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**UTAH LABOR COMMISSION**

**DEBRA HENDRICKSON,**

**Petitioner,**

vs.

**SMITH'S FOOD AND DRUG CENTER,**

**Respondent.**

**ORDER MODIFYING  
ALJ'S ORDER FOR  
BENEFITS**

**Case No. 05-0991**

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Smith's Food and Drug Center ("Smith's") asks the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Debra Hendrickson under the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Ms. Hendrickson claims occupational disease benefits for a right foot condition and right shoulder condition that she alleges developed from her work at Smith's. Judge Lima held an evidentiary hearing and then referred the medical aspects of the case to a medical panel. After reviewing the panel report, Judge Lima adopted the panel's opinion and found that Ms. Hendrickson's right foot condition was not caused by her work activities at Smith's and denied benefits for that condition. However, Judge Lima found that 70% of Ms. Hendrickson's right shoulder condition was caused by her work activities at Smith's and awarded benefits, including temporary total disability compensation, apportioned at 70%, and medical expenses, not subject to apportionment.

Smith's is the only party who appealed Judge Lima's decision. In its motion for review, Smith's argues that the award for medical expenses is subject to apportionment in an occupational disease case under the statute and Smith's should only be ordered to pay 70% of the medical expenses to treat Ms. Hendrickson's right shoulder condition.

**DISCUSSION AND CONCLUSION OF LAW**

The only issue before the Commission is whether medical expenses awarded under the Utah Occupational Disease Act should be apportioned. In light of the Utah Supreme Court's recent decision in Dale T. Smith & Sons v. Utah Labor Commission, 627 Utah Adv. Rep. (SC, 4/9/09), holding that medical expenses are included as "compensation" under the Act and therefore subject to apportionment, the Commission modifies Judge Lima's order for medical expenses accordingly.

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Ms. Hendrickson is hereby entitled to payment of her medical expenses at the apportioned rate of 70% work-related and 30% non-work related.

**ORDER**

The Commission hereby modifies Judge Lima's order for medical expenses as follows:

**IT IS FURTHER ORDERED** that Smith's shall pay 70% of the reasonable sums for Ms. Hendrickson's necessary medical care, including any out-of-pocket expenses incurred by Petitioner, related to her right shoulder condition pursuant to Utah Code Ann. §34A-2-418 and the medical and surgical fee schedule of the Utah Labor Commission, plus interest at eight percent (8%) per annum, under Utah Code Ann. §34A-2-420 and Utah Administrative Code, Rule 612-2-13 and any travel allowances incurred pursuant to Utah Administrative Code, Rule 612-2-20.

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 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.