UTAH LABOR COMMISSION

BRIAN L. CHRISTENSEN, **Petitioner,** **vs.** **SNOWBASIN and ACE AMERICAN INSURANCE COMPANY,** **Respondents.**	**ORDER AFFIRMING ALJ'S DECISION** **Case No. 09-0207**

Brian L. Christensen asks the Utah Labor Commission to review Administrative Law Judge Trayner'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. Christensen claims workers' compensation benefits for a broken leg he suffered during a skiing accident on January 15, 2009. Judge Trayner held an evidentiary hearing on the claim and denied benefits to Mr. Christensen after finding that his injury did not occur while he was working. Mr. Christensen challenges the denial of benefits by arguing that Snowbasin presented inadequate and false information regarding its policies and the events surrounding his injury.

FINDINGS OF FACT

The Commission adopts Judge Trayner's findings of fact, which are summarized as follows. Snowbasin employed Mr. Christensen as a ski instructor. Snowbasin's ski instructors used a sign-in sheet to indicate whether they were available to work and were allowed to ski on their own while they were not working. On the morning of January 15, 2009, Mr. Christensen arrived at Snowbasin's ski center but did not sign in. Mr. Christensen claims that the sign-in sheet was not available when he arrived, however, the evidence indicates that many other Snowbasin employees signed the sheet that morning.

After leaving the ski center, Mr. Christensen was skiing when he fell and broke his left leg. Mr. Christensen alleges that he was on his way to receive his assignment for the day when the accident occurred.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act provides for medical benefits and compensation for workers who are injured "by accident arising out of and in the course of... employment...." Although Mr. Christensen asserts that he was working at the time of the accident, he has not offered any evidence to support his position. In fact, the only objective evidence available is the sign-in sheet that Mr. Christensen admits he did not sign. There is no evidence that Mr. Christensen otherwise informed Snowbasin that he was present and available to work.

Regardless of Mr. Christensen's contention that the sign-in sheet was unavailable, the fact that he did not sign in or otherwise inform Snowbasin that he was available to work shows he was skiing on his own time as a patron rather than a ski instructor. The Commission concurs with Judge Trayner's determination that Mr. Christensen was not injured in the course and scope of his employment with Snowbasin because he was not skiing as an employee. The Commission therefore affirms Judge Trayner's decision to deny Mr. Christensen's claim for benefits.

ORDER

The Commission affirms Judge Trayner's decision of October 13, 2009, on this matter. It is so ordered.

Dated this 28th 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.