
UTAH LABOR COMMISSION

JOHN TERRY OGDEN,

Petitioner,

vs.

**STOCK BUILDING SUPPLY and/or
PACIFIC EMPLOYERS INSURANCE
COMPANY,**

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 07-0519

John Terry Ogden asks the Utah Labor Commission to review Administrative Law Judge Marlowe's decision on Mr. Ogden's claim for benefits 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. Ogden claims workers' compensation benefits from Stock Building Supply and its insurance carrier, Pacific Employers Insurance Company, (referred to jointly as "Stock") for a work accident that occurred on September 24, 2002, injuring his back. Specifically, Mr. Ogden claims that the work accident caused his back, knee, and left toe conditions, as well as depression, and that Stock should be liable for his medical expenses related to these conditions. Judge Marlowe held an evidentiary hearing and then referred the medical aspects of the claim to an impartial panel of medical experts. After reviewing the panel's report, Judge Marlowe adopted the panel's opinion and found that Mr. Ogden's work at Stock was the medical cause of his back condition and depression and awarded medical expenses and future medical care for those complaints based on the panel's recommendation. However, Judge Marlowe found that Mr. Ogden's knee and toe conditions were not caused by his work accident and denied benefits for those complaints.

In his motion for review, Mr. Ogden contends that his knee and toe conditions were related to his work accident and Stock should be liable for his medical treatment. He also claims certain unpaid bills purportedly related to treatment for his back and generally disputes the order for future medical care.

FINDINGS OF FACT

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

Mr. Ogden worked as a forklift operator for Stock. On or about September 24, 2002, Mr. Ogden was instructed to remove several cement filled posts from the yard, which he did by ramming the posts with his forklift counterbalance. Mr. Ogden began to feel pain in his lower back after about 20 minutes. A lumbar MRI revealed a large right-sided L5-S1 disc herniation and right S1 nerve root impingement. He later underwent two surgeries for his back. However, he continued to complain of chronic pain and received further treatment for this and a depressive disorder. Mr. Ogden's doctors found his current medical conditions were caused by the work accident, whereas Stock's medical consultants disagreed. The medical opinions also varied on the recommended treatment for these conditions.

In 2006, Mr. Ogden developed knee pain; however, his doctor did not find this was related to the work accident and no medical opinion was provided that indicated Mr. Ogden's knee pain was caused by the work accident. Mr. Ogden also reported that in 2006 an abrupt pain in his back caused him to fall and break his left great toe. Mr. Ogden's doctor found the toe condition was caused by the work accident but Stock's medical consultants denied a causal connection.

Due to the conflict in the medical opinions, Judge Marlowe referred the medical aspects of this case to a panel. The panel examined Mr. Ogden and reviewed the medical records and diagnostic films and found that Mr. Ogden's lower back pain and depressive disorder were caused by the September 24, 2002, work accident. The panel found Mr. Ogden's past medical care for these conditions had been necessary to treat the injury and recommended a course for future medical care; however, they found that there was no causal connection with the accident and Mr. Ogden's great toe injury.

DISCUSSION AND CONCLUSION OF LAW

In his motion for review, Mr. Ogden argues that his knee and toe problems were caused by the September 2002 work accident and are compensable. However, with respect to Mr. Ogden's knee complaints, there is no medical evidence to support his claim. His doctor discounted the possibility that his reported knee pain was related to his work accident. Thus, the Commission finds that Mr. Ogden's knee pain was not caused by his work accident and affirms Judge Marlowe's dismissal of this claim.

Mr. Ogden also claims that he broke his left toe due to a sudden pain in his back—related to the work accident—that caused him to fall. Because there were conflicting medical opinions on this issue from Mr. Ogden's doctors and Stock's medical consultants, an impartial panel of medical experts was appointed to review this and other issues pertaining to Mr. Ogden's claim, such as

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recommended medical care. The panel found that Mr. Ogden's back condition would not have caused the type of pain or buckling to send him to the floor and denied the possibility that the fall and resulting toe fracture were caused by the work accident. Due to the impartiality and expertise of the medical panel, and support in the medical record for the panel's opinion, the Commission finds the panel's report persuasive. The Commission finds that Mr. Ogden's left toe condition was not caused by the work accident.

In summary, the Commission affirms Judge Marlowe's decision dismissing Mr. Ogden's claims for his knee and left toe conditions. The Commission also has reviewed the panel's recommendation for future medical care related to Mr. Ogden's back and depressive disorder and finds it well-reasoned and persuasive. Thus, the Commission affirms Judge Marlowe's order for future medical care based on the panel's recommendations.

Finally, the Commission notes Mr. Ogden's complaint that he has unpaid medical bills related to treatment he received for his back. As indicated in the order, Stock is liable for medical expenses necessary to treat Mr. Ogden's back condition and he should submit these bills to the insurance carrier. If further disputes arise over payment of medical expenses related to necessary care for his back, Mr. Ogden can submit a new application to the Commission to review the claim under its continuing jurisdiction.

ORDER

The Commissioner therefore affirms Judge Marlowe'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.