Lumbermen's Underwriting Alliance ("Alliance" hereafter) asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's determination that Alliance is liable for E. P.'s benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

Mr. P. asks the Appeals Board to clarify and correct clerical errors in Judge George's decision.

The Appeals Board exercises jurisdiction over these motions for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mr. P. filed an application with the Commission on November 17, 2000, seeking workers' compensation benefits for back injuries suffered in two work accidents at Newspaper Agency Corporation ("NAC"). The first accident occurred on June 5, 1997, while Alliance was NAC's workers' compensation insurance carrier. The second accident occurred on January 17, 2000. At that time the Workers Compensation Fund ("WCF") provided NAC's workers' compensation coverage.

The parties waived an evidentiary hearing on Mr. P.'s claim and instead submitted a written stipulation of facts to Judge George. The parties also agreed that Judge George should refer the medical aspects of the claim to an impartial medical panel. The panel filed its report on March 15, 2002. On February 27, 2004, Judge George accepted the panel's opinion that Mr. P.'s back injuries were caused by his first accident at NAC. Because Alliance provided NAC's coverage at that time, Judge George directed Alliance to pay Mr. P.'s disability compensation and medical expenses.

In requesting review of Judge George's decision, Alliance argues that Judge George should not have disregarded a reply memorandum Alliance submitted in support of its objection to the panel report. Alliance also argues that Judge George applied an incorrect standard of medical causation to Mr. P.'s claim and erred in accepting the panel's opinion. Finally, Alliance argues that the "last injurious exposure rule" relieves Alliance of liability for Mr. P.'s claim.

Mr. P.'s motion for review asks the Appeals Board to correct Judge George's decision with respect to the dates of Mr. P.'s accident and medical stability, to correct the amount of disability compensation due Mr. P., and to determine the fee that Mr. P.'s attorney is entitled to receive.

FINDINGS OF FACT

The background of Mr. P.'s claim is set out in the parties' stipulated facts. In summary, Mr. P. first injured his back in 1985 while working at Burton Lumber. He underwent surgery at the L5-S1 level of his spine, recovered, and then returned to full-duty work with no further problems. He received a 7% permanent impairment rating for this event.

Twelve years later, on June 5, 1997, Mr. P. injured his back while lifting bundles of newspapers at NAC. He again underwent spinal surgery, this time at the L4-L5 level. He returned to work but continued to have back pain. This episode left Mr. P. with a 15% whole person impairment.

On January 17, 2000, during a period of strenuous work at NAC, Mr. P. experienced increased low back pain and left leg spasms. He was diagnosed with recurrent disk herniation at the L4 level. He underwent surgery during June 2000, and again during April 2001.

Due to differences of medical opinion regarding the causes of Mr. P.'s problems, the parties agreed that Judge George should appoint an impartial panel of physicians to evaluate the medical aspects of Mr. P.'s claim. The panel, consisting of an orthopedic surgeon and a neurologist, reviewed Mr. P.'s complete medical history and medical records, personally examined Mr. P. and ordered additional radiological studies. The panel concluded that Mr. P.'s ongoing back problems were entirely due to his work accident at NAC on June 5, 1997.

Over Alliance's objections, Judge George adopted the panel's findings. Because Alliance was NAC's insurance carrier at the time of the June 5, 1997, accident, Judge George ordered Alliance to pay Mr. P.'s workers' compensation benefits.

DISCUSSION AND CONCLUSIONS OF LAW

As already noted, Alliance and Mr. P. have each filed motions for review of Judge George's decision. The issues raised in their respective motion are discussed below.

I. ALLIANCE'S MOTION FOR REVIEW.

As its first argument, Alliance contends Judge George violated Commission rules and denied Alliance's right to due process by refusing to consider a supplemental memorandum that Alliance submitted in support of its objections to the medical panel's report.

The Appeals Board notes that on May 20, 2002, Judge George mailed copies of the panel's report to the parties and allowed 15 days for filing written objections. Alliance then requested and was granted additional time to submit its objections. When filed, Alliance's objections were included in a nine-page memorandum that fully set out Alliance's challenges to the report. Judge George accepted this memorandum, as well as WCF's subsequent response. However, Judge George declined to accept any subsequent reply memoranda from either Alliance or WCF.

