
UTAH LABOR COMMISSION

EVELIA BARAJAS,

Petitioner,

vs.

**IES EMPLOYMENT SOLUTIONS and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-1117

Evelia Barajas asks the Utah Labor Commissioner to review Administrative Law Judge Hann's denial of benefits to Ms. Barajas under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commissioner 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

Ms. Barajas claims workers' compensation benefits from IES Employment Solutions and its insurance carrier, Workers' Compensation Fund, (hereafter jointly referred to as "IES") for an alleged work injury that occurred on October 4, 2005. Judge Hann held an evidentiary hearing and then, due to the conflicting medical opinions, appointed a medical panel to review the medical aspects of the case. After reviewing the panel's report, Judge Hann found the alleged work accident did not medically cause Ms. Barajas upper right arm conditions and denied benefits.

In her motion for review, Ms. Barajas argues that Judge Hann failed to adequately detail Ms. Barajas' work duties in her findings of fact and that the medical panel's decision supported a finding of medical causation.

FINDINGS OF FACT

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

Ms. Barajas was a temporary worker for IES, working on a machine that perforated holes in flat iron bars, measuring 44 inches long, 2 inches wide and each weighing four pounds. During an eight-hour shift, Ms. Barajas's duties consisted of bending and grabbing two bars at a time, inserting them into the machine, and then catching them as they slid out of the machine. On October 4, 2005,

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about five hours into her shift, Ms. Barajas experienced pain in her right arm and by the end of her shift, the arm was painful and swollen.

The WorkMed doctor found Ms. Barajas's arm condition was medically caused by a work injury. Ms. Barajas's doctor, Dr. Yubero, assessed right rotator cuff/bicipital tendonitis and right carpal tunnel syndrome. IES's medical consultant, Dr. Marble, was of the opinion that Ms. Barajas's right arm conditions were all pre-existing the work injury and were not medically caused by her work activities of that day. Dr. Marble indicated the right shoulder condition was degenerative and, as to the carpal tunnel syndrome, that Ms. Barajas had risk factors for developing this condition, including her age, weight, heredity, and diabetes, which was poorly controlled.

Due to the conflicts in the medical opinions, Judge Hann appointed a medical panel. The panel, consisting of a specialist in occupational medicine and a physiatrist, examined Ms. Barajas and reviewed the findings of fact and medical records. The panel found that Ms. Barajas's work activities did not cause her right shoulder condition or carpal tunnel syndrome. When asked about the necessity of the medical care given, the panel did note that ". . . as it seems possible that her work exposure caused a temporary aggravation of pre-existing problems, the medical panel finds that Dr. Yubero's care . . . was necessitated by the industrial accident."

DISCUSSION AND CONCLUSION OF LAW

Under Section 34A-2-401 of the Utah Workers' Compensation Act, an employee is entitled to compensation and medical care for "accidents arising out of and in the course of" employment. Injuries are considered to "arise out of" employment if the work is both the "legal cause" and the "medical cause" of injury. See Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986). Here, both parties provided medical evidence to support their positions on medical causation. Due to this conflict, an impartial medical panel was appointed who reviewed the medical evidence and facts and found Ms. Barajas' work activities did not medically cause her right arm condition. The Commission finds the panel's decision well-reasoned and supported by the medical evidence.

In her motion for review, Ms. Barajas now argues that had the panel been given even more specific information as to the number of bars she was processing per hour, its decision may have been different. The Commissioner, however, finds that Judge Hann's findings of fact sufficiently detailed the facts of the case; furthermore, no medical evidence presented shows that had the panel been given this information, its opinion would have been different.

Ms. Barajas also argues that the panel's opinion supported a finding of medical causation, based on the panel's statement that "it seems possible that her work exposure caused a temporary aggravation of pre-existing problems." The Commissioner disagrees. The panel's second statement was not that it was medically probable that the work activities caused a temporary aggravation, only that "it seems possible." Thus, the Commissioner does not find that the opinion was stated in the terms of medical probability as necessary to support a finding of medical causation.

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In summary, the Commissioner affirms Judge Hann's finding that Ms. Barajas's work activities of October 4, 2005, did not medically cause her right arm condition and the decision denying benefits.

ORDER

The Commissioner affirms Judge Hann's decision. It is so ordered.

Dated this 30th day of March, 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.