
UTAH LABOR COMMISSION

J. DON MARTIN,

Petitioner,

vs.

**JORDAN SCHOOL DISTRICT and
EMPLOYERS REINSURANCE FUND,**

Respondents.

**ORDER DENYING REQUEST
FOR RECONSIDERATION**

Case No. 05-0140

J. Don Martin asks the Utah Labor Commissioner to reconsider her prior decision affirming Judge Sessions' denial of Mr. Martin's claim for benefits 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

Mr. Martin claims workers' compensation benefits from Jordan School District and the Employers Reinsurance Fund, (hereafter referred to jointly as "Jordan") for a work accident that occurred on February 7, 1994, injuring his back. In 1996 Mr. Martin filed a workers' compensation claim seeking benefits, including permanent partial disability compensation, resulting in the appointment of a medical panel. The panel found Mr. Martin suffered a 15% whole person impairment due to his lumbar condition, of which 3% was caused by the work injury and the remaining due to a preexisting lumbar condition. The Commission awarded permanent partial disability compensation on that basis.

Mr. Martin filed the present claim for permanent total disability compensation, alleging that his impairments caused by the 1994 work accident have left him unable to work. Another medical panel was appointed to determine what restrictions, if any, Mr. Martin suffered as a result of the 1994 work accident. The medical panel found that all of Mr. Martin's permanent work restrictions are due to preexisting lumbar conditions, not the 1994 work accident. Judge Sessions adopted the panel's findings and denied permanent total disability compensation.

Mr. Martin filed a motion for review of that decision, arguing that the Commission and the recently appointed medical panel were required to accept as an underlying fact the previous panel's finding that Mr. Martin suffered a 3% whole person impairment. The Commissioner found under the facts of this case that the medical panel was not bound by the earlier panel's opinion in making its own determination of whether any of Mr. Martin's current restrictions were caused by the 1994 work injury. The Commission affirmed Judge Sessions' dismissal of the claim.

**ORDER DENYING REQUEST FOR RECONSIDERATION
J. DON MARTIN
PAGE 2 OF 3**

In his motion for reconsideration, Mr. Martin argues that the Commission previously found Mr. Martin suffered a 3% permanent partial rating and that by affirming the ALJ's decision, which found that none of Mr. Martin's present restrictions were caused by the 1994 work accident, the Commissioner reversed the 1996 Order with no cause shown.

DISCUSSION

The Commissioner notes that the Commission previously adjudicated Mr. Martin's claim for permanent partial disability compensation and a final order for those benefits was entered in 1996. That order became a final order, no longer subject to appeal and Mr. Martin's award for those benefits is not set aside. Mr. Martin's present claim seeks only permanent total disability compensation, a claim not previously adjudicated with the Commission. In offering an opinion relevant to the issues on a permanent total disability claim, the panel found that based on the medical evidence **now** available, Mr. Martin does not **presently** suffer any permanent work restrictions as a result of the 1994 work injury. For purposes of deciding Mr. Martin's claim for permanent total disability compensation, the Commission affirms its position that the panel was not obligated to accept as an underlying fact the previous panel's opinion on Mr. Martin's permanent restrictions. The Commission therefore reaffirms its previous decision denying Mr. Martin's claim for permanent total disability compensation.

ORDER

The Commission denies Mr. Martin's request for reconsideration. It is so ordered.

Dated this 30th day of April, 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.

**ORDER DENYING REQUEST FOR RECONSIDERATION
J. DON MARTIN
PAGE 3 OF 3**

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Reconsideration in the matter of J. Don Martin, Case No. 05-0140, was mailed, first class, postage prepaid this ____day of April, 2009, to the following:

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