
UTAH LABOR COMMISSION

BRADLEY R. KEYSER,

Petitioner,

vs.

**BISYS and HARTFORD
INSURANCE CO. OF THE
MIDWEST,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 06-0032

Bradley R. Keyser asks the Utah Labor Commission to review Administrative Law Judge Lima's denial of benefits to Mr. Keyser under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission 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

Mr. Keyser claims workers' compensation benefits from Bisys and its insurance carrier, Hartford Insurance Co. of the Midwest, (referred to jointly as "Bisys") for a work accident that occurred on September 6, 2005, injuring his head. Mr. Keyser claims the work accident aggravated his brain condition (hydrocephalus) and the symptoms of his disease, including short-term memory loss, cognitive problems, and headaches. Judge Lima held an evidentiary hearing and then referred the medical aspects of the case to a medical panel. After reviewing the panel's report, Judge Lima adopted the panel's opinion and found that only Mr. Keyser's headache complaints were aggravated by the work accident and awarded limited benefits.

Mr. Keyser argues that the work accident aggravated his brain condition and the various symptoms of that condition and he is entitled to benefits related to the treatment of those complaints.

FINDINGS OF FACT

The Commission adopts Judge Lima's findings of fact. The facts relevant to the issue in the motion for review can be summarized as follows:

Mr. Keyser had previously been diagnosed with hydrocephalus and suffered headaches, short-term memory loss, and tremors from the brain condition. In February of 2005, he had complained that his short-term memory loss had worsened in the previous eight months. On

ORDER AFFIRMING ALJ'S DECISION
BRADLEY R. KEYSER
PAGE 2 OF 3

September 6, 2005, Mr. Keyser hit the top of his head on an exposed metal beam while working at Bisys. Although he was stunned for about 15 seconds, there was no break or bump on the skin from the impact and he returned to work. On September 14, 2005, Mr. Keyser was evaluated by Dr. Reichert, reporting that since the work accident he had a new onset of throbbing headaches that began about 30 minutes after the accident and worsened short-term memory loss and tremors. An MRI was performed that revealed no significant interval changes in Mr. Keyser's brain condition since the last MRI taken in February of 2005. Dr. Reichert's opinion was that Mr. Keyser suffered from long-standing hydrocephalus.

At Dr. Reichert's recommendation, Mr. Keyser saw Dr. Schmidt, a neurosurgeon, on October 11, 2005. Dr. Schmidt reviewed the September 2005 MRI and noted that it showed a typical pattern of arrested or compensated congenital hydrocephalus. Dr. Schmidt found that, although there was a suggestion of subtle deterioration over the last few years, Mr. Keyser had deteriorated substantially following the September 2005 work accident and surgery was recommended. On October 17, 2005, Mr. Keyser underwent surgery. Dr. Schmidt found that Mr. Keyser had a preexisting medical condition that was aggravated by the September 2005 work injury.

On May 15, 2006, Bisys's medical consultant, Dr. Moress, diagnosed long-standing hydrocephalus. However, he found that medical causation would need to be determined based on when Mr. Keyser's memory problems increased. If the increased symptoms are found to have occurred following the work accident, as Mr. Keyser reports, then, according to Dr. Moress, the work accident would have aggravated Mr. Keyser's condition resulting in the surgery. On May 30, 2006, after being provided more information about Mr. Keyser's symptoms and history of his condition as reported in February of 2005, Dr. Moress indicated he was "less sanguine in ascribing the onset of the abrupt deterioration in memory problems to the [work] accident. . . ."

The medical panel, consisting of a neurologist, examined Mr. Keyser and reviewed the medical records and diagnostic studies. The panel found that Mr. Keyser's increased headache complaints were caused by the accident, but that his cognitive/memory dysfunctions and the surgical intervention were not related to the work accident, but were preexisting. Thus, the panel indicated that Dr. Reichert's evaluation and the resulting MRI in September 2005 were caused by the accident, but not the surgery. Future medical care for Mr. Keyser's headaches included over the counter and prescription medication as necessary.

DISCUSSION AND CONCLUSION OF LAW

Under § 34A-2-401 of the Utah Workers' Compensation Act, an employee who is injured "by accident arising out of and in the course of . . . employment" is entitled to compensation and payment of medical services for loss sustained on account of the injury. Mr. Keyser contends that the evidence from his treating physicians show that the work accident aggravated his condition and thus treatment for all of his current symptoms, including surgery, are compensable.

ORDER AFFIRMING ALJ'S DECISION
BRADLEY R. KEYSER
PAGE 3 OF 3

Both Mr. Keyser and Bisys submitted medical opinions to support their respective arguments and in light of these conflicting opinions, the Commission appointed an impartial medical panel to evaluate Mr. Keyser's claim. The panel reviewed Mr. Keyser's medical history—before and after the work accident, personally examined Mr. Keyser, and reviewed the medical opinions of the treating physicians and Dr. Moress. Based on all of this information, it was the panel's opinion that Mr. Keyser's complaints related to his short-term memory loss, tremors, and cognitive difficulties were all preexisting and were not aggravated by the work accident. The panel found only Mr. Keyser's complaints of headaches were aggravated by the work accident and recommended medical treatment based on the increased headaches only. Given the panel's expertise and independence, the Commission finds the panel's opinion well-reasoned, persuasive, and supported by the evidentiary record.

The Commission finds that the September 2005 work accident aggravated Mr. Keyser's headache complaints and affirms Judge Lima's award of benefits limited to this finding.

ORDER

The Commission affirms Judge Lima's decision. It is so ordered.

Dated this 28th day of May, 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.