
UTAH LABOR COMMISSION

JUDITH E. STAYSA,

Petitioner,

vs.

**QWEST COMMUNICATIONS
and INSURANCE CO. OF THE
STATE OF PENNSYLVANIA,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-0241

Judith E. Staysa asks the Utah Labor Commissioner to review Administrative Law Judge Marlowe's denial of Ms. Staysa's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commissioner 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. Staysa filed a claim for workers compensation benefits against Qwest Communications and its workers' compensation insurance carrier, Insurance Co. of the State of Pennsylvania, (referred to jointly as "Qwest" hereafter) for upper-back injuries allegedly sustained on November 2, 2007.

After an evidentiary hearing, Judge Marlowe concluded that, because Ms. Staysa suffered from pre-existing back problems that were unrelated to her work and that contributed to her current back injuries, Ms. Staysa was required to prove that her work exertions at Qwest were unusual or extraordinary in order to satisfy the test for legal causation established by the Utah Supreme Court in *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986). Based on the evidence presented, Judge Marlowe held that Ms. Staysa had failed to satisfy the foregoing standard for legal causation. Judge Marlowe therefore ruled that Ms. Staysa's injuries did not arise out of her employment at Qwest and were not compensable under the Utah Workers' Compensation Act.

In requesting review of Judge Marlowe's decision, Ms. Staysa argues that the question of whether Ms. Staysa's work involved unusual or extraordinary exertions should be evaluated in terms of what exertions are customary for Ms. Staysa as a "handicapped" person, and not in terms of the general population as a whole.

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FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact. As material to the issue raised by Ms. Staysa's motion for review, the facts can be summarized as follows:

Ms. Staysa suffers from various spinal conditions that are not work-related and that pre-date the accident and injury for which she now seeks benefits. On November 2, 2007, Ms. Staysa was pushing a file cabinet across a carpeted office to a new work station. The exertion necessary to move the cabinet was compared by a co-worker to the force necessary to push a loaded grocery cart. Ms. Staysa believes that one of the casters caught on something; as she twisted to see what had happened, she felt immediate pain in her back.

DISCUSSION AND CONCLUSION OF LAW

In *Allen v. Industrial Commission*, 729 P.2d at 26, the Utah Supreme Court held that an injured worker must establish that his or her work is both the "legal cause" and the "medical cause" of the injuries for which workers' compensation benefits are sought. In *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." (Citations omitted.)

In this case, there is no dispute that Ms. Staysa suffered from preexisting back problems that contributed to the injury for which she now seeks workers' compensation benefits. Therefore, before she may receive benefits for her current problems, she must first satisfy the more stringent prong of the *Allen* test for legal causation by showing that her activities at Qwest were "unusual or extraordinary." *Allen v. Industrial Commission*, 729 P. 2d at 26.

In her motion for review, Ms. Staysa argues that the question of whether the exertions of her work at Qwest were unusual or extraordinary should be judged according to what is unusual or extraordinary for Ms. Staysa herself. However, Ms. Staysa's argument is inconsistent with the Utah Supreme Court's decision in *Allen*, which specifically states: "Thus, the precipitating exertion must be compared with the usual wear and tear and exertions of nonemployment life, **not the nonemployment life of the particular worker.**" *Allen v. Industrial Commission*, 729 P. 2d at 26; emphasis added.

When the Commission compares Ms. Staysa's work exertions against other common modern nonemployment exertions, the Commission agrees with Judge Marlowe that Ms. Staysa's work exertion was not unusual or extraordinary and does not satisfy the more stringent prong of the Allen test for legal

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causation. Consequently, Ms. Staysa's back problems are not compensable under the Utah Workers' Compensation Act.

ORDER

The Labor Commissioner affirms Judge Marlowe's decision. It is so ordered.

Dated this 28th day of April, 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.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Judith E. Staysa, Case No. 08-0241, was mailed first class postage prepaid this ___ day of April, 2009, to the following:

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