UTAH LABOR COMMISSION

SAVANNAH S. KINNE, **Petitioner,** **vs.** **IAP WORLD SERVICES and AMERICAN HOME ASSURANCE CO.,** **Respondent.**	**ORDER AFFIRMING ALJ'S DECISION** **Case No. 07-0859**

IAP World Services, and its insurance carrier American Home Assurance Co. (collectively "IAP"), ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to Savannah S. Kinne 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

Ms. Kinne claims benefits for an occupational disease that she allegedly developed while working for IAP. Ms. Kinne asserts that she developed pain and swelling in her right arm and shoulder in June of 2007 because of her duties with IAP.

Judge Marlowe held an evidentiary hearing and referred the medical aspects of the claim to an impartial medical panel. The panel concluded that Ms. Kinne's right arm and shoulder condition was medically caused by her employment. Judge Marlowe adopted the panel's finding and awarded Ms. Kinne temporary total benefits. IAP challenges Judge Marlowe's decision by arguing that she should not have appointed a medical panel because there was no real conflict of medical opinions between the parties' experts. Alternatively, IAP argues that the medical panel's report should not be adopted because it is not based on the evidence.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact, which are summarized as follows. Ms. Kinne began working for IAP in June of 2007 as a document processor. In June of 2007, Ms. Kinne reports that she began to experience pain in her right arm and shoulder. Ms. Kinne was restricted from working from July 16, 2007, until August 9, 2007, when she was released to light duty. Ms. Kinne resigned her position with IAP on November, 9, 2007, because she claimed that her job responsibilities violated her work restrictions. However, Ms. Kinne admits that she did not tell

IAP why she was resigning.

Dr. Thomas evaluated Ms. Kinne and opined that her symptoms were suggestive of cervical radiculopathy. Dr. Brandt later examined Ms. Kinne and also opined that her shoulder pain could be related to her cervical spine. However, IAP's medical expert disagreed with Ms. Kinne's treating physicians on whether her right arm and shoulder problems were medically caused by her work as a document processor.

In light of the conflicting medical opinions, Judge Marlowe referred the medical aspects of Ms. Kinne's claim to an impartial medical panel. The medical panel determined that Ms. Kinne's work activities caused her right arm and shoulder problems, and that the medical care she received was necessary to treat her work-related right arm and shoulder condition.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-601(1)(b) of the Utah Workers' Compensation Act provides that an ALJ may appoint a medical panel upon the filing of a claim for compensation based upon disability due to an occupational disease. IAP argues that Judge Marlowe should not have appointed a medical panel to consider Ms. Kinne's claim. However, IAP's argument is based on the Commission's Rule 602-2-2(A) which requires a medical panel where there are conflicting medical opinions with regard to the cause of the injury. Rule 602-2-2 does not prohibit the appointment of a medical panel, rather it provides that certain circumstances require a panel. IAP's reliance on this rule is misplaced because §34A-2-601 clearly allowed Judge Marlowe to appoint a medical panel for Ms. Kinne's occupational disease claim.

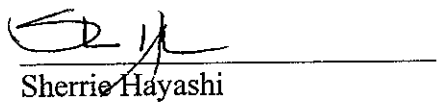
IAP also argues that the medical panel's report should not be adopted because it is not based on the evidence. Specifically, IAP asserts that the panel's report improperly focuses on a potential injury to Ms. Kinne's neck and spine even though her claim involves an alleged injury to her right arm and shoulder. However, the medical panel's finding is supported by the evidence because both Dr. Thomas and Dr. Brandt found that Ms. Kinne's shoulder problems were possibly related to her cervical spine.

Additionally, the panel's opinion is persuasive because it is impartial in this matter and has the benefit of collegial review of Ms. Kinne's relevant medical history as well as the opinions of the parties' own experts. For these reasons, the Commission accepts the medical panel's opinion. The Commission therefore affirms Judge Marlowe's decision to award benefits to Ms. Kinne.

ORDER

The Commission affirms Judge Marlowe's decision of , 2008, on this matter. It is so ordered.

Dated this 29th day of January, 2010.



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.