
UTAH LABOR COMMISSION

DENNY CARRADINE,

Petitioner,

vs.

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

Respondents.

**ORDER DENYING REQUEST
FOR RECONSIDERATION**

Case No. 07-0490

Denny Carradine asks the Utah Labor Commission to reconsider its previous decision affirming Administrative Law Judge Marlowe's determination of the date that 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 matter pursuant to § 63G-4-302 of the Utah Administrative Procedures Act.

BACKGROUND AND ISSUES PRESENTED

In summary, Judge Marlowe held an evidentiary hearing on Mr. Carradine's claim and then awarded him permanent total disability compensation for injuries from a work accident at True-Flo on September 2, 1988. Based on the evidence and representations presented at the hearing, Judge Marlowe ordered that payment of such compensation commence as of August 1, 2000.

Mr. Carradine then asked the Commission to review Judge Marlowe's decision. Specifically, Mr. Carradine argued that he had not been gainfully employed since July 1992 and that his disability compensation should begin then, instead of August 2000 as ordered by Judge Marlowe. The Commission rejected Mr. Carradine's argument and affirmed Judge Marlowe's order. In reaching its decision, the Commission noted that the existing record supported Judge Marlowe's order and that Mr. Carradine had not proffered any documentation supporting his claim that his benefits should commence at an earlier date.

Mr. Carradine now asks the Commission to reconsider its decision. As part of this request, Mr. Carradine has submitted his own affidavit describing limitations to his ability to work after July 1992.

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DISCUSSION

Section 63-46b-8 of the Utah Administrative Procedures Act (“UAPA”) requires that ALJs conduct evidentiary hearings “to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.” Section 63-46b-10(1) (a) of UAPA requires that an ALJ’s decision must include “a statement of . . . findings of fact based exclusively on the evidence of record.” Section 34A-1-303 of the Utah Labor Commission Act allows review of an ALJ’s decision based on “the evidence **previously** submitted in the case.” (Emphasis added.) These provisions, taken together, establish a clear requirement that parties to adjudicative proceedings at the Commission submit their evidence during the evidentiary hearing. This requirement is necessary both as a matter of fairness and of practicality.

In this case, Mr. Carradine did not submit evidence during the evidentiary hearing to prove that he could not work after 1992. Even later, in his motion for review to the Commission, he did not submit such evidence. While he has now proffered some evidence on that point—in the form of his own affidavit-- it is apparent that such an affidavit or other, more persuasive evidence could have been submitted at the evidentiary hearing. The Commission therefore declines to accept Mr. Carradine’s untimely proffer of evidence.

The Commission notes Mr. Carradine’s additional argument that the Commission should exercise its continuing jurisdiction under § 34A-2-420(1) of the Act to reopen Mr. Carradine’s claim and consider his new evidence. This argument overstates the scope of the Commission’s continuing jurisdiction, which is intended to allow the Commission to consider new developments in a claim but does not extend so far as to allow an unsuccessful party to retry a claim simply because that party failed to submit all the evidence that could have been submitted at the original hearing.

In summary, the Commission concludes that the existing record supports the Commission’s previous decision in this matter. The Commission declines to consider the new evidence Mr. Carradine has proffered as part of his request for reconsideration.

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ORDER

The Commission affirms its prior decision and denies Mr. Carradine's motion for review. It is so ordered.

Dated this 30th day of September, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.