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**UTAH LABOR COMMISSION**

**DENNY CARRADINE,**

**Petitioner,**

**vs.**

**TRUE FLO MECHANICAL SYSTEMS,  
INC. , WORKERS COMPENSATION  
FUND and EMPLOYERS REINSURANCE  
FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 07-0490**

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Denny Carradine asks the Utah Labor Commission to review Administrative Law Judge Marlowe's determination of the date on which Mr. Carradine is entitled to begin receiving permanent total disability compensation 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. Carradine claims permanent total disability compensation from True Flo Mechanical Systems and its insurance carrier, Workers' Compensation Fund, (referred to jointly as "True-Flo" hereafter) and the Employers' Reinsurance Fund ("ERF") for injuries from a work accident at True-Flo on September 2, 1988.

The documents Mr. Carradine submitted as part of his claim stated, among other things, that he had worked intermittently after the date of injury and had remained employed until 2001. During the evidentiary hearing on Mr. Carradine's claim, his attorney represented to Judge Marlowe that Mr. Carradine had worked until July 2000. Mr. Carradine was incapacitated at the time of the hearing and did not testify.

Judge Marlowe ultimately concluded that Mr. Carradine was entitled to permanent total disability compensation. In fixing the date on which such compensation would begin, Judge Marlowe accepted the representation of Mr. Carradine's attorney that Mr. Carradine had not worked after July 2000. On that basis, Judge Marlowe ordered True-Flo to begin payment of permanent total disability compensation on August 1, 2000, with ERF to assume liability for such payments on August 1, 2006.

**ORDER AFFIRMING ALJ'S DECISION  
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Mr. Carradine has now submitted a motion for review of Judge Marlowe's decision in which he asserts for the first time that he was last gainfully employed in July 1992. He asks that his award of permanent total disability compensation be amended to commence as of August 1992, or, alternatively, that his claim be reopened to allow presentation of additional evidence on this issue.

**DISCUSSION AND CONCLUSION OF LAW**

In considering whether to grant either of Mr. Carradine's requests, the Commission notes that Mr. Carradine has not proffered any documentary evidence or affidavit to support his contention that he was not gainfully employed after July 1992. Furthermore, that contention is directly contradicted by Mr. Carradine's earlier written submissions and by the representations of his attorney at the evidentiary hearing. Mr. Carradine has not explained these contradictions. Under these circumstances, the Commission finds insufficient basis to either modify the terms of Judge Marlowe's order or to reopen this matter for further evidentiary proceedings.

**ORDER**

The Commission affirms Judge Marlowe's order and denies Mr. Carradine's motion for review. It is so ordered.

Dated this 30<sup>th</sup> day of July, 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.