
UTAH LABOR COMMISSION

MICHAEL J. BULLOCK,

Petitioner,

vs.

**DAX DEBERRY, dba ROCKY
MOUNTAIN CARPET AND
INSTALLATION and UNINSURED
EMPLOYERS FUND,**

Respondents.

**ORDER ON REQUEST
FOR RECONSIDERATION**

Case No. 05-0927

The Utah Labor Commission's previous decision dismissed as untimely Dax Deberry's motion for review of Judge La Jeunesse's award of workers' compensation benefits to Michael J. Bullock. Mr. Deberry now asks the Commission to reconsider its dismissal of his motion for review. The Labor Commission exercises jurisdiction over Mr. Deberry's request for reconsideration pursuant to § 63G-4-302 of the Utah Administrative Procedures Act.

TIMELINESS OF MR. DEBERRY'S MOTION FOR REVIEW

In its prior decision, the Commission concluded that Mr. Deberry had failed to file his motion for review within 30 days after Judge La Jeunesse issued his decision. On that basis, the Commission dismissed Mr. Deberry's motion for review as untimely under § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-2-801 of the Utah Workers' Compensation Act. However, Mr. Deberry's request for reconsideration points out that Judge La Jeunesse had extended the deadline for Mr. Deberry to file his motion for review, and that the motion for review was, in fact, filed prior to the expiration of that extended deadline. In light of the extension of time granted by Judge La Jeunesse, the Commission concludes that Mr. Deberry's motion for review was timely filed. The Commission will therefore proceed to consider the merits of the motion for review.

BACKGROUND AND ISSUES PRESENTED

Mr. Bullock claims workers' compensation benefits for a back injury suffered on August 4, 2004, while working for Mr. Deberry. After an evidentiary hearing, Judge La Jeunesse concluded that Mr. Bullock was entitled to benefits for his injury and ordered Mr. Deberry to pay those benefits.¹

¹ Judge La Jeunesse also ruled that, because Mr. Deberry lacked the means to pay Mr. Bullock's benefits, the UEF was required to pay the benefits in the first instance, subject to a right of repayment from Mr. Deberry. The UEF filed a motion for review of that part of Judge La Jeunesse's decision. The UEF's motion for review was addressed in the Commission's previous decision in this matter and will not be discussed further in this decision.

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In requesting Commission review of Judge La Jeunesse's decision, Mr. Deberry argues that Mr. Bullock is not entitled to workers' compensation benefits because his injury was not caused by his work for Mr. Deberry, but was caused instead by other pre-existing or non-work events. Mr. Deberry also contends that, even if Mr. Bullock is entitled to workers' compensation benefits, Judge La Jeunesse erred in concluding that the amount of Mr. Bullock's disability compensation should be based on a 40-hour work week.

DISCUSSION

Mr. Bullock's entitlement to workers' compensation benefits. Section 34A-2-401 of the Utah Workers' Compensation Act requires employers to pay medical benefits and disability compensation to workers who have been injured by accident arising out of and in the course of the employment. In order to establish that an injury arises "out of employment," an injured worker must prove, among other things, that his or her work is the "medical cause" of the injury. In *Allen v. Industrial Commission*, 729 P.2d 15, 27 (Utah 1986), the Utah Supreme Court defined the requirements for proof of medical causation in workers' compensation cases as follows:

Under the medical cause test, the claimant must show by evidence, opinion, or otherwise that the stress, strain, or exertion required by his or her occupation led to the resulting injury or disability.

Mr. Deberry argues that Mr. Bullock's back injury was not caused by his employment by Mr. Deberry, but was instead caused by events occurring either before or after that employment. However, as noted in Judge La Jeunesse's decision, Mr. Bullock's accident while working for Mr. Deberry is well-documented, and the preponderance of medical evidence attributes Mr. Bullock's back problems to that work accident. The Commission notes Mr. Deberry's references to several medical records that mention other events in connection with Mr. Bullock's back pain, but the Commission finds those records to be vague and contradictory. The Commission therefore concurs with Judge La Jeunesse's determination that Mr. Bullock's back injury was caused by his work for Mr. Deberry and that Mr. Bullock is entitled to workers' compensation benefits for that injury.

Mr. Bullock's disability compensation rate. Under the Utah Workers' Compensation Act, the amount of an injured worker's disability compensation is generally based on the worker's average weekly wage at the time of the injury. In cases where a worker is paid by the hour, § 34A-2-409(1)(e) of the Act provides that the worker's average weekly wage "shall be determined by multiplying the hourly rate by the greater of: (i) the number of hours the employee would have worked for the week if the accident had not intervened; or (ii) 20 hours."

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In this case, Judge La Jeunesse found that Mr. Bullock would have worked 40 hours during the week in which his work injury occurred and, therefore, computed Mr. Bullock's disability compensation on that basis. Mr. Deberry's motion for review argues that Mr. Bullock would have worked no more than 30 hours during the week in question and that his disability compensation should be reduced accordingly. Having reviewed the hearing transcript on this point, the Commission notes that Mr. Bullock's testimony that he would have worked 40 hours that week was not challenged in the course of cross-examination. Furthermore, Mr. Deberry's contrary testimony was unclear and unsupported by any corroborating documentary evidence that an employer would reasonably maintain for such matters. In summary, the Commission agrees with Judge La Jeunesse's determination that Mr. Bullock's testimony is persuasive on this point. The Commission therefore affirms Judge La Jeunesse's computation of Mr. Bullock's disability compensation based on a 40-hour work week.

ORDER

The Commission affirms Judge La Jeunesse's order. It is so ordered.

Dated this 29th 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.