
UTAH LABOR COMMISSION

MAGDALENA JIMENEZ,

Petitioner,

vs.

**MARRIOTT COURTYARD and/or
WORKERS COMPENSATION FUND,**

Respondent.

**ORDER DENYING REQUEST
FOR RECONSIDERATION**

Case No. 05-0870

Magdalena Jimenez asks the Utah Labor Commission to reconsider its prior decision denying Ms. Jimenez 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

Ms. Jimenez claims workers' compensation benefits from Marriott Courtyard and its insurance carrier, Workers Compensation Fund, (hereafter referred to jointly as "Marriott") for a work accident that occurred on August 30, 2003, injuring her low back and right leg. After holding an evidentiary hearing, Judge Marlowe found Ms. Jimenez was permanently and totally disabled from her work injury and awarded benefits.

On appeal from a motion for review, the Commission found that Ms. Jimenez did not establish that she was permanently and totally disabled or that the work accident was the direct cause of her alleged permanent total disability. The Commission set aside Judge Marlowe's decision and denied permanent total disability compensation.

In her motion for reconsideration, Ms. Jimenez argues that the Commission's fact finding was contrary to the evidence and that the Commission should have conducted further fact finding before reversing Judge Marlowe's decision, such as asking a medical panel to review Ms. Jimenez's work restrictions. Ms. Jimenez also argues that the motion for review process is unfair and that the Commission's decision deprived her of property rights without due process of law.

DISCUSSION

Ms. Jimenez argues that because her medical doctors were either mistaken or ambiguous in giving their opinions on her physical restrictions, the Commission should have sent this to a medical panel to determine the extent of her limitations and made findings accordingly. However, Section

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34A-2-413 of the Utah Workers' Compensation Act provides that **the employee** has the burden of proving her entitlement to permanent total disability compensation by a preponderance of the evidence. Thus, even if Ms. Jimenez's doctors were mistaken or ambiguous in their medical opinions, it was Ms. Jimenez's burden to provide the medical evidence necessary to support her claim for benefits. The Commission will not appoint a medical panel to generate medical evidence that was her burden to provide. Furthermore, after reviewing the facts that Ms. Jimenez claims are at issue, the Commission reaffirms its findings of facts based on the evidence in the record and its decision finding that she failed to establish the elements necessary to establishing entitlement to permanent total disability compensation.

The Commission notes Ms. Jimenez's arguments that the process for reviewing motions for review are unfair and that reversing the preliminary award of permanent total disability compensation allegedly deprives her of property rights without due process of law. However, the Commission finds these arguments are without merit and bear no relevance to the issue of whether she was entitled to permanent total disability compensation. The Commission reaffirms its decision denying Ms. Jimenez permanent total disability compensation.

ORDER

The Commission denies Ms. Jimenez's request for reconsideration. It is so ordered.

Dated this 30th day of June, 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.