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**UTAH LABOR COMMISSION**

**KENT J. BASHFORD,**

**Petitioner,**

vs.

**CL MARTINEAU HOMES and AUTO-  
OWNERS INSURANCE CO.,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 08-0912**

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Kent J. Bashford asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse'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. Bashford claims workers' compensation benefits for an injury to his cervical spine which he attributes to an accident that occurred on January 21, 2008, while working for CL Martineau Homes ("Martineau"). The parties waived their rights to an evidentiary hearing, and instead submitted a stipulation of issues, facts and exhibits to be referred to an impartial medical panel. Judge La Jeunesse then referred the outstanding medical issues to the medical panel.

Judge La Jeunesse accepted the panel's opinion that Mr. Bashford's spine injuries were not caused by the accident, but that his emergency room visit immediately after the accident was reasonable and necessary. Judge La Jeunesse therefore ordered Martineau to pay for the medical expenses Mr. Bashford incurred because of his emergency room visit, but denied all other benefits that he claimed. Mr. Bashford challenges the denial of benefits on the grounds that the medical panel's opinion should not have been entered into the record because the panel members had no experience with the surgery that he requires.

**FINDINGS OF FACT**

The Commission adopts Judge La Jeunesse's findings of fact, which are summarized as follows. Mr. Bashford suffered from a preexisting spine condition for which he underwent surgery and ongoing treatment. On January 22, 2008, Mr. Bashford was working for Martineau when he slipped on ice and fell backwards landing on his head, neck and left elbow. Mr. Bashford went to the emergency room where he was diagnosed with a laceration on his left elbow, a head injury and a

strain to his cervical spine.

On March 10, 2008, Mr. Bashford consulted with Dr. Stephen Warner about the injury to his cervical spine. Dr. Warner recommended surgery to treat Mr. Bashford's spine problems. Dr. Richard Knoebel, Martineau's medical expert, examined Mr. Bashford on April 7, 2008, and determined that Mr. Bashford's cervical spine condition did not require surgery. Dr. Knoebel also opined that the accident did not permanently aggravate Mr. Bashford's preexisting cervical spine condition. Mr. Bashford then met with Dr. Charles Rich, who recommended surgery for his cervical spine problems.

In light of the conflicting medical opinions and complexities regarding his preexisting cervical spine problems, the parties stipulated to submit the issue of whether Mr. Bashford needed further surgery and if so, whether the accident caused that need for surgery. Judge La Jeunesse referred these issues to an impartial medical panel, which found that the accident did not cause or aggravate his cervical spine problems. The panel did find, however, that Mr. Bashford's emergency room visit immediately after the accident was necessary treatment for his injuries. Judge La Jeunesse adopted the panel's findings and determined that Mr. Bashford was entitled to payment of the emergency room expenses directly following the accident, but not entitled to other benefits because the accident did not medically cause his cervical spine problems.

### **DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2-601 of the Utah Workers' Compensation Act provides that a medical panel must consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim. Mr. Bashford asserts that his cervical spine condition requires surgery, an area in which neither of the panel members specializes. Mr. Bashford argues that because neither of the panel members are surgeons, the Commission should not adopt the panel's findings.

Mr. Bashford's argument is not persuasive, however, because it focuses only on surgery as the appropriate method of treatment for his spine problems. Simply because the panel members do not perform surgery does not mean they are not qualified in the treatment of his cervical spine problems or determining whether the accident caused his cervical spine injury.

The medical panel's findings are thorough and well-reasoned. The panel's opinion is persuasive because it is impartial in this matter and has the benefit of collegial review of Mr. Bashford'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 that the accident did not cause the injury to Mr. Bashford's cervical spine. The Commission therefore concurs with Judge La Jeunesse's determination that Mr. Bashford is not entitled to workers' compensation benefits beyond payment of the emergency room expenses immediately after the accident.

### **ORDER**

The Commission affirms Judge La Jeunesse's decision of August 19, 2009, on this matter. It is so ordered.

Dated this 29<sup>th</sup> day of October, 2009.

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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.