R.V.D. asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's decision regarding Mr. Van Dyke's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. D. was injured in a skiing accident while working as a ski patroller for Park City Mountain Resort on February 8, 2003. Park City Mountain Resort and its insurance carrier, Workers Compensation Fund (referred to jointly as "Park City" hereafter), accepted liability under the Act for Mr. Van Dyke's work-related injuries and paid some medical and disability benefits in connection with those injuries. However, Park City refused to pay other medical and disability benefits claimed by Mr. D. on the grounds such benefits were not necessitated by his work injuries. On June 3, 2004, Mr. D. filed an application with the Commission to compel payment of the disputed benefits.

Judge La Jeunesse held an evidentiary hearing on November 4, 2004, and then referred the medical aspects of Mr. Van Dyke's claim to an impartial medical panel. The panel submitted its report on November 30, 2005, and Judge La Jeunesse issued his decision on January 23, 2006. In summary, Judge La Jeunesse awarded additional medical benefits and permanent partial disability compensation to Mr. Van Dyke, but denied Mr. Van Dyke's claim for additional temporary total disability compensation after September 8, 2003, because Mr. D. had rejected Park City's offer of suitable light-duty work

Mr. Van Dyke's motion for review addresses his entitlement to temporary disability compensation after September 8, 2006. Mr. D. argues that neither Judge La Jeunesse's findings nor the underlying evidentiary record establishes that the light-duty work offered by Park City was within Mr. Van Dyke's physical capabilities. Consequently, according to Mr. Van Dyke, his rejection of that work should not disqualify him from receiving temporary total disability compensation thereafter. Alternatively, Mr. D. contends that, even if the light-duty work offered by Park City was suitable, the wages he would have received at the light-duty work would not have been sufficient to completely end his right to temporary partial disability compensation.

FINDINGS OF FACT

The Commission adopts Judge La Jeunesse's findings of fact. However, the Commission agrees with Mr. D. that additional findings of fact are warranted with respect to Park City's offer of light duty work and Mr. Van Dyke's ability to perform that work. The Commission has, therefore, reviewed the evidentiary record and includes its additional findings on those points in the following summary.

As already noted, Mr. Van Dyke's work-related skiing accident injured his left knee and left ankle, and caused a deep venous thrombosis in the left leg. The accident also caused left carpal tunnel instabilities. Mr. Van Dyke's thrombosis and ankle injuries resolved over time. The left knee injury was surgically repaired on July 17, 2003. The left carpal tunnel instability was surgically corrected on September 16, 2004, and Mr. D. reached medical stability from that surgery on March 16, 2005.

Mr. D. has also experienced other medical problems with his right leg, arms and head, as well as depression. These other medical problems were not caused by his work accident.

On August 25, 2003, Mr. D. was released to light duty work with the following restrictions: 1) no lifting, pushing, or pulling over five pounds; 2) no repeated bending, twisting or reaching; 3) no squatting or bending; 4) no climbing; 5) no prolonged standing or walking over 15 minutes; 6) no prolonged sitting. On September 8, 2003, these restrictions were slightly modified to allow Mr. D. to lift, push or pull up to ten pounds. During the three-month period following the September 16, 2004, surgery to correct his left carpal tunnel instability, Mr. D. would have been restricted from any significant use of the left hanD.

On September 8, 2003, Park City offered light-duty work to Mr. Van Dyke. Park City first suggested that Mr. D. help work at the "Alpine Slide." Mr. D. rejected this assignment. Park City then offered Mr. D. work in the company's accounting office. This proposal required Mr. D. to sort through stacks of invoices and place them in the proper files. The invoices and files were placed on the sorting table by another employee. Mr. D. was provided a chair and was free to stand or sit as he preferreD. Furthermore, Park City was prepared to provide any other necessary accommodations. For example, Park City's risk manager offered to drive Mr. D. to and from work.

