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**UTAH LABOR COMMISSION**

**GINA CHRISTENSEN,**

**Petitioner,**

vs.

**SMITH'S FOOD & DRUG,**

**Respondent.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 02-0436, 02-0948  
and 02-0949**

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Smith's Food & Drug ("Smiths") asks the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Gina Christensen under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Ms. Christensen claims workers' compensation benefits from Smiths for a work accident that occurred on February 1, 2001, and cumulative work trauma that arose by November 20, 2001, thereby injuring her cervical spine. Following the evidentiary hearing, a medical panel was appointed to review the medical aspects of the case. Based on the panel's opinion, Judge Lima found that Ms. Christensen's cervical condition was aggravated by cumulative work trauma that arose in November 2001, and awarded benefits.

In its motion for review, Smiths argues that Ms. Christensen's claim should be classified as an occupational disease claim and benefits should therefore be apportioned according to the Utah Occupational Disease Act.

**FINDINGS OF FACT**

The Commission adopts Judge Lima's findings of facts. Those facts relevant to the issue in the motion for review can be summarized as follows:

Ms. Christensen has a history of a preexisting cervical condition dating back to 1989. Ms. Christensen worked in Smith's dairy department for eight years. Around July or August, Ms. Christensen was experiencing shoulder pain that was exacerbated from her work duties but always resolved. In November 2001, Ms. Christensen was working as a cheese cooker in the dairy. This position required her and another coworker to work together during a 12-hour shift to cook the milk down into cheese curds. The milk was cooked in eight large vats, using large and heavy equipment (60-70 pounds) that had to be hooked above the vats to stir, cut, and push the finished cheese out of

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the vat. During the time period she was performing these duties, Ms. Christensen experienced stiffness and soreness in her shoulder that was different than the intermittent pain she previously had felt. On November 16, 2001, she sought medical treatment and x-rays of the cervical spine revealed spondylosis consistent with degenerative disc disease. A cervical MRI confirmed she has suffered a C6-7 disc herniation, disc abnormality at C5-6 and disc herniation at C4-5.

Ms. Christensen's doctor, Dr. MacFarlane, performed surgery and observed finding acute disc herniations in the cervical spine at various levels. In Dr. MacFarlane's opinion, Ms. Christensen suffered an acute event caused by a work injury. Smith's medical consultant, Dr. Shepherd, disagreed and found no medical causation between Ms. Christensen's work activities and her cervical disc condition. Based on these conflicting opinions, a medical panel was appointed.

The medical panel, consisting of a doctor specializing in occupational and environmental health and an orthopedic surgeon, reviewed the medical records and examined Ms. Christensen. The panel agreed with Dr. MacFarlane's assessment and found that the cumulative work trauma that appeared by November 20, 2001, medically caused an aggravation to Ms. Christensen's preexisting cervical condition.

**DISCUSSION AND CONCLUSION OF LAW**

Under § 34A-2-401 of the Utah Workers' Compensation Act, in order to recover benefits, Ms. Christensen must prove that she was injured "by accident out of and in the course of" her employment. Smith's argues that Ms. Christensen did not suffer an accident compensable under the workers' compensation act, but rather, over time had developed a cervical disease condition that should be compensated under the Utah Occupational Disease Act.

Although Ms. Christensen had previously reported some shoulder stiffness and pain, as of November 20, 2001, Ms. Christensen was reporting the development of new shoulder pain unlike her previous complaints. At the time of this new development, she was repeatedly lifting and connecting lines and heavy screen cutters, paddles, and pushers over eight large vats, and then later, was cleaning the large vats, all during a 12-hour shift. Dr. MacFarlane treated Ms. Christensen and during surgery, noted acute disc herniations that, in his opinion, showed Ms. Christensen had suffered an acute injury from her work. The medical panel agreed with Dr. MacFarlane's opinion that there had been an acute event that occurred at work to cause Ms. Christensen's condition.

The Commission is convinced that due to the repetitive and unusual and extraordinary exertion required of Ms. Christensen in performing her duties as a cheese cook, she suffered a cumulative trauma injury—or "accident"—by November 20, 2001, which arose out of and in the course of her employment. Therefore, the Commission finds that benefits are appropriately awarded under the Utah Workers' Compensation Act. As this claim is a claim for workers' compensation benefits, there is no need to address whether apportionment might be appropriated under the Occupational Disease Act.

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**ORDER**

The Commission affirms Judge Lima's decision. It is so ordered.

Dated this 16<sup>th</sup> day of March, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission 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.