
UTAH LABOR COMMISSION

DOUG DECKER,

Petitioner,

vs.

COSTCO,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0178

Doug Decker asks the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Mr. Decker 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. Decker claims workers' compensation benefits from Costco for a work accident that occurred on December 23, 2003. Judge Lima held an evidentiary hearing wherein she accepted into evidence Costco's late-submitted medical evidence and then referred the medical issues of the case to a medical panel due to conflicting medical opinions. After reviewing the panel's report, Judge Lima adopted the panel's opinion and issued benefits according to those findings.

In his motion for review, Mr. Decker argues that it was unfairly prejudiced by the admission of Costco's late-filed medical report into the record, which improperly created a medical controversy and sent the medical issues to a medical panel. He argues that Judge Lima's decision, relying on the panel's opinion, should be reversed and the case remanded for further fact finding.

FINDINGS OF FACT

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

In November of 2000, prior to the work accident, an MRI of Mr. Decker's cervical spine revealed chronic and acute cervical disk disease. In March of 2004, Mr. Decker reported neck and arm pain and numbness down his left arm and intermittently down his right hand dating back to 1993.

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On December 23, 2003, Mr. Decker was helping a customer load a toolbox weighing approximately 300 pounds into the back seat of a car when he hurt his back. Over the course of the next year and a half, Mr. Decker was treated by several doctors for neck and back pain, undergoing back surgery in April of 2004 and more than a year of chiropractor treatment with Dr. Guthrie. His doctor, Dr. Coleman, found that the work accident aggravated Mr. Decker's degenerative spinal condition. On July 5, 2005, Dr. Knoebel conducted a medical records review and found that the work accident caused only a minor soft tissue injury with muscle spasm of the neck and upper back. Dr. Knoebel's assessment was that the work accident did not cause, contribute or permanently aggravate Mr. Decker's cervical condition and need for surgery.

At the hearing on August 4, 2005, Mr. Decker objected to the admission of Dr. Knoebel's report that was received seven business days before the hearing. Due to the relevance of the material and Costco's previous notice to Mr. Decker that such a report was to be expected and would be included in the medical records exhibit as soon as it became available, Judge Lima found good cause for admitting the record into evidence. Mr. Decker was then permitted to submit a supplemental report from Dr. Guthrie, responding to Dr. Knoebel's report. Dr. Guthrie's report included his assessment that the work accident accelerated the speed of Mr. Decker's spine degeneration. Judge Lima also kept the record open an additional 30 days for Mr. Decker to submit additional records from Dr. Guthrie. After the evidentiary record was closed, a medical panel was appointed to review the medical aspects of the case in light of the conflicting medical opinions as to medical causation.

The medical panel examined Mr. Decker and reviewed the medical records and found the December 2003 work accident temporarily injured Mr. Decker's thoracic, shoulder and neck musculature but not his spine and that Mr. Decker had reached medical stability from the work injury by January 31, 2004. The medical panel's assessment was that Mr. Decker's current complaints and cervical condition were due to his preexisting condition, including the necessity of the April 2004 surgery.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commission is whether Mr. Decker was unfairly prejudiced by the admission of Dr. Knoebel's report, which was filed in the amended medical records exhibit on July 20, 2005, but not received by Mr. Decker until seven business days prior to the hearing. Mr. Decker argues that Costco's failure to provide a copy of Dr. Knoebel's report to him ten working days prior to the hearing has unfairly prejudiced him and that Judge Lima's decision, which relied on the medical panel's opinion, should be reversed. The Commission disagrees.

Mr. Decker was made aware in Costco's initial answer to his claim for benefits that medical causation was in dispute and again, later, in Costco's pretrial disclosure form that it may be providing a medical records review from an independent medical examiner. Costco amended its pretrial disclosure form on July 20th and supplemented the medical records exhibit with the report as soon as it became available. Mr. Decker also conceded that he received the report at least seven

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days prior to the hearing and that he was able to have his medical consultant, Dr. Guthrie review the report and provide a supplemental report, which Judge Lima permitted to be admitted into the record.

The Commission recognizes the importance of filing documents in a timely fashion, most notably for the purpose of putting the other party on notice of the claims and defenses and to permit the parties an opportunity to defend against all claims. The Commission also recognizes that it has broad authority to accept evidence that is deemed relevant into the record. Section 34A-2-802 of the Utah Workers' Compensation Act provides that the Commission and its Administrative Law Judges are not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules of procedure and that "[t]he commission may receive as evidence and use as proof of any fact in dispute all evidence deemed material and relevant. . . ."

Other than its timeliness, Mr. Decker did not provide any reason for the Commission to exclude Dr. Knoebel's report, which the Commission finds relevant to the issues in Mr. Decker's claim. The Commission finds that Mr. Decker was provided notice and an opportunity to respond to the medical evidence and that he was not unfairly prejudiced by the admission of the report into the record.

In summary, the Commission concurs with Judge Lima's admission of Dr. Knoebel's report into the record for good cause shown and the appointment of the medical panel based on the conflicting medical opinions. The Commission hereby affirms Judge Lima's order for benefits.

ORDER

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

Dated this 28th 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.