
UTAH LABOR COMMISSION

DAVID M. GREEN,

Petitioner,

vs.

**SHARP TRANSPORTATION and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 04-1078

David M. Green asks the Utah Labor Commission to review Administrative Law Judge Trayner's limited award of temporary total disability benefits to Mr. Green 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. Green filed for workers' compensation benefits, claiming benefits for a work accident that occurred on December 19, 2002, injuring his back. At the time he filed, Mr. Green was seeking future recommended medical treatment of back surgery. Judge George referred the matter to a medical panel. Before a decision was reached on the case, Mr. Green had back surgery on March 3, 2006. Judge Trayner was later reassigned the case and held an evidentiary hearing to determine the remaining issue of whether Mr. Green was entitled to temporary total disability compensation for the period of time prior to the back surgery. Judge Trayner found Mr. Green reached medical stability by July 30, 2004, and awarded temporary total disability compensation from July 26, 2004, through July 30, 2004.

In his motion for review, Mr. Green argues that he had not reached medical stability prior to his back surgery of March 3, 2006, and he was entitled to temporary total disability from July 26, 2004, through March 2, 2006.

FINDINGS OF FACT

The Commission adopts Judge Trayner's findings of fact. The facts relevant to the issue in the motion for review are as follows:

Mr. Green had a previous history of back problems. On December 19, 2002, he injured his back while he was unloading products for Sharp and sought medical treatment for a lumbar strain.

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On March 20, 2003, based on Mr. Green's report of being much improved and essentially symptom free, Dr. Housley's stated Mr. Green's lumbar strain was resolved and released him to work without further restriction. However, on May 7, 2004, Mr. Green reported increased back pain to Dr. Housley, who recommended sedentary work only and no professional driving. Dr. Housley referred Mr. Green to a back specialist for his chronic low back pain. During this time, Mr. Green was restricted from returning to work.

On July 15, 2004, Mr. Green was released to return to work with some physical restrictions. On July 30, 2004, Sharp's medical consultant, Dr. Morgan, examined Mr. Green and found that Mr. Green had reached maximum medical improvement as of July 30, 2004, and issued an impairment rating of 5%. On October 27, 2004, Mr. Green obtained a second opinion from Dr. Bowen, who agreed that Mr. Green qualified for a 5% impairment rating. Dr. Bowen recommended light duty work and issued some physical restrictions. Dr. Bowen also discussed a home exercise program and injections for Mr. Green's back pain, as well as the possibility of surgery.

In April of 2005, Mr. Green sought a surgical assessment from Dr. Felix. Dr. Felix's notes only indicated that these options were discussed, although he did not make any recommendation for surgery at that time. Green quit his employment on May 31, 2005, because of increased back pain.

In its report dated September 15, 2005, the medical panel only indicated that Mr. Green would be a "reasonable surgical candidate." The type of surgery was left to the discretion of the surgeon. On March 3, 2006, Mr. Green had back surgery.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commission is whether Mr. Green was entitled to temporary total disability compensation from July 26, 2004, through March 2, 2006, the period of time prior to his back surgery. Section 34A-2-410 of the Utah Workers' Compensation Act provides subsistence income to injured employees during the period they are healing from their injuries. Temporary total disability compensation ends when the injured worker reaches medical stability. See Booms v. Rapp, 720 P.2d 1363, 1366 (Utah 1986). However, it is important to note that medical stability does not mean that the injured worker will not experience any further improvement or require any further medical care. Rather, medical stability is achieved when the injured worker's rate of improvement has plateaued.

The only medical opinion in the record on whether Mr. Green had reached medical stability was from Dr. Morgan, who found Mr. Green reached medical stability by July 30, 2004. Mr. Green's own doctor reviewed Dr. Morgan's opinion and did not dispute Dr. Morgan's opinion on medical stability. Furthermore, there are no medical opinions that indicate Mr. Green was not medically stable or that he needed surgery before he could reach medical stability. Although Mr. Green continued to complain of back pain after July 30, 2004, and he took narcotics for the pain, the Commission finds that the medical evidence shows that Mr. Green reached medical stability by July

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30, 2004. Thus, Mr. Green was entitled to temporary total disability compensation from July 26, 2004, through July 30, 2004. The Commission hereby affirms Judge Trayner's decision and award of benefits.

ORDER

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

Dated this 30th day of June, 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.