The Appeals Board finds Judge George's actions to be appropriate. Objections to medical panel reports are governed by §34A-2-601 of the Utah Workers' Compensation Act and Commission Rule 602-2-2. These provisions allow parties 15 days to state their objections to medical panel reports. In this case, that 15-day period was extended for Alliance's benefit. The Appeals Board finds that Alliance had sufficient time to state its objections to the panel's report. As to Alliance's argument that it should be allowed to submit subsequent supplementary memoranda,

neither the statute nor the rule require the type of back-and-forth procedure Alliance desires.

As to Alliance's argument that another of the Commission's rules, Rule 602-2-1.J, authorizes the filing of a reply memorandum, the Appeals Board disagrees. The Appeals Board views Rule 602-2-1.J as pertaining to motions but not to medical panel objections. Even if the rule were to be interpreted as applying to medical panel objections, Alliance failed to comply with the rule's requirement that reply memoranda be filed within seven days. Alliance waited 42 days. Finally, the Appeals Board has reviewed the content of the reply memorandum and concludes that it does not change the validity of the panel's report.

Turning to the substance of Alliance's challenges to the medical panel report, Alliance contends the report is derived from an incomplete review of Mr. P.'s medical history and diagnostic studies, thereby leading to inaccurate conclusions. Contrary to this argument, the Appeals Board finds the panel report thorough and well-reasoned. It is the work of respected, impartial medical experts who have had the opportunity to thoroughly review Mr. P.'s circumstances. The Appeals Board finds the panel's report persuasive.

In a related argument, Alliance contends that "(t)he medical evidence . . . overwhelmingly supports a finding that the January 17, 2000, accident *caused or contributed* to (Mr. P.'s) need for subsequent treatment." While the Appeals Board recognizes that the record does contain some medical evidence supporting Alliance's argument, such evidence is contradicted by the medical panel's more persuasive determination that there is no medical causal connection between the January 17, 2000, event and Mr. P.'s back problems. The Appeals Board therefore finds no basis to attribute Mr. P.'s need for medical care or his periods of disability to the January 17, 2000, incident.

Finally, Alliance argues that the "last injurious exposure rule" relieves it of liability for Mr. P.'s back problems. Under this theory, Alliance again argues that Mr. P.'s work at NAC on January 17, 2000, was the last event to causally contribute to his back problems and that WCF, as NAC's insurance carrier on that date, would be liable for Mr. P.'s benefits. However, the Appeals Board has already determined it was the events of June 5, 1997, and not the events of January 17, 2000, that caused the injuries. Alliance is therefore liable for Mr. P.'s benefits.

II.. MR. P.'S MOTION FOR REVIEW.

Mr. P.'s motion for review asks the Appeals Board to clarify some parts of Judge George's decision and to correct clerical errors in other parts.

Mr. P. points out that, at one point in his decision, Judge George erroneously refers to June 5, 1995, as the date of Mr. P.'s first accident at NAC. The correct date is June 5, 1997. However, this typographical error is of no significance to Judge George's final order.

Next, Mr. P. contends he is entitled to payment of additional permanent partial disability compensation beyond the amount awarded by Judge George. The Appeals Board has reviewed Judge George's order and concludes it is correct as written.

Mr. P. also contends he is entitled to additional temporary disability compensation, based on the dates he returned to work and reached medical stability. However, the parties submitted this matter for decision on stipulated facts. Those stipulated facts are insufficient to support Mr. P.'s claim for additional temporary disability compensation.

Finally, Mr. P. asks for clarification of Judge George's award of attorneys fees. The Appeals Board finds Judge George's order to be sufficient and, therefore, takes no action on this request.

ORDER

The Appeals Board grants Mr. P.'s motion for review only to the extent of correcting the erroneous date of Mr. P.'s first accident at NAC from June 5, 1995, to June 5, 1997. The Appeals Board denies the remainder of Mr. P.'s motion for review. The Appeals Board also denies Alliance's motion for review. With the correction of the date of accident noted above, the Appeals Board affirms the remainder of Judge George's decision. It is so ordered.

Dated this 29th day of December, 2004.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch