
UTAH LABOR COMMISSION

ASHLY M. BIRT,

Petitioner,

vs.

**WALMART STORES INC and
AMERICAN HOME ASSURANCE CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 20040252

Walmart Stores, Inc. and its insurance carrier, American Home Assurance Co., (referred to jointly as "Walmart") ask the Utah Labor Commissioner to review Administrative Law Judge Hann's award of benefits to Ashly M. Birt 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 ISSUES PRESENTED

Ms. Birt claims workers' compensation benefits from Walmart for a work accident that occurred on September 20, 2002, allegedly injuring her low back and upper body. Judge Hann held an evidentiary hearing and then appointed a medical panel to review the medical aspects of the case. Judge Hann adopted the panel's findings and found that the work accident medically caused Ms. Birt's low back condition. Judge Hann awarded medical expenses and recommended medical care for Ms. Birt's low back condition.¹

In its motion for review, Walmart argues that: (1) Ms. Birt's current low back complaints were not medically caused by the work accident; (2) the medical panel improperly used a legal analysis in forming its opinion; and (3) the case should be remanded for a new hearing because the panel's opinion relied on new evidence that Walmart was not given the opportunity to litigate.

FINDINGS OF FACT

The Commissioner adopts Judge Hann's findings of fact. The facts relevant to the issues in the motion for review can be summarized as follows:

On September 20, 2002, Ms. Birt was trying to load a box weighing 40 pounds onto a rack

¹ Judge Hann found Ms. Birt's upper body complaints were not medically caused by the work accident and denied benefits. This finding has not been appealed and is not further reviewed.

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when the rack gave way causing her to fall to the floor. An MRI taken in January 2003 revealed a central and right forward L5-S1 disc bulge with likely neuroforaminal encroachment and a disc bulge at L4-5.

On July 7, 2003, Walmart's medical consultant, Dr. Knoebel, evaluated Ms. Birt and found her low back condition was caused by the work injury. Dr. Knoebel found Ms. Birt's low back condition was medically stable and assigned a 5% whole person impairment rating. He recommended future medical care of taking ibuprofen and a home exercise program. In contrast, Ms. Birt's physician, Dr. Bruce, found Ms. Birt's low back condition was not medically stable and because of her continued complaints of low back and leg pain, ordered another MRI, conducted on January 19, 2005. The MRI revealed degenerative disc disease at L4-5 and L5-S1 with a possible annular fissure or tear at L5-S1. Dr. Knoebel reviewed the MRI results and found that the results represented new findings subsequent to the work injury and were not reasonably caused by the work injury.

In its report dated August 11, 2006, the medical panel reviewed whether Ms. Birt's low back condition was medically caused by the September 2002 work injury. In making its assessment, the panel considered Ms. Birt's recent description of increased pain, the previous MRIs, and a recent MRI that was not previously available. The panel found the September 2002 work accident medically caused a disk herniation that had markedly increased recently and that had not reached medical stability, requiring surgery. The panel found that the herniation did not represent a new injury but rather a worsening of her previous pathology.

Judge Hann reopened the evidentiary record and permitted Dr. Knoebel to review the new medical evidence and to offer a supplemental opinion. Dr. Knoebel maintained his opinion that the new symptoms and increased size of the herniation show a new, non-work related event and that Ms. Birt had previously reached medical stability from the work injury by July 2003. Judge Hann then submitted Dr. Knoebel's supplemental report to the panel for consideration. In its report dated March 13, 2007, the panel disagreed with Dr. Knoebel's opinion and provided a detailed explanation for its reasoning. The panel concluded that Ms. Birt's condition was not a new event but was caused by the work injury and restated that she was not medically stable and needed surgery for her low back condition.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers and their insurance carriers to provide medical and disability benefits to each employee "injured . . . by accident arising out of and in the course of the employee's employment." In order to establish that his or her injury "arises out of" employment, an injured worker must prove that the work accident or exertion is both the "legal cause" and the "medical cause" of the injury. Allen v. Industrial Commission, 729 P. 2d 15, 27 (Utah 1986). The central issue in dispute in the motion for review is whether the work accident medically caused Ms. Birt's low back condition.

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Because of the conflict in the medical opinions, an impartial panel of medical experts specializing in the medical fields pertinent to Ms. Birt's claim was appointed. The medical panel provided a detailed explanation for its reasoning and conclusions that Ms. Birt's low back condition was medically caused by the work accident, that it had not yet reached medical stability, and required surgery. Walmart has argued that the panel's opinion was not supported by the evidence and that it should be disregarded because the panel purportedly used an undefined legal analysis in forming its opinion. The Commissioner has reviewed the medical panel's reports and finds that the panel reached its final conclusion and opinion based on its experience and knowledge of the medical issues—not by using a legal analysis. The Commissioner also finds the impartial panel's opinion persuasive and supported by the medical evidence. Therefore, the Commissioner finds Ms. Birt's low back condition was medically caused by the work accident and that future medical care of back surgery is necessary to treat Ms. Birt's injury.

Finally, the Commissioner denies Walmart's third contention that the matter be remanded for a new hearing based on the "new" evidence that it was not given the opportunity to defend against. After the new evidence became available, Judge Hann permitted Walmart's medical consultant, Dr. Knoebel, to review the new evidence and to provide a supplemental report. Dr. Knoebel's report was then admitted into evidence and submitted to the medical panel for consideration. Under the facts of this case, the Commissioner finds Walmart had opportunity to defend against the new evidence and it is unnecessary to remand the matter for a new hearing.

In summary, the Commissioner finds that the September 20, 2002, work accident medically caused Ms. Birt's current low back condition and hereby affirms Judge Hann's decision and award for benefits.

ORDER

The Commissioner affirms Judge Hann's decision. It is so ordered.

Dated this 27th day of May, 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.