
UTAH LABOR COMMISSION

KAREN S. FULLMER,

Petitioner,

vs.

**K-MART CORPORATION and PACIFIC
EMPLOYERS INSURANCE COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

ORDER OF REMAND

Case No. 09-0002

K-Mart Corporation and its insurance carrier, Pacific Employers Insurance Company, (referred to jointly as "K-Mart" hereafter) ask the Utah Labor Commission to review Administrative Law Judge Luke's denial of K-Mart's motion for summary dismissal of Karen S. Fullmer'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

Ms. Fullmer claims permanent disability compensation for back injuries allegedly caused by a work accident at K-Mart. K-Mart asked Judge Luke to summarily dismiss Ms. Fullmer's claim on the grounds of res judicata—specifically, that Ms. Fullmer's entitlement to workers' compensation benefits for the subject work accident has been litigated and decided in an earlier proceeding before the Commission. Judge Luke denied K-Mart's motion for summary judgment. K-Mart now asks the Commission to review this matter.

FINDINGS OF FACT

For purposes of considering K-Mart's motion for summary judgment, the Commission must evaluate the record in the light most favorable to Ms. Fullmer.

Ms. Fullmer injured her back while working for K-Mart on February 7, 2003. She filed an application for hearing with the Commission's Adjudication Division seeking temporary disability compensation and medical benefits, which K-Mart opposed. Judge La Jeunesse held an evidentiary hearing on the application and issued his final decision on Ms. Fullmer's claim on March 1, 2006. Judge La Jeunesse found that Ms. Fullmer's work accident at K-Mart had temporarily exacerbated her preexisting back problems, but she had recovered from the effects of the work injury by December 1, 2003. Judge La Jeunesse awarded medical benefits and temporary total disability compensation accordingly.

On December 22, 2008, Ms. Fullmer filed a second application for hearing, also based on the February 2003 accident at K-Mart, in which she claimed permanent disability compensation for alleged “spine [injury] in the lumbar region with radiculopathy into my right hp and right leg.” In support of this new claim, Ms. Fullmer submitted Dr. Gaufin’s statement of July 5, 2006, that Ms. Fullmer has “[c]hronic pain in the lumbar spine and thoracic spine, associated with the industrial injury of February 7, 2003, with injury to the soft tissues, joint capsules and discs.”

DISCUSSION AND CONCLUSION OF LAW

K-Mart seeks summary judgment against Ms. Fullmer on the grounds that the nature and effect of her work injury was litigated and resolved by Judge La Jeunesse’s decision of March 1, 2006. According to K-Mart, the principle of res judicata¹ precludes the Commission from considering Ms. Fullmer’s new claim for additional workers’ compensation benefits for the same injury.

Res judicata can sometimes apply under narrow circumstances in workers’ compensation proceedings. However, its application is constrained by § 34A-2-420(1) of the Utah Workers’ Compensation Act as follows:

- (1) (a) The powers and jurisdiction of the commission over each case shall be continuing.
- (b) After notice and hearing, the Division of Adjudication, commissioner, or Appeals Board in accordance with Part 8, Adjudication, may from time to time modify or change a former finding or order of the commission.

In *Mollerup Van Lines v. Adams*, 398 P.2d 882 (Utah 1965), the Utah Supreme Court discussed the relationship between the foregoing statute and the principle of res judicata “The ordinary rule of res judicata is not applicable to the instant [workers’ compensation] proceeding. Inherent in the [Utah Workers’ Compensation Act] is recognition that industrial injuries cannot always be diagnosed with absolute accuracy, nor their consequences predicted with complete certainty.”

In this case, Ms. Fullmer asserts that her work injury, previously thought to be only a temporary aggravation of pre-existing problems, has worsened and become permanent. She has submitted medical opinion and other evidence to support her claim. Considering that evidence in the light most favorable to Ms. Fullmer’s claim, and bearing in mind the Commission’s continuing jurisdiction under § 420 (1) of the Utah Workers’ Compensation Act, the Commission concludes that Ms. Fullmer is entitled to an evidentiary hearing to attempt to prove that the circumstances of her work injury have changed and that she is entitled to additional workers’ compensation benefits.

ORDER

¹ A rule that a final judgment on the merits by a court having jurisdiction is conclusive between the parties to a suit as to all matters that were litigated or that could have been litigated in that suit.

The Commission affirms Judge Luke's denial of K-Mart's motion for summary judgment. The Commission remands this matter to Judge Luke for further proceedings necessary to resolve the merits of Ms. Fullmer's claim for benefits. It is so ordered.

Dated this 28th day of October, 2009.

Sherrie Hayashi
Utah Labor Commissioner