
UTAH LABOR COMMISSION

FRANCISCO BENITEZ,

Petitioner,

vs.

**DEE'S RESTAURANT and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

**Case No. 06-0653
Case No. 2003-955**

Francisco Benitez asks the Utah Labor Commissioner to review Administrative Law Judge Trayner's denial of benefits to Mr. Benitez 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. Benitez claims workers' compensation benefits (medical expenses and future medical care) from Dee's Restaurant and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Dee's") for a work accident that occurred in May of 1997, injuring his back. An evidentiary hearing was held and the parties later stipulated to sending the medical aspects of the case to a medical panel for review. After reviewing the panel's report, Judge Trayner found that the May 1997 work injury was not the medical cause of Mr. Benitez's current back condition and need for medical care and dismissed his claim.

In his motion for review, Mr. Benitez argues that the medical panel's report supports his claim for further medical care caused by the 1997 work accident.

FINDINGS OF FACT

The Commissioner adopts Judge Trayner's findings of fact. The facts relevant to the motion for review can be summarized as follows:

Mr. Benitez was working for Dee's in May of 1997 when he slipped and fell forward on top of a case of glasses he was carrying. He received some medical treatment for his back pain by November of 1997. In January of 1998, he experienced back pain while picking up a tomato from the floor and he sought medical care.

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On or about November 17, 2000, Mr. Benitez reported severe pain after doing a fair amount of heavy lifting at work and underwent testing of his lumbar spine. He was diagnosed with a disc herniation and later had back surgery. In January 2001, he also reported a new injury working for Dee's that resulted in leg pain emanating from his back. Mr. Benitez later settled his claim with Dee's and its insurance carrier at the time (Safeco Insurance) for the November 2000/January 2001 work accidents.

On May 23, 2003, the Commission ordered Dee's to pay Mr. Benitez's medical expenses necessary to treat his lumbar spine from May of 1997 through October 2000. The order, however, did not allocate liability for future medical care. Mr. Benitez continued to incur additional medical expenses and he then filed the present claim for unpaid medical expenses and future medical care. Because of disputes in the medical opinions as to whether his medical expenses since October 2000 were medically caused by the 1997 injury or the previously settled 2000/2001 injuries, the parties stipulated to sending the issue to an independent panel of medical experts.

The medical panel examined Mr. Benitez and reviewed the medical records available since 1997, including the various medical opinions and diagnostic studies. The panel found that Mr. Benitez likely had suffered a ligamentous type injury in 1997 which would have resolved prior to the end of 2000. The panel found that no further therapy would be required to treat the 1997 work injury. In answering whether the 1997 injury could have contributed to the need for medical treatment in combination with any other accident or injury, the panel stated "[t]here is no evidence that the 1997 industrial accident was associated with extrusion of disc material or sciatica [from November 2000 and January 2001 injuries]." The panel then speculated that "it is **possible** that an annular disc injury did occur at that time [of the 1997 injury], which would have predisposed [him] to further injury leading to disc desiccation and the need for surgery." (Emphasis added.)

DISCUSSION AND CONCLUSION OF LAW

Mr. Benitez contends that the medical panel's report supports a finding that Dee's is liable for Mr. Benitez's medical expenses and future medical care based on its statement that the 1997 injury predisposed him to later injury. The Commissioner, however, disagrees. The panel stated in definite terms that no further care was needed for the 1997 care, which the panel believed had resolved by the end of 2000. The panel's finding that the 1997 injury would have predisposed him to later injuries was stated in terms of possibility. The Commissioner finds that this last finding was speculation on the part of the panel and did not negate its previous findings that the injury resolved by late 2000 and no further medical care is necessary as a result of the 1997 injury.

In summary, the Commissioner finds that the panel's opinion, read as a whole, persuasive and that the medical expenses incurred after October 2000 were not medically caused by the May 1997 injury. The Commission therefore concurs with Judge Trayner's decision denying further benefits.

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ORDER

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

Dated this 30th day of April, 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.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Francisco Benitez, Case No. 06-0653, was mailed first class postage prepaid this ____ day of April, 2009, to the following:

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