
UTAH LABOR COMMISSION

ASHLY M. BIRT,

Petitioner,

vs.

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

Respondents.

**ORDER GRANTING REQUEST
FOR RECONSIDERATION**

ORDER OF REMAND

Case No. 20040252

Walmart asks the Utah Labor Commission to reconsider its prior decision affirming 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 matter pursuant to § 63G-4-302 of the Utah Administrative Procedures Act.

BACKGROUND AND ISSUES PRESENTED

Ms. Birt claims workers' compensation benefits from Walmart for a work accident that occurred on September 20, 2002, injuring her low back. Judge Hann held an evidentiary hearing and referred the medical issues to a medical panel for review. The medical panel examined Ms. Birt and reviewed the medical evidence and offered its opinion. After providing its first report, the panel was asked to reexamine Ms. Birt and supplement its decision. During this second visit, Ms. Birt reported more intense back pain and brought a recent MRI to the exam. The panel found Ms. Birt's back condition, which had significantly worsened since the last examination, was caused by the work accident.

Walmart objected to the panel's report because, in reaching its opinion, the panel had reviewed medical evidence not previously presented at the evidentiary hearing. Judge Hann reopened the evidentiary record to permit Walmart's medical consultant, Dr. Knoebel, to review the new medical evidence and to provide an opinion. Dr. Knoebel found the increased herniation and new symptoms were caused by a new event, not from the work accident. The panel reviewed Dr. Knoebel's opinion but found that because there was no intervening event, Ms. Birt's back condition was medically caused by the work accident. However, the panel further stated, "We would be inclined to agree with Dr. Knoebel if we could identify an intervening event that appeared to break the chain of causation, such as an injury from a fall, an automobile accident, or lifting outside her restrictions, etc."

Judge Hann adopted the panel's decision and awarded benefits. Walmart filed a motion for review asking the Commission to reverse Judge Hann's decision. The Commission denied Walmart's motion and affirmed Judge Hann's decision.

In its motion for reconsideration, Walmart argues that because the panel relied on facts not previously in evidence, the Commission should remand the matter for further fact finding.

DISCUSSION

The issue before the Commission is whether the medical panel relied on facts that were not previously in evidence, therefore requiring that the matter be remanded to Judge Hann for further proceedings. At the time of the hearing, both parties had an opportunity to review the medical evidence and argue facts in support of each of their positions on medical causation. It is undisputed that after the hearing, Ms. Birt suffered a significant worsening of her condition. She reported to the panel that she had awoken one night with sudden sharp pain. Based on Ms. Birt's description and the findings of fact in evidence at that time, *the panel* found there had been no intervening event that broke the chain of causation and concluded the work accident medically caused Ms. Birt's back condition.

Neither party has had the opportunity to investigate or conduct discovery on this issue. The panel conceded that if there was evidence of an intervening event, it would likely agree with Dr. Knoebel that it was the new event that caused the increased herniation, not the work accident. Since the issue of whether an intervening event occurred has become a critical factual question that the parties have not had the opportunity to address, the Commission finds, under these circumstances, the case should be remanded to Judge Hann for additional fact finding and for further proceedings as she finds necessary.

ORDER

The Commission hereby remands the matter to Judge Hann for further proceedings consistent with this order. It is so ordered.

Dated this 30th day of July, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.