations on Mr. Roberts' motion for review of Judge Hann's decision.

The Labor Commission's rule 602-2-1.F.3 provides that "[u]pon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice." Brown acted within the scope of the foregoing rule when it arranged for a medical examination of Mr. Roberts. And while it is understandable that Mr. Roberts would not be familiar with the procedures governing workers' compensation claims, he had already presented his concerns to Judge Hann, resulting in Judge Hann's specific instruction that he cooperate with the exam. In light of these facts, and Mr. Roberts' refusal to sign the medical release in question, the Appeals Board concludes that Judge Hann properly dismissed Mr. Roberts' claim. Because this dismissal is "without prejudice," Mr. Roberts can refile his claim at such time as he is willing to comply with the rules of the Commission.

ORDER

The Appeals Board affirms Judge Hann's dismissal of Mr. Roberts' claim for benefits "without prejudice." It is so ordered.

Dated this 18th day of August, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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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.