UTAH LABOR COMMISSION

ERENDIRA RENTERIA, **Petitioner,** **vs.** **GRUPO VIDAL, LLC, dba LOS COMPADRES, and UNINSURED EMPLOYERS FUND,** **Respondents.**	**ORDER AFFIRMING ALJ'S DECISION** **Case No. 07-0392**

Grupo Vidal, LLC, dba Los Compadres, asks the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to Erendira Renteria 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 Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Renteria filed a claim for workers' compensation benefits from Los Compadres for a work injury that occurred on April 11, 2007. After holding an evidentiary hearing in which the only issue in dispute was Ms. Renteria's weekly wage, Judge Marlowe concluded that Ms. Renteria earned $700 per week. On that basis, Judge Marlowe awarded temporary total disability benefits of $476 per week.

In its motion for review, Los Compadres argues that Ms. Renteria earned only $240 per week and that her disability compensation should be reduced accordingly.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact, summarized as follows. At the time of her accident, Ms. Renteria worked for Los Compadres. As its lead cook, Ms. Renteria provided her own recipes and created the restaurant's menus. Ms. Renteria testified that when she began working for Los Compadres in April 2006, she was paid $500 in cash per week. After three months, she asked the manager for a pay increase and he agreed to pay her $700 per week. Although Ms. Renteria concedes that her paystubs from Los Compadres only show earnings of $220, she maintains that Los Compadres's payroll records never represented her actual earnings. She asserts that the manager would pay her $700 every other Monday in cash, and on alternate Mondays she would receive a paycheck for $480 and $220 in cash, for a total of $700.

As further evidence that Los Compadres' payroll records were not accurate reflections of her salary, Ms. Renteria asserts that in November 2006, she asked the manager to issue her a paystub showing her actual earnings so she could qualify for a loan. The manager agreed to provide a paystub, but only showing her hourly rate at $12. Ms. Renteria produced this paystub at the hearing. She testified that, despite the paystub, she was still given the usual cash payment of $220 and check for $480.

The restaurant manager who actually paid Ms. Renteria on behalf of Los Compadres did not testify at the evidentiary hearing. However, the restaurant's owner testified that Ms. Renteria worked 36 hours a week, at $6.00 an hour, and she was never paid cash for her work. He admits that, despite his testimony that she only worked 36 hours a week, the company's payroll records were adjusted to indicate she was paid 40 hours per week. The owner also testified that other employees in the restaurant, including the assistant cook, were paid more than Ms. Renteria.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commission is whether Ms. Renteria earned $700 per week as she claims, or only $240 per week as claimed by the employer. In considering the evidence on this point, the Commission finds Los Compadres' version to be inconsistent and illogical. The Commission notes that Los Compadres failed to produce testimony from Ms. Renteria's direct supervisor—the person who actually paid her wages. The Commission also notes Los Compadres' failure to discharge its obligation under Utah law to maintain accurate payroll records. Each of these factors detracts from the persuasive force of Los Compadres' arguments.

Ms. Renteria's testimony is also somewhat difficult to accept. For example, by Ms. Renteria's own admission, she failed to report the greater part of her actual income to state and federal taxing authorities. Nevertheless, when taken on whole and in context, Ms. Renteria's testimony is more plausible than the evidence submitted by Los Compadres. The Commission therefore concurs with Judge Marlowe's finding that Ms. Renteria earned $700 per week from Los Compadres and that her disability compensation should be computed on that amount.

ORDER

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

Dated this 31st day of July, 2008.

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Sherrie Hayashi
Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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.