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**UTAH LABOR COMMISSION**

**PATRICIA L. BEDEL,**

**Petitioner,**

vs.

**REST EASY ADULT DAY CARE and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER DENYING REQUEST  
FOR RECONSIDERATION**

**Case No. 05-0502**

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Patricia L. Bedel asks the Utah Labor Commission to reconsider its prior decision denying Ms. Bedel's claim for permanent total disability compensation under § 34A-2-413 of 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. Bedel claims permanent total disability compensation for a spinal injury suffered while working for Rest East Adult Day Care on August 10, 2004. Shortly after the commencement of the evidentiary hearing on Ms. Bedel's claim, the employer and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Rest Easy" hereafter) moved to dismiss Ms. Bedel's claim on the grounds that Ms. Bedel was gainfully employed and, therefore, was not permanently and totally disabled. Judge Lima granted Rest Easy's motion and dismissed Ms. Bedel's claim "without prejudice."

Ms. Bedel then requested review of Judge Lima's decision by the Labor Commission. Ms. Bedel's motion for review raised only one issue—whether Judge Lima had misapplied the "gainful employment" test of § 413(1) (c) (i) to the undisputed facts of Ms. Bedel's claim. The Commission concluded that Judge Lima had correctly determined that Ms. Bedel was "gainfully employed."

Ms. Bedel now asks the Commission to reconsider its decision. In making this request, Ms. Bedel asserts that Judge Lima did not permit her to present testimony at the evidentiary hearing that would have established she was not gainfully employed.

**DISCUSSION**

Section 63G-4-301(1) (b) (ii) of the Utah Administrative Procedures Act requires a party seeking Commission review of an ALJ's decision to "state the grounds for review and the relief requested." The Labor Commission is precluded from addressing issues that the parties have not

raised in their motions for review. *Hilton Hotel et al. v. Industrial Commission, et al.*, 897 P.2d 352 (Utah App. 1995.)

The only issue Ms. Bedel raised in her original motion for review was that Judge Lima had misapplied § 413 (1) (c) (i) to the facts of Ms. Bedel's claim. Ms. Bedel's motion for review **did not** assert that the facts relied upon by Judge Lima were incorrect or incomplete. As to Ms. Bedel's assertion that she was prevented from presenting additional evidence in support of her claim, the hearing record establishes that Ms. Bedel neither proffered any additional evidence at the hearing nor objected to Judge Lima's management of the hearing process. Furthermore, Ms. Bedel has not identified any omitted evidence that is relevant to the issue of "gainful employment." In light of the foregoing considerations, the Commission finds no basis to modify its previous decision affirming Judge Lima's order in this matter.

### **ORDER**

The Commission reaffirms its previous decision and denies Ms. Bedel's request for reconsideration. It is so ordered.

Dated this 28<sup>th</sup> day of May, 2009.

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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.