
UTAH LABOR COMMISSION

DANIEL E. DAMMASCHKE,

Petitioner,

vs.

**WABASH OF UTAH/WARNER TRUCK
CENTER and BENCHMARK
INSURANCE; UTAH BUILDERS
INSURANCE COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-0037

Daniel E. Dammaschke asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of his 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. Dammaschke claims workers' compensation benefits for an injury to his low back that occurred on November 16, 2007, while working for Wabash of Utah ("Wabash"). Judge Marlowe held an evidentiary hearing on the claim, and referred the medical aspects to an impartial medical panel. The panel concluded that Mr. Dammaschke suffered from a preexisting condition.

Judge Marlowe adopted the panel's conclusion and found that Mr. Dammaschke's injury was compensable under the more stringent causation standard set by the Utah Supreme Court in *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986) because it was caused by an unusual exertion. However, Judge Marlowe also found that Mr. Dammaschke unreasonably refused a light duty assignment on December 6, 2007, which ended his temporary total disability compensation. Mr. Dammaschke challenges the denial of further temporary total disability compensation by arguing that he could not perform the light duty assignment because it required exertion beyond his work restrictions.

FINDINGS OF FACT

On November 16, 2007, Mr. Dammaschke was working for Wabash when he injured his low back while repairing the landing gear underneath a tractor trailer. Mr. Dammaschke sought medical attention and was released to work with a restriction prohibiting him from bending or lifting more

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than ten pounds. Wabash placed Mr. Dammaschke on a light duty desk assignment following the accident, but that work ran out after approximately three days. Mr. Dammaschke was then assigned to some light duty sweeping, which Wabash later canceled after Mr. Dammaschke notified it that sweeping interfered with his work restrictions.

On December 6, 2007, Wabash informed Mr. Dammaschke that it had light duty work available that complied with his restrictions. Wabash offered Mr. Dammaschke an assignment washing windows and provided him with a ladder so he would not have to reach over his head. Mr. Dammaschke refused the assignment because he claims that he would have been required to use a 45 pound ladder that violated his ten pound lifting restriction. Wabash contends that the ladder actually weighed about 20 pounds, adding that Mr. Dammaschke did not have to lift it in order to move it the three feet between windows. More importantly, Wabash explained that Mr. Dammaschke should make it known if there was a problem with the assignment. Rather than discuss the matter with Wabash, Mr. Dammaschke left the worksite without saying anything about a conflict with his restrictions. Wabash deemed Mr. Dammaschke as having abandoned his position and consequently terminated his employment.

Dr. Fogg and Dr. Horne each examined Mr. Dammaschke and agreed that the accident caused his low back injury, but disagreed on the appropriate restrictions following the injury. In light of the conflicting opinions, Judge Marlowe referred the medical aspects of the claim to a medical panel. The panel found that the accident aggravated Mr. Dammaschke's preexisting condition. Judge Marlowe adopted the panel's findings, and concluded that Mr. Dammaschke was entitled to temporary total disability compensation. However, Judge Marlowe also found that when Mr. Dammaschke left the worksite without telling Wabash, he unreasonably refused a medically appropriate light duty assignment.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-410 of the Utah Workers' Compensation Act provides that an injured worker is generally entitled to temporary total disability compensation from the date of the accident until the healing period has ended. However, if an injured worker is released to light-duty work during the healing period, the employer may choose to provide such work. In that case, the injured worker's right to temporary total disability compensation will be reduced to reflect his or her earnings from the light duty work.

The Commission has consistently determined that an injured worker's unreasonable refusal of an offer of medically appropriate light duty work terminates the injured worker's right to continuing temporary total disability compensation. In this case, Mr. Dammaschke was released to work with certain restrictions, but refused the light duty window washing assignment because he claims it was not medically appropriate. Mr. Dammaschke contends that washing windows violated his restriction because it required bending and lifting more than the ten pounds allowed by his work restriction.

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There is nothing in the record to show that dragging or pushing the ladder over a distance of three feet was not medically appropriate given Mr. Dammaschke's lifting restriction, or that he would be required to bend to wash the windows. Even if the window washing assignment was not medically appropriate, the evidence indicates that Wabash was willing to modify it to address Mr. Dammaschke's concerns if he had made them known, just as it had changed the light duty sweeping assignment. Mr. Dammaschke had a good-faith responsibility to at least discuss his concerns over the window washing assignment rather than simply leave the worksite without informing Wabash. Mr. Dammaschke's decision to leave without discussing the matter with Wabash is an unreasonable refusal of light duty work.

Under these circumstances, the Commission concludes that as of December 6, 2007, Mr. Dammaschke had been released to light duty work and had been offered a medically appropriate light duty assignment from Wabash, which he refused unreasonably. The Commission therefore concurs with Judge Marlowe's determination that Mr. Dammaschke is not eligible for temporary total disability compensation after that date because he refused this light duty work.

ORDER

The Commission affirms Judge Marlowe's decision of August 31, 2009, on this matter. It is so ordered.

Dated this 29th day of October, 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.