Mr. D. reported for the proposed light duty work on or about September 9, 2003. He parked in a public parking lot, walked to Park City's office building, climbed two flights of stairs to the accounting office and then began work. He performed the job for about 45 minutes, then told a co-worker that he "couldn't handle" the work and left, never to return.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Labor Commission is whether Mr. D. is entitled to temporary disability compensation after September 9, 2003. Subsection 410(1)(a) of the Act establishes the general right of injured workers to temporary total disability compensation as follows: "In case of temporary disability, so long as the disability is total, the employee shall receive (compensation) . . . ." This provision must be interpreted in light of two decisions by the Utah Supreme Court. In *Entwistle Co. v. Wilkins*, 626 P.2d 495, 498 (Utah 1981), the Court held that an injured worker's temporary disability "may be found to be total if he can no longer perform the duties of the character required in his occupation prior to his injury." In *Booms v. Rapp*, 720 P. 2d 1363, 1366 (Utah 1986), the Court ruled that "once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits."

Mr. Van Dyke's work injuries prevented him from engaging in the strenuous work activities he had performed prior to his accident. Consequently, his presumptive right to temporary total disability compensation began at the time of his accident and continued until he reached medical stability on March 16, 2005. The Commission describes Mr. Van Dyke's right to temporary total disability compensation as "presumptive" because another statutory provision, subsection 410(2), allows an employer to avoid paying such compensation by providing light-duty work for the injured worker. Subsection 410(2) states:

> In the event a light duty medical release is obtained prior to the employee reaching a fixed state of recovery, and when no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paiD.

Subsection 410(2) establishes two conditions that must be met before an employer is excused from paying temporary total disability compensation. First, the injured worker must have a medical release to perform some type of light duty work. Second, the employer must make such light duty work available to the injured worker.

As of August 25, 2003, Mr. D. had been released to light-duty work with restrictions against lifting, pushing, or pulling more than five pounds; repeated bending, twisting or reaching; squatting or bending; climbing; standing or walking over 15 minutes; and prolonged sitting. On September 8, 2003, these restrictions were slightly relaxed to allow Mr. D. to lift, push or pull up to 10 pounds. And then, during the three-month period following the September 16, 2004, surgery to correct his left carpal tunnel instability, Mr. D. was restricted from any significant use of the left hanD.

Although Mr. Van Dyke's limitations were substantial, Park City was able to accommodate those restrictions by designing a sedentary office assignment. The assignment required nothing more than examining and sorting invoices, then placing those invoices in files. Mr. D. was not required to transport the files to or from the filing cabinets; other employees were available for that purpose. He was free to stand or sit as was most comfortable for him. He was offered transportation to and from the work site. The Commission finds nothing in this assignment that was beyond Mr. Van Dyke's capabilities, either as of September 9, 2003, or during the subsequent three-month period that followed his left-arm surgery on September 16, 2004.

The Commission notes Mr. Van Dyke's argument that the light-duty work offered by Park City required too much walking and climbing between the parking lot and the accounting office. However, at the time Mr. D. rejected the light-duty assignment, he had already arrived at the office. His alleged difficulties in reaching the office do not appear to have been the actual reason he abandoned the job. Furthermore, the record establishes that Mr. D. could have reached the location of his work with almost no walking by accepting Park City's offer of transportation and asking to be dropped off at the office entrance. Alternatively, he could have asked for disabled parking close to the office. Furthermore, the record establishes that Mr. D. could have taken an elevator to the second floor where his work was locateD. The Commission does not accept Mr. Van Dyke's assertion that he was unaware of the elevator's existence.

In light of the foregoing, the Commission concurs with Judge La Jeunesse's conclusion that

Park City offered medically-appropriate light-duty work to Mr. D. on September 9, 2003, and that Mr. D. rejected such work without justification. The Commission therefore concludes that Mr. D. is not entitled to temporary total disability compensation after that date.

As a final matter, the Commission notes Mr. Van Dyke's argument that, even if he is not entitled to temporary total disability compensation, he should be awarded some amount of temporary partial disability compensation. However, Mr. D. did not make this claim on his initial application for benefits or during the evidentiary hearing. The record provides no evidentiary basis for such an awarD. The Commission therefore rejects Mr. Van Dyke's claim for temporary partial disability compensation.

ORDER

The Commission affirms Judge La Jeunesse's decision, as modified herein, and denies Mr. Van Dyke's motion for review. It is so ordereD.

Dated this 31st day of March, 2006.

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R. Lee Ellertson
Utah Labor Commissioner