
UTAH LABOR COMMISSION

ROBBY ANDERTON,

Petitioner,

vs.

**FLYING V. RANCH and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 2002620

Robby Anderton asks the Utah Labor Commission to review Administrative Law Judge Sessions' decision on Mr. Anderton's claim for benefits 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 § 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. Anderton claims workers' compensation benefits from Flying V. Ranch and its insurance carrier, Workers Compensation Fund, (hereafter referred to jointly as the "Ranch") for a work accident that occurred on July 26, 2000, injuring his back. The parties stipulated to facts, waived the evidentiary hearing, and agreed to refer the medical aspects of the case to a medical panel due to conflicting medical opinions. Judge Sessions appointed a panel; however, after reviewing the panel's report, Judge Sessions determined that not all of the issues were resolved and scheduled an evidentiary hearing. A supplemental report from the panel was also requested.

At the commencement of the hearing, Mr. Anderton claimed Judge Sessions' copy of the medical records was incomplete. However, despite being granted ten days to provide the missing medical records, Mr. Anderton did not provide any additional records. Following the hearing, Judge Sessions adopted the panel's findings that Mr. Anderton reached medical stability on May 31, 2001, he suffered a 10% whole person impairment rating, and surgery was not necessary to treat his work injury; benefits were awarded accordingly. Judge Sessions also found that Mr. Anderton did not qualify for permanent total disability compensation and denied those benefits.

In his motion for review, Mr. Anderton argues he is entitled to additional temporary total disability compensation, an award of permanent total disability compensation, and travel expenses not specifically awarded in Judge Sessions' decision. Mr. Anderton also contends that there were several errors or omissions in Judge Sessions' final findings of fact due to the fact some of the medical records were unavailable for his review at the hearing.

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FINDINGS OF FACT

The Commission adopts Judge Sessions' findings of facts as they are consistent with this decision. The facts relevant to the issues in Mr. Anderton's motion for review can be summarized as follows:

Mr. Anderton had preexisting back problems. On July 26, 2000, Mr. Anderton injured his back while lifting a five-gallon can of gas while working at the Ranch. An MRI revealed a right paracentral disc extrusion at the L2-3 level. Mr. Anderton received conservative care for the injury, including medications and injections.

On February 26, 2003, Dr. Fotheringham evaluated Mr. Anderton and found he had reached medical stability as of May 31, 2001, and qualified for a 7% whole person impairment rating attributable to the work accident. Dr. Braun, Mr. Anderton's medical provider who treated Mr. Anderton through at least May 2004, did not believe Mr. Anderton was medically stable and had not released him to return to work. Due to the conflicting medical opinions, the parties agreed to refer the issue of Mr. Anderton's date of medical stability, among other issues, to a medical panel on September 9, 2004.

The medical panel evaluated Mr. Anderton and examined his medical records and additional diagnostic testing results. The panel found Mr. Anderton's work injury had reached medical stability by May 31, 2001, and that he qualified for a 10% whole person impairment rating. The panel also found that Mr. Anderton's medical care had been necessary to treat his injury and recommended future medical care of conservative treatment, including pain management.

DISCUSSION AND CONCLUSION OF LAW

The issues before the Commission are whether Mr. Anderton is entitled to additional temporary total disability compensation, a preliminary award for permanent total disability compensation, and an amendment to his award for travel expenses.

Temporary Total Disability Compensation. The first issue before the Commission is whether Mr. Anderton's work injury reached medical stability by May 31, 2002. Section 34A-2-410 of the Utah's Workers' Compensation Act provides an injured employee temporary benefits "so long as the disability is total." In Booms v. Rapp, 720 P.2d 1363, 1366 (Utah 1986), the Court ruled that "once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits."

Both parties had medical opinions supporting their respective position on the date of medical stability. Due to this conflict, the parties agreed to refer this issue to a medical panel. The medical panel, with access to the complete medical records, found that Mr. Anderton's injury reached stability on May 31, 2001. The panel's opinion was thorough, well-reasoned, and persuasive and its

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findings are adopted. The Commission finds Mr. Anderton reached medical stability by May 31, 2001, and therefore concludes that Mr. Anderton was entitled to temporary total disability compensation from July 26, 2000, through May 31, 2001.

Permanent Total Disability Compensation. The second issue before the Commission is whether Mr. Anderton is entitled to permanent total disability compensation. In order to qualify for these benefits, Section 34A-2-413 of the Utah Workers' Compensation Act requires Mr. Anderton to show that (1) he suffered a significant impairment or combination of impairments from the work accident; (2) he is permanently and totally disabled (as determined under a four-part test outlined under subsection 413(c), one of which requires that he show he is unable to perform his former work); and (3) the work accident was the direct cause of his disability. Judge Sessions found that Mr. Anderton failed to meet all three of these elements.

In his motion for review, Mr. Anderton argues that the evidence, including his testimony at the hearing, shows that he is unable to return to his previous duties due to his injury. However, even if the Commission were to find this assertion as a fact, Mr. Anderton would only have proven one part of the four-part test for proving he is permanently and totally disabled. He still has not shown that he satisfied any of the other remaining elements necessary to establishing he is entitled to a preliminary award for permanent total disability compensation. Therefore the Commission finds that Mr. Anderton's work injury does not qualify him for permanent total disability compensation and affirms Judge Sessions' decision on this issue.

Travel Reimbursement. The final issue before the Commission is whether Judge Sessions erred in his order for travel reimbursement. Judge Sessions' order states Mr. Anderton is entitled to payment of his medical expenses related to his injury "and any travel allowances under Utah Administrative Code, Rule 612-2-20" The Commission finds that Judge Sessions' order on travel is sufficient and authorizes reimbursement for Mr. Anderton's travel expenses. If an issue arises out of payment of these expenses, Mr. Anderton may file a claim with the Labor Commission to resolve any dispute.

Finally, the Commission notes Mr. Anderton's contention that there are some incorrect findings of fact in Judge Sessions' decision, such as the duration of Mr. Anderton's treatment with Dr. Braun, possibly because Judge Sessions did not have a complete copy of Mr. Anderton's medical records.¹ However, Mr. Anderton had the opportunity to update Judge Sessions' copy of the medical records and failed to do so. Nevertheless, the Commission finds that after reviewing the evidence and the issues pertaining to Mr. Anderton's motion for review, the errors are harmless.

In summary, the Commission concludes Mr. Anderton is entitled to temporary total disability compensation from July 26, 2000, through May 31, 2001, Mr. Anderton did not prove he qualified

¹ The Commission notes that the medical panel, who was appointed to resolve medical issues of the case, had a complete and updated copy of the medical records when it formed its opinion.

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for permanent total disability compensation, and Judge Sessions' award for travel expenses was sufficient based on the evidence presented at the hearing.

ORDER

The Commission affirms Judge Sessions' decision. It is so ordered.

Dated this 29th day of July, 2009.

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.