
UTAH LABOR COMMISSION

ROSEANN J. ZEMPTER,

Petitioner,

vs.

**WAL-MART and AMERICAN
HOME ASSURANCE CO,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0072

Wal-Mart and its workers compensation insurance carrier, American Home Assurance Co., (referred to jointly as "Wal-Mart" hereafter) ask the Utah Labor Commissioner to review Administrative Law Judge Trayner's award of benefits to Roseann J. Zempter under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commissioner 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

Ms. Zempter claims workers compensation benefits from WalMart for low-back injuries allegedly caused by cumulative trauma from Ms. Zempter's work at Wal-Mart between September 2003 and January 2004. Judge Sessions held an evidentiary hearing on Ms. Zempter's claim and then referred the medical aspects of the claim to an impartial medical panel. Judge Sessions received the panel's report, but resigned from the Commission prior to issuing a final decision. Judge Trayner was assigned to complete the adjudication of Ms. Zempter's claim by reviewing the evidentiary record and then issuing a final decision. In that decision, Judge Trayner accepted the medical panel's opinion that Ms. Zempter's work at Wal-Mart medically caused her back injury. Judge Trayner therefore ruled that Ms. Zempter's injury was compensable under Utah's workers' compensation system and ordered Wal-Mart to pay medical and disability benefits to Ms. Zempter.

In requesting review of Judge Trayner's decision, WalMart disputes the medical panel's conclusion that Ms. Zempter's work at WalMart is the medical cause of her back injuries.

FINDINGS OF FACT

The Commissioner adopts Judge Trayner's findings of facts. In summary, Ms. Zempter worked for WalMart for approximately ten years. Ms. Zempter's duties required substantial bending, kneeling and reaching, as well as lifting of items weighing up to 80 pounds. On September 3, 2003, Ms. Zempter experienced an episode of back pain. This pain resolved after a few weeks of

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conservative treatment. Then, while working at WalMart on January 30, 2004, Ms. Zempster began to experience pain in her low back and right leg. This pain increased over the course of her work shift and she was in great pain by the end of the day. Ultimately, Ms. Zempster was diagnosed with spondylolisthesis and radiculopathy, resulting in a permanent 10% whole person impairment.

Several of Ms. Zempster's treating physicians have attributed the cause of Ms. Zempster's back injuries to her work at WalMart. On the other hand, WalMart's medical consultant has concluded that Ms. Zempster's back condition is personal to her and is unrelated to her work at WalMart. The impartial medical panel appointed by the ALJ disagrees with WalMart's consultant and, instead, generally concurs with the opinions of Ms. Zempster's treating physicians that Ms. Zempster's back problems are causally connected to her work. According to the medical panel, Ms. Zempster suffers an 8% whole person impairment from work-related causes and a 2% whole person impairment from non-work causes.

WalMart urges the Commission to reject the opinions of Ms. Zempster's treating physicians and the medical panel and, instead, to accept the opinion of WalMart's medical consultant. In considering the relative weight to be given to the various medical opinions, the Commission notes that the medical panel consisted of only one physician. The Commission generally prefers that medical panels include two or more medical experts. The medical panel's report also would have benefited from a more comprehensive explanation of the panel's conclusions. These factors tend to reduce the persuasive force of the panel's report. On the other hand, the panel was independent and impartial. It personally examined Ms. Zempster and reviewed all her medical records, including the opinions of all the other medical experts who previously had examined and/or treated her. The panel's opinion is corroborated by the opinions of Ms. Zempster's treating physicians. On balance, the Commission finds the panel's report persuasive and concludes that the preponderance of medical opinion and other evidence establishes that Ms. Zempster's back injuries are causally connected to her work at Wal-Mart.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers or their insurance carriers to pay medical and disability benefits for employees' work-related injuries. In order to qualify for such benefits, the injured worker must establish, among other things, that a medical causal connection exists between his or her work and injuries. This requirement of "medical causation" is the only issue in dispute in this case.

As noted in the preceding section of this decision, the Commission has considered and weighed the various medical opinions regarding the relationship between Ms. Zempster's work and her back injuries. Because the Commission finds the requisite medical causal connection between Ms. Zempster's work and her back injuries, the Commission concurs with Judge Trayner's determination that Ms. Zempster is entitled to workers' compensation benefits for her injuries.

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ORDER

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

Dated this 28th day of April, 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.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Roseann J Zempter, Case No. 05-0072, was mailed first class postage prepaid this ____ day of April, 2009, to the following:

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